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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Judge

Appellant Case No. 2019-000533
Case No. 2016-CP-26-00652

Larry T. Chestnut, Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX
VOLUME II

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hallway?

A. Well, if I didn't tell them, then it's just probably because I was thinking about so many other things that had happened. They -- they were asking about so much stuff, and my brother, and told me that my brother had been stabbed ten times, and I'm not really remembering one thing from the next.

Q. Well, now, this is five days later. This is not the night of the incident. This is five days later that they're having this conversation with you. In fact, ---

A. Okay.

Q. In fact, Ma'am, did you not also tell them at that time that at that moment when he pushed you against the stove and you're in the kitchen, that Cindy, your sister, comes in and hits him with a shoe?

A. No.

Q. You didn't tell them that?

A. Not -- they didn't -- I mean, if I said that, it was just speaking. I talk so fast, and so a lot of things is jumbled up. That's not how it happened. Me and Ty were in the kitchen together and we were having a conflict, and he kind of pushed me up against the stove. No one had seen that. Cindy didn't see that. No one seen that.

Q. That's right, because if you're in the kitchen, if you're in the kitchen when this altercation takes place,

nobody who's in the living room can see it?
A. Correct.
Q. So it's important now that it be in the hallway, that there be a second incident in the hallway because then somebody could possibly see it, because if it happened in the kitchen, as you testified to ---
A. I didn't want anybody to see anybody ever hit me. Why would I ever want to cause something for some grown man to hit me? Why -- I'm eight months pregnant. Why would I want a grown man to come and hit me?
Q. We're coming to that. Let -- let ---
A. But why would I want to do that?
Q. Just let me ask you this: At some point in time, you told the police on your -- on your May 26th statement that Ty says I'm not taking any of this -- and you used an expletive, and you said he said this word, and I'm leaving, isn't that correct?
A. I just remember him walking in there, and I'm leaving. I'm going to get Tynesha, and he walked out the door. He never had to turn around and come back.
Q. He walked -- he was walking out the door to leave, to go get his daughter who was on the couch in the living room asleep at that point in time, ---
A. Okay.
Q. ---. isn't that correct?

A. Yes sir.
Q. All right. And, now, you are still in the kitchen at this point crying, is that correct?
A. Yes sir.
Q. And your sister comes in because she hears you crying?
A. It wasn't because she heard me crying. I think they were wondering where I was. Like Ty had already gone to the living room, and I remember her and Joey -- because she didn't -- they didn't know I was crying, because Joey didn't say, oh, my God, why -- Christie, why are you crying? He didn't even -- wasn't even aware of it, and he was just was walking in and, I mean, I don't know what they were thinking at the time.

Cindy came in and I had told her. Cindy didn't know anything until I mentioned to her that -- I don't know if I -- you know, Ty had just -- I don't know exactly the words whatever I told to her, but I know she didn't come in there because she heard me crying. They were looking for me, I'm sure.

Q. In your May 26th statement to the police, to these officers, did you tell them that after he pushed you against the stove, Cindy hit Ty, then saw her sister hit the floor?
A. That's what happened, but not like that. She came in there and we were talking, and then Ty -- I was heading towards the living -- Cindy and Joey started talking. I was

fine. Joey was like did I do something wrong? I'm like no, Joey, and I was walking towards the living room, and that's when Ty kind of -- me and him somehow met right there in the center.

Q. Let me show you this -- let me show you what's been marked as Defendant's -- I guess this is State's Exhibit Number 10. Take a look at that.

A. Okay.

Q. Now, that's a photograph of your hallway in your house, is that correct?

A. Yes sir.

Q. The hallway that leads to the kitchen and which is where you're saying that the second alleged assault of you took place, right?

A. Yes sir.

Q. And, now, in that picture, if ---

MR. WILSON: May I approach the witness?

THE COURT: Yes sir.

MR. WILSON: I apologize, Your Honor.

THE COURT: It's all right.

Q. Just on this picture, show me where the dishwasher would be.

A. The dishwasher is back this way.

Q. Back this way. How many feet would you say?

A. I mean, the kitchen isn't very, very big, but it's --

it's a good little distance this way, though.
Q. Okay, a good little distance, and if -- if y'all are in the hallway having this second assault and your sister gets punched, what your testimony is, is that she got punched all the way from this area all the way to the back of the kitchen where you say -- show me on here where your dishwasher is.
A. Let me see it.
Q. Wouldn't it be over here? Wouldn't your dishwasher be right in here somewhere?
A. No. The dishwasher is right here. Here is the door. The dishwasher is like right -- this is the -- the dishwasher is a little thing right behind the door. When you open up my door, there's a dishwasher here. There's a washing machine and dryer here.
Q. Okay.
A. Cindy was there. She went ---
Q. All right. So he knocked her from here, from right in here, ---
A. There's the door. The door ---
Q. --- to -- past this door, past the second door ---
A. There's not a second door. There's only one bathroom door. There's the hallway. There's a bathroom door, and there's my laundry room little section, and then the kitchen door. There's not a door -- multiple doors.

Q. All right. Now, my understanding is ---
A. I'm confused. Like on the pic- -- like if I can show you like on ---
Q. This is State's Exhibit 10 that you're referring to.
A. Okay. This is the hallway thing right here. There's only one door. That's my bathroom door. She went from like right here all the way past this -- there's a bathroom -- a wall, there's a bathroom, and then there's a little cut-out that I had painted where my washing machine and dryer is, and a little bird is up in it. It's kind of long, and then there's the door. Like she went past the door and a laundry room.
Q. Okay. And -- and -- but that's not what you told the police on May 26th when you had your conversation with them? You told them ---
A. Well, I know I told the police she got hit and she was flung across the room. That's -- that's for sure.
Q. You told them that she fell -- that he -- that she came in, she hit Ty -- well, let me ask you about that first. Did she hit Ty with something?
A. I remember seeing a shoe, ---
Q. All right.
A. --- and a little -- I remember looking back and Ty was on the floor, and she did have my little monkey thing from Barbados.

Q. All right. And before we go any further, let me ask you this because the Solicitor never asked you this.
A. Okay.
Q. Did you have one single bruise on you that night, one, that you showed to the police?
A. I'm not sure.
Q. Did you tell the police about any bruises?
A. No.
Q. No. And did they take any pictures of any alleged bruises on you?
A. They -- I think they did take pictures. They made me change clothes, and they -- I remember they wouldn't let me in the house to go get clothes, and they made me take off my clothes, and they were doing -- I don't know what they were doing.
Q. They made you take off your clothes because they wanted to examine you to determine if you had any injuries whatsoever, didn't they?
A. Uh huh **(indicating positive)**, I'm sure.
Q. And not one single bruise anywhere on you that night?
A. It wasn't about the bruises. It was about the fact that someone shouldn't ever grab you and do any kind of touching to someone pregnant, not pregnant, man or woman. You just -- you don't do that anyway. Bruise or not, it wasn't about the bruise. It was about the disrespect in my

home and -- it's not about a bruise.

I can hit somebody right now and they'd fall to the floor. They might not have one bruise, or somebody could barely hit me right now on my leg and I could have the biggest bruise in town and it would look like someone literally slaughtered me to death, ---

Q. Well, what ---

A. --- and it could be so simple, you know what I'm saying. I could stump my toe right now and it would look like somebody has just killed me to death.

Q. Now, Ma'am, that night you were upset with Ty, no question about that?

A. Uh huh **(indicating positive)**.

Q. You were upset, and ---

THE COURT: You need to say yes or no, Ma'am.

A. Oh, oh, yes sir.

Q. And so when he -- in fact, when he -- that night you were so upset after you saw the card, and he didn't write the card, did he?

A. No sir.

Q. All right. And, in fact, he didn't make any big deal about the card whatsoever and actually allowed you to see it, didn't he?

A. I'm sure no man wouldn't.

Q. But you was freaking out about it, and you were upset ---

about it, and when he left to go to the club with your brother and his friend, the more you sat there, the more upset you got?

A. No. Actually I didn't even see the card then. I had ordered food, and then I was just sitting there like, oh, I'm curious. I'm going to read this card, and then that's when I opened it. I didn't even -- I really am not the snooping type. I trusted him, and I didn't think there was going to be anything, and when I opened it, I was like it's a whole 'nother can of worms. It was like how naive am I, kind of. I mean, why would someone send this?

Q. Ma'am, didn't you tell the Solicitor earlier that you were so upset that you called your sister ---

A. I did call Cindy.

Q. --- and told her about it, and then had her come over to your house because you were so upset, and that she and her boyfriend came over to the house and y'all -- that's what y'all were discussing for that whole half hour, or forty-five minutes, or hour, or whatever it was between the time they got there and the time Ty came back from the club, y'all were discussing whether or not to kick him out of the house that night?

A. That wasn't an option. He was going to have to leave, and we talked about other stuff.

Q. That's what I'm saying. Y'all were -- y'all were

planning that when he was gone and ---
A. I was planning that.
Q. --- and you, and your sister and her boyfriend, and you wanted them there to make sure that you could get him out of the house? That was what the plan was, wasn't it?
A. Not really to make sure to get him out of the house. If I wanted him to leave, he would have to leave period, but, I mean, they just so happened -- I never called Cindy to come over and say hey, you know, I need help getting my boyfriend out of the house. I don't need help to get him out of the house. My brother would have been there, and Mo was there. I didn't need any sister or anybody to come and help me do anything.
Q. Do you deny ---
A. She -- she was there, and they just so happened to be there when Ty and them came there. Cindy could have left five minutes earlier and missed them, and then they wouldn't have been able to do anything. You know, she just so happened to be there.
Q. Do you deny that you told the detectives that you called your sister ---
A. I did call Cindy.
Q. Let me finish my question -- that you called your sister because you wanted her there to make sure that he left the house?

A. Not really in the terms like that. I was just was hoping she would come over and hang out with me, and see me, and just make sure that it didn't -- anything would happen or he was going to be mean to me or anything and ---

Q. And so she came, and that -- you said y'all ordered -- you had already ordered pizza or something?

A. Yes sir.

Q. And y'all were sitting down, and y'all were discussing -- you were telling her how upset you were about ---

A. The card. Look at it. I mean, if you seen it, you would be ---

Q. And she was encouraging you to get him out of the house? She wanted him gone, too?

A. Cindy -- she wasn't encouraging me to do anything. She was like, you know, I'll call Joey. You know, maybe Joey can just -- we was trying to do -- I don't try to encourage anybody else to hurt anybody. I want to do everything in the nicest possible way.

Let's call Joey and see if Joey will just take him on and drop him on off, maybe by his daddy's house, or dropped him off at a car, you know what I'm saying, and let them -- them off tonight, let them do whatever, let me have my night to think about what's going on and make it very easy. I never planned on somebody coming and, oh, let's just get him out of the house. It wasn't even like that.

Q. You -- you wanted him out of the house that night because you were upset, and you had your sister there to try to help you get that accomplished. When Ty came in, you were already ready to jump him about the card and about putting him out of the house?
A. I was going to speak to him about it, not jump on him about it. It was like, Ty, hey, we've got to talk about the card, but he was already upset about the card -- not the card, but he was upset about money being gone, so it kind of made the situation worse, but I was just going to simply talk to him, and he was -- if I asked him to leave, he was going to have to -- he would leave, ---
Q. All right.
A. --- and he didn't.
Q. And would you agree with me that -- that your memory about all this stuff would have been better on May 26th than it is six years later about what happened?
A. I don't think it's any better. I, you know, -- I remember certain things then, and when I look back now, I kind of think about things differently. I mean, I was pregnant. I ---
Q. And, Ma'am, there's no question that you would not have intentionally lied or misled the police when they were talking to you about your brother's death back on May 26th, would you?

A. No. Why would I?
Q. All right. And so anything you told them in that statement would be true, right?
A. I'm sure.
Q. Okay. And if that conflicts with what you're saying now, which version do you think is the correct one?
A. Whatever one I -- what I remember. I know certain things I remember.
Q. Now, is there -- let's be clear. Is there any question in your mind that Cindy, your sister, who testified in this trial, hit Ty with some object before he struck her? Is there any question about that?
A. Before he struck her?
Q. Yes, before ---
A. No, she didn't hit him. She -- she might have touched him, like, you know, hey, in a startled way, but it was never like bash anybody. I mean, we -- I don't even -- she never tried to hit anybody with glass, like, get off of her, like we -- I don't even have rage like that.
Q. Do you deny that you told the police on May 26th that she hit him and that he knocked her down?
A. I don't know. I think she did eventually hit him, but not first, I mean, not like any crazy way.
Q. It was before she got knocked to the ground, that's what I'm asking you?

A. She didn't hit him like go get something and like bash his head in and hit him. She just like simply touched him. Cindy ain't able to sit there and like punch people. She ain't going to do that.

Q. She didn't have a baseball bat or a knife, which she ---

A. She didn't have anything that was going to harm anybody that severe, you know what I'm saying, like a grown man can -- wasn't going to hurt him.

Q. And you weren't harmed? Ain't no question about that, is there? You were not harmed that night, were you?

A. Thank God.

Q. Okay. And, now, let me ask you another question. Is there any question, any question, that your brother, Joey, was the first person to have a weapon that night, any question about that in your mind?

A. It wasn't about a weapon. He didn't keep a weapon.

Q. That's not what I asked you.

A. It was a gif- -- it was about the rage and the violence that was going on in the house.

Q. And ---

A. It wasn't ---

THE COURT: Mr. Wilson.

MR. WILSON: Yes sir.

THE COURT: You let the witness answer. Then you can

ask another question.

MR. WILSON: Yes sir.

THE COURT: Thank you.

Answer your question, please.

A. What is it? Well, I don't know if your two -- two dukes include a weapon, too, because everybody had them, too.

Q. My question was, any point in time that night, was there anybody in that house with a weapon before Joey, your brother, pulled that knife?

A. What do you consider a weapon? Do you consider the hands and that a weapon? I mean, vio- -- is that considered a weapon, or are you talking about like an object?

Q. Let me show you ---

MR. WILSON: May I approach, Your Honor?

THE COURT: Yes sir.

Q. Let me show you this -- take a look at that.

A. Okay. Yes.

Q. Do you recognize that?

A. I mean, I didn't at the time. It was something that was given my brother for a Christmas present.

Q. Okay. Who gave it to your brother?

A. My sister.

Q. Which sister?

A. I'm -- I think Beth or -- or Martha. I'm not sure.

Q. Okay. And that would have been Christmas prior to

this incident, which would have been six months earlier?
A. Probably, yes.
Q. Okay. And what is that object that she gave him?
A. It's a little pocket knife.
Q. A pocket knife. Now, let me ask you this: Were you present when Ty was stabbed or cut with this little pocket knife that you've described?
A. Yes sir, I was.
Q. And at that time, was Ty -- did Ty have any weapon whatsoever in his possession when your brother stabbed or cut him with that little pocket knife that you've described?
A. He -- he didn't have anything.
Q. He didn't have anything. And there is no question that during this altercation, your sister, Cindy, your brother, Joey, Cindy's boyfriend, Moke, they were all in the kitchen on the floor at some point in time when this was going on, true?
A. I'm sorry. I don't know -- what did you say?
Q. My question was ---
A. I know that I was in the living -- I was -- I remember Moke getting through Mo, and the only other thing I remember is being in the living room and I remember I was standing by Joey, and he looked really scared, and I remember Ty just came in there and he was moving really quickly, and he was like don't mess with my sisters, man, like really

nonchalantly, and Ty goes or what, and that's just -- and that's all I heard. And Tynesha and Chapell were -- I've got to get them upstairs.

Q. Let me ask you about this, Ma'am. I understand this is your brother and he's your younger brother, and this is obviously an awful tragedy. Your brother that night had been drinking, too, had he not?

A. I can't say he'd been drinking. He was a little bubbly, but I can't a hundred percent say -- he didn't drink any alcohol in front of me. Now, whatever they -- if they did drink, only them two would know if he did drink because he didn't drink any alcohol at my house.

Q. So you don't ---

A. The keg was tapped. There wasn't anything at my house.

Q. So you don't know whether or not your brother had been drinking?

A. I can't say for a fact. He was bubbly, but I don't know if it was because -- if he was just happy because he had went to the strip club or if he was drinking. I don't know.

Q. Well, but you do know that your brother, and Ty, and Mo had gone out to the clubs, hadn't they?

A. Uh huh **(indicating positive)**.

THE COURT: You need to say yes or no, Ma'am.

A. Yes sir.

Q. All right. And what you're saying, though, is you don't know if he had any alcohol, and if so, how much?
A. No, I don't know. I mean, I'm sure, you know, he'd like to try, but, I mean, if he did, he did. If he didn't ---
Q. Well, did he act like he had?
A. He was with Ty at the time.
Q. Did he act like he had been drinking to you?
A. I didn't really notice -- it wasn't like, oh, like -- probably not. He just came in and he was real- -- he was just really happy, but that's how Joey always is. It wasn't really that much of a difference, you know what I'm saying. I could tell that Ty and Mo had been drinking, but Joey is always kind of giddy. I mean, I'm sure he probably had a beer or two, but he wasn't drinking like heavy liquor, and like falling over. He was perfectly fine to me.
Q. Okay. Now, at some point in time I think you told the Solicitor that you saw Larry Chestnut, that is Ty, with what you believed to be a pair of scissors, is that correct?
A. Yes sir.
Q. All right. And that you believed that those scissors were scissors that you kept for cutting purposes in the house, around the house?
A. Yes sir.
Q. And that you believed that those scissors were

normally either in the kitchen area, either in one of the drawers or on the counter somewhere, ---

A. Yes sir.

Q. --- is that fair?

A. Yes sir.

Q. And, now, tell us at what point in time -- is this after Ty had already been cut or was this before he was cut?

A. It was after.

Q. It was after, so he had already been cut. Now, when he was cut, did you see Joey cut him?

A. Yeah, but Joey didn't -- Joey wasn't trying to cut him. Joey didn't even want to hit Larry. He was scared to death. He was like don't mess with my sisters, man. He didn't want to use it. Just when he went back, he went like he went back, because he was going backwards, so he was flying back. Larry just punched him, and Joey was like going like that.

Joey didn't like stab him or like -- you know, like it wasn't even like that. Joey, he was so -- he was like don't mess with my sisters, man, because I was like standing there the same -- you know, just -- he was just trying to ward him off, like, hey, man, like leave, because they -- you know, he was good friends with Ty. You know, he didn't -- you know, he just was simply -- he was just going to walk out the door, and Ty just said or what on him, and he -- he went to punch

Joey, and it was just like a natural reaction, like uh, and he went back like that, and Ty's shirt was cut, and I remember seeing the shirt cut first, and then Joey -- your brother cut me, and he took his shirt off, and he was bleeding on the chest.

Q. And Ty ---

A. And Joey was -- I'm sorry.

Q. That's all right. Go ahead.

A. That's it.

Q. And Ty -- after Ty was cut, you were standing there. How close were you to your brother and to Ty ---

A. I was right there with them. I was standing directly beside my brother. Ty was like -- when he came from the kitchen, just like he was facing -- you know, like he was going to go -- like heading towards the door, but he was facing in front of him, at me and Joey.

Q. Yes Ma'am. Just -- just let me finish my question. What I was simply going to ask you was at the time Joey cut Ty with the knife, how close were you to Joey (sic) and your brother?

A. Pretty close. I was right beside Joey.

Q. Where? Where in the house did this happen?

A. I remember being in the living room and I saw Joey ---

Q. Show me on ---

A. --- standing near the stairs. I remember standing by

the stairs, and I was standing next to Joey, and he had a little teeny pocket knife in his hand, and Ty came in and he was -- and Joey was like don't mess with my sisters, man, because it was a -- it was a rage, like it was enough that somebody would -- I'm surprised at this point it wasn't even -- even stopped.

I can't believe that Mo and Moke never even dragged his ass from out of the kitchen and took him out in the back yard, you know what I'm saying, and got him on out of the house. How he even still was losing -- or even still went to the living room, I don't even know how he even still was -- loose, like how -- how was this even possible? I didn't think anything -- he was going to do anything, and the next thing I know, he's just like what, man, and just bam, and Joey's having a reaction, because he went back and went like that.

Q. Well, do you know how many times Joey cut or stabbed Ty?

A. I just seen one.

Q. Do you know it was three?

A. I had no clue. I didn't -- I just -- I seen the one. That was -- it was like he was just ---

Q. Show me if you would, please, Ma'am. Now, just if you would, Ma'am, show me where it was that you, Joey, and Ty were all standing when Joey cut Ty the time that you saw it.

A. We were in -- I remember we were in the liv- -- not by the highway. We were in my living room, like where's the front door -- it would be this -- we were -- I guess I need to stand up.

Q. All right.

A. Okay. Like there's the back door. Our stairs, here they go down, and we were just right over here in this area. I remember Joey was just standing.

I don't remember if -- I know he was over by the stairs, and we were -- he was standing there, and I remember just stopping by him, because Joey was fairly big and I couldn't -- I didn't go any other way. I just kind of walked -- and once I walked through this little hallway thing, Joey was just kind of in this area. He was standing there, and Ty came in front of him, and Joey was just like don't mess with my sisters, man, and da-da, and it just -- as soon as he was saying it, just the punch was out at the same time.

Q. So you're saying that when Ty was cut, that Ty was cut in the living room?

A. He was cut in the living room.

Q. Not in the kitchen?

A. I don't know whether he ever got cut in the kitchen. I know that when I was in the living room, he got cut in that living room.

Q. Okay. So ---

A. Him and Joey got in a brawl. They were -- they were arguing right there in the living room.

Q. So if they got -- if they had the argument and the fight in the living room, when was it that Ty gets into the kitchen ---

A. I don't know how Ty got to the kitchen. At this point after he took his shirt off and was cut, I remember seeing -- looking -- because where Ty was standing, Tynesha and Chapell -- the couch was there. They were sitting there. I mean, they were so teeny then, and they were looking at me, and I was like I got to get the girls upstairs, and I grabbed the girls and I took them upstairs.

I never stopped to see anything else that happened, like if I assumed it wasn't going to escalate to anything else, and when I come back downstairs, there wasn't anybody in the living room. I don't -- to that point, I don't know what happened or how Ty got to the kitchen. I just remember when I came back downstairs and I seen Joey, he was in the kitchen.

Q. Did anybody ever say to your brother, Joey, even after he cut Ty for the first time, put down the knife, Joey?

A. No. There wasn't anybody else in there. I don't know. I didn't remember -- I didn't wait to see. I just assumed Ty was going to leave. I don't -- I just got Tynesha and Chapell. I was scared to death for them, and I took them

upstairs.

Q. But there's no question, there is no question, that you knew, you knew that your brother had cut Ty?

A. Yes.

Q. And even at that point, you don't say to your brother, hey, stop, put that knife down?

A. Because he was on the floor.

Q. And Ty takes off his shirt and he's holding his chest because he's bleeding profusely, isn't that true?

A. I don't know if I'd say that bad. I mean, he was cut, and I remember he just said his chest was cut. He was like your brother cut me. I don't remember it ever being like that -- that gruesome at the time, you know.

Q. Well, now, you know that Ty went to the hospital, don't you?

A. Yes sir.

Q. And you know he stayed in the hospital for how many days?

A. I don't remember. I mean, I know he was there for a while.

Q. For a long time, wasn't he?

A. At the time, I didn't know -- oh, okay, you've got internal injuries, and you're hurt, and you've been stabbed. Like, I didn't know that. I mean, I knew he got sliced. I mean, I'm never thinking that this is -- us lay people are

divert -- like I'm assuming like let it be over, like go -- I didn't know -- I didn't even knew that it was like some kind of like everybody is going to the hospital type thing. I'm not thinking that. I'm hoping that he's got a little slice or whatever, and he's -- it's got stopped, and he had to go.

Q. Ma'am, if I could, please, that night, you said that at some point in time when you came back into the kitchen, your brother was in the kitchen standing near the door. Ty was in the kitchen standing kind of in the middle, and then Mo was on the far end of the kitchen, but the three of them were in the kitchen. There was nothing going on at that time. This would have been after Ty had been cut, is that correct?

A. Yeah, when I walked in the kitchen. I don't remember them all -- I think they were like yelling and -- they were arguing, but I don't remember seeing anybody hitting each other.

Q. Okay. Nobody is hitting anybody, and at that point, you get your brother to go outside?

A. Yeah. He was standing right at the door.

MR. WILSON: Your Honor?

THE COURT: I'm sorry. All right.

You have a note? All right, sir.

Bailiff, come over here and get it.

Thank you, Ma'am.

All right. We'll take a break for five minutes.

Everybody else remain seated.

Five minutes.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: We'll be at ease for five minutes.

Ma'am, you may step down, and you may not talk to the Prosecutor.

Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready for the jury?

MS. LIVESAY: Yes sir, Your Honor.

THE COURT: Mr. Wilson?

MR. WILSON: Yes sir, Your Honor.

THE COURT: And where is Mr. Long?

MR. WILSON: I think he went to the men's room.

THE COURT: Well, that's why we took the break.

Are you ready for the jury, Mr. Long?

MR. LONG: Yes sir.

THE COURT: Ask the jury to come in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Wilson, you may continue, sir.

MR. WILSON: Thank you, Your Honor.

CONTINUING CROSS-EXAMINATION BY MR. WILSON:

Q. Now, Ma'am, we were -- when we left, we were talking about the fact that you said that you were present when you saw your brother actually cut or stab Ty ---

A. Yes sir.

Q. --- that night?

A. Yes sir.

Q. And once that stabbing occurred, Ty then takes off his shirt, correct?

A. Yeah -- yes sir.

Q. And he has no weapon in his possession at that point in time, is that ---

A. No, but he had punched my brother in the face. Joey didn't just slice him. Joey had his hand down, and Ty -- Ty hit him, and that was like -- it wasn't -- because Joey just -- he was standing there and I'm just going to cut you, because, you know, it wasn't -- it didn't happen like that. He hit Joey in the face. If that's considered a weapon, I'm not sure, but it was -- Joey didn't just cut him and Ty is standing there and he's just bleeding because no incident had happened. Something happened for that to happen.

Q. Did Ty ever strike your brother before your brother pulled out the knife at him?

A. No, but Joey didn't have the knife at him. He wasn't

pointing it at him. He had it down by his leg. He wasn't holding like a knife out like I'm going to -- you know, don't hurt my -- it was down below his leg.

You couldn't even -- I didn't even honestly see it until it kind of like just happened. I was like -- it was surreal, and Joey is so big, and his hands are so big. The knife is as big as his hands, you know what I'm saying. His hands -- he's big.

Q. Joey is big. In fact, Joey was what, six foot tall, three hundred pounds?

A. Yeah, ---

Q. Okay.

A. --- five-nine or ---

Q. And Ty was what, five ten, a hundred and fifty pounds?

A. You could say that.

Q. Yeah. And Joey is standing there with a knife. You see the knife. Where is your sister, Cindy, at that point?

A. I don't remember seeing Cindy.

Q. Where is her boyfriend, Richard Day, standing?

A. I don't remember seeing Richard Day or Mo. Mo, Moke, or Cindy, I don't remember seeing them. I just remember seeing Joey, and I was beside him, and Ty had walked into the living room.

Q. Where is Mo at that point?

A. I don't know.

Q. So there's nobody there except the two of -- the three of y'all, and your brother has got a knife, your boyfriend gets cut, and even after your boyfriend gets cut, you don't try to get the knife from your brother?
A. No. Joey was like on the floor. I don't know -- I mean, Joey -- I didn't have to worry about getting the knife from Joey. He isn't out to stab or hurt -- he ain't going to hurt anybody. I don't have to worry if he's going to get up and start stabbing or hurting anybody. He's on the floor, and Ty is choked. He was just standing there. I just remember seeing Tynesha and Chapell, and I just -- main -- my main thing is these are two grown men. I had to get these kids upstairs.
Q. Okay.
A. It didn't seem that serious, I mean, like -- to me. I -- the kids was the main -- my main concern, is getting the two children upstairs.
Q. Okay. Now, you're saying that Joey is on the floor? Is that what you're saying?
A. He fell back. I don't -- I don't know like -- I mean, I just remember he just fell backwards when he got hit in the face.
Q. After he cut your boyfriend, then he falls back?
A. He was falling back in the process of, you know what I'm saying. As he's being hit in the face, he's falling back

and the knife went like this. He -- Joey was standing like this is how it -- Joey was like don't mess with my sisters, man, and Ty goes or what, and Joey, as he's going back, he just went -- I don't know, he went like that. As he's falling back, his arm kind of just went like that.

Q. Okay. Now, the children, the two kids, are on the couch, right?

A. Yes sir.

Q. In the same living room where the fight is going on?

A. Yes sir.

Q. And after Ty is cut and you say your brother is on the floor, you get the children and take them upstairs?

A. Yeah. I just remember seeing Tynesha and Chapell, and there's that -- I remember looking over and Ty had his chest, and I remember seeing Tynesha and Chapell and their little eyes just looking at me, and like I didn't want them to see any -- I didn't know what was going on. I just needed to take them upstairs.

Q. All right. Now, Ma'am, when you took them upstairs, you had to go -- walk across your brother, who is on the floor in front of the stairs, because you told us earlier that he was on the floor. You get the children and you're taking them upstairs. How did you get upstairs without going across your brother?

A. That's -- I don't remember. I just remember him going

back and -- I think maybe he hit the wall. I don't even think he was in the floor at the time. I think he just flip-- he went backwards. I think his body hit the wall or something because I don't really ever remember seeing Joey actually in the floor. It was like I'm going -- hit -- going backwards and hitting the wall, like he was kind of -- I think he went back towards the wall, and I just seen Tynesha and Chapell, and like let's get upstairs.

Q. Ma'am, the truth is once Joey cut your brother, Joey ---

A. I know his face was -- his nose was bleeding. I remember he was hit so hard, I remember seeing blood like -- and I remember I -- and I just -- I didn't think anything was going to escalate or anything else. I'm like this is insane, and I -- just let me get the kids upstairs and I'll come back downstairs and we'll get this figured out. I don't know. I ---

Q. When you took the kids upstairs, are you telling me that you don't know exactly where Joey was at that point ---

A. He was -- he didn't never go too far from beside me, because he was beside me, and he got hit in the face. He didn't walk off anywhere. He went backwards.

Q. Well, you had to leave his side because you said you took the kids upstairs?

A. I went -- I guess I went around, and then it happened

so quick. I just -- I just remember the kids standing there, and Joey got hit, and Ty was cut, and I just remember seeing the kids and going upstairs. I don't really remem- -- I know Joey didn't go too far. He was right there.

Q. Well, were you stunned about the fact that you knew at this point that Ty was cut and bleeding? I mean, were you concerned about him at all?

A. I mean, I seen the cut. It didn't look like it was anything to -- that could definitely matter. I mean, Joey just got hit in the face. He was like -- he -- he just punched my brother and he got stabbed or cut in the chest. It wasn't really -- it wasn't stabbing. It was like a -- like a -- kind of a cut like that. It didn't -- I wasn't that concerned.

I didn't think it was going to -- I'd never seen fighting like this. I don't wait to see if anything is going to get worse. I'm hoping it's getting better and they need to resolve it. They were friends. I didn't think it was ever going to get any worse. I'm like, okay, like you two pull it together and let me get these kids out of here, and let's get out of here.

He needs to go home, and Joey needs to be seen about, and Ty needs to be seen about, but I was hoping that the other guys or somebody is going to come in here and take care of the situation until I get from the kids. I don't know.

Q. Did you ever say to Ty, honey, you're cut? Let's try to get you to a doctor, or get you to a hospital, or find out what's going on with you ---

A. No.

Q. --- because of the cut that you got?

A. No.

Q. And you saw the open wound because he took his shirt off?

A. But my brother got punched in the face, and if you knew my brother, he's the type of person that like -- because he's not the fighting type. He's my little brother, you know, and he was there. He was punched in the face. I'm like my little brother. Like I'm thinking about Joey because he -- he's been hit. He doesn't ever fight anybody. I'd never seen anybody punch him in his face before.

I was like I hated to say it. I wasn't really worried about Ty, because he -- he was already going to -- fighting on, you know. They were fighting. I didn't think that it would be any worse. I mean, when you seen your little brother there, though, being punched in the face, I was really -- honestly, I hate -- I'm sorry that I was more consumed with Joey. Like I was like ---

Q. Right.

A. --- but then I seen the kids. I was just like Joey, and then I -- I gotta go upstairs. I didn't think he even --

I assumed he'd be okay, but, I mean, he got punched in the face. I was like he's going to be okay, and Ty, I mean, he's got a nick. It wasn't like a stab, where you are stabbing. It wasn't like a stab, like death where you stab. It was a little cut, you know what I'm saying? It wasn't nothing that -- that he was being a baby, that it wasn't that bad it seemed at the time.

Q. Did you go to the hospital to see Ty when he was in the hospital?

A. I did a couple of days later.

Q. And did you discuss with him his injuries at that time?

A. He had -- he didn't really know that Ty -- Ty didn't really know. He's just like I've been cut. My side hurts. I never knew about his side. After this, I didn't really remember -- I didn't see Ty for a while until he was in the hospital. I didn't know -- he told me then what -- like what had happened, ---

Q. Yeah.

A. --- and my brother, at the same time -- I mean, when he's in there, I know that he got cut, and my brother is dead, being -- getting planted -- he's getting buried, so ---

Q. Did he tell you that ---

A. --- to me, a little -- you know, that isn't really -- a cut to me in the chest isn't as bad as like your brother...

being dead. We didn't even talk about it because it was like if there's no relevance there, you know what I'm saying? He -- he didn't sit there, oh, God, look at this wound. This is just so bad.

He was like he didn't know what to say, you know what I'm saying? What do you say to me? He's not sitting there bragging about, oh, I've been stabbed. He didn't know what to say to me. What do you say to somebody? You ain't going to sit there and brag about, oh, my chest got hit.

Q. Did he tell you how many times he had been cut or stabbed when you went to see him in the hospital?

A. I don't -- I don't remember, maybe like the chest and maybe something on the side, I think.

Q. So he was stabbed in the side and in the chest?

A. We never really talked -- or he never talked -- wanted to talk about it. It wasn't about him at that time. He never was like, oh, God, look what Joey did. See what he did to me. It wasn't ever even like that.

Q. No, he wasn't complaining about it, was he? He never did, did he?

A. Who, Ty?

Q. Ty.

A. I guess not. I remember seeing a thing on his chest.

Q. And, Ma'am, let's go back to when you were going up the stairs because we never really went through that. You

get the two girls and you're taking them upstairs to get them out of the way of what's going on, is that correct?

A. Yes sir.

Q. All right. Now, when you get upstairs, you put them in the bed or in the bedroom?

A. I -- I really don't -- it's been so long, I don't remember. I just knew that I had to get the girls upstairs. At the time, I had a baby room. I don't think I would have put them in there. I think I put them in my bedroom and they might have -- I might have -- I had a really tall bed at the time. I think I might have put them on up in the bed and I came back downstairs.

Q. At that point in time ---

A. I don't remember if I stayed up or not. I don't remember. I just know I took them upstairs.

Q. At that point in time, did you think to call 911?

A. I didn't. I just wanted to get the girls upstairs and go -- I didn't think that it was nothing to call 911 over, you know. Joey -- okay, we're going to go -- this is going to be resolved.

Q. This is going to be resolved?

A. It didn't seem like anybody was -- it was like -- I mean, 911, why wasn't everybody else calling 911? Why did it have to be on me to call 911? Where were the men that are downstairs when all this is happening and everybody is cut,

and everybody is so hurt, and all this, why aren't they call-- why isn't 911 already there? By the time I got the kids upstairs, why didn't all these people call 911? Why has it got to be up to me to worry about the kids, and worry about whether he's stabbed, and my brother?

I mean, I've got so much on my mind. I'm three hundred pounds. I'm trying to get up and down the stairs. Why isn't everybody else calling 911? Just where -- you know, where were they? Why didn't they do it? Why does everything have to leave on me to call 911, and worry about who is so hurt, and who is not hurt? I just was worried about my brother. Ty was standing -- if he would have fell on the ground and like was going to die, I would have been really concerned, but he had a nick on his chest. I'm like okay, he's a big boy. He's going to be okay.

You know, I'm standing right there, and we're going to get him to the hospital eventually. He's going to be fine. I've got to worry about my brother, and I've got to worry about these two six year olds sitting on the couch seeing this, and getting them upstairs, and I'm not thinking about 911 or anything else. I'm worried about getting the kids safe somewhere else. 911, they will have to call 911 if it's that serious. They -- why didn't he call 911? I don't know when they called, 911.

Q. Now, your sister, Cindy, was concerned about you, and

she came to your rescue initially, correct?

A. She didn't really come to my rescue. Cindy just stopped by. She saw me. I showed her the card. She felt my remorse. She wasn't to my rescue. Cindy felt my pain. She was just like anybody else. I was like, hang, like girl, you know -- I didn't dwell on that. You know, we looked at the card. I was upset about it.

I knew that she was like -- Cindy's words were -- Cindy is so simple. Let's just call Joey, you know. Let's just get him to go and drop Ty off, you know. Coming from the club, we'll just go and drop him off, and everything will be simple, you know what I'm saying? I like simple. Okay, that sounds good.

We'll just call Joey, and it will be real simple. So he didn't answer. Well, I'll call Ty. I hate to upset him right now, but I'm not calling him, and just tell him, you know what, just don't come home tonight, or get -- or get Mo and Joey, y'all just get dropped off and -- just -- I didn't want him there. I just didn't want to argue with him, and I just didn't think it was appropriate at the time.

Q. What I'm referring to, Ma'am, is in the kitchen or in the hallway, whichever it is that this occurred, that -- but when Joey has the knife, she's not there?

A. Cindy?

Q. Yes.

A. I don't remember seeing Cindy.
Q. All right. And ---
A. Cindy had just been -- they were fighting in the kitch- -- I remember Moke went in there to go get Cindy. I don't remember how Ty even got into the living room so quick. I know that when he came to the living room, he was already -- had been fighting Cindy, and that was over. He never went back in there and was fighting her again.
Q. Now, let me just -- let's change the subject a little bit and talk about you and Ty's relationship.
A. Yes sir.
Q. Y'all had been together for close to a year at this point in time?
A. Yes sir.
Q. And at your house, this apartment belonged to your father, correct, the building?
A. My father and mother, yes, sir.
Q. Okay, your parents. All right. And they gave you the apartment?
A. They didn't give it to me. They -- they let me stay there until the next per- -- we evicted someone. Ty was in my life. He came in. My mom -- my dad didn't -- my mom said you come in, we'll fix it up. You paint it. You can stay there until we get someone else or until you can ---
Q. Okay. So they knew ---

A. --- get yourself together.
Q. --- that y'all were living there, you and Ty?
A. Staying.
Q. Staying, which -- whatever word you'd like to use, staying there, but the two of you were occupying that apartment?
A. Yes sir.
Q. And Ty's clothes were there?
A. Some.
Q. Some of his clothes?
A. Yeah.
Q. And when he came home in the evening, that was where he came?
A. Most nights.
Q. And that's where the two of y'all were -- I'm sorry?
A. Most nights.
Q. Yeah, unless the two of y'all were having difficulty, and then he'd go to his parents' house?
A. Yes sir.
Q. Okay. And that continued up until the night that we are discussing?
A. Yes sir.
Q. Okay. And is there any question about that now? Is there any question about the fact that he was living there with you primarily up until the night that this happened? Is

there any question in your mind about that?
A. We stay- -- we were -- we were together. I mean, if we had an argument or if he stayed out, he would go to his mom and dad's, but basically we lived together. I considered it somewhat living together and ---
Q. All right. And, now, let's ---
A. All of his -- all of his belongings weren't at my house. The things that were at his house were the things that I had bought. It wasn't -- he had -- he had a room at his mom and dad's house, too, that he had a lot of things at, too. He kind of had like two homes really, mine, and if me and him got upset, or if he felt like there was somewhere he needed to go or he wanted to see Tynesha, he could go to his mom and dad's house, and that was his home, too.
Q. You told -- when you were discussing with the Solicitor, you indicated to her that you retained me to represent Ty?
A. Mr. Larry suggested that he -- he -- he would like to have you, and I was like -- and I had a credit card at the time, and I was like I'll get it, and then we were going to make like a payment plan that I would get paid back, and you can make the payments on it, but if I get it, the lawyer, that y'all would, you know, pay me back.
Q. And you did, did you not?
A. What?

Q. Retain me?
A. Yes sir, I did. Yes sir, I did.
Q. All right. And ---
A. I want- -- Mr. Larry needed my help, and I wanted to help him, and ---
Q. Did you also tell the Solicitor that you came to my office on July the 12th ---
A. I did.
Q. --- and you had a conversation with me ---
A. I did.
Q. --- at that time?
A. I did.
Q. Did you tell her what you told me during that conversation?
A. Everything was basically accurate. If I forgot a few things, the Solicitors went back and played the tapes, and then my brain registered with some of the things that when I said the thing, I would close my eyes. I went back and then I could really remember what happened that night ---
Q. Okay.
A. --- to the best of my ability.
Q. But I want to make sure that you agree with me that what you told the police on May 12th -- I'm sorry, on May 26th of 2006, you stand by whatever you told them in that statement, do you?

A. I stand by what I remember. I mean, I assume that -- what I remember is what I remember, and that everything that they've ever played or ever seen pretty much was the same. I don't know how much -- drastic that could have changed.

Q. Okay. And -- and at that time on May 26th when you gave that statement, you were clear on what occurred, right?

A. Yes sir.

Q. And you understood that the police were investigating this case and that they were trying to make decisions about what to do and how to handle the case?

A. Yes sir.

Q. And that the information that you were going to provide to them on May 26th, five days after this incident occurred, was going to be extremely, extremely important?

A. It would be the truth.

Q. It would be the truth. And -- and if you're saying something different today than you said then, then that's something new that you've added since May 26th, right?

A. Yes sir.

Q. All right. And that's something that you got from where?

A. I'm not really influenced by what other people say. I mean, people were like don't lie, don't lie. Like they don't even have to tell me that because I already am not going to -- I mean, what -- I'm -- I'm in the worst situation in the

world. I'm not going to lie for Ty. I loved Ty, I did. I loved him, and I helped him get a lawyer. I did. I loved him. I have nothing to -- am not ashamed about it, but at the same time, I know things that I saw. I know what happened. It's not like you -- you know, I can't lie about it.

It was a really bad situation that happened at my house and, I mean, I can't -- just because I loved him doesn't -- I never seen anybody stab anybody. I -- I -- like that. I never seen any of that. Like as I said, my brother ended up -- when they -- when I got to the hospital, they said he had died, and I looked -- died? You know, like -- they said he was stabbed ten times. I'm like what? Because I never seen that, and how could that even happen? When I seen Joey at the door, he wasn't -- he didn't say anything. I didn't even think he was hurt like that. I'm like how could that even happen.

Q. Now, Ma'am, let's go to the point where when you come back downstairs after putting the girls upstairs and you say you come in and you see your brother, Ty, and Mo in the kitchen, correct?

A. Who? My brother wasn't in the kitchen with Ty and ---

Q. I thought he was ---

A. Oh, oh, okay, yeah, when I came from taking the kids upstairs?

Q. Yes Ma'am.
A. Yes sir.
Q. All right. And your brother was nearest to the door?
A. Yes sir.
Q. Ty was in the middle, and then Mo was at the far end?
A. Mo was kind of at the refrigerator.
Q. And when you come in, what do you do at that point? Now, Ty has already been cut? Is there any question about that at that point?
A. No. He had been cut.
Q. All right. And is he -- his shirt is still off?
A. Yeah. I remember -- yeah, I think his shirt was off, and I remember he was holding the kitchen scissors. He wasn't doing anything with them, and I didn't think anything of it. I just seen Joey at the door, and I'm like Joey, let's go outside.

He had -- he had blood on his face, and I'm like let's get out of here, and we went out the door, and we went around the corner, and then I remember I assumed it was over. We were walking to Joey's car, and then I just remember seeing a fist, and I looked over and it was Mo, and he hit Joey right up side the head, and Joey just went (witness makes a sound). It was so hard, he didn't -- he just -- he went down.

Q. What I'm going to ask you, Ma'am, is do you recall telling the police on May 26th of 2006, that after you took

your brother outside the door, that you never saw Ty come outside? Do you recall ---

A. I don't remember seeing Ty. I don't remember -- I didn't even remember anybody behind me. I don't know how -- I just remember going out the door with Joey, and the next thing I know he is just hit in the head. I'm like what, and I never -- I remember -- I think that -- I don't remember -- I remember seeing Mo, and I could- -- there was two pairs of feet kicking.

I assumed it had to have been Ty, because I don't think it would have been Moke, and I just -- I didn't really look. I just was looking down because I had -- Joey had already went down. Joey fell, and when I went down, I just remember seeing feet, and then the next thing I know, there was nobody around. They weren't there. I don't know where they went.

Q. Do you recall telling the police on May 26th in your statement that Mo punched Joey and he fell and never got up, saw Mo kicking her brother with white Air Force tennis shoes, never saw Ty come outside?

A. I don't -- I don't remember if I seen him. I know -- I don't want to say that I -- I know for a fact I seen Mo. I know Mo was there and he had -- I remember as clear as day, I was like -- like just bam, and Joey went down, and I remember the shoes kicking, because I was like looking down and there was feet. I was like still -- this is like still going on.

I was like how could this still be going on?

Q. Well, on May 26th, you were real certain that they were white Air Force sneakers, I think, is how you refer to them?

A. I've been real short on -- in the beginning it was white Air Force One's, but I know what they look like. I own a pair. I know they was white Air Force One's. I remember seeing them.

Q. And so has your story changed now? Did you see Ty come outside now in your new ---

A. I don't -- I -- I can't say for a fact that I saw Ty. I can say for a fact I saw Mo, for a fact, because he's not hard to miss, you know what I'm saying. I mean, I can't say for a fact. It seems like I seen two pairs of shoes, but it could have just been him -- I don't know.

Someone else -- I don't know if Moke or -- where Moke was at the time. Moke might have just even been behind and that's where I seen another pair of shoes. I seen -- it seemed like two feet, but I know one -- the ones were -- the white Air Force One's were kicking Joey.

Q. Ma'am, did you ever tell the police on May 26th, 2006, that you saw two pair of feet kicking your brother?

A. I -- I don't remember if I did or not.

Q. Did you tell them anything other than I saw a pair of white Air Force One sneakers kicking my brother?

A. I'm not sure. I know that I seen a pair -- I seen the white shoes.

Q. Do you admit, at least, that you told them that you never saw Ty come outside after you took your brother outside?

A. I believe so. I don't really remember seeing him, because I never looked back again. I just remember me and Joey were walking to the car, and a fist come and hit Joey and I -- I mean, obviously I looked and I just remember seeing Mo's face, and I'm like -- and Joey went down. I never looked back again. I wasn't looking back.

Joey went down, and I kind of went down with Jo- -- I didn't fall down, but Joey was a big boy. He went down, and I went and squatted down with him, and I -- I just seen kicking, and it was white tennis shoes kicking my brother over and over again. I'm like ---

Q. Was there ever a time outside after you took your brother and went outside when he fell to the ground where Ty was leaning over your brother?

A. I don't remember seeing that.

Q. Well, didn't you tell the Solicitor that when you went outside, that you said Mo came up and hit your brother and he fell, and you put your arms under your brother to lift him up, and that you were with him until Moke turned the lights on and until somebody came, that you were trying to ---

A. I was sitting there with him. He looked a little disoriented, and they were kicking for a minute, and then everybody was just gone. I mean, I don't remember if I put my hands directly under his head.

Q. All right.

A. I was just like Joey -- I just remember just talking to him. I was like this is crazy, and then that's when I started seeing like blood like come out, and that's when I was really -- Cindy -- and that's when Cindy kind of came up at that point. I don't remember ever seeing her. She just -- Cindy just showed up.

Q. The truth is, of the matter is, Ma'am, from the time you took your brother outside until the time the EMS or ambulance, or whoever it was, you were with him, were you not?

A. Pretty -- I never left the yard. I never went -- I mean, if I left his side, it was to go to Tammy and Jack's house, and I do believe I went to the road at one time, and I think I did see a younger boy, or a Mexican guy, and I said call 911, that I ran back, because I think at that time Cindy -- Cindy was kind of -- I think Moke might have came back and Cindy was over there with him and talking to the lady, and I just stayed with Joey. I never left. I just kneeled down, and I was just there.

Q. Okay.

A. At this point, I knew he was bleeding really bad.
Q. And that's what I'm asking. Once you say he was on the ground, you never left him, did you?
A. No.
Q. And there would have been absolutely no way for Jo- -- for Ty to be over him making any kind of motions against him at that point in time because you were there with him, over him, at that point?
A. I don't know. I mean, I don't know is how they could have done it. If he did, I'm not sure. I don't know.
Q. Well, if you're kneeling there ---
A. I can't say that I seen anything I didn't see. I didn't see any of that. I don't know. I just know that I seen Mo hit Joey in the face and Joey went down, and I never looked back -- I just seen feet. I didn't feel stabbing or -- I think if I'd ever felt that, I was like, oh, my God. Like I didn't see that or any kind of stabbing. I didn't see that.
Q. I understand, Ma'am. I'm simply asking ---
MS. LIVESAY: Your Honor, if I may, I think he's already asked it and she just answered it.
THE COURT: I appreciate it.
I'm going to allow it one more time, Mr. Wilson.
MR. WILSON: All right, sir. And if I -- I apologize if I'm belaboring it, but I just need to be clear because I ...

think ---

THE COURT: You don't need to explain. Just ask your question, sir.

MR. WILSON: Thank you, Your Honor.

Q. Just so I'm clear, when your brother fell, you were there when he was hit, you were there when he fell, and you stayed with him?

A. Yes sir.

Q. Any question about that?

A. Not -- no.

Q. Now, when you are in the yard, does Cindy or Moke, which is Cindy's boyfriend, do either of them come to you?

A. I don't remember seeing Moke at first. I really didn't. I remember -- it seemed like I was the first one -- I don't know. If Moke was, he might have been over by the cars. I wasn't -- I just know that by the time I got outside, Joey had already been hit and he went down, and I never really was looking around to where -- I was just like Cindy, get help, and that was it. I don't -- I don't know, but Cindy just appeared. I don't know, but Cindy just showed up.

Q. Let me ask you, how much time elapsed between the time that your brother cut Ty and the time that we're -- you're outside on the ground and you're with him? How much time ---

A. I really can't say because it happened -- it seemed

like it happened so quick, but I think it happened slower. I feel like I was in the twilight zone, like I really -- I don't -- I don't know if it was slow, or quick, or fast. I just know it happened, and it was just so surreal. I really -- if I had to think in a nut shell, ten minutes.

Q. Okay.

A. I don't -- I don't know.

Q. Okay. Now, did anybody discuss -- and when I say anybody, did anybody in the house that night discuss calling 911 before Ty got cut?

A. No.

Q. Did anyone discuss it after Ty got cut, but before you found out Joey was injured?

A. I don't think so. I mean, I don't know. I don't remember seeing Cindy or Moke. I don't know if they ever were calling 911. I don't know who was calling who. I took the kids upstairs, and I don't -- I didn't know whoever -- I figured if somebody is really hurt, they're going to call the police. They're going to call 911.

I wasn't -- I just was watching the kids, taking them upstairs, and if Ty, or Moke, or Mo, or Cindy, or any of them, however hurt they are, because I knew that Cindy got in a fight, but I couldn't -- Cindy, maybe go find a phone. If it's that's serious, they're going to call 911. Somebody is going to call 911. That's not my job right now because I'm

not cut. I mean, I will if it escalat- -- then it escalated to calling 911, you know what I'm saying. I didn't realize that. You know, I figured if Ty was so cut or why didn't Mo call 911, or if he seen Ty cut, call 911.

MR. WILSON: Your Honor, would you bear with me just one second, please?

THE COURT: Yes sir.

MR. WILSON: I think that's all I have.

Let me ask you just one last thing.

Q. When -- when you -- when your brother was on the ground and you were with him, what position were you in?

A. Okay, I'm walking out of the apartment, and you immediately turn to those bushes. You have to immediately turn, and I would have been -- my back towards everybody. I wouldn't have seen -- my back was toward -- I was -- went like this, and me and Joey had walked out, and I just remember seeing -- because once you get through the things, many people can go around you if they want to. As they're walking through the whole thing, it's one person after another, and then I just remember just a hand and I remember looking over, and I just remember seeing Mo's face, and Joey just (Witness makes a sound) to the ground.

Q. Yes, but what I'm asking you is what position, what position ---

A. I would have been, my back towards -- my side towards

the road. I was looking this way. The apartment -- people or whoever else was behind me, but I didn't remember who else was on me. I just remember seeing his face and Joey going down, and I remember seeing feet. I never looked back.

Q. What I'm -- what I'm asking, Ma'am, is physically what ---

A. I got on my han- -- knees, I guess. I'd say I got down to my knees.

Q. Yes Ma'am. You got down to your knees, and Joey was down, so you were on both knees or one knee, or do you know?

A. I don't know. I don't know.

Q. All right.

A. I ended up being on both knees, I believe.

Q. All right. So you were on both knees bending over him ---

A. Uh huh **(indicating positive)**.

Q. --- at that point, is that right? Let me show you -- I was trying to see ---

A. I don't know if I was bending over him. I know I was down. When he went down, I just kind of went down, too.

MS. LIVESAY: Your Honor, can I get a look at that picture Mr. Wilson is showing?

MR. WILSON: Sure.

May I approach, Your Honor?

THE COURT: Yes sir.

Q. Please take a look at that for me.
A. Okay.
Q. Do you recognize what that is?
A. Yes sir.
Q. All right.
MR. WILSON: And let me ask that it be marked for identification.
(PHOTO MARKED AS DEFENDANT'S (LARRY CHESTNUT) EXHIBIT NUMBER 4 FOR IDENTIFICATION ONLY.)
Q. Now, let's talk for a minute about your yard. When you come out of the house, there are hedges on the side of the ---
A. All along the whole -- it covers ---
Q. Along the wall of the house, but the door is free, right? There are no hedges in front of the door?
A. No. Well, on -- in front of the little gate, none, and then on either side.
Q. Okay. And so if you're coming out of the door, the back door, you have to run into the hedges to get out of the yard? You would have to ---
A. Some people do. Some people (Witness makes a sound) hit the hedges. I mean, they walk -- you could run into the hedges, you could, because they're big and they're kind of -- I don't keep them trimmed. They're hedges. I mean, they're pretty big hedges, but, I mean, I have gone and kind of

walked past, you know, and then go to the sidewalk, but they've overgrown the sidewalk. I mean, you could angle -- but you can't hit the hedges, you know what I'm saying. Somebody -- my boyfriend hit the hedge -- went right into the hedge. You shouldn't hit the hedge, but you can.

Q. Okay. But there are hedges ---

A. They're overgrown.

Q. Ok. But there are hedges to the side of the -- as you come out the door, on both sides there are hedges to the side, ---

A. Yes sir.

Q. --- right up against the door?

A. Yes sir.

Q. All right. And so if you're coming out, then you come out through the little walk, is that correct?

A. Uh huh **(indicating positive)**.

Q. And then you've got a yard, and the yard is maybe what, twenty feet, thirty feet?

A. A half acre yard. I don't know how big that yard is.

Q. All right. And you and your brother, when he fell, was out in the yard area?

A. He turned -- we went around the hedge, and we were going -- I remember seeing his car. We were going -- going on the sidewalk. I still never knew he was hurt. He never said anything to me, and the next thing I know, it's just

bam, and I just remember looking back, and I seen Mo's face, and hitting Joey, and Joey went down.

Q. Okay. And that's what I'm asking. He went down in the yard, in the grass?

A. I don't -- I don't -- it happened so -- I don't know. I don't know if he -- I don't remember him hitting the concrete. Seem like he went down into the grass.

Q. Okay. And you kneeled down, knelt down with him in the grass, ---

A. Yes sir.

Q. --- in the grassy part?

And -- and you stayed with him until ---

A. I think I got up once, because I went to Jack and Tammy's house, but I don't -- immediately I didn't run off.

Q. All right.

A. I was with him.

Q. So you say you left him at some point?

A. I mean, I didn't leave the yard. I think -- I remember like Cindy was looking for 911, and I think I was like yelling for Jack and Tammy, who lived like a few over, just at Jack and Tammy's, but I didn't leave him immediately.

Q. So Jack and Tammy live in the same building?

A. Yeah. They're at the very end.

Q. This is an apartment building, and they ---

A. Uh huh **(indicating positive)**, and Joey was right at

about apartment -- I was -- there's Apartment 1, is what we came out of. He was half-way to Apartment 2, and Apartment 4 is just right there, I mean.

Q. So how far would Apartment 4 be, maybe to the back of that courtroom?

A. I don't know if the apartments are that long, but obviously I guess they are, or could be. It seem -- I mean, I can ---

Q. Okay.

A. I don't even know if it's that far, really, maybe from this corner -- that back there. It's not a very, very long sidewalk.

Q. And you -- did you knock on their door?

A. I remember yelling for Tammy and them. I think Cindy is like, oh, they're not answering. I remember just screaming. I don't remember like -- I was just going somebody get help, because that's when I seen the blood, and then actually I think that's when I went to Tammy and Jack's.

Q. And after that, you came directly back to ---

A. I stayed with Joey pretty much the whole time.

MR. WILSON: Thank you so much.

THE COURT: All right.

Mr. Long.

MR. LONG: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. LONG:

Q. Ma'am, you -- you and Ty, you say, had been together for about a year, is that right?
A. Yes sir.
Q. And you were pregnant with his child and about to be -- and you were eight or nine months pregnant, that far along?
A. Yes sir.
Q. And y'all were living together at this location, is that right?
A. Yes sir.
Q. How many bedrooms were in this apartment?
A. Two bedrooms upstairs.
Q. Two bedrooms upstairs?
A. Uh huh **(indicating positive)**.
Q. A typical apartment layout, when you go up the stairs, there's like one bathroom in the middle and a bedroom on each side?
A. Yes sir.
Q. Okay. And Tynesha, then a six year old, was Ty's little girl, right?
A. Yes sir.
Q. Ty's little girl from a prior relationship, ---
A. Uh huh **(indicating positive)**.
Q. --- right?
What's ---

A. His first daughter. I mean, it's from his -- I don't even remember her name. She went to school -- and I don't know Tynesha's mom. I don't remember. I didn't -- I think I was a freshman and she was a senior. It wasn't relevant to me. I kind of -- I mean, I knew her. I was nice to her, you know what I'm saying? I mean, he's my new boyfriend. We have a -- are fixing to have a kid. Any kid that he has, I welcome in, you know. I don't remember what her name was. I didn't even know her like that.

Q. Okay. At the time that -- at this particular time in 2006 when you were living with Ty and you were pregnant with Ty's child, how many children -- other children did he have?

A. I think two.

Q. Okay. And what were their -- there was Tynesha and who else?

A. He had Tynesha and -- oh, God, I forgot what the little girl's name is. My mind is blank right now -- a pretty little girl. She lives with her mom in Baltimore. I don't remember what her name is -- still hangs out with her -- she likes her pretty good.

Q. Is she older or younger than Tynesha?

A. I think she was younger than Tynesha.

Q. Okay. And how long did -- so -- so the younger daughter lived in Baltimore?

A. Yeah. She would come down sometimes. Like we would -

get her when she came down to visit the grandmother.
Q. Okay. And but Tynesha lived in Myrtle Beach?
A. Yes.
Q. And how often did Tynesha come to see y'all or stay with y'all, a visitation type thing?
A. She didn't ever stay because I had just got -- you know, I lived with my mom and dad, and Ty lived with his mom and dad, and if I seen Tynesha, it would be at Mr. Larry and Sandra's house.
Q. Okay.
A. I think this honestly was the first time in my life that she ever stayed with me at the apartment. I don't think she stayed too many times when -- but I did watch her a few times when I lived with a friend of mine in North Myrtle Beach. She did come visit.
Q. Okay.
A. When I had a place to live, I would let her come. It wasn't very, very many times.
Q. Right. So Tynesha was the only child that either you or Larry had that lived in Myrtle Beach?
A. That I know of. I mean, I don't know.
Q. And so did the two bedrooms upstairs, was one of them was your bedroom, yours and Ty's together, and the other bedroom was set up for Tynesha?
A. It was my nursery. I don't -- I didn't even have -- I

don't think I even had a bed in there yet. I didn't have a crib. I painted it yellow with little -- it was just stuff in there. There wasn't -- I don't remember if there was a bed in there. The kids -- I think that's why the kids were on the couch. I didn't have any more beds. I had my bed upstairs, and that was going to be the baby's nursery, and, I mean, it was -- they could play. They could play in it, but there wasn't a bed in there.

Q. Okay. So there was no bed for Tynesha upstairs?

A. No.

Q. All right. And then so when Tynesha came to the party earlier on in the day, the one where Larry, Sr. had been invited to that and you had bought a keg, she -- is she -- is that the daughter that brought the card, ---

A. Yeah.

Q. --- the birthday card?

A. Yes sir.

Q. So Tynesha brought a birthday card to her father?

A. Uh huh **(indicating positive)**.

Q. And do you remember what it looked like?

A. I don't remember. It was in a regular card -- I don't remember if it was white, or yellow, or purple. I'm not sure. It was just a birthday card.

Q. Okay. And was it sealed up?

A. I don't remember. I don't remember. I just remember.

Tynesha had a birthday card. I didn't even know it was from her at the time until later on I seen -- I don't know what made me open it up. I don't remember if her name was on it or not. I just know something -- I was like okay. Well, I think what it was, when Tynesha came up, she goes this is from mom, I think is what she said. I don't think it had any certain -- any -- her name on it.

I don't think she put her name on the front. Her name was signed inside, but I think Tynesha -- I was standing there when Tynesha came in, and she was just like -- she might have had two cards. I think one was from her, and another one, I think she said this is from mama, or mom, or something.

Q. When and where was that when she came and brought the card?

A. She came. I was in the front yard, and I had a pool, and she -- I don't even know who honestly dropped her off. I don't know if she -- I don't remember if she came with Mr. Larry. I'm not sure. I don't remember her being there and she could have came with Mr. Larry. I don't remember.

Q. What time of day was that?

A. Oh, it was daytime. I don't know.

Q. So she handed the card to her dad, ---

A. Uh huh **(indicating positive)**.

Q. --- right, and you indicated earlier that you and Ty

lived there and stayed together, and Ty had a lot of his belongings there, but from time to time y'all would fight and argue and he wouldn't stay there, is that right?

A. Uh huh **(indicating positive)**.

Q. How often ---

THE COURT: You need to answer yes or no, Ma'am.

A. Yes sir.

Q. How often did you actually fight and argue and he had to go stay somewhere else?

A. Not too much, but we -- we had just moved in there, and before then, I would stay at his mom and dad's house. I stayed at his mom and dad's some. We just kind of went from place to place together as a young couple would until we kind of got settled.

Q. I'm trying to find out about your earlier testimony where you said whenever you would fight and argue, he would go stay elsewhere, and I'm trying to find out how often ---

A. If we got in a disagreement or if he got mad, I mean, I don't know. I can't go back and say how many times he did it. It wasn't all the time, but I'm saying if we -- if I would get annoyed, or he would get upset, or he wanted to go out, and if he stayed past what I thought he should stay past, I would -- you know, he would go to his mom and dad's house.

That was another home. He had the option to go

somewhere else if he wanted to. That is another home for him, and my house wasn't his sole home. He did have another home.

Q. It sounds like that to me, is that correct, that this was your house, your rules?

A. It's mine and his, but we're not married and you're not going to disrespect me in my home either, so if I feel like if you're going to come in there and you think you're just going to come rolling in at three in the morning or you're going to have people -- guests in my house that I don't feel like I want in my house, I do have the say-so -- that he could have argued about it, but I have the say-so to say you need to leave, because it wasn't neither mine or his, but I wanted to respect something that my mom and dad gave me and him and ---

Q. You had the say-so because it belonged to your parents, right?

A. Yes. Yes sir.

Q. Did you have the right to disrespect Ty in your parents' house?

A. I don't feel like I shouldn't -- I don't never want to disrespect anybody, ---

Q. Okay.

A. --- but if I'm being disrespected, then I'm going to say something about it. I don't ever just want to come

across and disrespect nobody in this world.
Q. Okay.
A. I don't -- I just don't do that.
Q. How long had you lived in this house again?
A. I don't know, maybe two months or so, three months. I'm not sure.
Q. Okay. So during that two or three months, you at least had some arguments enough that you mentioned it on direct-examination. You had some arguments enough to where he had to go stay somewhere else, right?
A. Yeah, or if he chose to. Some nights he was just like I want -- you know, I'm going to my mom and dad's house, like he was that night. I'm going to go get Tynesha, you know, and then I'm going home. If he got upset, he could go wherever else he wanted to go. If he didn't want to be with me, he could have somewhere else he could go.
Q. Okay. When was the first time, time of day, that you actually opened that birthday card and read it?
A. You know what, I don't rem- -- I don't think I -- I don't remember -- I don't think I -- I think I was upset that she might have sent a card, but I don't remember reading it until that night, because I think that's when I would have read -- I know for a fact I didn't read it that day because I would have been upset with him that day and I would have never -- all this wouldn't have accumulat- -- it would have

accumulated a lot earlier.
Q. Okay. You said you know that you were upset that she sent a card before you even read it. Why?
A. I just didn't think it was appropriate. I mean, if she isn't going to have the balls to come to the party, why are you going to send a birthday card through your child. Show up, bring your child, be a woman. Hey, you know, I'm with my child. Don't just be sending cards. Oh, this is from my mama. I mean, who does that? Show up. Bring your daughter to the party. I'm a woman enough for you to come to the party and, you know what I'm saying, and talk to me and let -- you know what I'm saying. You -- if you don't want your kid to spend the night at my house, I would think you should have -- unless there's a mother to show up and talk to me.
Q. So that angered you?
A. It didn't anger -- I wasn't angry. I'm just saying don't -- it was inappropriate.
Q. Inappropriate to send a birthday card by the daughter to a birthday party?
A. I wasn't mad about it. Honestly, I wasn't really mad about it. As I say, she sent the card or whatever. It wasn't until later on when I read what was in the card is what I was -- I'm talking about.
Q. What was in the card? What made you so mad? What was

written in that card that made you ---

A. Because I just thought that Ty -- me and Ty -- I loved him so much, and I was like okay, so what if she sends a birthday card. All right. So what if a mama is going to send a birthday card. Okay, so what. Okay, because I'm going to have to deal with this with a mama, you know, saying you've got someone else, other people's kids. You've got to deal with that for the rest of your life. Okay, Christie, so what.

But when I opened the card and there was a picture of them two in the card and it said I'm not going to start any drama today. Happy birthday to the man that I have made, or something of the sort, something like -- but that's really inappropriate now. The only difference, if she'd just sent it, I honestly would have never been so mad if there's wasn't pic- -- pictures of them together in the card, and it -- what she wrote in it was really -- she should have just signed it happy birthday, love, Tynesha and -- I forgot what her name was, and left it at that.

And I really honestly -- it would have never came to nothing. The picture and stuff was what -- I said, well, maybe she -- why would she send this? Obviously he's having contact with her or something, because who would send that with her kid to a birthday party?

Q. What about what was written in that card that made you

think he was having contact with her?
A. Because she sent a picture of them together and a picture of them -- it was a picture of them from high school ---
Q. Okay, from high school?
A. Yeah.
Q. It wasn't a picture of them together in May of 2006, was it?
A. No, and she wrote in the card I don't want to start any drama today, and that's what I thought was even weirder, like where would there be drama, you know what I'm saying, why would there ever be any drama, like ---
Q. Well, it did start drama, didn't it?
A. --- you're sending your kid to my house to a birthday party, and you're obviously sending a card with a picture of you two in it, obviously you've got some drama because I don't have any, and she should have came to the party.
Q. Well, ---
A. I never didn't invite her, you know what I'm saying. I don't know this lady. She's more than welcome to come just like anybody else was welcome to come to a party.
Q. Got'cha. So can you -- and I asked you earlier what exactly did it say, and you kind of went off -- you ---
A. I mean, I can't say word for word what the card said. I know for a fact it had a picture of them together. It said

I don't want to start any drama today, and it said something -- I love the man that I have made you become.

Q. I love the man that I have made you become?

A. Yeah, and it was like she -- she made him in such a good, good man, and she loved that she did that or something.

Q. Okay.

A. I don't know what in -- I was like ---

Q. So that when you read that card, it was when ---

A. It hurt my feelings.

Q. Okay. And it was when Ty, and your brother, and Kendrick Chestnut were out, right?

A. Yeah. They were -- I actually picked the card up because I think he had it sitting in the living room or something, and I remember sitting there. I just picked it up and said I'm going to read the card. I'm going to be nosy. I'm going to do it, and that was when the picture popped out, and I'm like ---

Q. Do you believe -- do you believe Ty had read the card at that point?

A. Yeah.

Q. Okay. And he wasn't trying to hide the card?

A. I didn't open it. No, he wasn't trying to hide it.

Q. So ---

A. But I wasn't going to -- I didn't want to be nosy either, you know what I'm saying. She's sending us his

birthday card. I mean, I should have been nosy and read it earlier. Honestly I probably should have read it earlier, but I don't know -- I just didn't. I was like that's his card. If he wants to show me the card, he will. He should have showed it to me at the party.

Q. Okay.

A. Why didn't he show it to me then. I was just like, you know what, he didn't. I'm just going to read it.

Q. So you opened the card. You read what the card said, and it hurt your feelings?

A. Yes sir.

Q. And it made you mad?

A. Hurt my feelings more.

Q. And you made the decision then that you didn't want Ty to come back and stay at the house with you that night, right?

A. Yeah, pretty much.

Q. I mean, why? Ty didn't do anything, did he? He got a card from a -- the mother of his daughter on his birthday. What did Ty do that made you so upset?

A. It's kind of what he didn't do. You know, he should have -- he should have ---

Q. He -- he could have stopped her from sending a card?

A. No. He should have shown me the card and say, you know, hey, look, she sent me this. I want you to see this.

You know, I think this is really inappropriate. Instead it's like you're out at the strip club now still. Like, you know, I didn't mind him going to the club. Then it's like I get this card with that, and I'm already thinking something like it's got to be happening, and -- and you're at the strip club tonight.

Q. So upset and so mad that you pick up the phone and got your sister and her boyfriend out of bed ---

A. No. I just called Cindy to talk to me. I didn't ever tell her really -- Cindy didn't have to come if she didn't want to come. Nobody has to come. I didn't even really say to come. I was like, Cindy, I just -- I needed someone to talk to, to rationalize my brain before I rush off and -- this is okay. It's okay for him to -- because I'm really naive.

It's okay for him to be at the strip -- it's okay that I get this card. I should just sit here and be pregnant, and not worry about it and deal with it. I should just deal with this, and so I called Cindy for ---

Q. What time of night did you make that call?

A. I don't know, maybe between eleven and twelve-thirty, one, I don't know.

Q. Okay.

A. I remember calling. I had opened the card. I remember they had already left for the club, and I was seeing

the envelope there. I opened it up, and then I remember being upset about it. The food already came. I was so upset about it, I couldn't even eat. I was like, oh, it's not ---

Q. When did you order the food?

A. I ordered it that night right before -- I ordered it because I knew by the time they get back, they would be hungry and there would be food. I don't remember saying things -- as soon as they left, about an hour later, I think I ordered it, because I assumed they would be home within an hour after that.

Q. So you ---

A. The kids were hungry, but then they fell asleep.

Q. You make the decision that you were so mad that you don't want Ty to stay there that night, but you thought about him enough to think that he might be hungry when he gets home from the strip club?

A. No, this was before. I ordered the food before I ever read the card. I was still thinking like, oh, yeah, they went to the club. Okay, everything is great. The kids were hungry. I was like, you know, I'll go ahead and order some super-subs, too. I got two footlong super-subs and a large cheese pizza, because the kids wanted a pizza, and I was like I knew Ty loved super-subs, so I was like I'll get two of them because Mo will be hungry, and my brother will, too, and I just might want a bite, too.

I don't know, but I know that's what I ordered, and I was like -- that's what I thought, that the food will be there when he gets home, you know. He's out with my brother. Everything's fine. There was something to eat, and everything is going to be fine.

Q. Okay.

A. And then I had already ordered the food, and I don't remember if the food had made it there or not, and then I just remember being -- the kids were kind of asleep. The lights are off, and I was like, um, like what -- you know, what am I going to do? I don't want to wake them up, and I just wanted to see the card. It triggered me. It was sitting there somewhere, and I remember, I'm going to read the card.

Q. All right. Now, they come home, and you're -- he's -- Ty's upset about the fact that he's lost some money or gotten some money stolen from him. He lost some money ---

A. Yes sir.

Q. --- at the strip club, and you're upset because you've read this card that his ex had sent him, and y'all have got to have a talk, and get in the kitchen and talk about it, right?

A. Yeah.

Q. And that's what y'all did? Y'all went in the kitchen, and it wasn't a talk, was it? It was you arguing with him ---

and raising your voice at him ---

A. I was not arguing. He -- he was upset. He told me he thought Mo took his money at the club or something. I was like -- I was like what do you want me to do about that? I was like -- and I -- and he said, well, what are you mad about? And I was like the card, and I was like and the picture was there, and he goes what are you worried about that for?

You know what -- and he kind of pushed me back up against the stove, like in reference -- like what I was saying really didn't matter. I mean, he didn't care about the card. It didn't make any relevance to him, that his money was gone and that's what's important.

Q. Okay. And then at that point you -- and you're in the kitchen and everybody else is in the living room, right?

A. Me and him are in the kitchen. They had just literally walked through the door, you know what I'm saying, and I -- I was in the living room, and before they came in, Moke was getting ready to walk out to door to do something, and at the same time, it was like Moke and Ty -- Ty was opening the door and coming in.

And I remember Ty was kind of upset, and I remember like I want -- and he goes I've got something to talk to you about, and I was like me, too. And I don't know if Joey and them -- or Cindy -- they're all happy to see each other, and

me and Ty just walked straight to the kitchen.

Q. Okay. Now, back out at the front of the -- I guess it's the back door, or the front of the house, where the living room is and the stairs are, ---

A. Yes sir.

Q. --- that's where you were standing right beside your brother and right beside Ty, is that right?

A. Uh huh **(indicating positive)**.

Q. And that's when Ty was trying to get his daughter and leave the house, is that right?

A. I wasn't standing beside Ty in the living room when he was trying to get his daughter. I was still in the kitchen.

Q. Okay.

A. I remember standing there and I don't know whether Cindy -- I was kind of still upset about what happened in the kitchen. Cindy came in, and Joey, and I think -- I don't know if I was kind of cry- -- I didn't want Joey to know that I was upset at all, and Cindy and -- Joey had kind of came in, I think, a little after Cindy, because I remember telling Cindy, I was like I'm upset, you know. He pushed me up against the stove, and -- and then Joey almost heard it because I remember Joey being like is everything okay? And I remember Cindy saying yes.

I was like, Joey, everything is fine, because I didn't want to go there. I assumed that after what happened, he's --

just going to go. I don't want to get everybody involved with anything else. I'm -- we're just going to end this. I'm going to keep my mouth shut and deal with it.

And then as I was walking towards the -- the living room, I don't know why he came back. I don't -- I don't know. I was in the -- I don't know why, because then I just walked -- I don't know why. You know, I was just walking towards the living room, ---

Q. Okay. Who was in front of -- who was in front of whom ---

A. --- and he was there, and we kind of -- we kind of just connected right there.

Q. Was he in front of you leaving the kitchen going to the living room ---

A. Yeah, he was. He walked out.

Q. --- or were you in front of him leaving the kitchen and going to the living room?

A. No, I think he -- he just walked out. I mean, he wanted to go, you know.

Q. And he walked out of the kitchen towards the living room, and you walked out of the kitchen towards the living room behind him, and your brother, Joey, was standing up near the door by the ---

A. I think I stayed by the stove. I never really -- I didn't follow him. I was really upset and I was just let- --

I was letting him go. I wasn't chasing him out the door. You know, I'm not chasing -- I remember standing there, and I think -- I don't know if -- I never asked Joey. I never got a chance.

I don't know why Cindy and them came in. Were -- were they walking in there because was Ty being loud? I don't know. Did they come in there because they were wondering where I am? I don't know. I just remember I think I stayed in the kitchen for a minute because I didn't -- I felt kind of ashamed. I didn't want to go back in there right that second, you know what I'm saying. Everybody seemed -- really was having fun, and I don't want to go in there, you know, and just ---

Q. Okay. You end up going into the kitchen, and your brother, Joey, is standing near the front door of the house. That is where the stairs are in the living room, right?

A. When? Okay, when Joey is in -- are you talking about later on or ---

Q. Later on, yes.

A. Okay. What time later on?

Q. Well, at the time where Joey pulled a knife out and -- with the blade out and had it ---

A. He had it down by his legs, like this.

Q. Right, with the blade out, right?

A. And I remember him being so startled and, I mean, I----

think because after everything that had happened, you know, Joey was just like, you know, I really want to calm down Ty, you know, because Joey didn't want to fight Ty, you know. They -- they had just went out.

You know, it was kind of -- it was just like a little like please let this just go, like maybe this will scare this guy that was in there fighting, because obviously nobody is stopping this. It's still escalating, and he had it down just along the side, I remember, and just saying don't mess with my sisters, man.

Q. Was the blade out?

A. I guess it was. I don't know for a fact that it was out. I just know he had something in his hand, like a little ol' something. I can't be sure that the blade was out. I just know he had it by his side.

Q. If I -- assuming that fists are not weapons, did anyone else have a weapon that you saw?

A. No sir, not that I know of.

Q. --- other than your brother's knife ---

A. Not that I know of.

Q. Okay. And then you find yourself right beside your brother and Ty at the point where your brother sliced ---

A. He didn't slice him like that. I remember Ty being like -- Joey was like don't mess with my sisters, man, and Ty was like or what, and I mean just swinging. As he was saying

it, he was just swinging, like he was so mad or something, and I don't know if he was getting mad at me and just went off on Joey. I don't know, and as he punched and Joey went back, he went like that.

It was like he went back. It wasn't like ---

Q. Did ---

A. --- sliced. When you say sli- -- don't make that pic-- -- paint that picture of it happened -- it didn't happen like that.

Q. Ma'am, I used your words from your earlier testimony ---

A. Okay.

Q. --- when you said sliced.

A. Okay. Well, I mean, like I don't -- it wasn't like he just sliced somebody. You know, to me it wasn't like a slicing. It was just he went like that.

Q. Okay. Well, if I use the word ---

A. Or if his chest was sliced. Joey didn't slice him. I mean, Ty might have -- I don't know how to -- but it wasn't ---

Q. If I use the word cut, can we -- can we carry on?

A. Cut, yes.

Q. All right. I'm going to use the word cut. Where were you standing when your brother cut Larry Chestnut?

A. I walked into the living room and Joey was standing

there, and all I know is Joey had a little -- a little pocket knife in his hand, and it was right by his waist down here. It wasn't up in the air. It was right by his waist, and he said don't mess with my -- I remember him going don't mess with my sisters, man. It really shook him, kind of like, but okay, and I just remember Ty being or what, and he punched him and he just went like that. It wasn't ---

Q. Why do you ---

A. It's kind of like -- it's kind of like it just happened like that. I don't know. I can't ---

Q. Why do you continue to refer to it as a little knife and why do you continue to ---

A. Because when you think of knives, in like kitchen knives, I'm thinking Jason and a knife. If I go cut an onion right now, I'm not going to go find a pocket knife to cut an onion with. I'm going to get a knife that you use to cut. A pocket knife to me is something you do your fingernails with or ---

Q. What kind of knife would you use to ---

A. --- slice a peach, or cut a fishing rod, I don't know, a pocket knife that you use to do daily things with, not ---

Q. Or ---

A. --- keep in your pocket for bad people, I wouldn't think.

Q. You wouldn't think that?

A. He wouldn't do that.

Q. Okay. Was Joey cutting an onion when he pulled the knife out on Ty in the living room?

A. No. He was trying to keep people -- anything else happening. My sister had just got beat up in the kitchen. He seen me up against the wall. He didn't -- you know what I'm saying, what should a brother do, stand there? Nobody else that's in the house is doing anything.

Q. When your brother cut ---

A. Nobody is really, really -- why wouldn't anybody else call 911, you know what I'm saying. Why didn't Mo -- why did Mo and Moke even let Ty back into the living room? They're all in there, you know what I'm saying. Why didn't they just pull him and get him out of the house to begin with? There's a houseful of grown men.

I don't think it should be against a woman to have to sit there and worry about being battered to death and worry about, oh, well, he's getting sliced, and everything else. Where are all these men at? What are these men supposed to be doing the whole time, you know what I'm saying.

Q. When your brother pulled the knife out, did you think that was going to calm things down?

A. No, he wasn't -- not calm it down. I just figured Ty would just keep walking out the door. He just had it out, not like he wanted to hurt somebody. It was never -- Joey

wasn't like that. He didn't want to hurt anybody. He just assumed he was just -- okay, let's cool it, you know. If you see something like that, okay, let's just cool this because it's getting out of control.

Q. All right. Now, back to my original question.

A. He didn't want to hurt Ty. Joey didn't want to hurt anybody.

Q. Back to my original question. How close were you to Joey when he pulled his knife out?

A. I was right next to him. It was like we were right there.

Q. Right beside him, and how close were you to Ty when Joey pulled his knife out?

A. Right across from him. He was across from Joey. I mean, it's kind of like a little triangle like.

Q. All right.

A. I'm here. Joey and Ty was right here.

Q. And Joey is a big fellow?

A. Pretty big.

Q. And they went and -- and somehow they went at each other, a punch and a knife together right there in the front foyer, near the front steps of the apartment, right?

A. Yes sir.

Q. And as that happened, you believe Joey fell back against the wall or fell on the ground, we're not sure, ---

A. He went backward.
Q. Okay. And then what did Ty do?
A. He went oh, oh. I remember him going like this, and he had a shirt on, just a couture shirt I had bought him, and he pulled it off. And at first I didn't think anything, but he was bleeding. He was look what your brother did. Look what your brother did, and I'm like -- and then I just remember seeing Tynesha and Chapell, and I'm like let me get Tynesha and Chapell upstairs, and then we'll see what Joey did and what's wrong with Jo- -- I mean, I didn't think about it like that. I don't ---
Q. You said when you got back downstairs from taking the girls upstairs, you came into the kitchen. There was not a fight going on in the kitchen. They were just standing there?
A. I didn't really see a fight.
Q. Okay.
A. I didn't see any stabbing.
Q. So you never saw any more fighting other than your brother cut Ty in the chest, and Ty hit your brother in the nose up near the front steps? That's the only body you saw in the living room, is that right?
A. Yeah, and there's a ---
Q. You saw no fighting in the kitchen after you got back down? You saw your brother in the kitchen with a knife in ---

his hand ---

A. I didn't see Joey with a knife in his hand. I don't -- Joey -- Joey's hand -- I don't think he -- I don't remember if anything was in his hands or on -- but he was holding on to the dishwasher. He was standing there like his hands was ---

Q. Did he have blood on his hands?

A. I didn't -- I don't remember looking. Joey is so big, I didn't see his hands. I just remember looking at his face, and like trying to get out the door, and I remember I seen blood on his face. I didn't see the bubbling, but his nose was real -- bleeding. I'm like Joey, let's just get out of here. Then we walked out the door.

Q. Okay. And in that kitchen where you saw no fighting going on, you saw Ty standing ---

A. I mean, they were arguing, but there wasn't like -- I didn't see like fighting, fighting. I mean, I don't know if they argued. I don't know.

Q. Okay. You saw Kendrick Chestnut standing all the way across in the opposite corner you described ---

A. I remember seeing him by the refrigerator.

Q. Okay. And you left ---

A. Ty was -- Ty was in one corner and Mo was like by the refrigerator, standing there.

Q. And you haven't described any weapons in his hand,

right?

A. Uh uh **(indicating negative).**

Q. Do you recall during that May 26th ---

A. I don't know why 911 wasn't called in. Where was 911 then?

Q. Do you recall during that May 26th interview the statement Mr. Wilson was asking you about where you described what was going on between Ty and your brother as like a cat fight? Do you remember that?

A. Yeah. Well, ---

Q. Do you remember telling them that your brother had a knife in his hand, and that Ty ended up with the scissors, and they were going at each other like a cat fight? Remember using those words?

A. Yes sir.

Q. Okay. And do you remember ---

A. Because at the time, it's jumbled all together, like Joey -- like Ty had gotten cut, and I remember the scissors. It was like kind of a cat fight. I didn't know what they -- what was going on, you know what I'm saying, after, you know, Ty and Joey's argument, and then in the kitchen he had scissors out. Like what Ty -- I don't know. I don't remember seeing anybody stabbing anybody.

Q. All right. And do you remember when you told the police about that cat fight where -- where your brother had a

knife in his hand and when Ty had scissors in his hand, and they were going at ---

A. I was referring to Joey ---

Q. --- each other like a cat ---

A. --- had the knife in his hand in the living room. I don't ever recall -- remember seeing Joey with the knife in the kitchen. I don't remember that.

Q. Okay. Can you -- I'm sorry. Just let -- if you can let me finish my question.

A. Oh, yes. I'm sorry. I'm sorry.

Q. All right. Do you remember when this cat fight was going on, when you told the police about that cat fight, and they asked you about what Kendrick Chestnut was doing, and you said -- you said nothing, is that right? He was still standing off to the side?

A. There was nothing about any fighting or arguing, whatever had happened in that house, or anything, was he never stopped anything, called anything, did anything, ---

Q. Never did ---

A. --- just let it be. Whatever was happening was happening, and he ain't going to -- don't care if anybody gets hit, if anybody has been bad, or if anybody gobbed it up. Why didn't he stop anybody from grabbing anything, doing anything?

Q. So you're saying that the whole time that this knife

fight was going on, Kendrick Chestnut did nothing?
A. Did nothing.
Q. Nothing.
A. Because why didn't he have any marks on him?
Q. Exactly.
A. He didn't try to fi- -- or stop anybody from doing anything.
Q. Thank you. Okay. So you say as you were leaving the back door of the house, ---
A. Yes sir.
Q. --- which faces Highway 15, which goes out the kitchen area of the house, that you looked back and you saw a fist hit your brother in the back of the head, is that right?
A. No, the side of his face, because we were already going out. We went out the door, and as we were turning, it just went bam on the side, and I was -- and I looked and I remember seeing Mo's face and his fist, ---
Q. All right.
A. --- and I was like -- and Joey went down.
Q. Did you see that knife still in your brother's hand when that happened?
A. I don't remember seeing a knife in Joey's hand.
Q. Did you see that knife in your brother's hand when you went down on the ground to check on him and ---
A. I don't ever remember seeing that. I don't know if

after he got hit it like went -- like it flew out of his hand if he had anything. I don't know. I don't -- the only time I know for a fact I saw a knife in my brother's hand was when he was in the living room and he had it by his leg like this. He was like don't mess with my sisters. I don't remember seeing a knife in Joey's hand.

Q. Did you just say that maybe after he got hit in the head ---

A. I'm saying if that's what you're saying ---

Q. --- the knife flew out of his hand?

A. --- happened. I mean if he had a knife somewhere else, that's the only thing I could think could have happened ---

Q. Let me ask ---

A. --- because I didn't see anything in his hand.

Q. Okay. Let me ask you a question.

A. Okay.

Q. Did you just say that maybe when he got hit in the face in the yard by Kendrick Chestnut, maybe the knife flew out of his hand? Is that what you just said?

A. That could be a scenar- -- I'm thinking of a scenario of how it could have been in the yard. I don't know. I never knew that it was in the yard. I never seen Joey with a knife in his hand in the kitchen. I seen it in his hand in the living room, though.

Q. You've had six years to probably have nightmares about this, right? You've thought about it a lot?
A. I've blocked it out a lot. I didn't want to -- I didn't want to think -- I didn't want to think about it. It's horrible.
Q. Have you not thought about it a lot?
A. I mean, you can't help but not think about it.
Q. Okay. You've thought about what could be, or what would be, and if things had gone differently, that sort of thing, a normal human response, right?
A. Yeah, definitely.
Q. You've thought about it that way?
A. Yeah.
Q. Have you ever thought about what life would be like today if your brother hadn't have pulled a knife out in your apartment that night?
A. He -- he pulled it out for self-defense on the sub- -- he didn't pull it -- he would have never pulled a knife out on anybody if -- if there wasn't something that escalated to something so big that he would have had to pull it. Nobody is just going to pull out a knife and do anything to hurt anybody unless something is escalating them to a point to do it.
Q. Okay. What was done to Joey, I haven't heard anything in any of the testimony in this case, especially your

testimony in this case, that indicated that anybody did anything to Joey Hucks before he pulled that knife out. You said something about self-defense ---

A. Nobody did anything to him ---

Q. --- and I'm going to ask you about it.

A. --- but my sister had just gotten beaten up in the kitchen. It wasn't like just a little slap, which that isn't even appropriate, but slung across the house. They're fighting. They're beating each other with the monkeys, and fighting. That, to me, isn't just a little ol' something. That, to me, is a -- fighting.

Q. These are the photos that depict your -- how bad of a beating your sister took, is that right?

A. Would you like your sister to get punched in the face, thrown across the wall, and you just stand there and say, well, just a little bruise right here, just a little bruise, sis, or would you jump in and try to pull the man that battered your sister right in the jaw, wouldn't you go and run after him and beat his ass?

Q. Who did that?

A. I hope you would.

Q. Who did that in this case?

A. I hope you would.

Q. Who did that in this case?

A. Not that ain't -- that ain't good. There's not a --

there's not a man that you should be -- I mean, any woman that gets beat in the face that's flying across the room and you're a grown man and you're standing in that room and you can't stop that? You can't stop two grown-ass women from getting beat and you got a house full of grown men, there's something wrong with y'all, ---

Q. Did anybody ---

A. --- something real wrong.

Q. --- do that in this case?

A. Cindy got thrown across the room. I don't know if it was all -- but she got hit pretty good. Her and Ty were in a pretty good fight together. I mean, it wasn't just no little old slap, you know. They fought. This was a brawl. Like it wasn't no -- just little ol' slap and leave. They were fighting, woman versus man, and this -- it wasn't just no simple little fight.

Nothing is a simple fight when it comes to men and women fighting anyway, but I -- you know, you -- sometimes you -- you might get a little grab here and there, you know, and settle down, just settle down, you know, but this was bam, fighting, punching, beating each other up, like -- so what do you expect, and especially your baby brother standing there and two other grown men in the house. Why didn't they stop it? I don't know.

That's like sit back and -- and that's what I think ---

about. Why wasn't all this ever stopped. It wasn't like it was just me, and Cindy, and Ty in the house. Where were these other grown men in the house that just were so wonderful, just love everybody and everything. Still where were they at whenever they was getting beat up? Why didn't they stop anything? Why didn't they stop it? You've got two or three hundred pound men. They couldn't stop one man beating a girl? They couldn't stop that? They didn't want to stop it.

Sometimes people don't want to get involved because they want to see it. They don't -- they don't mind it, and they don't want to get them and leave and go and have a real good time, and then leave. There's no sense in anybody that night getting beat, hurt, especially -- it would be different, and it ain't different, if two grown men was fighting. It wasn't two grown fighting. It was women versus men, and the men were big men, and they never stopped. Nobody ever stopped nothing, and they want to blame my brother and whatever else.

Ty didn't want to get -- I don't know how all this happened. Ty was a good guy. Alcohol, whatever else, it's pure alcohol, that I just say the men in the house should have stopped it. You would. And even if I don't know you right now, I see somebody getting knocked to the ground, I ain't going to let -- see anybody right now get battered

across the room and there's grown men in the room that ain't going to stop it, there's something really wrong with that picture to me, ---

Q. Okay.

A. --- but I was raised that way.

Q. Are you done?

A. Yes sir.

THE COURT: Redirect, Solicitor.

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

REDIRECT-EXAMINATION BY MS. LIVESAY:

Q. Now, Christie, there was some questions asked about Ty leaving that night. The first time he told you I'm leaving, that was when you were in the kitchen, is that right?

A. Yes Ma'am.

Q. Where did he tell you he was going? Did he say?

A. He said he was going home. I think he was going to get Tynesha out of the living room, and I don't -- I don't remember if I ---

Q. He said he was going home?

A. Yes Ma'am.

Q. Where was home to him?

A. If it wasn't with me, staying wherever I was staying -- it didn't matter, wherever I was staying, it would be with his mother and father.

Q. Okay. And did he have any furniture in that ---

apartment?

A. No furniture.

Q. Okay. Did he bring anything from his mama and daddy's house into that apartment?

A. Not much, a few clothes, not that much stuff.

Q. Just a few clothes?

A. Uh huh **(indicating positive)**.

Q. Okay. Whose furniture was in that house?

A. My furniture.

Q. Okay. Now, who paid the bills in that house?

A. My mom and dad, and I -- I would -- I had a cleaning business. Sometimes he would -- he would give me some money. If he was working with Mo, he would give me some money, but who paid the bills, my mom and dad did.

Q. Okay.

A. He didn't really pay them.

Q. Was there any mistake where he was going when he told you he was going home?

A. No. I knew it was Mr. Larry and Ms. Sandra's house.

Q. And that's whenever he was talking ---

A. If he said he was going home, that's -- that's to Mr. Larry's house.

Q. Okay. And he just had a few clothes at your house, and they were the clothes you bought him?

A. A lot of the stuff I bought.

Q. Okay. But ---
A. He may have had some of his other clothes there, but it wasn't much. The majority of the things that were in the house were things that I had bought or he had bought when he was in my house. It wasn't stuff that he brought from their house over. It was just the new things accumulating being with me.
Q. Okay. And his staying there was at your discretion?
A. Yes Ma'am.
Q. Okay. When you wanted him there, you would let him stay there, and when you didn't want him there, get out?
A. Yes Ma'am.
Q. It was at your discretion?
A. Yes Ma'am.
Q. Okay. Was there any mistake who was living in that house as far as who had the key, who had the authority to say who was there and who had to leave? Who was -- who was that?
A. I did pretty much, I mean.
Q. Okay. So that was definitely your house?
A. I wanted it to be mine and his, but you know what I'm saying, sometimes it just escalated where it's like you're not coming in and I'm going to keep the key, like ---
Q. Okay. And there was never a point where he could tell you to get out, could he?

A. No.
Q. Okay. Now, that night, there's this issue about him leaving, him leaving, when he left. When he told you the first time, I'm going home, did anybody put their hands on him to keep him there?
A. Not that I saw, but I didn't see him -- he was in the living room. I can't say that I seen anybody touch him because I wasn't in there. I was in the kitchen and I remained in the kitchen until we met again in the hallway. I can't say that anybody did. I assume they didn't because he came back and he wasn't arguing with anybody in there, so that's my answer to that.
Q. But you never kept him from leaving?
A. No, I didn't. He was going to leave. He was going to -- he wanted to leave.
Q. But for some reason he didn't, is that right?
A. Yes Ma'am.
Q. Okay. And he had a ride, didn't he?
A. He could have rode with Mo. I assume he had a car there. I don't remember if Mo had a car there or not. I don't know.
Q. Okay. And at that point, did Kendrick Chestnut leave?
A. Uh uh **(indicating negative)**.
Q. Okay.

THE COURT: Was that a yes or no?

A. I'm sorry. No sir. No Ma'am.

THE COURT: All right.

Q. Now, the second time when all this was going on, he had already grabbed you by the neck? He had already beaten Cindy up on the floor? He gets up, walks in, and Joey is holding a knife right here?

A. Yeah. I don't know if he was leaving or what he was he doing. I just remember ---

Q. Joey hadn't left at that point?

A. Yeah.

Q. Okay. And when Joey -- when all this happening, it was happening where, along here?

A. Yeah. Joey was in the -- Joey was in the living room, and I know Joey was like what's going on? I was like they're fighting, and, you know, and Joey heard them. I guess he wasn't really getting involved, but he was wanting to stop it, if anything. Everything stopped.

And I walked into the living room and I was standing with him, and that's when he had the little thing there, and Ty came in, and it was just like don't mess with my sisters, man. I don't know if Ty said anything to Joey. I don't remember. But for some reason, Joey said don't mess with my sisters, man, but not in a yelling way, and Ty just said or what.

Q. Okay. But he never said you ain't leaving to Ty? Joey never ---

A. Nobody ever told anybody they couldn't leave.

Q. Okay. And, in fact, there was a door right here that he could have gotten out of?

A. Yeah.

Q. Or he could have walked back through and got out that door, is that right?

A. Uh huh **(indicating positive)**.

Q. Okay. So he didn't walk out the door then either, did he?

A. No.

Q. When Joey pulled out that pocket knife and had it down here, did Larry Chestnut look like he was afraid?

A. Not really. I don't even remember feeling -- he didn't look afraid. I don't think he was afraid of anything at this point, because Ty was really drunk.

Q. Okay.

A. I don't think he was scared of -- he was calm, you know what I'm saying? He wasn't scared of anything.

Q. So Ty wasn't going -- like backing up away from him?

A. No.

Q. When he pulled out that knife, did Ty ever back up and say, man, let's just quit this?

A. No; no.

Q. Okay. What did Larry Chestnut say to Joey when he pulled out that knife?
A. Joey just had it down by his leg. It was like don't mess with my sisters, man. I just remember Ty being like or what, and as he was saying it, he was kind of swinging.
Q. So he actually moved towards Joey?
A. Yes.
Q. Okay. And it wasn't until he moved towards Joey that Joey swung his arm?
A. Yes Ma'am.
Q. Okay. Well, if Ty had backed up, would Joey have ever even nicked ---
A. I wouldn't -- Joey wouldn't have hit anybody.
Q. Okay. Now, there was some questions asked about did anybody put their hands on Joey before the knife was brought out.
A. No.
Q. At that point, who was being beat up in the house?
A. Cindy -- Cindy had just was -- and Moke were the only ones I know of that were ever -- but I didn't -- I didn't even look back to see if Moke, and Ty, and all them were fighting. I didn't -- I didn't know. I just know Cindy was getting beat up, and Moke went and got -- tried to get around -- he got around Kendrick Chestnut. He got around, and I just remember seeing Moke on top of Ty and pulling him off,

and I then thought everything was okay, it was over.
Q. So you remember Ty being on top of Cindy and then Richard Day pulling him off?
A. Cin- -- I just remember Ty was on the floor, and I remember seeing Moke on the floor, and Cindy was up against the dishwasher. I remember seeing Cindy up against the dishwasher, and Ty was in the floor and Moke was in the floor.
Q. Okay. But at this time, the only people that had been struck, hit, were you and Cindy Evans?
A. And Ty. We're all, you know, fighting.
Q. Right. Who took -- let me ask you this question: Who took the first swing between Ty and Cindy Evans?
A. Like a swing, Ty hit her first. I don't know if Cindy touched her (sic), but still, I mean, they're going man versus woman, and when you're not really ---
Q. Okay. Well, let me ask you this: Between you and Larry Chestnut, who grabbed who first?
A. He grabbed me first.
Q. Okay. Did Cindy Evans ever make any kind of effort to put her hands on Ty until he grabbed you?
A. No.
Q. Okay.
A. Nobody was wanting to argue. We -- I thought everything would honestly be okay.

Q. Okay. So he never made any ef- -- she never made any effort to touch ---

A. No.

Q. --- Ty until he grabbed you?

A. Cindy wouldn't ever do it anyway, even if it's already -- he battered me to death.

Q. Did he ever ---

A. She would have never done it, you know what I'm saying.

Q. Okay.

A. She's just going to comfort me and be my sister and let me make the decision that I feel like I was going to make in my life, whether to stay or go.

Q. Okay.

A. And that's all she could do.

Q. So just yes or no, did she get involved ---

A. No Ma'am.

Q. --- until he put his hands on you?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. Did Joey get involved before he put his hands on you and then put his hands on Cindy?

A. No.

Q. Okay. So he didn't get involved until Larry Chestnut—

had gotten into some physical altercation with you and Cindy Evans?

A. Yes Ma'am.

Q. Okay. Now, going back to -- we've already established he didn't leave when he said I'm going home. For whatever reason, he didn't leave. When Joey pulled out the knife at that point, he's by the door. He could have left. He did not leave then. When you're down there and Joey -- the blood is coming out of his mouth, did you see Larry Chestnut then?

A. Outside?

Q. Yes, anywhere?

A. I don't remember seeing Ty.

Q. Okay. You didn't see him then?

A. Uh uh **(indicating negative)**.

Q. Okay. When the police came, was Larry Chestnut there?

A. No Ma'am.

Q. Okay. So amazingly enough, once Joey was down on the ground, the blood was coming out, then Larry Chestnut could find a way out of that apartment?

A. I don't remember seeing anybody. I don't remember seeing him leaving. I just remember seeing Moke -- I never saw anybody else. I never seen Moke. I seen the blue Suburban just flying through the yard, and I thought are they going to hit me or Joey? I was like whoa, like it just flew

in like a Dukes of Hazzard thing, and I was like what is going on.

Q. Well, let me ask you this question: When he is down and the police are on their way, or what not is going on, did you see Larry Chestnut?

A. No Ma'am.

Q. Okay. So he definitely wasn't there at that point?

A. Not with me in the yard, or Joey.

Q. When you went inside to check on Tynesha and Chapell, was Larry Chestnut ---

A. I never got to go inside. They never would let me. They let Cindy.

Q. Okay. Cindy went inside?

A. Uh huh **(indicating positive)**.

Q. So while all of this is going on, is Larry Chestnut there?

A. I found out he wasn't there. I can't say that he wasn't there. I never went in the house. I don't know where they were. I know they weren't in the yard with me anywhere.

Q. Okay. But you saw him when you were in the kitchen?

A. Yeah.

Q. Did you see him when you were in the living room at that point ---

A. I never seen them again after I left out of the house.

I don't remember ever seeing him again.
Q. All right. You don't remember seeing him again once Joey is on the ground and the blood is coming out of his mouth, ---
A. Yeah. I don't -- yeah, I don't ever remember seeing him.
Q. --- is that right?
A. Yes Ma'am.
Q. Okay. When the police showed up, was Larry Chestnut around then?
A. No Ma'am.
Q. Okay. So by that point he had somehow found a way to leave the area or to leave that apartment?
A. Yes Ma'am.
Q. Okay. Now, Kendrick Chestnut, was he there at and ---
A. No, I didn't see him either. I didn't see either one of them.
Q. Okay. You didn't see either one of them then once Joey was on the ground and the blood coming out of his mouth?
A. Yeah. I saw -- I didn't see either one of them.
Q. Okay. So then both of them finally found a way to get in their car and leave the apartment?
A. I assume.

Q. Okay.
A. You know, I never seen them. I never looked back. I don't know ever where they went.
Q. Okay. Now, you made a big point about how many men were in -- in the house. There were actually three men -- four men in the house, is that right? It was Larry, Kendrick Chestnut, Richard Day, and Joey Hucks?
A. Yes Ma'am.
Q. Okay. They were all in there?
A. Uh huh **(indicating positive)**.
Q. Okay. When Larry Chestnut and Cindy Evans are in there fighting in the kitchen, who is standing in the doorway?
A. I remember Mo -- I just remember looking back like I need help, and Mo is standing there and didn't kind of come forward, and then Moke just came in, and that's all I remember. That was it. Moke just barged through, like came through. That's all I know.
Q. Okay. But it was Kendrick Chestnut standing in the doorway?
A. Yeah, like through the little hallway thing. I remember seeing -- he was standing -- I was looking back and I was like I need help -- they need help. I mean, they was real -- they wasn't like, hey, you cannot see this? I mean, it's like hello. I'm three hundred pounds, and I'm eight- - -

months pregnant, and I can't -- I don't know what I'm supposed to really be doing right now except for screaming and hollering, and somebody help. Do something. I mean, ---

Q. Okay. But you do agree ---

A. I don't know what I'm supposed to be doing.

Q. But you do agree that the reason that fight between Cindy Evans and Larry Chestnut finally got broken up was because Richard Day was finally able to get past Kendrick Chestnut and ---

A. Yes. He came in and got Ty off.

Q. Okay. So it made a big difference when he finally got through Kendrick Chestnut ---

A. Yes.

Q. --- to get in there to get her some help?

A. Yes.

Q. Okay.

A. It wasn't stopping at all, like there wasn't -- it wasn't -- no one was stopping it.

Q. Well, let me ask you this: That fight between Larry Chestnut and Cindy Evans was going a lot different until Richard Day came into the picture?

A. Yeah.

Q. Just one more real quick question, Christie. Ralph Wilson asked you if you had met with me and how many times, is that right?

A. Yes Ma'am.
Q. And you've met with me, isn't that right?
A. Yes Ma'am.
Q. Okay. Have I told you to tell anything to this jury other than the truth?
A. Absolutely not.
Q. Okay. Now, let me ask you this: Did you ever meet with Ralph Wilson?
A. Yes Ma'am, I did.
Q. Where did you meet with him at?
A. At his office.
Q. Okay.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Mr. Wilson.

MR. WILSON: Yes sir.

RECROSS-EXAMINATION BY MR. WILSON:

Q. And the story that you told me at my office is different than the story ---

MS. LIVESAY: Your Honor, may I ---

THE COURT: Y'all come over and talk to me right now.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

Q. Let me ask you this, Ma'am: When this all occurred, you said that Ty was really, really drunk. That's what you just told the Solicitor, right?
A. He was -- yeah, he was drunk that night.

Q. But nobody else was drunk but Ty? The only person there that was ---

A. Well, I was pregnant. Cindy had just showed up. I mean, I don't know if Mo was drunk or not. I don't know if he was. I'm not sure. I know that Ty was. I didn't really -- I don't know if anybody else was. Joey wasn't belligerent. I just know that Ty was pretty drunk.

Q. Joey wasn't drunk ---

A. I know him, you know what I'm saying. I don't really know anybody -- I know how Ty is if he was drinking liquor.

Q. Joey was not drunk? Is there ---

A. Not drunk.

Q. --- any question about that in your mind? Joey was not drunk?

A. Was not drunk.

Q. And not drunk, he still pulled out that knife? No question about that, is there?

A. No, no question about that.

Q. And which hand did he have that knife in?

A. In his left hand to the side of his leg.

Q. Is he right or left-handed?

A. Right-handed.

Q. All right. He's right-handed, but he pulls a knife out and he's holding it in his left hand?

A. I guess that means he didn't want to have to use it.

Q. Now, when did you ever say before this very moment that Ty -- that Joey had the knife in his left hand? When did you ever say that, Ma'am?

A. No one ever asked me where -- what hand he had the knife in. I know that when I walked into the living room, Joey was standing -- like if I'm looking at you, Joey is standing there and I'm standing right here, he had it down by his left leg. I don't think anybody ever asked me. I don't remember if anybody asked me. If they did, I know from now, the pictures, that he had it in his left hand.

Q. He had the knife in his left hand, and when he swung and cut Ty, he cut him then with his left hand, is that what you're saying?

A. Like -- like that, I guess. I don't know. He went back and I remember him going like that, because ---

Q. You had blood all over you, did you not?

A. Yeah. That was from -- after being in the yard.

Q. Well, did you have any blood on you from in the house, when the fight was going on in the house?

A. I -- not that I know of.

Q. Did you have blood splatters on you?

A. I could have had it on me when Joey got hit, if blood went on me or if Ty -- if any of Ty's blood got on me. I don't know. I don't remember seeing blood all over me, though.

Q. When Ty was ---
A. Ty had blood on him.
Q. When Ty got cut in the house, did you get blood on you from that?
A. I don't know. I mean, at that particular time?
Q. Yes Ma'am.
A. Like when -- as soon as he got -- I don't remember if I did. I don't -- I don't know. I was hurrying up and getting Tynesha and Chapell. I could have brushed across him. It could have gotten on me. I don't know. I wasn't looking.

I didn't see blood in a hand or on me like physically, like, oh, God, there's blood everywhere, right? No, if that's what you're asking. Now, if it kind of got on me, it could have. I don't know. It wasn't something that I noticed.

Q. When you were talking with the Solicitor, you said that after the altercation between Ty and Cindy in the kitchen, that Ty gets up and Ty is getting out towards the door, is he not? When he ---
A. When Ty and Cindy are arguing, or fighting, or whatever, I never looked. I don't know. I just remember being -- I don't -- I remember going back to the living -- getting through. Moke came in there. I remember going in and seeing my brother. I don't know. I was standing in

there with Joey because Joey was asking me kind of what was going on, and I was like, oh, they're arguing, fighting, and then seeing Moke on the floor.

Q. The fight between Joey -- the fight between Cindy and Ty occurred in the kitchen, is that -- is that true?

A. It kind of started in the hallway thing, though, you know what I'm saying. She was in the kitchen when -- when he was in there.

Q. It started in the hallway, went to the kitchen area?

A. Basically the kitchen, though. It was like the wall that's in the kitchen, the hallway, is like a little, teeny space dividing between the living room and the kitchen.

Q. Okay. My point is after the fight ended, you said Moke came in and helped to separate them, and the fight was over then between Cindy and ---

A. I assumed. I didn't know what they were still doing. I didn't know if Moke was going to get -- I thought later on, God, Moke didn't get hit? I thought maybe -- maybe, thank God, that Ty didn't hit anybody else and it would be fine. Nobody else -- I just -- I don't remember what else happened.

I remember seeing Moke go in there, and that's all I worry about, and then I went to go see what Joey was doing, and I seen Joey in there. I don't really -- the next thing I remember is seeing Ty come into the living room. I don't

remember how -- anything else in there.
Q. Well, obviously if Ty is in the living room, he's not in the kitchen ---
A. They had already -- that's what I'm saying. They had -- I walked in to go see Joey in the living room after Moke had went in there and was getting them off. Everything is okay in there. I'm going to go into the living room now and go see what Joey, and Tynesha -- and I don't even remember if I remember Tynesha and Chapell being there at the time.
I just wanted to see what Joey was doing for a minute and get out of the kitchen, and I then don't know how -- the fight must have broke up, and Ty came along to the living room. I was in the living room after the fight broke up, and he came in. He came into the living room from out of the kitchen. The fight got broke up and he came into the kitchen -- I mean to the living room where I was.
Q. Ty comes into the living room. The fight between he and Cindy is obviously over because he comes out of the kitchen into the living room?
A. Yes sir.
Q. That's when he is confronted by your brother with the knife, isn't that correct?
A. He didn't confront him with the knife, though. It wasn't like confronting him with the knife, like look, I've got a knife. You back up or else. It was -- Joey was like

don't mess with my sisters, man, and had it like that, and Ty was like or what, and just went at him, you know what I'm saying. It wasn't really like -- anything like that. I don't know what you're saying.

Q. Ty comes out of the kitchen, walks through the house, and at this point, he's trying to get his daughter because his daughter is still there, to leave. Your brother confronts him with the knife at that point. He can't leave because your brother is standing there with a knife at him. How is he going to leave?

A. Keep walking.

Q. And get cut in the back?

A. Who's to say Joey was going to cut anybody?

Q. Maybe he wouldn't have. We just ---

A. Maybe he wouldn't have. That's what I'm saying. Maybe nobody -- maybe nothing would have ever happened if people would have just kept going -- minding their business. I don't know. I can't say what would have ever happened, but maybe -- you know, I don't know.

Q. The Solicitor asked you about whether or not ---

A. Joey didn't have the knife -- let me put it this way. Joey didn't have the knife up like he wanted to cut somebody. Joey had it down by his side, like Joey said hey, like if something like happens in here like it did in there, I'll be able to get away, or protect my sisters, or something. It

was never in the sort of let me just try to harm this guy that hurt my sisters.

Joey still wasn't even -- didn't even want to harm anybody even after that. He just wanted it to stop. He didn't want to come in between -- you know what I'm saying. That -- I'm pregnant, and he lov- -- you know, he's my boyfriend or friend, they ain't trying to hurt each other. Ty didn't want to hurt him, you know. Ty didn't want to hurt -- you know, they were good friends.

Q. Joey ---

A. It wasn't about hurting or stabbing people in the back. It wasn't about that. I don't know how it --it was self-defense, and shit, a fight was going on and that's all I -- that's the way it seemed to me.

Q. Joey was twice the size of your boyfriend and he had a knife, and he was eighteen years old and three hundred pounds. How in the world was Ty supposed to get past him with the knife?

A. How to make sure it was a fight, I don't know. He's not a little man. I mean, I really don't know. I mean, he could have ran. I mean, there are so many things you can do. It wasn't like it was a butcher knife and chasing behind you and you're like let's get away. It's a little, teeny pocket -- it's a teeny little thing.

Q. And there's no ---

A. He didn't have it pointed at anybody. He didn't want to hit -- he didn't want to hurt Ty. The last thing Joey had on his mind was I think I'm going to stab Ty right now to give him -- he didn't want to hurt him. He didn't want to hurt him. He didn't. He just wanted it to stop. There was never no I want to hurt this man at all.

I really don't want to see my sister get hit in the face or anybody else in this living room, and if you could please not do that. You know, it was just don't let it escalate to any more hitting anybody or I have to step in. I'm a brother. You know what I'm saying, I'm a brother, and ain't no more of this shit going to happen, excuse me, in here. I can't do that.

Q. Now, Ma'am, let me ask you on another subject, the Solicitor was asking you about your relationship with Ty and whether or not he lived there and where his home was. Both you and Ty referred to that apartment as your home, did you not?

A. Yeah.

Q. All right. And he had -- his clothes were there in your closet, hanging up there, and had them there, right, and he spent most of his nights there at that place, did he not?

A. Yes sir.

Q. In fact, you told the police when your sister, Cindy, came to the house that night and she knocked on the door, at

first you thought it was Ty, but then you thought, well, why would Ty be knocking on the door instead of just using his key to come on in?

A. He had the key that night because Joey was with him, and they had the key to my brand new Volkswagen convertible, and they had to come back in that house, because I might have been asleep, and the kids were asleep, and Joey' keys were there. Joey left his truck. Joey had to get his truck because Joey didn't live with me.

Joey at some sort -- they had to have the key because Joey had to come back in and get the key to his truck to drive it back to my mama and daddy's house because Joey didn't stay with me. Mo had to go home. Everybody -- Ty had to come home to where I was staying that night, and whether he stayed or didn't stay, he had to have a key, or Joey -- I had to give the key to somebody to get in that house to get keys for people to get their cars and leave once they came there.

Now everybody there had to leave, you know what I'm saying. Somebody -- they had to come in my house, and just in case I was asleep, here, Ty, here's the key tonight. You get the key. Y'all come back in. Joey can get his keys to his truck in case I'm asleep, whether I'm awake or not awake.

MR. WILSON: I don't have any questions. Ma'am, thank you so much.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right, Ma'am. You may step down.

MS. LIVESAY: Your Honor, I have one more question.

THE COURT: I appreciate that. We've had Direct, and Cross, and Redirect, and Recross. We're done.

You may step down, Ma'am.

All right, ladies and gentlemen, we're going to stop for lunch at this point in time. I want you to be back in your jury room at -- by two o'clock, please. Be back in your jury room by two o'clock.

Everyone else remain seated while the jury retires, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, anything else at this point in time?

MS. LIVESAY: No sir.

THE COURT: Mr. Wilson?

MR. WILSON: Nothing, Your Honor.

THE COURT: And Mr. Long?

MR. LONG: No sir.

THE COURT: All right. Very good. Thank you very much. Two o'clock.

MR. WILSON: Thank you.

(THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, is the State ready for the jury?

MS. LIVESAY: Yes sir.

THE COURT: Mr. Wilson?

MR. WILSON: Judge, we have a question that we'd like to ask before the jury ---

THE COURT: Okay.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. Ask the jury to come in, please Ma'am.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right.

Solicitor, your next witness, please Ma'am.

MS. LIVESAY: Thank you, Your Honor.

At this time, the State calls Chapell Evans to the stand.

THE COURT: Please come around to be sworn, Ma'am, right up here, please.

CHAPELL EVANS, being first duly sworn, testifies as follows:

THE COURT: You may proceed, Solicitor.

MS. LIVESAY: Thank you, Your Honor.

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. How old are you, Chapell?

A. Fifteen.

Q. Okay. And ---

THE COURT: I'm sorry. You said fifteen?

A. Yes sir.

THE COURT: Thank you.

Q. And where are you currently in school now?

A. Socastee High School.

Q. And what grade are you in?

A. Tenth.

Q. And are you nervous today, being up there?

A. Yeah.

Q. And do you normally smile or laugh when you get nervous?

A. Yeah.

Q. Okay. Where -- who do you currently live with?

A. I live with my dad, but I stay with my sister during the summer.

Q. And do y'all live here in Myrtle Beach?

A. Yes Ma'am.

Q. Have you always lived in Myrtle Beach?

A. Yes.

Q. Now, do you know the different between the truth and a lie?

A. Yeah.
Q. Okay. And if I told you this shirt was black, is that true?
A. No. That's false.
Q. Do you know why we're here today?
A. Yes.
Q. Okay. And were you at -- Christie is -- Christie is who to you?
A. My aunt.
Q. Okay. Christie Hucks is your aunt?
A. Uh huh **(indicating positive)**.
Q. And who ---
THE COURT: You need to say yes or ---
A. Yes. Sorry.
THE COURT: Thank you.
Q. And who is Cindy Evans?
A. She's my mom.
Q. Okay. Do you remember being over at Christie's house the night of May 21st, 2006?
A. Yes.
Q. Okay. And were you over there spending the night?
A. Yes.
Q. Okay. And did you have a friend over there spending the night as well?
A. Uh huh **(indicating positive)**, yes.

Q. And who was that?
A. That's Larry's daughter, Tynesha.
Q. Okay. And do you know Larry Chestnut?
A. Only by Christie, but I know him, yeah -- yes.
Q. And do you know Kendrick Chestnut?
A. No. I think that was the first time that I met him was -- I can't really remember, but I'm pretty sure that's the first time I met him.
Q. So had you been over there that day for that birthday party?
A. Yes Ma'am.
Q. And do you remember seeing Kendrick and Larry over there that night?
A. Yes Ma'am.
Q. Okay. And so you were over there just spending the night?
A. Yes.
Q. Had you ever been in that apartment before?
A. Uh huh **(indicating positive)**, yes.
Q. Okay. And what were you and Tynesha doing that night?
A. We were -- well, they had a party, so we were like swimming in the pool and like eating, because they had a cookout, and then we went like later on around six or so, we went inside and watched some T.V., and I think I passed out around like eight or nine, or something like that.

Q. And about how old were you then?
A. Eight.
Q. Okay. And do you remember any commotion going on in that house that night when you were there?
A. Like later on, yeah.
Q. Okay. What -- what do you remember, anything going on in the house? Did you hear any yelling or see anything?
A. No. When I was like sleeping, I got woken up by glass breaking, and then like a lot of yelling and stuff, and then like -- I like closed my eyes and like -- just -- then I like -- I can't -- I mean, I remember, but there was just like Joey and Tyler both in the living room and I like closed my eyes again, and like I just remember Joey saying like don't touch my sisters, and then I like closed my eyes again, and I just heard Ty yell like or what, and then like -- I like opened my eyes again, and like Joey was on the ground.
Q. Okay. Where were you sleeping at or where were you when you saw or heard that?
A. I was on the couch in the living room.
Q. And it was downstairs?
A. Downstairs.
Q. Okay. And then what happened? What do you remember happening next?
A. After that, Christie came in and told us to -- she put us upstairs in her room, in her bedroom.

Q. And while you were upstairs, did you remember hearing anything?
A. No.
Q. Okay. And then what do you remember happening once you were upstairs?
A. When we were upstairs, me and Tynesha were just like there, like seriously like scared to death, and then we heard Ty, Larry Chestnut, yell, and he was like screaming Tynesha's name, and then I just didn't want to stay by myself, so I went with Larry Chestnut and his daughter.
Q. Okay. But he didn't force you to go with him?
A. No, not at all.
Q. Because you were scared?
A. Yeah, and I didn't want to be by myself.
Q. Okay. And when Tynesha got up and went, you just kind of got up and went, too?
A. Yeah.
Q. Okay. And so did Larry Chestnut come up there and get y'all or get Tynesha?
A. He -- he didn't like really come up the stairs, but he was like half-way up there.
Q. Okay. And then did you follow suit right downstairs?
A. Yeah.
Q. Okay. What happened then?
A. Then we went into -- I think it was Mo's car, I mean

Kendrick's car exactly, but he was the one that was driving, so I suppose it was his car, and we went into his car and went to ---

Q. Who all was in that car?

A. It was me, Tynesha, Larry, and Kendrick Chestnut.

Q. Okay. And who was driving the car?

A. Kendrick.

Q. Okay. Who was in the front seat?

A. The passenger?

Q. Uh huh **(indicating positive)**.

A. Larry.

Q. Okay. And who was in the back seat?

A. It was Tynesha and me.

Q. And then what happened once y'all got in the car?

A. Like Kendrick kept on yelling and saying like MF over and over, that he was going to go back and like kill someone, and then I -- I -- he just kept on saying it over, and over, and like over.

Q. He kept on saying ---

A. I'm going to go back. I'm not scared. I'm going to go kill them, MF, MF, I'm going to go kill them, MF, MF. He didn't say anyone's name, but he just said he was going to go back and kill them, but it wasn't just one person. It was them.

Q. Okay. And what was Larry Chestnut doing in the car?

A. Larry was in the passenger seat. He wasn't really doing anything besides holding -- like he was injured. He was just holding his injury and just not even talking. He was just -- I mean, he might have said something like, you know, oh, my gosh, or something, but he wasn't like really saying anything like ---

Q. Okay. So he was just in the car kind of like this (indicating)?

A. Yeah.

Q. Never really saying a whole lot?

A. Uh uh **(indicating negative)**.

Q. Did you know who they were talking about or who Kendrick Chestnut was talking about?

A. I didn't know exactly.

Q. And where did y'all go in that car?

A. We went to Larry's parents' house.

Q. Okay. And what happened once you got to that house?

A. We went to the house and Larry's mom was there, and she brought us in and give us like some water and something to eat and then took us to a bedroom, and we sat there.

Q. You weren't scared while you were at that house, were you?

A. No.

Q. Okay. So they dropped you off at that house?

A. Uh huh **(indicating positive)**, yeah.

Q. Okay. Now, Joey Hucks, the victim in this case, did you know him?
A. Yeah; yeah.
Q. How did you know Joey?
A. He was my uncle, but he seemed more like almost a cousin. I felt like we were -- like he wasn't like an uncle because I feel like adults are like uncles, but he was more like a cousin because he did fun stuff with us.
Q. Because he was a younger guy?
A. Yeah.
Q. Okay. So technically he was your uncle?
A. Yes.
Q. Okay. Now, describe at the time what Larry Chestnut looked like. Did he look like he looks today?
A. What was that?
Q. How did Larry Chestnut look when all this was going on, do you remember?
A. Not -- not really.
Q. Okay. Do you remember what Joey Hucks looked like? Was he a big guy, small guy, tall guy?
A. He was like a tall, bigger guy, ---
Q. Okay.
A. --- clean-cut, like nice.
Q. Okay. Would you say he was a muscular guy?
A. Not really.

Q. So he was a big guy, but kind of overweight, not really muscular?

A. Yeah.

Q. Okay. Now, I know you're nervous, and I just want to go back and ask you a couple more questions, okay? When you were in the house, you said you heard glass break and that kind of woke you up. When you opened your eyes, who did you see in the living room with you?

A. It was -- it was Joey, Ty, and Christie, but like I couldn't really see her because she was not like in the corner, but she was like beside him, but since she's like so kind of tall, I just didn't really recognize her.

THE COURT: You need to speak up.

A. I didn't recognize her too much. I don't know.

Q. That's okay. And then what did you see happen while your eyes were open?

A. I saw -- it -- like him -- it was Joey standing there, and then Ty, and they were just like standing there. They didn't look -- I don't -- like Joey looked kind of scared, but then I just couldn't -- I don't know. I can't really -- sorry, because I don't know.

Q. Okay. And then who took you upstairs?

A. It was Christie.

(PHOTO OF JOEY HUCKS MARKED AS STATE'S EXHIBIT NUMBER 27 FOR IDENTIFICATION ONLY.)

MS. LIVESAY: Your Honor, may I approach the witness?

THE COURT: Yes Ma'am.

Q. Chapell, I'm showing you what's been marked as State's Exhibit Number 27. Do you know who that is in that picture?

A. That is Joey Hucks.

Q. Okay. And is that what he looked like?

A. Yes Ma'am.

Q. Is that what he looked like the night that all this happened?

A. Yes Ma'am.

Q. Do you recognize who else is in that picture?

A. His mom, Becky.

Q. And is that basically what she looked like at that time?

A. Yes Ma'am.

MS. LIVESAY: Your Honor, at this time the State wishes to put into evidence State's Exhibit Number 27 and publish it to the jury.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: Can I have one second, please, Your Honor?

THE COURT: Yes sir.

MR. WILSON: Your Honor, I object. One, I don't think that any foundation for when this picture was taken, whether it's ten years ago, or five years ago, or ---

THE COURT: Could I see the picture, please?

MS. LIVESAY: Certainly, Your Honor.

THE COURT: Okay.

All right, Solicitor, if you would, why don't you lay a foundation.

MR. LONG: Your Honor, if I might before she gets into laying a foundation, whether she lays a foundation or not, I don't see the relevance in it. I would make an argument that it's totally irrelevant, has nothing to do with the facts in this case.

THE COURT: I do believe it's relevant if a proper foundation is laid. It's close in time to the time of the incident because the ---

MS. LIVESAY: Thank you, Your Honor.

THE COURT: --- physical appearance of everyone involved has become an issue by the State and the Defense.

MS. LIVESAY: Thank you.

Q. Chapell, you said that you didn't really think of Joey as an uncle, but a cousin, is that right?

A. Yes Ma'am.

Q. Because he was a younger guy?

A. Yes Ma'am.

Q. Was he a teenager, still in his teenage years, do you know?

A. Yes Ma'am.

Q. Okay. And he wasn't -- did you notice -- was he living on his own at that time or still living with his parents?
A. He was still living with his parents.
Q. And you were his -- technically his niece, is that correct?
A. Yes Ma'am.
Q. Okay. So did you see him often at family functions?
A. Yes Ma'am.
Q. So you saw him a lot?
A. Yes.
Q. Okay. And you saw him the night that this happened?
A. Yes Ma'am.
Q. Okay. Now, I want you to look at this picture. Tell me who is in this picture.
A. It's Becky, his mom, and then Joey Hucks.
Q. Okay. And you recognize Joey Hucks? That's your -- technically your uncle?
A. Yes Ma'am.
Q. Okay. And you can see his physical appearance in this picture, is that right?
A. Yes Ma'am.
Q. Okay. And is this how he looked as far as physical appearance, weight, on the night that all of this happened?
A. Yes Ma'am.

MS. LIVESAY: Your Honor, at this time the State wishes to move it into evidence and publish it to the jury.

THE COURT: Further objection, Mr. Wilson?

MR. WILSON: Yes sir. Your Honor, my objection is still the same, but the issue is how old is the picture. Is it when he was in fifth grade or is it something that happened a week ago, a week before this incident? That's what I'm concerned about, and there's nothing at this point which suggests that this was a recent photograph.

MS. LIVESAY: Your Honor, the ---

THE COURT: Well, -- go ahead.

MS. LIVESAY: That's okay.

THE COURT: The testimony of the witness is that the physical appearance of the person in the picture is the same as the night of the incident. Whether or not the -- there's a date on the photograph then does not affect its admissibility.

I'm going to admit it over the objection of the Defendant -- I keep wanting to use people's nicknames; I don't want to do that -- Mr. Larry Chestnut, and as to the Defendant, Kendrick Chestnut, Mr. Long, a further objection?

MR. LONG: No, Your Honor. Just again to follow up that I find it irrelevant. I know that the State has brought into question some appearance of people, but the Defense

certainly hasn't.

THE COURT: In cross-examination, both Defendants have talked about that, and it's certainly been made an issue as to the physical appearance of the ---

MS. LIVESAY: Thank you, Your Honor.

(PHOTO OF JOEY HUCKS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 27.)

Q. And you testified earlier that he was a bigger guy, is that right?

A. Yes Ma'am.

Q. And in this picture, can you tell he's a bigger guy?

A. Yes Ma'am.

Q. Okay. When you looked at his arm here, as you see, he's kind of a bigger guy?

A. Yes.

Q. Would you call it muscular, though, in the picture?

A. No, not really.

Q. And is this normally how he dressed?

A. Yeah, like in polos and khakis, and tucked in, a belt, but his ---

Q. Tucked in how?

A. Like he always tucked in his shirt and had a belt because I could like -- he always had like a brown belt on, like I -- I don't know -- I remember it like always, every time I saw him.

Q. So he pretty much even dressed kind of the same every day, khakis and polos, and even tucked his shirt in?

A. Yes Ma'am.

MS. LIVESAY: No further questions for this witness, Your Honor.

THE COURT: Cross-examination, Mr. Wilson.

MR. WILSON: Thank you very much.

CROSS-EXAMINATION BY MR. WILSON:

Q. Ms. Evans, when all of this happened, you were eight years old, ---

A. Yes sir.

Q. --- is that correct?

And your mother is Cindy?

A. Yes sir.

Q. But you don't live with your mother now?

A. Like my parents got separated, but I was living with my mother at the time, and now my dad has an apartment and I have some clothes like over there and that's where I usually stayed now.

Q. And that's what I was asking you.

A. I stayed with my mom then, and I didn't really see my dad.

Q. That's what I was asking. You don't live with your mom now? You live with your dad?

A. Well, they're my parents, but I like -- I've been

staying with my sister during the summer because it's closer to my job.

Q. Well, did you tell the Solicitor that you lived with your dad?

A. Yeah, but I like live with my dad, but for the summer, I've been staying with my sister.

Q. Okay. Well, is your normal, regular home ---

A. At my dad's, yes.

Q. My question is your normal home where you live, when you identify as -- when you tell the school that's in your information, is that with your dad?

A. Yes, but I don't use that address, but if -- I use -- we have one house, but we only use that because I know that address by heart, but I don't know my dad's address, but I stay with him. Like all my clothes are there, my bed is there, my furniture, my T.V., my ---

Q. When did you go to live with your dad? You were living with your mom when this occurred. When did you go live with your dad?

MS. LIVESAY: Your Honor, I have to object to the relevance of this question.

THE COURT: I'm going to allow this question. We'll see where it goes at this point in time.

MR. WILSON: Thank you very much.

THE COURT: Go ahead.

Q. When did you go live with your dad?
A. Seventh grade.
Q. Seventh grade?
A. I don't ---
Q. And you lived -- since seventh grade, you've lived with your dad continuously since seventh grade?
A. Yes sir.
Q. All right. And why did you go live with your dad?
MS. LIVESAY: Your Honor, I have to object as to where the relevance is as to her domestic situation in this courtroom on this particular ---
THE COURT: All right. Mr. Wilson, ---
MR. WILSON: Yes sir.
THE COURT: Come up, please.
(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)
Q. Now, you said you started living with your dad when you were in seventh grade, or eighth grade?
A. Seventh.
Q. Now, did you go visit with your mom?
A. Yes.
Q. All right. And when you were visiting with your mom over the past six, seven years, did you and your mom ever discuss what happened that night?
A. I didn't really like discussing it. It's not a topic I like discussing about.

Q. But my question was, was in the six years since this happened, ---

A. Yes, we have.

Q. You have. All right. How many times would you think you and your mom discussed this before you came here today, over the years?

A. Two times.

Q. Two times?

A. Not even in details or anything. I didn't like discussing it. I'd just quit.

Q. Okay. Did your mom bring you to meet with the Solicitor to discuss it?

A. My sister did.

Q. Your sister brought you to the Solicitor's Office to discuss ---

A. But my mom was in the car with us because she decided to ride with us also.

Q. Now, you were eight years old and you were asleep on the couch?

A. Yes. Yeah.

Q. And the police talked with you the night that this incident occurred, did they not?

A. I don't remember talking to the police, but I remember talking to like a detective lady at the hospital ---

Q. Okay.

A. --- if that's the same thing.
Q. Yeah, okay. So you remember talking to somebody in law enforcement that night, is that correct?
A. Yes.
Q. Okay. And do you remember telling them at that time that you remember being -- the only thing you remembered was being in the car going to Mr. Larry Chestnut, Sr.'s house?
A. I don't remember saying that.
Q. Well, what -- tell me what you told them that night, the police.
A. Well, she came up and she was like how were you, and what my name was, and she asked me like what happened or -- and like -- she just asked me stuff I don't know. (Witness is crying.)
Q. Ma'am, just let me -- I'm going to be brief. Just let me ask you a couple more things and I'll be through. Did you ever see while you were in the house that night any fight between Larry Chestnut, Ty, and Joey?
A. I didn't see like -- I mean, I knew something like -- apparently Joey fell to the ground. I knew Ty must have hit him. I just knew something happened. I just didn't see it completely.
Q. Did I understand you to tell the Solicitor that you were asleep, that you woke up when you heard a noise, and

that you thought you saw Christie, Joey, and Ty in the living room area?

A. What was that?

Q. Did you tell the Solicitor a minute ago that you were asleep on the couch, that you heard a noise that woke you up, something breaking which woke you up, and that when you woke up you saw Ty, Christie, and Joey in the living room area?

A. It wasn't in the -- it was just like I was so sad I just didn't know, and then once I heard somebody else -- like I heard them come into the living room, and I decided like okay, maybe something is fine. I just wanted to see.

Because the glass broke, I didn't know if somebody dropped something accidently, so I just opened my eyes to see if it was okay, and then it was just like yelling, and then I closed my eyes again, and then I heard Joey say like don't touch my sisters, and I was like -- I like opened my eyes again, and it was just like or what, and I just closed my eyes, and then Joey was on the ground.

Q. And my question simply is this: Did you see any contact between Joey and ---

A. I didn't see any contact.

Q. Okay. And then Christie took you and Tynesha upstairs?

A. Yeah.

Q. And do you recall which room upstairs y'all were in?

A. It was Christie's bedroom.
Q. Okay. And other than that, you saw nothing else, is that correct, until Larry Chestnut came up the stairs calling for Tynesha to leave?
A. Yeah. I didn't see anything else.
Q. All right. And was there anybody else in the house at that point when you woke up?
A. No, I didn't see anyone. Well, what was the question? Sorry, I just got confused.
Q. What I was asking, was there anyone else in the house when you woke up?
A. I didn't see anyone else.
Q. All right. Now, was your friend, Tynesha, was she awake also?
A. I -- I don't remember seeing her awake. The couch, like it was just kind of like -- like comfy, when you know how like you sink into them, like you don't really see the other person. I don't know. I just think I said I didn't see above the blanket or something to see if somebody else was awake.
Q. Okay. So when you woke up, you were not aware as to whether or not Tynesha was also awake at that time?
A. No, I couldn't see if she was awake.
Q. How long was it after you said you opened your eyes and you saw Christie, and Joey, and Ty in the living room

that Christie took you and Tynesha upstairs?
A. What was that?
Q. How long, what period of time, between the time you said you opened your eyes and you saw Christie, and Joey, and Ty in the living room before Christie took you and Tynesha up the stairs?
A. I -- oh, just like I said it happened, like she immediately came and took us upstairs, like as soon as -- as soon as it happened.
Q. Do you remember what Joey was wearing that night?
A. I felt like -- it was like -- was it -- it was a polo shirt and khakis, but I just can't tell you exactly. I felt like it was almost stripes, but I just don't know exactly. Maybe it was. I don't know.
Q. And is that because you don't really remember?
A. Yeah, I don't remember what he had on.
Q. And is there a lot about that night that you don't remember, being eight years old?
A. No, I remember, and I just don't remember -- like I don't remember clothes. I just remember stuff that happened, not really minor de- -- like the stuff that didn't really matter, I felt it didn't matter.
Q. And when y'all got in the car with Ty, and as I understand it, you went voluntarily? Nobody ---
A. No one forced me, no.

Q. You went because your friend, Tynesha, was going, and you would have been left there alone?
A. Yeah.
Q. So you came downstairs, got in the car with them, and they took you directly to Larry Sr.'s house?
A. Yes sir.
Q. Did anybody bother you, harm you, curse you, hit you, anything untowards to you in any way whatsoever?
A. No.
Q. When you got to the home of Mr. Chestnut, were they anything to you but kind, and considerate, and helpful?
A. Yeah.
Q. Yeah, they were or ---
A. I mean, Ms. Sandra was, but -- and I just -- Ty didn't come inside the house, so I don't know how they would have acted, so I don't know.
Q. All right. Tell me about that. When y'all were riding in the car that night going to Mr. Chestnut, Sr.'s home, you said that Ty -- the entire time that he's in the car is holding his wound, is that correct?
A. Yes.
Q. Was there ever a period when you were in his presence when he was not holding the wound?
A. What?
Q. Was there ever a period of time when you were in the

car riding with Ty and Mr. Kendrick Chestnut and Tynesha when Ty was not holding his chest where the wound was?

A. I felt like he was holding it, but I just don't know if he was holding it the whole entire time or he didn't stop holding it.

Q. Did you see what kind of covering he had on it, whether it was a towel, or a bandage, or a rug, or could you see what he was pressing to his chest or anything?

A. I think he had something. I think he had like something, a cloth maybe that was white or something. I don't know.

Q. Do you recall whether or not he was wearing a shirt that night when you got in the car and y'all were going ---

A. He didn't have a shirt on.

Q. He did not have a shirt on?

A. I'm pretty sure of that.

Q. I'm sorry?

A. I'm -- I'm not exactly sure, but I just don't remember him having a shirt on.

Q. And you said to the Solicitor that -- and I'm just asking so I'm clear, that you heard Ty yell, calling Tynesha's name, and he was half-way up the stairs?

A. Yeah, he was calling her name and half-way up those stairs, yes.

Q. Did -- did Larry, that is Ty Chestnut, ever say

anything while they were in the car riding from Christie's house and Ty's house to Mr. Sr's -- Chestnut's house? Did he ever say anything that you can recall?

A. No.

Q. Now, you said at one point that when you told the Solicitor, that Joey looked kind of scared as he was standing there. Is that what you said?

A. Yes.

Q. Now, when -- when you saw him, where was he standing? Where was Joey standing?

A. By the stairs, like his back to the stairs.

Q. All right. His back to the stairs?

A. Yeah. I saw Joey, but I could only see Ty's back. Like I was on the couch, so it was just kind of like he was angled.

Q. Okay. And which side were you looking at him from, that is Joey, when you were on the couch?

A. I could see his right hand.

Q. You could see his right hand?

A. His right side.

Q. His right side, okay. And did you see a knife in his right hand?

A. No.

Q. Did you see any knife or anything in Ty's hand?

A. I did not see anything.

MR. WILSON: If the Court could give me one second, Your Honor.

THE COURT: Yes sir.

MR. WILSON: I don't think I have any other questions. Thank you Ma'am.

THE COURT: Mr. Long.

MR. LONG: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. LONG:

Q. Ms. Evans, you doing okay?

A. Yes.

Q. I won't take long. You understand you've been called as a witness here by the Prosecutor, so we have to ask you some questions involved in this, you understand that?

A. Yes.

Q. Okay. You remember right after this happened being at the hospital and talking to a lady?

A. Yes.

Q. And do you remember that lady detective being the nice lady seated right over here in the dark suit?

A. Yes.

Q. And at the time, her name was Salena Mann, you remember that?

A. I didn't remember her name.

Q. But that's her?

A. Yes.

Q. All right. And you remember her coming up to you -- how long after this whole thing happened did she come talk with you?
A. Well, they took Christie, my mom, and all them in a room, and they kept me separate, so she came -- she came so I didn't have to be by myself.
Q. So how long, was my question, how long after all of this happened was it that she was talking to you?
A. Like how long did she talk to me for?
Q. How long after this thing happened. You were on the couch, you went upstairs, you got in the car, and you rode to Mr. Larry, Sr.'s house, right? From that point until the point where she was talking to you, how long was that?
A. I -- I don't -- I don't know. It could have -- I don't know how long we sat in the hospital for exactly.
Q. I can help you. Was it the same night?
A. Yeah, it was the same, like the same ---
Q. Okay.
A. Well, it wasn't the same night, but it was the same day, yeah.
Q. The same twenty-four hours?
A. Yeah.
Q. Right. Okay. It wasn't later in the week?
A. No.
Q. Or it wasn't last week?

A. No. It was when they went into the hospital, and everyone was at the hospital with me right then.
Q. Okay. How did you get to the hospital? You were at Mr. Larry, Sr.'s house. Did somebody come get you and take you to the hospital?
A. I remember Christie and my mom came and got me, and we went straight to the hospital.
Q. Okay. Do you remember what they said in the car on the ride to the hospital?
A. I don't remember what they said in the car.
Q. Okay.
A. They were just like -- just talking in -- like they didn't say exactly what happened, but they were just like, oh, my gosh, I can't believe this happened, and I was just completely ---
Q. Okay. And when you -- that night or morning at the hospital when you sat down with Salena Mann, was there anybody else in the room or just the two of you?
A. Yeah, it was just me and her.
Q. And do you remember that she had a recorder that she pulled out ---
A. Yeah.
Q. --- and she told you she was going to record it?
A. Yes.
Q. Have you listened to that recording lately?

A. I haven't -- I haven't.
Q. You've never heard that recording?
A. No.
Q. No?
A. I don't think so, no.
Q. And you said your sister brought you to the Solicitor's Office when?
A. I was supposed to come one day, but I didn't make it because I had to go to work, but I came two other days, and we were just going over what we saw and stuff.
Q. And none of those two times did they play your -- it's a short little recording. Neither of those two times they played that for you?
A. No.
Q. Well, I have a copy of it. We've all listened to it, and would you agree with me that what you said that night to Salena Mann about the conversation in the car, I'm talking about in the car now where you said Kendrick was driving the car, and Larry was in the passenger seat holding his wound, ---
A. Yes.
Q. --- and not saying anything, and they got you over to Mr. Larry, Sr.'s house, which is a very short distance, right, pretty much up Highway 15 over to 501, and then at Bob Grissom right there, right?

A. We went -- which way is that? I think we went on Pine Island and then we went and took a right to -- I don't know if that's 501, but I ---

Q. Which is a very little short car ride?

A. It was about five or six minutes.

Q. And you would agree with me they were going real fast?

A. Yeah.

Q. And would you also agree with me that what you told Salena Mann hours after this happened on the tape is that what you heard in that car, quote, Kendrick Chestnut say, quote, and I'm going to use some bad -- you say it on the tape and use some bad language, but I don't want to use bad language with you.

I'm going to use some abbreviations, okay, but isn't it true that you said then that Kendrick Chestnut said I'm going to kill that f-ing S.O.B. as opposed to what you just testified to. You said he said he was going to kill all of them, he was going to kill them, and you didn't know who he was talking about. Isn't it more true that you told Salena Mann that he was talking about your uncle?

A. I didn't know he was talking about my uncle, but I remember that he did say S.O.B. now that you just told me that, but he did say he was going to go back and kill them. He said S.O.B., but then he said also them, like he wanted to kill the person he was heading for and also them.

Q. Okay. Now, you didn't say anything about them in your conversation with Salena Mann. That's what I'm trying to get into. You just remembered that in your meeting with the Solicitor, or did you just remember that today?

A. I ---

Q. Why did you not remember that hours after ---

THE COURT: Mr. Long, how about don't ask three or four questions.

MR. LONG: Yes sir.

THE COURT: Just ask one at a time please sir.

Q. Why did you not remember that when you -- and say that to Salena?

A. What?

Q. Why did you not remember to say to Salena Mann a few hours after this happened that he was going to go back and kill all of them?

A. He said something about going back and killing them, so I -- I had said something about it. I might have not said that exactly, but he ---

Q. Okay. Okay. So you just -- you admit that he may not have said that exactly?

A. No. He said something about going back and hurting them, maybe not killing them.

Q. Did you tell Salena Mann that he said he was going to go back and hurt somebody? Did you tell her that?

A. That's what he said then. (Witness is crying.)
Q. If you did, it would be on that recording?
A. Yes.
Q. The reason I'm asking this, and if you need to take a break, I just ---
THE COURT: Just continue on, Mr. Long.
Q. If you need to take a break, you can, but the reason I'm asking that is because it appears to me in the statement that you gave to the detective that he made one statement, which was I'm going to kill that S.O.B., and my question of you is did you believe or did you know at that time that Joey Hucks was dead?
A. I did not.
Q. Okay. And you're obviously an intelligent tenth grader. You're much more close to being an adult now than you were back then. You're sitting here testifying on the witness stand, doing a great job.

My question is you did not know that Joey Hucks was dead at the time, and it sounds to me like Kendrick Chestnut did not know that Joey Hucks was dead at the time because he said in the car with you ---
A. But he wanted to make sure he was dead.
Q. He wanted to make sure. Did he say that?
A. No, but he said he wanted to go back.
Q. Okay. Now, what you told Salena was I'm going to kill

that S.O.B. Now, why do you think he said that?

MS. LIVESAY: Your Honor, I have to object at this point. It calls for speculation.

THE COURT: Sustained.

MR. LONG: Okay.

Q. The -- did you know that Joey Hucks had cut Larry Chestnut across the chest?

A. I didn't know Joey did, but I just knew that Ty got cut because he had a wound.

Q. So you didn't know that Joey was the one that pulled out a knife and cut Larry Chestnut to put him in the condition that he was in, in that car that you were riding in? You didn't know that, did you?

A. I -- I didn't know, but now that I think about it, because, you know, I was there when I saw -- you know, like when I saw him. I didn't see Joey get punched, but when I saw him on the ground and then he was just kind of like -- I just don't know. I didn't know. I didn't know.

Q. You didn't know that Joey cut Larry Chestnut and that's the reason -- if you had known that Joey had cut Larry Chestnut and that's why Larry Chestnut was bleeding in the car, ---

A. I ---

Q. --- would that then have made sense to you why Kendrick Chestnut said what he said?

MS. LIVESAY: Your Honor, again, I'm going to have to make an objection as to speculation.

THE COURT: Rephrase the question, please, Mr. Long.

Q. You said you did not know. You knew that Larry Chestnut was cut, but you did not know that your uncle was the one that cut him, right?

A. What was that again?

Q. You knew that Larry Chestnut was cut, but you did not know that your uncle was the one that cut him with the knife, right?

A. I felt like it was him just because it would -- that little moment or him getting punched, I just kind of knew that it was him that did because it was just like ---

Q. You're saying that you kind of knew that it was Joey that cut him?

A. I did, yeah, because I knew it wasn't going to be my mom or Christie. I knew it wasn't going to be Moke or Mo because he was in the -- I just knew it wasn't anyone else.

Q. I'm sorry. Did you just say that you knew it wasn't Mo because he wasn't in the fight?

A. No, because he was in the car, so why would he be in the car with Ty if he -- you know, like why would Mo be in the car if he cut Ty, so I knew it wasn't Mo. I knew it wasn't my mom. I knew it wasn't Christie, and I didn't see Moke in the room, so I did- -- like I knew Moke was there,

but I just didn't see him, so when I saw Joey get punched, I just knew it just had to be him.

Q. That cut Larry Chestnut?

A. Yeah.

MR. LONG: I don't have any further questions.

THE COURT: Redirect?

MS. LIVESAY: No further questions, Your Honor.

THE COURT: All right.

You may step down, Ma'am.

All right. Solicitor, further witnesses from the State?

MS. LIVESAY: Yes sir. At this time the State calls Michelle McSpadden to the stand.

THE COURT: All right. Please come around and be sworn, Ma'am.

MICHELLE McSPADDEN, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. And, Michelle, tell the jury who you are currently working for.

A. Myrtle Beach Police Department.

Q. Okay. And how long have you been there?

A. Just a little less than twelve years.

Q. And what kind of training have you undergone with the Myrtle Beach Police Department?

A. I'm a certified police officer, so I've been through --

the South Carolina Criminal Justice Academy, and I've had additional training in Crime Scene.

THE COURT: Ma'am, could you move in front of the microphone, please. Thank you.

Q. And what are your current responsibilities at the Myrtle Beach Police Department?

A. I am assigned to the Crime Scene Unit, so I respond to crime scenes, process and collect evidence.

Q. Okay. And processing means what exactly?

A. It could mean taking fingerprints. It could mean collecting blood or other kind of DNA standards, several things, I mean cell phone examinations. We do lots of different processing.

Q. And how long have you been in that particular department?

A. A little less than seven years.

Q. Okay. And are you familiar that we're here today for?

A. Yes Ma'am.

Q. And were you employed with Myrtle Beach during May of 2006?

A. Yes Ma'am.

Q. And in the capacity as a crime scene investigator?

A. Yes Ma'am.

Q. Okay. And tell the jury a little bit about how you became involved in this particular case.

A. I was working the night shift that night. It was a May weekend, and around 2:55 in the morning the patrol supervisor called for the Crime Scene Unit because of a stabbing on Highway 15.

Q. Okay. And did you respond to that stabbing?

A. I did.

Q. What was the address you responded to?

A. 1205 Highway 15.

Q. And that is in Myrtle Beach?

A. It is.

Q. Okay. And when you arrived, what did you see?

A. It was dark. It was almost 3:00 A.M. Well, it was a little after 3:00 by the time I got there. There's a row of apartments, I guess, that run kind of parallel, I think, to Highway 15 with a small yard in the front between the road and the apartments.

Q. Okay. What was the first thing you did when you arrived on the scene?

A. I met with Investigator Bertang, and he got for me some crime scene tape so that we could kind of keep people out of the -- the scene, and then it started to rain. I was afraid that we would lose evidence in the rain because blood washes away. Fingerprints may wash away in the rain depending on how heavy it is, so I did collect a few things from the front yard.

Q. Okay. And did you take pictures of the front yard?
A. I did, yes. I took lots of pictures of the front yard.
Q. Okay. And did you number the items that were in the yard at that time when you got there?
A. Yes, I did. We have little yellow evidence tents that have numbers on them, so I marked them with evidence tents.
Q. Okay. So what you've marked in the yard, there's a number that coincides with what that item is?
A. Yes.

MS. LIVESAY: Your Honor, can I approach the witness?

THE COURT: Yes Ma'am.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 26 FOR IDENTIFICATION ONLY.)

Q. Ms. McSpadden, do you recognize what I'm showing you that's been marked as State's Exhibit Number 26?
A. Yes. This is a photograph that I took.
Q. Okay. And what is this photograph of?
A. This is the front yard, as seen from around the edge of Highway 15.
Q. Okay. And does this essentially and accurately depict what you saw that night?
A. Yes.
Q. And what is in the yard?
A. Well, the -- you want the list of ---

Q. Yes, just the tags. Are those the items you have listed?

A. Yes. There are items of evidence in the yard that are all marked by a yellow tag.

Q. Okay. And the items -- the numbers, do they coincide where that item is?

A. Yes, right next to them.

MS. LIVESAY: Your Honor, at this time, the State wishes to introduce into evidence State's Exhibit Number 26 and publish it to the jury.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: I have no objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No, Your Honor.

THE COURT: It's in evidence without objection.

MS. LIVESAY: Thank you, Your Honor.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 26.)

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 20 FOR IDENTIFICATION ONLY.)

Q. And I'm showing you now what's been marked as State's Exhibit Number 20. Do you recognize it?

A. Yes.

Q. What is it?

A. It's also a photograph that I took.

Q. Okay. And tell the jury does this essentially and accurately depict what you saw?
A. Yes.
Q. And what are these?
A. They are some of the same evidence markers. Of course, I've backed up a little bit so you can see one more, but it's evidence that's in the yard that has been marked by a yellow marker.
Q. Okay. And what is this here?
A. It's a blue Suburban.
Q. Okay. And was that there when you got there, just parked out there?
A. Yes.
Q. Okay. And did y'all actually tape around the Suburban?
A. We did.
Q. Okay. So that was considered part of the crime scene?
A. It was.

MS. LIVESAY: Your Honor, at this time the State wishes to introduce into evidence State's Exhibit Number 20 and publish it to the jury.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No, Your Honor.

THE COURT: All right, sir.

So State's 26 and 20 are in evidence without objection.

MS. LIVESAY: Thank you, Your Honor.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 20.)

Q. Ms. McSpadden, if you don't mind, tell the jury -- go through those numbers and tell the jury exactly what each number is.

A. Okay. Number 1, there were three paper napkins. Number 2 is a plaid shirt. Num- ---

Q. A plaid shirt?

A. A plaid, button-down shirt.

Q. Okay.

A. Number 3 was a blood stain in the grass that I took swabs from. Number 4 is a folding knife with an orange handle. Number 5 is a little ceramic monkey. Number 6 is a green and purple ball, like a tennis ball. Number 7 is a little piece of a -- some kind of wrapper off I'm not sure what. It was very small. And then Number 8, which you probably can't see from that photograph, a pair of scissors.

Q. Now, did you basically mark every item that was in the yard?

A. Yes.

Q. Now, you said you noted that there was a Number 8, but you couldn't see it ---

A. That's correct.
Q. --- see it in that picture?
A. Correct.
Q. Is that right?
A. Yes.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 18 FOR IDENTIFICATION ONLY.)

Q. Do you recognize what I'm showing you now that is State's Exhibit Number 18?
A. Yes.
Q. Okay. And what is this?
A. This is a photograph I took of a little courtyard kind of outside of the apartment where the incident happened.
Q. And is this Item 8?
A. Yes.
Q. And what is this?
A. A pair of scissors that were on the ground in the courtyard behind the air conditioner.
Q. And does this essentially and accurately depict what you saw that night?
A. Yes.
Q. So all of these pictures were taken before anybody in Myrtle Beach Police Department touched anything?
A. Correct.
Q. So you took a picture where you found them?

A. Yes.

MS. LIVESAY: Your Honor, at this time the State wishes to introduce State's Exhibit Number 18 into evidence and publish it to the jury.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: It's in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 18.)

Q. Now, if you don't mind, where is that air conditioner? What yard is that we're looking at? Is that the front on the highway or is that on the back?

A. It's on the highway side, I believe. As you walk from the highway back to the apartments, you have the row of hedges. If I remember correctly, there's a little courtyard with the air conditioner.

Q. Okay. So you can hardly see those scissors in this picture.

A. Okay.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 19 FOR IDENTIFICATION ONLY.)

Q. Do you recognize what I'm showing you now that's marked as State's Exhibit Number 19?

A. Yes.
Q. Okay. And what is this a picture of?
A. This is the same courtyard, I believe, with the air conditioner, just from a -- taken from a different angle.
Q. Okay. Now, is this a door here to go outside or into apartments?
A. That's in the apartment. I can't remember if that's the living room door or exit door. I'm sorry.
Q. That's okay. And you're telling us that this door leads out into the highway?
A. I believe so. I'm not positive.

MS. LIVESAY: Your Honor, at this time the State wishes to put 19 into evidence.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

It's in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 19.)

Q. But that door that we're looking at definitely leads into the apartment, is that right?
A. That's correct, yes.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 21 FOR

IDENTIFICATION ONLY.)

Q. I'm going to show you what's been marked as State's Exhibit Number 21. Do you recognize it?

A. Yes.

Q. What is it?

A. Another picture from the same area showing the scissors and the wiring for the air conditioner.

Q. Okay. Now, when you look at the scissors, do you see anything on the scissors that could be potentially ---

A. They are stained red, which I would believe to be blood.

Q. Okay. And did you swab the scissors for evidence to find blood or anything on the scissors?

A. After collecting them, yes.

MS. LIVESAY: Your Honor, at this time the State wishes to put 21 into evidence.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: It's in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 21.)

Q. So when you saw that red substance on the scissors, that's what then noted you to swab? --

A. Yes.

Q. Okay. And what are you looking for when you're swabbing the scissors?

A. For any biological evidence, to include blood.

Q. And are you trying to match up the blood on the scissors to who that blood belongs to?

A. Sure.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 23 FOR IDENTIFICATION ONLY.)

Q. I'm showing you now what's been marked as State's Exhibit 23. Do you recognize that?

A. The entrance to the apartment, yes.

Q. Okay. Did you take this picture?

A. I did.

Q. Does this substantially and accurately depict the way it looked that night?

A. Yes Ma'am.

Q. Was anything moved or altered before you took this picture?

A. Not that I know of.

Q. Can you tell where this door is leading to?

A. The kitchen.

MS. LIVESAY: Your Honor, at this time I'd like to put State's Exhibit Number 23 into evidence and publish it to the jury.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: It's in evidence without objection.

MS. LIVESAY: Thank you.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 23.)

Q. Now before I show the jury, I'm showing you what's been marked as State's Exhibit Number 19, that picture.

A. Uh huh **(indicating positive)**.

Q. Let me ask you, is this the same door that's in this picture?

A. It is, yes.

Q. So this air conditioner, now are you sure that that's on the way out to the highway?

A. Yes.

Q. To the highway.

A. Now I'm sure, yes.

Q. And you're sure now that door I showed you earlier goes into the kitchen?

A. Yes.

Q. So those scissors that you found were found by the air conditioner by the front door?

A. Yes Ma'am.

Q. And that front door led out to the highway?
A. Yes Ma'am.
(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 24 FOR IDENTIFICATION ONLY.)
Q. I'm showing you now what's been marked as State's 24. Do you recognize this?
A. Also a picture of the front door, yes Ma'am.
Q. Okay. And does this substantially and accurately depict the way it looked that night?
A. Yes Ma'am.
Q. Anything altered about it?
A. No Ma'am.
Q. Now, when you are looking at this picture, can you see all the way to the other end of that apartment?
A. Yes.
Q. Okay. So can you recognize what this is here, what room that is?
A. The living room.
Q. Okay. And where ---
THE COURT: I'm sorry, Ma'am. I didn't hear you.
A. The living room.
Q. Where were you standing taking the picture?
A. Just outside the front door.
Q. Okay. So this is a shot outside the front door and you are shooting and you can see right through into the ---

A. Yes.

THE COURT: Sorry, Ma'am. Do you want to introduce that into evidence.

MS. LIVESAY: I'm sorry, Your Honor. Can I please place 24 into evidence?

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

It's in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 24.)

Q. So you're standing actually outside on that front step?

A. In that courtyard area, yes.

Q. And taking the picture?

A. Yes.

Q. Did you diagram this apartment in your notes or in your CSI Report?

A. No Ma'am. Investigator Carol Allen did the diagram.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 22 FOR IDENTIFICATION ONLY.)

Q. Okay. I'm showing you now what's been marked as State's Exhibit Number 22. Do you recognize this?

A. Yes Ma'am.
Q. Has anything been altered in this room or touched?
A. Not that I know of.
Q. And did you take this picture?
A. I did.
Q. And this picture is ---
A. This is the kitchen after you just walk in the door and turn to the left.
Q. Okay. Now, let me ask you this: This drawer that's open here, you opened that drawer?
A. I did not, no.
Q. Did you touch or did anybody touch anything when you came in there to take pictures?
A. Not that I know of.

MS. LIVESAY: Your Honor, at this time the State wishes to place State's Exhibit Number 22 in evidence.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: It's in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 22.)

Q. So you didn't open any drawers or go through anything in that kitchen?

A. No Ma'am, not prior to that photo being taken.
Q. And when you came in there, you took pictures of this kitchen, there were items laying on the floor as well that you collected right there?
A. Yes.
Q. Okay. What were those items?
A. We collected blood stains from the floor and the wall from the kitchen, a black and white hat from the floor in the kitchen, and an open soda can from the floor, a T-shirt, and then between the kitchen and living room pieces of a picture frame in that little walkway area.
Q. Okay. When you walked into that kitchen, did it appear like there had been a struggle?
A. It did.
Q. Okay. And what indicated to you that there had been a struggle?
A. There was blood on both the floors and the walls, a substantial amount of blood.
Q. And do you remember what they looked like on the wall, the stains on the wall?
A. If I can refer back. On the wall next to the little laundry room area, there was blood on kind of the -- it's almost like a door frame and on the wall. They're small droplets. They were kind of spread over a large area.
Q. And what do you call it?

A. I would call it blood spatter.
Q. Okay. And it was on the kitchen wall?
A. Yes.
Q. Okay. And you said you found a T-shirt in the kitchen, is that right?
A. Yes.
Q. Okay. Did you ever find out who that T-shirt belonged to?
A. I don't have it in my notes. If I did, I don't know.
Q. Okay. Let me ask you this question: Were there any tears on the T-shirt that you remember?
A. I'm sorry, I don't recall.
Q. Okay. But there was a plaid shirt in the -- outside in the yard, is that right?
A. That's correct.
Q. And a white T-shirt in the kitchen?
A. Yes.
Q. Okay. Did you take pictures of the T-shirt?
A. I have photographs of it on the floor. Oh, yes, I -- also I have -- I photographed it after it was returned back to the Crime Scene Lab.
Q. Okay. What did that -- did that T-shirt have any tears on it, the one found in the kitchen?
A. It appears so, yes.
Q. Where does it appear to have a tear?

A. There's a blue and white design across the front that kind of comes crossways, and it's kind of in the center of the design from what I can tell.

Q. Okay. And how about the plaid shirt, did you take a picture of that?

A. I did. I photographed the plaid shirt as well.

Q. Okay. And did the plaid shirt have any tears on it?

A. It appears to be missing some buttons. I can't tell. There is one photograph that has -- is just very small. There's something kind of in the center of it that I've marked with a scale. It may just be the missing button or it may be a tear. I'm not positive.

Q. Okay. But there's something along here on both shirts?

A. Yes.

Q. And one was found in the kitchen and one was found outside?

A. Yes.

Q. Okay.

(PHOTO MARKED AS STATE'S EXHIBIT NUMBER 17 FOR IDENTIFICATION ONLY.)

Q. Do you recognize what I'm showing you now that's been marked State's Exhibit Number 17?

A. Yes.

Q. And what is this?

A. It is a orange folding knife that was on the lawn.
Q. Okay. And is this a picture of exactly what it looked like that night?
A. Yes.
Q. And does this picture substantially and accurately depict what it looked like that night?
A. Yes.
Q. Okay. And what is this here in the picture?
A. Evidence marker number 4, the little yellow evidence tents we talked about.
Q. Okay. So you actually put a marker down beside this before you moved it?
A. I did.
Q. Okay.

MS. LIVESAY: Your Honor, at this time the State moves State's Exhibit Number 17 in evidence and asks that it be published.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

So that's State's -- is that 17, Ma'am? Solicitor, ---

MS. LIVESAY: I'm sorry, Your Honor.

THE COURT: Is that 17?

MS. LIVESAY: Yes sir, Your Honor.

THE COURT: All right. State's 17 is in evidence without objection.

(PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 17.)

Q. Now, did you collect that knife and swab it?

A. I did.

Q. Okay. And when I say swab it, what -- tell the jury -- explain to the jury exactly what that means.

A. Okay. We use two blood swabs or two swabs for each biological sample we collect. There are still swabs that are packed in like cellophane almost, packed individually, one per packet, so we would move to swab area and then package those two together, swab the same area and package those two together in paper.

Q. Okay. And what items did you swab in this case that I've shown the jury? I guess -- let me rephrase that. What items did you swab that were outside the residence?

A. I swabbed the blood stain in the grass, the scissors, and the knife, and I'm not sure about the shirt from outside. I'd have to go back and refer. Yes, also the plaid shirt from the lawn.

Q. I'm sorry. What item did you swab that you had found outside?

A. The blood stain on the grass, the knife, the scissors,

and the plaid shirt.

Q. Okay. Now, when you are swabbing those items, you are swabbing them looking for what?

A. It would be biological evidence, blood in this case.

Q. Okay. So basically you are looking to see whose blood that is on the knife or on the scissors?

A. Correct.

Q. Okay. And what is the process normally, do you keep it there at Myrtle Beach Police Department? Is it sent off somewhere?

A. Myrtle Beach Police Department does not have a DNA Lab. We refer all of our DNA evidence to SLED, which is the South Carolina Law Enforcement Division, in Columbia.

Q. Okay. And in the process of trying to match up who this blood or who this biological evidence belongs to, did you take any swabs from anybody involved in this case?

A. I also swabbed Larry Chestnut.

Q. Okay. And tell the jury what that entailed.

A. Mr. Chestnut arrived at the Police Department after -- well, he arrived at the Police Department and I met with him in our conference room. The same little cellophane-packed swabs that we use for any other kind of collection we use on the donor of the DNA standard. We take the swab and swab just the inside of their cheek, scrub it a little with a cotton swab like you would use, like a Q-tip, so you scrub

the inside of their cheek. We do two, and then those are packaged in paper.

Q. Okay.

(SCISSORS MARKED AS STATE'S EXHIBIT NUMBER 28 FOR IDENTIFICATION ONLY.)

Q. Do you recognize what I'm showing you now?

A. Yes.

Q. What is it?

A. The scissors from the courtyard.

Q. And are these the exact scissors you collected?

A. Yes.

Q. And are these the scissors in the picture?

A. Yes.

Q. Okay. Now, what is this here?

A. Evidence tape. This tape is used to seal up all of our evidence once it's collected. It's very fragile, so that you could tell if it has been -- if the package has been opened.

Q. Okay.

MS. LIVESAY: Your Honor, at this time the State wishes to put 28 in evidence.

THE COURT: Any objection to State's 28?

MR. WILSON: I don't have any objection to any chain of custody. I'm just not sure yet that it's been linked sufficiently.

THE COURT: Why don't you ask a further question, Solicitor, ---

MS. LIVESAY: I will, Your Honor.

THE COURT: --- of this witness, please Ma'am.

Q. Did you collect these?

A. I did.

Q. And where did you collect them from?

A. The courtyard in front of the apartment.

Q. And when you collected them, what did you do with them?

A. They were placed into my Crime Scene van, just like all the other evidence, and then once back at the lab, they were placed into our evidence room.

Q. Were they in anybody else's custody or control between the time they left the house and the time they went into the evidence room?

A. No.

Q. Okay. During that time, did you in any way, fashion, or form alter these scissors?

A. Only to swab them.

Q. Okay. And are these the scissors you collected that night?

A. Yes.

Q. And do these scissors appear exactly the way they appeared the night you collected them?

A. Yes.

MS. LIVESAY: Your Honor, the ---

MR. WILSON: I withdraw my objection, Your Honor.

THE COURT: All right, very good.

MS. LIVESAY: Thank you, Your Honor. At this time, the State is going to publish it to the jury ---

THE COURT: I'm sorry. What number is it?

MS. LIVESAY: State's Exhibit Number 28.

THE COURT: And any objection, Mr. Long?

MR. LONG: No, Your Honor.

THE COURT: State's 28 is in evidence without objection.

(SCISSORS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 28.)

Q. And are these the scissors that you located by the ---

A. The air conditioner, yes Ma'am.

Q. --- the air conditioner? Okay. And is this how they appeared the night you collected them?

A. You don't see the blood on them now, but they're in a similar condition, just without the blood now.

Q. Okay. And you actually swabbed the blood, trying to get ---

A. Correct.

Q. --- evidence off of it?

MS. LIVESAY: One second, Your Honor, please.

THE COURT: Yes Ma'am.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Mr. Wilson.

MR. WILSON: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. WILSON:

Q. Ms. McSpadden, is it Sergeant, Detective, ---

A. Just Officer.

Q. Officer. Now, Crime Scene, you're what we would commonly call a Crime Scene Specialist?

A. Yes sir.

Q. A CSI kind of person, is that right?

A. Yes sir.

Q. And that's probably the most critical -- would you agree with me, that's probably the most critical part of the investigatory process for law enforcement is when a Crime Scene person comes in to preserve whatever evidence there is, physical or otherwise?

A. Yes sir.

Q. Okay. And so when you came on this particular day, you came with the understanding that that was what your role was?

A. Yes sir.

Q. And that you wanted to do everything that you possibly could to preserve any evidence, physical evidence, pictures, whatever, that might be there so that we could have it for this very purpose?

A. Yes sir.
Q. And -- and in the process of preserving that evidence, you would then send it to SLED for SLED to test, or whatever other expert, maybe the pathologist, or whomever else needed to see the physical evidence in order to make decisions about the investigation?
A. Yes sir.
Q. Now, you took how many pictures would you say you took? The Solicitor has introduced several pictures. How many pictures did you take that night or during the process of this investigation?
A. I guess somewhere around two hundred and fifty.
Q. So you took over two hundred -- around two hundred and fifty pictures?
A. Yes sir.
Q. And did you turn all those pictures that you took, all two hundred and fifty, over to the Solicitor?
A. Yes.
Q. And how long ago did you turn those two hundred plus pictures over to the Solicitor?
A. The way case transmittal works in our Police Department, the lead investigator puts all of the case together. They have access to everything, and they do the transmittal. I'm not sure when the transmittal was done.
Q. Okay. And in the process, after you take these

pictures, do you have communication with the Solicitor or with their office about what you need to do in terms of having certain pieces of evidence processed by SLED or by some other expert?

A. Not with the Solicitor's Office. My contact has been with the lead investigator in the case.

Q. Okay. And who would that have been?

A. At the time, I believe it would have been Salena Mann.

Q. Okay. So would Detective Mann have contact with the Solicitor's Office to determine which pieces of evidence needed to go to SLED or some other agency to be tested?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. All right. So once you gather it, you turn it over to Detective Mann and then you are kind of through with it, is that what you're saying?

A. I do the request for processing by SLED. I would have done that most likely, but that would have been kind of at the direction of Salena Mann.

Q. All right. Now, when you got to the house this night -- did you come that night?

A. I did.

Q. It was 3:00 A.M., right?

A. Yes.

Q. When you got there that night or the early morning hours and you learned that there had been some altercation there, you wanted to determine who the blood belonged to in that house, right? That would have been one of the things that -- that law enforcement would have been interested in?

A. Absolutely.

Q. All right. And did you make a determination as to how many people had been in and out of the house before you arrived?

A. No sir.

Q. Did you make a determination as to how many blood stains were in the house?

A. Individual stain patterns, there were -- wow. We photographed every one, but I did not count every one.

Q. You photographed every one, but you didn't count every one?

A. Correct.

Q. All right. So every one of those blood spatter patterns would be included in the two hundred and fifty plus photographs that you took, ---

A. Yes sir.

Q. --- in some of those photographs?

A. Yes sir.

Q. Now, as I understood it, you said that you took blood or tested the blood of Larry Chestnut?

A. I took a DNA standard from Mr. Chestnut, yes.
Q. Okay. And when was that?
A. November 18th, 2010.
Q. Okay. And did you take blood standards from anybody else?
A. No sir, I did not.
Q. What about from Cindy Evans?
A. I don't believe I did, no sir.
Q. What about from Moke, Richard Day?
A. No sir.
Q. Now, in your work, when you came in you didn't know who the blood belonged to, right?
A. That's correct.
Q. So when you did your swabs, did you find blood that belonged to someone who was unidentified?
A. I have copies of the reports from SLED, and we sent to them somewhere in the area of eighty-five different DNA unknown samples. Not all of them were tested.
Q. All right. And when SLED came back and told you that based on what you had sent them, some of the blood spatters were of an unidentified person, right?
A. Yes.
Q. All right. And tell us what effort you made, because we know that whoever that unidentified person is or was, it was not Larry Chestnut, right?

A. Larry Chestnut's blood was one of the unidentified. His was included ---

MS. LIVESAY: Your Honor, I'm going to have to object. I don't know that Ms. McSpadden is the best witness to testify about the blood spatter. SLED was the one that made that decision ---

THE COURT: I appreciate that.

Mr. Wilson, why don't you get to the question that you're aiming to get to.

MR. WILSON: Yes sir, I will.

Q. Just for the sake of moving this along, let me ask you this way. There was blood in there, in that room, in that kitchen, that to this day is still unidentified, correct?

MS. LIVESAY: Your Honor, again I'm going to have to object.

THE COURT: I appreciate that. I'm going to allow this witness to answer the question if she can.

A. I'm not sure that it's unidentified. The last report I have, which is dated April 15th, 2011, indicates ---

THE COURT: All right, Ma'am, he's asking you of your knowledge, not of somebody else's knowledge.

A. Then no sir, I do not know.

Q. You do not. All right. Now, let me ask you this, Ma'am. In regards to -- I saw that you identified this as being an item that you found in the yard?

A. Yes sir.
Q. And actually, it was just outside the back door, maybe two feet, right?
A. Correct, yes.
Q. All right. And it was not out on the grass where you found the other six or seven items that you say you found?
A. That is correct.
Q. And when you got there, did you find a knife?
A. Yes sir.
Q. Well, did you take a picture of the knife?
A. Yes sir.
Q. Now, let me show you Defendant's -- I'm sorry, State's Exhibit Number ---

MR. WILSON: May I approach, Your Honor?

THE COURT: Yes sir, absolutely.

Q. --- State's Exhibit Number 17.
A. Yes sir.
Q. Is that the knife?
A. It is.
Q. All right. Now, where is the knife?
A. It was in the yard, I believe near like the center of the yard.
Q. The center of the yard?
A. Yes.
Q. Do you know where Mr. Hucks was at in the yard?

A. Mr. Hucks had been taken from the scene before I got there.

Q. So do you know of your own knowledge how close in proximity to him the knife was that was found in the yard?

A. I do not know.

Q. Did you take a picture of where you believed he was laying in the yard?

A. I did photograph a blood stain in the yard, yes sir.

Q. How far was the knife from the blood stain that you found in the yard?

A. They were quite close. I'm not sure, maybe a couple of feet.

Q. A couple of feet away. Now, the knife that we're talking about, this orange-handle mysterious knife, where is it now, today?

A. It should be here in the courtroom.

Q. Here in the courtroom. Do you have it?

A. I do not have it.

Q. Well, you're the evidence custodian, right?

A. No sir. I'm ---

Q. You're the Crime Scene person ---

A. I'm the Crime Scene officer.

Q. --- who took it. Did you bring it to Court?

A. I believe it was brought, but I -- I did not bring it myself.

Q. Okay. So who has it? The Solicitor has it?
A. There's a couple of boxes of evidence sitting back there. I believe it would be in one of those.
Q. Okay. Well, can you get it for me?
THE COURT: Do you need to step down and go through those boxes to find it?
A. If he needs it, yes, sir.
THE COURT: Ladies and gentlemen of the jury, if you would go to your jury room for about five or ten minutes, please. Leave your pads and pens.
Everyone else remain seated at this time, please.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)
THE COURT: All right, Ma'am, do you know where that evidence is located?
OFFICER McSPADDEN: Yes sir.
THE COURT: All right. I'll give you the opportunity to go down and go through it and find that evidence. You cannot talk to the Solicitor in the interim. You can -- you will have to resume the witness chair until we're ready to go back.
We'll take a short break for about five or ten minutes.
Thank you very much.
(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready to resume?

MS. LIVESAY: Your Honor, actually, sir, we have a matter to take up while the jury is out.

THE COURT: Okay. What is that, please?

MS. LIVESAY: We have a issue with the knife. If Mr. Wilson doesn't plan on introducing the knife into evidence, obviously we do not want the jury to see it in any way, shape, fashion, or form.

THE COURT: Is your intention at this point in time, Mr. Wilson, to introduce the knife into evidence?

MR. WILSON: My intention is to mark it for identification purposes at this point.

THE COURT: All right. Very good. I mean, it can be done by showing it to the witness, the witness keeping it on the desk in front of them, identifying it, handing it back, getting it to the Court Reporter, having her mark it, and she can put it somewhere on her desk that is below the sight of the jury.

MS. LIVESAY: Is there any way we can put it in a bag, Your Honor, and that would ensure that ---

THE COURT: Did y'all put it in a bag?

MS. LIVESAY: No, it's not in a bag now.

MS. VON HERRMANN: Your Honor, just by way of explanation, here is the situation with this knife.

That particular knife was a gift from Bab Cox to Joey,

and she would like to have that knife returned to her. Obviously the knife was put in evidence, which Mr. Wilson has every right to do, and it's in there and we can't get it out.

THE COURT: Well, I appreciate that, but I understand the sentimentality. I surely do, but I can't let that govern the procedures in this criminal trial.

Now, I understand what the State is trying to do. I'm sure you understand that if it doesn't come into evidence at some point in time, you're going to be facing closing arguments from the Defense attorney, why won't the State introduce this knife into evidence, and why are they, you know, keeping it from you, and, you know, why won't they show it to you, you know.

Y'all do what you want to do, but obviously that's what's going to happen. So y'all do what you want to do, but I'm going to let Mr. Wilson -- now, Mr. Wilson, you can't go parading it around in front of the jury. You understand that.

MR. WILSON: Yes sir.

THE COURT: We'll keep it as least visible as possible, and you understand that?

MS. LIVESAY: Yes sir.

THE COURT: All right. Very good. Thank you very much.

Ask the jury to come back in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Wilson, you may resume, sir.

MR. WILSON: Thank you very much, Your Honor.

CONTINUING CROSS-EXAMINATION BY MR. WILSON:

Q. Ms. McSpadden, I think I was asking you earlier about the item which was exhibited in State's Exhibit Number 17.

A. Yes sir.

Q. And did you find that item?

A. Yes sir.

Q. And do you have it?

A. Yes sir.

Q. All right. And where is it?

A. Here.

Q. All right. Now, where specifically was it that you found this particular item?

A. In the front yard, around the middle of the yard.

Q. All right. And you said, as I -- if I remember correctly, that this was approximately two feet from where you believe Joey was -- would have been in the yard?

A. Approximately, yes sir.

Q. Okay. And you found six of these seven other items, seven other items, I think, to be exact, in the yard, and

one, which is Number 8, was by the door?

A. Yes sir.

Q. May I have that?

MR. WILSON: And, Your Honor, I'd just ask at this time it be marked for identification purposes.

THE COURT: All right. Very good.

(ORANGE KNIFE IN CLEAR CONTAINER MARKED AS DEFENDANT'S (LARRY CHESTNUT) EXHIBIT NUMBER 5 FOR IDENTIFICATION ONLY.)

THE COURT: Go ahead, Mr. Wilson.

Q. When you came to the house that night, could -- when you walked into the kitchen area, being a Crime Scene person, could you see blood spatters all over the walls in the kitchen?

A. Yes sir.

Q. Okay. Did you see any blood spatters on the wall in the living room?

A. I don't recall blood on the wall in the living room. I do recall it on the bannister, which serves as kind of the living room wall heading up the stairs.

Q. Okay. And whose blood was that on the bannister leading to the stairs?

A. I don't know. That would be amongst the SLED reports.

Q. Okay. And which swab item was it that you sent with that?

A. From the bannister, we have 20 and 21.

Q. Okay. So you did swabs 20 and 21, and then you sent those two swabs to SLED to be tested ---

A. Correct.

Q. --- to determine whose blood was on that particular swab?

A. Correct.

Q. Now, did you take any swabs of blood from the floor of the living room?

A. Yes, Number 18.

Q. Okay. And what swab number was that?

A. I'm sorry, 18.

Q. Swab Number 18. And did you send that particular swab to SLED to be tested?

A. Yes sir.

Q. All right. Other than the one spot that you say you saw in the front room, did you see any other spots of blood on the floor in the living room?

A. No sir.

Q. So one, and you took a swab of that?

A. Yes sir.

Q. All right. In the kitchen, there were lots and lots of blood spatterss and stains, ---

A. Yes sir.

Q. --- correct?

In fact, there was blood on the floor. Was there blood

on the ceiling?
A. I don't recall blood on the ceiling.
Q. Okay. Did you look or take pictures of the ceiling?
A. I did not photograph the ceiling.
Q. Was there blood on the counters?
A. I don't recall blood on the counters. I do have photographs of the counters, but they are quite small and you just can't tell from these photographs if there was blood there or not.
Q. Okay. How high up on the walls were the blood spatters that you found, in the kitchen I'm speaking of?
A. Sure. I'm showing them above four feet.
Q. Above four feet?
A. Yes sir.
Q. Okay. And did -- when you talked with Detective Mann, or whoever your supervisor or lead investigators were, was there ever a decision made to hire or have these blood spatters examined by a blood spatter expert to determine how they got made when placed on the walls?
A. That was not part of the decision that I was involved in, but I do believe it was done.
Q. Okay. Now, based on your training in the field of crime scene investigation, you are aware, are you not, that there are experts at SLED who can look at patterns and make determinations about where things were done and how they were

done?
A. Yes sir.
Q. All right. And you knew that when you were taking these photographs and these swabs, ---
A. Yes sir.
Q. --- correct?
And I'm sure that after you completed the pictures and the swabs, that you then met with Detective Mann and whoever else were your supervisor, to discuss these spatters and what needed to be done in that regard?
A. I don't recall a conversation about the spatters specifically.
Q. Okay. So you don't ever recall discussing that with them?
A. I don't.
Q. Now, did you find blood spatters leading out of the kitchen out into the back yard?
A. I do see there was a blood stain on the floor between the stairs and the back door. I'm sorry, which -- you said back yard, sir. I'm sorry.
Q. The yard where you took the photographs of the seven items that you say you found.
A. I see. Okay. Yes sir, there were several on that kind of a door stoop and then leading into the kitchen, ---
Q. Okay.

A. --- or out of the kitchen.
Q. So there was a trail of blood leading out of the kitchen out towards the back door?
A. Yes.
Q. And even on the little metal stoop that's between the door and the sidewalk?
A. Yes sir.
Q. Did you find any more blood stains or spatters on the sidewalk as you're coming out of the door?
A. The only one I collected from outside was the one in the center of the yard where I believe Joey to have been.
Q. No other blood spatters in the yard that you found other than that one?
A. No sir.
Q. Now, whose -- well, let me ask you this: In regards to the items of evidence that you collected, when those items are removed from your custody, there should be some kind of a chain telling where they went, right?
A. Yes sir.
Q. And at some point in time, you sent the scissors to the pathologist to look at?
A. Correct.
Q. And you also sent the knife to the pathologist to look at?
A. Correct.

Q. And the purpose of that would be so that the pathologist could maybe compare the scissors to the wounds and the knife to the wounds and be able to tell us which item made which wound?
A. Correct.
Q. That's what we hope for, right?
A. Yes sir.
Q. And did you do that, or who made the decision to do that?
A. I did not attend the autopsy. Carol Allen attended the autopsy. I don't know if it was her decision or Salena Mann's, or a combination of it.
Q. All right. Now, do you know whether or not those items had been to SLED for testing before you sent them to the pathologist to work with?
A. They were not.
Q. They were not?
A. No sir.
Q. So before you send them to SLED to be tested, you sent them to the pathologist. Who handled them at the pathologist's office if you know?
A. I don't know.
Q. Do you know whether they were handled or not?
A. I don't.
Q. When you got there that night outside, was there a lot

of lighting out in that back yard?
A. No sir. It's quite dark.
Q. Quite dark out there, very difficult to see without some artificial lighting?
A. Yes sir.
Q. If I've asked you this, I apologize, if I've already asked you this, but you swabbed the scissors? I know you told me that, ---
A. Yes sir.
Q. --- is that correct?
A. Yes.
Q. Did you also swab the orange-handle knife?
A. Yes sir.
Q. And how many swabs did you take from the orange-handle knife?
A. A total of four.
Q. Okay. Can you tell us, the swabs that you took from the knife, did you take them from the handle, from the blade, or from both?
A. Both.
Q. Did you also do both sides of the blade?
A. I don't recall.
Q. Let me ask you, Ma'am, you don't know what happened there that night other than taking the photographs, and pictures, and collecting evidence?

A. Correct.
Q. You weren't there, so you have no independent knowledge of what occurred?
A. That's correct.
Q. All right. And you don't know who had which weapon?
A. No sir.
Q. All right. And you don't know who cut first or anything?
A. No sir.
Q. And you don't know of your own personal knowledge whose blood is on what?
A. No sir.

MR. WILSON: No further questions.

THE COURT: Mr. Long.

MR. LONG: Thank you.

CROSS-EXAMINATION BY MR. LONG:

Q. Ma'am, you, as a crime scene specialist, you're also trained in fingerprint removal or fingerprint lifting, is that right?
A. Yes sir.
Q. Do you have some special kind of training for that sort of thing?
A. Most of it is on the job.
Q. And you did -- also did some fingerprinting here at this scene?

A. Yes sir, not at the -- I don't recall if I did at the scene specifically. I know some of the items from the scene were eventually fingerprinted.
Q. Okay. Tell me what items were fingerprinted.
A. I have in my notes that the ceramic monkey was fingerprinted, the one from the yard. I don't recall anything else.
Q. So you think that the ceramic monkey is the only thing that you fingerprinted? Why?
A. I know that each item was processed for DNA. It would be swabbed. That was the more important of the two processes, fingerprint versus DNA, so I elected to do the DNA first. By the very nature of swabbing something, it's likely that I would have destroyed fingerprints.
Q. Item Number 28, the set of scissors, ---
A. Yes sir.
Q. --- where exactly on these scissors did you swab them? Excuse me; that's State's Number 28.
A. I only have noted that I collected two swabs from two different areas on the scissors. It would normally be my procedure to swab both the grip area and then separately the blade area, but I don't have that specifically written in my notes.
Q. You're not sure exactly where you swabbed them? Well, and the direct question, did you fingerprint these?

A. No sir, I don't believe so.
Q. Did you fingerprint the orange-handle Case knife?
A. I don't believe so.
Q. Did you fingerprint the drawer that was pulled open in the kitchen, State's Exhibit Number 22, to see if there were any fingerprints on it?
A. I don't recall that.
Q. So then I think I know the answer to the question, but did you find Kendrick Chestnut's fingerprints on any weapon that you found on this crime scene?
A. No sir.
Q. Did you find Kendrick Chestnut's fingerprints on the drawer in the kitchen?
A. No sir.

MR. LONG: That's all I have.

THE COURT: Redirect?

MS. LIVESAY: One second, Your Honor.

May I approach the witness, Your Honor?

THE COURT: Yes Ma'am, please.

REDIRECT-EXAMINATION BY MS. LIVESAY:

Q. I'm showing you what's been marked as I.D. Number 5?

MS. LIVESAY: Am I reading this correct?

THE REPORTER: It is Larry Chestnut, Number 5.

MS. LIVESAY: Thank you.

Q. Do you recognize this?

A. I do.
Q. What is it?
A. It's the knife from the front lawn.
Q. Okay. And did you take it that night?
A. I did.
Q. And is this the same knife you swabbed?
A. It appears to be, yes.
Q. Okay. And when you collected it, what did you do with it? How did you protect the integrity of this evidence?
A. I see. It was packaged, you know, separately from all the other evidence, as would be normal procedure, swabs taken from it, and packaged separately as well.
Q. Okay. So this item was by itself?
A. Yes.
Q. It never got mixed up with another item?
A. No.
Q. So there's no way that blood from one item could get on this item?
A. No.
Q. Okay.

MS. LIVESAY: At this time, Your Honor, the State wishes to place Defendant's Exhibit Number 5 into evidence.

THE COURT: Well, it will have to be now marked with a State's Exhibit.

MS. LIVESAY: Yes sir, Your Honor.

THE REPORTER: State's Exhibit 29.

THE COURT: Is there any objection, Mr. Wilson?

MR. WILSON: Absolutely none, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

So State's 29 is in evidence without objection.

(ORANGE-HANDLE CASE KNIFE ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 29.)

Q. Now, did you see biological evidence on both the knife and the scissors?

A. Yes.

Q. Okay. And did you swab those?

A. Yes.

Q. Okay. Now, tell the jury how do you swab it. Do you just run a Q-tip across the blade?

A. Okay, it depends on whether the blood is dry or wet. If the blood is still wet, then yes. It's a sterile swab, just like we spoke about before, unpackaged, and then it would be -- my procedure is normally to on something like this do both the blade and the handle as separate areas, so I would swab just the area with two sterile cotton swabs, package those, and then move on to -- let's say I started with the blade, then I would move on to the handle, swab it

with two sterile cotton swabs, package it.

Now, if the blood had been dry, the only addition is just a little bit of sterile water, distilled water on the swab.

Q. Okay. And did you -- when you swab the blade, do you label it swab of the blade, so when it gets to SLED what part that is?

A. I have them -- the stuff that I have from SLED just said swabs from the knife. I don't recall whether or not they were told specifically which area it came from.

Q. Okay.

MS. LIVESAY: Let me mark this as an exhibit.

Will you mark that for me real quick, Dixie.

(SLED REPORT MARKED AS STATE'S EXHIBIT NUMBER 30 FOR IDENTIFICATION ONLY.)

MS. LIVESAY: I'm showing her the SLED Report, which has been marked as State's Exhibit Number 30.

Q. When you look at this report, does it break down for you where that swab came from?

A. Yes.

Q. Okay. How is it broken down?

A. Number 63, it says swab from the blade, and 64 also says swab from the blade. 28 ---

Q. Does it tell you blade of what item?

A. It says of the Case knife.

Q. Okay. And 28 says what?
A. 28 says they were swabs from the handle, 28, Items 1 and 2, swabs from the handle of the folding knife, so from this it appears that I did both sides of the blade, as well as the handle.
Q. Okay. And even more importantly than that, when you sent that swab to SLED, they knew where -- which part of that item was swabbed?
A. Correct.
Q. Okay. So you labeled it when you did the handle; it said swab handle. When you did the blade, swab blade?
A. Yes.
Q. Okay. Are those items packaged separately?
A. They are, yes.
Q. Okay. So there's no way whatever you swabbed from the handle got on another swab?
A. No.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Cross-examination -- I'm sorry. Recross?

MR. WILSON: I just have one or two questions.

RECROSS-EXAMINATION BY MR. WILSON:

Q. Ma'am, when you got there, was the blood still wet on the floor?
A. I did not go into the house immediately because we waited for a search warrant. My thought is it would have

probably been dry by the time we did go into the house. I know the blood on the outside on the ground was still wet, but I don't recall about the blood on the floor.

Q. What about the blood on the scissors and on the knife, were they still wet?

A. I don't recall because it was raining, and I just don't remember. I'm sorry; I just don't.

MR. WILSON: No other questions. Thank you, Ma'am.

THE COURT: Mr. Long?

MR. LONG: Your Honor, I would -- I don't have any questions, but I would request now that this is in, to publish it to the jury.

THE COURT: Not a problem if you would like to do so. Anything else?

MR. LONG: No sir.

THE COURT: All right.

Ma'am, you may step down.

Do you wish the witness to be excused?

MS. LIVESAY: Yes, Your Honor.

THE COURT: All right.

Any objection?

MR. WILSON: No objections, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

Ma'am, you are released from your subpoena and may go back to your regular activities. Please make sure you don't have any exhibits.

Who is your next witness, Solicitor?

MS. LIVESAY: At this time, Your Honor, the State calls Adrienne Riley from the South Carolina Law Enforcement Division.

THE COURT: All right.

ADRIENNE RILEY HEFNEY, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. And, Ms. Hefney, tell the jury where you work.

A. I work with the South Carolina Law Enforcement Division, more commonly known as SLED.

Q. Okay. And what do you do at the -- at SLED?

A. I'm a forensic DNA analyst.

Q. Okay. And tell the jury about your educational background.

A. I have a Bachelor of Science Degree from the University of South Carolina in Biology. I've taken post-graduate courses in Molecular Biology, Population Genetics and Statistics. I also possess a MBA from Winthrop University as well, and I received my training on the job from a court-qualified analyst, and each year we are required to attend a conference or a training class in continuing

education to stay abreast of any changes or updates in the field of DNA analysis.

Q. And tell the jury and the Court, how long have you been at SLED?

A. Since 1997, so that's almost fifteen years.

Q. Okay. And have you held the same position?

A. Since March of 1999, I have.

Q. Okay.

A. Before then, I was a technician.

Q. Okay. And tell the jury again exactly what your position has been since 1999.

A. Forensic DNA Analyst.

Q. Okay. And have you ever testified in Court before?

A. Yes Ma'am, I have.

Q. Okay. How many times?

A. Roughly almost sixty times.

Q. Have you ever been qualified as an expert?

A. Yes Ma'am, I have.

Q. And how many times have you been qualified as an expert?

A. All of those times, almost sixty.

Q. Okay. And what court was that in, State ---

A. In both General Sessions in the State Court, as well as Federal.

Q. Okay.

MS. LIVESAY: Your Honor, at this time the State wishes to offer the witness as an expert in the field of DNA analysis.

THE COURT: All right.

Mr. Wilson, do you wish to voir dire the witness as to her qualifications or challenge the State's offer?

MR. WILSON: I do not.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

The witness is qualified to give her opinion.

You may proceed.

MS. LIVESAY: Thank you, Your Honor.

Q. Ms. Hefney, if you don't mind, tell the jury exactly -- we call -- we say DNA all the time. Explain to them exactly what that means.

A. Sure. DNA stands for deoxyribonucleic acid, and what that is, it's a chemical that is found in all your nucleated cells of your body, and what it does, it tells us -- it makes us individuals. A lot of us have the same DNA because it -- DNA that goes for humans having two arms, and two legs, and eyes, and nose, but, of course, we look around this courtroom, everybody looks different, so everyone's DNA is unique.

We receive our DNA from our parents. We get half from

our mother and half from our father, and so the only two people that will have the same DNA would be identical twins.

Q. Okay. Now, let me ask you this: Do you do your statistical comparison or statistical analysis when you're testing DNA?

A. We do. What we do is because of that uniqueness of DNA that no two people have the same DNA, we use that in crime scene investigations, and how that is, we compare knowns to unknowns.

The knowns would be what's like a blood standard from a victim and on a suspect, and that's blood that was taken out of the vein of them, or buccal swabs, or sometimes it's pronounced buccal swabs, from the inside of their cheek. Those are known standards because we know the origin from where they came.

The unknowns are samples that were left behind at a crime scene. It can be blood left behind at a homicide, semen left behind at a sexual assault case, or saliva, any type hair, fibers, we can get DN- -- not fibers, we can't get DNA from, but hair, blood, semen, saliva, teeth, bone, we're able to get DNA profiles from.

And so when we develop a DNA profile from a unknown, we'll make a comparison to a known. We'll do a visual comparison to see if that matches, and if it does, we'll apply a statistical weight to it, to say if you were to see

however many people you should only expect to see this DNA profile or this combination of DNA profiles one time.

Q. And explain exactly how evidence gets to SLED, how the chain works in SLED.

A. Sure. Evidence is submitted by local law enforcement agencies. It's brought to SLED. It is logged in, in our Evidence Control Department. A request is put on it based on what they need done, and if it's DNA that they need done, then we will go downstairs to our Evidence Control Department, retrieve it, bring it upstairs to work on it.

Back in '06 when this case was done, we had technicians that would retrieve the evidence for us, bring it to us and put it in our location, in our refrigerator, and then we would retrieve it from there.

Q. Okay. And did Myrtle Beach Police Department submit evidence to SLED regarding the number L0608393?

A. Yes Ma'am, they did.

Q. Okay. And if you don't mind, did you do a report regarding this -- what was submitted to SLED?

A. Yes Ma'am. I made the comparisons of those unknown swabs to those known standards that I received.

Q. Okay. And if you don't mind, could you please go through each item and tell the jury what your final result was.

A. Sure. First of all, on Item 85, which was the swab

from a folding knife that was found in the white Chrysler glove box, as well as Item 28.1, and these are SLED item numbers that I'm reading by, they may differ from Myrtle Beach item numbers, but Item 28.1 was some swabs taken from the handle of a folding knife. There was insufficient human DNA on those for STR analysis, and STR just stands for short tandem repeat. That's the type of DNA analysis that we do at SLED.

Now, the DNA -- and I'll read directly from my report in regards to the other items.

Q. I'm sorry. Before we get too far now, there were two -- there were swabs submitted from two different knives, is that right?

A. Yes.

Q. Okay. And what is the description of the second knife?

A. A Case knife. I'm assuming that's a brand name of a knife.

Q. Okay. So it's definitely two different knives that you're taking swabs off of, though, ---

A. Well, that I received a swab from, yes Ma'am.

Q. --- that you received swabs from, and what you just told us about was the folding knife, is that right, that was found from a Chrysler?

A. Yes Ma'am.

Q. I'm sorry, go ahead. Please continue. What was the next item?

A. Okay. The DNA profile developed from Items 63, which was a blade of a Case knife, and 65, which was scissors, is a mixture of at least two individuals. Joseph Hucks and Larry Chestnut cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could contribute to this mixture is approximately one in three hundred and fifty thousand.

Kendrick Chestnut is excluded as a possible contributor to this mixture.

Do you want me to keep reading the rest of them or ---

Q. Could you go ahead and tell us about the next analysis you performed.

A. The DNA profile developed from Item 66, which was another swab from scissors, is a mixture of at least two individuals. The DNA profile of the major contributor to this mixture matches the DNA profile of Joseph Hucks. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately one in one point five quadrillion.

The partial DNA profile of the minor contributor to this mixture matches the DNA profile of Larry Chestnut. The probability of randomly selecting an unrelated individual having a DNA profile matching the minor contributor to this

mixture is approximately one in one hundred and seventy thousand.

Q. That's a lot of information. Do you mind holding on one second.

A. Sure.

Q. If you don't mind, I'm going to use this pad to write it down kind of what the analysis is, ---

A. Okay.

Q. --- and who it matched up to. That way we can keep it straight. Can you see this?

A. Not really.

MS. LIVESAY: Your Honor, do you mind if she steps down so she can make sure the accuracy of what I put on this ---

THE COURT: I don't have a problem with that, but then you're just going to have to move it so that your -- you've got to move that thing closer over here to the microphone.

MS. LIVESAY: I understand.

If you don't mind, could you step down, ---

THE COURT: You may step down.

A. Okay.

MS. LIVESAY: --- and that way you can make sure I'm ---

Q. If you don't mind, take me back to -- I know we've already gone through it, but if you don't mind helping, the

swab from the scissors, is that what you were just testifying to?

A. Yes Ma'am. The first results I have are the swabs from the blade of the Case knife ---

THE COURT: Your voice is going to have to go up, Ma'am, or you're going to have to get closer to that microphone, one of the two.

A. I can speak louder.

THE COURT: Okay.

Q. Okay. Tell me about the Case knife.

A. The DNA profile from Item 63, which is the blade from the Case knife, and the scissors, is a mixture of two individuals. Joseph Hucks and Larry Chestnut cannot be excluded as possible contributors to this mixture.

Q. Okay. So we've got the blade of the Case knife?

A. Uh huh **(indicating positive)**.

Q. And the scissors?

A. Yes.

Q. And that's one analysis you performed? They were swabs taken off these items, and you compared them to the known swabs of Larry Chestnut, Joseph Hucks, and Kendrick Chestnut?

A. Yes.

Q. So, and what -- and your results were what?

A. That it's a mixture of Joseph Hucks and Larry

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF **HORRY**	)	**(06-GS-26-02997)**
	)	**(06-GS-26-02998)**
STATE	)	
	)	
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VERSUS	)	TRANSCRIPT OF RECORD
	)	
	)	
LARRY T. CHESTNUT and	)	August 13, 14, 15, 16, 17, 2012
KENDRICK CHESTNUT	)	Conway, S. C.
	)	
	)	
	)	

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

A P P E A R A N C E S:

NANCY LIVESAY, ESQ.
ASSISTANT SOLICITOR FOR HORRY COUNTY
ATTORNEY FOR STATE

RALPH W. WILSON, SR., ESQ.
ATTORNEY FOR DEFENDANT, LARRY T. CHESTNUT

RUSSELL BLAKE LONG, ESQ.
ATTORNEY FOR DEFENDANT, KENDRICK CHESTNUT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

VOLUME 3 OF 3
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Chestnut.
Q. Okay. And tell the jury -- explain to the jury exactly what a mixture is.
A. Sure. A mixture is when you have DNA evidence, a biological stain has been left behind. It's been left behind in more than one person, so I have the biological evidence of more than one person, whether that be blood from one person and saliva from another, or blood from both of them. I have no way of knowing that, but I just know that there was two biological specimens here in this one swab, or two swabs in this case, from two different people.
Q. Okay. Would you say what I wrote up here is accurate?
A. Yes.
Q. Okay. What is the second unknown swab or swabs?
A. The second one is from scissors, and that's Item 66, ---
Q. Okay.
A. --- and it's also a mixture of at least two individuals.
Q. Okay. And who are those two individuals?
A. The major contributor to this mixture matches the DNA profile of Joseph Hucks.
Q. Okay.
A. And let me explain what I mean by major contributor

versus minor contributor. Just as I explained that you have those two stains or two things that were deposited by two different people, say one person deposited blood and one person just deposited a little piece of -- a bit of something, that's just for, you know, explanation purposes. The blood would be a stronger profile than that small amount, and so the major contributor to that mixture you can clearly see, and then the other person would be a minor contributor.

In some cases in a mixture we have both contributing equal amounts of biological specimen, like what we said in the first one with the blade of the Case knife and the scissors. Both of them are contributing to that, but I can't say one is major and one is minor.

Q. Is this accurate?

A. Yes.

Q. Okay. And by major, you mean that there is more of that specimen on the scissors?

A. Yes, more of that person.

Q. Okay. Got'cha. So more of Joey's DNA is on the scissors than Larry Chestnut?

A. Yes.

Q. Okay. I'm sorry. Go ahead and tell us about the next unknown swab.

A. The next one is DNA profile developed from Item 64,

swab from the blade of the Case knife, is a mixture of at least two individuals. The DNA profile of the major contributor to this mixture also matches the DNA profile of Joseph Hucks. Larry Chestnut cannot be excluded as a possible minor contributor to this mixture, and Kendrick Chestnut is excluded as a possible minor contributor to this mixture or a possible contributor to this mixture.

Q. If you don't mind, explain to the jury what you mean, cannot be excluded?

A. It means that everything I see, the DNA profile that I developed of those two people, there's nothing that's saying that they're not there.

Q. But you don't have enough to say that is Larry Chestnut's DNA on the blade of the Case knife?

A. Yes.

Q. And you said somebody could be excluded?

A. Kendrick Chestnut.

Q. Okay. Would you say that's accurate?

A. Yes.

Q. Tell us about an unknown DNA swab.

A. The next unknown is from a T-shirt. I believe this is Kendrick Chestnut's T-shirt, ---

Q. Okay.

A. --- and a transfer stain on the T-shirt. The DNA profile I developed, Item 40.1, is a mixture of at least two

individuals. The DNA profile of the major contributor to this mixture matches the DNA profile of Kendrick Chestnut. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately one in seven hundred and forty quadrillion.

Joseph Hucks cannot be excluded as a possible minor contributor to this mixture. Larry Chestnut is excluded as a possible minor contrib- -- a possible contributor to this mixture.

Q. Okay. So we know that that's not Larry's DNA on that swab on Kendrick Chestnut's T-shirt?

A. On Kendrick's T-shirt.

Q. And we don't know if it could be Joey or not?

A. Joseph Hucks cannot be excluded.

Q. So there's some profiles that appear to belong to Joey Hucks, but not enough for you to be able to say, yes, that's Joey Hucks?

A. Correct. There's not enough there for me to exclude Joey Hucks from it.

Q. Got'cha. Would it -- tell me about the next item. I'm sorry, let me make sure I've got this written correctly before I let you go too far. Is that accurate?

A. That's accurate.

Q. Okay. Tell us about the next one.

A. There is another swab from the same T-shirt. The profile developed from Item 40.2 is a mixture of at least two individuals. The DNA profile of the major contributor to this mixture often matches the DNA profile of Joseph Hucks. Kendrick Chestnut cannot be excluded as a possible minor contributor to this mixture. Larry Chestnut is excluded as a possible minor contributor to this mixture.

Q. So Larry Chestnut is excluded?

A. Uh huh **(indicating positive)**.

Q. And, I'm sorry, what was the analysis regarding Joseph Hucks?

A. It mat- -- he was a major contributor.

Q. He was a major contributor or a match?

A. The T-shirt.

Q. Yes, the T-shirt would be a major contributor or was it a match on that T-shirt to Joey Hucks?

A. Both. He's a major contributor and it matches the DNA profile of Joey -- Joseph Hucks.

Q. Okay. But he's a major contributor and is a match?

A. Yes.

Q. Is that right?

A. Yes Ma'am.

Q. Okay. Tell me about Kendrick Chestnut on that T-shirt.

A. He cannot be excluded as a possible minor contributor,

and this is an example of, say, it was Kendrick's T- -- it's Kendrick's T-shirt, so clearly it's got his skin cells on the T-shirt. That would be -- you may not find a profile. That is another way to explain the difference between major and minor.

Q. So you would expect Kendrick Chestnut to be ---

A. To be on his own T-shirt.

Q. --- on his T-shirt, right?

A. Yes Ma'am.

Q. Is this correct here, what I wrote here?

A. Yes.

Q. And is this all the results that you came up with regarding the evidence?

A. I have three more items, but as far as no DNA profile foreign to the victim, Joseph Hucks, was developed in 45 and 46, and those were his fingernail clippings, and no DNA profile was developed from Item 28.2, which was the blade of the folding knife.

Q. Thank you, but before you go, is this a accurate depiction of exactly what the results are that came from SLED?

A. Yes.

MS. LIVESAY: Your Honor, at this time, I'm going to introduce this into State's evidence.

THE COURT: Have it marked, please.

MS. LIVESAY: I'm sorry, Your Honor?

THE COURT: Have it marked, please.

And what's the number, please, Ma'am?

THE REPORTER: State's 31.

THE COURT: State's 31.

All right. Mr. Wilson, State's 31, do you have any objection to it?

MR. WILSON: Yes sir. One, it's not the official report that this agent did. I wouldn't have any objection to the official report that she did. What I object to is these are the notes that were taken by the Solicitor during her direct examination.

THE COURT: All right.

Solicitor, do you want to introduce State's 30 into evidence?

MS. LIVESAY: No sir, I do not.

THE COURT: All right. I am not going to allow State's 31 into evidence. I will have it marked for identification. It can be used for demonstrative purposes only. Thank you very much.

(CHART OF DNA TESTIMONY MARKED AS STATE'S EXHIBIT NUMBER 31 FOR IDENTIFICATION ONLY.)

Q. Let me ask you, Ms. Hefney, what I've written up there, is this the results of your report?

A. Yes, my notes.

Q. Okay.

MS. LIVESAY: Your Honor, she has testified that these are the results of her report, and I ask to move this into evidence ---

THE COURT: I appreciate that, and again, I am not going to allow you to put that into evidence. You may put into evidence the original report if you so choose to do so. That's your choice. I will not allow State's 31 in evidence. It can be used for demonstrative purposes. Thank you very much.

Q. Let me ask you this, Ms. Hefney. Was Larry Chestnut a major contributor on the scissors or the Case knife in any of your results?

A. No Ma'am, he was not.

Q. Okay. Even on the blade of the case knife, which you told me the blade of the Case knife, who was the major contributor, whose DNA was the major contributor of the blade of that knife?

A. Okay. On one of the items, Item 63 was also a blade swab from Case knife, and that was a mixture of both Joseph Hucks and Larry Chestnut.

Q. Okay.

A. Item 64 is another swab from the blade of Case knife, and that's a mixture of two, and major contributor to that one is also Joseph Hucks.

Q. Okay. So were there any other swabs other than these two that are labeled blade of Case knife?
A. No, just 63 and 64.
Q. Okay. So on both blades of that case knife, both swabs that were taken from the Case knife, Joey Hucks, that DNA was equal to the amount of DNA from Larry Chestnut or was a major contributor?
A. That's correct.
Q. Okay. But on neither swab on the case knife, on that blade, was Larry Chestnut the major contributor?
A. No, he was not.
Q. Okay. Let me ask you, too, a little bit about the scissors. You had an item -- two items labeled or two swabs that were taken off the scissors, is that correct?
A. That's correct, Item 65 and 66.
Q. Okay. And again, on the scissors, there was one where Joey Hucks and Larry Chestnut -- it was an equal mixture from both, is that correct?
A. Yes.
Q. Okay. And then on the other swab from the scissors, Joey Hucks again was the major contributor on the scissors?
A. That's correct.
Q. Okay. So on none of the items as far as the scissors or the blade of the Case knife was Larry Chestnut ever a major contributor?

A. That is correct.
Q. Okay. If you don't mind, I'll ask you a little bit about that T-shirt, Kendrick Chestnut's T-shirt. The results from the T-shirt, there was a stain on the T-shirt, is that correct?
A. Yes Ma'am.
Q. Okay. And you said that was a transfer stain?
A. That's how it was labeled.
Q. That's how it was labeled?
A. Yes.
Q. Okay. So you don't know. It's just labeled as a transfer swab?
A. No. I just got the swab.
Q. And the DNA on that T-shirt matched up to Kendrick Chestnut?
A. That is correct.
Q. And would you be surprised by that?
A. No.
Q. Now, without a doubt on that particular one, Larry Chestnut's DNA is not anywhere on that, that particular swab?
A. That is correct.
Q. Okay. And on that stain, on Kendrick Chestnut's shirt, Joey Hucks cannot be excluded?
A. That is correct.
Q. That just means that there's a similarity of his DNA

on it, just not enough for you to be able to say that's a match, correct?

A. That's correct.

Q. Now, there was another swab taken off that Kendrick Chestnut T-shirt, is that correct?

A. Yes Ma'am, there was.

Q. Now, who was the major contributor of the DNA on that -- that swab?

A. Joseph Hucks.

Q. Okay. And that would be unusual on somebody else's T-shirt, is that right?

A. That's correct.

Q. Okay. Now, who can be excluded? Whose DNA definitely was not on that T-shirt?

A. Larry Chestnut.

Q. Okay. Now ---

MR. LONG: Your Honor, I object to that. It's not that his DNA was not on the T-shirt. It was not on the swab.

THE COURT: I'm going to allow the question and the answer. You have the opportunity to cross-examine the witness. Thank you.

Q. Who cannot be excluded?

A. Kendrick Chestnut.

Q. Okay. And is that a surprise to you?

A. No. It's -- it was his T-shirt.

Q. Okay. So on everything that came off his T-shirt, it would be his DNA or it would -- enough of his DN- -- or some portion of a similarity of his DNA, just not enough where you could say that's Kendrick Chestnut?

A. That is correct.

Q. Okay. So on nothing that came off of his T-shirt could Kendrick Chestnut be excluded?

A. Correct.

Q. Okay. And did that surprise you in any way?

A. No.

Q. Okay. Ms. Riley, I'm showing you now what's been marked as State's Exhibit Number 30. Do you recognize what I'm showing you?

A. Yes. This is the copy of my report that I've been reading off of with my signature.

Q. Okay. And has that report that I'm showing you now been altered in any way? Is that an exact copy of your report?

A. It is.

MS. LIVESAY: Your Honor, at this time the State moves the SLED Report into evidence as State's evidence Number 30.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: I don't have any objection to it.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: State's 30 is in evidence without objection.

(SLED REPORT (5 PAGES) ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 30.)

MS. LIVESAY: Can I ask you to step down for a minute, please, for some testimony.

Can you speak loud so I can have you up more this way because there's not a mic over here.

A. Okay.

Q. As part of your report, they are -- they are Page 4 and 5, okay, and you've got a copy of it, is that correct?

A. That's correct.

Q. Okay. I'm going to show it to the jury then. What is this I'm showing to the jury?

A. This is a representation of a DNA profile, of the DNA profile that we developed from the knowns as well as the unknowns in this case.

Q. Okay. And this is where you did your statistical analysis, is that right?

A. That is correct, and what you see here across the top of here, these are what are known as genetic locations. You have twenty-three pairs of chromosomes in your body. We, as DNA analysts, look at the chromosomes or genetic markers that are different, that make you unique, and right here at the top, these are where they are named, so right there you see

D8S1179. That just means that's chromosome eight at site one thousand, one hundred and seventy nine on that chromosome.

Q. Let me ask you this just real quick, to interrupt you. Could you read this chart before you went to school to do DNA?

A. No, not -- I wouldn't know what it meant.

Q. So you would have no idea before you went to school what any of this meant?

A. That is correct.

Q. Okay. Would you expect a lay person or anybody else to understand this chart?

A. No.

Q. Okay. And that report you did basically tells the results of this chart?

A. That's correct.

Q. Okay. This is actually extremely complicated, would you say?

A. It can be, but, I mean, it's -- you know, it's easily explainable so a lay person can explain -- can understand it.

Q. Right. Let me ask you this way: Would it be easier to understand these results by looking at this table or what I just did on this note pad?

A. Oh, what you just did on the note pad.

Q. Okay. And let me ask you this: This table -- this table is exactly what I wrote on my note pad, is that right?

A. Well, it's the results of what we look at in determining what's real.

Q. Okay. So there's nothing -- there's no results on this, this, that is not on your report?

A. No. What they'll be able to see from this chart is just where the DNA profile from each one came from, and there will be a representation of what she has written here.

Q. Okay. So your report just gives the results of what this table is telling you as a scientist?

A. That's correct.

Q. Okay.

MS. LIVESAY: I'm sorry, and go ahead and have a seat.

Q. Now, when you do this report at SLED, which is basically the results of this table, do you just send that to the -- to the Myrtle Beach Police Department, or is there a review process? Tell the jury about that.

A. There is a lengthy review process. Once I do this report, or any analyst, we're reviewing it as we go. It's sent to a peer, another analyst in the DNA Department. They review it, and once they approve it, it's sent to a supervisor and they review it, and they have the final review and the final sign-off before it's sent to the submitting agency, so it goes through at least two reviews before it's sent out the door, or three reviews including the analyst that does it.

Q. So that report has been reviewed several times by other people before it ever leaves the South Carolina Law Enforcement Division?
A. That's correct. That's every report that we submit.
Q. Okay. So right after you do the results, you do this report and then they actually look at it separate and apart and say, yes, this is accurate, or no, it's not?
A. That's correct.
Q. Okay. And how many people do that?
A. Well, right now we're down to about less than ten maybe that are DNA analysts that's doing that.
Q. Okay. Now, just -- just so I'm clear and the jury is clear because it's very complicated, or it seems complicated, on the report, there's nothing up here that's inapplicable?
A. That's correct.
Q. Okay. So there's nothing in that report that's going to say Larry Chestnut is a contributor on anything, any blades, any scissors, anything?
A. That Larry Chestnut is a contributor?
Q. Uh huh **(indicating positive)**.
A. Well, he is a contributor on Item 63 and 65; he cannot be excluded as one.
Q. Right, but is he a major contributor on ---
A. Oh, a major, no Ma'am.
Q. Okay. So given that report, I know it's complicated,

it's complicated for me, you're sure and this result up here is correct that Larry Chestnut is not a major contributor on any blade or any pair of scissors?

A. That is correct, not a major contributor.

Q. Okay.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Cross-examination, Mr. Wilson.

CROSS-EXAMINATION BY MR. WILSON:

Q. Ma'am, first let me ask you in regards to -- first in regards to DNA, you can make a determination that a person is included, and then you have to come up with a statistical analysis to quantify that, would that be a fair statement?

A. I believe that's a fair statement.

Q. Okay. And what is the statistical analysis that you came up with in order to determine that a person is not excluded? Give us the statistical analysis that you came up with to show that that person is not excluded.

A. Not excluded, okay. Like, for example, in the first paragraph where the DNA profile from Item 63 and 65 is a mixture of two individuals, and Joseph Hucks and Larry Chestnut cannot be excluded as possible contributors to this mixture, and the probability of randomly selecting an unrelated individual who could contribute to this mixture is approximately one in three hundred and fifty thousand.

Q. Well, now, I apologize, but I thought you said that

they were included?

A. They cannot be excluded.

Q. Sixty-three, did you not say that the blade, which is the blade Case knife, correct, 63, right?

A. Yes.

Q. And in that, did you not say that Joseph Hucks and Larry Chestnut are contributors to that?

A. They cannot be excluded as possible contributors to this mixture.

Q. Okay. So are you say- -- what my question to you is, if you're saying that they can't be excluded, in order to include somebody you have to give us a statistical analysis of what the odds are that that person is included, whether it's one in five trillion or whether it's one in two hundred and eighty billion, or whatever the number is, right?

A. That's correct. That's what the one in three hundred and fifty thousand is.

Q. What I'm asking you is -- that's when they're included. What I'm asking you is you're saying to me now that -- you're not saying that they are major contributors and they're included; you're saying we can't exclude them. That's what I'm asking you about, the difference, not those people who we know and you've said to us, look, these people are major contributors to this. I'm asking you about the ones where you're saying, well, I'm not saying that they're a

contributor. I'm saying they can't be excluded as a possible contributor.

A. Well, pretty much when they cannot be excluded, they're included.

Q. Well, then, if they're included, give us the statistical probability that you have to give us in order to tell us what the odds are that they are, in fact, included.

A. That would be the one in three hundred and fifty thousand.

Q. One in three hundred in fifty thousand, and how many people in the world?

A. There's almost seven billion people in the world.

Q. Okay. So if it's one in three hundred and fifty thousand, then that would mean that there are probably another eight hundred thousand people out there somewhere that could have put that -- that blood there, right, or that stain?

A. That's a statistical weight to it, so yes sir.

Q. Yeah, so then what you are telling us is that you really honestly don't know what it is when you're talking about a person not being able to be excluded?

A. I'm doing this based on what I see as far as the known standards and making a comparison to the unknown, and when I did, that I could say these two people, I didn't see anything saying that they are not a contributor to this mixture.

Q. And what do you have to say that they are? That's what I'm asking.
A. Their DNA profile.
Q. You told the Solicitor in your conversation with her that there is not enough there to say that a person is excluded, and so what I'm asking you is what is it that you have to find to show that?
A. I didn't say there was not enough there to say that person is excluded.
Q. You didn't say there's not enough there to say that Joey was excluded when you were talking about the T-shirt?
A. There is not enough to make a match to it saying that he's not the major contributor to it, but he's not excluded. He's included if that's the case. Is that what you're asking?
Q. You said on the T-shirt -- you said that the major contributor to the T-shirt was Kendrick Chestnut, is that correct?
A. On the transferred stain, the swab from his transferred stain.
Q. Okay. And then you go on to say that Joseph Hucks cannot be excluded, but Larry can be excluded?
A. Correct.
Q. And what I'm asking you now is you told us that you have to have a statistical probability to show the chances

that that stain belongs to a particular individual, and what I'm asking you simply now is in regards to this can't be excluded for Joseph Hucks, you're not telling us that that stain belongs to Joseph Hucks in any way, are you?

A. I'm not -- I didn't add a statistical weight to it, no sir, ---

Q. Okay. And ---

A. --- that he cannot be excluded.

Q. And by the rules that you operate under, unless you find enough there, you're not permitted to assign a statistical amount to it, are you?

A. That's incorrect.

Q. So you can just dig up a number and put it there regardless?

A. No. At this time when this case was written or this report was written, when they cannot be excluded we were not applying statistical rates to cannot exclude. Now we actually are applying statistical weights to it, so if I had the program here or whatever, I could apply a statistical weight to his not being excluded.

Q. You could do that now? What -- you've had this case since 2006 or '07, ---

A. Right.

Q. --- and you knew you were coming to Court because you submitted a new report, what was it, April of 2011?

A. Yes sir, but you cannot send a different report for it. That's just the way we were writing reports at that time.

Q. All right. Now, let's go back and talk about this DNA stuff and about major contributors and minor contributors.

A. Okay.

Q. Now, a major contributor and a minor contributor actually has a lot to do with how much of a stain you find on the item that you're trying to examine, fair?

A. Not necessarily.

Q. Okay. Well, ---

A. It's based on how much DNA or how much biological evidence was contributed by that person on that stain.

Q. Yeah, but you -- when you get a swab, you don't have the entire stain. You have a swab of the stain?

A. That is correct.

Q. You never saw this stain in its entirety, did you?

A. That's correct.

Q. You saw a swab that somebody brought you, and that swab would have had whatever substance was on the item that was swabbed, right?

A. That is correct.

Q. All right. And -- and so if more of one person's blood is on there, then you would expect that that person is going to be the major contributor versus less of him, is that

correct?
A. That is correct, if there was a swab of the blood stain, yes, sir.
Q. That's right, and -- and not only that, if it's swabbed incorrectly, then you're going to get the wrong results anyway because then you're not going to know which -- if you -- for instance, to give you an example, if you swab an area where there is a lot of blood and then you swab an area where there is a very little blood, then you may get in that lot of blood one person's blood primarily, and where you swab the second area, then you find other blood in there, which is less, right?
A. If it was swabbed that way, yes, sir.
Q. Yeah, so my question to you is when you're saying that a person can't be excluded, that does not mean that that person is, in fact, a contributor to anything, does it?
A. It means that they are a possible contributor to this.
Q. Possible, possible, and how many possible scenarios are there, a half million, two million, fifty billion, four quadrillion, what, or do you know?
A. I do not know.
Q. You do not know. And now the rule is when you're going to testify about something, if you can't quantify it, then you should not be saying that that belongs to a particular individual, should you?

A. That's not necessarily the case.
Q. Not necessarily the case, so you can quan- -- not quantify it and then come in this courtroom and tell a jury that it belongs to somebody?
A. Because we do a visual match first and then apply a statistical weight to it. It doesn't change that what we saw that the DNA profile that appears that Joseph Hucks or whoever cannot be excluded. That does not change. We just don't have a statistical weight to it, ---
Q. Let's go back ---
A. --- but it does not negate the match, or exclude or include.
Q. Okay. Let's go back to Item 63. Do you recall that one?
A. Yes sir. That's the blade from the Case knife.
Q. All right, the blade from the Case knife, and now did you tell the Solicitor that Joey Hucks was the major contributor on that?
A. I did not.
Q. And what did you say?
A. I said Joseph Hucks and Larry Chestnut cannot be excluded as possible contributors to this mixture.
Q. Okay. So that means what you're saying is you're not sure if that's Larry's blood and/or that's Joseph Hucks' blood on that knife based on that swab that you did or that

you have? Isn't that what you're saying?
A. No sir.
Q. Well, tell me in your words what you're saying then.
A. I'm saying that the DNA that was found on that swab from that blade appears to be a mixture of those two individuals.
Q. All right. And how did you come to that determination, because you're saying that they can't be excluded, but neither one of them are major or minor contributors. You're just saying that they can't be excluded?
A. Because they are of equal concentration for the most part, so I can't say that one is a major and one is a minor, so they're both just -- it's a mixture. It's a homogenous mixture, and that is what you will see on the chart that's on my report.
Q. Did you do blood typing at all?
A. We don't do blood typing any more, sir.
Q. So you can't tell us even if the blood from the stain is consistent or inconsistent with Larry or Joey, can you?
A. I'm saying that the blood from the stain, the DNA, is consistent with both Larry, as well as Joseph.
Q. Okay. You're saying it's consistent with that, is that what you're saying?
A. Where they cannot be excluded.

Q. Where they cannot be excluded, and -- but you can't tell them how many other people can be included?
A. I'm not sure I understand what you're asking me, but ---
Q. Okay. All right. Let me move on. Let me go to the scissors. Now, -- well, let me back up and go back to the knife. If the knife was found -- well, first of all, you don't know where the knife was found, do you?
A. No sir.
Q. All right. And you weren't there. You didn't see any of this. Did you even see pictures of this place?
A. No sir.
Q. All right. The knife was -- was -- now, 63 was the blade of the Case knife. Now, was that one side or is that both sides?
A. I'm not sure, sir. That would be what the crime scene person or whoever swabbed.
Q. Well, you have a 64 which you say is the blade of a Case knife?
A. That's correct.
Q. Now, is that the same Case knife or is that a different Case knife?
A. That, I'm not sure. These are descriptors that was given to me as they were submitted.
Q. Okay. So you don't know if 63 and 64, which are the

swabs that you tested, come from the same knife or not?
A. That is correct. It just said a blade of a Case knife.
Q. Right. Now, if 64, you say Joseph Hucks and Larry Hucks (sic) cannot -- he -- I'm sorry, Larry Chestnut cannot be excluded, is that right?
A. I said that the DNA profile -- of Item 64, which is blade from Case knife, the DNA profile of the major contributor to this mixture also matches the DNA profile of Joseph Hucks, and Larry Chestnut cannot be excluded as a possible minor contributor to this mixture.
Q. Okay.

MS. LIVESAY: Your Honor, ---

A. Kendrick Chestnut is excluded as a possible minor contributor.

THE COURT: Yes Ma'am.

MS. LIVESAY: If I may, Mr. Wilson is asking questions, and I don't know if he is going to go further down this road about whether or not this swab came from the same Case knife. The seems and appears like a chain question, which he's already consented the chain is good. Now is he questioning whether or not that's a swab or ---

THE COURT: I'm going to allow the question. I don't see it as such regarding your agreement.

You may continue, Mr. Wilson.

MR. WILSON: Thank you very much.

Q. Now, just let me ask you a couple more things and I -- then I'm going to be through, but I just need a couple more things here with you. In Item 64 you say that the major contributor is Joseph Hucks, correct?

A. That is correct.

Q. And that the minor contrib- -- and that Larry Chestnut cannot be excluded, that's what you're saying?

A. As a possible minor contributor, yes sir.

Q. All right. Now, did you come up with a statistical analysis or information to say what the probability is that that blood or that stain belonged to Joey Hucks?

A. Also matches means that it's the same statistic that I would have presented earlier, and so in this case I've already matched Joseph Hucks to another item and applied statistical weight, so that's what also matches means. It's the same statistical weight, and in this case that statistical weight would be one in one point five quadrillion.

Q. Okay. And what was the one for Larry Chestnut for Item 64?

A. Again, Larry Chestnut was a possible minor contributor and cannot exclude visual match. We did not apply a statistical weight to it.

Q. All right. So it's a possibility is what you're

saying, it's a possibility that it could belong to him, but we really don't know because you can't tell us that there's a probability, and in your field of work, a possibility is true for just about anything, isn't it?

A. I'm not sure what you're asking with that.

Q. What I'm asking you is in science, in your field, when you're dealing with these -- with blood and with the DNA, that anything is possible for the most part, right?

A. Anything is possible to a degree of reasonable scientific certainty.

Q. Which is why, which is why you're required to give us the statistical analysis telling us the quantitative number as to how that probability exists so that we know that the chances that it belongs to Larry Chestnut is one in five hundred billion or one in two hundred and twenty-five million, as opposed to your showing up here saying, well, it's possible it belongs to him.

A. Or it's probable that it -- that we don't see anything where he can -- it doesn't belong to him.

Q. Okay. So what you're saying is, well, we looked at it and we didn't see anything that said it wasn't his, so we must assume that, well, if we didn't see anything to show that it wasn't his, maybe it is? That's what you're saying, right?

A. I'm looking at the DNA profile and I'm noticing that

everything that I'm seeing is matching his DNA profile that's not already matching Joseph Hucks as the major.

Q. Well, if it matches his DNA, then why can't you say that he is included?

A. We said he cannot be excluded as a possible minor contributor.

Q. I understand that's what you're saying, Ma'am. I know ---

A. And it could be because -- let me look at the chart. You were asking me about Item 64, is that correct?

Q. I asked you about several, but yes, that's one of them.

A. Okay. So if I refer to my chart here on the stand, I'm noticing that in a lot of profile -- in a lot of the DNA, Joseph Hucks and Larry Chestnut may share an allele, which means, for example, in what I was saying the D8 site 1179, at that one, Joseph Hucks is a eight thirteen. Larry Chestnut is a twelve thirteen, so they both have a thirteen allele at that location.

Q. Well, but I may have a thirteen ---

A. And so when we have -- excuse me -- when we have a major contributor as an eight thirteen and throughout this profile we see that Joseph is an eight thirteen, why we didn't apply a statistical weight is -- we have a twelve, so who can the twelve come from? We see that Larry has a twelve

as well, and Larry has a thirteen. If we were to subtract out the thirteen from Joseph, which we can't do because he's the major contributor, in order to apply that statistical weight to Larry.

Q. Isn't it true, Ma'am, ---

A. And you can go through each one of them and determine -- you can see how we determined what we did.

Q. Is it not true, Ma'am, that if you are a relative, or a sister or brother, that your DNA is going to be closer to that sister or brother?

A. Not necessarily, not unless you are identical twins, because you can have completely different profiles as siblings just by, you know, the random match. You can get one thing from your mother. One sibling can get one allele from their mother. The other could get the other and may not match up the same way each time.

Q. Yes, it may not match up ---

A. There may be some similarities, ---

Q. You're right, ---

A. --- but not often or not all. I'm sorry.

Q. Okay. There are going -- if it's a brother and a sister, there are going to be some similarities because you share genes from your parents, so she may have -- the sister may have had a thirteen, too, right, on her DNA pattern, right?

A. Well, I have ---
Q. If you don't -- I'm sorry. Go ahead.
A. I'm sorry. I have both Larry and Kendrick's DNA standard, and I'm assuming they are brothers, and for example at D21, which is chromosome 21, site 11 on that chromosome, Larry Chestnut is a 2732.2. Kendrick Chestnut is a 2832. They don't share not one at that location.
Q. You're assuming that they're brothers, and you're assuming wrong, aren't you?
A. I asked were they brothers.
Q. And you were told that they're brothers?
A. I asked -- I said I'm assuming that they're brothers. I'm just giving an example of what you were asking me.
Q. Well, my point -- and that's my very point, Ma'am. They are not brothers.
A. Okay.
Q. So that is not a good analogy because they're not brothers.
A. Okay.
Q. And my point is if you are actually siblings, and the thing here is you never had any DNA from Christie, did you, the sister of Joey, did you?
A. No sir.
Q. You never had any DNA to match with that of Cindy, right?

A. No sir. I just had those three standards from Joseph, Larry, and Kendrick.
Q. Because if you had those, you might be here telling us that you can't exclude them?
A. If they are identical twins, I couldn't, because we don't just look at one location. We look at all of them, and if you have two siblings that are that similar to all of them and they are not identical twins, that's unusual. I haven't seen it yet and I've done cases with siblings, but without seeing their DNA profiles, I can't say that for certain.
Q. But Mr. Chestnut is not identical twins with Joey, right?
A. That's correct.
Q. Right?
A. Correct.
Q. Let me ask you, when you got these items to examine, did you -- were they sent to you directly before they went to fingerprinting or any other place, or did they just come to you, or do you know?
A. I don't know without -- I can look at the chain and tell.
Q. That's okay.
A. But the swabs would have directly come to me because they wouldn't do fingerprints on a swab.
MR. WILSON: If the Court would bear with me just one

second.

THE COURT: Yes sir.

Q. Just let me ask you one last thing. What about weather conditions, would that affect the amount of contribution that you might find on, say, a knife or scissors?

A. I'm not sure if it will affect how much you have. It will affect -- if DNA gets wet and it -- or extremely hot, then that could destroy DNA, because DNA is pretty stable on items in a dry state with -- but that's if it's not exposed to extreme heat or moisture.

Q. Do you know whether or not it was raining the night that this all happened?

A. I do not know.

Q. Do you know whether or not these items had been left out in the rain for a period of time before they were collected?

A. I do not know, but I would have to say the fact that I did get some DNA from it would lead me to believe that they weren't, because the DNA would have washed away before they had a chance to collect if they were.

Q. All of it would have washed away?

A. Possibility. It depends on if you had a heavy downpour, that's a possibility, especially blood would have washed away.

MR. WILSON: Thank you, Ma'am.

THE COURT: All right. Mr. Long.

MR. LONG: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. LONG:

Q. Ms. Hefney, how many items did law enforcement send you in this case originally for testing?

A. Originally law enforcement sent a lot of items, which is normal with SLED, but our case acceptance policy, we usually talk with law enforcement or talk with the investigator to find out what items are most probative.

On homicide cases we typically do five items, but we can go further in that and do more, depending on what's most probative, because we cannot -- we don't have the time or the money to do eighty some items that are submitted.

Q. And that's the case here, eighty-five plus items were submitted to you, is that right, in 2007?

A. Yes sir. It looks like eighty-five items were submitted for DNA analysis.

Q. Okay. And then -- so eighty-five items were sent to you, but you only tested how many?

A. In this case we tested eleven.

Q. And who made the decision to test those eleven and to disregard the other seventy-four?

A. A conversation between SLED and Investigator Salena Mann, or Detective.

Q. So Salena Mann decided which items SLED tested and which items SLED didn't test?

A. Yes. I have a narrative where my then trainee spoke with Salena Mann to find out which items of evidence were most probative in the case in terms of DNA, and in that case she said that the swabs from the two knives and the scissors were the most important to be tested, and so that's what we did.

Q. Okay. Now, the two weapons in this case, here, ---

A. Okay.

Q. --- the swabs that were taken from these two weapons and sent to SLED, you did test, correct?

A. If this is a -- yeah, that's a folding knife and scissors, yes.

Q. Okay. Did you find a DNA match for Kendrick Chestnut on either or any of the swabs taken from those weapons and sent to Columbia, did you find any match for DNA for Kendrick Chestnut on the items?

A. No sir, I did not.

MR. LONG: Thank you, Ma'am. That's all I have.

THE COURT: Redirect?

MS. LIVESAY: Yes sir, just a couple of real quick questions.

REDIRECT-EXAMINATION BY MS. LIVESAY:

Q. Ms. Hefney, Mr. Long has asked you about the items.

Is it y'all's practice to try to narrow down what's tested?
A. Yes Ma'am.
Q. Okay. And how many agencies across the State are sending you items, every agency?
A. All the counties in the State, yes Ma'am, with the exception of parts of Richland County and parts of Greenville County.
Q. Okay. So every other agency is sending you evidence just like we are?
A. That's correct.
Q. Okay. And about how many items do you normally test, is it requisite to test?
A. Depending on the case, we start with like five of the most probative items in cases of homicide, and we work out from there.
Q. Okay. So when we first send you stuff, your first answer is pick your best five?
A. Exactly.
Q. Okay. You just don't have the manpower to test every item we send?
A. No Ma'am.
Q. Okay. Now, as far as the -- what you get at SLED, you get it, what, just packaged up?
A. Yes Ma'am. We get the swabs typically on a dried -- off of a clothing item.

Q. And when you get it, do you refer to it as Lab Number L0608393?
A. Yes. And this -- each -- when the case is submitted by the local law enforcement agency, it's assigned a case number, and all of those items that were submitted under that or with those victims and that suspect are with that case number.
Q. Okay. Now, let me ask you this: Do you have any idea who Larry Chestnut is?
A. I have no idea.
Q. Do you have any idea who Kendrick Chestnut is?
A. No Ma'am.
Q. Do you have any idea who Joey Hucks is?
A. No Ma'am.
Q. Could you recognize any of them in this courtroom?
A. No Ma'am.
Q. Okay. So when you get it, you're just testing these results in some lab?
A. That is correct.
Q. Okay. You're not out looking at a crime scene, or viewing pictures? You're just testing these swabs in a controlled lab?
A. That's correct.
Q. And these are just the results you came up with?
A. That's correct.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Anything on those questions?

MR. WILSON: Nothing, Your Honor.

MR. LONG: No sir.

THE COURT: All right.

Ma'am, you may step down. Make sure you don't have any exhibits with you.

Solicitor, do you wish the witness to be excused?

MS. LIVESAY: Yes sir.

THE COURT: Any objection, Mr. Wilson?

MR. WILSON: None, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: All right.

Ma'am, you are released from your subpoena, may go back to your regular activities.

Solicitor, and Mr. Wilson, Mr. Long, y'all come and talk to me for a second.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. Ladies and gentlemen, we are going to stop for the evening. We will reconvene tomorrow morning at nine o'clock. Please be in your jury room at nine o'clock tomorrow morning.

Please remember don't talk about the case. Don't allow anybody to talk to you about it. Don't look up anything,

decide the case solely and completely on the facts and evidence presented in this courtroom and from no other source.

I'll see you back tomorrow morning at nine o'clock. Please leave your pads and pens.

Everyone else remain seated, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Ms. Schandl, Ma'am, the Solicitor's Office was asking me to continue on tonight. It was my choice. I decided not to. You are not released from your subpoena. You will be back tomorrow morning at nine o'clock. Thank you, Ma'am.

MS. SCHANDL: Sir, ---

THE COURT: Ma'am, you will need to be back tomorrow morning at nine o'clock. Thank you.

MS. SCHANDL: Judge, we will be in Charleston.

THE COURT: I'm sorry, Ma'am. You are under subpoena. You will be here.

MS. SCHANDL: I didn't receive the subpoena, sir.

THE COURT: And you will be here tomorrow morning. Thank you, Ma'am.

All right. Ms. Deborah Durick. Ms. Durick, where are you at, please, Ma'am?

MS. DURICK: Here.

THE COURT: Ms. Durick, your cell phone went off earlier today.

MS. DURICK: Yes, sir. I apologize.

THE COURT: I appreciate that. It's the third one in this trial.

There is a sign downstairs. There's a sign on that door when you walk in this courtroom. There's an Order of the Chief Justice of the State of South Carolina. Cell phones are not permitted to be operated in any courtroom in the State of South Carolina. I made that clear earlier.

I find you in contempt of court. I hereby order you to either ten days in the J. Reuben Long Detention Center, or you will pay a fine of Two Hundred Dollars, and that will be paid to the Clerk of Court of Horry County by 5:00 P.M. Friday. Thank you very much.

Solicitor, anything else that we need to do before we resume tomorrow morning at nine o'clock?

MS. LIVESAY: No sir.

THE COURT: Mr. Wilson?

MR. WILSON: Nothing, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No sir.

THE COURT: Thank you very much. Nine o'clock tomorrow morning.

(End Day.)

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, is the State ready to proceed?

MS. LIVESAY: Yes, sir.

THE COURT: And Mr. Wilson?

MR. WILSON: Yes, sir, Your Honor.

THE COURT: And, Mr. Long?

MR. LONG: Yes, sir.

THE COURT: All right. I'll wait till you get situated there. That's all right. Not a problem. Don't rush around.

All right. Good deal.

All right. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, your next witness, please, ma'am.

MS. LIVESAY: Ty, Your Honor. At this time, the State calls Dr. Cynthia Schandl to the stand.

THE COURT: All right. Please come around to the sworn, please, ma'am.

CYNTHIA SCHANDL, being first duly sworn, testifies as follows:

MS. SCHANDL: My name is Cynthia Anna Schandl, S-C-H-A-N-D-L.

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. Dr. Schandl, where are you currently working?

A. I'm working at the Medical University of South Carolina in Charleston, South Carolina in the medical and forensic autopsy section.

Q. And could you tell the jury a little bit about your educational background?

A. Yes. I am a Forensic Pathologist. In order to become a Forensic Pathologist, one must first be a doctor, so, I have a Bachelor's Degree which is a prerequisite for going into medical school. My Bachelor's Degree is in Biology from the California State University in San Bernadino. I attended medical school at the Medical University of South Carolina in Charleston. I then attended graduate school coincidentally with my medical school training at the Medical University of South Carolina within the Department of Pathology and Laboratory Medicine. Following medical school and graduate school, I did get my licensure to practice medicine in the State of South Carolina. I also hold a license to practice medicine in the state of Florida.

Following medical school, I chose pathology as my specialty and continued my training in a residency training program in Pathology and Laboratory Medicine again at the Medical University of South Carolina in Charleston.

In order to then sub-specialize in the field of Forensic

Pathology there is an additional one-year of fellowship training required to become board certified in that sub-specialty. I completed that year of sub-specialty fellowship training also at the Medical University of South Carolina in Charleston, South Carolina.

Having completed those seventeen years of training, I then took my board certification examinations in the fields of Anatomic Pathology, Clinical Pathology and Forensic Pathology and I am Board Certified in those three fields.

I was -- I have been faculty at the Medical University of South Carolina in the Medical and Forensic Autopsy Section since 2004, and I have been Co-director of the section for two years.

Q. Thank you, doctor. And how many autopsies have you performed?

A. I've performed over two thousand autopsies.

Q. Okay. And how many times have you testified in a courtroom?

A. I have testified over sixty times in courtrooms both -- more than both -- state, federal and military court.

Q. And were you ever declared an expert in any of those courts?

A. In each instance, yes, ma'am.

Q. Okay. And so you gave expert testimony all sixty times or more?

A. That's correct.

MS. LIVESAY: Your Honor, at this time, the State wishes to declare Dr. Schandl as an expert in the field of Pathology.

THE COURT: All right. Mr. Wilson, do you wish to voir dire?

MR. WILSON: Without objection, Your Honor.

THE COURT: All right. And do not wish to challenge. All right. Mr. Long?

MR. LONG: I do not wish to challenge, Your Honor.

THE COURT: All right. Very good. She is qualified to give her opinion.

MS. LIVESAY: Thank you.

Q. Dr. Schandl, did you perform an autopsy on Joseph Hucks in May of 2006?

A. Yes, ma'am.

Q. Okay. And just so the jury is familiar, what is the usual protocol as to how you perform an autopsy in that type of situation?

A. Well, this case is called a forensic autopsy and that is where the fields of medicine and law coincide. So if, when someone dies there is a possibility of a legal issue, whether it has to do with an accident or a homicide or a suicide or even in some cases natural death such as on-the-job natural death, that becomes a forensic autopsy case and it is at the county coroner's discretion which ones of those cases will be

autopsied.

In this particular instance, the Deputy Coroner of Horry County determined that this case, Mr. Joseph Hucks, should be autopsied. At that point, the Deputy Coroner contacted our office and requested that we perform that autopsy.

The county coroner is responsible for transporting the body, in this case Mr. Hucks, to the Medical University of South Carolina where the autopsies are performed when we do them.

When the case arrives and when we are prepared to begin the case, the individual will come up from the morgue, which is on the ground floor, to the autopsy suite, the main autopsy suite, which is on the second floor. At that time, we will take a series of photographs to document how we receive the individual, whether clothed or unclothed, and their current state of any medical intervention or not, in order to document those findings.

After we take those initial sets of photographs, we will then frequently remove the clothing, and in some cases such as in this case, we will examine the clothing separate and take separate photographs of the clothing.

Then we would turn our attention to the decedent, in this case, Mr. Joseph Hucks. Another set of photographs are taken of the body, and particular note is made of those things that may be identifying features such as hair color, eye

color, height and weight, as well as those things that may be considered injuries. In Mr. Hucks' case, he had some bruises and he had some stab wounds and he had some cuts. All of these things are then taken pictures -- we take pictures of these things and then we document their size and their shape and where they are located on the body, using diagrams and using other charts in order to record our numbers.

After we're done recording all of the information that we can gather looking at the outside of the body, we turn our attention to the inside of the body, which is often what is thought of as the autopsy examination, where a "Y" incision is made and the organs are examined for disease as well as for injuries. And all of these things were also done on Mr. Joseph Hucks' case.

And after completing those examinations, we have to compile in a report all of our findings based on what we see externally, so on what we call the external examination; internally, the internal examination of the organs and tissues; toxicologic examination, so blood or other body fluids are tested for toxicological substances in every forensic case; and then we also look at tissues and organs under the microscope to see, again, if there are any disease processes or injuries that we can see under the microscope that we couldn't see with our naked eye, or to confirm those findings that we did see with our naked eye.

And once all these results are back, then I compile a report and that report is generated and sent to the coroner's office.

Q. Dr. Schandl, just so I understand, basically what you're doing is examining just what the body looks like when it gets to you, and you take pictures and document the injuries you can just see with the eye on the outside of that body?

A. That's the first step; yes, ma'am.

Q. And then the second step is when you actually cut the body open, start looking at the organs, pulling the skin back, looking for bruises?

A. That's correct.

Q. Okay. And you actually document any injuries and take pictures of any injuries that are from -- in the organs, or puncture wounds to any organs, anything like that is taken out and a photograph is taken?

A. That is highly dependent upon the pathologist performing the case but it is my practice to do so, yes.

Q. Okay. Do you recognize what I'm showing you?

(DIAGRAM MARKED STATE'S EXHIBIT NUMBER 32 FOR IDENTIFICATION ONLY.)

Q. Dr. Schandl, I'm showing you what's been marked as State's Exhibit Number 32. Do you recognize it?

A. Well, I don't recognize it specifically, but it is a body diagram ---

Q. Okay.
A. ---A male body diagram.
Q. And would this assist you in marking the injuries that you documented that were on Joseph Hucks?
A. I certainly can do that, yes, ma'am.
MS. LIVESAY: Your Honor, at this time, the State wishes to ask Dr. Schandl to step down so she can use the diagram.
THE COURT: All right. If you want to have her ---
You can either be right in front of the jury where the microphone is or right here, but you may step down, Ma'am.
A. May I bring my notes?
THE COURT: Yes, ma'am.
A. Thank you, sir.
Q. Can you speak loud?
A. Yes, ma'am, I can.
THE COURT: And just remember, those right there are microphones so the closer you are to it, obviously the easier it is for everybody to hear.
Can you move that one back just a little bit, Solicitor?
MS. LIVESAY: Okay. I just want to make sure all the jurors can see it.
THE COURT: All right.
MS. LIVESAY: Everybody can see it. Okay. Wonderful.
Q. Dr. Schandl, if you don't mind, I've got a blue pen and a red pen; if you don't mind, could you please mark the puncture

wounds, not the bruises, with the red pen?
A. Yes, ma'am. Would you like me to describe them as I go?
Q. Yes, ma'am, please.
A. I will do that.

Mr. Hucks had ten injuries that were caused by sharp force. What I mean by sharp force is what you're thinking I mean by sharp force, which means inflicted by something sharp. We can tell the difference between sharp force and blunt force by looking at the skin. Are the edges that are affected, are they sharply cut or are they not cut, are they more matched.

In this case, I'm going to be describing ten separate sharp forced injuries that may have been caused by something sharp. I'll begin -- I have them numbered from one to ten and I will go through them in that order from one to ten so that I don't get confused.

Number one is a cut to the chin. This cut to the chin just goes right through the skin; it doesn't go into the underlying soft tissue; doesn't hit any major structures; it's small.

The second one, I will call a stab wound. I call this one a cut and I'm calling this one a stab wound. The reason I am doing that is to differentiate between two kinds of sharp force injury that I differentiate between. One of them cuts, or incised wounds, are longer on the skin than they are deep.

So, in this case, the length of this wound is longer than the depth of that wound into the body. I'm calling this one a stab wound. What I mean by that is that the length of the wound on the skin is not as long as the depth of the stab into the body. The depth of number two was less than one inch, zero point seven inch into the body, but again, did not hit any apparent vital organs or structures.

Q. Doctor, can you tell anything about the path of that wound?

A. The path of that wound is through the skin and into the soft tissue beneath the skin. If you are asking about the direction of the wound, that's a different question.

Q. What is the direction of the wound?

A. The direction of that wound is back, down and medial. So, if I am in front of this person, back would be towards him, down would be as you would imagine down, and medial is toward the center of the body, so something like this **(indicating)**.

Number three is to the right chest, right about here **(indicating)**. This is a stab wound, again, that means it is deeper than the wound on the skin is wide. This stab wound, number three, is two point one inches deep. This stab wound, again, goes through skin, it goes through the subcutaneous tissue and into the breast tissue. It does not go into the chest cavity, it does not hit any apparent vital structures or

organs.

Q. What is the direction of that stab wound, Doctor?

A. The direction is back and down and lateral. So, again, back, down and lateral meaning towards the edges of the body, something like this **(indicating)**.

Number four is to the left side of the chest. Number four is also a stab wound. It's depth is one-half of an inch. Again, this stab wound is not apparently hitting any vital structures, any vital organs. The direction of number four is back, down and medial. So, again, back, down and towards the center of the body; back, down and medial.

Number five is to the left chest. Number five is a stab wound. It goes to a depth of four inches. Unlike all of the other wounds that I will describe, number four does hit vital organs and structures.. It hits the sac around the heart. It goes through one of the walls of the heart and into the septum of the heart, the thobias, the two sides of the heart.

As a result of this injury what I see at autopsy is six hundred milliliters of blood around the heart. So, if you're thinking of a two-liter bottle, it's less than half of a two-liter bottle, but within the sac around the heart compressing the heart. That's a lot of blood around the heart in the pericardial sac, compressing the heart.

In addition to this six hundred mils of blood are one thousand six hundred milliliters of blood in the chest cavity

that would have leaked from the inside of the heart to the inside of the sac around the heart and out into the chest cavity. All together, as you can add, I'm sure, that's more than a two-liter bottle of blood spilled into Mr. Hucks' pericardial sac, the sac around the heart, as well as his chest cavity. And the direction of that wound is down and back.

Number six is to the left arm, the medial aspect of the elbow. This is classified -- excuse me -- as an incised wound, or a cut. Again, the cut itself is wider than the pathway is deep. This is a larger cut than the other ones. being two point two inches in length, and it's depth is one point two inches, and it does go through the skin, through the tissue beneath the skin, and into the muscle of the arm.

Q. Dr. Schandl, if you don't mind, is there a name for this type of injury?

A. Well, again, this is an injury to the inside of the elbow, it's to the arm. I can simply call it an incised wound. There is a possibility that it was obtained when he was attempting to defend himself, but that is supposition, and I cannot tell you that.

Q. Did you classify this as a defensive wound in your report?

A. I classified wounds that are to the hands or to the arms as defense wounds, and I put that in quotations because that

is a supposition based on the location of the wound and not based on the actual events.

Excuse me.

Number seven is to the medial aspect of the left thumb. It is an incised wound and its depth is less than one-half inch. It goes through the skin and into the muscle of the thumb.

Number eight is to the second finger where the thumb opposes the second finger. This is a stab wound because it is deeper than it is wide. It is also less than one-inch deep. It is zero point eight inch deep, and it also goes through the skin, subcutaneous tissue, and into the muscle.

Q. Let me ask you this, what are these wounds -- are these also classified as defensive wounds due to the location?

A. They are on the hand so I would put them -- consider them to be potential defense wounds, again, using quotations to make it clear that I -- it's a supposition and not a fact.

Number nine is to the left lateral upper thigh. Number nine is a stab wound; it is deeper than it is wide. It is one point four inches deep, and goes through the skin and subcutaneous tissue, into muscle. It does not hit any apparent vital organs or structures.

Q. What is the direction of this puncture wound?

A. This puncture wound is simply going lateral, towards the middle of the body.

And number ten, the last one, is to the left back, the mid-back. This is also a stab wound. The depth of this wound is four point three inches. It goes through the skin and the subcutaneous tissue, the tissue beneath the skin, as well as into muscle. It does not penetrate the chest cavity, it does not hit any vital organs or structures.

Q. What is the direction of this wound?

A. Wound ten, the direction is forward, because now we're talking about going from his back to his front, forward, down and medial, again towards the core of the body, so something like this **(indicating)**, and that are the ten.

Q. Okay. If you don't mind, with this pen, do you mind marking where you saw bruising on the victim?

A. Sure.

Q. Just so we can decipher it; blue for the bruises and red for the puncture wounds.

A. So upon the external examination there were some bruises identified and some other things, so in particular, there was an abrasion or a scrape around his nose here which had bruising around it. and there was a fracture.

Q. So, his nose was fractured?

A. So, this -- the part of his nose here, when I mashed on it -- we call that palpation -- I could feel that it was broken. All right. And surrounding that broken nose was an abrasion and the contusion which is just a bruise.

In addition, there was a bruise below this knee. The other bruise that's very difficult to put on this diagram was discovered during the course of the autopsy when the scalp is reflected. So, one of the procedures, in order to remove the brain we have to reflect the scalp in order to cut along the skull to get the brain out. In so doing, we see the inside surface of the scalp. At that point, it was apparent that there is a bruise, bleeding, right about this part of his head.

Q. Do you mind marking that? Was it right up in here? And that was an acute bruise?

A. This is misleading because it's on the inside surface of the scalp, not on the outside of the scalp.

The injuries all appeared to be acute, which simply means that they happened recently.

Q. Thank you, Doctor.

If you don't mind, Doctor, I'm just gonna clear up a couple of things. Whenever there is injury. and I understand it doesn't -- you have no idea what the situation was, or how the cut happened. or anything like that, you are just given this body to mark up injuries; is that right?

A. That's right to an extent. Sometimes we get a story from the coroner but often it is very preliminary.

Q. Okay. And any wound that is on the inside of the arm or on the hand is noted on any autopsy report as a defensive

wound?
A. It can be. Again that's pathologist dependent, depending on how they like to define their terms. From my point of view I consider a possible defense wound one of the hands or arms. It can also be to the feet or legs, depending upon the situation and how the person might have been attempting to defend themselves. So, it's a fluid term, and it certainly, by no means, means that they were -- that he got those cuts or stabs in defending himself. It is certainly possible that he did but it is just as possible that he did not.
Q. Did you see any bruising anywhere else other than his scalp which I understand means you pulled back the skin and viewed acute bleeding; is that right?
A. That's correct.
Q. Which just means that that bruising underneath the scalp was recent?
A. It was. That's right.
Q. Okay. So, the only bruising you saw on him was either around the eyes or the scalp just that when you pulled the skin on the top of the head; is that right?
A. That is correct until I looked at the slides under the microscope. Would you like ---
Q. That's fine. I understand. What -- which wound here ultimately caused the death of Joey Hucks?
A. The fatal wound is what is designated on that chart as

wound number five. It was to the left chest. It was four inches deep and it went through the pericardial sac, the sac around the heart and through one of the walls of the heart and into the septum of the heart causing a great deal of bleeding.

Q. Okay. Now, we talked earlier about first you take pictures of the external and mark those and then you open the body up and start looking at the organs; is that correct?

A. Yes.

Q. Okay. When you opened him up and you looked at his heart, could you visually see the puncture wound in the heart?

A. That's how I know it was there. I saw it and I probed it with a little metal probe and followed it as far as it went into the wall of the heart, yes.

Q. Okay. Now, was the direction of any of the wounds that you saw on him, anything other than forward and downward or backward and downward?

A. With the exception of the one that was simply lateral to the leg, no -- that is correct -- and the ones to the arms, which we do not classify quite the same way.

Q. So, all other wounds other than number nine, were forward and downward?

A. Other than six, seven, eight and nine, and of course the one to the back.

Q. Now, as far as number ten, that was the wound on the back; is that correct?

A. Yes, it is.
Q. Okay. I understand this is not to scale, but where you placed this puncture wound is near the center of the back; is that correct?
A. I can tell you more precisely. It is 4.3 inches to the left of center.
Q. Okay. So, it was definitely towards the center of his back.
A. It was 4.3 inches left of center.
Q. Okay. Now, where you marked these injuries, is there a diagram you're working off of?
A. Yes, ma'am.
Q. Okay. And is this a accurate depiction of the diagram that you're using?
A. It's close.
Q. Now, when you did the report, are these injuries that you've marked on this, this is all of the injuries that are in your report; is that correct?
A. With the exception of those I found microscopically.
Q. Okay. Now, you said earlier, too, that you look under the microscope for bacteria or disease or anything like that; is that right?
A. Yes, ma'am.
Q. Okay. Did you find any disease or anything like that when you looked at Joey Hucks?

A. He has -- and some of this is under the microscope and some of this is just looking at the organs themselves. His heart is large, it's 500 grams. We call that cardiomegaly. That could cause him problems if he had lived over time and it may not. He also has a very mild coronary artery disease. One of his coronary arteries was about ten percent occluded by atherosclerosis. Unfortunately, that's not that unusual for an eighteen-year-old in our country. His liver was somewhat large and round and it was found to be somewhat fatty under the microscope. His gall bladder demonstrated what I call, and what pathologists call, cholesterolosis, which is another marker
of increasing fats in the blood stream over time, they tend to deposit there in the gall bladder wall. Now, those are the disease processes that I found, all very minor.

As far as potential injury, there was bleeding in the area of the left back around the spleen or within the spleen, around the kidney and around the adrenal on that side. I cannot conclusively tell you that those are due to injury, however, it is my opinion that that is most likely as I do not see these -- the hemorrhage around those tissues due to resuscitative efforts or other things that we know occurred to Mr. Hucks.

Q. The minor disease or what you're describing now, did that cause his death?

A. No, ma'am.
Q. When the body was brought down, were any items brought to you to try to decipher if they caused these wounds?
A. Yes, ma'am. Brought also with Mr. Hucks, but in the custody or cared for by a law enforcement official at all times, were a pair of scissors and a pocket knife. What I do with these items is place them on -- individually, one at a time, one and then the next, onto a clean surface, using gloves, and I'll take a photograph of the item, usually the front and the back of the item, and then I will make a drawing of that item and then I will measure, in this case, blade length, handle length, total length, those sorts -- make those sorts of measurements. And then after I'm done with one, you get the -- a new pair of gloves and a new surface, and you do the other one. And then the law enforcement official is, again, still in custody and they simply return with that person. And that's what was done with these two items.
Q. Could you tell whether or not which item caused these puncture wounds, the scissors or the knife?
A. No, ma'am.
Q. And could you tell the jury, just explain to them why not in this particular case?
A. Yes. So, the scissors and the knife, although they sound quite dissimilar, are actually similar from my point of view. They both have a -- when you're using -- if you open the

scissors, the blade, if you take one blade, has a single sharp edge and a blunt edge. They knife also has one sharp edge and one blunt edge. They're similar in length, the blades, with the scissors being about an inch longer, and there aren't any identifying features on Mr. Hucks that would correlate directly with either the scissors or the knife. What I mean by that is there are instances when someone is stabbed when a bone may be punctured that you can see direct evidence of the type of blade on the bone. That did not occur in this case. There are other instances when a weapon has been used and -- all the way down to the hilt, and there may be an abrasion of that hilt that you might be able to match. That did not happen in this case. So, given that those items, those pieces of evidence were absent, I could not differentiate between one single-edge blade and another.

MS. LIVESAY: No further questions for this witness, Your Honor.

THE COURT: Cross-examination.

MR. WILSON: Thank you very much, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION BY MR. WILSON:

Q. Doctor, I just have a few questions. Did you make a determination as to how much alcohol had been consumed by Mr. Hucks?

A. Yes, sir. So part of the autopsy examination in the case

of forensic autopsy cases is a toxicologic examination and that was performed in this case. His alcohol level was measured to be 141 milligrams per deciliter. That is equivalent to 0.141 percent.

Q. Okay. And are you familiar with the driving under the influence laws, right?

A. Yes, sir, I am.

Q. And that would be what, .8?

A. 0.08.

Q. And so he was almost twice that?

A. That is correct.

Q. And did you also make a determination as to whether or not there were any drugs, marijuana specifically, in his system?

A. Yes, sir. That is certainly part of the toxicological analysis.

Q. All right. And what was your finding there?

A. In this case, Mr. Hucks had on-board, meaning in his blood, some what's called Delta 9 Carboxy Tetrahydrocannabinol which is THC. Now, Delta 9 Carboxy, THC, is an inactive metabolite of marijuana. It is not active. So I have absolutely no indication that he was, was under the influence of marijuana at the time of his death. All I know from that information is that previously he was exposed to marijuana.

Q. Okay. But you can't tell us how -- you can't tell us

when that was?
A. That is correct.
Q. You don't know if it was a day before or earlier in the day or whatever?
A. That is correct.
Q. All right. Now, let me ask you, ma'am, in regards to these injuries that we have been talking about, let's talk first about the one that you said that was in his hand. I think you said in here **(indicating)**; is that correct?
A. That is correct.
Q. Which hand would that have been in?
A. It was his left hand.
Q. His left hand. And if you're holding a knife and you're trying to stab somebody it would be difficult to get cut here, would it not?
A. It would depend how you were holding the knife, sir.
Q. Okay. So, you're thinking that it is possible to do it that way?
A. It is possible.
Q. Okay. And what about the thumb? Which thumb are we talking about?
A. It's the left thumb.
Q. The left thumb is also the one that gets cut. So -- and again, I'm gonna ask you if you're holding -- and you said that you're familiar with State's Exhibit Number 29; is that

correct?

May I approach, Your Honor?

THE COURT: Yes, sir.

A. Yes, sir. This is the knife that I saw.

Q. All right. And let me ask you, Could that knife have made these wounds?

A. Yes, sir.

Q. So, what you're telling us is that knife could've made these wounds, or perhaps these scissors could've made that wound?

A. Yes, sir.

Q. Or perhaps some other item which has not been presented to you could have made those wounds?

A. That is correct.

Q. And in fact, on all of the wounds that you've described, you can't tell us which item caused which wounds?

A. That is also correct.

Q. Now, in regards to -- well, let me ask it, I guess, this way. You said that there was -- on wound number five, which was the fatal wound, if I make no mistake.

A. Yes, sir.

Q. That in looking at that wound, you found 600 milliliters of blood around the heart or inside his cavity.

A. Inside of his pericardial sac directly around the heart; yes, sir.

Q. And that's a lot of blood, isn't it? Would that be considered a lot of blood?
A. That is a great deal of blood to carry around your heart.
Q. If a person lost that kind of blood, what would be their state at that point?
A. That is going to be extremely variable. It's going to depend upon how quickly that blood accumulates around the heart. And then it's going to depend upon how quickly the blood that is accumulating around the heart in the pericardial sac, and directly around the heart, held against the heart by the pericardial sac, is able to escape the pericardial sac and go into the body cavity adjacent to it, this time the left chest cavity. So the problem that you run into, if the blood leaves the heart and goes around the heart and is held next to the heart by the pericardial sac, your heart is pushing against that blood. it's called a pericardial tamponade. That can cause death, in and of itself, irregardless of the amount of bleeding.
Q. Okay. So irregardless of the 600 liters of blood, if the person say had 300 liters of blood, 300 milliliters, I'm sorry, of blood in that cavity, then that person would also -- could possibly die?
A. Yes. Now, again, often in those cases, you have a tear that does not involve direct access to another cavity. Maybe you have an aortic tear or something else natural, and if you

accumulate 300 milliliters in your pericardial sac, and it's stuck in there, and it happens quickly, that certainly can be a cause of death.

Q. Okay. And let me also ask you if you get a wound, say to your chest, and your actual muscles are cut, are you going to have the strength and ability at that point to continue to cut and fight?

A. Again, that is extremely individual and dependent upon the individual's fortitude, if you will, as well as the extent of the injuries.

Q. Ma'am, I notice that you said that there was some bruising in the top part of his head but you didn't see any external evidence of that bruising, just internal when you pulled the skin back.

A. Yes, sir.

Q. Okay. And so tell us, if you could, what would cause there to be a bruising under the scalp, on the inside, but not reflected by a bruise or contusion on the outside?

A. Well, again, that can be very variable. It is more -- more often seen with a blunt force injury. We were talking about sharp force and blunt force. So, if you have a blunt force injury that is spread out over some area, then you can transmit that force into the inside of something without an appearance of that wound on the outside of that thing. So that is the most common scenario for that, is a blunt force

injury that is not focused in a small area.
Q. Let's say if you're in a scuffle and you're on the floor and your fighting and your head gets banged against the refrigerator or the stove or the floor, would that -- could that possibly have caused that kind of an injury?
A. It could.
Q. And let me ask you, ma'am, when we were talking -- the Solicitor kept asking you about defensive wounds, defensive wounds, so let me ask you something about these defensive wounds that she wanted to talk about. Now, the reason you can't tell us as to whether or not that's a defensive wound or not is because, one, you weren't there so you didn't see what happened.
A. Yes, sir, that is paramount.
Q. And secondly, because a wound is on a certain location doesn't necessarily mean that the person was attempting to defend themselves at the time?
A. That is correct.
Q. In fact, a person could be swinging at someone else with a knife when that person swings back with another object, and cut them on their arm at the time they're swinging; that could also happen, couldn't it?
A. That is another scenario.
Q. All right. And the same thing is true with the thumb and with the cut between the arm -- between the ---

A. Yes.
Q. I'm sorry -- between the hand, the finger and the thumb.
A. Yes, one can discern multiple scenarios.
Q. Now, let me ask this, and then I think I'm through. The scissors, the knife -- you said that the blade of this knife is one inch -- I'm sorry, the scissors is one inch longer than the blade of the knife?
A. Approximately.
Q. Okay. So, about one inch difference in the -- in the blade length of the two weapons that you were brought?
A. Yes, sir.
Q. All right. And do you know whether or not -- if the scissors were in fact one of the items used, and we don't know that for a fact, but if they were one of the items used, would it have been open or would they have to have been closed?
A. I'm afraid I do not know the answer to that.

MR. WILSON: OKAY.

Would the Court -- one second, please, sir.

THE COURT: Yes, sir.

Q. Thank you so much, Doctor.
A. Yes, sir.

THE COURT: Mr. Long?

MR. LONG: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. LONG:

Q. Ma'am, the -- what effect does time have on blood

alcohol?
A. It depends if you're continuing to drink or not.
Q. Okay. And then what -- does time -- I mean, how long after the cause of death, or the time of death, excuse me, did you actually test the blood for alcohol?
A. As far as the -- what -- I'm sorry, I don't know your name.
Q. I'm Russell Long; I'm sorry.
A. Mr. Long, is asking -- we take samples at the time of autopsy. That is standard. The body will metabolize as long as it's alive. When it's dead, it's not doing that. So, the question about how long after he was dead did you take the sample is not necessarily relevant, presuming that he was refrigerated, which he was. So a more relevant question would be -- if I may?
Q. Please.
A. How long after he had his last drink, or how many drinks did he have, perhaps, compared to how long did he live. So, it's more -- it's more interesting or important, perhaps, to know how long he lived to see how high his alcohol level may have been at one time. But again, it's -- after death, we don't expect a great deal of change until one begins to decompose, which also did not occur in this case.
Q. So, you're saying that after -- after death, the blood in the vein -- the alcohol in the blood, in the veins, would not

change over time, it would not deplete, alcohol would not seep into the system and therefore not show in the blood?

A. No, sir. In fact, we often have the opposite result. If we draw the blood sample too near to the body core we may have an artificial elevation of levels. In this case -- one moment.

THE COURT: There's some water there.

A. Thank you. In this case, this was a peripheral blood sample and so we do -- we expect it to be as accurate as we can be doing a post mortem blood alcohol level.

Q. Okay. Do you have -- you did measurements, you have height and weight measurements in your report?

A. Yes, sir.

Q. As soon as you get that water, I would ask you to indicate to the jury what your findings were there.

A. We measured Mr. Hucks to be about six-two-and-a-half in height, and about 308 pounds.

Q. And would size and height and weight have any impact on blood alcohol?

A. There is a correlation, definitely, between how many drinks one must drink in order to get to a certain blood alcohol level and their body mass, their size. You can simply think of it that they have more blood and so you'll have to drink more in order to increase the concentration of alcohol in the blood if you are bigger.

There are certainly genetic variables to how quickly the alcohol is metabolized. Some people very quickly metabolize alcohol and never reach the level that you would expect them to be at for how much they have drunk. So there are many variables but yes, there is a correlation between size and the number of drinks required in order to reach a certain blood alcohol level.

Q. Okay. There's no question, ma'am, that when you're -- you have a subject on your table, and you begin your observation from the exterior, and then you work your way to the interior, and then you work your way to testing blood and that sort of thing, there's no question that you leave no stone unturned, you find every injury that you possibly can find to the subject that's on your table; is that correct?

A. That is the intention; yes, sir.

Q. Okay. And the question that I have is, if there were any other injuries to Joey Hucks, other than the ones that you've depicted on here, would you have found them?

A. I believe so.

Q. So, it's safe to say that the only injuries to Joey Hucks are the ones that you've told this jury about?

A. Yes, the ones that are diagramed there and the ones that I described.

Q. And therefore, ma'am, it's safe to say that you found absolutely no injury of blunt force to the side of Joey Hucks'

face or head?
A. That is correct.
Q. And it's true to say that you found no injuries to the back of the head, blunt force injury to the back of the head of Joey Hucks?
A. That is correct.
Q. Thank you, ma'am. I don't have any other questions.
THE COURT: Re-direct.
MS. LIVESAY: Just two, Your Honor.
REDIRECT-EXAMINATION BY MS. LIVESAY:
Q. Dr. Schandl, I've just got a couple of questions. Did you measure the length of the knife blade and the scissors?
A. Yes, ma'am.
Q. Would you tell the jury how long the blade on the scissors are?
A. The blade of scissors is 3.6 inches in length.
Q. Okay. And how long is the blade on the knife?
A. The blade on the knife is 2.3 inches in length.
Q. Okay. And tell me about the wound to the heart that killed him. How deep is that wound?
A. The depth of wound number five to the left chest that perforated the heart was 4 inches deep.
Q. Okay. So that's longer than the blade of the scissors and the knife; is that right?
A. That is correct.

Q. Does that mean that it would be impossible for either one of those items to puncture his heart?
A. No, it does not.
Q. Okay. What does that mean, that it just went further in than the blade?
A. That's correct. So there's a couple of ways to understand that. One is that, yes, it went in further than the blade, so perhaps it went in to the hilt, or the edge of scissors, or whatever weapon it may have been.

The other thing to keep into consideration is that we're human bodies and we're compressible. We're not made out of rock. So when you're going to hit somebody, or if you're going to hit somebody with a knife, it's likely that those things that you're passing through are compressing as you're passing through them, including the chest wall which we know expands when we breath and contracts when we exhale. So it -- there are at least those two things going on. Yes, it can be pushed past the hilt or past whatever the end of the item is, and, yes, the chest and the other soft tissues of the body are very compressible. So, taking those two things into consideration, you can certainly achieve a depth deeper than the weapon's blade.

Q. Okay. Now, Mr. Long asked you about a punch to the side of the head.
A. Yes, ma'am.

Q. Is it possible to be punched on the side of the head and there not be any bleeding underneath the scalp?
A. Yes, ma'am.
Q. Okay. And there's possible that people can get bumps or bruises or punched all the time and you don't find that injury, any sort of bleeding underneath the scalp or bleeding anywhere else?
A. That does occur.
Q. So, just because it's not bleeding under the scalp or a big lump on his head doesn't mean it didn't happen; is that right?
A. I can only tell you what I see.
MS. LIVESAY: No further questions, Your Honor.
THE COURT: Any recross on those questions, Mr. Wilson?
RECROSS-EXAMINATION BY MR. WILSON:
Q. Ma'am, one of the other scenarios would be that, if there was another weapon other than those two items that we just discussed; that is also a scenario, is it not?
A. Yes, sir.
Q. All right. And in regards to any abrasions, if a person is -- you had Joey's body, and he's a white male, correct?
A. Yes, he is.
Q. And did he have any growth on his face, a beard or anything?
A. One moment. He has stubble, beard and mustache stubble.

Q. Okay. Is there any difference between bruising and contusions?
A. No, sir, they are interchangeable.
Q. Okay. And if, if -- especially a light-complexioned person who is white, if they are kicked, wouldn't you expect to find bruising?
A. You may.
MR. WILSON: No other questions.
THE COURT: Mr. Long?
MR. LONG: Briefly, Your Honor.
RECROSS-EXAMINATION BY MR. LONG:
Q. Ma'am, the, the -- no question that you examined the outside of Joey Hucks' face and the back of his head; is that right?
A. That's correct.
Q. Did you see any signs of bruising or any signs of trauma in either area?
A. No, sir.
Q. No question that you looked under the skin on the side of the face and under the skin on the back of the head and there's no -- is that correct?
A. That is correct. Now, we do not peel the facial skin off. We peel down to the eyebrows. So this is my view, okay? So I would see definitely the back of the head, which we'd go all the way down to the base of the neck, and I would

definitely see all the way here and anything in those areas.
Q. Okay. And there's no question that both exterior and your interior probe, you found no bruising to the side of the face or to the back of the head?
A. That's correct.
Q. Okay. If I told you that I were punched in the side of the face, and then you were able to examine the exterior of the side of my face, and the interior of my skin -- I don't know you would do that, put me under and take a look, I guess -- what would that tell you about the punch that I took to the side of the face?
A. Well, it again is very, very variable, and depending upon the circumstances of -- one would think that in a situation where a person is healthy and walking around then you can make these kinds of arguments, that the harder you are hit the more you will bruise, and they can be accurate, however they may not be as accurate in somebody who is impaired in some way particularly by a loss of blood. So, it is true to the extent of one of us walking around, the harder you are hit the more likely you will bleed and the more you may bleed but it cannot be extended into every circumstance of everybody.
Q. Okay. So -- and there's no question that you can exclude as a cause of death any blunt force trauma in this case whatsoever?
A. That's correct.

Q. Thank you.

THE COURT: All right. Solicitor, do you wish the witness to be excused?

A. Yes, sir.

Q. Any objection, Mr. Wilson?

MR. WILSON: No objection, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No, sir.

THE COURT: All right. Thank you, ma'am. You are released from your subpoena and you may go back to your regular activities. Thank you very much.

All right. Solicitor, who is your next witness, please?

MS. LIVESAY: Carol Allen, Your Honor. The State at this time calls Carol Allen.

THE COURT: All right. Please come around up here to be sworn, please, ma'am.

CAROL ANN ALLEN, being first duly sworn, testifies as follows:

MS. ALLEN: Carol Ann Allen, last name spelled A-L-L-E-N.

DIRECT-EXAMINATION BY MS. LIVESAY:

Q. Ms. Allen, where are you currently working?

A. Myrtle Beach Police Department.

Q. How long have you been there?

A. Approximately nineteen years and four months.

Q. Okay. And tell the jury what kind of training you've

undergone while you've been at the Myrtle Beach Police Department.

A. Once I have been hired on, I've had extensive crime scene training, which includes documentation of crime scenes, collection of evidence, evidence preserve, integrity of evidence, chain of custody and testifying in a court of law.

Q. Okay. And were you employed with Myrtle Beach PD on or around May of 2006?

A. Yes, ma'am.

Q. Okay. Tell the jury what kind of capacity you are -- what your responsibilities were at that time.

A. Okay. At that time, in May of 2006, I was the supervisor of the Crime Scene Unit at the Myrtle Beach Police Department.

Q. Okay. And as part of the Crime Scene Unit, what exactly did you do? Did you get called out onto the scene?

A. Yes. Approximately 3:15 in the morning of May 21st, '06, I was actually contacted by Crime Scene Specialist **Ursist**. At that time he advised that he had responded to a report of a stabbing and ask -- requested that I respond.

Q. And what is the normal protocol when you get on the scene as a crime scene investigator?

A. Once on scene, we will meet with the first responder and supervisor. They'll give us the initial events that have taken place so we'll have a beginning point to start our investigation.

Q. Okay. And were you a part of the crime scene investigation in this particular case?
A. Yes, ma'am.
Q. Okay. If you don't mind, did you take in any evidence as far as blood or Buccal swaps in this particular case?
A. No, ma'am.
Q. Okay. Did you attend the autopsy?
A. Yes, ma'am, I did.
Q. Okay. And did you do anything while you were on the scene? I should've asked you that first. I'm jumping ahead. When you were on the scene, did you do anything?
A. Yes. I assisted the other crime scene specialist that was on-scene. Pretty much our protocol is, we like to keep all the evidence collection to one crime scene officer, that way there's less confusion, so while she was documenting, collecting all the evidence, I was drawing diagrams, I was assisting her in any which way I could.
Q. Okay. And did you actually collect any evidence off the scene?
A. Just from upstairs.
Q. Okay. That's okay. No, that's okay, but you just -- upstairs, you collected items?
A. Correct.
Q. Okay. But nothing from the kitchen or from the outside?
A. No, ma'am.

Q. Just assisting and doing the diagram or whatever somebody needed help in?
A. That's correct.
Q. Okay. Now, when you're on the scene or as any part of investigation, is it unusual to take the clothes off the victim or the defendant for trying to collect evidence?
A. The defendant yes, we definitely want to collect their clothes for further analysis. Normally when it comes to a situation like this, we normally as far as victim goes, we will leave the clothes on them because the pathologist would like to have the clothes remain on to help out their investigation.
Q. Okay. And did you collect any clothes from Kendrick Chestnut or Larry Chestnut?
A. Kendrick Chestnut.
Q. Okay. And could you tell the jury what you collected from Kendrick Chestnut?
A. Yes. It was a pair of blue jeans, I believe it was size 42/32, a 4X white T-shirt, two white socks and a pair of black tennis shoes.

MR. LONG: Your Honor, may we approach?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Go ahead, Solicitor.

(T-SHIRT IN RED BIO-HAZARD BAG MARKED STATE'S EXHIBIT

NUMBER 33 FOR IDENTIFICATION ONLY.)

MS. LIVESAY: Can I approach the witness, Your Honor?

THE COURT: Yes, ma'am.

Q. Do you recognize what I'm showing you inside State's Exhibit Number 33?

A. Yes, I do.

Q. And tell the jury what it is?

A. It appears to be the T-shirt that Kendrick Chestnut -- seized from Kendrick Chestnut.

Q. Okay. And is this the T-shirt you collected off of him the night of this incident?

A. Actually, a detention officer was the one that removed the clothing from him but I collected it as evidence.

Q. Okay. And did you take it back to the Myrtle Beach Police Department and put it in the evidence locker?

A. I took it to the Myrtle Beach Police Annex, that's where the Crime Scene Unit was located, and I did additional documentation of the clothes at that time.

Q. Okay. And that included taking photographs?

A. Correct.

Q. While this shirt was in your custody, at any time did you alter the shirt in any way?

A. No, ma'am.

Q. Okay. And the shirt in here today, does it appear to be the same shirt that you took from Kendrick Chestnut, or from

the person at the jail that night?

A. Yes, it does.

MS. LIVESAY: Your Honor, at this time, the State wishes to place State's Exhibit Number 33 into evidence and show it to the jury.

THE COURT: Mr. Wilson?

MR. WILSON: Your Honor, I'm not sure that a sufficient ---

THE COURT: All right. Ladies and gentlemen of the jury, why don't you go to your jury room for a little bit, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Wilson, be glad to hear from you, sir.

MR. WILSON: Your Honor, my objection is, is that this officer didn't collect the items. Her testimony is she got them from someone else, some other detention officer who she says collected them. The issue is, what did that person do with them before he gave them to her, or she gave them to her, that's my concern, and because the issue here is a mixing of blood on this particular item, which has been testified to by SLED, which we're fine with. The problem is, we need to how that occurred, and we need that officer who collected them to say how he or she preserved them until he or she turned them over to this officer.

MR. LONG: Your Honor, I would join, and that was my reason for the call to the side bar, is that earlier in the case, admitted into evidence was a cotton swab with blood on it taken from a, less than a millimeter portion of this shirt. There's a whole lot more evidence on this shirt. I don't believe we agreed for the shirt to come into evidence earlier in the case just because we allowed a tiny little cotton swab to come into evidence in the case. And exactly as Mr. Wilson says, the issue here is there's been -- you heard evidence earlier about a transfer stain. We believe that somewhere in the chain, before this witness got hold of this T-shirt, the evidence was changed, because the shirt was somehow folded or moved, or something was done to the shirt to cause a transfer stain, which is information that I believe my client is entitled to have dealt with, and that's why there is a gap in the chain here that we believe is important to my client.

THE COURT: Let me ask you a question, ma'am. Were you present when the shirt was collected from Mr. Chestnut, or did you get the item from some other police officer?

A. I was not present when the clothes were removed from Mr. Chestnut.

THE COURT: Very good. I'm not gonna allow it into evidence at this time. Thank you.

MS. LIVESAY: Your Honor, if I may just put my argument on the record for appeal purposes.

THE COURT: I'll be glad for you to put the argument on the record.

MS. LIVESAY: Thank you, Your Honor.

THE COURT: The problem is -- the problem is, as has been identified by the Defense, you don't have the initial person who collected the item to see how the item was treated. Just because it is a non-fungible item does not mean that it cannot affect fungible items that are on the non-fungible product or item. Okay.

MS. LIVESAY: I understand that, Your Honor. The State's argument is, they've already consented to the chain regarding that evidence. The evidence that was on the shirt, that chain has already been consented to. The only thing I'm trying to get in is the actual shirt. She has testified that that has not been changed. As far as the stain is concerned, that goes towards that swabbing process. What's on that shirt, I would agree, is non -- or fungible evidence, but the stipulation has already been made to that evidence, to the fungible evidence. Now we're talking about the shirt, which can be identified by Ms. Allen, just like a gun or any kind of other item which does not require a complete chain. Any argument they have goes towards the weight. It does not go towards the admissibility.

THE COURT: I appreciate that. Your stipulation and the order of the Court -- stipulation that all three of you

entered into, and the order I signed, does not cover this non-fungible item. It does not set forth. It talks about items of a fungible nature. It does not, in any way, make reference to this particular item, therefore ---

MS. LIVESAY: I understand that, Your Honor, but ---

THE COURT: --- therefore, their stipulation does not affect this particular item. There was no agreement as to this item. Okay?

MS. LIVESAY: I understand that, Your Honor. The State's argument is, we don't need an agreement; this is an item that she can recognize, this is an item she can say, this is Kendrick Chestnut's shirt, this is the item that ---

THE COURT: Well, I appreciate that. I don't see how she can since she wasn't present when it was taken from him. She's operating on information given to her by another individual.

MS. LIVESAY: I understand that, Your Honor, but ---

THE COURT: Thank you, ma'am. I'm not letting it in. You've made your argument. We're done.

(STIPULATION AND ORDER MARKED COURT'S EXHIBIT NUMBER 5 FOR IDENTIFICATION ONLY.)

THE COURT: You want to ask her a question?

MS. LIVESAY: I do, Your Honor.

THE COURT: Please.

Q. Ms. Allen, at any point did you ever observe the

Defendant with the shirt on?

A. No, I did not.

THE COURT: Thank you very much.

All right. So that was State's 33.

COURT REPORTER: Yes, sir.

THE COURT: All right. So, State's 33 is not in evidence in this matter at this present time. Obviously, if you want to produce some other witnesses, I'll be glad for you to.

MS. LIVESAY: This would be a good time, Your Honor, for them to review the pictures that Ms. Allen took?

THE COURT: If they haven't already seen them.

I mean, have y'all seen photographs ---

MR. WILSON: We've seen a bunch of pictures. We haven't -- I don't know specifically which ones ---

THE COURT: How about -- have you pulled out the pictures you want them ---

MS. LIVESAY: Yes.

THE COURT: Well, then why don't y'all do that then. That's a good idea.

MR. LONG: Your Honor, during this break -- my client tells me he's got to go to the bathroom real bad.

THE COURT: All right. Let's take a short break for five minutes, short break for five minutes.

MR. LONG: Thank you, Judge.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE

PRESENCE OF THE JURY.)

THE COURT: All right. State ready for the jury to come back in?

MS. LIVESAY: Yes, sir.

MS. VON HERRMANN: I think Mr. Wilson may have some objections to some of the photographs.

THE COURT: I'm sorry. Mr. Wilson, the photographs, and Mr. Long, y'all looked at them. Do you have any problems?

MR. LONG: This witness took those photographs?

THE COURT: Ma'am -- she doesn't know because she hasn't seen them. How about -- why don't you show it to them right now, and then we'll answer that question, then we'll know. How about let's do that. Just look through all of them, ma'am, and then tell me when you're done with them.

Thank you.

All right. Go ahead, Solicitor. You want to ask her about that? You want to ask her if she's ---

MS. LIVESAY: I will, Your Honor. Do you want me to mark any of them or no?

THE COURT: How about let's find out first if she ---

MS. LIVESAY: Okay.

THE COURT: --- before we even get that far.

Q. Ms. Allen, did you look through all these pictures?

A. Yes, I did.

Q. Okay. And these are autopsy pictures; is that right?

A. Yes, they are.
Q. And do you recognize them?
A. Yes, I do.
Q. Okay. And how do you recognize them?
A. Those are the pictures that I took at the autopsy.
Q. Okay. And are these the exact pictures you took?
A. They've been blown up but, yes, they resemble those that I took.
Q. Okay. The only difference is they've put on these boards?
A. Correct.

MS. LIVESAY: Okay. No further questions, Your Honor.

THE COURT: All right. Mr. Long?

MR. LONG: I don't have any objection to them.

THE COURT: Mr. Wilson?

MR. WILSON: Judge, my concern is that the pictures -- first of all, I mean obviously, the pictures are cumulative. She's already gone through all of these wounds. She had the pathologist testify about it. They're on a chart. They're marked. It's clearly cumulative. That's the first thing.

Secondly, the pictures are -- have -- I think are inflammatory, to some degree, because apparently this is done at the autopsy. Even though it's not the in-depth part of the autopsy, I think it's -- clearly looks like to me that it's taken at the autopsy. So, I mean, those are my objections. I

just -- I have some difficulty with it.

THE COURT: Let me see them, please.

MS. LIVESAY: Yes, sir, Your Honor.

MS. VON HERRMANN: And, Your Honor, we do have -- if the Court finds that some of those are unduly prejudicial, we do have black-and-white photos that can be substituted in if the Court finds that that is necessary.

THE COURT: All right. Thank you.

Have these marked, Solicitor. I'm returning these to you.

MS. VON HERRMANN: Would you mind looking at the black-and-whites of the particular ones that you've excluded?

THE COURT: I'm excluding those because they're duplicative.

MS. VON HERRMANN: Okay.

THE COURT: They're are photographs that I intend to allow in that show the exact same thing. That's the reason I am excluding them is they're unnecessary and duplicative.

MS. VON HERRMANN: Thank you.

MR. WILSON: Thank you, Your Honor.

COURT REPORTER: State's 34 through 42.

(PHOTOS MARKED STATE'S EXHIBIT NUMBER 34 THROUGH 43 FOR IDENTIFICATION.)

THE COURT: 34 through 42. All right. I am going to allow State's 34 through 42.

Solicitor, why don't you show those to Mr. Wilson, if you would, please. I did eliminate a number of photos that I found to be duplicative or unnecessary.

Those -- I'll be glad to hear anything else that you have to say, Mr. Wilson once you ---

MR. WILSON: No, sir. I'm satisfied. Thank you.

THE COURT: All right, sir. So, I'm gonna allow into evidence then State's 34 through 42, assuming again -- you know, we've already had the testimony but, of course, you're gonna have to have the testimony in front of the jury from this witness about her participation in taking the photographs at the autopsy, that sort of thing. All right?

Ask the jury to come back in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, you may proceed, ma'am.

Q. Ms. Allen, did you attend the autopsy of Joseph Hucks?

A. Yes, ma'am.

Q. Okay. And what did you do at the autopsy?

A. I basically documented, I took photographs, measurements, documented as he looked when I first got there, along with how he looked during the autopsy itself. I documented any wounds that he may've had on his person.

Q. Okay. And would you look through what's been marked as State's Exhibit 35 through 42, and tell me if you recognize

those pictures.
A. Yes, I do recognize them.
Q. Okay. And are those the pictures you took of the autopsy?
A. Yes, these are some of the photos that I took at the autopsy.
Q. Okay. And is that Joseph Huck's shirt?
A. Yes, ma'am, it is.
MS. LIVESAY: Okay.
Your Honor, at this time, I'd like to put into -- waive in State's Exhibit 35 through 42 into evidence.
THE COURT: Is it 35 or 34?
COURT REPORTER: 34.
THE COURT: 34.
MS. LIVESAY: 34, yes.
THE COURT: 34 through 42. All right. I'm gonna allow State's 34 through 42 in evidence.
MS. LIVESAY: Thank you, Your Honor.
(PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 34 THROUGH 43.)
Q. Now, I'm gonna go through these pictures with you, Ms. Allen. Tell me what exactly this is a picture of, and what you're trying to document with this picture.
A. Okay. The photograph is of Joseph Hucks' shirt.
THE COURT: Which exhibit is it, please?

MS. LIVESAY: I'm sorry.

THE COURT: Which exhibit, exhibit number?

A. Exhibit 34.

Q. 35, I'm sorry, State's Exhibit 35.

A. Okay. It's a photograph of Joseph Hucks' shirt. It's laid on a sterile location on the floor. I used a ruler to measure the size of the shirt, and I also used little stickers to mark each tear in the shirt from possible injuries.

Q. And were the tears in the shirt consistent with his wounds?

A. That's correct.

MS. LIVESAY: At this time, I'm gonna publish State's Evidence Number 35 to the jury.

THE COURT: You may do so.

Q. And so each one of those markings with a number one is where there was a tear in Joseph Hucks' shirt?

A. That's correct.

Q. Okay. And those tears were consistent with his puncture wounds?

A. Yes, they were.

Q. I'm going to show you what's been marked as State's Exhibit Number -- State's Evidence Number 34. Do you recognize what I'm showing you now?

A. Yes, I do.

Q. Tell the jury what that is.

A. This appears to be the photograph of the back of Joseph Hucks' shirt and it's also -- I used a ruler and I -- it also shows where there's a tear in the back of the shirt also.
Q. Okay. And is this picture to document that tear in the back of the shirt?
A. That's correct.
Q. And the ruler is to give some indication or reference exactly where that tear is; is that correct?
A. That's correct. Yes, ma'am.
Q. And is this tear in the shirt consistent with his wound to the back?
A. Yes, it was.

COURT REPORTER: Judge, may I correct something. We marked 34 through 43. I said 42.

THE COURT: All right. Very good. Court Reporter has brought something to my attention, it's State's 34 through 43. So, it's 34 through 43 are in evidence without -- I'm sorry, are in evidence. Thank you.

MS. LIVESAY: Thank you, Your Honor.

Q. I'm showing you now, Ms. Allen, what's been marked as State's Evidence Number 36; do you recognize it?
A. Yes, I do. This is a picture showing a deformity in Mr. Joseph Hucks' nose. I used an L-shaped ruler just to take measurements and there appears to be a wound on the top portion of the nose.

Q. So, all of these pictures are to document his injuries?
A. That's correct.
Q. And how many days after the incident were these pictures taken at the autopsy?
A. One day after.
Q. Okay. I'm showing you now what's been marked as State's Evidence Number 37. Will you tell the jury what that's a picture of?
A. This is a photograph of Mr. Joseph Hucks' back.
Q. What are you trying to document in that photograph?
A. There is a wound in the middle portion of his back.
Q. And is this wound consistent with the tears that you saw in the back of his shirt?
A. Yes, it was.
Q. I'm showing you what's been marked as State's Evidence Number 40, State's Evidence Number 42. Would you please tell the jury and the Court what we're looking at here?
A. Yes. Exhibit Number 42 is a photograph of Joseph Hucks' inner left arm by the elbow. It's picture right in this area right here **(indicating)**.
Q. And how about the other picture?
A. Exhibit Number 40, this is a picture of Mr. Hucks' left hand showing a laceration in this part of the hand by the thumb, in between the thumb and the first finger.
Q. And as a crime scene investigator, are there -- are these

wounds titled with any sort of title or is there anything you call these type of wounds when it's on the hands or the inside of the arms?

MR. WILSON: Your Honor, I object, first to the question. I don't know what relevance it is what she calls it. That's not -- that's of absolutely no relevance what she calls it.

THE COURT: I appreciate that. You'll need to rephrase your question, Solicitor.

Q. As a crime scene investigator, are you familiar with how different types of wounds are titled compared to where they are on their body?

A. Yes, I am.

MR. WILSON: Your Honor, unless she wants to establish her as some kind of forensic expert, then I object to that particular question.

THE COURT: I am going to allow the question as to how they are labeled. Further questions may be subject to an objection.

MS. LIVESAY: Thank you, Your Honor.

Q. And how do you label wounds, not just these particular wounds, but any wounds that are on the hand or the inside of the arm?

A. Okay, Any wounds that are on the hands, inside of the arm, are consistent with being defensive wounds, as if somebody was trying to protect themself.

Q. And both of these wounds are on the left side of Joey Hucks; is that right?
A. That's right.
Q. Okay. So, it's the left inner part of his arm and his left hand?
A. That's correct.
Q. So, when you're saying it would be -- they're called defensive wounds because it's kind of like this **(indicating)**, and both of these are on his left arm and left hand, so it would be consistent with this **(indicating)**; is that right?
A. Correct.
Q. Okay. And the wound -- it's hard to tell in the pictures -- is on the inside of his arm?
A. Correct. About in this position right here **(indicating)**, inside of the elbow.
Q. So when you lay my arm out straight, we're talking, for the jury, right in here **(indicating)**?
A. That's correct.
Q. Okay. Which when you turn your hand like you were showing us before, it's like this; is that correct?
A. That's correct.
Q. You recognize what I'm showing you that's been marked State's Evidence Number 43?
A. Yes. This is a picture of the chest area of Mr. Hucks. It shows two wounds, one on the upper left and one right near

the right nipple.
Q. And this picture, again, is to document his injuries?
A. That's correct.
Q. Did you document all of his injuries, Ms. Allen?
A. Yes, I did.
Q. Okay. All the puncture wounds the -- because you were at the autopsy; is that right?
A. That's right.
Q. Okay. There were wounds in the chest area; is that correct?
A. Correct.
Q. A wound on the back; is that correct?
A. That's correct.
Q. Okay. Two wounds on the left hand, one on the hand, one on the inside of the arm. When I lay it out like this it's right here, like this, it's right here **(indicating)**?
A. Correct.
Q. Correct, okay. And one on the leg?
A. That's right.
Q. And you were there to witness -- you saw the body front and back?
A. I did.
Q. Okay. Did you see any slice wounds around here or around the lower part of the legs or anywhere else?
A. No, I did not.

Q. Okay. So, all the puncture wounds, puncture wounds, were either in the chest area or the back?
A. Correct.
Q. Okay. I'm showing you what's been marked as State's Evidence Number 38. You recognize it?
A. I do. That is a photograph of a superficial cut on the victim's chin.
Q. And again, you're just documenting all of his injuries with these pictures?
A. That's correct.
Q. And this, again, was how many days after the incident?
A. One day.
Q. Okay. Just so I'm clear and the jury is clear, is this an accurate depiction of what these wounds looked like on the night of the incident?
A. I never saw the victim on the night of the incident itself.
Q. Okay. Let me ask you this, are you -- would you anticipate the body, outside the wounds, to look that clean on the night of the incident?
A. No, I would not.
Q. Okay. I'm showing you now what's been marked as State's Evidence 41; do you recognize it?
A. Yes, I do.
Q. And what is that?

A. That's kind of a side view of the victim's frontal area. He still has his clothes partially on.
Q. And again, you're trying to document any injuries that may be seen on the victim?
A. That's correct.
Q. I'm showing you the last picture which has been marked as State's Evidence Number 39. Do you recognize what I'm showing you?
A. Yes, I do.
Q. What is that?
A. It's the right side of the victim's head. It appears that he may be laying on his stomach, and it shows the back part too, or shoulder area.
Q. Did you do anything else at the autopsy other than collect the clothes of the victim, photograph, document the injuries?
A. No, I did not.
Q. Okay. So, you were there as the crime scene investigator with the main detective, Salena Mann?
A. That's correct.
Q. Okay. And your job was just to take in anything that needed to be taken in, the clothes, document, that sort of thing?
A. Yes, ma'am.
Q. Okay. And did you take the clothes of Joey Hucks into

evidence?
A. I transported them back to the crime scene lab, and I took additional photos of the clothes, and then I secured them in our crime scene evidence dryer so that the clothes could thoroughly dry to prevent contamination.
Q. Okay. And when were the clothes taken off the victim?
A. At the autopsy.
Q. Okay. And that picture I showed you of the victim's shirt, was that done at the autopsy?
A. Yes.
Q. Okay. And that was the first time his shirt had been taken off?
A. That's correct.
MS. LIVESAY: No further questions for this witness, Your Honor.
THE COURT: All right. Cross-examination.
MR. WILSON: Thank you, Your Honor.
CROSS-EXAMINATION BY MR. WILSON:
Q. Detective Allen, as a crime scene person -- and just so we are clear, were you the chief crime scene investigator responsible for this case?
A. I was an assistant. There were several of us involved. I was the Crime Scene Unit Supervisor. I pretty much just oversaw the crime scene. There was two other specialists involved; they pretty much handled the processing of the

scene.
Q. But you're their supervisor?
A. Correct.
Q. And as their supervisor, is there any part of their crime scene investigation that you don't oversee or take part in, take part in to the extent that you review it to make sure that they've done what they're supposed to do and make sure that everything is covered, and that everything is collected that needs to be collected.
A. In a perfect world, yeah, that would be great but unfortunately if there is multiple crime scenes, I may not get the chance to verify that each one was done correctly. I mean, I trusted my crime scene officers, they've had adequate training. I felt pretty good that they did what they were supposed to do to make sure all the evidence was collected.
Q. Well, do you review it to see if it was, in fact, done or you just trust that, okay, well, I told them to do it so I'm sure it's done?
A. I reviewed their reports.
Q. Okay. Did you review the photographs?
A. Yes, I did.
Q. Okay. Did you review all 250 of them?
A. Yes, I did.
Q. Okay. Let me show you these photographs.

MR. WILSON: May I approach, Your Honor?

THE COURT: Yes, sir.

MS. LIVESAY: Your Honor, are those already into evidence or ---

MR. WILSON: No, not yet.

MS. LIVESAY: Can I look at them then before you ---

MR. WILSON: Sure.

THE COURT: Absolutely.

MR. WILSON: May I approach?

THE COURT: Yes.

Q. Take a look at those four photographs that I just showed you. Have you ever seen any or all those photographs before today?

MS. LIVESAY: Your Honor, objection.

THE COURT: Let's -- I'm gonna -- allow her to answer the question whether she's seen them before right now or not.

That's a yes or a no answer.

A. Yes, I have seen them before.

Q. Do you know whether or not those photographs were taken by you or one of your subordinates?

A. They were not taken by me.

Q. What I asked you was, do you know whether or not those photographs were taken by you or one of your subordinates?

A. I'm not sure who they were taken by.

Q. That's not my question. My question is ---

THE COURT: Mr. Wilson, if you have a problem, again, with how the witness is responding, I'll be glad for you to address that to me. You want to rephrase your question -- she answered your question. If you want to rephrase it, I'll be glad for you to do so.

MR. WILSON: All right, sir. Can I ask her whether or not ---

THE COURT: I'm telling you, you can rephrase your question. I'm just saying she answered your question.

Q. Your answer is, you don't know who took the photographs?

A. Correct.

Q. But you know that those photographs were taken by somebody in law enforcement, under your supervision?

A. I don't know that either.

Q. You don't know that either? Is that what you're saying; that's your testimony?

A. That's correct.

Q. All right. Well, then tell us how you got to see them in the past, if you don't know that.

A. Well, when I was reviewing the case, actually I believe it was last night, I remembered seeing these photographs in there.

Q. Okay. And so you got stuff in your file from the police and you've been the supervisor -- you've been there nineteen years in law enforcement, and the head of this CSI unit, and

you don't know what's in the file until last night?
A. Correct.
Q. That's what you're telling us?
A. That's what I'm telling you.
Q. Yeah. And the truth is, ma'am, that you know exactly what's in these photos, don't you? That's the truth; you know exactly what's in those photos, do you not?
MS. LIVESAY: Your Honor, I'm gonna have to object. She stated that she didn't know who took the photographs.
THE COURT: I'll allow her to answer the question if she recognizes what's in the photographs. Beyond that, there may be an objection.
Q. Ma'am?
A. Ask one more time, please.
Q. My question is, you know exactly what's in those photographs, don't you?
A. Yes, I do.
Q. And you also know that they were part of your case file?
A. Yes, I do.
Q. And you turned those photographs over to this Solicitor, did you not?
A. Not those particular photographs, no.
Q. You didn't turn them over? Well, who turned them over?
A. That I don't know.
Q. You don't know. Well, let me ask you this, as the Chief

of the CSI unit, don't you think it's important when you're out making examinations and trying to come up with pictures of wounds that you also want to get -- and I notice there were a stack of pictures of wounds on the victim, Mr. Hucks, in this case, correct?

A. Correct.

Q. That you just testified to.

MS. LIVESAY: Your Honor, again, I'm gonna have to object to the chain. It hadn't been established and now we're asking ---

THE COURT: He's not talking about those photographs. He was talking about the other ones that were introduced into evidence. I'll allow him to ask that question.

Q. They were 34 through 43, that you collected of the wounds on the victim, Mr. Hucks, correct?

A. Correct.

Q. And you did that personally?

A. That's correct.

Q. You took those -- you went to the autopsy and you took those photographs, right?

A. That's right.

Q. All right. And Mr. Chestnut, did you take any photographs of him?

A. No, I did not.

Q. You did not. Did you go to the hospital to determine how

many wounds he had?
A. No, I did not.
Q. Do you know even how many days he was in the hospital with those wounds, in Grand Strand?
A. No, I do not.
Q. Did you send anybody over to Grand Strand to take pictures of the wounds of Mr. Chestnut?
A. No, I did not.
Q. Well now, as I understand crime scene investigation, that includes both the positive and the negative, the good and the bad, all evidence, and that, as a crime scene specialist wouldn't you agree with me that you want to collect everything possible to bring into court?
A. That's what our intentions are.
Q. That's what our intentions are. But that's not what happened, according to you, right?
A. I don't understand what you're saying.
Q. Now, let me ask you, ma'am, the Solicitor asked you about defensive wounds and you told her, yeah, that's how we label them, as defensive wounds, but you don't know for a fact that these are defensive wounds, do you?
A. All I said were, they were consistent with defensive wounds.
Q. But they are also consistent with other things, aren't they?

A. Sure.
Q. Okay. And so when you say that, that doesn't make it true because you say it?
A. No, it's just -- like I said, it's just being consistent.
Q. You weren't there that night, right?
A. Right.
Q. And you didn't see what went on in the house?
A. Correct.
Q. All right. And at what point did you even go to the house?
A. When I was asked to respond.
Q. What time was that?
A. The initial call was at 3:15 from Crime Scene Specialist Ursits, and then he called me back a half hour later while I was getting ready. He called me back at 3:45 in the morning to advise that the victim had expired, and I had already left out the house and was heading to the crime scene.
Q. Okay. Now, when you got there, at some point in time, did you learn that Mr. Chestnut was at Grand Strand Hospital?
A. At some point, I'm not sure when.
Q. Okay. And at some point in time, he became a suspect, right?
A. Correct.
Q. And knowing that he is a suspect and that you are investigating a crime scene, and you've got nineteen years of

experience, don't you want to know and collect any physical evidence that might be -- that he might have in his possession?
A. Of course.
Q. All right. That'd be the wise, smart thing to do, right?
A. Yes.
Q. All right. But you're saying you didn't do it?
A. That's right.
Q. Okay. But you did it with the victim, right?
A. Correct.
Q. All right. Do you -- being a good crime scene specialist you are, I'm sure you made a determination of whether or not Mr. Hucks was right-handed or left-handed, did you?
A. No, I did not.
Q. Well, would that, in your opinion, as a crime scene specialist, would it be important to know whether or not the victim and/or a perpetrator, for that fact, might be right-handed or left-handed?
A. That's normally done during the interviews that the detectives do.
Q. Well, what I'm asking is, did you do it?
A. No, I did not.
Q. Did you direct anyone under your supervision to do it?
A. No, I did not.
Q. The knife and the scissors, did you try to get

fingerprints from the knife, the blade that is the handle of the orange knife, which is in evidence, which I think is State's Exhibit Number 29. Did you ever attempt to get fingerprints from that?

A. No, I did not.

Q. Did you ever attempt to get fingerprints from State's Exhibit Number 28, these scissors?

A. No, I did not. And the reason being, if we would have fingerprinted the scissors and/or the knife, any DNA evidence would've been destroyed, but the DNA evidence was most prudent at that time.

Q. Okay. So, even after you sent the -- well now, as I understand it, did you not -- you're saying that you didn't want to destroy any evidence that might be on there before you did the DNA, right?

A. Correct.

Q. Well, you took these same items to the pathologist and had her handle them, trying to determine whether or not they matched the wounds, or whether they could've made the wounds.

A. Correct.

Q. You hadn't gotten any DNA off of them at that point?

A. No, the scissors and the knife were sent to the South Carolina Law Enforcement Division on a later date for DNA.

Q. After -- but my point is, if you can -- if you could send them to the pathologist, for her to handle, to try to match

against these wounds that they found on the victim, then there's a chance that while you're doing that, that you can lose the DNA that you're talking about.

A. I believe they swabbed DNA off of those items prior to autopsy if I'm not mistaken.

Q. Okay. Well, if they swabbed them prior to autopsy, then why not send them for fingerprints? I'm sorry?

A. **(No audible response.)**

MR. WILSON: I don't have any other questions.

THE COURT: Mr. Long.

MR. LONG: Very briefly.

CROSS-EXAMINATION BY MR. LONG:

Q. Officer, Allen, how are you doing?

A. Fine, sir, how are you?

Q. Great. Do you have in your hands, or anywhere nearby, anywhere in the courtroom where you can put your hands on, the property evidence report sheets that look like this?

A. Are you referring to one specifically or ---

Q. I'm sorry let me -- Your Honor, may I approach the witness?

THE COURT: Yes, absolutely.

MS. LIVESAY: Your Honor, he's showing the witness what she took from Kendrick Chestnut but I think we've already established there's no chain, so ---

THE COURT: Let me -- how about let him mark it ---

COURT REPORTER: Defendant, Kendrick Chestnut, Number 1 for identification.

(EVIDENCE LIST MARKED DEFENDANT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)

Q. I'm gonna show you what's been marked as Defendant Kendrick Chestnut's Number 1 for you to identify. Can you identify what that is?

MS. LIVESAY: Your Honor, she ---

THE COURT: I'm gonna let her see if she can identify the document first.

MS. LIVESAY: If she reads what's off that sheet ---

THE COURT: She's not reading it, she's looking at it, and then she's gonna answer the question whether or not she can identify it.

MS. LIVESAY: Okay.

A. Yes, I can identify it.

Q. What is it?

THE COURT: No, you can't answer that question. Let me have the document.

THE COURT: All right, Solicitor, come on over here and talk to me for a second.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Mr. Long, I'll allow you to use the document to ask a question.

MR. LONG: Thank you, Your Honor.

Q. So, can you -- the question that I asked, and I'll ask it again -- I'm gonna approach the witness, Your Honor.

THE COURT: Yes, sir.

Q. ---And hand you Defendant, Kenneth Chestnut's, Number 1 for identification purposes and the question was, can you identify that? What is it?

A. Yes, I can identify it. It is a Property in Evidence Report I completed on 5-21-06 and 1000 hours, pertaining to this case.

Q. Okay. So, you filled that out?

A. Yes, I did.

Q. All right. Now, set that aside, please. Do you have -- do you remember what color -- you saw the items that are on that document, is that right, with your own eyes?

A. Yes.

Q. Can you tell the jury, from memory, if you remember what color Kendrick Chestnut's shoes were?

MS. LIVESAY: Your Honor, I have to object.

THE COURT: I'm gonna allow that question. Thank you. Continue on.

A. I believe they were black.

Q. Thank you. I don't have any other questions.

THE COURT: Redirect.

MS. LIVESAY: Yes, sir, Your Honor, just a couple of questions.

REDIRECT-EXAMINATION BY MS. LIVESAY:

Q. Ms. Allen, that is the property sheet from what you collected from Kendrick Chestnut?

A. Correct.

Q. Okay. So, did you collect a white T-shirt?

A. Yes, I did.

Q. Okay. What I showed you earlier in that bag, is that the white T-shirt that you collected from Kendrick Chestnut?

A. That's correct.

Q. Okay. And you just testified to Mr. Long that those items on that sheet belong to Kendrick Chestnut; is that right?

A. That's right.

Q. Okay. And you testified that those black shoes that he just asked you about were Kendrick Chestnut's; is that right?

A. That's right.

Q. Okay. What does it say about his T-shirt?

A. You want me to read it off?

Q. What does it say on that property sheet about his T-shirt?

A. It's a white Champs -- white Champs brand T-shirt, size 4X with blood.

Q. Okay. And let me show you what's been marked as State's Exhibit Number 33. Do you recognize that?

A. Yes, that is a white T-shirt.

Q. And is that the white T-shirt that you've documented on this sheet?
A. That's correct.
Q. Okay. And do you see any stains on the shirt?
MS. LIVESAY: If you have just a pair of gloves ---
Q. So, you do see the stains on this shirt?
A. I do see stains on that shirt.
MS. LIVESAY: Your Honor, at this time, the State wishes to admit State's Exhibit Number 33 into evidence.
THE COURT: Is there an objection, Mr. Wilson or Mr. Long?
MR. WILSON: Yes, sir.
MR. LONG: Same objection.
THE COURT: Ladies and gentlemen, go to your jury room, please.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)
THE COURT: Before I hear your objection, Mr. Wilson, I want to ask a question.
Ma'am, I'm confused. I asked you a question earlier and you said, in response to my question, you did not collect State's 33 from Mr. Kendrick Chestnut. That's what you told me.
A. That's correct.
THE COURT: You just answered the question to the

Solicitor and said, I collected all the items that are on the Defendant -- let's see, that's Defendant Kendrick Chestnut's, 1, you collected all those, and one of those is the T-shirt which is apparently State's 33. So, which one is it? Did you collect it from him or you didn't collect it from him?

A. I collected these clothes that belong to Kendrick Chestnut.

THE COURT: Okay. So, you got all those items from Mr. Kendrick Chestnut?

A. These items belong to Kendrick Chestnut.

MR. LONG: Your Honor, I think she's going around your question.

THE COURT: Okay, let me try and be direct then. All right? You were there when those items that are on that document were collected, you were present?

A. No, I was not.

THE COURT: All right.

A. He was ---

THE COURT: So, you don't know that those items were collected from Kendrick Chestnut? You were not there, correct?

A. I could not be there because I'm a female and he is ---

THE COURT: I understand that. So, you weren't there, you don't know they were collected from Kendrick Chestnut; somebody told you they were collected from Kendrick

Chestnut, correct?

A. Correct, when I received the ---

THE COURT: Thank you.

I'm not gonna allow it into evidence. Bring me the person that collected them from Kendrick Chestnut and gave them to this witness, then they can come in.

MS. LIVESAY: I ---

MS. VON HERRMANN: Your Honor, she'd have a motion to strike his question in the same regard for the exact same reason. We'd ask for his -- for her response to his question with regard to the shoes to be stricken from the record for the exact same reason.

THE COURT: I'm gonna allow that because she doesn't know they're Kendrick Chestnut's shoes.

MR. LONG: If I might be heard, Judge. I said, set that aside -- Ms. Dixie can read it back ---

THE COURT: And she said ---

MR. LONG: Let me -- if I might, set that aside now, do you remember what color Kendrick Chestnut's shoes were, and she said black.

THE COURT: Black ---

MS. LIVESAY: She couldn't remember ---

THE COURT: --- because they were the ones that were sitting in front of her when she filled out the report.

So, again, ma'am, all right, were you there when the

shoes were taken off Kendrick Chestnut?

A. No, I was not.

THE COURT: All right. How do you know Kendrick Chestnut's shoes were black?

A. I read it off the property sheet.

THE COURT: You read it off the property sheet. So, she doesn't know. So, I'm gonna instruct the jury they are going to disregard that.

Again, bring me the person that collected them from Kendrick Chestnut before this witness and everything is good.

MR. LONG: Then I'm gonna -- when the jury comes out, so that we don't have to take another -- send the jury back out, the next question that I'm gonna ask is, in all the items that you received as evidence in this case, did you receive any white tennis shoes? Can I ask that?

THE COURT: You can ask that question because she said she received evidence but before you do that, we'll have to correct the other part of it.

Ask the jury to come back in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Ladies and gentlemen, prior to you going back to the jury room, there was a question asked of this witness by Mr. Long concerning certain tennis shoes of Kendrick Chestnut. I'm gonna tell you to disregard the

question and the answer. It is not evidence in this case; it is not part of this case. The Court has found that at the present time there is no basis and fact for that question or answer at the present time.

Thank you very much.

MR. LONG: Thank you, Your Honor.

RECROSS-EXAMINATION BY MR. LONG:

Q. Officer Allen, you received a lot of clothing, shoes, pants, shirts and all that stuff, from somebody in this case; is that right?

A. Correct.

Q. Did you receive a pair of white tennis shoes in this case?

A. I don't recall the exact colors of the shoes.

Q. Is there something that you can look at in your case file to kind of go through so that you can give us an accurate answer to my question?

A. Okay. Did you want me to identify to you all the shoes that I collected in the case or ---

Q. It's fine with me if you would like to look at all your notes and then come back and answer my question. The question is, did you collect any white tennis shoes in this case, or did you receive any white tennis shoes in this case?

A. According to my notes, no, I did not receive a pair of white tennis shoes in this case.

Q. Thank you. That's all I have.

THE COURT: All right. Redirect?

MS. LIVESAY: Just one question, Your Honor.

RE-REDIRECT EXAMINATION BY MS. LIVESAY:

Q. Ms. Allen, did you collect tennis shoes off either Defendant in this case?

A. Yes, I did.

Q. You took the shoes right off that Defendant?

A. No, I did not.

Q. Okay. Either Defendant?

A. No, I did not.

Q. Okay.

MS. LIVESAY: No further questions, Your Honor.

THE COURT: Mr. Wilson?

MR. WILSON: Nothing, Your Honor.

THE COURT: Mr. Long?

MR. LONG: No, sir.

THE COURT: All right, ma'am. You may step down.

Do you wish this witness to be excused?

MS. LIVESAY: Yes, sir.

THE COURT: All right, ma'am, you are excused from -- I'm sorry, any objection, Mr. Long, Mr. Wilson?

MR. LONG: No, sir.

THE COURT: All right. You are excused from your Subpoena and go back to regular duties. Thank you, ma'am.

All right. Next witness, Solicitor.

MS. LIVESAY: Your Honor, at this time, the State rests.

THE COURT: All right. Very good.

All right, ladies and gentlemen, there are some matters of some length that the Court, in any criminal case, has to take up at this point in time, when the State rests, so I'm gonna do those at the present time. It's a little early to send you to lunch but there's no sense in keeping you sitting there in the jury room while we're doing this because it will take some period of time as it does in every criminal case, nothing unusual here. So I'm gonna let you go to lunch. I'm gonna ask that you -- obviously, we're gonna be here for a while and I'll need to give the other participants some time for lunch.

So if y'all will be back in the jury room at 1:15. Be back in your jury room at 1:15, 1:15 back in the jury room.

Obviously, don't talk about the case, don't allow anybody to talk about the case.

Leave your pads and pens.

Thank you very much. 1:15.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. The State having rested; any motions, Mr. Wilson?

MR. WILSON: Yes, sir, Your Honor. Your Honor, at this

time, I would make a motion for a directed verdict as to the charge of murder. And I think that in this case, while there is certainly evidence of some kind of altercation, and I think that in this particular case because -- and I guess I'm arguing in part the **Castle Doctrine** that, in part, this Defendant, my client was at his home when this all occurred, and that as a result of that, he's entitled to stand his ground and defend himself against whatever may occur to his -- and not have to flee from his premises, and therefore, the -- my position would be that, that because of the **Castle Doctrine**, and because of his right to defend himself, that the State has not overcome that in trying to establish that there was a murder, or that there was malice involved in this. I think all of the evidence suggests, and is that -- and I don't think that this is disputed in the record -- is that Joey is the first person in the house to have a weapon, and that he cuts my Defendant before anything else occurs, and in terms of anything regards to any significant violence occurs, and that that would mean, therefore, that my Defendant had a right to defend himself. And even if -- even if the argument is made that, well, he was trying to defend some third person, then the problem with that is, is that when you're trying to defend a third person, you have to get in the position that third person is in, and the third person would not have been able to use a knife in order to try to stab him to death, because at

that point, at minimum, you have, at worst, some kind of a domestic altercation, at worst at that particular point, at the time Joey pulls the knife and tries to kill Mr. Chestnut, and so I would say to the Court that as a result of all that, that there is no malice, that he has a right to defend himself, and that the **Castle Doctrine** applies, and so does self-defense, and I would ask the Court to give a directed verdict as to the offense of murder.

THE COURT: All right. Well, let's talk about this. Hold on one second and let me look at one thing and then we'll ---

MS. LIVESAY: Your Honor, I think ---

THE COURT: Before you do that, can I look at something? That's what I was asking. Please hold on for a second.

Thank you, ma'am.

All right. Mr. Wilson, you're talking about the **Castle Doctrine**, are you're talking about 16-11-440?

MR. WILSON: Yes, sir.

THE COURT: All right. 16-11-440, effective date, June 9th, 2006. This matter occurred on or about May 21, 2006. I understand it was not indicted until July. I'm relying on the case of **State versus Bolin**, 673 S.E.2d 885. South Carolina Court of Appeals held that the persons -- the **Protection of Persons and Property Act**, 16-11-440, did not apply retroactively to require jury instructions regarding that

particular matter. So relying on that case, you cannot rely on 16-11-440. The matters happened before the enactment of that statute. The Court of Appeals has held that it shall not apply retroactively because the Legislature did not -- its intent was not clear in the statute, and the Appellate Courts have ruled that that Act is not retroactive.

Now, you may have an argument about self-defense, but it's the Court's ruling that, based upon that particular case and what we have here, I can't apply 16-11-440 retroactively.

I'll be glad for you to make any arguments you'd like to make.

MR. WILSON: Your Honor, I would argue to the Court that what really should apply is the date of the indictment as opposed to the date of the offense, and he was indicted after the statute was enacted.

THE COURT: And let me go back, I took the case off too quick. Hold on a second.

The Court of Appeals, in its legal analysis says, "Turning to the case at bar, the Act went into effect on June 9th, 2006, four months after the events leading to the instant matter." That happened in February of sometime in 2006. "Thus in order for the Act to apply, the Legislature must have either intended the Act to be retroactive or, in the absence of such legislative intent, the Act must fall under

the exception to the presumption of prospective application by being remedial or procedural. Here, as indicated in the Court's recent holding of **State versus Dickey**, there is no evidence of legislative intent that the Act be applied retroactively. In fact, the plain language of the Act specifically indicates the legislature's intent that the Act be applied prospectively."

I appreciate what you're saying, but the Appellate Court has, in talking about that particular case, said the Act went into effect on June 9th, 2006, four months after the events leading to this instant matter. I believe I'm bound by their Decision that the Act, 16-11-440, cannot be applied retroactively. I appreciate the fact that he was indicted and clearly was indicted on July 27th, 2006, as indicated on the face of the indictment as against Mr. Larry Tyrone Chestnut and Mr. Kendrick Chestnut, but in the indictment it clearly states and all the testimony and facts in evidence here is, the matter happened, whatever happened, on May 21, 2006. So, the incident for which they are charged happened before the effective date of the legislation. I do not find -- I do not believe the fact that they were indicted afterwards changes that. So, I appreciate your argument, it's here in the record, but I don't see how that changes it.

MR. WILSON: Your Honor, then my next argument would be that the crime of murder should still be dismissed. All the

evidence in this case suggests that there was a fight, that there was some heated argument, that there was obviously heat and passion going on during the course of this altercation and that as a result of that that, at worst, there could be -- would be manslaughter as opposed to murder.

THE COURT: Yes, Solicitor?

MS. LIVESAY: Just very briefly on that, Your Honor. I believe several witnesses including, Richard Day and Cindy Evans, commented that they heard statements that came from Joey Hucks that said, don't -- don't touch my sisters. They then heard somebody say, or what; I'll kill you. And Cindy Evans' testimony was, all she remembers hearing is kill, kill, kill. Your Honor, I believe that's not only implied malice but actual malice and I think the circumstances around this killing was that there was a cooling-off period. After he got off of Cindy Evans, he then walked into the den area, which is where he started another altercation. There was no argument until he walked off of Cindy Evans and came into the living room, and then that's when the altercation took place. There was a cooling-down period.

Also, there was several witnesses that stated Kendrick Chestnut and Larry Chestnut, while in the house, were saying kill, kill, kill. They get in the car, they've got Chappel Evans in the car, they're again in the car. Kendrick Chestnut is saying let's go back and kill that guy. The words kill

were used again, which is express malice. I believe this is a murder case. I don't think there's anything in the record or in the testimony that would lead to anything that there was expressed malice in this particular case.

THE COURT: Now, the way I recall the testimony is that certainly there -- and in looking at this, I'm not making any determinations here as to what was said, and might as well go over the directed verdict standard just so it's clear. Obviously, the Defendant is entitled to directed verdict when the State fails to produce evidence of the offense charged. My job is to look at the existence of evidence, not its weight or credibility or believability; that's not my job; that's the jury's job. I'm looking at whether evidence exists or not. If there's any direct evidence or substantial circumstantial evidence, reasonably tending to prove the guilt of the accused -- that's the standard I have -- reasonably tending to prove the guilt of the accused, then the case is submitted to the jury. My standard is not beyond a reasonable doubt. That's not my standard. That's the jury's standard but that's not my standard. is there any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused? Now, I would grant a directed verdict motion if the evidence merely raises a suspicion the accused is guilty or if I would find that the jury would have to merely speculate as to the guilt of the accused, or the evidence only

raises a mere suspicion that the person is guilty. But in this particular case I think the evidence is clear there was an altercation by your client, Mr. Wilson ---

MR. WILSON: Yes, sir.

THE COURT: --- Larry Chestnut, in the kitchen -- all right -- that did not involve Joey Hucks at that point in time.

MR. WILSON: Yes, sir.

THE COURT: Comes out of the kitchen, Mr. Hucks is in the living room area. There's testimony that Mr. Hucks made a statement, with something in his hand that was down by his leg, that was not held out or pointed to, or shown to the Defendant or shown to the Defendant, your client, in a threatening manner. In response to the question, or response to the statement that Mr. Hucks made, your client -- there's testimony -- I'm not saying this is what happened, but there is testimony and evidence says, or what, and immediately lunges to and strikes Mr. Hucks, who then, in a falling back motion swings, and your client is cut. The altercation continues on from thereafter.

I find from the facts and evidence presented, from all the testimony and the evidence presented, there is direct evidence and there is substantial, circumstantial evidence reasonably tending to prove your client guilty of murder. Again, I'm not judging its weight, I'm not judging

its credibility or believability, I'm saying evidence exists in the record from which, if the jury believes it to be true, they find its credible, again the jury's job, there's evidence they can use, that's in the record, to find your Defendant guilty of the crime of murder. They could also find him guilty of voluntary manslaughter from the facts and evidence presented. I don't think there's any question about that. If there -- and we'll talk about that later on -- but certainly, the facts in evidence would support a conviction for voluntary manslaughter, if that's their view of the evidence. But I'm going to respectfully deny your request for a directed verdict on the insufficiency of evidence for the crime of murder.

MR. WILSON: Thank you, Your Honor. Your Honor, I understand the Court's ruling. One last thing in that regard is that I think, in analyzing the scenario that the Court just presented, ---

THE COURT: Well -- and I included all the other facts. I brought those out, but I'm not just relying on that. I want to be clear about that. Okay? I'm relying on all the other testimony, and all the others facts and evidence presented.

MR. WILSON: Yes, sir.

THE COURT: I did make a point of talking about that but that's not the sole basis or the reason I am ruling. I'm looking at all the facts and evidence that have been presented

in this case. Okay?

MR. WILSON: Yes, sir. And my point is simply that, under the common law, my Defendant had no duty to retreat. Once he was -- assuming that, in the state -- in the light most favorable to the State, that it occurred just the way the Court presented it a second ago, assuming that's the way it happened, my Defendant was home. He had no duty to retreat, and the case law for that is -- goes all the way back to 1926, saying that in addition to no duty to retreat in one's home, no duty to retreat within the home cartilage is required.

THE COURT: That's true, but mutual combat takes it out of the realm of self-defense and contemptuous language. If you could even construe the words used by Mr. Hucks as they have been testified to, whether or not -- again, I'm not talking about weight -- I'm talking about credibility or believability, there's testimony. If you can find that -- even if you could find that language to be contemptuous, then that's not a reason to then go forward with violent acts. Okay? As -- when you're talking about being at home and the right of self-defense, okay, those are exceptions to self-defense, mutual combat, contemptuous language or -- not contemptuous language but the -- when you're talking about words that are used, they cannot bring it to the level, except if there is just such outrageousness that's associated, or

implications, or statements into words that would cause somebody to be in extreme fear of what the person is saying, but the language that's been testified to can't arise to that.

MR. WILSON: Judge, and I understand and I'm not gonna ---

THE COURT: Well, I appreciate it, I'm not -- I haven't stopped you yet.

MR. WILSON: My -- you know, even in the light most favorable to the State, when we're looking at this, you have a man who is twice the size of my Defendant, by the admission of the only person who was there, is there with a weapon of some type in his hand, whether you want to believe it's a knife or some other item ---

THE COURT: Right.

MR. WILSON: ---But he's standing there with a weapon confronting my Defendant, who is in his home.

THE COURT: That's correct.

MR. WILSON: And then, my Defendant has a right -- once that happens, once he is confronted by this individual who is twice his size to defend himself, and he can't wait until he's stabbed in order to start trying to defend himself. The man is there making an accusation to him, keeping him from leaving, and he's in his own home.

THE COURT: That's certainly a conclusion the jury, looking at the facts of this case, could come to. It's not

the only conclusion they could come to. I'm not telling you I'm not gonna charge self-defense, or it's not a defense in this case, but in talking about dismissing the case for lack of evidence, what I'm telling you is, there is evidence in the record that could support a conviction, there's evidence in the record that can support the argument you're making. It's a classic jury case. They've got to weigh credibility, believability, find that evidence which convinces them of its truth, weigh that evidence against the State's burden to prove the Defendant guilty of the crime charged beyond a reasonable doubt. This is a classic jury case. The evidence is there, that's why I'm denying your motion for a directed verdict. I'm not saying those aren't arguments that can't be made or it's not an issue to be presented in accordance with the law to the jury. I'm just not gonna grant a directed verdict motion.

MR. WILSON: Thank you, Your Honor.

THE COURT: All right. Mr. Long?

MR. LONG: Yes, sir, Your Honor. Judge, I'm -- as you can tell, and I know you've taken and you always do take meticulous notes during a trial, I'm in a totally different position, and I know that you see Mr. Wilson's position being the classic jury case. I see my position as being a classic directed verdict case.

The only evidence in this case that has my client doing

anything -- now you say, if a jury has to take the evidence that they've been given in this case, what do they know about Kendrick Chestnut? They know that Kendrick Chestnut and Joey Hucks were friendly and happy and everything was good. Kendrick didn't have any reason to have any conflict with Joey whatsoever. It's not as if you've got Kendrick and Larry jumping in a car and going to rob a liquor store, and Ty goes inside and robs the liquor store and kills somebody, and Kendrick is sitting outside in the getaway car. That's not the case. The case here is, three happy people enter a dwelling, and an argument ensues amongst third parties, an argument ensues between Ty and his live-in girlfriend, wife, the mother of his child. All the evidence shows that my client stayed out of that argument, completely stayed away from it. All the evidence shows my client laid a hand on no one in that argument.

Furthermore, as Joey Hucks decided to put himself into that argument by pulling a knife out in a non-threatening manner, if we believe that, light most favorable to the State, my client did nothing about that knife in that man's hand in that living room, and in fact, somehow, someway, that man gets from the living room, down the hall, into the kitchen, and still has that knife in his hand. My client has done nothing about the knife in that man's hand, and hasn't laid a hand on him.

Furthermore, the evidence in the case right now, whether the jury wants to believe it or not, is that Ty Chestnut, not my client, went into a drawer in the kitchen and pulled out that pair of scissors. Again, Christie, Cindy, every witness in this case saw Kendrick Chestnut with no weapon anywhere near him, no gun, no knife, no scissors, no nothing, still.

And Judge I don't believe and I don't think this jury is gonna believe, and I hope that you would see that it's unbelievable to a jury, but it doesn't much matter in my directive verdict motion, but if we all believe that Joey Hucks cut Ty Chestnut across the chest while Ty Chestnut was hitting him in the nose, and then they walked arm and arm, chuckling, to the kitchen before something else happened is unbelievable. The more believable scenario is that the fight moved from the living room, down the hall, into the kitchen. With that fight going on in the living room, down the hall and into the kitchen, no one has said that my client touched anyone in any way. No one says that my client pulled out a weapon and threatened anyone in any way. Moke, Richard Day, tried to say that my client held his fist out like this, and said something about a gun. No gun. So, you can say all you want, no gun. Then the fight continues in the kitchen between these two, Ty Chestnut, Joey Hucks. My client did nothing.

Keep in mind now, that Joey Hucks still has a knife in his hand and he's cutting Ty Chestnut multiple times. Keep in

mind that he carries the knife from the living room, at the front door, down the hallway, in the kitchen, and still out the back door. The only evidence in the case that my client touched anyone is that Kendrick Chestnut, while then outside the door, and presumably outside the fence, which would be past the little patio area, while Joey Hucks still had the knife in his hand because they found the knife two feet from his body in the middle of the yard, some distance away from the alleged touching, the only evidence is that Kendrick Chestnut hit him in the head, in the side of the head is what Christie, only Christie Hucks said, in the side of the head.

Christie Hucks also said that Kendrick -- she believed it was Kendrick that was kicking Joey Hucks. All she could remember was -- if you check your notes -- all I could remember was white Air Force 1s, white Air Force 1s, kicking and kicking and kicking, white shoes. Ain't no white shoes in this case. It was stricken from the jury's presence, but you heard what color shoes Kendrick Chestnut was wearing that night, pitch black Nike shoes.

The only evidence in this case is that if Kendrick Chestnut did lay a hand on Joey Hucks, they certainly weren't life-threatening injuries. In fact, he did not inflict any injuries. The pathologist said there's no bruise on the outside of the face, there's no bruise under the skin, there's no bruise on the outside of the back of the scalp, there's no

bruise under skin. And in fact, the only other bruise on the body, if we want to talk about the kicking any more, is a bruise at the knee. There is no evidence in this case that Kendrick Chestnut committed a murder; there is no evidence in this case that he contributed to the commission of a murder; and there's no evidence in this case that he acted in concert.

Now, Judge, I would call your attention to **State of South Carolina versus Kevin Cornelius Odems**, O-D-E-M-S, the cite is 395 S.C. 582, 720 S.E.2d 48.

THE COURT: I'm sorry 720 S.E. what?

MR. LONG: 395 S.C. 582, 720 S.E.2d 48. It's a directed verdict case talking about circumstantial evidence, and whether or not -- circumstantial evidence alone, a hint of evidence. You said it when you were dealing with Mr. Wilson's motion, that the standard is any evidence tending to prove reasonably the guilt of the accused. There is no evidence tending to reasonably prove the guilt of Kendrick Chestnut. The only evidence is that he swung and hit Joey Chestnut in the face and caused -- I'm sorry -- Joey Hucks in the face, and caused no injury and that he was believed to have been kicking Joey Hucks with white tennis shoes on; that's it. That's the only evidence in the case.

Now, again, after they leave the place, there's evidence from the poor little girl that had to come here to testify, that in the car -- and she told Salena Mann right after this

happened, hours after this happened -- that my client said, I'm gonna kill that F-ing SOB. Well, in the car leaving a murder scene, that does not sound like a murderer to me. That tends to make me believe that Kendrick Chestnut believed Joey Hucks to be alive, alive and well, not -- you know, if the testimony was, I'm gonna go back and kill somebody and then a murder happened, I understand why that's important, but the truth of the matter is, it's more important to me than it is to them because it shows that my client believed Joey Hucks to be alive, which corroborates the lack of evidence against my client.

Your Honor, I -- twenty years, I think most of my trials in the past fifteen years have been in front of you. Seems like Ms. Dixie and you and I are in the courtroom quite often over the past few years, and I've stood up and made directed verdict motions I don't know many times, a lot. Sometimes we stand up and make them because it's procedural, sometimes we stand up make them because it means something to the case. This time, it's a lot more than that. This time, I believe that the State of South Carolina should've made the choice not to proceed against my client in this case. They knew all this. If I could've filed a summary judgment motion months ago and had it heard before Your Honor I would have. This is the case I knew I had a year ago; it hasn't changed. There is no evidence -- the cause of death in this case singularly is a

four-and-a-half inch deep stab to the heart. There is no evidence that my client did anything to contribute to that, none. Based on that, Your Honor, please, consider directing a verdict of not guilty for Kendrick Chestnut, and ending this for him. The parties can move on and deal with the balance of this case.

Thank you for hearing me, Judge.

THE COURT: Solicitor?

MS. LIVESAY: Thank you, Your Honor. The State believes this is hand-of-one-had-of-all case. There's testimony from Cindy Evans, Christie Hucks, along with Richard Day, that while the assault was going on of Cindy Evans, it was Kendrick Chestnut that was holding Richard Day back, which is consistent. When Richard Day says he turns around to try to help Joey, he sees Larry Chestnut stabbing him, and he sees Kendrick Chestnut kicking him. As soon as he turns around to try to aid Joey Hucks, who is on the ground at this point, we've got him and a unbiased 911 caller saying the person on the ground is no longer moving. It is Kendrick Chestnut that comes to Richard Day, will not let him get to Joey Hucks, starts making threats that he has a gun. There might be an issue of whether or not the gun was there, he's making that threat, he's keeping Richard Day from getting to Joey Hucks and assisting a man that's on the ground being stabbed to death. He is aiding and abetting this murder. It took both

Larry Chestnut and Kendrick Chestnut, working together, that resulted in the end of Joey Hucks. That's what caused his death. I think there's no question that, if you've got one guy that jumps on another guy and starts beating him up, it's a lot easier when you've got a second guy keeping everybody else from helping that guy on the ground. It's a lot easier to jump on somebody and stab them to death when you've got another guy as big as Kendrick Chestnut keeping any aid from Joey Hucks. He had no assistance. He had nobody to help him because of Kendrick Chestnut. In fact, Christie Evans testified that Cindy was in there getting beaten, beaten, beaten. The only difference between her situation and ultimately what was Joey's, was that on that particular occasion Richard Day was able to get past Kendrick Chestnut and get him off Cindy Evans. We don't know what the result would have been if he wasn't ultimately able to get past Kendrick Chestnut and get Larry Chestnut off of Cindy. But what we do know is the ultimate result when we wasn't able to get to Joey Hucks because it was Kendrick Chestnut keeping him back while Larry Chestnut is stabbing him to death out there in the yard. This is a hand-to-one-hand-to-all. These two Defendants controlled that situation the entire time. It was Kendrick Chestnut that was controlling the situation the entire time.

The only person that 911 caller saw in the middle of the

yard, desperate for help, were the victims in this case, Cindy Evans and Richard Day. They never saw Kendrick Chestnut because he wasn't looking for help. He was looking to assist Larry Chestnut, who the testimony says, they worked together, he was over there every day, they were best friends, they were cousins. He was helping Larry that night. He was the one yelling kill, kill, kill. Even when he got in the car, and he was taking Larry from the scene of the crime, Chappel heard him yell, I'm gonna go back and kill him, kill him, kill him. That is expressed malice as to what he was thinking. He had just left the scene. He left that scene because a 911 caller finally stopped. That is nothing but a showing of his state of mind at that time.

MR. LONG: Your Honor, might I -- that is not an accurate reproduction of the testimony in this case. There is some testimony that ---

THE COURT: Well, let me -- let me talk about what I remember. Let's just disregard what the Solicitor just said, okay?

MR. LONG: Okay.

THE COURT: Let's just -- you tell me if you think this is incorrect. This is from the testimony of Richard Day. Again, I'm not judging credibility or believability. I'm not looking at anything other than whether the evidence exists, okay, and then I have to look at the standard that we just

talked about in a directed verdict standard, you know, applying that to the standard that I've already set out when I was dealing with Mr. Wilson's motion.

Looking at the testimony of Richard Day, okay -- all right -- and this is -- I'm not giving his exact words, all right, I'm obviously going from my notes that I was taking at the time that he was testifying. All right. He said, Ty goes in the kitchen, I tried to go in the kitchen, they -- they calmed down, there's more fighting, Larry and Joey are in the kitchen. We find help, Joey the stab wound, try to help him, Ty is kicking him, Mo is saying kill, kill these MFs.

They are all outside, Mo and Ty are both kicking him. Ty is having a stabbing motion. Mo, at the time, is talking, saying kill these MFs. Mo stops me, reaches in his pocket, I go back to the road. Mo is kicking Joey, both of them are kicking Joey. Ty has stabbed him.

I don't know if the jury is gonna believe that or not.

MR. LONG: Again, if they do believe ---

THE COURT: But if they believe that ---

MR. LONG: --- gonna believe that.

THE COURT: ---That's aiding and abetting a murder. That's hand-of-one-hand-of-all. That's an accomplice participation in the crime. He's saying one guy is stabbing him and the other guy is telling the person stabbing him, kill these MFs, and is preventing him from stopping the other

person from stabbing the person.

MR. LONG: Judge that's the only witness that says that.

THE COURT: I appreciate that.

MR. LONG: And secondly, that doesn't mean my client murdered somebody.

THE COURT: But it does mean that I have to give, and I do have to consider the theory of the hand of one is the hand of all when you voluntarily participate in that kind of activity as described by that witness.

MR. LONG: Well, then Richard Moke -- Richard Day is involved too, then. He's involved. What about Larry Chestnut dies, so we got Cindy Evans here charged because she hit him in the head with a monkey?

THE COURT: I'm not ---

MR. LONG: I know, I'm saying, Judge ---

THE COURT: I'm not faced with that. I'm not faced with that. They're not on trial.

MR. LONG: I understand.

THE COURT: I appreciate your argument, but that doesn't negate, or cause the Court to say that evidence doesn't exist. I appreciate that's the only person that says it and the jury may not believe that particular witness whatsoever; again, that's their job. They can believe one against several, several against one. I'll tell them they can disregard the entirety of the testimony; if you've got a good sound reason

for doing so, they can do that.

MR. LONG: Your Honor, that is ---

THE COURT: I can't do that. It's in the record.

MR. LONG: Those statements in the record are circumstantial evidence. They're not direct evidence.

THE COURT: It's direct evidence in that he is observing what is occurring. He is testifying as to what he sees occurring at that time, and what he is hearing at that time; that's direct evidence. He's there, he says I see this, I hear this, this is what's happening in my presence. That's direct evidence.

MR. LONG: Okay. Your Honor, I ---

THE COURT: So, I appreciate your argument, and fine jury argument but again, in response to your motion, being concerned with the existence of evidence not with its weight, not with its credibility of believability, I do find there is direct evidence and substantial circumstantial evidence reasonably tending to prove the guilt of the accused, and therefore I'm going to submit the case -- well, I'm gonna deny your motion for a directed verdict.

MR. LONG: Thank you.

THE COURT: All right. Thank you, sir.

Further motions from your client, Mr. Long?

MR. LONG: No, sir.

THE COURT: Motions from your client, Mr. Wilson?

MR. WILSON: No, sir.

THE COURT: All right.

MR. WILSON: Your Honor, one thing that I do ask the Court is, I know that you said be back at 1:15, and it's 12:10 now.

THE COURT: Right.

MR. WILSON: I'm -- at this point, I do plan to present some witnesses ---

THE COURT: But you need to discuss that with your client?

MR. WILSON: Yes, sir.

THE COURT: All right. I'm not gonna go in with him now my questions as to -- to him about the -- his rights, Constitutional Rights at this point in time.

MR. WILSON: All right, sir.

THE COURT: When we reconvene, you can let me know if you're going to present testimony. If you're gonna present testimony, then I'll let you present that testimony, and then we'll go into the questions with your client as to whether or not he wants to testify in this case, so he has the benefit of everything before it would be time for him to testify, but if you are not, then obviously we have to go into it at that point in time.

And then, regarding your client, Mr. Long, we'll do his after that occurs. All right.

MR. WILSON: Thank you very much, Your Honor.

THE COURT: Thank you very much. All right. 1:15. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready for the jury to come in?

MS. LIVESAY: Yes, sir.

THE COURT: And Mr. Wilson?

MR. WILSON: Your Honor, I have a matter that we probably need to take up and put on the record before we go forward.

THE COURT: Okay, great. All right.

MR. WILSON: We're at a point where both Defendants have kind of reached an inconsistent position with how we move forward in the trial.

THE COURT: Okay.

MR. WILSON: And that's, I know, a situation inherit when you try two -- both Defendants together and it -- one -- the position of one can compromise the position of the other, and that's the place we find ourselves where, where we have inconsistent defenses here, trying to go forward, And the impact is substantial on either one, depending on which choice we make, and I'm not even sure exactly what I'm asking the Court to do about it, except I think that it needs to be in the record because if, at some point in time one of these Defendants is prejudiced and there's a conviction in this

case, then that's obviously going to be, you know, perhaps a grounds for appeal, or at least post-conviction relief if nothing else. And while I'm trying not to give away everything in my conversation with you, I'm trying to at least let you understand what's going on and that was what the delay was about ---

THE COURT: All right.

MR. WILSON: ---And which -- what I was trying to attend to, and I've discussed this with Mr. Long for a period of time, and I've discussed with my clients, and we're kind of at an impasse, as best I can tell, from how we proceed from this point.

THE COURT: All right, sir. I appreciate what you're telling me. Is there anything that you are requesting of the Court, anything you want me to do, or anything that you specifically want to bring to my attention?

MR. WILSON: Well, yes, sir, I guess what I'm trying to bring to your attention is, is that, if I proceed the way I want to proceed, then I am prejudicing Mr. Long and his client and how they want to proceed. And it, it puts them in a bad situation if I do what I need to do to protect my client, which is obviously my ---

THE COURT: Which you have to do, which is your duty and your obligation is to, you know, use your best efforts to represent your client in conjunction with his input and, you

know, he needs to be obviously advised of all this and, give you his decision as to how he would like you to proceed.

MR. WILSON: Yes, sir.

THE COURT: So, I'm assuming you've done that?

MR. WILSON: I have discussed it with him, yes, sir.

THE COURT: All right. And he's given you his input as to how he would like you to proceed?

MR. WILSON: Well, he's given me input. He's kind of ---

MR. LONG: Judge, if I might?

THE COURT: Yes, sir.

MR. LONG: If there is a way that Mr. Wilson and I can -- this is not about any of the evidence in the case, this is about how to proceed from here forward.

THE COURT: All right.

MR. LONG: We're talking about whether to put up a defense or not.

THE COURT: Well, I'd assumed that's what it was.

MR. LONG: Mr. Wilson and I can have a short conference with you without opposing counsel, because it's got to do with trial strategy, to explain to you where our conflict rests, and maybe get some guidance from the Court there, then I think we might be able to make some headway with the problem that we've got.

THE COURT: All right. Are you asking that that be on the record, out of the presence of the Solicitor and the

State's representatives, is that what you're asking -- or you, the two of you, would like to come to my office without their presence and speak to me? What do you want to do?

MR. LONG: I think it has to be on the record, Judge.

THE COURT: Very good. I don't have a problem doing that.

All right. Without knowing what it is that Defense counsel wants to tell me, I'm sort of having a -- I'm gonna have to move a little bit in the dark here, Solicitor, but if I hear from them a little bit and I determine that y'all should not be excluded, I will immediately bring you back into the courtroom and tell you what has occurred, but there may be things that they need to bring up in the representation, or ethically, or however it is that they want to present it, that should be outside the presence of the State. So at this point in time, I'm going to clear the courtroom of everyone except for the Defendants, court security, court personnel and their attorneys.

So, everyone else needs to exit the courtroom. Don't get lost because we're gonna get started here shortly.

(THE FOLLOWING TAKES PLACE ON THE RECORD IN THE PRESENCE OF SECURITY PERSONNEL, CLERK, JUDGE, LAW CLERK, DEFENDANTS AND THEIR COUNSEL.)

THE COURT: All right. Mr. Wilson, you want to start or Mr. Long? It doesn't really matter.

MR. WILSON: Your Honor, my Defendant wants to present evidence in this case ---

THE COURT: Okay.

MR. WILSON: ---And witnesses, including testimony about his injuries and his hospitalization and all that, and the -- obviously the problem for that is that once we do that, then the Co-Defendant then loses his last argument, as well as we losing our last argument.

THE COURT: Right, and I believe that to be the law of the case. The major case I've found on that is **State versus Crowe**. It's found at 188 S.E.2d 379, a 1972 Decision of the South Carolina Supreme Court. Interestingly enough, that case cites a case called **State versus Huckie**, which is found at 22 S.C. 298, an 1885 Decision of the South Carolina Supreme Court.

I'll be glad for you to put anything on the record that you would like to, you know, argue against precedent, but obviously there is a long established rule in the State of South Carolina that says when defendants are jointly tried and any one of them introduces evidence, the State is entitled to the closing argument, the last argument. So, that's clearly extremely, a lengthy time period, been the law of the State of South Carolina.

So, if, Mr. Long, you want to make any arguments against precedent, I'll be glad for you to do that.

MR. LONG: And let me show you how it applies in this case, how totally unfair the established law is in this case.

THE COURT: I mean, y'all don't disagree with that? I mean, that's the established ---

MR. LONG: Right.

THE COURT: ---Law of this state.

MR. LONG: No, I don't have anything to refute that the law is established in that manner, but let me tell you where we are. And, you know, you take law exams and nothing ever turns out the way it is out here in real life, but here's what we've got. I've got a client that's got minimal evidence against him in a record right now, and the State closed. They didn't call their chief investigator who took these statements from my client, these statements that we worked on **Bruton** and we redacted so much stuff. The first statement that my client made got redacted all to pieces by Mr. Wilson because my client, in his third statement, implicated Mr. Larry Chestnut a whole lot worse than he's been implicated so far.

THE COURT: Yes, sir.

MR. LONG: Puts a weapon in his hand and so forth.

THE COURT: Yes, sir.

MR. LONG: Okay. If Mr. Wilson puts up testimony, my client loses the right to argue last. I've explained to my client, and also to Mr. Wilson and his client, that means if

he doesn't put up any testimony, and he doesn't put any evidence in, Nancy Livesay, the Solicitor, is gonna have to stand up and make her closing statement right now.

THE COURT: Right.

MR. LONG: Mr. Wilson is going to be able to make a closing statement after that, and I get to come in and pick up the crumbs.

THE COURT: Right.

MR. LONG: And so the last thing, aside from your jury instructions, are gonna be Ralph Wilson and me. That's substantial. We hang on to that last argument, as you well know, for dear life in cases so that we can have the opportunity. This is bigger than that. We've got a double chance to talk to this jury before they go back into that jury room. This is bigger than normal. We've got two chances to talk to this jury before they make their decision with no Nancy Livesay in the middle.

THE COURT: Right.

MR. LONG: Now, if they put up testimony -- my client has no criminal record, there's nothing -- there's no reason in the world for him not to testify for himself ---

THE COURT: Correct.

MR. LONG: ---If they put up evidence. If they don't put up evidence, then he's got a reason not to testify because I get to argue last, and he agrees with that a hundred percent.

THE COURT: Right.

MR. LONG: But if they put up testimony, any testimony, then we lost our argument ---

THE COURT: Right.

MR. LONG: ---So I might as well put him up. If and when I put him up, they're gonna bring that third statement that they got redacted all up, and they're gonna cross-examine him with it, and it's gonna be detrimental to Mr. Wilson's client. So, we are at, literally, the first time in this case, aside from the time when Kendrick gave that statement to the police ---

THE COURT: Right.

MR. LONG: ---The first time in this case where we really do have a conflict here ---

THE COURT: Yes, sir.

MR. LONG: --- and it's a major one because, again, you're talking about either I lose, we lose a double chance to talk to a jury before a case is over and I -- and then if he doesn't put up testimony -- see, Ralph wants to put up some testimony to show how bad his client's injuries were. I don't know if he's planning on calling his client or not but I know he wants his injuries because his injuries, the doctors are gonna tell the jury, are just as bad, or real close to being just as bad as Joey Hucks'. He just lived and Joey didn't ---

THE COURT: Right.

MR. LONG: --- which is helpful to both defenses. If my client is defending his cousin ---

THE COURT: I understand. It makes a self-defense argument stronger.

MR. LONG: Right. That's where we are, and it is a major, major conflict. I dropped a monster bomb on them by bringing that up, but that's just the way it is. That is the truth, and that's where we are, and we don't intend to put ourselves cross with Larry Chestnut one bit but ---

THE COURT: I appreciate that. And I appreciate that and I understand, you know, there is a, you know, connection that the Defendants have that was before this incident.

MR. LONG: So, Judge, I'm asking, I guess -- you need us to ask for something.

THE COURT: Yep.

MR. LONG: I'm asking that we -- that because this is so prejudicial to each of these Defendants, and we're always looking for the best interest of -- we're always protecting the rights of the accused -- if we've got -- I don't believe this exact situation was contemplated in that 1976 case. This situation, we've clearly shown to you, that either way it's going to be detrimental to the other, so I am requesting that we go outside the established law because this case is not directly on point with that, and ask you to determine that it would be wholly unfair, and put these clients -- put

these clients' odds against each other to force my client to argue first if Mr. Wilson puts up testimony.

THE COURT: All right. So, what you're asking for, I'm assuming ---

MR. LONG: Is a last argument.

THE COURT: --- is the last argument. Okay. And you're arguing against precedent, and you would like the last argument. All right. I understand the reasons that you've put forward the reasons for putting them up outside the State's presence but as far as the legal issue, I think I am obligated at this point in time to say -- bring the State back and in say -- you know, for you to just to make your motion; I want the last argument. You can say, in general, you know, it's prejudicial to my client for all the reasons we set forth previously, and any legal arguments you want to make, or how, you know, harmful it is to your client or whatever, whatever it is, but I have to give the State some opportunity to respond to your request to have the last argument.

MR. LONG: Certainly.

THE COURT: All right. Anything else y'all want to say before I do that?

MR. WILSON: No, sir.

THE COURT: All right. Very good.

Deputy, can you find the two Assistant Solicitors and ask them to come back in, please.

(MS. LIVESAY AND MS. VON HERRMANN RETURN TO COURTROOM.)

THE COURT: All right. Mr. Long, you have a motion that you'd like to make at this point in time?

MR. LONG: Yes, sir, Your Honor. I -- we all agree, and I think Your Honor has clearly stated, and I believe that all four lawyers standing in front of you would agree, that the established law in the State of South Carolina, by the 1972 case, is that if one defendant puts up testimony or evidence in any way then both defendants lose their right to argue last in the case, in the case of co-defendants. I am arguing against precedence here. I do not believe that that 1972 case contemplated this scenario right here.

Let me give the -- I've given the Court the scenario, I'm gonna give the Solicitors the scenario so they can argue against it. The scenario is thus -- this. As we sit right now, we both have retained our right to argue last. My client, Kendrick Chestnut, firmly believes that his right to argue last is substantial. It is very substantial. It's important to him, right now. Okay? If Mr. Wilson puts up evidence, puts in testimony of any kind, my client, through no doing of his own, is gonna lose that substantial right, and here's how it works out. If Mr. Wilson puts up testimony -- my client has no criminal record whatsoever. If Mr. Wilson puts up testimony, there's no reason in the world for my client not to testify in this case, because he has no

criminal record. He might as well testify, because his testimony is good for him. All of the statements that he gave, including the third statement that's been redacted all to pieces, is good for him, so he might as well testify. If he testifies, okay, through **Bruton**, Mr. Wilson has been able to redact his third statement all too pieces. All kinds of bad stuff has been said by my client ~~about his~~ client in that third statement, which is not gonna be in evidence in this case, unless he calls evidence, which then takes away my right to argue last, and there's no reason in the world why my client wouldn't testify then because he's got no criminal record, and then the bad stuff about Larry Chestnut is gonna come in. So, we have, lawyers, we have a real conflict now, a big-time conflict. And so I'm asking the Court that the precedence in this case did not foresee this exact problem that we've got, and it is wholly unfair -- if Mr. Wilson is allowed to go forward and put in evidence it is totally unfair to Kendrick Chestnut to allow him to lose his right that we've worked real hard during this trial to protect, which is the right to argue last. So, I'm asking that Your Honor go outside that case that established the law, and allow Kendrick Chestnut, even if Mr. Wilson puts in testimony, to argue last.

THE COURT: All right. All right, Solicitor, let me hear from you?

MS. VON HERRMANN: Well, Your Honor, obviously, the law

is what it is. I think it contemplates absolutely this situation. This is a joint trial where we have joint co-defendants. I understand that Mr. Long and Mr. Wilson may think that they have a conflict between each other, but the fact of the matter is, there is no relationship between them. They're only -- they're only duty is to their client. And so, Mr. Wilson's duty to his client is to do whatever it is that he thinks is best for his client, either to put up evidence or not put up evidence. Mr. Long's duty to his client is to do the same. They are two -- it's like two separate trials. There is no -- just because they're sitting at the table doesn't mean that they have to help one another.

The law is well established here, and I think it contemplates this exact situation. I think also what it does, if the Court were to grant that, is it places us in the position where we've got to stop this trial, we've got to go the Court of Appeals, we've got to file an interlocutory appeal, and we've got to deal with all of that mess for something that is arguing against long, long-standing precedent.

MR. WILSON: Your Honor, if I might ---

THE COURT: Yes, sir.

MR. WILSON: I think the difference -- and I agree with Mr. Long that this is not the typical co-defendant situation. What's happening here is, I can control what happens to Mr.

Long. That should never happen. I have absolutely no legal right to control what happens to his client, and to affect his ability to make a decision for his client. But what's happening here is I'm -- if I do what I want to do, I am, in fact, taking away Mr. Long's ability to represent his client in the best way that he believes he should be represented, and I have control of that. There is no way that a co-defendant should be able to control what happens to the other co-defendant when they have inconsistent positions.

MS. VON HERRMANN: If they had inconsistent positions, there is a remedy for that, and that is for them to make a motion for the severance of their particular cases, and that is something that should've been done at the beginning of this case, severance at the beginning of the case is the remedy for that problem, and once we find ourselves where we are now, the law is clear.

THE COURT: All right. Hold on one second. And I appreciate the fact that no motion for a severance was made. I mean, it's -- that wasn't before me, but it's also the fact that -- an argument that a, you know, one co-defendant is less culpable, or the co-defendant is the one that's alone is guilty of the crime, those matters alone are not really a reason for a -- for a severance, but that's really not before me. What's before me is this matter of last argument. And as indicated by counsel, we were talking about the case of **State**

versus Crowe and State versus Crowe, which is a case that is found -- and let me make sure I'm correct -- 188 S.E.2nd 379, 258 S.C. 258, 1972 Decision of the South Carolina Supreme Court, and it clearly states, where defendants are jointly indicted and tried, and any one of them introduces evidence, the State is entitled to the closing argument, the last argument, when one of them, even though the other one doesn't want to, and that case, incidentally, or I guess for the purpose of the record, cites State versus Huckie, found at 22 S.C. 298, an 1885 Decision of the South Carolina Supreme Court.

So, obviously, we're dealing with a -- an established rule in the State of South Carolina that has been in existence for an extremely long period of time. I appreciate the circumstance that the Defendants and their attorneys have expressed to the Court, both in the presence and out of the presence of the State's representatives, but I do not find those reasons and those arguments to be sufficient to go against this longstanding and established procedure as established by our Supreme Court of the State of South Carolina. If the current Supreme Court, as its constituted, wants to overturn this rule that's been in existence for hundreds of years, they're gonna have to do that. I don't see that it's either proper or necessary in this particular case, and I do not find it to be a proper thing to do under the

facts and circumstances of this particular case.

All right. Anything else, gentlemen, that you want to put on the record at this point in time?

Mr. Wilson?

MR. WILSON: No, sir.

THE COURT: All right. And Mr. Long?

MR. LONG: No, sir.

THE COURT: All right. Very good. Regarding that, then, it's your intention as I understand it, Mr. Wilson, to put on at least a few witnesses before you would come to the position whether or not your client is gonna testify; is that right?

MR. WILSON: Your Honor, my client is indicating to me as you speak that he no longer wants to put up witnesses.

THE COURT: Well, how about you, since we've talked about this -- I'm gonna give y'all about five more minutes to talk to him since he's just indicating that to you here in open court. I think -- you know, I'm gonna give you the opportunity to stop and talk to him about that, and fully explore that with him and make sure that's his wish and his decision because ---

MR. WILSON: Yes, sir.

THE COURT: --- you know, he's the one on trial, he needs the -- he needs to make the call here. All right?

MR. WILSON: Yes, sir.

THE COURT: Thank you very much.

MR. WILSON: Thank you, Your Honor.

THE COURT: All right. We'll take a short break. Thank you very much.

MS. VON HERRMANN: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Wilson ---

MR. WILSON: Yes, sir, Your Honor.

THE COURT: --- has your -- did your client make a decision -- let's -- before we talk about him testifying, about presenting evidence?

MR. WILSON: We have made a decision, Your Honor.

THE COURT: And what is that decision?

MR. WILSON: My client has decided that he will not present evidence.

THE COURT: All right. And so I -- I think it's important since we've had this extended discussion in this matter.

Mr. Larry Chestnut, could you stand up, please, sir?

Your attorney has indicated that you have fully discussed with him all of these issues about presenting testimony or not presenting testimony, how that would be good, or beneficial to you, or how it might harm your case, and obviously both of you or just interested, and the only thing y'all are concerned with is how it impacts you; you understand

that, correct?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right, sir. And Mr. Wilson has fully discussed this with you, correct?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right, sir. And do you have any questions you need to ask him now about this, any questions you've got about this point?

MR. LARRY CHESTNUT: No, sir.

THE COURT: All right, sir. And understanding, you're the one on trial, and ultimately it's your decision, are you in agreement with what your attorney has said, that you do not want to present evidence in this case?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right. Very good. Thank you very much.

MR. WILSON: Judge ---

THE COURT: Yes, sir.

MR. WILSON: --- just so the record is real clear, his sole reason for not presenting evidence is based on the discussion we had with the Court earlier, with Mr. Long and with the Solicitor, about the last argument and the conflict that it caused between Defense counsel.

THE COURT: And I appreciate the conflict, okay, I really do; I understand that. I was a defense -- you know, I was a trial attorney, and I was never a prosecutor, so I understand

that. Okay?

MR. WILSON: Yes, sir.

THE COURT: But, you know, your job is to represent your client and Mr. Long's job is to represent his client, and the two of them have to do what they think is in their own best selfish interest.

MR. WILSON: Yes, sir.

THE COURT: All right. How it best helps me, that's how you've got to -- whether it hurts or harms your life-long buddy and friend or not, that's where you are, and that's how you got to look at it. So, again, I appreciate your telling me that, Mr. Wilson, but again ---

Mr. Chestnut, I need for you to stand back up again now.

All right. Whatever the reason is and that's your reason, and that's a great reason, you know, whatever reason you want to use, okay, in making your decision, but again, you understand it's your decision, correct?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right. And you're free to make that decision based on the information you get from your attorney, and your attorney can say, I think its best that we do "X", but you don't have to do "X". Okay? You can say, I appreciate what you're telling me, Mr. Wilson, but I want to go a different way, I want do this. All right? You're the one on trial.

So, again, here's the question, do you want your attorney to present evidence on your behalf in this case or do you want to preserve or keep the last argument? Which one do you want? Do you want to present evidence, or do you want to keep the argument, because that's what it comes down to?

MR. LARRY CHESTNUT: The argument, sir.

THE COURT: I'm sorry; I didn't hear you.

MR. LARRY CHESTNUT: Keep the argument.

THE COURT: Keep the argument. All right. Very good. Thank you very much, sir.

Thank you.

All right. So, I'm not gonna bring the jury out and then have Mr. Wilson you tell me the Defense rest, and I turn to you, Mr. Long, and you tell me the Defense rests for your client. We'll do that in front of the jury but -- so that we can take care of all these matters now, Mr. Wilson, officially, are you telling the Court that on behalf of your client, and that being Larry -- it has Larry, and it's got -- I think it has Ty, Tyrone, I'm sorry -- Larry Tyrone Chestnut, as set forth on the indictment, on behalf of your client, does the Defense rest?

MR. WILSON: The Defense rests, Your Honor, at this time on behalf of Larry Chestnut.

THE COURT: All right. Very good. All right. Thank y'all. Y'all can have a seat.

All right, Mr. Long? What is the position on behalf of your client Kendrick Chestnut?

MR. LONG: Kendrick Chestnut rests, and we need to renew ---

THE COURT: That's what I was gonna ask you to do at this point in time now. I want y'all, since y'all rest, so we don't have to then -- okay, Madame -- or Mr. Foreman, ladies and gentlemen, go back out and then y'all make your arguments, so that's where we are.

So, let me hear your arguments.

MR. WILSON: Your Honor, I won't go back into it. You've heard it, it's all in the record, but I would like to at this point renew my motion for a directed verdict that I made at the end of the State's case in its entirety, and I would also like to renew the motion that we made in camera, and then with the Solicitor present regarding the conflict between the Defenses in this case and the last argument.

THE COURT: All right. Very good.

Again, not going through the whole directed verdict standard again, but basically -- and I think it's clear that what the Court is looking at is the existence of evidence, whether the evidence exists in the case, whether it's been properly introduced and it's before the jury in this matter, not weighing credibility, believability, whether something is true or not true, that being the job of the jury,

but I find, in response to your motion for directed verdict, that there is, in this case, direct evidence and substantial circumstantial evidence, both of them, reasonably tending to prove the guilt of your client for the crime for which he has been charged, that being murder, and therefore would respectfully decline to grant your motion for a directed verdict.

Mr. Long?

MR. LONG: Your Honor, I ---

THE COURT: I'm sorry. Were there any other motions that you had, Mr. Wilson?

MR. WILSON: Nothing further, Your Honor,

THE COURT: All right. Thank you.

MR. LONG: Your Honor, I renew my motion for a directed verdict. There is no evidence -- now that Defenses have both rested and this case is over, there is no evidence in this record tending to prove the guilt of Kendrick Chestnut of murder, none. There might be some evidence in this record that might show an assault, there might be some record -- some evidence in this record that might show some kind of accessory, but there is no evidence in the record, in this case, that would tend to prove guilt of murder against Kendrick Chestnut at all, and we would respectfully request you to direct a verdict against Kendrick Chestnut.

THE COURT: All right, sir. Let me -- before I get

directly to your arguments, let me address for both of you, again, the State's ruling on the -- or the -- regarding the last argument matter. The Court reaffirms my previous ruling that we discussed on the record, relying upon the precedent that has been set in this state of longstanding, and I cited the two cases, the **State versus Crowe**, the 1972 Decision of the South Carolina Supreme Court, and the 1885 Decision of the South Carolina Supreme Court, **State versus Huckie**, whereby the issues where the defendants are jointly indicted and tried, and any one of them introduces evidence, the State is entitled to the closing argument, or the last argument. I find that to be the -- not only the precedent, the proper precedent, but applying that to the facts and circumstances of this case, I find it to be proper, and that it does not unduly prejudice the Defendants in this matter, they having been jointly tried and -- in this matter. So, I respectfully decline to grant the last arguments to the Defendants if they had decided to put up testimony, or one of them had decided to and the other one didn't.

Now, on the basic issues of directed verdict, not going through that again, but again, regarding your motion for a directed verdict, I do find -- and we previously talked about that, but again, relying upon all the evidence that has been presented by the State in this case, I do find that there is direct evidence, and also substantial circumstantial evidence

that reasonably tends to prove the guilt of your client, Mr. Kendrick Chestnut, and that would prove him guilty of the crime for which he's charged, and that being murder.

Now, you made sort of a ancillary argument, I believe. Correct if I'm wrong, but he was charged in the indictment for murder. The law of the State of South Carolina is in an indictment a person can be convicted on the theory of accomplice liability pursuant to an indictment only charging him with the principal offense. And I believe that's -- again, is longstanding law in the State of South Carolina, so just the fact that he was charged as a principal does not mean that, based upon the facts and the evidence presented he cannot be convicted on the theory of accomplice liability of the crime for which he's charged, that is murder. And so rolling all that into your argument for a directed verdict, I would respectfully decline to grant your motion for a directed verdict, Mr. Long.

All right. Any further motions on behalf of your client, Mr. Long?

MR. LONG: No, Your Honor.

THE COURT: All right. Very good.

I sort of jumped ahead of myself, didn't I? I did not ask your respective clients, and inform them about their right to testify, and we need to do that, so -- I don't intend to go back to these directed verdict motions. I'll deal with that

in just a second, but I want to be clear about this, and I sort of covered it with Mr. Larry Chestnut but not as I should.

Mr. Chestnut, please stand, if you would.

And Madame Clerk, would you place him under oath?

LARRY CHESTNUT, being first duly sworn, states as follows:

THE COURT: All right. Now, at this time, Mr. Chestnut, I'm gonna explain to you certain of your Constitutional Rights. If, at any time, you don't understand me, you have a question about it, there's something you need you bring up, you need to stop me in some way. You can raise your hand, you can tell Mr. Wilson, whatever it is, but you need to tell me there's something we need to talk about. Are we in agreement there?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right. Very good. We've reached the stage of the trial, the State has presented its case, whatever it's gonna present, and the State has rested. You have the right to claim the protection given to you by the Fifth Amendment to the Constitution of the United States of America. And that says no person shall be compelled, that means forced, in any criminal case, to be a witness against themselves. That means nobody can make you testify, they can't force you to testify, but you have the right to testify. You can

testify if you want to. That's your choice, and it's your decision. Again, you get the advice of your attorney, but again it's your decision, your choice. If you decide to testify, you're gonna be subject to the same rules that you've seen all the other witnesses that come up in this trial, be put under oath, your attorney will ask you questions, and then one of the Solicitors will cross examine you as to any issues or facts the Court would deem proper; do you understand that?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right. In addition, is there -- does Mr. Larry Chestnut have any -- Solicitor, does Mr. Larry Chestnut have any record that you would be cross examining him on?

MS. LIVESAY: No, sir.

THE COURT: All right. Very good. So, that's not an issue, you don't have a record that they could ask you about. If you decide to testify, and again it's your decision, that's got to be made freely and voluntarily, nobody is making you make this decision. You're deciding to do whatever it is that, that you're going to do in this, and you understand the rights that I've talked to you about. If you decide not to testify, I'm going to charge the jury, I'm gonna tell the jury, in my instructions on the law to them, that they can't give that fact any consideration whatsoever. I'll tell them they can't even talk about it in the jury room; it's not a fact in this case; they can't use it in making up their

decision.

Now, understanding it's your decision to testify or not testify in this matter, do you have any questions you need to ask your attorney or anybody else at this time?

MR. LARRY CHESTNUT: No, sir.

THE COURT: All right. Do you understand everything we've talked about?

MR. LARRY CHESTNUT: Yes, sir.

THE COURT: All right. Do you want to testify in this case?

MR. LARRY CHESTNUT: No, sir.

THE COURT: Very good. Thank you very much.

All right. Mr. Kendrick Chestnut.

Madame Clerk, if you'll place him under oath, please.

KENDRICK CHESTNUT, being first duly sworn, states as follows:

THE COURT: All right. Mr. Kendrick Chestnut, I appreciate the fact you were probably listening to the questions and what just went on in my talking to Mr. Larry Chestnut, but yours is a separate case, and yours is separate decision. Do you understand that?

MR. KENDRICK CHESTNUT: Yes, sir.

THE COURT: All right. Now, I'm gonna explain to you, as I did to Mr. Larry Chestnut, certain of your Constitutional Rights that you have, and again, if there's anything you don't

understand, or you've got a question about it, or something you need to bring up, you need to stop me and tell me. Raise your hand, you can tell Mr. Long, but someway you've got to indicate to me that you've got a question or an issue. Are we in agreement there?

MR. KENDRICK CHESTNUT: Uh-huh **(indicating positive.)**

THE COURT: All right. Very good. Now, we've reached the stage of the trial where you can present a defense. Now, you can call people on your behalf, you can testify, but you have the right to claim the protection given to you by the Fifth Amendment to the Constitution of the United States of America, and that says no person shall be compelled, that means forced, in any criminal case, to be a witness against themselves. That means nobody can make you testify. You can testify if you want to, that's your choice. You control that; it's your decision. You can get all the advice you want to from your attorney, but you make the decision; you understand that?

MR. KENDRICK CHESTNUT: Yes, sir.

THE COURT: All right. Now, regarding this, if you decide to testify, you're gonna be subject to the same rules, you've seen it, what happens, your attorney would call you, he'd ask you questions, you'd answer them, and then you would be asked questions by the State and Mr. Wilson; you understand that?

MR. KENDRICK CHESTNUT: Yes, sir.

THE COURT: All right. As I understand it, Solicitor, the -- Mr. Kendrick Chestnut has no record; is that right?

MS. LIVESAY: No, sir.

THE COURT: All right. Very good. So that's not an issue. If you decide to testify, again, that's got to be your choice. You've got to make it freely and voluntarily, knowing the -- the protections given to you by the Constitution, and again, if you decide to testify, I'm gonna tell the jury, I'll make it clear to them there's two cases here, they got to make two decisions, that they can't give the fact that you didn't testify any consideration whatsoever, they can't talk about it in the jury room, it's not part of this case; they can't use it to make a decision. I will be clear with them about that.

Now, before I asked you if you want to testify, do you understand everything we've talked about?

MR. KENDRICK CHESTNUT: Yes, sir.

THE COURT: Do you have any questions that you need to ask me or Mr. Long?

MR. KENDRICK CHESTNUT: No, sir.

THE COURT: Do you need to talk to anybody about this?

MR. KENDRICK CHESTNUT: No, sir.

THE COURT: All right, sir. Do you want to testify in this case?

MR. KENDRICK CHESTNUT: No, sir.

THE COURT: All right. Very good. Thank you very much.

All right. Having covered that, and taking the renewed motions for a directed verdict by the Defendant Larry Chestnut, I -- any additional arguments you want to make Mr. Wilson on your directed verdict motion?

MR. WILSON: No, sir, Your Honor.

THE COURT: All right. I respectfully decline to grant the directed verdict based on the matters we've previously discussed, you know, all of the issues, the **State versus Crowe** and all the other issues we talked about.

Mr. Long, any other arguments you want to make on directed verdict?

MR. LONG: No, Your Honor.

THE COURT: All right, sir. Very good. Again, the Court respectfully declines to grant the motion based on all the matters we previously discussed just a few moments ago.

All right. Since we're gonna go into the closing arguments in this matter, and obviously the State is going to make their argument first, their complete and full argument, whatever argument you're gonna make, that's what you're going to do.

Mr. Wilson, you will have your argument, and Mr. Long will have his argument, and then I'll charge the jury.

Now, regarding that, let's talk about first, the verdict

form. My intention -- and I'll be glad to hear from all of you at this point in time -- is to present to the jury, on the verdict form against Larry Tyrone Chestnut - that's the name under which he's been indicted - a two-page verdict form. On the front page it has murder, on the charge of murder, we the jury, by unanimous consent, find the Defendant Larry Tyrone Chestnut - you've got two choices to check a block on - not guilty or guilty. The note underneath that says, in bold letters, if you find the Defendant not guilty on Count 1 murder, please proceed to Count 2, voluntary manslaughter, on page 2, if you find the Defendant guilty of Count 1, murder, proceed to the case of Kendrick Chestnut.

Any objection?

And then page 2 is the verdict form for voluntary manslaughter. On a charge of voluntary manslaughter, we the jury, by unanimous consent, find the Defendant Larry Tyrone Chestnut, two choices again, a block, not guilty, guilty.

And then down at the bottom, if they've gone to that, and it says, please proceed to the case of Kendrick Chestnut.

Any objection to that form from the State?

MS. LIVESAY: No, sir.

THE COURT: From the Defendant Larry Chestnut?

MR. WILSON: No, sir, Your Honor.

THE COURT: All right.

MR. LONG: I do object to it, Your Honor.

THE COURT: Okay. Well, I was gonna get to your ---

MR. LONG: I object to the Larry Chestnut verdict form actually. I don't think it's correct or proper to have a jury decide the Larry Chestnut case in full before they can move to decide the Kendrick Chestnut case. I think they should be able to decide the Kendrick Chestnut case first, and move to the Larry Chestnut case second, or they should be able to do them both at the same time. But I don't think it's fair for my client -- if they fail to reach a verdict your verdict form, and your instruction, doesn't even get them to the point where they're trying to decide my client's innocence or guilt, so, I don't think that's proper. I would ask that you remove the, if you find the Defendant Larry Chestnut guilty of anything, or not guilty of anything, then move to Kendrick Chestnut. I don't think that's fair. I believe we -- since we're two separate defendants being tried at the same time, you give them a verdict form for Larry Chestnut that lets them decide if he's guilty or not guilty of murder, guilty or not guilty of voluntary, guilty or not guilty of involuntary. Nothing about Kendrick Chestnut in his, and I would ask that in Kendrick's you say that they have three -- well, three possible verdict forms: murder, guilty or not guilty; voluntary, guilty or not guilty; or involuntary, guilty or not guilty.

THE COURT: We haven't gotten to the involuntary or ---

MR. LONG: Well, I ---

THE COURT: Well, we're not there yet.

MR. LONG: Right. Well, I object to the reference to Kendrick -- to waiting to go to Kendrick Chestnut's deliberation until after a decision has been made ---

THE COURT: So, what's your suggestion?

MR. LONG: My suggestion is to take it out.

THE COURT: All right. Well, I appreciate that. I've got two verdict forms. I'm gonna tell them -- I got to tell the jury something.

MR. LONG: I would ask that you tell the jury that they've got two cases to decide. In one of the cases, they've got Larry Chestnut's verdict form. The verdict form in Larry Chestnut is this ---

THE COURT: Okay.

MR. LONG: As soon as they reach a verdict, inform Mr. Foreman, sign your name on the verdict line and knock on the door. I would ask the same for Kendrick Chestnut's verdict form.

THE COURT: Well, I -- well, I'm not gonna tell them to knock on the door ---

MR. LONG: Well ---

THE COURT: I will tell them ---

MR. LONG: Set it aside and ---

THE COURT: When they have reached a decision, whatever

it is, on both of them, then they can knock on the door and let -- let us know.

MR. LONG: I've got a question for the Court actually, I've never had this arise, and obviously we've had some co-defendant issues here. What happens if the jury can't reach a decision on one defendant, but does reach a decision on the other? How do we find out that they've reached that decision if we don't give them ---

THE COURT: Because there's -- they will, at some point in time knock on the door, write a note and let us know. They're not gonna sit there for three days without doing something. All right. I mean, they're gonna -- they're gonna bring it to the Court's attention.

MR. LONG: But if you tell them that they have to decide Larry Chestnut's case first ---

THE COURT: All right. I appreciate what you're saying but I'm not gonna tell them, decide one case and knock on the door. I'm not gonna tell them to do that.

MR. LONG: And I'm not really asking for that.

THE COURT: Okay.

MR. LONG: That was an illustration of why it's important not to give them ---

THE COURT: All right. That's fine. I can tell them to -- there's a verdict form for one, and the verdict form for two, you have to decide both cases separately, and I've got a

charge about that.

MR. LONG: Just that one verdict ---

THE COURT: And then when you have decided both cases, knock on the door and let the Court know. All right. Any problem with that?

MR. LONG: I have no problem with that whatsoever.

THE COURT: All right. Very good. I don't have a problem doing that. That's not a problem at all. Not a problem at all.

Now -- okay now. You have brought up -- and I did not prepare a verdict form, and not currently my intention to include involuntary manslaughter in this matter. Tell me -- I understand it may or may not be the choice of the State or a particular Defendant, it's my duty to charge the jury what I think is the proper law independent of what I'm asked of by the State or the Defense, but you've brought it up. Tell me under what facts and circumstances that have been placed in the record that would have me charge the jury involuntary manslaughter.

MR. LONG: None. That was a -- just a slip. I was going through ---

THE COURT: Okay.

MR. LONG: I was going through a murder trial ---

THE COURT: Okay.

MR. LONG: I haven't seen any evidence in this case that

would lend a jury to find anybody guilty of involuntary manslaughter.

THE COURT: Okay. So, you want me -- well, my intention is to present it to them on behalf of your client on the charge of murder, that if they find him -- I am going to put on there, on both of them, if you find the Defendant not guilty of Count 1, murder, please proceed to Count 2, voluntary manslaughter on page 2. I got to tell them that.

MR. LONG: I agree with that.

THE COURT: All right. So -- and then I would put also, if you found the Defendant guilty of Count 1, murder, stop deliberating on that matter.

MR. LONG: Right.

THE COURT: Because that's -- that would be end of it. We don't want to confuse them and think they have to then make a decision on voluntary when they've already made a decision on murder. All right.

Okay. So that's my intention there. I'll set that aside for a minute.

Charge on the -- charge on the law. Talk to them about the usual things we usually talk about, credibility, believability, same thing I told them about note taking, direct and circumstantial evidence, the thing about expert witnesses that just because I qualified somebody to give their opinion doesn't give them a special status, you judge all the

evidence the same, it's credibility, believability, a charge about testimony of children, basically indicating that, as with any witness you determine whether or not that testimony is believable, in deciding that you may consider not only matters that we've already discussed but you also may consider the age of the child, the child's ability to observe and remember facts, the child's ability to understand and understand questions, because young children may not fully understand what is happening. It's up for the jury to decide whether or not the child understood the seriousness of appearing as a witness at the criminal trial, whether the child understood the questions, whether the child had a good memory, whether the child understands the difference between lying and telling the truth, and in addition, young children may be influenced by the way questions are asked. It's up to the jury to make that decision.

The instruction about the Defendants did not testify, that it's not a factor to be considered by them in their deliberations, not to be considered in any manner whatsoever, draw no conclusions, presumption of innocence, reasonable doubt, the kind of doubt that would cause a reasonable person to hesitate to act.

Also I am going to charge mere presence, mere presence at the scene is not sufficient to prove somebody guilty of a crime. Tell them, again, it's the burden of the State of

South Carolina to prove every element of the crime charged beyond a reasonable doubt. I am going to charge murder, voluntary manslaughter, and I probably -- I said mere presence, I probably will put that at the end. I'll probably then say mere presence, and I will use also an additional charge that a person's mere presence where a crime may be -- may be, or was being committed, does not in and of itself make a -- the Defendant guilty of the crime.

And then I'll talk about the hand of one is the hand of all, and then we will obviously need to talk about self-defense. Anything else? Prior record of a defendant, I need to put that in there because that was one of the witnesses -- I said defendant, prior record of a witness is what I'm gonna charge because there was a -- I think it was Mr. Day, that will be -- that will be charged. I will also charge and I'll just read it to you, it's not that long. I charge you that there are two defendants in this case, Kendrick Chestnut is charged with murder, Larry Tyrone Chestnut is charged with murder. The case of each defendant and the evidence and the law concerning that defendant should be considered separately and individually. Your verdict does not have to be the same for both Defendants. The fact is you may find one Defendant guilty or not guilty, and that should not, and cannot control your verdict as to the other Defendant.

Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other or you may acquit both, or you may convict both. It would depend upon your view of the testimony and evidence. You must take each defendant and consider the evidence as to that defendant and my instructions to you on the law. You will then write a separate verdict for each individual Defendant on the charges or the charge presented. So, I will do that also.

Now, as to self defense, my intention to charge self defense -- I am going to include in there, I mean, you know, you have to be without fault, the issue about mutual combat, imminent danger, the right to act on appearances, size and age, and no other way to avoid the danger, there's -- also state that the Defendant was on his own premises; the Defendant had no duty to retreat before acting in self defense, increased risk of harm; the defendant has no duty to retreat if by doing so the danger or being killed or suffering serious bodily injury would increase; lawful guests, lawful guests in another's home has no duty to retreat before using deadly force in self defense; degree of force, continuing until a threat of harm is ended; defense of others; and that should -- I believe that would be what I would charge.

So, anything from the State that you would -- we probably need to put in there greater or lesser offense; I

just thought about that, since I am charging murder and voluntary manslaughter. So I do need to put in there greater or lesser offense.

Anything else from the State?

MS. VON HERRMANN: Judge, if we could have just a moment to look over this self defense charge. Obviously, that does change a little bit with the inclusion or exclusion of the **Castle Doctrine**, so if you could give us just a moment to look at that.

THE COURT: Okay. All right.

MS. VON HERRMANN: Your Honor, may we approach for one moment?

THE COURT: Sure.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. So, is there anything else that the State wants me to add?

MS. VON HERRMANN: No, sir.

THE COURT: All right. And how about the -- your client, Mr. Wilson?

MR. WILSON: Your Honor, the only thing that I have asked earlier, and the Court's already ruled on it actually, is the **Castle Doctrine** and the Court's ruled on that, and -- but I just want to again make a record that I object.

THE COURT: Okay. And I appreciate that and I won't charge 16-11-440 for the reasons I stated previously, that I

was being not only governed by the Court of Appeals case, but the fact that the effective date of 16-11-440 and when this incident took place. I think everybody -- whatever the incident was, I think everybody is in agreement that it took place, you know, on May 21.

MR. WILSON: Yes, sir.

THE COURT: And the effective date of the legislation was June 9, 2006. They weren't indicted until in July, and that was July 27th, and I know that was your argument, but I think what I'm governed by is when it actually took place.

MR. WILSON: I understand.

THE COURT: And then the Court of Appeals saying that we're not -- the legislation was not retroactive, and that was not the intent of the legislature to make it retroactive. Okay?

MR. WILSON: Yes, sir.

THE COURT: All right. Since we have kept them out there, you want like five minutes and get organized and we'll come in and -- what we'll do is I'll bring them in, I'll turn to you, Mr. Wilson, and you can tell me that the Defense rests, and then I'll turn to you, Mr. Long, you can tell me the Defense rests, and then we'll go straight on to the closing argument of the State.

MS. LIVESAY: Your Honor, if there is any way that we can break and start that tomorrow morning, it would be most

appreciated, just because they've been listening to testimony now for four days. It's a murder case, it's 3 o'clock in the afternoon already.

THE COURT: I appreciate that, and I don't normally -- I appreciate that.

Well, before I make a decision, Mr. Wilson, what's your ---

MR. WILSON: Yes, sir. Judge, I have mixed emotions but I kind of agree. My concern is, I am in a bind here where I was preparing to put up evidence, I'm not now putting it up. I need to revamp and I ---

THE COURT: You want some time to fashion your closing argument.

MR. WILSON: I need that time.

THE COURT: All right. Mr. Long?

MR. LONG: Absolutely object to the case going over into tomorrow. It's 3 o'clock. The Solicitor told us that we were gonna finish her case Wednesday at lunch. It's Thursday at 3 o'clock, I think if we're here, I think it's hot. I think we can finish this case tonight, in its entirety, if we give it a shot and I think we should try.

THE COURT: I'll tell you what I'm gonna do. I'm gonna call the jury in, and I'm gonna tell them after the Defense rest and the Defense rests, I'm gonna tell them, you've heard all the evidence in the case, this is what remains, closing

argument of the State, closing argument of Mr. Wilson's client, and closing argument of Mr. Long's client. After that, I'm gonna submit -- you know, I'll give you the charge on the law and then I'm gonna submit the case to you for your deliberations. I want to put it to the jury; we can continue on right now and do all that, and I can submit the case to you for your deliberations or you can come back and start off with the closing arguments and charge of the law tomorrow morning at 9 o'clock.

The jury is the one that we are involuntarily keeping and it's their time -- I appreciate the rights of Defendants in this case, but we need to respect the rights also of the jury, what we're doing with the jury. So, I'm gonna leave it to them.

MR. LONG: On that issue, Judge, I understand that we want to respect the rights of the jury, but they have to have a expectation they're gonna work till 5:00, so I would ask that we argue and charge, and then ask them if they want to stay and deliberate or not.

MS. LIVESAY: Your Honor ---

THE COURT: I would -- I don't -- I would prefer -- and I don't think it's a good idea that we argue and charge and then we send them home, and then they come back the next day and they start deliberating. I really don't think that is to anybody's benefit. I don't think that's to the State's

benefit, I don't think it's to the Defendants' benefit to have them have that delay between hearing your arguments and the charge on the law and then overnight, and then they got to come back the next day and regroup and rethink, now what did the State say, what did the Defendants say, Defendants' attorneys say, what did the Judge say; I don't think that's a good idea. We're gonna do it all or nothing. So that's why I'm gonna leave it to them.

MS. LIVESAY: Your Honor, just very briefly on Mr. Long's argument. I think they do need to know, because I don't know what their expectation is, but if we do all that tonight, I don't think ---

THE COURT: I'm going to make it clear to them that they're here until they make a decision.

MS. LIVESAY: Okay.

THE COURT: I mean, that's what it is. I, you know, that's -- it's gonna be clear to them.

MS. LIVESAY: Okay.

THE COURT: You know, when they get the case, it's their case and they're gonna be with us until they make a decision.

MR. LONG: Thank you, Judge.

THE COURT: All right. So let's just take a very short break for like five minutes, and we'll come back in and then we'll call them in.

All right. Thank you.

(THE FOLLOWING TAKES PLACE AFTER BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, are you ready for the jury to come in?

MS. LIVESAY: Yes, sir.

THE COURT: Mr. Wilson?

MR. WILSON: Yes, sir, Your Honor.

THE COURT: And ---

MR. LONG: Kendrick Chestnut is ready, Your Honor.

THE COURT: All right. Very good. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Ladies and gentlemen, Mr. Foreman, ladies and gentlemen, I appreciate your patience. There -- when we have two cases that are being tried together, and that's what's happening, we have two cases being tried together, there are issues that need to be worked out and we needed time that we took to do that.

Mr. Wilson, what's the position of the Defendant Larry Chestnut?

MR. WILSON: At this time, Your Honor, the Defendant Larry Chestnut would rest.

THE COURT: All right. Mr. Long, as to the Defendant Kendrick Chestnut; what's the position of the Defendant

Kendrick Chestnut?

MR. LONG: Your Honor, Kendrick Chestnut rests his case.

THE COURT: Very good.

All right. Ladies and gentlemen, you have now heard all the facts and evidence in this case. There will be no other evidence presented in this particular matter. What remains now are the closing arguments, that is, the closing argument of the State, the closing argument by Mr. Wilson, the closing argument by Mr. Long. I assume when all that has taken place there will be -- that will take some period of time. We'll probably take a short break. I will give you the law that you're going to apply to the facts and evidence presented in this matter. And when we get done with that, then, I will submit the case to you for your deliberation and your unanimous decision on both cases, because you've got two decisions to make. You've got a decision on each Defendant to make. I'm telling you all that because when the case is submitted to you, it is your case until you unanimously decide both cases. You will be with us until you unanimously decide both cases. Therefore, I'm gonna give you an option. We can proceed on now, and you will be with us until you unanimously decide both cases, for however long that takes, or you may decide to come back tomorrow morning at 9 o'clock and proceed on with the closing arguments, the charge on the law, and then have the case submitted to you for your deliberations and your

unanimous decision on both cases.

So, Mr. Foreman, take the jury back to the jury room, take a couple of minutes, have them let you know do you want to be here today, and be with us until you unanimously decide both cases, for whatever period of time that all takes, or do you want to come back tomorrow morning and start then?

So, take the jury back to the jury room and take a couple of minutes, and knock on the door and let us know.

Thank you. Leave your pads and pens, please.

Thank you.

All right. We'll be -- we're just gonna sit here and wait for a couple of minute. We're not going anywhere, nobody is going anywhere, we'll just sit here and wait until the jury decides one way or another.

(THE FOLLOWING TAKES PLACE AFTER SHORT BREAK AND WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Foreman, did your jury reach a decision as to how we're gonna proceed?

MR. FOREMAN: Yes, Your Honor, we did.

THE COURT: And what is that, please, sir.

MR. FOREMAN: We elected to come back at 9:00 in the morning to hear the closing arguments ---

THE COURT: And the charge and then decide the case. Very good, sir. All right.

All right. Ladies and gentlemen, I'm gonna let y'all go

and just remember my instructions to you, don't talk to anybody, don't allow anybody to talk to you about the case. You have now heard all of the facts and evidence in this case that you're gonna hear about this particular matter. Now, you need to hear the closing arguments of the attorneys, again they're not evidence but there each side's submission to you of what they believe, and what they want you to do and you obviously don't know the law yet that you've got to apply to the facts and evidence you find to be true in this case.

So, don't do any research on your own, don't look up anything, don't talk to anybody about this, don't allow anybody to talk to you about, and I'll see you back tomorrow morning at 9 o'clock.

Thank you very much.

Everyone else remain seated.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Now, counsel, we're gonna come back at 9 o'clock so I would appreciate it if y'all would be in position at least by a quarter of, if not earlier. Y'all be in position, the Defendants in the courtroom, everybody is ready to go so we can start at 9 o'clock.

I would appreciate it, Solicitors, Mr. Wilson, Mr. Long, if y'all would get with the court reporter, Ms. Dixie, before you go and make sure we've got all the exhibits, everything is

in order so that we don't have any questions about that, or if we need to resolve that, we can get those resolved.

In just a second, my clerk is going to bring down the verdict form that I'm going to submit to the jury. I would like all of y'all to look at it, see if you've got any questions about the verdict form so if you do we can take care of that before tomorrow morning.

So, with that, anything else from the State?

MS. LIVESAY: No, sir.

THE COURT: Mr. Wilson?

MR. WILSON: Nothing, Your Honor

THE COURT: Mr. Long?

MR. LONG: No, Your Honor.

THE COURT: All right. Thank y'all very much. Tomorrow morning nine o'clock.

(THE FOLLOWING TAKES PLACE ON AUGUST 17, 2012, OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. It appears that the two tardy jurors have now shown up, so is the State ready to proceed?

MS. LIVESAY: Yes sir.

THE COURT: And Mr. Wilson?

MR. WILSON: I'm ready, Your Honor.

THE COURT: Mr. Long?

MR. LONG: Yes sir.

THE COURT: All right. Very good.

When they are ready, tell them to come on in as quick as they can.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Good morning, ladies and gentlemen.

The case where we are now, as I told you when we left yesterday, we've heard all the facts and evidence in the case. We are now coming to the closing arguments of the attorneys and then we'll have the charge on the law.

As I told you at the very beginning, the opening statement and closing arguments by the attorneys are not evidence. You've heard all that already, heard all the evidence in the case, but the closing arguments are important. They're each side's summation to you of what they believe the evidence has shown to you during the course of the trial and ultimately what they're going to be asking you to do as a result of your unanimous verdict, remembering, of course, that you are the judges of the facts of this particular case.

When we get done with that, depending upon their length, I told you we'll probably take a very short break. I'll call you back in. I'll charge you on the law. Then I'll give the case to you for your deliberations and your unanimous decision in these two matters.

there was a stabbing, and we know who did it. We know who else was in that house helping him, and that was Kendrick Chestnut. So, right off the bat, we know who did it, and we know how they did it, and we know what weapon was used. That's not a question in this case.

The question in this case is did he have the right to do it. That is the question. That's why there was so many questions asked by Ralph Wilson, Larry Chestnut's attorney, who took out the knife first? Who was the one that brought out that knife first? Wasn't my guy the first one that got cut in the house? That's why all of those questions were being asked.

Christie Hucks told you Joey had the knife down, scared to death. He said leave my sisters alone. At that time, Larry Chestnut said or what. He goes in to strike Joey. When he does, Joey swings the knife up and catches Larry Chestnut. There's no question about that.

Ralph was asking a bunch of questions like didn't he have the knife first? Didn't he cut my client first? The question is did Larry Chestnut have the right to kill Joey Hucks.

Now, the question is what gave him that right. Ralph Wilson is going to suggest to you that Larry Chestnut was acting in self-defense. He's going to suggest to you when Joey brought out that knife, Larry acted in self-defense.

That's the question in this case. Did Larry Chestnut have the right to kill Joey Hucks? Is this a self-defense case? Did Larry Chestnut have a defense of self-defense?

Now, I'm going to tell you if you decide that Larry Chestnut was acting in self-defense that night and he had the right to kill Joey Hucks, that's the end of that case. Self-defense is a complete defense. If he's acting in self-defense and that's what you believe, that he had the right to kill Joey Hucks in self-defense, that is a complete defense. He is not guilty. There is no question once you lay that aside, if that is what you come to.

But I am here to tell you that Larry Chestnut was not acting in self-defense. I'm here to tell you what has to exist for him to be able to say I'm acting in self-defense. There's a lot more to it than just saying I'm acting in self-defense. Four things must exist for him to say I'm acting in self-defense. That's what the law says.

His Honor goes through with you exactly what must exist for him to find self-defense. This is what this case is about. It's not a who-done-it. It's about does self-defense exist. Does Larry Chestnut have the right to self-defense. That's what it is.

Now, you have to find four things in order to find that he was acting in self-defense, all four, and I prove to you that even one of those four does not exist, he does not have

the right to self-defense. And the Judge is going to read the jury instructions to you about self-defense, but I'm here to tell you if I prove to you even one of those elements does not exist, this is not a self-defense case.

The first thing that I have to show you, did the Defendant -- was he without fault bringing on the difficulty that happened in that house. That's what -- that's what self-defense is about, was he without difficulty, was Larry Chestnut without difficulty, in bringing on the fault in that house that night.

I'm here to tell you he doesn't even meet that element. He was with fault that night. In fact, not only was he with fault, he was the reason that altercation broke out. There's no if, and's or but's about that.

When he came into that house that night with Joey and Kendrick Chestnut, he walked into the kitchen with Christie. They had a little talk. He grabbed her one time; nobody saw it. He said I'm leaving; I'm leaving. He walks out. Then he got to thinking about it and said, no, you know, all these people are here. I'm not going to leave. To hell with that. I think that's what Richard Day said.

He walked out. He could have walked right out the door. The diagram of the apartment shows you that he could have walked right out that door. He could have walked right from that kitchen, right through the hallway, grabbed his

daughter, walked right out the door.

He was there with his best friend who he works with every day, Kendrick Chestnut, so, for whatever reason, he decided not to leave. He turned back around, and when he turned back around, Christie was coming through that hallway. He was still upset and mad. When he got mad, he grabbed her by the neck, and at the time she was seven months pregnant, seven months pregnant, and he grabbed her up by the neck.

Somehow the picture breaks. Joey Hucks didn't even jump into it then when she got -- she was grabbed up by the neck. He didn't even jump in it then. Cindy Evans, her sister, jumped in and said, look, leave my sister alone. She's in there seven months pregnant. Leave my sister alone.

When she said that, the testimony from Cindy and Christie Hucks, as soon as she did that, Larry Chestnut threw her against the kitchen wall. There are bruises in the picture to show you that when he jumped on her, he beat her. There's no doubt about it. There's bruises. There's a bite mark on her leg showing that he jumped on her, and he was on top of her beating her at that time.

Now, Mr. Wilson and Mr. Long asked some questions, well, don't they end up fighting in the kitchen? Wasn't Cindy Evans and Larry Chestnut in the kitchen fighting? Now, I'm going to ask Cindy Evans to stand up real quick for me. I'm here to tell you when Larry Chestnut jumped on this woman,

that was not a fight. That was not a fight.

When he jumped on her, a twenty-eight year old man, jumped on that woman, that was not a fight. You can call it a fight, but it's not a fight. That was a beat-down in that kitchen, and the pictures are right here, that if it was, Cindy Evans clearly lost that fight.

And I'm here to tell you, that was not a fight, when this man, Larry Chestnut, jumped on that woman in the kitchen, that was not a fight, no more than if Ralph Wilson or Mr. Long jumped on me in here. That would not be a fight.

When he jumped on that woman, that was a beat-down. And after he jumped on her, she grabbed his hair, trying to get him to stop, and he bit her on the leg. I want you to look at this. This isn't a man that was going to stop anything. When he did this, when he jumped on that woman and was in such a rage, took a chunk out of her leg, it was out of control. That situation was out of control. He brought on that difficulty. There's no if, and's and but's about it. He brought on the difficulty that happened in that house.

Now, there's three other elements. The second element is the Defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. That's what the second element is.

Now, I'm here to tell you I'm not going to talk a lot about that element, but I can tell you Mr. Wilson is going to

say, well, when he brought out that knife; he was in fear. He was in fear for his life. That's what he's going to try to tell you.

I'm here to tell you the testimony is clear. Christie Hucks must have said it five times. My brother broke out that knife. He was the one acting in self-defense. Joey Hucks brought out that knife in self-defense. All he wanted was leave my sisters alone, calm this situation down.

It's obvious by the injuries to Cindy Evans he was in a rage that night, to jump on that woman, causes those bruises, and to bite her leg like that, he was in a rage. Joey raised out the knife and said just please leave my sisters alone.

She said the knife never got above right here. She said at that point Larry Chestnut said or what? You hear Cindy Evans and Richard Day testify when they were in the kitchen getting her off the floor, getting Cindy Evans off the floor, that they heard in there yelling, screaming, I'll kill you, I ain't scared of you, blah, blah, blah, blah, blah. They were not scared of Joey Hucks, not in the least. He was a eighteen year old chunky boy. They were not afraid of him. I can assure you this guy right here was not afraid of Joey Hucks. He wasn't scared at all.

And, in fact, even when Joey broke out that little pocket knife and said please, please just leave my sisters alone, Larry Chestnut said or what? It was in so little

fear, he hit him and broke his nose.

The autopsy lady told you his nose was fractured. Blood was coming out of his nose. Larry Chestnut was not at all scared of Joey Hucks in the least, and he showed him he wasn't scared, because he got in there and he got to testing, or what, what you going to do, and that's when he knocked Joey down in the floor. That's when Joey got his nose broke, so this came from Christie Hucks. She was sitting in there. She was looking right at them.

Now, this is the same woman that paid for his defense attorney, Ralph Wilson. This is the same woman that was out at the jail visiting him, talking to him. She told the same story to the police that night that she told you. He was holding that knife down, scared to death, Ty, or Larry Chestnut, would have never gotten cut if he didn't go in to hit Joey, and then Joey swung in defense. That's what she told you.

And this is the woman that was so in love with him that she paid for his defense attorney. Joey Hucks was her brother. She has no axe to grind against this Defendant. That's clear. She was out at the jail visiting him. She came in, she met with Ralph Wilson. She paid for his defense attorney, and then when we were asking her, well, did you meet with Ralph about this case? Yes. Where at? In his office.

She met with me, and she also met with Ralph Wilson. This isn't a woman that's going to come up here that has an axe to grind against Larry Chestnut. She's just here to tell the truth about whatever she saw that night, and that's what she saw.

She even said I'm in a terrible position. I just -- I'm here to tell the truth. I cannot lie. She still has a child in common with him. He still sees that child. His family still sees his child. That's not a woman that's up here bitter, trying to put it to Larry Chestnut. And if she was bitter and she wanted to put it to Larry Chestnut, she could.

She could have said yeah, I walked in there and saw him stabbing my brother, but she didn't. She said I saw him with the scissors, but I never saw any stabbing. I took the kids upstairs, and when I got downstairs is when I took Joey out and I saw Ty with the scissors, Larry Chestnut.

Make no mistake about it, if she had an axe to grind and she wanted to put it to Larry Chestnut, she could. She could have said, yeah, I saw him stab him, but she didn't. She said this is what I saw.

Now, the third element of self-defense, would a reasonable person of ordinary firmness and courage would have entertained the same belief, that's a question of what would a reasonable person do in this type of situation. Well, I'm

going to go ahead and tell you.

Larry Chestnut could have walked right out this door, and he chose not to. There's no question about Joey never took that knife above right here. He wasn't like this, I'm going to hurt you; you can't leave. All he wanted was for the situation to stop. All Larry Chestnut had to do was walk out the door, and he didn't.

Number four is the Defendant had no right of probable means of avoiding the danger. Now, you heard Mr. Wilson ask about didn't he just want to leave, didn't he just want to leave. He could have left at any point in that situation, and he chose not to. He chose not to leave. He could have left just right from the beginning out that door, and he said I'm going home. He could have left, but he didn't leave.

He turned around and grabbed Christie Hucks, and then when her sister intervened, she -- he threw her across the kitchen and jumped on her, and even then when he was beating her in the kitchen, there is a door right here in the kitchen. He could have left out of that one, but he didn't. He didn't leave out of that door.

Cindy Evans tells -- tells you that she was scared to death. She leaves out that door trying to wave down traffic. She's trying to wave down traffic to get help, and Richard Day, because that's his girlfriend, which anybody would expect him to do, ran after her, are you okay, do you need

medical help? What are you out here doing?

But Larry Chestnut didn't run out that door. He didn't run out that door. Now, Cindy Evans did; she was scared. Richard Day runs out. He's scared. He's looking for his girlfriend. Are you okay?

The person that didn't run out of that door that's in the kitchen was Larry Chestnut. He didn't run out of that door because he wasn't scared, and not only was he not scared, but he wasn't done with what he wanted to do in that apartment. He was still mad. He was still in a rage. That's why he didn't walk out that kitchen door. He wasn't scared. He didn't want to leave. If he wanted to leave, he could have left, but he didn't, because he was still angry.

So he walks back in there to where Christie Hucks is and Joey Hucks. The only two people there left in that apartment were Christie Hucks, who was seven months pregnant at the time, and her eighteen year old chunky brother, and who else? Larry Chestnut and Kendrick Chestnut. He wasn't going anywhere. He was going back in there to finish what he started. That's why he was going back in there.

He wasn't running for help. He didn't need help. He didn't want help. And I tell you somebody else that didn't run for help, Kendrick Chestnut. He didn't run for help either. Larry Chestnut walked back in there to take care of what he originally started when he grabbed Christie Hucks by

the neck. That's what he walked back in there for.

He was mad, and he wanted to finish what he started, and you know who walked in there with him, Kendrick Chestnut. That's his buddy. That's his friend. Kendrick Chestnut wanted to make sure that everything went Larry Chestnut's way, and when he walked in there, Joey was scared to death.

He had already seen Christie, a seven month pregnant woman, he grabbed her by the throat. He had already seen his sister being beat to the ground in the kitchen. Then he sees this guy, Larry Chestnut, coming back into the living room. He had already seen two people get beaten out. Cindy Evans and Richard Day had already took off. He knew the only people left in that apartment were him, and a pregnant woman, and these two men. He was scared to death.

I'm here to tell you he did not have to wait until Larry Chestnut and Kendrick Chestnut jumped on him to defend himself. He did not have to wait until that happened. All he wanted to do was for them to leave those women alone. That's all he wanted. He broke out that knife to defend himself and his sisters. That was his right. He had a right to defend himself.

They want you to believe that Larry Chestnut is acting in self-defense. That's what they want you to believe, but that is not the truth. The truth is it was Joey Hucks who was acting in self-defense. He was the one in fear. He was

the one that hadn't done anything that night to bring on that situation.

He was the one that was in that situation. He was the one that was scared to death that Larry Chestnut and Kendrick Chestnut were going to jump on him and beat him up. He had the right to defend himself. He had the right to break out that knife and to defend himself. He was the one acting in self-defense.

He didn't follow Larry Chestnut in that kitchen. He didn't follow anybody anywhere. He was never looking for an altercation. All he was looking to do was to defend his sisters. He had already seen Cindy Evans get beat down, and what else he saw was the same thing Christie saw, Kendrick Chestnut holding Richard Day back.

The only reason Cindy Evans didn't get it worse than what she did, and she was scared to death, she tells you I was scared for my life. That's why I ran out that door, and her actions say I'm scared for my life. She didn't stick around. She ran. The 911 caller says they're out there in the middle of the road stopping traffic. She was scared for her life. The difference is Richard Day was able to get past Kendrick Chestnut and get him off of him. That was the difference.

Joey Hucks was in there acting in self-defense. That was his right to act in self-defense. Now, the question is

did Larry Chestnut act in self-defense. I'm here to tell you he did not. He doesn't even meet the first element. He has to meet all four of those.

If I disprove even one, if you believe that he brought on that altercation that night by grabbing a seven month pregnant woman, and beating this woman in the kitchen, that he wasn't acting in self-defense, that's what the law says. If you believe that he brought on that altercation by grabbing that woman up and beating this woman down, then he's not acting in self-defense.

Now was Larry -- we've already covered that -- was he at fault? He was obviously at fault. Did he have no other probable means of avoiding the danger? That's the fourth element. He did. He could have left that situation any time he wanted to. All four of those, not just one, not just two, all four have to exist for him to have self-defense, all four.

If I disprove one, then he does not have self-defense, that he does not have the right to kill Joey Hucks, and I'm here to tell you he brought on that difficulty. He was not acting in self-defense. Not only was he not acting in self-defense, he was the primary aggressor when he swung his hand and broke Joey Hucks' nose.

Now, when you get back there, go through self-defense first. Does Larry Chestnut have that Defense or does he not?

When you decide that he does not meet all four, you have to put self-defense aside. It can no longer be discussed. Once self-defense has not been established and I prove that one doesn't exist, and it only takes proving one, then you have to put that aside.

Once self-defense is put aside, what is there? What kind of case is this? I'm here to tell you this is a murder case. There's no if, and's about it. Joey Hucks is dead. We heard from the pathologist, the lady who did the autopsy. He is deceased; there's no doubt about it.

Now, she also testified that he did not die from natural causes. He didn't. This is a killing. He died from a puncture wound to the heart. This is not a natural death. He died from a puncture wound to the heart. This is a killing. This is a murder case.

Now, the question is did Kendrick or Larry Chestnut act with malice. The act of malice is the killing of another acting in malice. We don't have to show premeditation. That's not an element. All we have to show is that he was acting in malice when he was stabbing Joey Hucks. Now, malice is any intentional doing of a wrongful act. Even simpler than that, malice is any intentional doing of a wrongful act, any ill will, hatred or hostility. It's any reckless disregard for somebody else's life. That's what malice is.

Malice is -- don't get caught up. It is not premeditation. That's not what I have to show you. I just have to show you that malice -- he was acting with ill will, some sort of hatred, some sort of hostility when he's stabbing Joey Hucks. It doesn't have to be premeditated. He has to be acting with that malice when he stabs Joey Hucks, and I'm here to tell you he was.

They heard in -- outside, you heard -- or actually inside, Cindy Evans testifies that all I remember hearing when I was in the kitchen was kill, kill, kill. Richard Day said I remember hearing kill, kill, kill. That's actual malice.

They're saying that because that's what they're doing. That's what they want. He was stabbing him to kill him. There was hostility there. They say -- the 911 caller said I seen somebody on top of another man, and Mr. Wilson said was that a struggle? She said no, there was no struggle. The man on the ground was not moving.

Richard Day says when I turned back, all I hear is Kendrick Chestnut yelling kill, kill, kill, and I see Larry Chestnut on top of him stabbing, and I see Kendrick Chestnut down there kicking. That's a murder, folks, when you've got two men on top of another man stabbing him to death, yelling kill, kill, kill. That is a murder case.

And the injuries in this case are so important, so

important. He broke his nose right off the bat. He was not scared of Joey Hucks. Larry Chestnut was not scared of him, and not only was he not scared of him, but he was ticked off that Joey even thought he was going to challenge him. That's what he thought about. He was mad that this eighteen year old chunky boy even thought he was going to challenge Larry Chestnut.

Every wound, the four puncture wounds you see in these autopsy pictures. They are so important in this case. Every single puncture wound in Joey is in his chest. Pay attention to what every single one of these stab wounds are. These stab wounds are in Joey Hucks' chest. These are stab wounds to kill someone.

He wasn't stabbing him in the stomach. He wasn't stabbing him in the side. Four puncture wounds to the chest. One was to the heart, punctured his heart. These are not stab wounds to a victim for somebody who is out of control, swinging a knife or swinging a pair of scissors. These stab wounds are very intentional. They are not wild, swinging stab wounds. These are intentional. Every single one of them is in his chest area. This is not a man wildly swinging or trying to get somebody off of him. These, every single wound is near the neck and his chest.

Now, even more telling than that, they want to tell you that Joey Hucks is the bad guy in this case. He's a bad guy

because he was trying to protect his sisters. It was Larry Chestnut that was acting in self-defense. That's what you want to -- that's what they want you to believe with a victim that had been stabbed four times in the chest and one time in the back. They want to tell you that Larry Chestnut had the right to kill this eighteen year old boy because he was acting in self-defense. When you have a victim with four puncture wounds to the chest and one to the back, that's what they want you to believe.

I'm here to tell you Larry Chestnut was not acting in self-defense. Joey Hucks was. I want you to look at this picture. This is his arm. This is his left hand, a closer picture of the hand, all of them defense wounds, to his inner arm and to his hand, but we know that this hand right here had two puncture wounds in it, and we know that his inner arm was sliced open.

Now, the left hand and the left inner arm, both of these injuries are on his left side. That's important in this case. These wounds are important, and I'm going to tell you why, because when you saw Mr. Wilson asking some questions to the pathologist and Carol Allen about defensive wounds, that's what they're called. She put them in quotation marks, but that's how they classify them because of the placement of the wounds.

Well, couldn't he be swinging that knife in this slice

right here, and on the same hand, couldn't he be swinging that knife and get punctured right there? I'm here to tell you, folks, you've got to come up with a wild story to make those wounds fit anything other than Joey Hucks had his hand up, his left arm up, protecting himself.

That's how he got that wound right there, and that's why they call it a defensive wound. That's why Carol Allen told you, because it's right here, is when somebody is going like this, left hand, left thumb. He had that arm up trying to protect himself. That's what he was doing.

This is a murder case. They jumped on him that night and killed that eighteen year old boy with malice. Four puncture wounds to the chest and one in the back, and they want to tell you that Larry Chestnut is acting in self-defense, when all Joey Hucks was doing was trying to defend his sisters. That's all he was trying to do, and to defend himself, and he took four puncture wounds, one in the heart and one in the back, and they want to tell you that Joseph Hucks is the problem, and he's the one with the stab wound to the back.

Now, hand of one, hand of all, that's very important in this case, because we're not just trying Larry Chestnut. I don't want there to be any mistake about it, any mistake. We're trying both Larry and Kendrick Chestnut, and both of them are charged with murder, because it took both of them to

kill Joey Hucks.

The law in South Carolina says just because I'm the one doing the stabbing, and I've got somebody, they're aiding and abetting, aiding and abetting me, it is hand of one, hand of all. We are acting together. We are both equally guilty. That's what the law says. We are both equally guilty.

Now, I've spent a lot of time talking about Larry Chestnut, but let me assure you, I'm going to now address Kendrick Chestnut, because he is just as guilty as Larry Chestnut. Make no doubt about it, he did not have to have the scissors in his hand to be guilty of murder, and I tell you why.

The facts in this case, Christie and Richard Day both say while Cindy Evans is in that kitchen getting beat, who's standing in the doorway? I mean, this has gone on for a good while. She's bruised in the face. He bit her on the leg. This has been going on for some time, but why isn't anybody coming to her aid? Why isn't anybody helping? I can tell you why, because Kendrick Chestnut is standing in the doorway.

Now, there was some talk about isn't Joey three hundred pounds. He was a overweight eighteen year old guy. There's no doubt about it. He was in high school, and he was overweight, but I don't know if they forgot or didn't mention it, but I want you when you get up, I want you to get a look

at the size of this guy, Kendrick Chestnut. I don't want that to escape anybody's attention.

I want you to get a look at how big Kendrick Chestnut is, but that's the guy that was standing in the doorway. That's the guy Richard Day was trying to get past. He couldn't get past him. Well, why couldn't he get past him? I want you to take a look at how big this guy is. That's why he couldn't get past him. He was finally able to get past him to get him off of Cindy Evans.

Now, the importance of just that piece is it makes a lot of difference when Larry Chestnut is in there whipping her butt and nobody is in there to help her. It goes a lot better when you've got Kendrick Chestnut holding everybody back. It's a lot easier for me to jump on Dixie when I've got Ms. Von Herrmann here holding everybody back, so it's a lot easier for me.

It's a lot easier when you've got the other man in the house -- where are the men in the house? I can tell you where. They're being held back by Kendrick Chestnut until Richard Day finally got in there. That fight went a lot different when he was able to get past Kendrick Chestnut.

There's no doubt about it, I don't know what would have happened to Cindy Evans if Richard Day wasn't able to get past him, but that fight went a lot different once somebody got in there to help her.

Kendrick Chestnut and Larry Chestnut were controlling that situation the entire time. When she walked down those steps and she walked into the kitchen and she saw Larry Chestnut holding her sister -- she said I saw Joey by the door, and you can replay any testimony you need to, I see Joey by the door. I see Ty Chestnut, Larry Chestnut, with his sisters. I see Kendrick Chestnut over in the other room. Those are the only three people in the kitchen, Larry, Kendrick Chestnut, Joey, the only three people in the kitchen she said.

We know that Cindy Evans and Richard Day were stopping cars, so they were outside. Richard Day said when I come back in is when I see Joey walking out, so when Christie Hucks walks down those steps, those are the three people in the kitchen.

They want you to believe that Larry Chestnut is the victim. That's what they want you to believe, when you've got one guy with a pair of scissors in his hand, and another guy, they're talking about Joey Hucks is three hundred pounds, get a look at this guy. That's who Joey Hucks is standing in the kitchen with, these two guys right here.

I suggest to you that things go a lot better when you've got both these guys jumping on one guy, or you've got one guy doing the stabbing, and you've got this guy here holding everybody back. Things go a lot better.

When Richard Day walked outside, he was trying to come back to get Joey, trying to come back to get him help. He goes to the car. He said when I turn around, I see Larry Chestnut stabbing him, and I see Kendrick Chestnut kicking him, and when I run up to try to help Joey. Who was there? Kendrick Chestnut. That's who was there. Who was holding him back? Kendrick Chestnut. Who was keeping Joey from getting the same help that Cindy Evans got? Cindy Evans got out of that house because Richard Day was able to get there and pull him off of her, and they were trying that same tactic outside.

Larry was out there stabbing him. Kendrick Chestnut, what you going to do? What you going to do? So he couldn't get any help. Cindy, he was able to get to Cindy, but he was not able to get to Joey, though, because of Kendrick Chestnut.

Now, there's going to be a jury instruction read to you about mere presence. Make no mistake, I'm not telling you that Kendrick Chestnut's part in this is mere presence. He was assisting, aiding, and abetting and just as guilty.

Now, when we heard from the SLED lady, she told us a lot of information, but when it came to Kendrick Chestnut's part, she gave us some very important information. She told us that they took swabs from Kendrick Chestnut's T-shirt. There appeared to be blood on the T-shirt, so they swabbed it just

like they did with these other items.

Now, what did we find? Lo and behold, we found that Joey Hucks was a major contributor on Kendrick Chestnut's T-shirt. That's what we found. I asked that lady probably three or four -- is this accurate? Is this accurate? Is this accurate? Yes. Yes. Yes.

She -- she doesn't know any of these people. She's working in a lab, just running the swabs they are making a comparison, and she tells you that Joey Hucks is the major contributor on Kendrick Chestnut's shirt. It's Joey Hucks' blood on Kendrick Chestnut's shirt.

Now, why is that? Is that because he's just standing there? No. That's because he's a active participant. When nobody else is around, he's kicking Joey, he's hitting Joey. He's probably holding him down, but whatever he's doing, he's on top of him close enough where his blood got on his shirt. That's how close he is.

Make no mistake about it, that's Joey Hucks' blood on Kendrick Chestnut's shirt. And that's because he was kicking him and hitting him before Richard Day walked up. Then he walks -- walked away from that scene and tells Richard that he better back off. That's why his blood -- that's why Joey's blood is on Kendrick Chestnut's shirt, because he's down there kicking and beating him every chance he can get. When he's kicking everybody away, once they run off, he gets

the chance to get a few licks in, and he does. That's how that blood got on his shirt.

So Mr. Long wants you to believe that he's -- it's just mere presence, just mere presence, he was just there. Well, I'm standing here with the Court Reporter. This is mere presence. We're in the same presence. If Dixie cuts her finger, it's not going to get on me if I'm just standing here and this is mere presence, I'm not going to have any blood on me.

You know, if I walk up and start touching her, and I'm around her, and I'm close up on her, I may get some of that blood on my shirt. Just because we're in this courtroom doesn't mean common sense does not apply and doesn't mean things work differently. It's the same -- use your common sense. It's the same law. Everything makes sense in the courtroom just like it does outside.

He wants you to believe that this is a mere presence case for his client, he's just standing back; he's not doing anything. That's impossible. That is physically impossible. The victim's blood is on his shirt, but ironically enough, whose blood isn't on Kendrick's T-shirt? That's -- that's even more important. Joey's blood is on his shirt, but who can be excluded? Larry Chestnut here, and excluded again is Larry Chestnut. His blood is not on Kendrick.

Isn't that amazing, how his blood is not on his T-shirt,

just Joey Hucks'. That's the only blood on Kendrick's T-shirt. You know why? Because he's not on top of Larry, beating him and kicking him while he's down. No. That's not the guy that he's bending over on top of, not Larry Chestnut, no. It's Joey Hucks he's on top of. That's how that blood got on his shirt. Both of them together killed Joey Hucks. One of them did the stabbing. The other one was holding any help he had back.

I'm here to tell you it goes a lot easier when you've got a guy as big as Kendrick Chestnut holding everybody back. It's a lot easier to kill somebody or even assault a woman when you've got somebody standing in a hallway keeping them back.

The law says if he was aiding and abetting, aiding and abetting Larry Chestnut, he's guilty of murder, and he was aiding and abetting. Every time he kept Richard Day back, he was aiding and abetting. Every time he kicked Joey Hucks or got down there and hit him, he was aiding and abetting. Make no bones about it.

These two guys work together. You heard Christie Hucks say that. Kendrick Chestnut is over there every day hanging out with Larry Chestnut. They're best buddies. They went out that night to the strip bar. Do you think for one second that when this all broke out Kendrick Chestnut didn't walk in there to help his friend? You better believe he did. He was

there to help his buddy, Larry Chestnut.

That's the guy he works with. That's the guy over there hanging out every day at the house. That's the guy he went to the strip club with. It doesn't make sense that an altercation breaks out and Kendrick Chestnut is just kind of hanging out watching them. That doesn't make sense.

Mr. Long is going to say, well, he didn't have the scissors. He didn't have the scissors. It doesn't matter. He wasn't just standing there. He was aiding and abetting his friend, his cousin. That's what he was doing.

I don't know how this would have unfolded if somebody was able to help Joey Hucks. I don't know how this would have unfolded if Richard Day was able to get to Joey Hucks, just like he did Cindy Evans. I don't know. But what I do know is that when Larry stabbed and Kendrick held everybody back, it resulted in the death of Joey Hucks. I do know that. There's no speculation at all about it.

Now, I'm here to tell you this is a murder case, but they're going to read voluntary manslaughter to you. Judge John is going to read voluntary manslaughter. Now, what is voluntary manslaughter? I'm going to go over it with you because Judge John is going to read it to you. That's going to be an option on your verdict sheet. Now, I'm going to go over it, but by no means do I believe that this a voluntary manslaughter case.

A voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. That's what it is. It's more than just a heat of passion. You've got to find both. You've got to find that it was heat of passion and he had sufficient legal provocation.

Now, if you just find that this man is in a rage, that Larry Chestnut is in a rage, and he killed Joey Hucks, that's not manslaughter. That is murder, okay? If you find that he's in a heat of passion and that's all it is, a heat of passion, he has no legal provocation, he's just in a heat of passion and he kills Joey Hucks, that is murder. That is not manslaughter.

I think people think when there's a fight that breaks out, somebody gets upset, somebody ends up dead, it's automatically manslaughter. It's not. Heat of passion is not enough. You have to have more than that. You have to have heat of passion and sufficient legal provocation, so the question is, is did he have sufficient legal provocation.

I'm not arguing that he was mad. He was obviously mad. He grabbed that girl up by the throat, and then when somebody jumped in, he was even more mad then. I'm not arguing that he wasn't mad, and I wasn't arguing that when Cindy jumped in and tried to help, he didn't get enraged in a heat of passion and jump on her. I'm not arguing that. I think he was.

I think he was in a rage that somebody challenged him. That's what I think, so I'm not going to tell you he was not in a rage, but what I'm telling you is because somebody tells you to quit choking a seven month old -- a seven month pregnant woman, does it give you legal provocation to do anything?

What I'm telling you is after you jump on that woman, somebody comes to her aid, and you jump on a forty some year old woman, that's not a sufficient legal provocation. That's not enough. Because two women challenge you and you get enraged, which ends in the death of somebody trying to defend them, that's not sufficient legal provocation. It's not. That's murder. That is not sufficient legal provocation.

That will be the question asked of you, did he have sufficient legal provocation. Did he have sufficient legal provocation when Joey Hucks pulled that pocket knife out and said leave my sisters alone.

Did that give him the right to then break his nose, run into the kitchen or go into the kitchen, another room in the house, get a pair of scissors out, stab him four times in the chest and one time in the back? That's the question. Is that sufficient legal provocation?

When he pulls that knife out, scared to death, and says leave my sisters alone, man, just leave them alone. He's already beat those sisters up. Just leave us alone.

He's come back in there, still in a rage, could have left out the kitchen door, but this -- came in there enraged with Christie and Joey. All he wanted to do -- he'd already seen everybody in the house take a beating. Then here comes ol' big Kendrick Chestnut and Larry Chestnut, and all he says is leave my sisters alone, with a knife out.

So, make no bones about it, both these guys walked up in there. Larry Chestnut, he walked in there by himself. Kendrick Chestnut wasn't just hanging out in the kitchen. They both walked in there, and Joey Hucks said leave my sisters alone. Is that sufficient legal provocation? Is it, for him to just say leave my sisters alone, had that little pocket knife out. That's all he wanted.

He didn't have it out here; he had it down there, when these two boys walked into that room. Is it sufficient legal provocation for Larry Chestnut then to break his nose? He's on the ground. And then to go into another room, get a weapon, come back and stab him four times in the chest, once in the back, did he have the right to do that?

Did Joey, taking up for his sisters and defending himself against these two boys, did that give them the right to kill him? That's the question, because voluntary manslaughter, you have to have a legal provocation. You have to. So, the question then is did they have the right, was there legal provocation because he was trying to defend

himself and his sisters -- they were the only two people left. Everybody else had run for help, against these two guys. Did he?

I'm here to tell you folks, that's not enough. That didn't give him the right to stab him four times, and once in the back. Both of them boys were on him, both of them. So this is a murder case.

There was an altercation. There's no doubt about it. There's an altercation. The altercation was brought on by Larry Chestnut. There's no doubt about it, and when somebody challenged him, he was enraged. He was enraged. And when Joey tried to stop it, he was scared to death, and he was upset, and he had the right to defend himself against those two guys.

Joey had not hit anybody. He hadn't even jumped into it. He had done nothing until he saw these two guys beating up two women in that house. And then it was just him and Christie Hucks left. He didn't have to wait until these two guys jump on him to defend himself. He already knew what was coming. He had already seen what had happened, so there was nothing about any of that that led anybody to believe that Larry Chestnut was anywhere near calming down or stopping anything.

They ran out that door because they were desperate for help. They were the ones out there in the street running,

looking for help, looking for assistance. So Mr. Wilson tells you a lot about he just wanted to leave, he just wanted to leave, didn't he just want to leave, didn't he want to leave? He didn't want to leave or he would have left.

When he first said I want to leave, he could have walked out that door. Nobody put their hands on him, nobody. Nobody was stopping him from leaving. He was in there with his buddy, Kendrick Chestnut.

After he beat Cindy Evans, he was standing right by the kitchen door. That was the door they ran out of to get help in desperation, scared to death. He didn't leave then. He didn't run out of that door. He had no intention of leaving. He went back in there to whip somebody else. That's what it was all about, whether it be Christie, or Joey Hucks, or whoever stood in his way.

Larry Chestnut and Kendrick Chestnut did not leave that house until Joey Hucks was out there on the ground she said with blood coming out of his mouth. It was coming out of his mouth. His heart was punctured. He was out there with blood coming out of his mouth.

Then all of a sudden they leave. Isn't that ironic? All that time they cannot leave. They cannot leave, but now that this boy is laying out there, blood is coming out of his mouth, all of a sudden then, not only can he leave, but him and Kendrick Chestnut grab his daughter, and Chapell jumps in

the car with them.

Then all of a sudden they're able to grab the daughter, leave the house, not go straight to the hospital, they drop Tynesha and Chapell off at Larry Chestnut's parents' house. They didn't go straight to the hospital. They weren't so out of their minds, or so afraid, or so scared of dying, I'm dying, that they had no train of thought.

They went upstairs and got his daughter from the house, took her then to his parents' house and dropped her off, and then went to the hospital. That's what they did. They dropped her off, dropped Chapell off, and they were really nice to me, and then they just left.

All of a sudden then, before the police can get there, now that Joey is laying there dead, now all of a sudden they get their daughter, drop her off, and then go to the hospital. Isn't that ironic? Isn't it amazing that after he did what he wanted to do, all of a sudden he was able to leave.

Not only did he leave, but he dropped the murder weapon. He wasn't going to take that murder weapon in the car with him. He gets out, gets to thinking about it, drops the murder weapon over there by the air conditioner. This is a man that he's not so enraged or so afraid for his life that he is in some mind state of just please help me, just please help me.

Neither him or Kendrick Chestnut are. Neither one of them are running by the road. Neither one of them are out there hollering help me, call the police, call the ambulance. They're not stopping down there for a caller. That's not what's going on. They're thinking -- he's thinking.

His mind is working before he walks back in that house, because he had stabbed him out there in the front. That's where he stabbed him. He stabbed him out there in the front yard. Here is the front yard, this area. The air conditioner is right here. That air conditioner where the scissors were was right there. He then, before he gets in the car -- this is the door right here that leads out to the highway.

If you look at this picture, you notice something in the beginning. The pair of scissors don't really catch your eye. It doesn't really catch your eye. You can hardly see them, but they're there. This is by the door before he went back in the house. This is a man who's thinking. This is a man who knows what he's doing.

He's not screaming for help. He doesn't think he's dying. He's not out flagging down cars. He's not yelling to Kendrick Chestnut, take me to the hospital, take me to the hospital. That's not what's going on. Nobody hears that. All they hear in the yard is kill, kill, kill him, kill him. That's all they hear in the yard.

Nobody is out there yelling help me, help me, help me, because Larry Chestnut doesn't need any help, and neither did Kendrick Chestnut. And Joey couldn't say anything because he was bleeding to death, so he couldn't scream for help.

He threw that knife down before he went back to that house, or those scissors. If you look in this picture, you can hardly see them. He threw those scissors down, went in there, got his daughter, got in the car and left, didn't just leave and go to the hospital, had sense enough with enough fear in his mind to drop her off and then go to the hospital, but none of that could have been done before. None of that could have been done before.

It wasn't until all hell breaks loose that he stabbed a boy out there to death in the yard. Someone has finally stopped and been waved down. Now, all of a sudden, he can get up and leave, but before then, he was there. But he got gone once Joey was down in that yard and the blood was coming out of his mouth.

Him and Kendrick found a way real quick like to get gone away from that house. There's no doubt about that. They weren't out there yelling for help. They weren't looking for help. They were getting just what they wanted when they had that boy down on the ground.

Now, they're going to talk to you a lot about Larry was acting in self-defense, was acting in self-defense. This is

Joey that broke that weapon out. He was acting in self-defense. That's what everybody will tell you. He was act-- he had to defend himself, had to defend himself.

Nobody has the right to self-defense in this case but Joey Hucks. He broke that knife out in self-defense, and he didn't break it out and he didn't get involved until he had no other choice. It was him and Christie Hucks in that house. Everybody else had left and they were stuck there with Kendrick Chestnut. They weren't telling you Joey is three hundred pounds, Joey is three hundred pounds, this guy that I don't know that I would call petite, and Larry Chestnut, that's who was left in the house.

Joey Hucks does not have to wait until somebody jumps on him, or his pregnant sister. That's not what the law says. He had the right to have that knife out. He had the right to defend himself. The only person that was beating on anybody in that house was Larry Chestnut. He was the only one in that house that was beating on anybody, and they want to tell you he was the one acting in self-defense when he, himself, was the aggressor. He, himself, was the problem in that house, and they want to tell you he was the one acting in self-defense.

He wasn't acting in self-defense. Joey Hucks was. He was the villain. He was the one jumping on everybody in that house and the only two people left were that eighteen year

old boy and his pregnant sister.

Mr. Wilson and Mr. Long can tell you whatever they want. Joey Hucks did not have to wait until they jumped on him or his pregnant sister. He did not have to wait for that. He had the right to defend himself. He knew what was coming. We know what was coming.

We know from the fact that he had already jumped on everybody else in the house. Joey had already seen him jump on Cindy. He had already seen him jump on Christie. We know what was coming. He had the right to defend himself.

Now, in this particular case I didn't call many police officers. There was -- in fact, there was no uniform officers that came into this case and I'm going to tell you why. There was no uniform officers or police officers there when all of this happened. They weren't.

Now, everybody knows what police officers do. They come out -- when somebody calls 911, they come out. Some people have seen them. Some people write incident reports, and they come out, what did you see and what did you do, and they write that down. What's your name, write that down; what's your contact information. That's what they do. They're not there. They didn't see anything happen. That's what the police do. They show up to the scene. They take down statements from everybody, what did you see, what did you do. I didn't call those people.

This is it. Those are the people that were there. That's who they are. I called them so you could see them, you could hear them, you could know what they are like. They are the ones there. I'm not dressing up some uniform officer to tell you what happened that night. I'm not going to do it. Those people saw it. I'm not going to put some officer up here to tell you what those people saw. I'm not going to do it.

They know what they saw. I want you to look at them, see them, see what they're like, see what their answers are. Could I brush it off and put him up here to say something? Of course I could. They're professionals. They do it every day. They testify all the time. Of course I could, but I'm not going to. These are the people that were there. No uniform officer was there, okay? No police showed up until he was gurgling in the yard. The defendants had taken off.

So Mr. Long and Mr. Wilson may get up here and tell you, well, where's the police, why didn't we call them? They weren't there. Everything that happened in that house was told to you by the people that were there. Those are the most accurate you will ever hear by seeing them, hearing them, seeing how they testified, what do they look like.

I'm not going to dress up an officer or a detective and put them in a suit and have them come up here and tell you what somebody else said or what somebody else told them, or

some crap like that. I'm not going to do it. They could do it. They're professionals. They do it all the time, and it may come across a lot better from a non-uniformer or a lady in a suit. It may come across a lot better, a lot more professional.

Richard Day told you what he saw. He told you what happened that night. Did he say it in a necessary -- a way without cussing or -- no, he didn't. Richard Day cussed. He got upset. It's an upsetting situation, but here's the deal. That's who saw it. That's who was out there that night.

Could I dress up some uniform officer to say it in a different way maybe, without cussing? Sure, but I'm not going to. Richard Day was there. Some uniform officer, or some lady in a suit, they weren't there. They might look better or they might be more appealing, but they weren't there. These are the people that were there.

So the officers I did call are Carol Allen, and she took the autopsy pictures; Michelle McSpadden, because she collected the weapons. They didn't see anything. They didn't hear anything. All they were there to -- was collect whatever they could find at the scene and have the evidence analyzed.

Nobody at Myrtle Beach Police Department is analyzing any of these things, so whatever evidence needs to be analyzed is analyzed by somebody at the South Carolina Law

Enforcement Division. That lady was qualified to do it.

Carol Allen and Michelle McSpadden collected the evidence. That's what they're qualified to do. They go to the scene. We see it on T.V. all the time. Here is -- here is this; here is that. Here's what is collected. These are pieces that may help us put together the puzzle.

They found the scissors by the air conditioner. I didn't see it in the picture the first time I looked at it. They find the scissors. That's what they do. But I want to assure you they're not going back to Myrtle Beach Police Department and doing any fancy DNA work or any of that stuff. All of that is sent to Columbia. All they do is collect it and they send it to Columbia. The people in Columbia tell us what the results are.

The people I called from the Police Department and from SLED are people that collected evidence, evidence, the knife, the scissors, evidence, and the DNA, the swabs off those items, and the lady that analyzed it, and Carol Allen, because she was there to take the autopsy pictures. That's why those were the people that were called. They had something to add that an eyewitness didn't. An eyewitness doesn't collect evidence. An eyewitness doesn't test DNA, so that's why those people are called. The eyewitness is here to tell you what happened.

Carol Allen and the CSI people are here to tell you what

it looked like when I got there and what I collected. SLED tells you, well, I analyzed it and this is whose blood was let. No other officer had anything to add other than I went in there and took down a report. That's all they had to add. I'm not calling somebody up here to tell you I took a report.

Now, I'm going to tell you that I charged them both with murder, no secret on that, and the burden of proof is on me. I don't want there to be any mistake about that. I have the burden of proof. The Judge will tell you that. I'm positive Ralph Wilson and Russell Long will tell you that. The burden is on me. There's no secret about that. I have to prove this case.

I have to prove to you that this is a murder case. I have to prove to you that that night there was a killing that ended in the death of Joey Hucks and that those Defendants acted in malice. I have to prove that to you beyond a reasonable doubt.

The self-defense argument, that's my burden. I have to prove to you Larry Chestnut was not acting in self-defense. I have to prove to you that he brought on the difficulty that night. That burden is mine to prove to you.

Now, what does reasonable doubt mean? Does that mean beyond any doubt in the world? No. Nobody in this courtroom was there. Nobody saw it happen with their own eyes. I have

to leave you firmly convinced. That's what reasonable doubt says. I have to leave you firmly convinced. It's not an absolute certainty.

I don't have to prove to you by every extension of the means that they're guilty. It's not an absolute certainty. It's not beyond all doubt. That's not -- that's not the burden. The burden for me is not beyond all doubt. It's a reasonable doubt.

It's are you firmly convinced that these two boys acted together, one stabbing, the other one aiding and abetting by keeping any help from them, not just keeping help, but he would go down there, too, and kick him a few times to make sure he wasn't getting up. Make no mistake about that. That's how the blood got on his shirt. Larry Chestnut's blood is not up there.

You have to be, for me to prove my case, firmly convinced. This isn't a beyond all doubt standard. It's a firmly convinced standard.

I want you to go back there, discuss the testimony, look at these pictures that are in evidence. This is the evidence. The testimony and what's sent back there, that's the evidence in this case. Those are the only things you can consider.

I'm going to ask you first to discuss self-defense because it is a affirmative defense, and he establishes self-

defense. If I have not proved to you that Larry Chestnut was not acting in self-defense, if I haven't proved to you that he didn't bring on the altercation, then he's got the right to that defense, but if you believe he did bring about that altercation that happened that night and you believe he didn't have the right to self-defense, he didn't have the right to kill Joey Hucks, then you have to put self-defense aside to no longer consider.

The question then becomes is this a murder case, is he guilty, is Kendrick Chestnut and Larry Chestnut guilty of killing that boy. I'm going to tell you if you listen to that evidence, if you look at those pictures, you look at where those stab wounds are on Joey Hucks, you look at that broke nose, this is a murder case. He was stabbed to death.

The wound in his chest was longer than the blade on the scissors or the knife. That's the kind of force we are talking about. Such force was used and that's what punctured his heart. That's the kind of force we're talking about.

This is important because it shows they killed Joey Hucks with malice. That's the kind of force they were using, and Kendrick Chestnut, while he was down there stabbing, was acting as the enforcer. That guy wouldn't let anybody by, anybody, and it's important. Look at it. See how big he is.

He kept Richard Day back, and you know what, I brought

Richard Day up here so you could see what he looked like. Compare what Richard Day looked like and what Kendrick Chestnut looked like.

They were acting together. This is a murder case. He was stabbed to death by two men that were out there yelling kill him, kill him, kill him, and kicking him while the blood was coming out of his mouth. That is a murder case.

Now, Mr. Long and Mr. Wilson will get up here and tell you, well, he broke out the knife. He broke out the knife. They want you to believe that Joey is the bad guy. I'm telling you he is not. He's the guy that stood up for his sisters, and it cost him his life.

I'm going to ask you to come back with a verdict for guilty for murder for Larry Chestnut for stabbing him to death, and I'm going to ask you to come back with a verdict of guilty for murder for Kendrick Chestnut, for he's the one that was keeping any help from getting to the eighteen year old boy. He was the one -- he's the one that kept Richard Day back.

I don't know what would have happened if Joey would still be alive. I don't know when he suffered that wound to the heart. I don't know. I know Richard Day saw him down there being stabbed, when Kendrick Chestnut walked up to him and started, you better back off, you better back off. He said I backed off and I was running for help, and that's who

the 911 caller saw, one young woman, one young man.

I don't know when he suffered that fatal wound. I do not know. I'm not here to tell you I know that. I don't know if Richard Day getting to him could have saved him from suffering that fatal wound, but what I can tell you is Kendrick Chestnut made sure that nobody was going to get over there. That's for certain.

I don't know what would have changed if Richard Day had gotten to him. I know it saved Cindy Evans. I don't know if it would have saved Joey Hucks or not, but what I do know is we will never know that because Kendrick Chestnut was standing there. He's just as guilty.

I don't know where that wound -- I don't know when it punctured his heart. I don't know. I don't know if Richard Day getting over there and grabbing Larry Chestnut again off of somebody else would have saved Joey Hucks' life, but what I do know is that Kendrick Chestnut kept that from ever happening. I want you to find Kendrick Chestnut guilty of murder.

Thank you for your time.

THE COURT: Mr. Wilson.

MR. WILSON: If I didn't know better, I would wonder if I sat through the same trial as the Solicitor.

Your Honor, one of the jurors has a note.

THE COURT: Madam Bailiff.

All right. We'll take a short break for about five minutes.

Everybody else remain seated, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Five minutes. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Solicitor, is the State ready?

MS. LIVESAY: Yes sir.

THE COURT: Mr. Wilson?

MR. WILSON: Ready, Your Honor.

THE COURT: Mr. Long?

MR. LONG: Yes sir.

THE COURT: Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Wilson.

MR. WILSON: Thank you very much, Your Honor.

THE COURT: Yes sir.

MR. WILSON: Mr. Foreman and ladies and gentlemen, you've been here now for four days. You've got to listen to all of the witnesses who testified in this case. You got to hear the Solicitor's closing argument, statement, if you will. Now you're going to hear from me, and then you'll hear

from Mr. Long, and let me say at the outside that obviously this is a serious matter.

You have one young man who is dead. You have two other young men who are on trial for their lives. It doesn't get much more serious than that. There are no winners here regardless of what happens.

But a Court and a trial is about the truth. It's not about who your family is, and who you are related to. It's not about what color you are, or how big you are, or how short you are. It's about the truth.

In fact, His Honor is going to instruct you that you're going to have a verdict form, and the word, verdict, itself means to speak the truth, veredicto, to speak the truth.

Where you sit, you have no friends to reward. You have no enemies to punish. You have but one job, determine what the truth is in this case and whether or not the State, not whether the Defendants, but whether the State has proven beyond a reasonable doubt the charges that they have made.

They must bring you evidence which satisfies you beyond every reasonable doubt, and a reasonable doubt has been defined from one time to another as a doubt for which you, as an honest person seeking the truth, can give a reason.

One of the issues that the Solicitor has raised to you is, well, you know, in this case there is no self-defense because Larry Chestnut didn't have a right to defend himself.

How absurd can that possibly be? Can you think of anything more absurd than to say that a man does not have a right to defend himself when he is confronted with a three hundred and eight pound man who has a knife in his hand and is standing between him and the door.

One thing that I want to bring to your attention is this. Remember in the testimony that if you listen -- depending on who you are listening to because they were all over the place with this stuff, but depending on who you're listening to, when Larry Chestnut comes out of the kitchen, whatever has happened is over with. Cindy is going on about her business at that point. Christie is going on about her business at that point. He is coming out of the kitchen, going into the living room where his daughter is, to leave.

Now, this is not a situation where they are saying, well, Joey comes into the kitchen while he has Cindy down and he pulls out the knife and says, oh, you know, get off my sister. No, no, no, no, no, no, no. Cindy is up and out of it. Christie is up and out of it. This man is trying to leave. He is trying to go get his daughter so he can go home, which is what he tells you -- and Christie tells you that's what he said. I am leaving.

But, see, alcohol and drugs are a funny thing. They make people do things that they would not ordinarily do, and I don't think ordinarily Joey Hucks would have pulled a

knife, but he did. He did. And the law does not require an individual to stand there and wait until you get stabbed to defend yourself. It doesn't require that. And the Solicitor told you that. She said that. Of course, she was talking about Joey, but it applies both ways.

Larry Chestnut had a right. The only thing standing between him and the door and his daughter was a three hundred pound man with a knife, this knife, and what did he tell you, something else -- we were talking about self-defense, and you know what she says, oh, well, you know, he had a chance to leave. Do you know what, remember what they said was is that the witnesses testified to, is that after whatever altercation happened in the -- with Joey and with Larry Chestnut there in the front room area, that Larry Chestnut had no weapon. Remember, he had no weapon.

Christie says he got cut in that altercation with Joey and his knife. Then if Joey is finished and he's trying to leave, and Joey is finished and Joey is trying to leave, why does Joey end up in the kitchen with this knife? Joey has to -- after he cuts Ty, after he cuts Larry Chestnut, he then proceeds -- because, remember, now, the scissors are allegedly in the kitchen. The scissors are allegedly in the kitchen, which means what, that Larry Chestnut is leaving, if he's backing up away from this knife to go try to find something to protect himself, and Joey pursues him. He

follows him in the kitchen with this knife.

Self-defense? How far you gotta run? He goes to the kitchen because he can't get out the door because he's standing there, the three hundred and eight pound man with a knife, between him and the door and his daughter. He can't go out the door. He's already cut.

And you know what the other amazing thing is, even after he's cut and he's standing there, Christie, according to her, because now she says she's the only other person in the house at this moment, Christie does what? Nothing.

Does she take the child? Does she take Ty to the doctor? Does she stop and see how seriously he's injured? Does she try to take the knife from her brother, who has already cut him? No. No. Did you ever hear one person testify from this witness stand that any of them ever tried to take the knife from Joey Hucks? Not a single person.

And while I'm on that, remember Carol Allen, the investigator from the Police Department, and I asked her when she was on the witness stand, and I'm asking her about -- I show her some documents and asked her if she recognizes them. First she says yes she recognizes them. Then she said, well, yeah, but I didn't take them, so I will say no. I said, well, I'll hand you your case file. Well, yeah, they're in my case file, but I don't really know what they look like.

And I asked her, I said, well, Larry Chestnut is in the

hospital. Did you ever go over there and take pictures of his wounds like you took pictures of the wounds that the Solicitor brought in here? I -- I didn't take no pictures. I didn't no pictures of him. No, she didn't want to because they didn't want you to see them.

You know, and that's what I'm talking about when I talk about the truth. Law enforcement's job is to find the truth, to bring it to you so that you can review it, and when they hide it, and when they secret it, and when they keep it from you, then we can't have the truth.

Let's talk about how all this started. Remember the testimony that Cindy says she got a call from her sister and it's one-thirty, two o'clock in the morning. She's in the bed. She gets up, she says, and after she gets up, she and her boyfriend then make it over to the house, and she says they sit there and they're eating pizza and talking, but now, remember when she called her sister at one-thirty or two o'clock in the morning, she's upset. She's upset about what? Not that Ty hit her, not that Ty beat her up, not that he molested her or anybody, nothing, because some girl from six years ago sent him a card that had a picture from six years ago.

When the sister comes over, now they're all there together. She -- she's upset. Apparently her sister gets into it. They get upset, so now they're waiting. They're

waiting for Larry Chestnut to come back. They're sitting there. They say, oh, but we weren't drinking, and you can believe that if you want to. We weren't drinking, and we weren't using no drugs. We were just sitting there eating pizza, waiting on him to come.

And when Ty shows up, she's ready for him. Now, you saw her on the stand, so you see what her demeanor is. You see how aggressive she is just in -- in the conversation I had with her. Can you imagine how it was that night when Larry Chestnut showed up at the house and she got this upset just about a card, and she's sitting there for hours, and hours, and hours while he's out at a club with her brother and some other guy, and she's getting more and more angry.

Her sister comes. They start discussing it. Her sister gets in on the act. Finally he shows up. She's loaded for bear. As soon as he comes in, they go into the front room -- go into the kitchen to talk. Well, now, I remember asking her when she was on the witness stand, because she tried to say there are two separate incidents, that she's in the kitchen and he pushes her against the stove, and then later on he had to push her a second time when she's by the wall as she's coming out.

Well, the reason for that, folks, is this: If the pushing occurred in the kitchen, which is what she testified to, and remember, I asked her specifically, hey, didn't you

give a statement to the police on, I think it was May 26th of 2006, saying that there was only one pushing, and that was in the kitchen when he pushed you against the stove, and he walked out and said I'm leaving, which is when he ran into Joey.

And let me tell you this, you can believe one second, when I asked her about that, if that weren't true, I promise you this Solicitor would have had every witness in here in the world to, oh, well, that wasn't in her statement. That wasn't what she said in that statement. Oh, no, that's not what she said. That's what she said in 2006. That ain't what she said today, no, because the problem for them is -- is that it needs to happen in the hallway because they need somebody to see it so they can justify the intervention by Cindy.

Well, what happened is just as she said in her first statement in 2006, which is that she and Ty are in the kitchen talking. She tells him she wants him to leave. He says some curse words, I'm leaving, pushes her against the stove. He walks out.

Cindy hears her crying. Cindy runs in, and by Christie's testimony, Cindy throws her shoe and hits Ty with the shoe. Ty then knocks her. She then falls against the counter because there's water on the floor in the room. Something else, Christie was never injured in any way

whatsoever. She didn't testify to any injuries, and believe me, you saw all these pictures that they had, if they had one spot, one bruise, one anything that looked like a bruise, they would have brought it in here to you.

She wasn't hurt. He never choked her. Think about it, if she is pregnant, she's eight -- seven or eight months pregnant, and he's got her up, according to them, up by her neck, up against the wall, she'd have bruises under her neck. Ain't no bruises because they didn't happen. It happened just the way she said it did in her 2006 statement.

As he starts to leave the kitchen, when he starts to leave, that's when Cindy comes and jumps him. But then even after Cindy jumps him, he pushes her aside, or knocks her down, or whatever it is, they get into a scuffle. What does he do? Does he get a knife? Does he get a gun? No. What does he do? He tried to leave again and he's heading out.

Well, the only problem is when he starts to go out, who's standing there? Now, if Joey was really concerned about what was going on in the kitchen, why not come in the kitchen. Joey is a three hundred pound man, and if Richard Day is in there, you've got Richard Day in there and you would have had Joey in there. Why would you need a knife?

Joey waits until Ty comes out of the kitchen. When he's coming out of the kitchen, that's when Joey confronts him with this knife, and according to -- to Christie, that Joey

has the knife down by his side. And you believe that, you can look for the Easter Bunny. It ain't true.

Think about it. If they're telling the truth and if he's scared, if he is scared, but see, the problem with that is alcohol and drugs will make you great. It will make you do stuff you would not ordinarily do. His alcohol was almost double the legal limit, drugs in his system, but she couldn't tell us exactly when it was, how many hours it was before he took them. She doesn't know.

Ty gets to the foot of the stairs to get his daughter to go home. Joey is standing there. No question about one thing, Ty ends up getting cut at that point with the knife, with this teeny-eeny -- teeny-weeny knife that they talked about. He gets cut. According to the witnesses, he hit Joey at that point. There is never a time when Ty hits anybody before they hit him, including Cindy, according to Christie.

Now, this is his home, too. Whether you like the relationship that they had or don't like the relationship they had don't really matter. He was living there with her. That's the arrangement that they had. He was home, and when you're home, you don't have a duty to retreat.

His Honor is going to tell you you don't have to retreat if you're going -- if it's going to cause you to be in more danger, you don't have to retreat, but he did, even after he was cut, because if Joey wanted to get away after he cut him,

all Joey had to do was go out the front door, but what did he do? He goes in the kitchen.

You know, you see in trying to argue self-defense, if you have the pictures of the wounds that Larry Chestnut had, you'd have a better idea of what really went on, but the State and law enforcement decided they weren't going to do that. They didn't take those because they didn't want you to see them. God forbid we be fair.

Let me -- let me tell you something else that is a problem here for them. Remember all the testimony about, oh, well, they were outside. Remember Ms. Wellons, I think it was, Pat Ritner, or Ms. Wellons, whatever her last name was, I remember her first name was Pat, she was actually the very first witness who testified, and what she said was that she saw two people on the ground outside when she was parked there waiting -- she was passing by. Somebody flagged her down, and that what she remembered seeing was two people on the ground, and one person was over the other person and the other person was still on the ground.

The Solicitor wants you to believe that that was Larry Chestnut on top of Joey. That's what she keeps on -- oh, he was there outside and they were just stabbing him. It ain't true. Christie told you -- remember her testimony when she -- when she brought -- she's the one who came into the kitchen, got her brother and took him outside. She said I

never left him.

After I got outside, I never left him. The only thing I did was I got up one second to walk -- there was a door, two doors down, to try to yell for those people. I wasn't more than twenty feet from him. I came right back to him. That's the only time she left him. And she says, what was she doing, kneeling down with him, and the amazing thing is, remember, because they would have you believe that not only was Ty out there with him, that they had Mr. Kendrick -- Mr. Kendrick out there also with him, kicking him and beating him. It ain't true. It didn't happen. And you don't have to take my word for it. That's what Christie said.

Let me talk for a minute about Richard Day, because that's the person who said that -- Richard Day is the one who says, oh, yeah, I saw him, got outside and he was stabbing him, and -- and Kendrick Chestnut was kicking him and, you know, and everything. Now, who is Richard Day? This -- this witness that they brought you, five months earlier, January of the same year, to the same Police Department, what did he do, giving false information and was convicted of it, so do you think he will tell you the truth?

I want to ask him, and said, well, in your first statement, that's not what you said? (Mr. Wilson imitating answer of Richard Day, which is not understandable.) You know the amazing thing in this is other than Christie, not a

single person is willing to admit that they ever saw Joey with that knife, not a single one of them. Do you honestly believe that, that they were all there -- Cindy pretended she had never even seen the knife before. Come to find out, one of his sisters had given it to him for his birthday.

See, it doesn't matter where the truth comes from. It doesn't matter where it comes from. It's still the truth, and it doesn't matter who it hurts or helps, it's still the truth. And I don't care how much law enforcement or how much the State tries to hide stuff from you, if it comes out, it's still the truth.

I wonder if Larry Chestnut hadn't defended himself that night and he had gotten stabbed to death like Joey if we'd be here, if it were the other way around. I submit to you we would not. We wouldn't be here.

I know that you recall all of the evidence. I'm not going to stand here and go through it line by line with you again. I know that you remember it. I noticed that you were paying very close attention throughout this trial. I appreciate that on behalf of Larry Chestnut. I appreciate that on behalf of the State.

Larry Chestnut was not at fault in bringing on this difficulty, and even if you believe, which I can't -- even if you believe that he started whatever happened with Cindy and not -- I'm sorry, Christie, and not Christie herself, that he

started it, it was over and done with when he started to leave, when he started to walk out to leave to go get his daughter, and Joey confronts him with a knife.

Whatever had happened was over. It was done with, and he's leaving. Joey wasn't going to have it. He wasn't going to have it, but, you know, the most telling thing, and I think I said this to you earlier, the most telling thing, the most telling thing is, is that when Ty gets cut, he's got no weapon. Nobody disputes that. Nobody disputes that, and nobody in this trial that I remember ever says that he saw a weapon with Ty other than Christie, but be that as it may, after Ty got cut, he goes away from Joey because he's in the kitchen.

He didn't -- there's not one bit of testimony that he grabbed Joey by the arm and dragged Joey all the way into the kitchen while Joey is holding that knife so that he can fight with him some more. No, no, no, no, no. Joey comes in the kitchen. When his sister, Christie, comes back, he's still in the kitchen with the knife, standing at one end -- Larry is standing here, and then Mo is further down at the end of the other counter.

They take him outside. That's when they say they see the wounds, so whatever happened, happened in the kitchen. Remember the testimony, even though I don't think the police did a very good job in this case, the one thing that they

probably did do a good job at was they at least had photographs of the blood spatters. The blood was splattered all over the kitchen, and I remember asking her about it, well, did you take swabs of that blood so we could see whose blood it was? Well, yeah, we took swabs, but we didn't test them.

I wonder whose blood it was and I wonder why they didn't test it. And remember I also asked her, well, don't y'all have blood spatter experts at SLED who can come in here and tell us exactly where somebody was standing and maybe how they were positioned at the time that this was happening. Well, yeah. I said, well, did y'all send this -- ask for this expert? Well, I think we did. Well, have you seen an expert? I haven't. Maybe that's because they don't want you to know that either.

You see, the State is not like a Defense lawyer. My job, my only job, is to represent my client. The State's job is to be fair.

Let me say this: When you talk about being in imminent danger, what does that mean? It means that there is an immediate threat posed to your person, that there is some way that a person can injure you immediately, right then, and if a three hundred pound man standing between you and a door with a knife in his hand isn't an imminent threat, I don't know whatever would be, so was that an imminent danger? Was

he in imminent danger? Absolutely.

Not only was he in imminent danger, he actually got cut, so you don't have to wonder about whether it was just imminent. Oh, it happened. And then she says, oh, well, he could have ran. He could have retreated. He did. After he got cut, he retreated. He went in the kitchen. She said, well, he went in there to find scissors. Maybe he did. I don't know, but I can tell you this, Joey followed him in there.

One of the things I want to point out to you is, is that remember, they were talking about some of the cuts on Joey's hands. You're going to have this knife in your jury room. This is not a lock-blade knife you will see. It can -- so if you're using it and you use it the wrong way, then it can fold in on your hand. That's the problem with a non-locking blade knife. This is not a lock-blade knife. A lock-blade knife when it folds, it will stay open regardless of what you do with it. This one won't. That's how he got those cuts on his hand.

And remember, the pathologist told you, I can't tell you which item made which wound. I don't know. And not only did she say that, she said, well, not only can I not tell you which wounds the knife made, I can't tell you which wounds the scissors made, and there could have been another weapon that I didn't even know about that could have made all of

those wounds.

You see, the State has the burden of proof. That's their job, because they decide when to charge somebody and what to charge them with. Because they do, then the law says that's fine, but then you've got to come in and you've got to prove it beyond a reasonable doubt. You can't just say, well, maybe that's what happened, because that's what they give you, say, well, look, maybe this is what happened, maybe that -- maybe it happened this way. Well, we don't really know, but that could be. It don't matter, just find somebody guilty. We'll be happy. That's fine. Larry, we'll just find him guilty. It don't matter.

Well, it don't work that way, folks, and it's a dangerous thing when you're not given all of the evidence and all of the information so that you can make the right decision. It's a dangerous thing.

I'll tell you a little story. When I was growing up, my mama used to tell me this story. I didn't really understand it then, and the reason she was telling it to me wasn't about circumstantial evidence. It was about just how people are, but she told me the story about how there was this little boy named Johnny and his mom had cooked a cherry pie and she put it in the window to cool, and they'd say when daddy comes home for supper, we're going to all eat the pie.

Well, Johnny decides that he wants to eat the pie before

suppertime, so what does he do? He goes up over the safe in the window. He gets the pie. He eats the pie. Then he realizes mama is going to be upset. So what does Johnny do? He gets the cat. He takes the cat and set the cat's feet down in the pie. The cat then jumps off the counter onto the sink and onto the floor and runs out the door. Mama comes back. What does mama think? The cat ate the pie. It didn't happen. Johnny ate the pie.

My point is simply this: Things aren't always the way that they seem, and people will manipulate things to make them look different.

Larry Chestnut is not guilty. He's not guilty of manslaughter. He's not guilty of murder. He's not guilty of anything except trying to stay alive, and he has a right to do that.

I want to leave you with this, and that is doing right sometimes is hard. It's hard, but it's still right. It's still right, and the right word for Larry Chestnut is not guilty. He is not guilty. Thank you.

THE COURT: All right. Mr. Long.

MR. LONG: Thank you, Your Honor.

Mr. Foreman and ladies and gentlemen, I need you bad. You sat there listening to a lot of talk this morning. We started around 9:15 and it's almost lunchtime, and a whole lot has been said, and a whole lot has not been said, but

please, I need you. I need you right now. Kendrick Chestnut needs you bad right now. For six years he has sat waiting on you to help him right now.

Now, I'm going to tell you, the Solicitor is wrong about a lot of things. First, I want to tell you she's wrong when she tells you that Ralph Wilson and Russell Long are going to get up here and tell you that Joey Hucks was a bad guy. Nobody believes Joey Hucks was a bad guy. Everybody in this courtroom, all the people that have come in and have gone during this week long trial, nobody wants Joey Hucks dead, nobody, his friends, God knows, his family. We don't want Joey Hucks dead, and Joey Hucks was a good guy by all accounts.

I didn't know him. I could get to know him today if he hadn't have made some bad choices. He had several opportunities to avoid all that. He had several opportunities to live.

I tell you another thing that the Solicitor is wrong about. She said that this was not a who-done-it case. This may not be a who-done-it case, but I'm telling you right now this is. This is a who-done-it case because you know what, Kendrick Chestnut didn't do anything. That's who didn't done it right there. Kendrick Chestnut didn't do it.

This is a who-done-it case, and it's important that you keep these things separated when you go back there in your

jury room. It's important that you give Kendrick Chestnut a fair trial. The State of South Carolina versus Kendrick Chestnut. Forget about this who-done-it or who-didn't-do-it.

The Solicitor then said, and I wrote it down because I wanted to get it right, the second thing she told you, she said this is not a who-done-it case, she said this is a case of did Larry Chestnut have the right to kill Joey Hucks. Is that what this case is about? No. That is not what this case is about.

Whatever happened about Christie Hucks getting -- finding a card that a third party sent to Larry Hucks (sic). I don't know how Larry could have done anything differently than receive a card. It's not like he gushed and said, oh, I miss her, I love her so much, to make his wife -- girlfriend mad, whatever happened before Joey Hucks pulled this knife, out I'm going to leave alone. I think you know what happened, but I do know this, down there in the living room, by the front door of the house, by the stairs, young Joey Hucks decided to pull this knife out of his pocket.

I agree with Mr. Wilson a hundred percent. The melee over the picture and the money was over. That whole thing was done. and if you believe that young Joey pulled this knife out of his pocket, opened the blade and held it down by his side and said please leave my sister alone, you don't believe that. A man pulls a knife on another man, like that,

no, that's a bad choice, and if Joey Hucks hadn't have done that, I could know what he was today. We could all know what a great guy he was, but he did that anyway.

And when he whipped that knife out and he said probably more along the lines of get your f-ing hands off my sister, and Ty Chestnut, Larry Chestnut, jumped to defend himself by punching him in the nose. He didn't stab him. He didn't shoot him. He hit him in the nose. Joey Hucks stabbed him in the chest. That could have been the end of this case, by the way, a bad choice, Joey. He could be facing a murder charge right now, alive, but he didn't kill Larry.

But as soon as Larry punched him in the nose in the living room, up there by the steps, you know what he could have done, oh, my God, I'm a scared eighteen year old and I just made a huge mistake and I pulled a knife out on somebody that I care about. Joey didn't do that. If Joey would have done that right there, he would be sitting right here -- he wouldn't be here. He would be at work, or at play, maybe with his kids or something. He didn't do that.

Larry didn't go to the kitchen and grab a weapon and come running back out here to get back at him, like Mr. Wilson told you. He went towards the next exit available, and who just walks back out with a knife who just pulled it on him, the knife open in his hand, down the hallway, into the kitchen, should have left it on the ground. Guess what?

He's in the kitchen with a knife in his hand.

Oh, by the way, back in the living room, where is Kendrick? Kendrick is up there somewhere. What did Kendrick do? Did he jump on Joey Hucks? Did he hurt Joey Hucks? Did he try to kill Joey Hucks at that time? No. He didn't do anything. He didn't lay a hand on a soul, not one person, not one thing, did not get himself involved.

Joey goes to the kitchen with the knife. Joey is in the kitchen with the knife. It's out in his left hand still. He's already cut Larry right in the chest, and he's standing in that kitchen. The witness says they walk in the kitchen and they see Joey with the knife. They see Larry with some scissors, and where is Kendrick? Way over there, the other side of the kitchen, the far corner. What's he doing? Nothing, Christie told you. Kendrick did nothing, and that's not murder.

He hadn't laid a hand on a soul. There's no evidence at the moment when they're standing in that kitchen that Kendrick Chestnut has laid a hand on a soul. He's in the corner of the kitchen unarmed, and by accounts of witnesses, there are now two men armed in that kitchen, Larry, if Larry did go to a drawer and pull out the scissors. Joey made another bad mistake. Uh-oh, Larry has got scissors. I'm sorry, Larry. It's cool. It's over. Let's get you some help. You're cut. He didn't do that.

Attacked by is what Christie Hucks said it looked like, attacked by with a knife and some scissors. Joey Hucks chose to hang on to that knife, and Joey Hucks chose in that kitchen to keep on cutting and to keep on fighting.

Whoa. What did Kendrick do? Nothing, didn't lay a hand on him. This is the most telling thing in the whole case right here, okay. Joey made a bad choice and didn't drop the knife. Joey didn't end it so that Joey could live today. The fight went outside into the yard. Guess who's still holding this knife that's cut Larry Chestnut at least one major time. Joey Hucks. And the cat fight, and the knife fight, and Larry Chestnut is trying his best to put an end to it. He had to get a pair of scissors to put an end to it. Joey hadn't dropped it yet.

You know how I know he hadn't dropped it yet? You know how I know he didn't drop it yet because it -- this knife was found two feet from his body in the middle of the front yard. He never let it go because the fight never stopped. For some reason, young Joey made a bad decision. He decided to keep it going instead of putting an end to it.

They've got a witness, maybe a witness and a half, they're going to tell you, okay, this is the point where we believe Kendrick is a murderer. This is what makes Kendrick Chestnut a murderer right here. This guy, Joey Hucks, is still swinging this knife at his cousin in the front yard.

For goodness sakes, it's taken all the way through the house and it hasn't stopped yet.

They want you to believe that Kendrick Chestnut hit one time in the face Joey Hucks, a murderer. They want you to believe that he was kicking Joey Hucks when he was on the ground. Well, I don't believe he was, okay? I mean, I heard Christie Hucks' testimony. All she could remember was the white shoes, and kicking and kicking, and white shoes, and white Nike Air Force One's, not just white shoes.

She knew the brand name, the handle, whatever you want to call it. Ain't no white shoes, but she was -- it was so vivid to her. All I could remember was the white shoes, and the kicking, and the kicking, and the kicking. Ain't no white shoes. You've been taking notes. You know that.

Kendrick Chestnut didn't lay a hand on Joey. If you believe that Kendrick Chestnut did lay a hand on Joey, then why would he lay a hand on Joey? Maybe because he still had a knife in his hand, maybe because he was still trying to kill his cousin. And, oh, what, well, Joe- -- what would have happened if Kendrick would have not stopped Moke, this guy, Moke, if he hadn't have stopped Moke from getting involved in the fight? Well, I don't know. Maybe Moke would have grabbed a hold of Larry and Joey would have ended it. We'd have two dead people.

I don't believe it happened anyway, but if you want to

believe Moke, Richard Day, if you want to believe him, you saw -- I don't know if you can remember his testimony, because it seems like we've been doing this for about a month, but if you believe anything Richard Day told you, okay, if you want to believe that my client stopped him from getting into the fight, then believe that my client stopped him from helping Joey Hucks kill Larry Chestnut. He certainly had the ability to kill him. He certainly showed the willingness to kill him, and he carried that willingness all throughout the whole bit.

Keep in mind this is not an hour-long fight, okay. This whole thing happened in a matter of seconds. I picture this thing happening as tussle, tussle here, run into the kitchen here, fight, fight here, out the back door, done, so fast that when Christie Hucks got down from the stairs, it was over. She went outside and never -- she was with Joey when he walked outside. That's quick. And she never left his side. She sat on the ground and rocked him and held him, because he had just started and had just died in a knife fight.

It's ridiculously sad that those choices were made. There's no question that those choices were made. It doesn't make it right and it doesn't bring Joey back, but what definitely doesn't make it right is for you to convict these two men of murder. That doesn't fix this. The tragedy is

gone. The ship has sailed. It is tragic. Don't add to it.

The doctor from MUSC came here and told you that the cause of death absolutely, unequivocable, without a question, was a single stab wound to the chest. Nobody claims that Kendrick Chestnut had anything to do with that. In fact, we have one hundred percent proof, DNA, fingerprints, or lack of, eyewitnesses. Nobody said Kendrick Chestnut had a weapon at any time. Nobody said Kendrick Chestnut did that, and nobody, nobody said that Kendrick Chestnut ever touched a weapon.

The Solicitor wants to make a big deal out of -- she said that Joey Hucks' blood was on Kendrick Chestnut's shirt; that's proof there that he's guilty. Folks, Joey Hucks' and Larry Chestnut's blood was all over everybody and everything. This was a knife fight, and all these people were in close proximity to it. Cindy Evans was covered in blood.

One police officer took one cotton swab, like a Q-tip, and went to one place on Kendrick Chestnut's shirt and did this, and shipped it to Columbia. That doesn't mean that Larry Chestnut's blood wasn't all over that shirt. That means that some of Joey Hucks' blood might have hit that shirt in one spot. That's all that means.

When it's over and Joey has finally dropped the knife, what's the evidence? Kendrick grabs Larry up to get to the hospital. The knife is finally out of Joey Hucks' hand,

finally. Larry finally got him to drop that knife.

They don't rush off like murderers. They go hide? This man had the wherewithal and the good heart and concern to think about his daughter at that moment. Now, keep in mind, nobody else did or even cared about where the girls were. They didn't know where the girls were, but as he's bleeding from the chest and elsewhere, and on the way out, what's he concerned about? My baby girl, and little Chapell, Cindy's daughter, she wasn't scared of these guys.

This event could not have had that kind of impact on her. She went with them. She went and got in a car with the murderers? No. They get in the car and they're riding down the road. He's dying. His cousin is driving him, and what does he say? I'm going to kill that S.O.B. That sounds bad, doesn't it? The Solicitor wants you to think that's criminal intent, that's malice, that shows you that he wanted to kill him. You know what that shows me? He thought he was alive. He had no idea. He was alive.

Would a murderer say I'm going to kill him if he's already dead? Would a murderer say I'm going to kill him if he thought he was going to die? Absolutely not, especially not with two little witnesses in the back seat.

Kendrick Chestnut said he was going to kill him because his cousin was dying at the hands of Joey Hucks, and he was mad. He was scared. He was rushing him to the hospital.

Well, let me tell you something else murderers don't do. They don't sit in the lobby at Grand Strand Regional Medical Center waiting on the police to get there and talk to them. They don't. And they don't really want to go sit down with a detective when the detective says, hey, I'd like to talk to you for a minute. Tell me what happened.

You know, you've got a right to talk to a lawyer before you talk to me. You've got a right to remain silent. You don't have to say anything. What is a murderer going to do at the hospital after he's gotten his thoughts together? Oh, man, I just killed somebody. He's not a murderer. Neither one of them are.

Folks, I need you bad. It's been six years that this man and his family has had to be tagged along and dragged along by the Solicitor's Office for your Circuit, hoping that they could somehow figure out a way to prove to a jury one day that he was a murderer. He can't get those six years back. He's already been punished. He didn't lay a hand on Joey Hucks.

The nice doctor from Charleston came up and said if there were injuries, I would have found them, left no stone unturned, she agreed. She doesn't just look on the outside. She looks on the inside. She knows every disease. She knew about the clogged artery. You know, the clogged artery didn't -- didn't cause Joey Hucks to die, but she sure knew

about it. She knew everything there was to know about Joey Hucks' injuries, and guess what, not one single injury to Joey Hucks that could have been caused by Kendrick Chestnut hitting or kicking him, not one.

I submit to you that if he hit him, he'd be bruised. I submit to you that if he kicked him, he'd be bruised. He's not. One hundred percent without doubt that witness told you he's not.

I hope you agree with Christie Hucks, Kendrick did nothing. He's just been dragged into and along for whatever reasons they have, but I want you to stop it today, please.

On behalf of Kendrick and his family, I do appreciate the service that you've given us. I told you when I stood up to do my opening remarks that we chose you because we knew you were going to be the kind of people that -- I've had juries before where we had one, you know, that we knew he wasn't paying attention. We had some people who looked like they needed to be somewhere else, sitting on the edge of their seat, couldn't wait for the trial to be over. Oh, my, God, what a waste of my life.

We chose the fourteen of you because we knew you would do exactly what you've done and exactly what you're doing right now, all of you, is you're paying extremely close attention to what is here and you're paying close attention to what is not.

Please, I'm going to ask you an unusual -- to take on an unusual task. When you go -- and the Judge is going to give you the law right now, and you're going to go in your jury room. I'm asking you to take up the State of South Carolina versus Kendrick Chestnut right away. Let's get that out of the way, please.

Did the State of South Carolina prove beyond a reasonable doubt that Kendrick Chestnut committed manslaughter or murder? Ask yourself that and resolve it right away. Get on with the rest of your work. Did the State of South Carolina take their burden not just to the twenty yard line, not just across the fifty? Did they prove to you beyond a reasonable doubt for sure that Kendrick Chestnut murdered Joey Hucks or committed manslaughter on him?

Thank you so much for your time. Thank you so much for your attention. I'm sorry we took a week out of your life, but I can promise you just one week out of your life is going to make a world of difference, a world of difference. Thank you so much.

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, why don't you go to your jury room for about five or ten minutes and we'll come back and finish the matter.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JURY.)

THE COURT: All right. We'll take a break for five minutes. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Ma'am, ask the jury to come in, please.

MS. VON HERRMANN: Your Honor, we do have one matter we need to take up just very briefly.

THE COURT: What is that?

MS. VON HERRMANN: Mr. Wilson in his opening and then again in his closing had mentioned, you know, something to the effect that these Defendants are fighting for their lives, and this has come up in the past in trials, Judge John. You and I have had it.

I think it leaves the jury with the thought in their head that there is a potential that this is some sort of death penalty case or something of that nature, and I know that Your Honor has told the jury before, and I would ask that you tell them this time, that this is not a death penalty case so that they are relieved of that particular burden.

THE COURT: Mr. Wilson, what's your position, please sir.

MR. WILSON: Well, I wouldn't have any objection if you

also tell them that it is a case for which they can get life. I don't see how we can tell them one and not tell them the other.

THE COURT: Mr. Long, what's your position?

MR. LONG: I have no position.

THE COURT: I appreciate the concern, Solicitor. I do not find the comments by Defense Counsel to bring that issue to the forefront. I don't intend to tell the jury in this particular case anything other than they have to reach a unanimous verdict in accordance the form that I will provide to them. Thank you Ma'am.

Ask the jury to come in, please Ma'am.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Ladies and gentlemen, it is now my duty and responsibility to give you the law you are going to apply to the facts and evidence you find to be true in this case.

I told you at the very beginning I would not indicate to you or intimate to you in any way what I think the facts of this case are because that's not my job. That's not my responsibility. You are indeed the judges of the facts of this particular case.

Now, in that same vein, if you came into the courtroom with any preconceived ideas of what the law is, what it ought

to be, what it should be, what you hope it would be, you will disregard that. You will take the law as I now give it to you and apply it to the facts and evidence you find to be true in this particular matter.

Now, I will remind you as I told you at the very beginning, one of your jobs and duties in this case is to judge the credibility and the believability of the witnesses that have testified before you in this particular matter and reminding you again it's something you do every single day of your life, and you do that by using your good common sense and your own good judgment.

You can believe one witness against several. You can believe several against one. You can believe a portion of what a witness says and disregard the remaining portion of their testimony. If you've got a good sound reason for doing so, you can disregard in its entirety the testimony of a particular witness.

You look at whether or not the witness has exhibited to you any kind of interest, bias, prejudice or any other kind of motive that they might have in giving you the testimony they gave from the witness stand. You obviously consider the opportunity for knowledge, how did they come about that information that they were giving you from the witness stand. Your job is to examine the facts and evidence and find that evidence which convinces you of its truth.

You don't have any enemies to punish. You don't have any friends to reward. Your verdict cannot be the result of any kind of passion, prejudice, or sympathy. It has to be an examination of the facts and evidence in this case and find that evidence which convinces you of its truth, and then you weigh that evidence against the State's burden to prove each Defendant guilty of the crime for which they are charged beyond a reasonable doubt. if that's your view of the evidence and the State has done their job of bringing to you the evidence that you are convinced is true beyond a reasonable doubt.

I allowed you to take some notes, and I told you at the very beginning some people are better note-takers than others. Just because somebody writes something down on a piece of paper does not make it any more valid or certain than somebody's memory of what occurred. We're looking at you to combine your collective knowledge and wisdom and come up with a unanimous verdict in these matters.

In this particular case, as in virtually every case that's tried, there's been presented two types of evidence, direct and circumstantial evidence. Direct evidence, that's the testimony of a person who asserts or claims to have actual knowledge of a fact.

Circumstantial evidence, that's proof of a chain of facts indicating the consistency of the facts. The law

doesn't make any distinction between the two. A greater degree of proof is not required of one over the other. Your job again is to examine all the facts and evidence presented, find that evidence that convinces you of its truth, and after weighing all the evidence, the evidence you find to be true, if you are not convinced of the guilt of either of the Defendants beyond a reasonable doubt regarding their particular case, you must find that Defendant not guilty.

I qualified some witnesses to give their opinion in this case. Sometimes they're called expert witnesses. What I do is qualify them to give their opinion because normally we don't allow people to give their opinion. They have to tell you what they saw, what they heard, what was occurring in their presence, what they actually know, not their opinion about something, but some witnesses by their experience, training, education or otherwise, are allowed to give their opinion.

Just because I qualified somebody to give their opinion doesn't give them any special status. Again, you look at all the evidence and find that evidence which convinces you of its truth.

A person who has a past criminal record can testify during a trial. A past record does not affect their ability to testify. A past record may be considered by you, if at all, in determining that witness' credibility or

believability. Again, you are the sole judges of the facts and the credibility and believability of all witnesses in this case.

During this trial you heard the testimony from a child. Where a witness is a child, you must determine, as with any witness, whether that testimony is believable. In deciding believability, you may consider not only matters that I've already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember, the child's ability to understand and answer questions.

Because young children may not fully understand in Court proceedings, it's up to you to decide whether the child understood the seriousness of appearing as a witness in this criminal trial, whether the child understood the questions, whether the child had a good memory, whether the child understands the difference between lying and telling the truth. In addition, young children may be influenced by the way questions are asked. It's up to you to decide whether or not the child witness understood the questions asked of her in the case.

During the trial of this case, I did direct you and ordered you to disregard a statement in certain matters that were talked about in your presence. You must disregard that. You may not use things that I told you to disregard in arriving at your verdict in this matter.

The Defendants in this case did not testify. I instruct you, I emphasize to you that this is not a factor to be considered by you in any way in your deliberations and in your consideration of whether or not the State has proved them guilty beyond a reasonable doubt of the crimes charged. It cannot be considered by you in any manner whatsoever. You may not discuss it in the jury room. You can't mentally use it in any way to arrive at your decision.

These Defendants, any defendants, have the constitutional right to remain silent. The assertion of this right cannot be considered in your deliberations. You will draw no conclusion from it whatsoever. The burden of proof, as I told you, is on the State of South Carolina to prove the Defendants guilty beyond a reasonable doubt.

That ties in with the next thing I want to tell you. I told you at the very beginning, I read to you the charges that were in the indictment, the charge against the Defendant. I told you that wasn't evidence, you'd hear the evidence in the case, and I also told you that to those charges, to the indictments brought against them, the Defendants pled not guilty. That put the burden of proof on the State of South Carolina to prove the Defendants guilty beyond a reasonable doubt.

A person charged with a crime is never required to prove themselves innocent. They're never required to prove to you

anything. I told you at the beginning the defendant need not even show up at trial if they don't want to because they don't have anything to show to you or to prove to you. The State has to prove the case beyond a reasonable doubt.

This is an important rule of law. No matter the seriousness of the charge, whatever it may be, defendants are presumed innocent of the crime for which the indictment was issued. That presumption of innocence didn't end at the beginning of the trial. It has not ended now. It does not end until and unless from the facts and evidence you find to be true you believe the State has proved the defendant guilty of the crime charged beyond a reasonable doubt.

This presumption of innocence, it's likened to a robe of righteousness. It's placed on the shoulders of the defendant and it stays on the shoulders of the defendant unless and until it is ripped from the shoulders of the defendant by evidence which convinces you of its truth and convinces you of the guilt of the defendant beyond a reasonable doubt.

Reasonable doubt, what is it? It's the kind of doubt that would cause an ordinary, reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things we can know with absolute certainty and the law doesn't require the State of South Carolina to give you that kind of proof.

What is required is that based upon your consideration of the evidence, the evidence you find to be true, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty.

On the other hand, if you are not firmly convinced that the defendant is guilty of the crime charged, you must give the defendant the benefit of the doubt and find the defendant not guilty.

Both Defendants in this matter are charged with the crime of murder. I'll talk about it later on again, but I'll say it now, and again, these are two cases. You are making two decisions. These are two separate matters. Your decision in one does not and should not affect your decision in the other because you are making two separate decisions.

Now, both Defendants being charged with the crime of murder, the State has to prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice, that's hatred, ill will, hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury or under circumstances that the law is going to infer the evil intent.

Now, malice aforethought does not require that malice exist for any particular time before the act is committed, but it has to exist. This malice has to exist in the mind of

the defendant just before and at the time the act is committed. There has to be the combination of this evil intent and the act.

It can either be expressed or inferred. Obviously expressed can be shown when a person speaks words or when a person prepared beforehand to do something. It can be inferred by conduct showing a total disregard for human life. Inferred malice can arise when the deed is done with a deadly weapon. Now, a deadly weapon is any kind of article, instrument, substance which is likely to cause death or great bodily harm. Whether or not something has been used as a deadly weapon depends on the facts and circumstances of each case.

Now, if you find that the State failed to prove beyond a reasonable doubt that the Defendant, and again we're talking each of them charged with this, so we're talking about each of them, committed murder.

If you find the State has not proved to you beyond a reasonable doubt that that Defendant, neither one of them, has committed the crime of murder, you can consider what's called a lesser included offense, and a lesser included offense of murder here is voluntary manslaughter. The State has the burden, if you have found the Defendant not guilty, or either one of them not guilty of the crime of murder, you consider whether or not the State has proved to you beyond a

reasonable doubt, again they have to prove everything to you beyond a reasonable doubt, the crime of voluntary manslaughter.

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

Sufficient legal provocation must be the type that would make an ordinary, reasonable person to become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act or related to the victim.

Now, words alone, however vulgar or insulting, are not enough for legal provocation. The exercise of a legal right, no matter how offensive it is to another, is not sufficient legal provocation for voluntary manslaughter. If the heat of passion has cooled or if there was enough time between the provocation, if any, and the killing for the passion of a

reasonable person to cool, the killing is not voluntary manslaughter.

In deciding whether a reasonable person would have enough time to cool off, you should consider all the circumstances surrounding the killing. You may consider the nature of the provocation, if any, and the defendant's mental and physical state and the circumstances and relationships between the parties.

If you have a reasonable doubt as to whether or not a defendant is guilty of a greater or a lesser offense, it's your duty to resolve that doubt in favor of the defendant and find him guilty of the lesser offense if that is your view of the evidence and it has been proven to you beyond a reasonable doubt.

Mere presence at the scene of a crime is not sufficient to prove somebody guilty of a crime. The burden is on the State of South Carolina to prove every element of the crime charged beyond a reasonable doubt. If you find after reviewing all the evidence the State has only proved the defendant was present at the scene of a crime and they have not proved beyond a reasonable doubt any other participation in the crime, you must find the defendant not guilty.

A defendant's mere presence where a crime is being committed, if one has been committed, or mere association with a person who commits a crime, if indeed there is one,

does not in and of itself make the person an accomplice who has agreed to join in the commission of a crime.

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by that other person which happens as a probable and natural consequence of the acts done in carrying out the common plan or scheme. It is said the act of one is the act of all, or another way, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of the crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict a defendant. The State has to prove to you beyond a reasonable doubt by competent evidence this theory of the hand of one and the hand of all.

A principal in the crime is one who either actually commits the crime or who is present, aiding, abetting, and assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. The hand of

one is the hand of all.

Now, present at the commission of the crime means to be sufficiently near to aid, abet, assist in the commission of the crime. Again, mere presence at the scene of a crime is not sufficient to convict one as a principal on this theory of aiding and abetting.

Intent is also a necessary element. There must have been some kind of common design or intent to commit the crime, and the crime must have been committed with the person aiding and abetting by some kind of overt act. Intent means intending the result which actually occurs, not by accident.

Intent may be shown by acts and conduct of the defendant in any other circumstances from which you could infer intent, remembering again the State has to prove all this to you beyond a reasonable doubt. The State has the burden of proof on everything, to prove it to you beyond a reasonable doubt.

Now, in this case both Defendants have raised the defense of self-defense. Self-defense is a complete defense, and if established, you must find the defendant not guilty. The State has the burden of disproving self-defense beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including evidence of self-defense, then you must find the defendant not guilty.

On the other hand, if you have no reasonable doubt of

the defendant's guilt after considering all the evidence, including evidence of self-defense, if any, then you must find the defendant or defendants guilty.

The following elements are required to establish self-defense. One, without fault. The defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

Mutual combat. If the defendant voluntarily participated in mutual combat for the purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

The second element of self-defense, the Defendant must

show that he was actually -- I mean the second element is the defendant was actually, not the defendant doesn't have to show to you -- the facts and evidence is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily injury.

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

In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you consider all the facts and circumstances surrounding the crime. The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary courage would have had that same belief.

The defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and

would have been felt by an ordinary person in the same situation.

The relative size, ages, and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed. Intoxication of the victim may be considered in deciding whether or not the defendant's fear of death or bodily harm was reasonable.

The final element of self-defense is the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular circumstance. If the defendant was on his own premises, the defendant had no duty to retreat before acting in self-defense. The defendant had no duty to retreat if by doing so the danger of being killed or suffering serious bodily injury would increase.

A lawful guest in another's home has no duty to retreat before using deadly force in self-defense. A lawful guest is a person who either enters the premises of another by expressed or implied invitation.

Regarding the degree of force, a person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense the defendant has the right to use the force needed to avoid death or serious