

1 **(In Open Court, Defendant Present)**

2 **THE COURT:** Thank you. Please be
3 seated. Good morning and welcome back.

4 **GROUP RESPONSE:** Morning.

5 **THE COURT:** Thank you. Ready to
6 proceed.

7 **MS. REYNA:** Your Honor, the State
8 calls Dr. Jason Wiersema.

9 **THE COURT:** Thank you.

10 **THE BAILIFF:** Judge, this witness has
11 not been sworn.

12 **THE COURT:** Thank you. Do you mind
13 facing the jury and raising your right hand?

14 **(Witness Duly Sworn)**

15 **JASON WIERSEMA,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **Q.** **(BY MS. REYNA)** Good morning, Doctor. Would
19 you introduce yourself to our jury?

20 **A.** My name is Jason Wiersema.

21 **Q.** And could you spell your name for the
22 record, please?

23 **A.** First name is J-A-S-O-N. Last name,
24 W-I-E-R-S-E-M-A.

25 **Q.** And where are you currently employed?

1 **A.** Harris County Institute of Forensic
2 Sciences.

3 **Q.** And what is your position there?

4 **A.** I am a forensic anthropologist and director
5 of forensic emergency management.

6 **Q.** And could you tell the jury what that
7 means?

8 **A.** Essentially two separate jobs. But the one
9 that's relevant to this is that I'm a forensic
10 anthropologist. What that means is that I con --
11 consult with the pathologists when requests are made.
12 My job is to interpret skeletal trauma or take a look
13 at the skeleton and try to figure out things like
14 sex, age, race, things like that.

15 **Q.** Okay. And how long have you been with
16 Harris County IFS?

17 **A.** Since September of 2006.

18 **Q.** And did you work anywhere before that?

19 **A.** I was a student before that.

20 **Q.** Tell us a little bit about your education,
21 background and training to become a forensic
22 anthropologist.

23 **A.** I have three degrees, all of them are in
24 anthropology. First is a Bachelor's degree from
25 Texas State; second is a Master's of Arts in

1 anthropology from California State University Chico;
2 and third is a Ph.D. from Texas A&M.

3 Q. And on October 3, 2012, were you asked to
4 consult on any cases with Dr. Doyle?

5 A. Yes.

6 Q. And what were you asked to do?

7 A. The way that this works is that she
8 actually had extracted a specimen for me, and it
9 was -- she put it into a toxicology room which is
10 where we -- they -- the pathologist frequently submit
11 samples for us to analyze, and I retrieved the sample
12 from that room.

13 Q. And what kind of sample was it?

14 A. It was laryngeal cartilage.

15 Q. Describe for us, when you receive a sample
16 like this, what is the first thing you do?

17 A. First thing I do is confirm the case number
18 and log it in to our laboratory.

19 Q. And did you do that in this case?

20 A. I did.

21 Q. And what do you do after that?

22 A. Process it, which means remove. We are
23 interested in the hard tissues. We have to get the
24 soft tissue that is remaining on those elements off.
25 And so, in the case of a specimen like this, there is

1 both bone and cartilage, which means that the bone,
2 we use a chemical process to remove the soft tissue
3 with the cartilage. It's a manual process. We
4 actually deal with scissors and scalpels.

5 Q. And what is the purpose of doing that?

6 A. So that we can get a look directly at the
7 surface of the bone and the cartilage.

8 Q. And did you do that in the case we're here
9 on today?

10 A. Yes.

11 Q. I'm showing you what's been marked as
12 State's Exhibits No. 212 through 219, and ask you to
13 take a look at those.

14 A. (Witness complies.)

15 Q. Are you personally familiar with the
16 objects depicted in the photographs?

17 A. Yes.

18 Q. And is that a fair and accurate
19 representation of those samples that you processed
20 back on October 3, 2012?

21 A. Yes.

22 MS. REYNA: Your Honor, at this time
23 the State would offer State's Exhibits 212 through
24 219 after tendering to Defense counsel.

25 MS. CARPENTER: We have no objection,

1 Your Honor.

2 **THE COURT:** Admitted.

3 **Q.** (**BY MS. REYNA**) So, after these samples have
4 been chemically processed, what is the next step that
5 you take?

6 **A.** Well, it's a -- on the process of analyzing
7 them is both a gross, meaning using my eyes, and a
8 microscopic process using a stereomicroscope.

9 **Q.** Okay. So, tell us exactly what you did in
10 this case.

11 **A.** I -- on those particular -- this particular
12 sample, what I was looking for is any sign of
13 fracture.

14 **Q.** Okay. Can you tell the jury what's
15 depicted in State's Exhibit 212?

16 **A.** Yes. So, what you see at the top of the
17 screen, the lighter-colored material, that's the
18 hyoid bone.

19 **Q.** Here (indicating)?

20 **A.** Yes. Beneath that is the thyroid
21 cartilage. And beneath that is the cricoid
22 cartilage.

23 **Q.** Okay. And what case number is it that you
24 were examining?

25 **A.** OC12-009 -- or 019.

1 Q. And what is it that you said you were
2 looking -- focused on when you examined these?

3 A. Fractures.

4 Q. So, which -- which sample did you take a
5 look at first?

6 A. Typically, I will -- the hyoid bony sample
7 will come out of chemical processing before I get a
8 chance to do the physical removal of the material and
9 I typically look at the hyoid first.

10 Q. And what is depicted in State's Exhibit
11 213?

12 A. That is the hyoid bone.

13 Q. And can you tell the jury what you observed
14 in the hyoid bone?

15 A. What you see on -- so, there is three
16 elements that you see. There is a body, which is
17 component of that bone in the mid screen --

18 Q. Let me stop you there, Doctor. See the
19 screen to your left?

20 A. Yeah.

21 Q. You can actually write on that like you do
22 in football games.

23 A. Okay.

24 Q. And it will show up on the screen for us.

25 A. Here you go.

1 Q. So, go ahead with your explanation.

2 A. Okay. I don't know if you can see that,
3 where the body of hyoid is. And then each of those
4 are called the superior horns of the hyoid. Those
5 locations, there are actually joints that is normal.
6 Those are unfused, which is typical for one of that
7 age.

8 Q. Okay. So, those are not the breaks there?

9 A. That's correct.

10 Q. Okay. So, what else did you observe,
11 Doctor?

12 A. Right there is a fracture in the right
13 hyoid horn.

14 Q. And can you actually circle it?

15 A. I will try. (Witness complies.)

16 Best I can do. Sorry.

17 Q. Okay. So, here (indicating)?

18 A. Yeah.

19 Q. And how would you describe that fracture?

20 A. It's a complete transverse fracture.

21 Q. And is that depicted more closely in
22 State's Exhibit 214?

23 A. Yes, it is.

24 Q. Okay. What do we see in State's
25 Exhibit 215?

1 **A.** That is the thyroid cartilage.

2 **Q.** And did you make an examination of the
3 thyroid cartilage?

4 **A.** I did.

5 **Q.** Did you make any notations about the
6 thyroid cartilage?

7 **A.** It is normal, no fractures.

8 **Q.** Okay. So, looking at State's Exhibit 216
9 and 217, you see these little bends in the cartilage.
10 Is that normal?

11 **A.** Yes. What you see there, is those ends
12 there are called triticeal cartilages, just a
13 cartilage that lives within that membrane.

14 **Q.** And showing you State's Exhibit No. 218.
15 What do we see here?

16 **A.** That is the cricoid cartilage, which sits
17 immediately beneath the thyroid cartilage in your
18 neck.

19 **Q.** And what did you observe about the cricoid
20 cartilage?

21 **A.** It has a complete fracture on the anterior
22 aspects of that aspect -- front piece of that
23 cartilage.

24 **Q.** And can you circle that on the screen for
25 the jury, please?

1 **A.** Apparently not.

2 **Q.** Okay. How about drawing an "X" over it?

3 **A.** I will try. Not getting it.

4 **Q.** Just not working for you. Okay.

5 We're looking at it right here on this
6 photograph, correct?

7 **A.** Yes.

8 **Q.** And how did you describe that injury?

9 **A.** I can show it on the screen if you want.
10 Would that help?

11 **Q.** If it will help the jury.

12 **A.** Yes, ma'am. Fracture goes directly through
13 there (indicating.) So, what you're looking at there
14 is the face of the bone that was continuous and
15 broken off. So, you're looking at that right here.

16 **Q.** And, finally, State's Exhibit 219. What
17 are we looking at there?

18 **A.** That is the same cartilage, looking at it
19 from the above.

20 **Q.** Okay. And where would the fracture be in
21 this photograph?

22 **A.** Can I show over here?

23 **Q.** Yes, sir. This -- this -- the -- the
24 contour of this cartilage should just be continuous,
25 and instead it's fractured right here (indicating.)

1 And this piece is displaced posterior towards the
2 back.

3 **THE COURT:** Excuse me. The Madden
4 screen is heat activated. Did you touch it with this
5 part of your finger?

6 **THE WITNESS:** I did.

7 **THE COURT:** Okay. I guess it's not
8 working. Thank you.

9 **Q. (BY MS. REYNA)** Were you able to determine
10 from your examination where the location of any
11 compression on the neck would have been based on
12 these injuries?

13 **A.** Both of the fractures that I saw are
14 consistent with compression of the neck.

15 **Q.** Okay. Okay. And is -- was there any
16 indication of any sort of healing response in either
17 of the fractures?

18 **A.** No.

19 **Q.** And can you tell the jury why you would
20 look for something like that?

21 **A.** We always look for that, but what we're
22 looking for is to try and get an idea when the injury
23 may have taken place. And there was no indication
24 that there is any healing response at all.

25 **Q.** Okay. So, what does that mean to you in

1 regards to these injuries?

2 **A.** That it happened at or near the time of
3 death.

4 **Q.** Was there anything that you observed about
5 the morphology or quality of the bone or cartilage
6 that was unique or different?

7 **A.** Unique? It was normal, anatomically
8 normal.

9 **Q.** And let's explain to the jury what it means
10 to look for any morphology -- or let me rephrase.

11 Can you tell the jury what morphology
12 is?

13 **A.** Morphology is actually just the shape or
14 contour of the bone. So, in this case, I would have
15 been looking for some disruption in there or
16 something abnormal; and there was nothing there.

17 **Q.** Okay. And what about the quality of the
18 bone? What are you looking for in the quality?

19 **A.** What we're looking for in quality, what
20 we're looking at is essentially density. So, we're
21 looking -- as you look at the cross-section of bones
22 in the case of hyoid, it would have been thinned or
23 reduced and the cortical bone would have been
24 reduced; and it wasn't.

25 **Q.** And are changes in the quality of the bone,

1 do they occur as a person ages?

2 **A.** Yes.

3 **Q.** Okay. And do you know how old the deceased
4 was in this case?

5 **A.** I believe 31.

6 **Q.** Okay. And was the quality of her bone
7 consistent with someone her age?

8 **A.** Yes.

9 **Q.** And does decomposition of the body affect
10 the quality of the bone?

11 **A.** Not bone, no.

12 **Q.** So, even though the deceased may have been
13 lying in an oil field for a week, it wouldn't affect
14 the quality of her bones?

15 **A.** That's correct.

16 **MS. REYNA:** Pass the witness, Judge.

17 **THE COURT:** Thank you.

18 Cross-examination?

19 **CROSS-EXAMINATION**

20 **Q.** (**BY MS. CARPENTER**) Just to be clear,
21 Doctor, when you initially received -- I will show
22 you what's State's Exhibit 212. When you initially
23 received this top bone, the hyoid bone, it still had
24 soft tissue on it, correct?

25 **A.** That's correct.

1 **Q.** And so, it looked like State's Exhibit 211,
2 correct?

3 **A.** Yes.

4 **Q.** And the way this would be situated, this
5 particular bone would be situated in the body, is
6 actually this way (indicating), correct?

7 **A.** Yeah. It goes not that quite straight up
8 and down; but, yes, essentially sits this way
9 (indicating). So, the horseshoe is like this
10 (indicating.)

11 **Q.** All right. And so, this bone is basically
12 with the soft tissue attached in a horseshoe kind of
13 shape?

14 **A.** Yes.

15 **Q.** And it kind of follows like the shape of
16 the jawbone?

17 **A.** It's essentially directly behind your jaw
18 right here (indicating.)

19 **Q.** Okay. Now, we do have a jawbone in this
20 area (indicating), right?

21 **A.** Uh-huh (affirmative.)

22 **Q.** But this hyoid bone sits behind that
23 jawbone?

24 **A.** That's correct.

25 **Q.** So, it's right up here where the neck and

1 the jawbone meet (indicating)?

2 **A.** That's right.

3 **Q.** Now, in this picture, when the soft tissue
4 is attached, we can see that this area here -- I'm
5 sorry. What did you call it?

6 **A.** That is the greater horn of the hyoid.

7 **Q.** All right. The greater horn. And there is
8 a greater horn on both sides, right?

9 **A.** That's right.

10 **Q.** Greater horn looks a little slender,
11 especially on -- in this area (indicating), right?

12 **A.** That's correct.

13 **Q.** So, in State's Exhibit 213, when we are
14 looking at those same bones, they look to be a little
15 bit wider. Is this the way that the superior bones
16 would be situated inside a person?

17 **A.** What you're looking at is those bones,
18 those horns actually sit -- they're laying flat on
19 the board, the photo board there; but they would
20 actually be sitting like this (indicating) and they
21 are very slender in that direction.

22 **Q.** Okay. So, the way they are depicted in the
23 picture is not the way they are when they're inside a
24 human being?

25 **A.** That's true.

1 Q. And because of gravity, you have to lay
2 them flat; is that fair?

3 A. Yeah. Yes.

4 Q. And all of these pictures are Ms. Warner's
5 hyoid bone, right -- or they come from Ms. Warner,
6 right?

7 A. Yes.

8 Q. You said they are unfused right here
9 (indicating); and that is normal, correct?

10 A. That's correct.

11 Q. So, when you look at this, you don't
12 consider the fact that they are not fused here to be
13 a break; is that true?

14 A. That's true.

15 Q. And what is this little piece up here
16 (indicating)?

17 A. This is the piece of that horn that's
18 distal to or on the other side of the fracture.

19 Q. I noticed that in the hyoid bone -- is this
20 cartilage, or is it bone?

21 A. That's bone.

22 Q. This is bone?

23 A. Yes.

24 Q. I notice that in the -- in State's
25 Exhibit 213, this picture, we have one on what would

1 be Ms. Warner's right side, correct? But we don't
2 have one on the left side. Do you know why?

3 A. That's just because the left side is not
4 fractured. It's just continuous.

5 Q. All right. So, this is the way it's
6 supposed to look?

7 A. That's correct.

8 Q. And this one, if it hadn't been broken,
9 would also look like this one (indicating)?

10 A. That's right.

11 Q. Would you agree with me that when we take a
12 look at State's Exhibit 13, it has a shape going --
13 basically a curve going out towards the outside?

14 A. Yes.

15 Q. And this fractured piece, its curve is in
16 reverse to this other one, isn't it?

17 A. Yes.

18 Q. If these were placed correctly inside a
19 person, this one would be flipped over?

20 A. Both of those two would be standing up on
21 their end.

22 Q. All right. So, if this were lying flat, if
23 this one were flipped over, it would be able to fit
24 into this little piece right here (indicating)?

25 A. That's correct.

1 **Q.** Now, doctors kind of have their own
2 language, right?

3 **A.** I have been told that, yeah.

4 **Q.** And I'm showing you what's been admitted as
5 State's Exhibit 193. And this report looks familiar,
6 doesn't it?

7 **A.** It does.

8 **Q.** And this is the autopsy report. Now,
9 inside the autopsy report, you made your own report,
10 correct?

11 **A.** That's correct.

12 **Q.** And so, all of this report that says
13 "report of anthropology consultation" is what you
14 drafted?

15 **A.** That's right.

16 **Q.** And if we look in the -- in the autopsy
17 report, you see right here where you talk about a
18 complete transverse fracture. Is that this breaking
19 of the bone that we see in State's Exhibit 213?

20 **A.** No. This is -- that sentence refers to the
21 fracture of the cricoid cartilage.

22 **Q.** Okay. I'm sorry. Right here is where you
23 talk about -- is this about the hyoid?

24 **A.** Yes.

25 **Q.** Okay. So, right here when you are talking

1 about a complete transverse fracture is present on
2 the right greater horn of the hyoid, that's where
3 you're referring to State's Exhibit 213?

4 **A.** Yes.

5 **Q.** When you look at this middle bone -- and
6 you called it something else, of course. What was
7 it?

8 **A.** That is the body of the hyoid.

9 **Q.** When we look at the body of the hyoid,
10 would you consider it to be pointed?

11 **A.** No, I wouldn't.

12 **Q.** Do you believe it to be slightly rounded?

13 **A.** Yes.

14 **Q.** And State's Exhibit 216, we're looking at
15 the thyroid, right?

16 **A.** Hyoid cartilage, yes.

17 **Q.** All right. Now, is there a difference
18 between bone and cartilage?

19 **A.** There is.

20 **Q.** All right. Now, the hyoid that we just
21 looked at before is a bone, right?

22 **A.** That's correct.

23 **Q.** Whereas, the thyroid is cartilage, correct?

24 **A.** That's correct.

25 **Q.** What makes the difference between bone and

1 cartilage?

2 **A.** Bone has a mineral component, a hard
3 component, that cartilage does not have which makes
4 it stiffer.

5 **Q.** So, cartilage is more flexible than bone?

6 **A.** Yes.

7 **Q.** Now, in your -- in your autopsy report, you
8 said the hyoid cartilage is atraumatic. What does
9 that mean?

10 **A.** It means there is no trauma.

11 **Q.** Okay. And these horns right here, are they
12 flexible like cartilage?

13 **A.** Yes.

14 **Q.** So, if they had been bent, then they would
15 be able to kind of pop back into place?

16 **A.** They can withstand some level of bending,
17 but at some point that -- they -- they are -- they're
18 able to resist that will -- it would be exceeded, and
19 they can fracture.

20 **Q.** So, the fact that this isn't fractured or
21 that you don't see signs of trauma doesn't mean that
22 at some point it didn't bend, correct?

23 **A.** Correct.

24 **Q.** And then in State's Exhibit 218, this is
25 the cricoid cartilage, right?

1 **A.** Yes.

2 **Q.** And we already talked about the difference
3 between bone and cartilage, right?

4 **A.** Yes.

5 **Q.** So, this cartilage -- this cricoid meets
6 that same definition of cartilage, correct?

7 **A.** Yes.

8 **Q.** And do you see this discoloration that's
9 right here (indicating)?

10 **A.** Yes.

11 **Q.** Is that where you see injury?

12 **A.** The actual fracture is a little to your
13 right from that. That is -- that is typical
14 coloration for cartilage.

15 **Q.** All right. So, this is standard?

16 **A.** Yes. All of it is. It can take a sort of
17 modeled appearance like that.

18 **Q.** Do you see right here where the
19 discoloration -- discoloration goes into a part that
20 is not discolored?

21 **A.** Yes.

22 **Q.** This whole line?

23 **A.** That is the -- that fracture -- that line
24 is the fracture, and then just to the right of that
25 is the fractured surface.

1 **Q.** Okay. So, when this bone -- with this bone
2 being fractured, this is -- supposedly looks like a
3 ring, correct?

4 **A.** That's correct.

5 **Q.** And when we get to talking about the
6 structures in the neck, there aren't that many, are
7 there?

8 **A.** Bone and cartilage?

9 **Q.** Bone and cartilage?

10 **A.** There are a number of very small cartilages
11 also in the larynx, but there is not a large number.

12 **Q.** And you did look at the larynx --

13 **A.** Yes.

14 **Q.** -- in Ms. Warner, correct?

15 **A.** Yes.

16 **Q.** So, the way the neck is set up, you have
17 the hyoid at the top; is that true?

18 **A.** That's true.

19 **Q.** Where is the larynx in -- you know, if you
20 were like -- now we know where the hyoid is. Is it
21 underneath it or above it?

22 **A.** The larynx is the term that we use to refer
23 to the whole complex. So, the hyoid plus those two
24 cartilages together make up the larynx.

25 **Q.** Oh, okay. So, State's Exhibit 212 is all

1 of these three?

2 **A.** That would all make up -- that plus some
3 other elements make up the larynx.

4 **Q.** What other elements would that be?

5 **A.** Your vocal cords, the trachea. So,
6 everything between sort of the hyoid and the bottom
7 of the cricoid there.

8 **Q.** All right. And you mentioned the trachea.
9 Where does the trachea -- so, we have the hyoid bone,
10 right?

11 **A.** Uh-huh (affirmative.)

12 **Q.** Then we have the --

13 **A.** Thyroid cartilage.

14 **Q.** -- thyroid cartilage. Right underneath the
15 thyroid cartilage is the cricoid bone?

16 **A.** Yes.

17 **Q.** So, all of these things are pretty close
18 together -- sorry. Cricoid cartilage.

19 **A.** Yes.

20 **Q.** So, all of these that we see on State's
21 Exhibit 212 are fairly close together in the neck?

22 **A.** They are very close. There is a membrane
23 that separates the hyoid from the thyroid cartilage,
24 separates it by maybe a half an inch. The other two
25 are directly on top of each other. Thyroid cartilage

1 and cricoid cartilage sit directly against one
2 another.

3 Q. Underneath the cricoid cartilage would be
4 the trachea?

5 A. That's right.

6 Q. And is the trachea attached to the cricoid
7 cartilage?

8 A. It is.

9 Q. I'm going to show you State's Exhibit 210.
10 Does this represent the larynx and trachea?

11 A. Yes.

12 Q. So, that's all of those components put
13 together, correct?

14 A. It's -- it cuts off the top of the thyroid
15 cartilage, and hyoid bone is not visible.

16 Q. So, what we're really looking at is the
17 cricoid cartilage?

18 A. You're looking at the bottom half of the
19 hyoid cartilage, the cricoid cartilage, and the upper
20 portion of the trachea.

21 Q. Can you show us exactly -- using the
22 screen, exactly what is what?

23 A. I will try. Those dots, they are separate
24 the bottom of the thyroid cartilage from the cricoid
25 cartilage. And the dots on the bottom show the

1 separation between the cricoid cartilage and the
2 trachea.

3 Q. So, underneath the cricoid cartilage, we
4 have the trachea?

5 A. That's correct.

6 Q. You didn't look at the trachea at all, did
7 you?

8 A. The trachea does not have any -- it has
9 very small cartilage rings that are not reliable for
10 anthropological examination. So, we removed that.

11 Q. So, you only leave that to the pathologist?

12 A. Yes.

13 Q. All right. So, looking back at State's
14 Exhibit 219, the cricoid cartilage, you said -- can
15 you hit the bottom left of your screen?

16 A. (Witness complies.)

17 Q. Thank you. Looking at the cricoid
18 cartilage, we identify exactly where the fracture
19 occurred, correct?

20 A. Yes.

21 Q. And you said that that fracture was going
22 posteriorly, of course, right?

23 A. What I can tell you is that the -- that
24 portion of the bone is displaced posteriorly relative
25 to the rest of the structure.

1 **Q.** All right. I need a little bit of help.
2 When you say "posteriorly," what does that mean?

3 **A.** Towards the back.

4 **Q.** Going towards the back?

5 **A.** Yes. Yes.

6 **Q.** So, that bone is actually -- on Michelle
7 Warner, would have been going towards the back of her
8 neck, right?

9 **A.** That cartilage that -- that portion of that
10 cartilage is displaced towards the back.

11 **Q.** Thank you. It's cartilage?

12 **A.** Yeah.

13 **Q.** All right. And it's going towards the
14 back?

15 **A.** Yes.

16 **Q.** Now, does that indicate to you which
17 direction the force was coming from?

18 **A.** Yes. It would have been compression of the
19 neck from the front.

20 **Q.** And when you say compression, does that
21 mean a squeezing; or does it mean like a fast, hard
22 hit?

23 **A.** It can actually mean either one. That
24 particular fracture could result from either of
25 those.

1 **Q.** Do you know how much pressure it takes in
2 order to fracture the cricoid cartilage?

3 **A.** There is unfortunately not good data on
4 that.

5 **Q.** Is this a common injury to see?

6 **A.** In cases with compression of the neck, I
7 would say yes.

8 **Q.** So, this is fairly common, then. You're
9 accustomed to seeing a fracture of the cricoid
10 cartilage?

11 **A.** Yes.

12 **Q.** If the cricoid cartilage was squeezed from
13 the side as opposed to having this compression from
14 the front, would you expect it to just take on a
15 different shape?

16 **A.** I don't think I have ever seen one that
17 looks like that. I couldn't really answer that.
18 There is a lot more soft tissue in the way in those
19 directions than there is from the front.

20 **Q.** All right. If we were to take the soft
21 tissue out of the equation altogether and then
22 squeeze -- an otherwise circular cricoid cartilage,
23 would you expect it to take more of an oval form,
24 like the shape of an egg where it just gets
25 distorted?

1 **A.** I suspect it would fracture in the same way
2 as what you saw on the fracture, may be in a
3 different location.

4 **Q.** Okay. Is it possible that it could just
5 bend as opposed to breaking?

6 **A.** Yes.

7 **Q.** As a matter of fact, it would bend first
8 before breaking, correct?

9 **A.** Correct.

10 **Q.** In the autopsy report, you had some
11 diagrams, correct?

12 **A.** In my anthropology report, yes.

13 **Q.** And I will go back to State's Exhibit 193.
14 Does this look like something that you looked at?

15 **A.** Yes.

16 **Q.** I want to zoom in on this lower left part.
17 Now, did you draw this yourself?

18 **A.** I did.

19 **Q.** And is this a drawing of the cricoid
20 cartilage?

21 **A.** Yes, looking at it from above.

22 **Q.** All right. And this is you showing,
23 without the soft tissue, what it looked like at the
24 time that you saw it, right?

25 **A.** That's correct.

1 **Q.** So, you're showing that that bone is pushed
2 in, correct?

3 **A.** Yes.

4 **Q.** Sorry. Cartilage.

5 And you have even drew an arrow,
6 right?

7 **A.** Uh-huh (affirmative.) Yes.

8 **Q.** And above that, we have a picture looking
9 straight on at the larynx, right?

10 **A.** That's correct.

11 **Q.** And one looking at the side view of the
12 larynx, as well, correct?

13 **A.** That's correct.

14 **Q.** You have a notation here. Can you read it?

15 **A.** It just says: "Both greater horns
16 displaced anteriorly." In parenthesis it says "no
17 fractures."

18 **Q.** No fractures. So, this is you saying that
19 this is the way it's supposed to look?

20 **A.** Yes.

21 **Q.** When I see the word "displaced," it makes
22 me think that it's moved somehow.

23 **A.** It just means that those triticeal
24 cartilages that I was talking about are displaced
25 anteriorly towards the front. It's not abnormal,

1 please, Your Honor.

2 **THE COURT:** Yes, ma'am.

3 *(Brief pause)*

4 **Q.** *(BY MS. CARPENTER)* So, the bending, even
5 though it's within the range of normal limits, it
6 could show that there was some application of force,
7 correct?

8 **MR. DAVIS:** From the front.

9 **Q.** *(BY MS. CARPENTER)* From the front?

10 **A.** The bending of the cricoid cartilage horns?

11 **Q.** Of the superior horns.

12 **A.** It's -- no. I would say that is within the
13 range of variation. It's location there doesn't tell
14 me anything is really what it means.

15 **Q.** Okay. Have you seen a lot of fractures of
16 the cricoid cartilage?

17 **A.** I have seen a lot of laryngeal cartilage
18 fractures. Fewer are cricoid than thyroid.

19 **MS. CARPENTER:** I pass the witness,
20 Your Honor.

21 **THE COURT:** Thank you.

22 **MS. REYNA:** Nothing further, Judge.

23 **THE COURT:** Thank you.

24 Is this witness excused for all
25 purposes?

1 **MS. REYNA:** He is, Judge.

2 **THE COURT:** Is that all right with the
3 Defense?

4 **MS. CARPENTER:** Subject to recall,
5 Your Honor.

6 **THE COURT:** Subject to recall? Okay.
7 You're free to go today, but --

8 **THE WITNESS:** Thank you.

9 **THE COURT:** -- you're still under
10 subpoena.

11 **THE WITNESS:** Okay.

12 **THE COURT:** Thank you, sir.

13 **(Witness released)**

14 **MS. JOHNSON:** Judge, may we approach
15 before I call the next witness?

16 **THE COURT:** Yes, ma'am.

17 **(At the Bench)**

18 **MS. JOHNSON:** The State plans on
19 calling Scott Russell. This is the issue of him --

20 **THE COURT:** Calling -- who is that?
21 Scott Russell?

22 **MS. JOHNSON:** Yes, ma'am. This is the
23 issue of him being charged with assaulting the victim
24 before, but he completed a deferred for it. He was
25 not convicted. Now, I want to be clear. I guess

1 maybe we need to take the jury out about what the
2 Defense plans to go into.

3 **THE COURT:** Why don't we send them
4 out.

5 **(End of Bench Discussion)**

6 **THE COURT:** Members of the jury, we're
7 going to ask that you recess back to the jury room
8 for just a moment.

9 All rise, please, for the jury.

10 **(Jury released)**

11 **MS. JOHNSON:** Your Honor, the State's
12 next witness is Scott Russell; and this is a Motion
13 in Limine that I addressed before the trial about
14 going into the facts of the assault between him and
15 our victim, Michelle Warner. Now, I know earlier you
16 stated in other conversations that you could -- the
17 Defense could ask because of a self-defense issue
18 that has the complainant hit this witness before, but
19 I want to set up the parameters of how far they can
20 go as far as -- okay, I agree that they should be
21 able to ask: Has Michelle hit you before or hit you
22 or attacked you or what have you. But as far as
23 going into anything other than that, I think that we
24 addressed that in the Motion in Limine where you said
25 they would have to approach or at that time that they

1 could not go into anything other than --

2 **THE COURT:** So, what kind of things
3 are you talking about?

4 **MS. JOHNSON:** In other words, I know
5 that in the offense report of the complainant and
6 this witness, that this witness stated that the
7 complainant hit him first and he hit her back. So,
8 as far as going into did she hit you before or did
9 she attack you or something like that, I think, is
10 fine; but anything other than -- anything going into
11 were you charged with assaulting or anything like
12 that, I think, is not relevant to this case.

13 **THE COURT:** Do you want to be heard on
14 that.

15 **MR. DAVIS:** Just two things, Judge. I
16 think the Motion in Limine went directly to Scott
17 Russell being on deferred and that was all that was
18 going to be mentioned --

19 **THE COURT:** Well, you know, before we
20 start the trial, we only know so much about --

21 **MR. DAVIS:** Yes, ma'am.

22 **THE COURT:** -- what's going to happen.
23 So, I think the key is to figure out what we're going
24 to do from here on out.

25 **MR. DAVIS:** And --

1 **THE COURT:** So, are you -- the State,
2 of course, has no objection to you asking if the
3 complainant ever hit him.

4 **MR. DAVIS:** Yes, ma'am.

5 **THE COURT:** Are you planning on going
6 beyond that?

7 **MR. DAVIS:** I have got a note, Your
8 Honor, that that evidence is already in the record
9 and has been introduced.

10 **THE COURT:** Which evidence?

11 **MR. DAVIS:** But the fact that he was
12 arrested and he was charged and put on probation,
13 that evidence has already been introduced by the
14 State.

15 **MS. JOHNSON:** Well, that was -- that
16 evidence, was the defendant talking about Scott
17 Russell and the complainant -- defendant never even
18 said anything about the complainant attacking him.
19 It was Scott Russell being charged with assaulting
20 the complainant, Michelle Warner.

21 **THE COURT:** What exactly are you
22 referring to?

23 **MR. DAVIS:** The fact of Scott Russell
24 being on probation, him being attacked by Ms. Warner
25 and as well as being arrested and charged by Ms.

1 Warner was introduced into evidence by the State. It
2 wasn't redacted from any reports, any statements, or
3 anything of that nature. So, the evidence she is
4 objecting to is already in the record and has been
5 introduced by the State. I think I am entitled --

6 **THE COURT:** Hold on. Where is that?
7 What are you talking about? You lost me.

8 **MR. DAVIS:** Yes, ma'am. Well, the
9 State made a statement -- or multiple statements by
10 Mr. Castellano where Mr. Castellano is saying in
11 those statements about Scott Russell being arrested
12 and being charged with assault. He even says at one
13 point: You see what Michelle did? I don't want it
14 to happen to me. You saw what she did to Scott
15 Russell. You know, in a sense of him being arrested
16 and charged with probation.

17 **THE COURT:** You're saying because the
18 defendant opened the door with his own statement,
19 that you --

20 **MR. DAVIS:** The State --

21 **THE COURT:** Hold on.

22 -- you should be allowed to go into
23 this? You're talking about because the State played
24 his statement?

25 **MR. DAVIS:** Exactly. Those statements

1 could have equally been redacted from that
2 information.

3 **THE COURT:** I think one of the issues
4 here is that you-all have listened to his statement
5 many times. For those of us hearing it for the first
6 time, it wasn't all that easy to understand; and the
7 volume wasn't always consistent. So, exactly what
8 was said there -- and I think you're going to need to
9 kind of give me a summary of that. And, also, give
10 me a response to what he is saying that has already
11 come up.

12 Exactly what did the defendant say on
13 his statement?

14 **MS. JOHNSON:** So, in his phone call
15 with David Chaffin --

16 **THE COURT:** Okay. We're not talking
17 about his statement. We're talking about the phone.

18 **MR. DAVIS:** It's in his statement, as
19 well. It's in the phone call, and it's in his
20 statement.

21 **THE COURT:** Okay.

22 **MS. JOHNSON:** Specifically, in the
23 phone call the defendant had with David Chaffin that
24 we played, the defendant talks about how Scott
25 Russell was arrested for hitting Michelle while she

1 was holding Cayden. He does not say anything in that
2 phone call that Michelle hit him first or attacked
3 him or anything like that. He strictly talks about
4 that Scott was arrested for hitting Michelle while
5 she was holding Cayden, and that's it.

6 Later on in a phone call with
7 Officer Do, the defendant talks about Scott Russell
8 being charged or arrested with assaulting Michelle.
9 He does not say anything about Michelle attacking
10 Scott Russell or Michelle hitting Scott Russell.
11 Does not say anything like that.

12 Every time he brings it up, he talks
13 about Scott Russell being charged; and he also brings
14 up that there was a restraining order, but Michelle
15 lived with him any way, and doesn't that invalidate
16 the restraining order? He brings that up with
17 Officer Do. There is at no time in any of the
18 defendant's statements that he ever says that
19 Michelle Warner attacked him or anything to Scott
20 Russell. It's always talking about Scott Russell
21 hitting Michelle or being charged with assaulting
22 Michelle.

23 **MR. DAVIS:** And --

24 **THE COURT:** And hold on. Where are
25 you referring to in the record that Michelle hit

1 first, but yet the other person was charged? Where
2 is that in the record that you're referring to?

3 **MS. CARPENTER:** Two things, Judge.

4 **THE COURT:** No. Can you answer that
5 question?

6 **MS. CARPENTER:** Yes. I was going to
7 tell you places where that's referenced.

8 **THE COURT:** Okay.

9 **MR. DAVIS:** During the statement --
10 during Mr. Castellano's statement with Detective Do,
11 he is asked questions and he is responding to
12 questions and one of the things he says is: You see
13 what happened to Scott? Michelle had him arrested,
14 is what he says. He says: She had him arrested.

15 **THE COURT:** Okay.

16 **MR. DAVIS:** Just for purposes to make
17 this easier, Judge, all I plan on going through with
18 Scott Russell -- I think that is what you are asking.
19 I don't plan on going into great detail about his
20 case, what happened subsequent to that encounter with
21 Michelle; but I do plan on asking him about her
22 hitting him first and then him being arrested as a
23 result of that.

24 **THE COURT:** Okay.

25 **MR. DAVIS:** And let me explain why and

1 what's my theory behind that.

2 **THE COURT:** Okay.

3 **MR. DAVIS:** The issue is we have a
4 situation where you have a woman who attacks a man
5 first; and when the police respond to that call, the
6 man is the one that is arrested. And he says to
7 Detective Do: You saw what happened to Scott
8 Russell. And it fits with the Defense theory in
9 terms of why Mr. -- Mr. -- to explain some of the
10 defendant's subsequent actions.

11 And it would be our assertion that if
12 we're not allowed to do it, the defendant will be
13 denied the Sixth Amendment right to present a
14 defense. He has a right to present a complete
15 defense; and one of the things the defendant has to
16 explain then is his subsequent actions, what happens
17 afterward. And that is evidence that explains the
18 defendant's subsequent actions.

19 Because here you have Scott Russell
20 who is attacked by Michelle Warner. And after he is
21 attacked by Michelle Warner first, he calls the
22 police. The police talk to him and they talk to her
23 and they decide to arrest him.

24 **THE COURT:** Okay.

25 **MR. DAVIS:** And in Mr. Castellano's

1 statement to Detective Do, he mentions that: You saw
2 what happened to Scott Warner -- to Scott Russell.

3 **THE COURT:** That's not working for me.
4 So, clearly, the relationship between the deceased
5 and the defendant is admissible; and clearly any act
6 of aggression by the deceased is admissible. But her
7 relationship with Scott is not relevant unless there
8 is some unusual exception, and I don't see how that's
9 applying here. So, I just don't see it's relevant to
10 the issue of self-defense. The reason that comes in
11 is on the issue of self-defense. It's not admissible
12 about whether or not someone was afraid they would be
13 charged.

14 **MR. DAVIS:** I plan on --

15 **THE COURT:** Their argument is just too
16 convoluted, too many steps to get there. I
17 understand that's very prejudicial for the State,
18 which is why you want it in; but it's also not very
19 probative. I don't see how it's probative.

20 **MR. DAVIS:** I don't want it in because
21 it's prejudicial to the State. I want it in because
22 it's probative to the Defense.

23 **THE COURT:** Every good lawyer wants
24 something that prejudices the other side.

25 **MR. DAVIS:** That's not the only reason

1 I want it in. It may prejudice the other side.
2 That's just a byproduct of why I want it in. We want
3 it in because it's probative to the Defense. But,
4 Your Honor, I do plan on arguing --

5 **THE COURT:** I don't think your client
6 had to worry about Michelle telling the police
7 something that wasn't true.

8 **MR. DAVIS:** He had to worry about the
9 police not believing him if he called the police.

10 **THE COURT:** Right. And that's a
11 different issue.

12 **MR. DAVIS:** From his state of mind and
13 his knowledge was that when Michelle called the
14 police and the police came and responded to a man who
15 was involved with a woman, they assumed that the man
16 was in the wrong.

17 **THE COURT:** That's way too convoluted.

18 **MR. DAVIS:** I understand, Your Honor.
19 I plan on offering the information about the
20 assaultive conduct of Scott Russell for the purpose
21 of self-defense.

22 **THE COURT:** So, you plan to -- plan on
23 going into the assaultive conduct towards Scott
24 Russell?

25 **MR. DAVIS:** I do plan on offering the

1 assaultive conduct by Michelle Warner for purposes of
2 self-defense; but I'd like to make a proffer as to
3 the other elements and other issues that we have
4 raised, Your Honor.

5 **THE COURT:** So, when we get to that
6 point, I'd like to do the proffer as we go.

7 **MR. DAVIS:** Yes, ma'am.

8 **THE COURT:** So, will you bring that to
9 my attention at the appropriate time? So the ruling
10 is clear, you may ask this witness: Did Michelle
11 ever hit you? You may not ask were you charged any
12 way, that kind of thing.

13 **MR. DAVIS:** I won't go into his
14 charges, Your Honor.

15 **THE COURT:** Thank you very much.
16 We're ready for the witness. The State's request is
17 granted.

18 We're ready for the jury.

19 **(Jury enters the courtroom)**

20 **THE COURT:** Thank you. Please have a
21 seat.

22 Thank you. Your next witness, please.

23 **MS. JOHNSON:** State calls Scott
24 Russell.

25 **THE COURT:** Thank you. Come on up,

1 please, sir.

2 **THE BAILIFF:** Judge, this witness has
3 been sworn.

4 **THE COURT:** Thank you.

5 **SCOTT RUSSELL,**
6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **Q.** (**BY MS. JOHNSON**) Good morning.

9 **A.** Morning.

10 **Q.** Would you please introduce yourself to the
11 jury?

12 **A.** Scott William Russell.

13 **Q.** How old are you, Mr. Russell?

14 **A.** Forty-two.

15 **Q.** Are you married?

16 **A.** No.

17 **Q.** Do you have children?

18 **A.** Two.

19 **Q.** How many -- two. What are their names and
20 ages?

21 **A.** Riley Victoria, she is 22; and my son
22 Nicholas Scott is 19.

23 **Q.** Do you work?

24 **A.** Yes, sir -- yes, ma'am.

25 **Q.** Where do you work?