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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.

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VOL. III

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

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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 3

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

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objections.

(State's Exhibit 115 admitted.)

(State's Exhibit 116 marked.)

DIRECT EXAMINATION

BY MS. LIVESAY:

Q Where are you currently employed?

A Nationwide Insurance.

Q Where is your office at?

A 2407 Second Loop Road, Florence, South Carolina.

Q And were you working there in August of 2013?

A I was.

Q And was your office in Florence then?

A Yes.

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

A I was.

Q Now, what are your responsibilities at Nationwide Insurance?

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

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

A Yes, it does.

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

A It is an individual term life insurance policy.

It is in the name of David Sims.

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

A It is.

MS. LIVESAY: Your Honor --

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

A It has my signature.

Q Has it been altered in any form or fashion?

A Not that I can tell, huh-hu.

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

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

(State's Exhibit 116 was admitted.)

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

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

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

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

A Correct.

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

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

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

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

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

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

paid to the beneficiary.

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

A Correct.

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

A It was David Sims.

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

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

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

A He was the owner.

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

A He was also the insured.

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

A Heather Sims was the beneficiary.

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

A No.

Q Only her?

A Only her.

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

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

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

A Correct.

MS. LIVESAY: Nothing further for this witness.

CROSS-EXAMINATION

BY MR. MARTIN:

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

A Correct.

Q And financial planner of sorts?

A Of sorts, yes.

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

A I do.

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

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

THE COURT: Speak up, please.

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

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

A Absolutely.

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

A I have, yes.

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

A Correct.

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

A I do.

Q This was a term policy?

A Yes, it was.

Q And those are relatively inexpensive for a younger person?

A Yes, it is.

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

A Correct.

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

A Somewhere in the latter part of June, yes.

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

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

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

A I did.

Q And he agreed with you about that?

A He did.

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

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

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

A Correct.

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

A Right.

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

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

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

A Correct.

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

A Yes.

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

A Yes.

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

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

Q Right. He did other insurance business with you?

A With the agent there, yes.

Q The name of the agency is Nationwide?

A It is Hodge Etheridge Agency.

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

A Yes.

Q Do know when that was?

A I can't tell you the date.

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

A Correct.

MR. MARTIN: Just one second, Judge.

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

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

Q White and green?

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

MR. MARTIN: Just one second, Judge.

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

A I've never met Heather.

Q You never met her, and you never had any

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

A No, sir.

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

A Good idea.

Q To get insurance?

A Yes.

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

A I sure don't.

Q Okay.

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

THE COURT: Okay. Anything on redirect?

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

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

(Defendant's Exhibit 50 marked.)

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

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

(Defendant's Exhibit 51 marked.)

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

You've never seen that picture before?

A No.

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

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

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

THE COURT: Security video?

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

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

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

MR. MARTIN: Yeah. Yeah.

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

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

A Okay.

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

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

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

A They are similar.

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

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

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

A No, I don't have a date.

Q Sometime between the 23rd and August 11?

A Yes.

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

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

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

MS. LIVESAY: That picture is in evidence?

THE COURT: Yeah. What about the policy?

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

(Defendant's Exhibit 51 admitted.)

THE COURT: Anything on redirect?

MS. LIVESAY: No further questions for this witness.

THE COURT: You can step down.

MR. MARTIN: I'm through with her.

MS. LIVESAY: The State rests at this time.

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

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

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

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

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

MR. MARTIN: I have probably seven to ten.

THE COURT: How long will they be?

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

THE COURT: Can we --

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

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

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

MR. MARTIN: Not long.

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

MR. MARTIN: Oh, yes, sir.

THE COURT: Let them fly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Anything in reply?

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

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

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

from.

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

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

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

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

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

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

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

MR. MARTIN: There was. There was.

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

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

THE COURT: What about that?

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

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

THE COURT: Which was a revolver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. MARTIN: I have to take a break.

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

MR. MARTIN: At most.

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

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

THE COURT: We know nothing up here.

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

MS. LIVESAY: Who?

MR. MARTIN: Lisa Riddle.

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

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

(A recess was taken and the proceedings continued in Volume IV.)

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

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

VOLUME IV of V

November 9th - 20th, 2015

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

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

HEATHER ELIZABETH SIMS,

Defendant.

APPEARANCES:

Nancy Livesay, Esq.
For the Plaintiff/State.

L. Morgan Martin, Esq.
For the Defendant.

Official Court Reporter:
Natalie Dahl, RPR

THE COURT: You have one witness in and out?

MR. MARTIN: Yes.

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

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

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

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

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

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

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

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

THE COURT: Call your witness.

MR. MARTIN: We call Lisa Riddle.

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

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

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Lisa, where do you live?

A I live in Spartanburg, South Carolina.

Q What kind of work do you do?
A CRNA, certified registered nurse anesthetist.
Q Are you married?
A Yes.
Q Have children?
A Yes, sir.
Q And you are currently employed where?
A Gastroenterology Associates.
Q In Spartanburg?
A Greenville.
Q And do you have to be back at work bright and early tomorrow morning without failure?
A Yes, sir.
Q And you asked me to take you this afternoon if in any way we could, whether in or out of order?
A Yes, sir.
Q Do you know Heather?
A Yes, sir.
Q How long have you known her?
A Nine years.
Q In what capacity did you come to know her?
A I met her in August of 2006. We went to the Medical University of South Carolina together, and we obtained our Master's in Nursing Anesthesia Science there.

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

A We were there in school together for 28 months.

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

A Yes, sir.

Q You consider her a good friend?

A Yes, sir.

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

A Yes, sir.

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

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

THE COURT: Generally, I would assume.

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

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

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

communities you have been with her in addition to that, specifically the medical community, for truthfulness and honestly?

A Yes, she's truthful and honest.

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

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

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

A She's above and beyond extremely hard work.

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

A She's very generous.

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

A Very peaceful.

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

A No.

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

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

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

MR. MARTIN: That is not the question.

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

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

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

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

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

what she knows.

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

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

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

A Yes, sir.

Q You and her talked on the phone fairly regularly?

A Frequently.

Q Text with each other fairly regularly?

A Yes.

Q You know your texts are now part of evidence?

A I realize that.

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

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

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

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

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

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

A Yes, sir.

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

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

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

A Figurative.

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

A No.

MR. MARTIN: Answer any questions they have.

CROSS-EXAMINATION

BY MS. LIVESAY:

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

A Roughly.

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

A Sure.

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

A Yes.

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

A Potentially those could be from me, yes.

Q Are they, or aren't they?

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

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

A No.

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

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

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

A Right.

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

A Right.

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

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

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

A You have a script from the phone call?

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

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

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

A Potentially.

Q Because that is the one right after that divorce?

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

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

A Right, but I do recall that one.

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

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

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

A I do recall that.

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

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

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

Q Her not wanting to work?

A She wanted it to work.

Q Oh, wanting the relationship?

A The relationship to work, yes.

Q How often did you talk to her?

A Multiple times a week on the phone, both.

Q Text and phone call?

A Yeah.

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

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

Q Because the only text I see between you and her between that one and after David was shot -- and let me ask if you recall this one. You are asking her on the 13th -- let me make sure the date is right. Actually, it is the 12th about going to a Florida football game the day after he was shot; do you remember that?

A Maybe.

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

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

A Does it have my number with it?

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

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

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

A I didn't know --

THE COURT: You all, one at a time.

A I didn't not know that happened --

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

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

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

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

A Yes, ma'am.

Q How long have you been living in Spartanburg?

A 34 years.

Q How long?

A 34.
Q So you've never lived in Conway?
A Well, I moved away for anesthesia school, but I still had a home in Spartanberg.
Q How many years have you lived in Conway, South Carolina?
A Six weeks.
Q So out of your -- you are how old?
A 34.
Q And out of all that time, six weeks you have lived in Conway?
A I lived with Heather in Conway.
Q For six weeks?
A Yes, ma'am.
Q Where did you all live?
A In her home.
Q On Old Reaves Ferry Road?
A Yes, sir.
Q Her parents' home?
A Yes, ma'am.
Q So you and her lived with her mom and daddy on Old Reaves Ferry Road for six weeks?
A Uh-huh.
Q Is that the most you ever had lived in Conway?
A Yes, ma'am.

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

A Right.

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

A Yes, ma'am.

Q And how do you know him?

A Through Heather.

Q And how many times had you met him?

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

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

A Yes, ma'am.

Q Do you know anything about him?

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

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

A Not much.

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

A Sometimes it was.
Q So you have no idea what he's like; is that correct?
A Not personally from him.
Q Personally, do you, as a witness, talking to this jury, do you know anything about that victim?
A I know him through the encounters we had.
Q Which was only a handful?
A Handful of times.
Q And you do not live in Conway, so you had no idea what went on between the two of them in Conway?
A Not in Conway, but through phone calls and text messages I did.
Q From what she tells you?
A From him as well.
Q Did you ever stay with them in Conway?
A I stayed with her and her parents before she got married.
Q How about her and David?
A No. No, ma'am.
Q Did you ever spend any time with her and David in their home in Conway?
A No, ma'am.
Q So you have no personal knowledge for yourself of anything that went on in that household between her and

David?

A Not personally.

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

A Correct.

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

A I know what she's told me.

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

A No. I wasn't there.

Q Have you ever been to their house in Conway?

A Yes.

Q On Old Reaves Ferry Road?

A Yes.

Q How many times?

A Maybe three.

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

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

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

A Just her.

Q So you actually never seen the two of them interact in that house together?
A No, ma'am.
Q So you have no personal knowledge of what went on between the two of them in that house in Conway?
A Correct.
Q And you didn't even live in Conway on August 11 of 2013?
A Correct.
Q And you never lived in Conway when the two of them lived in Conway?
A Right.
Q So all you are up here doing is talking about what this woman told you, basically?
A And what he's told me. He spoke to me as well.
Q How many times did he talk to you?
A A handful through text messages, never on the phone.
Q Okay. Did you notice your number was not on those text messages?
A Yes.
Q Did you know they had been deleted?
A The messages?
Q Between you and her.
A I didn't see they were deleted.

Q You didn't see they were deleted?
A Huh-huh.
Q This is your message here; you see that?
A Yes.
Q And you see over here where it says "yes" for being deleted?
A Yes, ma'am.
Q Do you acknowledge that your messages had been deleted?
A Yes, ma'am.
Q Let me ask you something else. You say you know this woman, you know her reputation for truthfulness, know this woman would only act out of self-defense; is that what you told Mr. Martin?
A Yes.
Q So would it surprise you that she was wiping down the crime scene after she shot him?

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

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

THE COURT: That is what you ask her.

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

bleeding out; did you know that?

A I wasn't there.

Q So do you know it, yes or no?

A No.

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

MR. MARTIN: Objection.

THE COURT: Ask her if she knows it.

MS. LIVESAY: I did ask her.

Q (MS. LIVESAY) Did you know?

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

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

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

THE COURT: Sustained on that question about the phone.

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

A No.

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

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

MS. LIVESAY: That's fine.

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

A No, ma'am.

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

A No, ma'am.

MS. LIVESAY: No further questions.

REDIRECT-EXAMINATION

BY MR. MARTIN:

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

A Yes.

Q Tell the jury about that.

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

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

THE COURT: I have no idea.

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

MR. MARTIN: No.

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

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

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

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

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

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

MR. MARTIN: No, sir.

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

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

THE COURT: Who do you have in the morning?

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

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

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

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

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

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

MR. MARTIN: Understood. Have a good night.

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

out of the presence of the jury.)

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

MR. MARTIN: Judge, can we approach?

THE COURT: Yeah.

(Whereupon, a bench conference was had.)

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

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

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

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

JUROR: 31, no, sir.

JUROR: 51, no, sir, Your Honor.

JUROR: 115, no, sir.

JUROR: 210, no, sir.

JUROR: 311, no, sir.

JUROR: 74, no, sir.

JUROR: 89, no, sir.

JUROR: 371, no, sir.

JUROR: 327, no, sir.

JUROR: 64, no, sir.

JUROR: 123, no, sir.

JUROR: 79, no, sir.

JUROR: 132, no.

JUROR: 217, no, sir.

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

MR. MARTIN: Renee Hardwick.

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

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

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

DIRECT-EXAMINATION

BY MR. MARTIN:

Q You work where again?

A Horry County 911.

Q In what capacity?

A Deputy director.

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

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

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

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

Q And the date on that 911 call is what?

A July 31st, 2012.

Q July 31, 2012?

A Yes, sir.

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

A Yes, sir.

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

THE COURT: Any objection?

MS. LIVESAY: Obviously I objected earlier, but.

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

(Defendant's Exhibit 17 admitted.)

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

A Domestic.
Q And does it indicate who called in?
A The caller name shows Heather Sims.
Q Does it say what telephone number it came from?
A Yes, sir. (843) [redacted].
Q If you would -- and, again, now, what do you have here, how would you describe what is on this document as opposed to the actual recording that would have been made of the call when it came in?
A These are the notes that were taken during a call that the call taker, dispatcher, puts in the call. It is not a complete transcript of the call, not word for word.
Q It is her brief summary?
A Correct.
Q Of what the call was about?
A Yes.
Q If you would, publish that to the jury. The notes are what? If you would read the notes to the jury beginning where it starts here.
A You want the date and time?
Q Yeah.
A July 31, 2012, 9:09:08 p.m., incident was initiated by PD, Tracey Novak. July 31, 2012, 9:09:08 p.m., said she and her husband, David Sims, are

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

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

A It is whatever I'm asked to do.

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

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

THE COURT: You can correct it.

A Okay. I'm sorry.

THE COURT: Just let me know.

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

THE COURT: Well, go ahead and reread it.

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

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

A Yes, sir.

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

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

CROSS-EXAMINATION

BY MS. LIVESAY:

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

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

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

A That is what the notes say.

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

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

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

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

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

guns in the house and they are not locked up?
A That is what I would take it to mean.
Q Now, it does say something about him, David Sims, in here, doesn't it? Around 7-31 at 9:11 p.m., and again at 9:10 p.m. Tell the jury what is going on, what is she telling the dispatcher at 9:10 and 9:11?
A He has a bloody lip, REF, to struggle over phone. He is telling her to hang-up because her daddy is on the way.
Q So she told the dispatcher that he has a bloody lip; is that correct?
A That is what the notes indicate, yes.
Q And that he has called her dad?
A That he is on the way, is what it indicates.
Q Now, there was something else on this call that I felt very interesting. At seven -- July 31st, tell this jury what she's telling the 911 caller (sic) at 9:11 and nine seconds?
A She wants this on record.
Q So she's calling telling the 911 caller where are you, he's taken my phone and I want this on the record?
A Yes.
Q Now, a little further down does it ever say whether or not her dad showed up to the house?
A 7/31/2012, 9:15:34 p.m. her dad has arrived.

Q So her dad does show up to the house?
A According to these notes, yes.
Q Okay. Can I take another look at it? Thank you. Now, at 7/31/2012 it talks again about her dad. If you don't mind, tell this jury what is being said on those two lines at 9:17.
A I let her off the phone to talk to her dad, slash, who the husband calls every time, TH. And the next line is EY, so it is they, fight, slash. He is a constable and not too happy we were called.
Q So it indicates that her dad shows up, he is a state constable, and he's not happy that she called the police?
A That is what it says.
Q That is what the notes indicate to you?
A Yes.
Q Do you know Ronnie Causey?
A Yes.
Q And is he a state constable?
A I don't know the current status, but he was.
Q Now, there is something very interesting here that is going on at 9:18. Tell this jury what that note says, and if you don't mind, what does CX stand for; do you know?
A It is an abbreviation for "counsel."

Q So tell the jury what she's saying at 9:18?
A She has called back, slash, slash, ADV, that she has her phone, slash, slash, at ADV. We can't cancel, verbal only.
Q So she calls back and says I've got the phone back, and this is after her daddy has arrived and gotten there, and she wants to cancel the call?
A That is what the notes indicate.
Q So the notes indicate she calls back and says my daddy is here, I got my phone back, don't worry about coming?
A Well, they indicate that he arrived, and it says that, yes.
Q Now, does it indicate anything at 9:47?
A Verbal only.
Q And this is what she's telling the dispatcher?
A She was the caller, so, yes.
Q And she told the dispatcher that he has a bloody lip; is that right?
A That's indicated in those notes, yes.
Q Now, if you don't mind, look over this and tell me where she's saying she's injured?
A I don't see anything in the notes that indicate that says that she was injured.
Q So she calls 911 over her phone, and the only

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

A That's what these notes indicate.

Q And she was the caller?

A Right.

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

A According to these notes, yes.

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

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

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

A At 9:15:34 p.m.

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

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

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

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

A Yes.

MS. LIVESAY: No further questions.

REDIRECT-EXAMINATION

BY MR. MARTIN:

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

A By law it is 60 days.

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

A No, sir.

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

WITNESS: Can I be released?

THE COURT: Can she be released?

MR. MARTIN: Yes.

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

THE COURT: Call your next witness.

MR. MARTIN: Becky Pavilack.

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

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

THE COURT: Okay.

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

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

MR. MARTIN: I have no objection.

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

WITNESS: Go ahead.

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

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Where are you employed today?

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

Q Where were you employed on August 11, 2013?

A Horry County Fire Rescue.

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

A Yes.

Q Do you know what time you got there?

A She just took my report, so.

Q Let me ask you this question --

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

Q Say that again.

A 18:36.

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

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

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

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

Q How would you describe her demeanor?

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

Q Did you -- who is Unit 34?

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

sorry, 905.

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

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

Q What did you do?

A To?

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

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

Q There was blood on the knife?
A There was.
Q Did you -- as you were there, did you note whether the knife was in the right or left hand?
A Well, I could have swore it was in his left hand, but I did not document which hand it was in.
Q That was just your impression?
A It was on the left side of his head, and I just assumed it was in his left hand, but I did not document which hand it was in.

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

CROSS-EXAMINATION

BY MS. LIVESAY:

Q You looked in the bathroom and saw the victim?
A I was in the bathroom, yes, ma'am.
Q If you don't mind, tell the jury how he looked?
A He was pale in color.
Q What?
A Pale in color. He had no pulse rate, was not breathing. There was blood noted to the front of his shirt, and that is about what I got.
Q My question is, you and Scott Thompson come in, correct?
A Yes.

Q She's obviously up talking, moving around?
A She was sitting on the end of the bed. I don't know if there was like an ottoman or a chest at the end of the bed, or she was actually on the edge of the bed. She was at the edge of the bed. She was talking, so I knew she had good circulation, so I knew she wasn't the priority at the moment.
Q She was upright and able to speak?
A She was speaking, yes.
Q And she wouldn't be talking jibberish, she was talking something that you could understand?
A She told me, Go help him, go help him.
Q Here is my question. When you all went in there, nobody did, from EMS, CPR on him; is that correct?
A On Mr. Sims? No, ma'am.
Q If you don't mind, tell this jury why not?
A He had no pulse. The call had originated at 8:13. The first arriving unit was 8:35, so there was 15 minute -- if my math is a little wrong -- 15, 20 minute arrival for the first medic unit. There was no signs of life left.
Q So, basically, when you get there and you all take a look at him, you know he's dead?
A Well, I mean -- hooked him up on the monitor, which was a flat line. He had no pulse. He was very

cool in temperature.

Q He was cool?

A Cool.

Q Which is an obvious sign of being deceased?

A Right.

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

A There was no sign of life, no.

Q And you are a nurse at Grand Strand?

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

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

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

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

A Yes.

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

A Nurse anesthetist.
Q Does she have as much education as you?
A More education.
Q So she has more education than you have?
A Yes, ma'am.
Q And you could look down there and tell that this man was deceased, he was not going to be revived?
A Understand that the initial call received was at 18:33; we arrived at 18:35. We had to stage to let the police clear the scene. So there was time that went by before we got to him.
Q Let me ask you this. When she was telling you, Go in there, check on him, there is no doubt he was not moving, he was not breathing and he was already cool to the touch?
A Yes.
Q So you knew at that time he was deceased from your medical knowledge?
A Yes, ma'am.
Q And this woman has more medical knowledge than you do?
A Yes, ma'am.
Q Now, you said earlier that you were focused on her; is that right?
A I initially went into the bathroom to make sure

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

Q Could you even see her injuries?

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

Q And how about on her arms?

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

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

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

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

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

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

Q And did you actually see that wound?

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

Q You don't know how deep it is.

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

Q You didn't see anything on the arms?

A I did not really pay attention to her arms.

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

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

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

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

A Yes, ma'am.

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

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

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

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

Q So you automatically send it off?

A Yes.

Q And there is no way visually for any doctor or

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

MR. MARTIN: Objection.

THE COURT: What's the objection.

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

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

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

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

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

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

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

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

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

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

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

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

MS. LIVESAY: No further questions.

REDIRECT-EXAMINATION

BY MR. MARTIN:

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

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

can come in.

Q Where did you stage?

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

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

Q (MR. MARTIN) Where did you stage?

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

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

A Yeah, however far that is.

Q How long did you stay staged?

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

MR. MARTIN: Thank you.

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

MR. MARTIN: Yes.

THE COURT: You are released.

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

(Defendant's 52 marked.)

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

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

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Steven, where do you work today?

A Pen County Fire and EMS.

Q Where were you employed on August 11, 2013?

A Horry County Fire, Station 34.

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

A Yes, sir.

Q Did you go to the Sims' house?

A Yes, sir.

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

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

ensure there is no hazards for us.

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

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

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

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

Q And you were in route at what time?

A 18:16:21.

Q And arrived at what time?

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

Q And you left the scene at what time?

A 18:48:01.

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

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

Q Did you travel with her to the hospital?

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

Q What time did you arrive at the hospital?

A 19:06:39.

Q And that is about 7:26:44?

A Say that again?

Q Is that 7:26?

A We arrived at the hospital at 7:06.

Q 7:06?

A Yeah.

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

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

Q And what did you do when you got there?

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

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

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

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

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

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

A It was a few minutes.

Q 10, 15 minutes, roughly?

A Potentially.

Q All right.

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

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

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

Q What, if anything, did you do then?

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

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

A Emotional.

Q Frantic?

A Yeah.

Q Hysterical?

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

Q And did you examine her?

A Yes, I did.

Q And what were your physical findings of her injuries?

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

Q Yeah.

(A brief pause in the proceedings.)

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

Q (MR. MARTIN) Sir?
A Can I just read it to you as it is written.
MR. MARTIN: I move to enter it into evidence.
THE COURT: Any objection?
MS. LIVESAY: Yes, sir. Are we refreshing his memory, or are we putting a prior statement in evidence?
THE COURT: I have no idea.
MR. MARTIN: It is not a prior statement. It is the actual EMS incident report, which is maintained in the record.
MS. LIVESAY: And you are putting that into evidence?
MR. MARTIN: Yes.
MS. LIVESAY: I have no objection to it going into evidence, but I have an objection from him straight of reading off of it. Either he remembers or doesn't.
THE COURT: It is in evidence. Overruled on that. He can refresh his memory. Make sure when you do that, let us know.
(Defendant's Exhibit 52 admitted.)
Q (MR. MARTIN) I'll hand this to you, and I want to know what you reported that you found related to her injuries. Whether you want to read it or refresh

your memory, it doesn't matter to me?

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

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

A One.

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

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

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

A Can I read from this?

Q Yes.

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

MR. MARTIN: That is all I have.

CROSS-EXAMINATION

BY MS. LIVESAY:

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

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

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

A In the bedroom.

Q So you were not in a hospital?

A No.

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

A Huh-huh.

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

A He said --

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

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

does, he can answer. Overruled. Go ahead.

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

A No, ma'am.

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

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

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

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

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

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

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

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

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

A Admission date, 8/11/13.

Q Who is that that he saw?

A He saw Sims, Heather.

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

A Uh-huh.
Q Do you see whether or not she was assessed by the hospital?
A I'm not familiar -- I mean, it's a medical record of hers, so someone saw her.
Q But you are not real familiar with medical records?
A Not in the hospital. I don't work in a hospital.
Q That's fine. If you don't mind, you testified earlier that she was hysterical when you got there; is that correct?
A Yeah. That was in another document I was provided with. It wasn't given back to me.
Q But your assessment was that she was hysterical?
A That is not in my report, no.
Q Okay. Now, she is a nurse?
A Anesthetist.
Q Thank you. Does she have more or less education than you do?
A More.
Q Okay. But when you got there, did she tell you, My wound is not that bad?
A I don't believe that is in the record, ma'am.
Q When you were called out, did the dispatcher let you know she has told us that, yes, she's stabbed, but

it is not that bad?

A Again, that is not in the report.

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

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

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

A There is no way to tell that.

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

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

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

A Per protocols, any penetrating injury is Level 1.

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

A Correct.

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

-- you have some medical training?

A I'm a paramedic.

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

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

THE COURT: Only ask what he knows. Sustained.

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

MR. MARTIN: Objection. Same question.

THE COURT: Yeah, same question.

MS. LIVESAY: The man is a paramedic.

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

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

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

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

A No, ma'am.

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

A That is not in the document here, so.

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

A No, ma'am.

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

A I found her on the foot of the bed.

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

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

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

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

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

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

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

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

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

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

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

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

A Negative.

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

A No.

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

A No.

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

A No.

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

A Uh-huh.

Q Is that correct?

A Uh-huh. Yes.

MS. LIVESAY: Nothing further.

THE COURT: Anything?

MR. MARTIN: No, sir.

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

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

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

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

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

(A discussion was had off the record.)

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

(Defendant's Exhibit 53 through 56 marked.)

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

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

MR. MARTIN: Adrienne Hefney.

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

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

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Where are you employed?

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

Q For how long?

A Yesterday made 18 years.

Q And in what capacity?

A As forensic DNA analyst.

Q How long have you worked in that field?

A For 18 years.

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

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

Q 78th?

A 70th.

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

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

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

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

A Yes, sir, I was.

Q And did you perform that analysis?

A Yes, I did.

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

A Yes, sir, I did.

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

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

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

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

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

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

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

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

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

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

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

A That is correct.

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

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

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

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

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

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

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

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

A That is correct.

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

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

Q Also matches?

A Yes, sir.

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

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

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

A That's correct.

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

A More than likely, it would not.

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

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

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

A You have.

Q And can you describe what it is for us?

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

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

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

MR. MARTIN: I move to enter into evidence

Exhibit 53.

THE COURT: Any objection?

MS. LIVESAY: No, sir.

THE COURT: Without objection, 53.

(Defendant's Exhibit 53 admitted.)

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

A Yes, I did.

Q What did you find there?

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

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

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

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

Q 1 in 66?

A Yes, sir.

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

A What matched David, yes.

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

A That's correct, from a grip portion.

Q What were your findings there?

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

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

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

A That is correct.

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

A A picture of a gun, pistol.

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

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

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

MS. LIVESAY: Which picture?

MR. MARTIN: The one with the gun.

MS. LIVESAY: That one?

THE COURT: Okay. You can go ahead.

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

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

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

(Defendant's Exhibit 54 admitted.)

MS. LIVESAY: No objection.

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

A Yes, sir.

Q How about Item 8?

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

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

A Correct.

Q And your findings as to Item 8 are what?

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

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

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

Q DelPercio and Ronnie Causey are excluded as possible contributors?

A Correct.

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

A That's correct.

Q Did you examine Items 21.3 and 21.4?

A Yes, sir, I did.

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

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

Q What were your findings with regards to those?

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

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

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

A In this case it was 3.1 quintillion.

Q What is more, a quadrillion or a quintillion?

A A quintillion is more.

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

A That is correct.

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

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

A Yes, sir.

Q Do you see 21.3 and 21.4 on 77?

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

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

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

Q Of course these are cut-offs?

A Oh, okay.

Q Don't know what you call them --

A Capri pants?

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

A Capri pants.

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

A Yes, sir.

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

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

Q Does it accurately represent your findings?

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

MR. MARTIN: I move to introduce Exhibit 56.

MS. LIVESAY: Without objection.

THE COURT: Without objection, Defendant's 56.

(Defendant's Exhibit 56 admitted.)

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

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

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

A That is correct.

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

MS. LIVESAY: Without objection.

(Defendant's Exhibit 55 admitted.)

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

A That is correct.

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

A Yes, sir.

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

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

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

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

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

of something, you would find it?

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

MR. MARTIN: One second, Judge.

(A brief pause in the proceedings.)

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

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

Q No DNA of Heather Sims?

A That is correct.

MR. MARTIN: That is all I have.

CROSS-EXAMINATION

BY MS. LIVESAY:

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

A That's correct.

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

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

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

evidence sealed-up bags, would you touch it?

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

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

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

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

A That is correct.

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

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

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

A That is correct.

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

good?

A That is correct.

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

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

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

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

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

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

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

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

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

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

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

A If it has been tampered with at the scene?

Q Yes.

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

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

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

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

A That is correct.

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

A That is correct.
Q So if something has been wiped or manipulated, you would have no idea?
A That is correct.
Q So all you're analyzing is what the police are able to collect when they arrive and what they see?
A That's correct.
Q So if the scene has been manipulated or wiped or messed with in any form or fashion before the police get there, we are stuck with whatever has been done?
A Whatever the police collects and sends to us, that is what I have.
Q This is the knife, that black Cuisinart knife. Let me ask you this. Was this sent to SLED, or were Q-tips swabbed off of this sent to SLED?
A The swabs.
Q So you never even see this, just the swabs?
A That's correct.
Q I'll open it up. Do you mind going through the results while we're looking at the knife?
A Okay.
Q Do you want some gloves?
A Yes, thank you.
Q Do you mind stepping through and coming down for the jury. Let me get a picture so we can be accurate

as to how it looked that night on the scene.

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

(A brief pause in the proceedings.)

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

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

A Yes, Cuisinart.

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

A That's correct.

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

A That's correct.

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

A Resting between the thumb and index finger, it

looks like.

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

A Uh-huh.

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

A Uh-huh.

Q This is the non-label side again?

A Uh-huh.

Q And if I grip my hand around it, it would be like that?

A Yes, ma'am, if you grip.

Q So now what we're looking at is the non-label side, and this would be the label side. Now, which part of the handle, which side of the handle has blood?

A Let's see. I'm missing my notes here. The handle. They told me about the blade. I don't see -- blade of Cuisinart side and the swab from black handle knife, non-label side, handle, Item 14, for any DNA, there was no blood.

Q Which side, Cuisinart or no Cuisinart?

A No Cuisinart, non-label.

Q So I'll show this crowd. Can I get where you are at? So the non-label side of the handle does not have any blood?

A Right.

Q So that would be this side of the knife, non-label side handle has no blood (indicates)?

A On the handle, yes, ma'am.

Q So what we're saying is I did like this with the knife and then I came back out from that side, there is no blood on that side of the knife that you saw?

A On the handle? From what I'm looking at, there is no blood on either side of the non-label side -- I'm sorry that is the blade. So Item 14, the handle, no blood.

Q So I can show this jury, if the knife is being held like this (indicates) --

MR. MARTIN: I object to that, because it is improper. If the knife is being held like this, it calls for speculation.

MS. LIVESAY: That's right.

THE COURT: I understand. Let him -- go ahead.

MR. MARTIN: The objection is if it is held like this, in and of itself it requires speculation.

MS. LIVESAY: It doesn't. Here is the picture of how he is holding the knife.

THE COURT: I'm going to allow her to answer. The question is if it was held like that. I understand your objection, but go ahead.

Q (MS. LIVESAY) When the knife is held like this --

A With your hand gripped around it?

Q Yes. Let me show the jury. And this is the non-label side (indicates)?

A Uh-huh.

Q If I go like this (indicates) with this knife, so the jury can see, there is no blood on this side of the handle for the results?

A Are you saying you have blood on the shirt maybe?

Q Yes -- I'm just asking is there any blood indicated on this part of the handle?

MR. MARTIN: I want to make an objection.

THE COURT: Go ahead. Ladies and gentlemen, I'm going to send you out for two, three minutes. Don't talk about this case.

(The jury exits at 12:32 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Tell me your question again.

Q (MS. LIVESAY) I'm just asking her, is there blood on this part of the handle, and she's going to say, no, there's not.

THE COURT: If you ask that question, that is fine, but that really wasn't what you were asking. You were making -- if this, if that. What you can ask

is if there is blood on that handle. You are going to say, no; right?

WITNESS: No.

THE COURT: And that's the answer.

MR. MARTIN: To save time, because I'm very dubious whether that is all that is going to be asked and answered, so to save time, the question that Ms. Livesay just asked -- and, frankly, the one or two before that -- I would object to that, because there is a couple of problems. One, she's asking this witness a question in which she has no basis and fact to testify to. Number two, she is saying if I had the knife like this and I touched here, there's nothing in the record about how she's holding the knife or what she's touching. Thirdly, the question -- again, the question obviously calls for speculation in order for this witness to try to answer it. What she's doing is jury argument, and she can argue that if it was held like this or that all day long, but there is no need to ask this witness over and over something she knows nothing about.

MS. LIVESAY: She knows that there is no blood on this side of the knife.

MR. MARTIN: She testified to --

THE COURT: That is the question you ask. But

all of the hypotheticals, I'm going to rule she can't testify, because she can't. She knows -- that is why she's smiling -- that anything you ask her -- if a unicorn walked in here, we would all be stunned, but that is the way it is.

Bring them back in, and just ask that question.

(The jury enters at 12:34 p.m., and the following is heard in the presence of the jury.)

THE COURT: Thank you. Ask that question.

Q Is there any blood on this side of the handle of the knife?

A On the non-label, no.

Q This is the side that we see up here; is that correct?

A The non-label side is up right here, yes, ma'am.

Q No blood on that side of the knife?

A On the handle.

Q On the handle of the knife. No blood on that side of the handle of the knife; is that correct?

A Right.

Q Now, the label side is the part laying in his hand; would you agree?

A Yes, ma'am. The label side is turned down in that picture.

Q Is there blood on that side?

A Okay. (Witness examines document.) The non-label side of the blade....

Q So you are telling me --

THE COURT: Let her finish.

A So you asked me if there was blood on the non-label side of the handle? No. And then swab from black handle knife, non-label side of the blade? No. And then Item 10, swab from handle of the knife, there was blood and swabs from blade Cuisinart side of the knife, there was blood.

Q So let me ask you this. On this side, which is the Cuisinart side; would you agree?

A That's the Cuisinart side, yes, ma'am.

Q Tell me if there was any blood indicated on this part of the handle.

MR. MARTIN: Wait a minute now. I object to that, because the question says "this part of the handle." This witness doesn't know what part of the handle was swabbed. That was Ms. Domogauer that did that, so she doesn't have a basis to answer that.

THE COURT: The question is does she know. If she doesn't know, the answer is, no. If she knows, I'll let her respond to the extent of her knowledge. Go ahead.

A I don't know. This is how it came to us, so all

I got was Item 10 was swabbed from handle of the knife. Item 11 was swabbed from blade, Cuisinart side, of the knife. Whether the handle of the knife was the Cuisinart side, she didn't say that. I don't know. So there was blood indicated on the handle of the knife. Now, whether that was Cuisinart side or not, I don't know.

Q Was there another swab sent to you?

A It was four swabs total, I'm guessing from this one knife, and Item 10 says, Swab from handle of knife and there was blood indicated. Item 11 says swabs from the blade Cuisinart side of the knife, so I'll assume that is right here, there was blood indicated there. We skip down to 14, swab from black handle knife, non-label side handle, there was no blood, touch DNA. And Item 15, swab from black handle knife, non-label side of the blade, no blood. So she never labeled whether the handle was the label side.

Q So one is labeled swab from black handled knife, non-label side of handle?

A That's correct.

Q So would you agree that this was the non-label side?

A Of the handle, yes, ma'am.

Q And is there any blood on this part of the

handle?

A No, ma'am. On the non-label side of handle, no, ma'am.

Q Would you agree with me that that is the part of the knife showed in this picture?

A That is correct.

Q So the part of the handle in this picture, there is no blood indicated on that part of the handle?

A On the handle, no, ma'am.

Q Now, was there blood indicated on the other side of the handle?

A If that is what she meant when she described it that way. It just says, Swab from handle of knife Item 10. She didn't say whether it was labeled or not.

Q What does that tell you?

A That there was blood indicated, swabs from handle of knife, blood indicated, and that is the DNA analysis.

Q So we know there is only blood on one part of the handle?

MR. MARTIN: Objection. Again, now --again, Jill Domogauer testified. I object because she's asking this witness a question she can't answer, because she doesn't know how the knife was swabbed.

THE COURT: You asked her --

MS. LIVESAY: Your Honor, in her testimony -- if I can -- she got up and Mr. Martin questioned her, and she said, yes, on this side of the handle there was blood, on the other side there was no blood. On the Cuisinart side, there was blood; on the other side, there was no blood.

THE COURT: I'm overruling, but ask her first, does she know. Her answer has been, no; and if it is no, it ends. Ask the question.

Q So the only thing that you know is that the swab from black handle knife non-label side did not have blood on it?

A Black handle knife, non-label side of handle did not have blood.

Q So all we know is that --

A There was a second swab from the handle, there was blood, but she didn't say whether it was labeled or not.

Q So all we know is that this portion of the knife exposed in this picture has no blood on it?

A That's correct, because that is non-label side.

Q So we know the knife sitting in his hand, which has blood all over it, doesn't each have blood on one side of the handle?

A That's correct.

MR. MARTIN: Objection. I object, and here is the difference -- and she can call her other witness -- the portion that was swabbed apparently had no blood. We don't know what was swabbed or what wasn't.

THE COURT: I'll let him redirect now that it is opened up.

MR. MARTIN: Redirect.

MS. LIVESAY: Like I said, Your Honor, I don't want to squabble, but we have already entered something into evidence, Mr. Martin did, and it is labeled, "Knife handle, labeled side, blood; knife handle, non-label side, touch. So is that now we are saying that is no good?

THE COURT: I'm saying he gets on redirect, he can ask her questions about what you are asking her now, but you have to ask if she knows this stuff.

MS. LIVESAY: We can get it straight now.

Q Did Mr. Martin show you this?

A Yes. Knife handle, label side, blood. If you are assuming that this is the label side, then, yes. I was going by Item 10. Our Item 10, and that is correct for our Item 10. Whether he said label side, I said Item 10. There was blood on Item 10.

Q Are you now saying that the knife handle, label

side, had blood on it?

A On that side of 10, if she swabbed it, it would have been easier if she had swabbed the Cuisinart side of the handle, but she didn't say. But blood indicated on that side.

Q This has to be clear. DNA results -- I know you know how important it is --

A I do. And, unfortunately, I wasn't there taking the swabs. I mean, SLED doesn't take them. They were sent to us. This is how we received it, as far as description.

Q What you are saying is you cannot testify that the knife handle, label side, had blood?

A One would assume it did since the other side -- I'm assuming she flipped the knife and took blood, but that is an assumption. All I can go by is Item 10, swab handle of the knife had blood.

Q Let me ask you this.

A And Item 14, swab from the non-label side of the handle did not have blood.

Q Would you say -- are you saying that this is accurate?

A Item 10, knife handle, blood, yes.

Q So now you are willing to say that the knife handle, label side, did have blood?

A Well, that is what they want to call it, yes. If that is what you want to say label and non-label side, that is not how it is described.

Q I know. I know. We have to figure out what you can testify to. Can you say that the knife handle, label side, had blood on it? Can you say that?

A I can say Item 10.

MR. MARTIN: Again, just to clear it up --

THE COURT: Wait a minute.

MR. MARTIN: To clarify the question, the swab that she tested, that is what she can testify to, and that is the point I'm trying to make. This is misleading -- or confusing, let me say that. The swab is what she tested, not the knife handle. Maybe they swabbed the whole thing, maybe they didn't. Maybe they rubbed something off, maybe they didn't. But it is confusing, and I object under 403, if that is the confusion with the rule. They keep talking about the handle.

MS. LIVESAY: Here is the problem, real quick. Mr. Martin has put this into evidence, and now this lady is saying I cannot say. That is the issue, she's now saying I can't say knife handle, label side, had blood. She's saying -- is that what you are saying?

MR. MARTIN: No. I'm --

WITNESS: I'm going by the item number.

THE COURT: Wait. Here is the deal. Obviously, I don't want to confuse them, but, Mr. Martin, you get the right to redirect and you can ask these questions. I understand what you are saying. You can ask her if she knows the answer to these things. I haven't made any ruling -- that is in evidence.

A I'm going to assume, for just clarity's sake, that Item 10, knife handle, label side, is what it was. Item 10, I don't know -- it doesn't say on my report if it was label or non-label. I said Item 10 did have blood; that was the swab I received. How it is described in my report versus here, that is slightly different, because on my report it doesn't have label side, but it does have Item 10 having blood, and that blood did match David Sims.

Q (MS. LIVESAY) So you are now saying that the knife handle, label side, which is this side, which is the side laying in his hand, had blood on it?

A Okay.

Q Yes, ma'am?

A Item 10 had blood, yes, ma'am.

Q So this is accurate?

A If Item 10 is from the label side, yes, ma'am.

Q So, basically, you don't know?

A That is what I know. If Item 10 is on the label side, that is accurate.

Q That's fair enough. Let me ask you this. Talk about the blade a little bit. Whose blood is on the Cuisinart side of the blade?

A That is Item 11, blade of knife, positive for blood, it was a mixture. Major contributor to that mixture was Heather Sims; minor contributor, David Sims couldn't be excluded.

Q So for some reason, on this side of the blade it is a mixture both of David and Heather?

A Uh-huh. Heather was the major, and David was minor, or he cannot be excluded.

Q Okay. And when you look at this picture, this is the side down on the ground?

A I don't see Cuisinart on that picture.

Q Okay. So the part that is lying down has DNA from major contributor, Heather Sims, and minor contributor, possibly David Sims?

A That's right.

Q So it's not just Heather on this blade, not just the defendant's DNA on this blade; is that correct?

A Correct, it is a mixture.

Q Now, the non-label side, what did you get there?

A So non-label side of the blade, that is Item 15.

I didn't get any blood. It was insufficient amount of DNA.

Q Now, let me ask you about the pliers. Hold on, I'll grab those real quick. These are in evidence, State's 70. I'm showing you the pliers. Whose DNA is on the handle of these pliers?

A The handle of the pliers is Item 9, no visible blood, so I looked for any DNA. It was a mixture, pretty much equal of Heather Sims and David Sims on the handle.

Q So both of these people had -- both defendant and victim has DNA on the handle of the pliers?

A Yes.

Q Earlier you were talking about touch DNA, so that indicates that both of these people have touched the handle of these pliers?

A At some point, yes, ma'am. I mean, it is household pliers?

Q Yes.

A Right, that makes sense.

Q And the needle nose part?

A That would be what is described as the tip of the pliers, that is SLED Item No. 8, and there was no visible blood stains, so I tested for any DNA, which would be touch DNA. There was a mixture on there. The

major was Heather Sims, and the minor was David Sims.

Q So that means that there is more touch DNA on these needles from Heather Sims, not David?

A Yeah, higher concentration on Heather's DNA versus David.

Q And it was not blood DNA, it was touch DNA?

A It was touch.

Q Which shows that she had her hand on both parts of these pliers?

MR. MARTIN: Objection.

THE COURT: If she shows. Ask first if she knows.

A Her touch DNA was -- or her DNA was on the tip and the handle, as well as David's DNA was on the tip and handle.

Q And only touch DNA, not blood?

A Right.

Q Now, let me show you something else that was tested. I'm showing you a picture of the gun, which is already in evidence for defense, it is No. 54. Is that blood there circled?

A That is Item 17. I have a swab from the grip of a 9-millimeter Ruger, so it looks like that is the grip portion, and looks like what is circled could be blood. So it was positive for blood on the grip, which is SLED

Item No. 17.

Q Just so this jury can see, this blood is close up near to the slide of the gun and the hammer; is that correct?

A It is right there at the curve of the grip.

Q Now, tell this jury whose DNA was on the trigger of the gun?

A Trigger, or the grip? Trigger now?

Q Yes, ma'am, the trigger of the gun.

A That is Item 12. There was no visible blood seen and an insufficient amount of DNA.

Q So there was so little on the trigger you could not get any sort of match if it was Heather, David or anybody else in the household?

A That's correct.

Q Okay. Just so we're clear on the knife, because this is pretty important. The blood that was indicated on the knife -- I'll show you this picture -- was the part of the handle --

MR. MARTIN: Objection again.

THE COURT: What is your objection?

MR. MARTIN: She's talking about the part of the handle. First of all, I object --

THE COURT: Wait a minute, I'm going to take care of this. I'll send you out. Don't talk about the

case. I'll bring you back in five minutes. You all come over here.

(Whereupon, a bench conference was had.)

THE COURT: Bring them back in.

(The jury enters at 12:58 p.m., and the following is heard in the presence of the jury.)

THE COURT: You can ask your question.

Q Ms. Hefney, you commented -- and I only have a couple more questions. When we were up there talking about the pliers, you were talking about how the DNA was both on the needle nose part and the handle; do you remember that?

A Yes, ma'am.

Q And you commented on the -- that that was a household item?

A Uh-huh.

Q So you would expect DNA from both people?

A If they both handled it, yes, at some point.

Q Would you agree this knife looks like a household knife you would use in your kitchen?

A Yes, ma'am.

Q Wouldn't you expect the DNA from both parties on the handle of that knife?

A Yes, ma'am, they both handled it at some point.

MS. LIVESAY: Nothing further.

ADRIENNE HEFNEY - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q Ms. Hefney, the initial line of questions was contamination. Let me back up. In this instance, it was the Horry County Police Department who did the crime scene investigation; they did not call SLED in, did they?

A Not to my knowledge.

Q And SLED will do that if they are asked to come in?

A Absolutely.

Q And what you tested is what you got, didn't you?

A That's correct.

Q Did you see any evidence of there being any problem with what you tested that was sent with you, as far as contamination, or not?

A No, sir.

Q Did at any point in time anyone from Horry County Police Department call you and say don't test that evidence, the scene was contaminated or manipulated?

A No, sir.

Q Did anyone from Horry County Solicitor's Office call you at any time and say don't test any of those items we sent you because there is evidence that the crime scene was contaminated or manipulated?

A No, sir.
Q You haven't heard a word until you got to court here today, right?
A That's correct.
Q And, obviously, you are an employee of the state, and had the Solicitor's Office wanted to call you to give the DNA office, you would have been happy to come for them, wouldn't you?
A Oh, absolutely.
Q Obviously -- let me say this. You don't know how Mr. Sims, if he was the one holding the knife, was holding the knife, do you?
A No, I don't.
Q You don't have any idea where the blood on the knife or his hand in the picture she showed you came from, do you?
A That's correct.
Q So if she's got something here that is like this, and is like this, and all of that, you don't have a clue whether that is what happened or not, do you?
A I don't.
Q So at the end of the day, that really isn't relevant to anything, is it?
A No, sir.
Q Now, the other thing is what you have done --

since they didn't call you in -- you're testing the swab they sent you?

A That is correct.

Q And it does have some description as to where it came from?

A That's correct.

Q Now, when it says from the non-label -- let's say from the Cuisinart side of the knife handle, you, yourself, don't know what part of the handle that swab came from, whether it came from the length of the handle, one end of the handle, from the other end of the handle or where, do you?

A I do not.

Q I think you got asked a ton of questions, and I hate to start with you, but I do want to leave the right impression, you know what you are talking about. You do know what you are talking about, don't you?

A Yes, sir.

Q I mean, you generally testify for the State in these cases, don't you?

A I do, yes, sir.

Q They don't have any problem with your knowledge in doing what you do --

A That's correct.

Q -- generally. Now, I think what we're doing

here -- I'm looking at Exhibit 53, and the inscription that I put on there says, 10, knife handle, label side, blood; 14, knife handle, non-label side, touch?

A That's correct.

Q The SLED report that you got, what you had to put in it was the label side, or the Cuisinart side, which would be the -- if that is what we're talking about, if you say -- you would assume that is what she's talking about?

A That is what I would assume. I'm sorry, I didn't pay attention to your description of label side. I was going by your Item 10, knife handle, had blood on it and it matched David Sims. The label side, non-label side, I just -- I didn't go by that part, I just went by our item number.

Q Item number. And what you have actually is you have two swabs that were purported to be from the knife handle?

A That's correct.

Q And one was designated from the Cuisinart side?

A One was designated from the non-label side, and the other one was not designated, just says, "Swab from handle."

Q Non-label side, and swab from handle. As an expert in this area, you would assume that if they are

sending you two to test from a knife handle, and one of them is designated "non-label side," than the other one is likely to be label side?

A That is what it should be, yes, sir.

Q And if that is wrong, Ms. Jill Domogauer, who works with Horry County Police Department, can come up here and explain to the jury that that is not right, can't she?

A Yes, because she collected it.

Q If that needs to be straightened out, Horry County Police Department can straighten it out, can't they?

A That's correct.

Q But at the end of the day, when all of these questions are asked, the bottom line is that there was David Sims' touch DNA on that knife handle, wasn't there?

A Are we talking about Item 14?

Q It's a rhetorical question. I'll tell you what, I won't do that to you.

MR. MARTIN: That is all I have.

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

MR. MARTIN: Yes.

MS. LIVESAY: She can be excused, Your Honor.

THE COURT: You can go back. You all come over here for a second, please.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to let you go for lunch. We have witnesses all afternoon, so be back in about 2:00 so we can get started at 2:30, that is an hour and 10. Don't discuss the case. If anyone approaches -- they shouldn't -- let me know. See you in an hour and ten minutes.

(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 witnesses that will take us all afternoon?

MR. MARTIN: Yes.

THE COURT: And then --

MR. MARTIN: I don't think I'll finish today the way it is proceeding, but I think I would finish in the morning.

THE COURT: Okay. My intention is to get this to them tomorrow afternoon, so be ready for closing tomorrow. I'll see you in an hour.

MS. LIVESAY: And, Your Honor, can I get the date of birth of any witnesses he will call so we can run a criminal record?

THE COURT: Sure, if he knows it.

MR. MARTIN: I don't know the date of birth. I didn't get that. There is some of them here if they want to give it to them. I don't have any problem. All of them aren't here, but, anyway.

THE COURT: See you in an hour.

(A lunch recess was taken.)

THE COURT: Based on what we talked about back there, we'll do whatever witnesses we can do, up to and including anybody that is going to be very controversial. And, of course, I have questions, if that happens, and we'll deal with that later, but I'm intending to keep going. I think I'm doing you a favor that you don't realize, but that is okay.

(Defendant's Exhibit 57 marked.)

(The jury enters at 2:59 p.m., the following is heard in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, we're going to continue on. I'm going to give you an idea -- we may blow through supper, and I understand that is probably okay with you. Mr. Foreman, our next break there is going to be a point this afternoon where we have to take a break that may seem odd, there's a reason for it. If there is a problem, Mr. Foreman, with doing that tonight, let me know.

FOREPERSON: Yes, sir.

STARLETT GODWIN - DIRECT EXAMINATION

WITNESS: Starlett Godwin, G-O-D-W-I-N.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Where do you live?

A Clarendon is my address; we call the community Beaver Dam.

Q Is that South or North Carolina?

A North Carolina.

Q And do you know Heather Sims?

A Yes, sir.

Q How do you know Heather?

A She worked at the hospital with me.

Q And where are you employed?

A It is now McCleod Sea Coast. It used to be Loris Healthcare System.

Q Loris Healthcare System?

A Yes, sir.

Q How long have you worked there?

A 2006.

Q What is your occupation?

A I'm a CRNA.

Q Nurse anesthetist?

A Yes.

Q Same thing that Heather is?

A Yes, sir.

Q But you are her supervisor?
A Yes, sir.
Q How long has she worked with you -- let's go back to August 11th of 2013, how long had you and Heather worked together?
A I can't recall exactly when she graduated, so I'm not exactly sure her date of hire, but whenever she graduated from school, she came to work with us.
Q So that was 2009, it would have been roughly four years, or something like that?
A Yes, sir.
Q And you are her direct supervisor?
A Yes, sir, I was.
Q What kind of employee is she?
A She was a good employee. She had good technical skills, patients loved her. If patients came back or we had employees that would come, sometimes they would request her to do their anesthesia when they returned.
Q Do you know Heather's reputation in the community and in the hospital community for truthfulness and honesty?
A I can't really speak about the community because I'm not from this area, but in the hospital, she was well liked, yes, sir.
Q Did you know her reputation in the hospital

community for being hard working, as opposed to a lazy person?

A Yes, sir.

Q What was it?

A Hard working.

Q Any question about that?

A No, sir. She was very self-confident in her job and her skills.

Q What does a nurse anesthetist do on a day-to-day basis?

A Well, we have many duties. When you come in for surgery, you go through pre-admission testing process, and we have to go in and assess you to make sure -- to see if you have any past medical problems or past surgical problem that we need to be aware of that would compromise something we might be doing, so we might have to alter medications or something to do anesthesia to put you to sleep. We then go in the rooms and we are the ones who stay with the patients and provide the medications that keep them asleep during their surgical procedure. We wake them up at the end of the procedure, take them to recovery. Sometimes we do post-op rounds on the patients after surgery to make sure everything is okay and they didn't have any complications or anything like that. We do labor

epidurals for patients who are in labor. We do anesthesia for C-sections, so we do spinals for those kinds of procedures.

Q In the position that Heather had, was she on-call?

A Yes, sir.

Q And how does that work?

A There is a schedule that goes out every month and we are assigned to certain days to take calls, and so when the schedule is finished, at the end of the day, then that person -- at that time we toted a beeper. They don't do beepers anymore, we have our cell phones. But if an emergency case comes in, then the person who is on-call is notified, and that person has to respond and come in to do the anesthesia for the case.

Q And like in Heather's case, or any case, is there any particular time you have with which to make a response?

A Yes, sir. Whenever we're responding to a C-section, we have to be within 20, 30 minutes of the facility, because if it is stat, that means you have a mama and baby in distress, so you have to get back real quickly.

Q So you have to live to where you can be there within 20, 30 minute?

A Yes, sir.
Q And in Heather's case, could you have asked for a more efficient or cooperative CRNA?
A No, sir. She did her job very well.
Q And a person has to be in control of their mental and physical faculties to handle a job of that nature, I would think?
A Yes, sir.
Q Let me show you what is was marked for identification as Defense Exhibit No. 58.

MS. LIVESAY: I have an objection to that exhibit.

THE COURT: It is just an exhibit.

(A bench conference was had out of the presence of the jury.)

THE COURT: We had an off-the-record discussion. I'm going to allow it as an exhibit only.

Q (MR. MARTIN) Ms. Godwin, did you on the night of August 11th, 2013 talk to Ronnie Causey?
A Was that the night of the accident?
Q Yeah.
A Yes, sir.
Q Do you remember where you were when you talked to him?
A Yes, sir.

Q Where?
A My husband and I -- it was after church and we were going to get some dinner. I was coming back into Tabor City when I got the phone call. I'm not sure at what point I was at in Tabor City.
Q Sunday night?
A Yes, sir.
Q What is your phone number?
A (910)840-2651.
Q Let me show you this exhibit and see if you see your phone number on it?
A Yes, sir.
Q You see that?
A Yes, sir.
Q How many times does it appear?
A Two.
Q And at what time does it appear?
A I'm sorry, I don't have my glasses. 8:23 p.m. and 8:24 p.m.
Q 8:23 and 8:24?
A Yes, sir.
Q Do you know why there is two calls?
A Yes, sir. I remember -- I have poor cell service in that area, and I remember this number called and I didn't recognize the number, because I didn't have it

in my phone. So I do the schedule, so I called it back realizing it was an 843 number, and when I called it back, it was Mr. Ronnie. He told me there had been an accident and Heather would not be at work the next day.

Q So at 8:24 you called that -- a number back that had called you, and Ronnie Causey answered the phone?

A Yes, sir.

Q Are you sure it weren't Heather that answered the phone?

A To the best of my recollection, it was Mr. Ronnie.

Q Ronnie?

A Yes, sir.

Q And Ronnie told you Heather wouldn't be in the next day?

A Yes, sir, he did. Said there had been an accident.

Q And she wouldn't be in the next day?

A Yes, sir.

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

CROSS-EXAMINATION

BY MS. LIVESAY:

Q How long have you known this defendant, Heather Sims?

A Just when she started at work.

Q Just through work?

A I mean, I didn't know her before she came to work there.

Q Is she somebody that you hang around with socially?

A I'm not sure what you describe as "socially."

Q Going out to eat, going to the mall.

A No. We went to a conference together and we worked together, and like, you know, most people at work. There is a small number of us, if we have a baby, we give them all baby showers. When they get married, we give them wedding showers and stuff, but hang out in the mall and stiff like that, no.

Q Had you ever met David Sims?

A I saw him at the wedding momentarily just to walk up and speak to them and say congratulations, and then I met him one time before when he came by work to see Heather, but to recall a conversation, no, ma'am.

Q Had you ever been to their house on Old Reaves Ferry Road?

A Yes, ma'am.

Q How many times?

A Probably -- maybe twice. I can remember when they built the new home, and I can remember when the baby was born, and then several of us went to the

wedding at her mom and dad's home. After the accident, I went because I had to have papers for work and stuff signed.

Q How close is Heather's house to her parents' house?

A Distance? I'm not good at distance.

Q Across the street or?

A Oh, no, you can just walk.

Q Just walk from Heather's house to her parents' house?

A Yes, ma'am.

Q That close. Do you know where David was from?

A Just Heather told me he was from Florence.

Q So he was not from Conway?

A I just know what she told me, he was from Florence.

Q Do you know what he did for a living?

A She told me landscaping.

Q So she is a nurse....

A Anesthetist.

Q Thank you?

A You're welcome. You can say CRNA.

Q And he is a landscaper?

A Yes, ma'am.

Q And they lived walking distance from her parents;

is that correct?

A Yes, ma'am. When they first got married, they lived in Florence for awhile.

Q And these -- this exhibit that Mr. Martin showed you, do you know what this is?

A I'm assuming it is a phone record.

Q Do you know whose phone record it is?

A No.

Q Okay. Okay. You answered earlier -- he asked you did Ronnie Causey call you, and you said to the best of my recollection?

A Yes, ma'am. Because I remember talking to Heather the next day, but Mr. Ronnie told me she had been in an accident that night, and she would not be at work the next day.

Q Now, can you say for 100 -- if you can or can't, that is fine -- are you one hundred percent sure you talked to Ronnie, or could you have talked to Heather that night?

A I do not think I talked to Heather that night. I mean, it's been a long time ago, but to the best of my recollection, it was Mr. Ronnie. I know he was the one I spoke to first, because I didn't recognize the number, and when I said hello -- I said this number called me, and I remember him saying, Star, this is

Ronnie, Heather's dad.

Q And did you talk to her the next day?

A Yes, ma'am. Actually, I called Mr. Ronnie's phone because I had -- I'm not sure if I text or tried to call her phone, and I didn't get no answer, and that was after we had heard what had happened, so I called Mr. Ronnie's phone, because I knew he called me the night before, so I called his phone and he let me speak to her.

Q He had told you that she had been in an accident?

A Yes, ma'am.

Q Now, Mr. Martin asked you about her reputation in the community; do you remember that?

A Yes, ma'am.

Q And you said you just know her reputation right there in the hospital?

A Yes, ma'am.

Q So you don't live in Conway?

A No, ma'am.

Q And you -- you really don't have any idea what goes on in Conway or what she does in Conway?

A No, ma'am.

Q You just know her reputation at the hospital?

A From work, yes, ma'am.

Q I saw some pictures one time of a bulletin board

with a schedule on it from the hospital, and I noticed one name up there was "Princess." Was anyone -- any of your crowd have that nickname or known as a princess?

A If they do -- they call several people like that. This week at work somebody laughed and called somebody that. But, you know, it is more like a joke when they are calling them a princess or something like that. To my knowledge, nobody had that, per se, nickname. If they did, I didn't really hear it, because I'm in rooms, and out. I'm in meetings and things like that.

Q So you are a supervisor, not really hanging out with a lot of people under you?

A Correct. Correct.

Q And you were her supervisor?

A Correct.

Q So she wasn't even really somebody you socialized with at work due to a supervisor's relationship?

A We are a small number. There is only 10 of us, so they all come and talk to me. We have monthly meetings, and so they all do come in my office and talk with me from time to time.

Q From time to time?

A Uh-huh.

Q But you don't hang out with them at the hospital? There's a difference between a supervisor and an

employee?

A Well, I'm not sure what the term "hang out" means.

Q Do you spend a lot of time with her at the hospital?

A Well, I'm right there with them. I mean, my office is within the operating room, so, yes, ma'am, I'm with them all the time, but I might not be side-by-side with you. Does that make sense?

Q Right. So when you are around this defendant, it is only when you all are working together in the hospital?

A Or unless she comes into my office, she was there. She would come into my office to ask how my day was going or tell me something had gone or something happened, yes, ma'am.

Q So only in a work capacity?

A No. She talked to me some about personal stuff, too.

Q Did she ever talk to you outside of work?

A She would call me sometimes. Some of my CRNAs call me or send me a text or something, yes, ma'am.

Q How often would you say you talked to her outside of work?

A I don't really know. I can't really say, to be

honest. I don't know. I hate to say once a day, once a week, because I really don't know.

Q Would you consider you and the defendant close friends?

A I consider us friends, yes.

Q And you had been to her house twice, three times?

A Probably three times. That is all I can recall right now. And then like I said, after the accident happened, then I went two, three times after that.

Q How many times has she been to your house?

A Once for her bridal shower.

Q Just one time?

A To my knowledge, yes, ma'am. That is all I can remember.

Q So a total, you've been to her house maybe a handful of times, and she's been to your house once?

A Yes, ma'am, to my recollection.

Q And you don't live in Conway?

A No, ma'am.

Q Have you ever lived in Conway?

A No, ma'am.

Q So you can't say anything about her reputation here in this community?

A No, ma'am.

Q You said earlier to Mr. Martin you had beepers?

A Yes, ma'am. We don't anymore, but we did.

Q So it beeped, and any phone available you could use to call into the hospital?

A Yes, ma'am.

Q So nobody was making any direct calls to her cell phone?

A They could have.

Q Ma'am?

A They could have.

Q What was the system?

A The system was -- you know the old pagers, the number came across and told you what to call back, we had those. We had special codes, so if it was a stat C-section, we would know so they could get on the road and get started, and then they would call in and say, you know, I'm on my way. But they would call the number on there, and nine times out of ten it was the supervisor, and she would tell them what the case was and when it would be there. But if the anesthesiologist got a call, he could have picked up his cell phone or the hospital landline and called her cell phone and said I need you to come to the hospital, I've been notified we have a such-and-such case.

Q So the system was they beep you, and then you just get to the closest phone and call the number?

A Yes, ma'am.
Q Did you see Heather the day after this happened?
A Not the day after, no, ma'am.
Q Some people already came in here and testified about people bringing her food that Tuesday night, were you one of the people that went to the house and brought food?
A No, ma'am.
MS. LIVESAY: No further questions.
THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MR. MARTIN:
Q You keep your cell phone with you on-call?
A Yes, sir.
Q Would you want your cell phone with you if you were on-call?
A Yes, sir.
MR. MARTIN: That's all I have.
THE COURT: You can step down. Can she be released from any holds she has?
MR. MARTIN: Yes.
MS. LIVESAY: Yes, sir.
THE COURT: You are released. Thank you.
(Defendant's Exhibits 59 and 60 marked.)
(CHRISTINA WALLACE, having been duly sworn,

testified as follows:)

WITNESS: Christina Wallace, W-A-L-L-A-C-E.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Chrissy Wallace?

A Chrissy, Christina.

Q Ma'am?

A Chrissy, Christina.

Q How about if I call you Ms. Wallace?

A That's fine.

Q Ever been in court before?

A No.

Q Are you nervous?

A Yes.

Q Let me ask you, Ms. Wallace, were you working at Grand Strand Hospital on the night of August 11th?

A Yes.

Q And did you have an opportunity to be a nurse for Heather Sims?

A Yes.

MS. LIVESAY: Your Honor, my only objection is this is Page 4 of 6 of nursing notes. If we're going to introduce -- I ask that we introduce all of them and not just one page.

MR. MARTIN: I have no objection if she wants to

introduce all of them. For simplicity's sake, I wanted to pull out the relevant page for this testimony so I wouldn't be flipping through it.

THE COURT: Lay foundation for why you want that page, and then we'll go from there.

Q (MR. MARTIN) Ms. Wallace, go back. You were working that night when Heather Sims was at the hospital, brought in, questioned by the police and that sort of thing?

A I was not there when she was brought in, but I came in at 7 o'clock.

Q At 7 o'clock?

A Uh-huh.

Q And you were there until when?

A 7 o'clock the next morning.

Q 7 o'clock the next morning. Let me show you what was marked for identification as Defendant's 59 and ask if you can identify that?

A Yes.

Q What is it?

A A picture of Heather on the stretcher.

Q At the hospital?

A Yes, in a room at the hospital.

Q And does that accurately reflect her as you saw her at the hospital that night?

A Yes.

MR. MARTIN: I'll enter that into evidence, Exhibit 59.

THE COURT: Ask her if she's reviewed the other four pages.

MR. MARTIN: Well, this is not part of the medical records, first of all. This is something different.

THE COURT: Okay.

MS. LIVESAY: She said that is the way she saw the defendant that night?

THE COURT: Is that what you said?

WITNESS: Yes.

THE COURT: Yeah.

MS. LIVESAY: No objection.

(Defendant's Exhibit 59 admitted.)

Q (MR. MARTIN) Let me show you what is marked as Defendant's Exhibit 60, Page 4 of 6 of the nursing notes, and ask if you can -- are you familiar with that?

A Yes.

Q And tell the Court and jury what it is?

A It is a page from the trauma documentation we have to chart -- we do paper charting in traumas, and it is a page out of the paper chart.

Q Okay. And does it have certain entries on it that you placed there?

A Yes, sir.

Q Are those notes, do you think -- or do they accurately reflect the records as you know them to be?

A Yes, sir.

MR. MARTIN: I move to enter into evidence Exhibit 60 then.

THE COURT: No objection you said?

MS. LIVESAY: So these are her notes that she put up there?

MR. MARTIN: It is, as I understand it, yeah.

WITNESS: It's not just mine.

THE COURT: Talk to yourselves, but a little quieter.

(Mr. Martin and Ms. Livesay confer.)

MS. LIVESAY: I have no objection if these are her notes and she wrote these notes and that is her signature. I have no objection, but I think we probably need to lay the foundation first.

Q (MR. MARTIN) Is that what this is, Chrissy? Are these the nursing notes --

MR. MARTIN: I can put all of it in if it makes it easier. You want them all in?

MS. LIVESAY: Not yet. I am waiting for a copy

of all of them.

THE COURT: Lay a foundation for that page. What is that, ma'am?

Q (MR. MARTIN) You are a nurse at Grand Strand Hospital, right?

A I was.

Q You are not now?

A Yes.

Q On August 11th, you were?

A Yes.

Q You were there the night Heather Causey was there?

A Yes, sir.

Q And there were medical records and nursing notes filled out on Heather Causey and what happened with her while she was there?

A Yes, sir.

Q Is this page that I'm handing you, 4 of 6, is that one of the pages -- there is obviously other pages there. I've handed you one because it has the information that I'm most interested in, but is that the medical records of Heather Causey?

A Yes.

Q Are you familiar with it?

A Yes.

MR. MARTIN: I move to enter into evidence.

THE COURT: Any objection?

MS. LIVESAY: All my question is -- I understand these are the records. Are these -- this page this lady's notes, and is that her signature at the bottom?

THE COURT: Ask her that.

Q (MR. MARTIN) Are these your notes that are entered on the page?

A They are my notes on the page. My signature is on the next page.

Q It is on the next page.

MR. MARTIN: You want the next page?

THE COURT: You know, overruled. Go ahead.

(Defendant's Exhibit 60 admitted.)

Q (MR. MARTIN) So here's what I want to ask you. Couple of questions. You were there a long time ago, I know, but the one thing is -- did you have instructions from the doctor, as the nurse, as to what had to occur before Heather could be discharged to go home that night if she wanted to go home?

A Yes, according to my notes.

Q According to your notes, what was Heather required to do before she could be discharged?

A Doctor Sciarretta (phonetic) reports that patient will be observed for six hours, and if patient can

ambulate, eat, drink, urinate and her pulse is normal, patient may be discharged.

Q So she was required to eat and drink and ambulate and urinate before she was allowed to go home?

A Yes, sir.

Q Is that pretty standard in a case like hers?

A Yes, sir.

Q Nothing out of the ordinary?

A No, sir.

Q Now, she was brought a meal tray at some point in time that night; was she not?

A She was required to eat, so, yes, according to my notes.

Q She wasn't there begging you for food, was she?

A I don't recall, but I don't think so.

Q Now, she was brought a meal tray, and there is an entry on there that says 11 o'clock; is that correct?

A Yes, sir.

Q All right. And that -- tell the jury what that means. You made that entry at 11 o'clock, what does it say?

A Patient got a meal tray and ambulated to bathroom.

Q Does that mean that you brought it specifically at 11 o'clock?

A No. That is just when I documented it, but I would assume it would be around that time.

Q So your thought is that that is when you documented it, but you would assume that you entered it shortly after the meal tray was brought to her?

A Yes.

Q Is that fair?

A Yes.

Q And that is at 11 o'clock p.m., right?

A Yes.

Q The meal box is a snack box, and it has a sandwich in it?

A Turkey sandwich usually and carrots, and maybe a pudding.

Q We have a picture, and I don't know if I can find it. I don't want to take a lot of time looking for it, but there is -- but there is a sandwich included? Was she brought any other food that night other than that one box with a sandwich and carrots in it?

A I don't recall.

Q It is not indicated on the records, is it?

A No.

Q All right. Now, when Heather was there at the hospital and the police were questioning her, you were aware that the police questioned her?

A Yes.

Q And she was questioned in a room there in the emergency room, or where?

A Yes, a room in the ER.

Q And she was hooked up on some monitors with IVs, right?

A Yes.

Q And the police were questioning her, turned the tape recorder at 8:06 and cut it off at 9:41, and you were not allowed in the room while that was going on, were you?

A I don't know. I didn't want to go in there.

Q You didn't want to go?

A Huh-huh.

Q And to your recollection, you didn't go?

A Huh-huh.

Q And nobody else went in but the police, to your recollection?

A To my knowledge. I wasn't standing there the whole time.

Q But you weren't in and out or standing by there when they were questioning her, were you?

A No.

Q And you remembered at some point in time the police telling the father he couldn't go in, he had to

stay out?

A I don't remember exactly. I remember there being some going back and forth whether or not he was going to stay in there, but I can't say for certain that they said he couldn't be in there.

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

MS. LIVESAY: Can we approach real quick?

THE COURT: Yes.

(Whereupon, a bench conference was had.)

THE COURT: Ladies and gentlemen, I'll send you back take 10, 15 minutes so we can clean this up. Don't discuss the case.

(The jury exits at 3:50 p.m., and the following is heard out of the presence of the jury.)

THE COURT: For the record, state your objection.

MS. LIVESAY: Your Honor, on the Page 4 of 6 that Mr. Martin is trying to put in, there are some items checked on the abuse screening tool. These are not for any sort of medical purposes. We don't know if this young lady checked these boxes or not, so I think it is objectionable. All this is is something that this defendant told somebody at the doctor -- doctor's office. It isn't for medical purposes. This isn't anything the doctor uses to treat this defendant.

THE COURT: Why don't you ask her, proffer the

testimony, because I'm confused.

PROFFER EXAMINATION

BY MS. LIVESAY:

Q Did you fill out everything on this sheet?

A No.

Q You did not?

A No.

Q So we're clear for the Court, tell this Court exactly what you did fill out, what you wrote or filled out?

A My notes up here that have my initials beside them.

Q Just the ones that say CAW?

A CCW, those are mine. These are mine (indicates). I would assume these are mine, but I'm not positive.

Q You are not positive you filled that out?

A They look like mine, but I can't be certain; it is just a checkmark.

MS. LIVESAY: She's saying she's not positive this is what she filled out.

THE COURT: Let me ask you something. When someone comes in, would it be your normal procedure to ask those questions, or would you hand them the paper to fill it out?

THE WITNESS: We fill it out; we ask them.

THE COURT: You ask them, and then based upon their answer, you check or don't check a box?

THE WITNESS: Yes.

MS. LIVESAY: What she's saying she -- doesn't even know that she filled this out, and it is not for medical purposes. The only thing that gets this in is that it is for medical purposes.

THE COURT: Look, you know, it is one of those things.

MR. MARTIN: I'm not going to agree to have it redacted because --

THE COURT: I'm shocked beyond belief that you don't agree on something.

MR. MARTIN: These are medical records, nursing notes. She introduced through Werner Spitz, who didn't fill out a darn thing, the whole emergency report and all of that over my objection. This young lady came in and said she was the nurse on-call, these are the records, I think I filled them out, it's been two-and-a-half years ago, can I say specifically that that's my checkmark, but I think ultimately her answer is -- if she wasn't such a cautious young lady -- yes, that is my nursing notes, I filled them out. They are part of the medical records. If they weren't, they wouldn't be on that chart.

THE COURT: Were they not in the medical records introduced, and are they?

MS. LIVESAY: The medical records -- I can tell you why. The medical records given to me originally were given by the facility. They never gave us the nursing notes. It wasn't until I met with Dr. Sciarretta and he said do you have the nursing notes, and I said I never saw nursing notes, and he said I believe they are part of the medical records, so I'm going to give them to you. When he gave them to me, I gave them to Mr. Martin, but we didn't have those until I started meeting with him to talk about trial.

THE COURT: Your own witness said they are part of the medical records?

MS. LIVESAY: At the end of the day, she cannot say I'm 100 percent sure I filled it out. What Mr. Martin is saying is simply not true, she can't say I filled that portion out.

THE COURT: I think that goes to the facts, whether she's weak or not and of course her credibility. But here is the deal, get all four pages, if they come in under "nursing notes," they all need to be in, and it goes to her creditability, but they are the nursing notes, I mean.

MR. MARTIN: This is the rest. Do you want to mark them separately?

THE COURT: Yeah, actually -- there is one page there, and for record purposes, those are the additional three that I'm asking you to introduce.

MR. MARTIN: Additional five pages, for what it is worth.

THE COURT: Five, okay. I understand your objection, but I think they come in under medical records. Please understand, that is a legal term, it's not that we don't believe you. I think we all do. You have been very honest, and you need to continue to be. So you all take a minute to do -- the restroom or whatever.

(A recess was taken.)

MS. LIVESAY: If I may, before the jury gets back in, I want to be sure that my objection is clear regarding the nursing notes. My objection is to the fact that, A, this young lady cannot say for sure that she filled that portion out. B, that entire section is not filled out, and this is only something the defendant told her. This is not for medical purposes. This is not scientific. This is not her taking blood pressure or pulse, it is something this defendant told her, so it still is hearsay whether in medical records

or if it is this young lady saying Heather Sims told me this, it is still hearsay.

THE COURT: Let me make it clear, and, again, I want to be sure I understand this, but you all found out about this when your expert said these are part of the medical records, right? Isn't that what you said?

MS. LIVESAY: My medical expert never saw this. All he saw was what came from Dr. Sciarretta. I never had this until after I met with Dr. Sciarretta myself.

THE COURT: What did he say to you; that is what I want clear?

MS. LIVESAY: What happened is I sent what I had to my experts, which was only Dr. Sciarretta's medical report and CT scans. I then, probably a month before this trial was scheduled, I met with the doctor to meet with him to go over the records. At that time, he says do you have the nurse's notes. I said, no, we do not, I've never seen that. When we did a search warrant, this is what we got. He, at that time, said, well, I think the nursing notes are considered the medical records, so he then went and said I will run you off a copy and give you a copy of the nursing notes, and at that time I told him, okay, and I would turn over a copy to Mr. Martin. So I didn't even have these nurse's notes until probably a month ago.

THE COURT: Tell me why that is not hearsay contained in that document, because it is something she said to her. I mean, I got an answer, I want to hear it for the record.

MR. MARTIN: First of all, they are medical records. I mean, medical records in and of themselves contain hearsay, if you want to define it as a statement made by out of court. They come in -- I mean, that's the exception. These are medical records, there is no question about that. In totality, that is what they are. They were turned over in that fashion. They had pertinent information to them, and for that reason they are admissible.

MS. LIVESAY: Your Honor, just for the record, and I know you are not bound by any other circuit court judge, but what has always been is the records have been looked at. If the statements were made to further medical treatment for the patient, it has been allowed in. If it is just for hearsay purposes, for her to relay her story, it always has been redacted. My understanding is the rule is if it is said for medical purposes, if it is said in the furtherance of that doctor treating the patient, then it is allowed in. This is not that. This is just her statement about how she feels.

THE COURT: Hold on. Ma'am, tell me why is that information in that medical record, I mean, to the best of your ability?

THE WITNESS: It is a standard of care. We ask everybody patient.

THE COURT: You ask every patient?

THE WITNESS: (Witness nods head.)

THE COURT: It creates a standard -- that is a standard of care for you?

THE WITNESS: Every patient that comes into the ER gets asked these questions.

MR. MARTIN: That was part --

MS. LIVESAY: The whole form is not even filled out. If you look at it, there are eight questions, and she only filled out four.

MR. MARTIN: Well, Judge, again --

MS. LIVESAY: I mean....

MR. MARTIN: It is part of her assessment, part of the medical records, part of the medical record form, clearly part of the medical records, and for that reason it is admissible.

THE COURT: Well, I think -- look, I could be wrong, I've been wrong before, but I'll allow it in. I'll let you cross-examine her. I think it goes to her creditability, but when your own expert says it is

part of the medical records, I don't know how you keep it out.

MS. LIVESAY: Just for the record, Dr. Spitz never saw these nursing notes, never saw them. The only thing he saw is what I gave him from Dr. Sciarretta, just for the record.

THE COURT: Would you agree that Dr. Sciarretta would depend on this?

MS. LIVESAY: Sorry?

THE COURT: Would you agree that Dr. Sciarretta, before he treated her, would depend on this information?

MS. LIVESAY: The reason I know this information is because he pointed it out and said, look, this is just something the patient tells us, that is what he told me. He said this is something we ask before we discharge a patient. It has nothing to do with treatment of the patient. It is on Page 4 of 6. Before they discharge the patient, they want to make sure this patient has somewhere safe to go. It has nothing to do with medical records or the treatment of the patient.

THE COURT: I agree with you completely. I think that goes to the factual issue of his credibility, so I'll allow it in, but you can question her about that

information. That is the danger of putting it in. Everything has two sides.

MS. LIVESAY: For the record, she can't answer my questions anyway because she's not sure she filled this portion out.

THE COURT: That is why I asked her that question. It is part of the medical record because it is always filled out. Bring them back in.

(The jury enters at 4:22 p.m., and the following is heard in the presence of the jury.)

THE COURT: Okay. You can continue.

MR. MARTIN: Judge, I'm through questioning.

THE COURT: Okay.

MS. LIVESAY: Are you moving the records?

THE COURT: She's moved, and I've admitted over whatever objections.

MR. MARTIN: They've been admitted.

THE COURT: They are now.

(Defendant's Exhibit 61 marked.)

THE COURT: Any questions?

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Ms. Wallace, were you previously employed at Grand Strand?

A No.

Q Ma'am?
A No, ma'am.
Q Where are you employed now?
A I work at a primary care doctor's office.
Q Where?
A Primary care doctor's office.
Q So you went from Grand Strand to primary care?
A Yes, ma'am.
Q Do you know the defendant?
A No.
Q Have you ever seen her before?
A No.
Q Have you seen Mr. Martin? Have you ever talked to Mr. Martin before?
A Yes.
Q And was it about this case?
A Yes.
Q Now, he has put into evidence the complete nurse's notes. Can you look at these and tell me whether or not these are nursing notes from Grand Strand Hospital and if they are from August 11, 2013, and if they have any kind of stamp on them, like this one, that shows to you that these are the medical records or nurse's notes from Grand Strand?
A Yes.

Q You want to look through them?
A (Witness examines documents.)
Q Are these records kept in the normal course of business at Grand Strand?
A Yes.
Q Are you familiar with nurse's notes?
A Yes.
Q And do you sometimes have to look at one nurse's notes to kind of get back and see what you need to do; is that correct?
A Yes.
Q So you are familiar with reading all of the nurse's notes, not just your own?
A Yes.
Q So there is nothing on this page, these notes, that you don't understand or you could not explain to this jury?
A Correct.
Q Is that correct?
A Uh-huh.
Q I've got some questions about these notes. I don't know if you remember, but Mr. Martin was talking earlier about the police was talking to the defendant at Grand Strand Hospital; do you remember that?
A Yes.

Q He said it was sometime between 8:00 and 9:30; do you remember that?

A Vaguely. Not exact times, but I remember them being there.

Q Now, you documented on your page -- these are yours there. You documented on your page that she actually had a visitor; do you see that?

A Yes.

Q If you don't mind, tell this jury who the visitor was?

A Her father.

Q And if you don't mind, tell this jury what time they let her father back there to see her?

A I don't know exact time.

Q Did you document a time on your notes?

A That is when it was entered. I entered it at 8:30, but I'm not positive that is the exact time that he was back there.

Q Let me ask you this. Why would you document it at 8:30 if you didn't know that was the time he was back there?

A That is the time I had to chart, I charted a few things at 8:30.

Q So do you have any idea if around 8:30 is when he went back there?

A I would assume it would be around 8:30. It says visited with father with Horry County Police.

Q So around 8:30, while she's in the hospital with the police, her dad is allowed to go in there and visit with her?

MR. MARTIN: I object. The objection is that is not what the record states.

THE COURT: Ask her if she knows that.

Q (MS. LIVESAY) Is it documented in your notes that her father came to see her in the hospital in her room around 8:30?

A It says family with Horry County Police at 8:30.

Q Does it say "father"?

A Father with Horry County Police.

Q So your notes read that -- it is documented that around 8:30 her father came in, and it is checked "visited;" is that right?

A Visited.

Q So your notes read that her father -- and it is checked "visited" on the notes -- with her around 8:30; is that correct?

A I don't recall. I mean, it is documented that at 8:30 her father was visited and it says with Horry County Police. I don't know if he was in the room with her. I don't know if he was outside of the room at

8:30. That is simply the time I put -- I wrote it in the chart.

Q So --

A I can't say for certain whether or not her father was in the room with her at 8:30, or not.

Q Would you agree with me that you have documented on this form that a family member at 8:30 visited, and it is noted in your handwriting, "Father with Horry County;" would you agree that that is documented in your notes?

A It is in my notes.

Q So it is documented in your notes -- and I'm not saying it happened, I'm just asking, it is documented that he went back there around 8:30, visited with Horry County?

A Through my notes.

Q That is in your notes. It is okay. Is it in your notes?

A Yes.

Q That's in your notes. These are the complete nursing notes here, and they already are in evidence. These, I'm assuming, are to document the patient throughout her time at Grand Strand?

A Uh-huh.

Q If you don't mind, tell this jury what is

documented as her pre-hospital records, as far as her blood pressure and her heart rate; what is documented there?

A Her pre-hospital blood pressure is 100 over 70, and heart rate is 70.

Q So her heart rate is 70 when she comes into the hospital; is that correct?

A No. That is what EMS calls over the radio.

Q So that is what EMS documented her heart rate to be, 70?

A Uh-huh.

Q And her blood pressure is 100 over 70; is that correct?

A Yes.

Q So EMS documented when she was brought in, her heart rate was 70 beats per minute; is that correct?

A Uh-huh, that is what is documented.

Q That is what's documented, okay. There is a few other things documented about her injuries in these notes. As far as this is concerned, is this also EMS's documentation?

A It is not EMS's documentation. It is the nurse's documentation, but it is what they call into us.

Q Okay. That is wonderful.

A That is filled out generally before the patient

gets there.

Q Okay. If you don't mind, tell this jury what is documented as to how many penetrating stab open wounds she has; is that documented?

A It is documented.

Q What is that number?

A Didn't write it. I can't tell if it is a one or a two.

Q Either one or two?

A Uh-huh.

Q What does it look more like?

A I don't feel comfortable answering that.

Q This documentation here about the puncture wound --

A Yes.

Q -- did somebody write out approximate measurements of it?

A Yes.

Q And tell this jury what is documented as that measurement?

A Half a centimeter.

Q I brought this ruler, because I'm terrible with measurements. I couldn't tell you how many inches in a foot probably. Would you agree this is the centimeter part of the ruler (indicates). It's not a trick

question. I know you are nervous. Does this say "CM"?
A No.
Q So you would agree this is centimeters going across here?
A No.
Q You don't know?
A I said no.
Q Ma'am?
A I said no.
MR. MARTIN: Judge.
THE COURT: I can't hear you.
A I don't understand why you are asking me these questions.
THE COURT: Just answer, is that the centimeter portion of the ruler?
WITNESS: No. It says millimeter.
Q (MS. LIVESAY) Do you see "CM" on this ruler?
A Yes. Now I do.
Q Would you agree with me that that is documenting centimeters across this ruler?
A Yes.
Q Do you see where one centimeter is on the ruler?
A Yes.
Q And you see where half a centimeter is on the ruler?

A Yes.

MR. MARTIN: To save time, I'll stipulate what a centimeter is or isn't, to save time.

THE COURT: Well, thank you. Ask her if that is half a centimeter.

Q (MS. LIVESAY) Is this what I'm showing you here, that is one centimeter, so would you agree that this half mark is half a centimeter?

A Yes.

Q That is what the documentation shows as to her has laceration and her puncture wound; is that correct?

A Uh-huh.

Q I'm show the Judge -- I mean the jury. This is one centimeter, and this is a half a centimeter, okay. And that is where this starts, that is 1 right there. So half a centimeter is right there. This half a centimeter is measuring the width of that puncture?

A I'm not sure. It is not my documentation.

Q It just says half a centimeter?

A It says, Half a centimeter laceration.

Q Okay. Is this one half centimeter?

A Yes.

Q And if you put this over this knife, would you agree with me that that is measuring half a centimeter on this knife?

A Yes, I guess.
Q Is that measuring half a centimeter? Did you see it?
A Yes, I think so.
Q I'll put it up here. Do you see that is half a centimeter. Here is that measuring the width of that, half a centimeter?
A I just don't feel comfortable making that observation.
Q You don't feel comfortable measuring the width of the knife?
A No.
Q Would you agree this here, way up here on the knife, is more than half a centimeter?
A I don't feel comfortable doing that.
Q That's fine. I understand. You agree that half a centimeter is what is documented as to that puncture?
A Yes, I agree it is documented. I did not document that.
Q But it is in the nurse's notes; is that correct?
A It's in there. I did not document it, though.
Q Did you see that picture that Mr. Martin showed you of Heather Sims?
A Yes.
Q And you actually remember from -- how many

patients do you normally see within a day at Grand Strand?

A I don't know. It is random. I really can't put a number on it.

Q Now, did you remember that that was Heather Sims on 8/11/2013 sitting at Grand Strand Hospital when he showed you that picture? Did you remember that, indeed, is the patient that belonged to these nurse's notes?

A Yes.

Q So you did remember what she looked like two years ago?

A Yes.

Q This is it here?

A Yes.

Q Do you see any bruising or anything on her left arm. Would you like to refer to the notes to see if it is documented in the notes?

A Are you asking me if I see it in the picture, or?

Q Do you see it in the picture?

A I don't see any bruises in the picture.

Q And this picture, you don't see any bruises, you just see cuts on her arm; is that correct?

A Yeah, I don't see a bruise in that picture.

Q You don't see it in the picture? Will you look

through the nurse's notes and see if any nurse documented anything about any bruising and let me know and let this jury know?

A (Witness examines document.)

(A brief pause in the proceedings.)

MR. MARTIN: If it will save us any time, I don't know what the records say about that, I'll stipulate the records may not say anything about bruises. Bruises don't show up until the next day or two. There is no reason to let her read these records here to prove or disprove.

MS. LIVESAY: If he's stipulating there is no bruising documented in the nursing notes, I'll move on.

THE COURT: So stipulated.

Q (MS. LIVESAY) Earlier we talked about the times of this documentation, and just so I'm clear and the jury is clear, and there is no misunderstanding, these times are documented up there, but you are uncertain whether or not the times are correct?

A I am uncertain as to if these things happened at that time, yes.

Q But these are your notes, times are written down, but you are uncertain that that is an exact time or just kind of an estimated time looking at the watch and

then --

A For example, her valuables were given to security -- excuse me, Horry County at 8:30. I'm not sure if they were given to them at 8:30, but that is when I documented it, so that is why it is in there.

Q That is fine. If that is the truth, that is fine. I understand you are documenting the best you can, and what are saying is you are not sure that that is the an exact time, you were just documenting to the best of your ability?

A Correct. Correct.

MS. LIVESAY: Thank you. No further questions.

THE COURT: Redirect?

MS. LIVESAY: Sorry, one more question.

Q (MS. LIVESAY) Which Doctor's Care are you currently employed at?

A I'm not at Doctor's Care.

Q Sorry. Where are you currently employed?

A Myrtle Beach Family Medicine.

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q Look at Page 4 again -- you don't have it. Are you tired of looking at it?

A Kind of.

Q Let me show you this. You and I talked about

this, the dates and times of the document, before you testified?

A Yes.

Q I asked you about the 8:30 time about the father and the police?

A Yes.

Q To be sure here, first of all, she was discharged at 1:56?

A Yes.

Q Secondly, if you go down the list, you have family, clothing, valuables, police and there is an entry of 8:30 for every one of them, isn't there?

A Yes.

MS. LIVESAY: I think that is -- are we going outside of my cross?

THE COURT: No. I don't know where we are going yet, let's just get there.

MR. MARTIN: This is directly relating to it.

Q (MR. MARTIN) What you explained is that the 8:30, that is entered four times at the very same time for different activities, isn't there?

A Yes.

Q And what that means is that you actually made that entry --

MS. LIVESAY: Your Honor, if I may, can he ask a

non-leading question? He is basically, at this point, testifying from the nurse's notes. Does he have a question for this nurse?

THE COURT: Sustained. Don't lead.

Q (MR. MARTIN) How many entries are there that say "8:30" on there, Chrissy?

A Four.

Q And that is four separate activities, right?

A Yes.

Q And all four of those wouldn't occur simultaneously, would they? I'm not trying to make it harder than what it is. Maybe this question --

A It is when I charted it.

Q The 8:30 time is when you entered it into the chart, right?

A Yes.

Q That doesn't mean that is when the activity was occurring, does it?

A No.

Q Because the activity has already occurred --

MS. LIVESAY: Another leading question.

THE COURT: Hold up. We're going to keep going, so you might as well gird your patience. Don't lead. Go ahead.

Q (MR. MARTIN) The activities have occurred, and

at some point in time, you get time and you pick up the paper and enter the activity at 8:30 on that chart, right?

A Yes.

Q You entered four of them at the same time?

A Yes.

Q And they already had occurred, right?

A Yes.

Q Same thing on the --

MS. LIVESAY: Your Honor, she never said anything about the activities had occurred and then you enter it on the chart. She's already said I'm uncertain if these times are accurate, I'm trying to get a roundabout time. She never said that.

THE COURT: I mean, she said what she said. Ask her what you want.

Q (MR. MARTIN) Let me turn with you to Page 3. Let me show you Page 3. The question was brought up about heart rate. Are there entries on the nursing notes as to heart rate?

A Yes.

Q Read the heart rates out to the jury of Ms. Sims, not whether EMS called it in, but what some nurse wrote during the course of the evenings.

A 145, 138, 140, 130, 1238, 130, 132.

Q Those are all very high, aren't they?

A Yes.

Q And last question. One of Dr. Sciarretta's charges was that heart rate had to come down before she could be discharged?

A Yes.

MR. MARTIN: That is all I have.

THE COURT: Thank you. You can step down. If you are under a subpoena, you can be released. Call your next witness.

MR. MARTIN: John Gaddy.

MS. LIVESAY: I do have a matter that needs to be heard outside of the presence of the jury at this time. It is real quick.

THE COURT: I'll send you out for five minutes. Don't go downstairs or discuss the case.

(The jury exits at 4:46 p.m., and the following is heard out of the presence of the jury.)

MS. LIVESAY: Your Honor, I'm thinking that they are going to call John Gaddy to say that he looked at the toilet, and I would like to know when he looked at the toilet, because if it wasn't the day before or day of, I don't think anything that he looked at days after the incident when the scene was released back to the family, we have no custody control or idea what

happened with that toilet between August 11th and when John Gaddy got there.

THE COURT: You are calling someone to talk about the toilet?

MR. MARTIN: Yes.

THE COURT: If it wasn't before, I don't think they can testify.

MR. MARTIN: Let me understand, I'm going to proffer it, if you exclude it.

THE COURT: Yeah, I'm going to exclude it, but bring him on up.

MS. LIVESAY: What is his date of birth?

WITNESS: 6/5/73.

MR. MARTIN: You going to check it anyway?

MS. LIVESAY: I know Johnny ain't got no record.

(JOHN GADDY, having been duly sworn, testified as follows:)

PROFFER EXAMINATION

BY MR. MARTIN:

Q The question, John, and I know the answer of course, but did you check this toilet prior to August 11th, before or after?

A After.

Q Of course you wouldn't have had a reason to check it before?

A No, sir.

Q I asked you to check it shortly after August 11th, did I not?

A Yes.

MR. MARTIN: It was a few days after, Judge. What I would say to you is we have no -- I mean, first of all, Horry County Police Department -- and I'm assuming before -- and this is relevant -- there is no testimony from them that they confirmed that the toilet was in proper working order, and they released the scene at 1:00 a.m. They can control it as long as they want to, check whatever they want to. I can only assume they did not check the toilet, or if they checked it, it weren't working right because they didn't say that. There is no documentation of it, nothing like that. The only thing I can do is check it myself. We checked it, there was a problem with the toilet, that kind of thing. Now, did we check it before? The answer is, no.

THE COURT: What I was going to say, it has to be within the relative time period. What date did you check it?

THE WITNESS: I do not remember.

MR. MARTIN: He and I talked about it. He checked it in the month of August, I can't tell you

what date.

MS. LIVESAY: He's already answered, he doesn't know.

THE COURT: There is no jury here, just tell me. You all, just tell me. That is all I want to know, and, quite frankly, that's all they want to know.

MR. MARTIN: That is what I'm telling you.

THE COURT: I'm telling you, if it was sometime unknown afterwards, I think that obviously it could have been tampered with.

MR. MARTIN: Sure. But that is a matter for cross-examination. The only thing we can do -- we cannot check it before. I had no reason to send anybody to check it before. Now, it goes -- maybe it goes -- she could say they could have tampered with it, manipulated it, yes, they could, okay. But the only thing I can do is -- because from what I've seen so far, and there weren't anything wrong with the toilet, well, I have a feeling that -- stand up and tell me if I'm wrong, Cestare was there, Chatfield was there, let me know if you right now before you make your determination, but I did the best I could do, which was send someone after I was involved.

THE COURT: Did anyone check the toilet? I hadn't thought about the toilet, quite frankly.

MS. LIVESAY: Give me five seconds.

THE COURT: That may answer the question.

(A brief pause in the proceedings.)

THE COURT: What do we know?

MS. LIVESAY: Your Honor, Lieutenant Cestare says when they went back on the search, second search warrant, he did listen for the toilet. He said every few minutes it would run for a few seconds and then shut off, and then five or six minutes later it would run a little bit again, and then shut off, but that was on the second search warrant.

THE COURT: I appreciate the honesty, believe me. What did you hear was wrong with the toilet?

WITNESS: The chain was too long. It is a flush valve, cylinder raises up and down, and the chain was too long and doing a half flush.

THE COURT: Which would cause it to do what?

WITNESS: Run.

THE COURT: Run every four, five minutes?

WITNESS: If the chain gets hung, it will.

THE COURT: So the level of the water would drop, and it would fill up?

THE WITNESS: Correct.

THE COURT: I appreciate the honesty more than you both know, I mean.

MR. MARTIN: I'm willing to stipulate to this. If that is what he says, that is what he says. This might be the one thing we have an agreement.

THE COURT: That the toilet ran?

MS. LIVESAY: On the 15th when they got there, not the night of.

THE COURT: I think that the only day we can do it, because he doesn't know what day he went.

MR. MARTIN: There is one other thing that John would testify to.

THE COURT: Ask away.

Q (MR. MARTIN) The problem that you found that you just described, is the -- well, would it be out of ordinary for a person to take a pair of needle nose pliers and a knife to correct that problem?

THE COURT: Let him answer. If you don't know the answer, it's I don't know.

WITNESS: I mean, I use a knife for a lot of things.

THE COURT: Do you know the answer to his question?

WITNESS: Would it be unreasonable to take --

THE COURT: Out of the ordinary?

WITNESS: No. No.

Q (MR. MARTIN) Another way, are those the tools

that a person may need to correct that problem, or at least think they would need to correct that problem?

A To pry the link on the chain.

Q Yes?

A Yes.

MR. MARTIN: And I will enter that.

THE COURT: Again, I'm not going to let it in. I understand why he wants it in, but I'll assume that you all will stipulate that on the 15th, when it was checked by the police department, that the toilet was running?

MS. LIVESAY: Yes.

THE COURT: Mr. Martin, you agree there is a stipulation that on the 15th of August, when it was checked by the police department --

MS. LIVESAY: I'm stipulating under the pretense that this man is not testifying.

THE COURT: Stipulation is to the truth, no matter what.

MS. LIVESAY: Right.

THE COURT: I won't let him testify, but I'm assuming what you have been told is the truth.

MS. LIVESAY: I'm assuming it is true, too. If Mr. Martin wants to put Lieutenant Cestare up, he can.

THE COURT: He doesn't know -- I wouldn't

remember either -- it could be a week, two weeks. The evidence has not been in the control of anyone, and he can't know whether it is out of the ordinary to take needle nose pliers or not, that is a stretch. I won't let that in, but I do want you to stipulate to what they are telling me.

MS. LIVESAY: I'll stipulate to that, but I'm not stipulating to him getting up here and testifying what tools --

THE COURT: I don't know what else to -- he's not testifying.

MR. MARTIN: Well, let me be sure, Judge, to what our stipulation is. All I want to do is to close the door on an argument and insinuation that there was no problem with the toilet, that that is a bunch of BS. Now, having said that, if the stipulation could be between the State and the defense that the -- and we'll think about the wording of it, but that on -- that when checked -- and just leave it done -- by authorities and private plumber, that the toilet was not functioning properly in, need of some sort of repair.

MS. LIVESAY: Okay.

THE COURT: She agrees to that. Thank you, sir. I appreciate you coming. You are protected for the

record.

MR. MARTIN: They just told me he went on the morning of the 16th.

THE COURT: You have it on the 15th, and you have it a day early. So work on the language of that. Good luck on that.

MR. MARTIN: You think we need to work on it before he leaves?

THE COURT: No. Thank you, though. Who is your next witness?

MR. MARTIN: I think it is good to give them 15 minutes. I have witnesses here, and I'll call him now, if you want. Whatever you want.

THE COURT: Are you calling the pathologist?

MR. MARTIN: Collins, at some point in time.

THE COURT: Well, I think tonight is a good night.

MR. MARTIN: You think tonight is the night?

THE COURT: Yes. Trust me, with this jury, they do, too. I want to give you a little time before you do that, is what I'm saying.

MR. MARTIN: Yeah, I need a little time before we get to her.

MS. LIVESAY: We're calling another witness tonight?

THE COURT: That's what we're talking about.

MS. LIVESAY: Yes. Okay.

MR. MARTIN: I have one short one here.

THE COURT: Call the short one and then we'll give them 15 minutes or so.

MR. MARTIN: I don't see why we -- come around, Mr. Briggs. I don't know why we can't stipulate to this one. I asked Ms. Livesay, and I don't see a problem, but I have Dean Briggs, custodian of records for one of these phone companies, AT&T. The State used him to introduce cell phone records of Heather Sims and David Sims for the month of August. I want to use him to introduce Heather's records for the month of July, specifically the day of July 24th.

MS. LIVESAY: Your Honor, I'm going to object. That date is not relevant, not close in time.

THE COURT: What is the relevance of it? I mean, you might as well say it, you're going to say it in a few minutes.

MR. MARTIN: I don't have a problem with that, I was just thinking. On July 24th, Heather -- the telephone records and text records, a combination, will show that Heather made numerous calls from -- starting about 7 o'clock in the morning to Prayer Ministry about -- to pray for her marriage, and

numerous marriage counselors, about four or five different marriage counselors called trying to get an appointment with one, because there was an argument between her and David about, and so there is a litany of phone calls there that Heather could identify or -- I want the records in, that is the purpose.

THE COURT: If he's going to put him up to put the records in --

MS. LIVESAY: Here is my thing, judge. If he's going to put those records in, those numbers have to be identified, that's the counselors' numbers. Now, if he wants to put his defendant in, she can look at the records and say these are my records, here is the phone calls I made.

THE COURT: I get it. This is just -- you know. Bring them back in. Call him. I'm not going to argue whether you stipulate. She's not going to. Bring them back in.

MR. MARTIN: Judge, they have the records. I would assume they've introduced the days all around it, but this is not a trick of any sort.

(The jury enters at 5:00 p.m., and the following is heard in the presence of the jury.)

(DEAN BRIGGS, having been duly sworn, testified as follows:)

WITNESS: Dean Briggs, late name B-R-I-G-G-S.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Mr. Briggs, you're getting the same pleasure of getting to testify twice?

A Absolutely.

Q You are a custodian of records with AT&T?

A Correct.

Q Let me show you what is marked for identification as Defendant's Exhibit 62.

(Defendant's Exhibit 62 marked.)

Q (MR. MARTIN) Can you identify those? Have you looked at them before you took the stand here this afternoon?

A I've looked at records pertaining to this case, yes.

Q Take a look at these and tell me if those are the official records of AT&T?

A (Witness examines document.) Yes.

Q For what telephone number?

A (843) [redacted].

Q And you testified earlier that that is the cell phone records of Heather Sims?

A Correct.

Q Do those accurately -- have they been tampered or

changed or manipulated in any way, to your knowledge?
A No.
MR. MARTIN: I move to enter those into evidence, these records, Defendant's 62.
THE COURT: Subject to your objection on relevancy.
MS. LIVESAY: Yes, sir, Your Honor.
(Defendant's Exhibit 62 admitted.)
THE COURT: Subject to the objection.
Q (MR. MARTIN) The date -- these cell phone calls were made on what date, Mr. Briggs?
A Starts on 7/23/2013 and going forward from there. Do you want the ending?
Q What day? Did you say the date?
A 7/23/13.
Q And end date is what?
A End date is 7/25/13.
MR. MARTIN: That is all I have, Mr. Briggs.
THE COURT: Any questions?
MS. LIVESAY: No questions for him.
THE COURT: You can step down. Can we let him go?
MR. MARTIN: Well....
THE COURT: You are still under subpoena. I get it. I understand. Is this the point you need a

little time, Mr. Martin?

MR. MARTIN: It is, Judge.

THE COURT: Like I told you several weeks ago, there would be times that we have to take a little bit of a longer break. I told you, again, not to get mad with the lawyers, it is just the way it works, but at this point it will take --

MR. MARTIN: Judge. Judge.

THE COURT: Yes.

MR. MARTIN: If it works, I do have a witness that needs to be called because of issues that he has.

THE COURT: Okay. Wait a minute, a short one?

MR. MARTIN: Well, he should be relatively short.

THE COURT: Okay. What we're going to do is we'll call this next witness, and then we have to take a 15, 20 break. We'll go later this night to a point you can stand it and we call can take it, but we'll call this next witness, and then we have to take a break. Bear with us.

(Defendant's Exhibit 63 marked.)

(ROBERT SHELLEY, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell the last.

WITNESS: My name is Robert Shelley,

turned over on July 31, 2014, but we gave them another copy out of an abundance of caution.

THE COURT: Okay. Thanks.

MR. MARTIN: Judge, the jury is on the way, I'm assuming?

THE COURT: Yeah.

MR. MARTIN: Let us talk to you about something that won't stop what we're doing at all, but I don't want to forget.

(A bench conference was had.)

(The jury enters at 5:58 p.m., and the following is heard in the presence of the jury.)

THE COURT: I'm not going to let you suffer on purpose. Mr. Foreman, when we take this witness, if you want supper, I'll order it for you.

(AMY RICHARDSON, having been duly sworn, testified as follows:)

WITNESS: Amy Richardson, R-I-C-H-A-R-D-S-O-N.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Amy, you live here in Conway, I know that. Are you employed?

A I am.

Q Where?

A Smith, Sapp, Bookhout, Crumpler & Calliham.

Q Do you know Heather --
A I do.
Q -- Causey Sims?
A I do.
Q And you have known her for a long time?
A Since about kindergarten.
Q Did you hear about the shooting out at the residence on August 11 that night?
A I did. My husband called me.
Q And you were where?
A I was in Charleston, South Carolina, at a retreat for my work.
Q Facebook. Facebook. I want to talk to you about Facebook. There have been questions and testimony about Heather being on Facebook or having something to do with Facebook. Can you tell us what you know about how Facebook came up that night?
A Yes. I was on Facebook. We had left dinner in Charleston and were heading back to the hotel. I got on Facebook, like I normally do. I saw something from someone in David's family, a post to Heather's Facebook page, and it was -- had profanity. It was negative, and something I just didn't feel like was appropriate for Facebook, so I called her mom at that point to let her know it was on there.

Q What time was it that you called her mom?
A It was probably between 8:30 and 9:00. We had been to dinner around 7:30 and finishing up dinner and heading back to the hotel.
Q And did you have further conversation -- when you made that call, what did you tell Sandra?
A I first asked if Heather was okay, make sure everything was okay, she said she was fine. She -- I told her that I felt like someone should take Heather's Facebook down or delete the comment, and I told her if she didn't know how to do it, if she knew the password, I would be willing to do it for you.
Q You knew how to do it?
A Yes.
Q If you have the password?
A Yes.
Q You didn't have the password to Heather's Facebook?
A No, sir.
Q Who would be the person that would know the password to Heather's Facebook?
A I would assume just Heather, but I don't know.
Q All right. And you talked with Sandra by telephone or by text from about 9 o'clock until about what time that night about this issue?

A It was around an hour or so back and forth, maybe a little longer.

Q And do you know whether Sandra was trying to contact Heather or Ronnie about that?

A It was my understanding that she was not -- Ronnie hadn't been able to get back to Heather, so she did not give me a password.

Q Couldn't get the Facebook because Ronnie couldn't get to Heather at that time?

A Yes.

Q Later on in the night, in the 11 o'clock hour, give or take, did you have any more conversation with her, or do you know whether the password for Heather's Facebook was ever obtained?

A I remember asking her if she got it, and she told me, no, and after that, we didn't talk about it.

Q But there is no question that you are the one that instigated the idea that Heather needed to be worried about her Facebook?

A Yes, sir.

MR. MARTIN: That's all I have for Ms. Richardson.

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

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Amy, what time did you call Sandra Causey about the Facebook?

A We went to dinner at 7:30. We were there about an hour. On our way back to the hotel, you know, in Charleston. Probably between 8:30 and 9:00. I can't give you an exact time, but between 8:30 and 9:00.

Q Do you have any idea when Sandra talked to Ronnie or Heather to relay that message to them?

A No.

Q So just because you told her at 8:30 doesn't mean anything about when Heather or Ronnie was trying to close out the Facebook?

A I wasn't with them.

Q Let me ask you this. You called her on 8/11/2013 after David had been shot?

A Called who?

Q Called Sandra Causey.

A Yes.

Q So this man has been shot and killed and your first concern is to notify Heather's Mom about Facebook?

A I called her first and asked her how Heather was doing and if everything was okay, and I called her

back. There were two separate phone calls. I told her about Facebook when I saw it, and I did think -- I just didn't think it should have been up there.

Q Ma'am?

A I just didn't think it was appropriate to be on Facebook. I felt they should know about it.

Q But this man has died, lost his life at 35 years old, and your concern is to call them about Facebook?

A I was concerned about everyone. I asked about Heather, asked how they were doing, but, yes, I did let them know it was on Facebook.

Q Okay. Did you know he was dead?

A Yes.

Q Do you know what Sandra's phone number is?

A No, it is saved in my phone.

Q Would you recognize it if you saw it?

A I doubt it. Maybe. You can try me.

Q Can you look and see if you recognize her phone number?

A Yeah.

Q Look at this number here and tell me if you recognize it.

A Yes, that's it.

Q Is that Sandra Causey's phone number?

A Yes.

Q It is?
A Uh-huh.
Q Is that message concerning something about Facebook?
A Yes.
Q Now, what is the time that -- UTC time on that message?
A 1:18 a.m.
MR. MARTIN: I couldn't understand.
THE COURT: 1:18 a.m.
A I'm just reading this.
Q (MS. LIVESAY) Go ahead. What does it say?
A 1:18.
Q And UTC time, do you know that is four hours in front of eastern time?
A I don't know what that means.
Q And that message -- do you see the message?
A Uh-huh.
Q What does the message say?
A Ronnie call Morgan Martin now. You need Heather's Facebook password. I need to shut it down ASAP. Amy said to tell Morgan she said for us to call.
Q You are the Amy that said --
A Yes.
Q This was four hours in front, so about 9:18?

A Yes.

Q So 911 was called about 6:13, David was shot and killed, and at 9:18 Sandra and Ronnie and Heather are worried about Facebook?

A I can't say what they were worried about.

Q Can you tell me what that message is about?

A I can read it back again.

Q Read it back.

A Ronnie call Morgan Martin now. You need Heather's Facebook password. I need to shut it down ASAP. Amy said tell Morgan she said for us to call.

Q Is there anything in that message about David?

A No.

MS. LIVESAY: No further questions for this witness.

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q I want to be clear on this, Amy. The contact between you and Sandra about Facebook was started by you?

A Yes.

Q No one text you and asked you to worry about Facebook; you are the one that brought up the Facebook issue?

A Yes.

Q So to say that Heather or Ronnie or any of the rest of them were worried about Facebook would be somewhat misleading from your knowledge of the situation; would it not?

A I can't speak for them.

Q You can't speak for them, can you?

A Huh-huh.

Q But they didn't call you. The first text you seen about any of this was that you saw the posting that you didn't think was appropriate, you contacted the family?

A Uh-huh.

Q And said you all ought to get that Facebook shut down?

A Yes. Yes.

Q Did you text her at some point in time, If you folks don't have time to do it, I'll do it for you?

A Yes, sir, I did.

MR. MARTIN: That is all I have.

THE COURT: Thank you. You can step down.

MR. MARTIN: Dr. Kim Collins.

(KIMBERLY COLLINS, having been duly sworn, testified as follows:)

WITNESS: Kimberly Ann Collins, C-O-L-L-I-N-S.

MR. MARTIN: I'm looking for some of the

photographs that I might use in my examination of her, and that will take me just a second.

(A brief pause in the proceedings.)

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Where do you live, Dr. Collins?

A Wadmalaw Island in Charleston, South Carolina.

Q What is your occupation?

A I'm a forensic pathologist.

Q Are you a practicing forensic pathologist?

A Yes, I am.

Q Where do you practice your profession?

A I work at Newberry Pathology Associates and also the medical director at Life Point Organ and Tissue Procurement Services and Transplant for South Carolina.

Q And could you give the jury the benefit of your education and training?

A Yes. I went to college at the University of Georgia and received my bachelor's in microbiology. After college, I went to medical school at the Medical College of Georgia in Augusta and received my MD. Following that, I chose to specialize in pathology, and so I completed a five-year combined anatomic and clinical pathology residency at Wake Forest University, also Bowman Gray School of Medicine which is in

Winston-Salem, North Carolina. After my five-year residency, I wanted to study forensic pathology. There are very few programs of training in that area, and one was here in Charleston at the Medical University of South Carolina, so I completed that forensic fellowship in that location. I then stayed on staff as a full professor of pathology and laboratory medicine, and when we had a medical examiner system, I was chief medical examiner for Charleston County.

Q All right. And have you been qualified as an expert in the courts of this state and other states?

A Yes, I have.

Q In what field?

A Pathology and forensic pathology.

MR. MARTIN: I offer Dr. Collins as an expert in that field.

THE COURT: Any objection?

MS. LIVESAY: No objection.

THE COURT: Without objection.

Q (MR. MARTIN) Dr. Collins, did you take a look at some evidence in this case at my request?

A Yes, I did.

Q If you would, tell the jury what you looked at, and then I want to ask you about some of your findings and opinions.

A I looked at the autopsy report on David Sims. I looked at photographs that were taken at the scene, some that were taken of Ms. Heather Sims' arm and hand. There were some photographs taken by the patrol officers, autopsy photographs. I was provided with a diagram from an engineer locating angles in the bathroom as well as a handwritten diagram. I had evidence -- a report from Dr. Spitz. I had an Horry County 911 transcript of what went on in the 911 call. I had the transcript of Heather Sims. I have SLED, South Carolina Law Enforcement Division, serology and DNA results. Grand Strand Regional Medical Center medical records on Heather Sims, and also there was reenactment photos that were sent to me of someone reenacting the event, supposed event.

Q I think they've abandoned the reenactment theory, but they may ask you about some of the other items. Who performed the autopsy in this case?

A Dr. Lee Proctor.

Q They haven't called Dr. Proctor. Did you talk with him?

A I sure did.

Q Do you know how big a person Mr. David Sims was according to the autopsy report at the time of his death?

A Yes. He weighed 250 pounds, and he was 74 inches, or 6 feet 2 inches for height.

Q Now, the first thing I wanted to ask you about is self-inflicted as opposed to defense wounds. After having looked at the photographs, the evidence and all the things that will go into forming an opinion of that matter, do you have an opinion as to whether or not the wounds on the arms of Heather Sims were self-inflicted or defensive?

A They are defensive wounds.

Q If you would, explain to the jury how you come to that conclusion?

A Defensive wounds in a knife altercation are classically seen on the forearms, either fending off yourself, so you have the inner forearm or non-hair bearing part of the forearm, or maybe you are covering your face, so you have the hair bearing part of your forearm. Also, they are on the hands as you try to deflect the blade or grab the knife. Sometimes if the individual or victim is on the ground, we look for them on the bottoms of the feet. Those are the classic locations for defensive wounds.

Q Did you see the pictures of the wounds of Mrs. Sims?

A Yes, I did.

Q All right. And I'll show you what is in evidence as State's 81 and 96 and ask if those are the wounds that you observed?

A Yes, these are the ones on the arm.

Q And while I'm handing them to you, No. 82, the third one.

A This is a wound on the thumb.

Q Now, Dr. Werner Spitz came and testified and he testified that those -- his opinion was those wounds were self-inflicted, and there is a couple of things that he talked about how you make that determination. First of all, what factors do you weigh in trying to determine whether wounds are one or the other?

A Well, defensive wounds -- and we know there was a knife altercation, and so defensive wounds are on the locations that I just mentioned. Self-inflicted wounds are more commonly seen in cases of suicide; we see hesitation marks. Self-inflicted wounds are usually in the same area of the body. Often, if you are right-handed they are on the left arm or left part of the body. They are often run in the same direction, parallel to each other.

Q And in this case, as to the wounds all running in the same direction on that arm, are those all running in the same direction?

A No, all running in the different directions. Some are almost horizontal, some are almost vertical, some are oblique or going sideways down the arm.

Q Do you find anything in those that are inconsistent -- here is another question. If Heather is right-handed, those wounds are on her right arm, so they would be on her dominant arm, is that an indication you factor in?

A It does factor in, yes. If she's right-handed, you would see a self-inflicted wound on the left arm, and these are different lengths, very haphazardly on her left arm.

Q Let me right --

A On her right arm, excuse me.

MS. LIVESAY: Can I see?

MR. MARTIN: Sorry, what?

(Ms. Livesay and Mr. Martin confer.)

Q (MR. MARTIN) Let me show you for identification and refresh your memory the paragraph out of Mr. Spitz' book about self-inflicted wounds. If you use his criteria, there is one statement he makes in there that trying to determine what they are without a history is very dangerous; would you agree with that?

A Yes.

Q So one would always take into account history in

a situation like this?

A The paragraph says, The background information is, quote, essential in all of these situations, end quote.

Q And in addition to that, he's got a book here -- I mean a page out of the book, which is in evidence, but to refresh your memory, it is No. 43 that shows a wound on a forearm?

MS. LIVESAY: Is that from Dr. Spitz' book?

MR. MARTIN: It is.

Q (MR. MARTIN) Do you see that?

A Yes.

Q Is that in a similar, if not identical, location of Heather Sims?

A Yes, it is. It's in the same location and it says, Superficial defense cut on the left forearm, and this was a stabbing case.

Q That word "superficial," that is out of Dr. Spitz's book. He describes it as a superficial what?

A Defense type cut of the left forearm.

Q So superficial, does that mean in and of itself that a wound was self-inflicted?

A No, not at all.

Q And an assailant can certainly inflict a superficial wound?

A Yes, and in this case, what he wrote here, it occurred in an altercation.

Q Exactly the situation that at least Ms. Sims says occurred here?

A Yes.

Q Now, Dr. Spitz testified in reaching his conclusions about the cuts or scratches on the arm of Ms. Sims were -- at least as I took it -- inflicted in a slow and meticulous fashion; what would you think he meant by that?

A There is no way to look at a stab or a laceration and determine how quickly the cut took place or how meticulous the cut was. These are just haphazard lacerations or -- not lacerations, but incisions on her arm.

Q Is there anywhere in the field of forensic pathology that allows pathologists to make that determination?

A No, not even looking at it under a magnifying glass.

Q No matter how heavy the book is you published?

A No matter how heavy.

Q Fat versus fat stranding. Dr. Spitz testified he wasn't sure what I was talking about when I said fat stranding, but it had nothing to do with his

determination of the depth or of the reading of the radiology report of the stab wound to the abdomen. It's been talked about before, but would you describe for the jury briefly the difference between fat and fat stranding?

A Minimal fat stranding, and what stranding is, it is a term used with CT scans. It has to do with -- when you look at a CT scan, for instance, your bone will be white and different organs of different density has a different shade of black or gray. When we have fat stranding, that means there is some edema or swelling to the fat, and that is kind of a red flag to the radiologist that there is something going on in this location, either like a appendicitis or an infection or some type of trauma. So when you see this change in the look or density of the fat because it is swollen, that is called "stranding," and that is just a sign of pathology, sign of something is not quite right in this place.

Q Dr. Spitz testified that the stab wound to the stomach was, in his professional opinion, 3 millimeters deep. Do you know what he could have used without a radiology report or a CAT scan reading to make such a determination?

A The only way you can determine how deep the stab

wound is is to have a physician measure it with a sterile probe or have it measured under CT scan.

Q Okay. If we're talking about measurements, first of all, do you have a photograph there of the stab wound?

A No.

Q But you looked at multiple photographs of the stab wound?

A Yes, the stab wound to the abdomen.

Q First of all, the medical records that are in the record refer to two --

MS. LIVESAY: Can I get a look at what she's looking at so I'm on the same page?

THE COURT: Sure.

MR. MARTIN: I'm looking for the pictures now of the -- here it is.

Q (MR. MARTIN) Let me show you State's Exhibit 83. How many stab wounds are on Heather's abdomen, stomach?

A This is her abdomen. I only see one stab wound that appears to be going up and down, or vertical.

Q Is that consistent with a knife wound?

A Yes. It is not a puncture wound, it is a knife wound.

Q Is it consistent with the knife that was found at

the scene in this case?

A Yes.

MS. LIVESAY: I have an objection to 77 and 78.

THE COURT: What is the objection?

Q (MR. MARTIN) Well, let me show you -- well, these aren't marked. Let me mark these.

(Defendant's Exhibits 64 and 65 marked.)

Q (MR. MARTIN) Let me show you what is marked as Defendant's Exhibits 64 and 65. Are those photographs of the crime scene that your reviewed in connection with your findings?

A Yes, they are.

Q And they are photographs of what?

A They are photographs -- you see in the background is a tiled bathroom floor, and 77 -- or Defense Exhibit 65 is the hand that is holding a knife. And Defendant's 64 is pretty much the same picture just taken from a little further back.

MR. MARTIN: I move to enter those into evidence.

MS. LIVESAY: I guess my first question is, is this woman saying that that is an accurate picture and it has not been altered in any form or fashion? Because you can clearly look at the ones taken from the crime scene and tell that that picture has been altered, and the blood on his hand and color has been

lightened to where you can't even see it.

THE COURT: Come over here.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to send you out for five minutes. Don't discuss the case.

(The jury exits at 6:31 p.m., and a bench conference was had.)

MR. MARTIN: Nancy, here is one here.

(The jury enters at 6:33 p.m., and the following is heard in the presence of the jury.)

THE COURT: Ask your next question.

Q (MR. MARTIN) Dr. Collins.

A Yes.

Q Let me show you a photograph here which is Defendant's Exhibit No. 46, which has been admitted into evidence.

MR. MARTIN: Is that in?

COURT REPORTER: 46? I have it as admitted.

Q Which has been admitted into evidence. Is that one of the photographs -- one of the crime scene photographs that you reviewed?

A Yes.

Q Now, let me ask you this -- let me show you what is marked as Defendant's Exhibit No. 46 and ask if you have seen that?

MS. LIVESAY: I think he's showing her a picture from the radiologist. I don't know if she anticipates testifying this time. I can tell you last time she said -- when I asked her about it -- I would have to ask a radiologist, so I'm wondering if her qualifications have changed?

THE COURT: No. You can ask her that. Go ahead. That is into evidence, right?

MR. MARTIN: It's into evidence.

Q (MR. MARTIN) The answer was, You would have to ask a radiologist?

A Exactly.

Q So per your advice, I asked a radiologist, didn't I?

A Yes.

Q And that was Dr. Joshua Tew that came in to testify last week, and that is an exhibit that was entered into evidence where he determined the depth of the stab wound to the abdomen, the one stab wound that you could see on the pictures, and he testified that it was -- what is the number on that exhibit?

A 33.26 millimeters.

Q And he said it was that, or three-and-a-half centimeters?

A Yes.

Q Now, what does that tell you about that wound in terms of self-inflicted or inflicted by an assailant or superficial? Tell the jury what that means to you now that we know the actual depth.

A It is not superficial. It is deep to the skin, to the fat, right to the peritoneum, the area where your organs are. So it is not superficial. It is not one that I would say as a self-inflicted wound.

Q Now, the medical records used the term self-inflicted -- strike that -- "superficial," even as to the wound to the abdomen, and you are saying, to you, it is not superficial. Talk about that for a second.

A Superficial, when you are talking about the skin and wounds and depth, refers to going through the top layer, epidermis and the dermis, which is below it. Once you get into fat and deeper, you are no longer superficial.

Q And in this instance where we're talking about -- let me ask you this first. That wound, the testimony in the record was that it penetrated through three-and-a-half centimeters of fat to the muscle, but not into the peritoneum cavity, and that area of the body that there was the bowels or intestines under there. With all of that information and the pathology

of the body, do you know how close to penetrating the peritoneal cavity was the stab wound?

A It was through the muscle. The peritoneal, you can see through the peritoneal; it is like wax paper.

Q This went to the muscle and the peritoneum?

A So we're -- we're within a millimeter, which is the thickness of a lead in a pencil.

Q And what does that tell you about the issue of whether it is self-inflicted or inflicted by another person in an altercation?

A To me, this would be consistent with inflicted by another person into her left abdomen.

Q And does that somehow raise the level of opinion inasmuch as it is that deep and that close to penetrating the peritoneum cavity?

A Yes, because self-inflicted wounds are usually superficial, and this definitely is not superficial.

Q And had there been a penetration of the peritoneum cavity, what would or could have occurred?

A She could have had -- once you expose that sterile area, you can have infection, rupture of the colon, you can die from fecal material spilling out into your abdomen. It could have ruptured a great vessel, such as the aorta, any of the large vessels in that area. On the left side, we have the spleen, which

is a very vascular organ.

Q All right. And as to, again, the wounds -- the wounds on the arm, which you have described in your opinion as defense wounds, are any of those wounds located to major arteries or veins?

A They are over the areas of major arteries and veins. You can see your own arteries and veins on the inner aspect of your arm, your wrist. That is where a lot of cuts that can be fatal take place, on your wrist or elbow region.

Q The wound closest to the wrist is a little different from the others; would you describe that to the jury?

A It is close to the wrist, goes over some major vessels. You can see those in the photograph. It is bleeding more than the two that are above it. The end of it looks like it might be a little deeper, but there is dried blood, so it is difficult to tell.

Q Now, did you have an occasion -- let me change the topic from defense wounds. Let me go back. In your opinion, the wounds on Heather, the ones on the arms and the ones in the abdomen, in your opinion, to a reasonable degree of scientific certainty, were they defensive wounds?

A The ones on her arms are defensive wounds, and

the one to her abdomen is inflicted by another individual.

Q Now, bruises. There has been testimony or questions asked in this case of medical personnel and/or police officers if they saw any bruises on Heather's arms or, I guess, other parts of her body.

A Yes.

Q If you would, explain to the jury why you may or may not see bruises on a person in the two to four hours after they were inflicted?

A Often it takes bruises some time to appear on the body. We've all had a bruise and think, When did that happen. The reason is it depends on the body location. Some body parts have a lot of fat, some don't. It depends on the age of the individual how quickly they appear, and it depends on the force that was applied. So it is not unusual to have bruises appear the next day or two.

Q And would bruises generally age and change in color and intensity as time passes?

A They do. They change from a red/purple to yellow. As the red blood cells break down, they can have a brown color, but can't age a bruise by looking at a color. Some look older than others. You can say maybe they occurred at different times, but you can't

age it and say this is X number of days old.

Q And going back for a moment to the stab wound to the abdomen. The wound that you observed, could it have been inflicted by the knife that you had previously examined that is etched in this case whether it was turned with the blade either way?

A Yes.

Q No way to say that it was held a certain way when that particular wound was inflicted?

A That's correct.

Q Now, did you -- let me talk to you a minute about distance, gunshot residue, powder burns and that kind of thing. Dr. Spitz testified the autopsy report indicated that there was no discrete powder residue?

A That was visible, that's correct.

Q Visible to the pathologist's eye?

A Correct.

Q And if you want to know for certain whether there was any gunshot residue on the clothing of Mr. Sims, you would have to have that analyzed, and could have it analyzed at a lab?

A That's correct.

Q Any question about that?

A No. That is the only way. If you can't see it, you have to have it analyzed by -- trace evidence lab,

that is what they specialize in, detecting the unburnt power or carbon fragments or some lead antimonium and barium.

Q What does that tell you as a forensic pathologist -- the autopsy report that you have in this case, what does that tell you about your ability to tell how far the end of the gun barrel was from the chest of Mr. Sims as it would be in this case?

A You would never be able to tell and give a number. You can give a guesstimate and say, well, looking at a handgun, if you are about 18 inches or further away, you usually don't see any soot or gun powder, but the only way to know really how far the end of the gun is from its target is you take that same gun, same type of ammunition, and you have it tested and fired onto fabric, and that is performed by ballistics, such as at a crime lab.

Q All right. So, in essence, what you are saying is no forensic pathologist, you or Dr. Spitz or anyone else for that matter, can say whether this gun barrel was 6, 8, 12, 18, 24, 36 inches from Mr. Sims at the time it was fired?

A No. All we can say is yes or no there is carbon. Yes or no there is visible gunpowder, or we don't see anything visible. That is all you can say, and the

rest is testing of the clothing.

Q Are you familiar with the old rule of thumb in Dr. Spitz' book that generally if you get more than two times the length of the barrel of the gun away, it tells you nothing?

A That would be like 18 inches, and that is correct, it doesn't tell you anything. You could be 50 feet away.

Q And, of course, in this case the barrel of the gun is probably five to six inches, but at any rate, there is no way to make that determination with any particularity, is there?

A No, there's not.

Q Were you able to -- let me ask you this. In terms of what you looked at in connection with the case, did you look at the crime scene photographs, which showed the position of the deceased body in the bathroom?

A Yes.

Q Did you look at photographs which showed the hole in the tub?

A Yes.

Q And did you look at the photographs which showed the shell casing in the chair in the bedroom outside the bathroom?

A Yes.

Q Did you take a look at the chart that I sent you that Brandon Elvis prepared?

A Yes.

Q And as you look at all of that, do you have an opinion as to whether or not -- and let me back up. You did review the 911 call recording of Mrs. Sims?

A Yes.

Q As well as the statement that she made to the Horry County Police Department?

A Yes, I did.

Q And in that she described what occurred?

A Yes.

Q As best she could tell?

A Yes.

Q Do you have an opinion as to whether or not her statement as to what occurred is consistent with the physical crime scene that you saw there?

MS. LIVESAY: Your Honor, I'm sorry, maybe I missed it. Did she now get qualified in crime reconstruction to be able to say whether or not the 911 call is consistent with the crime scene, so now she is a crime scene expert as well?

THE COURT: Sustained. That is probably stretching it.

MR. MARTIN: All right.

Q (MR. MARTIN) Did you take a look at all of those things?

A Yes.

Q Now, you also reviewed, I believe, in this case the autopsy report?

A Yes, I did.

Q And what did the autopsy report say about the angle of the bullet as it transferred through the body?

A It said that it went from anterior to posterior, front to back, to the left and down.

Q Does it give an angle down?

A No.

Q So Dr. Proctor, who did the autopsy report, and of course you talked to him as well, he didn't attempt to provide an angle down, did he?

A No, he did not.

Q He does report in there that the bullet entered 50 centimeters from the top of the head on the chest, and exited 50 centimeters from the top of the head on the back?

A Yes, that is what it says.

Q Does that make sense if there is a downward angle?

A It doesn't make sense anatomically, looking at

the structures that the bullet went through. You can look at the body where it entered at the rib level, and where it exited at the lower rib level, as well as the heart and lung it went through. So we know the exit wound is lower than the entrance wound on the body.

Q You talked to Dr. Proctor, if you have a downward angle, you would expect the entrance wound was 50 centimeters from the top of the head, that the exit wound would be a greater number, 55 or 56 centimeters from the top of the head, 53 or something?

A That's correct.

Q Here, he said 50 and 50?

A Yes.

Q Did he have an explanation for that?

A He said that was an error. He said that either he wrote it down wrong when he dictated it, or the typist typed it out wrong. He said the error was also that he did not catch -- that it should be greater than 50 centimeters from the top of the head. I asked him --

MS. LIVESAY: Your Honor, if I may, the first problem I have is that whatever Dr. Proctor told her is hearsay. Second problem I have is I've also spoken to Dr. Proctor, and that is not what he told me. In essence, that is the issue with it being hearsay.

THE COURT: Overruled. She's an expert. She can testify as to opinions and give her background. It goes to creditability. Go ahead.

Q (MR. MARTIN) Go ahead. If you would, answer the question.

A Well, if you look at the autopsy report, it doesn't make sense where it goes through the rib on the front and then exits -- it goes through the fifth rib on the front, it exits below the ninth rib on the back, so we know it is going down. So the numbers don't make sense at all. Looking at anatomy, it goes through the heart and then the lower part of the left lung, so we know it is going downward also. So the numbers don't make sense. You don't even need the numbers. I said, well -- and we have worksheets that we work things on, so you go back to your worksheet and see if you wrote it down or the right answer is written down. He said the worksheets are all in storage in Virginia.

Q All right. And Dr. Spitz had an explanation, and the reason I ask that question is Dr. Spitz had an explanation saying that he explained the 50/50 as being correct, but when a person is lying down, as opposed to standing up, it changes the angle of those wounds, and that was the explanation why there was an angle somewhat downward, that it was based on the fact that

he was lying down at the time the measurement was made.

A That's so not true. You can't -- if we went home and tried to flatten our spine on the floor, we couldn't do it from the bottom of our skull to the tailbone. Every body I've seen, when you look in the body, the spinal cord column maintains its curvature. We have ligaments, tendons, muscles and we've got stiffening of the body. It is not going to suddenly like a string of beads flatten on the table. Never happens. Never.

Q Let me ask you this --

MR. MARTIN: Mark this for me.

(Defendant's Exhibit 66 marked.)

MS. LIVESAY: What are you showing her?

MR. MARTIN: Some measurements that I prepared.

MS. LIVESAY: Can I get a look at it so we can be on the same page?

Q (MR. MARTIN) Did you do any calculations in connection with the measurements that we're talking about?

A No.

MR. MARTIN: She can't use it anyway.

MS. LIVESAY: Where did these come from, and who did the measurements? Your Honor, I have some serious objections.

MR. MARTIN: Let me save time. I'm not trying to introduce it through her at this time.

MS. LIVESAY: I have problems with this woman even looking at this. I don't know where any of the measurements came from.

MR. MARTIN: I'm not going to show it to her.

THE COURT: Okay. Don't.

Q (MR. MARTIN) I'll come back to this in a moment. Going back to this case. You know from the autopsy report that the path of the bullet was somewhat downward. Could anybody say at this point in time what that angle would have been?

A You could guesstimate just by looking at the fifth rib and the ninth rib -- fifth in the front and ninth in the back. Everyone is different, but you could say approximately 20 degrees down, 15 degrees down.

Q Anywhere from 10 to 20 degrees, but it is somewhat downward?

A Definitely down, yes.

Q And not only is it downward, it was to the left?

A Yes.

Q What does that tell you in terms of the positions of the body at the time the shot was fired?

A We know that the bullet entered at a slightly

downward angle, which is consistent with him leaning forward. We know that because when you look at the entrance wound, there is a collar from 9:00 to 3 o'clock over where the bullet kind of rubbed the skin as it was going in.

Q Let me ask you, Dr. Collins, how about -- you said it traveled through the body to the left?

A Yes.

Q Is that correct?

A Yes.

Q Tell us -- step down if you would.

MR. MARTIN: Do I need to mark this? I'm not introducing it into evidence.

THE COURT: No. As long as it is just an exhibit.

Q (MR. MARTIN) Now, let me ask you, in terms of -- how is the best way to do this for the jury to see? Simplest way, can you take one of these rods and approximate the path of the bullet through the body?

A Yes. It went in like your breast bone, it went into the left of the breast bone, right under the fifth rib. So, I mean, it is hard without the nipple and everything to look at, but it -- let's make a mark. It exited near the back kind of where that little (indicates) --

Q Show them on me.
A On the skin, kind of where your arm comes -- this is your armpit, and where it comes together, there is a line, imaginary line, and so it exits right in this area, and then they measured how far to the left of midline.
Q And I know it is not exact, but just -- Dr. Spitz had a skeleton and a ruler, but I'll have you show this approximate path going to the body.
A It is not easy to have it go in there. It might be easier to get another one to go this way. Probably about right (indicates).
Q Something like that. And that is an approximation?
A Yeah.
Q You can take the witness stand, if you would.
A Okay.
Q What is your opinion, if you have one, to a reasonable degree of scientific certainty about the fact that that path of the bullet through the body is consistent with the -- if the persons (sic) are standing straight in front of each other, with the deceased having been with his right side forward leaning at the time the shot was fired?
A Yes, that would make the exit wound lower. If he

was standing straight up, it would go right through and come out at a similar level where the exit wound is. When he is leaning, it will come out lower on the back.

Q And the fact that it transfers through the body to the left, but yet goes back into the tub --

A That would pull his left shoulder backwards, and his right shoulder towards the gun.

Q If I were -- if I did have a knife and I lunged at you with my right hand, would it put me in that position?

MS. LIVESAY: Your Honor, I'm assuming now --

A Yes.

MS. LIVESAY -- this lady is testifying to the fact that with all of these variables, she knows the position of the victim when he was shot; is that what she's trying to testify?

MR. MARTIN: I'll ask her whether she has an opinion as to whether or not that is consistent with the autopsy results.

THE COURT: Okay. Do that.

MR. MARTIN: All right.

Q (MR. MARTIN) Is it consistent with the autopsy results that an individual was leaning forward and with his left side back and his rights side forward at the time the shot was fired?

A Yes. The direction and the appearance of the entrance wound, yes.

Q Appearance meaning -- looking -- you looked at the entrance wound from the photographs at the crime scene and at the autopsy?

A At the autopsy, yes.

Q As far as an angle downward, if a body is leaning forward, it could almost be a straight through-and-through shot?

A Yes. Leaning that forward, then the rods are going parallel to the earth, floor.

Q So we also know -- let me ask you, when the bullet transfers through the body, what we have here is -- if you look at these things, the bullet, when it hit the tub it was lower than it may have been when it went through the body of Mr. Sims? Of course, we don't know -- again, let me ask you this. Can you tell from the autopsy report whether or not the deceased at the time he was shot was standing in any position or whether he was kneeling or crouched or anything like that?

A No.

Q Now, the path in looking at the diagram that we have here, which you reviewed, which is 57, which shows the angle of the tub, is there anything in your

opinion -- and this is within pathology within reasonable degree of certainty --

MS. LIVESAY: I'm assuming she's going to testify to that line being accurate as to the ballistics of the bullet?

THE COURT: That goes to her credibility on cross. Go ahead.

Q (MR. MARTIN) No. And the question I've got to you is, is there anything inconsistent with the fact that the bullet goes through a body at some 10, 12 feet from the tub higher than it winds up at the time it strikes the tub?

A Once it hits the body, it loses energy. It loses energy as it passes through the organs we don't hit ribs or bones, so we don't lose too much energy. It still has energy to go through the air, but the number one factor with what happens now is gravity, so gravity pulls it down.

MS. LIVESAY: Your Honor, just very briefly -- and, again, I could have missed this -- is she now an expert in ballistics as well as forensic pathology? If she is, I just want to hear about it.

THE COURT: No. No. And that goes to credibility. Go ahead.

MR. MARTIN: I'm not offering in ballistics, just

forensic pathology.

THE COURT: I understand.

Q In addition to that, when the bullet goes out of the rifle barrel -- and I know you are not in ballistics, but, again, in the field of pathology, one thing that would cause the path of the bullet to change would be that it begins to tumble as opposed to flying in a circular pattern?

A Right. When it comes out, it almost goes like a football in a way spin, but once it hits an object, skin, clothing, anything, it will lose that nice direction and spin and start to tumble; that is why the entrance wounds are often really round like a cookie cutter, and the exit wounds -- if you see the picture -- it is jagged and almost star shaped.

Q Now, in conclusion on that, is there anything that you could find in looking at everything you did in connection with the case that is inconsistent with what Mrs. Sims told the police about what occurred that night?

A No, I could not find any inconsistencies.

Q Now, you also have some pictures, and there are many in evidence of the deceased with the knife lying on the floor and on his hand. You've looked at those photographs?

A Yes.

Q Do you have some of those with you?

A Yes.

Q Do you have an opinion whether or not there is any question that the deceased could have maintained control of the knife in his hand from the time he was shot until he eventually was laying on the floor in a position that he died in?

MS. LIVESAY: Again, are we getting into blood spatter?

THE COURT: I don't think so. Overruled.

Q (MR. MARTIN) I'm not asking you a blood spatter question at this time. I'm asking you a forensic question, and that is -- first of all, when an individual is shot, as Mr. Sims was, do they lose immediate control of their musculature? Are they able to do anything? What can you tell the jury about that?

A Where he was shot, you don't lose immediate control. There have been cases where they are noted to run upstairs, run down the street when they are shot in the heart or lungs. It all depends. Now, if you're shot in the brain stem or shot in the spinal cord, you could lose control from there at that point down. But this is not what we would call an instantaneous death.

Q In this case, is there any question that he could have maintained control of the knife, that is not dropped the knife immediately, but maintain control of it until he came to his final rest?

A Yes. It is not uncommon to see objects in the hands. If it is really clenched, they call it a cadaveric spasm --

MS. LIVESAY: Again, I just want make sure I'm clear. This woman now knows something about crime scene --

THE COURT: All right. Ladies and gentlemen, don't go all the way back to the room, and don't discuss the case.

(The jury exits at 7:05 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Your objection?

MS. LIVESAY: My concern is this woman is a forensic pathologist, and I feel we have lost touch of what she does. This woman goes and does autopsies on deceased people, and somehow we have gone from that to she is a ballistic expert, and now a crime scene expert. Now she knows something about the way the victims are found at the crime scene.

THE COURT: Let me ask you this. What was Dr. Spitz' qualified as?

MR. MARTIN: Same thing.

MS. LIVESAY: He didn't say anything about victims are --

THE COURT: I love Dr. Spitz, but he got down on the floor. I mean, look, she can testify about this stuff to the extent that it is within her opinion. On cross, you can do whatever you want. In fact, we'll give them a break before cross. This is nothing that Dr. Spitz didn't testify to, and I would let her testify. Again, it goes to creditability. I'll tell this jury they can disregard an opinion if they believe it is outside the scope of her expertise. Bring them back in.

(The jury enters at 7:06 p.m., and the following is heard in the presence of the jury.)

Q (MR. MARTIN) Let me show you Defendant's 46, which is in evidence.

MR. MARTIN: Is Defendant's Exhibit No. 1 in evidence?

COURT REPORTER: It is not.

Q (MR. MARTIN) The pictures before you is a picture of --

MR. MARTIN: How about State's No. 43?

COURT REPORTER: Yes, sir.

Q (MR. MARTIN) All right. There is multiple

pictures of the gun in the hand lying on the floor --
A Knife, right.
Q State's 43 and Defendant's 46, the two of them. And those pictures -- tell us what those pictures show.
A This is a picture of the crime scene, and as a forensic pathologist, I've been to hundreds of crime scenes, all hours of the day and night. So this is a crime scene where they have marked with the number the area of the body at the scene, and you see those, a hand with a knife in it.
Q All right. And what I was asking you was an opinion as to whether or not he could have maintained control of that knife until he was found in that position?
A Yes.
Q And in your opinion, could he have maintained control of the knife by holding it in his hand in any one of many variations?
A Yes.
Q And in your opinion, could he have had that knife in his right hand and maintained control of it throughout his going to the floor in the position that he was found?
A Yes.
Q You see there is blood on his hand?

A Yes, I do.

Q And of course -- does the blood on the hand in any way change your opinion of that?

A There is blood on the lateral palm of the hand, and then there is sparing on part of the palm, which would be consistent with him holding the knife or gripping the knife.

Q And the heaviest concentration of blood in those pictures is on what part of the hand?

A The lower, outer palm under the side of the pinky, side of your small finger.

Q All right. As you look at the photograph, the blood dissipates or becomes less or nonexistent as you move from the crease of the palm to the palm of the hand towards the fingers, right?

A Yes.

Q And what is your opinion of what that tell us?

A That he's got blood on his hand and he was holding the knife, which protected the hand from getting blood in those locations where the fingers are curled around the knife handle.

Q In your opinion, is that consistent with the fact that instead of not having a knife in his hand, he had a knife in his hand at the time the blood was transferred to the hand?

A Yes. He has transfer blood on the hand, and the knife was in the hand or else there would be more blood on the hand as opposed to blood being on the knife itself.

MS. LIVESAY: For the record, I'm going to assume we have now qualified her in forensic pathology and blood spatter; is that accurate?

THE COURT: No. Go ahead.

Q (MR. MARTIN) Dr. Collins, did you reach any other conclusions or opinions that I have not discussed with you?

A No, I don't think so.

MR. MARTIN: That's all I have.

THE COURT: Okay. Give us a minute. Let's take ten minutes to, come back in, we'll finish this witness and go home. Take 10 minutes. Don't discuss the case yet.

(The jury exits at 7:11 p.m., and a recess was taken.)

THE COURT: Bridge them in.

(The jury enters at 7:28 p.m., and the following is heard in the presence of the jury.)

THE COURT: Ladies and gentlemen, I'm assuming you are okay to continue on?

FOREPERSON: Yes, sir.

THE COURT: That is the impression I get radiating off of you. All right.

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Ms. Collins, Mr. Martin showed you some articles or pages out of this book?

A Yes.

Q And they were about self-defense wounds and self-inflicted wounds?

A Yes.

Q Well, did you bring your book to show us what you have written about as far as self-defense wounds or self-inflicted wounds?

A Oh, I could have, but I wasn't asked to.

Q Did Mr. Martin show you anything or any pages from a book you had written?

A No.

Q Just from this book?

A Today? Yes, just today.

Q So he didn't bring anything from any articles you ever have written?

A No, he didn't.

Q And you didn't bring anything?

A No. I was not asked to.

Q Okay. But you knew you were coming to testify

today on this particular issue, didn't you?
A Exactly.
Q And you were here Friday when Dr. Spitz testified?
A Yes.
Q And so you knew what we were going to be talking about, correct?
A Yes.
Q And you saw we were taking excerpts out of this book?
A Yes.
Q But you didn't think it would be appropriate for you to bring something you had written regarding the same topics?
A No.
Q Now, the next question is, Dr. Spitz did a report, and you reviewed it, didn't you?
A Yes.
Q Can I get a look at the report you did?
A I wasn't asked to generate one.
Q So you didn't do a report?
A That's correct.
Q Okay. Now, we talked about some wounds -- first of all, I want to clear something up, because I think I misunderstood. You testified to Mr. Martin that in the

autopsy report Dr. Proctor put that this was a -- I think he put it went through the left -- what did you testify to earlier?

A It went to the left, unless I misspoke.

Q Let me ask you this. Did you testify that Dr. Proctor said it was a downward angle? Isn't that what you told this Court, that Dr. Proctor said it was a downward angle and it didn't make any sense because the measurements were 50, 50?

A I said he did not give an angle, but the location anatomically did not make sense to be 50, 50.

Q So you are telling this Court now that you never said anything about the autopsy saying it was a downward angle, and that didn't make any sense because Dr. Proctor measured it 50 centimeters from the top, and 50 centimeters in the back; is that what you are telling us now?

A No. I said I don't recall using the word "angle." I said the bullet went downward.

Q Is that what the autopsy report says?

A One part says anterior to posterior and left direction.

Q You show me where that report says anything about downward.

A Using that word?

Q Yes.
A No, he just describes the areas of the body that it went through.
Q So when you told this Court that his autopsy report said downward, but it didn't make any sense because of the measurements, that is not true, is it? His report didn't say anything about a downward angle; isn't that correct?
A He didn't mention an angle at all.
Q So he didn't say anything about a downward angle?
A Correct. I said he didn't give an angle.
Q You said also that you talked to Dr. Proctor, and he said he was incorrect in his report?
A Yes.
Q Now, what are you holding now? Documentation from Dr. Proctor?
A Yes.
Q And that is his report?
A Yes.
Q So do you have documentation of a supplemental report?
A No.
Q But you do realize he supplements his reports, correct?
A We all do.

Q Right. Did he supplement this report?
A Not that I'm aware of.
Q So there is nothing in writing saying anything about Dr. Proctor said there was a mistake in the report; is that correct?
A That is correct.
Q And you would agree with me that you and any other doctor have supplemented their reports and said, here, this is a supplement to this report?
A If the mistake was brought to their attention. Maybe the mistake was not brought to his attention.
Q So you did not have a conversation with him about a mistake?
A Yes, I brought it to his attention. Maybe he'll make a supplemental report now.
Q Has he made one yet?
A I haven't spoken to him yet.
Q Have you seen one?
A No.
Q So he hasn't sent you anything in writing about any sort of mistake being in his report; is that correct?
A That's correct.
Q Now, these wounds -- Mr. Martin only talked about two wounds, he talked about the abdomen and he talked

about the scratches on her arm; do you remember that?
A Yeah. There are more than two, though.
Q I agree. I agree. That is what I want to talk to you a little bit about right now. First of all, let's start with this wound I'm showing you now, State's Evidence 95.
A Yes.
Q Does that look familiar to you?
A Yes.
Q Let me show the jury so they know which wound we're discussing. This is the wound on the thumb?
A Yes.
Q And you can see her thumb in the picture.
(Published to the jury.)
Q (MS. LIVESAY) You've told this Court before that this wound was a self-defense wound, correct?
A I said it was consistent with that in the location.
Q And you said it did not come from the gun, from the slide; is that correct?
A You are referring to my previous testimony?
Q Yes.
A If you want to pull up on Page 32 and 54, you can see exactly what I reference with regards to that being from the slide, or from a cut or incised wound. I said

it is a --

Q What is your opinion today?

A The same as the other time. It is a classic location for a defensive wound, for a stabbing, as I mentioned the hands. If a gun is held improperly, you can also have an injury from a gun.

Q Okay. Let me refresh your memory: So you never took into consideration that possibly the wound on her thumb came from the slide of the gun?

And your answer was: Not in my opinion. I haven't seen a wound like that. If it did, it did. I'm saying it is not in a classic location for self-defense.

Is that correct?

A It is not in the classic location for self-defense?

Q You said I'm saying it's in the classic location?

A Yes, in the classic location for self-defense, that's correct.

Q So you testified earlier that this was in the classic place for self-defense, and that this was a knife wound?

A Yes.

Q And it was your opinion that this gun -- this did not come from the slide of the gun?

A If you turned to Page 32, and I believe on 54 -- I can finish my question?

THE COURT: Let her answer.

MR. MARTIN: Let her answer.

A It was brought up -- she brought up and asked me could this have come from a gun. I said, well, it could have, but in my opinion it is a classic location for a defensive stab wound.

Q (MS. LIVESAY) So it is still -- you are telling these people today that this wound right here is a classic wound from a stab wound from a knife?

A It is in the classic location for defensive wounds.

Q So it is still your opinion in looking at this wound that it did not come from the slide of that gun?

A No, that is not what I testified before either. I said it could have happened the day before from another type of injury. It is very non-specific. I testified before, and today, it is in the classic location for defensive wounds.

Q And it is your opinion that this did not come from the slide of the gun?

A No, that is not what I testified to at either time. I said it could have been an injury from the gun, could have been an injury from the day before. It

is a very non-specific injury to the thumb.

Q Let me just read this to you. This is off of Page 54. I'm asking you: So you never took into consideration that possibly the wound on her thumb came from the slide of the gun?

And you replied to me: Not in my opinion.

A Correct, I did not take into consideration.

Q Okay. So in your opinion, this, along with the other two, are from the knife?

A It is an injury in the classic location. It is not a great photograph. I thought it was a defensive wound from the knife, yes.

Q So this one came from the knife?

A I said it is in the classic location. It is a very poor photograph.

Q Let me ask you this. Is it also in the classic location of when you hold this gun the slide is already back on the thumb, is it not in a classic location from when the slide comes back to nick you right there?

A Depends how you hold the gun. Most of them that I see occur more in the palm area.

Q You've seen a wound from the slide of a gun in the palm area?

A Yes. Again, these wounds occur in people that are not experienced with firing guns, that is why they

have them.

Q Let's look at her wounds, because we didn't get to look at those with the injury, and I have some questions regarding her wounds. See if I have some -- give me one second, Ms. Collins.

(A brief pause in the proceedings.)

MS. LIVESAY: My pictures got a little jumbled up over here.

Q (MS. LIVESAY) I'm showing you State's Evidence No. 84. You are in here now telling this jury that that is not a superficial wound; is that correct?

A That's correct.

Q Do you know how it was treated?

A I know that at one time she had antibiotics and they wanted it to heal from the inside out because it was a dirty implement, so the wound was considered, quote, dirty. You don't suture those.

Q Let me ask you this. Did you know that that wound did not require a stitch, a staple, not even a bandaid; did you know that?

A Yes. They were healing from the inside out.

Q And did you know that the doctor at ER who saw her in person said it was superficial?

A If that is what he said, I disagree.

Q Okay. So you are disagreeing with the doctor

that actually treated her that night who is a trauma surgeon?

A I'm basing it on the medical records, radiology and photographs.

Q Do you have the medical records with you?

A I have everything with me, I believe.

Q Did you look at the medical records and radiology?

A Yes.

Q Both said superficial?

A Yes.

Q So you are in here telling this jury that a trauma surgeon, who saw her that night, is wrong, and you are in here telling this jury that the radiologist who also said it was superficial, he was treating her, they are both wrong?

A You have to ask them how they define superficial. To them it may mean no penetration into one of the body cavities.

Q Let me ask you this. What did the report say?

A It was superficial with no penetration into peritoneal cavity.

Q You are saying you degree with that?

A I define that wound as not superficial when it is 3.5 centimeters deep.

Q Let me make sure I'm correct. The trauma surgeon at the ER said it was superficial. The radiologist said it was superficial. It was treated with not even a staple or a stitch, not even a bandaid, and now you want to tell the people in here it was not a superficial wound?

A Depends how they define "superficial." If they mean it doesn't penetrate into the abdominal, you don't need to suture because you want to heal from the inside out; otherwise, you are suturing in germs and you're going to create an abscess. If that is how they define superficial, that is not how I define superficial when I look at wounds on the body, and that is what forensic pathology is.

Q Are they doctors?

A Yes.

Q Are you a doctor?

A Yes, I am.

Q But for some reason, superficial is different to them, those three, than what it is to you?

A And every other profession. Superficial to a neurosurgeon is going to mean a lot different than to a dermatologist.

Q But you would agree every other doctor said it was superficial?

A Every other doctor -- the two that looked at her, yes.

Q Okay. If you don't mind, these are wounds on her arm. Can you step down so we can go through them with the jury?

A No.

Q What I'm extremely interested in -- and I'm showing the jury what is State's Evidence 18. Do you see here that there is a light scratch and then a deeper scratch over the same scratch; do you see that?

A Yes, I see the darker one and then there's a light pink.

Q So would you -- she has two wounds, one real light one, and then one that is just a little deeper over the same wound?

A Can't tell if it is a scar or scratch. The three main ones are the ones mentioned in the medical record.

Q This red -- would you say that is red?

A Red or pink.

Q That looks like a scar to you?

A It could be anything. I don't see what the relevance is.

Q I don't -- do you know what a hesitation mark is?

A I do.

Q Do you mind telling the jury what it is?

A A hesitation mark is usually seen in cases of suicide where they are trying to get up the nerve, so to speak, to cut. So they'll cut kind of like you are marking it out, where I'm going to do it, and you cut and cut a little deeper until you kind of finally decide to do it all the way in. So that is what a hesitation mark is. They go very parallel, very much in line to where the final incision mark is on the body.

Q Basically, a practice run? Do you describe it they try one time to see, and then go a little deeper?

A It could be called that, I guess.

Q What you are saying is this is not a light scratch, like you just talked about, with one just a little deeper over the same one?

A Right. They are not over the same -- running the same place, no.

Q Have you talked to Mrs. Sims?

A Just seen her over here.

Q And have you looked at her arms?

A No.

Q Now, we talked to you earlier at the prior hearing, didn't we?

A Yes.

Q About whether or not this was a scar or a

hesitation mark?

A I remember something of that, yes.

Q And between then and now, you never looked at her to see whether or not there, indeed, is a scar in that location?

A No.

Q And what you want to tell these people here today is this red scratch, you don't know if that is a scar or a wound?

A It could be another scratch with a blade. I would be happy to look at her arm now.

Q Okay. You can have a seat if you want to, Ms. Collins. I know it's late, and I'm tired.

You are an expert in forensic pathology, which is basically wounds; is that correct.

A You know, I think that would really help clarify things for the jury, because we never got into what forensic pathology really is. And so pathology is the study of diseases. You've all been treated by pathologists if you've ever given urine, blood, had a PAP smear, biopsy. Forensic pathology is the investigation and study of unnatural death or trauma in both living and deceased individuals. So we take everything we know from the laboratories and anatomy, and we look at trauma, look at any injuries from

poisonings to gunshot wounds and try to understand the injury process so we can understand how it occurred so we can backtrack and extrapolate the injuries.

Q So you do all of that, and you cannot tell these people if that is a scratch or a scar on her arm?

A Not in that two-dimensional photograph, no.

Q Okay. Can you -- let me ask you this. Can you tell on this two-dimensional photograph if that is a scratch or a scar?

A That is a scratch or laceration that is bleeding -- or incision, sorry. It is an incision that is bleeding.

Q So you can look and tell something about a two-dimensional photograph?

A In those I can.

Q The only one that you are unsure about is that one that looks like a hesitation mark?

A The one that is very pale, yes.

Q Yes. Yes. Very pale, light scratch. Now, you talked a little bit earlier with Mr. Martin, and when he first started questioning you, you immediately said, yes, because we know that this is a knife altercation; do you remember that?

A I would have to look back what the sentence was, I don't remember.

Q So you don't remember what you just said maybe 30 minutes ago?

A I remember saying this is a knife altercation, I don't remember what it was in response to.

Q Okay. So you are saying that this is a knife altercation?

A There is a knife involved in an altercation, yes. There also is a gun involved.

Q How do you know that this was an altercation other than the defendant's statement?

A Because the gun -- there was a gun shooting and she was stabbed in the abdomen.

Q Let me ask you this. How do you know, other than her statement, that she -- these wounds were through any kind of altercation?

A They are classic for defense wounds.

Q Now, you were here Friday for Dr. Spitz' testimony?

A Yes.

Q And tell these people where you were sitting when he was here?

A I was sitting in one of the benches or pews where I could see him.

Q Right beside Heather Sims' mom?

A I don't recall. I know her father.

Q So you don't recall where you were sitting Friday last week?

A I remember one time I was sitting on the other side of the isle, and one time I moved over. Someone had a cushion.

Q So you do remember sitting over there behind the defendant and beside her parents?

A Yes, behind Mr. Martin.

Q So you were over there sitting beside the defendant's mom and behind the defense attorney?

A If that was her mother.

Q Let me ask you this. When you were here for Dr. Spitz' testimony, something that Mr. Martin didn't point out that I wanted to ask you about was, did you see him show this jury his arm; did you see that?

A Where he had written on it?

Q Yes. Where he had marked out the wounds on his arm.

A Yes.

Q And did you notice when you do this way, you cannot see those wounds in this self-defense location; did you notice that?

A I could see the wound he drew on his arm from back there.

Q Let me ask you this, yes or no. Tell these

people right here if you saw Dr. Spitz -- yes or no -- show them his arm like this with the wounds drawn on them, and you could not see any of those wounds in that self-defense location that you keep referring to?

A I did see those wounds. I saw the magic marker, and I was sitting back there.

Q Oh, so you did see him from this side?

A No, when he lifted up his arm.

Q So you are saying when he lifted up his arm like this, you were sitting over there; is that correct?

A Yes.

Q And you are telling this jury when you were sitting over there, you could see what was on his arm right here (indicates)?

A It was when he was questioned by Mr. Martin and he raised his arm, and that is when people started laughing.

Q So could you -- when he put his arm up like this, then tell me, could you see the wounds on his arm?

A Yes.

Q And you saw him put his arm up like this and show the jury?

A Well, they would have seen it when he was facing the jury. When he was here, and Mr. Martin asked him a question and he raised his arm again, there were the

marks.

Q When he raised his arm like this (indicates)?

A He raised his arm.

Q Okay. Okay. You are doing like this, is this how you saw the wounds (indicates)?

A Well, the left arm.

Q So you saw when he raised his arm like this (indicates), you saw the wounds?

A He raised it up like this, more in front of him.

Q Would you just admit that a minute ago you were telling when he raised his arm up like this I saw the wounds (indicates)?

MR. MARTIN: Object. This has gone on. The jury saw what he raised, and I'm trying not to object, but this is so repetitive.

THE COURT: I think they understand. Go ahead.

A I wasn't trying to pose like Dr. Spitz. I was saying when he raised his arm up, in answer -- I guess Mr. Martin was asking a question about the defensive posture, when you have a defensive wound, there were the wounds. He had drawn the wounds right in the same place as Heather Sims' wounds, and he is demonstrating defensive wounds, and I saw it from back there.

Q (MS. LIVESAY) When he was doing like this in this classic self-defense position (indicates)?

A I told you I did not pose like Dr. Spitz.

Q Mr. Martin also talked to you a lot about, of course, her wounds, which you have said are classic -- in the position of classic self-defense wounds, correct?

A Yes.

Q The one on the thumb, the puncture and the scratches on the arms, all of those are self-defense?

A I did not say that. The puncture to the abdomen is not a puncture, it is a stab. It is not a self-defense wound.

Q Okay. So the one on the thumb and her arm is self-defense?

A I said they were classic locations for self-defense, and that is my opinion, yes.

Q And you are telling these people that those scratches on her arm and the one on her thumb are, in your medical opinion, from self-defense?

A I think we've been over the one on the thumb, it is in a classic location. It is difficult to see from the photograph exactly the detail as the ones on the arm are very clear in the photographs.

Q He talked a little bit about gunshot residue; do you remember that?

A Yes.

Q And if you don't mind, the rule is -- and correct me if I'm wrong, because you mentioned 18 to 24 inches; do you remember that?

A Yes.

Q If gunshot residue is not visible, that means the muzzle of the gun was at least 18 to 24 inches from the victim; is that correct?

A It depends on the gun. You would have to test fire it.

Q So now you are saying that this is not the general rule, if you don't see gunshot residue, then the gun is more than 18 to 24 inches? Is that what you are saying?

A I said that is a rule of thumb when you are teaching residents to think about that. As I told the jury, you never would give a number. You would have that tested by trace or ballistics.

Q But you would admit that the general rule of thumb, which is why Dr. Proctor put it in his report, is that if you don't see residue on the shirt or on the wound, then the muzzle is at least 18 to 24 inches from the victim?

A That would be a guestimate.

Q And it also would be the general rule of thumb, wouldn't it?

A I don't know if it's a general rule of thumb. It is something I use to teach my trainees.

Q That is what you use to teach people, that rule, 18 to --

A It is not a rule. You said a rule of thumb, which is slang. I say if it's greater than 18 or 24 inches, the gun is probably far away, that it doesn't matter because you have to have it test fired.

Q You also talked a little bit how he was holding the knife; do you remember that?

A Yes.

Q And Mr. Martin was talking about blood in the hand and could he still be holding the knife with blood in his hand; do you remember that?

A Yes.

Q Now, were you in here when Paulette Sutton testified, a blood spatter expert?

A No.

Q Tell this jury how many times you have been qualified as an expert in blood spatter?

A I told you, I've only been qualified as a pathology expert and forensic pathology expert.

Q So the answer is none?

A Correct.

Q So you never have been qualified in blood

spatter, and let me ask you about ballistics. You were talking about the bullets tumbling, gravity gets a hold of it, it drops, all of this stuff. Tell these people how many times you have been qualified as an expert in ballistics?

A Ballistics, with forensic pathology, every gunshot wound case, because we study the way -- or the ballistics of the bullet or any projectile through the body, so that is part of the study of forensic pathology.

Q So the answer is none, you have never been qualified as an expert in ballistics?

A Ballistics is not what I mentioned earlier. Ballistics is the study of the bullet itself, the rifling, the cartridge, the ammunition, the guns. I didn't bring up any of that.

Q Have you been qualified as an expert in anything with ballistics?

A When it deals with forensic pathology.

Q When it deals with forensic pathology, but nothing else?

A No.

Q So you have never been qualified with any kind of specialty in ballistics?

A I'm not a ballistic scientist.

Q Okay. Good. So you are not an expert in blood spatter, and you are not an expert in ballistics; is that correct?

A As long as we know what the definition of ballistics is, yes.

Q Mr. Martin was talking about what is consistent with David Sims' wound, the trajectory of the bullet; do you remember that?

A Yes.

Q The motion he was making, is that the only position that is consistent with that type of wound?

A No.

Q In fact, there is many positions that would be consistent with that type of wound, correct?

A You can put the victim or the person with the gun in different positions as long as the angle is the same through the body.

Q So the answer is, yes?

A Yes.

Q Now, he also mentioned with you the 911 tape; do you remember that?

A Yes.

Q And you said that her wounds and this crime scene was consistent with what she told the 911 operator; is that correct?

A We listed all of the materials that I went through, and he asked if my opinion and materials were consistent with the history that was provided by with Ms. Sims, and I said, yes.

Q So you are saying her 911 call, which is what he specifically mentioned, is consistent with the crime scene and her wounds, and everything else?

A From what I recall, yes.

Q So when she said -- and it is on the 911 tape, you've heard it -- he's coming at me with a wrench; do you remember that?

A I remember "wrench" or "pliers," yes.

Q So do you know that the pliers were found sitting on top of the toilet?

A Yes.

Q So you are now telling these people that those pliers sitting on top of the toilet is consistent with the victim attacking Heather Sims with pliers; is that what you are telling me?

A No. Just an attack with a knife.

Q Sorry?

A What is consistent is that she was attacked with a knife.

Q Okay. Tell me this. Is it consistent that she was attacked with a set of pliers, and when the police

got there, they were lying on top of the toilet with the top of the toilet closed, they were sitting on top, is that consistent with her being attacked with a pair of pliers?

A I don't know how the pliers got there, so I couldn't say.

Q You don't know the answer?

A I don't know how the pliers got there, or wrench, or anything, how they went from Point A to Point B.

Q Then how do you know that the crime scene is consistent with the 911 tape?

A Her history of being stabbed and the crime scene, standing in the threshold, the ejection of the cartridge, all of that is consistent.

Q So you completely forgot about the fact that she said "pliers" or "wrench," just discarded that; is that correct?

A I know she mentioned the pliers and a wrench, and there was nothing else said about it.

Q But you discarded that?

A She didn't appear to be injured with pliers or a wrench.

Q So that is not consistent with the fact she was attacked with pliers or a wrench; is that correct?

A I did not see any injury from pliers or a wrench.

Q Did you hear when someone is telling her to stop wiping down the blood? Did you hear that, Stop wiping that? Did you hear that?

A Something to that effect. I don't remember the exact wording.

Q And, to you, that means that the crime scene, again, was consistent with what she told 911, the fact that she is in there altering the crime scene, to you means that it is consistent with the fact that an altercation took place?

A Not altering the crime scene, but an altercation did take place.

Q Are you denying that the crime scene was altered, manipulated?

A If she wiped off blood, yes, it was.

Q So when somebody said, Stop wiping that, what does that indicate to you? Does that indicate to you that she is wiping something?

A If they said, Stop wiping that, she's wiping at something, an object.

Q And you are going to tell these people the fact that they altered the crime scene, was manipulating the crime scene, is consistent with what she told 911 that she was being attacked?

A I don't know what she was wiping or how she was

wiping. I'm saying that the physical wounds on both individuals are consistent with the history provided.

Q Let me ask you this. The fact she was in there taking the phone out of his pocket --

MR. MARTIN: I object to that line of questioning. It is the same old thing.

THE COURT: Yeah, sustained. Sustained. Move on.

Q (MS. LIVESAY) Let me ask you this. The fact that her dad is telling her to wipe blood off the door; did you hear that?

MR. MARTIN: Object. I object to that. That is a nonsensical question for this witness, and I object to it.

THE COURT: Tell you what, you've asked it a couple of times. One more time, and that is it.

Q (MS. LIVESAY) The fact that he was in there telling her to wipe blood off the door, to you, that means that that crime scene is -- the integrity is in tact and it is consistent with what she said?

A He was telling her to wipe something off the door?

Q Yes. He said, Wipe that off the door.

A I don't think that is what he said, but.

MR. MARTIN: That is her interpretation of what

was said, and she didn't ask the question that way.

THE COURT: Overruled. She said that is not what she thought she said. I mean, it is what it is.

Q (MS. LIVESAY) Did you listen to her statement from the hospital?

A I read one statement. I don't know if it was from the hospital. I'll have to see where she was when she gave it. Interview with Heather Sims, yes, Grand Strand.

Q Did you read in there where she was telling Chatfield that she moved the knife and placed it back in his hand; did you see that?

A What I recall is the knife might have moved while she did CPR.

Q So you are denying that she told Chatfield --

MR. MARTIN: I object. Again, Judge. I object to what is totally improper.

THE COURT: Do you have that statement?

MR. MARTIN: Do I have the statement? She's got the statement.

MS. LIVESAY: I have it on recording. We don't have to squabble about it.

THE COURT: Okay. Well, let's not squabble. Go ahead. Sustained.

MS. LIVESAY: I'll play it for you, Dr. Collins,

and you tell me whether or not you hear her say that she moved the knife.

MR. MARTIN: Judge, wait a minute now. First of all, that is why I told you my objection, these nonsensical questions -- the tape says what it says. The fact that Ms. -- she asked Ms. Collins did you know that she said -- or I think she said this, that doesn't mean she changed the crime scene. All she's saying is if she did wipe blood off the door, that ain't necessarily changed her opinion about what happened, or if she did make a misstatement --

MS. LIVESAY: Here is my question. It's important to ask her. All of these things are going on, and this woman is trying to tell these people that that crime scene, which was manipulated by the very words of the defendant --

MR. MARTIN: Again --

THE COURT: Yeah. Yeah. Wait a minute. Just ask her a question and within her realm of expertise, which is very broad.

Q (MS. LIVESAY) Did you hear Heather Sims, the defendant, talk about moving the knife?

A I know -- and I can look for the wording verbatim, but the knife might have moved while performing CPR.

Q Did you hear her say, And possibly I picked it up and put it back in his hand?

A I don't recall that, but I didn't memorize this.

Q Would you like me to refresh your memory?

A If you want to tell me what page.

Q Actually, it is a very lengthy 10 minutes. Do you mind if I play it for you, and that way there is no question about it?

THE COURT: If you have a page, do that.

MR. MARTIN: I have a page. That is an hour and 46 minute tape.

THE COURT: Pull the page.

MS. LIVESAY: All I'm asking is that I can present my case, and I would like for this woman to refresh her memory by hearing what this woman said at the hospital. I have documented where that conversation takes place, so I will get to that place.

THE COURT: Come over here. This is not on the record. Come over here.

(Whereupon, a bench conference was had.)

Q (MS. LIVESAY) Would it change your opinion to know that in her statement she's talking about moving the knife, putting it back in the victim's hand?

A No.

Q So you would still tell these people in here that

these wounds were self-defense, even though this woman, by her own words, said that she wiped something down, her dad is telling her to wipe something down, she gets to the hospital and tells the police, yes, I possibly moved the knife, yes, I put it back in his hand?

A Yes, she said she was trying to feel his pulse on one part, and the knife might have moved while she was doing CPR.

Q But she also said other things, didn't she, about moving the knife?

A I have to look through here.

MR. MARTIN: Can we just say would it change her opinion?

THE COURT: Move on. It doesn't change her opinion.

Q (MS. LIVESAY) So none of that would change your opinion about these wounds?

A No. That is correct.

Q So you are telling these people, it is your opinion, that some sort of altercation took place, and this woman only suffered what the medical records called superficial wounds, she's in there wiping the scene off, and she's telling the police that she moved the knife back in his hand, and you are telling these people that you still believe these wounds are from

self-defense?

A Yes, taken with the totality of the records that I have, yes.

Q So you are including these facts I just went over?

A Yes.

Q Let me ask you this. Since those things didn't seem to change your opinion, tell these people then, other than the position of the wounds, how you are coming up with there was a huge altercation and this woman was stabbed. Tell these people how you came up with that opinion.

A Based on the physical findings, and we know there was an altercation, gunshot wound, and there is a stabbing. She had a deep stab into her abdomen. There is nothing that would refute that history.

Q Not even the hesitation marks on her arm?

A That is not a hesitation mark.

Q What is it?

A Incisions on her arms.

Q So now you are sure that that one mark is not a scar, now it is an incision?

A No. I still say that that one mark, whatever it may be, is not clear to me what it is.

Q Just so we're clear, you are an expert, we're

looking at simple wounds, superficial, but you can't tell these people what that particular wound is; you don't know?

A Not with that photograph.

Q But you can tell, ironically, what the other wounds are from a photograph?

A Yes, they are in focus. They are better.

Q When you look at medical records, how many wounds did the doctor that actually examined her say she had?

A Two.

Q So he said that she had two puncture wounds?

A I don't know if he used the words "puncture," but two wounds.

Q Do you have the medical records?

A Yes, I still have them.

Q Take a look at them and tell me.

A She sustained stab wounds to the abdomen.

Q You don't see in there where he described two wounds?

A Yes, I said that he counted two.

Q Do you see where he says, Stab wounds less than .5 centimeters times two; do you see that?

A I see two stab wounds less than 0.5 centimeters in the left, upper quadrant.

Q So he saw two very small wounds; is that correct?

A Well, less than 0.5 centimeters.
Q Can you show these people .5 centimeters on this?
A Sure. Do you want me to walk around with it?
Q Yes, please.
A A centimeter has 10 millimeters in it, and a millimeter is about the thickness of lead from a pencil, so you multiply that by five. But here is 5 millimeters, five pencil leads wide.
Q Thank you, Dr. Collins. Two more questions. My first question is, did you base your opinion as to the wounds on the pictures, medical records, or did you actually see her in person with the wounds?
A No, I didn't see her in person.
Q So everything that you based your opinion on is the documentation already in evidence?
A That is correct.
Q Was this opinion peer reviewed by any other doctor or forensic pathologist?
A What do you mean peer reviewed? I know what "peer review" means, but there was not a report for anyone to read or peer review.
Q So the answer is, no?
A No one asked me, that's correct.
Q But so this jury is clear, you didn't do a report and nobody peer reviewed or looked over anything you

are in here telling these people today?

A No forensic pathologist is involved in this case to have peer reviewed my opinion. I generate reports when asked, but I wasn't asked to.

Q So you didn't generate a report?

A No.

MS. LIVESAY: Nothing further.

MR. MARTIN: No questions.

THE COURT: What did you say?

MR. MARTIN: No questions -- just one (laughing).

THE COURT: Thank you. You can step down. Can she be released?

MS. LIVESAY: Yes, sir.

THE COURT: Come over here for a second.

(A bench conference was had.)

THE COURT: Ladies and gentlemen, when this is all over with, I'll probably stand in the hallway and let you all take a punch at me because that will be the only thing that will make you feel better. We are through for the night. We have other matters to deal with, and I'm telling you that I'm hopeful that we can get this case to you tomorrow. I'm staying here until Friday, because I think there is a chance -- it is tomorrow or Friday you'll be in the middle of it.

Thank you for your patience. We have something

in the morning at 9:30, so don't be here until 9:45. That 15 minutes will make a difference in the day, but don't talk to anyone or watch or listen or read any publicity. Have a great 13-and-a-half hours.

(Whereupon, the jury exits at 8:21 p.m., and the following is had out of the presence of the jury.)

THE COURT: We have to take one matter, the iTunes stuff?

MR. MARTIN: I think they are trying to get it to us. They gave us something earlier that said this is what you mean. When Mary Ashley -- we can't find anything on what they are giving us that they had described. Either our software won't pull it up, we don't know how to pull it up, but it is -- we can't find that. I had asked them if they would, you know, help us with our ignorance, I guess, but it doesn't do me any good to say here it is, but yet we can't see or hear what it is.

THE COURT: Can you work together? I mean, all you are going to do is play that under certain circumstances?

MR. MARTIN: I don't know that it is admissible, period, or if she wants to put it in, period. But I don't want to wait until tomorrow to deal with it.

THE COURT: Well, here's the question. For you

to make a decision, he has to know what is on there. So I -- I'll stay here, you work here and see if you can pull it up. I don't know what else to tell you. I think you are entitled to it, because you have a hard decision to make tomorrow. If you can't pull it up, as an officer of the court, I believe you both. I know I frustrate you and you frustrate me, but I believe you. You just have to get it somehow. You are saying you can't pull it up under any format you have?

MS. MARTIN: They put it on this disk of mine, and if they want to put this disk in their computer and pull it for us on there, it just doesn't pull up on mine.

THE COURT: You all work that out. We're adjourned until tomorrow. I'm going to give you the jury charge, too, tonight. It is very rough, but you all can have it.

MS. LIVESAY: We are making a copy, and it is 30 more minutes, but we are able to find where we handed it over on November the 26th of 2014. We did a screen shot, and it looks like we put it on their Passport.

THE COURT: Okay. Well, here is what I want to do, because you all can stick around, but I want the -- all I'm worried about is the record, and I want it

to reflect it is 9:15, eight days of trial, and we're making recordings of potentially -- potential material for cross-examination, and I'm going home. You all can stay and do all you want, but I want the record to be clear that we're still doing this at 9:15, so when the supreme court looks at it later, they are real clear that everyone is here. You have to stay, because this should have been done. We have to go.

MS. LIVESAY: Judge, I handed it over on November 26 and put it on a passport for them, the record shows.

THE COURT: I think tomorrow morning when they argue you can't use it, that is something -- have that ready.

MR. MARTIN: I can tell you now, just a couple of things, and we'll get it -- first of all, they said they handed this July 31, 2014. That isn't right. Here is the problem, just because they have a piece of paper saying they handed it over in this instance, doesn't mean I got it, and it doesn't mean they were trying to trick me out of it, it simply means with these electronics and digital recordings and downloads on the Passports, and that kind of thing, it is just like E-mails, sometimes they don't come through. That Passport she is talking about, we did thoroughly go

over, and we haven't seen or heard any -- not one -- I haven't, because I looked at it, Heather herself, Mary Ashley, and we just didn't find those.

So I'm just saying that for the record now so that you can be thinking about it. I'm going to say, again, adding to -- there is things in evidence that is going to have to be redacted somehow before it goes to that jury, and that will take some work, too.

THE COURT: You all -- you better get to it. I don't know what else to tell you. My being here isn't going to help, because you all said earlier today you would work towards redacting it. We all know what needs to be redacted, stuff that is inflammatory and some of the stuff referred back in my office 10 days ago that needs to come out. I'm just worried that, you know, tomorrow -- I mean, look, you both have made comments that led me to believe that you think you -- I'm not being fair. I'm trying to be as fair as I can, believe it or not, and I just want the record to reflect it is 9:15 on Wednesday night, 18th of November and we still have to redact and tomorrow argue about whether or not Rule 5 material was turned over. I just want that on the record.

MR. MARTIN: I think it is clear, too, the only reason I'm hanging personally is I want to see what

they have to say if they have anything inculpatory in it that I want, because I don't think -- I mean, certainly it would be my position at this hour -- it would be extremely unfair for me to have to try to listen to all of this, get ready for court tomorrow, closing arguments and all of that. I mean, you know, whatever they hand over, they hand over and they go home, and then that is left to me and my small staff here to try to deal with this, and there is no way in the world that that can be reasonable. Having said that --

THE COURT: Let me -- let the record reflect also that the State -- I know you have given it to them, but you also have the ability to pop something in, apparently, and record the one document that you all -- we all know what is going on here -- the one recording that you just are dying to put in. I think the record needs to reflect that. I know you said you gave it to them, they said they didn't get it. Now it is 9:17 tonight, after 12 hours of trial, no supper, we're still waiting for one recording, best I can tell. If I'm wrong, tell me.

MS. LIVESAY: Okay. Judge, I'm not saying you are wrong. Here is the dilemma I run into, just for the record. On November 26th, Mr. Martin signed for

a Passport, which included screen shots of three pages that was on the Passport. PhePhe was written an E-mail by my administrative assistant saying she has Mr. Martin's Passport loaded with the discovery. On that Passport, it included Heather Sims' stuff from the tower, the Apple laptop. It also included a 911 call, David Sims' phone dump to, AOL search warrant results and Apple Device Advance Logical Report for Heather Sims, AT&T records, Brad Daniel's interview, CSI file and several other interviews, and all of this was turned over altogether on one Passport on November the 26th of 2014.

So the dilemma I'm in -- and I understand that Mr. Martin is saying he has to look at it tonight, but it was handed to him on November 26th. I have to give it all to him because I didn't want an issue to come up at a later date where he listens to it and says, oh, this one was exculpatory, and I didn't get it. So I have no choice but to give it all to him. Yes, one recording, but I have a duty to give it all to him.

MR. MARTIN: She's right. And I just found something else out here. I don't understand all of this stuff, but they now apparently have our Passport, same Passport that they are talking about, that they

are downloading it onto now. I don't think -- people tell me the program won't let you download it if it is already on there. But whatever, under any circumstance, my position will not change about the inadmissibility on anything unless I want it because of the exculpatory nature of it.

THE COURT: Okay. Like I said, I can wait around and give it to you, but.

MR. MARTIN: No need for you to wait, Judge, because once it is given to me, then I have to figure out what the hell I'm going to do with it.

THE COURT: You know, I understand.

MS. LIVESAY: For the record, tomorrow, this is only going to take 10 minutes. I'll place it into an exhibit, a copy of the signed discovery showing that we put it on the Passport for them and the items on the Passport, just to protect the record.

MR. MARTIN: And I'm going to protect the record from my side, too.

THE COURT: I understand. We'll do that tomorrow as calmly as we can because -- I'm sort of expecting that, at most, we have five -- more likely maybe we have four witnesses tomorrow, right?

MR. MARTIN: Well, you know, I don't think I'll have over three, four at the most, and only one will

be more than 10 minutes unless we are both insane, and that is possible, I may be.

THE COURT: Let's stop the record there for judicial notice. I understand. And yours aren't going to be that long either?

MS. LIVESAY: No, sir.

THE COURT: We know what can take long, and we'll have to deal with that in the morning. I'm really worried about this jury. I've pushed them pretty hard despite some people's thoughts that I've taken way too many breaks; that hurts. You can tell it doesn't bother me, and I let it roll off my back. I'll let the court reporter go home. I'm out of here.

(Whereupon, the proceedings for November 18, 2015 concluded. The following was had on November 19, 2015 out of the presence of the jury continuing in Volume V.)

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

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

VOLUME V 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

(State's Exhibit 117 and 118 marked.)

(Defendant's 67 through 76 marked.)

THE COURT: Let me clear some things up for the record. Mr. Martin, you kept referring to Exhibit 46?

MR. MARTIN: Yes, Judge.

THE COURT: It had not been introduced. I think we have so many that I would assume it slipped by.

MR. MARTIN: I move to introduce it since it has been talked about.

THE COURT: I mean, any objection?

MS. LIVESAY: Is that the one where you can -- it looks lightened up?

THE COURT: No. Come look at it.

MS. LIVESAY: Same objection I had before.

THE COURT: I'll let this one in. Not the other one. I assume you have given up on that. This is now Exhibit 67, because it wasn't 46.

(Defendant's Exhibit 67 is entered, but has been referred to as Exhibit 46 throughout the trial.)

THE COURT: Who are we calling next?

MR. MARTIN: Dr. Dorn Smith.

THE COURT: Let's get what we can, and at some point we'll have to take a break and talk about the proceedings, but you all know what I have do on the record.

MR. MARTIN: And, also, I don't know when you want to take up this issue about late last night, why we stayed here.

THE COURT: Let's wait, because I don't know if it is going to matter. I know you do, but you are only in the courtroom --

MR. MARTIN: It will matter, Judge.

THE COURT: We'll take a break, and when we do, we'll do all of that.

MS. LIVESAY: Before he gets on the stand, can I get some idea what he's planning on testifying to so I don't have to object.

MR. MARTIN: The same thing we discussed with the judge on the bench last week. He is a thoracic cardiac surgeon. He'll address the fact that the presence or lack of blood on the shirt on the chest of the diseased is no indication that CPR was not performed.

THE COURT: I mean, it is a fact issue. Okay. Bring them in, but can you tell Robert to bring me some of those glasses -- here he is right here.

(The jury enters at 10:06 a.m., and the following is heard in the presence of the jury.)

THE COURT: Thanks for your patience. I know some of you are cold. I'm so hot. One of us is sick,

either you or me, but probably me. But thanks for your patience last night. I understand you are frustrated, and I completely understand. We're going to get as far as we can today, hopefully to the end. Call your next witness.

MR. MARTIN: Dorn Smith.

(CHARLIE DORN SMITH, having been duly sworn, testified as follows:)

THE CLERK: State your full and spell your last.

WITNESS: Charlie Dorn Smith the Third, S-M-I-T-H.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q And, Dr. Smith, where do you live?

A I live at [redacted], Lake City, South Carolina.

Q And what kind of work do you do?

A I'm a cardiovascular thoracic surgeon.

Q How long have you been doing that?

A Since '92 -- what would that be -- so close to 25 years -- 23 years.

Q How many times have you been qualified in courts in South Carolina as an expert in that field?

A Probably 10 or 12.

MR. MARTIN: I offer Dr. Smith as an expert in

the field of cardiac or thoracic surgery.

THE COURT: Any objection?

MS. LIVESAY: No objection.

THE COURT: Without objection.

MS. LIVESAY: I have one question.

THE COURT: What?

PROFFER EXAMINATION

BY MS. LIVESAY:

Q How many times have you been qualified in general sessions before as an expert?

A I would say 10 or 12 times. I mean, I'm not an attorney, so I assume by "general sessions" you mean any court? I would say that number, yes, ma'am.

Q So in a courtroom like this with 12 jurors you've been qualified as an expert before?

A Yes, ma'am, I have.

Q Here in Horry County?

A I have.

Q Okay. And what were you qualified as an expert in?

A I was qualified as an expert witness in a medical malpractice lawsuit.

Q Have you ever been qualified as an expert in any criminal case?

A I have not.

CHARLIE DORN SMITH - DIRECT EXAMINATION (CONT.)

THE COURT: Go ahead.

DIRECT-EXAMINATION (CONT.)

BY MR. MARTIN:

Q Did I ask you to take a look at some information in this case?

A You did.

Q And among other things, did that include photographs of the house, of the body of the deceased?

A Yes, sir.

Q The statements and things of that sort?

A Yes, sir.

Q Now, an issue has arisen by some as to whether or not the defendant, Mrs. Sims, conducted CPR or vigorous CPR in order to attempt to save Mr. Sims' life. Do you have an opinion as to whether or not the amount of blood that is seen in the picture that we have, or on the chest, either the presence of what is there, or the lack of some that is not there is any indication as to whether or not vigorous CPR was performed?

A Yes, sir, I do have an opinion.

Q What is that opinion?

A The opinion is that the amount of blood that is there on the front of the chest or on the floor has no bearing on whether or not CPR was performed adequately or not.

CHARLIE DORN SMITH - DIRECT EXAMINATION (CONT.)

Q If you would, briefly explain to the jury how you come to that opinion?

A Well, two reasons. First of all, just the laws of gravity. In other words, if I'm trying to drink water out of this cup, if you cut the bottom out of the cup, it doesn't matter how much I want to drink out of the top, gravity will pull the fluid to the bottom and, unfortunately, in Mr. Sims' case where the bullet entered his chest, entered through the right side of his heart, went through the area between that and the left side and then went out the back, because of that the blood drained to the floor, if you will. In this case it didn't go all the way through the chest wall, because blood is thick, it is not like water. The tissue there is thick. The body's own mechanism is trying to get things clotted off, if you will. If you look at the autopsy report there was only about 50 cc's of blood in the pericardium, which is the sac around the heart, but there was over two liters of blood in the left chest, which is where all the blood drained to. So it is not going the blood is going to be squirting up like a garden hose or something, it was draining out posteriorly, if you will.

Q And would it follow then that the presence of some blood, no blood or a lot of blood on the hands of

the deceased would be no indication as to whether or not vigorous CPR was performed?

A That is correct, yes, sir.

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

CROSS-EXAMINATION

BY MS. LIVESAY:

Q How are you?

A I'm well. How are you?

Q Good. If you don't mind, tell this jury how you know Morgan Martin.

A I met Morgan probably four or five years ago through a mutual friend.

Q Are you social buddies?

A We do have a social relationship, we do.

Q So you all are friends?

A We are, but I'm also friends with Jimmy Richardson, the Solicitor, and with Cane Hearn; does that imply that my testimony is anything other than a medical opinion?

Q I'm just asking.

A Yes, ma'am.

Q Did you do a report about anything you were going to say in this case?

A No, ma'am, I did not. I wasn't asked to.

Q Now, you are telling this jury -- so I'm clear, what you are saying is you don't know by looking at the pictures whether or not CPR was performed?

A Well, what I was asked to say is whether or not the presence of blood on the defendant's hand were any evidence, if you will, or blood on the floor and on the chest, and you can't say from looking at the picture whether or not CPR was performed or not, but you also cannot say that if it was performed, it was not adequate because of the fact that there was adequate --

Q So what you are saying is you do not know? You don't have any sort of medical opinion about whether or not CPR was performed on the victim?

A There is no way to know that. I wasn't there.

Q So, basically, you are just up here saying you don't know if CPR was performed or not by looking at the pictures; it could have been performed, but may not have been performed?

A That is true, but if it was performed, there is no indication that it wasn't done properly.

Q Just so I'm clear, and I'm not arguing with you, I just want to be sure I'm clear, you know a lot more about this than I do.

A I hope so.

Q Yes. I do, too. You really don't know if CPR

was performed? It could have been, but may not have been?

A That's true, but if CPR was performed, then there is no way to tell that it wasn't done properly.

Q What did you look at before you came up here to give your expert opinion?

A I looked at the pathology report, and I looked at the pictures that were provided from the investigation.

Q Did you listen to the 911 tape?

A I did not. I read the 911 tape, but I did not listen to the 911 tape.

Q Okay.

MS. LIVESAY: No further questions.

MR. MARTIN: Nothing further.

THE COURT: You can be excused and I assume released from any subpoena?

MR. MARTIN: Yes.

THE COURT: Call your next witness.

MR. MARTIN: Katie Brim.

(KATIE KHANDUJA, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: My name is Katie Khanduja, K-H-A-N-D-U-J-A.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q Katie, where do you live?

A Currently in New Jersey. I live at [redacted], Montclair, New Jersey.

Q And where were you born and raised?

A I was born in Conway and raised in Conway.

Q How long did you live in Conway before you moved to New Jersey?

A I lived in Conway until 2006. I moved to New Jersey in 2006 when I was hired with Continental.

Q Do you know Heather Causey Sims?

A I've known her my whole life. We were born six months apart and put in the nursery together at church, and known her ever since.

Q Since you have moved to New Jersey, have you kept in touch with Heather?

A Yes, sir. I've kept in touch with Heather just like I have with my family down here. Heather and I always have done everything together. We've always kept in contact with each other making sure everything is going okay.

Q Your parents still live in this area?

A They do. My dad is still here. He's an attorney across the street. My mom worked for the State, and

they are still in Conway and Murrell's Inlet.

Q Let me ask you this. Based on the 26 years you lived here in Horry County and keeping in touch with Heather over the past eight years, do you have an opinion as to her reputation as it regards to truth veracity in the community?

A Heather has always been truthful and loyal. She was a friend of everyone. Everyone knew what she stood for. Heather stood for her faith. She stood for her family. She stood for her friends. If you needed her, she was there for you (witness crying). She's always been a friend that you always want, and she's the one I want my daughter to meet. I was raised by this family growing up. She is a part of my core memory. I love her as much as I could love anybody. (witness crying.)

Q Are you worried about her?

A I'm so worried about her. I was worried about her when it happened. I couldn't imagine -- I couldn't imagine what she's gone through. I can't imagine my life without her.

Q Let me ask you this, Ms. Brim. Do you know her reputation for hard-work, industriousness as opposed to laziness or greediness?

A Heather has worked so hard. It always seemed to be so effortless, and she was so smart. She would be

with me -- in fifth grade she would name all the bones in my body. She taught me how to swim. She taught me how to love. She always worked so hard in school. She worked so hard in college. She just did more than I've ever done, and I wish I could do.

Q Do you know her reputation in the community for violence as opposed to peacefulness?

A Heather wouldn't know how to hurt someone if she tried. We were little one time and having a sleepover. I guess I was nine, and we had a mosquito -- a gnat in the room, and I wanted to kill the darn gone thing because it kept buzzing in my ear, and she said, no, put the blanket over your head and we'll put it out in the morning. I was like, Heather, can't I just get rid of this gnat now, and she was like, no, Katie, just leave the gnat alone, just sleep under the covers and the gnat won't bother you anymore. Heather couldn't hurt anybody, she wouldn't know how.

Q Do you have an opinion as to whether or not Heather would have shot that gun that day unless she was in fear of her safety or her life?

A The only reason why Heather would pull a trigger is if he were going to kill her or hurt her child.

MR. MARTIN: Answer any questions Ms. Livesay has for you.

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Ms. Brim, where do you live now?

A Montclair, New Jersey, 180 Walnut Street.

Q How long have you lived there?

A I've been in New Jersey for almost ten years.

Q Ten years?

A Uh-huh. Yes, ma'am.

Q Let me get this straight. You have not even lived in Conway for the past decade?

A No, but I visit about three times a year. My family is here. My roots are here. I mean, this is home. You know, this is what my daughter knows as being home.

Q So you come here back just for the holidays?

A No. I come here just to visit my parents and visit my friends, and if I have a group of days off, I can fly, so I just fly home. I fly home to visit them.

Q But the majority of the time for the last decade you have lived several states away from Conway?

A Yes. Yes. I work in Jersey, so I live in Jersey. Yes, ma'am.

Q So you really have no idea what her reputation is in the community for the past ten years, do you?

A I know Heather's reputation. It doesn't mean it

is going to change because it is ten years. I have friends all over the U.S., and just because I don't live with them or see them, I know they are good people.

Q That is an excellent point. Just because you don't live here and don't see her, doesn't mean that you don't know all about her; is that you are saying?

A I wish I knew she was in a domestic violence relationship because I would have done something to help her.

Q Let me ask you this. Did you know David Sims?

A I met him three times.

Q And when did you meet him?

A I met him at the high school reunion in '99 -- I mean 2009. I met him at the rehearsal dinner at the wedding, and on the wedding.

Q How long had he and Heather been together?

A They had just -- I think they just started seeing each other in 2009.

Q So they had been together for almost five years?

A Until August 11th, yeah.

Q And you all are close friends?

A Uh-huh.

Q And she eventually married him?

A Yes, ma'am.

Q And had a child with him?

A Yes.

Q And you all were so close you only met him and been around him three times, and one was when they got married?

A He wasn't available. I mean, I saw her when they were together, but he just wasn't around, so I didn't spend time with him. It doesn't mean I wasn't with Heather, I just didn't have time with him.

Q And did you ever see them and hang out with them at their house on Old Reaves Ferry Road?

A No, I wish I did.

Q So they lived at Old Reaves Ferry Road about a year, and during the course of that year, you never went to that house and spent any time with both of them?

A No.

Q And what do you know about David Sims? Anything?

A You want fact, or rumors?

THE COURT: Just facts.

A No. I mean, Heather met David. I know Heather was going to marry David, and Heather is not an idiot, she's very smart, so I figured, you know, if Heather lovers him, he must be a good guy. Why would I think less? You don't want to think bad of people, you only

want to think the good of people.

Q And you are from New Jersey?

A No, I'm from Conway.

Q That's right, I'm sorry. And you lived in Jersey for ten years?

A Yes. February is ten years.

Q Really, the last time you were around her was high school?

A No, because I was around when we were in college. Like I didn't leave until 2006.

Q Where did you go to college?

A I attended Horry Technical College.

Q Where?

A Horry Technical College. I didn't graduate. I just went there for a few years, and I worked at Grand Strand.

Q Is that the same college Heather went to?

A No.

Q So you didn't go to the same college?

A No, ma'am, I wasn't smart enough to go to her college.

Q And shortly after that, you moved to New Jersey?

A Yeah. I moved to New Jersey in February of '06, February 24th of '06.

Q So, really, you haven't been around her since

high school?

A No, we were around each other. Just because we didn't go to the same college doesn't mean we didn't see each other on the weekends. I mean, our families are friends. Just because you don't hang out with someone all the time doesn't mean you are not friends with them. I mean, I saw her, saw her on the weekends. My family saw her. I mean, when my sister died, I stayed at their house for two weeks when I was nine years old. My family has been friends with them. Just me being away doesn't change her reputation or who she is. (witness crying.)

Q Right. But would you agree it changes how much you know about her reputation and what is going on in her day-to-day life?

A All that changed was I didn't know what she was going through, and I would have come home more often and saw her, and I could have probably figured out that she was abused, and I could have helped her. She is such.....(witness crying).

THE COURT: Do you need a break? We'll give you a break.

WITNESS: I'm okay.

THE COURT: Ask your question.

Q You okay?

A Yes, ma'am.
Q Did she tell you before August 11, 2013 that she had been hit or abused in any form or fashion?
A No, ma'am. Women who are abused don't talk about it.
Q And you told my investigator that she's not the type of person that would sit around and be abused; is that correct?
A Yeah, I did. Yeah, I sure did. I talked to Ginger in June.
Q So let's talk about that little bit. You know her?
A Uh-huh.
Q And when my investigator asked you about her, you told my investigator she's not the type of person that would sit around and be abused, didn't you?
A I did.
Q And she lived right across the same yard from her parents' house; isn't that correct?
A When you are mentally broken down, you are not going to tell anyone. You are not going to tell anyone.
Q Do you know anything about domestic abuse?
A I was in a domestic violence relationship, and I did go somewhere for help for it, so I do know about

it.

Q But you told my investigator that this woman is not the type of woman that could sit around and get abused?

A I did. I did.

Q And you also told my investigator that this is also not the kind of woman that would want a divorce, didn't you?

A She would fight so hard to stay married. She really wanted to be married. She wanted her family, and I know she wanted -- she wouldn't just let it go, just walk away.

Q So she's not the type of person that would sit around and be abused, and she's not the type of person that would want a divorce; isn't that what you told my investigator?

A That is why I was so worried about her. God knows what she went through.

Q Let me ask you this, Katie.

A Yes, Counselor.

Q Did you tell my investigator that this woman is not the type of woman that would sit around and get abused, and this is not the type of woman that would want a divorce; is that not what you told my investigator?

A I have said yes to that, Counselor.
Q You did? That is what you told her, yes?
A I just answered that question three times with you, Ms. Nancy.
Q And now you are up here telling these people a completely different story than what you told my investigator?
A I haven't changed my story, Nancy. That is not a story changer.
Q But you would agree with me that you have not lived in Conway for ten years?
A I have not lived in Conway in ten years. I live in New Jersey.
Q I noticed you got up here and cried and talked about you didn't know what she was going through; do you remember that?
A Yes, ma'am.
Q Have you been here all week?
A Yes, ma'am.
Q And do you realize you are the only person that got up here and said that she was in some sort of domestic violence situation?
A I do.
Q Do you also realize there hadn't been one person from Conway that still lives in Conway that has said

anything about her being in an abusive relationship or ever being abused?

A No one has been on the stand.

Q Ma'am?

A No one has been on stand to say that.

Q But have you been here all week?

A Yes, ma'am.

Q Have you seen anybody that is from Conway and lived in Conway all their life, and still lives in Conway, say anything about this woman being in that kind of relationship?

A No one has been on the stand and asked the question or given the opportunity.

Q And did you also notice nobody came up here from Conway that still lives in Conway and say anything about her truthfulness or how peaceful her reputation is; have you seen anyone from Conway come in and say that?

A No one has been called up here, Nancy.

MR. MARTIN: Objection. That statement is inaccurate, and she is beginning to badger this young lady.

THE COURT: Yeah. It's -- move on. Sustain on that.

Q She never said anything to you about any of this

going on before she shot and killed him and was charged with murder, did she?

A She has not said, no.

Q She didn't say anything until after she was locked up for murder.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: You can answer that question.

WITNESS: She didn't murder him.

THE COURT: Ma'am, the question was, did she say anything?

WITNESS: No. No.

THE COURT: Anything on redirect?

MR. MARTIN: Nothing.

THE COURT: You can step down and be released. I'll need to send you out. It will take 10 minutes. Don't talk about the case.

(The jury exits at 10:31 a.m., and the following is heard out of the presence of the jury.)

THE COURT: Where are we?

MR. MARTIN: We are at a stage where I may have one more short witness, but the next witness would be Heather Sims.

THE COURT: Mrs. Sims, if you would, come up here with your lawyer. I'm going to put you under oath. I have some questions to ask you. Stand there, we're

going to swear you in. This is, quite frankly, between you and I.

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

EXAMINATION

BY THE COURT

Q I need to ask you questions, which are checklist questions, to make sure you understand your Fifth Amendment rights. If you have questions about the questions I ask you, you are welcome to ask Mr. Morgan -- Mr. Martin, but you need to understand that at this time in the trial, you have a right to claim your protections to the Fifth Amendment; do you understand that?

A Yes, sir.

Q Which means -- the Fifth Amendment states, in part, that no person shall be compelled to testify against themselves; you understand that?

A I do. Have.

Q You talked to your lawyer about that?

A I have.

Q If you decide to testify, the decision must be freely, voluntarily made, and it must be your decision, and it must be made intelligently. The Fifth Amendment right is given to you, not to your lawyer or to anyone

else in the courtroom, and even though you can speak with your lawyer about it and seek his advice, and also depend on his advice, you are the only person in this courtroom that can decide they want to waive their Fifth Amendment rights; do you understand that?

A I do understand.

Q Do you understand that if you don't testify, I'll instruct the jury that they cannot hold that lack of testimony against you?

A Yes, sir, I understand.

Q Do you understand that I will tell them that they cannot be prejudiced in any way by the fact that you did not testify?

A I understand.

Q Have you talked to your lawyer about this decision?

A Yes, sir.

Q Do you have any questions about the Fifth Amendment right as I've explained to you?

A I don't.

Q Has your lawyer explained his Fifth Amendment right to you?

A Yes, sir, he has.

Q And have you discussed this issue with him.

A Yes.

Q Have you made a decision whether or not you will testify?

A I have.

Q What is that decision?

A I'm going to testify.

Q And you talked to your lawyer about this?

A Yes, sir.

Q And you understand all of these rights as I told them to you?

A Yes.

Q Do you have any questions about those Fifth Amendment rights?

A No, sir.

THE COURT: Any questions?

MR. MARTIN: There is none. She understands. The only thing that I will tell the Court is we have that issue we were dealing with last night that we need to deal with before. No, there is no question that she understands her rights.

THE COURT: Thank you, ma'am. What we'll do is -- let's get this next witness.

MR. MARTIN: it may not --

THE COURT: Where are you with this stuff?

MR. MARTIN: I need to check when I'm done talking to you about if there is another witness.

COURT AND THE ATTORNEYS

THE COURT: Let me ask you this. We stayed up here last night at 9:20. I went on the record that it was 9:20 and we were still here. Where are you in regards to the audio files, because when I left at 9:40, you were copying 250 audio files and there was questions about whether they received it. State said they sent it, so we have one of those questions. Where are you on that?

MS. LIVESAY: I've marked it as an exhibit, State's 117, showing Mr. Martin's signature, and we sent it on November 26, 2014. This is a screen shot attached to the items that was sent to him. I've also put State's 118 in, that is a screen shot of what we gave him last night to show, indeed, what he was given on November 26 of 2014, is the exact same thing we gave him last night.

THE COURT: What did you discover? I know you went back to look.

MR. MARTIN: Well -- well, the point is, Judge, the piece of paper she's got is legitimate, either me or my secretary signed for it, but that doesn't establish what we got. And we did go over last night and listen as much as I could until I gave out at about 1 o'clock in the morning. I don't think that it was intentionally on anyone's part that we didn't get

anything, but I do know that we didn't have all of the -- all the audio recordings that they got from David Sims' phone, iCloud, whatever that apparatus is that maintains things. We didn't have them. Obviously, if I had them, I would have listened to them. Or they were delivered in a format that was unopenable, and that happens from time to time with this kind of stuff. So I would -- but having said that, if -- I'm going to object under Rule -- discovery of Rule 5 Brady versus Maryland, and anything else I can think of, those things specifically, to the use of any of those audio recordings from this point on, so I do that.

I have a second objection. I think that we may have isolated Ms. Livesay -- and the State never did say exactly which one they wanted to use, other than a general description about a conversation he recorded back when they were building a house, in which there was an exchange of some sort. I did hear a conversation which may well be that in November of -- well, it was 18, 20 months before August 11 of '13. It must have been '12. I would object to that on the additional grounds of relevance under 401, 402 and 403. It is at least 20 months removed from this event. It really is an argument about -- and of

course if I'm talking about the wrong one, they need to tell me, and I want the Court to listen to it before anything occurs.

THE COURT: I will.

MR. MARTIN: Under Rule 401, 402 and 403, I don't think it is relevant, anyway. If it is the one I heard, it is not earth shattering by any stretch of the imagination, but it is, again, not relevant. The chance of prejudice from some old conversation relating to the issue of whether in this instance she is guilty of murder or self-defense, the confusion or prejudice from that is too great, and I move that it be excluded.

THE COURT: Okay. Let me ask you this, because this is where I left it, and it was, quite frankly, the point of frustration I had last night. If you are going to play something, you have to show him what it is. I'm assuming -- this is what is driving me crazy. I'm assuming you are talking about the same recording, right?

MS. LIVESAY: I can play the recording for him now, but I wasn't --

THE COURT: No. Hold on. Are you all talking about the same recording, the one he says that he listened to, and the one you say you are going to use?

COURT AND THE ATTORNEYS

MS. LIVESAY: We are looking at the same report.

THE COURT: No. No. I'm not a witness. Are you all talking about the same audio recording?

MS. LIVESAY: I would think so. I can play it to make sure.

THE COURT: That is what I want to do, but that is taking us two days to get to that point. Go ahead and -- I mean, I'll listen to it, and then, quite frankly, the question -- I don't have any doubts that you sent it to him, you know. The timing of it probably goes to its credibility. I mean, it is a factual issue. There is a forest and tree argument here, and I think the forest has been lost, but let her respond.

MS. LIVESAY: I do think it is relevant because he marched these people up to talk about their relationship and how peaceful she was, and this woman just got up and insinuated that this woman was a victim of domestic violence. That conversation is between her and the victim, so we don't have to wonder what is going on between her and the victim. We don't have to hear from Katie Brim or some lady from Spartanburg. We can listen to the tape and get insight about that relationship, and I believe that would be the best evidence to show what was going on

in this relationship, then the jury doesn't have to wonder is this man this controlling, overwhelming, not-letting-her-speak type of relationship. The audio speaks for itself. That is an insight into what is going on into that relationship, so I think it is completely relevant.

We are here charging this woman with murder. Mr. Martin has said, no, she didn't have the personality for that, so let's get a look at the recording and see really what this woman's personality is like and what was going on between her and the victim. There couldn't be any better evidence.

MR. MARTIN: Let me say this to you. That is not true. When I tried to put in phone records from July 24, Ms. Livesay objected because it wasn't relevant, it was too far removed. We are talking about November of 2011. Let me say this, now, the Court needs to know this too. Mr. Sims apparently loved to record himself. You know --

THE COURT: I understand there is over 200 recordings, that is where we were at late last night.

MR. MARTIN: And the majority has nothing to do with her. But it doesn't change, in my mind -- the objection I made, I won't restate them, but that is where I'm at.

COURT AND THE ATTORNEYS

THE COURT: Let me say this. We've all known we would reach this point for 10 days, and so that was the crux of my frustration last night, that literally since last Monday we knew we were going to get to this point, and then suddenly at 9:30 the night before the trial ends, we're arguing about it. I think -- I assume there is no disagreement that this is these two voices, these two people?

MR. MARTIN: Judge, I suggest when you take the break, you listen to it before you make a decision, and then whatever you do, you do.

THE COURT: I know. Again, I'm not a witness. You all agree, it is these two people?

MR. MARTIN: Oh, I think it is, yes.

THE COURT: That is the first question, and then relevance is second. So you have something I can listen to it on?

MS. LIVESAY: Your Honor, this recording, just for the record, was off of David's phone, and you clearly hear him calling Heather's name in the recording.

THE COURT: We've agreed it is them. I'm wondering is there some way I can listen to it back there and not have to listen to them out here?

MR. MARTIN: There is. I'm sure they have it on

a laptop.

THE COURT: Bring it back there and let me listen to it. I'll let the jury know through Bobby it will be 10, 15 more minutes. They probably already hate me, but I tried to avoid that. We're on break until I come back after I listen to it.

(Defendant's Exhibits 77A through N marked.)

(A recess was taken.)

MS. LIVESAY: Can I look at the particular portion that Mr. Martin is going to show the jury before the jury gets in here?

(Defendant's Exhibit 78 marked.)

MR. MARTIN: While we're waiting, in an effort to save time again -- are they coming?

THE COURT: No. No. We have to proffer that stuff.

MR. MARTIN: Nancy, if you would, please, let's show the Judge something here.

(A conversation was had off the record.)

(KERRY HODGE, having been duly sworn, testified as follows:)

WITNESS: Kerry Hodge, H-O-D-G-E.

PROFFER EXAMINATION

BY MR. MARTIN:

Q What is your full name, and where you do live?

KERRY HODGE - PROFFER EXAMINATION BY MR. MARTIN

A My name is Kerry Hodge and I live in Green Sea.
Q Do you know Heather Causey Sims?
A I do.
Q Did you know David Sims?
A I do.
Q Did you have an occasion to have Mr. David Sims do some work at your home?
A I did.
Q Tell the Judge what happened.
A It was May of 2013. We put a pool in, and he poured a deck around the pool. Getting over to the end, later in the afternoon, he -- the pumping guy he had there was not the one he usually used. He had already cleaned out the pipe, and they needed a little bit more. At this point, he went from okay to upset, I mean upset enough that I was uncomfortable, and I removed myself from the situation.
Q And what -- what did he appear to be upset over?
A This guy that cleaned the pipe out before he pretty much said he was done.
Q And how did he -- what did he say -- not specific words, but convey to the Judge his demeanor as to what was said, how he looked and how quickly he got to that condition?
A It went from calm to angry. I mean a split

second. He was red from the neck to the top of his head. There was many, many explicits, GDs and MFs a lot and, I mean, I was uncomfortable, so I left.

Q It made you uncomfortable?

A Yes, sir.

Q Were you glad he wasn't directly mad with you?

A Absolutely.

MR. MARTIN: That is the basis of the testimony, Your Honor. We believe it is admissible, and in this particular case under the Rules that allow evidence of character and specific instances in character, because the testimony in this case from the way the both sides look at it is that Mr. Sims in this case got very angry, very quickly, over what some might call not a big deal, and so we think it is specifically relevant to our case.

THE COURT: And thank you for proffering that. Based upon what we talked about in the back, this was his testimony about Mr. Sims and another man, doesn't have to do with Heather Sims. So, again, I'm glad you proffered it, but I won't allow it. I think it is too remote, and I'm not sure it is relevant. I understand because the State is planning on playing a snippet of a tape that seems to show their relationship, I don't think the fact he got mad at a concrete guy has

anything to do with that. Thank you. I'm not saying you are not telling the truth, it is just that.

THE WITNESS: Right. Right.

THE COURT: Thank you, sir. Before we start, I understand that everyone in this courtroom is tired. We've all been here most of the time. I have noticed some whispering, and you've done better than what I thought you would do, but when Mrs. Sims testifies, if she testifies, that is not going to make everyone happy. If you make any noise, make any faces, I mean, I can see, and I've seen what you did. I saw when Dr. Collins testified there was a little bit of an outburst, do not make any noise or faces. If you do, the deputies are under orders. They will point to you, and you're gone. There won't be any questions, okay.

Have you seen these pictures?

MS. LIVESAY: Let me see which ones.

(The jury enters at 11:30 a.m., and the following is heard in the presence of the jury.)

THE COURT: Thank you for your patience. We had to take some equipment out of here and take it to the back office and get it back in here. My law clerk did notice last night when I said you all can punch me that no one smiled; I did, too. So sorry about that,

but we're quickly bringing this thing to the point where you will get a chance to make your decision, so bear with me, please.

Call your next witness.

MR. MARTIN: Heather Causey Sims.

(HEATHER CAUSEY SIMS, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

WITNESS: Heather Sims, S-I-M-S.

DIRECT-EXAMINATION

BY MR. MARTIN:

Q I won't ask you where you live and what is your name, because I think we've been there with that. Are you okay?

A Yes, sir.

Q Heather, you know we talked about you testifying. You've given statements, calling 911, you've talked for the police at the hospital, talked about this case and you answered a lot of questions, and you probably have been getting asked a lot more questions.

A I understand.

Q But you want to testify?

A Yes, sir, I do.

Q Heather, let me go back and start with you. Now, I'm going to do this as organized as I can, but let me

first say right at the start, it's been two years and two, three months since August 11, 2013. Do you remember every movement you made or everything you did that day?

A No, sir, I don't.

Q Do you remember everything or every body movement that David did that day?

A No, I don't.

Q Do you remember every syllable, every word, every utterance that you or David said that day?

A No, I couldn't. I couldn't tell you everything that was said or done.

Q When you talked with the police that night at the hospital, did you tell them the best you could what you could recall?

A It was a very emotional and difficult situation for me to be in, but I did the very best I could to tell them what happened.

Q And let me back up with you for a few minutes and talk. Tell the jury -- they know who you are and essentially where you are from a little bit. But I'll go over your background. You live here in Conway, and your parents are Ronnie and Sandra Causey?

A Yes, sir.

Q Your grandparents live in this community?

A Yes, sir, they do, from Conway as well.
Q And you have a child?
A Yes, sir.
Q What is the child's name?
A His name is [redacted].
Q And he is the child of you and David?
A Yes, he is.
Q Heather, do you regret what happened?
A With all my heart. I look at my child every day and I am reminded that he doesn't have his father, and it's the most difficult thing. I never wanted this for my child. (witness crying.)
Q Do you know how hard this is on the Sims' family?
A I think about his family every day, and I'm so sorry for all of their pain, and I sympathize with their pain, because I've experienced the same pain.
Q In your opinion, Heather, did you act in self-defense?
A Yes, sir. This wouldn't have happened. I loved David with my whole heart.
Q All right. Heather, where did you finish high school?
A I went -- graduated in 1999 from Conway High School.
Q And after finishing high school in Conway, what

did you do?

A I always knew that I wanted to do something in the medical field. My desire was to help people, and I thought it would be, you know -- everybody loves anesthesia, it is your favorite person and helps your nerves, you know. I wanted to be that person, so in order to do that, I had to be a nurse first.

Q All right. So let me say to you. I want us to try to tell your story to the jury. I don't want to bore them. I don't want to drag this out any more than we have to.

A Yes.

Q So let's remember that as we go through it, and maybe I'll lead you a little bit through some of this. You went to high school here in Conway, and you graduated?

A Yes.

Q And then you went to Coastal for a couple of years to get the basics of college?

A Right.

Q And then Francis Marion to get your degree in nursing?

MS. LIVESAY: Your Honor, is he going to allow her to testify?

THE COURT: Don't lead.

Q (MR. MARTIN) I'll do better. You went to nursing school?

A Yes.

Q Where?

A I went to Francis Marion. It was a satellite program. I got my diploma through the Medical University of South Carolina, and I did that in 2003.

Q And then after that, did what?

A In order to be a nursing anesthetist, you have to have ICU experience. So I went to Grand Strand Regional Medical Center and worked in the surgical ICU, floated to the cardiovascular ICR and all the other ICUs and got three years of experience there before I applied to USC and MUSC. I got into both programs. MUSC is the one that started before, so that is the only reason I picked MUSC over USC, so I could get started.

Q You graduated from MUSC when?

A I graduated from MUSC with my Master's in Science in Nurse Anesthesia in December of 2008.

Q And came back to Horry County?

A Yes, sir.

Q And you got your degree in -- you are a nurse anesthetist?

A Yes, sir.

Q And then you came back to Horry County and went to work?

A Yes.

Q Where?

A I went to work -- it was Loris Healthcare Systems at the time, but it is now McCleod, Loris and McCleod Sea Coast.

Q You worked there until August 11?

A Yes.

Q And of course with these charges pending against you, what is your work status?

A I haven't been able to work.

Q Let me hand you what was marked for identification as Exhibit 77M, 77L, 77I, 77H, 77N, 77K and 77J, and ask you if you can identify those for us?

A Yes, sir.

Q Take each one and tell me.

A That was me in the homecoming parade in high school.

Q Let me hand them to you.

MR. MARTIN: Judge, we have a larger exhibit of it when we need it, but for time's sake, I'll do it this way.

THE COURT: Thank you.

Q (MR. MARTIN) 77M is what, Heather?

A That was the homecoming parade in high school. I was Ms. Homecoming, and we had a parade.

Q And 77L is what?

A That is also when I was in high school, when I got inducted in the National Honors Society.

Q 77I?

A I graduated anesthesia school with my mom and my dad.

Q 77N?

A That is a picture of me and the runners-up on the football field after I found out I won Ms. Homecoming.

Q And 77K?

A That is -- I took piano for 12 years, and my grandmother, she had a stroke. She was in a nursing home, and we -- she would like to hear me play the piano. She's not with us anymore, but I was playing the piano for her.

Q 77J?

A Is me -- I graduated nursing school. That was me at the sign.

Q And 77H?

A That is a picture ever me as I was pushing a patient to the recovery room after they woke up.

MR. MARTIN: I'll move these into evidence.

THE COURT: Any objection?

MS. LIVESAY: No objection.

(Defendant's 77A through 77N admitted.)

Q (MR. MARTIN) You worked at Loris Hospital up until August 11th when this happened; is that right?

A That's correct.

Q Tell the jury -- and of course a nurse anesthetist does what, very briefly?

A Well, simply put, this is what I would tell you if you were having surgery. I'm going to wake you up -- I'll put you to sleep and wake you up, and wake you up as comfortable as I can. I'm with the patient from the beginning to the end during the entire procedure, whether it is 30 seconds or 8 hours.

Q And what kind of schedule do you work as a nurse anesthetist?

A We were a small hospital, so we had to take calls at least once a week, and every fourth weekend I was on-call from Friday 7:00 a.m. until Monday at 7:00 a.m., I was on-call for 72 hours at a time.

Q Is it a somewhat stressful job?

A Yes, it is. I would say it is very stressful.

Q Did you like what you do?

A I love what I do.

Q Heather, now that we are talking about your job, I'm going to ask you about your salary and that kind of

thing, because they've introduced evidence of a life insurance policy that you were the beneficiary of, and maybe that might raise the question of whether you needed money or you shot David to collect the life insurance policy. It's the kind of thing that people don't want to talk about, but I need to ask you about your financial situation.

A I understand.

Q What was your salary at the hospital over there?

A I think my last W2 read 170,000 to 180,000.

Q Somewhere between 170- and $180,000?

A Yes, sir.

Q While we're on that point, you had gone to work part-time after the baby was born and before this happened?

A No, I never went part-time.

Q You hadn't?

A No, I hadn't. I had --

Q There was a conversation about that, so tell the jury about the full-time/part time.

A After I had [redacted], you know, it's a full-time job being a parent, let alone working. You know, I did take a lot of calls, and I talked to my boss about a part-time position, if there was one available, and she actually went to the board of

whoever she had to go to, and they actually made a position for me there so I could stay there and not go to a different hospital. I did that so I wouldn't have to take calls so that I could -- when I got off of work, I could be available. David worked -- he was away from home a lot of times until after 9 o'clock at night, and I relied on my mom. If I got called in, she would have to run quickly over to the house, and I had a time frame I had to be in work if I got called in. So it seemed -- even part-time, I still had benefits and I could definitely make ends meet on a part-time salary.

Q Have you testified about what part-time salary was?

A No. If I remember correctly, it would have went from 180- to $120,000. So I felt that was enough, and then I would be available not have to leave once I got home. I would get called in at 3 o'clock in the morning and 10 o'clock at night, and many times my mom would have to stay until I was off at work, and sometimes that was 9:00 p.m. I didn't want her to feel that she was being taken advantage of as far as being there all the time when I couldn't be.

Q Now, Heather, I feel we need to cover as many bases with you as we can in terms of interpretations

and thoughts about what might have occurred here. But did you want to quit work and not have an income?

A No, I would never. Anesthesia school is nothing short of difficult. It is difficult, and I knew when I went to school that I would be working to some capacity until I was ready to retire. I put too many hours and too much sweat into that license to lose it, and it is one of those things that if you don't work and completely quit, I mean, you're going to lose your credentials, which unfortunately I have at this point, but I hope to get that taken care of.

Q You had a conversation with your mommy, daddy, David about working, not working, part-time, full-time, that type of thing?

A When my boss, Star, you heard her yesterday, when she told me a part-time position had opened up, I was ecstatic. I felt that was an answer to my prayer. It was something I had prayed about.

Q And when were you to start the part-time work?

A I'm not sure. When I found out, it was July or August of 2013, and she said the position would become available later that fall, so I would assume November.

Q Financially, Heather, were you in a position to quit work if you wanted to?

A I could. I've continued to pay my bills and make

my house payments on funds that I have saved without any work for the past two years and three months, so I could have if I wanted to, but that isn't what I wanted to do.

(Defendant's Exhibit 79 marked.)

Q Let me show what you was marked for identification as Defendant's Exhibit 79 and ask you -- don't read it now -- ask you if that is a series of text communication between you and your dad about that very issue of needing to work, wanting to work, having to work?

A Yes.

Q And, again, without -- just using that to refresh your memory, and not reading it verbatim in the interest of time, what is the basic theme of that text conversation between you and your dad?

MR. MARTIN: Judge, this is something that is already in evidence.

THE COURT: Right. Okay.

MR. MARTIN: I'm pretty sure it is anyway.

A This was a text message conversation between my dad and I. It was early on in May, so [redacted] was maybe a little over a month old. I think every mother at some point in time worries about the first day going back to work, being away from their child. I probably

made a comment to him, gosh, I wish I could not go back, but my dad texted me and he said, well, if you want to do that, I'll pay your house off, and I told him I would never let him do that, that I worked too hard for my license, first of all, and -- you know, I just worked too hard for that, for what I do, and I love what I do. I absolutely love being a nurse anesthetist.

Q And is that back-and-forth in paper on that text message or communication?

A Yes.

MR. MARTIN: We move to enter into evidence Defense Exhibit No. 79.

THE COURT: Any objection?

MS. LIVESAY: No objection.

(Defendant's Exhibit 79 admitted.)

Q (MR. MARTIN) Let's talk about David, your meeting David. Tell the jury -- and, again, I guess using as few words as possible, how you met David and came to be married to him?

A Okay. I'm long winded, so I'll try to keep it short. I met David at a mutual friend's wedding. I think that is when he was going through his first divorce, sometime in that period. I met him there briefly, never talked to him again. Years later, I got

a friend request from a David Sims, and I'm terrible with names, so I messaged him and asked if I knew him, and he said I think we were in the same wedding together, and I said, oh, okay. That is when he was going through his second divorce, and that is when we started dating at that point.

Q And when was this, 2009?

A Yes.

Q And when did you -- how did you first meet David personally after that?

A On August 4 of 2009, my dad had to have surgery, and he had surgery at McCleod in Florence, and since I was there, I think I text him or E-mailed him, or had some sort of communication about, hey, do you want to get lunch. He was having a long surgery, neck surgery, and so we went and ate lunch, and that was our first, I guess, formal date.

Q And you and David were married when?

A We were married a year and few months later on December 18, 2010.

Q How would you describe your relationship with David at that time?

A Oh, gosh, I was -- it was great. It was really everything that I ever wanted at that point.

Q You never had been married, Heather?

A No.
Q You loved David?
A Yes.
Q And you believe David loved you?
A I believe he did.
Q So you got married at your parents' home in Conway in December of 2010, right?
A Yes.
Q And where did you and David live?
A After we got married, it was a week before Christmas. We had a Christmas wedding. We went on our honeymoon, and we came back and he had a house in Florence that he had during his second marriage. We lived there; it made sense. We lived there, but he was actively trying to sell it and, you know, the market wasn't good at the time. Nobody was interested in buying it, but he did have an inquiry about a family wanting to rent it, so on February 14th of 2011, I remember because it was Valentine's Day, we had to kind of quickly move out, and they were ready to move in. So he rented it so he could pay -- the rent that he was charging the renters was the same amount as his mortgage, so he wouldn't have to pay a mortgage.
Q Do you know how much the mortgage was on David's home?

A Total, or monthly?

Q Total.

A I really don't. I think it was between $200- and $300,000.

Q So you and David moved from -- you were working at McCleod at the time?

A Yes.

Q And you moved back to Conway?

A Yes.

Q And did you have a home to move into then, or what did you do?

A We kind of packed up quickly and got out, and we didn't have anywhere to go. So my parents offered for us to move in with them, and that is what we did. We had plans of building or buying, but we lived in their upstairs, which is, I mean, like an apartment, until we figured out what we were going to do.

Q Then you set out about building a house?

A Yes.

Q Now, at this point in time in your marriage had there -- had you seen a marriage counselor of any sort by the time you started building the house?

A Yes.

Q And tell the jury briefly why?

A You know, obviously after you get married the

honeymoon is over and you start to have normal marital issues. For one, we were trying to figure out building a house, and that was an issue, but David and I had trouble communicating, and if there was an issue, we would talk about it, but it would get talked about in circles. There was never a resolution. In the two-and-a-half years of my marriage, I don't think we ever resolved issues, and every time we had one that would rise up, the others would get brought up. It would snowball. We couldn't -- we couldn't settle one thing without everything else getting brought up.

So, you know, my reason for wanting to see a counselor at that point is I think we had problems communicating, and I wanted somebody to help us learn how to talk instead of -- I just wanted to talk and solve issues we had with a resolution instead of just being mad with each other.

Q All right. Now, you are living with your mom and dad, you all begin to decide to build a house?

A Yes.

Q And you got pregnant?

A Yes.

Q Tell the jury when and where.

A I got pregnant in April of 2011, just four-and-a-half months after we got married, and we

were living with my parents. You can imagine the predicament we were in. The building of the house kind of got on the back burner. We considered buying. We kind of needed to get something more urgent at the time, but when we went to see the doctor, it wasn't a normal pregnancy, so I ended up having a couple months later a miscarriage that ended up with me in the emergency room on July 4th. It was, to say the least, a traumatic experience. It wasn't your normal miscarriage, but that was on July 4th.

Q And without getting into graphic detail, why was it more traumatic than maybe some miscarriages?

A I know being a nurse anesthetist a lot of times they know it is not a normal pregnancy and they do a DNC, but we needed closure. Every time we went back to the doctor, the baby had a heartbeat and, you know, I just couldn't -- I needed to know that -- I just couldn't do that. It was just a long drawn-out process, and I thought that the miscarriage was actually over with. I was on-call one day, and I was in the operating room, and I just got these terrible pains and it progressed that night. I ended up going to the emergency room and being discharged from the emergency room and having to go back to my doctor's office the next morning and having a DNC the next day,

so it was drug out.

Q That was in July of 2012?

A 2011.

Q Let me show you what was marked for identification, State's Exhibits 77G -- F and G. Can you identify those for me?

A Yeah.

Q What are those?

A They are pictures of me and David, one when we were in the mountains, and one when we were on a cruise.

Q Were those before or after you were married, or do you recall?

A I don't remember. I think one looks like before, and the other one I can't remember.

MR. MARTIN: I move to enter these pictures.

MS. LIVESAY: No objection.

(Defendant's Exhibits 77F and 77G admitted.)

Q (MR. MARTIN) Let's go back to after the miscarriage and building the house. How did you decide where to build a house -- buy a house or build one? How did that, briefly, come to be?

A My grandfather has land enough for -- it is family land. He deeded a piece of the land to me for David and I to build on, and we both agreed that that

is where we wanted to be, and we started to look at house plans.

Q Let me ask you this. One question, how were you working at McCleod when you lived in Florence for those months after your marriage? You have to be fairly close to the hospital.

A When I was on-call, I would sleep at the hospital. We had a call house at that time, which, you know, it is not there anymore. When McCleod took over, we didn't have it anymore, but at the time when I worked for Loris, they had a call house for us to stay in.

Q You moved into your house when?

A June of 2012.

Q June of 2012. So it takes you probably nine months to get that, a year to get that house built?

A Yeah.

Q Who built it?

A My dad; he's a contractor.

Q And how was the house paid for?

A It took us -- we had trouble getting a loan.

Q I'm asking you these questions because of the insurance and all of that.

A Right. Right. I got you. The loan wasn't going to suffice what it cost to build a house, so we had

trouble getting a loan for the amount we needed. My dad just started building, and he said, you know, if I have to fund it myself, I'll just do it. So we got a loan almost -- the loan didn't go through until almost when the house was close to being complete, so my dad was paying for that and I was helping him, you know, my dad, and I funded -- we were the loan until we got one.

Q And when you -- you did finally take a loan on the house, right?

A Right.

Q And you paid your dad back with that?

A Yes.

Q And of course the house was in your name?

A Yes.

Q Not yours and David's?

A No.

Q House was on the land your grandfather gave you?

A That's right.

Q And your name was on the note and mortgage for the house?

A Yes. Yes.

Q Of course, what kind of work did David do?

A When I met David, and when we first got married, he was a landscaper. He did irrigation, and then throughout our marriage he kind of got more into the

concrete side where he would do -- spray create or stamp create or anything with concrete.

Q And David worked fairly hard?

A Yeah, he did.

Q And he wasn't in a position to make as much money as you did?

A No. No, he wasn't.

Q But that didn't matter to you or him at the time?

A No, had nothing to do with it.

Q Was building the house stressful on the marriage?

A Yes. I can remember people telling me if you can get through building a house, you can get through anything, and I believed that. It was stressful.

Q And did you and David argue some about the house and get upset with each other?

A Yes. Yeah, we both did. We were both tired, frustrated. We had a lot of arguments about the house.

Q When did you move into the house?

A June of 2012.

Q What happened shortly after that?

A I got pregnant the next month.

Q Let me show you what is marked as Defendant's Exhibit 77A and ask if you can identify that?

A Yes.

Q What is that?

A That's me and J.D. and our dog, Marley. Our dog passed away, and I got him a new one just like the one we had, and that is us when we picked her up.

MR. MARTIN: I move to enter into evidence Exhibit 77A.

MS. LIVESAY: No objection.

THE COURT: Without objection.

(Defendant's Exhibit 77A admitted.)

A Yes.

Q J.D. was born when?

A On [redacted] 2013.

Q And tell the jury about that time in the relationship with you and David and how it changed, if at all?

A When we had J.D. -- (witness crying). Sorry. My whole life was just at its peak. I would see David with J.D. and, you know, it would -- I know it does something to you, you see your husband with your child, and it really does just intensify the love you have for both of them. We had -- you know, we had a little family, and I wanted desperately to keep that family together. He stayed home for two weeks, and then he went back to work. After he went back to work, it started changing, you know. We had a new house, new child. Everyone was tired. There were a

lot of frustrations, and then, you know, other family issues were coming into play, issues we never had to deal with.

Q And did there come a time when the relationship just began to deteriorate to a significant degree?

A Yes.

Q And when was that, Heather?

A You know, it's hard to tell, because it was just kind of a gradual thing, but it seems like it was -- looking back, it was around June, like the first of June, you know. I was getting ready to go back to work and I was talking about going part-time, and he didn't seem to like that idea too much. You know, other people were giving their opinions about that, and it was -- obviously he had been talking to people. He had an opinion about that. You know, we were up at night with J.D. , and then he was having to drive to Florence an hour-and-a-half both ways, and it became I'm here because of you and I'm having to drive because of you, you're the reason my parents don't come see J.D. , and, you know, everything is your fault.

Q There is a text of some of this stuff, in the information here in which the conversation between you and David, and you talk about you don't -- that he seems to have a lot of resentment and hate; do you

recall that?

A Yeah, I do.

Q And you recall a conversation you tried to have with him about where it was coming from?

A I think so.

Q And what do you think was going on with you and David back in July and August in terms of where his anger seemed to be coming from?

A A lot of David's friends were having marital problems, and it seemed to me like there was few people in his life that actually encouraged our marriage to work, and I wanted our marriage to work. You know, he would come home, and I haven't cooked supper, you see J.D. more than I do, and your parents see J.D. more than I do, the whole driving thing, it was a big issue that he just didn't want to be here anymore.

Q Your house?

A Your house, your land, your pond. It was just so much resentment, and the resentment started when we started building the house, but it just grew significantly after J.D. was born.

Q And how did David's treatment of you verbally during this time period change?

A Well, it seemed like every time we had an argument -- you know, I made J.D. 's baby food, I

planted a garden and tried to make home-made baby food, and tried to do all of that, and that didn't last very long, but I did try, you know. I was a hippie. I was selfish. He would often call me a bitch. He would tell me he wished he pushed me through a window while I was pregnant, is the time he was referring to.

Q All of these comments are in text placed into evidence?

A Yes. Yes. I would get upset and I would get emotional, and it should have been the happiest time in our life, and it was the most -- it was terrible.

Q Let me ask you this. Let me go back July 31, 2012. You called 911?

A Yes.

Q You heard the testimony about that, and the CAD report is in the record?

A Yes.

Q And tell the jury why you called 911 on that day.

A I was on-call and we did have beepers, but mine was never on. They never really used the beeper unless it was really, really bad. They always called my cell phone. I had my cell phone with me, and I said something about our remote, about the sound or something wasn't working, and his friend is the one who installed it, so he took a lot of offense to it. He

stood up, and I was sitting in the recliner, he grabbed my cell phone and he walked back towards the other end of the house, assuming he's going through it, and I said, David, I have to have my phone, I'm on-call. When I said stuff like that, that whole resentment about your job is so important, so much more important than me, so much more important than what I do, that kind of stuff was coming out at that point. My job was important. I was expecting somebody, a pregnant lady, to need an epidural, possibly a C-section, and I needed to be able to get in touch. I explained to him that I needed my phone, and he kept walking. So I just simply went and got the house phone, called the nursing supervisor, told her if she needed me to call my house phone, make sure she had that number. I have a window of 20 minutes to get into work, and I live 17 minutes away, so if they can't get in touch with me, they are wasting time. So she needed to get in touch with me.

I went in the bathroom to have this conversation with her, and as I was getting off the phone with her, he came in. The lights are off in the bathroom, all we have is the daylight, light of the sun, you know. And he came in and he put his arms like he was going to hug me, and I thought, okay, this is good, you know, it is just going to end. But he put his arms

around me and started taking out all of his frustrations, like closed fist on my back like -- he was mad, he was -- he wanted to hit me, but instead of just doing it, he just started beating my back, and it hurt. I pushed him away, and when I did, he grabbed my arms, and when he grabbed my arms, he grabbed them tight, and it hurt. I had the house phone in my hand. You know, someone grabs you by your arms, the first thing you do is this (indicates), and it hurts. So whenever this happened (indicates), his lip got hit in that whole process. I'm not sure how it happened, but it was in this process of after he grabbed my arm so tight.

Q What happened to him?

A When his lip got hit, which was completely unintentional, however that happened, when that happened, he was livid. He took me by my arms and he pushed me up against the wall where the window meets the wall, where the molding is, and that is where my back was. He pushed me up there, put his hands around my throat and pushed my head against the wall, and I'm six weeks pregnant -- or I don't know how many weeks, but in my first trimester. I reminded him, David, you know, what are you doing. He stopped, and I had that phone in my hand, and I called 911 because he was still

mad.

Q You called 911?

A Uh-huh.

Q And of course you had a conversation with them?

A Right.

Q There is a piece of evidence in the record, which is the CAD report of the summary of that report?

A Yes.

Q Did you tell that operator then roughly or basically what you are telling us today, maybe not every detail?

A Maybe not every detail, but I told her that he had been physical. He was over my shoulder listening when I called 911, and he didn't want me to call 911. He kept telling me to get off the phone, he was calling my daddy. He knew that I have never wanted my parents to worry about me. They have other things to worry about, don't involve them. I'm calling your daddy, you need to hang up the phone right now. I don't want to cause a scene or anything like that, but she overheard him, and she said is that him, and I said, yes, ma'am, it is, and she said, well then somebody needs to go out there and you need to get out of the house.

Q All right. No one was arrested as a result of that call?

A No.

Q But that was about a year before this occurred?

A Yes.

Q And things would get better and worse, and get better and that kind of thing?

A Yes.

Q Let me show you what's marked Defendant's 78 and ask you if this is a series of text exchanges between you and David in March of 2013?

A Yes.

Q If you would, I believe that has to do with an issue you and he were having about the way you got along and Max, the dog?

A Yes.

Q Tell the jury as succinctly as you can what that was about, and then I want to let you refer back to the text messages.

MR. MARTIN: First, I move to enter into evidence Exhibit 78.

MS. LIVESAY: No objection.

THE COURT: Without objection.

(Defendant's Exhibit 78 admitted.)

A We had a dog named Max that was about four months older than J.D. . This took place -- I was -- I think it was March, sometime the beginning of March.

He was born [redacted] so I was really pregnant with J.D. . Max, our dog, was little. He is a big dog, but he was a puppy at the time. They were roughhousing on the floor and, you know, playing and tussling and everything. Max, he's a bull mastiff -- part bull mastiff and lab. He took his paw, which he had a big paw, playing with David, and he scratched him when he did. And when he did, I mean, he went from playing with Max to I'm about to hurt this dog. Like, I was scared that he was going to hurt Max when that happened because his whole demeanor changed in seconds. Max could tell. He jumped behind me and he was shaking, and it was, Give him to me. Give him to me. Give him to me.

Q Were you afraid for the dog?

A Yes, I was.

Q Of course, that was a dog?

A Right. No, it wasn't me, but I loved our dog.

Q But as a example how David could get upset so quickly?

A Right.

Q Let me ask you, there's a couple of comments in here in this text exchange between you and him, and for brevity's sake, I don't want to read the whole thing, but I want to talk about the give and take. You all

had a conversation about what happened the next day about what had happened with the dog, and the way you felt and what he felt about it?

A That's right.

Q And, of course, the whole thing is in evidence, so the jury can look at it, but there's a couple of comments I want you to publish to the jury. Look here at 7:14 UTC time, for what that is worth. What does David say to you?

A He tells me via text message, So you are saying that the next time he needs discipline that I should instead just punch you in the face.

Q And of course that is in response to you saying something like, David, you can't be that way with the dog, I rather you mistreat me than the dog?

A Yeah.

Q And then, if you would, look at the 7:27 entry, and not the whole thing, look at the last couple of sentences that stop with "sometimes."

A Okay. Sometimes I feel like I can't even bring things up or talk to you because you are so quick to get mad. It shouldn't be like that. And as far as children go, you should never discipline out of anger. If you are that upset, as you were last night, you need to stop and cool down before you hurt someone. You

were downright rageful last night, and I don't like to see that and it is not healthy.

Q And did slowly but surely that rage and resentment become some sort of a pattern?

A Yeah, it did. It got a little bit more every time.

Q But in between these periods, there was good times, and I-love-yous and I love you and you're great and I'm awesome, and all of that?

A Yeah. We tended to kind of ignore, you know -- you send a text I love you and kind of ignore what happened yesterday, and hope for the best.

Q A lot of texting going on between you and David. Did it get in the final months that that is how a lot of communication took place?

A Yeah. Especially about two or three weeks before this happened. We had very little conversations with each other; it was on text. He would come home and wouldn't speak. So when we talked, it was via text message.

Q Did he get to the point that the two of you decided to see a marriage counselor?

A Yes.

Q And would you say that was you, him, or the both of you?

A I think it was both of us.
Q And did you see a marriage counselor?
A Yes.
Q Let me show you what is marked as Defense Exhibit 74 and ask you if you can tell us what that is?
A Yes. These are the dates that David and I saw the marriage counselor. We saw her alone and by ourselves.

MR. MARTIN: And I move to enter into evidence 74.

MS. LIVESAY: No objection.

THE COURT: Without objection.

(Defendant's Exhibit 74 admitted.)

Q (MR. MARTIN) For brevity's sake, you and David saw a marriage counselor?
A Yes.
Q And the first time was July 22, 2013, and you both went?
A Yes.
Q And July 30, 2013 David went?
A Yes.
Q August 1, 2013 you went?
A Yes.
Q August 5, 2012 both of you went?
A Yes.

Q August 6, 2013 David went?
A Yes.
Q August 12, 2013 you were both scheduled?
A Yes.
Q What, if anything -- what it just a general problem overall with you and David, and you just felt it was getting bad?
A Yeah. The arguments were really -- over really insignificant things. We had nothing to argue about. I mean, neither one of us had any infidelity or -- they were a lot of little trivial things, and we needed to see a counselor for several reasons. But still, again, we had trouble communicating and resolving those little issues.
Q Wednesday, July 24th, was that a day that became emotional and tough day in terms of you and David arguing and marriage counseling information?
A Yes.
Q I'll show what was marked for identification as Defendant's 75 and 76 and ask if you can tell the jury what that is?
A This is a call log from my phone referring to July the 24th of 2013, all the calls that I made that day.
Q This is your cell phone, AT&T, in the records,

and that exhibit shows where you have gone back and written in the people that you were calling with those specific numbers during that period of time, right?

A That's right.

MR. MARTIN: I move to introduce into evidence 75 and 76.

MS. LIVESAY: No objection.

THE COURT: Without objection.

(Defendant's Exhibits 75 and 76 admitted.)

Q (MR. MARTIN) Now, Heather, if I recall correctly, you were on-call that night. Did you get called in, and if you can, as succinctly as you can, tell the jury about that day.

A I was on-call the night before, and I got called in sometime -- 2 o'clock in the morning to put an epidural in. I had stayed there until 7 o'clock or 6:30 when the rest of my co-workers we're coming in. I hadn't been back to sleep, so I came home and, you know, J.D. is up. So I'm taking care of him, and we're in the rocking chair. And I happened to come across the TBN Christian channel, and there happened to be -- it was Kerry Schook talking about relationships and marriage. I thought this is meant for me to see. They had a 1-800 number you can call and ask for prayer, so I said, well, I'm going to call,

and I had the lady pray with me.

(Defendant's Exhibit 80 marked.)

A I was getting a little bit more encouraged about my marriage. Then I called the pediatrician. We had a conflict with the counselor dates and J.D. 's pediatrician's appointment, and whatnot. Then I get a text from David about I want you to change the baby's dedication date.

Q Stop right there. Let me show what is Defendant's Exhibit No. 81 and ask if you can tell me what that is?

A Yes, this is -- after I called Kerry Schook, the pastor on TV --

Q He is a preacher?

A He's a preacher. I called them and, you know, I put David and I on their prayer list, and this is a CD they sent me about relationships after that phone call.

Q July 24, 2013?

A Yes.

MR. MARTIN: I move to enter this into evidence.

MS. LIVESAY: No objection.

(Defendant's Exhibit 80 admitted.)

Q (MR. MARTIN) The baby dedication became an issue?

A Yes.

Q Tell the jury about the baby dedication scheduling.

A Okay. I had -- he got -- his baby dedication was July 28. July 21 is when I first had it scheduled. At first, David said don't worry about my parents to be there, they are in the mountains, but it doesn't matter. My first thought was let's do it a day that they can come if they wanted to. So I changed it to July 28th, and he thought that would be a good day for everybody. His sister was actually in town, and I thought that was the perfect date to do it, that way everyone could come, and he was okay with it. Everyone was okay with it. This was on a Wednesday before the Sunday he was getting dedicated on. His outfit was picked out. I was on-call the next weekend, so that was out of the question. I got a text from him about wanting to change it.

Q On the 24?

A On the 24th, four days before the dedication. So I called him back, and he just said I want you to change it, change the day. You know, there was really no reason about why and, you know, he was upset, for whatever reason. I don't know if there was communication with him and somebody else that had kind of started that process, but when he called me, he was

obviously frustrated and upset with me. It was just out of the blue. So I said, you know, I'm having trouble talking to David and sorting this out, so I'll call his mom. I called his mom and I said, you know, what do you want to do about the dedication date, I'll change it, you know. And I did tell her, you know, we've got his outfit, but I will change it to whatever day if you all want to come so that you can come if you want to come, and she was really nice. She said, No, no. No. Don't you do that, just take pictures, and it is fine.

Q That morning, what time did you call the television station with the minister on it?

A 7:54 a.m. -- yes. Yes, 7:54.

Q And you had seen the marriage counselor on the 22nd?

A Yes.

Q And you were to go back another day?

A Yes.

Q And there was a conflict with that and the baby's doctor's appointment that you didn't realize at the time you made the appointment?

A Right.

Q And that became an issue itself?

A Yes.

Q So as a result of what was going on with you and David that morning, and the arguments and the intensity thereof, what did you do throughout that morning?

MS. LIVESAY: Your Honor, can he let her testify?

THE COURT: If you can stop leading, please.

MR. MARTIN: Okay.

A In attempts to correct the conflict between the counselor date and J.D. 's pediatrician appointment, I called the pediatrician. I was considering switching the pediatrician, so I actually switched his appointment a couple of times. I was going to take him to see one in Florence, but that -- we didn't think that was a good idea because if he was sick, that is a long way to drive if he didn't feel well. I was trying to change around the appointment to keep the counselor's appointment, and they couldn't, so I kept that appointment --

Q (MR. MARTIN) I don't want to get bogged down. There was some juggling schedules, that kind of thing?

A Yes.

Q Besides calling the pediatrician and arranging that, who did you call?

A John Fowler, a counselor, I called Myrtle Beach Biblical Counseling, I called Cathy Battle, she is a counselor, I called Coastal Samaritan Counseling, and

then after I called them, they gave me a counselor's cell phone, I called her specifically, and then I called back Coastal Samaritan Counseling and Cathy Battle again. I made several different phone calls because I was trying to find one that could see us soon.

Q Could you find anyone to see you any sooner than the one you were currently seeing?

A No. No. I even called our counselor that we were seeing and begged her, and I told her things were getting worse. We had been to see her one time, and I said we really needed to see you before two weeks, and she assured me that things may get worse before better.

Q So that is an accurate reflection of the efforts you were taking that morning to arrange a second counselor?

A Yes.

(Defendant's Exhibits 81 through 86 marked.)

Q (MR. MARTIN) And in between that time, you are calling and texting back and forth with David and your friend, Lisa, who was here in that time?

A Yes.

Q It was an emotional day?

A It was. It was a rough day. I remember crying a good bit that day. I was frustrated.

Q Couple of things. Between the 24th and August 11, were you wanting to save your marriage?

A Absolutely.

Q Let me show you what is was marked for identification as Defense Exhibit 82 and ask if you can identify that?

A This is a receipt from Books A Million. Let's see if I can find the date. It was on July 28th of 2013 at 6 o'clock, 6:05 p.m. I went to Books a Million and I bought, I think his name is, Gary Chapman, Five Love Languages, and it was charged to my MasterCard.

MR. MARTIN: I move to enter into evidence 82.

THE COURT: Any objection?

MS. LIVESAY: No, sir.

THE COURT: Without objection.

(Defendant's Exhibit 82 admitted.)

Q (MR. MARTIN) 81 is, in fact, the book?

A Yes, sir.

Q Where was that book on Sunday August 11th when this tragedy occurred?

A On my nightstand beside my bed.

Q Now, they entered evidence into the record that the insurance policy that they've put in was issued on July 23. We're going to go back and talk about that in a minute, but that was on July 23rd and you bought

this book when?

A July 28th.

Q And you called Kerry Schook when?

A July 24th.

Q Were you worried about the life insurance policy, or your marriage?

A I was worried about my marriage. I never knew the life insurance was even issued.

Q And we'll go back to that, but what you are saying is you knew he was trying to get one, but you didn't know it was issued?

A Yes, I didn't know it was in effect.

Q And let me show you what is marked as Defendant's Exhibit 83 and ask if you can identify that?

A Yes. It is a receipt from iTunes. On iTunes you can buy books, and I bought a book called "I Vow." It was a marriage help book, and it was purchased on August 5th of 2013 and billed to my MasterCard.

MR. MARTIN: I move to enter that receipt into evidence.

THE COURT: Any objection?

MS. LIVESAY: No, sir.

THE COURT: No objection.

(Defendant's Exhibit 83 admitted.)

Q (MR. MARTIN) Heather, with that background,

August 11th, 2013, the jury heard the 911 call, they've heard your hour and 36 minute statement to the police, but we need to recount that again I think here in the courtroom. So I want you to break it up into different segments. Tell the jury about August 11 and how it started and what you did.

A We got up that morning, I can't remember what time, normally between 6:00 and 7:00 J.D. would wake up. David went to get him and gave him his bottle, and after he gave his bottle, we had the play mats with the things they lay on and look up at the lights and the music. He laid him on that in the living room, and then he came back to bed. So at that point, I got up. I didn't want to leave him in there by himself. So I went back into the living room and sat up with him and got him settled, and when David got up, he wanted to go to Ruby Tuesday's to eat lunch. It was like 10:00 or 10:30 that morning. I remember it was kind of early for lunch, but it was when he got up.

So I started getting ready and got J.D. ready. I started getting ready and, you know, David wasn't really used to have to get everything packed up and ready, so I was doing all of that, making sure the bottles were in the diaper bag and he had diapers and extra change of clothes, and all of that stuff. We

had trash that needed to be taken out. I had to make sure the dog had food and water, several things before you can get out of the door. It was hard to get out the door with an infant and a dog. So he had J.D. at the back door, and I don't know what he was doing, just holding him. I'm sure I'm running back and forth trying to get it altogether and bagging the trash up. I asked him, because he just came from the bathroom, somewhere over that way, he was on that side, I said did you shut the bathroom door before we leave, because that is something we did. He said, Would you just sit your ass down a minute. And, you know, this was really the first day that I had the opportunity to spend with my husband and my child together, the three of us. If that was any indication of how the day was going to be, it was -- I just remember thinking, God, please don't let today be like that. So I just went and sat down, and then he came up to me and he said, Don't you start this shit today, and I said, Start what, and he said, Don't you start this shit, you know what I'm talking about. I said, I don't know what you want me to do. You don't want me to stand up, you don't want me to sit down. It seems like I just get on your nerves no matter what I do. So we -- I got the trash together, made sure the door

was shut, and we were going out to the car. He was loading up the trash in my Tahoe, and he has a truck. We have to actually take the trash to the dump, they don't come by and pick it up. So it wasn't opened up yet; it was a Sunday. I said, Can we drive your truck that way my Tahoe won't smell like trash, and he said -- I guess I use the language he said?

Q Use initials, if you can?

A He said I'm not driving my F'ing truck any more than I already do. I already drive it an hour-and-a-half to Florence and back, and I'm not driving my F'ing truck any more than I have to. And I don't mind driving my car, so I just said okay. And I said, At least take the trash out and we'll just take it later. So I remember him taking the trash out of my car, and then I took it and put it in the back of his truck, from what I can recall. We loaded up, and we were on our way to Ruby Tuesday's. Out of the blue he said, So are you taking diet pills, and I said, Well, I thought that was an odd question. And I said, Well, no, but after my C-section and after I stopped breast-feeding, my OB/GYN, she offered them and I had gotten them filled, but I hadn't taken but a few from -- I don't know how many I took. Anyway, I explained that to him, and he said, Um, just kind of

snide. I didn't know what that was for, but it was obviously going to come up later. You know, I didn't go into it. We got to Ruby Tuesday's and, you know, it was obvious that the day he woke up on the wrong side of the bed. He was just aggravated to all get out with me, for whatever reason. I had lost my appetite at that point when we got to Ruby Tuesday's. I just ordered water. I remember him saying, well, I know why you're not eating, and I remember explaining to him, you know, David, I don't need to take diet pills. I mean, this is enough to make somebody not want to eat. So I remember, you know -- even the waitress, she did her job and was nice to us, I thought, but she didn't fill his tea fast enough, didn't clean the table fast enough. Even her, she was not doing efficiently what he thought she should be doing. When the bill came, he had wrote something on the tip line where it said -- it was initials, and it stood for "are you kidding me." That is when I explained to him -- I said, David, you know, she did her job, and if you don't leave a tip, I'm going to because, I mean, I don't know why you're so on edge today, but, you know, don't take it out on her. So he ended up leaving the tip and --

Q Where did you go then?

A Bass Pro.

Q And stayed at Bass Pro for long?

A No. He went in, and I had the stroller, which is bulky. It was not a regular stroller, it was a bigger one. It was kind of cumbersome to get through the wheel thing.

Q I don't want to get bogged down.

A Okay. Okay. We sat outside on the bench. J.D. and I sat outside of the store on the bench, and David went in and bought whatever he bought and --

Q Tell us about the trip home.

A We got in the car -- something was eating at him. He needed to say something. It was just really eating away at him that day. On the way home, he started taking his truck and running it on them little things on the side of the road that is supposed to wake you up if you start to fall asleep, and he would do that and run off the road and pull it back. We do that several times, and J.D. at this point is sleeping in the car seat, and I turned around to see if he was awake or if it was waking him up, because I didn't want him to wake up. He was going to be cranky, and I turned around and checked, and he would say, Turn your ass back around. He said, Is this getting on your nerves yet? And I said, Well, yeah, a little. And he said, Well, good. Just real -- I don't know. Then, you

know, on the way home I asked him at some point, I said, David, what do you want to do? You are obviously miserable. Do you want to separate? What do you want to do? And he said, Well, I think we need to talk, and I said, I agree, I do, I think we need to talk. But look our talks didn't last for 30 minutes, they went on and on and on. I told him, you know, maybe the best time to have our talk is after J.D. goes to sleep. He was sleeping through the night at this point. David and I were up more than one night all night long arguing, and I told him, if I have to stay up at night with you, we will talk. We will talk about every problem that you and I have, and we will figure out what we need to do, but we need to do it when we're not interrupted, because it is impossible to have that conversation when you have a child.

Q So you -- anything else of significance? And, of course, you can't recall everything that was said?

A No. No.

Q Let me ask you this --

A Never could.

Q You told some details here that you didn't tell the police on that night at the hospital. Does that mean you are making them up, or just remembering different parts at different times?

A I remember different parts at different times and, you know, when I was talking to the police, you know, I never told anybody really how David could act. I never talked bad about David. I didn't want people to think bad about him, and that night he had just passed away, and I didn't want to repeat everything he said.

Q You and David got home that day sometime in the 1:00 to 2 o'clock range?

A Yes.

Q What happened then?

A J.D. was still asleep on his way home, and I got in the recliner and I rocked him. I rocked him all the time. I rocked him and David came up to me and said, We're going to talk, and we're going to talk now. And I said, David, why don't we just do it later? You are going to wake J.D. up. He said, You might as well put his ass down right now because I'm going to talk to you. I don't know if David really understood at that point, but if J.D. woke up, we weren't going to be able to talk; and you never wake a sleeping baby is true. I said, David, if I lay him down, he's going to wake up. He kept going, Heather. Heather. Heather. Heather. And it got louder and louder and louder, and more frustrated and more frustrated, and

instead of engaging in that, I said, You know what, I'm just not going to -- I'm not going to involve -- I'm not going to engage in it. He just kept getting louder and louder. I took my phone, and I had an app on there, it was a white noise app and it was an app when he was in the car I would play it and it helped him sleep. So I turned that on, and I turned it on wide open and I was trying to drown David out, so the baby wouldn't wake up.

Q So what did you do the rest of the afternoon? We have -- obviously know that 911 was called at 6:13, and you all are home for three, four hours and that is what was transpiring as to the conversation between you and David. What did you do? What physically did you do that afternoon?

A After J.D. got up, I put him in his Pack'N'Play. I got up and, you know, I prepared to get everything ready so that David and I could talk. I washed the baby bottles. I had to clear the sink out, because that is where J.D. got his bath, in the kitchen sink. So I went and I got everything cleaned out, the sink, everything ready. I was doing everything I could do to avoid having to do it later on, so we could talk as soon as possible. I did that, got his bottles ready for the next day, had his diaper

bag ready to go for tomorrow morning. And I said, Well, what else can I do? I went outside and played with the dog for a little while, and his mobile needed batteries, so I went to the Dollar General and bought batteries for that and replaced those. At that point, I said, you know, I can take a bath, that way that is one less thing I got to do. Then I can give him a bath, get him to sleep and we could talk.

Q Did you go anywhere else?

A Not that I recall.

Q On that point, some video clips were introduced showing your mom and dad out at the house, you leaving the hospital that night. If that whole video was played, it would show you going out with the dog, you leaving with the car and coming back, and all of that?

A Right.

Q Because each of the entrances of the house --

A Right.

Q -- is videoed as to who comes and goes 24/7?

A That's correct.

Q Now, going back to shortly before this altercation occurred, tell the jury where you were and what you were doing?

A I was sitting in the bathroom. We have a big garden tub with granite surround around it, and you

have to understand, our bathroom is like 16-by-17 feet. It is large enough to be a room. The tub is way back here when you walk in the door. I was sitting on the surround of the granite bathtub and running bath water. It takes awhile to fill that bathtub up, so I was sitting there waiting on it. I was texting my mom back and forth. We had missed a baby shower. This was right before 6 o'clock that evening. I was texting her back and forth and realized that my battery was about dead, which that happens to me every day. I went and I got a spare charger that I had used for work. Where that charger was at, I don't recall, but it was somewhere that I put down after I had taken a call one night. I went and got the charger, plugged it into the outlet above the vanity, and I plugged my phone in. I remember -- I heard J.D. cry. I left David and J.D. in the living room, you know. I told him I was going to take a bath. I heard J.D. crying, and normally you just have to put a pacifier in his mouth or something and he would settle down, but he continued. So I went in to check on him, and David wasn't in there. He was out on the porch. I didn't know what he was doing, but I saw him getting ready to come back in. So when I saw him get ready to come back in, I went back to the bathroom. I was trying to avoid

-- it was tense. The whole day was just tense, and there was a lot of bitterness and a lot of resentment, and I was trying to avoid any confrontation, you know, until after --

Q So you go back into the bathroom, and you are having some text messages with your mama?

A Yes.

Q And tell the jury about David coming into the bathroom.

A I was sitting on the surround, and he comes in and he has tools in his hand. When he came in, I mean, he came in and he was walking hard. He was very frustrated. And when he came in, he said -- he walked over to the toilet. I made an assumption he was going to work on the toilet. Our toilet had been having some problems, and he said I'm going to talk to you and I'm going to talk to you right now, right now. At that point I thought I've probably avoided this as long as I can, so I turned the water off and prepared to talk about whatever he wanted to talk about.

But he walked in, and he walked in looking to argue and he turned around and he said, So what do you want to do? Do you want to separate? And I said, No, David, that is not what I want. I love you and I want our marriage to work, but I don't want to be married

to somebody who doesn't love me, and I don't think you do. And he said, Well, I don't want to be married to a damn liar. And I said, You know, that has been brought up a couple of times today, and I don't know what you are talking about. If you can talk to me about it, we might can fix it. What are you talking about, and he brought up the diet pills again. He said, How many did you say you had taken? And I said, David, I only had taken a few. Well, I went and counted them, there is X amount in the bottle and X amount gone. I said, I didn't count them. I didn't intentionally lie about how many I had taken. But it was that little stuff that was just -- and then he said, Well, how many times have you been to see a counselor by yourself, because I didn't tell him that I did that. I did that in confidence with her because I knew he didn't want me talking to the counselor by myself.

When he asked me about it I told him, I've been to see her once. And he said, Well, you said you couldn't get an appointment for us with her in two weeks, and that is a damn lie because I've been to see her twice by myself. And I said, Well -- he wanted to see her in the afternoons when he got off of work, and I told him, I said if she got you in there with a

cancellation or there was -- you know, she could only see us that morning and you couldn't be there, it didn't work out. I'm not lying, she couldn't see us for two weeks.

You know, that progressed there about the counselor. I told him, I said, You know what, if that is what all this is about, something that insignificant, I'll show you on my phone what I'm talking about, because we had that conflict with the baby's appointment.

I went over to my phone, and I took it off the charger. I was trying to show him -- or get to my calendar where I could show him. So I have my phone in my hand and I'm looking at it, and he comes up and he tries to get my phone away. There is a struggle for the phone. I mean, there was -- I turned my back and he was behind me, and then he got it and then he had his back towards me, and there was a struggle for it. You know, I simply wanted to show him that what he was upset about wasn't -- there wasn't a reason for him to be upset.

At that point, he turned around and he had a knife in his hand. He got in my face and held the knife in my face and he said, You are a stupid bitch, and then he started calling me these names, and when

he did that, I was like, David, why are you so mad? Why are you so mad with me today? I backed up, and he starts taking that knife and just taunting me with it, just trying to scare me with it. He was calling me names the whole time, You stupid bitch. I would like to knock the F'ing teeth out of your head. I backed up, and I had put that gun in that drawer earlier, like maybe a month before this happened. You know, I've never even had that thought in my head about even having to get a gun, but I got it because I was scared. I was scared, and he was mad. He was gritting his teeth, his face was red. I -- I've seen him mad before, but I've never seen him this mad, this was something different. This was something that I had never experienced before, and I was scared.

(Witness crying.)

So I reached for the gun and I held it by my side, and he goes, What the F are you going to do with that? I'm not going to do anything with it, you're just scaring me, and I want you to stop. He says, Well, you're not going to do shit. And it's like it made him madder. And while he was calling me names, he was -- he still had that knife and he was just taunting. I kept backing up, and as I was backing up around the vanity to get back into the bedroom, he

said again, I would like to knock your F'ing teeth out of your head, and he lunged at me, and when he did, my hand went up and I shot, and I shot out of a reaction. I didn't think, nor did I ever want to do that, but it was a reaction because I was scared. (Witness crying.)

And when I shot, I thought, This did not just happen. This is not real. All I can think about at that point was I've got to get help. I don't know -- I don't know where that bullet went, but we got to get somebody here. (Witness crying.)

So I went and I called 911, and I've never been more scared in my entire life. And I went and got the phone and I called 911 and, you know, I could not get my words straight. I couldn't think. All I could think about was, You all got to get here. So when I went back into the bathroom, I saw David laying on the floor and I didn't know until that point how bad it was. I put the phone on speakerphone and I put it down, and I thought, I have to do CPR. And I started doing CPR, and I did CPR the best that I could, but I knew it wasn't helping. It wasn't making things any better, and I watched my husband just deteriorate right in front of my face, and it was the most helpless feeling I've ever felt in my entire life.

(Witness crying.)

I kept waiting and waiting and waiting on somebody to get there, and nobody ever came. They took 24 minutes, and it felt like 24 hours. It was the longest 24 minutes that I've ever lived in my entire life, but I still did what I knew what to do still kept doing CPR. I didn't do it the whole time, I know I was moving around. I had a baby on the other end of the house, I had a dog up under me. I mean Max didn't know what was going on, he didn't understand. And my -- my focus was, I've got to get somebody here. That is the first part of CPR, is to get help.

I am a nurse anesthetist, and I can and I know how to do CPR. I know how to do basic life support and advanced cardiac life support, but I can't do -- I couldn't do what I needed to do with just my hands and my mouth. David needed more than just basic life support, and I couldn't -- I was limited in what I could do for him, so I needed somebody to get there with IVs and drugs and with a defibrillator. I'm limited, and I'm in my home and my baby is -- our child is on the other end of the house by himself and, you know, one person -- I don't care how educated you are, one person cannot handle all of that.

Q Heather, let me ask you. Were you afraid for

your life, for your safety?

A Yes.

Q That day with David?

A Yes, sir, I was.

Q Did he come at you with a knife?

A Yes, sir, he did.

Q Were you trying to box him into the bathroom?

A No.

Q And kill him for insurance money?

A Absolutely not. He never tried to get past me, never (witness crying).

Q You called 911?

A Yes.

Q Where is the 911 station with regards to your house?

A There is a fire station -- I can walk to it from my house. I'm terrible with distances, but it is probably 200, 300 yards from my house.

Q And you thought that is where they would be coming from --

A Right.

Q -- because they do have fire rescue?

A When I called, I was expecting them to be there like then, like immediately.

Q And it took forever?

A It took so long.

Q Let's talk about some of the things that the State introduced into evidence. Heather, did you do all you can do with CPR to save David?

A I did CPR until I had no skin on my toes, and I didn't realize that until the next day, because your adrenaline -- you don't know is going on. But I did CPR until I had no -- I have scars on my toes where I didn't have skin on the bottom -- top of my foot where my toe met the foot. There is still scars down there from me being on the tile floor doing CPR.

Q In order to do that, obviously you had to get down by David's side?

A Yes.

Q And the questions come up -- let's talk about a cell phone. Let me ask you this before I talk about that. They've introduced phone records here today, not today, but some day previous which shows every call, every text or something from your phone or other phones that day. You called 911 from the house phone?

A Yes.

Q When you came back into the bathroom and you found where David was, your phone was in the bathroom?

A Yes.

Q Did you try to call anybody from your phone?

A Looking at the records, I apparently -- I didn't have any recollection of it at the time, it was just a minute or two after this happened, but I tried to call my parents' house, but my fingers were not -- it was hitting an extra button or something. I mean, I was trying to do it so fast, they just weren't working.

Q And you voided that idea and kept doing CPR?

A I apparently tried a couple of times and couldn't -- you know, you're shaking. I'm shaking, and my fingers can't dial numbers. You can't -- couldn't dial the number correctly. I just put it down and started CPR again.

MR. MARTIN: Hold on a second, Ms. Livesay wants to approach.

MS. LIVESAY: Can we approach?

THE COURT: Yep.

(Whereupon, a bench conference was had.)

THE COURT: I'm going to give you an hour for lunch, we'll get started. Of course you can't talk to your lawyer while -- during a break. You be back by 2:00, and we'll get started. Don't discuss the case.

(The jury exits at 1:03 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Ma'am, you can't talk to your lawyer.

(A lunch recess was taken.)

THE COURT: You can bring them in. Come on back up, if you would, please.)

(Whereupon, a bench conference was had.)

(The jury enters at 2:21 p.m., and the following is heard in the presence of the jury.)

THE COURT: We're going to keep going until, Mr. Foreman, I think we need a break, and as I said, I'm going to ask you at that time to poll everyone and make sure they're good with us keeping going. If you need a break, raise your hand, we'll stop.

MR. MARTIN: May it please the Court.

THE COURT: Yes, sir.

DIRECT EXAMINATION (CONT.)

BY MR. MARTIN:

Q Let's gather ourselves and go back to where we are, and I'm trying to recall exactly what I asked you last. You had just finished with talking about what happened there in the altercation between you and David and moving onto the cell phone. If you would describe -- though you may not know what it was at the time -- describe to the jury the injuries that you did get. They've seen multiple pictures, but tell them what the injuries were and when you think you got them and how you got them.

A I ended up with three lacerations on my right arm. You can see one here and across, and a couple more here. I had a stab wound to my left abdomen.

Q When did you get the stab wound specifically?

A It was after he lunged.

Q It what was what?

A After he lunged at me.

Q At the time he lunged?

A Uh-huh.

Q Is that the time you testified to that the shot was fired, right after that?

A It was right after that. It was a reaction to what he did.

Q Heather, did you self-inflict these wounds on yourself?

A Absolutely not, no, sir.

Q In addition to those wounds, let me -- let me show you what was marked for identification as Defendant's Exhibits 71, 72, 73 and ask if you can identify those?

A Yes. These are pictures that was taken at Karen Staples' office.

Q Do they accurately depict your arms and legs and knees on August the 13th when the photographs were taken?

A Yes, sir, they do.

MR. MARTIN: I move to enter these into evidence.

MS. LIVESAY: No objection assuming she's going to date and authenticate them.

MR. MARTIN: I think we did date them and verified them.

(Defendant's Exhibits 71, 72 and 73 admitted.)

MS. LIVESAY: If he can date -- can he date it?

MR. MARTIN: August 13th.

THE COURT: Day after?

MR. MARTIN: Two days after the pictures were taken.

THE COURT: It was after the incident.

MR. MARTIN: I hid a picture from myself. Let me show you what was marked for identification as Defense 28; do you recognize that?

A Yes.

Q What is that a picture of?

A These are pictures of my feet after the altercation occurred. This is -- you can see where the skin off of the knuckles of my toes when I was on the floor.

Q Were you barefooted the day this occurred?

A Yes, sir.

Q Does that the picture adequately -- accurately represent your toes in the days shortly after this altercation occurred?

MR. MARTIN: I move to enter into evidence 84.

THE COURT: Any objection?

MS. LIVESAY: No, sir.

THE COURT: Without objection.

(Defendant's Exhibit 84 admitted.)

Q Heather, the photographs that we just introduced are some bruises?

A Yes, sir.

Q On your arms, knees, in addiction to the toes that we have here. Is that the way bruises developed on your body in the days following this altercation?

A Yes, sir.

Q And do you know specifically how they were inflicted on you?

A I don't know specifically. I do know that they were not there prior to this altercation, and I noticed -- you know, that night was a very long night, and I came home and tried to sleep, and the next morning is when I saw these bruises.

Q All right. Now, if we go back and talk about what had occurred with you there. The cell phone, let's talk about what turned out to be David's cell

phone. If you would after you -- this had happened, you had got the phone, called 911, you had come back in, you were attempting to do CPR. Tell the jury what, if anything, you know about David's cell phone.

A When I was on the floor kneeling down, I was on David's left side, specifically in between his upper body and his left arm. While I was doing CPR, I was knelt down right beside his leg, and like I said earlier, my focus was on getting help in because I'm limited as to what I can do on my own, in addition with a baby and a dog just more -- anyway, his phone was hanging out of his pocket, or it was visible. Visibly -- you can see the phone sticking out of his pocket, that's when I got his phone in attempting to use his phone to try to call somebody else to come help me before the police got there.

Q Did you attempt to use that phone?

A Yes, I did.

Q Could you use it?

A No. I used to know David's pass code, and apparently he changed it or -- he changed it randomly, and my fingers were shaking and I couldn't get into it, although I tried.

Q And that was in and about the same time you were trying to use your phone to call your mom or dad?

A Yes. Yes, it was.

Q Do you know what happened to that cell phone?

A No, I was -- I don't remember every move I made, but I do remember just -- I felt like I was just running in circles wondering where they were, if I had -- I was trying to get into it and I couldn't. I don't know what I did with that phone, but when I couldn't get into it, it was of no use, and I just couldn't get into it, and I don't remember what I did with it.

Q All right. Now, and I'll come back to the cell phone in a few minutes. You were there at the house, and you did finally call your dad?

A Yes.

Q And he came?

A Yes.

Q And we've heard the 911 tape, and it is in evidence for the jury to listen to again?

A Right.

Q Now, in terms of you manipulating the crime scene, let's talk about that a minute. There is a statement about you wiping blood?

A Yes.

Q Tell the jury what you know about that.

A This was later into the 911 phone call. You have

to understand that 24 minutes, like I said earlier, felt like 24 hours, and what do you do when your husband or spouse is deteriorating in front of you and your efforts are just not working? I remember my dad being on the house phone with 911, and while I'm doing CPR, I did it forcefully enough peanut butter was coming out of his mouth and nose, and it was difficult to do CPR like that, but, you know, I did it anyway. (witness crying.) You have to clear someone's airway in order to get air in, and just peanut butter was in his mouth, and I took a rag and wiped his mouth and attempted to do mouth-to-mouth again, and I remember getting up and I remember going -- I heard my dad and I just could not figure out where they were. I just cannot figure out -- there is a fire station in walking distance of my house, and I don't know how that works. I don't know that anyone has to clear, so I'm not understanding what is taking them so long. I remember getting up, and I had the rag in my hand and there was something on the door that I think that I put there with my hand, and about that time I just unconsciously, not thinking about it, took the rag and wiped the door. It had nothing to do with anything that happened. I never wiped anything that had to do with me or David or this altercation. This was something that I thought

that I had just -- my hand or something touched the door and I put there, and I wiped it and it was just something that I wasn't even thinking about at that time.

Q Heather, in the moments after -- while you were waiting on the police to come there, and at least until your dad comes in, does this strike you that this is a crime scene that you shouldn't touch, move anything?

A No. No. No. No. No.

Q As a matter of fact, you were all in it?

A I was all in it. And you know what, at that point I wasn't thinking about it being a crime scene. I didn't care what was moved or wiped or anything. All I was worried about is doing CPR on my husband and being there, and that crime scene wasn't a crime scene to me at that point.

Q And, of course, your daddy came, and the state constable; we started talking about that?

A Yes.

Q And you can hear on the 911 calls a couple of times first don't touch anything, don't wipe anything, don't touch the knife, don't do this; you remember that?

A I do.

Q Do you remember Mr. Cestare testified that

somewhere in there they hear your daddy say, Wipe the blood off the door?

A I don't recall that at all. Frankly, that is not what I heard. I did not hear him tell me -- the 911 operator was telling him, Ronnie, don't let her touch anything, don't let her move anything, don't wipe nothing. My dad was reinforcing that every time I would check his pulse, Heather, don't touch nothing, don't touch nothing. He was scared that I was going to touch something.

Q And that wasn't -- that weren't what you were trying to do?

A No. No. No. No.

Q In talking about touching things, let me ask you this. David came into the room and he had tools with him; we talked about that. We know there is pictures of a knife and pair of pliers. What do you know about the pair of pliers?

A At the time I didn't know what happened to the pliers. During the altercation, I didn't know what happened to the pliers, but I remember while I was doing CPR, the 65-pound dog we had, he is everywhere I am. He is in whatever room that I'm in, and he was obviously around me and David. I'm doing CPR, and I happen to look over, and he's around the pliers that

were on the floor. The pliers were on the floor, and he's around them sniffing them like he's getting ready to put them in his mouth or do something to them. Again, not thinking about a crime scene, not thinking that, you know, this is my bathroom, this is my home, you know, this just happened, I picked them up and put them on the back of the toilet, for whatever reason.

Q And you didn't tell the police that that night? We'll go into the statement, but you didn't tell them that before, had you?

A No. There were a few times I kept saying, My dog, and then I would get cut off, and we would go back to that knife. Every time I would try to say something, which frankly that wasn't really on my mind either, but any time I would start getting into what my dog was doing, we got redirected back to something else.

Q Are you making it up, just to make it up?

A No.

Q And every time you talk about this, Heather, do you tell it a little different way?

A Of course.

Q You remember a fact here or there that you don't remember the last time?

A Yes.

Q Are you lying about any of it in trying to tell as best you can remember?

A I did my best that night, and I've done my best ever since it happened to help talk to whoever to tell them what happened.

Q And you understand you don't have to take the stand to testify, don't you?

A Yes, sir.

Q You know you are going to get asked a gazillion questions what you did, what you didn't do, why this, why that?

A Yes, sir.

Q You want to tell it, don't you?

A Yes, sir.

Q And I know that in this particular case, Detective Jim Chatfield took a statement from your daddy after this happened, didn't he?

A Yes.

Q And you had told your daddy about the pliers -- moving the pliers onto the toilet, and he told Chatfield?

A Yes.

Q That is this guy here?

A Yes. He told Detective Chatfield.

Q So let me ask you this, then. I'm trying to move

this as quick as I can, but we don't need to cut corners at this point. Going back to the 911 call, you said, He came at me with a wrench and was trying to stab me?

A Yes.

Q And they are making a big deal about that?

A Yes, sir.

Q You are lying?

A No.

Q There was no knife, that is why you said that and thought of all of this later, talk to the jury about that?

A Immediately after that happened, I called 911 within seconds. That 911 call was made within seconds of this happening, that is the first thing I did. When I was on the phone with the 911 dispatcher, for whatever reason, the needle nose pliers -- I don't know why "wrench" came out, he wasn't trying to stab me with a wrench obviously, but I did use the word "stab" connotating that there was something he was trying to stab me with. For whatever reason, I think I used the word "wrench" until half way into my interview. "Wrench" just kept coming out, for whatever reason.

Q What you are referring to was "pliers"?

A Pliers, that's right.

Q No question about it?
A No question.
Q So, eventually, the police get there. Sergeant DelPercio is there. You are still in the bathroom?
A Yes.
Q And they move you out to the EMS?
A Yes.
Q And they testified as to what they did, and they took you to the hospital?
A Right.
Q And you got treated?
A Right.
Q And the policeman came to talk to you?
A Yes, that's correct.
Q You are in the hospital. Are you clothed at that time, or how are you dressed?
A My clothes were taken off when I went to the hospital. I had a hospital gown. I came in barefoot. I had no socks or shoes, all I had on was a hospital gown.
Q And then the police officers come in to question you, right?
A Yes.
Q First of all, they wanted a consent to search your house, didn't they?

A Yes. I do remember being put into the CT scan and they were getting ready to inject the dye, and they stopped and they took me out, and they took me back out and they wanted a consent to search, so I signed it, and they did the CT scan.

Q You had no problem with them searching your house?

A No. No, sir.

Q And they wanted to take a statement from you, and you had no problem talking to them?

A No.

Q And they told you you could get a lawyer if you wanted one?

A Yes, they did.

Q Did you get a lawyer?

A My exact words, I'm going to talk to you. I'm going to talk to you.

Q Of course you are smart enough to know you didn't have to if you didn't want to?

A Yes.

Q And then they questioned you, we know from 8:06 to 9:41. How many police officers took their rightful turns questioning you, Heather?

A Detective Chatfield started, and Brantley was in there, and then at the end, Cestare came in.

Q And during that statement that you made to them, were you doing your best to cooperate and answer the questions?

A Yes. And at that point when they asked questions, I did my best to answer them. I did my best to give them an answer.

Q How would you describe your state of mind at the time?

A My mind was, frankly, all over the place. You know, I was wondering about David's family, if they knew, you know, my mom, our child.

Q You said somewhere in that statement that you just felt --

A I felt numb, absolutely numb. I remember saying that on the ride to the EMS, to the hospital, I do remember they kept saying, How are you feeling, or, Are you hurting, and I kept saying, I just feel numb. I just feel numb. It was so surreal that I -- I felt numb is the only way I can describe it.

Q And over the next hour-and-a-half or so, you answered their questions?

A Yes.

Q You drew them a diagram?

A Yeah. It was a little confusing I think at first because Detective Chatfield, he didn't know the layout

of my house. It was confusing for both of us I think as to where we were standing, and so I offered to draw him a diagram of the bathroom and bedroom to help, because understandably one wouldn't know -- it would be helpful.

Q And you told them immediately after, in this statement, what happened in terms of where the altercation started, how it advanced to the vanity, where the gun was, backing up and all of that?

A Yes, sir.

Q And do you know specifically within the 6 inches of the foot where you were standing or where David was standing at the time the shot was fired?

A No. I mean, we were in constant motion. I don't recall it that night. I don't recall it today. It happened so fast. I know the area that we were in, down to the foot or the exact location -- he was somewhere in the doorway, and I was somewhere around that white chair, that is the only thing I know how to describe it.

Q And the time they were questioning you, you told them -- and of course the statement is in evidence and obviously you and I have looked at it -- you told them then, at that time, when they asked you, that he didn't drop the knife upon being shot?

A I did.

Q And you told them you went to get the phone, and he began to back up?

A Yes.

Q And when you came back in, he was lying on the bathroom floor, and then at some point they are getting calls and they start questioning you about did you possibly touch the knife?

A Yes. There was a lot of "possiblys." There was a lot of "could this have happened, could this, is it possible. I know you were doing CPR is it possible -- is it possible you touched the knife"? Well, of course it is possible. I wasn't concerned about the knife, or anything else for that matter. The only concern I had was -- I remember David, and I remember his face, and I remember just that helpless feeling of doing CPR. Did I possibly? Yes. Yes, it's possible. If I'm doing CPR in the hospital and someone said, Is it possible you touched this? Well of course it is possible, because that is not my concern.

Q What was your focus, Heather? What did you tell them in the statement your focus was while all of this was going?

A My focus was David, David the entire time, and if it wasn't David, it was trying to get someone here to

help David.

Q Did you get that knife after the fact, stab yourself with it and lay it in David's hand?

A No, sir, I did not.

Q Did you inflict these wounds on yourself?

A No, sir.

Q What time did you get out of the hospital that night, or do you remember?

A Somewhere around 2:00, I think, 2:00 a.m.

Q Now, let's talk about -- they have a photograph in here of you and a cell phone and a sandwich?

A Yes.

Q Did you have that cell phone and sandwich while the police officers were questioning you?

A No, sir. That cell phone was brought into me after they were finished with the interview and my dad was let back in the room.

Q But they have a picture -- there is a picture of you, a piece of sandwich or part of a sandwich, and a phone; how did that have to happen?

A It had to happen after the interview.

Q Some pictures were taken during the interview?

A That's correct.

Q You can tell from listening?

A Right. But that cell phone and sandwich was not

introduced to me until after I was interviewed.

Q The food was brought to you -- the records show -- some point in time before 11 o'clock, according to Christy Wallace, and probably in somewhat close proximity to that, but was it brought to you after your daddy came back in?

A Yes. I remember my dad was in the room when they brought me that tray, because I remember distinctly saying I don't want anything to eat. I can't eat. She replied, Well, that is one of your criteria, you have to eat to go home.

Q Were you -- you did use the cell phone after it was brought back in?

A Yes.

Q Facebook. Facebook. Tell the jury what you used the phone for and how that came to be that you were messing with your Facebook account after this had occurred?

A After the interview, my dad came back in the room. He came to my side and he said, I don't know how to tell you this or even if I should, but I think we need to shut your Facebook page down. Amy called your mama, your mama called me and they want your Facebook page down. So I said let me hold your phone, I'll get on Facebook app and log in, and when I got on it, I

couldn't remember my passwords. You can hit the forget password thing on the bottom, and it will say password change, or whatever it is, is sent to your E-mail address. Well, tried to get into my E-mail. Can't remember my password to that either. I could not remember any of my passwords to anything. So I tried to enter in my dad's phone number in my Facebook to get that code generator for password reset. I tried to enter -- Mike was at my mom's house. Daddy had called him to help my mom. He was at the house. It was just, well, we'll try Mike's phone number, maybe I can get the code -- all of this was in an attempt to get my password for Facebook, not for search on Facebook or browse any pages, just to deactivate Facebook to prevent any more comments from being put on my Facebook page.

Q And that was not your idea, but brought to your attention?

A No -- yes.

Q So the characterization, if anyone tried to make it that in the two, three, four hours after this horrible thing happened that you are nonchalantly, uncaringly gnawing on a sandwich and checking your Facebook is right or wrong?

A Absolutely wrong. I had to eat to go home.

Q And you didn't want to stay at the hospital?
A I was ready to go home or to my parents' home.
Q Now, you go home and go back your parents' home?
A Yes.
Q Let's go back to the cell phone. The cell phone, at some point in time -- the police had your cell phone, right?
A Yes.
Q At some point in time, did you become in possession of David's phone?
A Yes.
Q Tell the jury about that.
A The next day, my dad and I had some visitors. You all met Robert Shelley yesterday, him and a couple other friends came and checked on us. They came to my house instead of my parents', so we were up there with him. My dad, he came across David's cell phone in the drawer, in the drawer that Jill Domogauer and Mr. Cestare saw the phone in, it was in that same drawer.
Q In that same drawer?
A Yes.
Q So this is important. The police say that they looked in the house, they saw some old phone in that same drawer that this phone came from; did you or David have an old phone that was still there at the house?

A No. We had just an iPhone 5. We had an iPhone 4 before. We both sold our iPhones shortly after we got an iPhone 5. We had no cell phones -- no old cell phones in the house.

Q If the police saw, as they said they saw, a cell phone in a drawer at your house that night while they were searching and you were at the hospital, it had to be what phone?

A It was David's phone, no doubt in my mind that that was David's phone. There was no other phone there.

Q Have you seen the picture that was introduced into evidence of the kitchen drawer?

A Yes. Yes. That was David's phone.

Q Same drawer that Jill Domogauer and Pete Cestare said they saw a phone, but they did not take a picture of it at that time, and they did not collect it?

A That's correct.

Q And they didn't make any notes of it, but that is the phone you believe?

A Yes. There would be no other old phone in that house for them to see.

Q Now, did they ever that night ask you about David's cell phone?

A No, they didn't. I was never asked about the

phone.

Q Were you ever told by anyone after you got home not to touch anything, not to go into the house, not to use what was there, or anything of that sort?

A No. When I got home, either then or the next day, they told my mom the scene was clear. It was even asked, Do we need to wait 'til tomorrow to do anything? No. No. No, you all go ahead. It was even brought up --

Q Jonathan Martin advised that it would be smart to go ahead and clean up that night?

A Yes.

Q And you didn't have anything to do with it?

A No, I was at the hospital, but it was advised that we go ahead and do that.

MS. LIVESAY: Your Honor, for one, there is no evidence that John Martin suggested anything even close to that.

THE COURT: Sustained.

MR. MARTIN: If they want to call John Martin in reply, that would be good.

THE COURT: I understand.

Q Heather, you did try to use David's phone, right?

A Yes.

Q They have records in here as to when a call was

made. First of all, could you use it?

A No.

Q Why?

A Again, the pass code, I couldn't -- I didn't have his pass code. It locked me out.

Q So no way to get in that phone?

A No.

Q And you know a little bit about phones, but you are not an expert?

A No.

Q But you did begin to -- let me -- you tell it. Tell the jury what you did. First of all, let me ask you this. When was it that you made an attempt to use the phone and call AT&T or Apple in regards to trying to reset the password on the phone so you could use it?

A It was August 13th, two days after this happened.

Q So you made no attempt to do anything with that phone when you got home Sunday night?

A No.

Q Or Monday?

A No, sir.

Q It was the next day?

A That's correct.

Q And these records, of course, which are in

evidence, have the times when calls are made and what is asked and what is said; is that right?

A That's correct.

Q Are you smart enough that if there is something on that phone you wanted to hide or get rid of, that you would have waited two days to get the phone and attempt to use it?

A Yes, I'm smart enough to know if there was something to hide -- you would have seen records on Apple and AT&T of trying to get into it as soon as I can. There was nothing on there to hide.

Q So the question might be, Why not just buy another phone? Why did you use that one?

A Well, the phone account was in my name. I was under the assumption that the police did not want the phone. They didn't ask about the phone. My family was even told that they didn't need the phone. My family was told that it wasn't part of the altercation, they didn't need the phone.

Q And so at some point, you did get the phone, and of course they have the records of a few phone calls back and forth on the phone and text messages, and there were some about bringing food, birthday cake; what is that about, in case questions are curious about that?

A After this happened, after I gained access to David's phone, I gave a couple of people, close friends, David's phone number and said if you need me, this is my phone number -- using this phone, and people were offering to bring over food, which is common after something like this happens. August 13th was my mom's 60th birthday, so one of her friends was trying to bring over a birthday cake to her birthday.

Q When you found out the police were looking for the phone, the police got the phone?

A Yes, they did.

Q Anything you wanted to hide from anybody whether it was deleted or not deleted?

A No. No. No.

Q Did you delete anything off the phone?

A I don't delete anything. I called Apple in order to figure out how to go around the password to simply get in the phone and use it. There were pictures, videos, all sorts of things -- pictures of J.D. I didn't want to erase the phone, that was never my attention to erase anything, and there was nothing that was -- I was trying to hide. I, to this day, would love to know what was on this phone, see what was going on, why he was acting the way he was that day.

Q There is also testimony around the 13th that

you are going into computers trying to get -- and I don't know that I understand it -- going into computers looking been for passwords, trying to hook up, trying to hook up, find this, find that; were you attempting to delete anything so the police couldn't find it?

A No. No.

Q As a matter of fact, they got all of the computers in your house one by one?

A Yes, they did.

Q Nothing was erased?

A No.

Q Everything that was there, was there?

MS. LIVESAY: Your Honor, if I can, can we just let her testify?

THE COURT: That is what -- just ask her questions.

MR. MARTIN: She's right. She's right. I'm wrong.

THE COURT: Don't start, either one of you.

MR. MARTIN: I apologize. I am leading, but --

Q Tell the jury what you were doing.

A On the 13th, I'm trying to get into David's phone. I would like a phone to use, and I didn't, frankly, feel like going to get another phone. There was a phone, the police didn't want it, they didn't get

it, they saw it, it was left there.

Q Now, the computers, move on to the computer. What are you doing with the computers?

A So after I get into the phone, Apple say after you restore the phone, you have to hook that phone back into the computer that it is registered to, or the iTunes account that it is on, and you have to sync it back up to iTunes, and everything that was restored off of that phone, it would go back to that phone after you synced it with iTunes. So I went up to our house and I plugged David's phone into his computer in order to get everything back on his phone, and it popped up there that I needed his Apple password. I didn't know his Apple password, so, again, you have to try to get into E-mails to get a password to reset to even sync the phone back to the iTunes account to put everything back on it, which I was never successful.

Q All of that being said, were you trying to destroy or hide anything?

A No.

Q The gun in the bathroom drawer, we've seen pictures. The gun was in the nightstand. There was a gun in David's nightstand. You testified that you had moved the gun?

A Yes.

Q Tell the jury what you know about that.

A J.D. started rolling over around July 21st, and he was scooting around, wasn't crawling or walking yet, but my first child I knew that would be approaching, the next step would be crawling. Just out of an abundance of precaution, our pediatrician said think about childproofing the house. That was just something that I could do quickly, just, okay, let's move the guns. We didn't have a safe to put them in. That gun safe was not in our house. David did not want to put the guns in the safe, which was at my parents' house, which that makes sense. The guns in the bottom of a nightstand I thought would be safer in a room that was --

Q Why the bathroom?

A It was in the bathroom -- Max, our dog, was never allowed in the bathroom unless someone else was in there with him. If he was, he would get the wash clothes off the vanity and chew them up and they would be in a million pieces in front of the back door. So that is why -- even the day this happened, when we left, that is one of my questions, did you shut the bathroom door. Obviously, my dog was very close to me, and if I went in there to take a bath, if I didn't let him in the bathroom while I was taking a bath, he would

scratch the paint off the door. I mean, I can't keep the dog -- he was going to be there with me and, you know, I had a dog bed in there for him to lay on while I took a bath. I took a shower, he was in front of the shower.

Q I'll show you Exhibits 85 and 86, which are text messages already in evidence.

MS. LIVESAY: Can I look at them?

MR. MARTIN: After she identifies them, I'll show them for you.

Q Any comments in there about the dog, Max, being on the bathroom floor?

A Yes. Yes.

MR. MARTIN: All right. Let me show them to Ms. Livesay.

MS. LIVESAY: Can we put one that is not altered on?

MR. MARTIN: She's right. I have scribbled because it is hard for me to find what it is looking for instantaneously. I'll not stop now, but put in a clean copy at the end.

THE COURT: Before the jury sees it.

MR. MARTIN: Right.

THE COURT: All right. I'll allow you to substitute it.

MS. LIVESAY: For the record, I'm assuming that her testimony is going to come from the copy with these notes on them, just so everyone knows?

Q There is underlining in here at the point where we are --

A Right.

Q -- but to save time, the text messages that Cellebrite that cannot be altered, what is on there that may substantiate what you told the jury about the dog in the bathroom?

A On July 31, 2013, I sent a text to David, Max made a mess. We got to shut the bathroom door. July 31 I sent my mom a text message that says, K. I normally close the bathroom door, David probably didn't.

Q There are other questions that was raised about towels, towels in the bathroom. Did you hide towels from anybody as part of wiping blood or doing anything like that?

A No, sir.

Q Did you have a towel at some point in time in your hand during this -- waiting for the police and EMS workers?

A Yes, I did.

Q And might it have had blood on it?

A If it did, it was a small amount, whatever I wiped off the door.

Q What were you doing with the towel to start with? Why did you have a towel?

A I was trying to wipe David's face with the peanut butter.

Q Let me show you Defendant's Exhibit No. 68 and if -- that is in evidence. What is that a pictures of?

A This is a picture of the bathroom that was taken after this happened.

Q And do you see a hand towels in that photograph?

A Yes, I do.

Q And where are they? Explain to the jury where there are.

A It is on top of the short wall of the shower right there on the shower ledge, but it is just the half wall going into the shower. I have no glass, you just walk into the shower.

Q Do you recall how those towels would have gotten there from you in that -- who put them into the final position before the picture was taken?

A I don't remember exactly how they got there, but I do remember, you know, again, trying to look and see if anybody had made it outside yet or where everyone was at.

Q Is there a window near that shower encasement where the towels are?

A Yes, there is.

Q Can you see the road from that window?

A You can't see the road. You can see the driveway.

Q So if you wanted to check the road or if you wanted to look out of your house to see if anybody were coming, or on the way, how would you have to do it?

A Go out of the bathroom, all the way through the kitchen, go into the living room, and there is windows in the front door out on the front of the house.

Q Or you could go through the tub?

A Well, yeah, in order to see the road from the bathroom, you would literally have to crawl over the garden tub, get in the tub, open the blinds, and it is more difficult. The tub is really wide. It is not a standard tub.

Q Two knives -- two knives missing?

A Yes.

Q Tell the jury what you know about two knives missing?

A There was one knife that has been missing for a long time before this happened. I don't know where it is at.

Q Allyson Brown doesn't remember that?

A No, she doesn't. I don't think it was ever brought up. I don't see how it would be relevant for her to know.

Q Did you have any knife that night? Did you, that night -- did David have the knife, or did you have the knife?

A Oh, no, David had the knife.

Q Allyson Brown's testimony. Allyson was your friend and photographer and did housework for you?

A Allyson and I were very close when it happened. She was at my house every day for weeks after this happened.

Q And you did talk to her -- or did you talk to her about what happened?

A I talked to her in bits and pieces. She did ask me questions. It was bits and pieces here and there. I remember right after this happened I was more quiet about everything. You know, I didn't talk to -- I don't even know that I told my dad immediately everything, but it was in bits and pieces here and there, and it was in response to questions she asked.

Q She testified about something going -- sliding cross or flying cross the bathroom floor, which somebody might try to use that to say something

happened different than what you say happened; what do you know about that?

A All I know is there was a struggle over the phone and David ended up with the phone. She said my phone slid cross the floor. I found that highly unlikely. First of all, it's not what happened, so I don't remember ever telling her that. I'm not sure how she can remember that long ago, and I think that is normal, not to be able to get everything exactly right. But with that being said, I had an Otter Box on my phone. The case is made out of silicone, and I've even had a phone in an Otter Box that rode on the back of a tool box for 10 minutes without sliding off. It would be unlikely for that phone to slide across the floor.

Q I'll slow you State's Exhibit 73.

A That is my phone.

Q Is that similar?

A That's the phone case.

Q That is the case for your phone?

A Yes.

MR. MARTIN: I move to enter it.

MS. LIVESAY: It already is.

COURT REPORTER: Yes, sir, it is.

Q Heather, did you attend David's funeral?

A No. I thought about it, and I remember talking

that over with you. It was apparent after this happened that there was some -- I don't know how to say it, but there was some....

Q Great animosity?

A Great animosity with David's family and myself.

MS. LIVESAY: Your Honor, I have to put it on the record, when he asked her a question, can he just let her answer instead --

THE COURT: Sustained. Ask a question, don't put words --

A There was obvious animosity after this happened. We thought it over, talked to you about it. We probably talked to several people about it, and we didn't know what to do. I wanted to be there, but I didn't want to cause a scene.

Q Fair to say -- or how would you describe any direct communication you had with David's family since this tragedy?

A There has been none. It's all been through lawyers and their family lawyer.

Q Let me talk to you a minute about life insurance. They've introduced a life insurance policy into evidence. They've introduced text messages into evidence. Let me -- let's talk about that. Tell the jury what you know about, first of all, David's life

insurance?

A Before we got married, and even after we got married, David had life insurance. It came out after J.D. was born because that is when it was pertinent. We talked about wills, life insurance. We talked about the obvious things you do after a child is born, that is when it came out he didn't have life insurance. His mom had life insurance on him, that it was a policy she owned.

Q Who is Dave Ramsey?

A Dave Ramsey is -- a lot of people know who he is. He goes to a lot of churches and talks about financial planning. He helps couples with retirement and just planning for the future.

Q Anything to do with life insurance?

A Yes. His suggestion that, you know, every family, everybody needed life insurance, specifically term life insurance.

Q It is clear from the text messages there were explanations between you and David about life insurance?

A Yes, there was.

Q And what was the extent of your knowledge on August 11 about David's life insurance policy?

A The extent of my knowledge on that date was that

he had looked into a life insurance policy. He had gotten a quote on a life insurance policy, that that quote wasn't the -- his blood pressure was high, and he didn't think he needed to pay that much. They came back and checked his blood pressure and gave him a preferred rate, but at the time this lapped, I did not know that that life insurance policy was actually issued or in effect. I thought it was still in the process of figuring out what rate he was going to pay every month, and if he was even going to get it or purchase it, or whatever. I knew we talked about it, but I did not know it was in effect or issued.

Q Did you kill David to collect life insurance?

A No. I loved David, and it was never about money.

Q Did you need insurance money to live a decent life?

A No. Money was not anything -- I never thought about money.

Q The policy was issued, the evidence says, July 23rd. You tried to save your marriage after that?

A Yes. I bought books. I was in the Five Different Love Languages, I offered to read it in its entirety and when David -- he was willing to.

Q The reason to have life insurance is probably

self-explanatory, but we are in a very serious trial here, so I don't want to shortcut it. Did David have debt associated with his house, business, auto?

A Yes. He had to refinance mortgages and he owed almost as much on his home in Florence as he did the loans were taken out. Credit cards were maxed out. The only reason I know that -- I didn't have much to do with David's business or financial stuff. I mean, I was the primary one that handled all of that, but and it was not uncommon, quite frankly, that he paid for stuff, so it wasn't really -- I didn't really know much about his financial stuff. I do know when we were -- we would go out to eat, he would have to pay a credit card before he charged something. He bought a $50,000 truck while building the house that he still owed on.

Q I'll show you what is marked as Defendant's Exhibit 51 and ask if you can tell me what that is?

A This is a picture of our carport, mine and David's truck, and it is a picture that you can see the life insurance policy on the dash of his truck.

Q And that can clearly be seen in the surveillance video, which has been offered into evidence?

A Yes.

Q And when did you realize that was there?

A This was after August the 11th. There was

communication through their family attorney and you or one of ours that, you know, they wanted the truck back and clothes, and I had been up there putting clothes in bags. My dad asked Mike--

THE COURT: Mike, stand up. Is that Mike White?

A Yes, that's Mike.

Q He's here.

A Mike was helping me load the truck up because there was deer heads, a lot of heavy stuff. The bags were heavy. My dad asked him to help put things in the truck to give back to his family, and while we were in there, and this was after the police searched the truck on August 11, I happened to look up there and find this life insurance policy, didn't know it was there.

Q And Mike was with you?

A Mike was with me.

Q And, of course, the police had been in the truck themselves also as well?

A Yes.

Q And you hadn't taken it out, because it is in the surveillance video?

A That's correct. It was never brought to the house, to my knowledge.

Q Did you have life insurance, Heather?

A Yes, I did.

Q Allyson Brown testified something about life insurance, so tell the jury about your life insurance.

A I had life insurance through my work. It was four times my pay. Whatever my pay was, they multiplied it by four, so it was like 600 something thousand dollars. It was term life insurance. David --

Q Beneficiary was who?

A My dad before we got married was my beneficiary. When we got married, David became my beneficiary. When we were in the process of building our house and didn't have a loan, and my dad was having to pay everything, I switched everything back over to him. In the event something happened to me, his debts would be paid off because he was the -- he was our loan, you know, and I wanted to be sure that he would pay his debts off and take care of David. But I owed my dad, so I switched all of that to him.

Q Had you ever switched it back?

A I was in the process of doing that. I had been back to work only for a month, and in order to get it changed back through work, it is a little bit different than calling up Nationwide or whoever and saying I need to change my beneficiary. It is not that simple. They told me I physically had to get on a computer and log

in, and their program is compatible with an HP, I had an Apple.

Q Was that a priority on your mind on who the beneficiary of any particular life insurance policy was?

A No. No, it wasn't.

Q How about your 401K, did you have a 401K?

A Yes.

Q Only because we're having to deal with the question of whether or not this life insurance policy had anything to do with David's death, I want to ask you about your financial situation. Other than the debt on the house, did you have any other significant debt?

A Just the house.

Q And at the time, you had a 401K?

A Yes.

Q Who was the beneficiary of that?

A David.

Q How much money did you have in the 401K?

A I'm not sure. I had a 401K and a 403B, and it totaled up to over a hundred thousand dollars.

Q And between your savings and checking account at about that time, how much money did you have in them?

A Around $90,000.

Q And have you been trying to live off of that with the help of your parents since this happened, since you haven't been able to work?

A I have been.

Q But were you in any sort of financial distress that would cause you to want to collect an insurance policy on your husband?

A No.

MR. MARTIN: One minute, Your Honor.

(A brief pause in the proceedings.)

Q Is there a picture of a handgun on the bottom drawer on David's nightstand side of the bed?

A Yes.

Q Why would that have been there, and you moved the other gun?

A When David and I got engaged, I bought a .38 revolver -- it was small -- to put in the car, and before we got married, he liked it, so I bought a second one; that one I gave to David. My .38 revolver was in my car, that is where it's always been, and that was the one that I had given to David. He had it in the nightstand, and I always thought that that gun was in his truck. I never knew that that gun was in his nightstand.

Q You might have said this, but the gun that

happened to be used here was registered to or bought by Mike White?

A Yes.

Q Tell the jury who Mike is to you and your family?

A Mike has been an employee with my dad, who owns a construction company, for as long as I can remember. But over 10 years ago, my dad bought that gun from Mike. There was a lady that was kidnapped from Walmart when I was younger, and my dad gave it to me and said, here, go get your weapon permit and keep it.

Q You bought the two small guns, one for you and one for David so it could be kept in the car?

A Yes.

Q And you did -- do you have a concealed weapons permit?

A Yes, I did.

Q You went to training. Did you get the permit?

A Yes.

Q Okay. Allyson Brown said you were packing up some of David's clothes the week following, or sometime after this happened. Why were you getting any of David's clothes at that particular time, Heather?

A I was packing them up to put them in his truck and take them back to his family. They wanted his truck back, and I put deer heads and rifles and

whatever I could pack in there, clothes.

Q They made a request to get things back of his through attorneys, right?

A Yes. Yes.

Q When you were at the hospital, did you have any phone call conversations with Star Godwin?

A No.

Q Did you have any texting conversations with Robert Shelley?

A No. I actually told my dad to call Star for me.

Q Now, the drawers in your house -- it is a new home, what kind of cabinet drawers do you have in it, in the bathroom and kitchen?

A They are the kind that all you have to do is touch them and they roll on back. They roll on back and close all the way.

Q So they are easy to close if they get --

A They just roll back and close.

Q What else were you doing to childproof your house? You said the movement of the gun, not having to be immediate, but it was an effort to start; what else were you doing?

A I bought the electrical plugs. I had bought those -- I bought the stove knob things; they wouldn't fit. I have the ones with huge knobs and never found

ones that fit, but I did purchase them. I started buying that stuff. I had corner bumper guards around some of the corners, and the gun was something -- you know, it was on the bottom of the nightstand, just seemed to be better to be in a room that was -- in general the door was shut, in general nobody could go in there unless I was in there or David was in there, and it was a drawer that was higher off the ground. It was something like, Let me do it while I'm thinking about it, I'm that kind of person.

Q Heather, you told this jury today, and when you talked to the police department, police officers that night at hospital, why did you tell them that you shot David?

A I told them several times that I was scared.

Q Were you?

A I was.

Q Have you visited David's grave?

A I have.

Q How did you have to find it?

A I had to go on-line on grave.com and put his name and cemetery, and it gave a picture, and I searched about a half day, and I finally found it.

MR. MARTIN: That it is all I have.

THE COURT: Come over here for a second.

(Whereupon, a bench conference was had.)

CROSS-EXAMINATION

BY MS. LIVESAY:

Q Ms. Causey, I noticed earlier when you were talking to Mr. Martin, Mike White is the guy that the gun belonged to, correct, with the two bullets?

A It was registered to Mike.

Q Yes or no?

A No, it didn't belong to Mike.

Q Whose name did it come back to?

A It was registered to Mike White, but it belonged to me.

Q So the gun that was registered to Mike White that had two bullets, is the gun you used to shoot David Sims with?

A That is the gun that was used, yes, ma'am.

Q And Mike White is the same man that you were sending your passwords to that night from the hospital; is that correct?

A He was one of the people, yes.

Q And he was also, ironically, the same person, you and him, after David had been killed, was rummaging through his truck to find the insurance policy?

A My dad asked Mike.

Q And he is the same guy standing in the back to be

here to support you today?

A He is under subpoena, yes, ma'am.

Q So he's here to support you?

A He's here under your subpoena and Mr. Martin's subpoena.

Q Is he here?

A He is here, yes, ma'am.

Q And he was actually there at your mama's house when you were at the hospital?

A Again, yes, he was. My dad called him. I never saw him, but my dad called him to ask him to help.

Q So he was there that night you were at the hospital already at your mom's house; is that correct?

A I don't know when he got there. I didn't see him. All I know is my dad asked him to come and help.

Q And how long have you known him?

A Ever since he started working for my dad; I'm not sure what year that was. I think in high school.

Q Now, something else that Mr. Martin brought out that I didn't really didn't catch until today. He brought out some receipts, Barnes and Nobles or Books a Million on -- do you see a date?

A Yes, ma'am, I think it is at the bottom. 7/28.

Q So July 28, and then you ordered the CD and got a receipt back on what day?

A Well, this wasn't the CD, this was a book that was purchased through iTunes that was like an immediate download.

Q What was the date on this?

A August 5th.

Q Okay. And you called some counselors on -- what day did you start calling the counselors?

A I think it was -- let me make sure. July 24th.

Q And when did you start making appointments?

A I don't know when the -- when I actually called to get an appointment, I had to call a first counselor before Ms. Payne, so it was sometime prior to July 22nd.

Q So all of a sudden you start keeping up with receipts from Books a Million from July 28th, 2013, you were able to find that, keep up with that, and a receipt from August the 6th, all of these phone calls started going out to a counselor at the end of July? Do you have one shred of paper to show us where any of this was going on before that insurance policy went into effect, or did you just start papering everything after?

A This receipt for Books a Million was actually -- I didn't keep up with the receipt, but I had put it in the front cover, and I just happened to find it there.

It was when they purchased the book, they put it in the front of the book, and that is where it was. I called to try to get a receipt, and they never did call me back, and I happen to find it there.

Q You called them to?

A After this happened.

Q After this happened?

A After this happened, I was searching for the receipt, and it happened to be in the book. I wasn't keeping up with it.

Q Is there one shred of a receipt or a paper or a book or a counselor was called before the insurance policy went into place?

A I'm not sure when the first appointment -- yeah, I called the counselor before July 22 and I'm not sure when the life insurance policy was issued, but it was July 23rd, so the counselors were scheduled before life insurance was issued.

Q Do you -- there is a lot of documentation here. Do you have one piece of documentation where you have kept up with showing where any of this was going on before the end of July when he got the life insurance?

A My phone records are in evidence. I'm sure I called -- and you'll see where I called Ms. Payne prior to that.

Q But nothing up here?
A I haven't been given anything.
Q So nothing your attorney has introduced into evidence?
A I think you may have introduced it into evidence.
Q Sorry?
A I think you introduced it into evidence, but I haven't been handed it.
Q Anything up here show anything about this going on before the life insurance policy went in effect?
A Not up here, no.
Q Ma'am?
A Not up here, no, ma'am.
Q These are things that were introduced by your attorney?
A I'm assuming. I can't remember who introduced them.
Q So all of this documentation starts where you can show it on the phone records where you are calling, all of a sudden now -- all the sudden you've kept receipts, all of this is going on after July?
A I didn't keep up with anything. I was able to find this after this happened. Never did I keep up with anything.
Q Let's lead up to the night that all of this

happened, okay. Because, ironically, after all of this documentation is taking place in July, along with the insurance policy, he's killed three weeks later, so we'll get to that night. That night you told this jury about his phone; do you remember that?

A Yes.

Q If you don't mind -- and you dug his phone out after he was laying there shot on the floor, correct?

A I didn't dig his phone out. It was visibly out of his pockets. I didn't go through his pockets or dig anything out; you could see it.

Q Which pocket did you dig it out of, the one closest to the vanity or the other one?

A I hate to assume.

Q Ma'am?

A I hate to assume, but it would have been the one closest to me, because that is where I was at.

Q So I'm showing you now State's Evidence 41. This is a picture of his bloody pocket that you dug the phone out of?

A There is some blood on the pocket, but not in his pocket.

Q Ma'am?

A I see blood around the top part of the pocket, but not in his pocket.

Q Is that the pocket you dug the phone out of?
A Yes.
Q So he's laid out bleeding and blood is on his pocket, and you reach in and get his phone out; is that correct?
A I don't remember reaching in his pocket. I put my hand on his phone and pulled it out.
Q You pulled it out of his pocket after he was laid out on the floor?
A There would be no reason for me to get it out before then.
Q Okay. Okay. Let me ask you this. Your attorney, you all talked a little bit about where that phone went, so there is no doubt at this point you have his phone?
A Yes.
Q And there is no doubt we never found it in the bathroom?
A I think you did -- not the bathroom, but in the house.
Q Ma'am?
A I'm assuming it was found.
MR. MARTIN: I object. She doesn't know where they found or didn't find the phone, she doesn't know that.

THE COURT: Ask if she knows. If she knows, she can answer; if she doesn't, the answer is, no.

MS. LIVESAY: Can I ask leading questions on cross, is that a problem for Mr. Martin?

THE COURT: It is not a problem for me either, so let's go.

Q (MS. LIVESAY) Where did you put his phone after you dug it out of his pockets?

A I didn't dig it out of his pockets, but I don't know where I put it.

Q Don't know where you put it?

A No. That was not -- I don't remember everything -- everywhere I put everything, it wasn't my priority.

Q But you would admit you've seen all of the pictures from the bathroom, you've been here the entire trial?

A Yes.

Q Did you see a picture of his phone in the bathroom?

A Not in any of the other pictures that I saw.

Q Ma'am?

A Not in any pictures I saw.

Q So you agree there is no evidence that you put the phone anywhere in that bathroom; is that correct?

A No. I don't know where I put the phone.

Q But your phone was still in the bathroom, correct?

A Yes, my phone was. I could get into my phone. I called my mom. And just to clear everything up, I didn't have to dial my mom's phone number, I have my mom -- I have to hit her name and it called her. She was in the call log, that is how I called her.

Q While we are talking about what all is going on in the bathroom, it is obvious there is a lot going on in the bathroom, and obviously at some point you left the bathroom with the phone, but also the other items in the bathroom are moving around as well, like the pliers. Did you see every picture we had of that blood spatter; do you remember seeing those around the victim?

A Yes.

Q Do you remember we actually had a blood spatter expert come in and talk about it?

A Yes.

Q Did you see one -- and you can actually tell in the pictures -- do you remember where there is wiping; do you remember that?

A Yes.

Q That woman is very good at what she does. Did

you see one dog print in any of that blood all around the victim, one dog print?

A I saw smears.

Q Ma'am?

A I saw smears. I didn't necessarily look for a dog print.

Q So you didn't see a dog print?

A I didn't look for one.

Q Ma'am?

A I didn't look for one. I had seen where things were in the blood, but -- no, I don't -- no.

Q Nobody saw a dog print?

A Okay.

Q And you didn't see one either, did you?

A I didn't look for one.

Q Let me ask you this, because I thought this was very puzzling to me, and I think I can straighten it out for me and the jury. In the beginning of the 911 tape, you are saying "wrench, wrench, wrench"?

A Yes.

Q And then after the operator says "knife," then you say, yes, he stabbed me with a knife?

A I said he stabbed me. He had a wrench, he tried to stab me, and immediately she said "knife."

Q And, ironically, after that happened, the dog --

now what you are telling us -- was sniffing around the pliers, but never the knife? The dog never --

A He may have, I didn't see him. Like I said, I wasn't watching my dog, I just happened to look over there and he was around them.

Q But whatever went on in the bathroom only entailed, ironically, moving the pliers, which is of course is when you switched your story from pliers to knife; is that not correct?

A Can you ask it again?

Q I certainly can. Those pliers were on the toilet?

A Yes.

Q And you are telling this jury now it was because the dog was sniffing around them?

A Yeah. I was getting ready to pick them up. They were rubber handled, and every dog toy he had was made out of rubber, so I thought he was going to pick them up.

Q. So, ironically, this dog is in the bathroom running around, sniffing around, sniffing around the pliers, but ironically he never sniffs the knife, he never kicks the knife, and ironically that knife stays laying right in his hand; is that correct?

A I don't know if he was sniffing around it or not.

Like I said, I wasn't watching everything he did, I just remember trying to push him away.

Q At some point you got the pliers off the floor and put them on the toilet?

A I happened to look back and he him sniffing the rubber part of the handle, and I moved them.

Q So now -- just so we're all on the same page -- at some point you are getting his phone out and taking it to another room, then you are moving the pliers from the floor on the toilet; is that correct?

A Like I said, I saw my dog sniffing around the pliers, and I picked them up and moved them out of his reach.

Q At some point you are wiping blood off the door and putting that washcloth on the top of the shower?

A I don't know where I put the washcloth, but I would assume it would be a possibility. I remember a brown washcloth, but I was using it to wash peanut butter off David's face.

Q So the picture Mr. Martin showed you, you are now saying that is not the washcloth you used to wipe the blood off?

A I remember having a washcloth. There is several of them in that picture, I don't know which one was used.

Q So you don't know that that is the washcloth?
A I would assume it was one of them. There is several in that picture, I don't know which one you are referring to.
Q Are any of them on the vanity?
A There was one on the vanity, but like I said, the one on the vanity was a light color, and I don't remember. If you notice, it was pushed away from the ledge of the vanity; again, that was typical.
Q So now you are saying that was the washcloth?
A No. No. I'm just saying that was typical for a washcloth to be pushed up away from the ledge of the vanity, so the dog wouldn't get it.
Q So when you pointed out the washcloth on top of the shower to Mr. Martin, the truth is you are not sure that that is the washcloth you used to wipe the blood?
A There was two washcloths on that shower ledge. I remember it being a brown washcloth, but there is two, so I'm not really sure which one you are referring to, but it would be one of the ones on the shower.
Q It would be one of the ones on the shower?
A That is all I seen in the pictures that were taken.
Q So now you have moved his phone, moved the pliers and wiped some blood, and then put that washcloth on

the shower?

A I looked out the window to see if anyone was there yet.

Q But you moved the washcloth, correct?

A At some point I had a washcloth, and I laid it down somewhere.

Q And you are talking to your dad -- talking to Mr. Martin about your dad telling you to wipe the blood off the door; do you remember that?

A Yes.

Q And did you hear the 911 tape?

A Yes, I did. It was very difficult to hear and make out what he was saying. I heard a word in front of that, and I can't make out what it was. All I know is I never heard him telling me to wipe anything.

Q Because I thought your response on the 911 tape was, I already did that? You didn't hear that either?

A I don't recall "I already did that." It wasn't "I already did that," it is something else. And I don't even know what I was talking about. I can't remember everything I said. This was a completely -- this was an event that most people don't have to recollect everything that was said or done, and I can't.

Q Let me talk to you one more time about this phone

because, to me, there is something going on?

MR. MARTIN: Objection, commentary. She can ask questions, but there is a running commentary with it for argument.

THE COURT: Get to the question. You can lead a little bit, but make sure you ask a question.

Q (MS. LIVESAY) This phone, the issue with the phone, to me, I want to ask you because I find it puzzling that you would pull his phone out, hide it and then at a later date wipe all the information off, I found it puzzling, but then since you have been in this case, have you looked at all of the discovery with your attorney, looked at everything with him?

A I don't know if I looked at all of it or not, I've looked at a lot.

Q Did you look at the fact that both David's phone and your phone had been dumped, Cellebrited the information?

A Yes.

Q Do you want me to move so you can look at Mr. Martin better?

A No, I'm looking at you, Ms. Livesay.

Q Did you find out on the Cellebrites that he was recording your conversations with him?

A Yes, I found out last night about midnight.

Q And you recorded some of his, too, correct?
A I recorded one or two, yes, ma'am.
Q It doesn't matter, but both you all you were recording each other?
A Yes, I found out last night.
Q I'm so glad you said you found that out last night, because the fact that you mentioned that makes me think that he was recording the conversation on August the 11th, and that is why you took that phone out, that is why you hid it from the police, and that is why you had to wipe the information off it.
A The police could have gotten the phone that night, they didn't get it. There was nothing to hide.
Q The truth is you didn't have the code for that phone, did you?
A No.
Q So there was no way when this was recording for you to turn it off?
A It wasn't recording.
Q Now, I want to ask you a few more questions about that night. Obviously there was a lot going on before the police got there?
A Yes.
Q There is no doubt about it. You are moving around wiping things down, moving his phone, moving the

pliers, but then the question becomes, was the knife moved -- because all of this has gone on, the question then is basically everything in the bathroom has been moved, and the only piece left to address is the knife. Do you remember talking to Detective Chatfield at the hospital?

A Yes, ma'am, I do.

Q And, in fact, you told him that you moved that piece of evidence, too, didn't you?

A Those were his words, not my own. I just answered "right" at the end with the assumption he was still talking about the possibility.

Q Did you tell him -- and we've already heard the tape. You heard the tape?

A Yes.

Q Did you not tell him that the knife landed inches away from the victim?

A When he was asking me that -- this was the context of what he was saying, It had to have flown way over here and flipped up against the wall or something. Let me ask you this. How many feet was the knife away from his hand? I was like, It wasn't feet away from his hand. And he was like, Well, how many would you say? I remember that knife being in or around his hand so I simply said inches. It wasn't a foot, 2 feet,

3 feet. He wanted an answer, and I answered him.

Q And you said -- just so we're on the same page -- you did tell him it was inches away from the victim?

A Yes. He was adamant that it wasn't in his hand, it had to have been away from his hand.

Q On the 911 tape you said he dropped it?

A Yes, ma'am. When I was doing CPR -- when I was doing CPR and the 911 operator -- while I'm watching my husband deteriorate in front ever me -- the 911 operator says, Where's the knife. She asked where the gun was first, obviously I know where the gun is, I put it there. She asked where the knife was, and I said, On the floor where he dropped it. I looked out of my peripheral vision, saw the knife on the floor, assumed that's where it was. It wasn't all the way in his hand. I assumed he dropped it. I don't know. Frankly, my focus was not where that knife was at the time; I don't think anybody's would be. Everybody is asking me where the knife is. Where is the knife? I don't know, but I'm doing CPR.

Q That is a good question, because it has been boggling my mind. When did you have time to do CPR? You are taking the phone out of his pocket, moving it to another room, moving the pliers, wiping off blood off the door; when is there time to do CPR?

A 24 minutes is a long time to do CPR.

Q It's a long time to do a lot of things.

A Yes, it is. And I don't understand why it took that long, but, frankly, it was out of my hands.

Q Let me ask you this. You go to the hospital. You tell him that you are, the knife was inches away, and that conversation is going on. Now, your attorney has talked to you some bit about how you felt at the hospital; do you remember that?

A Yes.

Q You told him in the beginning when we first started this conversation, you told him that you were upset and hysterical and emotional in the hospital; do you remember that?

A I remember feeling numb.

Q Do you remember hearing your statement from the hospital?

A Yes.

Q You may remembering something I don't. Do you remember even one time while you are in there talking to him ever breaking down and crying and sounding the least bit hysterical?

A Yes. When they left the room, you can hear me crying.

Q Ma'am?

A When they left the room, you can hear me crying.

Q So when the recorder ironically wasn't running is when you became hysterical?

A The recorder was running and you can hear me crying when they left. I knew I had to talk to police officers. My dad said, Heather, you have to get it together. It is clear on the 911 call I'm frantic. But he's telling him, Heather, you have to get yourself together, you've got to compose yourself, you have to talk to a police officer, and, you know....

Q So you talked to the--

A I gained my composure and talked to the police the best I could. I knew I needed to talk to them, yes, ma'am.

Q Would you admit that that recorder is about an hour-and-a-half?

A Yes.

Q So -- at no time during that hour-and-a-half do you break down and cry sounding hysterical, really even emotional, and now you want this crowd to believe as soon as the recorder stops you fall to pieces?

A No. When they left out of the room you can hear me crying on the recorder. You can hear it on the recorder. When they walk out, I'm crying. I'm not screaming.

Q You are screaming?
A I said I'm not screaming, but I'm crying.
Q Oh. This picture, Mr. Martin talked about a lot, State's 95. Were you upset after the police left?
A Ms. Livesay, I was upset for -- yes, I was.
Q But you were not too upset to get on Facebook; is that correct?
A I was helping my dad figure out how to take down Facebook. I was upset. Obviously I was in the mental capacity to talk to the police, I can certainly take down my Facebook page after someone made a derogatory comment on there.
Q Oh, no, I don't blame you, that would be my first priority.
THE COURT: If you have a question, ask it, but don't make comments. I've told both of you -- no. No. Don't do it again.
Q (MS. LIVESAY) After you leave the hospital, a lot goes -- now, after you leave the hospital, you get home. All of a sudden, the victim's phone shows up, and you reset the phone back to factory settings; is that not true?
A I called Apple, that was their suggestion, and they walked me through it, and they reset it.
Q You saw his Cellebrite, correct?

A Yes.
Q And you saw it was only about that big?
A Yeah, I did. I saw it wasn't much.
Q And you heard the messages read off of it, and like you told your attorney, those were your messages?
A You are talking about the lasagna and stuff?
Q Yes.
A Yes.
Q And that was on the 13th?
A I don't remember the date.
Q You want me to refresh your memory?
A What are you asking? What day the text was?
Q Yes.
A Yes, I believe it was on the first.
Q So on the 13th, you are texting your friend from your deceased husband's phone about lasagna and bringing birthday cake?
A They were asking me about if they needed to bring paper products, because someone else was bringing lasagna. They text me that.
Q After you got done wiping his phone, is then when you got on his computer and tried to get into his Apple account and into his E-mail?
A I was trying to put everything on the phone back on it. I had pictures of my child and pictures of us

that I didn't want to delete.

Q Did you hear the guy from SLED testify?

A Yes.

Q So then you heard him tell these people and you that you are up there trying to reset the password? He did not say one word about you trying to put information back on the phone?

A Yes.

Q He testified that you were up there trying to reset passwords to get into that account?

A That is what I had to do in order to put the information back on there. I had to get into the Apple account in order to put whatever he had backed up in his iTunes. I'm not an expert. I don't know how it works, but you have to get a password to get into that account to put everything back on it, otherwise, it is not going to put everything back on his phone the way it was. They told me after I did that that all we had to do is connect to iTunes or Apple, it would put everything back on the phone the way it was before you set it; that is what I was doing. In order to do that, I had to get into e-mail accounts -- I never got into any of them, and you all have everything that was on those e-mails accounts, and so whatever was on there, you all have.

Q Did you need to get into his e-mail as well?
A In order to change the password to his iTunes account, yes, ma'am.
Q Now, this stuff about connecting the phone and the computer, are you sure you learned that from Apple and not from Ms. Pop when she told your attorney?
A No, I don't know who Ms. Pop is, but I don't know the conversations she had with my attorney. I have no idea.
Q Because you testified earlier, few months ago, remember that?
A Yes.
Q And you never mentioned anything about that then.
A I remember trying to tell you that I tried to go there, and they taught me how to reset the phone and load everything back on there. Maybe I didn't go into detail, but that is what I meant. That is what I did.
Q And you now have some pictures of some bruises?
A Yes.
Q And you've told this jury, Mr. Martin, how your daddy went and talked to the police and told them why you wiped that blood up; do you remember that?
A Yeah, I do.
Q He didn't tell the police anything about those bruises, did he?

A He wasn't asked about them.

Q Ma'am?

A I was stabbed in my stomach. I think the bruises were irrelevant. I don't see where that would have to be brought up.

Q Your daddy talked to Detective Chatfield at the end of the month?

A About what happened and the questions he asked me, and there was never any question about any bruises or anything. I could see where that wouldn't come up.

Q So you've heard that interview?

A No, ma'am, I have not. I haven't listened to the interview.

Q You did?

A I did not.

Q How do you know what was brought up in the interview whether or not Chatfield asked him?

A My dad. My dad told me.

Q Now, what I find -- and I want to ask you about these bruises. I'm showing you defendant's 71, 72 and 73. Tell us how those bruises came about two days later?

A Actually, the morning after.

Q When were the pictures taken?

A These pictures were taken on the 13th when I

went back to Ms. Karen Staples' office, and she took these pictures.

Q So this jury is clear, the 11th is when it happened, 12 is the next day and this would be the 13th?

A Yes, ma'am.

Q So these pictures are two days later?

A Yes, ma'am.

Q Now, tell the -- tell this jury how you got those bruises?

A I'm not -- I've learned not to assume. I know they were not there before this altercation, and I will go out on a limb and say it was during the struggle over the phone. I'm not sure. All I know is they weren't there before this happened.

Q So you don't know that this came from the altercation?

A Nothing happened before the altercation and Tuesday morning that would cause these to be here.

Q So they -- these bruises popped up between the altercation and when she took the picture on the 13th?

A They popped up between the altercation and the next morning. When Robert Shelley came to my house, he took pictures that day.

Q But for whatever reason, these pictures came from the 13th, not the 12th?

A Yes. Yes.

Q You have no idea how you got those bruises?

A They were from the altercation.

Q So now they were --

A Assuming that they were during the struggle. They weren't there before, nothing happened the altercation that would cause this.

Q You heard your interview with Detective Chatfield on the 11th?

A Yes, ma'am.

Q And did you notice he was minimizing -- he said those are some scratches on your arm, and I'll call that what you might call a puncture wound; do you remember that?

A Yes, ma'am.

Q So he didn't seem too convinced that your injuries were that severe; would you say?

A I can't speak for Detective Chatfield.

Q You just said earlier you were both confused.

A We were confused -- he didn't know the layout of my house, and I was trying to tell him where we were at when this altercation took place, and the whole time he thought I was talking about the bedroom, and I'm

talking about the bathroom, so that is why I finally drew it out, to limit the confusion.

Q You would agree, when you were talking to him about your wounds, he used the words "scratches," and he said, I guess we'll call that a puncture wound?

A I remember that, yes, ma'am.

Q You do remember that?

A I think so.

Q Do you remember when he is insinuating to you that he thought you placed the knife in the victim's hand?

A Yes. That question was asked quite a bit.

Q And he said, Do you think maybe you shot this guy and said I'm going to get in trouble, and you go and get the knife and put it in his hand; do you remember that?

A Yes, ma'am, and I adamantly said, no.

Q So one would assume from that conversation that he is not bought in on this idea of self-defense; would you agree?

A I don't know what he has bought into. I can tell you the questions what he asked me and what he told me and it was always, No, no, no, no.

Q Throughout the conversation, he is consistently insinuating that your wounds are not severe?

MR. MARTIN: Objection.

THE COURT: Hold on a minute. Hold on. Yes, sir.

MR. MARTIN: What he's insinuating is not relevant, even on cross-examination.

THE COURT: Sustained. Ask what she knows, what he is saying or -- sustained.

MS. LIVESAY: It is relevant because that night when you talked to Detective Chatfield --

THE COURT: Wait. Wait. Wait. It is sustained.

MS. LIVESAY: I understand.

Q (MS. LIVESAY) You didn't have these bruises when you talked to Detective Chatfield, did you?

A I don't recall seeing them. I wasn't looking for bruises. I don't think anybody was. No one saw the wounds on my feet. No one saw all of that. No one was looking for anything. Wasn't looking for anything to document.

Q Would you agree that we saw a picture?

A Yes, ma'am. They asked me to put my hands out to take a picture. I was asked to pose like that so they could take a picture.

Q That was when you were at the hospital?

A Yes, ma'am, on the stretcher at my house. They said I need to take a picture of you, they said do

this, and that is what I did.

Q Tell these people if there were any bruises in that picture -- in either of those pictures?

A In the hospital I had a blood pressure cuff around the same arm, it would have been covered up. I had another hospital gown on my other arm that was draped this far down, so I don't know that you could have seen them or not.

Q Did you see any bruises?

A I couldn't see through the hospital gown or blood pressure cuff.

Q Have you seen the medical records?

A Yes, ma'am.

Q From Grand Strand?

A Yes, ma'am.

Q Would you tell these people if that documented any bruises on you?

A They didn't document that. They didn't document anything on my toes. No one was looking for anything like that. We weren't out to document anything, Ms. Livesay. At this point I'm letting them take pictures of what they want, and I'm not looking to document anything.

Q And at this point you didn't have any bruising, and after you talked to Dr. Chatfield, you had to amp

the story up, and the next day you got bruises and you went back to a family doctor and had these pictures taken?

A No. These bruises were noticed on my arms the next day when we had a visitor. He told me, Heather, your arm is black and blue, we might need to take a picture of that, so that is when we took a picture of it.

Q Which picture -- who took those pictures, these right here?

A They were taken by Karen Staples.

Q Tell these people who Karen Staples is.

A She's a nurse practitioner in Loris that I see. I see a nurse practitioner instead of a doctor.

Q And tell these people whose camera she used to take the pictures with?

A She didn't have a camera in her office. McCleod -- she didn't have access to a camera, so she asked my mom to bring hers, and she took the pictures. But Karen took these pictures, but it was on my mom's camera because they didn't have a camera.

Q Tell this jury who went and got the pictures developed?

A I don't remember if it was me or my mom, but I can't make up pictures. I mean, she took them.

Q And then you and your mom go and get them developed, and tell the jury how they get back to Dr. Staples and her medical records?

A I really don't know if -- I guess I took the pictures to her office.

Q So you go to Karen Staples, bring your mom's camera, you snap pictures, go get them developed, bring them back to Ms. Staples and ask her to put them in her medical records?

A She asked me. That is what she wanted me to do. As part of her care, she said -- she's very thorough and documents everything, and she asked that we bring the camera and take pictures and bring it back and put them in my record.

Q You want these people to believe that she documents everything in a woman that didn't even have a camera?

A The McCleod Hospital didn't have a camera. She wouldn't have brought a personal camera to take pictures of me, no, sir.

Q Do you know Karen Staples' phone number?

A It would be in my contact list.

Q Do you know your dad's phone number?

A Yes.

Q And would you recognize that on this sheet? This

is a Cellebrite from your dad's phone.

A Yes.

Q Do you see where there is a conversation between your dad and Karen Staples about Karen needing to talk to your attorney, Morgan Martin?

A Yes.

Q And tell this jury what date that conversation is going on?

A That was on the 14th of August.

Q So your dad -- your dad is having a conversation with Karen Staples, who took these pictures, about that lady needing to talk to your attorney, Morgan Martin?

A I'm not sure how that conspired (sic). What their conversation was about anything is beyond my knowledge, I don't know.

Q From Karen Staples, I need to talk to Morgan, call me?

MR. MARTIN: Judge, she's asked and answered it.

THE COURT: I don't know the question. Go ahead and ask your question and we'll see. I mean, it is a different question, but I understand.

Q (MS. LIVESAY) You don't know how you got the bruises, correct?

MR. MARTIN: Object. That question was asked and answered four times.

THE COURT: One more time.

MS. LIVESAY: It's fine. She said she didn't know.

Q Something else I noticed, and you have been here the whole trial?

A Yes, ma'am.

Q Your attorney called some character witnesses; do you remember that?

A Yes, ma'am.

Q And one lady was from Spartanburg, who was Lisa Riddle?

A Yes, ma'am.

Q And one lady lives in Tabor City?

A Star Godwin.

Q And one is your Daddy's friend, Ronnie Shelley?

A Robert, yes, ma'am.

Q And these are the three people that he called for you as character witnesses?

A And Katie Brim.

Q And the girl that lives in New Jersey?

A Yes, ma'am.

Q And tell this jury if he called one person that currently lives in Conway to testify about your reputation for peacefulness or truthfulness?

A No, he called people I'm closest with. I'm

closest with my childhood friends and people I work were and keep up with. I'm closer with these people than people in Conway.

Q So you are closer to people that don't live where you live?

A Well, I have a lot friends, but these childhood friends know me better than anybody, people that I would always keep in touch with. I talk with -- and my boss. You know that saying you are closer with your work family than your own family? Like Star Godwin, regardless of where she lived, I was with her every day.

Q But you would agree you lived in Conway all of your life?

A Yes -- well, with the exception of school.

Q And your parents are from Conway and lived here all their life?

A Yes, ma'am.

Q And there wasn't one person that came up here as your friend from Conway to testify to your truthfulness and your peaceful character?

A I mean, we could have, but, you know, we've had four.

Q You have said -- and your attorney has said -- constantly about the fact that David has two exit

wounds?

A Yes.

Q And I want to show you something. These two women are here, and I'll ask them to stand up; do you see where they are sitting?

A Yes, ma'am.

Q Where are they sitting --

MR. MARTIN: Objection, relevance.

THE COURT: Sustained. That's not relevant. Sit down. That is not relevant.

Q (MS. LIVESAY) You also showed some text messages, your attorney did. Do you remember seeing this?

A Yes.

Q You have gotten up here and told these people how David is so ugly to you and cusses you, and this has been so terrible and you felt so threatened, and you all couldn't come up with one text where he was saying ugly stuff to you and calling you ugly names and threatening you; this is what you introduced, something about him and the dog; is that correct?

A This text message is about him losing his temper with our dog, yes, ma'am, and he admitted that.

Q This notebook is part of your Cellebrite report, isn't it?

A I'm assuming. I trust you.

Q You don't know? You want to look at it? It is yours?

A I can look at it before I answer to make sure.

Q See where it says "from," is that your phone number?

A Yes, ma'am.

Q So this notebook is part of your Cellebrite?

A Yes, ma'am.

Q And the only things you could come up with to introduce is that text message about the dog?

MR. MARTIN: Objection. Objection. First of all, she doesn't know what we could come up with. They are in there, she put them there and we'll talk about them.

THE COURT: I mean, they are what they are. Go ahead. Sustain on that.

Q (MS. LIVESAY) Last thing I want to talk to you about is where the gun was.

A Yes, ma'am.

Q There is a picture in here of this drawer, State's Evidence No. 89?

A Yes, ma'am, I remember that picture.

Q Now, we saw pictures of your house. Would you agree that is very clean, immaculate really?

A Yes, ma'am, I'm a very clean person.

Q Yes. And everything has a place, everything is put up, everything is tight and needy?

A We had those drawers that were -- I don't know where to put stuff, you put them in here. We had those drawers. For the most part I tried to keep everything in its place, but it is impossible to have a place for everything. You have those odds and ends you don't know what to do with.

Q You want these people to believe that you moved a gun from a safety box to a drawer in the bathroom full of Q-tips and dental floss and some old remotes?

A It is a drawer that I put stuff in. Yeah, I'm not a hundred percent sure that everything in that drawer was in that drawer that night. That picture was taken four days later.

Q So you thought it was safer to move it from a box that is made to keep a gun in a safety box, to a drawer full of tooth floss and Q-tips?

A I have several reasons. One was for child protection. I didn't like the idea of it being in a bottom drawer of the nightstand, and I wanted to move it. I didn't have a place to move it to, so the bathroom is -- normally the door is shut unless I'm in there, that seemed like -- and my dad keeps guns in his

bathroom, so that just seemed like, you know, keep it in there. My husband was never home until late in the evening after dark, and after J.D. went to sleep, I would take a bath, and I was in that house by myself, so that is the other reason I put it in there.

Q Let's talk a little bit about your wounds.

A Yes, ma'am.

Q Let me see if I can -- I put my pictures here but they got jumbled around. Do you see this wound on your thumb, State's Evidence No. 95?

A Yes, ma'am.

Q In the beginning of your interview with Chatfield, you said this is from where you put your hand up, and then you said, yeah, it could have come from the slide of the gun.

A They were introducing possibilities where it came from, and I guess it is possible. There is a lot of possibilities. I don't have a videotape memory of everything that happened, but my answer was it came from the altercation, and then, well, that looks like it could have been this or that, and for the sake of argument, yeah, I guess it could have been.

Q What was it from?

A From the altercation. It possibly was from the gun slide. All I can tell you is after this

altercation, before I reached for the gun, I had blood on that hand, and that is how the blood ended up on the gun.

Q So you are telling these people that this did not come from the slide of the gun?

A I'm telling them I'm not a hundred percent sure where it came from, but my hand was bleeding before I went for the gun. I never shot a gun and had that happen.

Q So you are not sure?

A I'm not sure.

Q And you are not sure where the bruises came from?

A They weren't there before, and nothing happened afterwards that would cause them. That would have been the only reasonable answer for where they came from.

Q And Mr. Martin talked a lot about what you do for a living?

A Yes, ma'am.

Q And you make a lot of money doing what you do for a living; is that correct?

A Yes, ma'am.

Q And the house was in your name?

A Yes, ma'am.

Q Both phones were in your name?

A Cell phones? The account was in my name.

Q So that means you had control over both phones, you could cancel a line if you wanted to?

A Yes, ma'am.

Q And you were, by far, the bread winner in the household?

A Yes, ma'am.

Q And your family was the one from Conway?

A Yes, ma'am.

Q And you all lived right across the yard from your mama and daddy.

A Yes, ma'am.

Q And that was daddy and mama's land?

A That was my grandfather's land.

Q Okay. It was family land?

A It was family land.

Q Now, these pictures, let me ask you, you put people to sleep for a living?

A Yes, ma'am.

Q And you do that so people can perform surgery on them; is that correct?

A I do that for several things. There is endoscopies, surgeries, spinals, epidurals, labor patients, several reasons that people need anesthesia, patients in the ER.

THE COURT: Okay. Ladies and gentlemen, take a

break. I'll give you 10 minutes. We went longer than we thought we would. Don't discuss the case.

(The jury exits at 4:18 p.m., and a recess was taken.)

THE COURT: How much longer do you have so I can guesstimate?

MS. LIVESAY: Sir, just two questions and I'm sitting down.

MR. MARTIN: Here's some charges.

THE COURT: Bring them in.

(The jury enters at 4:38 p.m., and the following is heard in the presence of the jury.)

THE COURT: That is exactly how we do it, get my attention and we break. Go ahead.

CROSS-EXAMINATION (CONT.)

BY MS. LIVESAY:

Q Did you look at the medical records?

A I believe I did.

Q How many stab wounds or puncture wounds does the medical records say you have?

A Sorry, I'm finding it. Okay. Two stab wounds in the left, upper quadrant.

Q And you have seen that shirt from the 11th?

A Yes, ma'am, I've seen pictures.

Q And it only has one hole?

A Yep.

Q And on the day of his funeral, you heard Allyson testify that you all were at Red Lobster and looking for you a phone; is that correct?

A Yeah. At that point the police were coming to get David's phone that I was using, so I just went and got my own.

Q So she was telling the truth, the day he was getting buried, you were going out to lunch and shopping?

A It was her birthday and mother's, so she wanted to go to Red Lobster to eat, and while at Red Lobster we went and got a phone because I wasn't going to have mine.

MS. LIVESAY: No further questions.

THE COURT: Anything on redirect?

MR. MARTIN: Just a couple.

REDIRECT-EXAMINATION

BY MR. MARTIN:

Q Was it your idea to go have lunch that day, or was it your family?

A They were trying to get my mind off of everything, get out of the house.

Q What was your mind on, Heather?

MS. LIVESAY: Your Honor, does he want her let

her testify or --

THE COURT: Go ahead.

A I can remember that day well, and it was their idea to go. My mind was not my friend's birthday or my mother's birthday. I had completely forgotten my mother's birthday until that day or the day before, and it was their idea to go.

Q Karen Staples, you saw Karen Staples on the day after this happened?

A Yes.

Q And the pictures that we've introduced in evidence of the bruises on your arms and knees and thighs were taken on August 13 by Karen Staples?

A Yes, they were.

Q And did you go beat yourself up or bruise yourself up to do that so you can --

MS. LIVESAY: I have an objection. It's been asked and talked about in direct.

THE COURT: I'm going to allow you to answer that, it's just on redirect.

MR. MARTIN: Briefly.

Q (MR. MARTIN) Did Ms. Staples also treat you for an infection?

A My stab wound got infected, like I said earlier, at the hospital it was --

MS. LIVESAY: Your Honor, just for the record, I have an objection because it is outside of my cross.

THE COURT: Okay. Overruled.

A Typically, and I know this from nursing experience, if you have a dirty object into your abdomen, or anywhere else for that matter, you don't stitch it up. You want it to drain. I, in fact, got an infection and I had to go see Karen Staples to get an oral antibiotic.

Q (MR. MARTIN) And the hole in the shirt -- and it's here, and somewhat torn -- tell the jury what you know about the hole in the shirt.

A When I realized I had blood on my shirt, I looked down and I felt around and felt a hole, and instead of lifting my shirt, I remember doing this, I pulled and tore it to see what was going on, how bad that wound was. For whatever reason, I didn't lift my shirt up.

Q The medical records -- the entry by Dr. Sciarretta, who has not been called by the State as a witness, talks about two wounds of similar size; does it not?

A Yes.

Q Was that accurate?

A No, sir. No, sir.

Q How many stab wounds did you have?

A I had one. I had one, that was all I ever had. I had one.

Q That is what the EMS guy says?

A That is what the EMS guy said.

MR. MARTIN: That is all I have.

MS. LIVESAY: I just have one question on that, Your Honor.

THE COURT: No. No. No. You can step down. Any other witnesses?

MR. MARTIN: That's it. Defense rests.

THE COURT: You heard the defense's case, and so I'll send you back. I have to hear certain motions. Mr. Foreman, my intention is -- you all have a couple of witnesses?

MS. LIVESAY: I do.

THE COURT: We have a couple more witnesses in rebuttal. My intention is to give you a break, hear the motions and keep going. If that bothers anyone, if you would, poll the jury and let me know. I can't say I'll do what you want me to, but it helps me know.

FOREPERSON: Yes, sir.

THE COURT: Thank you. You can take them down. This will take 15 minutes.

(The jury exits at 4:44 p.m., and the following is heard out of the presence of the jury.)