RECEIVED
MAY 22 20
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5631 (S.C. Ct. App. filed February 27, 2019)

Appellate Case No 2019-000840

THE STATE, ... PETITIONER,

v.

HEATHER ELIZABETH SIMS,.....RESPONDENT.

APPENDIX
VOL. II

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

JIMMY RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Box 1276
Conway, SC 29528
(843) 255-5880

ATTORNEYS FOR PETITIONER

BLAKE A. HEWITT
Counsel for Respondent

Bluestein, Thompson, Sullivan LLC
Post Office Box 7965
Columbia, SC 29202
(803) 734-1330

ATTORNEY FOR RESPONDENT

INDEX

Index. i

Record on Appeal. 1

Final Brief of Appellant. 1831

Final Brief of Respondent. 1849

Final Reply Brief of Appellant. 1874

S.C. Court of Appeals Opinion No. 5631 (S.C. Ct. App. filed February 27, 2019) 1886

Respondent's Petition for Rehearing. 1912

Appellant's Return to Petition for Rehearing 1923

Order Denying Petition for Rehearing 1931

Appellant's Petition for an Appeal Bond. 1933

Order Granting Appellant's Release 1944

Respondent's Emergency Motion to Stay Appellant's Release (S.Ct.) 1945

Respondent's Emergency Motion to Stay Appellant's Release (Ct.App.) 1963

Order Staying Appellant's Release (S.Ct.) 1983

Appellant's Return to Emergency Motion. 1985

Respondent's Return to Motion for an Appeal Bond. 1993

Order Granting Appeal Bond. 2008

Order Reversing Release of Appellant. 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

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

State of South Carolina ..... Respondent,

v.

Heather Elizabeth Sims ..... Appellant.

RECORD ON APPEAL - Volume 2

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

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

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

Attorneys for Appellant

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

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

Attorneys for Respondent

INDEX

VOLUME 1

Orders

Indictment 1

Verdict Form 3

Order Denying Post-Trial Motions 4

Pleadings and Motions

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

Memo on Motion to Modify Sentence 9

Memo in Support of Motion for New Trial 11

Transcripts

Trial Transcript (excerpts) 15

Opening Statements 38

Renee Hardwick
- Direct 88
- Cross 95

Tom DelPercio
- Direct 99
- Cross 132
- Redirect 161

Scott Thompson
- Direct 174
- Cross 197
- Redirect 215
- Recross 231

Jill Domogauer
- Direct 238

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

VOLUME 2

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

Cross 980
Redirect 981

VOLUME 3

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

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

VOLUME 4

Trial Transcript (continued)
Motions 1472

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

Motions 1509

Jury Charge Conference 1534

Closing Statements 1548

Jury Charge 1627

Jury Question No. 1 1652

Jury Question No. 2 1662

Verdict 1673

Sentence 1699

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

State's Exhibits

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

Defendant's Exhibits

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

Certificate of Counsel 1818

Q Why did you get a search warrant?

A Two reasons. First, the scene looked unnatural.

MR. MARTIN: Objection. Objection. Same thing I objected to, he's not a crime scene specialist. He can't give an opinion as to what it looked like. We've already been over that.

THE COURT: He can only testify what he saw, but not make any -- give us any opinions. I mean, that is a very thin line, but you have to walk it. Sustained on that. He can testify about what he saw.

Q Lieutenant --

A The second part, if I can answer?

THE COURT: I don't know. Let her ask the question again.

Q If you don't mind, let me back up one second. Have you ever been qualified as an expert?

A Yes, ma'am, I have.

Q If you don't mind, tell this jury what you have been qualified as an expert in and tell this Court and Mr. Martin what you have been qualified as an expert in.

A I have been qualified as an expert in crime scene processing, crime scene reconstruction, evidence processing procedures, blood pattern analyst, property and evidence procedures, and with limitations on

firearms, footwear and tool marks. I've also been qualified as an expert in the City of New York in a ballistics alignment laser. I've been qualified numerous times in this court and in New York City.

Q Okay. And, basically, what that means is you have the qualifications --

MR. MARTIN: Objection.

THE COURT: Let her ask the question.

Q Do you know what being qualified as an expert means?

A Yes, ma'am.

Q After you were qualified, were you able to give your opinion on those things?

A Yes, ma'am, only an expert can render an opinion.

Q Okay. Wonderful. If you don't mind, I would like to know when you came in, did you form an opinion that led you to --

THE COURT: Wait a minute. He has to be accepted as an expert first. Are you asking that he be admitted and qualified as an expert?

MS. LIVESAY: Yes, sir, Your Honor.

MR. MARTIN: Well, then they have to lay the proper foundation. It has not been done yet.

MS. LIVESAY: It is okay.

THE COURT: Unfortunately, I need you to go

through his training and everything. I know he was qualified, but back it up.

MS. LIVESAY: I will.

Q If you don't mind, just one more time, let's start off. What have you been qualified as an expert in?

MR. MARTIN: Again, I've heard that. That question has been asked and answered. That is not the only question that needs to be asked.

MS. LIVESAY: I need my memory refreshed; it was a long list.

Q What have you been qualified as an expert in?

A Crime scene processing, crime scene reconstruction, evidence processing procedures, blood pattern analysis, property and evidence procedures, particularly with the South Carolina Preservation of Evidence Act, and with limitations of firearms and footwear and tool marks.

Q So, basically, you have been qualified as an expert in the investigation of crime scenes?

A Yes, ma'am.

Q Now, how long have you actually been doing investigations of crime scenes?

A Since approximately 1984, maybe.

Q Has there ever been a break, or have you been

doing crime scene investigation since '84 until 2015?

A I had a separation of service when I retired from New York City and moved here, and then was hired here after a period of time.

Q So give me a total of how many years you have been doing crime scene investigation?

A I would say approximately 25 to 27, maybe.

Q How many crime scenes have you been to and worked?

A Well over a thousand.

Q And how many times have you been in this courthouse and testified about crime scene investigation?

A At least a dozen.

Q And how many times have you been qualified as an expert regarding the investigation of crime scenes?

A I believe at least a dozen.

MS. LIVESAY: Your Honor, at this time, I wish to have him moved as an expert in the investigations of crime scene and processing.

MR. MARTIN: Again, I don't think the proper foundation has been laid. None of this is going into his training, specifically as to any of those areas, and the fact that he's been qualified before or the fact that he has been doing it for 25 years is not the

proper foundation. He may well be able to do it, but it just hasn't been laid yet. If, in fact, he's going to testify as an expert in anything, I would like to see any reports that he's made or given in connection with what he's going to testify about.

THE COURT: There are no reports, I assume?

MS. LIVESAY: Your Honor, all he's going to testify about is the reports that Mr. Martin already received and the evidence he's already received in this case.

THE COURT: Over your objection, I'm going to allow him to be introduced as an expert based upon his training and education, and the fact that he's been qualified in this court as an expert before, not by me, but other judges. But your objection is --

MR. MARTIN: An expert in what, for the record?

MS. LIVESAY: Crime scene investigation.

THE COURT: Crime scene investigation, which is very broad.

MR. MARTIN: Again, I don't think that qualification qualifies him to testify to opinions.

THE COURT: That's a whole other question.

MR. MARTIN: Yeah, it is.

THE COURT: Go ahead.

MS. LIVESAY: Thank you.

Q Lieutenant Cestare, when you first went into the house -- let's try to get back to -- you snapped a few photographs?

A Yes.

Q Why did you snap those particular photographs?

A They were relevant to the investigation that was ongoing.

Q Why did you find those particular items of relevance to your investigation?

A I felt that each of the photos I took depicted an item of evidence or of value that we were going to be further investigating. And to keep from potentially contaminating the scene any more than my initial entry, I snapped those photos, so when I backed out of the residence, I could review them on my phone and make any additional determinations that I needed to make.

Q After you left the house, where did you go to further your investigation?

A When I backed out of the residence, I instructed the detectives -- I believe it was John Martin -- to go ahead and get a search warrant. At that point, I was informed Ms. Sims had been taken to the hospital.

The second reason of not wanting to go forward with a search warrant is that she was not there to withdraw consent at any time if she wanted to. So I

wanted a search warrant there so we had a legal course to go about the house as we needed to.

Q After you left the house, where did you go to further your investigation?

A I left the house. I had received the phone call from Detective Chatfield that he was in route to Grand Strand Hospital to conduct an interview of Ms. Sims. I instructed him that we would need her clothing taken into evidence for further examination, and that we would need DNA from her for further examination, if she was willing to consent to DNA. He had asked me some of the details of the case, since he had not come to the scene, so him and I discussed briefly what I observed inside the residence. I told him I would be in route to the hospital shortly to meet up with him and bring DNA kits to get swabs from her and bring any packaging that they needed for clothing and so forth.

Q When you went to the hospital, did you come in contact with this defendant?

A Yes, I did.

Q And did you see any injuries on her?

A Yes, I did.

Q I'll show you what is marked as State's 94, 95 and 96.

MR. MARTIN: Make sure you identify the number.

MS. LIVESAY: I will.

Q First of all, if you don't mind, just for the record, note what exhibit this is and whether or not you took the picture, and if this was accurate of her that night when you were at the hospital.

A (Witness examines document.) I'm holding State's Exhibit No. 96. Without looking back at my notes, I'm not sure if these are the photos I took or -- I know one of them is. The other two, I'm not sure without looking at my notes.

Q It's okay. Refer to your notes and let us know if those are the ones you took.

A Two of the photos, I took. The third one is not. I believe it was a patrol photo.

MS. LIVESAY: This is the one he did not take (indicates).

Q So if you don't mind, let this lady know which exhibits did you take?

A State's Exhibit 95 is a photo I took, and State's Exhibit 96 is a photo I took.

Q And are those pictures you took at the hospital?

A Yes, they are.

Q And is she still in the hospital in her hospital gown?

A Yes, ma'am. This is in the emergency room at

Grand Strand, and they were in one of the rooms there.

Q Are those pictures accurate of what you saw and took a picture of that night?

A Yes, they are.

MS. LIVESAY: Your Honor, at this time the State is wishing to put into evidence State's Evidence No. 95 and 96.

THE COURT: Any objection?

MR. MARTIN: Those pictures haven't been introduced before? My only objection is if they were already introduced.

THE COURT: No, they have not.

MR. MARTIN: If they have not -- I mean, the exhibits numbers haven't, but there were several pictures that looked the same. But if they haven't, I have no objection. Put them in.

(State's Exhibits 95 and 96 admitted.)

MS. LIVESAY: So they are in evidence without objection?

THE COURT: Without objection.

Q Pete, if you don't mind, step down and show these people what these are pictures of. I'm showing the jury now State's Exhibit No. 96?

A That is a pictures of Ms. Sims' arm showing an IV in it and showing some scratch marks on the arm.

Q How many scratch marks do you see on her arm?
A Three.
Q If you don't mind, for the jury, point out those three.
A Here is a mark here, two marks here and a mark here, so four I see.
Q So you see four marks?
A Yes, ma'am.
Q Now, I'm going to show you State's Evidence No. 95, what's going on in this picture?
A That is a picture of her hand showing an injury on the thumb. There is also a picture of a sandwich in the photo, and a picture of a cell phone in the photo.
Q Was this photo taken while you were at the hospital?
A Yes, ma'am.
Q Did you hear your voice on the recording?
A I did.
Q So was this photo taken during that process?
A Yes, ma'am, during the time I was there.
Q So this was taken a couple hours after she shot the victim?
A Yes.
Q Thank you, Lieutenant Cestare. Ms. Pop is going to put those pictures up there real quick. Is this the

pictures you took?

A Yes, ma'am, it is.

Q If you don't mind, you said you saw four marks?

A Yes, I did.

MS. LIVESAY: Do you mind blowing that up a little, Ginger, so I can see it?

Q If you don't mind -- I had a -- can you point those marks out to the jury?

A On the extreme right you will see an IV tube. There is Mark No. 1, which crosses underneath the IV tube. To the left of that, there are two marks, one faint mark, one a little bit more detailed, and then to the far left, just at the edge of the frame of the photo, is another mark.

Q If you don't mind, show that other one, if you can.

MS. LIVESAY: Can you blow up that other one to the left?

Q And you saw this mark as well?

A Yes.

Q Do these marks, to you, look like the other two?

A Sorry, I don't understand.

Q Sorry. Does this scratch look like the other two scratches?

A It does.

Q You were there around 9 o'clock?
A I would have to look at my notes for the exact time.
Q Sometime close to 9:00?
A I believe it might be after 9:00 when I was there.
Q Let me see the next picture. Maybe the clock will be on the phone. What is this a picture of? Is this her again?
A That is a picture of her left hand with an injury on the thumb, a sandwich just above that and the cell phone to the upper-right of the photo.
Q Is that how you saw her when you showed up to the hospital?
A Yes.
Q Tell this crowd how her demeanor was. Was she hysterical at the hospital?
A No. She was cooperating, answering the questions that I had asked of her. She was apparently, you know, upset, but she was able to stay composed and answer the questions clearly and concisely. I had no problems understanding her and I don't believe she had any problems understanding the questions that were asked of her.
Q Were her answers responsive to your questions?

A Yes, ma'am.

Q Okay. Now, about how long were you at the hospital?

A Roughly, 30 minutes or so.

Q And earlier, I don't know if you were here or not, but there was a question Mr. Martin asked that -- talking about you and Detective Chatfield and Brandon Lee were all in there talking to her; do you remember that?

A Yes.

Q And was there -- did you see anybody that was there for Heather Sims at the hospital?

A Yes, I did, later on.

Q And who was there?

A After I left the room that Ms. Sims was in, I went into the waiting area of the hospital and met some family members and friends of Ms. Sims.

Q So it is not like you walked out and there was absolutely nobody at the hospital?

A No, ma'am. When I walked into the waiting room, Mr. Causey, Ronnie Causey, was in the waiting room and several other people I knew were friends of the family that I also knew through the police department.

Q If you don't mind, when you got there, did she have that phone in the hospital when she was sitting

there in the ER?

A The phone in the photo, yes. I asked Mr. Causey who that phone belonged to.

Q Let me ask you this. Did you take that phone from her?

A No, ma'am, I did not.

Q Did you arrest her, handcuff her or in any way restrain her that night?

A No, not at all.

Q When you walked in was she restrained in any form or fashion?

A No.

Q When you walked out was she restrained in any form or fashion?

A No.

Q And, in fact, this is close to the end of the interview, this picture, isn't it?

A Yes, ma'am. That was shortly before I left the room, and the interview concluded pretty much when I left.

Q So while you are all in there, nobody denied her having a phone or something to eat or drink or anything else she may want while she was in there?

A No, ma'am. She was eating on the sandwich a little bit. She was back and forth on the phone while

she was talking to us, back and forth on the phone texting in some form or fashion. She was not speaking on the phone.

Q And you said that you asked somebody who the phone had belonged to?

A Yes.

Q Who did the phone belong to?

A When I went into the waiting room, the lobby of Grand Strand Hospital, I went right over to her dad, Ronnie Causey, whom I have known through the police department as an acquaintance. We've talked briefly here and there. I just know him as an acquaintance. I went over to him to tell him that his daughter was okay and was probably going to be released within a little while, that we just finished the interview, and I'm sure he would be able to go in and join her shortly.

I did ask him that she had a phone in the room with her -- I said it is an iPhone in a black and orange case, is that David Sims' phone, and he said, no, that's my phone. I gave her my phone so she would have a phone on her.

Q Okay.

A "My phone," meaning Mr. Causey's phone.

Q So that was Ronnie's phone in the pictures?

A As I believe, yes.

Q So when you asked him that, I don't know if you were in here earlier, there was a big question about did anybody ask her or anyone else about this phone, looking for a phone. So you did make an inquiry about where David Sims' phone was?

A Yes, ma'am, I did.

Q Did anyone have an answer for you?

A No.

Q At that time?

A No.

Q So you were, at that time, inquiring, looking and wondering where the phone was?

A Yes, ma'am. When I was at the residence and took the initial picture on my cell phone, I saw the gray and white iPhone on the counter. Somewhere along the line of getting to the hospital, I was told that that was Ms. Sims' phone in the bathroom. I questioned where Mr. Sims' phone was. I did not get an answer to it.

Q And then after you left the hospital, where did you go?

A When I left the hospital, I responded back to the residence. When I got back to the residence, I had been informed leaving the hospital that the search warrant had been signed for the residence. I spoke

with Investigator Domogauer and told her -- instructed her to start processing the scene, that I would be along shortly to assist her, and I pretty much responded straight from the hospital back to the residence on Old Reaves Ferry Road.

Q Okay. There has been -- throughout Jill's testimony and other testimony -- questions about the house being searched. Did you assist in searching the residence?

A Yes, I did.

Q In that process, did you find the victim's phone?

A No, I did not.

Q Earlier, I don't know if you were listening or if you were here, but Mr. Martin was asking if any phones were in the residence that night other than Heather Sims' phone?

A Yes.

Q And you saw other phones in the house?

A I did.

Q And were those phones collected?

A No, they were not.

Q Why weren't they collected?

A They had no relevance to what we were investigating.

Q Now, here is the question that I think I have,

and Mr. Martin probably has. Were you ever able to recover the victim's phone?

A Yes.

Q If you don't mind, please tell this jury how this phone was finally recovered?

A After leaving the scene that night and not finding the victim's phone, I was told that it was also an iPhone, so I knew what type of phone I was looking for. After leaving the scene that night, we made inquiries through Mr. Causey to try to locate where that phone was, and four days later -- four days later, August 15th, Mr. Causey advised that he had the phone, at which time we did another search warrant on the residence to recover David Sims' phone, and at that time we also recovered other evidence from the residence that we felt was now going to be important.

Q So did you -- eventually, somebody handed the phone over to you?

A Yes.

Q Who was it?

A Mr. Causey.

Q And that was after you executed another search warrant for the house?

A Yes, ma'am. That was four days later.

Q So, indeed, you had seen the victim's phone?

A Sorry?
Q You had seen the victim's phone and collected it?
A Yes, ma'am.
Q Tell this jury, was that phone in that house that night on August 11, 2013?
A No, it was not.
Q So you didn't see it anywhere in that house?
A No, ma'am.
Q Since then, have you learned whether or not it was in the house August 11th?
A I was informed by Mr. Causey that he found the phone allegedly in the drawer in the house.
Q And since then, did you ever find out that the phone was somewhere other than that drawer on August 11th?
A It was not in that drawer on August 11th.
Q Tell this jury where that phone was?
A At one point during this investigation, and at an earlier hearing, I was in this room, I believe, when Ms. Sims said that on the evening of the incident the phone was in her husband's pocket and half hanging out on the floor, yet, we never found it that night when we searched him, the residence or the next day at the autopsy of him.
Q So you learned through this defendant that,

indeed, she got it out of his pocket that night after he had been shot?

A Yes. I don't know her exact words, but it was that the phone was half hanging out of his pocket when he was lying on the floor when she was performing CPR on him.

Q And she took the phone out of the pocket?

A Yes, ma'am.

Q And did you ever learn from that statement where she put the phone after she got it out of his pocket?

A I don't know where it went from there.

Q You just know when you got to the house, you couldn't find it?

A That's correct. I did not find that phone anywhere in that residence.

Q And that was her phone sitting right up there on the vanity?

A Yes, that was Ms. Sims' phone on the vanity.

Q And there was actually a home phone sitting in the white chair?

A Yes, ma'am. The home phone we never collected, and there was also another -- an older phone in a drawer in the kitchen that was not an iPhone.

Q So you didn't see any reason to collect it?

A No, ma'am. It had no relevance to the case.

Q Okay. If you don't mind, tell this jury, you executed another search warrant on the house on what date?

A Well, we executed two additional search warrants on the house.

Q That's right. I'm sorry, I jumped ahead. Tell them about the first additional search warrants?

A Okay. The first search warrant was the night of the event, which was August 11th. The second search warrant was August 15th where we recovered Mr. Sims' phone, and I also at that time took a computer tower from the upstairs office of the residence. The computer tower was in what, I guess you would call, an office, a bonus room above the garage. It was in the same room that I had on the night of the event taken the video surveillance system for the residence. I collected that device as well.

Then, a third search warrant was executed several days later on August 23rd, and at that time we seized a cell phone bill, a white in color Mac Book computer that had not been in the residence on the evening of the event, and I believe that was it that was seized that day. So those were the two additional dates, August 15 and August 23rd.

Q When you went back to the house the second time,

you collected the phone; is that correct?

A Yes, ma'am.

Q And at this point, you had more information from the interview at the hospital; is that correct?

A Yes, it is.

Q Now, when you went back that second time, at that time, she had told you which drawer she got the gun from; do you remember that?

A Yes.

Q So when you go back to the house, do you further look into that, further investigate?

A Yes, I did.

Q If you don't mind, I'll show you some pictures, and if you don't mind, tell this Court if you recognize these pictures. If you don't mind, let this lady here know what picture number you are looking at -- sorry, one second. Let me show them to Mr. Martin first.

A Sure.

MR. MARTIN: No objection to any of the exhibits except 90 and 91, I object to the introduction of.

MS. LIVESAY: They are the trajectory rod into the bullet hole of the tub.

THE COURT: Let's me look at it.

(Whereupon, a bench conference was had.)

THE COURT: Lay a foundation and then they are

introduced over his objection after.

Q For this lady and for the Court, tell them what picture number it is and what we're looking at, and if you took the picture.

A I was there when the photos were taken. I'm not the person who took these photographs. These were taken by Investigator Robbie Caulder.

Q Okay. Were you there?

A Yes, ma'am, I was.

Q Is this an accurate picture of what you and Investigator Caulder saw?

A Yes, ma'am. Investigator Caulder came back with me on the second and third search warrant at my direction to assist me in furthering this case, and I instructed him as to what photos to take as we went along.

Q If you don't mind, go through each photo and tell this lady which one you are looking at, and if that is an accurate depiction of what you saw in the house that night.

A State's Exhibit 90 is a picture in the master bathroom showing the front panel of the garden tub, and the only alteration to this picture is that we had placed a protectory rod into the bullet hole in the tub.

Q If you don't mind, tell this Court and for Mr. Martin, tell me what a trajectory rod is, whether or not that is something you usually use in an investigation?

A Trajectory rod we generally use in almost any case involving a firearm so we can understand what we think may be the path of travel of a bullet. It is used commonly when we have a victim who has been shot in the body to determine how the bullet entered and potentially exited the body. It is used in any type of setting, room or if outside, we would use a laser to try to determine the angle at which a bullet may have been fired from.

Q Is that a general course that is used in crime scene investigation?

A Yes, ma'am. That is pretty much any shooting investigation.

Q And that is just a picture of the trajectory rod in the bullet hole?

A Yes, ma'am. State's 91 is also a picture of the garden tub in the master bathroom, and it shows from the top looking down of the trajectory rod in the hole of the tub next to the faucet.

State's Exhibit 92 is a picture looking somewhat from the closet doors in the master bathroom, looking

back towards the shower and toilet area, and it shows the bathroom counter -- excuse me, the vanity -- pretty much a lot of the items that were in the bathroom that night; however, at this time, we're four days later and the bathroom -- the blood and all had been cleaned up from the bathroom.

State's Exhibit 84 is a picture of an empty drawer from a nightstand in the master bathroom.

State's Exhibit 86 is a photograph of the nightstand in the bedroom showing the case for the -- for the handgun. It shows the box of .38 caliber ammo opened up to show the number of bullets in that box with several missing.

State's Exhibit 87 is a picture of that drawer showing the Ruger box and showing the ammo box, as well as two other items that were in that drawer.

State's Exhibit 89 is a picture of the two upper left drawers of the bathroom vanity. The drawer on the left that's opened in the photo is the drawer that Ms. Causey explained to me that the gun was in the night she grabbed it from the vanity, and the drawer to the right is the drawer that I found Mr. Sims' identification in the night of the incident that was photographed, and I believe you folks saw it in an earlier photograph.

MS. LIVESAY: Your Honor, at this time the State wishes to place 89, 90, 91, 92, 84 and 86 and 87 into evidence.

THE COURT: Any objection?

MR. MARTIN: Only the objection I had about the two rods that he stuck in there.

THE COURT: Yeah. Over his objection.

(State's Exhibits 89, 90, 91, 92, 84, 86, 87 admitted.)

Q Do you mind stepping down to go over the photographs?

MR. MARTIN: Let me ask this, Judge, just thinking out loud, if we're going to do this and do it up there, why don't we just do it up there to start with?

MS. LIVESAY: I can't. I'm sorry. I didn't introduce all of these because he didn't take some of these, so they were out of order. Sorry. There was a couple that got mixed in there.

Q Start with this one, if you don't mind, and then that way you can explain what this rod is and how you use it.

A Let's start with this one.

Q Certainly. Certainly.

A State's Exhibit 92 is an overview of the master

bathroom. You can see it is cleaned up now from the night of the incident. Just to orientate you here, to the left, over here, would be the door going into the master bedroom. Where the photographer is standing, his back is against the closet doors looking longways into the bathroom. This here is the garden tub here and faces the front of the house. This window here faces to the side of the house. The victim was lying here the night of the incident. The garden tub is here. The vanity is here. The two drawers over here on the extreme left of the vanity are the drawers. This drawer here at the top is the one that Ms. Sims told me the gun was in at the night of the incident, and the drawer to the right of it, second drawer in on the vanity, is the drawer that I found the victim's identification in the night of the incident.

Q Okay. Let me go ahead and show this jury. So I'm going to place my fingers, is that the correct drawer that my finger is on?

A That the gun was in, yes, ma'am -- that I was told the gun was in, yes, ma'am.

Q Top drawer, the one all the way to the right; is that correct? Is that correct?

A Yes.

Q Okay.

A State's Exhibit 90 is the face of the garden tub. These would be the doors to the closet that the photographer was standing against in a prior photo. This photographer is now near like the makeup vanity, I'll call it, looking towards the tub. This is the face of the garden tub, and this is simply slowing the ballistics rod that we placed into the hole of the tub.

Q If you don't mind, tell this jury what this rod is used for in the course of investigations?

A We use rods to be able to show and highlight in a photograph the potential angle that a bullet entered an object.

State's Exhibit 91 is a picture standing in front of the garden tub -- I'll orientate it this way for you -- looking down where the handle is, the faucet handles for the tub where you turn the water on. As you can see, the hole is just actually to the side of one of the handles, and it shows the ballistic rod in there just to properly orientate the hole in the tub.

Q So the bullet hole was right beside the faucet?

A Yes, ma'am.

Q Again, this is not dead middle of the tub, it is to the left?

A To the left of the center of the tub, yes.

Q We saw a shot earlier of that drawer that the

defendant said the gun was in, did you look inside that drawer and take a picture?

A On the evening of?

Q Not the evening of, when you went back through with the search warrant?

A Yes, ma'am.

Q If you don't mind, tell this jury what that's a picture of.

A Let me go back here for a minute so it explains it. There is State's Exhibit 89, and I'll reference it against State's Exhibit 92. 92 was the overall short of the bathroom that I mentioned, and State's Exhibit 89 is a closeup of both of the upper, left drawers in that vanity closest to the doorway. This is the drawer here. This drawer here represents this one, that's the drawer that Ms. Causey said that the handgun was in the evening of the event. The second drawer here is the drawer that I found Mr. Sims' identification in the night of the event.

Q So the drawer with the Q-tips, the remote and this black bag, and it looks like there is a little floss thing to use, that's the drawer she said the gun was in?

A Yes, ma'am, that's what she told me.

Q The same one with these Q-tips, the remote and

the black bag?

A She indicated that at the hospital that night in both the drawing and the questioning.

Q Do you -- did you find any 9-millimeter bullet in there?

A No, ma'am, I did not.

Q Did you find a clip -- I'm sorry, a magazine of any kind?

A In that drawer?

Q Yes.

A No, ma'am, I did not.

Q Did you find any evidence that would show you or indicate that a gun was ever in that drawer?

A No, ma'am, I did not.

Q Did you go back -- now that we're on the items of where the gun was kept up -- and looked back into the nightstand during that second search warrant?

A Yes, I again looked in the same nightstand.

Q Did you instruct Investigator Ronnie Caulder to take a picture?

A Yes, ma'am, I did.

Q If you don't mind, tell this jury what it is a picture of?

A State's Picture 87 is a picture of the nightstand drawer in the master bedroom. Looking at the bed would

be the nightstand to the right where, in earlier photographs, the baby cradle was there, the cordless house phone charger is there. And the purpose of the second photo, there was a photo that was taken that evening showing these items in that drawer. The purpose of the second photo was just to confirm that they were still in the drawer four days later. The box in that drawer marked "Ruger," it bears the same serial number as the gun that we took from the bathroom the night of the event. The bullets in that drawer, in that box, was the magazine -- a spare magazine for the 9-millimeter that was also photographed in the earlier photographer on the night of the event.

There is also a box of .38 caliber ammo in that drawer, ammo that is not for that weapon but for another weapon. I simply photographed that box open to show how many bullets were in the box and how many bullets were not in the box, and what the make of the ammo was.

Q Okay. And is that Photograph Evidence 86?

A Yes, ma'am. State's Exhibit 86 is that box of ammo with the ammo sleeve pulled out to expose -- to show what is in there, and for the purposes to show it was only .38 caliber rounds. There was no 9-millimeter ammo in the box.

Q And on the original search, there was a .38 in his nightstand?

A In the nightstand to the left on the other side, yes.

Q Did you photograph that nightstand, again, to see if that stuff was still in there?

A Yes, ma'am.

Q And if you don't mind, show that photograph to the jury.

A This is State's Exhibit 84. That is a photo of the drawer that -- on the other nightstand where the .38 had been the night of the event. It is not in that drawer at this time, four days later.

Q I'm going to show this to the jury. This is State's Evidence 84?

A Yes.

Q This is four days later?

A Yes, ma'am.

Q If you don't mind, I'm going to show you a picture that is already in evidence. This is State's Evidence 57; is that this drawer?

A Yes, ma'am.

Q So the gun had been removed and a couple books and a CD?

A No, I'm sorry. I'm sorry, it is not this photo.

No. Well, it is the same location that the drawer was, but it's not the same drawer.

Q Okay. What is this a picture of?

A That is a picture of the second drawer of the nightstand, but it's not the same drawer here, because (indicates) there's decorative stuff on the drawer. It is not the same drawer.

Q Let me ask you about this one, State's Exhibit 60; do you recognize that drawer?

A Yes, ma'am.

Q Is that this drawer here?

A Yes, ma'am. State's 60 was taken the night of the event.

Q Were you there the night of the event?

A Yes, ma'am.

Q Is that how the drawer looked then?

A Yes, ma'am -- it was closed. I opened it in the search, yes.

Q This is that same drawer four days later?

A Yes, sir.

Q Same items in that drawer?

A Yes, ma'am.

Q Is there anything different about the Ruger case from this picture on August 11th from the one taken August 15th?

A Yes, ma'am. On the front of the case it has flipped down plastic tabs. Those clips were open the night of the event; they are closed in that photo. And I did not lock them down when I closed the case that night.

Q So that's how you found it?

A Yes, ma'am.

Q So when you went in there on the 15th, the clips on that case were closed?

A Yes, ma'am.

Q But on the night of August 11, those clips were opened?

A Yes, ma'am, they were opened.

Q So that's one of the cases where you unclip it to open the case?

A I didn't, but it had been unclipped the night of the event. I simply opened the lid of it, but on the second event -- on the second search warrant, on the 15th, if you wanted to open the case, you had to pop the two clips up.

Q But on the night of, it was already popped and you just opened the case?

A Yes, ma'am.

Q Same shells, same everything in there on the 15th?

A Yes.

Q Now, if you don't mind, can you -- I have a few more questions. You can have a seat. I'll show you State's 103; do you recognize that?

A Yes, ma'am, I do.

Q What is this a picture of?

A That's a picture standing in the master bedroom looking towards the master bathroom showing the white armchair with the home phone receiver in the chair, also a shell casing for a 9-millimeter in that chair, and looking further on you can see the legs and feet of the victim. You can see a dog bed. You can see the garden tub, front window to the house and you can see the hole in the tub.

Q When you went back on August 15th, was that dog bed in that room?

A I would have to look at the photo. I don't believe it was though. No, ma'am, it was not in the bathroom on the 15th.

Q Do you remember when you went back -- looking at your pictures -- on the 15th, had anything else, other than the dog bed, as far as furniture in that bathroom or, items in that bathroom, had anything else been removed other than the evidence? Anything else?

A No, ma'am. To my knowledge, looking at the

photo, the only thing that is removed is the dog bed and the items of evidence, and the blood that was on the floor had been cleaned up.

Q I'm glad you mentioned the blood on the floor, because I have a few questions about the scene as far as where blood was on the scene, that kind of thing. Did you see any blood outside the bathroom in that house on August 11th?

A No, I did not.

Q Did you -- after you executed this search warrant on August 15th, did you, in fact, execute a third search warrant?

A Yes, ma'am, I did.

Q If you don't mind, tell this jury why you executed, indeed, another search warrant to go back into the house?

A I executed another search warrant on August 23rd of 2013, some 22 -- 12 days later, I guess it would have been. The primary reason for going there, to the residence on that occasion, was because after listening to the 911 tape--

MR. MARTIN: Objection. Can we take up something?

(Whereupon, a bench conference was had.)

THE COURT: While we argue that, they are going

to get their dinner, so this is perfect. Ladies and gentlemen, I'm going to send you out. This is going to take us a little bit of time. They'll get your dinner reservations -- what you want from -- where are you going?

THE CLERK: Chick-fil-A.

THE COURT: Chick-fil-A, and we'll let you -- the five of you who are climbing the walls -- go outside, and we'll get you back as quick as we can.

(A recess was taken.)

THE COURT: Where are we with this now?

MS. LIVESAY: I was just asking lieutenant Cestare if he came back and did another third search warrant, he said he did, and I was asking him why.

THE COURT: Your objection to that is what?

MR. MARTIN: Well, I know why he went back, and he went back to -- my objection is I think he's now going to start talking about looking at video, listen to 911 tape. I would suspect he would say something like, And I learned something somewhat suspicious and I wanted to get a third search warrant. So that is the reason I objected. You know the issue we have about the video, and all of that.

THE COURT: Yeah.

MR. MARTIN: So I didn't want to let something

come in the back door that I don't think is going to get in the front door.

THE COURT: Ask him that question, just for the record, proffer it and we'll see where we are.

MS. LIVESAY: Actually, I would rather not proffer it, but I can tell you he's not going to say anything about that video. The only thing he's going to talk about is the 911 tape, which is already in evidence.

THE COURT: Why won't you proffer it?

MS. LIVESAY: I mean, we can.

THE COURT: Proffer it. I mean, for the record -- look, I trust you and Mr. More -- Mr. Martin probably trusts you, but --

MS. LIVESAY: I would say no.

THE COURT: In his heart, he does (laughing).

MR. MARTIN: About many things, I would.

THE COURT: Yeah. But for the record, that is what I'm concerned about. Proffer it and then we'll go on.

MS. LIVESAY: Okay. I will.

PROFFER EXAMINATION

BY MS. LIVESAY:

Q Lieutenant Cestare, did you execute a third search warrant?

A Yes, I did.
Q Why did you -- sorry. First of all, what date was this search warrant executed?
A The third search warrant was executed on Friday August 23rd, 2013.
Q And why did you get another search warrant to go back into that house?
A Because of new information that developed in the course of the investigation.
Q Okay. And was any of that information on the 911 tape?
A Yes, it was.
Q And it was specific as to why you went back on the 23rd?
A Yes, it was.
MS. LIVESAY: I'm going to asking, basically, what he heard on the tape, and did that lead him to --
THE COURT: Well, I think you have to ask him. I mean, we're not hiding anything at --
MS. LIVESAY: Okay.
Q What did you hear on the tape that led you to go back to the house on the 23rd ?
A A male voice say, Wipe the blood off the door.
THE COURT: Who said "wipe the blood"?
MS. LIVESAY: Yes.

THE COURT: Okay.

Q (MS. LIVESAY) When you went back on the 23rd, did you further investigate to find out whether or not blood had been on the door?

A Yes, I did.

Q And what did you do to investigate to find out whether or not blood was on the door?

A We took additional photographs of the bathroom and measurements, and we used a chemical called Blue Star, which is a phosphorus chemical that is sprayed on. The room has to be dark. It is similar to what -- another chemical called Luminol. Most people have heard of Luminol. Blue Star fluoresces if it hits a protein commonly found in blood.

Q And did it indicate that blood had been on the door?

A Yes, it did.

Q When you went in there on the night of the 11th, did you see blood on the door?

A No, ma'am. There was no blood on the door that night.

Q You said a male voice on the 911 tape; did you hear the entire tape?

A Yes, I did.

Q Whose male voice was that that said, Wipe the

blood off the door?

A Ronnie Causey.

MS. LIVESAY: That is all I'll ask.

MR. MARTIN: Let me see, I want to....

THE COURT: You can ask him a question.

MR. MARTIN: No. No. I think I'll save it.

MS. LIVESAY: So are we good?

MR. MARTIN: First of all, I object to all of that, because it is absolutely unnecessary. All he has to say is I went back on the 23rd with a third search warrant to gather more evidence, period. What did you gather while you were there? The rest is a subterfuge.

THE COURT: Well, he'll get to cross him. I mean, you proffered it. If that's what he says he heard, and that was his reason, that is admissible.

MS. LIVESAY: I mean, if Mr. Morgan wants to cross him on what he heard, I mean, I'll play the tape. Pete is going to be able to point out what he heard, and he can cross-examine him, yeah.

THE COURT: Yeah. I mean, look, the point of proffering is just to go ahead and put it on the record so that something funny doesn't jump out, and "funny" is subjective. Okay. Have they ordered; do we know?

THE CLERK: Yes, sir, it should be here at 6:00.

THE COURT: Bring them back in.

MR. MARTIN: Will this entail playing the entire 911 tape?

THE COURT: I don't know. Does it?

MS. LIVESAY: Do you want me to?

MR. MARTIN: No. I'm just wondering.

THE WITNESS: I can take you to the spot on the tape.

MS. LIVESAY: Okay. Then that's what we'll do. He can bring up that spot, and we can play that.

MR. MARTIN: Pull it up while we're waiting so I can hear what you're talking about. Maybe I can stipulate to it. You don't want me to stipulate to it, you want to play it?

MS. LIVESAY: I am playing it, yeah.

THE WITNESS: Are you okay with me just going to that spot on the tape?

THE COURT: Yeah. Yeah. If you just want to play that portion, that is fine.

MS. LIVESAY: Yes. Yes. That way it will move things quickly.

THE COURT: He can play the whole thing, I mean.

MS. LIVESAY: Right, and that way things will move quicker.

(The jury enters at 5:26 p.m., and the following is heard in the presence of the jury.)

THE COURT: Thanks again, ladies and gentlemen. We are dealing with the same technical problem, and it was just a good time. You can continue.

DIRECT EXAMINATION (CONT.)

Q (MS. LIVESAY) Lieutenant Cestare, if you don't mind, let's go back. Did you execute a third search warrant?

A Yes, ma'am, I did.

Q And what date was that third search warrant executed on?

A Friday, August 23rd, 2013, roughly 12 days after the initial incident.

Q And that is several days after August 11th?

A Yes, ma'am.

Q And if you don't mind, please tell this jury why you went back that third time?

A Because of new information that developed over those, roughly, 12 days. In listening to the 911 tape, I felt we needed to go back and do another search warrant.

Q If you don't mind, tell this jury what you heard that caused you to go get a third warrant?

A On the 911 tape I heard Mr. Ronnie Causey say,

Wipe the blood from the door.

Q So you were going back a third time for what reason?

A To go back in with a chemical that we use called Blue Star. It is similar in nature to Luminol, which many people have heard of. It is used in a totally dark room. It is sprayed onto any objects or anything you believe blood may have been on, and what it does is it fluoresces if it finds the proteins commonly found in blood, and on that date, we went back in to do that.

Q And do you remember where you heard this information that caused you to go back and do all of this further investigation?

A Yes, ma'am, I heard it on the 911 audio tape.

Q Do you remember about where you heard it?

A Yes, ma'am. I have it timed into the tape as to where I heard that statement.

Q And if you don't mind, tell us so we can play the tape and hear it as well.

A Give me a minute to look at my notes. 911 tape starts at 6:13 p.m. and 1 second. Bear with me one minute while I find it. At approximately 18 minutes and 6 seconds into the tape, I heard Ronnie Causey say, Wipe the blood off the door.

Q If we played the tape now, could you tell us

where that is?

A Yes, ma'am.

Q We'll put it at about 18 minutes?

A Okay. If you will bring the tape up and bring it 18 minutes into the tape and roughly 6 seconds from that point, you should hear it.

THE COURT: That is so hard to hear when it starts, if you don't mind -- and I don't want to spend more time -- but back it up to about 17 minutes, because there is nothing in there -- and maybe over all your all's objection, but it is hard to immediately click onto that. Where are we?

MS. LIVESAY: Yes. Yes, sir. You want it at about 17 minutes?

THE COURT: I just wanted to build in some time so people can get adjusted. Where are we starting, just for the record?

MS. LIVESAY: 17:08.

THE COURT: So that is about a minute before?

MS. LIVESAY: Yes.

(Published to the jury.)

MS. LIVESAY: Can we play it one more time?

MR. MARTIN: I didn't hear it either.

THE WITNESS: I just heard, Wipe the blood off the door.

THE COURT: Play it again. How about raise your hand when you get to that point. I mean, I can hear maybe better than they can.

MS. POP: It is at 17:56.

THE COURT: Raise your hand two seconds before you think they say that.

MS. LIVESAY: Yes, sir.

(Published to the jury.)

Q (MS. LIVESAY) Could you hear that, Lieutenant Cestare?

A Yes, I did. That's what caused me to want to develop additional information and go back with another search warrant.

Q Do you notice -- I know it is hard for me to hear, is there something different about when that is being said?

A There is. It sounds a little muffled, but listening to it probably the second time I was into the tape, I heard that, and I kept going back to see if it was clear to me, and each time I listened to it, it was clear to me that that's what was being said.

Q Is there actually some muffling talk after that?

A Yes.

Q Were you able to hear what was said there?

A No, I could not. It was not to a point to where

home. The cameras all face the perimeter of the residence, pretty much on all four sides and the carport, and face back at the rear doors of the residence, both the back door and mainly the carport door.

Q (MS. LIVESAY) So, basically, it shows who is coming in and out --

MR. MARTIN: Objection. Objection, again.

THE COURT: Yeah. That will be sustained. We have enough for you to do what you want to do after the break.

MS. LIVESAY: Can I ask --

MR. MARTIN: No. No. No. That is up to him, but I'll object, because we went over and over this.

THE COURT: What do you want to ask?

MS. LIVESAY: All I was asking him is can you see from this camera--

MR. MARTIN: I object to what she is going to ask him. Now if this is --

MS. LIVESAY: I didn't even get it out of my mouth yet.

THE COURT: Yeah. Ladies and gentlemen, I tell you what, you all go eat your dinner and we'll fix this. We're only going to give you 30 minutes, 35 minutes or so and get you back in here. Don't discuss

the case.

(The jury exits at 6:07 p.m., and the following is heard out of the presence of the jury.)

THE COURT: What was your next question going to be?

MS. LIVESAY: I was going to ask him does it show who is coming in and out of the house, and what is going on around the house.

THE COURT: And what could your possible objection be?

MR. MARTIN: Well, no. Because, Judge, let me tell you, when we had the side conference, it was simply to lay the foundation that he had downloaded the material and he had it, and that he had done it, and he had it. That is all that had to be asked. That is what we agreed on. And then, it is just one question after another. And, frankly, Ms. Livesay knows exactly what she's doing. She tells me and you this over here, and then she comes here and tries to put testimony into the record for the jury over what she's been told not to do, putting me in a position to object.

And, you know, Judge, maybe she thinks she's being slick with it, but it's improper and, you know, it's not hard. She is telling me one thing and doing

another.

THE COURT: She's laid the foundation to get in the video only. I assume that based upon our side conference here, you understand that I would not let the sink --

MS. LIVESAY: Yes.

THE COURT: And I think you probably -- some part of your heart agrees with me on that. So when we come back after dinner, my understanding is that you will show the video only?

MS. LIVESAY: Uh-huh.

MR. MARTIN: Now, we might as well talk about it right now. I'll have any objection for you after we come back, if any, I have about that. But I can tell you now, I would then object to any commentary by Investigator Cestare of what he's seeing and how that might do anything else, because I'll tell you, that is exactly what you are going to hear, and that would be objectionable and not relevant. The tape is what it is. His interpretation of what he is seeing is the very reason that any other synchronization is not admissible. Because with these DVRs, he may not know what he's seeing, and that is that affidavit that you have before you. And so I can tell you now I'll be objecting every time she asks a question if you let

her ask those questions.

THE COURT: That is fine. What I'm telling you is I'm leaning towards -- when you have an exhibit like this, that is visual, they are the fact finders, they are going to have to see what they see. I don't want anyone really telling what they see. So I was assuming we wouldn't have that problem. We don't need to have that problem.

MS. LIVESAY: I am going to ask if he sees people coming in.

MR. MARTIN: Oh --

THE COURT: Let her finish. We have no jury here. Go ahead.

MS. LIVESAY: I'll ask if he sees people going in and out of the house.

MR. MARTIN: Why? It is on the video if they are going in and out of the house.

MS. LIVESAY: Then why can't I ask him, Do you see people going in and out?

MR. MARTIN: I don't want any of his interpretation, any of it. And you can see people walking in and out of the house, and they don't need him telling them, That is Ronnie Causey walking out of the house.

MS. LIVESAY: Here is my question, Judge. All

day, for four days, I've been showing pictures, What do you see in this picture? I see a chair. I see a projectile. And now, all of a sudden, I can put up a surveillance camera, and now it is irrelevant what the camera is showing?

THE COURT: Well, let me tell you my problem. I haven't seen the surveillance tape, and I have no idea what it looks like, so I'm in a vacuum here. If it is a digitized surveillance tape, I'm going to have to just see it, and if he wants to -- if it is real clear who that person is --

MS. LIVESAY: It is.

THE COURT: I don't know why he needs to say it, except for the fact that we don't -- I don't know who the people are. I know one person. This jury knows one person in this courtroom -- two people; one is not with us, and one is here. If there are other people in that video, someone has to tell me who they are, and someone has to tell them who they are; don't you agree?

MS. LIVESAY: He knows who the other people are.

MR. MARTIN: I'll tell them. I'll tell them.

THE COURT: You'll tell them? You can tell them together. I mean, they're going to rehearse. Somebody has got to say that is Mr. X, that is Mr. Y,

because they haven't testified. I mean, it really is not -- you are making it more complicated, which I understand, I did it for a long time, too.

MS. LIVESAY: So he can at least say, I know this person, that is who that is on the tape?

THE COURT: Well, here's the problem. Saying I know this person -- and I understand what you are trying to do. I think it is okay and would overrule an objection by Mr. Martin if he said, That is Mr. X. That is it. Because I don't know who Mr. X is. That is Mr. Y. That is Mr. W. That is Ms. W. When you get into interpretating information about where they are going, I don't --

MS. LIVESAY: No, he won't say that.

THE COURT: Okay. All right. Let's take our break. Do you all -- now that I ruled on the sink, Mr. Martin -- hello, Mr. Martin.

MR. MARTIN: I'm sorry.

THE COURT: That's okay. Now that I ruled on the sink issue, do you need to see that thing?

MR. MARTIN: I want to see whatever she is going to play before it is played, so I know exactly what it is.

THE COURT: You have 30 minutes to watch it, wherever it is. I don't have it.

(A recess was taken.)

THE COURT: For the record, I'm going to give a synopsis the last hour and 10 minutes, and then you all, I'm sure, will not agree on the way I say it, but the issue has been, number one, whether or not the time stamp can be shown to the jury. There is a problem with the time. It is not the correct time; everyone agrees to that. So we've agreed, I think -- nobody is here. I started talking, I thought you were here. Let me get back to where I was.

Let me synopsize what we've talked about for the last hour. The problem has been the time stamp on the video is incorrect, so we have tried to figure out a way to show this jury portions of the surveillance system without showing them the time stamp, and my understanding is that what we're going to do is I'm going to tell the jury that, unfortunately, there are between two and four portions of this thing that they want to publish that I'm going to have to send them out in the hallway for a minute while you reach that point, and that is just inevitable, it is no one's fault; we agreed on that?

MR. MARTIN: Yes.

THE COURT: And that's what we talked about back there?

MR. MARTIN: Yes.

MS. LIVESAY: Yes, sir. And what I would like to do, and Pete can do it, is put him on the stand so they'll know what we are showing them.

THE COURT: That's fine. And we also talked to Pete, and I'm calling him Pete because we've been in the back talking, about how he can estimate times without referring to the time stamp. And so we have agreed, off the record, but it is now an agreement, if you will say it out loud, that he will, within a five-minute window, because that is a within the margin of error, he will be able to say this occurred between 6:50 and 6:55, and that five minutes is within the margin of error in the universal time from the AT&T tower, which I think is six minutes or something; have we agreed on that?

MR. MARTIN: We have.

MS. LIVESAY: Yes, sir.

WITNESS: I can see the two of them to be clear on one thing?

THE COURT: Yeah. Let me finish this, because if I don't, I never will. The other thing that has come up is that the State wishes to introduce into evidence the entire surveillance video, but only show them selected portions.

MS. LIVESAY: I would like to put in the day of August 11th, 2013.

THE COURT: But only show selected portions?

MS. LIVESAY: Select portions, yes, sir.

THE COURT: And you object to that.

MR. MARTIN: I do.

THE COURT: What is your objection?

MR. MARTIN: In that, first of all, I've objected to all of it. We tried to reach a compromise by playing portions of it, and I agreed to that, but I object to putting into evidence, other than what is played for the jury, because it shouldn't be able to be referred to at any other time in this trial, unless it had been shown to the jury at this time. I also agreed, like any other thing in a case, if something happens that might make something else relevant, I guess that will have to be addressed at the time, because I still have objections about the video itself, and the video and a time stamp, and any synchronization of it. I understand that over that objection the Court is going to let them enter into evidence these, three portions of the tape --

THE COURT: Without synchronization. There is no audio.

MR. MARTIN: Right. And we have the time

limitations, and that if at some point in time I want to enter parts of it, that I would be able to do that under the same rules as well.

THE COURT: I think you have that right, as you have any other. The problem is this videotape has taken on some extra-judicial character. It is a piece of evidence. I don't think -- I may be wrong, and I've been wrong three times -- you cannot put an entire 30-hour tape, or however long it is -- how long is it?

MS. LIVESAY: There's months, but I just want to put 24 in.

THE COURT: You can't put 24 hours in, pick out three portions and, let's face it, there are three portions we all know about, and there's another portion that you have an interest in this jury seeing. I don't know why you don't just move to show that.

MS. LIVESAY: Can we --

THE COURT: We can do that at a later date, but I know what you are talking about, and here is the deal. If you are concerned that he gets off the stand, and then you have forever, until this case is over, lost your right to come back, re-call him, I'm telling you right now, I would allow you to re-call him, if that other portion of the tape becomes relevant, and you --

like you said, trying your own case, wanted to introduce it. I have no problem with that. I'm sure there would be an objection, but I'm just telling you that I don't have a problem with it.

So, I don't think you've lost that right. The problem I have is giving this jury a 12- to 24-hour tape, and you are a good lawyer, and I know what you would do, you would in your closing not introduce this one little portion, refer to it in your closing because the whole thing is in, and say, You are welcome to watch that. The problem with that is that allows them to go back there and infer facts that are not in evidence, and that is my problem with it. And that is just at its simplest form. It is just a tape. It's just like any other piece of evidence. To you all, it's become, you know, the crucible on which the world deploys, but I'm just telling you.

MR. MARTIN: How much are we going to do tonight?

THE COURT: As much as we can. I really thought we would be finishing up by now. But to be honest with you, I would like to do as much of this tape and get him off the stand as we can, because tomorrow, if you have your expert, at 1 o'clock we are booking. As I told you, even though you don't agree, this jury is thankful to you two because of that, even though we're

doing it so I can get a shot in my knee at 8 o'clock in tomorrow night.

MS. LIVESAY: As far as time is concerned, so we're going to -- I'll ask Pete the questions I want to ask him, let him come down and play the portions, and then Mr. Martin will cross-examine him, and then we'll be done for tonight.

THE COURT: That would be fine with me. Now, let me ask you this, for time purposes only, I promise you I'm not trying to hold either one of you to something, but tomorrow, if we start at 9:00 instead of 9:30, can you get your expert up and give him plenty of time for cross by 1:00?

MS. LIVESAY: Yes, I think that should be doable.

THE COURT: I've lied to these 14, 15 people so many times.

WITNESS: You still have to cross me.

THE COURT: Oh, I know, and we're going to do that tonight.

MR. MARTIN: And I don't have a problem doing that, the only thing I would ask, depending on what time, just ask the jury if they are okay with doing it, whatever time it is.

THE COURT: The reason -- the jurors have been very good about not talking about this case, and they

actually got concerned at one point because they were laughing, they wanted me to understand they weren't talking about the case, they weren't deliberating. They passed a message to me, in a weird sort of way, that if I want to work until 2:00 in the morning, they are happy to do that.

MR. MARTIN: Okay. Okay.

WITNESS: I just need you two for a minute.

THE COURT: You all talk.

(A brief pause in the proceedings.)

MR. MARTIN: And, Judge, let me just say, I didn't go into detail, but if it is okay with the Court, let me reserve my right to put on the record the substance of my objections later on? I don't want to do all of that tonight.

THE COURT: That's fine.

MS. LIVESAY: What are we doing?

THE COURT: He's just reserving his right to put on the record the objections to all of the things I've ruled tonight, and put on the record and force you all to agree, and everything else.

WITNESS: If I give them two minutes before, that will give them about a minute-and-a-half to get in and get seated?

THE COURT: Yeah. And I'll explain that they are

actually going to have to leave, and it's a technical reason for them to leave, and they'll never know the difference.

Bring them in.

(The jury enters at 7:57 p.m., and the following is heard in the presence of the jury.)

THE COURT: Okay. Soundproofing is a good thing, I'll tell you that, and I hope your room is more soundproof than I sometimes think it may be.

Here's what we have to do, and this is what has taken us forever. We have just an insurmountable technical issue on one particular problem, and that is a portion of the video that you are going to be watching. So here is the way we finally -- don't know what else to do. There are three portions -- three, right?

WITNESS: Yes, sir.

MS. LIVESAY: Yes, sir.

THE COURT: Three portions of the video. These are three short portions that you will see. Unfortunately, I'm going to literally, between all three, ask you to stand in the hall for about a minute-and-a-half. You won't have time to go sit, but that will allow us to come down, fix it, move it ahead and show you. There is a lot of esoteric legal

reasons why. I promise you, that is the shortest way we figured out how to do it.

And then there was some concern among the lawyers, quite frankly, about how late we'll stay tonight, and how late you can stand staying. My guess is you are willing to stay later tonight if you can leave at 1 o'clock tomorrow. Mr. Foreman, am I right?

FOREPERSON: Yes, sir, you are.

THE COURT: That's what I thought. We'll go until this witness finishes, and tomorrow we'll have one witness that we'll do. We'll start at 9:00 tomorrow morning, and we'll be finished by 1:00, and you'll be out of here at 1:02. Again, if there is a problem, if you got it, just take a break. It is 8 o'clock, I understand you are tired. If you just feel yourself nodding off, raise your hand and I'll let you go smoke, run around the house, whatever you want to do.

DIRECT-EXAMINATION (CONT.)

BY MS. LIVESAY:

Q Lieutenant Cestare, before we start back on the video, I want to be sure I'm clear on one thing. On that third search warrant, when you went back to the house, what did you do?

A Third search warrant was when I went back with

Blue Star in the bathroom looking for blood evidence and so forth.

Q If you don't mind, tell this jury where it indicated there was blood at?

A On the bathroom door, I got luminescence -- we sprayed the whole bathroom down. The floor of the bathroom fluoresced completely because it had been cleaned up, and any time blood comes into contact with a surface, even though it is cleaned up, it will -- it will fluoresce under Blue Star or Luminol. So the entire floor fluoresced, obviously because it was cleaned up, in whatever form or fashion.

On the outside of the door, leading from the bedroom into the master bath, so bedroom side of the door, fluoresced in several spots on that side of the door.

Q Which side of the door?

A On the -- what would be the bedroom side of the door. So, in other words, when the door was opened and back against the wall, that side would be exposed to the bathroom. When the door is closed over, that side would be exposed to the bedroom.

Q Let me see real quick, Lieutenant Cestare, if I could find a picture. I'm showing you now State's Evidence 6. You are meaning the part of the door that

opens up here into the bathroom?

A Yes, ma'am. The door facing that would be facing where the victim is lying right now, which when the door closes, would be the bedroom side of the door. When it opens up, it would face into the bathroom.

Q So, basically, this part of the door that is exposed to the bathroom?

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

Q The floor lit up to indicate blood, and then the door lit up to indicate blood?

A Yes. There was also small particle luminescences on, like, the fascia of the garden tub, but so minute you can only see them for a split second before they would disappear.

Q That was where?

A On the wooden panel on the garden -- front of the garden tub.

Q Right here?

A Yes, ma'am.

Q I'll point it out to the jury. That part of the bathtub (indicates).

So the door, front of the bathtub and the floor all indicated blood?

A Yes, ma'am.

Q When you say the floor, do you mean by where the

victim was laying?

A Well, I would say the majority of the bathroom floor, because when you clean up blood, and it is either mopped or toweled or -- the scene had to be cleaned up after the victim was moved. Just in a regular mopping motion you would move blood around on the floor, and that would fluoresce, even though it looks clean to the eye. Luminol or Blue Star, as we use, would fluoresce on the floor and, of course, like I said, it has to be -- conditions have to be as dark as you can get them. I had to physically put black trash bags over the windows to black out the blinds and so forth. The unfortunate part to any chemical is you only have a couple moments to observe it.

MR. MARTIN: Your Honor, I've got an objection that I would like to enter at this time.

THE COURT: Yes, sir.

MR. MARTIN: It occurred to me while Mr. Cestare is speaking. I object to this line of testimony about the Blue Star and what he found with it as being not relevant, because what happened here is they go back to do the third search warrant, 11 days later after they released everything. It's been cleaned up, as he said, wiped up. Any indications of where the Blue Star may have indicated there was blood is not

relevant to the crime scene as it existed that night. They've got photos of just what was there that night, and so I don't believe that it ought to be admissible after they had gone in and cleaned up 11 days later to go back and then try to recreate, well, what does Blue Star show us, because it doesn't show what was there that night. Had they gone that night and Blue Starred the place, then you might something, but I object to any further testimony and ask that any testimony about Blue Star be stricken from the record, because two things, number one, I don't believe -- and he may be qualified, but they haven't laid a foundation for his ability to testify to this. And then, secondly, it clearly is not relevant, and it may well be more prejudicial than relevant under 403, because of the timing and what had transpired between the 11th and the 23rd, with the permission of the police as far as cleaning the place up, so I object.

THE COURT: You are protected for the record. It is overruled. You can go into that in cross. Go ahead.

MS. LIVESAY: Thank you, Your Honor.

Q (MS. LIVESAY) So after you go back and do this further investigation of the bathroom, only three places end up indicating, is that correct, the front

of the bathtub, the floor and the door?
A Yes, ma'am.
Q Do you go back to the house again to do any further investigation after the 23rd?
A No.
Q Earlier, we talked -- and I want to get back to it -- we talked about you looking and viewing at a surveillance camera that was installed in the house; do you remember that?
A Yes, ma'am.
Q In fact, were you able to download all of the information or whatever is there to see for August 11 of 2013?
A Yes, I was.
Q Okay. And on that tape -- we've already talked about it -- there is three particular spots on that tape where you are able to identify who is going in and outside of the house; is that correct?
A Yes, ma'am.
Q If you don't mind, tell this jury if you see the victim going in and out of that house close in time to the 911 call.
A Yes, ma'am, I do.
Q And if you don't mind, tell this jury about what time that is on the tape?

A Between 5:55 p.m. and 6:00 p.m. I see David Sims walk out of the back door of the house.

Q Okay. Now, we've already heard the 911 tape. You've already heard it, we've reviewed it, Mr. Martin heard it, the Court's heard it. Do you see on the tape Ronnie Causey, Sandra Causey, all of those people going into the house?

A Yes, ma'am, I do.

Q And, approximately, what time do you see that, please tell this jury?

A Between 6:15 p.m. and 6:45 p.m. you'll see Ronnie Causey enter the house, Sandra, Ms. Causey, and Sergeant DelPercio enter the house.

Q And you are able to identify those people in looking at the surveillance tape?

A Yes, ma'am, I am.

Q Now, do you see -- are you able to see when the defendant was taken out of the house that night?

A Yes, ma'am, I can.

Q And about what time do you see that on the tape?

A Approximately 6:40 p.m. to 6:45 p.m. a stretcher is brought into the house and she's taken out of the house on a stretcher.

Q And that is all on the surveillance tape that you downloaded from the house at Old Reaves Ferry Road?

A Yes, ma'am.

MS. LIVESAY: The State wishes to publish those three segments to the jury.

THE COURT: Yeah. Are you ready with the first one, or do they have to go out?

THE WITNESS: I need them out just for a minute.

THE COURT: Go out, stand in the hallway and we'll bring you back in.

(The jury exits at 8:10 p.m.)

(The jury enters at 8:11 p.m., and the following is heard in the presence of the jury.)

Q (MS. LIVESAY) Just let them know about what time it is before you play the tape.

MR. MARTIN: Wait a minute now. He's already testified as to the times, and so I would think that is repetitive.

THE COURT: To make sure that we're clear, you can go ahead and give us that window.

WITNESS: Approximately 5:55 to 6:00 p.m.

THE COURT: All right.

(Published to the jury.)

MR. KOCLANES: Okay.

THE COURT: Ladies and gentlemen, can you see to get out? Two more minutes and we'll bring you back in.

(The jury exits at 8:15 p.m.)

THE COURT: Bring them back in.

MS. LIVESAY: I'm going to ask him what time it is, for the record.

THE COURT: We'll assume it is objected to, but that is okay.

(The jury enters at 8:16 p.m., and the following is heard in the presence of the jury.)

Q (MS. LIVESAY) If you don't mind, briefly tell this jury about what time they are looking at right now in the surveillance camera?

A This is between 6:15 p.m. and 6:45 p.m.

Q That's the time period we're watching from 6:15 until when?

A 6:45.

Q So this about 15 minutes in front of what we just watched?

A Yes, ma'am.

Q Lieutenant Cestare, did you recognize the people on that tape?

A Yes, ma'am.

Q If you don't mind, tell this jury who we just watched on that tape.

A Initially you saw Mr. Ronald Causey coming from the area of his residence into the back of the house.

A few moments ago you saw Ms. Causey come, also go into the house, take the baby and leave. A few moments later you saw Mr. Causey come out of the back of the house, come around to the front, and then return back into the house with Sergeant DelPercio.

MS. LIVESAY: No further question on that segment. Judge, if you want to send them out and let me play the third.

THE COURT: Few minutes.

(The jury exits at 8:33 p.m., and the following is heard out of the presence of the jury.)

MR. MARTIN: Play it for me right quick, because that is the one I haven't seen.

(Video is published to Mr. Martin.)

THE COURT: Bring them in.

(The jury enters at 8:40 p.m., and the following is heard in the presence of the jury.)

Q (MS. LIVESAY) If you don't mind, tell this jury what this video is getting ready to show?

A This is approximately 6:40 p.m. to 6:45 p.m., and you will see the paramedics bring Ms. Heather Sims out on a stretcher.

(Published to the jury.)

THE COURT: Thanks for your patience doing that.

Q (MS. LIVESAY) Lieutenant Cestare, after you --

after the 23rd, did you do any further investigation in this case? After August the 23rd, the last search warrant was executed, did you do anything else to further investigate this case?

MR. MARTIN: Object as being too general.

THE COURT: If he did anything.

MS. LIVESAY: I'm just asking him did you do --

THE COURT: Overruled.

A Yes, ma'am. The investigation continued, and several aspects -- evidence was sent to the state lab and so forth. So, yes, it continued for several months.

Q (MS. LIVESAY) Now, if you don't mind, so this jury is clear, the Court is clear and Mr. Martin is clear, go through and tell this jury the evidence that you collected?

A I did not physically take custody of evidence the night of the incident; that was collected by Investigator Domogauer. Give me a moment and I'll look at my notes here. On August 14, 2013, as a result of the search warrant, on the Speco unit I downloaded two 8 gigabyte flash drives from the residential video system. On August 15, 2013, I collected two items of evidence at that second search warrant, and that would be David Sims' iPhone, black iPhone 5, which I

577

recovered from Mr. Causey, and a Lenova computer tower from the upstairs office is the residence. On August 23, 2013, I collected an AT&T cell phone bill on the third search warrant with Account No. 534021772607. I also collected a white in color Mac Book laptop computer that indicated on it -- had the Causeys' Mac Book Serial No. W, whiskey, 89414 T as in Tom, M as in Michael, 8, P as in papa, W as in William. Those are the only two items I collected that day.

Q That was the items that you further investigated after the August 11th?

A Yes, ma'am. In addition to all of the other items collected during the course of the investigation.

MS. LIVESAY: No further question for this witness.

CROSS-EXAMINATION

BY MR. MARTIN:

Q First of all, DNA, are you the guy who took the DNA sample from Heather Causey at the hospital that night?

A I assisted Detective Chatfield with collecting DNA, yes, sir.

Q All right. Well, now, help me with this. When you say you assisted him, did you take it, or did he take it?

A -I took the swab from her mouth.
Q All right. And you preserved it?
A Yes, sir.
Q And took it where?
A Back to the county police department, and from there, I don't -- I don't know if it was sent to SLED or not.
Q But, anyway, you took it to the proper location to be, I guess, locked in the county's evidence locker so it could be used to analyze items as police felt necessary?
A Yes, sir. It was brought back to the county police department and put in their evidence storage.
Q You did that?
A Yes, sir.
Q Now, do you -- did you do a report in this case?
A No, sir, I did not.
Q You didn't do a report?
A No, sir, it was done by my investigator.
Q Is it not policy there at the county police department that when a police officer, like yourself, is active in a crime scene and questioning like you were, shouldn't you have done a report?
A I did a report subsequently on the Speco unit when I executed the search warrant on it, but as far as

the case report, one of the investigators handles each aspect of it.

Q Well, you did, but as far as the activities of yourself, at the Sims' residence, on the night of August 11, from the time that you checked in at 7:30, went to the hospital, went back to the house and checked in at 10:50 and checking out at 1 o'clock in the morning, you didn't make a report of your activities, is what you are telling me?

A No, sir, I did not physically make a report. My activities were included in Investigator Domogauer's report. I did prepare a case activity report for the subsequent days of 8/14,8/15 and 8/23, and those were also included in her report.

Q And that's on the single sheet of paper you are looking at there?

A Yes, sir.

Q And what you did there simply was list going back to the house on these other occasions and taking -- and whatever you took into evidence?

A Yes, sir.

Q Now, do you have any notes that you made contemporaneously with what you did on the night of August 11th at the Sims' house?

A No, sir. The notes are all done -- on any crime

scene investigation, one crime scene investigator was assigned, and they are to prepare field notes for the case, and anything that occurs that the crime scene personnel responded to, it is generally on the field notes.

Q Well, okay. All right. So I'm clear, there are no notes -- you kept saying -- you said a time or two during direct testimony, Let me refer back to my notes; what notes are you talking about?

A I'm looking at the overall case notes for the entire case.

Q Which includes Jill Domogauer's report?

A Yes, sir.

Q Anything else?

A My report. As I mentioned to you, the photo indexes, every time we take a picture, an index is made of the picture to indicate what it is a photo of.

Q That is okay, but as to the night of August 11th, when everything was happening at the house, you have no report and you have no notes of what you did or what you saw or what drawer you opened, or anything?

A No, sir. All the notes are documented in Jill Domogauer's report.

Q That's right. All right. Now, let me -- that

night your testimony is that you went to the house about -- is this the latest in the day you've ever testified?

A Yes, sir, I believe it is.

Q There was a consent to search at 7:30. You were at the house, you left the house and went to the hospital at what time?

A I don't know exactly the times. I can tell you from the recording what time the recording says I'm in there and what time the recording says I left.

Q What time does the recording say you are in there?

A Give me a minute. The recording puts me in there at about 10 after 9:00 in the evening, I believe, approximately. And then I left at about -- about 30 minutes later, about 20 minutes to 10:00.

Q And you are -- let me go through this. So you don't know what time you leave the house, but you know that you get to the hospital in the room where Ms. Causey is somewhere around 9:10?

A Yes, sir. I went immediately from the house to the hospital.

Q Anyone ride with you?

A No, sir.

Q Talk to anyone on the way there?

A I did. I spoke with Investigator Chatfield -- Detective Chatfield.

Q So one of those calls Investigator Chatfield got was from you?

A Yes, sir.

Q How many times did you call him?

A I believe we spoke twice, if memory serves me.

Q Anyone else? No one with you. Did you talk to anyone else on the way to the hospital?

A No, sir, not that I'm aware of.

Q Then you got to the hospital, and we got the part of the time that you are on the tape there, and I believe that you, yourself, questioned Heather Causey in that last 30 minutes of -- her tape runs from 8:06 to 9:41, you get there about 9:10, so you are there about 31 minutes. And you are questioning -- listening in and questioning her during that time period, right?

A Yes, sir.

Q And you got to ask her all the questions you wanted to, right?

A No, sir, I did not ask her all the questions I wanted to.

Q Did she stop you from asking any questions?

A No, sir.

Q Who stopped you?

A She had been questioned prior to that, so I did not ask her all the questions.

Q You just didn't repeat everything because she already had been questioned for an hour and 10 minutes before you got there?

A Yes, sir. I asked her any questions I needed to while I was there, yes, sir.

Q And it is clear on the tape that you say, I think that is about all the questions I've got, and so at 9:41 that tape recorder is cut off. What did you do then?

A I got back in my vehicle and drove back to the scene.

Q All right. Anyone ride with you?

A No, sir.

Q Did you talk to anyone on the way there?

A Yes, sir. I believe I called Investigator Domogauer and told her I was on my way back to the scene.

Q What time was that?

A It would have been shortly after I left, so I would estimate about 9:45.

Q So from 9:31, and you are back in your car probably in 10, 15 minutes and going back to the house, right?

A I was back in my car probably in about five minutes. I came right out the emergency room.
Q So you talked to Domogauer. Talk to anyone else?
A No, sir, not that I recall.
Q Went straight back to the house?
A Yes.
Q You signed in, again, at the house. You signed the log; do you remember what time you signed the log?
A I do not without seeing it.
Q If I told you you signed in at 10:50, do you think that is right?
A I'm sorry?
Q 10:50.
A Let me see here.
Q Let me hand you what is Defendant's Exhibit No. 20 and --
A That is not me signing back in. Someone printed my name on the form. There is my signature here on the earlier time, at 19:30.
Q Who had authority to put your name on it?
A I guess the officer that was there wrote me coming back in.
Q Would you agree that is the time you got there, the best you can recall?
A No, sir, I wouldn't agree, because I didn't sign

it.

Q What time did you get there?

A If I left the hospital at 9:45, it was probably about 10:15. It is more than a 30-minute ride from Grand Strand.

Q So you got back about 10:15 you say, even though you were signed in at 10:50? So someone signed you in at 10:50?

A Yes, sir, somebody did.

Q So there is an error or discrepancy or miscommunication or something there, isn't there?

A Not on my part, sir.

Q And it doesn't mean anyone's is lying, it's just one of those things that happens in the hub-bub of a crime scene deal, right?

A No, sir. What that means is an officer saw me come back on the scene and put my name on the sheet. I didn't sign it.

Q So he put the wrong time down for you?

A Sir, I don't see anything else filled out on the sheet, so I don't even know where that sheet is from.

Q All right. What is that?

A Crime scene entry log filled out with the location and so forth, date, first responding officer, the case number, complainant's name and address.

Q Pete Cestare's name appears on it twice; am I right?

A No, sir. It appears on this page once.

Q On the document? On the document?

A This page is not even filled out with a header or anything, so I don't know what that page represents.

Q Let me ask you this. Are you taking the position then that this is an inaccurate document for the crime scene log for that place that night?

A I'm taking a position that I don't know what the second page is.

Q Who is responsible for filling it out properly? This is what you gave me, so why -- do you have any idea why I got something that wasn't properly filled out?

A First of all, I did not give it to you, let's be clear on that.

Q No, you didn't.

A Secondly, I don't know who filled it out, so I can't attest who filled out the second page. I can tell you that is not my signature on the second page.

Q Is that your signature on the first page?

A Yes, it is.

Q What time does it say you got there?

A It says I got there at 19:30 hours, which is

7:30 p.m.

Q And you left what time?

A It has 20:50 crossed out, and then 01:00, which is 1:00 a.m., next to it.

Q Who crossed out the 20:50?

A I don't know. I signed out at zero 100.

Q You signed 1 o'clock?

A Yes, sir.

Q So you left at 1 o'clock?

A I left out of the taped area at 1 o'clock, yes, sir.

Q And there is no question that you were there, that Sandra Causey was told by Jonathan Martin that at 1 o'clock, approximately, that morning, according to Jill Domogauer's report, that the police were through and they were leaving, and they were releasing the house back to the Causeys or Heather Sims?

MS. LIVESAY: Your Honor, I have an objection. I'm not sure how Lieutenant Cestare has any idea what Sandra Causey was told by Jonathan Martin. This is neither Sandra Causey nor Jonathan Martin, so I don't know how he would know.

THE COURT: Like I said, he can ask if he knows, and if he knows, he can answer; if he doesn't know --

WITNESS: I can't answer that, Mr. Martin.

THE COURT: Next question.

Q (MR. MARTIN) Okay. Do you know -- were you, in fact, the -- you are the head of what, now, at Horry County Police Department?

A Crime Scene Investigations.

Q Crime Scene Investigations. You were in charge of the crime scene that night, weren't you?

A I was.

Q Do you know, of your own knowledge, how the house, scene, was released to the Causeys at 1 o'clock on August 12th? You know that, don't you?

A I don't know who it was released to. I left out of the scene at 1:00 a.m.

Q Are you telling this jury, Pete, that you didn't authorize the release of the scene to the family that night?

A At zero 100, 1:00 a.m., I instructed Investigator Domogauer that she could release the scene, that we were done.

Q Okay. That is all I wanted to know.

Now, you know -- or do you know whether or not the Causeys were told that?

A I have no knowledge of that.

Q Did you know that they were going -- but you knew the house was going to be released to them, right?

A I knew the house was going to be released, I don't know who it was being released to.

Q But, anyway, the police were gone, and as far as anyone there, you were through with the house and the scene; am I right?

MS. LIVESAY: I'm not sure I understand that question.

THE COURT: If he doesn't understand it.

A At 1:00 a.m. the scene was released.

Q (MR. MARTIN) Right.

A We were through there.

Q And did you authorize -- did you instruct Domogauer or anyone else to tell Heather Sims, Heather Causey Sims, or her mother or father not -- to preserve the house, to not disturb it or not go in there or do anything with it? Were they instructed in that manner in any way?

A I never made that instruction. I simply said we're done at the house. I instructed Investigator Domogauer that the house could be released. I instructed the officers on the scene to remove the crime scene tape. At zero 100 hours, I stepped under the tape and back to my vehicle. What time I left the physical area? I can't tell you. It was possibly 30 minutes to an hour later.

Q Okay. And from that point on the, quote, crime scene, as you know it, is no longer, right?
A That's correct.
Q And let me talk to you a moment about -- the search warrant was signed at 9:45. Do you know when Jill Domogauer began to search the house pursuant to the warrant?
A I would say -- I do not, no.
Q She began before you got back?
A Yes, sir.
Q What did you -- not what Jill did, but what did you do to search the house that night?
A I searched the contents of the house with the exception of the two vehicles in the driveway and the double door storage room off of the carport. I did not go in that; that was a locked area. The vehicles were locked. I had no reason to go in them that night, but what I did was searched through each of the other rooms in the house.
Q Let me ask you this. So when Jill said that you searched the cars that night, she was wrong, wasn't she?
A Yes, with respect to that statement. The car was searched on a subsequent occasion, but not that night.
Q And I want to come right back to that. You

didn't search the storage building, but you could have if you wanted to, couldn't you?

MS. LIVESAY: I'll have an objection, because I haven't heard anybody say anything about -- did you say storage room?

THE COURT: Building.

MS. LIVESAY: Yes, sir. This man hasn't, to my knowledge, said anything about a storage building. He said there was a locked room on the house, so he didn't go into it.

MR. MARTIN: All right. All right. All right.

THE COURT: He's a very smart man, obviously. If he doesn't know anything, he'll say I don't know; if he knows it, he'll answer.

Q (MR. MARTIN) There was a room outside, which I refer to as a storage room that was locked under the carport, you say; you didn't search it, but you could have if you wanted to?

A Yes, sir.

Q You had the authority to break the door and go in there?

A Yes.

Q But you didn't see the need to do that?

A No, sir, I didn't think it warranted busting the door down.

Q Right. Going back, when did you search the automobiles? Do you have that in your report anywhere?

A It is documented with photographs on one of the other search warrant occasions. If you'll give me a moment.

(A brief pause in the proceedings.)

MS. LIVESAY: Could I see those before you show them?

A The victim's vehicle was looked in on August 15 during that search warrant, and I photographed the interior of the vehicle.

Q (MR. MARTIN) And what documentation do you have of that there?

A There are photos and a photo index log made no that date. That was the second search warrant date.

Q Let me show you some photographs that are marked for identification and ask you if you can identify those. Are those photographs you took or someone took there on August 15th when you went back?

A Yes, sir. These are photographs that were taken by Investigator Caulder on August 15th.

Q You were there when this was done?

A Yes, sir, I was.

Q And, specifically, you went into that truck that was under the carport on the 15th, right?

A Yes, sir.
Q Let me show you what is marked as Defendant's Exhibit 28 for identification; do you know what that depicts?
A Yes, sir, it is a holster containing a glock handgun and a magazine.
Q And that glock handgun was located where?
A Inside the victim's vehicle, white pickup truck parked under the carport.
Q Exhibit 33, what is that? Tell the jury what that is.
A That's a picture of the inside of the driver's door. Are these in evidence yet? Okay. Inside the driver's door of the vehicle.
Q Let me show what is marked as 30, and tell me what that is?
A Yes, sir. That is David Sims', the victim's, Social Security card and South Carolina driver's license.
Q Who took that picture?
A Investigator Caulder.
Q And 29 is what?
A That is the Lenova computer tower located upstairs in the bonus room office, if you will.
Q Let's go back to searching the house. You and

Domogauer searched the house together side-by-side, or separately?

A Separately most of the time, but at times side-by-side.

Q You looked in every drawer in the house personally?

A Yes, sir, I did.

Q Any reason that she would look in every drawer and you would look at every drawer in a different time?

A Yes, sir, two sets of eyes are better than one.

Q Did you look in the washer and dryer, too?

A Yes, sir.

Q Every cabinet?

A Yes, sir, I did.

Q Looked in every closet?

A Yes, sir.

Q Why would you have looked -- just wondering -- why would you have looked in the closet in an upstairs room? Just to be thorough?

A Yes, sir. The upstairs room is where I found the camera system for the house, so, yeah.

Q But you didn't take any pictures that night of what you saw in the drawers?

A No, sir. If I took pictures of everything I saw, I still would be there.

Q And you didn't document any of it in a report, did you?
A Not other than Domogauer's report indicating that overall photographs were taken of the residence, and then photographs consistent with what we collected.
Q And so if you looked in every drawer in the house, you looked in every drawer in the kitchen then, too, didn't you?
A Yes, sir, I did.
Q And you saw what you had described as an old cell phone in the kitchen?
A That's correct.
Q Didn't take it?
A No, sir.
Q Did you examine it?
A I looked at it. I knew I was looking specifically for an iPhone 5. It was not an iPhone or anything close to it.
Q Did you document what it was?
A No, sir. It was not relevant to what I was looking for.
Q How do you know what it was? What were you looking for?
A I was looking for a black iPhone 5, that is what Mr. Causey told me.

Q All right. I want to ask you, you say that's what Ronnie Causey told you?
A Yes, sir.
Q Are you sure about that?
A Yes, sir. It was in the lobby of Grand Strand.
Q Did you document that anywhere?
A No, sir, I did not.
Q Did you put it in a report anywhere?
A No, sir, I did not.
Q You just remembered that?
A Yes, sir, I do.
Q Why did you ask Ronnie Causey about David's phone and you didn't ask Heather Sims about David's phone?
A I did not ask him specifically about David's phone. I asked him whose phone Heather had in the hospital, and he said, oh, that's my phone, David has a black iPhone 5.
Q Oh. Well, why would he say David -- you said whose phone does she have, and he just volunteers, Oh, that's mine, but David has a black iPhone 5?
A No, sir. I asked him if that was David's phone that Heather had.
Q I thought you asked whose phone it was?
A Well, I meant to say David's phone.
Q So even police officers in the line of duty can

misspeak, even on the witness stand, can't they?
A I guess you can.
Q I mean, anybody can. Obviously I can, you can, anybody can, but, okay. So that is how you find out about that. But now we don't really know what kind of phone you did see at the house, because you haven't documented it, right?
A No, sir, nor did I document all of the other things I saw in the house.
Q Let me show you what is marked as Defendant's Exhibit No. 34 and ask if you can identify that photograph?
A Yes, sir, I can.
Q What is that?
A That is a photograph of the drawer in the kitchen showing on the countertop David Sims' wallet, Social Security card, his South Carolina driver's license, and it also shows a black iPhone 5 in the drawer that I placed there after Mr. Causey handed it me and told me that is the drawer he recovered it from.
Q But that phone was in that drawer when you got there that day, wasn't it?
A No, sir, it was not.
Q Okay. Tell me specifically how you got that phone?

A I was informed that we were going back to the residence to meet with Mr. Causey to get a phone, David's phone from him.

Q You went with a search warrant to search the house, did you not?

A Yes, sir.

Q And when you got there, Mr. Causey told you about the phone, but the phone was in the drawer then, wasn't it?

A No, sir.

Q Where did he hand you the phone?

A He handed me the phone in the kitchen of this residence. He told me that he found it in this drawer. I opened the drawer, I placed the phone in it, I instructed Investigator Caulder to take a picture of it.

Q So that is what you swear is the truth, whole truth and nothing but the truth, so help you God?

A That is what I said when I came up here, yes, sir.

Q Okay. Now, as fate would have it, that is the same drawer that Jill Domogauer saw -- and I'm supposing if she was telling the truth, you saw -- the old phone on the night of August 11th? Same drawer?

A Same drawer.

Q And there is no other phone in that drawer, is there?

A No, sir, not that day.

Q Not that day. You didn't take into possession any other phones out of that house other than Heather's that night, did you, on any of your visits to that house?

A I didn't take any of the phones in the possession they were taken by Investigator Domogauer and Investigator Caulder.

Q She didn't take any, and you didn't take any more, right?

A No, sir.

Q You don't have any more pictures of any other phones in that house?

A No, sir.

Q Now, there is a wallet there that was in the drawer, I suppose? Think carefully?

A That, I don't recall. On this occasion, on the 15th or whatever the date is, I don't recall if it was in the drawer or not.

Q Well, if it wasn't, why would it be laid out, opened up and a picture snapped of it beside the drawer?

A I don't know. I took a picture of those

identification cards in the bathroom. I had Jill take it the night of the incident.

Q Let me get back to that in a minute. On this day, those identification cards, I'm guessing, the driver's license and Social Security card was in that wallet, and you fellows pulled them out and took a picture of it; am I right or wrong?

A I didn't, so I can't tell you.

Q Who did? You were there. Don't play that with me. You were there. What happened?

A I don't remember who took it out. I know I didn't, so I can't tell you who did.

Q Well, you didn't have any trouble telling me about the phone -- okay. So you don't know? But it is right there, right?

A Yes, sir, it is there.

Q And that baby pacifier, did you take those out or were they laying there, or what?

A They were just there, I guess. I didn't put them there.

Q Now, you say that there was -- who found on the night of August 11, the driver's license and Social Security card in the bathroom drawer?

A I did.

Q You found that?

A Yes, sir.
Q Did you document that anywhere?
A With a photograph.
Q Not in the drawer. You have a photograph with them in the drawer?
A No, sir.
Q There is not a photograph of them in the drawer, is there?
A No. There is no relevance of them, I just photographed them simply to have his pedigree information.
Q Well, you went through the trouble to put the phone back in there, to the drawer where you say Ronnie Causey told you he found it, and you put it back, where he got it from. But, again, his wallet was on him that night, wasn't it?
A No, sir. The phone was evidence, that is why it was photographed.
Q The drawer you are talking about is a sock drawer, am I right, that you say you found these two documents in that night, it's a sock drawer?
A Yes, sir.
Q And so what you are saying is that they were just -- he had his driver's license and Social Security card just laying out in a sock drawer?

A No, sir. The wallet was there.
Q Oh, the wallet was there?
A Yes, sir.
Q Okay. Okay. So his wallet was in the drawer?
A That's correct.
Q But you didn't take a picture of that?
A It wasn't evidence. I didn't take a picture of it.
Q Well, were these evidence?
A No, sir. We took a photograph for his ID.
Q All right. But -- okay, now we're getting somewhere. So that night it is true that his wallet was right there in the bathroom?
A Yes.
Q And you didn't take it into custody or evidence?
A No, sir.
Q Did you put it in this kitchen drawer?
A No, sir.
Q What did you do with it?
A Left it there in the bathroom.
Q Where in the bathroom?
A I don't recall.
Q You don't recall?
A I never took it out of the bathroom. I took it out, took the two documents out, took a picture and it

was left there.
Q What did you do with those two documents?
A They were there with the wallet.
Q You left them -- did you put them back in the wallet?
A I don't recall if I put them back in a pocket of the wallet, but I folded it back up. It's a billfold.
Q Billfold, folded up? And you put the documents back in somewhere, folded it up and put it back in the drawer?
A I don't recall if I put it in the drawer or not.
Q But you put the documents back in the wallet?
A Yes, sir, I just folded them over on top of it.
Q And you personally did that and left it there?
A Yes, sir.
Q You didn't give it to the coroner?
A No, sir, I didn't. If the coroner picked it up, I don't know, but I did not give it to him. If I did, there would have been a chain of custody to the coroner.
Q If anyone would have given these to the coroner, there would have been a chain of custody, right? If anyone gave those to the coroner, there would have been a chain of custody, wouldn't there?
A If we had given them to the coroner, there would

be a chain of custody. Not anybody.

Q Does there exist a chain of custody to the coroner?

A I'm not aware of one.

Q Well, you were in charge of this crime scene investigation. You are aware of one?

A No, sir, I'm not aware of one.

Q Now, when you went back to the house that night, talking about taking pictures of drawers, when you went back out to the house that night, she had told you what drawers she got the gun out of, hadn't she? When you went back out that night after you left the hospital, she was there and you knew then what drawer Heather said she got the gun out of?

A Yes, sir, I believe I did. Yes.

Q Did you take a picture of that drawer that night?

A No, sir, I did not.

Q You could have, if you wanted to. There wasn't a picture taken of that until you went back on August 15th, right?

A Yes, sir.

Q Four days after you had released the crime scene?

A Yes.

Q To the family. Okay. The third search warrant you went out to the house and you sprayed Blue Star

everywhere, right?

A Not everywhere.

Q Well, a miscalculation. You sprayed it in the bathroom everywhere?

A Yes, sir.

Q Did you spray it anywhere other than the bathroom area?

A No, sir. We only sprayed it in segments of the bathroom, not the entire.

Q Segments of the bathroom? Of course now we're talking -- wait a minute, that wasn't on the 15th, was it? That was on the 23rd that you did that?

A That's correct.

Q Why did you do that?

A Because of information that was obtained through the 911 tape.

Q About whether Heather wiped the door or not?

A Yes, sir.

Q About Heather wiping the door?

A Someone wiping the door, yes, sir.

Q So you went to find out -- I guess spray the stuff to see if there was any evidence of blood on the door, right?

A Yes, sir.

Q And you found that?

A I found evidence that something of a protein fluoresced, yes, sir.

Q And that's the issue we have here. Of course, first of all -- first of all, if there was evidence -- if there was blood on the door that she wiped off, for whatever reason, this blue stuff showed up with what was blood somewhere; did you take a pictures of that on the door?

A It showed up a protein source.

Q Doesn't mean it's blood, does it?

A It does not mean it is blood. It is a presumptive test.

Q It is. And there is a whole laundry list of things like cleaning detergents and paints and things that could light up also, right?

A Blue Star focuses them down better than Luminol.

Q It does, but I have a whole list of them over here, but I don't want to read it. But there are numerous household cleaning detergents, for example, that could show positive?

A Yes.

Q And as you said, by the time you folks get back out there, we know that the bathroom was cleaned at least once, because the blood had been cleaned up, and as you -- I think correctly -- said if you are in there

cleaning, the fact that something shows up that it may be blood, really doesn't tell you much, because you don't know how -- if it was blood, it got there; do you?

A I don't know if I follow your question.

Q My question is, you saw blood there that night, right?

A Which night?

Q August 11?

A Yes, sir.

Q As a matter of fact, if you wanted to, you could have sprayed Blue Star in other areas of the bathroom where you saw no blood that night while the scene had not been contaminated any more than police and EMS had gone out, you could have done it that night and you would have had a much better idea where blood was or wasn't instead of waiting two weeks to do it, wouldn't you?

A I would have gotten the same reaction that I got two weeks later.

Q Well, no, you just said if I go in and mop that floor, I might sling product over here in the process of mopping that would show up two weeks later, that wouldn't have shown up on August 11?

A If it was wiped that night, I would have gotten

the same fluoresce on it.

Q I understand that. I'm talking about the other areas.

A It was obvious, you could see the blood that night, so there was no need to spray.

Q Well, I mean, she might have wiped the whole place up, right? Lots of other places you didn't check, right?

A No, sir.

Q But, anyway, if she was attempting to hide something by that wipe of the door, then you fellows went back out there -- albeit 11 days later -- and found the spot, right?

A I found a spot.

Q Did you take a picture of the spot?

A Well, I didn't. Investigator Caulder attempted to, but because of the darkness and the facts that Blue Star fluoresces for a short period of time, we weren't able to get a clear focus on it, so there are several pictures of evidence that are merely black photos, and it is indicated on the index log that the photos were not exposed well.

Q But didn't show you anything?

A No, sir. You could see it by eye, but could not capture it by camera.

Q Did you document in your subsequent report where on the door you saw this spot?

A I didn't do a report on it.

Q You didn't do a report on that either? I'm asking you, in all sincerity, you are an instructor, you said, you are qualified in crime scene and other things, you are actually an instructor, how do you explain never doing a report? You are too smart to do a report?

A Investigator Caulder did the report.

Q No, she wasn't with you --

A Caulder.

Q Did he do a report?

A Yes, sir, he did. The photo index.

Q And did he do a report as to where the spot on the door was; that's is what I'm trying to figure out?

A He created a photo index of what the photos were.

Q The photos don't show anything, from what you are telling me?

A Right.

Q All right. You made a -- a point was made earlier that this drawer, State's Exhibit 60, is a drawer in the nightstand in the bedroom, and it shows that Ruger gun case?

A Yes. Yes.

Q That one has the clasp opened on it. Then you had another picture that you took when you went back on the 15th that showed the clasp closed; am I right?

A Yes, sir.

Q Do you know who closed the clasp on that?

A No, sir, I do not.

Q On the night that this was examined -- there is more pictures of this. Was that thing taken out of the drawer, that gray case, that night?

A Yes, sir.

Q Who did that?

A It was moved out of the drawer, it was opened, photographed.

Q Who moved it out?

A I moved it out, opened it, Jill photographed it.

Q And you put it back in?

A That's correct.

Q You're sure?

A Yes, sir.

Q And then you went back and you took more photographs of it, right?

A When?

Q August 15th.

A Yes.

Q But there was no question that this was taken

out, examined and put back in?
A That's correct.
Q And if the tabs were closed on it on the 15th when you photographed it, you don't have any clue who did that?
A No, sir, I don't.
Q Did you see a Browning safe in that house that night?
A No, sir, I did not. I saw a lockbox, like a fireproof file box, in the upstairs room, but I did not see a Browning safe in the house.
MR. MARTIN: Just a minute, Judge. Let me think my way through here.
THE COURT: Okay.
(A brief pause in the proceedings.)
Q (MR. MARTIN) Couple more questions. Now, we're clear on one thing, you never asked Heather Sims yourself about David's cell phone that night, did you?
A Which night are we speaking about?
Q How many nights did you talk to her?
A I'm trying to keep your dates straight.
Q August 11th.
A No, sir, I did not.
Q And you didn't ask her about a missing knife, did you?

A No, sir, I did not.
Q And you didn't instruct Chatfield to ask her about either one?
A I did not instruct Chatfield to ask that, no.
Q And so the truth of the matter is, Mr. Cestare, you all weren't even thinking about that that night, were you?
A Thinking about what?
Q Where David's cell phone was or where another knife might be, you weren't even thinking about it. You, nor anyone, was thinking about it on that particular night, were you?
A I wasn't thinking about where the second knife was at the time; I was in the hospital.
Q You weren't thinking about where the cell phone was either, were you?
A Yes, I did, because I asked Mr. Causey.
Q Why didn't you ask Heather? Why would Ronnie know? Why didn't you ask Heather?
A I don't know why I didn't ask her. I went out to the lobby to speak to him, let him know how his daughter was, and I asked him.
Q And he just blurted it out to you? All right. Let me ask you this, and this is really important for me, and I know you don't have any notes, but when you

went in to talk to Heather Causey, is there a picture -- you took three pictures at the hospital?

A I only took two pictures at the hospital.

Q You took two. And one of them -- I'll find it eventually. Here it is, No. 95. You took that, right? Are you sure -- now, listen, I want to be clear -- are you sure you took that picture?

A That's not the picture I took. What I took was not as blown up. Someone has blown up that photo, but that is part of the picture I took, yes, sir.

Q So that is a blow-up of the picture you took?

A Yes, sir.

Q You are sure about that?

A Oh, I'm sure. It is still on my cell phone.

Q And what time did you leave the hospital that night? I know you answered that, but 9:00 -- 8:06, 9:41, you left about -- shortly after 9:41 you left the room where Heather was?

A Roughly.

Q So what time would you have taken -- you took this picture after you got there at about 9:15, right?

A I can't tell you the time I took it. I took it during the time span that I was in the room.

Q All right. And did Ronnie Causey come into or out of that room while you were there?

A No, sir, not that I recall.
Q And Brandon Lee testified that nobody -- including Ronnie Causey -- came into or out of that room before you got there, right? You were sitting here.
A I can't tell you what he said or didn't say.
Q So it is your testimony that while you all were questioning Heather, that she was texting on this cell phone or had the cell phone with her; is that your testimony?
A Are you telling me that's my testimony?
Q Well, you've testified that you took this picture?
A Yes, sir.
Q And I believe you testified on direct that she had the cell phone and a sandwich while you were questioning her in there?
A Yes, sir. While she was being asked questions and answering, she had a cell phone in her lap, she had the sandwich in her lap, and I don't know whether she was texting, but she had the phone in her hands and manipulating something.
Q So while you all were -- while you are in there asking her questions, you are letting her tinker on the phone; right? Is that what you are telling this jury?

We have the tape. We've got the tape of the questions. While you are there, you are asking her -- you are saying she was using the cell phone?

A At times she had the cell phone in her hand and doing something with it, I don't know what she was doing with it.

Q Okay. Ronnie Causey didn't have his phone, she had it?

A That is what he told me.

Q No. No. That's what you said. You said that that was his phone she had -- well, you are right. You said she had a phone?

A Uh-huh.

Q And he told you she had his phone?

A Yes. I didn't ask her whose phone she had. That phone I documented as being in her hand. When I got out into the waiting room and spoke to him, I asked him if that was David's phone, and he said, no, she has my phone.

Q And she wasn't eating a sandwich either, was she?

A Yes, she was, she had it in her lap.

Q Was she eating it?

A I can recall seeing her put it up to her mouth once. I don't know whether she swallowed or not.

Q Are you sure?

A Yes, sir.

Q All right. So during the statement you took from her when, she's in there, she's eating a sandwich and working on a cell phone?

A I guess I can't say she was eating the sandwich. She put the sandwich up to her mouth and had the cell phone in her hand and did something with it, yes, sir.

Q Did you know they told her before she could go home that night that she had to eat something? You know the medical records show what time she got the sandwich?

A I have no idea, but she was not in custody, so there was no reason to take anything away from her.

MR. MARTIN: Judge, I don't think I have any more questions for him tonight.

THE COURT: And I believe that, you know, he's subject to being recalled at a later date. Do you have anything on redirect?

MS. LIVESAY: I do. I just have some questions.

MR. MARTIN: I want to put these into evidence.

THE COURT: Those are introduced by agreement, right?

MS. LIVESAY: I was going to show it to him, if you don't mind. Do you have more questions?

THE COURT: Before you do anything, she needs

to -- without objection.

MR. MARTIN: 29, 30, 33, 28, 34.

(Defendant's Exhibits 28, 29, 30, 33, 34 admitted.)

(A discussion was had off the record.)

Q (MR. MARTIN) Let me show you what is marked as Defense Exhibit 31, was that a picture that was taken on August 15th?

A August 15th, yes, sir.

Q Or August 11th, or do you know?

A I believe it is August 15th, and this photo was taken by Investigator Caulder, yes, sir.

Q And that's in an upstairs part of the house?

A Yes, sir. That is what would be called down here a bonus room.

Q A bonus room upstairs?

A Upstairs. That is where the office and the camera system was.

Q You got the computer and camera system out of that the room?

A That's correct. And that is the fire box, as I would call it.

Q That you saw there, and that is where it was when you saw it?

A That was in that room.

Q And I know it is confusing, this picture was taken--

MS. LIVESAY: Your Honor, is he asking a question, or is he telling --

THE COURT: I would assume there would be a question mark at the end, I hope, let's see.

Q (MR. MARTIN) I'm trying to figure it out myself. Let me ask you this. If this picture was taken on August 15, it shows what it was. This is the same place you would -- you examined this room on the 11th and it would have been the same place at that time?

A I don't recall if it was in the same place, but I do recall that it was in that general area on both evenings, both the 11th and 15th, yes, sir.

MR. MARTIN: I move that into evidence.

(Defendant's Exhibit 31 Admitted.)

Q (MR. MARTIN) One minute before I turn you over to her, one second.

A You already lost that (laughing).

Q The wound -- the pictures you took of her, you asked her to show you places where her injuries were on her, didn't you? She didn't just run up to you and say, hey, hey, take a picture of this; I mean, you asked her about it?

A No, sir. I only took two pictures, one was of her arm, injuries on her arm, and I asked her if I could take a picture of the injuries on her arm, and then the second one was I asked her if I could take a photo of the injury on the heel of the hand, whatever you want to call that area, and that is the picture that shows the cell phone and the sandwich in it.

MR. MARTIN: That is all the question I have tonight, but I would like to reserve the right to have him come back.

THE COURT: Well, yeah. I mean, I think that's what we've agreed to, because of the late time, that he's going to be subject to be recalled over that other issue anyway. So if you got some question -- but, now, after you finish your redirect, he is off the stand unless he is called back, and he's subject to being called back, like every other witness?

WITNESS: Mr. Martin, you left one photo over here.

THE COURT: Is that 31?

WITNESS: 32.

MS. LIVESAY: Just two quick questions. I understand. I'm tired myself.

REDIRECT-EXAMINATION

BY MS. LIVESAY:

Q Mr. Martin showed you what's in evidence as Defendant's Exhibit 31?

A Yes, ma'am.

Q And if you don't mind, tell this jury, is there a locked safe box in that room?

A Yes, there is.

Q Okay. Did you hear the interview earlier with Heather Causey at the hospital?

A Yes, ma'am, I did.

Q So when she said there was no safe or nowhere to put that gun, that is obviously not true; is that correct?

A That would be correct, yes.

Q Mr. Martin -- this is my second question--

THE COURT: This is your fifth, but go ahead.

Q (MS. LIVESAY) It is a compound question. Let me ask you this. Mr. Martin asked you several questions about Blue Star on the 23rd instead of the 11th; do you remember that?

A Yes, ma'am.

Q Did you anticipate when you were there on the 11th that Ronnie Causey and his daughter had been in there wiping the scene up?

MR. MARTIN: Objection. Objection. Objection.

THE COURT: I understand your objection, and I'll let you put it on the record. You kind of opened the door. I'll allow you -- over his objection -- to ask that question only, which did he anticipate someone was there spreading the blood around, right?

MS. LIVESAY: Yes.

Q (MS. LIVESAY) Did you anticipate that?

A No, ma'am, I did not anticipate that.

MS. LIVESAY: Thank you. No further questions.

THE COURT: You may step down. I'll let you put that on the record after they go, but let me let them go.

Trust me, they don't hate you. I'm not going to make you come back here in less than 12 hours, 9:30, it doesn't matter much. I mean, 9:30, 9:00. At 1 o'clock, we're leaving. I promise. I have a self-interest in leaving, and it also works. You have a great night. I'm sorry you had to wait for the technical glitch. You've been the best jury I've had in 15 years. Have a good night. Don't talk about the case, and don't watch the publicity, which is out there.

(The jury exits at 9:45 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Before I say another word, you all come up here. You all are taking exhibits to your tables, bring them back to her.

(Whereupon, the proceedings for November 12, 2015 concluded. The following was taken on November 13, 2015 out of the presence of the jury continuing to Volume III.)

623

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

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

VOLUME III of V

November 9th - 20th, 2015

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

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

HEATHER ELIZABETH SIMS,

Defendant.

APPEARANCES:

Nancy Livesay, Esq.
For the Plaintiff/State.

L. Morgan Martin, Esq.
For the Defendant.

Official Court Reporter:
Natalie Dahl, RPR

THE COURT: Are we ready?

MS. LIVESAY: Yes, sir.

THE COURT: Again 1:00, 1 o'clock.

MS. LIVESAY: Yes. Yes.

THE COURT: Bring them in.

(The jury enters at 9:52 a.m., and the following is heard in the presence of the jury.)

THE COURT: Good morning to you. If you're like me, it is sort of like we just left, because you just did. 1 o'clock, give me until 1 o'clock. You have been one of the best juries I've ever seen as far as staying with me, and I appreciate it. I don't say that every week, because I don't have it every week, but I will be true to my word on that, and all of the lawyers know, we all know. Thank you. That does mean we may push straight through, so don't climb the walls.

Call your first witness.

MS. LIVESAY: The State calls Dr. Werner Spitz to the stand.

(WERNER SPITZ, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: My name is Werner Spitz, W-E-R-N-E-R. Spitz, S as in Sam; P like in Paul, I, T like in

625

Thomas, Z like in zero dates 20.

(State's Exhibit 104 marked.)

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q Dr. Spitz, if you don't mind, tell this jury a little bit about your education and experience.

A I am a medical doctor. I went to medical school, graduated in, I think, April 1953, and following medical school, I went into training in pathology. Pathology deals with examination of tissues and body fluids from a living person or a dead person, and then performance of autopsies on dead people, of course, and -- to determine cause of death, manner of death, meaning whether the death was by natural causes, homicide, suicide or accident, or if you cannot make a determination. Then as a medical examiner, or a forensic pathologist, you can certify that the cause or manner of death are indeterminable.

I did four years of training in pathology, practiced in hospitals where people go because of disease, illnesses, or after a traffic accident or murder, or other types of accidents or suicides, and that requires another one year of training in so-called forensic pathology; in other words, pathology as required by the law. Those type of cases

626

usually involve the police. So I did five years after medical school training to become a forensic pathologist.

I have worked in various offices where forensic pathology is practiced, first abroad where I graduated from medical school for seven years, then I came to the United States, that occurred in 1959. When I came to the United States, I worked for about two years at Baltimore, Maryland at the medical examiner's office. The medical examiner's office worked for the entire state of Maryland. Then I had to leave this country because I came here on the wrong type of Visa. I came here as a visitor, and I should have come here as an immigrant. So because I came on the wrong visa, I had to leave the country for two years and return to the country of my origin, which is Germany. So I worked for the next two years and three month in Berlin, Germany in a similar type of department, that is where I worked.

The office in Berlin, in Germany, was attached to the medical school, and I worked for that two years, and then I applied for the visa to come back to the Baltimore, and that took another three months to receive, to receive a permit to come back.

In 1972 -- until 1972 I then worked in Maryland,

and in 1972 I received an invitation by the County of Wayne, which is the Detroit suburbs, to be the medical examiner for that area, and I was -- I worked for that county. About two days after I arrived in Michigan, the next county next to Wayne also asked me to work for them, and whereas I retired from the County of Wayne in 1988 in October, I worked for -- continued to work in a more suburban type of office, medical examiner's office in the County of Macomb. There, I worked until 2004, and then I retired from that county. I continued, as I had been doing all along, to work privately as a consultant in forensic pathology, and that is what brings me to this venue right here.

In 1961, I took and passed the American Board of Pathology examination in hospital type of pathology. And in 1965, after two years -- a little over two years abroad in Germany, I took and passed the examination had by the American Board of Pathology and Forensic Pathology. I have published, I think, 96 or 97 scientific articles, which were published in medical journals, most of which were peer reviewed, that means other doctors reviewed those publications and determined whether they are worthy to be published in a particular journal, and I also published a

textbook. The textbook is now in its fourth edition. The first edition was published in 1972, the second in 1980, the third in 1993 and the fourth in 2006. I now am working on the fifth edition. I've published chapters in various books, other than my own, where I was asked by the author of those books to write a chapter in this chapter or -- in various areas of forensic pathology.

Q Let me ask you this. Do you recognize what I'm showing you now?

A Yes.

Q What is this?

A It is the fourth edition of this book, and if weight has meaning, this book weighs 9 pounds.

Q This is the book you wrote?

A I didn't write the whole book, I wrote most of the trama chapters, injury chapters. There were other people who wrote other chapters, like there is several dentists who wrote about identifying people by dental ways in -- by dental examinations. There are other people who wrote about anthropology, et cetera. Different chapters were written by different people.

Q But you basically wrote the textbook for forensic pathology?

A Well, it is a well-received book. It is a big

book, obviously, and it is used in this country a lot, and then it is used in Canada. It is used in, as far as I know, all of the English speaking countries because it is in English, but it is also used in places that don't speak English. When they need some information, they translate it.

Q So this book is published all over the world?

A It is.

Q This is my copy. I had my copy tabbed.

A You better have a good breakfast, because it is heavy.

Q Did you write the chapters on gunshot wounds and knife wounds?

A Yes.

Q This is not your first time testifying?

A No. I have testified in all states of the American union, including Alaska and Hawaii. I have testified before the U.S. Congress in the assassination of President Kennedy. I have testified for a committee put together by the then vice-president of the United States, Rockefeller also in regards to the assassination of President Kennedy. I testified in federal courts, state courts, all types of courts, in Michigan and in various other jurisdictions.

MS. LIVESAY: Your Honor, I want to ask that Dr.

Spitz be recognized as an expert in a forensic pathology.

MR. MARTIN: I don't have any questions, obviously.

THE COURT: Yeah. He's admitted as an expert in forensic pathology.

Q (MS. LIVESAY) I'm showing you State's Exhibit 104; you recognize that?

A Yes.

Q What is that?

A This is my resume, and it includes the list of publications.

MS. LIVESAY: Can I put this into evidence, State's Evidence 104?

THE COURT: Any objections?

MR. MARTIN: I object to the resume into evidence, he's talked about it.

THE COURT: Overruled. I'll allow it to be put in. That will save some time.

(State's Exhibit 104 admitted.)

Q (MS. LIVESAY) Have you testified in any case that you think these people might recognize?

A Oh, yes. I've testified in a lot of cases that went -- across the country, and I've testified abroad as well in other countries. I should have said before,

I testified for the United Nations in a shooting death with a dispute -- a boarder dispute between Guatemala and another adjacent country. I have testified in the assassination of President Kennedy, as I said. I've testified in the case of Chappaquiddick where Senator Ted Kennedy went over the bridge causing the death of Mary Jo Kopechne. I've testified in the Jon Benet Ramsey -- well, not really testimony, but I consulted with the police in the case of Jon Benet Ramsey in Colorado. I've testified in the Preppie Killer murder case in New York where John Chambers was found guilty of strangling a young lady in Central Park.

MR. MARTIN: I object to the relevance about to much detail of these cases; it is not relevant.

THE COURT: Yeah. I understand. Look, I'll allow you some leeway, but he's an expert.

Q (MS. LIVESAY) Dr. Spitz, this case against Heather Sims, have you looked at the autopsy, medical records, pictures, those types of things?

A Yes, I looked at medical records and pictures, photographs and was able to come to opinions based on those materials.

Q If you don't mind, do you mind on that skeleton just showing the trajectory of the bullet through David Sims, the victim in this case?

A Yes.

Q We did it earlier; do you remember doing it?

A Yes.

Q Is that accurate (indicates)?

A I think it is.

MS. LIVESAY: Let's bring it around, if you don't mind.

Q (MS. LIVESAY) If you don't mind, after reviewing the autopsy, where the entrance and exit wounds were on the victim in this case?

A The entrance wound was in the front of the body about -- it was measured as being 50 centimeters. It is 20 inches below the top of the head in the midline, or approximately in the midline of the front of the body. That would be about where I'm showing (indicates), somewhere around here. And it is exited --

Q So it entered at the fifth rib interspace?

A I'm sorry?

Q The fifth rib interspace space?

A Yes. The fifth interspace between the ribs, that space. That is called the interspace because they are between two ribs. It went through the fifth interspace on the left side and it came out in the back and from the ninth interspace. In order to evaluate this

correctly the jury has to understand that the ribs are -- if you look at the skeleton from the side, you will see that the ribs are higher in the back as opposed to the front so that the trajectory going from five to nine is a downward slant, somewhat downward approximately 20 degrees.

Q Now, if you don't mind, tell this jury the measurement from the autopsy. You already said it was 50 centimeters in the front and 50 in the back. Tell this jury what that means.

A No, 50 centimeters in the front and 50 centimeters in the back.

Q Yes, sir.

A That is confusing because it is a downward track if it is 50 in the front and 50 in the back, but if you consider that -- if you look at the vertebral column or the spinal column, the vertebras in the back, you will see that the vertebral column is in the form of an S, letter S, and when the autopsy is done, the body is laying on a table, on a flat table, and if you -- now when you are a certain age you find that you lie down on the floor, especially when you are somewhat up in age, and it is painful. You don't like the position. Why is that? Because you are straightening the spine. The spine becomes completely straight, and at that

moment, the dimensions change.

Q Did the autopsy note anything about residue on the victim's shirt or on the entrance wound?

A The autopsy report indicates that there was no evidence of gun powder residue.

Q If you don't mind, tell this jury what that means?

A When you don't see gun powder residue on a light color surface or white surface, it means that the shot was fired from a handgun in excess of --

MR. MARTIN: Objection. Objection.

THE COURT: I'll have to send you out for this, but don't get too comfortable.

(The jury exits at 10:12 a.m., and the following is heard out of the presence of the jury.)

THE COURT: Is your objection --

MR. MARTIN: Objection is that he's not qualified to testify as to whether there was or was not any gunshot residue on the shirt. The autopsy report says no discrete residue. The shirt was never tested to determine whether there was gunshot residue on it or not.

Secondly, even if it had been, he could not testify to that because he's not an expert in gunshot residue analysis. Now, he can testify to these other

things, but he's not an expert in gunshot residue analysis, and Ms. Livesay knows that in order to make any sort of determination of --

MS. LIVESAY: That's not true.

THE COURT: Well, let him finish.

MR. MARTIN: In order to make any determination about distance, only the FBI in the United States, after extensive testing, would attempt to determine if a gun was any specific distance from a body, and that is the basis of my objection.

THE COURT: That he can't testify that because there was no residue, that the gunshot was from beyond a certain distance?

MR. MARTIN: No, sir, he can't -- first of all, let me clear now, because I want you to be clear.

THE COURT: I'm clear, but.

MR. MARTIN: Well, no. No. No. The autopsy report says there was no discrete gunshot residue seen, which means visible to the eye. It does not mean there was no gunshot residue. As a matter of fact, if it was tested, there would have been gunshot residue. Secondly -- I've talked to the folks at SLED and I have them subpoenaed to talk about what I'm telling you, if I need to, but -- but, again -- so -- but in order to testify of what that means, first of

all, he's -- there is no evidence in there that there was none, there is none visible to the eye.

MS. LIVESAY: That's right.

MR. MARTIN: The other part of it is, in order to make a determination whether a particular gun left gunshot residue of any sort at a particular distance, you have to test that gun with the specific same type of ammunition that was in it, because every one is different. And so all of that has to be done before anybody could begin to testify about what distance the gun -- the gun was from the body.

He's qualified in a lot, you know. I just found out he was -- became a doctor the day I was born, apparently. There you go, but he's not qualified to do this, and that is my objection.

THE COURT: I understand your objection, and those are great cross-examination questions, and I'll allow him to testify based upon his experience, but I understand and --

MS. LIVESAY: He's going to explain. The rule is not about gunshot residue. The rule is whether or not there is visible residue on the shirt. There is always residue along with the bullet, the rule says that is the distance.

THE COURT: I know. I would make that a little

clearer, because you are going to get that on cross. Bring them back in. And you are protected.

MR. MARTIN: Thank you.

(The jury enters at 10:17 a.m., and the following is heard in the presence of the jury.)

THE COURT: Thanks. You can continue.

Q (MS. LIVESAY) Thank you. We were talking about the fact, Dr. Spitz, about the autopsy report noted there was no visible residue on the shirt; do you remember that?

A Yes.

Q If you don't mind -- and you've actually seen the victim's shirt; is that correct?

A Yes.

Q Did you see any gunshot -- visible gunshot residue on this shirt?

A No, I did not.

Q If you don't mind, tell this jury what that means?

A That means that the shot was fired from a distance in excess of 2 feet.

Q Okay. So all we know from that is the distance between the muzzle and the victim was more than 2 feet?

A Right.

Q I'll show you something in your book, Page 627;

do you recognize that picture?

A Yes.

Q Is this picture explaining what you just told that jury?

A Yes.

(State's Exhibit 105 marked.)

MS. LIVESAY: Your Honor, at this time I would like to put Page 627 into evidence. I'll make a copy of it and put it in.

THE COURT: Any objection?

MR. MARTIN: Well, I want to look at it.

MS. LIVESAY: You didn't bring your book?

THE COURT: Show it to him.

MR. MARTIN: I don't put as much thought in that book as you do.

THE COURT: How about you all just showing it and moving on.

MR. MARTIN: Well, Judge, it is not relevant to the case we're dealing with, so I will object to it.

THE COURT: You are noted. We'll see. I don't know what the question is, but I'll allow it into evidence over your objection.

MS. LIVESAY: Page 627 is in.

(State's Exhibit 105 admitted.)

THE COURT: Yeah, but I'm assuming what you are

going to do is make a copy and substitute?

MS. LIVESAY: Yes. Yes, but I'm going to show them this out of the book. I'm going to bring you a copy and you can put it --

COURT REPORTER: Okay.

Q (MS. LIVESAY) This explains the idea that a closeup shot shows visible gunshot residue?

A Absolutely.

Q And a shot more than 2 feet doesn't show visible residue?

A Correct.

Q Does that mean there is no gunshot residue on this shirt?

A No, the bullet may carry some grains of gunpowders.

Q But the issue is whether or not it is enough to be visible from --

A Well, you see on the diagram, you know, that there is a bunch of -- I mean a lot of gun powder. If you have one little speck -- look, if you have one nice day, that doesn't make it summertime.

Q Right. I'm showing this jury now what you just explained on 627, and that top picture is showing a close-up shot, and the bottom picture is showing more than 2 feet?

A Correct.

(State's Exhibit 105 published to the jury.)

Q (MS. LIVESAY) Did you see pictures of this defendant's wounds and look at her medical reports, CT scans and all of that stuff?

A Yes.

Q Tell this jury a little bit about her wounds before we get into too much detail.

A The defendant had on her right arm -- on her right arm, she had scratches. I call it scratches because of their superficialities, because these straight lines of wounding are so superficial, those scratches, that they almost did not -- they are not really bled. One area did bleed, it is a little bit deeper, but the majority in the larger areas did not really bleed, they oozed maybe a little bit of serum, but did not really bleed, and that is because they are so superficial.

If you look at them with a magnifying glass, you will see that there are other manifestations in those scratches that tells you that they were meticulously drawn very carefully, very slowly on her skin. These were not attack wounds. These were, in my opinion, self-inflicted wounds. Self-inflicted means that the defendant caused these herself.

Also, it is significant to note the location on the arm, and I would really like to show, if His Honor will allow me to do it, where these wounds were.

Q Yes. And if you don't mind, I have to show this crowd the three pictures you saw that are already in evidence before, that way we are all on the same page.

MS. LIVESAY: Ginger, can you show the three pictures just so everyone knows what pictures we're looking at?

Q Dr. Spitz, I want you to look up there and tell these people if these are the same pictures you saw?

A Yes.

Q And here is the copy down here, and I'll be putting it on the screen for them. Did you see that wound on her thumb?

A Yes.

Q And after examining it, tell this jury your opinion as to that wound.

A This is a -- an injury, semicircular injury caused by the slide of a semi-automatic.

Q Have you seen anything like that before?

A Oh, yes.

Q How about did you look at the wound on her stomach, two little puncture wounds?

A Yeah, two little puncture wounds; in fact, the

medical record in the emergency room where she went after she was taken to the emergency room, because she had this wound, which oozed a little bit of blood. It is a superficial wound, and they were referred to in the emergency room as "punctate." Punctate means that they are like points, not real big wounds. They are under the breast on the left side.

Q And so in the medical records they call them punctate wounds?

A Punctate wounds.

Q Not puncture wounds, once they were examined?

A Yes. And they did do a CAT scan and determined that neither of these wounds penetrated the interior of the body. That means, yes, it went into the interior of the body in the sense of being a wound which went into the skin, but it did not go into the cavity where the lung is or organs are. So that is a very important consideration, because if it did go into the interior of the body cavity, they would not have discharged her, number one; and, number two, they released her with a bandage on the wound, so it was not a serious injury.

Q Were any of these wounds anything more than superficial wounds?

A No.

Q And if you don't mind, we'll show them up here

just to show this jury and the Court knows what we'll go through when you get down off the stand.

A Sure.

MS. LIVESAY: Can we dim the lights, Bobby?

Q And this is the punctate would you looked at?

A Yes. What you see there is -- there is one wound, and then there is another wound down -- the first one is closer to the top, the smaller wound is at the end of that instrument that you can see. There is a round, circular type of wound.

Q So there is two -- and I'll circle these for the jury. There is two punctate wounds. One is here?

A Yes.

Q And then one is below just, again, a very small punctate wound?

A Yes.

Q Can we see the next one? Did you see this picture?

A Yes.

Q And is this the one that you determined came from the slide?

A The slide of the semi-automatic weapon.

Q And why did you -- or how did you come to that determination?

A I've seen it before. People who don't have much

experience with firing firearms, shooting firearms, don't take precautions not to get this wound. You hold the gun somewhat differently if you know that, so -- I mean, it's painful and bleeds and, et cetera, et cetera, somewhat nasty injury, but it a byproduct of firing the gun.

Q So this is the pattern you see from the slide?

A Yes.

Q And these are the scratches you referred to earlier?

A Yes, but they probably advisable to see -- be close range.

Q Can you really determine that they are drawn on looking at it like this, or do you need to look much closer to see?

A Well, if you look at it closer through a magnifying glass, you see things which you don't see if you look at it from like 40 feet away.

Q Did you look at it through a magnifying glass?

A I did.

Q And you saw the characteristics that led to your opinion that they were self-inflicted?

A Correct.

Q If these jurors look closer through a magnifying glass, could they see --

MR. MARTIN: Objection to what they can see.

THE COURT: Sustained. Rephrase that.

Q (MS. LIVESAY) Can you show these jurors through a magnifying glass?

A Sure.

Q Did you bring one?

A Yes.

Q Perfect?

MS. LIVESAY: Your Honor, can he step down?

THE COURT: Certainly.

MS. LIVESAY: And he brought a magnifying glass; that is the only way I can show it.

THE COURT: Let Mr. Martin come over and observe it.

Q Do you mind stepping down, Dr. Spitz?

A No, I don't mind.

Q You looked through this magnifying glass?

A Yes, I did. The way to do this is put directly in what you want to see and put your eye in contact with the rubber lining on top of the magnifying glass.

Q We'll have them take a look. Tell them what they are looking for.

A First of all, you are looking at the scratch, and you will see in the scratch reddish areas or pinkish areas and black areas, very dark areas. The dark areas

are areas that are dried, and those areas, when they dry, they are -- become different colors, become brown and more brown and more brown and eventually black, almost black. I need to describe why that is, is that all right?

Q Yes. Yes, sir.

A We are covered -- the whole body is covered with a very thin membrane called epidermis, and maybe one or the other of you have fallen and scuffed your knee, and you will break off like a little rag -- a little almost translucent rag. What is that? That is epidermis. That is the upper layer of the skin. Or you have a blister from a burn, and in the blister that developed there is fluid inside, and the top of the blister, covering of the blister, that is epidermis. That epidermis is what we have from top to bottom and is needed to prevent the fluids inside the body to come out. When there is a burn, that swells up and there is fluid inside, but it doesn't come out. In is -- when you fall, the epidermis is scuffed off, and it will first be pink, then it becomes yellow, then it will become brown, more brown, more brown until black. Maybe the next day it is black, and it dries underneath it, some oozing more, and it is black. Those areas are so superficial it allowed the skin in those areas to

dry and become black, and that is what you need to see, and the reason why that is significant is because it indicates that the sharp object -- maybe the tip of the knife -- was drawn very carefully to cause little or no pain to reduce the pain, very carefully drawn on the skin.

Q And how about the fact that there is a faint scratch here; does that mean anything?

A On the bottom?

Q Yes.

A There is one area -- there are three larger scratches, and one of the -- the one in the middle -- the one in the middle has a double scratch in about three quarters of an inch long, and I think it is at the bottom. At the bottom on the left side of the middle scratch. The middle scratch is right here. There is one scratch here at the end of the picture, and the middle scratch, and there is a scratch next to the wrist.

Q What does that mean?

A That is like a hesitation scratch. That is a scratch that is so superficial that you just attempt to see if it hurts any, if indeed it hurts, to reduce any likelihood of -- furthermore, of course the more superficial it is, the less bleeding there is. The

defendant would have known that, that the more deep the cut is, the more bleed there will be. So these are attempts to reduce blood loss and cause less pain.

Q So that real faint scratch is a hesitation mark?

A You can't see it -- I almost cannot see it without a magnifying glass.

Q You want me to bring them down?

A I think that would be best.

Q Let me show them this first, State's Evidence No. 18, so they know what they are looking at.

MS. LIVESAY: Your Honor, can I ask the jurors to step down to see what Dr. Spitz is telling them?

THE COURT: If that is the easiest way to do it, that's fine, sure.

Q (MS. LIVESAY) If you don't mind, Doctor?

A The black areas are in all of them. The double scratch is in the middle scratch, this is the middle scratch, and right at the bottom here. So look here with your eye.

(The jurors examine the document.)

Q Next juror.

A Put your eye right on it.

Q Here you go, Dr. Spitz, we'll use this.

A Okay.

Q They are looking to see if some parts are thinner than others?

A Thinner, more superficial, black areas, light areas. I still think mine is better.

Q They can use yours if they want.

A Yep. Yep. Well, this is okay.

Q This faint line is the hesitation mark, and then they are looking for how this line is drawn?

A Yes. There is an area on the bottom part of this, and in this where the black area is.

(The juror examine the document.)

Q Dr. Spitz, that is one aspect of it. How about the position of where these scratches are, what does this tell this jury?

A The location of the scratches is such that an assault to cause them is highly unlikely. The location is such that all of them, the ones on the right forearm is in proximity of the left breast. They are all within reach, that is the first thing to look for. If they are beyond reach in the middle of the back, you wouldn't be able to reach that. These are very accessible to the individual on whose body they are; furthermore, they are also inaccessible to an assailant.

MR. MARTIN: I can't understand him.

THE COURT: Almost inaccessible to an assailant.

Q (MS. LIVESAY) If you don't mind, show these jurors what you mean.

THE WITNESS: Your Honor, may I get up and show them?

THE COURT: Yes, sir.

A To make it visible to you, I drew them on my forearm. I drew them on my forearm.

(Dr. Spitz shows the jury panel his arm.)

A No blood, just red marker. How does a person defend himself? By this? No. By that? No. By -- do you see them? You don't. You only see one little area from one of the scratches, the rest are not there. How then would an assailant produce visible wounds?

Q (MS. LIVESAY) So what you are saying, Dr. Spitz, is this (indicates) is a classic self-defense?

A This is self-defense.

Q And you would expect the wounds -- if you don't mind, put your arm back up one more time -- classic self-defense like this (indicates), so you are expecting wounds on this side?

A Anatomically, we refer in medicine -- a doctor wants to tell another doctor over the telephone where a wound is or where a tumor is or something, he would describe the body like this. This is the front, this

is the back, that is how he describes it. So on the front here, there are these scratches. When I threaten someone that I will throw this thing in her face, you will see this (indicates), or that (indicates) or this (indicates), but you are not going to do this or that (indicates), it will not defend you. You are protecting your face and your chest, that is where the heart and lungs are, everyone knows that.

Q Let me ask you this. How about if you go like this (indicates)?

A This is not protecting anything; everyone knows that. You are protecting -- where will I look to find wounds and interpret the meaning of the wounds in that particular area? I will look here from this, or here, or even sometimes if lying down my legs up, everything to cover the front of the body to such an extent that it will become inaccessible to the assailant (indicates).

Q So these wounds are superficial and they are not where a self-defense wound would be?

A Those are not self-defense wounds. These are self produced, but not self-defense.

Q Tell it to the jury again.

A These wounds are not defense wounds; these are wounds produced by the person herself.

Q And is it possible that these wounds could be self-defense wounds?

A I don't see how that is possible. In my view, no.

Q So if you don't mind, tell this jury what your expert opinion is as to the punctate wound and the wounds on the arm.

A The punctate wounds are made deliberately, very superficial injuries, hardly bleeding injuries. The picture of the wound -- the two wounds here, one of them is a little deeper and approximately, I would say, maybe just through the skin. You can see the dried blood is -- still a little bit of blood on the surface and in an area very easily accessible right to the side and below the breast. The tip of the knife was used to inflict that. The entry -- the depth of one of the wounds is the bigger of the two, is just barely under the skin. The hospital describes it as less than -- I think they say less than a quarter of an inch, or something like that.

Underneath, there is fat, and the fat is described as a minimal amount or slight amount of fat, and the fat hardly bleeds, and certainly not -- certainly none of this entered the interior of the body cavity.

653

Q Let me ask you this --

A So when you put them altogether, this and the arm, there is no doubt in my mind that the wounds are superficial and do not qualify to be called attack wounds.

Q Now, I'm showing you what is in evidence as State's Evidence No. 71.

A Yes.

Q Show this jury by looking at her injuries how deep that knife went in?

A (Indicates.)

MR. MARTIN: First of all, I would ask that they lay a proper foundation, how he made that determination, if he's going to testify to that.

MS. LIVESAY: The fact that he's an expert, I mean, does that maybe get us there? I don't know.

THE COURT: It doesn't. I mean, if he asked --

MR. MARTIN: It's okay. I'll ask him about it. Let him show it.

Q (MS. LIVESAY) Let's show how far this knife could have gone.

MR. MARTIN: Can I get a picture of this, Judge?

THE COURT: You may.

(A brief pause in the proceedings.)

A I will. I will. I will publish to the jury.

MR. MARTIN: Let me get a picture. Thank you.

Q (MS. LIVESAY) Can you see the dark stuff on the knife?

A Yes.

Q And so that would be about accurate as to how far this knife went in?

A May I see? (Witness examines knife.)

Q Do you see where this dark stuff is here?

A Yes.

Q Is there any way the knife went in that far?

A That would have entered the chest cavity.

Q Do you have a chapter in your book on wounds?

A I'm sorry?

Q Do you have a chapter in your book on knife wounds?

A Yes, I do.

Q And in that book, does it discuss hesitation marks?

A Yes.

Q And what kind of victim in the book do you see that has hesitation marks?

A Hesitation marks are attempts to -- well, like the term indicates, the person's hesitation in causing a major cut. The hesitation marks are the hallmark of a suicide. They are an indicator that somebody tried

to take their own life. Of course, at one point there is a major cut, there is something that caused this individual to die and to be taken to the medical examiner's office for autopsy, and the pathologist who does an autopsy would consider the hesitation mark as an indicator that not someone else caused the wounds, but in an attempt to eventually actually do the thing.

MS. LIVESAY: No further questions.

MR. MARTIN: Can we take a brief recess?

THE COURT: Sure. Ladies and gentlemen, this literally will be your only break of the day unless you just can't stand it, but just take 10 minutes, the five can go smoke, bathroom, come back in and we'll go to 1:00 and then we'll be out of here.

(The jury exits at 11:04 a.m., and following is heard out of the presence of the jury.)

MS. LIVESAY: I feel like I'm bothering you, you haven't even sat down in your chair.

Your Honor, if I may, I know I sat down, but can I ask Dr. Spitz a couple more questions, and all I want to do is put in medical records to lay foundation for him testifying about the wounds. I should have done that before, and it was my mistake.

THE COURT: Yes, sir.

MR. MARTIN: Put in the medical records.

THE COURT: That is all you want to do, what he reviewed?

MS. LIVESAY: Yes, he reviewed them. He reviewed all the medical records, CT scan, he reviewed the pictures, that kind of stuff. No interviews, just the paperwork.

THE COURT: Just the medical --

MR. MARTIN: I want to see specifically what you are talking about.

MS. LIVESAY: The medical records from Grand Strand. You got a copy.

MR. MARTIN: I never know what you got in your hands.

THE COURT: When I retire, I may write a book of under-your-breath-whips that lawyers make. I can make $40 maybe (laughing).

MR. MARTIN: I think I'll do this. I'll object to introducing medical records through him. I think he is an expert and can testify that he reviewed the medical records, but he's not the patient. He's not the doctor. He's not the custodian of the records, so I will object to them being introduced. For her to say you looked at all of the medical records and refer to them and coming up with a quarter inch, or whatever -- because I'm going to show him some records

657

myself.

MS. LIVESAY: Oh. Oh, that's shocking.

THE COURT: Don't be part of my book. Here is the deal. I understand your objection, but I think as an expert, he can testify and the documents can be introduced that he relied upon in giving his opinion. If there is only medical records there, and no statements, nothing, right?

MS. LIVESAY: No. These are just the records. These are showing that the .5 centimeters is two puncture wounds, and this is the CT scan.

THE COURT: I understand your objection, but it is overruled. I'll allow it to come in. I mean, he's an expert, but I need you to lay the foundation. I will let him do that, that he relied upon. Is that about all you got?

MS. LIVESAY: Yes, sir. But when I looked into it, Morgan was right, I needed to introduce these to talk about the depth of the wound, so I'm sorry.

THE COURT: I'll give both of you leeway there, sure. I'm sure I will have to do it for you.

MS. LIVESAY: It will be three questions, Judge, and I'll put these in and then sit down.

(State's Exhibit 106 marked.)

THE COURT: If you want it on the record, I can

put it on the record.

(A discussion was had off the record.)

(The jury enters at 11:27 a.m., and the following is heard in the presence of the jury.)

THE COURT: Okay. Thank you, ladies and gentlemen. Yes, ma'am.

Q (MS. LIVESAY) Dr. Spitz, did you review the ER records from this defendant's visit to the ER?

A I think I did, yes.

Q And if you look through these, can you tell me if these are the records that you reviewed?

A (Witness examines the document.) Yes.

Q And are these the records that you use to base your opinion that you gave earlier regarding her wounds?

A Yes.

MS. LIVESAY: The State wishes to move 106 into evidence.

THE COURT: Subject to our discussion on the record, it is admitted.

(State's Exhibit 106 admitted.)

CROSS-EXAMINATION

BY MR. MARTIN:

Q What else did you use to come up with these opinions that you have?

659

A I'm sorry?
Q What other information did you use other than these medical records to come up with these opinions that you have offered?
A I reviewed the records. I reviewed the autopsy report. I reviewed photographs. I studied photographs with a magnifying glass, like I did here, and I used the skeleton myself. I have access to a skeleton when I need it at home.
Q Do you have with you what you reviewed? Do you have it with you today, if you need to talk about it?
A I don't think so.
Q You didn't bring it?
A Well, I brought some things. I don't really recall what I brought, I will have to look at it.
Q You don't remember what you brought?
A No.
Q Let's start here. You didn't perform the autopsy in this case, did you?
A No, I did not.
Q And do you know who did perform the autopsy in the case?
A A gentleman by the name of Proctor.
Q And I assume you have talked with him about that autopsy that he performed?

A No, I did not.
Q You didn't talk with the guy who performed the autopsy?
A No.
Q You did review the autopsy report?
A Yes, I did.
Q As background, you say you reviewed pictures; do you have the pictures with you that you reviewed?
A Yes.
Q You have those if you need them?
A Yes.
Q You didn't examine Heather Sims and see these scratches and injuries of hers in person, did you?
A No. By the time -- by the time that I received this file, these things have healed.
Q The autopsy reported that the deceased in this case was how tall and how heavy?
A I don't know that. I would have to look and see what the autopsy report says.
Q But you have it with you?
A I think I do.
Q Look at it for me and tell me.

(A brief pause in the proceedings.)

Q (MR. MARTIN) Is this it, Dr. Spitz?
A Which one?

Q Right here?

A No, I don't think so.

Q Take a hard look at it with your magnifying glass.

A Yes. I think -- yes, this is it.

Q It is. Height of the deceased is what?

A He is 74 inches high, or he called it length, because he measured the body on the autopsy table.

Q Weight?

A 250 pounds.

Q Now, in that autopsy report Ms. Livesay asked you about the fact that the entrance wound is indicated to be 50 centimeters from the top of the head, and the exit wound, 50 centimeters from the top of the head?

A Yes.

Q But, yet, you say it went through at an angle?

A It -- well, the exit wound is on the left side of the back. During life, there was an angle of about 20 degrees. When the body is on the autopsy table, that angle is ironed out because the body has a different posture when the body is on the autopsy table because the spine has -- the spinal column is a figure of S, like the letter S, and that straightens out when the body is on the autopsy table, therefore, the measurement is --

Q So that is your explanation of that? You don't think Dr. Proctor might have just made a mistake in measuring one of those two wounds?

A I don't want to say he did, because it may not be a mistake.

Q But it may be?

A Well, we're only human, but I believe if you measure -- I know that if you measure a body standing up, it's a different posture than if the body is lying down, and the S curve of the spine is eliminated.

Q Now, you had testified that the angle of the bullet through the body was approximately 20 degrees; is that correct?

A Yes.

Q But you didn't perform the autopsy?

A No.

Q You are just going by what was written in the report?

A Correct.

Q And whether that was -- and that is an approximation. It could be a little more, could have been less?

A Yes.

Q And are you of the opinion that the deceased was standing when he was shot?

663

A I believe that he was upright standing and then collapsed when he was shot and bled to the tune of 2,000 ml, milliliters, of blood in the chest cavity, which is 3 ounces -- no, 3 -- 30 milliliters.

Q Well, I'm not worried about that.

A 30 milliliters and 1 ounce.

Q All right. I'll ask you about that in a minute. Right now I want to ask you, in your opinion, he was standing when he was shot; am I correct?

A Correct.

Q And I believe you said at some point in time that he was leaning slightly forward when he was shot?

A Well, eventually he collapsed, so he may --

Q I'm not talking about when he eventually collapsed.

MS. LIVESAY: Your Honor, can Dr. Spitz answer the question before he is interrupted with another question?

THE COURT: If you would, let him answer.

Q (MR. MARTIN) Let me sure you understand the question. You have given a statement to this previously, and was it not that he was standing and leaning slightly forward, in your opinion, when he was shot?

A Correct.

Q And after that, he went to his knees?
A He went to his knees.
Q In your opinion?
A Yes, that is correct.
(Defendant's Exhibits 40-45 marked.)
Q Now, as a matter of fact, while we're -- well, we'll come back to that in a minute. Let's talk a minute about the self-inflicted wounds. First of all, let me show you what was marked for identification as Defense Exhibit 40 and ask you if you can identify that for me?
A Yes.
Q What is it?
A It is a picture out of my book.
Q She wants to take a look at it.
MS. LIVESAY: Thank you. Okay.
Q (MR. MARTIN) It is what?
A A picture out of my book.
Q What does the caption underneath read?
A I can tell you the caption underneath is that she's got defensive wound on her forearm, and she's got fingernail scratches on her face, and I know from knowing the case that she has a fatal stab wound in the chest.
Q So her efforts to defend herself were not

successful, were they?

A Well, yes -- well, I don't know if she defended herself over and above raising the arm where she received defensive cuts.

Q What I want you to do for me --

MR. MARTIN: And I want to enter into evidence Exhibit No. 40.

THE COURT: Any objection?

MS. LIVESAY: No.

(Defendant's Exhibit 40 admitted.)

Q (MR. MARTIN) Because this is out of your book and I want you to read it for me.

A Superficial defense type cut of the left forearm and scratches on the face indicate that an altercation had taken place. Death was due to a single stab wound of the chest.

Q Okay. So, we've got a case in which you know the case, that a person was stabbed to death, but before they were stabbed to death, they had superficial scratches placed on them, didn't they?

A Based on what?

Q Whatever you say. You said -- you just read it. What I'm asking you is you say that is a person who died from a stab wound?

A Correct.

Q You also found -- your photographs indicate that they suffered superficial fingernail scratches and cuts, right?

A On their face, yes.

Q All right. And a cut on the forearm?

A Cut on the forearm.

Q And a cut in the forearm on the underneath side of the forearm, right?

A On the front of the forearm.

Q What is the front?

A It is this whole area.

Q Hold your arm up. This is the front here (indicates)?

A Yes.

Q That is where Heather Sims' wounds were, right?

A That is where some wounds were.

Q That's right. So she had the same kind of wounds -- placement wise -- on her forearm that the individual in this exhibit out of your book, didn't she?

A She had a defensive wound in the forearm on the front of the forearm, on the right forearm -- no, the left forearm.

(Defendant's 40 published to the jury.)]

Q (MR. MARTIN) Scratches, fingernail marks and a

667

cut on the forearm just like Heather Sims, right?

A Well, with all due respect, she had a fatal wound, which, I mean, it would have killed her.

Q I know. But the answers to part of that is, is that she attempted to defend herself, but she was stabbed --

MS. LIVESAY: Your Honor --

THE COURT: Yeah.

Q (MR. MARTIN) Right?

THE COURT: Hold on. Objection.

MS. LIVESAY: I'm not sure how we got into evidence this scenario about defending herself. Are we going from the picture and the caption, or are we not kind of recreating the incident from the book?

THE COURT: I think you are going from the caption of the piece of evidence that was introduced, right?

MR. MARTIN: Clearly.

THE COURT: Go ahead.

Q (MR. MARTIN) So my point is, this is an individual that as you say was stabbed to death, because you know the case, right?

A Yes.

Q And, of course, Heather was not stabbed to death, was she?

A No, she was not stabbed to death.
Q But she may well have been stabbed to death if she had not had a gun, hadn't she?
A I doubt it.
Q Well, you may doubt it, but you don't know, do you?
A Well, there is no indication that there is any attempt to stab her or successful attempts to stab her.
Q She was stabbed, wasn't she?
A She was never really stabbed.
Q What do you call it?
A I call it self-inflicted scratches, superficial scratches, that is where it ends with her. The one in the chest, which is next to -- next to the breast, on the outside of the breast, is a stab wound, if you call it a stab wound, because it was made by the tip of the knife to a depth of one quarter of an inch or less.
Q That is the stab wounds to the chest you are talking about now?
A That is the wound that is not a scratch, but a very superficial stab wound, quarter of an inch deep.
Q Where?
A On the side of the -- on left side of the chest.
Q Are you sure about that?
A Yeah.

Q Her stab wound was to the abdomen, wasn't it?

A Well, no. Stab wound was really -- it's difficult to know where her stab wound was. I would have to refer to the autopsy report. It doesn't matter because let me --

Q Let me ask you this --

THE COURT: Wait a minute, let him finish.

A Because what is above the diaphram is the chest. What is below the diaphram is the abdomen. I'm not sure whether it was an abdomen wound or chest wound, but I don't see the diaphram.

Q You are not sure if it was an abdominal wound or a chest wound, but you know it was self inflicted?

A The two have nothing to do with each other.

Q One is the determination of fact, is it not? Whether or not it was chest or abdomen is a determination of scientific fact; is it not?

A It is a scientific fact.

Q And you're a medical doctor, aren't you?

A Yes. Let me finish. It is a scientific fact because it is a fact memorialized in the autopsy report.

Q Chest, let me write that down while I'm thinking about it. Now, you reviewed the medical records, didn't you?

A I reviewed the medical records.

Q Look at them and tell me where it talks about the stab wounds to the chest?

A I can take it from the autopsy report, is even more accurate.

Q You can take it from the autopsy report that is even more accurate?

A The autopsy pathologist would have examined the wound such that a mistake is almost impossible.

Q Then what does the autopsy report say about her stab wounds?

A What am I talking about? I'm sorry. I'm confused. She did not die.

Q Well, I know that. I know that, but apparently you don't.

A I know that too, but you confused me, so excuse me.

Q I confused you?

A Yeah.

Q Okay. All right.

A She did not die. I mean, that is a fact; she's sitting there.

Q So let's go back. With all of these opinions that you have offered in a very serious allegation against her, I want to be sure you get a chance to

defend it, so I want to start with this. Was she stabbed in the abdomen or the chest? Because you ought to know that if you are going to offer any opinion, whatsoever.

A I believe that the wound that she had was in the chest.

Q Chest, okay. You are sure about that?

A Well, it looks like it. If it is in the breast, the breast is usually part of the chest.

Q In the breast? Okay. In the breast.

A It is not in the breast; it is near the breast.

Q Near the breast? How near would you say?

A I need to find the description.

(A brief pause in the proceedings.)

Q (MR. MARTIN) Dr. Spitz, that is the autopsy report. Let me help you here.

A I did not find the -- they look very similar, so maybe you have it?

Q I do. But I'm wondering if you ever had it or not, that is the only reason --

A No. No, I had it.

Q Listen. I will save you time, I'll take the blame, you couldn't read it. Let me show you State's Exhibit 40 -- no, excuse me, 106, the medical records that were just introduced. Let me direct you to the

diagnostic imaging report dated -- well, let me see, 8/11/13. I'll direct you to that. Do you know what a diagnostic imaging report is?

A Yes.

Q What is it?

A X-ray.

Q No, it's not the x-ray, it's a CT scan.

A That is a type of x-ray.

Q Type of x-ray, all right. It has down here, to direct you, to help you, impressions. These are the records of Heather Sims at the hospital. You see my finger?

A Yes.

Q What was the impression from that CT scan as to the location of her wound?

A They call it a superficial stab wound within the left mid-abdomen. This does not extend into the peritoneal cavity.

Q Okay. Now, does it say "chest" or "abdomen"?

A Abdomen.

Q Left mid-abdomen, right?

A Okay.

Q So when you just told this jury that she was stabbed in the chest, you were dead wrong, weren't you?

A I was probably wrong in calling the location of

that wound.

Q And you are dead wrong about these opinions that the wounds are self-inflicted, too, aren't you?

A No. Because it really makes no difference whether the wound is in the abdomen or chest, it did not penetrate.

Q Yeah, but it makes a difference whether you knew what you were doing or not, doesn't it? It makes a difference if you know what you are talking about or what you are doing, doesn't it?

A If you tell me what the difference is, I'll be glad to acknowledge.

Q Well, if you don't know what you are doing or the difference in what you are saying, how can this jury believe anything you say?

A Well, I can tell you how they believe what I said, because if you make a stab wound in the chest that does not penetrate, the result is the same as whether you stab the abdomen and it doesn't penetrate and it doesn't bleed and doesn't cause anything, so the difference is zero.

Q All right. Let me ask you this. You testified on direct examination that in regard to the depth of this wound, that there was minimum fat reported in the medical records as to the amount of fat that Heather

Sims had in the abdomen near the wound, did you not?

A Well, it was a small amount of fat, yes.

Q Minimal, small amount?

A I don't remember what word they used to describe the amount of fat.

Q Do you know the difference between the term "minimal fat" and the term "minimal fat stranding"?

A Straining?

Q Minimal fat stranding. Do you know the difference between the term "minimal fat" in medical terms, and "minimal fat stranding"?

A Stranding? No, I don't know what "stranding" means.

Q You don't know what stranding means?

A No.

Q Well, would it surprise you to know that it means something totally different than "minimal fat"?

A Maybe you can teach me what it is.

Q I will. I will. You're a medical doctor, aren't you?

A Yes, I'm a medical doctor.

Q Before we start, let's be sure. I'll let you look at this with your magnifying glass. This is the same diagnostic imaging report reads that there was minimal subcutaneous fat stranding to the abdominal

wall musculature, right?

A Right.

Q You don't know what that means?

A No, I don't know what "stranding" means.

Q Well how in the world can you render a report about the depth of a wound and whether it was inflicted by her or someone else if you don't know what "minimal fat" means, but yet you are using that term to reach your determination that it was a stab wound of less than 3 milliliters?

A The wound does not penetrate the abdominal cavity, so it really does not make any difference, whatsoever, if the word "stranding" is there or you omit the word "stranding." I did not consider that a significant deviation from my ability as a forensic pathologist, one iota.

Q I understand what you're saying, but you offered an opinion to the jury that the medical records indicated that there was minimal fat?

A I will tell you that again now.

Q So that is what you are saying?

A That is what I'm saying, is that there was a minimal amount of fat. What the "stranding" means -- I don't know what this word "stranding" means in this context.

Q Well, let me help you a minute. You do know that "fat stranding" is a pathologic condition caused by a stab wound and has nothing to do with how much fat a person has in a certain place on their body; did you know that?

A Tell me that again, please.

Q The term "minimal fat stranding" refers to the pathologic condition of the fat caused by a stab wound, and it has nothing to do with how much fat tissue there is in the body.

A Well, what I need to tell you is I've been a pathologist for 62 years. Now, I have never heard that term used by a pathologist. Maybe some surgeon found that term acceptable. As a pathological entity, that means nothing because -- well, if I don't know after 62 years what "stranding" means in that context, when the stab wound so-called did not enter the cavity, well, I hate to disappoint you, but that is not.

Q Well, there are a lot of things that we old folks don't know that we need to know. But if you are going to interpret medical records -- and they introduced these medical records to help you explain how you reached your determination on the depth of the wound, and if you are going to use the medical record to help you make that determination, don't you think you ought

to know what the term means?

A No, I don't need to know what the term means. They indicate what the depth of the wound is. They said less than 3 milliliters.

Q Where does it say that?

A You read it to me.

Q No, that is what you said in another statement you made. What does the medical records say?

A The medical records indicate it is a superficial wound.

Q I understand that, but a superficial wound simply means it did not penetrate the peritoneal cavity. I'm asking you about the depth of the wound. You testified what you thought the depth was.

THE COURT: What is your objection?

MS. LIVESAY: I want Mr. Martin to allow Dr. Spitz to answer.

THE COURT: I'm going to have him finish his question.

MR. MARTIN: I don't want to go long. I just want him to respond to the question.

Q (MR. MARTIN) I'm talking about the depth of the wound, not whether you want to use the term "superficial" or not. I'm talking about the -- you testified about the depth of the wound, and you walked

down with that knife.

MS. LIVESAY: Your Honor, again.

THE COURT: Wait a minute.

MR. MARTIN: I'm sorry, go ahead.

THE COURT: Go ahead.

A The depth of the wound is described as superficial. "Superficial" means it went through the skin, not any further.

Q (MR. MARTIN) That is what "superficial" means?

A That means "superficial".

Q How about the fat?

A The fat is there, and it is a superficial wound. So did the wound enter into the fat? Maybe it didn't.

Q How deep would you tell this jury now, under oath, how deep --

MS. LIVESAY: Your Honor.

THE COURT: Let him finish his question.

Q (MR. MARTIN) How deep, again -- now, I know you walked down with the knife, and I have a photograph of that, but you have made an estimation about the depth of it. Tell this jury today, now, what is your opinion about the depth of the wound that she suffered, the stab wound to her abdomen?

A Less than a quarter of an inch.

Q Less than a quarter of an inch?

A Right.
Q How many millimeters would that be?
A About three.
Q 3 millimeters?
A Four is a quarter of an inch, approximately.
Q Are you sure about that?
A Yeah.
Q Are you just as sure about that as you are that her wounds were self-inflicted?
A Yes, I'm sure of it. I'm sure as anybody can be that these wounds are self-inflicted.
Q That is a good point. The truth of the matter is that you cannot say that these wounds were self-inflicted?
A Yes, I did.
Q That is simply your opinion; is it not?
A No. The opinion is --
THE COURT: Let him finish.
A The opinion is based on scientific criteria, and those criteria are really indisputable.
Q (MR. MARTIN) Okay, but, again -- and you are confident that the stab wound was no more than 3 millimeters, right?
A Yes.
Q Do you know that they took that CT scan; do you

know that?

A. Yes.

Q Did you attempt to read the CT scan?

A No, I took for granted that what they told me in the medical record was correct.

Q And they didn't put a depth of the wound in the medical records, though, did they?

A They said it was superficial.

Q I'm not asking you that. Did they put a depth of the superficial wound in the medical records?

A No, they don't need to do that.

Q So that is --

A You are talking like -- you are talking like you want to tell the surgeon what to call superficial or not. I mean, this is -- they did not even -- to make a determination of superficial means to another surgeon or to another physician or to a pathologist that the skin was penetrated, but did it go into the cavity? No, it didn't. Therefore, it is a different kind of wound, because if it is a wound that is not superficial, but a little bit deeper into the abdominal cavity, it requires a different kind of treatment. The treatment in a superficial wound is to put a Band-Aid over it and tell the patient to go home. The treatment of a penetrating wound into the abdominal cavity is to

681

keep the patient in the hospital for overnight observation and then to decide the next day whether this patient can be discharged or whether the abdominal cavity has to be opened and worked out. There is a huge difference, because the one can end up in massive incapacitation and even death. The other one is go home and don't bother me anymore.

Q Right. If the peritoneal cavity was penetrated in Heather Sims, it could have resulted in serious injury or death; am I right?

A Unless proven otherwise.

Q And --

A And it was proven otherwise by the use of the term "superficial."

Q Okay. Do you know how thick the peritoneal cavity is?

A How thick?

Q Yes.

A What do you mean the peritoneal cavity? The --

Q Excuse me, the muscle that protects the -- what protects the peritoneal cavity from -- what do you call it, between the cavity and the fat?

A Peritoneum.

Q How thick is that?

A A membrane that is approximately -- maybe less

than 1 millimeter in thickness, but it is a very tough membrane.

Q 1 millimeter in thickness, right?

A Yeah, but very tough membrane.

Q Okay. Let me show you Defendant's Exhibit No. 4; do you know what that is?

A Yes. That is the wound in the proximity of the breast with some small amount of blood around it that otherwise is not meaningful without a medical record by those who examined it.

Q Okay. Now, let's talk a moment about the self-inflicted wound. First of all, you have the 9-pound book that you brought out and showed us?

A I didn't bring it.

Q Well, that Ms. Livesay brought out. Isn't it correct that in that 9-pound book you have got one paragraph concerning -- let me back up. Three paragraphs talking about self-inflicted cuts of the body; am I right or am I wrong?

A I don't remember how many paragraphs.

Q I'll refresh your memory and show you Defense Exhibit No. 34.

A Okay.

Q Is that your paragraph or two on self-inflicted wounds?

A I don't know if that is the only paragraph. There might be a half a dozen other paragraphs.

Q I'm not asking you to go back and look through that book now, but when you get off the witness stand, look at your book and bring to Ms. Livesay any other paragraphs having to do with that book so she can bring them to me, okay; is that fair enough?

A Well, maybe I'll do that, maybe I won't.

Q Okay. You talk about trying to make a determination whether or not they are self-inflicted, and, again, that is a matter of opinion, not fact, right?

A No. Medical opinion, yes. Stopping there is wrong because there are other things that belong into that determination, and those other things -- excuse me -- those other things are scientifically based findings that support that. That is how a physician arrives at the determination, by rendering scientifically supported opinions.

Q And in your book regarding self-inflicted wounds, you talk about four measuring factors, and they are superficiality, wounds of the same depth, consistent direction, consistent with the person being left or right-handed, and wounds running parallel to each other; is that correct?

A That is what it says, yes.

Q And you say that superficial wounds can also be inflicted by an assailant, right?

A Yes.

Q And that superficial wounds -- excuse me, that the interpretation of wounds alone can be misleading, says that on Page 566 of your book in talking about self-inflicted wounds; would you agree with that?

A Yes. Yes. Under certain circumstances, that may be correct.

Q And the circumstances surrounding the death and the scene are essential in all of these situations, again on Page 566, right?

A You took it out of context. Could you read it --

Q I read it to you. I read it right out of your book. Circumstances surrounding death and the scene are essential in all of these situations --

A Okay.

Q Closed quote, Page 566.

A Yeah.

Q And, again, quote, Interpretation of injuries alone can be misleading, closed quote, Page 566; you agree with that?

A Yes. Yes.

Q Okay. And I don't want to spend a lot of time

with you, but I want to be clear. You are not an expert in gunshot residue powder analysis, are you?

A Well, I am an expert in forensic pathology, which includes gunshot wounds, from various distances. So I have knowledge in regards to what the presence of gun powder means on a clothing or on skin or in the wound.

Q But in this case, I believe your testimony was -- and if you go back and look at your book -- you call this a distant gunshot wound instead of a contact gunshot wound, correct?

A I would call this a distance gunshot wound without evidence of close range fire.

Q And in your book -- and here you said 24 inches, but in your book you actually say those are described as 18 to 24 inches; am I right about that?

A Well, in rare instances. It is quite rare. In the every day case that you examine -- that one examines, you talk about more than 20 inches.

Q Does your book say 18 to 24 inches or not?

A The book may say up to 24 inches. That is out of -- that is the outer -- rare outer consideration.

Q And last question on this, now. If you really want to be sure, you have to take that gun with the same ammunition in it and test fire it into a board and make measurements to make any determination about what

any presence or lack of gunshot residue means; is that not correct?

A If you need to know the exact distance, then you have to do that, but in the day-to-day case, you really don't.

Q Okay. I got you. Now, you at one time offered an opinion in this case that the deceased was on his knees, and that the defendant was standing at the time he was shot, didn't you?

A The defendant was standing?

Q You want me to repeat the question?

A Yes, please.

Q Let me go back with you. Prior to ever coming to court, and transcript testimony in this matter, you had opined, had an opinion, just like your opinion about self-inflicted, that the deceased was on his knees and the shooter was upright when the shooting occurred; did you not offer that opinion at one time?

A I think I did.

Q And you swore to it under notary signature, did you not?

A Yes.

Q But you had changed your mind about that opinion today, haven't you?

A No, I didn't really not change my mind.

Q You didn't?

A No. Let me explain. The person shot was upright and collapsed when -- a few seconds after being shot. The bullet wound -- the bullet passed through the entire heart from side-to-side and damaged the right side of the heart and the left side of the heart, and the blood splattered out or ran out of the heart and not to the brain. So the brain became -- had lack of adequate amount of oxygen causing the individual to collapse within a few seconds of being shot.

The statement that he was this way or that way, and that I use this terminology or that terminology, still is -- when I wrote that, in my concept, was describing a situation in which he was shot. So was he at that time down? No. Nothing caused him to be down. He became down when he was shot. In other words, he -- the collapse occurred as a result of being shot, so he must have been upright at that time.

Q And we agree with that now. That is what you testified to today, and that is what we agree to.

A And at all times that was my opinion.

Q Well, at one point in time, did you not write down and sign your name to an opinion that to cause this angle, referring to what you said was a 20-degree angle, the shooter was upright?

MS. LIVESAY: Your Honor -- what page are you reading off of?

MR. MARTIN: 37.

Q (MR. MARTIN) I'll start over. You testified earlier that you had offered an opinion in this case that, quote, to cause this angle, the shooter was upright. The victim was down on his knees --

MS. LIVESAY: Your Honor, if he's reading the question that he asked Dr. Spitz, he's not reading the answer. He's reading his own question.

MR. MARTIN: I'm trying to get the question to him. I'll start over.

THE COURT: Start over with your question and his answer.

Q (MR. MARTIN) I'm asking you, did you not offer an opinion that to cause a 20-degree angle, the shooter was up right and the victim was down on his knees, this is evident from the reenactment and from spatter of the blood on the back of the pant leg; isn't that what you said?

A I don't remember what I said. I have not read this in a long time. I can read -- you just read it, whatever you read. It is evident that at one time the deceased was on his knees and that blood coming out from the wound of exit trickled onto his -- the back of

689

his pants. That is shown on a photograph where the back of the pant legs show evidence of blood stains in those areas of both legs. For that to occur, there is no other way for the blood to get there unless somebody deliberately sprinkled blood over there, but he was down at that time with the upper body up, and blood coming out of the bullet hole of exit, and that is shown by the presence of blood on the pant legs on the back of the pant legs, as shown on the photograph. So at that time, he was down. But he sustained the shooting, the bullet wound of entrance, that is when you are shot, he was upright. Then after a few seconds of remaining upright, losing blood, collapsing into that position where the blood will come out of the bullet wound of exit onto the pant legs, at that time he was down. What caused him to go down? The lack of adequate blood supply to the brain.

Q Why, then, did you offer an opinion to the exact contrary that he was on his knees when he was shot and the shooter was upright? Why did you offer a sworn opinion to that if that is not true today?

A It's not a matter of not true. It is still true in the way -- in the -- when you consider he was shot in the context of him being shot, he's still upright, otherwise, that information would be wrong, the picture

would be wrong, but the picture is not wrong.

Q Let me ask you something. You're from Michigan, St. Clair's Shore, Michigan, right?

A That is where my office is.

Q Have you ever heard of an old South Carolina phrase "beating around the bush"?

A I have heard that, but what does that have to do with my office?

Q I think you are beating around the bush. I want an answer, and you are going on the same thing over and over. Do you remember -- do you remember asking them to do some kind of reenactment photographs for you?

A In a different case.

Q No, this case. This case.

A I don't remember that.

Q You don't remember that?

A No.

Q How in the world can you get up on this witness stand and testify that you think these wounds were self-inflicted when you don't even remember what you said in this case on an earlier occasion?

A What I -- my opinion is, and has been from day one when I first saw this case, is that these are self-inflicted wounds.

Q I'm going to ask you one last time, because this

is important, because they are going to ask this jury to convict that girl based on your -- and primarily your -- opinion that these wounds were self-inflicted. I propose to you that you've offered two opinions in this case, and one of them you have retracted?

A Which is?

Q That he was -- that reenactments of the shot that struck David Sims indicate an adult standing -- let me -- I'll make it shorter. To call -- the approximate angle of 20 degrees downward through the body. To cause this angle, the shooter was upright, the victim was down on his knees. This is evident from the reenactment and from the spatter of blood on the back of the victim's lower pants leg. Did you say that or not, yes or no?

A I said that, however, you misinterpreted what I said.

Q I'm going to write it down, and we'll let someone else interpret it.

(A brief pause in the proceedings.)

MS. LIVESAY: I'm assuming that is just a portion of this total --

THE COURT: For the record, what did you write?

MR. MARTIN: I wrote down what he testified to at the hearing that we had.

THE COURT: A portion of it, or the whole?

MR. MARTIN: No, just a portion of it.

MS. LIVESAY: So this is just a portion of those 64 pages?

MR. MARTIN: It is. It is. This is a portion of his transcript testimony.

MS. LIVESAY: Which is 64 pages.

MR. MARTIN: It is. That is true, and there is no question about that. This is where we were talking about this, but there is a bunch of other pages.

Q (MR. MARTIN) Dr. Spitz, come down for me, if you would.

A (Witness complied.)

Q I know you have a little trouble seeing well, the distance, but that is what I just asked you, and I won't ask it again, but I'll read it to you, that if anybody -- to cause this angle, the shooter was upright, the victim down on his knees. This is evident from reenactment and blood spatter on the back of the victim's pants leg, right?

A Yeah.

Q Put your initials right there for me.

MS. LIVESAY: Your Honor, Dr. Spitz is trying to talk.

THE COURT: Yeah, let him explain.

693

Q (MR. MARTIN) Okay. I'm sorry. Go ahead. He explained it, and I've accepted his explanation, but we'll do it again.

A What was meant with this is that he was kneeling, blood percolated out of the exit wound onto his pants, because there is no other way for these pants to have those blood stains on this area (indicates), on this area of each of the legs. Because at that time, he was like this (indicates). The bullet wound of exit is somewhere here (indicates), and it spattered blood down from here onto the back of the legs. That is what the position had to have been, otherwise, that would not have been possible. So is it part of the shooting? Of course it is.

Q Having said that, put your autograph on your words there.

A (Witness complied.)

Q Thank you, sir. You can have a seat.

(A brief pause in the proceedings.)

Q (MR. MARTIN) All right. Dr. Spitz -- and I'm just about through, but I want to recap your testimony. You say wounds were inflicted. You say that the stab wound was no more than 3 millimeters deep to the abdomen?

A I say it was less than -- yeah, less than

3 millimeters, or somewhere around 3 millimeters, maybe.

Q And there is no difference between the term "minimal fat" and the "minimal fat stranding" for a pathologist interpreting medical records?

A I don't know what the word "stranding" means.

Q And that your interpretation of the paragraph that you just autographed up there is that you meant something different by it, being after he was shot, he went to his knees and the blood drained onto his pants; is that right?

A My opinion is that after he is shot, he went to his knees. Otherwise, what is he doing on his knees? Why is he suddenly on his knees? Why the picture showing blood on the back in the area of the calves of both legs?

Q In addition to your description of 3 millimeters or less, you are of the opinion that the stab wound was, as you indicated to this jury, with a knife, right?

A Would you ask me that again?

Q You remember walking down and putting your thumb on the knife blade?

A Right. Right.

Q You are sticking with that as being on the

opinion of the depth of the wound?

A Yes. Less than a quarter of an inch.

Q You are just as sure about that as any other opinion you offered today?

A I am certain of that opinion, that's correct.

MR. MARTIN: That's all I have.

THE COURT: Anything on redirect?

MS. LIVESAY: Just one question.

REDIRECT-EXAMINATION

BY MS. LIVESAY:

Q Dr. Spitz, have you ever said anything other than her wounds were self-inflicted?

A Never.

MS. LIVESAY: Nothing further.

THE COURT: Thank you very much. You can step down. You all, come over here a minute.

(Whereupon, a bench conference was had.)

THE COURT: Ladies and gentlemen, believe it or not, we are 30 minutes early. We're going to let you go. I need to take about five minutes to explain a couple of options that we have with you and why we've taken what we have.

I really don't tell every jury they are a great jury, because they are not. I appreciate what they do, and I can honestly say that I've watched you, and

you paid attention, and I'm very impressed. I promise you that if you were with me every week, you would know that isn't true.

I told you at the beginning of the trial there would be publicity. I'm telling you, there is publicity. You know it. I mean, you know, sometimes jurors think that lawyers and judges try to keep them in the dark and, quite frankly, there are things you can't hear from a legal perspective, but there is no point in me treating you like two year olds. There is publicity about this case. You can go on Google and get information about witnesses, about this case, about the people, about me. You can do that if you want. You can pick up the newspaper or radio and TV and see somebody talking about this case. I'm just telling you that.

I told you the other day that I was asking you and ordering you not to do that, and I trust that you have not. What I'm going to have to do Monday, because we have not sequestered -- you know, there is an option like this to put you in a hotel for the entire time, and I've done that before. That was not something that we thought in this case, even though we knew there would be a weekend where you are outside of our purview.

So what I'm going to do is Monday I'll individually ask you if you have read anything, listened to anything, watched any television or done any kind of Internet research. If you happen to do it, even accidentally, you need to tell me. I'm not going to jump on you. I mean, I understand that things happen, but I need to know. I mean, it is very important. I trust you, the lawyers trust you, that is why you are not in a hotel all weekend being fed by SLED agents, but it is important.

So because of that, I will individually put you under oath and ask you. Keep that in mind. Again, keep in mind that the truth will never hurt you, period, as far as I'm concerned. I hope that you have a good weekend. I will, again, caution you. Everywhere you look, you need to be careful. You see the cameras. Don't do any of that. Please don't cause a problem.

Next week I don't think there will be -- last night was an unusual night for a lot of reasons, but we were trying to get to a point. Again, at the end of this trial, when I come back and talk to you with my robe off and off the record, you can ask me questions about why we do some of the things we do. You just have to trust me that we are doing it for

reasons that are unknown. As the Bible says, You are looking through the glass darkly, but at some point it will all be known. It will all be known when it is over with, at least about this trial.

Have a great weakened. Don't watch any television concerning this case, listen to the radio, read newspapers or do any type of Internet or on-line search or reading, and enjoy your weekend. See you Monday at 9:30.

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

THE COURT: Okay. Anything we needed to take up before we end for the day?

MR. MARTIN: Whether you want me to put on the record a couple of things that we discussed, I'll be happy to do that next week.

THE COURT: You can do it now. Look --

MR. MARTIN: I would like to do it next week, if I could.

THE COURT: That's fine. I'm good with that.

(A discussion was had off the record.)

THE COURT: One thing I did not deal with. Obviously nobody asked that her bond be revoked during the course of the trial, and I wouldn't have done it anyway, but for the course of the record, that bond is

still in effect and she has the same restrictions, but.

MS. LIVESAY: I don't think the bond is still in effect.

MR. MARTIN: He is saying it is.

THE COURT: What is the condition of it? No one mentioned it. It hit me last night. I mean, if it is 50/50, a lot of people ask that I revoke them. In this case, I would not have because, quite frankly, a lot of reasons that I won't go on the record for, but what is the status of it?

MS. LIVESAY: My understanding -- I mean, the bondsman is not here, but normally, as soon as the first day of trial starts, the bond is no longer in place. They brought her to trial, or him to trial, and so that person is no longer on the bond. In saying that, I don't -- I have no objection to her being out. I mean, if she doesn't show back up, obviously the trial would continue on without her.

THE COURT: And I'm not worried. It is just a little technical matter. You may be right. I will tell you that most judges consider a bond in effect until it is revoked or the case is over. You may be right, and I'll check that as a curiosity, but I am not worried about it. For the record, I wanted it

stated that if the question came up, I made a decision not to do it. Anything else?

MR. MARTIN: No, sir.

MS. LIVESAY: No, sir.

(Whereupon, the proceedings for November 13, 2015 concluded. The following was had on November 16, 2015.

THE COURT: What I'm going to do is bring the jury back in, and rather than name them, I'm going to probably start at the back row and end up with the foreman. This is a good foreman, he's listened to every word. I'm going to ask if they have been exposed to any publicity on this case or done any research on their own or contacted by anyone regarding this case, and then if then say, no, we'll continue on; if they say yes, we'll deal with it; is that right?

MR. MARTIN: Yes.

MS. LIVESAY: Yes.

(The jury enters at 10:38 a.m., and the following is heard in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. I hope you had a good weekend, and like I said, I understand sitting back there wondering why you sit for an hour, please don't be frustrated, just things

happen, and that is just the way it is.

What I need to do now is make sure you haven't been approached by anyone, done any kind of research or be exposed to any publicity in this case. The way I'll do this, I don't need your name because we have your name. I would rather keep you as private as possible. I'm going to ask that we start in the back back here, and the same question goes to each of you, and that is: Since we've stopped court, or any time during this trial, have you been exposed to any publicity, either through the paper, radio or television, or any other manner, or have you done any research in this case or have you been contacted by anyone in this case, and that is the same question -- I won't ask it every time, I'll just ask you to stand up so we know which one is answering for the court record. In fact, do you all remember your juror numbers? Say your juror number and tell me the answer, okay. Yes, ma'am, you're up first. Stand up and give us your number. You look surprised as I do sometimes.

JUROR: Juror 31.

THE COURT: Been exposed to any publicity, done any research or has anyone contacted you?

JUROR: No, sir. A lady approached me in the

grocery store.

THE COURT: Did she say anything to you?

JUROR: Yeah -- no, I didn't say anything.

THE COURT: Thank you. If anybody does and you feel like they are pushing you, get their name, I may be meaner than I look.

JUROR: 51, I think. No, sir, Your Honor.

THE COURT: Thank you.

JUROR: 115, no, sir.

JUROR: 153, huh-huh.

THE COURT: You have to say yes or no.

JUROR: No.

JUROR: 210, no.

JUROR: 89, no.

JUROR: 74, no.

JUROR: 311, no.

JUROR: 371, no, sir.

JUROR: 327, no, sir.

JUROR: 64, no, sir.

JUROR: 132, I think, but, no.

THE COURT: 132 is your number you think?

JUROR: I think. But, no.

THE COURT: If you read on the record, the way it is transcribed it would look like 132, you think you have been contacted, so -- okay.

JUROR: No, sir.

JUROR: 79, no.

JUROR: 132, no.

JUROR: 217, no.

JUROR: Then I'm 133.

THE COURT: During the course of this trial, as I told you the other day, no point in treating you like children, you know there is publicity. I had a long talk with my wife this weekend about this case, and you all -- because I think you've paid attention, and I will tell you that I told her I think you are the best jury I've had in a long time, and I appreciate it. I understand the time frame this last week was frustrating. It was frustrating for everyone, but it is hard to pull together. We'll finish this case this week. As it stands now, I don't plan to go too late. I think we're all on the same page in this courtroom. I'll make that assessment after lunch to be sure, but I don't believe there is any doubt that we'll get this case to you this week.

Mr. Foreman, if there is any problem back there, write it out and let me know. You all have been good. If you have to go to the restroom or something, just raise your hand. I'm not going to say, Do you have to go to the restroom. I'll just say, Thank you, take

15, that is all I'll say. Thank you again.

Yes, ma'am.

MS. LIVESAY: At this time State called Paulette Sutton to the stand.

MR. MARTIN: Judge, can we approach side-bar for one second?

(Whereupon, a bench conference was had.)

(PAULETTE SUTTON, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: Teresa, T-E-R-E-S-A, Paulette, Sutton, S-U-T-T-O-N.

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q And, Ms. Sutton, if you don't mind, tell this jury a little bit about your career in law enforcement and your training.

A I have a Bachelor's Degree in Medical Technology from the University of Tennessee in Memphis, which is our medical units. And I have a Master's Degree in Engineering from the University of Arkansas. As soon as I graduated, I completed my undergraduate in medical technology. I went to work for the medical examiner in Memphis. In that job, I'm actually employed by the University of Tennessee, so I have kind of a dual

assignment. I'm an associate professor now with the University of Tennessee, but I also function as Director of Investigations for the Medical Examiner's Office.

Q And what kind of training have you undergone in crime scene and law enforcement?

A You know, it was so long ago when I graduated that there weren't a lot of programs that you attended at a University that was directly involved in forensic science, so most of my forensic training is on the bench or at the FBI Academy, which I've completed both, also at the North Louisiana Crime Laboratory where I took several courses in forensic science, one of which is blood stain pattern analysis.

Q And tell this jury, have you published any books or articles on blood stain -- or blood spatter analysis?

A Yes, ma'am, I have.

Q And tell the jury a little bit about how many publications you've done through the years?

A I think the last one numbered 31, and that was a chapter in a book in Italy. So I've not been able to read it since they translated it into Italian, but I have 31 publications, and the majority of those dealt with either serology, the identification of body

fluids, which is where I started in this field, or blood stain pattern analysis, which is what my specialty became in this field.

Q How many times have you been qualified as an expert?

A A lot of times. I think in 12 states and five or six federal courts.

Q And what were you qualified as an expert in?

A I've been qualified as an expert in forensic serology, which is now called forensic biology, again, the analysis of body fluids for medicolegal matters, and I've been qualified in blood stain pattern analysis and crime scene reconstruction.

MS. LIVESAY: Your Honor, at this time I would like Ms. Sutton recognized as an expert in blood stain pattern analysis.

THE COURT: Any objection other than what we've discussed?

MR. MARTIN: No, sir.

THE COURT: And you are reserving any objection later?

MR. MARTIN: Yes.

THE COURT: Without objection other than what is reserved.

MS. LIVESAY: Thank you.

707

Q (MS. LIVESAY) Are you familiar with the case we're here today for?

A Yes, ma'am, I am.

Q If you don't mind, tell this jury what you have reviewed.

A I actually have 20 items that I received from my initial contact, which was by Ms. Livesay, on May 19 of 2015. I received the autopsy reports, autopsy photos, clothing photos from the defendant, photos of an reenactment, photographs of David Sims' jeans, photographs of Heather Sims on a gurney, CSI file, field notes, measurements of the scene, patrol photos, sketch, Dr. Werner Spitz's report, SLED reports, 911 call, audio and transcript, interview with Ms. Sims, photograph of the bullet penetration area in the tub, knife photographs, and then a couple of transcripts that I've received when I came here.

Q Do you have an opinion as to the blood stain patterns in this case?

A Yes, ma'am, I do.

Q And did you review the crime scene, and specifically those patterns?

A Yes, ma'am.

Q And if you don't mind, could you walk this jury through those patterns and the evidence you found

through those patterns?

A Sure. If I could, I need to tell you a little bit background about blood stain pattern analysis and what we do. As I stated, my initial entry into forensic science was identification of body fluids, which as a medical technologist we're quite aware of all the testing done in that field, but I became interested in looking not just at whose blood or whose other body fluid it might be at a crime scene, but how that blood came to be at that crime scene. In other words, not just looking at who, but looking at how the blood was deposited. In order to do that, we look at a lot of the characteristics of the residual patterns because, of course, that is what you are left with when any kind of crime or any kind of activity has occurred, you are left with the residue. We look at the size of the stains and that gives us a general area of what kind of activity might have created this pattern. And the reason is when a drop of blood is formed, it is like any other liquid, it undergoes or it reacts to the effects of surface tension, and surface tension wants to pull it together in as tight a form as it possibly can.

Now, when you look at cartoons and they show water dripping or blood dripping, they always draw it

like a little teardrop. That is good for cartoons, but that is not real. That is not how physics works. How physics works is it pulls that drop together in the most compact form, and the most compact form is a ball or a sphere. Now, the way it does that is by surface tension. If you've ever done the trick where you lay a plank on a puddle of water and try to pick it up, and no matter how strong you are, it is difficult to pick it up, that is surface tension that is holding that plank, like it is stuck to that water. That is the force of surface tension.

Now, that helps us determine what created the stains, because surface tension is a strong force. So you have to exert energy to break that ball up, and the more energy you exert, the smaller drops are going to be. So we look at the size to get us into a category, size of the individual stains in that pattern, then we look at how the pattern is distributed. How does it lie on the surface? Where did it come from? We do that by looking at the shape of the stains. If you drop a drop straight down onto something that is smooth and flat, like this tabletop -- we had it on video, I wish you could see it -- but the drop doesn't break, it just flattens out, and it will make a round stain.

By the same token, if I start to push it at the surface at an angle, the drops become progressively more elongated. They start looking like tadpoles, and the tail tells me it is traveling in this direction. So I can look at a whole group and tell which way they are traveling and then combine them together and tell how the pattern was distributed, and all of those characteristics help me determine what kind of activity created this individual pattern and where did that activity take place. That is what I did with the stains in this particular case, looked at the blood stains and tried to back calculate, if you will, how these pattern were created.

I actually put these photographs that I used into a PowerPoint so that you could see these as we go through each individual photograph that I received.

Q Yes, ma'am. I'm going to start that up for you, Ms. Sutton. Will that take us through the patterns at the crime scene?

A Through the patterns, yes, that I looked at, right.

MR. MARTIN: Are all of these photographs in evidence?

MS. LIVESAY: Yes, ma'am -- yes, sir, they are from the crime scene.

THE COURT: They are all in evidence now?

MS. LIVESAY: Yes, sir, all but one, and the pants is in evidence, it is a picture of the pants.

THE COURT: Any objection to that?

MR. MARTIN: If you are -- the pants are in evidence?

MS. LIVESAY: The picture before SLED took the cuttings.

MR. MARTIN: No objection.

THE COURT: All right. Without objection, and you reserved them, so we'll....

A This is a photograph that I clipped from a document I received that was entitled "patrol photographs," and it was on Page 24, and what this is is an automatic weapon that was lying the vanity in the bathroom. What you see here is a fairly large stain, so it is a passive type of activity, not anything has acted upon that stain. The other thing that you see, and I started you off with a sort of specialized blood stain, but this is what we call a skeletonized stain. What I mean by that is if you look at the perimeter of the stain, you see that the blood is there, but then nothing is on the inside. The inside of that stain has been removed, and all that is left is the skeleton of the original stain. And what that tell us is that

drying occurred. A blood stain or any liquid stain will dry from the inside -- or from the outside inward. So the outer edge is drying first, and the drying progresses inward. If you move through that stain or wipe your hand through that stain, or anything goes through it, after drying has begun, but before it is complete, the inner part of that stain will be removed and leave only the skeleton of the original outline, and that is what you have here. It simply tell us that from the time the blood was deposited until that movement occurred, there has been a time lapse, a period of time has transpired.

Q (MS. LIVESAY) Did you look at any other stains from the crime scene, Ms. Sutton?

A Yes, ma'am, I did. This is -- the blood stain -- the front of Mr. Sims' shirt -- and this has characteristics of an arterial gush. What an arterial gush is, is it is a projected stain. The best way I know how to describe it is it is as if you have a water hose and a spray nozzle on one end, and it is attached to the faucet at the other, and you cut that garden hose. Water will squirt from the cut in that hose. The same thing happens to us if we have an artery that is breached in the body. You have fairly large, discrete stains, but you also have a distribution that

is an art type of pattern. This is consistent with what I read about how the injuries affected his heart in the autopsy report. That it is an arterial type of a pattern on his shirt.

Q So that stain is from the heart pushing the blood out the entrance wound?

A Yes, that is correct, from the entrance wound.

Q Is that common with gunshot wounds?

A It commonly occurs. We don't commonly see it because there is such a large amount of blood volume being lost that it tends to -- you get so much blood that it obscures the original pattern. So it happens a lot, we just don't see it a whole lot. You tend to see it when you have one simple wound.

Q Thank you. Ms. Sutton. Any other stains?

A No. Very small stains on the top of Mr. Sims' feet. Again, small stains tell me that a lot of energy was delivered to break that surface tension of the blood. That is consistent with a gunshot, or it is also consistent with what we call satellite spattering, when a drop of blood hits the floor or rough surface, the floor in this case, and it creates kind of a corona, a crown-like thing coming up, and you get the little bitty stains around that.

I have very small stains here on the floor as

well, not just the ones on the top of his right foot. Let me show you the left foot. You have a good bit more on the left foot, and you also have a lot more stains in the area around that foot. That tells me that, again, a lot of energy has been applied, so these are potentially from the gunshot from the entrance wound or from satellite spattering where drips have hit the floor.

Now, we don't have drips in this general area. We don't have large drips. The closest ones are up between his legs. So these are more consistent with originating from the gunshot than from the satellite spattering. Again, entrance creates the very small spatters, but this tells you that his feet were exposed to receiving the spatter from the gunshot, so that means that his feet are -- he's upright in order for his feet to be exposed to that spatter.

Q Just so I'm clear, these droplets came from the entrance wound?

A Correct. The entrance wound typically is smaller than the exit wound, and we see these very small stains, few of these stains as opposed to what we will see with the exit.

Q So the blood is dripping from the entrance wound onto his feet and the area around his feet?

A I think that these very small ones are actually from the penetration of the bullet into his skin, that is what we call "back spatter," splatter going back towards the shooter. Where the dripping occurs is further away from his feet, up between his legs. If his feet were there, he could have received satellite spattering, but that would not explain the stains that are in this location as a mechanism. So I believe these are created as a result of the entrance wounds.

Q Did you look at any other stains?

A Sure. These are the stains that are further up between his legs. These are the ones that have potential to create satellite spattering, and this is just an overview-type of slide. Here is the closeup of the stains. Here are the large almost 90-degree drops, so those drops are falling essentially straight down. These could create some satellite spattering. These spatters would be very small because they would be created coming off of this parent stain. The other thing you see is what we call wiping, it is just like if you wipe up a table, you've spilled something on the table and you wipe through it, you will smear the blood or whatever liquid you are wiping from the table, and that's what has created this pattern right here.

The other thing that you can see in this

photograph is directional spatters coming out and away from his torso and slightly over to the right. These are spatters, and I call them "spatters" because of the size of the stain. They have been broken up, subdivided, so there is that kind of a force. If you are looking at the direction, the tadpole, tail being towards his feet, that tells me that the force occurred up under here. What I believe after having studied all of the photographs that I received, and all of the reports that I've enumerated, is that when his body begins to hit the floor, the blood on the back of the body caused the spatters right here to come out from under him. So his left buttock is not flat on the floor when the spatters were created, but more the impact of the back and the buttock hitting the floor creates these, and then the body settles down into this position.

Q This is showing something wiped through the blood. We don't know what it is, we just know that something wiped the blood between his legs?

A That is correct. I could not determine what wiped it through.

Q Thank you Ms.Sutton, do we see any other blood stain patterns along this victim?

A Not in this photograph, no. I put this one in

just to turn everything back over and make a little more sense where it is talking about the spatters traveling and the wiping effect that went through those stains.

Q What are we looking at here on his jeans?

A This is the lap portion, if you will, in the upper thigh of the left leg of his jeans. As I stated earlier, the presence of spatter on the tops of his feet indicate that his feet were exposed, so he is probably standing up. Looking at the front of the pants, you see where blood comes down the pants from the area of the wound, comes right down here, but then on the side you see an unusual stain. It is kind of a crescent stain. If you think about it, the way we're all sitting in our chair right now, when we bring our torso down towards our thighs, you create this sort of a semicircular or crescent field with your body, and that is telling us that he drops down and is kind of in a -- I hesitate to say sitting position, but don't know another way to put it. I believe he drops down on his knees, and that is what the evidence shows me. And then his body, upper body, stays upright for a period of time. I can't tell you how long, but it is long enough for blood to come down the pants, right here and orient across that leg like that.

Q This is telling us that at some point he's slumped forward?

A Yes, slumped forward, but the torso is upright. The upper body is upright.

Q How about the back of the jeans?

A On the back of the jeans, you can see quite an accumulation left of midline, and that is consistent with the location of his exit wounds, so that is exactly where I would expect to see the accumulation of blood. It is coming down, and it is actually saturating his pants. Then, at the bottom legs, or the lower legs of the pants -- I think here is a better photograph, you see some fairly large stains and you see some stains that are consistent with what we call "transfer stains." Transfer stains simply mean that blood has been -- let's say put on my hand and I touch this tabletop, I will transfer blood onto the tabletop from my bloody hands. Think of it like a rubber stamp. When you ink that stamp and touch another surface, you transfer a part of the image of the original surface.

Now, a lot of times we can't tell you what it is, but we can tell you that it is a transfer stain. I think this is created as a result of his folding on down onto his lower legs. So he receives the gunshot, drops down to his knees, sits upright for a period of

719

time, and then knees drops, strike the lower part of the leg of the pants and he collapses on downward creating the transfer stains. I'm sorry, did you have a question?

Q So this is telling us that at some point he dropped to his knees and the blood has saturated the shirt, and it is dripping from the shirt onto the back of his legs?

A Well, the shirt and the pants, yes.

Q When you say --

MS. LIVESAY: Can you turn the light on real quick, Bobby?

Q So there is no confusion, when you say he dropped to his knees, you mean he dropped to his knees like this?

A Yes. And the reason I say like that is because of the stain on the leg that I showed you, that semicircular stain on the leg.

Q So those are the stains back here?

A This is the stain right here on the front of his pants, the one that is coming down, that side, and ends up in that semi-sicker, and then you look at the back of the pants and you can see the accumulation of blood and where it drips down onto the lower pants leg. You have to put the front and back together, is what you

have to do.

Q So you are saying that at some point he's slumped over like that?

A Yes.

Q And at some point, he's back like this (indicates)?

A Yes.

Q And you don't know which came first, but we know at some point he's in this position down on the knees?

A Correct.

Q And at some point his body slumps forward?

A Yes.

Q Creating the stain on the jeans?

A Right.

Q And at some point, his body is leaning back causing the blood from here to drip onto the jeans?

A Well, it could come from his jeans without leaning back, but if it comes to the shirt, then the upper body would have to lean back, but we know he leans back because that is the final position.

Q So at some point he slumped forward, and then the final position he's laying straight down, straight back, hands up?

A Correct.

Q Do you know from what we've look at so far how he

got from this position to laying straight back on the floor?

A No. No, I can't tell you that. Blood stain analysis or any kind of a crime scene reconstruction is like seeing still frames of a movie. You might get one still frame here and have a whole frame missing, and then another frame here. We can only tell you within these frames what we are able to see remaining in the blood stains, or in whatever we're using for the reconstruction. So it is not a complete picture, it is a little snippets, if you will.

Q Did you look at any other stains?

MR. MARTIN: Can we approach one second?

THE COURT: Yes.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to send you out for 30 seconds, at the most. We have to do something real quick. Don't take them all the way back. That is how serious I am about 30 seconds. Don't discuss this case.

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

THE COURT: If you can do it at the desk, that is fine, you decide. You want to flip through them so he knows which ones you are seeing?

MS. LIVESAY: He can come here or flash them up there.

THE COURT: I'd rather have you do it -- I mean it doesn't matter to me. If they are in evidence, you just want to know which ones are coming next?

MS. LIVESAY: She can flash through them.

(A discussion was had off the record.)

THE COURT: They're in evidence. I understand what you want to see. You just want to know what is coming up, that's fine. Anything?

MR. MARTIN: Yeah, there is. I have objections to these exhibits which were prepared and not provided to me. But some of these -- what it is, Judge, it is not the pictures in evidence, I have no problems with the pictures, but she added her comments to them which is not in evidence.

THE COURT: The drips and transfer to the lower legs?

MR. MARTIN: We're on different things now.

THE COURT: I don't know have them. You all got them. That is all I got to see.

MS. LIVESAY: She can flip through it so we can look at it together.

THE COURT: Okay. This is the picture that was shown by Jill?

MR. MARTIN: No problem with that.

THE COURT: Next one.

MS. LIVESAY: This is also already in. That is just a segment of a picture already in. Same thing, section of a picture already in. I guess these are the comments that he's objecting to, her testimony.

MR. MARTIN: I have don't have a problem with that one.

THE COURT: Next one.

MR. MARTIN: No problem with that.

THE COURT: All right.

MR. MARTIN: Semicircular void at base of fingers. I want to know what her testimony is on that one.

THE COURT: Do you want to proffer that?

MR. MARTIN: Yeah.

MS. LIVESAY: If I may --

MR. MARTIN: I might not have an objection, but I'll tell you, before we do that, if you flip to the next one, and the next one. Now, this, I object to that. I can tell you because it says "no blood visible on knife handle." We know from DNA testing that there was blood on the knife handle. So I think testimony being visible is irrelevant. "Only partial DNA profile matches David Sims," I object to that

unless I have an opportunity to cross-examine her to find out what that means.

THE COURT: I think you will. I understand your objection, and you are protected for the record, but I would let this in as an expert -- an exhibit of an expert's opinion and as you know she can opine broadly and based upon even admissible evidence.

MR. MARTIN: And let's see the next one. Next one. Is that it?

MS. LIVESAY: That's it.

MR. MARTIN: Judge, let me say this. I understand what you are saying, let me put on the record now since we stopped --

THE COURT: Yeah.

MR. MARTIN: First of all, I object to the testimony of Ms. Sutton inasmuch as she was an expert that was not disclosed to the defense until after the trial had begun. Under the cases of South Carolina, Jumper versus Anissa Hawkins, Joseph Jumper versus Anissa Hawkins, Introduction of this type of testimony after the commencement of a trial has to go through a weighing process by the Court to determine whether or not it is admissible or should not be admitted.

Then, I would further emphasize my objection to the admission of any testimony that is an addition to

that which -- and some of is not, and some of it is -- that is additional to the testimony that would have been presented by Stuart James, who the State hadn't elected to make or attempt to make their witness and had not disclosed any expert to the defense or any report of another expert to the defense, or this slide show presentation, which is not only a recreation of the photographs, but it is -- it is one with interpretations and comments provided therein, and that inasmuch as that was not presented to the defense, inasmuch as it is the preparations of an expert witness who was not disclosed to the defense prior to the commencement of the trial, then it should be excluded under Rule 5 and under the cases that I -- case that I just handed up to you.

THE COURT: Well, let me as simply as I can reiterate that the former expert, after we started this trial -- or as we began this trial this last week, that it became apparent that there were some issues that I actually blame no one for. I can see how it came up, and you two might blame each other, but it was a huge problem and created an ethical issue for him, and I think both of you, and you did the right thing. I had to decide to allow the new witness, which I did, over your objection. You are

protected for that objection then and now.

Once I allowed her to testify, anything like this, she can use as an exhibit for opinion, and I'll allow you broad cross-examination. I mean, the key issue is whether or not I should have let in another expert, and I understand you object to me doing it. I will say for the record, just so the reality is clear, everyone had a chance to talk to this witness, even though there was an objection.

MS. LIVESAY: Yes, sir.

THE COURT: So I understand your objection, and you are protected for the record, but I'll overrule and allow her to continue to do this. Again, I'll allow vigorous cross-examination.

MR. MARTIN: Thank you, Your Honor.

THE COURT: Tell them to come back in, and I'll tell them I lied about 30 seconds.

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

THE COURT: You can continue.

MS. LIVESAY: Thank you, Your Honor.

Q (MS. LIVESAY) To get us back on track, Ms. Sutton, the blood on the back of the jeans, in this particular portion of the jeans, indicates to you that at some point he went down to his knees?

A Correct.

Q And blood on the front of the jeans indicates to you at some point he is on his knees and slumped forward?

A Right.

Q And you do not know how he got in the position he ultimately ended up in, which was straight back and the arms out?

A I do not.

Q And did you look at any other stains?

A Yes, ma'am. The stains right here -- well, first off, you see the blood distribution is largely on the left side, and that is exactly what one would expect with a wound that is, I believe, six-and-a-quarter inches left of midline; in other words, it is on the left side, but it also goes along with the accumulation of blood we saw in the pants. But, again, we always -- we always take note of the distribution and where these things are and make sure that everything remains consistent, and it does.

The other stains that are here on the floor are what are called "projected blood stains." That simply tell us that a large volume of blood has exited the body under pressure, or additional force has been applied to it, and I think you have a couple of

explanations for that occurring here.

One is that the blood that was exiting from the exit wound may well be under pressure because of the damage to the heart itself, and the heart exerts the pressure on the blood. The other possibility is when he tips back and a large volume that originally was inside of his chest exited the back as well. So either one of those scenarios can explain a pattern like you see, right here. You see at least half of it, and then the body has laid in the other half.

Now, when that blood strikes that surface at this velocity, you are going to see a lot of tearing and you'll see directional spiny spatters. You see it on these stains here, but you are also going to see it leaving this area and traveling away, as well as in some of the next photographs I'll show you. I'm sorry. And that is what these are right here (indicates). These are directional spatters. They are going from the shoulder -- or these are more directly underneath his head -- and traveling down and to your left. That tells you that the impact occurred right back over here if I connect these stains, and that is consistent with his falling down or his body coming down against the surface.

Q And if you don't mind hit the lights. I want to

make sure we're clear on this because I think that is important. So the droplets we saw earlier between his legs, you remember those?

A Yes.

Q Those droplets are just 90 degrees, meaning he is upright or down, but the blood is dropping straight down?

A Right, it's dropping straight down and hitting the floor.

Q Okay. Now, this spatter here looks very different. This is because it is not dropping straight down, it is from impact like that?

A Impact either by something striking the blood and creating the spatter, or the blood impacting the surface. These are -- these spatters are due to the body of blood itself striking the surface, and what happens is it is almost like a column of blood. The first ones hit, and they are torn and they start making spatters, and then the rest of the column comes in behind it, and that is what keeps the spatters from coming up; they are all pushed out this way.

It is like if you step on a grape, it goes out the way it can, and that is what happened here. So that body of blood, large volume of blood, hit the surface, and that created the spatters. This one --

these spatters are the result of perhaps that body of blood hitting it, because I know a lot of spatters are coming off from that, perhaps the bloody shirt you saw striking the surface, and spatters are going to come off from that, but the force is up under the body.

Q Is the force of the body coming down on that puddle of blood?

A Right. Right.

Same thing is happening here. These are directional spatters coming out from under the body. Again, if you draw a line through the long axis of the stains, project them back, they originate right underneath there. I don't see the same amount or the same kind of spattering on his left hand, which indicates that it was not down in this position when these spatters were created. It may have followed shortly thereafter, but I just know that it wasn't down there at the time the spatters were created.

Here you've got, again, a little bit of wiping. Once again, blood on a surface and something is coming through it. I can't tell you what it is. It could be the back of his arm. I don't have any photographs to confirm that, but that certainly is one possibility.

Q So we don't know, again, what did the wiping, we just know that something wiped through that blood?

A Right. Right. The same kind of wiping pattern here up by the right hand itself, this is all wiping, and you have the directional spatters that we talked about earlier. You also have a transfer stain that is in the palm of the left hand, and looking at the reports from SLED, from the law enforcement division, the DNA was found to be David Sims' from that area.

Q Do you have any idea or have an opinion where that transfer stain came from on his hand?

A Where the transfer came from? I don't know. I know that it is very common when you are injured, and I don't know why we do this as humans, but when you cut your finger, you grab it and hold it, and that is certainly a possibility, because there is no other source of David Sims' blood until he has received the injury, so there is no way that blood could have transferred to his palm prior to his injury.

Q And the only place that you saw there was an injury was the actual bullet wound?

A That's the only place that I saw or that I read about in the autopsy report, yes. That stain was confirmed to be blood as well, that is in the palm of his hand.

Q What does this tell us (indicates)?

A This is a voided area right up here, at the base

of the fingers. We look at where things are stained, but we also look where they are not stained, and what I want to do, once I identified a transfer stain in his hand, I want to determine as many characteristics about it as I can, and I don't know where the semicircular void came from. It could be that there simply was, let's say, touching a wound. It could be that there is simply no blood in that particular area to be transferred to the hand.

Q So it is just as important to know where there is blood and where there is not blood?

A Yes. Absolutely. Looking and enlarging this photograph -- I take it back, I did not enlarge this one. This is Photograph 79. You can see the transfer pattern in his hand that I was talking about, but what I don't see is any blood on the back of his fingers. There is no transfer there, and it is going to be difficult to hold that knife and get blood in your palm all the way up to where you saw the semicircular area at the base of the fingers and not be curling your hand around the knife. It only leaves the thumb and index finger to hold the knife itself.

Q If you don't mind me asking --

MS. LIVESAY: Bobby, can you hit the lights again?

Q So what you are saying is this blood on top of

the fingers, there is none?

A None that I can see.

Q So there is no transfer from this wound on the top of the fingers?

A Right.

MR. MARTIN: Objection.

THE COURT: Hold on a minute.

MR. MARTIN: Question misstates the answer. She said there is no blood she can see; she didn't say there was no blood there.

THE COURT: Rephrase and ask her those two questions singularly.

Q (MS. LIVESAY) Do you have an expert opinion as to whether or not his hand could have been like this and be up against his chest like that?

A It could not.

Q And why is that?

A Because, again, there is visible staining on the palm of the hand, but not on the fingers, and the way you held your pen there, would be with the fingers curled as if you are grasping an object. If you put your hand down against a bloody surface, you have to transfer blood to your fingers. So the fingers are not curled under as in grasping.

Q So it is your expert opinion, because there is no

blood up here, the victim could not have gone like this (indicates)?

MR. MARTIN: Objection. The question -- the question presupposes how the victim was holding the knife at the time; if, in fact, he did go to his chest. There is no evidence in the record, and she can't know how and what manner he was holding the knife; if, in fact, that is what occurred.

THE COURT: Well, as before, ask her if she knows. If she says no, end it; if she does, I'll allow her to give her opinion.

MS. LIVESAY: Okay.

Q (MS. LIVESAY) I guess just generally -- I think this will clear it up. What does it tell you that there is no blood on this part of his fingers?

THE COURT: Which part are you talking about, just for the record? The inside of the --

MS. LIVESAY: Yes.

Q (MS. LIVESAY) What does that tell you?

MR. MARTIN: We're talking about what part of the fingers? I can't see. She's up there doing this (indicates).

THE COURT: Inside of the index and middle finger. You can answer.

A You are talking about the inside of the index,

this surface?

Q (MS. LIVESAY) I was asking, first, about the outside. What does this tell you? There is no blood on the outside of his fingers there?

A The outside of the last few fingers is where I cannot see any visible blood stain, so that did not come into contact with this entrance wound, the area of blood on his shirt.

Q Do you have an opinion as to what part of his hand did come into contact with this wound from looking at the transfer on his hand?

A The only place that I can see blood transfer is on the palm of his hand. Again, we have the void here. You have voids around, but in general the palm of the hand.

Q So it is your opinion the portion with the blood on the palm of the hand is what would have come in contact with his wounds?

A That is the only place there's blood transferred on the hand, so that is the only place that could have touched that bloody wound.

Q Did you look at any other blood stains as to the knife and the hand?

A Sorry, I must have hit the button too hard. I looked at the handle of the knife because that's the

surface that is up as the knife is lying there in his hand.

This is the side that was tested by SLED, and from their report, they only did DNA analysis (indicates). They do not appear to have done any presumptive testing for the presence of blood, so they haven't determined of where they are getting the DNA is from blood, the body fluid blood, as opposed to what we call "touch DNA," where perhaps your epithelial cells, skin cells come off onto an object and they do not -- they did not test it for the presence of blood. I cannot see any blood on the part of that knife where it actually came into contact, again, with that bloody wound.

Q So you don't see any visible blood on the handle; is that correct?

A That is correct.

Q What does that tell you as an expert?

A That surface didn't come into contact with the bloody wound.

Q Did you look at any further pictures in this case?

A I think I simply added the photographs together, the ones that you've seen earlier, the handle of the knife, and then the knife in position. And you'll

notice that, again, if you look at all of the patterns across that palm, remember that there is no blood on the back of the last three fingers of the right hand. The only way to be holding that knife is between the thumb and the index finger and have it not come into contact with the bloody wound and, yet, allow blood to come into contact with the palm of the hand all the way up to the base of the fingers.

MS. LIVESAY: Bobby, could you turn the light on, please?

Q (MS. LIVESAY) Now, you were talking about the only way he could be holding that knife for that blood stain to be on his hand like that; is that correct?

A That's correct.

Q Okay. And if you don't mind, here is the knife, can you show this jury how the only way he could be holding the knife with that blood stain to be there?

A Sure. You notice this is the side of the blade where you can see the brand name, Cuisinart. That is how they distinguished in the crime scene notes and in the lab testing which side of the knife they were talking about. So the side that was up was the side that did not have the Cuisinart label. Here is the right hand. This side is the side that is up. That is the side you are able to see in that photograph.

In order to have blood here on the heel of the hand and then extending on into the palm of the hand up to the base of the fingers, you have to be holding that knife just with the thumb and the index finger and slide the handle up so that it comes out of the transfer stain that is on the palm. So you have kind of the base of the knife held. It is held too upside down in order to fit that configuration. The fingers are not curled under, that is why I'm saying they are not grasping the handle of the knife, yet, this part has to touch the bloody wound.

Q Let me ask you this, Ms. Sutton. It is in his right hand?

A Yes.

Q And he's holding it, you say, like, how? Like this (indicates)?

A Right. Right.

Q So this is the only way he could be holding it with the blade up and to make contact here and create that transfer stain?

A That's correct.

Q Now, let me ask you about this. Earlier you said he went down to his knees?

A Right.

Q So you are telling me he goes --

MR. MARTIN: Objection. She's leading the witness. Just ask her questions.

MS. LIVESAY: I will.

THE COURT: Rephrase.

Q (MS. LIVESAY) You said earlier -- did you say earlier he went to his knees?

A Yes, I did.

Q Tell the jury how you know he went to his knees?

A Because he had blood coming down the front of the pants, and, again, I have to look at where the entrance wound is. Where is my source of blood? I also have blood accumulating at the back of the pants that is allowed to drip down onto the bottoms of the legs, and that puts him in the kneeling position. Again, you are having to take all of these pieces and fit them together.

Q And at some point, does he jump forward?

A Yes.

Q How do you know that, tell this jury?

A The semicircular stain at the base of the left leg, that is pushing down like this. Now, I'm not saying -- I don't know, 30-degree angle or 35-degree angle, I can't tell you something that precise, but he is slumped forward to make this semicircular pattern on the front of the leg.

740

Q So at some point, he slumps forward (indicates)?
A Uh-huh. And he starts to -- he's dripping on the back of his legs.
Q Okay. And, ultimately, he is in what position?
A Ultimately, comes to the back backwards and stretches out, or his legs are stretched out.
Q You don't know how he gets in that position, but there is some way he gets from here, to all the way back straight out; is that correct?
A That's correct.
Q So, ultimately, he ends up from here, all the way down like this; is that correct?
A That's correct.
Q And at some point this hand is moved; is that right?

MR. MARTIN: Objection. She's not testified to that. She's leading the witness.

THE COURT: Ask it -- you have to rephrase it.

MS. LIVESAY: I will, Your Honor.

Q (MS. LIVESAY) Is there anything in your expert opinion that indicates either one of his hands are moved through that blood?
A There is a wiping pattern at the base of the thumb of the right hand that tells me something moved through that blood. I can't tell you if the thumb side

741

or the arm moved, or it was moved. I can't tell you who did it.

Q But you can tell me that this hand moved?

A That hand moved and this arm moved some.

Q And the knife is, again, in these two fingers, and then this hand is moved, and then the knife continues to stay in these two fingers?

A Right.

Q So I'm clear, because that is a lot of information --

MR. MARTIN: I object. If it is repetitive, I object to it.

THE COURT: Ask your question, but, you know.

Q (MS. LIVESAY) Would you please tell me if I'm correct in my understanding of the information you just gave us?

MR. MARTIN: Objection. It's the same question.

THE COURT: I understand. Overruled. I'll give you one shot at this.

MS. LIVESAY: Thank you.

Q (MS. LIVESAY) Is it your expert opinion from looking at the blood stain pattern analysis that the only way he could have been holding the knife is with these two fingers?

A At the time he touched his bloody wound, that is

correct.

Q And is it your expert opinion as to whether or not at some point he goes to his knees?

A Yes, it is.

Q And is it your expert opinion that you don't know how, but at some point he goes from his knees, slumps forward to completely on his back?

A Yes. Because that is the position the body was found in.

Q And do you have an opinion as to whether or not the hand with the knife in it was moved through that blood?

A It could have been what was creating that wiping pattern, something moved through the blood.

Q Thank you. I have a couple more questions. We looked at stains from the entrance wound; do you remember that?

A I don't think I do.

Q Were there any strains from the entrance wound on the floor or on his feet?

A Yes, the very small stains around his feet were consistent with the entrance wound. Yes.

Q And were there any stains near the doorway or the threshold between the bedroom and the bathroom?

A None that I could see, and none that were noted

in any of the crime scene notes.

Q And looking at the blood stain pattern analysis, is there any evidence to show whether or not he was standing in the doorway of the bathroom?

A There is nothing that can show that, no. Maybe a better way to phrase that, sometimes I think I give double negatives when I'm answering. I have no physical evidence that puts him in that doorway at the threshold. Physical evidence starts pretty much where his feet are.

Q Is it possible that he was in the doorway?

A It is possible, because we have to allow time for the blood to come from the wound and actually drop to a surface, so someone would have to move very quickly not to have that occur, but that certainly is a possibility.

Q But did you see any physical evidence that anything had -- anyone was bleeding at the threshold?

A I did not, no.

MS. LIVESAY: Nothing further for this witness.

THE COURT: All right. You all approach over here for just a second.

THE COURT: I'm going to give you your morning break. We'll come back and begin cross, so don't discuss the case. You can take them out for 15

minutes, and we'll go directly to 1:00, take our break and come back.

(The jury exits at 11:52 p.m., and the following is heard out of the presence of the jury.)

(A recess was taken.)

THE COURT: Thank you. Have a seat. Bring them in.

(The jury enters at 12:19 p.m., and the following is heard in the presence of the jury.)

MR. MARTIN: I want a copy of the exhibit so I can ask a question.

MS. LIVESAY: He can use this copy, Your Honor.

THE WITNESS: I have an extra.

MR. MARTIN: I'll hand it to Ms. Livesay.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Ms. Sutton, are you working from your pictures, or from the slide exhibit?

A Yes, sir, I can.

Q Well, let me let you do it. How about, if you would, first and foremost, go back to the second one, I believe. Go back. Go back. Right there. Let me ask you something on that. Do you see this area right here (indicates)?

A Yes, sir.

745

Q Mr. Spitz testified that -- somebody testified -- saying that was a bullet hole in the shirt; would you agree with that?
A I don't know. I don't know.
Q But do you see any blood adjacent to that area if, in fact, that is where the bullet went through the shirt? Obviously there is blood near it?
A You are saying this area here?
Q Well, obviously you have something here, but up above it is a circular pattern in the shirt, and there is no blood covering that circular pattern, is there?
A I don't see any blood above that. I don't know that I see the circular pattern they are talking about.
Q Okay. Okay. How about -- can you -- you can't -- can you blow it up?
A No.
Q Okay.
A I think if we come out of slide mode they can blow it up back there.
Q That's okay. That's okay. But what I'm saying is if that circular pattern is, in fact, the hole where the bullet went through the shirt, then there is no blood -- well, let me say there is no visible blood covering that hole, is there?
A That little spot you are talking about looks like

746

it might have some light blood underneath it, but not like this other stuff, no.

Q Right. Right. And when you examined these photographs and -- did you examine the shirt as well?

A No, sir, I did not.

Q Just the photographs?

A That is correct.

Q Did you discern a hole through the shirt in any other place other than that, that I have pointed out to you?

A No, sir.

Q Now -- first of all, Ms. Sutton, are you a doctor?

A No, sir, I'm not; I'm a forensic scientist.

Q All right. First of all, your testimony today here is, in fact, opinion as opposed to fact testimony; would you agree with that?

A Well, I think some of it is fact, and then the opinion I derived from the facts that I see.

Q And it goes without saying you weren't there, so you didn't see what happened; you are just trying to figure out what happened from the photographs and items of evidence that you viewed?

A Yes, sir.

Q You agree?

747

A Yes, sir.
Q Correct. Now, you reviewed the autopsy report, I believe?
A Yes, sir, I did.
Q And could you determine from that that Mr. Sims was a rather large man?
A Yes.
Q And he would then have been relatively large hands?
A Yeah. Probably so. Sure.
Q And you also are of the opinion he was upright when he was shot?
A That's correct.
Q That he went to his knees at some point in time?
A Correct.
Q And he stayed there for some measure of time, though you can't say how long?
A That is correct.
Q And eventually wound up in the prone position that we see in the pictures?
A Yes, sir.
Q And he obviously was alive for a period of time?
A I believe he would be looking at what the injuries were. An individual can live for a few minutes with that kind of injury.

748

Q And, certainly, he's capable of movement?
A That is correct.
Q Walking forwards, walking backwards?
A Yes.
Q Holding onto a knife, whatever?
A Yes.
Q And there is no question that the scene that the -- the pictures that you observed, that the blood on the floor is, number one, near and in front of the vanity of the bathroom?
A Right.
Q And the spatters on the floor are very near the doorway of the door, even if you didn't see any in the doorway of the door; wouldn't you agree with that?
A Yeah. You are probably -- like two of those large tiles, so within 2 feet of the threshold of the doorway.
Q And as you said, he certainly could have been in the doorway at the time he was shot; could he not?
A He could have been, but, again, I didn't see any physical evidence that I could tell you that for sure.
Q Right. And, of course, at the same time, if he is in the doorway or just outside of the doorway or just in the doorway and he is shot and he begins to back up, that would be possible or probable or natural

749

movement; would you agree?
A Yes, sir, it's possible, yes.
Q And at some point in time after he is shot, blood appears to come out of the chest wound, because we have blood on the front of the shirt, right?
A Right.
Q But, certainly, if there is none around the exit wound -- strike that.
If -- if there is none on the shirt around the area where the bullet went through, that may be an indication that there was movement from him before any blood came out of that hole?
A I think that is an indication that it didn't immediately bleed onto the shirt at the time the bullet goes in. There is a lapse.
Q Right. There is a lapse?
A I don't -- and there is a lapse. I mean, if you cut your finger, usually you have time to look at it and say, oh, boy, that is going to be sore, and then it begins to bleed. I don't know that I can say "movement."
Q I got you, all right. Let me get you to another picture. Let me get you to this one.
A Is that the one?
Q Go back to the one before it for me. Right here.

750

Let's talk about that first. From your testimony, you say that there is a transfer stain on the hand, right?

A Yes, sir.

Q And that transfer could have come from the wound?

A That is correct.

Q Could have come from blood that had gone onto the shirt?

A Well, it came from blood produced by the wound.

Q I guess what I'm trying to say is you don't know exactly at what point in time it was transferred to the palm, or exactly from which source it came from -- well, it came from his blood, but from what part of his body it came from?

A No. I'm trying to make sure I answer your question.

Q Let me ask it this way. We've been doing a lot of this (indicates). How could this have happened (indicates)?

A Right.

Q That is assuming that that transfer came from right here to start with, isn't it?

A Yeah, or anywhere there is blood on the shirt.

Q My point is that the transfer from his hand certainly could have come from there, could have come from the blood here, could have come from blood off the

751

jeans, for that matter?
A Yes.
Q Could have come from blood on the floor if the hand went to the floor somehow?
A There is not that much except what is covered by the body on the floor, so I think we can eliminate the floor as a possibility, but anywhere on his body, yes.
Q And there is no question that he could have been holding a knife when the blood was transferred to his hand, as you demonstrated to the jury, correct?
A That's correct.
Q And then it becomes a question of, well, how is he holding the knife, where do we see blood, what does that tell us, and all of that kind of stuff, right?
A Right.
Q What we do know from the photographs and from your -- from your expert opinions here, is that the concentration of blood and all of these photographs -- and this is one of them -- is in what I would call the crease of the palm and the lower quadrant of the palm?
A Well, it goes -- if you look at -- do you mind if I advance? The one that has the semicircular void, it is going way up into this part of the palm, so a little further towards --
Q And I will get to that one in a second. Do you

have a laser on there?
A Yes, sir.
Q Good. Good. Which one is the laser?
A This one.
Q Which one?
A The middle one. You may have to turn the lights out.
MR. MARTIN: Turn the lights out just a second.
Q (MR. MARTIN) Okay. All right. You see that -- we'll go to the next picture. You'll see the concentration of the blood will appear in the crease of the hand; do you agree?
A I would call it the heel of the hand, and then also the crease, yes.
Q The crease and the heel right here?
A Yes.
Q And right here, it doesn't appear to be, I wouldn't say any blood, doesn't appear to be much blood?
A Not much, if any, correct.
Q And if you go down here, there is some stain in there, but we don't see any stain in the lower part of the hand here other than what may have -- see, part of this could be blood running from the hand after it was deposited it here; could it not?

753

A That is such a thin transfer, I don't think you have a lot of running.
Q That is not a thin transfer right there?
A Well, it could be running down that crease, or what we call the life line.
Q How do we go to the next picture?
A The one on the right.
Q Okay. Yeah. If you come here, you see again that is a picture of the same thing, but we see the concentration of the blood is in the heel?
A Yes.
Q And on the lower quadrant of the palm, you might say, and then the further you get up under here and under these fingers, on these fingers, you don't see any blood, do you?
A Right. I would say right at the base of the fingers.
Q Wouldn't you agree that that looks like something protected -- like a knife may have protected, his fingers were around the knife and it protected the knife or the fingers from blood?
A That certainly is a possibility that I considered, but in order to do that, I would have to curl his fingers around the knife.
Q Well, the first thing --

754

MR. MARTIN: Turn the lights back on for us.

Q (MR. MARTIN) Ms. Livesay was trying to hold the knife and, of course, Mr. Sims was a much larger man with a larger hand, right?

A He was a large guy, I would assume with large hands.

Q Where is the knife? Here it is. Give me one of the gloves. So what you said is the knife could have been held with one finger like this, right, at the time the transfer was made; is that right?

A Well, with two fingers. And you are holding it with two fingers.

Q Thumb and forefinger?

A Thumb and forefinger, right.

Q Bottom line, he could have had the knife in his hand to transfer this blood while he was upright, while he was on his knees, hand on the floor, anything like that?

A Right. Right.

Q No question about that?

A That's right.

Q And if, in fact, that hand went to the chest, you say it is a natural instinct or impulse that when there is an injury, we cover it or whatever?

A Right.

755

Q If he's got nothing in his hand when he does that (indicates), you wouldn't think he would do it like this, would you? Wouldn't he be more apt to do it like, oh, my (indicates)?

A True.

Q So the indication that it is on the crease of the wrist and the palm of the hand is an indication that this is a part -- this is the part (indicates) that came in contact, right?

A That part came in contact, but that is not the only part that came in contact. All of this area has indications of having come in contact. I think what you are seeing in that crease is simply the concentration by running into that crease, just like it is concentrating down that life line.

Q So what you are saying then is blood can run one way or the other --

MS. LIVESAY: All I want to ask is that she be allowed to finish her answer before he interrupts with another question.

THE COURT: Allow her to finish.

Q (MR. MARTIN) I didn't mean to cut you off. So what you are saying is if, in fact, blood ran to the crease, blood could run the other way as well?

A Blood is going to run to gravity, okay, but the

756

crease that we're talking about can be up or down.
Q So, again, just to be clear, if blood is running, if there is blood running, it could run this way or it could run that way, depending on how the hand was being held at the time it was running, due to gravity, right?
A That is if blood is running, but there is not enough blood on the palm of his hand to be running any significant distance.
Q But you said that blood, if I understood you right, that the blood in the crease, which is clearly there, and concentrated here, that that could have run to the crease (indicates). So if there is enough blood to run this way, then there would be enough blood to run that way?
A Exactly. Yes, but it runs to gravity, whichever side is up, and that could be either one of those.
Q Could be either one, no question about that. And then, again, if I had got the knife in my hand like this in some fashion, and I put my hand like this (indicates), are my fingers touching the shirt to transfer any blood?
A No, they are not.
Q So the fact there is no blood on the outside of these two or three fingers doesn't tell us anything, does it, other than it apparently didn't come into

757

contact with much blood?
A Other than that, right.
Q And as a matter of fact, even if the hand was flat down like that, and those fingers were in contact with it, we don't know whether there was any blood here to transfer from the shirt or the wound to the fingers, do we?
A Other than there is blood right underneath that area indicating -- and I say "underneath that", I'm talking about -- right up to the base of the fingers, so if I curl my fingers down, it looks like there is blood in that area, yes.
Q Would you not agree with me, Ms. Sutton, that not only is it possible that he was holding the knife in his hand, that it is likely that he was holding the knife in his hand because of what we see as to where blood was, and where blood wasn't; wouldn't you agree with that? Something was in his hand as opposed to a flat rubbing; wouldn't you agree with that?
A No.
Q You wouldn't?
A I would not.
Q What we do know is that there is -- the blood is here, right (indicates)?
A Yeah, we talked about where the blood was.

758

Q And if I grab my chest like this, I'm not going to create any circular voids if I'm contacting an area of blood, am I?

A Not if you have a whole area of blood, but you don't know that you do. We know that there was a void.

Q And, of course, the problem with all of this kind of testimony is it is hard to determine what is opinion, and what even gets over into speculation, isn't it?

A That might be your opinion of it. I do my very best to support what I tell you with what I can see, what I know scientifically.

Q Let me talk to you about the wiping. There has been some testimony --

A The what?

Q Wiping.

A Oh, okay.

Q If you looked at these photographs of this area, there was several areas which could be, by you, construed as wiping; is there not?

A Yes, sir.

Q What you are telling the jury is that you don't know what wiped through it, but something did?

A That's correct.

Q Could have been his hand?

759

A Yes.
Q Could have been a forearm?
A Correct.
Q Could have been a foot moving through it?
A Yeah, because I can't see the total bottom of his feet, I don't think.
Q Could have been the knees, clothes from Heather Causey as she's trying to administer CPR?
A That's correct.
Q By the way, blood by volume force out of the exit wound could well have been, as well as other things, could have been CPR creating pressure and forcing that blood out?
A Out of the exit wound?
Q Out of the exit wound.
A Yes.
Q So when we talk about why there is large deposits of blood, it could have been gravity and -- what did you say it could have been? You said a couple of things.
A It could have been part of the arterial type of pattern where the heart is pumping. It also could be an accumulation in his body, his cavity, and then as he tips back, it comes out and strikes the floor. If that surface were up and CPR was being administered, that

760

also could do it, yes.

Q One last question. The fact that there is an area there that at some point in time -- here is my question to you. If blood is transferred from a source to the hand, can it be wiped off with the hand by another movement?

A Yes. Sure.

MR. MARTIN: That is all I have.

THE COURT: Redirect?

MS. LIVESAY: No further questions.

THE COURT: Any objection to her being excused?

MS. LIVESAY: No, sir.

MR. MARTIN: No.

THE COURT: You are dismissed. Thank you so much. Be safe.

MS. LIVESAY: My understanding is that Mr. Martin has a witness at 1 o'clock?

MR. MARTIN: No. No, not at 1:00.

THE COURT: You all come up here.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to send you out for five minutes. We're going to get one more witness that should be very short. The witness after that is very lengthy, so give us five minutes. You wouldn't have enough time to go downstairs. Please don't discuss

761

the case, and we'll call you in as soon as we get set up, and we'll take our lunch break right after that.

(Whereupon, the jury exits at 12:44 p.m., and the following is had out of the presence of the jury.)

THE COURT: Let me know when you are ready.

(A recess was taken.)

MS. LIVESAY: Judge, can we approach?

(Whereupon, a bench conference was had.)

THE COURT: Bring them in.

(The jury enters at 1:03 p.m., and the following is heard in the presence of the jury.)

THE COURT: I'm going to send you to lunch rather than have you sit through this difficulty. Be back at 2:30. Please don't discuss this case, and let me know if there is anyone that approaches you.

(The jury exits at 1:06 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Before we go, you have this guy and a longer witness?

MS. LIVESAY: Yes, sir. He's here, and he'll be a short witness, and then one that is a little longer this afternoon.

THE COURT: And then your goal is to call -- Mr. Martin, you want to call your guy last out of turn?

MR. MARTIN: That is what I thought I would do.

THE COURT: That seems to work, so at least in their minds it is separated, but I don't care how it is done. I'll see you at 2:30.

(A recess was taken.)

THE COURT: Okay. Thanks. Have a seat. Look, here's the deal. We did away with trial by ambush in 1976. If you have a document you want to introduce, show it to Mr. Martin, and, Mr. Martin, show to Ms. Livesay. The next person that beats on my desk up here, I'm going to snatch their arm off, how about that.

MR. MARTIN: I apologize.

THE COURT: It's all right. We've just reached a point where, you know -- I'll always remember in the movie Verdict when Paul Newman turned to the judge and the judge said, I'm just trying to help you try your case, and Paul Newman said, I appreciate you not losing it for me. I let you all run as much as I can let you run about, but we're on day six. It is 3:30. Those people have been sitting back there, and I'm going to be more proactive. I hate to do it, and I don't think that is my role, too bad.

MS. LIVESAY: Just for the record, if it helps move things along, this Cellebrite report only runs from December of 2012 up until the incident, so I

would only be able to get in -- even the whole report would be basically 2013.

THE COURT: Here is my problem. I don't know the -- and you all know this case -- you all referred to a 911 call here. I don't know about a first 911 call, that never came out. When was that made?

MR. MARTIN: July 31, 2012.

MS. LIVESAY: August 11th, 2-12 -- oh, you're talking about the first one? It was in July of 2012.

THE COURT: What I'm looking for is to figure out in my head the relevant dates.

MR. MARTIN: July 31, 2012 was the first call to 911 by the defendant, and then -- well, that's it. That was it. And then it was a year later, roughly, that this incident occurred.

MS. LIVESAY: Yes. But the phone doesn't even run back that far, it only runs back --

MR. MARTIN: For the record, she has provided me -- since the break -- with several slides that she wants to introduce that are exhibits. I can take them up one by one if I have any objection to them. At the basis of it, I do object to the introduction of the Cellebrite report in total from any point in time to a point in time because, number one, we don't know what is in it. Number two, it may not be admissible

because it may not be relevant. Even if there was some relevance, it may be prejudicial and under 403 not admissible, and just because it came from her phone, does not make it admissible.

So I would object to the wholesale introduction of any parts of the Cellebrite report from her phone, or any other phone. Then I can take the others up one by one.

MS. LIVESAY: Your Honor, what we have done -- but the fact that we have printed it off means that we can exclude the pictures and the videos, and just include the text messages from this defendant, and the text messages she was receiving from, really, basically 2013, a little bit of December 2012, but the rest of it all is all 2013, from January until August, which would include the conversations between her and the victim.

THE COURT: All right. Well, what we'll do is anything you object to, I'll have to look at it. I mean, if there is 200 pages and she wants to put 200 pages in, then we'll have to go through -- I mean, I can't just say this whole thing comes in, because I have no idea. What I heard up here off the record are the kinds of things I worry about. So only relevant information comes in. It may all be relevant. That

is what I was saying, you all are probably saying the same thing, but I don't know. So, you know, unfortunately, I'll have to look at whatever comes in, but if there is an objection, make it and we'll go from there.

MR. MARTIN: Again -- in other words, I have an objection to the introduction of those books, as the first objection.

THE COURT: Do you intend to introduce all four of the books?

MS. LIVESAY: These right here, the notebooks, include basically the time line from the conversations this defendant is having on her phone with whoever she's contacting and whoever is contacting her back, but a lot of the messages are between her and the victim from January of 2013 until August of 2013.

THE COURT: Why would anything else be relevant? Let's say if she has a text in there to her father about the dog, just as an example, that wouldn't be relevant.

MS. LIVESAY: No, it would not be. But there may be a way -- and I'll check with Ms. Dudley --there may be a way where we can just run off the conversation between her and the victim for 2013, from January until the time she kills him, but some of the other

text messages we're introducing through the slides is conversation she was having with him about the insurance policy and the conversations she's having with another young lady about divorce and alimony. But there may be a way --

THE COURT: You say that goes to motive?

MS. LIVESAY: Yes, sir. And all of those texts are from -- stemming of May of 2013 until August, so we're talking a very small window of just barely three months -- I mean the end of May to beginning of August, so, really, a small, small time frame.

THE COURT: Well, I just don't want something wholesale put in. It needs to be relevant, and that particular page, unfortunately -- Page 1 is relevant, then we'll have to go to Page 2. I'll have go through if you all object.

MS. LIVESAY: If it is easier, maybe we can put in from the beginning of May until David is killed, and that would be that immediate time frame of what this young lady is talking about up to the murder. Because we know "insurance policy" is in there, and we know "divorce" is in there, and we know the conversations between her and David are in there. So certainly we can say everything going on in that time frame is certainly going to her state of mind leading

up to the murder.

THE COURT: Here is the only problem. He's going to object, and I don't mind it, I mean -- but it would be better if you two sat down and figured out what you object to, because --

MS. LIVESAY: Do you have an objection --

MR. MARTIN: Well, if I can see it. Pick the pages, show it to me and I can look and see it.

MS. LIVESAY: He keeps saying if he can see it, Judge. I gave him this stuff a year ago.

THE COURT: Well, I know, but I think he still has a right to know what you are going to introduce. I mean, see, I think the fact you gave it to him you met your Rule 5 requirement, but then I still have to decide whether it is relevant and if it goes to motive or some other thing. And, again, I suspect you are arguing about one or two lines in 500 pages, but you are still arguing about it, and I can't make a decision in a vacuum.

MR. MARTIN: Let me say this, Judge. If I understand it correctly, we have made progress because instead of two years' worth, she's talking from May to August 11th. If you will get me a copy from May to August 11th, if that's what you are talking about putting in, let me look at it and we may not have an

objection to it.

MS. LIVESAY: Well, let me do this then. Why don't we let him look at May 1st until August 11th, which you already have. You can probably get that off your own --

MR. MARTIN: You can get it quicker because my computers are not as good as yours. You have it right there, just run me a copy of the pages, because she has it right there in that book. That's the quickest thing for us to do.

MS. LIVESAY: Here is what else I would like to do. I would like to find out if there is a way -- I know at one time we could do it -- run all of the conversations between her and one other person, and I would like to introduce that, if we could do that, the conversations between her and the victim from January up to the point she kills him.

THE COURT: And there may be conversations between her and who knows. But, again, what you all are asking -- and you have to understand my frustration -- I'm in a vacuum up here. I have no idea what you are talking about when you start objecting and, you know. So showing what you have, decide what you will object to. That puts us in this position: Where are we now? Are we in a place where

we can proceed, or do I need to send them home while you all argue it?

MS. LIVESAY: I was going to call the AT&T person and then the Cellebrite person, Lori Dudley, to get in the Cellebrite stuff.

THE COURT: But isn't the Cellebrite stuff the stuff you all still have to figure out what is relevant?

MS. LIVESAY: Yes.

MR. MARTIN: Well, I don't want to send the jury home because I have the witness here that we've talked about, Judge. I think you could -- we could put the AT&T guy up. She might can call another witness, and us come back to the Cellebrite stuff tomorrow and we'll figure it out tonight.

THE COURT: All you are going to have to figure this out or let me rule, one way or the other. I didn't mean to say snatch his arm off, I would just break it, so I apologize for being that rude. But I'm frustrated, and part of my frustration is it is 15 til 4:00. A lot of this stuff comes up, literally, when we're walking back in, and as I told the deputy back there earlier, I'm going to get in there real quick before they need something. I don't want to be that way, and I don't want to be so frustrated, but if I'm

frustrated, they are frustrated -- maybe.

MS. LIVESAY: If I can, Judge, while Mr. Martin is in here, we do have a copy of the conversations just between her and David, so I do believe they are relevant and admissible because they are from December of 2012 up to the point she kills him.

THE COURT: Let me make a suggestion. You have your witnesses here. The fact that they are -- you've laid a foundation to get these documents in, get you to the point of me making a decision whether it is relevant.

MS. LIVESAY: Yes.

THE COURT: So I don't have a problem with you moving ahead, having them basically verify that these are correct, and then we can move on and then you all can meet and figure out if you disagree on particular portions, and I'll rule on it, and we can let the AT&T person go and I can -- see what I mean? I mean, lay the foundation and then we can argue about it later.

MS. LIVESAY: Okay. And we'll make you a copy of this so you can look along with us.

THE COURT: Yeah. But let me make real clear, the fact that this AT&T person says those are phone calls made from this phone does not make it admissible for either side. It makes it potentially admissible,

if it is relevant.

MS. LIVESAY: Right. I understand that. Yes, sir.

MR. MARTIN: And I do have my witness here that I can put up any time you deem appropriate, that I estimate would take some 30 minutes.

THE COURT: And I'm good to go. I think I've been pretty patient. Are you going to hit my desk again?

MR. MARTIN: No, sir.

THE COURT: You?

MR. MARTIN: I do apologize.

THE COURT: Don't worry about it. I understand in the heat of the argument. It is fine and, you know, my theory is just punch the first person you find and move on, but that would be you, so I won't do it.

MS. LIVESAY: Me (laughing)?

THE COURT: Call your AT&T person to get them in.

MR. MARTIN: That ain't the AT&T --

MS. LIVESAY: He looked at these records, and he's good with these. These are just conversations with her and the victim.

THE COURT: Okay.

MR. MARTIN: And if you would, while you're

making the copy, just make me a copy of whatever it is you want to introduce.

MS. LIVESAY: I'll get you a copy of these, and May through --

MR. MARTIN: August?

MS. LIVESAY: Yap. For the record, Your Honor....

THE COURT: Can we call them in?

MS. LIVESAY: We're ready.

(Whereupon, the jury enters at 3:49 p.m., and the following was had in the presence of the jury.)

(A conversation was had off the record.)

THE COURT: You can call your next witness.

MS. LIVESAY: Thank you. At this time the State calls the representative from AT&T.

(DEAN BRIGGS, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: My name is Dean Briggs, B-R-I-G-G-S.

(State's Exhibits 107 through 109 marked.)

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q I'll show you what's been marked as State's Exhibit 107, 108 and 109. Would you please tell this Court what I'm showing you?

A I have a call history from the account, as well as text and usage for the account, and notes on the account as well.

Q How about the phone records?

A Shows the originating number, terminating number the dates of the calls.

Q And what number are those phone records belong to?

A (843)[redacted], and also (843)[redacted].

Q Do those records indicate who, I guess, the account holder is for those two phone numbers?

A It does.

Q And who is that?

A Heather Sims.

Q What is the phone number that belongs to Heather Sims?

A (843)[redacted].

Q And what is the other number that belongs to David Sims?

A (843)[redacted].

Q Are those records kept in the usual course of business at AT&T?

A Yes.

Q Have they been tampered with in any form or fashion?

A No.

Q And are those, indeed, the AT&T records for Heather Causey Sims?

A Yes.

MS. LIVESAY: The State wishes to put 107, 108 and 109 into evidence.

THE COURT: Subject to whether or not we make a decision of relatively, any objection?

MR. MARTIN: Well, it's my understanding -- I do have a question or two for him, but when she says "into evidence," my understanding is they are identified and admissible, as long as you find them relevant?

THE COURT: That's correct.

(State's Exhibits 107 through 109 admitted.)

Q (MS. LIVESAY) And were there any inquiries on the (843)319 number after August 11th?

A Yes.

Q And what was that regarding?

MR. MARTIN: Object. We should publish them, I think.

THE COURT: Ask that question again.

MS. LIVESAY: If there were any calls made about the (843)319 number, which is David Sims, after August the 11th.

THE COURT: About the number?

MS. LIVESAY: Yes, about the number.

THE COURT: Overruled. Go ahead.

Q (MS. LIVESAY) And if you don't mind, tell this jury what that was about?

A They called --

MR. MARTIN: Object. I don't think I have an objection, but for the record, she's talking -- you haven't admitted them into evidence, and she's going to publish them, is what is happening. But if I can --

THE COURT: I thought your question was, was there a call about this number?

MR. MARTIN: No. No. No, that was not the last question. Well, what was that call about, was the next question, which is publishing.

MS. LIVESAY: It is in the notes. This is a part of the notes that we just looked over together, whether or not there was an inquiry, and Mr. Martin even said, yes, I know what this is about, I've seen these before.

(Whereupon, a bench conference was had.)

THE COURT: Overruled.

Q (MS. LIVESAY) What was the inquiry made about David Sims' phone after August 11, 2013?

A Customer's husband passed away and she needed the code to get into the phone, phone was disabled.

Q So that just means she made a request looking for the key number to get into the phone?

A And lock code.

MS. LIVESAY: No further questions, Your Honor.

-- CROSS-EXAMINATION

BY MR. MARTIN:

Q With regard to that, first thing, account holder, two different phone numbers, what does that mean when you say "account holder" as opposed to phone -- the difference between an account holder and the two telephone numbers?

A The account holder owns both numbers.

Q What now?

A The account holder owns both of the numbers.

Q Owns both of the numbers?

A Correct.

Q And they could give the phone to whoever they wanted to, but technically they own the phone?

A Correct.

Q And to make changes on the account or with the phone, or whatever, that individual is the one that needed to call?

A Either the account holder, or if you are listed

as an authorized user.

Q Okay. And these phones were -- does it say whether they were iPhone 4, 5s? Does it say?

A It says it was an iPhone. I would have to find it in here -- iPhone 5.

MR. MARTIN: No further questions for him, assuming the foundation has been laid so that either of us could move to enter those into the record once this witness is gone.

THE COURT: Make sure that, on the record, we agree. Foundation has been made for any records subject to their admissibility, but, you know, the threshold has been laid, so you are okay. Okay. Do you have any questions on redirect?

MS. LIVESAY: No, sir.

MR. MARTIN: Judge, I would like for Mr. Briggs -- I also had him under subpoena, I would like him to stay until I can talk to him.

THE COURT: Okay. Sorry. Call your next witness.

MS. LIVESAY: Thank you, Your Honor. At this time the State calls Lori Dudley to the stand.

(LORI DUDLEY, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: Joshua Brian Tew, T-E-W.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q What do you do for a living?

A I'm a radiologist with Carolina Radiology in Conway, Myrtle Beach.

Q How long have you worked with Carolina Radiology here in Horry County?

A 15-and-a-half years.

Q And in your capacity as a radiologist there, do you read CT scans from Grand Strand Hospital, as well as other hospitals around the area?

A I do, yes.

Q And how long have you been doing that?

A Since I got here in 2000.

Q If you would, give the jury the benefit of your educational background which qualifies you to read a CT scan?

A I went to the University of North Carolina undergraduate with a degree in chemistry, University of South Carolina, School of Medicine in Columbia, have a medical degree from there. I did an internship in medicine at the University of Nevada. I did a

779

residency in diagnostic radiology at the University of Louisville in Louisville, Kentucky and a special extra year of neuroradiology, brain and spine imaging, at University of Michigan in Arbor, Michigan.

Q And, again, how long have you been reading CT scans?

A I mean, I started my residency in 1995, so you start reading them right away. I've been -- I was board certified in 1999. I've been reading them with my own name at the bottom of the report for 16-and-a-half years.

Q You read them here for Grand Strand Hospital?

A My group covers Grand Strand, Loris, Conway, Sea Coast, Marion and Lake City hospitals. We read all the CAT scans done at all of those facilities, in addition to a bunch of out-patient.

Q And that is within the field of radiology?

A Oh, yes.

MR. MARTIN: I would offer him as an expert in the field of radiology.

THE COURT: Any objection?

MS. LIVESAY: Did he testify as to how many times he's been qualified as an expert?

Q Have you ever been qualified as an expert in court before?

A No.

Q This is your first time?

A Correct.

Q Does that detract in any manner from your ability to read a CAT scan?

A No, it does not.

MR. MARTIN: He's -- this is his first time, but I offer him as qualified.

THE COURT: Any objection? As a radiologist?

MR. MARTIN: As a radiologist.

MS. LIVESAY: Just a few qualifying questions.

PROFFER

BY MS. LIVESAY:

Q Just a few questions, Dr. Tew. About how many reports are -- yeah, reports do you look at in the course of the year?

A We just had our numbers pulled. I've read about 23,000 studies in the -- I'm annualizing at 23,000 studies this year, approximately 30 percent are CAT scans.

Q And how long have you been at Grand Strand?

A Since June of 2000, 15-and-a-half years.

Q And nobody has contacted you until recently in this case to be an expert?

A I was contacted on Friday, November 6th, about

this case.

Q Contacted when?

A Friday, November 6th.

Q Okay. And -- but you never have been contacted prior to that about being an expert in radiology by anybody?

A I have done medical malpractice defense work, never criminal. This is the first criminal trial I ever sat in on, but I've done medical mal defense work, yes.

Q So you have been qualified as an expert?

A But not in a court. I've never seen the inside of a court. I've given depositions, but that is about it, yes, and I've rendered opinions about the practicality of a case, whether or not to pursue it and not been deposed in some cases, but never in a criminal case.

Q So you've written opinions and basically consulted with defense attorneys?

A Yes -- I don't know -- it is defense, plaintiff's -- I guess med mal defense, yes.

Q But no judge has ever qualified you as an expert?

A No. I've never been inside a courtroom as a witness before.

Q Now, you work at Grand Strand; is that correct?

A Yes, I do.

Q Is that with Michael Brown, the doctor that did this radiology?

A Yes. He's a member of my radiology group. I know him well.

Q Okay. So you are actually partners with the radiologist that did this particular case?

A Correct.

THE COURT: Any objection?

MS. LIVESAY: No, sir, Your Honor.

THE COURT: He's admitted as an expert in the field of radiology.

DIRECT-EXAMINATION (CONT.)

BY MR. MARTIN:

Q Do you have the CT scans of Heather Sims?

A I do.

(A conversation was had off the record.)

Q I'll mark this later, which will be marked as an exhibit later, but ask you whether or not that disk has the CT scan of Heather Sims performed at Grand Strand Hospital on the night of August 11?

A Yes, it is a CT scan of chest/abdomen and pelvis for Heather Sims, 8/11/13.

Q Can I ask you to speak up --

A I'm sorry.

783

Q Say that again?
A It is a CT scan of the chest, abdomen and pelvis on Heather Sims, date of birth is 10/6/1981, dated August 11, 2013.
Q And I asked you to take a look at that for me; did I not?
A Yes, you did.
Q And I asked if you could determine how deep the stab wound to Heather Sims' abdomen was, didn't I?
A Yes, sir.
Q Were you able to do that?
A Yes.
Q How deep was the stab wound to her abdomen?
A 3.5 centimeters.
Q Three-and-a-half centimeters?
A Yes.
Q Can you put that in your computer and draw up the scan and show the jury -- show the jury what you are talking about?

MR. MARTIN: Judge, what I would like to do, if he can get it pulled up, instead of getting -- I have a larger television or screen, but instead of getting that, I would like for him -- once he get it up -- that will take time, to send the jury out and all of that -- just let him show them the computer screen,

and maybe he can just set it on the front, and they can look at it from there.

THE COURT: As long as they can see, I have no problem with it. Let her look at what comes up first.

(Ms. Livesay and Mr. Tew confer.)

MR. MARTIN: The pictures that would best allow you to explain to the jury the image, would you pull that one up for us?

WITNESS: That's it.

Q (MR. MARTIN) If you would -- let me ask you a couple of questions when Ms. Livesay gets through looking at it.

(A brief pause in the proceedings.)

MR. MARTIN: The jury hasn't been able to see a thing. The State has had this CT scan for two years, too. And if she wants to question him after he gets through, obviously she can, but I would like him to publish it to the jury.

THE COURT: That one picture there that I'm seeing?

MR. MARTIN: Yes. Just one picture. We won't go back and forth.

THE COURT: Because your question was which was the best one, and he said that's it. Any objection to that one?

MS. LIVESAY: No, sir.

THE COURT: He can come down and publish it.

MR. MARTIN: I can hook this up on the TV screen, but it will take 15 minutes.

THE COURT: If you are good with it, I'm good with it.

MR. MARTIN: If I could, maybe the jurors can do it on one end and then the other.

Q (MR. MARTIN) But if you would, explain to the jury where the stab wound was?

A Okay. So a CAT scan is basically you take a picture of the human body and you slice it into little slices this. We can pull each individual slices out like a slide and put it back in, and take the next slide out. So you can see she's laying on the table. This is her back, this is her front, and this is her belly button. She is lying like her feet are towards you and head this way. So this is the left side, and this is the right side of the body. It's kind of flipped --

COURT REPORTER: Mr. Martin, could you have him go down by the microphone?

THE COURT: Hold on a minute. If you'll really speak up. She's trying to take everything down.

A So these little pieces of metal sitting on her

786

skin indicate puncture wounds. The technologist puts the patient on the table and then exposed the skin. Wherever there is a puncture wound, they put a metallic marker so that we can see when we take the x-rays, you know, metal shows up on x-rays really well. This indicates where a puncture wound occurred. Now, this is the body fat, the blackness. I should probably change (indicates). The black around the body fat, it is the spare tire, so to speak.

Q (MR. MARTIN) Let me ask you this. Would a doctor describe that as "minimal fat"?

A Sadly, no. That is normal to obese.

Q Normal to obese fat, not minimal?

A Not minimal fat.

Q Go ahead.

A So you have a rim of fat around your body. You have a layer of muscles, this brown layer here is a roll of muscles that contain your organs and your bowels, stomach and so forth. So fat is generally a very smooth black substance, and when you stab or shoot or penetrate it surgically or traumatically or whatever, the fat bleeds and the blood and the fat puts stranding into the fat, it makes it look kind of dirty or not as pristine or black as it used to be.

When someone has been stabbed there, you can see

787

a little bit of stranding of the fat that occurs from the puncture wound there.

Q You were able to measure the depth of that?

A Yes. You can use the program here and just draw a line along the stranding of the fat.

Q If you can't -- oh, you were able to draw that. And so that is the way you measure the depth of the wound?

A Correct.

Q And in this instance, the wound was three-and-a-half centimeters?

A The line I just drew, the computer says 3.47, which is roughly 3.5 centimeters, three-and-a-half centimeters.

Q Three-and-a-half centimeters. And that is 300 --

A 35 millimeters.

Q 35 millimeters, isn't it?

A Yeah.

Q Is there any way anybody could construe that stab wound through an estimation, as Dr. Spitz did, that it was 3 millimeters?

A Not by looking at the CAT scan.

Q So an accurate reading of that depth of that stab wound is not 3 millimeters, but 35 millimeters, right?

A Millimeters, yes.

Q Millimeters. And that is approximately an inch-and-a-third?

A 1.3 inches, roughly.

Q Let me ask you this. Fat and fat stranding, are they the same thing?

A No.

Q Matter of fact, before we go into that, come down and show the folks on this end the same thing you showed the jury on that end.

A Again, body, your organs, which are surrounded by a compartment muscle and hold all the organs together, and the muscles, this layer here, vertebral body, really strong back muscle and so forth, and then as you get older, your body packs the fat between your skin and muscle there, and so this is the layer of fat right there. If you disrupt the fat by shooting, stabbing, surgically incising, whatever, the fat bleeds and the blood takes away this nice, pristine, black homogenous density and distorts it a little bit, and we call that "stranding." This it is what fat stranding looks like right here. You can tell the depth of penetration by where the fat stranding happens, and you can measure it, and that is what I've done here, and you can draw a line along the fat stranding to the abdominal wall, and it is about 3.5 centimeters.

789

JOSHUA TEW - DIRECT EXAMINATION (CONT.)

Q I'll let you go back to the witness stand.
A Okay.
Q In the world that you operate in, the ability to make that finding and to determine the depth of that wound is rather routine?
A Well, normally, we, as doctors, don't care about the depth of the wound, we just care what compartments of the body the wound extends into. It matters to us, treating the patient, whether it went far enough to hit a vital organ or something, and that may be a different depth for me than you.
Q Two questions on that. First of all, the radiology report in this case, which is in evidence by the way, does not give a depth of that stab wound?
A No.
Q And explain to the jury why that wouldn't be there? I think you just did, but in other words, if it --
A For the purposes -- he's not reading that -- writing that report, authoring the report, for courtroom or a lawyer. He's authoring a report for another doctor to treat a patient, not a criminal defense or anything like that. What he's trying to tell the doctors who are treating this patient is, did it go deep enough to hit this or that, did it stop in

790

the skin, did it stop in the fat, go all the way into the muscle, too deep, and we just have medical terminology, "deep, superficial." It was technically a superficial wound, because it stayed superficial to the abdominal wall.

Q And it penetrated the fat to the muscle, it simply did not penetrate the abdominal wall?

A Correct.

Q But it came right up to it?

A It did.

Q And fat stranding is a totally different concept and meaning than just fat?

A Fat is what we all have. Fat stranding is something that damages the fat. It's like having a car and a damaged car, fender-bender, right?

Q This wound is fairly consistent with having been inflicted by a knife?

A That would be consistent, yes.

Q Now, you -- Dr. Michael Brown's name is on the radiology report, but you and he do the same thing?

A Correct. I could -- it could have been easily my name on that report. I could have been on-call, but Dr. Brown was on-call that night.

Q And is there any question about the fact that this wound, as opposed to being 3 millimeters deep, is

actually 35 millimeters deep?

A There is no question. The wound was 35 millimeters deep.

MR. MARTIN: One moment, Judge.

(A brief pause in the proceedings.)

(Defendant's Exhibits 46 through 48 marked.)

Q (MR. MARTIN) Let me show you what is marked for identification as Defendant's 46 and ask you if you can identify that.)

A That is the blow-up of the photograph of the same image right there on the screen.

MR. MARTIN: We move to enter this into evidence, same thing I gave you earlier.

MS. LIVESAY: Just a picture?

Q (MR. MARTIN) It is a picture of the scan you just showed the jury; am I correct?

A Correct.

MS. LIVESAY: The only problem I have with it is what he is saying today is 35. What is on that picture is 33. I mean, 33? 35? 25?

Q Explain to the jury 33 as opposed to --

A The difference between 33 and 35 is that much (indicates). I mean, a millimeter is tiny.

Q Is what you are saying is when you measure this, the degree you can measure, it may be 3.3 or 3.4, but

it is within a range?

A A range of within 10 percent, say 3 millimeters either way, 3.5 versus 3.2.

(Defendant's Exhibit 49 marked.)

THE COURT: All right. Well, subject to your objection, it's a factual issue that you can cross him on, so I'm allow that to be introduced.

(Defendant's Exhibit 46 admitted.)

MS. LIVESAY: I have no objection. Are you going to have someone authenticate if it's been altered or not?

MR. MARTIN: I'll show it to the judge. Let me show you what is marked as Defendant's Exhibit No. 49. I ask the Court to move -- this has been authenticated by the fact that this is the photograph that I took of Dr. Spitz' --

MS. LIVESAY: I do have an objection.

MR. MARTIN: -- opinion to the jury about the depth of the wound.

THE COURT: You have an objection?

MS. LIVESAY: I do.

THE COURT: Ladies and gentlemen, I need to send you out for just a minute. Don't discuss the case.

(The jury exits at 4:34 p.m., and the following is heard out of the presence of the jury.)

793

THE COURT: Yes, ma'am.

MS. LIVESAY: My objection is I don't know who will authenticate it that is, indeed, that picture and has not been altered in any form or fashion.

THE COURT: I mean, I know you took one, but how would I get it in? How would you get it in?

MR. MARTIN: I took the photograph in the courtroom in front of the jury, in front of you. They saw what Dr. Spitz walked down with. I asked your permission to take it. This is the exact photograph that I took. I don't have the ability to alter it in any way, and besides that, the jury remembers what he walked down and showed them, and this is an accurate representation of that. It is the best of all evidence, because it was taken in the courtroom in front of everybody.

MS. LIVESAY: The problem I have is I appreciate what Mr. Martin is saying, but it was a picture taken by him who only has a duty to his client, so I cannot say whether or not that picture has been altered or not. I've never seen a copy before now. I have no idea if he --

THE COURT: I mean, if she objects to it, I think she's right, so I'll sustain your objection to that picture. Problem is, you would be a witness. If she

794

would agree --

MR. MARTIN: I should have gotten you to take the picture.

THE COURT: Made me the witness? (laughing) Bring them back in.

(The jury enters at 4:40 p.m., and the following is heard in the presence of the jury.)

Q (MR. MARTIN) Now, Doctor, in conclusion of you, again, this did not penetrate the peritoneal cavity or the muscle there by -- it went to the muscle that protects the organs inside?

A Correct.

Q And had there been a penetration, what would it have cut when it went into that cavity from the location that it entered the body?

A On that trajectory, the next organ -- the next vital organ would have been the colon.

Q The colon?

A Yes.

Q Would that have been a serious injury or complicated injury had it penetrated the colon?

A That would have complicated her medical care, yes.

Q What happens when that happens?

A Well, if you spill stool, which is being formed

795

in your colon, into the body cavity, you can get pretty serious infections, peritonitis, abscesses and so forth.

Q Total different form of treatment?

A Oh, yes.

Q And in this case, to be sure we're clear, you say that there is, at most, in your opinion, a 10 percent variance in what would have been the exact depth of that wound?

A I would say 10 percent is a -- scientifically speaking is a good margin of error, yes. You have to realize I'm drawing freehand with a computer mouse. You can draw that line 50 times and you will end up with everything ranging from 3.3 to 3.5, but you are not going to vary much from those two.

Q 3.3 to 3.5. And I think your testimony was, in your opinion, to a reasonable degree of medical certainty, it was 3.3 -- three-and-a-half centimeters?

A 35 millimeters, 3.5 centimeters, yes.

MR. MARTIN: That is all I have.

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Did you do a report, Dr. Tew?

A Did I do a report?

Q Did you do a report about what you are going to

come in here and tell these people?

A I did not do a formal written report, no. I just spoke with the attorney.

Q So -- but nothing in writing?

A No.

Q No?

A No.

Q Okay. Now, normally when you are in Grand Strand and seeing patients, do you do a report?

A Yes.

Q Why is that?

A For billing purposes, for documentation purposes. I mean, every study performed has to have an attached report so that people can say here is the study, and here is what the radiologist communicated to the ordering physician.

Q Was a report done in this case by Dr. Brown?

A It was.

Q But you did not do a report?

A I did not formally read that study. Dr. Brown formally read the study.

Q So nothing in writing?

A Correct.

Q Do you know this defendant?

A No.

797

Q Never met her before?
A I have not. If I have, I have not met her. I understand she's in the medical community, but I do not know her.
Q Let me ask you something. Do you recognize what I'm showing you, and for the record I'm showing you what is already in evidence as State's Evidence 106?
A Yes. That is the official, finished signed report for the study that I just showed.
Q So this was the report that was done by the actual radiologist on this case?
A Correct.
Q And if you don't mind, tell this Court how he described that wound?
A Superficial stab wound is seen within the mid-left abdomen denoted by metallic markers at the skin surface, reference Images 104 to 112. Minimal subcutaneous fat stranding extends to the abdominal wall musculature, but does not penetrate the peritoneal cavity.
Q He described it as superficial?
A Correct.
Q Do you recognize what I'm showing you now?
A Yes.
Q What is this?

A Medical dictionary. It's pretty much the standard.

Q Does it have the word "superficial" in it?

A Probably, yes.

Q Do you mind giving a look and tell me what it says?

A Sure. There is a lot of "supers" in the medical terminology. You underlined it. Pertaining to or situated near the surface.

Q So "superficial" means it is near the surface?

A Correct.

Q And that is out of a medical dictionary?

A Correct.

Q So when he said "superficial" and you said "superficial," isn't that how you described the wounds, superficial?

A I would say it is a superficial wound, yes.

Q And by the very nature of the dictionary, that is described as near the surface, superficial, not penetrating?

A Well, superficial, yeah, I mean, you penetrate to a superficial degree, so it is penetrating, but.

Q Close to the surface?

A Correct.

Q You can look at it again. What does it say?

799

A Pertaining to or situated near the surface.
Q And it says what? Close to the surface?
A Pertaining to or situated near the surface.
Q Near the surface?
A Correct.
Q So by its very definition, "superficial" means it's near the surface?
A Correct.
Q Now, the next thing I want to talk about and -- you would admit it is superficial?
A By medical terms, it is a superficial wound, yes.
Q Would you admit that by medical terms in this medical dictionary, superficial means "near the surface"?
A Both by that medical dictionary and by a surgical description, it is a superficial wound. Some people's superficial wounds are deeper than others, right. I can take a 400 pound man and he might have a superficial wound that deep (indicates) --
Q You would describe this as superficial?
MR. MARTIN: Objection. Let him finish.
THE COURT: Let him finish his answer.
A A superficial wound surgically goes under the skin, but doesn't penetrate the abdominal wall. I can put a layer of fat this big on somebody, and I'm sure

you've seen it, and any wound that only stays superficial to the abdominal wall, it might go that deep, but that is still technically a superficial wound.

Q (MS. LIVESAY) Okay. Would you -- does this lady look like she has that much fat on her?

A No. I know she has exactly 3.5 centimeters of fat.

Q That is interesting. I'm glad you brought that up. So today you testified earlier that it was 35 millimeters?

A Correct.

Q Is that right?

A Yes.

Q Now, tell these people here what the documentation I got right before you took the stand, and you said -- hold on, I wrote it down. Mr. Martin asked you, Is this wound 35 millimeters deep, you said, No question about it, 35 millimeters deep; do you remember that?

A Yes.

Q That's what you said?

A I did.

Q Okay. If you don't mind, just yes or no, does this say 35 millimeters deep?

801

A No, it does not.
Q So then there would be a question about it?
A Yes. Okay.
MR. MARTIN: He can explain it, Judge.
THE COURT: Yeah.
MS. LIVESAY: Explain what?
THE COURT: Just go ahead.
Q (MS. LIVESAY) You would admit your testimony was 35, and this documentation says 33?
A Yes.
Q And you would admit when you were talking to Mr. Martin he asked you, Is it 35 millimeters deep, and you said no question about it?
A Yes.
Q Okay. Now, I have some more questions, because I'm very interested in this report -- well, not yours, you didn't do one. On the scan, can you definitively measure whether or not that is showing penetration or that is showing some disturbance in the fat?
A Well, it is showing disturbance in the fat caused by penetration.
Q Could it be caused by fluid or blood or anything else other than sheer penetration?
A No. I don't think so, no. I don't understand how that would.

Q So you don't think that could be fluid or blood that you see on that report running down? You are absolutely certain that that documentation you showed this jury is, no question about it, showing complete penetration showing -- depicting that wound?

A Yes.

Q Was there a measurement on Dr. Brown's medical records?

A There was not.

Q Did he mention anything about fluid?

A No. Our term is "stranding of the fat" because it is a mixture of fluid and inflammation and, you know, just the -- it was dragged into the wound from the outside, we call it "stranding of the fat" because it is a visual term rather than --

Q So "stranding" means fluid?

A Fluid, inflammation, debris, yes. Alteration of the pristine fat, yes.

Q And that is what he describes here in this report, "stranding"?

A Correct.

Q Which is describing fluid that is stranding down shown on the report?

A Correct.

Q Did you see fluid?

803

A I see stranding of the fat.
Q Sorry?
A I see stranding of the fat, which is blood -- typically considered blood, can be other stuff, but I see stranding of the fat. I can't tell you the actual cellular makeup of what that is.
Q Do you see it?
A Yes.
Q Where do you see it? It's okay. What is stranding? Fat and fluid?
A Yes.
Q And this doctor who read the radiology report said that is what he saw, stranding?
A Correct.
Q And you say you saw stranding?
A Correct.
Q Okay. So this picture is depicting fluid, stranding; is that correct?
A Yes.
Q And that is what is shown possibly on this radiology report, stranding? Isn't that what this report says?
A Correct.
Q So that is really stranding, not actually a measurement of penetration? It is a measurement of the

804

stranding; is that not correct?

A Correct.

Q Now, you just told me that what we just looked at was an exact measurement of how far that knife went in. I want you to think before you answer this question. Is that a measurement of that, or is that a measurement of the stranding?

A The stranding is caused by the penetration. The penetration will form the stranding to the depth the penetration occurs and not deeper.

Q Stranding is the fluid; is it not?

A Correct.

Q It's not showing penetration, it is showing stranding, is that not correct, which is two different things?

A I think we're parsing words here, but I'm trying to be as exact as I can. So when you stab someone, and I'll preface this by saying I intentionally stab people as a physician with a CAT scanner every day of my life. I will put a patient on a table who has a lesion on their liver, on their kidney, and I'll intentionally stick a needle into that. I stick a needle a little bit and take a picture to make sure I'm on target, and I'll stick the needle in a little bit more, take a picture to make sure I'm on target, and I have never in

805

the thousands of these I've done seen stranding deep to my needle during all of these pictures I'm taking. When I pull the needle out, there is stranding along the tract of the needle. Sometimes I'm off target, I take the needle out and there is fat stranding down to the depth of the needle and no further. The stranding is the bleeding that occurs on the tract, it is the -- and when you say "fluid," I'm afraid you are making -- you are assuming it is a collection of well-organized measurable collection of fluid, but it is not. It is fluid between the interstitial --

Q That's right. The stranding is the fluid and blood moving between the fat?

A It is not moving. It is blood that bled there and stayed there. It is not a river. It is not a glass of water or blood that is dripping around the place. As you tear a small capillary, it bleeds there and strands there. As you go deeper, it strands right there. So that is what it measures. In my experience, and I've done many, many intentional stabbings under medically controlled conditions, the stranding goes to where the penetration goes and no deeper, and that is how you are able to infer the depth of a penetrating wound.

Q Normally, do you measure wounds that never

penetrate the cavity?

A I normally don't measure wounds ever in my reports. I tell them what compartment the wound went to. The wound went deep enough to go into the peritoneal, the wound went deep enough to go into the spleen, the wound went deep enough to go to the kidney. I don't say it went 20 centimeters into the kidney or 8 centimeters into the kidney. How deep it is medically doesn't matter, what matters is it went into the kidney or it went into the liver.

Q Okay. So let me get this straight. On a daily basis, you are not measuring the depth of any wound, only deciding whether or not it penetrates, basically, the cavity or an organ?

A Correct.

Q So when you do a report like this one, which you say you have been doing for years and years, you are not actually measuring the depth of the wound?

A No.

Q But you are up here testifying as an expert about measuring the depth of the wound, something you never do?

A Correct. Just because I don't do it, doesn't mean I can't do it though.

MS. LIVESAY: Nothing further, Your Honor.

807

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q After all that was said, how deep did the tip of the knife go, how many centimeters or millimeters?

A Millimeters.

Q How many?

A I will say three --

MS. LIVESAY: Your Honor, I'm going to have to object, because this man is not even an expert at measuring the depth of wounds. Yes, he is an expert in reading a radiology report, I agree with that.

THE COURT: Wait a minute. Let me -- overruled. I'll allow you to ask the question. I understand your objection.

Q (MR. MARTIN) I want to be sure this is clear. Do you know what you are talking about?

A Yes.

Q And when you treat people there at the hospital -- and you said this -- you stick a needle in and you can measure the depth in millimeters, if you want to?

A Yes.

Q And the depth in which you do that insertion of the needle up to so many millimeters would determine whether or not a person has a successful or

unsuccessful procedure at times; would it not?

A Correct.

Q You have to know what you are talking about in terms of depth of your insertion of an instrument; do you not?

A Well, of course.

Q And so if that measurement that you make there, that you do every day, is that the same kind of measurement you would do in reading this CAT scan of Heather Sims?

A Precisely.

Q The very same, is it not?

A Correct.

Q Is there any doubt, whatsoever, about the fact that that knife went in 35 millimeters, not that it was some fluid that caused that picture; is there any doubt about that?

A No.

MR. MARTIN: That is all I have.

THE COURT: Okay. You can step down. Thank you.

COURT REPORTER: We need to mark 48.

THE COURT: Put it in an envelope. Any objection to him putting it in an envelope?

MS. LIVESAY: No, sir.

MR. MARTIN: Judge, let me say this. What --

this is not admitted. This has more records than just the CAT scan. I would like -- that is the reason why I introduced the picture of the scan there. This at this point was marked for identification, and I'll determine later whether or not I want to move it into evidence.

THE COURT: All right. That's fine.

Okay. We're back, ladies and gentlemen, as I said, he was called out of turn. He normally would be called for the defense side. I know you have work to do, do you need to let them go so you can do it now?

MR. MARTIN: I think so.

MS. LIVESAY: Obviously, I would rather call my witness to move it along, but whatever is best for everyone else.

THE COURT: Come over here.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to send you home. We've got some work to do, and I'm not going to make you sit around and wait. Let me just sway any fears you may have. We'll finish this case this week, don't worry about that, and that is why we're going to stay, but I won't let you sit around while we argue. We have to put things on the record. I hope you have a good night. Please don't watch anything, listen to

anything or read anything about this case. Don't do any research, speak to anyone about it. I trust you. You did it all weekend, you can do it for a couple more days, and we'll see you at 9:30 tomorrow morning. Thank you.

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

THE COURT: You all take some time to look at it, and I'll stay. If you can do it now, that's great, but like I said, from my perspective the problem is that exhibit has to be shown and, again, you have to show her what you are introducing. You are telling me it is going to take a period of time to look at it, right?

MR. MARTIN: Well, yes, I think so.

THE COURT: Do you want to take up the matter of -- you're frustrated, what's the problem?

MS. LIVESAY: Judge.

THE COURT: Yes, ma'am.

MS. LIVESAY: First of all, I just want to say, all of this stuff was handed over a year ago, but we're going to hand over, again, for everybody's convenience, from May until the end of August, and then the conversations just between Heather and David for 2013.

THE COURT: That is what you intend to introduce, right?

MS. LIVESAY: Yes. Yes, sir. Yes, sir. But that should simplify.

THE COURT: Do you have that exhibit ready to show it?

MS. LIVESAY: Yeah, I've already made a copy of the conversations just between Heather and David, so we don't have to worry about all of the other stuff. And then from May until -- all the texts from May until August, because that includes insurance, divorce, those issues.

THE COURT: How many pages is that, in all seriousness?

MS. LIVESAY: What would you say? Hard to say.

MS. POP: Couple hundred.

MS. LIVESAY: Hard to say, 30 maybe.

THE COURT: She says couple hundred, and you say 30. I mean, it depends -- I'm willing to stay here at 10 o'clock tonight to rule on it, but he is entitled to an opportunity to look at it. Why don't you give it to him, I'll step back here go to the restroom, and then you all tell me if you want to stay and do it tonight.

MS. LIVESAY: Yes, sir.

THE COURT: I mean, I don't know what else to do.

MR. MARTIN: I think we can let you know --

MS. LIVESAY: I did give this to him already a year ago, but, yes, I will take out his excerpt and -- give it to him as to what we're putting in now.

THE COURT: Again, I understand that you've complied with Rule 5 and giving him everything, but an exhibit used and introduced has got to be shown to him. I mean, you all do that; I'll wait. If it looks like it is 500 pages and can't do it tonight, that's fine, but I would like to finish it tonight so tomorrow we can jump in here. I mean, you know, we have to get moving. You all take a few and look and let me know.

(A recess was taken at 5:57 p.m. to 6:38 p.m.)

MR. MARTIN: I think while they are bringing the slides, if we can talk about part of the objection that I have.

THE COURT: All right.

MR. MARTIN: Because several of the slides refer to texts that are back and forth between my client and David Sims, running from May 29 to July 2, I believe it is, about various aspects of -- conversation about life insurance and the fact that, at least as I read them, that he -- she thought that he had a policy,

813

ought to get a policy, he was looking into a policy, going to get a policy, he was getting his blood pressure checked, that kind of stuff.

Again, as we had discussed earlier, my objection to any introduction about life insurance is that there is no evidence in the record, and there is no evidence in what they are attempting to put into the record that establishes that she was aware that the policy had been issued. As a matter of fact, the policy was not issued until July 23rd. The last entry in any of these text messages about insurance was July 2nd, I believe it is.

So the basis of my objection to those texts is that they referred to life insurance and the admissibility of life insurance is not proper in this case because it hadn't been established that she was aware that the policy that they are discussing was in effect. He did, apparently, have, prior to this, a life insurance policy that was on his life that -- I'm not sure who the beneficiary was, it may have been his mother or owned by the mother, but just for context, there was a policy that was in place in addition to the policy that went into effect July 23rd of this -- yeah, July 23rd.

THE COURT: So, basically, your objection is that

she didn't know there was a policy in existence?

MR. MARTIN: She knew they had talked about him getting one and that he talked to the agent about getting one, that they checked his blood pressure and all of that, but not -- but it hadn't been issued when all of this was going on. It was issued on the 23rd. The policy had not been delivered. As a matter of fact, that policy was in his truck when the police went through it.

THE COURT: Yes, ma'am.

MS. LIVESAY: Your Honor, I think the Cellebrite points out clearly that she was aware he had a policy. In fact, he texted her in May -- she texted him something to the gist of I know you are tired of me talking about this, but this policy is really important. He texted her back and basically says trust me, you're taken care of.

THE COURT: Do you have me a copy?

MS. LIVESAY: Yes, we're getting you a copy now, Judge. She's then saying basically, well, that's good, because if something happens to you, I'll basically be a single parent, so I won't be able to work. So there is a lot of in-depth conversations about the policy. And, in fact, he texted her, yes, my blood pressure was high. There is a text back from

her saying, basically, let me check your blood pressure. Then, later on, he texted her and said, look, they've checked my blood pressure and now I have a preferred rate.

So, no, there is no texts after later in July because it is pretty much established at that point he has the policy, there is nothing else to talk about. In fact, she asked him in the text for a copy of the policy to put in a notebook, because she doesn't trust the insurance company. So she's gone so far as saying I know you have a policy, I want a copy of a policy because I don't trust the insurance company, and if something happens to you, I want to have this policy right here handy so I can address whatever needs to be addressed.

THE COURT: Yes, sir.

MR. MARTIN: Well, what she says is accurate other than the interpretation of what the text means. I think the first entry about a copy of the policy might be referring to his first policy, that is early in the conversation about it. But it doesn't -- again, it doesn't change the premise of what I said. The policy had not be issued, it was not said that the policy was issued, he had not provided her a copy of the policy and, therefore, the premise that there was

a motive there and that this was done because -- so she can collect insurance money was -- is not there because it doesn't -- it doesn't establish that she knew it, and she couldn't know it if it hasn't been issued.

MS. LIVESAY: The only issue I have, Judge, is this stuff about the policy being found in his truck, that is allegedly what she's saying, that she found a policy. Ironically, after he is shot and she goes to jail, very shortly after that, the policy just pops up and then they start moving to try to get proceeds from the policy, which they are still trying to obtain those proceeds. I know that is not relevant, but at the end of the day, she's texting back and forth asking for a copy of the policy. He is telling her you're taken care of, and he's even telling her I have a preferred rate.

MR. MARTIN: Two things, Judge, just so it is clear. That policy can be seen in the dash of his truck on the video surveillance that the State introduced into evidence. You can see the policy. The police went through that car that night -- I mean the 15th when they came back.

MS. LIVESAY: They would not have --

MR. MARTIN: Well, I'm not saying -- as far as

mysteriously appearing, that is an inaccurate statement, because we know where it was on the date this occurred, or we know where it was when the police searched that car. It just wasn't -- again, that is just to straighten out what I think is a misconception about where it was, because it can be proven where it was....

And then the second thing I was going to say, no, there was no active attempt to collect the policy. I know what happened there, because I wrote the letter, and it was to notify the company of what had happened, but specifically that no claim for payment was being made at that time, that this was a matter that would have to be determined, and so there was no active efforts to collect that policy.

MS. LIVESAY: Let me say this, Judge. The last filing I received regarding the policy, Mr. Martin and his client were not just asking for the 750,000, they were asking for 750,000 plus interest where the policy had not been paid prior to date, which I think ended up totally, what, 825,000.

MR. MARTIN: I don't know the exact number, but let's be clear. The insurance company filed an interpleader in federal court wanting to pay the money, we responded to that. First of all, don't pay

it in, just hold it. If you are going to pay it in, they ought to pay interest to whoever gets it. They are paying the interest on it, and I would assume everybody would be in favor of that. But, again, the characterization that there was an active attempt to collect the policy is inaccurate. There is a letter, which I can certainly produce, that says exactly the opposite, and the company is the one wanting to pay it in; they are tired of holding it.

THE COURT: Okay. All right. Well, look, I've read through this stuff quickly, and I'll take it with me. I'm inclined to let this in. As I said off the record, and I'm talking about this, instant messages, I don't know if it helps or hurts anybody. I mean, there is a lot of stuff in here that you can read, quite frankly, and say these are normal people who are arguing, and sometimes not arguing in the rest. So I'll let that in. As far as the insurance claim goes, you are not trying to get that in, are you?

MS. LIVESAY: No, sir, just that there was a claim -- just that there was a policy and she was the beneficiary, nothing more. In fact, the lady that is coming, she doesn't know anything more than that, so there is no danger in that slipping out. She doesn't know about a claim or anything other than she issued

the policy to David, and the defendant was the beneficiary.

THE COURT: What if he asks has it been paid, and she says no?

MS. LIVESAY: She's going to say she doesn't have any knowledge. In fact, she told me that Mr. Martin called her recently and that she had referred him to Nationwide's attorney or legal department, or somebody else. She has no knowledge of who made a claim, if it's been paid, anything further about the policy.

THE COURT: I guess what I'm saying is that opens the door to him calling someone and saying we haven't paid a penny. That is strategic, and that's okay.

MS. LIVESAY: If Mr. Martin wants to open the door about the filing of the policy, I'm fine with that.

THE COURT: No, you would be opening it for him. I'll let this in, but won't let the insurance payment information in, unless somebody knows the answer to it. And then you have to go through the rest of that stuff, right? Isn't there something else you all were talking about?

MR. MARTIN: Yes. There is a couple other things on these that we can discuss, if you want to.

THE COURT: Let me ask you something. I know

that you want a strict chain, but the more I think about it, I'm thinking about not letting those SLED people in. I don't know that it would do anything for them. I don't think it helps our record, because I assume there is no evidence that there is a problem with the chain, right, custody of the DNA?

MS. LIVESAY: No, sir.

MR. MARTIN: There's not. And, Judge, just so -- the case that -- Nancy and I discussed this during the break --

MS. LIVESAY: Is that Hatcher?

MR. MARTIN: Hatcher. And my understanding is that Hatcher goes specifically to that point, that even with blood samples and DNA, you don't have to produce everyone as long as you establish the chain to the satisfaction of the Court, and the way we did it last year was you got Jill Domogauer, she took it to SLED, the lady at SLED took it to the appropriate place to analyze it, and there is no allegation that there is any -- anything wrong with it.

THE COURT: Well, if I hadn't been here for the stand-your-ground hearing, I would -- I didn't see anything in the stand-your-ground hearing that would lead me to believe there was a problem with the chain. I guess what I'm saying is if you insist on calling

it -- making him call people, it is -- I understand, but it may -- all they are going to say is I signed it in on such-and-such day, and we'll have a succession of five people. I'll just throw that out there. I know you're tired. What else can we talk about tonight, and we'll go --

MR. MARTIN: I mean, obviously, an answer to that is important, because my getting people here to keep things going, because bringing them down has got to be done, unless the Court rules I don't have to. It looks to me, judge, you can rule without her consent, because there is a case law that supports that fact.

THE COURT: Yeah, I can. What I don't want to do -- in one of these cases you all have one goal, and my goal is to make it as clean as possible. I'm perfectly comfortable that the chain has been met, and it would be easier if there was no -- I just don't see it will add anything to it, to bring all of these chain people up here. So I'm asking can you make a decision on that?

MS. LIVESAY: I told Mr. Martin that I was going to look at Hatcher closer tonight and let him know in the morning if I would let him consent, if that is something --

MR. MARTIN: Let's read the language in Hatcher

right now. It is a paragraph, but it's relevant.

THE COURT: It says in the discretion of the Court.

MS. LIVESAY: Yes. And normally the case law prior to that has said that if it is the defendant's DNA, it requires a strict chain.

THE COURT: Judge Cottingham. I guess you would agree that DNA -- I mean, unless there is something here I don't know, and I've had this case -- it's been a long time since I had somebody bring the chain links from --

MS. LIVESAY: I've had to bring the chain any time I've ever had to produce anybody from SLED.

THE COURT: Really? Unless there's a problem, we pretty much -- I'm fine with you not doing it, if you don't want to do it. The problem with Hatcher is it does deal with drugs.

MR. MARTIN: It says specifically -- it goes beyond drugs, the case law does, and unless you require me, I don't want to go through the trouble of calling them. It takes up time, it takes up energy, space. I talked specifically with Adrienne Hefney about that, and she says that she testifies all the time in the DNA cases, and they never require the tech to come.

THE COURT AND ATTORNEYS

MS. LIVESAY: I'm going to tell you something, that's not true.

MR. MARTIN: Well, that's what she said. You can ask her.

THE COURT: Well, Ms. Livesay, I'll make it easy on you, that is really what I'm trying to do. Do you have any indication there is a problem with the chain?

MS. LIVESAY: No, sir.

THE COURT: And it won't be dispositive of anything as far as -- I think I have the discretion in here. I don't want to cram it down your throat, but I can make it easier on you and rule that way, and you don't have to worry about it, because I don't think it helps or hurts you or anything.

MS. LIVESAY: Obviously, there is -- I don't believe there is any tampering with the chain.

THE COURT: Okay. I'm going to make it easy and rule -- I'll just go on a limb with Hatcher, even though it is going a little further than I want, but that is okay. So you have somebody that can testify as to the chain that will -- I'll let you get that information in that way.

MR. MARTIN: All right. There is a couple of these other exhibits, judge, and I'll keep that in mind. I'll bring Adrienne Hefney, and she can testify

824

as she told me. There is another exhibit here that is a text that says, I am. Divorce is not an option, it may be for him. I would object to that unless it is put into the context. It is difficult to read these extraction reports, because some of it -- they have all the texts from one person, and a separate page is all the texts going into that person. By looking at Page 2166 and 2235, you can see the context of that statement. I would objection to the slide as is, and I would not have an objection to a slide that puts it into context.

THE COURT: I'm having trouble. I find 2391. I don't -- I have 2166, that's what you are talking about: I am. Divorce is not an option?

MR. MARTIN: 2166? I don't know what you are looking at. This is the slide they gave me.

THE COURT: Yeah, but where is it in context?

MR. MARTIN: It's not in context. I'm just telling you what they have is not in context, but if you do look at the extraction reports, they have specifically Page 2166 and 2235, then you can -- you can put it into context with the other conversation that she's having with the other individual that that communication is with.

THE COURT: So you would rather have her put the

whole page in?

MR. MARTIN: Well, it would be two pages, and you have to put it together, because for whatever reason, when it prints it out, one page has every text that Heather sent on that page. There is another page showing texts that were sent back in response. You can correlate them with the time, you know. You can see it. It is on separate pages, it's just the way the extraction report comes out. But there is a context that is not just an isolated statement floating in the atmosphere. It was part of a conversation. So it seems to me that the context of the conversation would be relevant if, in fact --

MS. LIVESAY: I agree, and that is why I'm trying to put the entire report from May until August in, so when he gets up there, he can say this has been taken out of context, isn't there a text after.

THE COURT: That is the big stack you have, right?

MS. LIVESAY: That is in July 22.

THE COURT: But you gave him that big stack?

MS. LIVESAY: Yes. Yes. From May --

MR. MARTIN: Which I haven't had a chance to go through yet. I have a whole stack. Just think on it.

THE COURT: I'm thinking on it, but let me tell

you all, generally I would be more inclined -- Ms. Livesay, listen to me, because it is important -- I would be inclined to put as much in so the jury can get the context as possible. You've argued that you don't want it all in, but I think context is very important, so I hate to do it to you, but I would look through that stuff and see if there is anything in there that is so damaging it would just -- I'm inclined to let her put it all in, unless there is something terrible in there, and the problem is I don't know.

MR. MARTIN: Well, I don't think there is anything terrible, but I'm not sure what it is, but we'll take a look at it tonight, and I'll report back to you bright and early tomorrow.

THE COURT: Absent something so outweighed by its probative value, I would be inclined to let it in; how about that? And that way we have the context and everybody can --

MS. LIVESAY: Judge, we were able, I believe, to get the strand between Heather and David, and nothing else, from January until August, so we're going to --

UNIDENTIFIED SPEAKER: It pulls everything from -- that has David from the context.

(A discussion was had off the record between Mr.

827

Martin and Ms. Livesay.)

MR. MARTIN: That is 2005, that was before they were married and everything. You don't want all of that.

MS. LIVESAY: It looks here is where it starts, December 2012. So it would go from December 2012 until August of 2013.

MR. MARTIN: That is not a thousand pages, is it?

UNIDENTIFIED SPEAKER: I don't know how many that would be.

MR. MARTIN: Whatever you want to put in, print my a copy, because I don't have a hard drive to get, and I won't have a computer to open it up, so I want a copy of -- paper copy of it, and I don't know how much I can look at it tonight, but I'll do my best.

MS. LIVESAY: You want us to print all of this for you?

MR. MARTIN: Print off whatever it is you want to introduce into evidence.

MS. LIVESAY: That is this. We're going to give Mr. Martin what we got, which is the conversations just between Heather and David from December 2012 until August. She's going to print that out since he doesn't have access to a computer tonight. Do you want me to print you a copy as well?

THE COURT: It would save us time tomorrow when you argue about it, yeah.

MS. LIVESAY: Okay.

MR. MARTIN: I think that is all we can do on the record tonight.

MS. LIVESAY: She can put it on your laptop, if you would like her to.

UNIDENTIFIED SPEAKER: It is just an Excel document. Whatever is easier. I was just asking.

THE COURT: I hate to have you print it, but I'm going to tell you, this thing is locked and won't let me put anything on it, even my law clerks can't. We can't even update to the -- it is crazy. I guess they think terrorists are going to get my laptop.
9 o'clock tomorrow.

MS. LIVESAY: We're done with all of these, so the PowerPoint is good to go?

THE COURT: PowerPoint is good to go, and since this is good to go, I'm inclined to put in all of it, unless he finds something so objectionable. And, again, I'm not sure that doesn't help, because you have a lot of stuff between -- okay. Thank you all. I'll see you at 9:00.

(Whereupon, the proceedings from November 16, 2016 concluded. The following was had on November 17,

2016 out of the presence of the jury.)

THE COURT: You all clean up all the stuff we talked about off the record?

MS. LIVESAY: Here is the plan. We're going to introduce into evidence the hard copies, and Mr. Martin has given us what he wants redacted, so when we break at lunch, we'll break that stuff out, redact and put those pages back.

THE COURT: Makes sense. You okay with that?

MR. MARTIN: I am. And, Judge, again, for the record, as you know, I've objected to the -- what I call the wholesale entry of these issues, but we've talked about it thoroughly with the thought that you may introduce them over my objection. I did provide them some lines that probably ought to be deleted because they are not relevant, and I think we'll both agree on that, and that they could be prejudicial for one side or the other. So I object to the introduction of what I think would be best defined as -- of course she hasn't marked it as an exhibit yet, but it would be the one that has the text messages back and forth between Heather and David and, frankly, other people too. But it runs essentially from May through August when this occurred, and that is what -- that is one of the items that they have --

are asking to introduce, so I object. I understand you overruling that.

Then there is a second batch of items that Mr. Hyman is going to talk to you about our objection to, because it is different from the first batch from May to August.

THE COURT: Okay. Yes, sir.

MR. HYMAN: Judge, what we've been provided is essentially -- I think it 300 pages, approximately 5,740-some-odd text messages, call logs. Judge, this is not an accurate representation of correspondence between Ms. Sims and Mr. Sims. Judge, this is simply a word search where they went through Cellebrite, typed in "David" and it printed out everything that had "David" in it. Now, her son's name is J.D. , so if it is a text from her to anyone else that says "J.D. ," it prints it out.

The other problem with this is it is completely out of context. Quite a few of the text messages on this have no previous text messages. It is obvious he's answering a question. There is no previous question on it. There is no answer from Heather, because she didn't use the term "David" in it. It's not an accurate representation. We think 401 and 403 -- 403 specifically says confusion, as well as

prejudice. This creates confusion among the jurors. It is nothing more than a word search, don't see how it would be relevant and admissible.

THE COURT: Yes, ma'am.

MS. LIVESAY: Your Honor, Lori Dudley is going to explain that these conversations are between Heather and David; in fact, they came from Heather's phone and the way the report was created, it was a finding of a word, which of course the key word was "David," who is the victim in the case. What this means is when you do a key word search, she's going to explain you cannot do the conversation through a time line because that is not the way you are running the report. You are running the report every time it catches his name, which means it may not be in a format where it is Heather, David, Heather, David. It is just every time it is catching that name.

She'll tell the jury that. Certainly Mr. Martin can cross-examine on the fact that, yes, this is every time his name is mentioned, this is every message between him and her, but it is not in the exact order. Now, in saying that, every message is dated and timed, so they know when they are looking at it, this message may not be in order, but they know the date and time when they are looking through the report when that

message was sent. So all of the information is there, and it is just like we were told earlier, the only way to get these messages exactly in a timeline would be for us to manually go through it and put it in a timeline for a cut and paste type fashion. We decided just to do David's conversations this way to keep from having to put in the entire report. So we are left with this subsection of the report because we can't get in the entire report due to Mr. Martin's objections, so this is what we have been left to do to create some section that keeps it just between her and the victim.

MR. HYMAN: And, Judge, just to let you know. I went through about 2,000 of the text messages, and only about two, two-and-a-half, 3 percent of those text messages are Heather. Again, it is not --

THE COURT: Who are they?

MR. HYMAN: What I mean is they are only from David. It is not her responses. It is not her questions. It simply is his responses. So you'll have 200 text messages and no response from Heather. I mean, it confuses the jury to think maybe she's not answering him. Judge, again, the prejudicial value of that is there is no context to it. It does nothing but creates confusion among the jurors. Judge, the

messages between the two of them can be seen in what we have agreed to admit, but not in this.

THE COURT: Well, obviously, it has to be relevant. What I'm a little concerned about is -- I'm a little worried about the context. So how do we fix that so that they understand that -- I mean, I understand you are going to question her and -- I'm a little concerned that the messages are not synced up. I mean, I guess --

MS. LIVESAY: They don't sync up, and the reason why is there is no reason to run the reports to sync that. Now, in saying that, Mr. Martin is more than welcome to introduce the other text messages that he wants to introduce, and he's more than welcome to introduce a report that syncs up, but like I say, in order to do that, you have to manually cut and paste every message, and the only alternative is to introduce the entire report, entire timeline to show him, her, him, her in that sequence.

THE COURT: Which one -- you objected to the whole thing?

MR. HYMAN: Right. And, Judge, again, a word search, I just don't see the relevancy of that.

THE COURT: Well, and I understand. I'm assuming that the relevance -- and I'm just making this broadly

wild assumption -- is to show these people's relationship and potential motive. And I understand your objection. I'm going to let it in, but, again, I'm going to give you broad cross-examination. I mean, it is what it is, and if it is not worth anything, it is not worth anything, but I understand your objection.

MR. MARTIN: Let me add to that. The foundation of this is simply the word search of the name "David," all right. That cannot equal relevance in and of itself, and it's impossible to read every one of those things for prejudicial material. Again, first set there is context to, but I want to be sure the Court understands before you let it in -- and you can't cross-examine it, I mean, it is a document. So cross-examination will be had, she will explain how it is printed out like it is. But, again, just as the objection to the other one of the first set under 401 and 402, which you overruled and you'll put that in, but i Raises it to another level to now we are -- the basis of the introduction is the word search of the name "David."

THE COURT: Let me ask you this. Will that pick up "David Smith"?

MR. HYMAN: Yes. Yes.

THE COURT AND ATTORNEYS

THE COURT: So you just have the word "David"?

MR. HYMAN: Yes, Judge.

MS. LIVESAY: Yes, sir. If you put in a word find or word search, if that word is not in the word search, then it is not going to pick up that word. It picks up identical how you put it in. So if you misspell it, it won't pick up that word. It picks it up identically how you put it in.

THE COURT: Tell me how it is relevant to have all of the texts that have the word "David" in it.

MS. LIVESAY: First of all, Your Honor, it is her phone. It is showing the conversations going between her and him leading up to the murder August the 11th. It has already been introduced into evidence through Renee Hardwick that there was a 911 call made July of 2012, that is a year prior to when --

THE COURT: You keep mentioning that, but that has not been introduced in this case, right?

MS. LIVESAY: It came in through Renee. The call was made. Mr. Martin questioned her, so it is already in there. We really have no way to get those conversations because we don't have the phone that they had during July 2012. Of course, I would love to have the phone during that time frame. So now the best I can do is introduce what is going on between

836

the defendant and the victim leading up to the murder. This is her phone, which makes it relevant. It is the defendant's phone. She has shot him. She is in here saying that it is in self-defense. She's had to call the police on him before, that is what they are saying. So it is relevant to show what is going on between these two people in August of 2013.

THE COURT: Here is my problem. It shows what is going on between her and anybody named David.

MS. LIVESAY: No, sir. No, sir. It shows -- I've looked at the texts. It shows anything between her and David.

MR. HYMAN: That is not true.

MS. LIVESAY: And any messages that include the name David. So if the name David is included in the message, that message is included, but other than that, it is the messages between her and David.

MR. HYMAN: Judge, if I may say. It does not include her messages unless she uses the word "David" in it. There is a message, No. 571, you have listed --

THE COURT: See, here is another problem. I don't have this, so I'm taking your -- I don't have a copy.

MR. HYMAN: This message says, Not necessarily

from my car, maybe David Floyd.

David Floyd is an ex-Horry County policeman who runs a gun store. I mean, what relevance does that have to make other than the fact it has the word "David" in it? Again, none of her responses to any text messages are in this unless she uses the word "David."

MS. LIVESAY: Your Honor, the only answer to that is under the rule of completion, and if they would like to introduce the rest of the report, they can do it. It is there. It is available. I tried to introduce it just for that simple fact to show, look, I'm not just giving tidbits, here is the whole report from January to August. They don't want it. So then it is okay, well, I want to introduce between -- just the defendant and the victim? I mean, I can't imagine in my wildest dreams how that's not relevant leading up to a fact that she has killed him.

THE COURT: That is relevant, but what he is telling me is that there aren't -- that packet there doesn't have text messages between she and he, it just has messages that mention the word "David."

MR. HYMAN: Judge, it has all the messages from him because it says "from David," but unless her message uses the term "David" or "J.D. " or

"David Floyd" or "David Smith" or anything like that, it is not included.

THE COURT: So if he asks this person a question, These are only the text messages that only have the word "David" in it, she has to say yes?

MS. LIVESAY: Yes. I'll ask, How did this report come about, and if his name is used in the context and the name is up there, to/from David, that message is up there. The problem is we are left with this issue that the report has been out there for a year. We have given it to them in discovery. They knew this day was coming, and now we're in a situation where we've done everything we can to introduce something, and there is no other way to do it other than the way we're doing it, and the only other way they are objecting to the complete report.

Now, they can run off and get all Heather's responses to these texts. Please, do it and introduce it. It is allowed under the rules. I want them to do it, but I can't produce what they want, and they won't allow me to produce the entire report. So this is kind of where I've been left with it. I don't believe because they haven't looked at the report, they haven't adequately prepared should be my issue at this point.

THE COURT: Okay.

MR. HYMAN: Judge, they can do it manually to each text message if they wanted to. If they have a specific text message, we can do that. That is not a problem. But putting in 5,700 text messages with no responses -- and, Judge, I do want to put on the record, these are not the complete text messages, even for David. It says his text message and be cut off. It will say "because," and then it doesn't have the remainder. It creates nothing but confusion.

MS. LIVESAY: We solved that problem, and we talked about it in the back. The electronic copy can produce the full amount of the text. It is just the fact it is printed off. That space only allows so much of the text.

THE COURT: How are you going to fix it? Are you going to put it into evidence and also the jump drive?

MS. LIVESAY: Yes.

MR. HYMAN: The jump drive is the entire CAD report.

THE COURT: I thought it would be just that.

MR. HYMAN: They just printed this off for us.

MS. LIVESAY: If I may, this could solve this issue. Ms. Dudley has the file that Mr. Hyman is holding and that we handed up to you electronically,

so we can hand up just that file.

THE COURT: Here is the deal. I understand your objection. I mean, it is a document that is produced. As I said yesterday, I'm not sure who it helps, but if they want to introduce it, I'll allow you to cross-examine. The question is, is this just a pile of letters or text messages that have the word "David" in it? I mean, I'm not sure how helpful that is, but I'll allow it in. I understand your objection, and it is duly noted.

Okay. Anything else? Somebody said something about clothes?

MS. LIVESAY: I do have an issue, yes, sir. The defendant's clothes earlier were not allowed into evidence because of Mr. Martin's objection to the chain. So I came in and spoke with him about it this morning, that if that was the case, I was going to want to revisit the issue with the chain for DNA, and my understanding is that at this time he is stipulating and allowing her clothes to go into evidence.

THE COURT: That's right.

MR. MARTIN: I have no objection to those related to the chain. I can't remember exactly what was testified to, but I think there was a foundation laid

that they took her clothes, so I --

THE COURT: From our hearing way back when?

MR. MARTIN: Yeah. Yeah. So I have no objection regarding the chain and Heather Sims' clothes.

THE COURT: Okay. Because I think that is a smart thing to do for both of you all, to just take these minuscule objections that don't have any relevance and put them aside. We'll let the clothes in.

MS. LIVESAY: Thank you.

THE COURT: Bring them in.

(The jury enters at 10:32 a.m., and the following is heard in the presence of the jury.)

THE COURT: Thank you for your patience. Call your next witness.

MS. LIVESAY: Your Honor, the State calls Lori Dudley to the stand.

THE COURT: She's still under oath from yesterday, come on up.

(LORI DUDLEY, having been previously sworn, testified as follows:)

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q Ms. Dudley, if you don't mind, just for the jury, the Court and all of us, remind us again where you are

842

employed?

A Employed by the Horry County Police Department assigned to the Crime Scene Evidence Unit.

Q And if you don't mind, again, what training do you have in Cellebrite?

A I have Cellebrite certifications through the Cellebrite company. I have taken a three-week fellowship with the creator of the software of the Cellebrite company. I have UFED certifications for operator.

Q And how many Cellebrite reports have you done?

A 163.

Q And are you familiar with what a Cellebrite report looks like and how to read a Cellebrite report?

A Yes, I am.

Q Now, how long have you been working again with Cellebrite?

A Three years.

Q And if you don't mind, tell these people again what exactly that does in regards to a cell phone?

A The cell phone is the physical evidence that is collected and turned into us. The cell phone is connected to what is considered a UFED, a forensic data extractor. You connect it to the data extractor, and the data extractor reads it into Cellebrite, which is

software that helps us to read the data extracted from the cell phone. It puts it in a read-only format so we can read the table of context, jump around through the information collected. It has a timeline so we can look for the date and time to see the correlation to the incident.

Q Okay. And when you say "read only," that means whatever messages come off of that phone, they cannot be altered or tampered with in any form or fashion by you or anyone else?

A That is correct.

Q Now, are you familiar with the case we're here today for?

A Yes, I am.

Q And did you Cellebrite any phones in this particular case?

A Yes, I did.

Q If you don't mind, tell this jury whose phone you Cellebrited in this case?

A I Cellebrited the defendant, Heather Sims' cell phone and a cell phone for a David Sims.

Q And if you don't mind, tell this jury -- give them a rough estimate of how lengthy the report is for the defendant's phone?

A The defendant's phone is approximately 4,000

pages.

Q And can you take out certain material from a certain date on that Cellebrite report and extract that particular time frame?

A You mean key word search? Yes, you can do a key word search for the entire content of the phone and extract that data. If I wanted to extract information about an apple from a phone, I can type in the key word "apple," and every time it appears, it should pull it on key word search.

(State's Exhibits 110-112 marked.)

Q Let me show you State's Exhibit 111 and 112 -- State's 110, 111 and 112? Take a quick look through that.

A (Witness complied.)

Q Are those sections from the defendant's phone from her Cellebrite report?

A Yes, they are.

Q So the entire contents of the phone is downloaded in one big report; is that correct?

A That's correct.

Q And the two things I've handed to you are just a section of that report?

A That's correct.

MS. LIVESAY: Your Honor, at this time I would

like to admit Exhibit 111 and 112 into evidence.

THE COURT: Subject to the objections.

MR. MARTIN: Yes, Rule 401, 402 and 403.

THE COURT: Admitted.

(State's Exhibit 111 and 112 admitted.)

Q (MS. LIVESAY) So everything in this notebook, 112 and everything in this report, State's Evidence 111, all came off the defendant's phone?

A Yes.

Q Is that correct?

A Yes.

Q So all of these messages are between her and someone else?

A Yes, that is correct.

Q Would you please tell this jury what the time frame is on this report? I apologize, I put it in backwards?

MR. MARTIN: Which exhibit?

A 112.

MS. LIVESAY: We put in as in accordance to earlier from May until August, but I actually put August in the front, and I ran it from August to May. I'll fix it.

A This report runs from May 1, 2013 until August 15, 2013.

THE COURT AND ATTORNEYS

Q (MS. LIVESAY) And does that include all of the texts on this defendant's phone from that time frame?
A Yes, it does.
Q Between David or whoever else she was texting?
A Whoever this device communicated with, yes.
Q On that report, just so this jury knows before they look at it, does it show a date and time when the text was sent?
A Yes, it does.
Q Does it show who that text is to or from?
A It shows who the text is sent from and who it is delivered to.
Q Now, Cellebrite, is it capable of pulling deleted information off of the phone?
A Yes, it is.
Q When you are looking at the report, does it indicate to you whether or not that information has been deleted?
A It does.
Q And if you don't mind, tell this jury so when they look at the report they'll know how it is indicated if it has been deleted or not?
A Can I take the page out?
Q Yes.
MS. LIVESAY: Can she step down? The writing is

847

so small.

THE COURT: Sure. Sure.

A In the report -- in the report, the very far column where the word "yes" appears, on the original download here it will appear in red when it is deleted information and recovered.

Q (MS. LIVESAY) So if it says yes that means that was a message that was deleted?

A Yes.

Q And if it says nothing, it just means that it was recovered and never been deleted?

A Yes.

Q They are looking at the far left column that either says "yes" for deleted, and if it's not deleted, there is nothing there?

A That's correct.

Q If you don't mind, tell these people is Cellebrite capable of recovering all of the deleted information?

A Not always. All deleted information is not always recovered.

Q When it recovers a deleted message, does it recover all the information regarding that message?

A Sometimes it will; sometimes it won't. It depends on how much memory and storage space is left on

the phone.

Q It is just able to recover as much as it can from the deleted file?

A Yes.

Q But that is normally not all the information about that message?

A That's correct.

Q And it is not able to recover all the deleted information?

A Right.

Q Thank you. Now, we talked a little bit earlier about a key word search?

A Yes.

Q If you don't mind, explain to this jury how that works.

A Once data is extracted from the phone, it is a report file just like you see here. There is -- just like an Excel document, there is a "find" bar, you type in the word you want to search for in the "find" bar, and every time the word or contact appears, it pulls that information, it jumps from spot to spot where the word appears at. You can transfer that to another document so that it is readable in Adobe format or whatever format you would like to transfer it to.

Q So it is basically -- when you are looking at an

electronic form -- so I'm clear -- you go to "find word" and you put that word in, and it jumps through that report every time it sees that word?

A Yes.

Q Now, I'm showing you what is in evidence as State's Evidence 111; are you familiar with this?

A Yes, I am.

Q And is this a subsection of the entire Cellebrite report?

A Yes, it is.

Q And if you don't mind, tell the jury what this is, State's Evidence 111?

A This is a key word search that was done using the word "David."

THE COURT: Using the word what?

A David.

Q (MS. LIVESAY) So these are just messages from every time the word "David" is used?

A Every time the report pulled the word "David" or from the contact "David."

Q This is from the defendant's phone?

A Yes, it is.

Q If you don't mind, tell them so they'll know what the date range is on this report.

A December 2012 to August 2013.

THE COURT AND ATTORNEYS

Q Now, let me ask you this. Is there a way -- because I know you pulled this by key word search -- is there a way -- on that 4,000 page report, is there a way to just carve out all of the conversations between the defendant and the victim in a timeline type of format?

A Not using a key word search.

Q Is there any way to do it other than manually going through?

A Not that I'm aware of.

Q So this is the only way you can collect this information off her phone every time the word "David" is used?

A Yes.

Q Now, if law enforcement -- how long have you been with the police department?

A 18 years.

Q And you specifically do evidence and Cellebrite?

A Yes, I do.

Q When we're looking at this report, if there is a certain topic we're interested in seeing on a phone, can you use the word search then?

A Yes.

Q And have you used the key word search on this defendant's phone to look up certain topics?

851

A Yes, I did.

Q Are you familiar with the exhibits we're getting ready to show?

A Yes, I am.

Q And did all of those come from the defendant's Cellebrite report?

A Yes, they did.

Q And did all of them come from a time frame between May of 2013 to the point this victim was killed?

A Yes, they did.

Q All right. And you are familiar with the entire report?

A Yes.

Q Did you -- were you able to do a key word search to find out whether or not she ever discussed life insurance with anybody, including the victim?

A Yes, I did.

Q And did you find out whether or not those texts were in the Cellebrite report?

A Yes, I did.

Q And were they in the Cellebrite report?

A Yes.

Q Now, if you don't mind, I'm going to show you a text from this Cellebrite report, and would you please

give the information of the text to this jury, what they are looking at?

MR. MARTIN: Your Honor, obviously this is introduced and protected on the record regarding the admissibility of these items.

THE COURT: That is correct.

Q (MS. LIVESAY) First of all, tell us what this information is telling us on this top line, what information are we looking at on the top line?

A It shows Line 693, instant message, and that is the uniform time that the messages came through, and the date. It is showing that it came from 1-843-[redacted], which is the defendant's cell phone number, and then the data extracted.

Q On this time I noticed the date was May 29, 2013?

A Correct.

Q But it says 1:38 UTC time?

A Right.

Q That is not eastern time?

A That is correct.

Q If you don't mind, could you tell this jury so they know what is the conversion between UTC time and eastern time?

A UTC is four hours in advance. So in order to get the eastern time code, you would have to go four hours

behind.

Q And is every Cellebrite report in UTC time?

A Yes, it is.

Q So to know what time this was sent in our time, you subtract four hours?

A That's correct.

Q And is this telling us who it is from?

A Yes, it is.

Q Now, would you please tell the jury how you came across this particular message?

A Using the key word search for life insurance, the report pulled this message. As you can see, the first sentence the word "life insurance" appears. I'm going to call my life insurance company.

Q I noticed -- on this particular messages, does it tell us who it was sent to?

A No.

Q So all we know from this message is it is something that the defendant is sending to someone else from her phone?

A That is correct.

Q Were there any other messages regarding life insurance on the phone?

A Yes, there are.

Q This is very small. I'll see if we can make it

bigger for the jury. On this message, again, it is telling you who this message is from; is that correct?

A That's correct.

Q All of these messages came from the defendant on her phone; is that correct?

A The messages that are from 602-[redacted] are from her phone, and the messages from 319-[redacted] are received by her phone.

Q So this is showing from her the 602 number?

A Yes.

Q And where it shows from 319, that is a message from him to her?

A Yes.

Q I noticed in here, is it indicating whether or not that message has been deleted?

A The red portion that says "yes" means that message was deleted.

Q Okay. And could you please tell this jury, because it is very small, what this conference is about?

A This conversation is about -- apparently they are discussing life insurance.

Q So him and her are discussing life insurance in this conversation?

A Yes.

Q And she has deleted some of these messages?
A Yes.
Q Now, does she have -- did you find any other messages regarding life insurance on her phone?
A I believe so. Can we go to the next slide?
MS. LIVESAY: Can we look at the next slide?
Q (MS. LIVESAY) What are we looking at here?
A This is more conversation between Ms. Sims and 319-2683, Mr. Sims.
Q So these are more messages between David and Heather regarding life insurance?
A Yes.
Q And, again, you have the number who it is from, showing her number, 602, and when he's responding back, the 319?
A That's correct.
Q Again, the date is May 29 of 2013?
A That's correct.
Q Okay. Can we see the next slide, please? Again what is this about?
A This insurance key word search pulled from the first couple of words where it says, I called my insurance company to see if they will take my blood pressure without drawing blood. It was another message pulled through the key word search.

Q So he's saying here something about drawing blood and blood pressure?

A Yes.

Q And this 602 is her telling him he can take it?

A She can take it, I'm assuming, because she sent the message.

Q Sorry?

A The message says, I can take it, and it is from her, so.

Q So this message is from her saying, I can take it, see if it's lower?

A Yes.

Q And this message here in June of 2013 is him discussing again with her the specifics about getting life insurance?

A Yes.

Q Tell us about the information on this message. First of all, what is this message about?

A This is also pulled from key word search under "life insurance." The message is from 319-2638, which is David Sims' phone, I forgot to tell you my life insurance agent call me Wednesday and said that my blood pressure was low enough to lower my rate back to preferred.

Q So now we're in July of 2013, again, now talking

857

about the specifics about the rate he's going to get for life insurance?

A Yes.

Q Other than --

MS. LIVESAY: Sorry. Bobby, can you turn the lights on?

Q (MS. LIVESAY) Now, other than these messages on life insurance that stems from May into June into July, did you do any other key word searches regarding topics discussed on this phone during that time frame?

A Yes, I did.

Q If you don't mind, tell this jury one of the other words you searched for during this time frame. Would it be easier for you to see the paper copy than look up here? I know that angle you have is not good.

MS. LIVESAY: This is just the slide show so she can see it up there.

A I did. I did a key word search on the word "divorce."

Q (MS. LIVESAY) Did any discussions with that word come up on this defendant's phone between May and August?

A Yes, they did.

Q Are they on these slides here?

A Yes.

Q Can you give the information from that particular message?

A Yes, I can.

MS. LIVESAY: Yes, please, Bobby.

Q (MS. LIVESAY) Give us the information on this particular message.

A This message is sent from the device that was downloaded, obviously, to the far right it says "sent" and date is 7/22/2013, 2:32 p.m., Universal Time Code. The message is deleted is what the red "yes" means. It says, I am. Divorce is not an option. It may be for him, but we're going to sort this out, just makes me feel so bad because, you're right, this should be the happiest time for us.

Q I notice on this message there is no phone number. If you don't mind, tell this jury why there is no phone number on this message?

A Partial information was recovered only because the message was deleted.

Q So when you delete it, you can only recover certain aspects of the message?

A Depending how much the phone is used or the device is used.

Q Okay, but this tells us that she sent this message to someone?

A Yes.
Q And that it was deleted?
A Yes.
Q And did you do a further key word search on this word?
A Yes, I did.
Q Did any other messages come up other than this message?
A Yes, they did.
Q Can you give us the information off of those messages?
A Yes, I can.
Q If you don't mind, tell this jury --
MS. LIVESAY: Can we make that any bigger for them?
Q If you don't mind -- this is hard to see. If you could tell us, first of all, what the date frame is on these messages?
A The messages are August 6, 2013.
Q And, again, I noticed there is no phone number on these messages?
A That's correct.
Q Why is that?
A These messages are deleted messages, and only personal information is recovered.

Q And were all of these messages deleted off of the phone?

A Yes.

Q And if you don't mind, I noticed some of these arrows are pointing in and green, and some are pointing out and they are blue. Tell this jury, so they know when they are looking at this, what does this mean?

A The arrows means sent and received.

Q Okay. So these are indicating what messages she sent to someone, and what messages have been received to her phone?

A Yes.

Q Now, if you don't mind, this portion of the report was gathered again how?

A Cellebrite.

Q So this is, again, is topic of divorce here in August of 2013?

A Yes, it is.

Q Now, did you look at any more sections of this whole Cellebrite report?

A To compare?

Q Regarding divorce or life insurance, are there any other texts that you pulled out of the report?

A That's it for divorce.

Q Sorry?

861

A For divorce, that was it.
Q So this is the last one for divorce?
A Yes.
Q Did you look up any other key words in the report?
A Yes.
Q If you don't mind, tell the jury about that.
A There were other key word searches done for insurance, as opposed to using "life insurance," to use for the slides also.

MS. LIVESAY: Is that our last slide? One second, Your Honor.

Q (MS. LIVESAY) So these slides we've looked at are the key searches you've done for insurance and divorce?
A Yes.
Q Okay. But you had access to the entire report?
A Yes.
Q Including the day that David was killed on August 11, 2013?
A Yes.
Q And were you able to put a timeline together as far as what was going on on this phone on August 11, 2013?
A Yes, I was.

Q Can you go through that time line with this jury?

A Sure.

MR. MARTIN: Is this an exhibit? Are we talking about -- are they --

THE COURT: Is there a number on that that you can see?

WITNESS: I don't see a number.

THE COURT: Do you want to mark it as an exhibit? Just so we can refer to it? Is this entered?

WITNESS: Do you have an exhibit number?

MS. LIVESAY: The timeline? Yes, ma'am. Do you need light?

WITNESS: He's asking for the exhibit number.

MS. LIVESAY: Your Honor, I was going to put all of this in as one exhibit, unless we want to do each slide separate.

THE COURT: I think it needs to be marked somehow to refer to it.

MR. MARTIN: I agree. I mean, it just needs to be marked whether you do it for each slide -- probably for each slide.

THE COURT: Do it for each slide. We'll give her a chance to do that so we know what we're referring to.

MR. MARTIN: Since we already are through, mark

it, except for this one, after the jury goes out so we're not waiting for that marking to be done.

THE COURT: Fine with me.

(State's Exhibits 113 and 114 marked.)

MS. LIVESAY: I'll turn the light back on, and we'll go over that with the jury.

Q (MS. LIVESAY) Do you mind stepping down. First of all, did the information on this timeline come from the defendant's phone?

A Yes, it did.

Q And if you don't mind, I'll show this jury this, and if you don't mind, tell them what these columns of information are?

A The first column, the time, is converted time. As I was telling you earlier, the UTC time is different from the time we use, so this is the converted time to the far left. The data is the data that was extracted from the timeline report, and the sender is where the information was gathered from, the location collected from the report.

Q So the first line is the time, date, and then the last location is where exactly that came from off the Cellebrite report?

A Yes.

Q If you don't mind, go through the timeline and

tell this jury what this information is and where it came from.

A 6:00 a.m., woke up, there's some notes that were entered at 5:30 p.m. on Line 158. At 7:00 a.m. --

Q (MS. LIVESAY) Let me interrupt you. When you say "from notes," what notes?

A There is notes that were entered in the phone, like a daily log, of activities that a lot of new parents do with their children, they keep up with daily activities of their child.

Q So these were notes on the defendant's phone she was making?

A Yes. Yes.

Q Go ahead.

A 7:00 a.m. was taken from the notes. 8:10 to 8:40 a.m., "Slept." 8:50 to 10:20 a.m., "Played." At 9:14:06 a.m., "So I dreamed that we were on a call and you needed your appendix out, so I did your anesthesia," was sent by Heather Sims. At 9:24 a.m., "Hilarious," was sent by a Lindsey Coleman, MD. That contact was a contact in the defendant's phone. At 10:17 a.m., "Didn't get your text last night until this morning, I went to bed," was sent by Heather Sims. 10:18, "IK, I figured you did," was sent by Ronnie Causey, a contact from Heather Sims' phone. At 10:28

was another note entered later that day with daily activities. At 10:44, "I found it," was a message sent by David Sims, another contact with Ms. Sims' phone. 11:00 a.m., Baby milestones were entered -- another thing parents do -- "teething, two months; chewing, four months," that were entered at 11:00 a.m 11:30, 11:45, "Ate." 11:42, "We sitting on the bench," was sent by Heather Sims. 11:45, "Played," taken from notes. 11:48, "What bench" was sent by that device by David Sims. 11:49, "At the entrance we came in at" was sent by Heather Sims. 12:05, "When's Mom's appointment -- I guess that is appointment -- A-P-P-T, with Jarret," sent by Heather Sims. 12:26, "Ate. At 2:45 tomorrow" was sent by Ronnie Causey. 1:00 p.m., "Slept." 2:15, "Ate," from notes. 2:30, "Woke up." 2:30 to 5:00, "Played." 4:37 p.m. incoming call to David Sims' phone. 5:16, "Are horses out" is sent to Heather Sims' phone -- Heather sent that message, I'm sorry. 5:17, "I'm pulling in driveway, I'll let them out" is sent to Heather's phone by Ronnie Causey. 5:17, "We can so you don't have to" is sent by Heather. 5:00 to 5:30, "Slept." 5:38, "Ate."

Q Before we get too far, is this all the information regarding Heather's phone that day?

A Yes.

Q So none of this has been edited? This is exactly off the phone that has been taken out?

A No.

Q Now, I noticed here you have Ronnie Causey and a text regarding Lindsey Coleman up at 9:24?

A Yes.

Q If you don't mind, how do you know that that phone number or that person belongs to that message, tell this jury.

A Because it says "from" in the log on the time line.

Q So this is in the context -- this name is in the contacts and it shows up when the message comes up, This message is from Lindsey Coleman or Ronnie Causey?

A Yes.

Q So it's just like when I pick up my phone and I see a message from Ginger Pop, that is how it looks on this report?

A Yes.

Q Do you have the information off the phone after 5:30?

A Yes, I do.

Q If you don't mind, tell this jury about what was on the phone after 5:30.

MS. LIVESAY: Can you jump back, sorry.

867

Q (MS. LIVESAY) Do you see any conversations here between -- were there any conversations between David and Heather up to this point on 8/11 that are cussing or showing any foul language or anything like that?

A No, I don't.

Q So the only messages up to this point between him and her was just him looking for which bench she was sitting on?

A Yes.

Q If you don't mind, tell the jury again, is this from 5:30 on, on August 11, 2013?

A Yes.

Q This is all the information came off the defendant's phone?

A Yes.

Q And has any of this been edited in any form or fashion?

A No.

Q If you don't mind, tell them about the information from 5:30 on?

A At 5:32 p.m. a message is sent, "How are you feeling." At 5:32, "Okay, better" from Sandra Causey. 5:46, "We forgot the baby shower today, Mama and Kitty went." 5:57, "Crap." 5:57, "I thought about that. I had forgot when it was though." 5:58, "Well, I wish

Mama had called me. She and Kitty always do stuff without including me."

Q So I'm clear, when it says "Sandra Causey," this is just like when you look on your phone and you see I have a message from John Smith?

A Yes.

Q And, again, on the last line and on this slide, we are now seeing messages going on between the defendant and her parents?

A Yes.

Q Ronnie Causey and Sandra Causey?

A Yes, ma'am.

Q And this is showing us the messages and what they are talking about?

A Yes. At 6:00 p.m. a message is recovered that is not found, the content is not found, just a blank message. There is no way to explain it because I don't have the capability to change the information, I just pulled the message and it has an unknown contact, so I don't know where it came from. Incoming call at 6:07 from David Sims' to Heather Sims' phone. 6:13 a call is made. 6:15 outgoing call to (843)[redacted] is attempted and canceled. 6:15, outgoing call to (843)352 is attempted and canceled. 6:20, outgoing call to Mom.? 6:35 incoming call from "Mom." 8:04,

incoming call from Katie Brehn is pulled and deleted. 8:26, incoming call from Terry Daniels. 8:27, incoming voice mail from Terry Daniels. 9:15, Lindsey Lewis sends a message, "Hey Heather, it's Lindsey, you don't have to worry about the blanket." 9:15 Lindsey Lewis says, "Leigh in her blanket sleeper," and she also sends at 9:15, "Thank you though." Incoming call from "Mom" at 9:16. 9:53, "Use 343432 as your password for Facebook for iPhone" is received from 32665. 9:54, "Use 343432 as your password word for Facebook for iPhone." 9:55, "Are you okay" from Will Bratcher.

Q When we're looking at the fact that there was an incoming call at 6:07 from David Sims, that means when she picked up her phone -- or if you looked at the phone, it was showing David calling her, there was connection between the two phones?

A Yes.

Q So at 6:07 his phone is calling her phone?

A Yes.

Q And it is already in evidence the 911 call is picked up at 6:13. Now, at 6:15, couple minutes later, it says "outgoing call" and then "canceled;" what does that mean? Does that mean you push the number and then push "end"? What does that mean?

A Canceled is just described on the phone. The

outgoing call is noted on the report, and the actual iPhone itself notes that it was canceled.

Q So after 911 is call, there is at least two attempts on the defendant's call (sic) to call out to somebody around 6:15?

A Yes.

Q And then at 6:20 is ultimately when a call was actually connected between her phone and "Mom"?

A Yes.

Q Now, I noticed this says outgoing call to Mom, and the messages say Sandra Causey?

A Yes.

Q Explain that to the jury, if you know.

A It is just how the phone is logged as in the contact information in the phone. I don't have an explanation except for when she added her contacts in that both names were used.

Q So, basically, when you look at the report, it says Sandra Causey?

A Yes.

Q And when you look at the report on the phone call of 6:20, the report registered that call just went to "Mom"?

A Yes.

Q Now, I noticed around 9:53 there is some

messages. Are these messages coming into her phone at 9:53?

A Yes.

Q And these are messages indicating something about a password on Facebook?

A Yes.

Q Now, was anything on this timeline edited in any form or fashion?

A No.

Q And to the far right column, you can actually go to the report, to that line, and find that exact information?

A Yes.

Q Now, there is consistent use on the phone before 6:13; is that correct? The phone is in use?

A Yes.

Q And there are messages going back and forth between, at some point, David, Lindsey, Sandra Causey and Ronnie Causey before 6:13?

A Yes.

Q And those messages are on this screen?

A Yes.

Q Do any of those messages indicate anything was going on or there was any difficulty going on, anything like that?

A I don't see anything.

MS. LIVESAY: Can I flip back to the last prior screen?

Q (MS. LIVESAY) At 11 o'clock -- and this is eastern time; is that correct?

A Yes.

Q So you converted this already in eastern time?

A Yes.

Q But when they see it on the report, it will be in UTC time?

A That's correct.

Q I noticed at 11 o'clock this says, "Baby milestones, teething two months, chewing four months," from notes?

A Yes.

Q Was there anything else on that particular note?

A Yes, there are.

Q There was?

A Yes, the dots.

Q If you don't mind, tell the jury what else was on that note?

A Can I go back?

Q Yes.

A Baby milestones, teething two months, May 26, question mark. Rice, five weeks. Lifting head, two

months. Smile, two to three days. Laugh, three weeks. Mouthing my face, seven weeks. Laughing at people, two months. Held bottle June 26, three months. Putting things in mouth besides hands, July 5, three months. Reaching for things, 3.5 months. Holding head for awhile, three months. Rolling over, July 21. Fed with spoon, July 31st. First fed avocado, August. Starting putting things in mouth and chewing, four months.

Q So those are the notes of the milestones of the child?

A Yes.

Q Anywhere in those notes does it say anything about taking a first step or crawling?

A No.

Q Did you at some point -- to authenticate whether or not this information was consistent, did you turn the phone on?

A Yes, I did.

Q And could you see those phone calls after 911 was called, the canceled calls, can you see those on the actual phone?

A Yes, they're there.

Q These are all from -- just so everyone is clear, there has been a lot of information. This all came

from Heather Sims' phone; is that correct?

A Yes.

Q And what we had put into evidence, and what this jury has seen is just a section of a four-page report?

A Yes.

Q In fact, the full report is in about three or four great big notebooks; is that correct?

A Yes.

Q Now, that was the defendant's phone. Did you Cellebrite the victim's phone?

A Yes, I did.

Q I'll show you what is marked as State's 110.

MR. MARTIN: No objection.

THE COURT: Without objection.

Q (MS. LIVESAY) I'm showing you State's 110; do you recognize that note.

A Yes, I do.

Q (MS. LIVESAY) Tell this Court, first, what this is.

A It is an extraction report from Cellebrite for Mr. Sims' phone.

Q And, again, it came out in a read-only form, so it can not be tampered with?

A That's correct.

Q This is the Cellebrite report you got off of his

875

phone?

A Yes, it is.

MS. LIVESAY: At this time, I would put State's 110 into evidence.

THE COURT: Subject to any objections.

MR. MARTIN: I have no objection to that.

THE COURT: Objection?

MR. MARTIN: I thought it was already in.

THE COURT: If it is not, it is now.

(State's Exhibit 110 admitted.)

MS. LIVESAY: Thank you, Your Honor.

Q Do you mind stepping down again? This notebook and key word search is off the defendant's phone?

A Yes.

Q And this is only one section of a 4,000-page report?

A That's correct.

Q Now, did you do a Cellebrite download on his phone just like you did on her phone?

A Yes, I did.

Q And did it produce a report?

A It did.

Q If you don't mind, I'm going to open this notebook up. Is this the report off of his phone?

A Yes.

THE COURT AND ATTORNEYS

Q If you don't mind, you cannot help but just visually notice that this report looks a lot different than a four-page report. If you don't mind, explain to this jury when the date started on this report.

A 8/13/2013, and it ends 8/22/2013.

Q So were you able to collect any information off of his phone when you plugged it in prior to 8/11/2013?

A No.

Q Is there any information at all that came off of the victim's phone?

A Yes.

Q And if you don't mind, tell this jury what information that was?

A You want me to read it?

Q Yes.

A There is a message on 8/14/2013, How likely are you to recommend AT&T services to a friend or family member. On 8/14/2013, David, thanks for calling AT&T. Will text you sometime shortly for some feedback about your wireless call experience. Survey texts are free.

Q So hold on. That would be on 8/14 AT&T is thanking him for his phone call?

A Yes.

Q So that would be after he was killed on 8/11?

A Yes. On 8/13, Does your mom have a birthday

877

cake? 8/13, In on the way. 8/13, In on the way.

Q So this is somebody texting on the phone on 8/13, again, after his death on 8/11?

A Yes.

Q Any other messages?

A On 8/13 a heart is sent, just an emoji. 8/13, Okay, well, I can just bring some drinks and maybe some salad, bread or paper products. I'll see you later.

8/13 a message, Well, I was asking because Katie's mom is bringing lasagna. Did you want some later on? Love for you to come though.

Q So, again, this is on what day?

A 8/13.

Q This is somebody testing on David's phone about bringing lasagna and drinks?

A Yes.

Q This is after he was killed on 8/11?

A Yes.

Q So what else is on the phone?

A On 8/13, No, but I thought about some subs from Subway, question mark, or chicken dot, dot, dot, something that can be refrigerated. On 8/13, Oh, okay. Do you need me to come over? 8/13, I was going to come by later this evening.

Q These are messages indicating a back-and-forth

between someone using the phone?

A Yes.

Q So at this point, there are messages going out of the phone and into the phone on 8/13?

A Yes.

Q Again, after he was killed. So somebody else is using the phone on 8/13?

A Yes.

Q And they are discussing lasagna, drinks and birthday cake?

A Yes.

Q What else is on the phone?

A There is some outgoing calls -- incoming calls, sorry, and another message on 8/13. I will keep you in mind. At this point we're not ready to do anything yet. Thank you.

Q Are there any other messages?

A No.

Q I noticed there is a stream of words here, what is this?

A It is a user dictionary of words that possibly have been used.

Q And this is out of, again, the phone -- David's phone?

A Yes.

Q So at some point these words were used on that phone?

A Yes.

Q Sometime after 8/11?

A Yes.

Q If you don't mind, just so this jury knows, read some of -- read all of them, unless it is repeated. Read those words so the jury will know the words used on that phone after he's killed on 8/11.

A Don't repeat?

Q Yes.

A Bell South --

Q Speak loud so these people can hear you and this lady.

A Bell South, this, Allison, Heather, using, David's, phone, better, and, talked, to, lawyer, again, it's, okay, cling, over, in, a, little, bit, "R" -- just the letter "R," later, for, can, come, though, if, you, want, have, you, already, got, food, bring, I, was, asking, because, Katie's, mom, is, bring, lasagna, bring, some, on.

Q Is that all of it? If you don't mind, it sounds like those are words involved in some sort of message?

A Yes.

Q And something about in the beginning a lawyer,

and then the other messages we saw. Obviously, they are part of a message. Why weren't these -- why couldn't we find these messages on the phone like the other ones; do you know?

A The messages are deleted.

Q This is his entire Cellebrite report?

A Yes.

Q Is there anything on this report -- let me ask you this first. When you downloaded the defendant's report, we noticed on the screen there were other names like Sandra Causey, Ronnie Causey, Lindsey Coleman; do you remember that?

A Yes.

Q And were they contacts in her phone?

A Yes.

Q And that is why the name was popping up?

A Yes.

Q And, in fact -- let me ask you this. When you download the entire report, can you look through the person's contact list?

A Yes, you can.

Q So you are looking at it just like at your looking at her phone, Ginger Smith, and here is the phone number?

A That's correct.

Q Now, this is his entire report?
A Yes.
Q Please tell this jury, are there any contacts in this report?
A No.
Q So the only information we have off of his phone is AT&T sending him a message thanking him for calling on 8/13?
A Yes.
Q Thanking David for calling them from this phone?
A Yes.
Q But, of course, he's deceased by 8/13?
A Yes.
Q And then the only other information we have is some messages, again, on 8/13; isn't that right?
A From AT&T?
Q Any messages.
A 8/13 a message is starred.
Q So on 8/13, what you just read off, is the messages about lasagna and bringing food?
A Yes.
Q And then you read off what you called some key word -- some words that were at some point used after 8/11?
A Yes.

THE COURT AND ATTORNEYS

Q And some of them sounded familiar about the lasagna, and the first words were something about contacting a lawyer?

A Yes.

Q But those messages had been deleted, so we were never able to put all of those words in the same message?

A That's correct.

Q Now, if you don't mind, why does this Cellebrite report -- this is the entire report?

A Yes.

Q And the other one is 4,000 pages?

A Yes.

Q Why is this report -- why is it like this? Why don't we have more information?

A Because all the information has been deleted from the phone.

Q Okay. So when you got this phone, David's phone, it was basically like looking at a brand new phone that was only used for a couple of days?

A Restored to factory settings.

Q Restored to factory settings means just like when you go into AT&T and get you a new phone?

A Yes.

Q Okay. If you don't mind, are there any -- did

883

you see pictures, all of that stuff on the defendant's phone?

A Yes.

Q Just like you are looking through it in your hand?

A Yes.

Q Did you see any pictures, anything like that on this phone?

A No.

Q Had any contacts been added into this phone?

A Not that I'm aware of.

Q So no contacts was added, no pictures, just a few texts?

A That's correct.

Q And could you tell who was having this conversation on this phone about the lasagna and the birthday cake?

A No.

Q Why was that?

A They've been deleted.

Q And were there ever any contacts added to this phone?

A Not that I'm aware of.

Q This was on 8/13?

A Yes.

Q So no contacts had been added for kind of the norm --

MR. MARTIN: Objection. I object because it is repetitive to the tenth degree.

THE COURT: Ask one more time.

MS. LIVESAY: I'll rephrase.

THE COURT: Rephrase it. Sustain for your objection.

Q (MS. LIVESAY) Were there any contacts on this phone at all?

A No.

Q So when we looked at the Defendant's phone, we noticed there were contacts from "Mom"?

A Yes.

Q Nothing like that on this phone?

A Right.

Q You can have a seat. Now, you told us you Cellebrited the victim's phone; is that correct?

A That's correct.

Q Which means at some point did that phone come into Horry County Police Department?

A Yes, it did.

Q Now, have you learned at any point whether or not somebody else had that phone between the time it was used on August 11, 2013 to the time it came to the

885

police department?

A No. It is my understanding it was collected on scene.

Q I'm sorry?

A It was collected on scene, so, no.

Q Was the victim's phone collected on scene, or just the defendant's?

A The defendant's phone was collected on scene.

Q Was the victim's phone collected on scene?

A No.

MR. MARTIN: Objection. I object whether or not she has basis of knowledge for this line of questioning, unless she knows of her own personal knowledge.

THE COURT: Yeah, ask if she knows, and if she does, she can answer; if not, she can't.

Q (MS. LIVESAY) Do you know whether or not the victim's phone was collected on scene?

A No, it was not collected the day of the incident.

Q Okay. Now, do you know whether or not this defendant ever had possession of the victim's phone?

A She testified in the hearing --

MR. MARTIN: Objection. Object to that.

MS. LIVESAY: Your Honor, this is a statement against a party opponent. This woman was in here and

heard the statement.

THE COURT: Ladies and gentlemen, I need to send you out. You've been sitting for awhile. Go ahead and take your 15 minutes. This will take us five to finish. Don't discuss the case.

(The jury exits at 11:35 a.m., and the following is heard out of the presence of the jury.)

THE COURT: I've been wondering when we would deal with this issue. Your objection is --

MR. MARTIN: There is probably two, of course, maybe if we proffer her testimony, maybe I don't object to it. But the first objection is she's testifying to information she learned through hearsay or does not have personal knowledge thereof. Secondly, any testimony concerning she testified or she stated at a stand-your-ground hearing is inadmissible. If the statement of a party opponent -- if it is to be utilized, it shouldn't be utilized in the context of the stand-your-ground hearing. It is simply a statement made by the defendant at a different time.

THE COURT: Can you -- proffer it. Rephrase the question so we don't get into the previous hearing. That obviously creates --

MS. LIVESAY: Your Honor, first of all, we did

discuss at stand-your-ground that her statements would be admissible in this trial, that it was a statement taken under oath. And, in fact, when we were back there, Mr. Martin and I specifically discussed that, and we were in agreement that this was a sworn statement and it would be able to be used against her at a later date. So as far as whether or not it is admissible because it was from a prior hearing, it is admissible because it is a prior sworn statement made by this defendant.

Now he is saying now that his objection is hearsay. It is not hearsay when you use a statement against a party opponent. So the first leg is it is admissible because it is a statement made by the defendant under oath. It is not hearsay because it is being used against a party opponent. This lady was in the hearing, she heard the statement this defendant made under oath. Therefore, it is a statement being used against this defendant who is a party opponent. It is not hearsay. She has firsthand knowledge. She was sitting right here. She heard the entire statement made by the defendant.

THE COURT: Actually, I understood his objection -- you may not have an objection, right, you wanted to hear what she had to say?

MR. MARTIN: Well, her monologue doesn't accurately restate my objection. The objection -- it is a two-fold objection. One is Lori testifying that I know when the phone was collected, I know the defendant had the phone, those kinds of things. All right. Now, I don't she knows that. The objection related -- that was the hearsay part.

The objection I have related to any prior statement that she made at another hearing in court is based on the fact that it should be not premised in terms of another stand-your-ground hearing. It should be premised in terms of the defendant made a statement, A, B or C.

THE COURT: You don't want the stand-your-ground hearing --

MR. MARTIN: That's right.

MS. LIVESAY: Right. She could just say I heard her say.

WITNESS: I wasn't going to say that.

MS. LIVESAY: She knows now not to mention stand-your-ground. She'll just say I heard this defendant say.

WITNESS: So you don't want me to say I was in the courtroom?

THE COURT: Don't mention the stand-your-ground

889

hearing, no.

MS. LIVESAY: Can she say in the courtroom, or do you want her to just say --

THE COURT: I mean, she's heard the sworn statement. I think the best answer to avoid problems is, Do you know? Yes. What do you know?

MR. MARTIN: My objection is stand-your-ground hearing, courtroom. It simply is -- if anything is admissible, it can simply be said, "The defendant said."

THE COURT: That is what I'm saying. That avoids any mention of the previous hearing.

MS. LIVESAY: Sorry.

THE COURT: That's okay. I'm surprised it took us two weeks to face it.

MS. LIVESAY: She's clear on that now.

THE COURT: Take five, ten minutes.

(A recess was taken.)

THE COURT: You all ready.

MS. LIVESAY: Yes, sir.

THE COURT: Bring them in.

(The jury enters at 11:57 a.m., and the following is heard in the presence of the jury.)

THE COURT: Thank you. You can continue.

Q (MS. LIVESAY) We were talking earlier about the

victim's phone from this report?
A Yes.
Q And that reports the victim's phone -- and this is a section of the defendant's phone?
A Yes.
Q Now, do you have any knowledge of anybody in the house touching David's phone after he was shot?
A No. Ms. Sims said she took it from his pocket in the bathroom.
Q So you know there was a transfer in custody from the time he had it until the police department had it?
A Yes.
Q And the defendant told you she had had it?
A Yes.
Q Now, earlier we went over some slides with the jury, do you remember that?
A Yes.
Q And on those slides, I noticed there was no arrow to indicate the back-and-forth conversation, just "from" and "to"?
A Yes.
Q If you don't mind, so this jury is clear, can you go over just the slides regarding the insurance about what messages are to who and read that message so it is clear that this message is sent from the defendant to

the victim and, indeed, which messages are David Sims, the victim, back to the defendant?

A You want me to read --

Q Yes.

MR. MARTIN: Judge, I would object to that simply that it is repetitive. It is clear from reading them. They are into evidence, and it is an unnecessary waste of time.

MS. LIVESAY: Your Honor, it is only a few slides and it is to clarify.

THE COURT: If you can go quickly, that's fine.

MS. LIVESAY: Thank you.

Q (MS. LIVESAY) If you don't mind, Ms. Dudley, step down. So the jury is clear and the Court is clear, all these reports say Lori Rabon; that was your name prior to this case?

A Yes.

Q If you don't mind, stand here by this microphone and tell them -- explain who the messages are to, the time and date, and whether or not there was a response to that message, and who the response was from. Stand right here in front of this.

A (843)[redacted], we know that is Heather Sims' phone number: I don't mean to talk about it all the time, but I want everything in place so that we can

make sure everything is taken care of. You do contribute, it is just important to me anyway.

This message again is from Heather Sims: I don't mean to talk about it all the time, but I want everything in place so that we can make sure everything is taken care of. You do contribute, it is just important to me anyway.

That message is deleted. It is a duplicate message to the one I just read.

This message is from --

Q If you don't mind, can you stand straight so this crowd can hear, too? Your back is to them. Just read it to them so everybody can hear you.

A This message is from (843)[redacted], which is David Sims' phone number: It is to me, too. And you are well taken care of, trust me.

Another duplicate message on the same thing on 5/29/13: It is to me, too. And you are well taken care of, trust me. That message is deleted.

5/29/13: I'm glad to hear that. That means you must think I contribute to the family is sent from (843)[redacted], from David Sims.

On 5/29/13, from Heather Sims, (843)[redacted]: I love you, too, no matter how you react to me too. I know you get aggravated sometimes when I talk about

life insurance. I just want to make sure we're taken care of if something happens to you, and vice-versa, especially if we have another one. We would be a single parent. I don't like to think about it, but we have to. I know I make good money, and if I were a single mom it would be difficult to work full time and raising children. Sometimes I feel like you don't worry about that stuff like that because of the job I have.

The duplicate message is sent again 5/29/13, from (843)602: I love you, too, no matter how you react to me too. I know you get aggravated sometimes when I talk about life insurance. I just want to make sure that we're taken care of if something happens to you, and vice-versa, especially if we have another one. We would be a single parent. I don't like to think about it, but we have to. I know I make good money and if I were a single mom it would be very difficult working full-time and raising children. Sometimes I think you don't worry about that stuff too much because of the job I have.

And then 5/29/13, from David Sims, (843)[redacted]: I love you no matter how you react to me.

Q Are there any other messages regarding life insurance from the defendant?

A Yes.

Q If you don't mind, read those to the jury and tell them if you had any information who the message is to.

A The message is from Heather Sims' phone. It is in conversation with (843)[redacted], which is David Sims' phone. On 5/29/13: I meant to tell you, I know you have to go, but knowing you opened up a life insurance policy on your own makes me feel a thousand times better, just shows you have an interest. That is all I wanted, just to know that you were thinking about the future and your family. I just don't know why you wouldn't tell me, that's all. Now go to work.

5/29/13, from Heather Sims' phone: Just trying to make it easy on both of us, but I'm going to be honest, I don't feel like you are worried about yourself too much because you might take for granted how much I make. I may be wrong, and I hope I am, but the lack of interest makes me feel that way. It's just that you are always avoiding a conversation and blowing me off. I know you are busy and don't expect me to worry with it right now, but I would like for you to sometime. I just hate having to remind you, makes me seem nagging, but in all honestly, I won't keep bringing it up if you tell me what you found out.

Go ahead and get back to work, I know you're busy.

Q That was from Heather to who?

A Conversation with David Sims. From (843)[redacted], which is Heather Sims: And if I am, you will be dealing with it. But if you are, I will be -- and then it is an emoji that we couldn't decipher what it is.

(843)[redacted], Sims, on 5/29/13: I know.

5/29/13 from (843)[redacted], Sims: If you're dead, you won't be worried AB.

Q That is from David Sims?

A Yes.

Q From Heather Sims on 5/29/13: I just don't trust insurance companies.

5/29/13, from Heather Sims: You remember how I did when I had surgery. I had everything written down before I went for financial counseling.

5/29/13, from Heather Sims: I still want it in a notebook -- with a smiley face -- I'm just organized, and especially when it comes to things like that.

5/29/13, from Heather Sims: I still want it in a notebook, I'm just organized, and especially when it comes to things like that.

Duplicate message to the previous one. That one is delete.

5/29/13, from David Sims: I know.

5/29/13: I know, from David Sims.

Q And is that all the messages regarding life insurance?

A There is another message on 6/21/13 from David Sims: I called my insurance company to see if they will take my BP without drawing blood to see if it will come down. They said they can call me back.

On 7/5/13, from David Sims: I forgot to tell you, my life insurance agent called me Wednesday and said that my BP was low enough to lower my rate back to "preferred."

Q That message is from David to Heather's phone?

A Yes. On 5/29/13, Heather's phone sends out: I want to call my life insurance company today and make sure all of that is lined up, how we can have the house with J.D. . I have to get the contact number, et cetera, put it in a file so we can get to it. I want to do the same with yours, the company to contact, amount, et cetera.

Q Those are, again, the conversations that the defendant is having regarding life insurance policy on David Sims?

A Yes.

Q I've just got one more question. This phone was

897

used -- this 319 was used after David was killed on August 11?

A Yes, it was.

Q But do you know who was using the phone?

A No, I don't.

MS. LIVESAY: No further questions, Your Honor.

MR. MARTIN: May it please the Court?

THE COURT: Yes, sir.

MS. LIVESAY: One more thing, I'm sorry. I marked those and I had talked to Mr. Martin about putting those in evidence. Do you have any objection to the slide show and timeline going into evidence?

MR. MARTIN: None other than what we previously discussed. I thought they were in. I made the record.

THE COURT: I thought they were in. It's in. And your objection is protected.

(State's Exhibits 113 and 114 admitted.)

CROSS-EXAMINATION

BY MR. MARTIN:

Q You have the Cellebrite report of Heather Sims' report?

A Yes.

Q All right. Let's just turn to a random page, say, 2184.

MS. LIVESAY: What line? And I'll follow along on here.

MR. MARTIN: It is 2184.

Q (MR. MARTIN) Do you see 2184?

A This copy doesn't have the page number.

Q It don't have the page number?

A I'm sorry, it does on that side. Okay, I'm with you.

Q You got it?

A Yeah.

Q 2184, just picking a random page here. Now, we have talked about -- first thing I want to talk to you about is "delete," what "delete" means. You know from your every day use of your cell phone, like everybody else, if you get text messages or E-mails, that most people from time to time delete those?

A Right.

Q Do they not?

A Yes.

Q It does not carry a sinister connotation that I might delete a message that somebody sent me, does it?

A No, it does not.

Q If we look at 2184, for example, you said that the word "yes" in the right-hand column means that it had been deleted, right?

A Yes.
Q If you look on that page, would you agree with me that all but two of the approximately 24 entries had been deleted?
A That is correct.
Q And that the majority of the messages that are in this exhibit that you had brought to court have deleted messages, right?
A Yes.
Q And take this page, look at some of the things deleted. If we start down, "AT&T free message auto pay, call confirmation," deleted, right?
A Yes.
Q "Sweet," exclamation mark, deleted?
A Yes.
Q "He's going to get them things before long," deleted, right?
A Yes.
Q "Love Dad, just got home," deleted, right?
A Yes.
Q "Thanks, sorry," deleted, right?
A Yes.
Q So, again, it is not unusual, but rather it is usual for anybody using a cell phone to delete messages after they've read them, at least for some sort period

of time?

A It happens.

Q You do it, don't you?

A I do it.

Q You don't -- how often do you delete them?

A Whenever my phone runs out of space.

Q There you go. Because if I don't keep deleting them, they use data space on your phone and you can't receive messages anymore or use it as you otherwise could; is that not right?

A Right.

Q So wouldn't you agree with me that any interpretation of the fact that Heather Sims over here deleted a message is an indication she was hiding it from somebody is probably misleading in and of itself, isn't it?

A Can you say that one more time?

Q Would you agree that any interpretation or characterization of the fact that Heather Sims deleted a message from her cell phone is an indication, is evidence that she's trying to hide something, that is probably misleading in and of itself; wouldn't you agree with that?

A No, not necessarily.

Q You wouldn't? Okay. I want you to pull back on

the screen, if you would for me. The timeline of the day that you introduced, please. We do agree that UTC time is four hours off -- in other words, if it says -- like the 911 calls 6:13, it will say 10:13?

A Yes.

Q Look at Page 2258 on your report there.

MS. LIVESAY: It is going to take a minute to warm up.

Q (MR. MARTIN) There is single -- 2258 -- some single entries there. Because as I read these -- and, again, this is a general, I guess, as opposed to a specific question, it doesn't always say who the text is to or from?

A Right.

Q Do you have an explanation for that?

A Sometimes when information is recovered that is deleted, it doesn't recover the entirety of the message or the sending and everything portion.

Q Sometimes it does, and sometimes it doesn't, is that what you are telling me?

A It's possible that when data is recovered that it doesn't recover the "send" or "received" portion.

Q Okay. All right. Now, they are pulling that up and we'll talk about it here in just a minute, but there is an exhibit here in which you talked about the

word "divorce," do you remember that; you read to the jury in which Heather said, Divorce is not an option?

A Yes, sir.

Q And specifically what does it say?

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

Q And you can tell from reading that that is part of a conversation with somebody, isn't it?

A Yes.

Q And you were able to go back and figure out who that was a conversation with; were you not?

A No, I was not.

Q You weren't?

A No.

Q Were you able to look at the phone records -- did you look at the phone records to determine who that conversation was with?

A No, I did not.

Q Now, you could go through that report you put in and you can find the text that precedes and are subsequent to that in the conversation, can't you?

A You can attempt to, yes.

Q No. You can attempt to, or you can?

A You can.

Q You can. But you didn't do that because you just wanted to -- not you, but you weren't asked to do anything but take that one statement, were you?

A That's it.

Q You weren't asked to put it in context for the entire conversation, were you?

A No.

Q And that statement was made once in -- what did you say -- 4,000 pages of things?

A Yes.

Q Because you all had a world of information, didn't you?

A Yes.

Q And this is an instance -- how would you like for your cell phones and computers to be turned over to the police to be rummaged through?

A A lot of data.

Q It is a lot of data. But with the -- with the technology you've got, I mean, you can whip through it and you can type in "divorce" and every time "divorce" is mentioned, it pops up, "life insurance, mean to me," whatever you want, you can -- you have it at your fingertips?

A (Witness nods head.)

Q Okay. Let's talk about this timeline here just a minute. This is from your compilation of the information from the day, and I don't want to get in your way, but on August 11th, right?

A Yes, sir, from the timeline.

Q And the notes that you found that are denoted on there, everybody that has an iPhone, there is a note app on there, right?

A Yes.

Q And all you do is hit that if you are sitting at the mall, you can hit that and enter in a note you want to?

A Yes.

Q I can go home tonight and make a note on Lori Rabon, what to ask her tomorrow in court, can't I?

A Yes.

Q And you can sit in the courtroom today with Internet access and Google anything you want to?

A Yes.

Q Blue Luminol, fingerprints, Lori Dudley?

A Yes.

Q All of that?

A Yes.

Q Now, so all of these notes here indicate, it would seem, that one of the things that Heather is

905

thinking about on August 11th is just a little notebook about what the child is doing, right?

A Yes. Those notes were entered on that day of the activities.

Q All right. And if we go down -- text back and forth between she and her mother -- yeah -- about from the timeline from 5:30 to 5:57 back-and-forth with Mama about missing a baby shower, wish I had gone, nobody told me, that kind of stuff?

A Yes, sir.

Q And then you have 6 o'clock -- 6:59 message found, and I had seen that before and was curious about it, too, but there is just no explanation for what that is one way or the other, is there?

A No. The information is "read only" to me just like it is here.

Q And that's not a deleted item, for what it's worth, it is just an odd entry?

A It did not show up as deleted item.

Q And, certainly, there is no sinister or -- no sinister connotation that you can assign that it happens to show up there, is there?

A I have no explanation.

Q Don't know what in the world it is, do you?

A No, sir.

Q And then outgoing call, canceled. Outgoing call, canceled; do you know whose phone number that is? First of all, it is an improperly entered number, is it not?

A Right. It appears to have too many digits.

Q The first one at 6:15:37, (843)[redacted], right, one number too many, won't go that way?

A Right.

Q And then you know that (843)[redacted] is Ronnie and Sandra Causey's phone number, don't you?

A I believe it is.

Q You wouldn't disagree with me, would you.

A No, considering that "Mom" is the incoming call and that was the number that "Mom" was assigned.

Q And, then, 6:15:43 it is tried again, this time (843)352, and again canceled?

A Correct.

Q So whoever was trying to enter those numbers at that time, and if it was Heather trying to enter those numbers at that time, then they couldn't properly dial the phone number, could they?

A It appears that way.

Q And what we do know then is, according to this message, at 6:20 she does call not (843)[redacted], but calls her mom, right?

A Correct.

Q Now, if we look at 8:04:42 -- I'm sorry -- 8:04:42, that says "incoming call deleted." Do you know what that means?

A A call came into the phone at the time Cellebrite report was ran, the call was deleted from the history.

Q That is the first time I've seen that entry. So how would that have been deleted?

A By whoever was using the phone or had the phone, it had to have been deleted.

Q Well, what we know is that on 8:04:42 Heather Sims is in Grand Strand Hospital and the police have her phone; wouldn't you agree with that?

A I don't know what time, I wasn't there that night.

Q Well, if the record says that her statement was taken from 8:06 to 9:41, and that she arrived at the hospital at 7:30, her phone -- we have pictures of it there at the scene, you've seen all of this stuff?

A Right.

Q So Heather did not have her phone at 8:04, did she?

A Apparently not.

Q And she couldn't delete anything, so if anything was deleted, it was in the control, care and custody of

Horry County Police Department, wasn't it?

A Yeah.

Q Do you have any idea how you delete a call? We know how to delete a text message, but do you have any idea how you delete a call?

A I know how to delete items, but, I mean, I don't know specifically on that phone.

Q You can go on calls, there's voice mail or get a call and you can hit "delete," right?

A Yes.

Q But you don't know why that is there, but what we do know is that Heather didn't have the phone, did she?

A No.

Q Okay. And then on the last part of it there is people sending -- Lindsey Lewis sends three texts to Heather, and then we have this "use 343432 as your password for Facebook," that's at 9:53, the first entry you see about anything about a Facebook page or password; am I right?

A Correct.

MR. MARTIN: You can take that down if you want to.

Q (MR. MARTIN) They ask you about the Cellebrite report -- let me ask you this. You do Cellebrite with a telephone and you do that with a computer?

A You can, yes.
Q You can do that with a computer?
A Uh-huh.
Q And so, in this case, as evidence custodian for Horry County Police Department, you know that they took cell phones, they took two or three computers out of the house, both Heather's and David's, in the days after this event at least, if not that night, right?
A Yes.
Q And what we do know is when you did the Cellebrite on David's phone, when it came into your possession, it didn't have much information on it, did it?
A No, sir.
Q And, of course, you know that that phone was on -- or the account was in the name of Heather Sims?
A Yes. Yes.
Q And we have these iPhones -- and you have an iPhone?
A I do.
Q You have a pass code on it so no one can get on your phone, but you?
A I do.
Q If you have an iPhone 5 and you have a pass code on it, the only person that can get in that phone is

someone who knows the pass code?

A Pass code.

Q And even if the police have that phone, with an iPhone 5 they cannot run a Cellebrite program on it, can they?

A Not without the pass code.

Q Not without the pass code?

A Right.

Q Even Apple can't get into the phone without the pass code; is that correct?

A Right.

Q If you have a phone like that and you don't know the pass code to it, and you want to use it, then you have to call Apple, or Apple has to reset the phone, or something, don't they?

A If you need to get into the phone and don't have the pass code?

Q Right.

A I guess you have to call the manufacturer.

Q So if I wanted to use the phone and dial it and receive texts and out texts, the only way to do that is to go in and let Apple reset the phone, and you put in a new password, right?

A Right.

Q Now, if a cell phone like Mr. Sims', in addition

to what is on the phone itself, there is an iCloud storage system; is there not?

A Correct.

Q And the iCloud storage system is where information from the phone is backed up?

A Correct.

Q And Mr. Sims' phone had an iCloud storage system only it, doesn't it?

A ITunes, I think it was.

Q Maybe iTunes, but there was a backup storage system on it?

A Correct.

Q And, of course, that information would be available from iCloud or iTunes, or whoever, even though it wasn't on the phone, wasn't it?

A Correct.

Q And, of course, in this case, do you know when it was backed up or how often it was synchronized or backed up?

A No, sir.

Q And when it comes to whatever information was on Mr. Sims' phone, when you took Heather Sims' phone and went to search for evidence that might be pro or con her in this case, the big thing you have gone to is text messages and instant messages, right?

A Correct.

Q Of course, you have voice mails and all other kinds of stuff that you had access to, right?

A That's correct.

Q Now, most of those text messages were from Heather to David or to her friends, mother, father, the people she worked with, your closest associates, right?

A That's true.

Q So if you think there's something on David Sims' cell phone that might be evidence in this case one way or the other, and you can't retrieve it from his phone, you can do a couple of things. You can go to iCloud and look for it. You can go to friends, relatives, mother, father, sister, friend, work comrades and you can check their phones to see what messages or texts or photos or anything that David sent them in and around August 11th or any time prior there, couldn't you?

A Yeah, you can do that.

Q Now, your Cellebrite report related to David Sims does indicate -- this occurred on August 11th?

A Yes, sir.

Q And Heather is taken to the hospital. She's released that night about 1 o'clock in the morning; is that right?

A I think so.

Q You don't know for sure?
A Right.
Q That's fine. And the information that you have in the Cellebrite report is that the phone was put into use August 13th, sometime during Tuesday after the Monday; am I right?
A That's correct, the 13th.
Q So, apparently, nothing on Monday, Sunday night, sometime Tuesday somebody reset the phone so they could use it?
A About 10:52 a.m. on the 13th.
Q 10:52 on the 13th?
A Is the first message.
Q You agree with me that from the information that you've read to the jury here today, and the text messages and those things you looked at, that Heather is a very organized person?
A Yes.
Q Very neat person?
A Yes.
Q And, of course, there was testimony about life insurance?
A Yes.
Q Life insurance is a good thing, isn't it?
A I think so.

Q Wouldn't you say?
A I think so.
Q You have children?
A I do.
Q You and your husband have life insurance?
A Yes, sir.
MR. MARTIN: Just a minute, Judge.
(A brief pause in the proceedings.)
Q (MR. MARTIN) The exhibits that Ms. Livesay introduced into evidence in court here are only a small portion of the exhibit you have there of the taking from the phone of Heather Sims; am I right?
A Yes.
MR. MARTIN: That is all I have.
THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MS. LIVESAY:
Q I'm showing you what is already in evidence as State's No. 95. This is a picture of her at the hospital on the phone. Can you tell what is on that phone?
A It is a Facebook app.
Q So I'm showing you State's --
MR. MARTIN: Objection.
THE COURT: Hold on. Hold on.

MR. MARTIN: That is improper redirect, but if you allow it, as long as I can follow up, I'm fine.

THE COURT: Go ahead.

MS. LIVESAY: He asked questions regarding the fact that this young lady was receiving Facebook texts on her phone around 9:30 or 9:45. This picture shows her at the hospital around that same time frame on Facebook, which may help this jury explain why those messages are --

THE COURT: I'll allow that. I think that is okay. Go ahead.

Q (MS. LIVESAY) So this is her at the hospital on Facebook?

A Yes. That is a Facebook app.

Q And these messages came to her Facebook page at what time, resetting her password?

A 10:39 p.m. the first message comes in, and 10:55 p.m. and 11:07 and 11:10.

Q This is a picture of her here on a different phone?

A Yes.

Q And then shortly around that same time frame her phone starts to get information for a pass code?

A Yes.

Q So this is a picture of her with a phone with

Facebook; is that correct?

A Yes.

Q And this is at the hospital a little bit after the incident, and then these messages start rolling into her phone?

A Yes.

Q From Facebook?

A Yes.

Q Now, Mr. Martin asked you a few questions, and this is the last question I got about deleting items; do you remember that?

A Yes.

Q Now, we have put into evidence the messages from May leading up until he was killed, and you've looked at that report?

A Yes.

Q Is every single message in that report indicating that it has been deleted?

A Not every message.

Q So here and there messages are deleted throughout the report?

A Yes.

Q But not every message?

A Right.

Q Do you get to pick what messages you delete?

A Yes.

MS. LIVESAY: No further questions.

THE COURT: What do you want to ask?

MR. MARTIN: The picture she showed to the jury.

THE COURT: Just the picture, go ahead.

RECROSS-EXAMINATION

BY MR. MARTIN:

Q She showed you this picture, which is Exhibit 95; do you know what time that photograph was taken?

A No, I don't.

Q Do you know whose cell phone that is in that photograph?

A No, I don't.

Q It is not Heather Sims' cell phone, is it?

A No, it is not.

Q Is it Ron Causey's cell phone?

A I don't know if it is or not. Her phone was wiped, I'm pretty sure.

Q You know that about sometime after this thing occurred, 10 o'clock or so that night, someone is posting outrageous things on Heather's Facebook, aren't they?

A I don't --

MS. LIVESAY: Your Honor, I have an objection. First of all, this question about outrageous things

being on Facebook is outside of what I cross-examined.

THE COURT: Sustained on that. Go ahead.

Q (MR. MARTIN) But we are clear that any messages that came back to Heather's phone regarding a password to her Facebook account was in the 10 o'clock and after range?

A 9:30 I think was the first one.

Q 9:30, 9:50, whatever it is?

A Yes.

Q But they are all late?

A Yes.

MR. MARTIN: That is all I have.

THE COURT: Anything in regard to that picture?

MS. LIVESAY: No, sir.

THE COURT: Thank you. You can step down. You all come up here a second.

(Whereupon, a bench conference was had.)

THE COURT: Call your next witness. We're going to do one more witness and give you an hour lunch break. We may go a little later tonight to get to the point I want to get to. Thank you.

MS. LIVESAY: At this time the State calls Bart Cave to the stand.

(BART CAVE, having been duly sworn, testified as follows:)

(Whereupon, the jury enters at 2:43 p.m., and the following is had in the presence of the jury.)

THE COURT: Hope you had a good lunch. We're going to push, push with me. Call your next witness.

MS. LIVESAY: State calls Allyson Brown to the stand.

(ALLYSON BROWN, having been duly sworn, testified as follows:)

WITNESS: Allyson Brown, B-R-O-W-N.

DIRECT-EXAMINATION

BY MS. LIVESAY:

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

A 36.

Q And are you married? Have any kids?

A I am.

Q Where are you from?

A Conway.

Q And have you lived here all your life?

A I have.

Q And do you know the defendant in this case?

A I do.

Q And how long have you been friends with her?

A I've known her since high school. Our parents knew each other, but we grew up together, and then I would say from high school until now, I knew her more.

Q Now, have you -- are you familiar with the incident as to why we are here today?

A I am.

Q Are you familiar with what statement that defendant gave at a prior hearing?

A I am.

Q Were you present at that hearing?

A Yes.

Q You were?

A Yes, for part of it.

Q And why were you at that hearing?

A To support her as her friend.

Q So you came to that just to support her?

A Uh-huh.

Q And did you hear what she had to say?

A Yes.

Q Now, has she talked to you at all about what happened on that night of August 11th?

A Yes.

Q Is what she told up here the same thing she told you?

A Not the same.

Q Now, if you don't mind, tell this Court what she told you happened that night.

A I went to check on her -- you want to know the

921

exact date, or the first time? She had messaged me about taking pictures early on on Facebook, so I responded that -- I'm a photographer -- and I would come over and take pictures, and we set up the appointment and went to take pictures of the baby. And then, thereafter, she messaged again saying that she wanted somebody to start cleaning their house, and I told her I did that part time, so she asked what the rate was and what I would do and --

Q When was all of this conversation going on?

A Earlier in the year, February-ish to March range.

Q Before she talked about regarding this incident?

A Right. But the earlier time was about the pictures, and then later about coming clean.

Q Is that how you kind of reconnected with her?

A Yes.

Q Tell this jury how that came about, what started going on then?

A So then I agreed that I would come clean, and I went the first visit on June 6th, actually. We talked the week prior leading up to it, and then she texted me and asked -- I'll see you tomorrow, that kind of thing. I went over and walked through the house and took a tour, and she showed me around the house and showed me what she would want me to do. I told her I

had my cleaning supplies, and she had some of her own. She showed me those and where is everything, and how everything worked.

After a little while, she came into the bathroom where I was cleaning the garden tub, sat on the tub with the baby monitor, and the baby was sleeping. And she just started talking how have you been, how is your family, that kind of thing. Then she started asking if -- how long I've been married and if my husband ever had been hateful to me or called me names, that kind of thing. I said, Well, I can't recall specific times, but I'm sure he has and I probably wasn't being very nice myself, or something, in an argument, but after 15 years of marriage, you're going to have that, you know.

Q So you and your husband have been married 15 years?

A Yes. And I said you just get to a point where you pick your battles over certain things and you learn. She went on into talking about they were different spats about their baby, and the baby's dedication and their relationship in general.

Q And this is going on while you are cleaning her house?

A Yes.

Q And, originally, you kind of came back in contact with her to take pictures of the baby?

A Yes.

Q And then she asked about can anybody clean my house, and that is something you do on the side from taking pictures?

A Yes.

Q So do you continue to talk, and do you continue to clean the house?

A Yes, I did.

Q And tell this jury about those conversations.

A Well, then, I would go every other Friday to clean, so she just began to open up, and on that first occasion she said that they were having issues about the baby, and then she said that she had been through a lot and that she was really frustrated because she felt like her parents had been there for her and helped put her through nursing school and always been supportive of her and asked if my parents were the same way, and I said, yes. She said that she decided she had life insurance at work and that she named her parents as the beneficiaries because they have always been there for her and she felt she owed that to them.

Q Did she tell you whose land that house is on?

A She did.

Q Whose land is it?
A Her grandfather.
Q Do you know where her parents live?
A Yes.
Q Where do they live?
A Right behind her.
Q So that house is on her granddaddy's land right across for her parents' house?
A Yes.
Q And so you all are talking about the house, and did she ever tell you who paid for that house to be built?
A She didn't tell me the exact amounts or that kind of thing, just that they helped with everything.
Q Okay. And then what else did she tell you as these conversations are moving on? When was this conversation?
A That was on June 6th.
Q So June 6th she's talking about she and her parents' relationship?
A Yes.
Q And how much they had done for her and that she was leaving her life insurance to them?
A Yes.
Q And tell this jury what else is going on as you

are talking to her?

A So she continued to tell me about that, and we talked a little while. I left that day, and then come back every other Friday, like I said, to clean. Each time, opened up a little more, and she began texting me. She would call sometimes, and we would talk sometimes and she would bring up issues they were having, such as the baby dedication, conversations about the baby or conversations that maybe David had with his mom, and she read the messages or would send me the messages to see what I thought of the messages.

Q Are you becoming closer friends during this?

A Yes.

Q She's talking to you, basically, about the baby, David, that kind of stuff?

A Yes.

Q Tell this jury what is she saying.

A She said that -- different conversations at different times along the line -- just that she felt frustrated with how he was handling their visitation, going to Florence or coming from Florence. The baby, his grandparents are in Florence, not being a part of their life, her feeling like, you know, when they built the house that they had chosen different things for the house, like the wall color or the brick or columns or

what kind of tile or granite --

MR. MARTIN: Object to the relevance of this.

MS. LIVESAY: She's just talking about --

MR. MARTIN: The question is, What did she tell you what happened that night, and we've gone to Florence and everything else.

MS. LIVESAY: I think she's trying to lead up to that night.

THE COURT: I understand. Make it relevant.

Q (MS. LIVESAY) So you all are becoming closer friends?

A Yes.

Q And I think the relevance is that she's talking to you during these couple of months prior to killing him what is going on in the relationship?

A I'm sorry?

Q Is she talking to you about what is going on between her and David and the relationship?

A Yes, a little bit.

Q And this has gone on during June and July?

A Yes.

Q And if you don't mind, are you continuously talking to her in July, the month before?

A Yes.

Q And what is she telling you then?

MR. MARTIN: Object. That is my objection, relevance of what she told her then -- her first question to this witness was, Did she tell you what happened that night, was it different or something else; that is relevant. But now we're going through a fairy tale about their -- every conversation from here to there, and that is not what this witness was reported to testify and --

MS. LIVESAY: Your Honor, we have already put in text messages between May and August. This is moving -- this is the month before she is discussing what is going on between him and her before she ultimately kills him.

THE COURT: If you can get it to be relevant, I'll give you some rope, but overruled. I'll allow you to keep going.

Q (MS. LIVESAY) So in July, just the month before she kills him, what is she talking to you about then?

A It started to slack off in July. There was not as much texting. It was more calling and talking some, and the two weeks prior I didn't hear much from her. I sensed that there was more stress going on that they were -- I don't really know. I can only assume she just said they were arguing a good bit.

Q Did she confide that they were going to

counseling?

A Yes.

Q And what did she say about that?

A She told me that they set up an appointment with a counselor and they were going -- I think she told me -- a few days prior, and then they were going -- I had forgotten about it, and she texted me the day of and said that was awful, and I don't remember what she was referring to. I said, What are you talking about, and she said, We just met with the counselor today, and I said, Why was it awful, and she said, Because she completely didn't see an issue with him. She only felt that we should concentrate on us right now as a married couple, and focus on things like Florence later.

Q And that was in July?

A That was -- yeah, I believe it was July.

Q And you are talking to her in August, just not as often?

A Right.

Q And are these talks by text or voice mail?

A Mostly talking on the phone. There was a couple of voice mails where she would leave a voice mail, call me back when you call, that kind of thing, wanting to talk.

Q Just not as much?

A Right, slacking off.

Q Now, as to August the 11th, 2013, were you still friends and talking during that time period?

A Yes, I had cleaned. The last date was August 2nd, which was a Friday, and messaged her not long after that about maybe us going to dinner for my birthday at the Bistro.

Q So you are inviting her to your birthday dinner?

A Yes.

Q And you cleaned the house from June until August?

A Correct.

Q Now, if you don't mind, tell this jury how you describe that house? Was it dirty, clean; how was it?

A It was very clean and organized, and I felt like I was cleaning a clean house. It was very clean, very well kept, everything had a place.

Q Now, I have to ask you a few questions to follow up on some stuff talked about earlier. While you were there at the house -- first of all, was the dog bed ever kept in the bathroom?

A I never saw a dog bed in bathroom, I saw one in the bedroom and living room by the entertainment center. There was a round one there, and a rectangle one by David's side of the bed.

Q There was some questions asked about the knife

block in the kitchen; are you familiar with that?

A Yes.

Q And did you ever see or notice any knives missing from the knife block?

A I did not.

Q Did you actually wash dishes as part of cleaning your house?

A There were never many dishes to clean, but there were a few on occasion, but I would wash the bottles or just a few little items in the sink, silverware, knives things like that.

Q And were there every knives from the knife block in there?

A Sometimes.

Q And you would wash them and put them back?

A Put them back, uh-huh.

Q There was also discussions prior about the facts there was another drawer in the house that had knives; did you know that?

A Yes.

Q Now, tell this jury, did the knives from the knife block look like the ones from that the drawer?

A No.

Q So if you pulled out the drawer, you would notice one from that knife block? It would look completely

different?

MR. MARTIN: Objection, it is speculation.

THE COURT: Ask her if she noticed, and if she says yes --

Q (MS. LIVESAY) Did you look in that drawer with the knives?

A I didn't inspect the entire thing, but I've opened it.

Q Just through cleaning the house?

A Uh-huh.

Q Did those knives look anything like the ones in the knife block?

A No, they were bigger, different type of knives. The ones in the knife block were black handles.

Q So there was a distinct difference?

A Yes.

Q Now, you all were still talking, still friends on August 11th; is that correct?

A Yes.

Q Now, did you hear about what happened that night at the defendant's house?

A I received a phone call on the 12th, which was a Monday morning about 9 o'clock, and I was on the way back from taking pictures, and a friend asked if I had heard the news, that someone had been shot and stabbed,

and I said, no, I didn't. I immediately called my husband and told him I was going to check on her, so I tried to call.

Q Did you check on her?

A I tried to call her, and I couldn't get her on the phone, and I text her and I couldn't get a response, so I drove over there.

Q What day do you remember you drove over there?

A On Monday the 12th.

Q And when you got there, what did you see?

A When I pulled up, I pulled in the driveway and there was their two vehicles and one other vehicle whose I didn't know. So I pulled past and went on up to her parents' driveway, and there were her parents' vehicles, and I got out and knocked on the door.

Q Okay. So it is a situation where there is one driveway and you can pull into Heather's, or the defendant's, or you can keep going and pull on down to her parents' house?

A Correct.

Q So you pulled on down to the parents' house?

A Yes.

Q And during that time you get to the house, what happens, her parents' house, what happens?

A When I got there, her mom was there and her mom's

cousin and the baby. The cousin was watching the baby, and her mom was in the bathroom getting ready or -- I'm not sure what she was doing, but getting ready, I believe.

Q And did the defendant ever come to that house?

A Yes.

Q And did you get a chance to talk with her at that time?

A I did.

Q If you don't mind, tell this jury about that.

A She came in with her dad from the front door, and she had on kind of pajama-like pants. She looked like she didn't get much sleep, looked really tired. She came over and hugged me and thanked me for coming, and I said what in the world, and she came and sat down, and I talked a little with both of them. She said that she had gotten up that morning and they slept a little bit late, and David wanted to go to Bass Pro to get shorts, but also wanted to eat at Ruby Tuesdays. So they went there, and when they got there, that he just seemed like he was in a bad mood and wanted to argue about the counselor and kept bringing it up and kept bringing it up, and she didn't want to.

She said that they got ready to leave, and the waitress came to the table and he was frustrated with

the waitress about something. They got in the car and left, came on home and he continued to argue all the way home. They got home and kept arguing. She said she didn't want to argue and told him she wasn't going to, and she said we'll talk about this, but I'm not going to talk about it until I put the baby down. So she said I went straight and put the baby down, tried to get him to sleep, but I started washing bottles. I went to the bathroom, and she said he was sitting on the couch or recliner, and she went in the bathroom and ran the bath water, and that after she got in there, he came in and walked towards the toilet like he was going to repair it and had tools of some type in his hand. She was sitting on the side of tub with her phone and looking through her phone. He said so you can come take a bath, but you can't talk to me.

Q And did she tell you what happened next?

A So she said, well, I will talk to you, David, I already told you I would, but I'm not going to talk to you right now. I'll talk to you whenever the baby is asleep and everything is what I want it to be, you know.

Q Is this what she is telling you Monday?

A Yes.

Q And what else did she tell you?

A Then she said that he walked up and started trying to get her phone from her. He walked away from the toilet, and she had her phone out and she said I'm not going to give you my phone, and he called her a liar and said you are lying to me, and she said what am I lying about, and he said you've been calling the counselor or calling some counselor or another counselor, or something, and kept on about the counselor. She said that they got in a tussle and she stood up and was trying to walk away, and he said give me the phone, and he put his arms around her and locked his arms around her at the door by the doorway and tried to get her phone.

Q This is what she told you happened on August 11th?

A Yes.

Q Did she tell you any further what happened?

A No. She stopped and then she started to cry and got upset, and I hugged her, and I said you don't have to talk about it, and she didn't see it coming, she said I just, you know, didn't know what to do.

Q And when she was relaying the story to you, did she show you or tell you she had any injuries?

A On that Monday, she did.

Q What did she show you?

A She pulled her jacket sleeve and showed me her arm and lifted the front of the shirt and showed me her stomach real quickly.

Q And that is all she showed you?

A Yes.

Q Then what happened?

A We talked for a few more minutes and I walked in the kitchen, spoke with them a little more, and I left.

Q Did you go back to her house after that again?

A I did.

Q When did you go?

A Tuesday, the 12th.

Q And how did that transpire that you were going to come back --

MR. MARTIN: Tuesday what?

A August 12th.

THE COURT: August the 12th.

A On Tuesday, I got a text message from a number I didn't recognize.

Q (MS. LIVESAY) So we're clear on the date, what you just told me was that Monday, August the 12th. Now we're on Tuesday that you go back over there?

A Yes.

Q How does that transpire about you going back to the house again?

A Well, I messaged another friend of mine, and we arranged to take food on Tuesday night.

Q And you messaged who, Heather, about bringing food?

A I originally talked to her about it before I left that day, on Monday, and we just discussed it. I said I may come back one night and bring food, and she said you don't have to do that. But whenever I messaged a friend of mine about bringing food, we were going to get together and bring food.

Q Did you bring food on Tuesday?

A I did.

Q Now, earlier we were talking about some text messages about bringing food, lasagna, birthday cake, that kind of stuff; do you know anything about that?

A Yes.

Q Tell the jury what you know about that.

A On Tuesday I received a text message from a number I didn't know, and it was not a contact of mine, and it said, Is this Allyson, and I said, yes, who is this, and it said this is Heather, I'm using David's phone.

Q And then what kind of text transpired after that?

A I said, How are you doing? Okay. I'm going to bring food later, and I asked if I could bring

something, and she said are you already bringing food, you don't have to, Katie's mom is bringing lasagna. I said I can bring something that goes with the lasagna, salad, that kind of thing. It ended up pretty much after that.

MR. MARTIN: Again, object to the relevance.

THE COURT: Come over here for a second.

(Whereupon, a bench conference was had.)

Q These text messages are transpiring between you and her on David's phone on Tuesday?

A Yes. Basically, the essence is you are coming over and you are bringing food?

MR. MARTIN: I object again to the essence of it.

THE COURT: Yeah. I'm trying to bring her up to speed.

MR. MARTIN: She's up to speed.

THE COURT: Sustained. Go ahead.

Q (MS. LIVESAY) Did you go to her house that night?

A I did.

Q And about what time did you go Tuesday night?

A About 7:30, 7:45.

Q And when you get there, who is at the house?

A Her dad, Ronnie, and a friend of theirs, Joe Brehn, and the baby, and at that point that was all

when I arrived.

Q Did you know anyone at the house?

A Yes.

Q Eventually, did the defendant come to that house and you come in contact with her?

A Yes.

Q If you don't mind, tell this jury about that.

A Probably about 45 minutes or so after I got there, she came in the door with her mom and said they had been to the doctor, Dr. Staples, to get pictures taken and medicine to help her sleep.

Q At that time, what was she wearing; do you remember?

A She had on a tank top with a little jacket like a zip-up hoodie jacket and capri khakis and flip-flop shoes.

Q And did you talk to her that night?

A Yes.

Q If you don't mind, tell this jury about that.

A We ate food, and then after a few other people arrived, and after everyone started to go home, she asked if I would ride over to her house to let the dog out, turn off lights, so I rode with her over there.

Q In a car?

A On an ATV type of vehicle.

Q Okay. So her parents' house is kind of like right across the yard, so you take the ATV to her house?

A Yes. Yes.

Q Tell this jury what happens next.

A I told her that I was nervous going over there, and was it okay for me to go in the house. She said, yes, it's fine, the house had been cleared and it was okay to go in. So we go in and let the dog out, and she's fixing lights and stuff. And then she walks into the master bedroom and asked me to follow her in there.

Q Did you follow her in there?

A I did.

Q And then what happens next?

A She turned on the light in the bathroom and she showed where it happened and she pointed out the bullet hole in the bathtub, and then she came over and she showed me where it hit, and then she said that -- she wanted to show me where they were standing, and she showed that he put her in the lock and started talking about it.

Q Tell this jury, when you get back to that bathroom where it happened, she shows you the bullet hole, and then what is she telling you?

A She said -- she pretty much walked through the

exact same thing as Monday, but she was showing me where they were standing at, that they were arguing that morning kind of -- to fast forward, the same thing, that he wanted the phone, he came to get the phone, and then she said this is what he did, and put her arms around me by the door, and had my arms against my chest.

Q Did she tell you what happened after that?

A She said that he bit her finger to get her to let go of her cell phone, and it dropped and hit the floor and slid across the floor, and that then he went to go get the phone, and she looked down and realized that she had been cut somehow, she didn't know how, but she had been cut. And I said, Oh, my God, what did you do? And she said, I remember that I had put the gun in the drawer, in the top drawer of the bathroom right where she was standing. She opened the door, took the gun out. She said, I didn't point it at him, I held it down by my side. And he said, What are you going to do with that? And she said, What are you going to do with that? And he said, I'm not going to do anything, but what are you doing? And so then she said I want you to stop what you are doing right now, and he came towards her, and then she realized the knife was in his hand. She said that he lunged at her, and she was backing out

of the bathroom, and he said I'm going to knock your fucking teeth down your fucking throat, you f'ing whore.

Q What happened next?

A She shot the gun one time.

Q And did she tell you what happened after that?

A Yes. She said that she looked up, and I said, Did he fall on the floor, you know, what did you do, and she said -- did he say anything, and she said he said, Oh, God, and grabbed his chest.

Q And was she showing you by grabbing her chest?

A Yeah, she said, Like that real quick (indicates), oh, God.

Q So she says she shoots him, and you say, Well, oh, my God, what did he do, and she is telling you and showing you, he goes (indicates), oh, my God?

A Uh-huh.

Q And what did she tell you happens next?

A I said, What did you do then, and she said, well, I didn't -- I wanted to call the police, I wanted to call 911, but I didn't want to go grab my phone because I had to go around him to get my phone on the floor, so I took off in the living room to get my house phone.

Q Did she say she called 911?

A Yes.

Q Did she say what happens next?

A She called and then she -- called her dad and called 911, and then she said that she got the phone and came back in there, and I said, Did you leave the gun in there on the counter, or take it with you? I would be scared not knowing what to do. She said she would take it with her because she was scared that he could stand up and grab it and go after her.

Q Then what did she say?

A Then that was pretty much it. She said that, you know, she began CPR, 911 came, her dad came and just kind of roughly told about that. I didn't hear much about once 911 got there and all of that. And then I said, Well, weren't you scared to use a gun? I would be scared. I didn't know that I -- I've never taken a course or anything, but I would be scared to hold a gun, much less shoot it in my house. She said, No, I knew how to shoot a gun. We had taken the concealed weapons class and they taught me you don't shoot to wound when you shoot a gun, you shoot to kill. And she said that we had even taken the class together, and we had gone and done that together, and we had the target sheets still out in the storage room, and she said she was a perfect shot.

Q Okay. Okay. And then that is Tuesday night?

A Yes.

Q So do you see a bite mark on her hand when she's telling the story where he bit her to let go of the phone?

A I didn't look at her finger, no. She didn't show me a bite mark.

Q When she's talking to you, it is that he has his arms around me, I let go of the phone?

A Uh-huh.

Q He turns his back to me and walks over there to get the phone?

A Yes.

Q She says all of a sudden, I realize I have cuts on my arm?

A Yes.

Q While he's going to get the phone, she tells you she's over there opening a drawer getting a gun out?

A Yes.

Q Now, you had been cleaning that house for how many months? Two, three months?

A Few months. I've been about seven times, then one other time, so seven, eight times in total.

Q Did she ever mention to you that she had moved that gun from the nightstand to that drawer?

A No.

Q Had she ever talked to you after the incident and had a conversation with you regarding anything about moving the gun or telling you that she had moved the gun?

A She asked me later, on a later date, months later, did I ever tell you I moved the gun to the bathroom drawer, and I said, no, I wouldn't have needed to know that because I don't clean in drawers, I clean on surface tops. But she told me she moved the cradle and the Pack'N'Play, because the baby was getting a little bigger, and as far as the length he would fit in the cradle or the Pack'N'Play, he liked to lay in the Pack'N'Play in the living room.

Q That was on Tuesday?

A Yes.

Q Did you come in contact with her again that week?

A Yes.

Q And when was that?

A I sent a message on Wednesday, just a how-are-you-kind-of-thing, and then Thursday was my birthday, and her mom's birthday was the same week. So we discussed going to lunch for my birthday. She didn't have a phone, so I messaged her mom's phone and said, you know, are we going to meet, what time and that kind of thing, and we met up for lunch at the

beach.

Q On what day?

A Thursday the 15th.

Q What are you talking to her about then?

A She mentioned that that was the day of David's funeral.

Q And so she tells you that Thursday David is being buried?

A Yes.

Q And tell this jury what you and her were doing on that day?

A We went to eat at Red Lobster, then she said that she needed to get a new phone because the police had her phone --

MR. MARTIN: Object to the relevance of this.

THE COURT: Sustained on that.

MS. LIVESAY: Thank you.

A So we went to Best Buy after --

THE COURT: Sustained.

MS. LIVESAY: The relevance is going to be regarding the victim's phone. There is going to be conversations between her and this young lady about the victim's phone, and she also has knowledge about Ronnie Causey calling Heather that day and saying, Hey --

MR. MARTIN: Objection.

THE COURT: Go ahead and ask her.

Q (MS. LIVESAY) That day he's being buried, what are you doing and what is she telling you?

A We're at Red Lobster eating lunch. She mentioned it was the day of his funeral, and we had a small conversation about she didn't know if it was the right thing to go or not, and talked to her lawyer and felt it was not a good idea --

MR. MARTIN: Objection.

THE COURT: Sustained.

A We went to Best Buy to get her a new phone, and as we left, she received a phone call on her mom's phone from her dad that said that the police were coming --

MR. MARTIN: Objection.

MS. LIVESAY: She's going to tell me --

THE COURT: Don't say it out loud. Come here.

(Whereupon, a bench conference was had.)

THE COURT: You can ask the question we just talked about.

Q (MS. LIVESAY) You were telling us a little bit about a phone call that comes into Sandra's phone?

A Yes.

Q Does Heather relay any information -- does this

defendant relay any information during that phone call?

A To me?

Q To anyone.

A Yes.

Q What does she say?

A She wanted -- the person that was going to give the phone over to the police because they were on the way, David's phone, and she told that person where they could find it in the house.

Q And where did she say they could find it?

A In a drawer.

Q Is this the same phone she had been texting you on earlier in the week?

A Yes.

Q Do you get on the phone and talk to that person on the phone?

A I did.

Q If you don't mind, tell the jury what you are telling that person on the phone?

MR. MARTIN: Objection.

THE COURT: I understand. She can say what she said only. Overruled.

Q (MS. LIVESAY) Tell this jury what you said to that person?

A How to -- they wanted to know --

MR. MARTIN: Hup, I object. I object, you know.

THE COURT: I understand. I understand. Make sure she only asks a question --

MR. MARTIN: They are not going to do that, Judge.

THE COURT: They better or else. Ask the question what she said.

MS. LIVESAY: That is what I asked her.

THE COURT: She needs to answer that. Ma'am, you only say what you say.

MS. LIVESAY: But she can say why she's relaying that information. It is not being used for the truth of the matter.

THE COURT: We talked about that. That is overruled. I mean, it is not that I don't believe you, but she needs to answer the question of only what she says.

MS. LIVESAY: Okay.

Q (MS. LIVESAY) You can't tell this jury why you said it, but tell them what you said to the person on the phone?

A How to delete the text messages off of that phone.

Q How to delete the messages off the phone?

A Yes.

Q How did you come about --

MR. MARTIN: She said what? I said to delete?

THE COURT: How to delete messages off of it.

MR. MARTIN: I said how to delete text messages off of that phone?

WITNESS: Yeah.

THE COURT: Go ahead.

Q (MS. LIVESAY) Now, who gave you the phone so you could relay this information?

A Heather's mom.

Q Now, is this information you just decided to give, or did someone inquire and you said here is how you do it?

A I was asked to.

THE COURT: I understand.

MR. MARTIN: Judge, again, I don't -- I don't know that it makes a bit of difference in the world, but, again, that is what I had objected to, because it is not proper for her to say what somebody else said, and she's already done it.

THE COURT: I understand. Real careful. I understand your objection, and she can only say what she said, that is important. That is why I'm sitting here listening to every syllable. Go ahead.

MS. LIVESAY: Okay.

951

Q (MS. LIVESAY) How do you wrap up that day after Red Lobster, after you get a phone? What happens next? Where do you go?

A Home.

Q Now, do you go back to the defendant's house again after that day?

A Yes.

Q Okay. And about when did you go back to her house?

A I went back on the 23rd of August.

Q Okay. And why did you go over there on the 23rd?

A I had a voice mail from Ronnie Causey.

MR. MARTIN: Objection.

THE COURT: She's saying why she went over there.

MS. LIVESAY: There is nothing about the truth of the matter.

THE COURT: Well, I don't know that, that's the problem. Ladies and gentlemen, I'm going to send you out for a few minutes. We're going to wrap this up. This will take 10 minutes. Don't discuss the case.

(The jury exits at 3:26 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Tell me -- maybe this will solve this problem. What is she going to say?

MS. LIVESAY: All she's ' --

THE COURT: Where are we headed?

MS. LIVESAY: All she's going to say is Ronnie Causey called me and asked me to come back over to the house to clean it, so that is why --

THE COURT: Clean the house?

MS. LIVESAY: Yes, on the 23rd. So there is no real truth of the matter, just why did you show back up on the 23rd, I showed up because this person called and asked me to come over and clean the house. This isn't going --

THE COURT: What does that prove? I mean, what are you trying to prove?

MS. LIVESAY: She's going to say I showed up at the house and she asked me to clean more blood off of the vanity, and where the blood was, and what conversation transpired while she's in there cleaning his blood off of the vanity.

MR. MARTIN: Well, first of all, what is the relevance of that?

THE COURT: I understand -- here is the -- the answer to your question, to me, and I understand we may have to go off the record. What she's going to say is -- the answer is she's going to say she went over there and then a conversation transpired, that is

953

where -- that's the line, the conversation. So I'm concerned that she's going to testify something about that violates the hearsay rule.

MS. LIVESAY: It is just her and the defendant over there. All she's going to say is what her and the defendant are talking about. Now, Ronnie shows up at the end, because he's the one that asked her to come and clean.

THE COURT: And then what is she going to say she and the defendant talked about? What is the answer to that? I mean, I know you know the answer to that, because I'm trying to figure out if -- the problem is if she blurts it out and it is really prejudicial, we're back --

MS. LIVESAY: This defendant is in there basically packing up the victim's stuff, and she's in there cleaning the blood up. She's in there -- the defendant walked over and says, hey, here is more blood, I need this cleaned up. There is not a whole lot more to that that is going to be able to come in.

THE COURT: Okay. I mean, I don't see how that is -- we've taken a long way to get to that point, is what I'm saying.

MR. MARTIN: Well, my objection --

MS. LIVESAY: I think I know what he's worried

about.

THE COURT: Go ahead.

MR. MARTIN: My objection is, first of all, I never know what is coming out next, regardless of what we say or do, because it is in the record here now, and I want to put on the record, you know, that we have several side conferences in which Ms. Livesay is instructed about what to ask or what not to ask, and then comes right back out and asks a question that gets the answer that was objectionable, and it puts me in a position of standing up and objecting every time. And if I'm wrong about that, I want you to put on the record that I'm wrong.

THE COURT: No.

MR. MARTIN: But this is not fair, and it is not proper, and I strenuously object and ask that the last exchange be stricken from the record.

THE COURT: Which one? I haven't seen anything that has hurt anybody.

MR. MARTIN: I don't think that is really -- I just never know what is coming because there is no rules here, from what I can see.

THE COURT: There are rules.

MR. MARTIN: Well, we aren't going by them.

THE COURT: You know what. Let's take a break.

You all come back here. I'll explain it.

(A recess was taken.)

THE COURT: Bring them in.

(The jury enters at 3:39 p.m., and the following is heard in the presence of the jury.)

THE COURT: Thank you for your patience.

Q (MS. LIVESAY) Did you go to the house again?

A I did.

Q And when was that? Later on in August?

A August 23rd.

Q And why did you go to the house that day?

A I was asked to.

Q And what did you do when you got there?

A I went in to clean the house, and I first sat down and talked with Heather.

Q And when you -- did you clean the bathroom?

A I did.

Q What did you see in the bathroom when you cleaned it?

A She pointed out there was blood on the cabinet doors and underneath, I guess you would call it, the molding where like the foot area down beneath the sink, and asked -- she said when they cleaned it, or whoever cleaned it, they didn't get off the cabinets, and asked if I could clean it when I went through the bathroom,

if I could scrub it off.

Q Did you do that?

A I did.

Q Did you clean the rest of the house?

A I did.

Q How did the rest of the house appear then?

A Very clean.

Q Everything but basically the blood on the vanity and underneath the vanity?

A Yes.

Q She at the house that day?

A Yes.

Q What was she doing?

A In the closet packing away his clothing in like Rubber Maid containers.

Q And about how long did you stay at the house that day?

A I was there until about 1:00, 1:30. She had to leave to go to a doctor's appointment, so I left shortly after her.

Q And when you were at the house, was there any cameras around?

A There were on the outside. She pointed out that there were cameras on the outside, and whenever she was getting ready to leave to go to the doctor's

appointment, she asked if I thought there could be any cameras on the inside, and I said I don't know why anyone would have cameras on the inside. She said, No, I mean, like if David put one there, me not knowing about it, because he installed the ones on the outside. I said, Why did he install the ones on the outside? And she said, For security, but he would always watch me on the cameras and, you know, when I got home or when I left or if I had been anywhere. And I said, Well, I certainly hope there would be cameras on the inside because that would prove you are innocent.

Q What did she say?

A She said, Yeah, I know, I was just wondering.

Q Did you ever see a camera on the inside?

A I did not.

Q Now, before she shot him, were you all talking on a regular basis?

A Yes.

Q Did she ever say anything to you during that time before she killed him about him ever putting his hands on her?

A No.

MS. LIVESAY: No further question for this witness.

MR. MARTIN: I need a moment.

THE COURT: Ladies and gentlemen, I'm sorry, and hate to do it, but legitimately we have to take a quick break. This may be the last break until a little later. So you can take them out. We have to review something and we'll bring you back in at about 10 minutes, 15 minutes max. Don't discuss the case.

(Whereupon, the jury exits at 3:43 p.m., and the following is had outside the presence of the jury.)

THE COURT: Let him look at what he needs, and we'll start 10 minutes or so.

MR. MARTIN: If the witness has any notes before you leave, if she has any notes --

MS. LIVESAY: Just for the record, what she's got up there is text messages and, in fact, she already had given Mr. Martin those messages before she ever met with me, and then when she met with me, she gave me the messages and any further messages since that point, so he would have everything and I would have everything.

THE COURT: So there is no notes or anything like that?

MR. MARTIN: What I would like to do --

MS. LIVESAY: He can look at them. They are the text messages.

MR. MARTIN: I just want to see what she's got

959

there.

THE COURT: That is why we're taking a break. Let him look at the messages. You have to make sure you are looking at the same thing. We'll be right back.

(A recess was taken.)

THE COURT: Call the jury back in. Surprising when I think we're making good progress.

(Whereupon, the jury enters at 4:14 p.m., and the following is had in the presence of the jury.)

THE COURT: Thanks for your patience. We'll continue.

CROSS-EXAMINATION

BY MR. MARTIN:

Q You knew Heather Causey, and you went to take pictures of her, and you wound up doing housework with her?

A Yes.

Q And though you hadn't been close in recent times, you knew each other in the past and you considered yourself a friend of sorts?

A Yes.

Q You and Heather talk from time to time, and you did begin to do work for her in June of 2013?

A For the house?

Q Yeah.
A Yes.
Q You said June 6th?
A June 6th, uh-huh.
Q Is that right?
A The first time I went to clean was on Thursday, and then we changed the plan to every other Friday. It worked better for both of our schedules.
Q Okay. Was it June 6th or June 8th?
A Sorry?
Q Was it June 8th or June 6th?
A It was June 6th.
Q June 6?
A A Thursday.
Q Are you sure about? Do you have anything -- because I want to ask you this. You've talked about what Heather told you that night. Did you -- did you record that statement that she made to you? Did you record the statement?
A Record it with who?
Q With Heather. Whatever Heather told you about what happened that night, which is the reason you are here, you didn't record that statement, did you?
A I didn't feel a reason to record anything.
Q Okay. All right. Now, again, I'll ask you about

when you began with her; was it June 6th or June 8th?

A June 6th.

Q Did you ever make a note that it was June 8th?

A I may have somewhere, I don't know. I talked to both of you all, so I don't know.

Q What do you have in front of you?

A Sorry?

Q What do you have in front of you?

A Up here?

Q No. No, in your hands? Nothing? Did you have some notes about what time you started cleaning house for her?

A Do I have notes?

Q Yeah.

A No. I have notes that I took along in time.

Q My only point, just trying to get to it, I looked at a statement you gave me, it said June 8th, you said June 6th. I was just curious if one is right or wrong, or which is right?

A I can look at my calendar and be sure, if you want me to do that.

Q You have it with you?

A The calendar?

Q Yeah.

A I have it back here.

Q No, I won't let you do that. You are not sure if it is June 6 or 8?

A It was a Thursday, 2013.

Q June 6 or 8. If your testimony was June 6th, it could be a faulty memory of yours, which made you say it was June 6th if, in fact, it was June 8th; would you agree?

A I don't think it was faulty memory.

Q What would it be?

A I remember the first Thursday of June, 2013.

Q All right. Couple of things I want to talk with you about, the question about is that you say that Heather told you that she still had the gun in her hand when she went to call 911; would you agree with that?

A She didn't tell me if she put it down at that point. She went to get the phone and came back and called 911. She took it with her to get the phone.

MS. LIVESAY: Can she answer her question before being interrupted?

THE COURT: Sure. Let her answer.

Q (MR. MARTIN) Your testimony earlier was, I believe -- and of course you and I talked at some point in time -- was that she told you that after the shooting occurred, that she got the phone to call 9911

and she still had the gun in her hand at that time; would you not agree with that?

A She had the gun to go get the phone, is what I said.

Q Right. When she went to get the phone, she took it with her?

A Right.

Q And only put it down after she came back?

A I don't know when exactly she put it down.

Q That's okay. We agree. You said that was the case. She took it with her to call 911?

A Uh-huh.

Q And, of course, you wind up talking to her a couple different times?

A Uh-huh.

Q Would you consider yourself her best friend?

A Wouldn't say best friend. We were close, talking a good bit, but not every day.

Q And she sounds like you went to see her, that you wound up talking with her about what happened. Were you asking her to tell you what had happened?

A No. She just started opening up to me, which I thought was kind of strange, but.

Q She just started opening up to you?

A She did on the first visit.

Q And she opened up to you on a subsequent visit, right?

A Yes.

Q Again, you don't have any particular -- you are not asking questions wanting to know what happened, she's just talking?

A Right, asking for marital advice type of thing.

Q Asking for marital advice?

A Marital advice, yeah.

Q Excuse me. I'm talking about after the fact now. I understand that before this occurred, on August 11th, you had been with her some, and that you and she talked and she told you some things about the marriage?

A Yes.

Q And she told you some things about that David was mean to her in different ways?

A Just verbal words, I mean nothing physical until after.

Q Just things he would say?

A Uh-huh.

Q He called her a bitch?

A Uh-huh.

Q Called the baby a fat ass?

A Uh-huh.

Q Difficult to deal with?

A At times, yes.

Q And then you observed -- because you took pictures of the child and everything, didn't you?

A Yes.

Q And you had a chance to observe David's demeanor around Heather and the child shortly before this occurs?

A Yes.

Q And how you would describe his demeanor around you?

A He didn't speak much. He was really quiet the first occasion when the baby was young-young, like a few weeks. He was really quiet, but nice, polite. The second time I was around him, it was a Sunday afternoon and they were really tired, so he was in the recliner and she was on the couch, and they were wanting to take a nap.

Q Quiet?

A Uh-huh.

Q Now if I go with you -- you talked about visiting a couple of times. You went on the 12th, on a Monday, went on Tuesday and then went back August -- couple weeks after that?

A Uh-huh.

Q On those occasions, on a couple of those occasions, Heather told you some parts of what happened with them that night, right?

A Right.

Q Now, you didn't record any of that, did you?

A I didn't feel the need to.

Q Well, you are not an investigator. You are not there to figure out what is said or done, you are just listening?

A Right. Right.

Q And you don't go home and write down verbatim she said A, B, C, D, E, F, G, do you?

A Right.

Q And you are just there as a friend?

A Uh-huh.

Q And now we are now some two years, three months removed from that time?

A Uh-huh.

Q And you are here testifying now about what you remember from memory about what she said about what happened that night?

A Correct.

Q And there is no question that she told you that -- and, of course, when these conversations are had, it is just you and her there, right?

967

A Uh-huh.
Q Right?
A Which conversation?
Q Either one of them.
A The first conversation, her parents were present; the second was just she and I.
Q Second time was just she and you in the house?
A Yes.
Q And the essence of what she told you was that she was in the bathroom?
A Uh-huh.
Q Getting ready to get a bath?
A Correct.
Q Right?
A Uh-huh.
Q And that she had her cell phone there and that she was charging -- been using her cell phone sitting on the tub and had hooked her phone up to charge it?
A She didn't tell me she hooked it up to charge it. She told me she had it in her hand sitting on the tub.
Q You are not making any mental notes exactly what she told you, but we know from the pictures that we got that there was a charger in the wall there; did you know that?
A No.

Q There is a charger in the wall, so I'm asking you, in other words, when she told you she was in there, she had her phone, she had been texting with her mother and them about something, David came in as if he was going to work on the toilet?

A She didn't tell me who she was texting or even if she was. She just said "with her phone."

Q With her phone?

A Uh-huh.

Q And, essentially, that he confronted her, that they got into an argument, and she talked about grabbing trying to get the phone, you said it went flying cross the floor?

A Sliding across the floor. It was a tile floor.

Q And, of course, that is purely from memory that you are telling us that?

A Yes.

Q But what she tells you is that there was an altercation, and that he had a knife and that she was backing up, and that he lunged at her and she shot?

A She never said that she noticed a knife. She said whenever he came towards her, she saw the knife, that is when she mentioned the knife.

Q Right. That's right. When he came towards her, he had a knife, she was backing up, she got a gun out

of the drawer in that bathroom, she was backing up, that he lunged at her, and she shot him?

A Yes.

Q All right. And that is why she shot him?

A Yes.

Q And she told you she was afraid?

A She said that she was scared whenever he came towards her with a knife.

Q She was scared when he came towards her with a knife, and she got the gun, backed up, and shot when he lunged at her with a knife?

A Yes.

Q And she never in her quietest moments indicated to you that there was any other reason in the world that she shot David other than in self-defense, was there?

A She didn't tell me.

Q Nothing else, just you and her, right?

A Uh-huh.

Q And you are her friend?

A Uh-huh.

Q And she never told you anything other than he had a knife, there was an altercation about the phone, he had a knife, he came after me, he lunged and I shot, right?

A She told me that she saw the knife when he started coming at her, then she didn't know how she got cut.

Q Okay.

MR. MARTIN: One second, Judge.

Q (MR. MARTIN) In addition, I think your testimony in direct was in addition to the things that I repeated about he had a knife coming at her, that he told her that he was going to knock her G-D teeth out of her f'ing head?

A Her f'ing teeth down her f'ing throat, uh-huh.

MR. MARTIN: That is all I have.

THE COURT: Anything on redirect?

REDIRECT-EXAMINATION

BY MS. LIVESAY:

Q Did you come to this courthouse for a prior hearing to do with this defendant?

A I did.

Q And did you come to support her?

A I did.

MR. MARTIN: Objection. Objection. That is not proper redirect.

MS. LIVESAY: All I'll ask -- he asked her about what she said, what she said, is what she heard that day the same story as what she told this witness?

971

THE COURT: I don't think that is proper redirect. I would move on from that.

Q (MS. LIVESAY) One more question, Allyson. What she told this Court --

MR. MARTIN: Objection.

THE COURT: You all come over here.

(Whereupon, a bench conference was had.)

THE COURT: Anything else?

MS. LIVESAY: Nothing further from this witness.

THE COURT: Thank you. You may step down. She can be excused as far as you are concerned?

MR. MARTIN: Yes.

MS. LIVESAY: Yes, sir. At this time the State calls DeDe Richardson to the stand.

(DeDe RICHARDSON, having been duly sworn, testified as follows:)

THE CLERK: State your full name and spell your last.

WITNESS: My full name is Marian Lowder Richardson, I go by DeDe. The last name is Richardson, R-I-C-H-A-R-D-S-O-N.

DIRECT-EXAMINATION

BY MS. LIVESAY:

Q Where are you from?

A Originally from Lake City and I live in Florence

now.

Q What do you do for a living?

A I'm a consultant pharmacist in long term care.

Q And do you know the defendant in this case or the victim, David Sims?

A Actually, know them both.

Q If you don't mind, tell the jury how you know them?

A Well, I had known David for quite some time because he was married to a high school friend of mine, and then I met Heather a few years later at a New Year's Eve party. My husband introduced me to both of them.

Q So you know both of them?

A Right.

Q And how well do you know the defendant?

A Not very well.

Q And were you in contact with her around June/July or August of 2013?

A Yes, ma'am.

Q And how did that contact come about?

A Sad to say, but my husband and I were actually having problems also, so the timelines of our lives sort of parallel each other, so we were both in similar situations.

Q And did she talk to you about the situation she was going through with the victim in this case?

A She did. I know that they were not getting along very well.

Q Did you all talk on the phone and text on the phone about this situation?

A Yes, ma'am.

Q And I'm going to show you some text messages. Can you tell me whether or not these are the text messages between you and the defendant?

A Sure.

(State's Exhibit 115 marked.)

Q (MS. LIVESAY) I'll show you State's 115. Are those messages familiar to you?

A Yes, ma'am.

Q Are those the messages between you and the defendant?

A Yes, ma'am.

Q And were those messages sent around August of 2013?

A Yes, ma'am. Probably June/July.

Q Are the dates on the messages?

A Yes. That says 8/6/2013.

Q Is your phone number on the message?

A I do not see my phone number here, no.

Q But those are, indeed, the messages between you and her?

A Yes, ma'am.

MS. LIVESAY: At this time, the State wishes to put 115 in as evidence as the slide show, but for the record, this will be referred to as Evidence 115.

THE COURT: Any objection?

MR. MARTIN: Well, let me see.

THE COURT: Yeah.

MR. MARTIN: This is a question I have, is that a complete set of the exchanges between those two, or portions of it?

MS. LIVESAY: It is a portion, because the rest of them had been deleted off of the defendant's phone. This is all we were able to recover.

THE COURT: Okay. Just clear that up on the record, and you can cross her on that.

MS. LIVESAY: This is part of the defendant's Cellebrite report, that is where this came from.

MR. MARTIN: I'm a little confused, because my understanding was there is already one in evidence that was deleted, but they've got it, so if the deleted doesn't mean you can't get it, then --

MS. LIVESAY: Means you can't recover all the deleted messages, only some of them.

THE COURT: For the record, I'll assume that you are objecting to it, and I'll let you lay a foundation, and I'll admit it. Clear it up.

Q (MS. LIVESAY) Ms. Richardson, if you don't mind, tell the message going back and forth between you and the defendant.

A So the first one says, oh, that's good. Wow, how long have you all been married. And then the next one says, Because of the length of the marriage -- and then the next one says -- my lawyer said he can get alimony, but only short-term and only if he pushed for it.

And then the next one says, Us women stick together, too.

The next one says, Yes, I've tried to keep it out of someone else's hands and decide like grownups, but I don't think we can agree.

And the next one says, I'm going part time, though, so my W2 won't look as hot as it used to. Do you think he will be able to get the alimony? And I said -- someone says, Yes, it does, don't think I don't regret that. Whatever you tell me, I would never tell David, you know how men are, they stick together.

Q So is that you talking to her about divorce and alimony?

A Yes, ma'am.

Q Is she inquiring to you about alimony?

A Yes, ma'am. At that time, I had already seeked (sic) a lawyer to proceed with the divorce, and I had already gotten a majority of the advice -- legal counsel from him about those issues.

Q And she was kind of talking to you about advice that your attorney had given you?

A Right.

Q And did she confide in you the issues between her and the victim, David Sims?

A I knew that they were not getting along very well, and that hadn't been going on that long. But with the recent birth of their baby, that they were arguing a lot about whether he was able to take the child to see his parents, and things like that.

Q Okay. And so she confided to you what they were arguing about?

A Right.

Q That was about him taking the baby to Florence?

A Right.

Q Did she ever confide in you how she felt about him having time with the baby going to Florence, doing things with the baby?

A The only thing that she said to me was that if

she was working, and he was wanting to take the baby to visit his parents or family in Florence, that it made her real anxious and almost like not able to work and have panic attacks, and not wanting to be there.

Q Now, in the course of your conversations with her, were they by telephone and text message?

A Both telephone and text. Majority would have been the text.

Q And what was the time frame when this was going on?

A June or July, and we only spoke one time on the telephone, that I remember.

Q Now, did she confide in you as to any other problems that they were having?

A Just, again, marital issues, you know, just arguing.

Q Did she ever confide in you that he had ever been physical with her?

A She did not.

Q Did she ever tell you or indicate to you?

MR. MARTIN: Objection to leading.

THE COURT: I'll allow you a little bit.

MS. LIVESAY: Thank you.

Q (MS. LIVESAY) Did she ever confide in you that she had concerns about David being around the child?

A Actually, when she said that she felt uncomfortable about when she was at work and he was taking the child. I was like, how come, that's the dad, I think it would be okay, and his mom has two children, probably could figure it out, and so I just had twins, so you learn to kind of....

Q Did she ever tell you why?

A She didn't.

Q Did she ever indicate if she had any concerns that he would harm the child?

A No, ma'am.

Q Did she ever confide in you that she had concerns about him harming her?

A No, ma'am.

Q Were all your conversations with her about her wanting a divorce and wanting to be rid of him?

A I wouldn't say every single thing we ever talked about was that, no. I'm sure we talked about girl things, too.

Q Did she ever indicate to you that she wanted that marriage to work?

A I feel like she was just sort of asking the question so she could have a baseline knowledge of what to expect if she were to move forward if they were to move forward, what would happen.

Q So she was talking to you about, really, the baseline and what her options were when it came to divorce?

A Right.

MS. LIVESAY: Nothing further.

CROSS-EXAMINATION

BY MR. MARTIN:

Q Ms. Richardson, do you have -- yes, ma'am, let me see this a second.

(A brief pause in the proceedings.)

Q (MR. MARTIN) Is this -- is that all of the text messages that would have occurred between you and her?

A No, sir.

Q That is a portion of them?

A Right.

Q How many times did you and Heather get into a text exchange that you recall?

A Unsure about that.

Q Did you talk on the phone at all?

A We did, yes, sir.

Q And did you call her; she called you initially?

A I think we were texting, and then she said let's just talk, or something, and I drive a lot for work, so we spoke on the phone.

Q Who was your husband?

A Tommy Richardson. He's still my husband now.
Q Okay. Good. But at that time, you and she were going through marital troubles, so you talked a little bit?
A That's right.
Q You talked to a lawyer?
A Yes, sir.
Q Questions about alimony and child --
A Custody, yes, sir.
Q So this was back in early August, August 6th, you and her had these conversations. Do you remember when the other conversations were, if any were?
A Previously.
Q Prior?
A Yes, sir.

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

THE COURT: Anything on redirect?

REDIRECT-EXAMINATION

BY MS. LIVESAY:

Q Mr. Martin asked you whether or not there were more texts between you and her than just that I just showed you; is that correct?
A Right.
Q And I'll show you what already is put into evidence. This is her full Cellebrite report from May

until August; would that be the time frame you all talked?

A Yes, ma'am.

Q So if she didn't delete those messages, they would be in here?

A Right.

MS. LIVESAY: Nothing further, Your Honor.

THE COURT: You can step down, thank you.

MS. LIVESAY: Can she be excused?

THE COURT: Any objection?

MR. MARTIN: She can be.

THE COURT: She can be excused.

MS. LIVESAY: Do we have time for one more?

THE COURT: Oh, yeah.

MS. LIVESAY: At this time, the State calls Carolyn Paul.

(CAROLYN PAUL, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: Carolyn Paul, P-A-U-L.

MR. MARTIN: Judge.

THE COURT: Yeah.

(Whereupon, a bench conference was had.)

THE COURT: Subject to the previous objections put on the record, I'll allow this over those