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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Appellate Case No. 2021-000569

The Honorable Diane S. Goodstein, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Muanah A. Fortune, Jr. Appellant.

RECORD ON APPEAL

VOLUME II OF III

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1 done so that we can connect the jury assembly room to the
2 courtroom.

3 Anything that the state needs to add to that?

4 ATTORNEY GLOVER: No, Your Honor.

5 THE COURT: Very well. I'll note your exception for the
6 record.

7 ATTORNEY HUBRICH: Thank you, Judge.

8 THE COURT: Yep, thank you. All right.

9 ATTORNEY CORNWELL: Judge, we're just renewing our objection
10 in joining in, just for purposes of the record.

11 THE COURT: Absolutely. And I hadn't had a specific request
12 from you to join the team.

13 ATTORNEY CORNWELL: And we are, your Honor. We got there.
14 And my client's family is able to see.

15 THE COURT: That's wonderful. You're just more geeky than I
16 am.

17 ATTORNEY CORNWELL: Thank you, Your Honor.

18 THE COURT: Okay. Very well. All right. Anything further
19 from the state where we bring the jury out?

20 ATTORNEY OSBORNE: No, Your Honor.

21 ATTORNEY CORNWELL: No, Your Honor.

22 THE COURT: From the Defendant Mr. Fortune?

23 ATTORNEY HUBRICH: No, ma'am.

24 THE COURT: Thank you so much. And we need our witness
25 back, please. Thank you. Mr. Porter, come on back. Marvin, you

1 need to get Mr. Porter some water, please.

2 (WHEREUPON, the jury is seated in the courtroom at
3 10:23 a.m.)

4 THE COURT: All right. Good morning, ladies and gentlemen.
5 (Jury responds.)

6 THE COURT: We are about to continue with the state's case
7 with the cross-examination of Mr. Porter. But I did want to just
8 explain to you, I know you've been in your jury room longer than
9 we all anticipated this morning. There were matters that I
10 needed to handle outside your presence, which is what we've been
11 doing. We haven't been in here telling jokes and having a big
12 time; we've been working. And the hope is that, as we can do
13 pretrial matters, it does help us be more efficient when we
14 begin. And so that's what we've been about.

15 Now, at this time we will continue. And we will continue
16 with the cross-examination of Mr. Porter. On behalf of
17 Mr. Fortune, Ms. Hubrich.

18 ATTORNEY HUBRICH: Thank you, Judge. May it please the
19 Court.

20 THE COURT: Yes.

21 MARCUS PORTER,

22 having previously been duly sworn, retakes the witness
23 stand, was examined and testified as follows:
24
25

CROSS-EXAMINATION

BY ATTORNEY HUBRICH:

Q Mr. Porter, I want to ask you some things that you testified to yesterday. You talked a lot about a light-skinned guy with light-colored eyes and black-and-white shoes. Right?

A Yes.

Q And he was the guy who shot Joe Weaver, that was your testimony. Correct?

A Is that a question?

Q Yes.

A Yes.

Q So the light-skinned guy with the light-colored eyes and the black-and-white shoes, that was the gentleman that shot Joe Weaver; right?

A He shot him three times. Yes.

Q And that was the guy that locked eyes with you?

A Yes.

Q And that was Alijah Green, that was your testimony yesterday; correct?

A Yes.

Q Elijah Green's not on trial today?

A No.

Q You talked a lot about the fat -- and I put that in parenthesis because I think that was your word exactly -- dark-skinned guy with purple shoes. Right?

1 A Yes.

2 Q And he was the first or second guy in the door, that was
3 your testimony yesterday; correct?

4 A Correct.

5 Q And that was Devonte Major, that was how you identified him;
6 right?

7 A Yes.

8 Q And Devonte Major is not on trial here today?

9 A No, ma'am.

10 Q So the first two guys in the door, you said, were Elijah
11 Green, Devonte Major?

12 A Yes, ma'am.

13 Q The other two guys, you don't remember anything about other
14 than yesterday you testified one was wearing camo, maybe. Right?

15 A Correct.

16 Q I'm going to talk to you about some other things you
17 testified to yesterday. You testified about pending charges.
18 Right?

19 A Yes.

20 Q And, wow, did I hear it right that you've got a possession
21 of drugs charge pending?

22 A Yes.

23 Q A distribution of drugs charge pending?

24 A Yes.

25 Q And a trafficking of drug charge pending?

1 A Yes.

2 Q Trafficking's about how much weight you have; right?

3 A I don't know the code.

4 Q Trafficking is a much more serious offense, you do know
5 that?

6 A Yes.

7 Q It means you had a bunch of drugs?

8 ATTORNEY OSBORNE: Objection, Your Honor. She's asking him.
9 He needs to invoke the fifth.

10 THE COURT: I understand. It is cross-examination. You may
11 continue.

12 Q Trafficking means you had a bunch of drugs. Right?

13 ATTORNEY OSBORNE: Objection, Your Honor. Can she just
14 rephrase it to, You are alleged to have had?

15 ATTORNEY HUBRICH: Sure, I can do that.

16 THE COURT: All right.

17 Q Trafficking means you are charged with a crime that alleges
18 that you had a bunch of drugs. Correct?

19 A I don't know the definition of a bunch.

20 Q It's a lot of weight.

21 A I didn't have a lot of weight.

22 Q It's a serious offense?

23 A Yes.

24 Q Carries a lot of time, ---

25 A Yes.

1 Q --- you do know that? Are you familiar with the terminology
2 violent offense?

3 A I've heard it.

4 Q Is trafficking a violent offense?

5 A I'm not sure.

6 Q When did you get charged with that?

7 A Last year.

8 Q So this is 2020. You were charged with that in 2020?

9 A I believe so.

10 Q A year after these allegations here that we're here for
11 today?

12 A Yes, ma'am.

13 Q What did you get charged with first, the possession, then
14 the distribution, then the trafficking? Is that the order it
15 came in?

16 A I'm not sure.

17 Q I think the testimony yesterday was you were out on bond for
18 the charges you picked up from the gun and the drugs you had in
19 your house January of 2019. Right?

20 A I didn't say it yesterday but, yes, I was out on bond.

21 Q Okay. So you get charged from January of 2019 for all this
22 stuff you got in your house, and you're out on bond?

23 A Correct.

24 Q And then you pick up another charge while you're out on
25 bond. Right?

1 A Correct.

2 Q What was that charge?

3 A I don't recall right at the moment.

4 Q It's some sort of drug charge, either distribution or

5 trafficking, and you get out on bond on that; right?

6 A Yes, ma'am.

7 Q And then you pick up another charge?

8 A Yes, ma'am.

9 Q Right? And you get out on bond on that, because you're not

10 in jail today; are you?

11 A No, ma'am. Ankle monitor.

12 Q Would you agree with me, just from your personal experience

13 with the criminal justice system, that a person who keeps getting

14 charged typically ends up in jail with a bond revocation?

15 A I was.

16 Q So you're familiar with the concept of bond revocation?

17 A I am.

18 Q And that means that you violated your bond so you sit in

19 jail until, I don't know, your case is disposed of. You're

20 familiar with that concept; right?

21 A It doesn't necessarily have to be that long.

22 Q But you're familiar with the concept of when you're out on

23 bond and you pick up a new charge you could get your bond revoked

24 and end up in jail?

25 A Yes.

1 Q But that didn't happen to you, because you're sitting here
2 today.

3 A Actually, it did.

4 Q How did you get out?

5 A COVID.

6 ATTORNEY OSBORNE: I'm sorry, I did not hear that. Could he
7 repeat that?

8 THE COURT: The answer?

9 ATTORNEY OSBORNE: Yes, ma'am.

10 THE COURT: The answer was COVID.

11 A COVID.

12 ATTORNEY OSBORNE: Oh, COVID.

13 Q So, did a judge let you out or did the solicitor agree to
14 let you out of jail?

15 A The judge did.

16 ATTORNEY HUBRICH: The Court's indulgence.

17 THE COURT: Yes.

18 Q So you're out on bond on a charge, right, I think it was the
19 charges you got in 2019. And you have an attorney, Brady Benoit.
20 I think that was your testimony yesterday. Right?

21 A Yes, ma'am.

22 Q He's a good attorney; right?

23 A Yes, ma'am.

24 Q And you get your bond revoked. The state says, You messed
25 up so we're going to put you back in jail. Right?

1 A Yes, ma'am.

2 Q And your testimony is you got out of jail because of COVID?

3 A I don't know the particulars of everything.

4 Q Would it surprise you to know that the state ---

5 A I understand that I was, it was me being a nonviolent
6 offender, I fit the criteria.

7 Q Would it surprise you to know that the state actually
8 consented to let you out of jail?

9 A I wasn't aware. I don't know. I don't know the details
10 behind it.

11 Q And yet after you got out of jail you picked up another
12 charge again. Right?

13 A I did.

14 Q And then they didn't move to revoke your bond at that time;
15 did they?

16 A They have not yet.

17 Q And yet your testimony is that the state didn't promise you
18 anything to get you to come here and testify?

19 A That's correct.

20 Q I want to talk to you a little bit more about your testimony
21 yesterday. Would you agree with me that your testimony yesterday
22 was substantially different than your first story on January 28th
23 of 2019?

24 A I'm not sure.

25 Q Could be substantially different?

1 A I'm not sure.

2 Q I want to talk to you about the oath you took yesterday.

3 A Yes, ma'am.

4 Q You said that, you swore to tell the truth; right?

5 A Yes, ma'am.

6 Q You said yesterday you swore to tell the whole truth; right?

7 A Yes, ma'am.

8 Q Yesterday you swore to tell nothing but the truth?

9 A Yes, ma'am.

10 Q The whole truth, doesn't that mean that you wouldn't leave

11 anything out?

12 A I'm not sure of the definition, but I --

13 Q What do you think it means?

14 A I told Mr. Osborne ---

15 Q No. I'm just asking a simple question.

16 A --- everything as I recall it.

17 Q When you say, I swear to tell the whole truth, doesn't that

18 mean that you don't leave anything out?

19 A I'm not sure, but I believe I answered every question.

20 Q What does the whole truth mean to you?

21 A It means just what I said. I mean, I ---

22 Q Does it mean you tell everything, is that what it means?

23 When you say, I'm going to tell you the whole truth, it means I'm

24 going to tell you everything?

25 A Everything that happened. Yes, ma'am.

1 Q Did you want to tell the whole truth to the officers when
2 you spoke to them after this incident?

3 A Did I want to?

4 Q Yes.

5 A Yes.

6 Q Did you want to tell the whole truth to the officers who
7 came to the hospital and spoke to you the night that this
8 incident happened?

9 A I want to.

10 Q And the whole truth means you don't leave anything out;
11 right?

12 A Understand, I was just shot.

13 Q So that's a yes?

14 A My life has not been -- has not been right since, so.

15 Q I understand, my friend.

16 A Thank you.

17 Q The whole truth means you don't leave anything out?

18 ATTORNEY OSBORNE: Objection, Your Honor. Asked and
19 answered.

20 ATTORNEY HUBRICH: Judge, I can't get an answer, a yes or
21 no.

22 THE COURT: Well, one of the things is that you're talking
23 over each other, and so I'm surprised that Cathy hadn't run out
24 of the courtroom as though her hair was on fire. So I'm going to
25 ask you to please allow the question to be asked; and then

1 answered; and don't step on each other. It makes it very
2 difficult for the court reporter.

3 But, yes, please. Cross-examination. You may ask the
4 question again.

5 ATTORNEY HUBRICH: Thank you, Judge.

6 Q So the whole truth, when you spoke to the officer at the
7 hospital, meant that you didn't want to leave anything out;
8 correct?

9 A Correct. It's not that I didn't ---

10 Q I'm sorry?

11 A Excuse me. Correct, I did not want to leave anything out.

12 Q And the whole truth, when you spoke to the officers at the
13 station, meant that you didn't want to leave anything out.
14 Correct?

15 A I was forthcoming. I was forthcoming with everything I
16 knew.

17 Q It's a yes-or-no question.

18 A Could you repeat the question.

19 Q The whole truth, when you talked to the officers at the
20 police station, meant that you didn't want to leave anything out.
21 Correct?

22 A I don't believe I did.

23 Q It's a yes-or-no question.

24 A It's really not, though. Sorry.

25 Q You didn't want to leave anything out when you spoke to the

1 officers at the police station. Correct?

2 A Correct.

3 Q Okay, thank you. You have spoken to law enforcement at
4 least seven times in preparation for this case. Correct?

5 A I'm not sure that's accurate.

6 Q Well, you spoke to Deputy Boehler at the scene, we heard
7 that yesterday. You were in the courtroom yesterday; right?

8 A I was.

9 Q So you spoke to Deputy Boehler at the scene, right, on
10 January ---

11 A I don't recall. I don't remember her.

12 Q Were you present in the courtroom yesterday to hear
13 testimony?

14 A I was.

15 Q And your testimony now is you don't remember talking to her?

16 A To her?

17 Q Right.

18 A That's correct.

19 Q Okay. If I played you audio of you speaking to her, would
20 that refresh your recollection?

21 A I don't know. I don't know, I haven't seen it, you haven't
22 played the audio.

23 Q Are you testifying that you did not listen to all of your
24 prior statements prior to getting on the witness stand and
25 testifying yesterday?

1 A I would say that. Yes.

2 Q I didn't understand your answer. Did you listen to all of
3 your prior statements before getting on the witness stand to
4 testify to this jury today?

5 A No, I didn't.

6 Q No, you did not listen to all of the prior times you spoke
7 to law enforcement?

8 A No.

9 Q Okay. So maybe you spoke to Boehler at the scene. The
10 testimony yesterday was that you did. Right?

11 A From her, yes.

12 Q You then spoke to your neighbor that was related to 911,
13 right, and you heard that yesterday?

14 A Yes.

15 Q You do remember that?

16 A Yes.

17 Q You then were interviewed at the hospital ---

18 A Yes.

19 Q --- by Deputy Jackson and Detective Moy. Right?

20 A I'm not sure who they were.

21 Q But you were interviewed twice at the hospital, two
22 different officers asked you questions, at least. Right?

23 A That night was fuzzy. I remember speaking to someone.

24 Q Okay. So you remember only one, or do you remember two?

25 A I don't know. It could have been one or two, but ---

1 Q Okay.

2 A --- that whole night bled into itself.

3 Q You then went to the police station on February 4th and were
4 interviewed, videoed and gave a third written statement.

5 Correct?

6 A Correct.

7 Q And then you testified yesterday, I think on direct, that
8 you spoke to the solicitor's office on at least three occasions.

9 Correct?

10 A No. I believe it's two.

11 Q Two, okay. So that makes seven.

12 A Okay.

13 Q So I'm going to go back to my first question. So you have
14 spoken to law enforcement at least seven times in preparation for
15 this case today?

16 A I have spoken to them not in preparation but in just
17 answering questions for them.

18 Q Okay. So you've spoken to law enforcement seven times, at
19 least?

20 A Yes.

21 Q You heard Boehler testify yesterday that you told -- that
22 her initial report was that it was two to three black males that
23 were involved. Did you hear that yesterday?

24 A I heard her say Swibaker said that.

25 Q Two to three black males were involved?

1 A Yes, but she said Swibaker told her.

2 Q So, yes, that was what you heard yesterday; right?

3 ATTORNEY OSBORNE: Your Honor, I'm going to object. Those
4 facts weren't in evidence. What Boehler said was that Swibaker
5 said there were two to three, not him. The question is, You
6 heard Boehler say that you said two to three. Well, he never
7 said that. Those facts aren't in evidence.

8 ATTORNEY HUBRICH: That was not my question, but ---

9 ATTORNEY OSBORNE: That's the way I heard it.

10 ATTORNEY HUBRICH: I can repeat it, if you need me to.

11 THE COURT: That would be great.

12 Q So you were present yesterday for Boehler's testimony;
13 right?

14 A Correct.

15 Q And you heard her say that, the initial report, there was
16 two to three black males that were involved?

17 A No. I heard her say it was four.

18 Q You were in here to hear the 911 call?

19 A I was.

20 Q And in the 911 call you were asked, Did you know who did
21 it?, and you answered, No.

22 A Correct.

23 Q And in the 911 call you were asked to describe the men that
24 were involved, and you answered, One was fat with purple Nikes,
25 and one was light-skinned, and that's who shot him. Isn't that

1 correct?

2 A Those are the two I could identify at the moment.

3 Q Did I correctly say what you told the 911 call -- the 911
4 dispatcher?

5 A I never talked to the 911 dispatch.

6 Q But you were here yesterday to hear the 911 call.

7 A I was.

8 Q And in the 911 call you said, One was fat with purple Nikes
9 on, and one was light-skinned, that's who shot him. Isn't that
10 what you told the 911 dispatcher?

11 A No. I never spoke to the 911 dispatcher.

12 Q That's what you said, and that was what was recorded on the
13 911 call that was admitted into evidence yesterday. Right?

14 A I'd have to listen to it again.

15 Q Okay. I'm going to go play you a clip from the 911 call
16 that was admitted into evidence yesterday by the state.

17 (WHEREUPON, State's Exhibit 1 is published.)

18 Q And that's where you said, One was a light-skinned male,
19 that's who shot him. Did I correctly interpret that? Is that a
20 yes?

21 A Can you repeat that original question.

22 Q And that's where you said, That was a light-skinned male,
23 and that's who shot him.

24 A Yes. I believe that -- yeah, that's me talking in the
25 background.

1 Q Thank you. You were asked what they were wearing in the 911
2 call, and you stated you weren't sure, they just all had masks
3 on. Right?

4 A If that's what I said that night, that's what I told them.

5 Q Never once did you mention that any of them had gloves on.
6 Right?

7 A I did not mention that. No.

8 Q Not once did you mention that someone took Joe Weaver's
9 wallet. Right?

10 A Correct.

11 Q Never once --

12 ATTORNEY HUBRICH: Judge, may we approach?

13 THE COURT: Yes.

14 (WHEREUPON, an off-the-record discussion is held at
15 sidebar.)

16 THE COURT: Ladies and gentlemen, I'm going to ask you to
17 please step to your jury room. Please remember, do not discuss
18 this matter; do not allow anyone to discuss this with you. There
19 is a matter that I'm going to take up outside of your presence.

20 (WHEREUPON, the jury is escorted out of the courtroom at
21 10:45 a.m.)

22 MATTERS OF LAW

23 ATTORNEY HUBRICH: Judge, if I may.

24 THE COURT: Hold on one second. I wanted to get the rule in
25 front of me. Okay. Yes.

1 ATTORNEY HUBRICH: Judge, my next question to this
2 particular witness is, Never once did you mention that your house
3 was robbed of drugs and guns ten days prior?

4 I'm going to continue that theme throughout my
5 cross-examination because he never mentions it until he's
6 actually confronted with that information. It's certainly a lie
7 of omission. It goes to his credibility.

8 It is the only reason I'm bringing that in, is because the
9 jury has to determine whether or not he is a credible individual.
10 And the fact that he doesn't tell the police and law enforcement
11 this very relevant information is a lie of omission, and it
12 impeaches his credibility. And because of that, I think I get to
13 ask him that.

14 I do not think it kicks open the door for the state to then
15 argue that my client was somehow involved in the original
16 burglary. I'm not asking about the facts of the original
17 burglary. I'm just bringing it in to impeach his credibility.

18 And I stopped my questioning because I knew that that was
19 going to be objectionable.

20 THE COURT: Let me just say that you did as I asked you to
21 do in chambers, so everyone just be apprised that Ms. Hubrich is
22 following my instructions, because we had talked about this in
23 pretrial motions and she was instructed to do as she has done.
24 So that's really important that that be on the record. So, first
25 of all, thank you for doing that, Ms. Hubrich. And I think our

1 record does need to reflect that you were told to stop before you
2 went here so we can do exactly what we're doing.

3 Now, so you are impeaching him. Tell me why you think this
4 is impeachment, because you must attack his credibility for
5 truthfulness or bias ---

6 ATTORNEY HUBRICH: Right.

7 THE COURT: --- et cetera.

8 ATTORNEY HUBRICH: Part of being truthful is to tell the
9 whole truth. He took an oath to tell the whole truth. He wanted
10 to tell the police officers the whole truth.

11 THE COURT: Okay. What else you got?

12 ATTORNEY HUBRICH: And so, you know, Judge, in a case like
13 this ---

14 THE COURT: Because the whole truth -- your whole truth may
15 not be his whole truth.

16 ATTORNEY HUBRICH: Well, in a case like this, Judge --- and
17 you'll see it ---

18 THE COURT: Let me be clear.

19 ATTORNEY HUBRICH: Right.

20 THE COURT: There may come a time, there may come a time ---

21 ATTORNEY HUBRICH: Right.

22 THE COURT: --- and I don't know this to be true, I don't
23 know whether law enforcement asked him ---

24 ATTORNEY HUBRICH: And that's where I'm going.

25 THE COURT: --- that question.

1 ATTORNEY HUBRICH: At the very next interview, Does anybody
2 have a beef with you? No. Has anybody been to your house, do
3 you sell out of your house? No, everybody likes me. Have you
4 had any prior issues?

5 Because the police can't figure out why they were picked.
6 So specifically it's to get more clear as I go on. As I said,
7 this is a theme that continues. The notes I have, Judge, is that
8 officers at the hospital specifically asked him ---

9 THE COURT: Hold on a second.

10 ATTORNEY HUBRICH: The officers at the hospital specifically
11 asked him, Does anybody have a beef with you? And he said, No.
12 They want to know, Has anybody, has anything like this ever
13 happened before? And he says, I've lived my whole life here,
14 nothing's ever happened like this before. David Swibaker says
15 the same thing.

16 You know, it's definitely, right now, a lie of omission. As
17 we move forward through his interrogation, or his statements to
18 the police, we find that it's actually a lie. He starts
19 physically, actively lying to the police about this prior
20 robbery. I think.

21 Do I actually think a prior robbery happened? No, I don't.
22 I think that that's probably something he makes up.

23 But I think the jury gets to weigh his credibility based on
24 the lie of omission and his actively deceiving police during
25 their investigation. So that's why I want to bring that up.

1 And I don't know if you want me to compound this, but right
2 after that when we talk about the officers bringing him to the
3 station on February 4th I'm then going to ask, May I also ask you
4 about a gentleman by the name of Jaquavious Washington? That's
5 something that you never volunteered to them before.

6 And that's also, that's actually more of a lie of omission,
7 from my perspective, because he then says, Oh, yeah, well,
8 there's this Jaquavious Washington, and I sell drugs to him.

9 And I'm only bringing that in at this point because he's
10 omitted it from every prior interaction with law enforcement
11 until they confront him.

12 But I think that Ms. Cornwell's going to argue that I'm now
13 kicking the door open for -- or, no, the state's going to argue
14 I'm kicking the door open for third-party guilt that they don't
15 want us to get into.

16 THE COURT: All right. Yes, sir.

17 ATTORNEY OSBORNE: Okay. Anybody got a beef with you?
18 Somebody breaks into my house and burglarizes me, I don't have a
19 beef with them. I mean, I don't understand that question. I
20 mean, what they're looking for, which is what I would have asked
21 in my previous life, Do you have arguments with somebody,
22 disagreements with somebody, that somebody would come in here and
23 kill your buddy? That's what they're talking about, that's the
24 question. He doesn't have any.

25 The second thing, Anything like this happen to you before?

1 Well, he's saying, No, nothing like this has happened to me
2 before. They're investigating a murder, they're investigating
3 somebody getting shot right in front of his face, and he's never
4 seen anything like that before. So, no, nothing like that's ever
5 happened to me before.

6 And then I'm getting a little bit confused because I don't
7 know if I would have answered it any differently. I don't know,
8 if I was in his shoes, that I would have been listing every
9 individual that I had sold marijuana to in the past when they're
10 investigating murder.

11 Now, if he said at any point -- I don't know where these
12 questions are going, but if he said at any point -- I don't sell
13 marijuana, game on, impeach away on that.

14 But what I'm hearing for this is nothing more than she's
15 using this as an opportunity to try to bring in evidence that
16 five people burglarized his house before. And let's make no
17 mistake, the argument's going to be it's the same five that did
18 it this night. And that's where she's going with this.

19 I haven't heard anything here that is a lie or an omission.
20 Maybe it's going to come. I haven't heard it with those
21 questions.

22 THE COURT: Let me ask you this question, because here's the
23 get-to. She's going to ask, Were you asked by law enforcement
24 whether or not you had been burglarized in the recent past? I
25 bet you dollars to doughnuts that's coming, right. I think she

1 told me it's coming.

2 ATTORNEY HUBRICH: No. I don't think they ever asked him
3 that specific question, Judge. They asked him if he ever had a
4 beef with anybody. He said no. They asked him, Do you have
5 reason to believe anybody would want to do this to you? He said
6 no.

7 They then asked David Swibaker -- and so this is coming when
8 David Swibaker comes up -- Why would this happen to you? And he
9 says, Nothing like this has ever happened to me before, which,
10 that is definitely inconsistent, so definitely coming up when
11 Swibaker comes up.

12 ATTORNEY OSBORNE: And to that point, this is why -- I think
13 that's close, and I think she could do that, I think that's okay.
14 You told police that nothing like this has ever happened to you
15 before? Yes, I did. But, in fact your house has been
16 burglarized before; hasn't it? Yes, it is. Okay, inquiry's
17 over.

18 ATTORNEY HUBRICH: That's all I want to ask. That's all I
19 want to ask, Judge.

20 ATTORNEY OSBORNE: Well, my issue with it was there were
21 five people that came in here before; somebody was kicked in the
22 face before. Now we're getting into this, why do you get into
23 that? You only get into that to say, Same guys before, same guys
24 now.

25 ATTORNEY HUBRICH: No.

1 ATTORNEY OSBORNE: And if we're doing that, then Swibaker
2 then gets to say, I think it's the same guys that did it before.

3 But if you simply want to say, Police asked you if anything
4 like this ever happened to you before, and you said no but, in
5 fact, your home has been burglarized before, I mean, I think that
6 is impeachment, I think that's game.

7 But it's where that leads, where that argument opens up --
8 again, sandbox, I'm happy to play in. I just don't want to tip
9 my toe in, I want to get dirty. If we're going in that sandbox,
10 let's bring it all out.

11 ATTORNEY HUBRICH: No, ma'am. We're in agreement then.
12 This is moot. I'm not asking about the facts of the prior
13 burglary. I don't want them in. I don't want him to say my
14 client broke into this house prior.

15 All I want is, They asked if you had a beef with anybody,
16 and you said no. You actually then, later on, say, Actually
17 somebody broke into my house earlier and stole drugs and guns.
18 That's all.

19 I don't want to get into the facts. I definitely don't want
20 to know there was five guys and they were all black males and
21 then, low and behold, we think it was the same people. I don't
22 want any of that.

23 If you want me to limit it to -- I mean, I think my question
24 literally ends with this. I think we're all on the same page
25 then.

1 Never once do you mention that your house was robbed of
2 drugs and guns 10 days prior? And then I literally move on to
3 the hospital statement. And that is the exact question I asked
4 three times.

5 And then when he finally admits it, I ask, They asked you if
6 your house had been robbed a couple days before, they tell you to
7 be honest about it. Why do you think they have to caution you to
8 be honest? At this point you finally concoct a story about being
9 robbed 10 days earlier. Now you tell them that your house was
10 robbed of a half pound of weed and two guns. And that is it.

11 And then it goes into, They confront you about a phone
12 number they found in your phone, a phone number for Jaquavious
13 Washington. And that's when he finally mentioned that he sold
14 drugs to Jaquavious Washington.

15 I mean, the thing that -- and then he confronts Jaquavious
16 Washington with, Hey, are you part of this robbery before? If I
17 was to say that, I'd object to that part, because I think that is
18 what -- they don't want us to talk about third-party guilt,
19 because this was actually Jaquavious Washington.

20 ATTORNEY OSBORNE: Again, I don't care.

21 ATTORNEY HUBRICH: Okay. Well, then I can ask all of that.

22 ATTORNEY OSBORNE: If you want to tell that story, I want to
23 tell the whole story. Well, there's a bit of evidence here that
24 I knew was going to be a problem for the state coming into this,
25 and there is a footprint on the back of the door that doesn't

1 come back matching any of the shoes of the four individuals.

2 So how do we explain that? Well, we had a burglary that
3 just occurred 10 days earlier where the door was kicked in.
4 We've got that, I'm satisfied with that. That's how that is
5 explained.

6 I didn't really want to cover it, but we got into it, no big
7 deal. I don't know that any of that really introduces any
8 issues. I don't think we get into third-party guilt with any of
9 that. It's, if we limit it to that, there was a burglary
10 earlier, you didn't mention it. But I'm not sure about that
11 whole beef thing, I don't that really covers, that's not
12 impeachment. Having a beef and then somebody breaking into our
13 house are two totally different things.

14 ATTORNEY HUBRICH: Judge, I don't know what I'm responding
15 to at this point.

16 THE COURT: Hold on a minute, just breathe a second.

17 All right. Review for me the questions that you have that
18 you want to ask.

19 ATTORNEY HUBRICH: Yes, ma'am. I'm sorry, I lost my
20 thought.

21 THE COURT: That's okay.

22 ATTORNEY HUBRICH: The very next question was, Never once do
23 you mention that your house was robbed of drugs and guns 10 days
24 prior.

25 THE COURT: Okay, all right. What is the ---

1 ATTORNEY HUBRICH: Then we go on to his statement at the
2 hospital.

3 THE COURT: Let me stop you. What is the prior inconsistent
4 statement?

5 ATTORNEY HUBRICH: It's omission.

6 THE COURT: Okay.

7 ATTORNEY HUBRICH: He just never tells them that.

8 THE COURT: Okay.

9 ATTORNEY HUBRICH: Then I ask him, Just tell them everything
10 you know. So in the hospital my question is, Again, never once
11 did you mention your house was robbed of drugs and guns 10 days
12 prior.

13 The specific -- and I don't know, this is the problem. He's
14 not reviewed any of his statements to these officers. So I have
15 to get him to say whether or not he said it, and then I have to
16 bring the officer in in my case in chief to bring in their bods
17 to say that he said it.

18 So I've got to confront him with it and get him to say
19 whether or not he said it, and then I have to call the officers
20 in my case in chief, by extrinsic evidence, to show it by
21 extrinsic evidence.

22 I mean, that's one of the reasons why I fashioned my cross
23 this way, because I suspected, and I think I told Your Honor in
24 the very beginning I suspected, this was going to be his
25 testimony, that he hadn't reviewed any of it and he didn't know.

1 And so I was going to need to bring it in with the officers
2 during my case in chief, which is why I scrambled to get them all
3 under subpoena last night.

4 ATTORNEY OSBORNE: The problem with crowbarring that rule
5 into this is that rule envisions a situation where you allowed
6 the witness to either acknowledge or deny a prior statement.

7 THE COURT: That's right.

8 ATTORNEY HUBRICH: Right.

9 ATTORNEY OSBORNE: Well, he wasn't asked that question.

10 THE COURT: That's right.

11 ATTORNEY OSBORNE: So we're talking about an omission. Now,
12 if he was asked, then that's different. But I don't believe he
13 was ever asked.

14 ATTORNEY HUBRICH: Well, he can review the whole thing then,
15 Judge. I mean, he's not my witness, so I didn't have him review
16 everything, but he can review the whole thing, he can review all
17 the stuff he said.

18 ATTORNEY OSBORNE: If she can produce where the detectives
19 asked, Has your house ever been burglarized before?, and he denied
20 it, she can bring that in through extrinsic evidence.

21 But the omission of an answer to which he was never
22 questioned isn't impeachment.

23 THE COURT: So here's the way the impeachment will work.
24 You can ask him, Did you make this statement; Were you asked; Did
25 you say? I'm looking at 613, the witness's prior statement. You

1 do not have to prove it by extrinsic evidence, in fact, you
2 cannot prove it by extrinsic evidence, unless you've given him an
3 opportunity to ---

4 ATTORNEY HUBRICH: Review it.

5 THE COURT: Well, yes.

6 ATTORNEY HUBRICH: That's right.

7 THE COURT: It says, When examining a witness about a
8 witness's prior statement, a party need not show it or disclose
9 its contents to the witness, but the witness must, on request,
10 show it or disclose its contents to an adverse party's attorney.

11 Extrinsic evidence of a witness's prior inconsistent
12 statement is admissible only if the witness is given an
13 opportunity to explain or deny the statement and an adverse party
14 is given an opportunity to examine the witness about it, or if
15 justice so requires.

16 ATTORNEY HUBRICH: Absolutely, Judge, you're absolutely
17 right. And that was the intent. I mean, I can't -- I don't know
18 what he's reviewed prior to coming here to testify. I'm shocked,
19 frankly, that the state didn't have him review it.

20 But, so I have to ask him. And that's why I keep saying,
21 it's a yes or. It's not an I don't know; it's a yes or no.

22 If he says, I don't know, then I have to refresh his
23 recollection with it, which is going to be ridiculous because
24 it's audio, so I have to do what I did with Boehler and take my
25 computer up there and let him listen to it, and the jury is going

1 to be sitting here, you know, kind of waiting, and then I have to
2 ask him isn't that what he said.

3 ATTORNEY OSBORNE: Well, it's not what he said; it's what he
4 didn't say. That's what she wants to get in.

5 ATTORNEY HUBRICH: No. Let me finish my argument.

6 THE COURT: No. No.

7 ATTORNEY OSBORNE: If he asks -- I'll just say, I mean, this
8 is the way to impeach people. If the detective asked the
9 question, Has your house ever been burglarized?, and on his prior
10 statement he did not say that his house was burglarized, then
11 that's impeachment.

12 But I think you alluded to that earlier, and I would agree,
13 I mean, you can't then say, Well, you didn't mention your house
14 was burglarized, therefore, I'm going to impeach you with it,
15 unless he was asked that.

16 I mean, because then how far back are we going to go? Well,
17 I mean, you never mentioned when you were a child that you stole
18 a cigarette. Okay, well, I mean, why not impeach him on that?
19 That's the whole truth, is it not, Mr. Porter, that you're a
20 liar, you're a thief? I mean, where does that end? They're
21 asking him about what happened that night.

22 Now, if she has something, show him that. Mr. Porter, have
23 you ever stole candy before?, and he denied it and she can prove
24 it, then she can impeach him with that and bring in that
25 extrinsic evidence. But the fact that he did not mention that,

1 that's not impeachment, because he was never asked, he never
2 lied.

3 THE COURT: What you're saying is it's not a prior
4 inconsistent statement, is what you're saying.

5 ATTORNEY OSBORNE: That's right.

6 THE COURT: Okay. Yes?

7 ATTORNEY HUBRICH: May I go now?

8 THE COURT: Yes. That's why I made that comment. You can
9 ask him if, in fact, law enforcement specifically asked him, Was
10 your home broken into two weeks ago? and he says no, and that is
11 untrue, that's a prior inconsistent statement.

12 But it's not this business about the whole truth, you've got
13 to tell the whole truth. No, no, no, it's got to be a specific
14 statement that is a prior inconsistent statement. You got one of
15 those?

16 ATTORNEY HUBRICH: Yes, ma'am. That's actually what I was
17 addressing before the state cut me off. I was addressing your
18 question to me about how to impeach prior inconsistent
19 statements. I'm well aware of how to do it. Thank you, though,
20 for the instruction, Mr. Osborne. Yes, there are ---

21 THE COURT: Lower the snark, you two. Go right to it, let
22 me hear it.

23 ATTORNEY HUBRICH: So, yes, there are statements that I will
24 impeach. I know how to do it. It's going to be a mess because
25 it's audio and I'm going to have to ---

1 THE COURT: Tell me what it is, what is the statement? And
2 if you want him to be sequestered while you tell me ---

3 ATTORNEY HUBRICH: At this point he already knows every
4 question I'm going to ask because I put it on the record in front
5 of him. Specifically he said, I didn't have any gloves; I didn't
6 see any gloves.

7 THE COURT: You already did that.

8 ATTORNEY HUBRICH: I know how to impeach him. It goes on.
9 He talks to people seven times, so it goes on, it's going to be a
10 while.

11 THE COURT: You did the gloves.

12 ATTORNEY HUBRICH: I will do specific statements.

13 THE COURT: Not worried about gloves. I'm worried about the
14 prior burglary. Go.

15 ATTORNEY HUBRICH: Are we still arguing about the prior
16 burglary?

17 THE COURT: Yes.

18 ATTORNEY HUBRICH: Because I thought I heard the state
19 consent to me asking him, You never mentioned the prior robbery
20 where they took drugs and guns? They, in fact, already brought
21 it up to some degree in their direct by asking about the prior
22 burglary.

23 THE COURT: So was your house burglarized in the past? Yes.
24 End of discussion.

25 ATTORNEY HUBRICH: Right.

1 THE COURT: You're talking about prior inconsistent
2 statement with law enforcement. That's where I'm laser-focused.

3 ATTORNEY HUBRICH: Okay.

4 THE COURT: Tell me about that now, how are you going to
5 handle that?

6 ATTORNEY HUBRICH: And my argument is going to be that.

7 THE COURT: And I'm not so much concerned about him as I am
8 you. Go. Tell me what it is. I'm worried about ---

9 ATTORNEY HUBRICH: You want me to tell you about prior
10 inconsistent statements?

11 THE COURT: Yes.

12 ATTORNEY HUBRICH: Okay. There's gloves. There's a wallet.
13 There's --

14 THE COURT: Okay. Burglary, prior burglary.

15 ATTORNEY HUBRICH: No, there isn't one, Judge. He was never
16 asked, and I think I said that, he was never asked, Did you
17 commit a prior burglary? Or, Was there a prior burglary?

18 THE COURT: Okay. Then there's not a prior inconsistent
19 statement.

20 ATTORNEY HUBRICH: But I don't think there is an objection
21 now that the state has already brought in that there was a prior
22 burglary, during Boehler's testimony. I don't think there's an
23 objection to me asking him, You never told them that there was a
24 prior burglary?

25 Is the Court now saying I'm not allowed to ask that

1 question?

2 THE COURT: Okay, we're somewhere else.

3 ATTORNEY HUBRICH: Right.

4 THE COURT: It's not a prior inconsistent statement.

5 ATTORNEY HUBRICH: Okay.

6 THE COURT: I sent the jury out because of impeachment,
7 prior inconsistent statements. And now we're somewhere else.

8 ATTORNEY HUBRICH: My understanding of why we sent the jury
9 out was the state was then going to try to say that five black
10 males broke in 5 to 10 days earlier and kicked in the door. And
11 they wanted to get into the facts.

12 And I think that was Ms. Cornwell's concern, she didn't want
13 the *Lyle* in. And back in chambers we talked about it, we did it
14 pretrial, and I said, I'm not asking about *Lyle*; I'm just asking,
15 You didn't mention a prior burglary to the police, that's it,
16 where they stole drugs and guns? No. The state's already asked
17 that question. That's already in front of the jury. They
18 already got Deputy Boehler to say, Was there a prior burglary?
19 Yes. So that was the only reason why we stopped.

20 And then the state gets up and says, Well, we don't want to
21 talk about the five previous black males that kicked in the door
22 and robbed them and somehow they think that that was our clients.
23 Now they're saying they don't want to talk about that.

24 So I don't think there's an issue anymore. That's why I
25 said I think we're all now in agreement.

1 ATTORNEY OSBORNE: Your Honor, the only problem with the one
2 question that I heard her just say, You never told the police
3 about a prior burglary?, he did, he told them all about it, what
4 he knew. So that's not impeachment. He did talk about that when
5 he was asked.

6 ATTORNEY HUBRICH: Okay. When they confronted him with it.
7 I'm getting there. He didn't say it in the 911 call.

8 THE COURT: But you moved on from impeachment.

9 ATTORNEY HUBRICH: I still think that it would be admissible
10 under impeachment.

11 THE COURT: Okay. Why? Because it's not a prior
12 inconsistent statement.

13 ATTORNEY HUBRICH: I believe it to be impeachment of his
14 credibility. Very relevant in a case where someone gets their
15 door kicked in by four black males, robbing them of drugs, if
16 someone -- if that happens to you and the police say, Who did
17 this?, and you don't say, I don't know but 10 days prior five
18 black males kicked in my door and stole drugs and guns.

19 And then they say, Do you have any reason to think this
20 would happen to you? No. Wouldn't you then say, But 10 days
21 prior five black males broke in and stole guns and drugs.

22 And then when they asked you, Does anybody have a beef with
23 you? So when does he then say, Well, 10 days prior five black
24 guys broke in my house and stole drugs and guns from me.

25 THE COURT: I do not think it is impeachment.

1 ATTORNEY HUBRICH: Okay.

2 THE COURT: It may be -- it may be -- so we need to move
3 from impeachment. It's not a prior inconsistent statement. It
4 doesn't attack his credibility in terms of ---

5 ATTORNEY HUBRICH: How about, do you want me to say, Judge,
6 the state -- You were here for Deputy Boehler's testimony, and
7 the state asked Deputy Boehler whether or not there had been a
8 prior burglary at your house, and Deputy Boehler said yes. Did
9 you ever tell the police that there had been a prior burglary at
10 your house? No.

11 How about that, can we do that?

12 ATTORNEY OSBORNE: The answer to that would be, Yes, I did,
13 when I was asked I did tell them.

14 ATTORNEY CORNWELL: Your Honor, I'm sorry, it's very hard
15 for me to stay quiet over here for long. But, if I may, my
16 issues are also going to be along with *Bruton*. I think that he
17 has testified that there was a prior burglary.

18 ATTORNEY HUBRICH: He hasn't yet.

19 ATTORNEY CORNWELL: Well, I think David asked, Your home's
20 been burglarized before, and he said yes. Correct?

21 ATTORNEY OSBORNE: Yes. Yes or no, and he said yes.

22 ATTORNEY CORNWELL: So I Think that the way that we get
23 around all of this is, you know, When law enforcement asked you,
24 You know, they're trying to figure out who broke into your house,
25 at that time you failed to mention that your house had been

1 burglarized prior. And he said, Yeah, I didn't say it at the
2 time. He didn't ---

3 THE COURT: That's not impeachment. That's just a
4 confrontation, that's just a Sixth Amendment right to
5 confrontation. It's not impeachment. That's where I'm locking
6 up. Now, it may be/it might be -- and I'm talking to you and
7 worrying about you and what is going on.

8 ATTORNEY CORNWELL: I think if he says no -- I think if she
9 says, You didn't tell law enforcement about the prior
10 burglary ---

11 THE COURT: We're not there; we're not there; we are not
12 there. It is not a prior -- you impeach with prior inconsistent
13 statement, showing bias, character, of prior convictions. This
14 is not impeachment.

15 However, don't forget about the good old Sixth Amendment
16 right to cross-examine and confrontation of witnesses. That's
17 where I think we've gone into, just simply the confrontation of
18 witnesses, is it relevant? Is it *Lyle*? Is it *Bruton*?

19 That's why I sent the jury out, because I want to get to
20 that. In other words, the rubicon has approached, we have
21 approached the rubicon.

22 ATTORNEY CORNWELL: I'm going to give you my argument right
23 now before we get into all of it.

24 THE COURT: That's fine.

25 ATTORNEY CORNWELL: So I don't think that any of the facts

1 of the prior burglary are relevant because I think it's prior bad
2 acts, I don't think it's clear and convincing, and I don't think
3 it meets any of that.

4 If you want to say that there was a prior burglary, cool,
5 leave it on that, no facts. When we talk about Jaquavious
6 Washington and how we bring that in ---

7 THE COURT: I'm not doing Jaquavious Washington.

8 ATTORNEY CORNWELL: But it kind of all ties in to where ---

9 THE COURT: I'm not doing Jaquavious Washington right now
10 unless you tell me you want to ask him about ---

11 ATTORNEY HUBRICH: I actually did say that, Judge. That's
12 the compound issue that I have, is that I'm now going to ask him,
13 You didn't mention Jaquavious Washington?

14 ATTORNEY CORNWELL: Here is Jaquavious Washington. He's
15 directly asked in the hospital by law enforcement about him
16 selling out of his home. He says he does not sell from his home.
17 And then later on he admits to selling to Jaquavious Washington
18 at his home.

19 ATTORNEY HUBRICH: Right.

20 ATTORNEY CORNWELL: That has nothing to do with the
21 burglary. And so I don't see how we're trying to tie Jaquavious
22 Washington to a previous burglary. The impeachment on that is,
23 You told law enforcement you never sold out of your home at the
24 hospital, and then later on when you were confronted about a
25 person named Jaquavious Washington, you do admit that you sold to

1 Jaquavious Washington at your house, he's been at your house.

2 I don't see what that has to do with the burglary so I don't
3 know how we're trying to intertwine that, but it doesn't work.

4 So if you want to bring up a prior burglary without talking
5 about the facts of the burglary, that's one thing. You can't tie
6 Jaquavious Washington into the burglary. You impeach Jaquavious
7 Washington on the, I never sold weed from my house; just kidding,
8 sold from my house, sold to Jaquavious Washington.

9 THE COURT: I'm not there.

10 ATTORNEY CORNWELL: I think she was trying to tie it in with
11 the burglary. And I'm saying five people and ---

12 ATTORNEY HUBRICH: No.

13 ATTORNEY CORNWELL: --- they thought that Jaquavious was one
14 of the five people, and that that's how ---

15 THE COURT: Not there, I'm not there. I'm not there.
16 Here's where we are. We're cross-examination. If you want to
17 ask him ...

18 Cross-examination, you want to ask, You never told law
19 enforcement about a prior burglary? And there's no -- is there
20 objection to that question from the state?

21 ATTORNEY OSBORNE: No, Your Honor, since your ruling was
22 that is not an impeachment question. Since it's not an
23 impeachment question, then I'm going to be razor-focused on where
24 we're going from here and whether a door is going to be opened.

25 ATTORNEY HUBRICH: That's the problem, Judge. Because when

1 we said in chambers and I said, I'm going to ask him whether or
2 not he told police about the prior burglary, the state informed
3 all of us in chambers, That kicks the door open and I'm willing
4 to go play in that sandbox about the five males and David
5 Swibaker saying -- I then get to talk to David Swibaker about
6 saying that these two guys, he thinks these two guys, were part
7 of that prior burglary.

8 And so that's why I stopped and said, No -- I just want to
9 make sure I ask this question, we're not kicking the door open,
10 because it's not right. I couldn't figure out why the state kept
11 saying, You're going to kick the door open and now I get to talk
12 with David Swibaker, the next witness, about the fact that he
13 thinks these two guys were part of that. Because that's what he
14 tells Marcus Porter, and that's what he tells police, I think
15 these two guys, I recognize their voices, I think it was all the
16 same guys.

17 So that was why I stopped, because the state kept saying,
18 You're kicking the door open. And I kept saying, No, I'm not,
19 I'm just asking about the prior burglary and that he didn't tell
20 the police that. So that's why I stopped.

21 And then the state stood up and said, As long as she doesn't
22 say about the five black males and it was the same black males.
23 I was like, Oh, well, then we're all in agreement, I'm not
24 kicking the door open, and so now there's no objection.

25 That was the whole argument pretrial, and that was what we

1 stated back in chambers, and that was why I stopped. I do not
2 intend to argue third-party guilt with Jaquavious Washington.

3 But when I said in chambers, I plan to say, You never
4 mentioned Jaquavious Washington, the state then said, You can't
5 get into third-party guilt. I'm not. I'm in agreement with
6 Ms. Cornwell 100 percent. That's not where I'm going with this
7 right now. I'm just saying, You said you were a small-time drug
8 dealer; you told them you didn't sell out of your house; later on
9 you then say, Oh, wait, I did sell to Jaquavious Washington out
10 of my house.

11 The problem is that Jaquavious Washington is the crux of the
12 third-party guilt. And I believe that Ms. Cornwell would like
13 to, at some point, argue that it wasn't her client as part of
14 these four black males, it was Jaquavious Washington. And I know
15 that the state ---

16 THE COURT: I know that. I mean, I know that. That's
17 something I'm going to have to deal with.

18 ATTORNEY HUBRICH: I don't want the state to then argue I
19 have kicked the door open with Jaquavious Washington by asking
20 him about the fact that he didn't disclose that. And so, because
21 that was what the state was saying pretrial, that that was going
22 to kick the door open and they wanted to be able to go, walk in
23 through that door. And that's why I stopped.

24 THE COURT: Okay. So this is what we're going to do.

25 ATTORNEY HUBRICH: Yes ma'am.

1 THE COURT: Here's where we are. Because the state asked
2 the question, Your house has been burglarized before?, and he
3 said yes, you can say, you can ask the question, Did you tell --
4 or, You did not tell law enforcement, did you, or did you tell
5 law enforcement that your home had been burglarized before? And
6 that will be where it is.

7 ATTORNEY HUBRICH: Perfect.

8 THE COURT: You can ask that question ---

9 ATTORNEY HUBRICH: Perfect.

10 THE COURT: --- because you went into it. You can confront
11 the witness about that. That's it. We're stopping there. You
12 want to go farther than that, I want to know about it, okay.

13 ATTORNEY HUBRICH: Absolutely, Judge.

14 THE COURT: With Mr. Washington, with Mr. Washington, that's
15 going to be, you are impeaching with a prior inconsistent
16 statement, you've got to get the prior inconsistent statement.
17 You've got to get the prior inconsistent statement.

18 ATTORNEY HUBRICH: I know.

19 THE COURT: And you're going to ask him, I guess, Did you,
20 did you tell law enforcement, what, that you were not selling,
21 you weren't selling out of your house? And he'll say whatever he
22 says, he'll say yes or he'll say no.

23 ATTORNEY HUBRICH: Right.

24 THE COURT: But do not ask him about Jaquavious Washington
25 until I pass on it, even if we've got to send this jury out

1 again. Okay.

2 Are you weighing in on any of that, Ms. Cornwell, right now,
3 on behalf of your client?

4 ATTORNEY CORNWELL: Your Honor, I think I placed my concerns
5 on where I would like to go with it at this point. If things are
6 opened up, I'll make my objections as they come. I don't know
7 what else to do at this point.

8 I think, yes, you didn't tell them there was a prior
9 burglary, then the door opens.

10 THE COURT: What else you got? We're not talking about
11 Jaquavious Washington. She's not going to talk about Jaquavious
12 Washington right now.

13 ATTORNEY CORNWELL: I'm good, Your Honor.

14 THE COURT: All right, good. Anybody need a real two-minute
15 comfort break, only a two-minuter? Yes? Everybody's running.
16 Two minutes.

17 (WHEREUPON, court recessed at 11:25 a.m. and reconvened at
18 11:31 a.m.)

19 THE COURT: Let me have the jury, please.

20 (WHEREUPON, the jury is seated in the courtroom at
21 11:33 a.m.)

22 THE COURT: All right. Ladies and gentlemen, at this time
23 we will continue with the cross-examination of Mr. Porter.

24 ATTORNEY HUBRICH: Thank you, Judge. May it please the
25 Court.

1 THE COURT: You may proceed.

2 Q Okay. Mr. Porter, I'm going to ask you -- I'm going to
3 repeat some of the questions, just quickly. When you spoke to
4 911 at the scene -- that's what we were talking about when I
5 stopped -- never once do you mention to 911 that these gentlemen
6 were wearing gloves. Correct?

7 A I never spoke to 911.

8 Q Never once do you mention to your neighbor, who spoke to
9 911, that these gentlemen were wearing gloves; correct?

10 A Correct.

11 Q Never once do you mention to your neighbor, who spoke to
12 911, that these gentlemen took Joe Weaver's wallet?

13 A Correct.

14 Q Never once do you mention to your neighbor, who spoke to
15 911, that your house was robbed 10 days prior?

16 A Correct.

17 Q Correct? At that point you've been shot. I think you
18 showed your wound.

19 A I had been.

20 Q And so they transport you to the hospital. Right?

21 A Yes.

22 Q And at the hospital you gave another statement; right?

23 A Yes.

24 Q I think you said you didn't know who you gave it to, but
25 maybe one or two officers you gave some statements to. Right?

1 A Yes.

2 Q In one statement you said, The light-skinned dude came in
3 first; the fat, black dude with purple Nikes was the second one
4 in. Correct?

5 A Yes.

6 Q You said, The dog was shot right off. Right?

7 A Yes.

8 Q Then you said, The other two guys didn't leave right by the
9 front door?

10 A No.

11 Q You did not say that?

12 A No, ma'am.

13 Q So your testimony right now is that you did not tell the
14 officer at the hospital that the other two guys stood right by
15 the front door?

16 A That's correct.

17 Q Okay. You were then asked directly if they were wearing
18 gloves, and you answered, I can't remember gloves, but they all
19 had masks on. Isn't that correct?

20 A I don't recall.

21 Q You don't recall?

22 A Sorry.

23 Q If I had a video or an audio of that statement you made to
24 the police at the hospital that night, would that refresh your
25 recollection?

1 A Yeah.

2 ATTORNEY HUBRICH: Judge, may I approach the witness?

3 THE COURT: You may.

4 Q I'm going to play for you a portion.

5 A Ma'am?

6 Q I'm going to play for you a portion. If you could just
7 listen to it and let me know if it refreshes your recollection.

8 (WHEREUPON, the witness privately watches/listens to disk.)

9 Q Did you get a chance to listen to that? I guess -- I don't
10 want to put words in your mouth. What did you just listen to?

11 A A clip of my statement being written while lying in the
12 hospital bed.

13 Q And in that statement you said to the officer, The
14 light-skinned dude was first in; the fat, black dude with the
15 purple Nikes was the second one in. Right?

16 A I didn't hear that, but I said that. Yes.

17 Q And then you said, The other two really didn't leave by the
18 back door. Correct?

19 A I said that; yes.

20 Q And then you said, The first guy, the lighter skinned,
21 really black eyebrows, was nervous as hell. Right?

22 A I didn't hear that part.

23 Q Well, because the next question is, You were then asked,
24 Were they wearing gloves? And you said, I can't remember gloves.
25 Did you hear that part?

1 A I did not.

2 Q Let's listen again.

3 (WHEREUPON, the witness privately watches/listens to disk.)

4 Q So you were asked directly if they were wearing gloves, and

5 you answered, I can't remember gloves, but they all had masks on.

6 Correct?

7 A Correct.

8 Q Your testimony today was that somebody did have gloves on,

9 or I guess yesterday. Right?

10 A That's right.

11 Q You also stated that the light-skinned dude, that's Elijah

12 Major -- we've already established that; right?

13 A Yes, ma'am.

14 Q Put the gun to the back of my head.

15 A Yes.

16 Q And the fat dude, that would be -- or, so Elijah Green was

17 the light-skinned dude; right?

18 A That's correct.

19 Q And then Devonte Major, the fat dude, had the gun out but

20 didn't touch me with it?

21 A I don't remember that part.

22 Q You didn't say that, you don't remember saying that?

23 A I don't remember. I don't recall.

24 Q You were also interviewed again at the hospital. Do you

25 remember that?

1 A No. Oh, possibly. It was a busy night.

2 Q Okay. You were interviewed a couple times. Is it fair to
3 say that?

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

5 Q Do you remember being asked if anyone would have a beef with
6 you?

7 A I do not.

8 Q Do you remember answering, No?

9 A I do not.

10 Q Do you remember being asked about the drugs found around
11 your house?

12 A I do not.

13 Q Do you remember answering, I admit to selling small amounts
14 of weed?

15 A I don't recall.

16 Q If I could play those clips for you, would it refresh your
17 recollection?

18 A Yep. If you have it on camera, then yeah.

19 Q And you didn't listen to these prior to preparing for your
20 testimony today?

21 A No, ma'am.

22 (WHEREUPON, the witness privately watches/listens to disk.)

23 Q So did you have a chance to listen to the interview at the
24 hospital?

25 A A section of it, yes.

1 Q And you were asked, All the guys had masks, all these guys
2 had masks?, and you answered, Yes?

3 A Yes.

4 Q And then you were asked, Nobody you would have a beef with
5 recently that you would expect to come by?, and you said, No?

6 A Correct.

7 Q And then you were asked, Do you guys normally sell out of
8 your house, or what?, and you said, No?

9 A No. That's correct.

10 Q And then you said, I admit to selling weed, but I don't even
11 sell an ounce, it's such small weight, I don't even understand
12 it. Isn't that correct?

13 A Correct.

14 Q You were then asked, Do people come to your guys' place?,
15 and you said, No, we do it somewhere else. Right?

16 A Correct.

17 Q And then you were asked, Are you moving stuff?, and you
18 said, No. Right?

19 A I don't believe. I don't recall that question.

20 Q Never once do you mention that someone was wearing gloves in
21 those statements to the police on the night that this happened.
22 Correct?

23 A Correct.

24 Q In fact, you state you don't remember gloves at all, to the
25 police, on that night. Right?

1 A I don't recall that.

2 Q Well, you do remember, I just asked you and you testified
3 yes -- but correct me if I'm wrong -- the police officer asked
4 you, Were they wearing gloves?, and you responded, I can't
5 remember gloves, but they all had masks on. Right?

6 A Correct.

7 Q Do you know now why the gloves question is important?

8 A I do not.

9 Q You've not talked to the state about that at all ---

10 A No, ma'am.

11 Q --- about why the gloves become important?

12 A No, ma'am.

13 Q Never once in that interview at the hospital do you mention
14 that the guys who broke into your house took Joe Weaver's wallet;
15 right? You never mentioned that?

16 A I'm not sure. I didn't listen to the whole clip, to the
17 whole thing.

18 Q Let me ask you this. When was the first time that you
19 mentioned the fact, to your recollection, that these guys took
20 Joe Weaver's wallet?

21 A I'm not sure, but -- I'm not sure.

22 Q Do you think you ever told the state about that?

23 A I believe. Yes, ma'am.

24 Q When do you think you told the solicitor's office that these
25 guys broke in and took Joe Weaver's wallet?

1 A Probably the first interview. Excuse me. I assume the
2 first interview.

3 Q Do you understand why that's important now?

4 A I do not.

5 Q Would it surprise you that you never spoke about Joe
6 Weaver's wallet to any of the law enforcement officers that
7 talked to you? Would that surprise you?

8 A I have, though.

9 Q You think you have?

10 A I know I have.

11 Q Do you think that you've told the solicitor that's
12 prosecuting the case today that those men reached into Joe
13 Weaver's pocket and took his wallet?

14 A I never said that.

15 Q Okay. What do you think? What did you say?

16 A I'm not exactly sure what I said other than it being the
17 truth, I mean, of how it went down.

18 Q I think your testimony yesterday was Joe offered up his
19 wallet but that still didn't appease them.

20 A That's how they got the wallet.

21 Q That's what you testified to yesterday?

22 A Yes, ma'am.

23 Q Would it surprise you that you've never actually mentioned
24 that before?

25 ATTORNEY OSBORNE: Objection, Your Honor. Asked and

1 answered.

2 THE COURT: Cross-examination. You may proceed.

3 Q Would it surprise you that you've never actually mentioned
4 that before?

5 A I believe I have.

6 Q Who do you believe you mentioned that to?

7 A A law enforcement officer.

8 Q Do you believe you mentioned it to the solicitor's office?

9 A Yes, ma'am.

10 Q Never once in your statement to the police at the hospital
11 do you mention that your house was robbed 10 days prior?

12 A I was never asked.

13 Q And that's a no, you don't mention it, right? That's a --

14 A I would have to hear the clip, but ...

15 Q Never once do you mention in your statement to the police at
16 the hospital that one of the guys who came into your house was
17 wearing camouflage?

18 A During when?

19 Q Let me ask you this. When was the first time you told law
20 enforcement that one of the guys that came into the house was
21 wearing camouflage?

22 A I'm not sure.

23 Q Would it surprise you that you've actually never told them
24 that one of the guys that came into your house was wearing
25 camouflage?

1 A See, I know I have.

2 Q When do you think you did?

3 A I'm not sure.

4 Q A couple days after this happened you then were invited down
5 to the police station to give a statement to the police.

6 A Correct.

7 Q That would have been on February 4th of 2019; right?

8 A I'm not sure exact date, but I remember going down there.

9 Q Did you know it was recorded?

10 A Yes, ma'am.

11 Q And you gave a written statement at that point, too?

12 A Full cooperation. Yes, ma'am.

13 Q Full cooperation?

14 A Yes, ma'am.

15 Q Okay. You were asked to describe what happened again when
16 you went to the police station on February 4th, 2019. Right?

17 A Yes, ma'am.

18 Q Detective Davis was there; right?

19 A Yes, ma'am.

20 Q Detective Moy? He's not in the courtroom. He was there,
21 too; right?

22 A Yes, ma'am.

23 Q And this was five days after the incident; right?

24 A Six, I believe.

25 Q Six days?

1 A If the dates that you gave me match up.

2 Q So if February 4th's correct, it would have been six days,
3 that's what you're saying?

4 A I don't know which date it was. Sorry.

5 Q You told Detective Moy and Davis that Green was the first
6 one in the door and Major was the second guy in the door. Isn't
7 that correct?

8 A I'd have to see the transcripts, but I believe that's what I
9 said.

10 Q So, yes, that's what you said?

11 A I believe. I never seen transcripts. I haven't seen -- I
12 don't know what I said. That's two years ago. Sorry.

13 Q And again, you didn't review your prior statements prior to
14 getting on the witness stand today?

15 A I'm sorry, I didn't.

16 Q Did you say that the other two guys were left at the back
17 door?

18 A Were left at the back door?

19 Q So Green and Major were the first ones in, and the other two
20 guys were left at the back door.

21 A No, ma'am.

22 Q No, you did not say that, that's your testimony?

23 A That they left?

24 Q They were left at the back door.

25 A I don't believe so. I don't believe I said that.

1 Q Okay. So, no, you didn't say that to the police when you
2 went on February 4th?

3 A I'm not sure without actually seeing the transcripts.

4 Q So what you're telling me is you would need to see that to
5 refresh your recollection?

6 A Yes, ma'am.

7 ATTORNEY HUBRICH: May I approach, Judge?

8 THE COURT: You may.

9 THE WITNESS: Please.

10 (WHEREUPON, the witness privately watches/listens to disk.)

11 Q So in that clip you stated that Green was the first one in
12 the door, and Major was the second guy in the door. Correct?

13 A Correct.

14 Q And then you said, The two other guys never even left the
15 back door?

16 A No, ma'am.

17 Q What did you say?

18 A I don't think they left the back door.

19 Q So, I don't think the two other guys even left the back
20 door, that's what you said?

21 A Yes, ma'am.

22 Q And then you say the only two you saw go past the kitchen
23 table was the heavysset male and Green. Did you say that?

24 A I don't know.

25 (WHEREUPON, the witness privately watches/listens to disk.)

1 Q So then you say the only two you saw go past the kitchen
2 table was the heavysset male, which is Major, and Green. Right?

3 A You didn't play that. I'm sorry.

4 (WHEREUPON, the witness privately watches/listens to disk.)

5 Q Do you need me to repeat the question?

6 A Please do.

7 Q You then go on to say that the only two you saw go past the
8 kitchen table was the heavysset male and Green. Correct?

9 A No, ma'am.

10 Q What did you say?

11 A I said, I don't believe the other two.

12 Q Okay. You then ---

13 A No. Excuse me, I'm sorry. I said I don't remember.

14 Q You don't remember?

15 A I believe that's what I said, I think.

16 Q Your testimony is that you didn't say the only two you saw
17 go past the kitchen table was the heavysset male and Green?

18 A No, that's not my testimony. I said -- we can play it
19 again.

20 Q Okay.

21 A Please.

22 Q Go ahead and listen to it again.

23 A I'm sorry.

24 (WHEREUPON, the witness privately watches/listens to disk.)

25 Q Did you say the only two you saw go past the kitchen table

1 was the heavysset male and Green?

2 A The only people I saw.

3 Q Did you say to these officers at the interview that the only
4 two you saw go past the kitchen table was the heavysset male and
5 Green? Yes or no.

6 A I said, I think. But, yes. I said, I think, but yes.

7 ATTORNEY HUBRICH: Judge, may I approach the witness?

8 THE COURT: Yes.

9 Q Mr. Porter, I'm going to hand you what's already been marked
10 and entered into evidence as State's Exhibit 33 and 34. Is that
11 a picture of the kitchen?

12 A Yes, ma'am.

13 Q So the kitchen table would be right next to the back door;
14 right?

15 A Yes, ma'am.

16 Q So your testimony, or your statements to the police,
17 indicate that Green and Major came in the house, but the other
18 two, who you can't identify, stood next to the back door?

19 A No. I said I don't recall them, I don't remember them,
20 going any further.

21 Q Okay.

22 A So they could have.

23 Q But you told the police you believed -- and I'm sorry if I'm
24 putting words -- you believed that the other two stood right next
25 to the back door and never came past the kitchen table?

1 A At the time, yes.

2 Q So that's what you told the police ---

3 A Yes, ma'am.

4 Q --- the night that you were questioned?

5 A Yes, ma'am.

6 Q Can I have those back?

7 A No, not the night.

8 Q Six days after this happened.

9 A Yes, ma'am.

10 Q If you could look at the screen here for me, Mr. Porter. So

11 the kitchen door/the back door, would have been back this way,

12 right back through here?

13 A Yes, ma'am.

14 Q And so what you told police on February 6th at the

15 station -- I'm going to show you also No. 34 -- were that Green

16 and Major came in through there and into the house, but that the

17 other two, you did not believe, left that back door area. Right?

18 A No, I didn't say that.

19 Q Your statement to the police on February 6th was that you

20 believed the other two never even came past the kitchen table and

21 that they stood next to the back door. That was what you told

22 the police back then; correct?

23 A I said I didn't believe that they went past the kitchen

24 table. Sorry.

25 Q And that would have been right here, the other two that you

1 can't identify?

2 A They would have been up a little closer to where the kitchen
3 was.

4 Q But in that general vicinity?

5 A Yes, ma'am.

6 Q You go on to say to the police -- Deputy/Detective Davis
7 would have been one of them -- that David ran to his room to get
8 a knife. Do you remember telling that to the police?

9 A No.

10 Q Would it help to listen to your statement to the police on
11 February 6th to refresh your recollection of that?

12 A I know the statement, and it wasn't -- I didn't say it like
13 that.

14 Q You didn't say that David ran --

15 A No. David told me that he went to his room to get a knife.

16 Q So David told you he went to his room to get a knife, and
17 David told that you that while in there they threw a mattress on
18 him?

19 A Correct.

20 Q And that story didn't make sense to you? Isn't that what
21 you told the police?

22 A Yes, ma'am.

23 Q Finally the police give up and they confront you and they
24 say to you, Hey, had your house been robbed a couple days before?
25 Didn't they ask you that question that day?

1 A I don't recall.

2 Q Would it help if you listened to your ---

3 A Yes, ma'am.

4 Q Okay.

5 (WHEREUPON, the witness privately watches/listens to disk.)

6 Q So finally the police ask you whether or not you had been

7 robbed previously; right?

8 A Yes.

9 Q And finally you say to them, Yes, we were robbed previously?

10 A First time being asked, yes.

11 Q You had never volunteered that to the police before?

12 A I was dealing with a gunshot and watching my friend die, get

13 murdered in front of me. So that was the last thing on my mind.

14 Q The fact that you had been robbed 10 days prior?

15 A Correct.

16 Q When they asked you if you had been robbed 10 days prior,

17 they say, Come on, Marcus, just be honest about it. Right; isn't

18 that what you heard?

19 A Yes, ma'am.

20 Q Why do you think they had to caution you to be honest?

21 ATTORNEY OSBORNE: Objection. Calls for speculation.

22 ATTORNEY HUBRICH: I'll withdraw, Judge.

23 THE COURT: Sustained.

24 Q But at that point you now tell a story about how your house

25 was robbed 10 days prior; right?

1 ATTORNEY OSBORNE: Objection, Your Honor. That calls for
2 hearsay and the other issue we were discussing.

3 ATTORNEY HUBRICH: I can withdraw that question, Judge.
4 I'll just withdraw it if it's objectionable.

5 THE COURT: All right.

6 ATTORNEY HUBRICH: I think it's been asked and answered
7 anyhow.

8 Q They also confront you about a phone number that they found
9 in your phone at that point; right?

10 A I don't recall.

11 Q Did they ever ask you about a phone number for Little Brh,
12 B-r-h?

13 A They did.

14 Q And that person is Jaquavious Washington?

15 A As I later found out, yes.

16 Q And you finally tell them, I sell drugs to Jaquavious
17 Washington; right?

18 A I don't recall.

19 Q Do you recall telling them that, I sell drugs to Jaquavious
20 Washington out of my house?

21 A No.

22 Q You don't recall saying that statement?

23 A I do not recall that.

24 ATTORNEY HUBRICH: The Court's indulgence.

25 THE COURT: All right.

1 Q In all of these statements that you've given to the
2 police -- well, you're just going to say you don't know because
3 you have not reviewed them -- do you know whether or not you told
4 them that Devonte Major was wearing gloves?

5 A I don't recall.

6 Q Do you know whether or not you told them that the gentlemen
7 who broke into your house took Joe Weaver's wallet?

8 A I don't recall.

9 Q Do you know whether or not you told them that your house was
10 robbed 10 days prior other than when they finally confronted you?

11 A I was never asked a question.

12 Q So you do recall not saying that until they asked the
13 question?

14 A As you just pointed out.

15 Q Okay. And then you start, in all of these statements, a
16 couple different times, do you recall telling the police that you
17 believe your roommate, David Swibaker, set this whole thing up?

18 A I don't recall.

19 Q You don't recall saying that to the police?

20 A No, ma'am.

21 Q Do you believe that your roommate, David Swibaker, set this
22 whole thing up?

23 A I do not.

24 Q Did you, at one point, believe that your roommate, David
25 Swibaker, set this whole thing up?

1 A I did.

2 Q So you did believe it; you just don't recall telling the
3 police that?

4 A Correct.

5 Q Okay.

6 A If you have a clip, I'd be happy to listen to it.

7 Q Well, that's okay. As long as you believed it at one point,
8 it doesn't really matter whether you told the police. And that
9 might be why you told the police, His story didn't make sense to
10 me about going to get a knife; right?

11 A I don't know.

12 Q Does his story make sense to you?

13 A I don't know his story.

14 Q You don't know his story that he went -- he told you he went
15 to go get a knife, you testified to that. Right?

16 A Correct.

17 Q And he told you that they flipped a mattress over on him.
18 You testified to that; correct?

19 A That's what he told me. Yes.

20 Q And that story doesn't make sense to you?

21 A I do not know. I haven't heard the whole story.

22 Q You didn't talk to your roommate about what happened that
23 night?

24 A Two years ago, right after I got shot. One time.

25 Q That's fair enough.

1 ATTORNEY HUBRICH: Judge, may I approach the witness?

2 THE COURT: You may.

3 Q I now hand you what's been marked, I don't know what the
4 second one is, I think 69 and 80. Is that correct?

5 A Yes, ma'am.

6 Q And those are already entered into evidence as state's
7 evidence, as state's exhibits. What are they?

8 A No. 69 is the photo of my master bedroom.

9 Q Okay. And 80 is also a photo of your master bedroom, it
10 just happens to have ---

11 A My deceased dog in it.

12 Q --- your dog in it, yep. Can I have them back. And these
13 are the ones you identified as being what your house looked like
14 that night; right?

15 A Excuse me?

16 Q These are the ones that you testified looked like, what your
17 house looked like that night?

18 A I didn't see it that way. I never seen it that way. I
19 could testify that that's what, where my room was, but I don't
20 keep my room like that.

21 Q When the state admitted it into evidence and handed it to
22 you yesterday, you said, Yes, that's what my room looked like
23 that night; right?

24 A No. I testified saying that that's the basic concept of my
25 room and that's my master bedroom. As far as disarray, no.

1 Q This is not what your room looked like that night?

2 A I don't know.

3 Q You don't know?

4 A No. I never seen it like that. That was after I was

5 already pushed out of the room.

6 Q You testified on direct yesterday, I believe, that one of

7 the perpetrators, I think you said Major, took you to the back

8 room at gunpoint, right, and you saw your dog on the bed. Right?

9 A I did.

10 Q Was the mattress flipped over then?

11 A No, ma'am.

12 Q Oh. I'm going to show you this then. How about that? So

13 that's a picture of your room; right?

14 A Correct.

15 Q That's your master bedroom?

16 A Correct.

17 Q And that, on its side there, is a mattress?

18 A Box spring, yes.

19 Q And it didn't look like that when you were taken back to

20 your room?

21 A No, ma'am.

22 Q No. That happened later?

23 A Yes, ma'am.

24 Q But your dog was there, when you went back to your room, on

25 your bed?

1 A Yes, ma'am.

2 Q And I know this is hard, and I'm sorry. This a picture of
3 your dog on the bed; right?

4 A Yes, ma'am.

5 Q And this was what was entered into evidence yesterday by the
6 state; correct?

7 A Yes, ma'am.

8 Q And this is not what it looked like when you went into the
9 room?

10 A No, ma'am.

11 Q Where was your dog when you went into the room at gunpoint?

12 A The dog was right there.

13 Q Where was the box spring?

14 A On the base where it's supposed to be.

15 Q Underneath the mattress?

16 A Yes, ma'am.

17 Q So somehow, after you were taken out of that room, the box
18 spring was taken out from underneath your dog and flipped up on
19 its side like that?

20 A It's a split box spring.

21 Q Okay, I'm not following. So half of it was flipped up and
22 the dog remained in the same spot?

23 A Yes, ma'am. It appears that way.

24 Q What room was David Swibaker taken into where they flipped
25 the mattress over on him? That was a different room?

1 A Yes, ma'am.

2 Q And your testimony to, I think, the police and also today
3 was that his story didn't make sense to you at the time?

4 A At the time, no, it didn't.

5 ATTORNEY HUBRICH: The Court's indulgence.

6 THE COURT: All right.

7 Q Just two final questions, Mr. Porter. I thank you for your
8 patience. Your testimony is that you never saw Muanah Fortune
9 shoot Joe Weaver, right, that's your testimony?

10 A That I never saw?

11 Q Muanah Fortune shoot Joe Weaver.

12 A I testified that -- I testified, saying that three shots
13 were -- I was seeing him get shot three times out of eight.

14 Q And you saw Elijah Green shoot Joe Weaver?

15 A Three times. Yes.

16 ATTORNEY HUBRICH: And, I have no further questions. Thank
17 you.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Yes, ma'am.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY CORNWELL:

22 Q Good afternoon, Mr. Weaver (sic). You doing okay; do you
23 need a break? You've been up there for a while.

24 A No, I'm good.

25 Q You have water?

1 A Yes, ma'am.

2 Q I'm going to ask you a few questions. And some of them may
3 be repetitive. If you don't remember, just tell me you don't
4 remember. If you need to refresh your recollection, just let me
5 know. I'm not trying to put words in your mouth; just trying to
6 follow up on things. Okay.

7 A Yes, ma'am.

8 Q We discussed you talked about this case ad nauseam with
9 people; correct?

10 A I try not to.

11 Q But with law enforcement, with people that have questioned
12 you about it, when you get questioned you have to answer
13 questions about it; correct?

14 A Correct.

15 Q And obviously the first real time you talked to law
16 enforcement was at the hospital while you were being treated, and
17 you spoke to a couple of different officers as they came in and
18 out of the room; correct?

19 A As I was just laying there.

20 Q And I know we established this, but yesterday in testimony,
21 I wanted to make sure, you keep referring to a light-skinned,
22 black guy, a light-skinned, black guy with dark eyebrows, and a
23 light-skinned, black guy with hazel eyes.

24 You were referring to Elijah Green when you talk about that
25 light-skinned, black guy; correct?

1 A Yes, ma'am. I found out later, found out his name.

2 Q Yes. You were not talking about this light-skinned, black
3 guy; you were talking about Elijah Green in all of those
4 statements; correct?

5 A Yes, ma'am.

6 Q And I know that you just kind of went over this, but when
7 you were talking to law enforcement in the hospital and they
8 asked you about the other two guys, because you talked to them
9 about Green, the light-skinned, black guy, and you talked about
10 the fat dude with the purple Nikes, and we've established that
11 that's Green and Major ---

12 A Yes, ma'am.

13 Q --- when they asked you about the other two, do you remember
14 telling them you didn't have any good description of them; you
15 didn't really get a good look; they stayed in the kitchen area?

16 A That's what I said. Yes.

17 Q So you would admit that at that time you never mentioned any
18 sort of camo or anything?

19 A At that time, no, I didn't.

20 Q And you would agree, that to give a description like that,
21 camo is fairly distinctive; correct?

22 A Not in my world.

23 Q But it's recognizable. How's that?

24 A Sometimes.

25 Q And you would agree that, kind of like purple shoes -- and

1 you described the shoes, you described purple shoes, you
2 described white Nikes, I think you at some point you described
3 them as white-and-black Nikes, that something like camo is
4 important?

5 And so if you would have told that to law enforcement, you
6 would expect law enforcement to record it, to put it in a
7 statement, to make note of it. Correct?

8 A I believe everything was important about that night.

9 Q So would it surprise you, because you think that you told
10 them, would it surprise you that there is no mention on any
11 body-camera video, on any in-car camera interview, on any
12 hospital video, in any interview-room video of you ever saying
13 any description of camo or anything about the two guys in the
14 back area?

15 A I'm not sure.

16 Q So your testimony is that when you discussed maybe a camo
17 jacket, that yesterday is not the first time that you mentioned
18 that to law enforcement or the solicitor's offers?

19 A Excuse me? Can you repeat the question?

20 Q You're saying that when you testified yesterday, Oh, yeah,
21 there was maybe, maybe a camo jacket, I don't know -- you weren't
22 definitive about it, you said maybe and I don't know -- but
23 that's not the first time you've ever brought up camo?

24 A It was not.

25 Q So you're saying that if it's not in law enforcement's

1 report and it's not on the video and it's not anywhere in any
2 record of you ever saying that, that law enforcement must have
3 omitted it, they must have left it out?

4 A No, ma'am, I'm not saying that.

5 Q Or could it be that when you came to testify and you
6 prepared to testify, you decided that that was going to be
7 something that you were going to add in yesterday and nobody else
8 knew that you were going to make that statement yesterday?

9 A No, ma'am. I wouldn't say that.

10 Q But you agree that when you were first discussing the two
11 men in the back area, you told law enforcement you could not give
12 them a good description; you did not get a good look at them;
13 they stayed in the back area? Yes?

14 A Which? The interview? Which time?

15 Q The first time you told them that was at the hospital. Yes?

16 A I would have to hear the whole transcripts, but, yeah.

17 Q I mean, you just testified, Yeah. Now you just said yeah
18 again. So, you're good?

19 A All right. Yes, I did.

20 Q And the second time you would have said that would have been
21 at the second interview that we talked about. And in that one
22 you're actually a little more certain, you talked about two
23 little guys, only two that went past the kitchen table were the
24 fat, black dude and Green. And then you called them later, The
25 two kids in the back. But you can never, you never, describe

1 them other than the little guy and the two kids that never leave
2 the back area?

3 A I'm not sure. I would have to listen to the interview or
4 see the transcripts. I'm sorry.

5 (WHEREUPON, the witness privately watches/listens to disk.)

6 A Could you repeat the question, please.

7 Q Absolutely. You call the two little guys, and you said, The
8 only two that went past the kitchen were the fat, black dude and
9 Green?

10 A No ma'am, I didn't say that.

11 Q What did you say?

12 A I said, I don't remember anybody other than Green and, at
13 that time, Major.

14 Q Let me clarify. You started to say the two little guys, and
15 you stopped yourself and you said, The only two that I remember
16 going past the kitchen were the fat, black dude and Green?

17 A That I remember, yes, essentially.

18 Q And quick question. You're having to go back, and you admit
19 that you've had to re-listen to those clips, the same clip, even,
20 a couple of times; right?

21 A Yes, ma'am.

22 Q And you're having trouble remembering what you heard 15
23 seconds ago, yet you have no question about what you remember
24 three years ago when you were testifying for the state?

25 A Some things stand out. PTSD.

1 Q You have PTSD now?

2 A Yes, ma'am.

3 Q And do you recall, in the hospital, going through the
4 timeline of your day with one of the detectives?

5 A No.

6 Q Do you recall telling them that you got up around 7:00 --
7 you were sleeping on and off most of the day; you got up at 7:00
8 in the morning; you were on pain medication because you had
9 fallen out of a tree?

10 A I don't remember. I don't recall.

11 Q Were you on pain medication that day?

12 A I don't recall.

13 Q Had you fallen out of a tree?

14 A If I said I fell out of a tree, I fell out of a tree.

15 Q And do you remember talking to them about how sore your
16 wrist was?

17 A I do not. I'm sure I did.

18 Q Is it possible that you were on painkillers that day and
19 that you told law enforcement that you were on painkillers?

20 A I'm not sure. I'd have to listen to it or see a transcript.

21 Q I'm not asking if you're sure; I'm just asking if it's
22 possible, if it's possible you could have said that?

23 A I suppose it's possible.

24 Q Okay. We talked a little bit about your roommate, David
25 Swibaker. And do you recall telling law enforcement that you

1 don't know him that well; that you were trying to evict him?

2 A I don't recall.

3 Q Were you trying to evict him?

4 A I would have liked to now.

5 Q And when they asked you if you thought that David had
6 anything to do with it, do you recalling saying, I wouldn't put
7 anything past David?

8 A I don't recall.

9 Q Do you recall muttering under your breath, People don't run
10 inside someone's house like that without an inside man?

11 A No. I don't recall.

12 Q Does that sound like something you might think or say?

13 A I'm not sure. Yeah. I mean, I feel like it's something I'd
14 say.

15 Q And we've talked about, talked about, Jaquavious Washington,
16 the person that was in your phone as Little Brh. And I believe
17 when you were talking to law enforcement about him, you actually
18 thought his name was maybe Quinton or "Q". That's kind of how
19 you had figured out?

20 A I'm not sure. I'm sorry.

21 Q How do you know Little Brh?

22 A He worked with David earlier.

23 Q So your connection to Little Brh is through David?

24 A Yes, ma'am.

25 Q And you have now admitted that you sold drugs to Jaquavious

1 at your house?

2 A I don't recall that, saying that.

3 Q Has Jaquavious been to your house?

4 A He has.

5 Q And you have sold drugs to him?

6 A I have.

7 Q Do you recall telling law enforcement that a day or so
8 before this happened that Jaquavious Washington contacted you
9 about you fronting him some drugs?

10 A I do.

11 Q So he was contacting you to see if you had drugs in your
12 house?

13 A No.

14 Q Well, how did he think you were going to front him drugs if
15 he didn't think that you had them?

16 A He didn't know where I kept them. He didn't know if there
17 was anything at the house.

18 Q But he had been to your house before?

19 A He has.

20 Q And you admit that there have been drugs in your house ---

21 A Some.

22 Q --- including the drugs that were found in your house during
23 this incident; correct?

24 A Yes, ma'am.

25 Q So it is logical that Jaquavious Washington would know that

1 you had drugs at your house?

2 A No, ma'am.

3 Q And you do not recall telling law enforcement that you've
4 sold to Q at your house?

5 A No, ma'am, I don't recall that.

6 Q But you admit he's been to your house and knows where you
7 live?

8 A Yes, ma'am.

9 Q We talked about the fact that you've had a prior burglary
10 before this incident. Correct?

11 A That's correct.

12 Q But when you were asked at the hospital to describe your
13 back door -- because you had mentioned that the guys came in the
14 back door; correct?

15 A I don't recall, but they did. I don't recall saying it now
16 on that interview or then.

17 Q You don't recall telling law enforcement that four black men
18 came in through your back door?

19 A I don't remember, but I know I did. I mean, I'm sure I did.
20 I don't remember saying it personally. Sorry. I don't remember
21 much about that night right now.

22 Q You remembered it yesterday when you were testifying for the
23 state.

24 A Unfortunately I'm trying to get it out of my mind.

25 Q Okay. Well, let's talk about your back door. I don't even

1 care what you remember saying to law enforcement, ---

2 A Okay.

3 Q --- but would it be accurate that you would have told them,
4 based on what that back door was like at the time, that it was
5 not a crappy back door and it would have had to have been kicked
6 with force?

7 Would you agree with that statement, that at the time that
8 this incident happened your back door was just fine, it was not a
9 crappy door, it was not a broken door or anything, and for them
10 to get in through that back door it would have had to have been
11 kicked with force?

12 A Yes, ma'am.

13 Q If you'll bear with me for one moment.

14 A Okay.

15 Q When you talked law enforcement about when the guys came in
16 the house, do you ---

17 A Which time?

18 Q The incident that we're talking about here.

19 A Which time? Which time?

20 Q When the four black guys kicked in your back door -- and
21 we've now come to trial on those men -- on the night
22 January 28th, when you were testifying yesterday you indicated
23 that they came in single-file, that four people can't fit through
24 that door.

25 A Yes, ma'am.

1 Q And you told law enforcement that the first guy that comes
2 in is a light-skinned, black guy now known as Elijah Green; then
3 Devonte Major; and then you didn't know about the other two, they
4 stayed in the back area.

5 And you also said that as soon as they came in, your dog
6 attacked and was shot.

7 A Yes, ma'am.

8 Q The first guy shot the dog?

9 A I don't recall.

10 Q You don't recall today, but is that something that you would
11 have told them at that time?

12 A I don't recall that, I don't recall saying that. I don't
13 remember actually seeing who shot the dog.

14 Q But the only person that you definitely saw fire a gun, that
15 you know that you saw shoot a gun, at someone is Elijah Green?

16 A He's the one I can pin. He's the one who shot J.B. and
17 myself.

18 Q Thank you.

19 A Yes, ma'am.

20 THE COURT: Does that conclude your cross-examination?

21 ATTORNEY CORNWELL: It does, Your Honor. Thank you.

22 THE COURT: All right. Redirect?

23 ATTORNEY OSBORNE: Briefly, Your Honor.

24 THE COURT: All right.

REDIRECT EXAMINATION

BY ATTORNEY OSBORNE:

Q Mr. Porter, how many people entered your home?

A Four.

Q Okay. All right. So when you were talking to law enforcement, the first thing, Ms. Hubrich brought up the 911 call, what was going on with you at the time? With you.

A With me?

Q Yes.

A I just got shot.

Q You just got shot?

A I got shot in the chest.

Q Okay, in the chest. And when you were talking to law enforcement on scene, you just got shot?

A Yes, sir.

Q And when you went to the hospital and you were receiving treatment, what happened to you earlier that night? Other than you getting shot, but what else happened that night?

A I watched my friend get murdered in front of me, and my dog.

Q Okay. So your friend got murdered in front of you?

A Yes, sir.

Q Your dog was shot and killed?

A Yes, sir.

Q David Swibaker was not shot?

A He was not.

1 Q Did that lead your mind to start spinning?

2 A Yes, sir.

3 Q While we're talking about David, so you had two people with
4 you, right, when you went into that room, when you went to your
5 bedroom?

6 ATTORNEY HUBRICH: Objection, Your Honor. Leading.

7 A Yes, sir.

8 THE COURT: You are not to lead.

9 Q How many of the four defendants brought you into your
10 bedroom?

11 A Two.

12 Q Four minus two is how much?

13 A Two.

14 Q So now we're talking about, do you know where or what those
15 two guys were doing?

16 A I do not.

17 Q Okay. Is it fair to say that you can only speak for what
18 the two guys were doing who were with you?

19 A Yes, sir.

20 Q And those two guys, your words, a fat guy wearing purple
21 shoes ---

22 A Yes, sir.

23 Q --- and a tall, light-skinned guy, who you believe to be
24 Elijah Green?

25 A Yes, sir.

1 Q The other two, you have no idea what they were doing?

2 A No, sir.

3 ATTORNEY OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 (WHEREUPON, State's Exhibits 121 and 178 were marked for
6 identification.)

7 Q All right. Let me just show you a couple things here.

8 Well, let's deal with the Q thing first. I'm going to show you
9 121 and 178.

10 A Yes, sir.

11 Q 121, can you tell me if you recognize that?

12 A Yes, sir.

13 Q And what is that?

14 A Looks like a ledger, my ledger.

15 Q Okay, so it was your ledger?

16 A Yes, sir.

17 Q And what is a ledger?

18 A It's like a debt list.

19 Q A debt list?

20 A Basically, yes, sir.

21 Q Is it or is it not a list of the people who owed you money
22 for marijuana?

23 A Yes, sir.

24 ATTORNEY HUBRICH: Objection, Your Honor. Leading. And I
25 don't have 178 on my list. I don't know what it is.

1 ATTORNEY OSBORNE: Do you have it?

2 ATTORNEY HUBRICH: No.

3 ATTORNEY OSBORNE: Let me see it. May I approach, Your
4 Honor?

5 THE COURT: You may.

6 Q And you ended with saying that's a debt list?

7 A It is a debt list.

8 Q And we're talking about -- and I may have misspoke --
9 that's 121?

10 A Yes, sir.

11 Q Okay. It's a photograph of it?

12 A A photograph of it.

13 Q There was some questions by, I think it was, Ms. Hubrich in
14 regards to a Little Brh, a person that you had sold marijuana to
15 before.

16 A Yes, sir.

17 Q Is he listed on that list?

18 A He is.

19 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
20 move 121 into evidence.

21 THE COURT: Any objection?

22 ATTORNEY HUBRICH: No objection.

23 THE COURT: Any objection?

24 ATTORNEY CORNWELL: No objection, Your Honor.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit 121 is admitted into the
2 record.)

3 Q All right. Now take a look at -- and I think that next
4 number is what, 178?

5 A Yes, sir.

6 Q Do you recognize that person on 178?

7 A Yes, sir.

8 Q And who is that?

9 A That's Little Brh.

10 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
11 admit 178 into evidence.

12 ATTORNEY HUBRICH: No objection.

13 ATTORNEY CORNWELL: No objection, Your Honor.

14 THE COURT: Very well.

15 (WHEREUPON, State's Exhibit 178 is admitted into the
16 record.)

17 Q And so just to circle back and tell me if I'm wrong or I
18 misheard anything from cross-examination. I'm going to show you
19 121 first, all right. So we're looking at 121. These are the
20 people that owed you money for marijuana?

21 A Yes, sir.

22 Q Guy (phonetic sp) owing you five bucks; Bree (phonetic sp),
23 60. Yeah?

24 A Yes, sir.

25 Q And then Little Brh down here, a hundred bucks?

1 A Yes, sir.

2 Q Okay. And then let's run over here real quick. Showing you
3 178 now. That's Little Brh?

4 A That is Little Brh.

5 Q Q?

6 A Q.

7 Q You testified you sold weed to him a couple times at your
8 house? Well, you sold weed to him a couple times?

9 A I sold weed to him a couple times.

10 Q Is it fair to say you weren't super-excited about telling
11 the police that you sold weed to Q in particular at your house on
12 the night that you got shot?

13 ATTORNEY HUBRICH: Objection. Leading.

14 THE COURT: Don't lead.

15 Q Were you excited about telling the police?

16 A No, sir.

17 Q Last two.

18 ATTORNEY OSBORNE: Your Honor, may I approach?

19 THE COURT: You may.

20 (WHEREUPON, State's Exhibits 31 and 47 are marked for
21 identification.)

22 Q I'm going to show you 31 and 47. Can you take a look at
23 those and tell me if you recognize those. And what is 31?

24 A Thirty-one is a photo of my back yard, going to the back
25 door.

1 Q Does that photograph fairly and accurately depict your
2 residence on the night of the incident, or at least the back door
3 to it?

4 A Yes, sir.

5 Q All right. And the next one? What number's the next one
6 again?

7 A It is 47.

8 Q All right. What is 47?

9 A Forty-seven is a photograph of my kitchen table.

10 Q Okay. Does 47 fairly and accurately depict your residence,
11 or at least the kitchen table portion of it, as it was on the
12 night of the incident?

13 A Yes.

14 ATTORNEY OSBORNE: All right. Your Honor, at this time we'd
15 seek to admit 31 and 47 into evidence.

16 THE COURT: Any objection?

17 ATTORNEY HUBRICH: No objection.

18 ATTORNEY CORNWELL: No objection, Your Honor.

19 THE COURT: All right.

20 (WHEREUPON, State's Exhibits 31 and 47 are admitted into the
21 record.)

22 Q All right. I'm showing you 31 first. We're looking at the
23 back door to your residence?

24 A Yes, sir.

25 Q There was a lot of questions regarding the other two

1 individuals and where they were standing.

2 A Yes, sir.

3 Q And you've stated, if I heard you correctly -- and you tell
4 me if I'm wrong -- that you stated that they were by the back
5 door when the other two, when Devonte and Elijah, the other two
6 you're identifying as Devonte and Elijah, were inside the
7 residence?

8 A Could you repeat the question.

9 Q Did you testify that the other two individuals, not Elijah
10 and Devonte, were in the kitchen area by the back door?

11 A Yes, sir.

12 Q That's where you last saw them?

13 A Yes, sir.

14 Q Were they outside the house when you saw them?

15 A I never seen them outside the house.

16 Q You only saw them inside the house?

17 A Yes, sir.

18 Q It's hard to see here. Is that your hat by the back door
19 there?

20 A I'm not sure.

21 Q Okay. Showing you 47. Just to make sure that we all
22 understand what you're testifying to, Marcus, the two people that
23 you saw inside your house, not counting Elijah and Devonte, they
24 were inside your house?

25 A Yes, sir.

1 Q And all four individuals were armed?

2 A Yes, sir.

3 ATTORNEY OSBORNE: No further questions.

4 THE COURT: All right. Ms. Hubrich, cross-examination?

5 ATTORNEY HUBRICH: None, Your Honor.

6 THE COURT: All right. Ms. Cornwell?

7 ATTORNEY CORNWELL: No, Your Honor, thank you.

8 THE COURT: Very well. Mr. Porter, may come down.

9 THE WITNESS: Thank you.

10 THE COURT: Yes. All right. Counsel, your next witness?

11 ATTORNEY OSBORNE: It's going to be David Swibaker.

12 THE COURT: All right. We will take lunch. We're going to
13 take it a little bit earlier. Is it here?

14 THE BAILIFF: No, ma'am. We are on the road; it's en route
15 as we speak.

16 THE COURT: All right, it's en route. Ladies and gentlemen,
17 we're going to take our lunch break now, because I know you do
18 more than just eat food during lunch. But, your lunch is en
19 route. And so I do want to remind you, and, yes, please be
20 mindful, do not discuss this matter, or allow anyone to discuss
21 it with you over our lunch break. We are going take a break from
22 about a quarter till 1:00 till a quarter till 2:00, take about an
23 hour.

24 I know that there are going to be those of you who need to
25 and want to check your cellphone or other communication devices.

1 Please be mindful that you cannot communicate about this case;
2 you can't do any research; don't look up any terms or information
3 about anyone that has anything to do with this matter or anything
4 that has anything to do with this matter.

5 You must receive all of the information from which you will
6 make up your mind here while court is in session.

7 I know we have some folks who smoke. And same thing that we
8 did yesterday will certainly apply to today. We want to
9 accommodate as best we can.

10 So remember to do your social distancing. But we will take
11 about an hour for lunch. It's almost a quarter till 1:00. We
12 will start back at a quarter till 2:00. Have a good lunch.

13 (WHEREUPON, the jury is escorted out of the courtroom at
14 12:46 p.m.)

15 THE COURT: All right. Anything for us before we take our
16 break for lunch?

17 ATTORNEY OSBORNE: No, Your Honor.

18 ATTORNEY HUBRICH: No, ma'am.

19 ATTORNEY CORNWELL: No, Your Honor.

20 THE COURT: I want to just -- if you'll all approach for me.

21 (WHEREUPON, an off-the-record discussion is held at
22 sidebar.)

23 (WHEREUPON, court recessed at 12:46 p.m. and reconvened at
24 2:30 p.m.)

25 (WHEREUPON, an off-the-record discussion is held at

1 sidebar.)

2 (WHEREUPON, Court's Exhibit 3 is marked for identification.)

3 THE COURT: I understand that my jury, we need to issue
4 blankets? Oh, you can just wait and be my age and have your own
5 personal sauna. I would ask Ms. Westbury if she could email
6 downstairs and do this (makes sound).

7 Now, I've had periodically, I've had messages from you guys,
8 and I wanted to acknowledge the messages. And with regards to
9 the appointment in the morning, I wish I could accommodate, I
10 cannot. If it was going to be a quick appointment and you could
11 be here at like a quarter till 10:00 that would certainly be fine
12 but I certainly can't, I can't excuse for that reason. And I
13 really do apologize.

14 Having said that, I've got two other folks with situations
15 for tomorrow afternoon, and I'm giving some consideration, that I
16 may/we may end tomorrow. We're going to be going into next week.
17 I don't know if y'all figured that out, but it appears that we
18 are going to have to go into next week.

19 So having said that, I know that for some folks -- I know
20 we've got a vaccination on Monday for COVID, and we're going to
21 have to figure that one out. And I know we've got graduation
22 tomorrow and celebrating tomorrow, as well. So we may end a
23 little bit earlier tomorrow if we can work that out, we're trying
24 to, because I don't want to loss you folks.

25 And also with regards to today, we're not going to be ending

1 earlier. You all are going to be leaving a little bit earlier
2 today because there's a matter that I must hear outside your
3 presence. So I'm going to do that at the conclusion of today so
4 y'all can go, you can go about your business. So that's sort of
5 where we are.

6 Now, maybe the person that had their appointment for the
7 morning, perhaps you can get it for this afternoon, perhaps you
8 can get it for tomorrow afternoon. That would be lovely. And
9 there may be folks that need to announce, there may be notes
10 about next week. That's fine. We'll have a break, and you'll
11 have an opportunity to do that.

12 Now, hand out. You need to do a note. You have a pencil
13 and paper, that's very nice.

14 Do we have a presiding juror at this point? No, okay. We
15 do? You just wanted to see if I'd figure it out. And you are
16 Juror No?

17 JUROR NO. 289: I don't know. Oh, 289.

18 THE COURT: 289.

19 JUROR NO. 289: Uh-huh (yes).

20 THE COURT: Got it. Wonderful, thank you. So I'm going to
21 note about what your concern is. Great. But just don't allow
22 writing the note to keep from your attention.

23 Now, call your next witness.

24 ATTORNEY OSBORNE: Thank you, Your Honor. The state calls
25 Agent Jamie Green.

1 CLERK OF COURT: Agent Green, if you'll please raise your
2 right hand, and state your full name.

3 THE WITNESS: James Green.

4 JAMES GREEN,

5 having first been duly sworn, was examined and testified as
6 follows:

7 THE COURT: And, your witness.

8 ATTORNEY OSBORNE: Thank you, Your Honor.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY OSBORNE:

11 Q And what was your name again, sir.

12 A James Green.

13 Q All right. And what is your occupation and title?

14 A I'm a forensic scientist, or a firearms examiner, for SLED,
15 or the South Carolina Law Enforcement Division.

16 Q And how long have you been with SLED?

17 A Since June of 2005.

18 Q And I know you said you were a firearms examiner. What
19 exactly does a firearms examiner do with SLED?

20 A Firearms examination is a discipline of forensic science
21 where trained examiners look at fired bullets and fired cartridge
22 cases to try to determine the common origin. Basically what you
23 see on CSI or NCIC are real, basically was this cartridge case or
24 this bullet fired by this firearm, the firearm that was
25 submitted.

1 Q And how long have you been working in the field of firearms
2 identification?

3 A Since I started at SLED in 2005.

4 Q What is your educational background?

5 A I have a bachelor's and a master's, both from Charleston
6 Southern University. And then when I was hired at SLED I began a
7 SLED firearm and toolmark course of instruction. It's about a
8 three to three-and-a-half year course of instruction in an
9 apprentice-type fashion, studying under court-qualified firearms
10 examiners.

11 Q Have you received any specialized training in the area
12 firearms identification?

13 A Yes, sir. In addition to the training we received at SLED,
14 we also have ongoing training. We have Association of Firearm
15 and Toolmark Examiners, or AFTE, A-F-T-E, is a worldwide
16 association of firearms and toolmark examiners. We have a
17 conference every year where we get together and meet and discuss
18 things relative to the science.

19 Q I don't have any other better way of asking this, I guess,
20 but are you authorized by SLED to conduct firearms identification
21 examinations?

22 A Yes, sir.

23 Q How many cases have you worked at SLED in that field?

24 A I don't have an exact number, but it's in the thousands.

25 Q Have you ever been qualified as an expert in the area of

1 firearms identification?

2 A Yes, sir.

3 Q How many times, about?

4 A Ninety.

5 Q Is that in state court? Federal court? Both?

6 A That's 88 times in state courts and twice in federal.

7 ATTORNEY OSBORNE: Your Honor, at this time we would offer
8 Agent Green as an expert in the field of firearms examination.

9 THE COURT: Is there any objection?

10 ATTORNEY WEHMAN: No, Your Honor.

11 THE COURT: Any objection?

12 ATTORNEY CORNWELL: No, Your Honor.

13 THE COURT: Very well. Let me just explain to our ladies
14 and gentlemen of the jury, let me tell you what's just occurred.
15 Under our law, ordinarily a witness cannot testify with regards
16 to their opinion and the reasons for those opinions. There is an
17 exception, and that is when, by virtue of someone's knowledge or
18 training or education or profession, they become an expert in
19 some field. It might be science, or it could be any number of
20 expertise. And for those people who are then qualified as an
21 expert, then they are allowed to testify regarding their opinion
22 and the reasons for those opinions.

23 Ladies and gentlemen, Agent Green is qualified as an expert,
24 and he will be allowed to testify regarding his opinions within
25 the context of his expertise, which is firearms, and give the

1 reasons for those opinions.

2 I'll give you some concluding instructions when I give you
3 the instruction on the law at that time, but, for your
4 informational purposes, in that he has been qualified as an
5 expert, he will be allowed to testify with regards to his
6 opinions and the reason for those opinions.

7 All right. Very well. Yes, sir.

8 ATTORNEY OSBORNE: Thank you, Your Honor.

9 Q So let's get into how you do your job. How do you go about
10 matching a fire cartridge casing -- you know, let's start off
11 with this. What is a cartridge casing and how does that, how do
12 you define that in reference to the way guns work?

13 A Okay. A cartridge is a single piece of unfired ammunition.
14 My dad says he's going to Wally World, or Walmart, to buy
15 bullets. He's not, he's going to buy cartridges.

16 The cartridge is just a single piece of unfired ammunition.
17 And when a cartridge is fired you have a bullet, or projectile,
18 and a cartridge case. The cartridge case is nothing more than a
19 container for everything else, that holds the primer, the gun
20 powder and the bullet.

21 When the cartridge is detonated in a semiautomatic pistol,
22 the bullet goes down the barrel, the cartridge case is extracted
23 and ejected from the pistol, full loading the next cartridge.

24 Using a cartridge in a revolver, the bullet goes down the
25 barrel, and the cartridge stays in the cylinder of the revolver

1 until the shooter unloads the revolver.

2 Q While we're on that, do you or does SLED, or does anyone,
3 for that matter, that you know of, have the capabilities of
4 marrying up, or matching up, a particular fired cartridge case to
5 a particular bullet? Are you able to take those specifics and
6 say, Okay, well, that bullet came from that cartridge case?

7 A No, sir. That's not an examination that SLED does. The
8 reason for that is the bullet diameter is slightly larger than
9 the diameter of the cartridge case, so when the manufacture
10 forces the bullet into the cartridge case to load the cartridge,
11 marks are imparted on the bearing surface of the bullet by the
12 cartridge case. So some people, some agencies, out west, do
13 match those.

14 However, you think in computer terms, when the bullet is
15 fired and it goes down the barrel, the bearing surface touches
16 the rifling and it's engaging with the rifling, and all the
17 markings from the rifling are overriding those markings left on
18 the cartridge case, so the marks that may have been there are all
19 overwritten based on the rifling.

20 Q Okay. And are you able then to match a bullet to a
21 particular gun?

22 A Yes, sir. You can match a bullet to a firearm. You can
23 match a bullet to a bullet. You can match cartridge case to
24 firearm or cartridge case to cartridge case.

25 Q And how do you go about doing that?

1 A The main tool we uses a comparison microscope. It's two
2 microscopes connected by a single optical bridge that lets us
3 look at two simultaneously. When the firearm is produced, the
4 manufacturer, be it Smith & Wesson, Glock, Taurus, Ruger, whoever
5 makes it, they have certain criteria that they want and designed
6 into that pistol. Those are called class characteristics. So
7 all those are meant to there by manufacture.

8 However, during the manufacturing process, with metal on
9 metal contact, and then further use and abuse by the shooters,
10 certain individual characteristics are formed in those firearms
11 that make that firearm mark uniquely from the one immediately
12 before it and the one immediately right after it.

13 Q Okay. With regards to this case, I believe your lab no.
14 L19-02-418, did you have the occasion to examine some evidence
15 that was submitted by the Summerville Police Department?

16 A Yes, sir.

17 Q And I believe, and tell me if I'm correct, on October the
18 10th of 2019 you came into possession of the evidence you were
19 asked to examine in this case. Does that sound that?

20 A Yes, sir. I remember that because it's my birthday.

21 Q Okay. All right.

22 ATTORNEY OSBORNE: Beg the Court's indulgence.

23 THE COURT: Yes.

24 (WHEREUPON, State's Exhibits 13, 14, 15, and 16 are marked
25 for identification.)

1 Q I'm going to kind of do this, kind of hand it to you just a
2 little different now, in steps. I'm going to show you State's
3 25, 13, 14, 15 and 16.

4 ATTORNEY OSBORNE: And, Your Honor, just for the record, all
5 these guns have locks on them.

6 THE COURT: All right. Good.

7 Q And if you want, you can just sort of -- well, let me just
8 ask you, as you're going through those, what's the first one that
9 you're looking at there? What is my number?

10 A State's Exhibit 25.

11 Q So let's just start with State's 25. Do you recognize that
12 item?

13 A Yes, sir. State's Exhibit 25 is a Taurus, Model PT 738,
14 semiautomatic pistol that was submitted as SLED item 5 in this
15 case.

16 Q Okay. And did you tell me, what's the caliber of that
17 pistol?

18 A It is a .380 auto.

19 Q Okay, .380 auto. All right. Now let's move to, is the next
20 one 13, my 13?

21 A Yes, sir.

22 Q All right. And what is that?

23 A State item 13 is the Taurus, Model 24/7 G2, semiautomatic
24 pistol, and 9-millimeter Luger caliber, that I examined as SLED
25 item 1.

1 Q And the next one, is that 14?

2 A Yes, sir.

3 Q And what is that?

4 A It is a Smith & Wesson revolver, a .38 special, that I
5 examined as SLED item 2.

6 Q And the next one is my 15, State's 15.

7 A Yes. State's Exhibit 15 is a Jimenez, a Model J.A. LC383,
8 auto caliber pistol, that I examined as SLED item 3.

9 Q So stop there for one second. So we have four pistols that
10 you've looked at so far; one revolver, three semiautomatics, two
11 which are 9 millimeters?

12 A Well, we haven't gotten to the one 9 millimeter yet.

13 Q Oh, the other 9. Oh, sorry.

14 A Yes, sir. So far we're got one .38 special revolver, two
15 .380 auto caliber pistols and one 9-millimeter pistol.

16 Q You're absolutely right. Sorry. Now State's 16.

17 A Yes, sir. State's Exhibit 16 is the Springfield, Model XD
18 Mod.2, that I examined as item 4 in this case.

19 Q Okay.

20 ATTORNEY OSBORNE: Your Honor, may I approach?

21 (WHEREUPON, State's Exhibits 17, 18, 187 and 188 are marked
22 for identification.)

23 THE COURT: You may.

24 Q I'm showing you now 17, 18, 187 and 188. Can you take a
25 look at those items and tell me if you recognize them. And I

1 guess 18. Going in order might be the easiest way. Or,
2 whatever.

3 A Yes, sir. State's item 17, or Exhibit 17, is made up of
4 three fired .38 special caliber cartridge cases, and seven fired
5 9-millimeter Luger caliber cartridge cases. I examined each one
6 of these in this case. They're in sealed bags that bear my
7 initials and my seal date.

8 Q And while you're going through that, when you received all
9 these items did any of them appear to be tampered, damaged,
10 altered in any way?

11 A When I received everything, everything was sealed.

12 Q Properly packaged?

13 A Yes, sir.

14 Q If it had not been properly packaged would you have accepted
15 it?

16 A Yes. But the person assigned the case, in this case me, if
17 I found anything that was opened, the seals weren't proper, I
18 would immediately stop working on the case and contact the
19 submitting agency to find out what happened. Sometimes evidence
20 tapes are fragile, they can get bumped; they weren't really
21 tampered with, they're just open.

22 But in this case everything was sealed when I received it.

23 Q Okay. The next one.

24 A State's Exhibit 18 is made up of two fired bullets which I
25 examined as SLED items 6 and 7.

1 Q Okay.

2 A State's Exhibit 187 is three bullets that I examined as SLED
3 items 41, 42 and 43.

4 Q Okay.

5 A And State's Exhibit 188 is a fired bullet and a fired bullet
6 fragment that I examined as item 40, or SLED item 40.

7 Q Okay. All right. And who was it with SLED or who was it
8 that gave you/transferred those items into your possession, the
9 last group that is up there? Or all the groups?

10 A May I look at the chain?

11 Q Sure.

12 A So you're referring specifically to State's Exhibits 187
13 and 188?

14 Q If there's any difference, then, if you don't mind, just go
15 through it.

16 A Everything was transferred to me by Chad Smith, who is
17 another firearms examiner in our department.

18 Q Okay. All right. So let's get into the specifics of it.
19 Let's start with State's 25 which you identified as a Taurus,
20 Model 380.

21 What can you tell me about that firearm when you looked at
22 it and you examined it? What did you see or what did you learn?
23 In reference to its working or operability.

24 A I like my fingers, I like my hands, I like my eyes. So
25 anytime I get a firearm, anytime any of us examiners in the

1 department get a firearm, we make sure it's in proper working
2 order. I've seen too many videos or heard too many stories of
3 people accidentally shooting themselves, putting a hole in their
4 desk or losing a finger. So anytime I get a firearm in any case,
5 not just this one, I make sure it's in working order, proper
6 working order, before I try to test fire it.

7 In this instance, State's Exhibit 25 would not fire. My
8 report said it was not in working order.

9 Q Okay. And then for the record, State's 25 has already been
10 previously identified by Marcus Porter as a gun belonging to him.

11 Moving on to State's 13, your SLED item 1, what can you tell
12 the jury about this firearm?

13 A State's Exhibit 13, the Taurus 9-millimeter pistol, was in
14 working order when I received it. Working order means when I
15 pull the trigger it will go bang. And in this instance my
16 preliminary test led me to believe it would fire, and when I test
17 fired it I was able to test fire successfully.

18 Q And I guess we can move a little bit quicker. So 14, 15 and
19 16, did all of those guns work, too?

20 A Yes, sir. The only one that would not fire when I received
21 it was State's Exhibit 25.

22 Q The first one you talked about?

23 A Yes, sir.

24 Q Okay. And so now, of the four functioning guns you have, is
25 it correct, am I right here by saying you've got two 9-millimeter

1 handguns, a .380 semiautomatic and a .38 revolver?

2 A Yes, sir.

3 Q So now let's get into the projectiles and the cartridge
4 casings that you were asked to compare in this case. Let's start
5 with State's 18, that would be your SLED's 6 and 7.

6 When you looked at those items and tested those items
7 compared to the pistols that you had, or to the four that we
8 talked about that are operational, what conclusions, if any, were
9 you able to draw?

10 A The SLED item 7 bullet, or State's Exhibit 18, was most
11 consistent with a .38 special caliber bullet or a .357 magnum.
12 They use the same bullet. And when I compared it microscopically
13 with test specimens, or test bullets fired by the State's Exhibit
14 14 revolver, my conclusions were that this bullet was fired by
15 the State's Exhibit 14 revolver.

16 Q Your 7 was fired by State's 14 revolver?

17 A Yes, sir.

18 Q And then what about 6?

19 A The SLED item 6 bullet, State's Exhibit 18, it was most
20 consistent with a 9-millimeter Luger caliber bullet, but due to
21 damage and insufficient markings I was not able to determine
22 whether it was fired by the State's Exhibit 13 Taurus pistol or
23 by the State's Exhibit 16 Springfield pistol, or by another
24 pistol altogether that was not submitted.

25 Q Might be; might not be?

1 A Yes, sir.

2 Q All right. And we you already covered 7. Let's move on to
3 State's 188, which I believe is your SLED item 40. What can you
4 tell us about this item, or items?

5 A Yes, sir. State's Exhibit 188, like I said a minute ago, is
6 actually a fired bullet and a fired bullet fragment. So the
7 fired bullet fragment -- or fired bullet, I'm sorry -- was most
8 consistent with a 9-millimeter Luger.

9 Just as the previous one, it was damaged and there were not
10 enough markings for me to determine whether it was fired by State
11 Exhibit 13, State Exhibit 16 or by another firearm.

12 Q Okay.

13 A And then the small bullet fragment, it was so small I could
14 not determine the caliber of it, and it had no markings on it
15 suitable for identification. So I reported it as being
16 unsuitable for identification.

17 Unsuitable means you can say, Jamie, I shot that bullet out
18 of this pistol and neither myself, nor any other firearms
19 examiner, would ever be able to say, Yes, it was.

20 Q Okay. All right. Moving now to State's 17, I believe,
21 which contains your SLED items 15 through 17 and 18 through 24.
22 Let's talk first about 15 through 17, your 15 through 17.

23 A Yes, sir.

24 Q What can you tell me, when you looked at those items, what
25 kind of conclusions did you reach?

1 A Those were the three fired .38 special caliber cartridge
2 cases. Through a phone call to the submitting agency, it was
3 determined that these were removed from the cylinder of a
4 revolver by law enforcement personnel. So, therefore, I did not
5 do any microscopic comparisons on them.

6 Q And this comes back to what you had said before, when you're
7 dealing with a revolver, if you fire it, the fired shell casing
8 remains in the cylinder unless you manually take it out, I guess?

9 A Yes, sir.

10 Q Okay. Now we'll move into your items 18 through 24. Can
11 you tell me what your findings were when looking at those items?

12 A Yes, sir. The first thing I did in this case, in any case,
13 is when I get fired cartridge cases -- I worked a case last week
14 where I had 57 fired cartridge cases and three firearms
15 submitted -- I look at the cartridge cases first to see how many
16 firearms are represented in those cartridge cases. Did the same
17 thing in this case. So SLED items, I think it's, 18 through 26,
18 I think.

19 Q Eighteen through 24.

20 A I'm sorry, 18 through 24. All of those were fired by a
21 9-millimeter Luger caliber cartridge cases. And when I compared
22 them with each other, my conclusion is they were fired by the
23 same firearm. So then I compared them with test specimens that I
24 fired from State's Exhibit 13 pistol and State's Exhibit 16
25 pistol.

1 The reason why we fire test specimens ourselves is because I
2 know beyond the shadow of a doubt those cartridge cases and
3 bullets were fired by that gun, because I did it myself. So I
4 test fired State's Exhibit 13, State's Exhibit 16,
5 microscopically compared the tests with each other to make sure
6 the firearm was marking consistently.

7 When I was happier, and I agreed that it was, I looked at
8 the test specimen versus SLED items 18 through 21. Or, 24. I'm
9 sorry. All of the 9-millimeter Luger caliber cartridge cases
10 that were submitted to me in this case were fired by the State's
11 Exhibit 16 Springfield pistol.

12 Q And just to make sure, one, two, three, four, five, six,
13 seven fired cartridge casings all having been fired by the
14 Springfield 9 millimeter?

15 A Yes, sir, by State's Exhibit 16.

16 Q All right. Last thing. Let's talk about State's 187. I
17 think that's going to be your SLED items nos. 41 through 43.
18 What can you tell me about those?

19 A Start with State's Exhibit 187, items 41 and 42. They were
20 both consistent with .38 Special .357 Magnum. Just like I
21 mentioned, I compared the cartridge cases with each other; I
22 compared the bullets with each other.

23 SLED items 41 and 42, or State's Exhibit 187, they were both
24 fired by the State Exhibit 14 Smith & Wesson revolver.

25 Q Okay. And then we have SLED 43.

1 A SLED item 43 was a 9-millimeter Luger caliber bullet. Once
2 again, was inclusive with State's Exhibit 13 and State's Exhibit
3 16 and the other 9-millimeter Luger caliber bullets.

4 Q So is it or is it not fair to say, in your expert opinion,
5 regarding the bullets that are in State's 187, that there were
6 two different firearms used to fire those bullets?

7 A Yes, sir.

8 ATTORNEY OSBORNE: Your Honor, at this time I would seek to
9 admit into evidence, subject to Rule 104(b), State's 13 through
10 16, and 17 and 18, 25, 187 and 188.

11 THE COURT: Any objection?

12 ATTORNEY WEHMAN: Judge, assuming the solicitor can lay the
13 proper foundation under 104(b), we would not have any objection.

14 THE COURT: All right. Any objection?

15 ATTORNEY CORNWELL: No, Your Honor.

16 THE COURT: With regards to 104(b), I understand it's the
17 request of Defendant Fortune is that it be conditionally admitted
18 with the understanding that you will tie it up foundationally.

19 ATTORNEY OSBORNE: Yes, ma'am.

20 THE COURT: All right. Very well. Okay.

21 (WHEREUPON, State's Exhibits 13, 16, 17, 18, 25, 187 and 188
22 are admitted into the record.)

23 ATTORNEY OSBORNE: No further questions of this witness.

24 THE COURT: All right. Cross-examination, Mr. Wehman.
25

CROSS-EXAMINATION

BY ATTORNEY WEHMAN:

Q Mr. Green, how are you?

A I'm doing well. How are you?

Q I'm doing well. Let's talk briefly about what it is that you do as a forensic scientist, okay.

A All right.

Q Essentially you receive evidence from law enforcement, from a law enforcement agency that's given to you. Correct?

A Yes, sir.

Q So you're given samples, fired round shell casings, and you're also given weapons to compare them to?

A Sometimes, yes, sir. Sometimes -- about 50-50. Sometimes we get firearms submitted in a case; sometimes we don't.

Q In this case you did receive weapons and you received projectiles and casings?

A Yes, sir.

Q And your job is to fire the weapon and develop a profile of what a round fired by that weapon would look like; correct?

A Yes, sir. We fire known specimens, and we compare it with the unknown.

Q And you compare them, as you said, with the unknown, the evidence that you receive, fired bullets, spent shell casings?

A Yes, sir.

Q And at that point you develop a report and see if you can

1 make comparisons that you can report back to law enforcement and
2 the solicitor's office?

3 A Yes, sir. There's a step in between that but, yes, sir.

4 Q Essentially, just ---

5 A Yes.

6 Q --- you're trying to figure out if you can match things
7 together?

8 A Correct.

9 Q But to be clear, what you do, you can't determine who would
10 be at a crime scene, a physical person who would be there?
11 Correct?

12 A No, sir. The only thing I can say is if a firearm's
13 submitted, that this firearm fired those bullets or those
14 cartridge cases.

15 Q And one step further. I think you answered it, but you
16 can't determine who shoots what gun?

17 A No.

18 ATTORNEY WEHMAN: No further questions, Judge. Thank you.

19 THE COURT: All right. Ms. Cornwell?

20 ATTORNEY CORNWELL: Your Honor, I have no questions for this
21 witness. Thank you.

22 THE COURT: Very well. Any redirect?

23 ATTORNEY OSBORNE: None, Your Honor.

24 THE COURT: All right. Very well. You may come down. Are
25 you asking that this witness be excused?

1 ATTORNEY OSBORNE: Yes, Your Honor.

2 THE COURT: Any objection?

3 ATTORNEY HUBRICH: No objection.

4 ATTORNEY CORNWELL: No, Your Honor.

5 THE COURT: Very well. Thank you, sir. Call your next
6 witness.

7 ATTORNEY OSBORNE: Your Honor, the state calls Deputy
8 Scarborough.

9 CLERK OF COURT: Deputy Scarborough, if you'll raise your
10 right hand, and state your full name for the record.

11 THE WITNESS: Joshua Scarborough.

12 JOSHUA SCARBOROUGH,
13 having first been duly sworn, was examined and testified as
14 follows:

15 THE COURT: All right. If you would, once you're seated, if
16 you'll state your full name for our record, and spell your last
17 name, please.

18 THE WITNESS: My name is Joshua Scarborough. First name is
19 J-o-s-h-u-a. Last name is S-c-a-r-b-o-r-o-u-g-h.

20 THE COURT: Your witness.

21 ATTORNEY OSBORNE: Thank you, Judge.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY OSBORNE:

24 Q Where do you work?

25 A I currently work at the Berkeley County Sheriff's Office.

1 Q How long have you been with Berkeley County?

2 A About a year and a half.

3 Q What is your position there?

4 A I'm a deputy.

5 Q And do you have any prior law enforcement experience?

6 A Yes. I worked for Summerville Police Department for two to
7 two-and-a-half years.

8 Q All right. While at Summerville what were some of your
9 various assignments?

10 A Started out on patrol. Did that for a little while. Then I
11 went to the special enforcement team, some community outreach
12 team, and then did that about six months. And then I left.

13 Q Were you working the night of January the 27th, 2019, going
14 into the early morning hours of January the 28th?

15 A Yes.

16 Q And what was your assignment then?

17 A Somewhere in the north end of Summerville. Patrol.

18 Q And so geographically speaking, where would the north end of
19 Summerville be, what's in that area?

20 A I believe the cutoff is still kind of like where Bacon's
21 Bridge and Trolley meet at Five Points. That splits north and
22 south. So Five Points up to like Walmart would be north end, and
23 then five points down toward Dorchester Road would be south end.

24 Q So heading back to North Charleston would be the south end,
25 actually?

1 A Yes. Yes, sir.

2 Q All right. And, okay. So the neighborhood of Robynwyn, is
3 that in the north zone?

4 A Yes, sir.

5 Q Did you have the occasion to become involved in this murder
6 investigation?

7 A Yes, sir.

8 Q And what were you doing when the shooting call came out?

9 A I was on a traffic stop unrelated on Tulip Street, which is
10 also in Robynwyn.

11 Q So you were actually in the neighborhood?

12 A Yes, sir.

13 Q But it was on Tulip Street?

14 A Yes, sir.

15 Q Not related to this murder?

16 A No, sir.

17 Q I'm going to show you State's 1. It's already been marked
18 and admitted. In the good old days we used to stick it right in
19 front of you. So Tulip Street, just for sake -- I mean, it's
20 already marked. Is this Tulip Street?

21 A I believe so. Yes, sir.

22 Q And let me see if I can zoom in a little bit. Right about
23 here?

24 A Yes, sir.

25 Q And do you know where the location of the shooting was

1 dispatched?

2 A 108 Myrtle Place, also in Robynwyn.

3 Q I think we've already heard testimony, does that look like
4 Myrtle Place over here?

5 A I can't read it but I believe so. Yes, sir.

6 Q So you were pretty close, not too far away?

7 A No, sir.

8 Q How was the call dispatched, like, how did it come out as?

9 A I believe they dropped emergency tones for it. As far as
10 what was exactly said, I don't remember the specifics.

11 Q Okay. But is it, so a shooting, would that generate an
12 emergency tone?

13 A Yes, sir.

14 Q So once you heard the emergency tone come out what did you
15 end up doing?

16 A I ended my traffic stop and started to head towards the
17 location of the shooting.

18 Q Okay. Now, you've already testified the shooting and your
19 traffic stop was in the Robynwyn subdivision. Were you familiar
20 with that subdivision?

21 A I am.

22 Q Well, that's a loaded question; right? Did you respond to
23 many calls in that neighborhood?

24 A Frequently, yes, sir.

25 Q Okay. That's one of the hot spots, for lack of a better

1 word?

2 A Yes, sir.

3 Q So that's why, yeah, that was your reaction. So how would
4 you describe the geography of the neighborhood of Robynwyn, like
5 the layouts of the streets?

6 A It's kind of like a maze. All the roads, a bunch of the
7 roads, connect. There's multiple, different ways to get to
8 different streets. It can be very confusing.

9 Q Not like downtown Charleston, perpendicular/parallel?

10 A No, sir. It's quite a maze.

11 Q So in that regard what happened when you were responding to
12 the location of the shooting?

13 A I got turned around and confused about where I was at for a
14 minute in trying to get to Myrtle Place from Tulip.

15 Q And this is an area in which you respond to frequently?

16 A Yes, sir.

17 Q And did you observe anything of note while you were trying
18 to get to 108 Myrtle?

19 A Yes, sir.

20 Q And what was that?

21 A There were a black Honda CR-V on Fripp Lane that passed me
22 while I was trying to figure out how to get to Myrtle Place.

23 Q While you were trying to figure out how to get to Myrtle
24 Place?

25 A Yes, sir.

1 Q And could you see -- you said it was a Honda CR-V. Could
2 you tell how many people were in it?

3 A Yes, sir. It looked like there was four that I could tell.

4 Q Were you driving a fully marked police vehicle that night?

5 A Yes, sir.

6 Q When you passed the vehicle did you take note of anything or
7 make note in your head, I guess, of anything that kind of was
8 unusual to you?

9 A Yes, sir. The back, left passenger had his eyes wide open.
10 I believe his mouth was actually dropped open, as well, like he
11 had saw a ghost, so to speak. And he followed me with his eyes
12 as I passed him.

13 And then once I actually passed him, I observed the driver
14 looking at me through the mirror. And the ones, the passengers,
15 in the back seat turn around and looked at me, and at which time
16 I also saw that the car didn't have a license plate on it.

17 Q Okay. And said you actually saw. I mean, I know you were
18 passing, but could you see the driver at all, well enough to ID
19 him at all?

20 A Probably not.

21 Q White? Black? Do you know?

22 A They were all black males. As far as pointing a person out,
23 I'm not sure I can do that.

24 Q Was the driver, did he do anything odd to you, or?

25 A Once I passed by, like I said, I could see him looking at

1 me. They all just looked like they were in complete shock to see
2 me.

3 Q What did you do then?

4 A I put on the radio that, you know, the vehicle passed me
5 with four black males. I wasn't sure if it was related or not.
6 And then I continued towards Myrtle Place.

7 Q And that's what I was going to ask. You had no reason at
8 that point to believe that that car was involved in the shooting?

9 A No, sir.

10 Q I mean, I guess maybe arguably the reaction of the
11 passengers?

12 A It was just circumstance. I mean ---

13 Q Yeah.

14 A --- the car leaving the neighborhood at the time the
15 shooting came out. Just something I noted to dispatch.

16 Q Oh, you did, you notified dispatch of what you saw?

17 A Yes, sir.

18 Q On that night was your patrol car equipped with an in-car
19 dash camera?

20 A Yes, sir.

21 Q Well, how do you go about activating? Is it running all the
22 time, or how do you activate it?

23 A To start the record, you can press the record button, or you
24 can turn your lights and sirens on. It puts it on automatically.

25 Q The moment that you passed that Honda, was your in-car dash

1 cam activated, was it running?

2 A Yes, sir. Yes.

3 ATTORNEY OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 (WHEREUPON, State's Exhibits 4 and 5 are marked for
6 identification.)

7 Q I'm showing you what's been marked as State's Exhibit 4
8 and 5. Can you take a look at 4 and 5 and tell me if you
9 recognize those. And, if so, what are they?

10 A Yes, sir. They're a set of DVD of my dash camera for my
11 patrol vehicle.

12 Q Let's break them down individually. Four, is that all your
13 dash came from the entire night?

14 A Yes, sir.

15 Q And then 5, are we just looking at a clip in 5?

16 A Yes, sir.

17 Q Does what's in 5 accurately depict a clip of 4?

18 A Yes, sir.

19 Q Okay.

20 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
21 move 5 into evidence.

22 THE COURT: Any objection on behalf of Mr. Fortune?

23 ATTORNEY HUBRICH: No objection, Judge.

24 THE COURT: All right.

25 ATTORNEY CORNWELL: No, Your Honor.

1 THE COURT: All right. Thanks. Into evidence.

2 (WHEREUPON, State's Exhibit 5 is admitted into the record.)

3 ATTORNEY OSBORNE: And publish to the jury.

4 THE COURT: Yes.

5 (WHEREUPON, State's Exhibit 5 is published to jury.)

6 Q So just for clarification, is this the traffic stop that you
7 were talking about that's unrelated to the shooting?

8 A Yes, sir.

9 Q Looks like something just happened?

10 A Yes, sir.

11 Q What was that?

12 A They dropped tones for a shooting that just happened.

13 Q You have another officer behind you?

14 A Yes, sir.

15 Q And they're following you?

16 A Yes, sir.

17 Q All right. What was that? I mean, not what you said. Let
18 me try again. What just happened there?

19 A That's the black CR-V that passed me.

20 Q I'm not trying to embarrass you. I just wanted to watch it
21 again. I'll go ahead and stop it. It's obvious that it was kind
22 of hard to find. I'll shut it down. It was hard to find the
23 place; right?

24 A Yes, sir. It was very confusing.

25 Q Okay.

1 ATTORNEY OSBORNE: Your Honor, may I approach?

2 THE COURT: You may.

3 (WHEREUPON, State's Exhibit 3 is marked for identification.)

4 Q I'm showing you what's been marked as -- and this will be
5 for ID purposes only -- State's 3. Have you seen that type of
6 report before?

7 A Yes, sir.

8 Q And what is that?

9 A It's just a CAD printout for that specific incident.

10 Q And okay. So does that report times of importance?

11 A Yes, sir.

12 Q Can you turn to page 5. And then I want to just refer to
13 times in which your information regarding you is on the report.
14 Can you look down under your name Scarborough, and do you see a
15 time of 6:27?

16 A Yes, sir.

17 Q Well, I'm sorry, that's going to be 12:06, correct, and 27
18 seconds?

19 A Yes, sir.

20 Q So 12:06. At 12:06 there's a number 88 by that. What does
21 that mean in police terms?

22 A In the area.

23 Q So is that what you put out over the radio?

24 A I believe so. Yes, sir.

25 Q Signaled 88, in the area?

1 A Yes, sir.

2 Q And then we see another entry there for Scarborough at
3 12:07:04. And what did you put out then?

4 A The CR-V of four black males just drove past me.

5 Q And that's kind of what we heard right there?

6 A Yes, sir.

7 Q And so we can marry up a time, that happened at 12:07?

8 A Yes, sir.

9 Q All right. I'll take that back. All right. After the
10 video ends, what's your next involvement in the case?

11 A I located Myrtle Place. Went on scene. Saw there was
12 multiple officers that were already on scene. And at this time
13 Jesse Kerr (phonetic sp) was actually pursuing that CR-V that
14 passed me.

15 So due to multiple officers being on scene and not sure who
16 was with him, I left the scene and went to go assist him with the
17 pursuit.

18 Q And at a certain point was the vehicle stopped?

19 A Yes, sir.

20 Q And do you know where -- I mean, y'all weren't in
21 Summerville when this car stopped; right?

22 A I think we were almost to Cottageville. Colleton County
23 somewhere, I believe. So it was a little ways down. Yes, sir.

24 Q And when you're stopping a car of that nature, I guess, in
25 police terms, it's called a felony traffic stop?

1 A Yes, sir.

2 Q Did you assist in that?

3 A Yes, sir.

4 Q All right. We'll get into the specifics of that in a
5 minute. After that was over did you have the occasion to
6 transport one of the individuals that was in the car back to
7 Summerville?

8 A Yes, sir.

9 Q And who was that?

10 A Devonte Major.

11 ATTORNEY OSBORNE: Your Honor, may I approach?

12 THE COURT: You may.

13 (WHEREUPON, State's Exhibits 141, 142 and 161 are marked for
14 identification.)

15 Q All right. I'm showing you State's 141, 142 and 161. Can
16 you take a look at those and tell me if you recognize those.
17 Let's start with 141 and 142.

18 A Okay. Yes, sir. These are Devonte Major's shoes that he
19 was wearing.

20 Q 141 and 142 are photographs?

21 A Yes, sir, they're photographs of the shoes.

22 Q And then what do we have with 161?

23 A Do you want me to ---

24 Q I mean, if you need to open them, we can open up the shoes.
25 If you can tell by looking at the bag, we can do that.

1 A They're Major's shoes, labeled and collected.

2 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
3 admit 141, 142 and 161 into evidence.

4 THE COURT: Any objection?

5 ATTORNEY HUBRICH: No objection.

6 ATTORNEY CORNWELL: No, Your Honor.

7 THE COURT: Very well.

8 (WHEREUPON, State's Exhibits 141, 142 and 161 are admitted
9 into the record.)

10 Q I'm showing you 141. And this is just the bag, I guess,
11 next to the shoes. Is that correct?

12 A Yes, sir.

13 Q And then now I'm showing you 142. Is that correct?

14 A Yes, sir.

15 Q Major's shoes?

16 A Yes, sir.

17 ATTORNEY OSBORNE: No further questions, Your Honor.

18 THE COURT: Cross-examination, Mr. Fortune?

19 ATTORNEY HUBRICH: Thank you, Judge. May it please the
20 Court.

21 THE COURT: Yes.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY HUBRICH:

24 Q Officer Scarborough, you testified that you heard, you were
25 conducting a traffic stop, and you heard tones for a shooting.

1 Right?

2 A Yes, ma'am.

3 Q So the way that happens is, there's a 911 call, and that
4 goes out over dispatch, I guess, and then that's what triggers
5 the tones for the shooting, the dispatch does?

6 A Yes, ma'am.

7 Q So you can't testify as to when the shooting actually
8 occurred; you can only testify as to when it was reported?

9 A Correct.

10 Q And then when it came out over dispatch?

11 A Yes, ma'am.

12 Q The shoes that you just identified, they belong to Devonte
13 Major; right?

14 A Yes, ma'am.

15 Q Not Muanah Fortune?

16 A No, ma'am.

17 ATTORNEY HUBRICH: I have no further questions.

18 THE COURT: All right. Ms. Cornwell?

19 ATTORNEY CORNWELL: Your Honor, I have no questions of this
20 witness.

21 THE COURT: All right, thank you. Any redirect?

22 ATTORNEY OSBORNE: No, Your Honor.

23 THE COURT: All right. And, thank you. And is this witness
24 free to leave? Yes?

25 ATTORNEY OSBORNE: Yes, Your Honor.

1 THE COURT: No objection?

2 ATTORNEY HUBRICH: No objection.

3 ATTORNEY CORNWELL: No objection, Your Honor.

4 THE COURT: All right. Thank you, sir. Call your next
5 witness, please.

6 ATTORNEY OSBORNE: State calls Corporal Jacob Cramer.

7 CLERK OF COURT: If you'll please raise your right hand, and
8 state your full name for the record.

9 THE WITNESS: Jacob Anthony Cramer.

10 **JACOB ANTHONY CRAMER,**

11 having first been duly sworn, was examined and testified as
12 follows:

13 THE COURT: Your witness.

14 ATTORNEY OSBORNE: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY OSBORNE:

17 Q All right. Good afternoon, Corporal Cramer.

18 A Good afternoon.

19 Q It's corporal now?

20 A Yes, sir.

21 Q Where do you currently work?

22 A I work for Summerville Police Department.

23 Q And how long have you been with Summerville Police
24 Department?

25 A Seven years now.

1 Q What have been some of your various -- I'm sorry. You might
2 want to, if you can lean up a little bit and speak into the mic.

3 What have been some of your various assignments with
4 Summerville Police Department?

5 A Patrol Team 4, Patrol Team 2. I've been a K-9 handler now
6 for six years. I'm currently assigned to the SET Team, which is
7 our Special Enforcement Team.

8 Q What does that mean, Special Enforcement Team, what are some
9 of y'all's duties and responsibilities being on that team?

10 A We do surprise patrol in areas where it's needed, community
11 outreach and criminal enforcement.

12 Q Okay. Some of the more higher crime areas, that's where
13 y'all are directed?

14 A Yes, sir.

15 Q Have you received any awards or commendations while you've
16 been with Summerville Police Department?

17 A In 2019 I received a life saver award.

18 Q Let's go back to the night of January the 27th, into the
19 early morning hours of the 28th of 2019. Were you working that
20 night?

21 A Yes, sir, I was.

22 Q And what was your assignment then?

23 A I was K-9 handler on Team 4 nights, and I was training
24 Officer Reynolds.

25 Q So you had your K-9 and Officer Reynolds and you, y'all,

1 were in a car together?

2 A Yes, sir.

3 Q And Team 4, is that the north end or the south end of
4 Summerville?

5 A We work everywhere in Summerville.

6 Q Okay, K-9 would?

7 A Yes, sir.

8 Q Is that what Team 4 means?

9 A Team 4 is just our, at the time we had four teams, but it's,
10 our rotation's night shift. Team 4 and Team 1 are night shift;
11 Teams 2 and Teams 3 are dayshift.

12 Q All right. How was it that you became involved in this
13 murder investigation?

14 A There was a call that came out for a shooting, and we
15 weren't super-far away, so we went en route, Code 3.

16 Q Code 3?

17 A Lights and sirens.

18 Q You're moving. And so the location was 108 Myrtle Place.
19 Did you respond to that area?

20 A Yes, sir. We were going to that area, but we didn't make it
21 all the way there.

22 Q Okay. That area is in, the neighborhood's, Robynwyn?

23 A Yes, sir.

24 Q Before we get into that, how far away were you when y'all
25 responded to the area when the call first came out?

1 A I don't know exactly. We were in the, at the time it was a,
2 new construction area of the neighborhood called South Point
3 probably a mile and a half, two miles at most, up Highway 78.

4 Q So not too far?

5 A Not too far. No, sir.

6 Q And while responding, did you hear anything over the radio
7 that caught your attention?

8 A Yes, sir. Another officer said that they had seen a dark
9 colored SUV leaving the area that was possibly involved.

10 Q Unknown whether it was or not?

11 A Unknown. Yes, sir.

12 Q Okay. And what route -- and so 108 Myrtle Place, that's in
13 the Robynwyn subdivision?

14 A Robynwyn. Yes, sir.

15 Q So what route did you take to get there?

16 A Highway 78. And we made a right-hand turn on North
17 Palmetto.

18 Q Okay. When you were coming up or coming down North Palmetto
19 did you see anything of interest?

20 A Yes, sir. We passed a dark colored Honda CR-V that was
21 occupied by four people.

22 Q And what road was that on?

23 A That was on North Palmetto.

24 Q So you were heading into Robynwyn. Where was that vehicle
25 headed?

1 A Out of Robynwyn towards Highway 78.

2 Q I'm showing you what's already marked and admitted as
3 State's Exhibit 1. And just to move things on a little bit, my
4 curser, is this going up and down North Palmetto here?

5 A I believe so. Yes, sir. If you can point Highway 78 out to
6 me. Is that at the top of the page?

7 Q Let me back it up a little bit. Is this 78 here, or can you
8 not see it?

9 A From here, no, sir.

10 ATTORNEY OSBORNE: Your Honor, may we walk over and take a
11 look at it? And I'll zoom in a little.

12 THE COURT: If he needs to, absolutely.

13 Q Okay. Can you point out Highway 78?

14 A Yes, sir. This is Highway 78 at the top of the picture,
15 right here in yellow.

16 Q And the way you're moving that pointer from left to right,
17 is that the way that you were coming up 78?

18 A We came up 78 from this direction here. South Point would
19 be way down here on the other side.

20 Q And, sir, I'm going to ask you to really speak up.

21 A Sorry. Get my inside voice up. We were coming from way
22 down here in South Point, up Highway 78, this direction to North
23 Palmetto, which is this street right here. So we made the
24 right-hand turn right there onto North Palmetto.

25 Q So you're headed in that direction. Where did you first see

1 the dark colored CR-V pass you?

2 A We passed the vehicle right in this area, possibly a little
3 bit more than a block after we turned onto North Palmetto.

4 Q And did you see what the vehicle did after it passed you?

5 A We seen individuals inside. And then I told Officer
6 Reynolds to go ahead and turn around. So at that point he was
7 turning the car around and I was watching the vehicle, and I seen
8 it make a left-hand turn onto Highway 78, going back this
9 direction.

10 Q Okay. While I got you up there let me just, if I could, can
11 you point out Fripp Lane?

12 A Fripp Lane would be all the way at the end of North Palmetto
13 right here.

14 Q That's Fripp?

15 A Yes, sir, that's Fripp right down here at the bottom.

16 Q And North Myrtle, or Myrtle Place? I'm sorry.

17 A Myrtle Place would be over -- Shamrock. Myrtle Place, right
18 here.

19 Q And I know Tulip's kind of long. Can you point out Tulip,
20 too?

21 A Tulip would be when you come into Robynwyn off of Iris. So
22 this is Tulip Street, which turns into Weber, and then it goes
23 back out to North Palmetto.

24 Q All right. Thank you, sir. All right. When you told
25 Officer Reynolds to turn around, did y'all come back out and get

1 on 78?

2 A Yes, sir. We turned around and went back to 78 and made the
3 left-hand turn. At that point the vehicle was already much
4 further down Highway 78 than us. We caught up with it in the
5 area North Pine ---

6 Q Okay.

7 A --- on Highway 78.

8 Q Go ahead.

9 A We caught it up with it in the area of North Pine on
10 Highway 78.

11 Q So is it fair to say that when the CR-V turned onto 78 that
12 there was at least a few moments in which y'all weren't behind
13 the car, didn't have eyes on it?

14 A There was. Yes, sir.

15 Q All right. What did y'all do then?

16 A Our emergency equipment was already activated, so we got up
17 behind the car. And that was when I realized that it didn't have
18 a tag on it. So we stayed behind it. And the vehicle made a
19 right-hand turn on to North Cedar Street in the direction of the
20 railroad tracks, or southbound bound on North Cedar Street, and
21 it drove slow, like, while we were behind it.

22 So, you know, we were hitting the siren and had the
23 spotlight on the car. And it continued down, slowly moving down
24 North Cedar Street towards the railroad tracks.

25 Q Well, did y'all -- no license plate. Did y'all try to stop

1 the car?

2 A Yes, sir. We were attempting to. We were hitting the siren
3 and attempting to get the vehicle pull over on the shoulder of
4 the road.

5 Q Did the car pull over?

6 A It did not.

7 Q What happened then?

8 A Once it crossed over the tracks, it began accelerating to a
9 higher speed. And at that point we went over the radio and said
10 that, you know, we were giving our direction of travel and
11 traffic and everything, and that that's we were pursuing the
12 suspect vehicle.

13 Q That's when the fun began.

14 A You could call it that.

15 Q For the next 30 minutes or so.

16 A It was a while.

17 Q Was your in-car dash cam working at the time?

18 A Yes, sir, it was.

19 ATTORNEY OSBORNE: Your Honor, may I approach?

20 THE COURT: You may.

21 (WHEREUPON, State Exhibits 6 and 7 are marked for
22 identification.)

23 Q I'm showing you State's 6 and 7. Can you take a look at
24 those and tell me if you recognize them.

25 A These are my in-car videos.

1 Q Six, is that the entire video from that night?

2 A Yes, sir. That would be the whole video. It's indicated on
3 here.

4 Q And 7, is that a clip from 6?

5 A Yes, sir, 7's clipped.

6 Q And how do you know that's what on those CDs?

7 A You showed them to me.

8 Q And?

9 A And I watched them.

10 Q Are those your initials on them?

11 A Yes, sir. Those are my initials on both CDs.

12 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
13 admit 7 into evidence.

14 THE COURT: Any objection?

15 ATTORNEY HUBRICH: No objection.

16 THE COURT: Any objection?

17 ATTORNEY CORNWELL: No, Your Honor.

18 THE COURT: Very well.

19 (WHEREUPON, State's Exhibit 7 is admitted into the record.)

20 Q Rather long video, which is going to take some moments to
21 watch, okay.

22 A Okay.

23 (WHEREUPON, Exhibit 7 is published to the jury.)

24 Q So we had a couple things happen there. When y'all took
25 that right, is that North Palmetto?

1 A Yes, sir.

2 Q And that's when we heard Officer Scarborough put out ---

3 ATTORNEY HUBRICH: Objection, Your Honor. Leading and

4 hearsay.

5 ATTORNEY OSBORNE: Okay, I'll rephrase it.

6 Q What did you hear?

7 A I heard Officer Scarborough say that there was a

8 dark-colored SUV, or looking in the videos, it's blue or black,

9 that he didn't know if it was involved.

10 Q And what happens right here on the video that we just

11 watched?

12 A Right before you paused it?

13 Q Yeah.

14 A We passed the vehicle matching that description.

15 Q What is this number on the bottom left here?

16 A That's our speed.

17 Q You've seen this whole video?

18 A Sir?

19 Q You've seen this whole video?

20 A Yes, sir.

21 Q How fast is that, how fast did y'all end up driving to keep

22 up with them at times.

23 A Over 100 miles an hour. 105, I believe.

24 Q I'm going to move ahead a little bit. You know what, we're

25 missing an important part. Let's go back to 7:48 on this time.

1 Sorry.

2 Now, it's very hard to hear what you said there, but do you
3 remember making a comment about a wallet?

4 A Yes, sir. Officer Reynolds said, you can hear in the video
5 Officer Reynolds, who was driving the car, said, They just threw
6 a wallet.

7 ATTORNEY HUBRICH: Objection. Hearsay.

8 THE COURT: Sustained.

9 Q Were you standing right there, sitting right there, in the
10 car?

11 A Yes, sir.

12 Q What did you hear that happened that was being, that was
13 happening at the moment that it was being said?

14 ATTORNEY HUBRICH: Objection, Your Honor. Calls for
15 hearsay.

16 ATTORNEY OSBORNE: Exception. Present sense impression.

17 A I ---

18 THE COURT: Hold on.

19 ATTORNEY OSBORNE: Hold on.

20 THE COURT: Hold on.

21 ATTORNEY OSBORNE: Your Honor, I have another option.

22 THE COURT: Okay.

23 ATTORNEY OSBORNE: May I approach the witness?

24 Q I'm showing you State's 3. Can you take a look at page 6.
25 And the entry is at 12:14 a.m. What is the entry right above

1 that?

2 A Page 6?

3 THE COURT: Present sense impression gets you there.

4 Overruled. You may proceed.

5 Q We'll get an actual time, too, off this. What is the time?

6 A I'm sorry, can you tell me the time again?

7 Q 12:14?

8 A 12:14. I'm sorry, point it out to me. I'm just having
9 trouble finding it. Oh, here it is.

10 Q And do you mind speaking into the mic so everyone can hear
11 this.

12 A It's actually 0013 or 0014. Wallet looked like just came
13 out window just before White Gables.

14 Q Just before White Gables a wallet came out the window?

15 A Yes, sir.

16 Q Okay. Back into it. Move ahead here to 19 minutes on this
17 exhibit, State's Exhibit 7.

18 All right. You solve the mystery for me. What was that
19 sound?

20 A That was the window opening.

21 Q And why was the window opening?

22 A Because I was smoking an e-cig. That's just to keep the
23 nerves calm and the car aired out.

24 Q All right. Moving ahead to 30 minutes and 15 seconds. All
25 right. Move it back to 25:10. Going to be fast. What was that

1 on the roadway?

2 A At the time when we passed it, it was a blue, looked like,
3 clothing item in the middle of the roadway. And I believe it was
4 still tumbling down the road.

5 Q Did you go back later?

6 A Yes, sir.

7 Q And what about this in the roadway?

8 A We seen it was an orange clothing item. We were unsure what
9 it was until later on when we collected it.

10 Q Were there other agencies who were assisting?

11 A Yes, sir. Colleton County, Dorchester County. I don't
12 remember if Cottageville was involved or not. I don't believe
13 they were.

14 Q And was there a plan in place to get this car to stop?

15 A Yes, sir. Colleton County said that they were going to
16 spike strip it, use stop ---

17 Q I'm sorry?

18 A Use stop sticks in order to get it to stop.

19 Q Okay. Fair to say that's already happened?

20 A Yes, sir, that had already happened.

21 Q Who was the driver identified as?

22 A Polo Salazar.

23 Q And who was the front passenger identified as?

24 A Muanah Fortune.

25 Q This rear driver's side individual, who was he identified

1 as?

2 A Devonte Major.

3 Q And the rear passenger?

4 A Elijah Green.

5 Q All right.

6 ATTORNEY OSBORNE: Your Honor, may I approach?

7 THE COURT: You may.

8 (WHEREUPON, State's Exhibits 201, 202, 203, 204 and 205 are
9 marked for identification.)

10 ATTORNEY OSBORNE: Showing you state's 201 through 205. Can
11 you take a look at those and tell me if you recognize those.

12 A These are photographs of jackets that each individual was
13 wearing.

14 Q Okay. Wearing that night?

15 A Wearing that night. Yes, sir.

16 Q And, I mean, were you there when the individuals were
17 wearing those jackets?

18 A Yes, I was.

19 Q So you saw them wearing those jackets?

20 A Yes, I did.

21 ATTORNEY OSBORNE: Your Honor, may I approach?

22 THE COURT: You may.

23 (WHEREUPON, States Exhibits 130, 131, 148, 149, 150 and 157,
24 158 and 159 are marked for identification.)

25

1 Q I'm showing you now 130, 131, 148, 149, 150, and 157 through
2 159. Do you recognize those?

3 A Yes. These are the shoes that each of them were wearing
4 that night.

5 Q Okay. And again, we can hear your voice. You were there at
6 the time?

7 A I was.

8 Q And this is the clothing that the defendants were wearing at
9 the time they were taken in custody?

10 A Yes, it is.

11 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
12 admit 130, 131, 148 through 150, 157 through 158, and 201 through
13 205.

14 THE COURT: Any objection?

15 ATTORNEY HUBRICH: Yes, ma'am. May we approach?

16 THE COURT: Sure.

17 (WHEREUPON, an off-the-record discussion is held at
18 sidebar.)

19 THE COURT: Can you just put on the record what's going to
20 be ID'd right now and what's going to be offered.

21 ATTORNEY OSBORNE: Yes, ma'am. So again, Your Honor, just
22 for the record, we would seek to admit 130 and 131, 148 through
23 150, 157 and 158, and then 201 through 205.

24 THE COURT: All right. And which ones are ID'd at this
25 point?

1 ATTORNEY OSBORNE: All of these we would seek to admit.
2 These are all the photos.

3 THE COURT: Okay, very well. Any objection?

4 ATTORNEY HUBRICH: No objection to the photos, Judge.

5 THE COURT: All right.

6 ATTORNEY CORNWELL: No, Your Honor.

7 THE COURT: Very well.

8 ATTORNEY OSBORNE: And 159. I'm sorry.

9 THE COURT: 159 is a photo. Any objection?

10 ATTORNEY HUBRICH: No objection.

11 ATTORNEY CORNWELL: No, Your Honor.

12 THE COURT: All right. 159 in, also, photograph. They're
13 all photographs.

14 (WHEREUPON, State's Exhibits 130, 131, 148, 149, 150, 157,
15 158, 159, 201, 202, 203, 204, 205 are admitted into the record.)

16 Q I'm going to start off by showing you 201, corporal.
17 Recognize that one?

18 A Yes.

19 Q Who was wearing that jacket? If we need to go back and
20 watch the video again, we can.

21 A Well, there was two that were wearing just plain, or black,
22 jackets. I believe that one's Devonte Major.

23 Q And moving now to 202?

24 A That was Polo Salazar's jacket.

25 Q And now showing you 203?

1 A The front seat passenger, Muanah Fortune.
2 Q Okay. And lastly, 204?
3 A I believe that one was Elijah Green's.
4 Q Okay. Doubled up, right, 205? And what is 205?
5 A It's the outer jacket that Elijah Green was wearing.
6 Q Okay. And let me just flip this real quick without making
7 everyone dizzy. Was there something about Mr. Green's jacket
8 that was a little bit unusual? Do you remember?
9 A I don't recall.
10 Q Okay. And now I'm showing you 130. And whose was that?
11 A I don't recall which ones were wearing which shoes ---
12 Q Okay.
13 A --- without going back and looking at the photos.
14 Q Okay, that's fine. All right. So when we were watching the
15 video we saw a bunch of items, well, a couple times, I suppose,
16 that were discarded from the road, or that you ran through on the
17 road, I guess?
18 A Yes, sir.
19 Q And did you go back and collect those?
20 A Yes, sir. There was an orange ski mask and a pair of navy
21 blue coveralls.
22 ATTORNEY OSBORNE: Your Honor, may I approach?
23 THE COURT: Yes.
24 (WHEREUPON, State's Exhibits 168, 169, 170, and 171 are
25 marked for identification.)

1 Q I'm showing you what's been marked as State's 168 through
2 171. Take a look at those and tell me if you recognize those.

3 A Yes. These are the coveralls and the ski mask that I picked
4 up off the roadway.

5 Q Photographs of them?

6 A Yes, photographs of them.

7 Q All right.

8 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
9 admit 168 through 171.

10 ATTORNEY CORNWELL: No objection, Your Honor.

11 ATTORNEY HUBRICH: No objection.

12 ATTORNEY OSBORNE: That's 168 through 171.

13 THE COURT: There was no objection.

14 ATTORNEY OSBORNE: Okay.

15 THE COURT: Okay.

16 (WHEREUPON, State's Exhibits 168, 169, 170 and 171 are
17 admitted into the record.)

18 ATTORNEY OSBORNE: All right.

19 Q Let's go to, start off by showing you, 168. What are we
20 looking at here?

21 A It's a pair of navy blue coveralls.

22 Q Okay. That you found on the roadway?

23 A Yes, sir. Those are the ones that I found.

24 Q And then moving to 169, what are we looking at here?

25 A This is the backside of the coveralls.

1 Q Okay. Now I'm showing you 170. What are we looking at
2 here?

3 A Orange ski mask that I located on the road.

4 Q Now, this was -- in reference to where the vehicle stopped,
5 where was the overalls recovered, or coveralls?

6 A They were both probably maybe a mile, if I had to guess,
7 about a mile or so, before the vehicle was stopped.

8 Q And now I'm showing you 171.

9 A This is the back of the ski mask, minus the writing on it.

10 (WHEREUPON, States Exhibits 10 and 11 are marked for
11 identification.)

12 Q All right. And now I'm showing you State's 10 and State's
13 11. Can you take a look at these and tell me if you recognize
14 these.

15 A Orange ski mask. And assuming that this is the blue
16 coveralls. You want me to unwrap it?

17 Q If you need to look into it to be able to identify it, you
18 may go ahead.

19 A (Responds.)

20 Q And this one, as well, if you want.

21 A Yes.

22 Q They are? And are you the individual that recovered these?

23 A Yes, sir, I am.

24 ATTORNEY OSBORNE: State's 10 and 11 have just been ID'd,
25 Your Honor.

1 THE COURT: All right.

2 (WHEREUPON, State's Exhibits 160, 162, 163, 192, 193, 194,
3 195, 196 and 197 are marked for identification.)

4 Q And I'm going to show you State's 160, 162 and 163. If you
5 could, I'm showing 192 and 193.

6 ATTORNEY HUBRICH: I'm sorry, 192?

7 ATTORNEY OSBORNE: And 193. And then 194 through 196. And
8 that these are all for ID purposes, for the record.

9 Q And the easiest way to do it, I think, would be if you could
10 just tell what the number is and then tell what's in the bag.

11 A 162 is going to be the shoes worn by Fortune.

12 163 is going to be the shoes, Nike shoes, worn by Polo
13 Salazar.

14 160 is going to be the shoes worn by Elijah Green.

15 197 is going to be Green's black jacket. That's 197. I'm
16 sorry, is that a 7 or a 3? 197 is going to be the black jacket
17 worn by Green.

18 And 193 is going to be the black jacket worn by Devonte
19 Major.

20 194 is going to be Polo Salazar' camo sweatshirt.

21 195 is going to be Muanah Fortune's black sweatshirt.

22 And 196 is going to be Elijah Green's black jacket.

23 (WHEREUPON, State's Exhibit 12 is marked for
24 identification.)

25 Q Okay. And while we're at it, I'll go ahead and show you 12.

1 Do you recognize that?

2 A It's going to be the wallet that I located on the side of
3 Central Avenue.

4 (WHEREUPON, State's Exhibits 83, 84, 85 and 86 are marked
5 for identification.)

6 Q Okay. And now I'm showing you 83 through 86.

7 ATTORNEY HUBRICH: I'm sorry, what number was the wallet?

8 ATTORNEY OSBORNE: Twelve.

9 A These are going to be the photographs of No. 12, the wallet,
10 83, 84, 85 and 86. It's definitely the wallet that I located on
11 the side of Central Avenue, and its contents.

12 Q Okay.

13 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
14 move in 12 and 83 through 86.

15 THE COURT: Any objection? Hearing no objection, they are
16 in.

17 (WHEREUPON, State's Exhibits 12, 83, 84, 85 and 86 are
18 admitted into the record.)

19 ATTORNEY HUBRICH: Your Honor, I have no objection. I'm
20 sorry.

21 ATTORNEY CORNWELL: No objection.

22 Q All right. We're going to start off by showing you 83.
23 What are we looking at here on 83?

24 A It's going to be the wallet that we collected off the side
25 of Central Avenue.

1 Q And where at on Central again?

2 A Just before White Gables Drive.

3 Q And 84?

4 A That's going to be the inside of the wallet. Same wallet.

5 Q And the name on the driver's license?

6 A Joe Weaver.

7 Q Eighty-five?

8 A Two five-dollar bills, the cash that was inside of it.

9 Q And 86?

10 A The other miscellaneous cards that were inside the wallet.

11 (WHEREUPON, State's Exhibits 212 and 213 are marked for
12 identification.)

13 Q Okay. I'm showing you now 212 and 213. Can you take a look
14 at those and tell me if you recognize those.

15 A They're overhead maps. Overhead maps of Summerville, as
16 well as Highway 17, going out through Cottageville.

17 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
18 publish, move and admit 212 and 213.

19 ATTORNEY HUBRICH: No objection.

20 ATTORNEY CORNWELL: No objection, Your Honor.

21 THE COURT: Very well.

22 (WHEREUPON, State's Exhibits 212 and 213 are admitted into
23 the record.)

24 Q All right. We're going to play that little game again, if
25 you don't mind, real quick. We'll start off by showing you 212.

1 And I want you just to point out a few things for me, if you
2 don't mind.

3 A Yes, sir. And my outside voice.

4 Q So can you point -- and I know this is, you know, be kind of
5 awkward -- can you orient yourself?

6 A You mean orient myself this way or orient myself on the map?

7 Q On the map.

8 A I believe I have it, yes, sir. This is Central Ave.

9 Q So I think we see where Summerville is. So about where was
10 the location of the incident of the shooting?

11 A It's Summerville, that's West Fifth. Summerville, North
12 Main Street. This would be Highway 78 and North Maple Street, so
13 it would probably be right about this area right in here.

14 Q And generally speaking, what route did the car, the CR-V,
15 flee?

16 A This would be Highway 78. So it came through the
17 neighborhood, out to North Palmetto, which is really hard to see,
18 but it should be right around in this area.

19 Q Raise up a little bit.

20 A It's kind of right on top of where I need to be. Yeah, it
21 should be right -- North Maple -- excuse me. North Palmetto is
22 right around this area. And then up -- is that 78 or Maple? No,
23 wait, I'm going... Yep, Highway 78. North Palmetto should be
24 right in this area. And then North Cedar Street, where the
25 vehicle took a right, runs parallel to North Main Street, which

1 would come right down through here. And then after crossing over
2 the railroad tracks, which is right here, that long line, it
3 turns into Central Avenue. And this is Central Avenue coming all
4 the way down here to the middle.

5 Q And where was the wallet recovered?

6 A White Gables should be -- this is the neighborhood of White
7 Gables, so the road going in is White Gables Drive. The wallet
8 was right in this area right here off of the right-hand shoulder
9 of Central Avenue.

10 Q Okay, same path that it took?

11 A Yes.

12 Q All right. Showing you 213 now. We're really backed out
13 now, but can you, just generally speaking, which way did the car
14 go?

15 A Well, here's Cottageville - Walterboro Highway. Ridgeville;
16 Summerville; Cottageville; Summerville. This little faint line
17 there is Central Avenue. And it comes back out to 17. And 17,
18 all the way down across the Edisto River, through Cottageville.
19 And it ended somewhere in this area, I believe.

20 Q And would it have been along that path that you recovered,
21 or would have not been along the path that you recovered, the
22 overalls and the ski mask?

23 A Yes. It would be a couple miles before the chase ended. So
24 I'd say if the chase ended there, the ski mask and the coveralls
25 were located only a mile or two ahead of it.

1 Q Okay. We're finished with that part. One last thing.

2 After you finished that, did that end your investigation or your
3 involvement in it, or did you do something else?

4 A It did not. I was requested to come back to the scene to
5 utilize my K-9 partner to conduct an article search.

6 Q What does that mean?

7 A It means to look for evidence that was possibly left behind
8 on the ground. So myself, Officer Reynolds and my K-9 partner,
9 we walked the area behind Myrtle Place, up and down the canal
10 side, and looking for possibly weapons that had been thrown
11 because at that point no firearms had been located in the vehicle
12 or anything.

13 Q Okay. You didn't find any weapons back there?

14 A We did not.

15 Q Did you make any other observations?

16 A I believe I remember there be something fresh footprints in
17 the mud, in the ditch not far from the residence where the
18 incident happened.

19 Q All right. What did you do next?

20 A Since we didn't find any weapons there, myself and Officer
21 Reynolds, we were both tired, my dog was tired. I told my
22 supervisors that were there that the only place we lost track of
23 the vehicle was for a short time on Highway 78, and that we
24 wanted to go back to that point and see if we could find
25 anything.

1 Q Okay. When that car first turned on ---

2 A When the car first made the left-hand turn onto 78 from
3 North Palmetto, we just had that few seconds where we didn't have
4 eyes it.

5 Q And y'all went back there and looked. And did you find
6 anything?

7 A Yes. We located four firearms on the shoulder of the road
8 in front of, I believe it was, 504 and Highway 78.

9 Q Okay. I'm showing you State's 13 through 16. Can you take
10 a look at these ---

11 A I can.

12 Q --- and tell me if you recognize those. And if you do, just
13 sort of say the state's exhibit and then identify it.

14 A Item 14 is the Smith & Wesson revolver that I located on the
15 side of Highway 78.

16 Item 16 is going to be the Springfield semiautomatic handgun
17 that I located on the side of Highway 78.

18 Item 15 is going to be the other semiautomatic, I believe
19 it's a Jimenez Arms, that was located on the side of Highway 78
20 in that area.

21 And 13 is going to be the Taurus semiautomatic handgun that
22 was located on the side of Highway 78.

23 Q And you're the one that located these items?

24 A Yes.

25 Q Or, these firearms.

1 ATTORNEY OSBORNE: I've lost track, Your Honor. If it's not
2 in evidence, we'd seek to now admit 13 through 16 into evidence.

3 THE COURT: I believe that I have 13 through 16, 17, I think
4 I have them in evidence. However, is there an objection? I
5 think they're in.

6 ATTORNEY HUBRICH: Judge, I think that that was entered into
7 evidence. I'd object to chain, and I don't think the chain has
8 been met at this point.

9 ATTORNEY OSBORNE: Well, these are the firearms, so.

10 THE COURT: I will ask Cathy. Do you have 13, 14, 15, 16 in
11 evidence?

12 THE REPORTER: Yes.

13 THE COURT: I thought so. They're in evidence already.
14 Thank you. You may proceed.

15 ATTORNEY OSBORNE: I have no further questions.

16 THE COURT: All right. Now, counsel, let me see you at
17 sidebar, please.

18 (WHEREUPON, an off-the-record discussion is held at
19 sidebar.)

20 THE COURT: All right. Cross-examination, please, on behalf
21 of Mr. Fortune?

22 ATTORNEY HUBRICH: Thank you, Judge. May it please the
23 Court.

24 THE COURT: Yes.
25

CROSS-EXAMINATION

BY ATTORNEY HUBRICH:

Q Officer Cramer, Muanah was a passenger, the front-seat passenger; right?

A Yes, ma'am.

Q And you can't say when the shooting occurred, just when it was reported. Right?

A Yes, ma'am.

Q And did you see a wallet come out of the window, or were you just testifying as to what Officer Reynolds said?

A I didn't see the wallet come out.

ATTORNEY HUBRICH: I have no further questions, Judge.

THE COURT: All right. Very well. Yes, ma'am?

ATTORNEY CORNWELL: Very briefly, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY ATTORNEY CORNWELL:

Q When we watched that video, when y'all made the felony traffic stop, you agree there was a bunch of officers on scene at that time?

A A lot.

Q And they've all got firearms drawn? It's a felony traffic stop?

A Yes.

Q And when we watched that video, I don't believe it's your

1 voice but, you heard one of the officers tell the driver, As long
2 as you do what I say, you won't get shot. Correct?

3 A That wasn't me. That was another officer on the other side
4 of the vehicle.

5 Q And then Mr. Fortune is the second passenger to get out?

6 A I called him out. I was the one speaking to him.

7 Q And you heard at one point when you were saying, Step out of
8 the vehicle, step out of the vehicle, what did he say to you?

9 A He had his seatbelt on.

10 Q And he was afraid to even put his hand in to take his
11 seatbelt off without letting you know, I can't get out of the
12 car?

13 A Yes, ma'am.

14 ATTORNEY CORNWELL: Nothing further, Your Honor.

15 THE COURT: All right. Redirect?

16 ATTORNEY OSBORNE: None, Your Honor.

17 THE COURT: And is this witness free to leave?

18 ATTORNEY OSBORNE: Yes, Your Honor.

19 THE COURT: Any objection?

20 ATTORNEY HUBRICH: None.

21 ATTORNEY CORNWELL: No, Your Honor.

22 THE COURT: Very well, you are free to leave. And thank
23 you.

24 Ladies and gentlemen, I'm about to discharge you for today,
25 for today. We're going to start in the morning at 9:30, in the

1 morning at 9:30.

2 Please be mindful over the balance of this evening, do not
3 discuss this matter or allow anyone to discuss it with you; do
4 not do any research, no Columbo; do not go to the internet for
5 the purpose of researching any term, anything about this matter
6 or anyone that has anything to do with it.

7 You must receive all of the information from which you will
8 make up your minds here in court while court is in session.

9 Thank you for leaving your communication devices or your
10 cellphones somewhere other than the courthouse today. The same
11 would apply tomorrow. Normally if you would work at night, do
12 not go to work this evening. I need you to rest so that you are
13 prepared to propose in the morning.

14 Now, with regards to the graduation, graduation, graduation.
15 That won't be a problem tomorrow. With regards to the
16 bachelorette party, not so sure, but counsel is aware, and I
17 certainly am aware. I just don't know at this point. But I am
18 aware of that concern and, if we can accommodate, we certainly
19 will, but I just can't let you know at this point.

20 So, ladies and gentlemen, please be mindful of the
21 admonition, do not discuss this matter or allow anyone to discuss
22 it with you. And I so look forward to seeing you in the morning
23 at 9:30. Have a very good evening.

24 You all don't know but I know, but -- well, I'm going to
25 ask. If you don't want to respond, you certainly don't have to,

1 you don't have to. I'm just asking. If you're comfortable
2 responding, fine. Who has had their vaccinations? Interestingly
3 enough, this afternoon, the CDC came out with its guidelines that
4 said if you have been vaccinated, you've received both of your
5 vaccinations, and it's been two weeks after your second one, you
6 do not need to wear your mask indoors or outdoors. Now, there's
7 some exceptions, but I felt that was fascinating. I think we're
8 all getting pretty excited about that.

9 However, the Chief Justice has informed us that, in public
10 places, in courthouses we will still wear our masks as we move
11 about the public places. So I just thought that was interesting
12 to mention that to you.

13 All right. Ladies and gentlemen, I look forward to seeing
14 you in the morning, 9:30. Have a good evening.

15 For those of you who have not been vaccinated, you've got to
16 maintain your social distancing. Thank you.

17 (WHEREUPON, the jury is escorted out of the courtroom at
18 4:41 p.m.)

19 MATTERS OF LAW

20 THE COURT: All right. The next witness, Mr. Osborne, is
21 this way.

22 CLERK OF COURT: Could you please raise your right hand, and
23 state your full name for the record?

24 THE WITNESS: Ryan DeWane.
25

1 RYAN DeWANE,
2 having first been duly sworn, testified in open court but
3 outside of the presence of the jury, as follows:

4 ATTORNEY OSBORNE: Thank you, Your Honor. Now, I can move
5 it along a little bit. If I understood correctly, I don't think
6 the defense was arguing about the science of DNA; they were
7 arguing about the 702 aspect to STRmix, the program they're using
8 to analyze probabilities and statistics. And if that's the case,
9 then maybe we can move along the qualification questions.

10 ATTORNEY WEHMAN: As for me, Judge, I'm not challenging the
11 science of the DNA, that's correct; only STRmix and the relevancy
12 going forward of this DNA.

13 THE COURT: All right. Yes, ma'am?

14 ATTORNEY CORNWELL: I'm not crazy enough to challenge the
15 DNA at this point. I am challenging the STRmix analysis.

16 THE COURT: All right. Got it.

17 **DIRECT EXAMINATION**

18 BY ATTORNEY OSBORNE:

19 Q All right. Forensic Scientist DeWane, let's just move right
20 into how DNA, how, when you're asked to analyze two samples,
21 being a scientist at SLED, how are those samples characterized?
22 Are they known, an unknown, or what's the terminology for that?

23 A The unknown evidence that is submitted from the case is just
24 called evidence. And any known standard from an individual, such
25 as a swab taken from inside of a cheek, is a known standard.

1 Q Okay. Now, when we're talking about DNA, is it fair to say
2 that we're talking about numbers?

3 A When reporting the results of DNA analysis, we do report it
4 with statistics.

5 Q Okay. So there's really no way to get around numbers when
6 we're talking about DNA, is that fair to say?

7 A Yes. We have to report a number if we're going to include
8 the possible inclusion of an individual.

9 Q Okay. And you do so in statistical probabilities?

10 A We use statistical likelihood ratios.

11 Q Likelihood ratios. And what is the software that SLED
12 currently uses to analyze those likelihood ratios?

13 A We you use a software called STRmix.

14 Q All right. And did SLED always use STRmix?

15 A No. Previously we used a program called PopStats.

16 Q Okay. Well, why did y'all make the move?

17 A Our previous statistics were called random-match
18 probability, or RMP. This type of statistic was a probability,
19 and it was much more restrictive than a likelihood ratio. So
20 likelihood ratios can evaluate much more of a DNA profile.

21 So we use STRmix mix to analyze more profiles than we could
22 previously, and to better distinguish between noncontributors and
23 contributors in a profile.

24 Q Is it fair to say that the technology of DNA, in locating
25 and finding and identifying DNA contributors to a certain

1 mixture, has increased in its sensitivity over the years?

2 A DNA technologies have become much more sensitive, allowing
3 us to detect more people in mixtures.

4 Q And when you were dealing with your, I think it's called,
5 PopStats?

6 A That's correcter.

7 Q When you were dealing with your PopStats software, what that
8 did, am I correct in saying, that that software would assign a
9 probability when comparing a known standard to an unknown
10 standard?

11 A The statistic was called a probability. So it would be
12 reported as one-in-a-million chance, or something like that.

13 Q Okay. Was that program sufficient to handle DNA mixtures
14 with multiple DNA contributors?

15 A At times it was if it was a very simple mixture. However,
16 it would not be able to interpret profiles that were complex.

17 Q So again, kind of doubling back, now that technology for DNA
18 has increased, profiles have become more complex because y'all
19 are locating more contributors to mixtures in the past. Is that
20 fair to say?

21 A For some items, that is correct.

22 Q And then introduce STRmix. And what does STRmix do that
23 PopStats could not do?

24 A STRmix evaluates a much more -- makes a much more of an
25 intricate evaluation of the DNA profile. It can analyze the

1 entire profile, whereas RMP would only focus on one aspect of the
2 profile.

3 Q And how does it go about doing that, what's the science
4 behind that?

5 A STRmix uses a method called probabilistic genotyping. This
6 is simply biological modeling, which is how many people are in a
7 profile and how much DNA each person is contributing; that,
8 combined with statistical theory and mathematical calculations.

9 There are two very basic steps to STRmix. First, it
10 deconvolutes a profile, or breaks it down into every possible
11 combination that could explain the evidence. It then calculates
12 a likelihood ratio when comparing known standards to those
13 possibilities.

14 Q Why not, why not just -- all right. So when it's
15 deconvoluting the mixture, it's separating, and that's how it's
16 identifying the number? Well your DNA technology does that, is
17 that correct, or is it the software that actually does that, is
18 it STRmix that does that?

19 A It is the software.

20 Q The software. And so why not just do, why not -- is it fair
21 to say that you could use PopStats on the simple mixtures, on the
22 easy ones where you only had one contributor, a single
23 contributor?

24 A Absolutely.

25 Q Bow now that the technology is increased, is this the

1 standard that most labs are going to?

2 A There was a mass movement several years ago encouraging
3 forensic laboratories to switch to probabilistic genotyping,
4 which is the method that STRmix uses. So most laboratories are
5 in the process of shifting.

6 Q And why was that?

7 A It's because STRmix allows for a much more thorough
8 examination. So it's to add more consistency among labs across
9 the country.

10 Q Okay. Have you received any additional training as it
11 relates to the software program known as STRmix?

12 A Yes. I received training directly from the developers of
13 the software program during a four-day workshop. I also was a
14 member of SLED's STRmix implementation, or validation, team, so
15 we were responsible for writing the protocol and interpreting the
16 validation and teaching the department. I also successfully
17 passed the competency test.

18 Q All right. Let's start with the validation process. What
19 does that mean and what did that look like?

20 A The validation process, for any new method, technology or
21 software program that we implement at SLED, we have to test its
22 reliability to make sure that it will hold up at our laboratory.
23 And it did pass that validation.

24 Q Okay. And what does competency testing mean?

25 A Competency testing is testing an individual in every aspect

1 of a new method or technology, and making sure that they are able
2 to pass that before doing any kind of casework.

3 Q Okay. Has STRmix been validated by other labs, to your
4 knowledge?

5 A It has.

6 Q Do you know of any labs in which STRmix has not been
7 validated or not found competent?

8 A No.

9 Q How long has the STRmix software been around?

10 A It has been around since 2012. In the United States, the
11 Army Criminal Laboratory implemented it in 2014. And then the
12 FBI adapted it in 2015.

13 Q So STRmix is the program that's used by the FBI when
14 analyzing DNA?

15 A That is correct.

16 Q Are there any other labs other than the FBI and the U.S.
17 Army Criminal Investigation Lab that use this method, STRmix, to
18 analyze DNA, that you know of?

19 A In the United States there are approximately 59 laboratories
20 currently that use STRmix, and there are at least 60 laboratories
21 that are validating it or in the process of training their
22 department. There are also several labs internationally that use
23 it.

24 Q Is it fair to say that this is the method of reporting and
25 testifying to DNA that is going forward in the industry?

1 A As far as I can tell, yes.

2 Q How many, approximately, research papers have been done on
3 STRmix software?

4 A To my knowledge, there are at least 30 papers that have been
5 published and peer reviewed just on the validity of STRmix. I
6 know there are several more than that that are just using STRmix
7 in the research.

8 Q Okay. Is STRmix a recognized methodology in the DNA field?

9 A It is.

10 Q When did SLED begin using STRmix?

11 A We published our first report in September of 2018.

12 Q Has anyone from your -- do y'all keep track of forensic
13 scientists that testify in court as it relates to STRmix?

14 A We do. Approximately -- at least 27 people have
15 testified -- or, it has been testified to at least 27 times from
16 our lab.

17 Q In a General Sessions court?

18 A Yes.

19 Q And, to your knowledge, has STRmix results, or I guess DNA
20 results using STRmix, has that ever not been allowed into
21 evidence?

22 A No, not the STRmix.

23 Q Okay, that's fair. Okay. Because I think it was left out
24 one time not because of the science or not under -- all right, we
25 can talk about that. It was kept out because it was too

1 prejudicial, that was the ruling. Is that your understanding?

2 A That was my understanding.

3 Q And that was one time?

4 A Yes.

5 Q All right. Now in reference to this case, your SLED lab no.
6 L19-02-418, were you asked to conducted DNA analysis in this
7 case?

8 A I was.

9 Q All right. You know what, I'll just go ahead and move on,
10 and then we'll identify these later.

11 All right. So, were you given known standards in this case?

12 A I was.

13 Q All right. Let's start with your -- well, go ahead. Do you
14 mind listing the known standards that you were provided in this
15 case, along with your accompanying SLED lab number?

16 A Yes. I was provided SLED lab no. 8, which is buccal swabs
17 from Polo Salazar; SLED item 9, which is buccal swabs from
18 Devonte Major; SLED item 10, which is buccal swabs from Muanah
19 Fortune; SLED item 11, which is buccal swabs from Elijah Green;
20 SLED no. 32, which is buccal swabs from Marcus Porter; SLED item
21 no. 38, which is a blood spot from Joe Weaver; SLED lab no. 46,
22 which is a buccal swab from the right cheek of Polo Salazar; SLED
23 item 47, which is a buccal swab from the left cheek of Polo
24 Salazar; SLED item 48, which is a buccal swab from the right
25 cheek of Devonte Major; SLED item 49, which is a buccal swab from

1 the left cheek of Devonte Major; SLED item 50, which is a buccal
2 swab from the right cheek of Elijah Green, and; SLED item no. 51,
3 which is a buccal swab from the left cheek of Elijah Green.

4 Q Okay, 46 and 47 are repetitive. Which one did you use?

5 A I used item 47.

6 Q Okay. Forty-eight and 49 are repetitive. Which one did you
7 use?

8 A Item 49.

9 Q And 50 and 51?

10 A Item 51.

11 Q Okay. And for purposes of this, for this hearing, I know
12 you were asked to analyze some of these items a second time.

13 Correct?

14 A That is correct.

15 Q Let's just talk, let's use the numbers for the second time,
16 the 47 for Polo, 49 for Devonte, 51 for Elijah, and we'll double
17 back and use 10 for Fortune, okay.

18 All right. And I know that you were submitted some items,
19 as well, some samples to compare those known standards to. Is
20 that correct?

21 A That is correct.

22 Q All right. Let's start with SLED item 12. And then for
23 purposes of this hearing, I think we're going to be able to
24 establish that this was a blood swab taken from marker 11, which
25 was going to be a projectile, I believe, in the room. Did you

1 analyze that item?

2 A For clarification, this was a swab from marker no. 11,
3 collected from the living room floor, that I did.

4 Q All right. And what results, if any, did you come up with
5 after analyzing that item?

6 A Preemptive testing for blood was positive. The DNA profile
7 suitable for comparison was developed. Polo Salazar, Devonte
8 Major, Muanah Fortune, Elijah Green and Marcus Porter are
9 excluded as possible contributors.

10 Likelihood ratios for this profile were calculated using
11 STRmix. A likelihood ratio is a mathematical comparison of two
12 possible scenarios.

13 So the first scenario for this is that Joe Weaver
14 contributed to the DNA profile versus the possibility that it's
15 an unidentified, unrelated individual that contributed to the
16 profile. The DNA profile was interpreted as single source.

17 The mathematical result of that comparison is that the DNA
18 profile is approximately to 2.7 octillion times more likely if
19 Joe Weaver contributed to the profile than if an unidentified,
20 unrelated individual contributed to the profile.

21 Q Okay, so now let's break that down. First, when you looked
22 at that profile it came back as a single-source contributor; is
23 that fair to say?

24 A That is correct.

25 Q One individual contributed to that mixture?

1 A That is correct.

2 Q And so now STRmix, knowing that there's one individual
3 contributing to that mixture, it comes up with propositions. Is
4 that fair to say?

5 A Yes. Our comparison set is referred to as a proposition
6 set.

7 Q And the first -- well, I guess then STRmix looks at all the
8 known standards that you've already submitted, that's already
9 been submitted in this case. Right?

10 A In this item, no, I did not compare them using STRmix.

11 Q And why not?

12 A Because they could be officially excluded seeing as how it's
13 single source.

14 Q So through your process, the first thing you were able to do
15 was to start excluding a bunch of people right off road?

16 A That is correct.

17 Q And you excluded everyone, is it fair to say, except Joe
18 Weaver?

19 A That is correct.

20 Q And now this is where STRmix comes into play with
21 propositions?

22 A Yes.

23 Q So STRmix looks at it, am I fair to say when it reports it,
24 is it fair to say that it compares the proposition of Joe Weaver
25 being the contributor to that of it being an unknown person? Is

1 that a fair way of putting it?

2 A Yes.

3 Q And when it looked at that, when STRmix punched out the
4 numbers for you, what was the probability that it was Joe Weaver
5 compared to the probability of it being an unknown person?

6 A It was 2.7 octillion times more likely to see this profile
7 if Joe Weaver contributed to the profile than if an unidentified,
8 unrelated individual contributed to the profile.

9 Q Now, on the back page of your report I notice that you have
10 verbal wordings associated with each likelihood ratio. What is
11 the verbal wording that's associated with a ratio that high?

12 A That falls in our very strong support range, which is any
13 likelihood ratio of one million or greater.

14 Q And is that the highest wording of ratio that you have?

15 A Yes. Our strongest level of support is very strong.

16 Q Do y'all have national standards, or recommendations, as a
17 forensic scientist, as how you should testify to DNA results?

18 A Yes. We follow SWGDAM, which is the Scientific Working
19 Group on DNA Analysis Methods. We follow their guidelines for
20 reporting likelihood ratios.

21 Q And what does your guidelines say in reference to reporting
22 those ratios by just simply saying it's a very strong likelihood
23 that Joe Weaver's blood is on marker 11?

24 A Verbal wording is only meant to compliment the actual
25 quantitative number. So they recommend that you always, if

1 you're going to report a verbal wording, then you must have a
2 quantitative number, as well.

3 Q And is it fair to say that the reason why that
4 recommendation is in place is to give a more accurate
5 representation of the statistics?

6 A That is correct.

7 Q Because the old word, match, which is what used to be
8 reported, correct ---

9 A That is correct.

10 Q --- I mean, that's not 100 percent accurate; is it? I mean,
11 in the sense that there is a -- even if it's an infinitesimal
12 percentage of a chance, it is possible that it could be somebody
13 else?

14 A That is correct. And just for clarification, the match
15 wording was always from the DNA profile to the DNA profile
16 developed from a known individual ---

17 Q Okay.

18 A --- never to the individual.

19 Q Okay, it was always a number associated with it?

20 A Uh-huh (yes).

21 Q Okay. Gets a little bit more complicated when we have
22 multiple contributors; is that fair to say?

23 A That is correct.

24 Q So SLED item no. 13, and this is the one -- the other one
25 12, was from the floor. Thirteen is a swab from a projectile.

1 Is that correct?

2 A That is correct.

3 Q And let's try it like this. Can you tell me how many DNA
4 profiles contributed to that source, or to that mixture?

5 A The DNA profile was interpreted as single source.

6 Q And who were you able to exclude as contributors?

7 A Polo Salazar, Devonte Major, Muanah Fortune, Elijah Green
8 and Marcus Porter are excluded as possible contributors.

9 Q Who were you not able to exclude, and what were your
10 findings?

11 A I was not able to exclude Joe Weaver. This comparison is
12 one scenario being Joe Weaver contributed to the DNA profile
13 versus the scenario where it's an unidentified, unrelated
14 individual who contributed to the DNA profile.

15 The result of that comparison is the DNA profile is
16 approximately 2.7 octillion times more likely if Joe Weaver
17 contributed to the profile than if an unidentified, unrelated
18 individual contributed to the profile.

19 Q All right. Moving on to SLED item 14. That's listed as an
20 oral swab from inside of the dog's mouth. Were you able to get
21 enough DNA information from this to be able to do anything with
22 it?

23 A The partial DNA profile developed is not suitable for
24 interpretation.

25 Q Next, moving on to SLED item 34.1. That's listed as a swab

1 from a scraping of an interior of an orange mask. How many DNA
2 profiles did you find on this item that led you to a result of
3 individuals contributing to it?

4 A The DNA profile was interpreted as a mixture originating
5 from four individuals.

6 Q All right. Of those, of the known standards in this case,
7 who were you able to eliminate as contributing to that mixture?

8 A Polo Salazar, Muanah Fortune, Elijah Green, Marcus Porter
9 and Joe Weaver.

10 Q And who were you not able to eliminate as contributing to
11 that mixture?

12 A Devonte Major.

13 Q And what were your results?

14 A This is a comparison of Devonte Major and three
15 unidentified, unrelated individuals who contributed to the
16 mixture versus the possibility that it's four unidentified,
17 unrelated individuals that contributed to the mixture.

18 The result of that comparison is the DNA profile is
19 approximately 370 trillion times more likely if Devonte Major and
20 three unidentified, unrelated individuals contributed to the
21 mixture than if four unidentified, unrelated individuals
22 contributed to the mixture.

23 Q Okay. Moving on to 34.2.1, that is hair from that orange
24 ski mask. Were you able to do anything with that?

25 A No DNA profile was developed.

1 Q All right. Looks like we've got another hair from the same
2 orange ski mask, number's 34.2.2. And who were you able to
3 exclude as contributing to that DNA?

4 A Polo Salazar, Muanah Fortune, Elijah Green, Marcus Porter
5 and Joe Weaver are excluded as possible contributors.

6 Q And I guess, following a pattern here, that leaves us with
7 Devonte Major?

8 A That is correct.

9 Q And what were your findings when it come down to him?

10 A The DNA profile was interpreted as single source. The
11 comparison is Devonte Major contributed to the DNA profile versus
12 the possibility that an unidentified, unrelated individual
13 contributed to the DNA profile.

14 The result of that comparison is the DNA profile
15 approximately 310 septillion times more likely if Devonte Major
16 contributed to the profile than an unidentified, unrelated
17 individual contributed to the profile.

18 Q All right. We've got another hair on the orange ski mask,
19 34.2.3. Were you able to do anything with that?

20 A No DNA profile was developed.

21 Q All right. Moving on to 35.4.1, swabs from the entire
22 pocketknife. Who were you able to exclude as contributing to
23 that mixture?

24 A Devonte Major, Muanah Fortune, Elijah Green and Marcus
25 Porter are excluded as possible contributors.

1 Q All right. Doing math, that leaves us with Joe Weaver and
2 Polo Salazar. Is that correct?

3 A That is correct.

4 Q All right. Let's start with the proposition that it was
5 Polo and two unknown people. What was your findings with that?

6 A The DNA profile was interpreted as a mixture originating
7 from two individuals. The first comparison is Polo Salazar and
8 an unidentified, unrelated individual contributed to the mixture
9 versus it being two unidentified, unrelated individuals who
10 contributed to the mixture.

11 The result of that comparison is the DNA profile is
12 approximately 41 times more likely if Polo Salazar and an
13 unidentified, unrelated individual contributed to the mixture
14 than if two unidentified, unrelated individuals contributed to
15 the mixture.

16 Q And is it fair to say 1 in 41 is a pretty low number?

17 A That is in our weak support range.

18 Q Okay. Now let's look at it, did you look at a proposition
19 to say that it was Joe Weaver and an unknown person compared to
20 two unknown people?

21 A I did.

22 Q And what was your findings on that?

23 A The result of that comparison is the DNA profile is
24 approximately 340 septillion times more likely if Joe Weaver and
25 an unidentified, unrelated individual contributed to the mixture

1 than if two unidentified, unrelated individuals contributed to
2 the mixture.

3 Q Much bigger number, fair to say?

4 A Yes.

5 Q And moving on to 35.5.1, swab from the scraping of the
6 entire interior of a black-and-orange glove. How many DNA
7 contributors did you see to that profile?

8 A The DNA profile was interpreted as a mixture originating
9 from four individuals.

10 Q And who were you able to eliminate, if anyone?

11 A Marcus Porter is excluded as a contributor to the mixture
12 under the list of propositions.

13 Q And Marcus Porter is the only one who's excluded. Is that
14 fair to say?

15 A That is correct.

16 Q And when you're looking at a mixture that has four
17 individuals and it's hard to exclude people, is it fair to say
18 that when you start combining known standards and comparing those
19 to the mixtures that it becomes, I don't know, maybe not quite as
20 trustworthy as if you did it individually? Is that fair to say?
21 Or, how would you report that?

22 A I'm not sure I understand the question.

23 Q If you were to report your findings in this, would you
24 prefer to compare them individually or as a group?

25 A We first compare each individual to the mixture by

1 themselves. And then if there are multiple individuals that are
2 included, possibly included, then we compare them together.

3 Q Okay. Well, let's look at if it's -- did you compare Polo
4 to three unknown people?

5 A I did.

6 Q And what was your -- as compared to four unknown people, I
7 suppose. So Polo and three unknowns compared to four unknowns.
8 What were your findings then?

9 A The result of that comparison is the DNA profile is
10 approximately 260 sextillion times more likely if Polo Salazar
11 and three unidentified, unrelated individuals contributed to the
12 mixture than if four unidentified, unrelated individuals
13 contributed to the mixture.

14 Q All right. And then let's look at it with Muanah. So if
15 you were to -- did you compare Muanah Fortune and three unknown
16 people to that if it had been four unknown people?

17 A I did.

18 Q And what were your results there?

19 A The DNA profile is approximately 130,000 times more likely
20 if Muanah Fortune and three unidentified, unrelated individuals
21 contributed to the mixture than if four unidentified, unrelated
22 individuals contributed to the mixture.

23 Q So did you then take a look that what if we were to compare
24 if it was both Polo and Muanah, they both contributed to that
25 mixture, and two unknown people, compared to four unknown people?

1 A The result of that comparison is the DNA profile is
2 approximately 330 octillion times more likely if Polo Salazar,
3 Muanah Fortune and two unidentified, unrelated individuals
4 contributed to the mixture than if four unidentified, unrelated
5 individuals contributed to the mixture.

6 Q And this really gets to the crux of what STRmix does, right,
7 that PopStats would have had a problem doing?

8 A That is correct.

9 Q Analyzing multiple contributing DNA, or multiple
10 contributors to a mixture, and finding out what weight to put to
11 that statistic. Is that fair to say?

12 A We did have a different technology called Griffin PopStats,
13 it's called CPI. And it would be able to compare multiple people
14 to a mixture, but it was very, very restrictive and we often
15 weren't allowed to use it due to the mixture not meeting the
16 standard of statistics.

17 Q Which STRmix does meet?

18 A That's correct.

19 Q And then we have a couple other propositions on here; is
20 that fair to say? One is a low when we're looking at comparing
21 Elijah Green and three unknown people to that of four unknown
22 people. Was that result low, or weak?

23 A No.

24 Q Or, you tell me. You tell me.

25 A Okay. The result of that comparison is the DNA profile is

1 approximately 47 times more likely if four unidentified,
2 unrelated individuals contributed to the mixture than if Elijah
3 and three unidentified individuals contributed to the mixture.

4 The difference here being that it's supporting the
5 proposition that four unidentified, unrelated individuals
6 contributed to the mixture. This means it's trending toward
7 exclusion but doesn't meet our threshold protocol for exclusion.

8 Q It looks like it's pretty close. Right?

9 A Our full exclusion is 100.

10 Q Okay. And this was 47?

11 A That's correct.

12 Q All right. It's another weak result there. Moving on to
13 35.6, swab from the scraping of the entire neckline of the navy
14 jumpsuit. Were you able to do anything with that?

15 A The DNA profile developed is a mixture of up to five
16 individuals. Due to the complexity of the mixture, no further
17 interpretation will be offered.

18 Q Okay. And is it fair to say that this is an example in
19 which technology hasn't reached the point to be able to analyze
20 35.6?

21 A In our laboratory, we only analyze mixtures of four or less.

22 Q All right. 35.7.1, hair from the navy jumpsuit. Were you
23 able to do anything with that?

24 A The partial DNA profile developed is insufficient for
25 interpretation.

1 Q And is that the same thing for -- well, it's a little
2 different result but, I guess, the same outcome, 35.7.2?

3 A No DNA profile was developed.

4 Q All right. Moving on to 36.1, swab from the scraping of the
5 entire interior of the camo glove. Could you do anything with
6 that?

7 A The DNA profile developed is a mixture. Due to the
8 complexity of the mixture and the inability to determine the
9 number of contributors, no further interpretation will be
10 offered.

11 Q Let's just say the next one's the same thing, it looks like
12 something like that. No DNA profile was on 36.2.1?

13 A That is correct.

14 Q 37.1.1, swab from the scraping of the interior of the knit
15 hat. How many contributors?

16 A The DNA profile was interpreted as a mixture originating
17 from four individuals.

18 Q All right. Did you look at -- well, were you able to
19 exclude anyone?

20 A I was. Devonte Major, Muanah Fortune, Elijah Green, Marcus
21 Porter and Joe Weaver are excluded as contributors to the
22 mixture.

23 Q All right. I didn't hear Polo Salazar. Did you look at him
24 and come up with any findings?

25 A I did. The comparison is Polo Salazar and three

1 unidentified, unrelated individuals contributed to the mixture
2 versus the possibility that it's four unidentified, unrelated
3 individuals that contributed to the mixture.

4 The result of that comparison is the DNA profile is
5 approximately 1.4 septillion times more likely if Polo Salazar
6 and three unidentified, unrelated individuals contributed to the
7 mixture than if four unidentified, unrelated individuals
8 contributed to the mixture.

9 Q All right. 37.2.1, swab from scraping of the entire
10 interior of the black-and-orange glove. How many contributors
11 were there to that?

12 A The DNA profile was interpreted as a mixture originating
13 from four individuals.

14 Q Were you able to exclude anyone?

15 A Yes. Devonte Major, Muanah Fortune, Elijah Green, Marcus
16 Porter and Joe Weaver are excluded as contributors to the
17 mixture.

18 Q Didn't hear Polo's name. Did you look at him?

19 A Yes.

20 Q And what results?

21 A The comparison is Polo Salazar and three unidentified,
22 unrelated individuals contributed to the mixture versus the
23 possibility that it's four unidentified, unrelated individuals
24 that contributed to the mixture.

25 The result of that comparison is the DNA profile is

1 approximately 12 octillion times more likely if Polo Salazar and
2 three unidentified, unrelated individuals contributed to the
3 mixture than if four unidentified, unrelated individuals
4 contributed to the mixture.

5 Q 37.2.2.1, which is a hair from that black-and-orange glove,
6 how many contributors were there to that DNA profile?

7 A The DNA profile was interpreted as single source.

8 Q And eliminated everyone but Polo. What was your results?

9 A This comparison is Polo Salazar contributed to the DNA
10 profile versus it being an unidentified, unrelated individual
11 that contributed to the DNA profile.

12 The result of that comparison is the DNA profile is
13 approximately 440 sextillion times more likely if Polo Salazar
14 contributed to the profile than if an unidentified, unrelated
15 individual contributed to the profile.

16 Q 37.2.2.2 -- providing a little product for the defense --
17 what is that?

18 A I'm sorry. Can you repeat?

19 Q It that a hair from a black-and-orange glove?

20 A Yes.

21 Q And were you able to eliminate anyone from that?

22 A Yes. Polo Salazar, Devonte Major, Muanah Fortune, Elijah
23 Green, Marcus Porter and Joe Weaver are excluded as possible
24 contributors.

25 Q So we've got an unknown hair?

1 A That is correct.

2 Q Thirty-nine, that's a swab from the black sweatshirt worn by
3 Porter.

4 A This item was returned to the submitting agency without
5 analysis and had not been inventoried.

6 Q All right. And lastly, we got 44.1, cuttings from -- well,
7 we got some cuttings from some gloves from 44.1 and 44.2. So,
8 briefly, were you able to exclude everyone but Joe Weaver on
9 those?

10 A That is correct.

11 Q Okay. And then just moving on to swabs from the victim's
12 wallet, the last one, were you able to get any DNA from that?

13 A Due to the limited information developed, no further
14 interpretation will be offered.

15 (WHEREUPON, State's Exhibits 172, 186, 206, 209, 210, and
16 211 are marked for identification.)

17 Q All right. And then just circling back, for the record, I'm
18 going to show you 209 through 211, 186, 172 and 206. And if you
19 could, just tell me if you recognize those items, and then just
20 identify them per state's exhibits as to what they are.

21 A For SLED item no. 38, this is a blood spot from Joe Weaver.

22 Q Okay. And what's the state's exhibit number to that? You
23 said SLED item 38? So it's State's Exhibit No. 186?

24 A Oh, okay. I'm sorry.

25 Q That's okay. All right.

1 A This is SLED item no. 32, which is buccal swabs from Marcus
2 Porter. And this is State Exhibit 206.

3 Q Okay.

4 A This is what looks like SLED's container I, which includes
5 SLED item nos. 34.1, 34.2, 34.2.3, 35.4.1, 35.5.1, 35.6, 35.7,
6 35.7.1, 35.7.2, 36.1, 36.2, 37.1.1, 37.2.1, 37.2.2, 37.2.2.2,
7 44.1 and 44.2. And this is State Exhibit 172.

8 Q Okay.

9 A This is SLED container O, which are buccal swabs from Elijah
10 Green. And this is State Exhibit 211.

11 Q Okay.

12 A These are SLED container N, which is buccal swabs from
13 Devonte Major. And this is Exhibit 210.

14 And this is SLED container M, which is buccal swabs from
15 Polo Salazar. And this is State's Exhibit 209.

16 Q Thank you.

17 ATTORNEY OSBORNE: No further questions.

18 THE COURT: Cross-examination?

19 ATTORNEY WEHMAN: Thank you, Judge.

20 THE COURT: Yes.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY WEHMAN:

23 Q Good afternoon. How are you?

24 A Good afternoon.

25 Q All right. So I think you touched on this before. I'll try

1 not to be too redundant. STR DNA, the whole point was that law
2 enforcement/SLED labs across the country were having issues with
3 complex DNA profiles. Is that fair?

4 A We were not having issues. We just could not interpret them
5 as fully as we can with STRmix.

6 Q So in the past, before you started using these programs and
7 STR DNA, you're testifying that you could come up with a report
8 and issue these same probabilities?

9 A No. It's a different statistic.

10 Q So this was, at least you acknowledge, it was created to
11 help give you a more accurate identification of what it is that
12 you're looking at and interpret it and give it to the Court?

13 A Yes, to better help distinguish between noncontributors and
14 contributors.

15 Q Would it also be fair to say that the problems started to
16 come when DNA collection by law enforcement on scene got a little
17 bit more complex?

18 A Can you rephrase?

19 Q Sure. In the past, a long time ago, the main sources of DNA
20 that laboratories would be asked to analyze, is it fair to say
21 that they would be more single-source type things like blood,
22 hair and, in sexual assault cases, maybe semen? Would that be
23 the traditional way that you're looking at DNA?

24 A We also looked at touch DNA in the past, too. But I don't
25 think the evidence collection has changed, to my knowledge.

1 Q So you don't think that law enforcement, within the past 20
2 years, has made great strides in collecting touch DNA?

3 A I am not familiar with their collection methods.

4 Q You can just testify to what you do in your lab; correct?

5 A That is correct.

6 Q Okay. So SLED -- that's who you testified you're employed
7 by; correct?

8 A That is correct.

9 Q And that's a wing of law enforcement in the state; is that
10 right?

11 A Yes.

12 Q So you're assisting in the investigation of all these cases
13 that use your lab; correct?

14 A That is correct.

15 Q And STR, that's what we're talking about today. And I think
16 that you testified it helps identify profiles with multiple
17 contributors and his break those profiles apart so that you can
18 get probabilities for different people in that giant kind of DNA
19 sample that you receive. Right?

20 A Yes.

21 Q Can you talk to me about degradation of genetic material
22 over time? Is that an issue when you're looking at this and when
23 STRmix is interpreting?

24 A STRmix can account for degradation in samples. We also see
25 it through our technology and know that we're working with

1 degraded samples. But degradation is actually incorporated
2 into the validation.

3 Q But it is an issue. I mean, if you're looking at it in this
4 case, I believe you testified that there was a scraping from the
5 interior of a glove. Correct?

6 A That's correct.

7 Q So you would agree that four people -- you said there were
8 four DNA profiles developed -- four people can't wear that glove
9 all at the same time; right?

10 A That is correct.

11 Q So if they wear them at different times, one of those DNA
12 profiles will be the first on there; one will be the newest? Is
13 that correct?

14 A That is correct.

15 Q And over time DNA does degrade. Is that also an accurate
16 statement?

17 A Yes, based on environmental factors.

18 Q And you testified earlier that when we're looking at these
19 mixes we're talking about probabilities. That's what your report
20 says, and that's the term that you're comfortable speaking about.
21 Is that right?

22 A It's likelihood ratios.

23 Q Likelihood ratios, there you go. And you testified that
24 SLED has purchased STRmix as your program of choice to do this
25 analysis for you?

1 A That is correct.

2 Q And there are multiple programs out there. I think
3 TrueAllele is a program that's out there; is that right?

4 A That is correct.

5 Q And these companies that produce those programs, they're
6 looking for business, right, they're trying to come up with an
7 algorism that attracts people, and they want your business, they
8 want to keep you there, because you could go with TrueAllele in
9 the future? Is that right?

10 A We could choose to go with TrueAllele in the future.

11 Q I think you testified that there were software updates with
12 this, where they will come out with patches or they'll modify
13 their algorism. Is that correct?

14 A They will come up with updates in each one. I'm not sure if
15 it's an algorism change or if it just is a new feature.

16 Q Are you able to testify whether or not, ever, their
17 algorism, their -- and I'm not smart enough in this area to
18 really go past that. Have you ever seen an algorism change in
19 STRmix at SLED?

20 A I have not seen an algorism change, but there have been
21 updates due to small miscodes. And that is available on their
22 website. But these miscodes have not affected any casework, to
23 our knowledge.

24 Q Let's talk about miscode. When we are talking about a
25 program, that program is developed by an individual or a series

1 of individuals. Is that correct?

2 A That is correct.

3 Q And they are making human determinations on specific factors
4 that they think are important and that they think will help
5 benefit their algorism. Would that be right?

6 A To my knowledge.

7 Q And so are you also familiar with -- so you know the term
8 source code. Did you testify to that a second ago?

9 A I didn't say source code, but, yes.

10 Q So would it be an accurate statement that a source code
11 would be that human written code and instructions that basically
12 instructs the computer on what to look for?

13 A I am sorry. I do not have a lot of training in computer
14 engineering.

15 Q Okay. But you do know that it's the computer that processes
16 this information and gives you out a series of numbers that give
17 you your likelihood ratios. Right?

18 A Yes. It's a series of mathematical calculations and
19 algorisms.

20 Q And it gives you numbers all the way from, I think in the,
21 40s in this case, all the way to octillion, sextillion and
22 septillion. Big numbers. Is that right?

23 A That is correct.

24 Q And just to touch back on TrueAllele, each program has a
25 different algorism; is that right? That's what makes it

1 proprietary, that's what you're buying, their algorithm; is that
2 right?

3 A I am not familiar.

4 Q Okay, fair enough. As to STRmix itself, isn't it true that
5 if you ran the exact same analysis, everything the same, you
6 pushed, you drag it, I think maybe you drag it into the program,
7 and you say run, you ran the exact same stuff twice, that you can
8 get different numbers?

9 A Are you referring to likelihood ratios?

10 Q Yes.

11 A Yes.

12 Q Let's talk about this case a little bit. I actually did
13 have a question that you brought up with validation. When was it
14 determined -- when did you finish the validation process, what
15 year would that be?

16 A 2018.

17 Q And competency you were speaking about, is that individual
18 based? Is that laboratory based? I kind of lost you there.

19 A Each individual takes a competency test.

20 Q So in order to operate the software, you have to pass that
21 test?

22 A That is correct.

23 Q You said that 27 times, I think -- what did you testify to
24 happened 27 times? Was it admitted into court 27 times?

25 A STRmix has been testified to in court 27 times.

1 Q How many times has it been challenged? Do you know?

2 A We've had two admissibility hearings.

3 Q And one of those, you said, the evidence was kept out but
4 not based on the science?

5 A Both admissibility hearings accepted the evidence.

6 Q So nothing has ever been -- there's not been a case in South
7 Carolina where your analysis has not been admitted?

8 A That's incorrect.

9 Q Help me there.

10 A Since switching to STRmix, to my knowledge, one case
11 excluded the DNA evidence based on concern for probative value.

12 Q The number, the likelihood ratio, that specific piece of
13 evidence, was not admitted because of concern for probative
14 value. Is that what you're saying?

15 A To my knowledge.

16 Q Okay. Now, in this case I want to direct your attention to
17 item 35.5.1, which would be an analysis, DNA analysis, from a
18 swab from inside the black-and-orange glove.

19 A That is correct.

20 Q Okay. And I'm not sure, I didn't look, I know that in
21 preparation for this case, during dependency of this case, there
22 were two, I guess there were -- you did analysis on this twice
23 for a variety of reasons, but it was run twice. Is that correct?

24 A That is correct.

25 Q So I'm not sure if this one specifically changed, because I

1 believe some things did change when you ran it a second time.

2 Are you familiar with that?

3 A Yes.

4 Q I'm going to look at the June 14th, that will be the first
5 one. And based on that analysis you were able to identify a
6 primary contributor, or at least you were able to identify four
7 individual DNA profiles, one of which the likelihood was far
8 greater than anybody else. Would that be fair to say?

9 A That is correct.

10 Q And that would be Polo Salazar?

11 A That is correct.

12 Q And the number on there -- and again, correct me if I'm
13 wrong if you're looking at a different report -- the number I
14 found was 260 sextillion times more likely that he and three
15 random individuals contributed. Is that correct?

16 A That is correct.

17 Q And that is compared to a standard of just four random
18 people?

19 A That is correct.

20 Q So that is very strong confidence, I would imagine. I think
21 you said everything over a million is very strong?

22 A That is correct.

23 Q Okay. You ran the same analysis independently on Muanah
24 Fortune, and that number is only 130,000 times more likely than
25 four random individuals. Is that correct?

1 A That is correct.

2 Q So would it be your position, when looking at these numbers,
3 that not only do you have a major contributor and a minor
4 contributor but you have a very significant statistical deviation
5 between the likelihood in Mr. Salazar and Mr. Fortune?

6 A That is correct.

7 Q Also want to turn your attention to item 12. That would
8 have been, I believe, a swab of blood, or it was a swab that was
9 submitted that you identified as blood.

10 A Presumptive testing for blood was positive.

11 Q In fact, when you ran the program and came out with a
12 number, you were only able to find one profile; correct? It was
13 a single source?

14 A That is correct.

15 Q And what was the number again, the likelihood ratio on the
16 single source?

17 A It was 2.7 octillion.

18 Q And that was a positive with whom?

19 A Given the comparison, in order to do this DNA profile, it is
20 2.7 octillion times more likely if Joe Weaver contributed to the
21 profile than if it was an unidentified person.

22 Q And am I correct in remembering that the DNA profile from
23 Joe Weaver, I believe that would be item 38, was a blood spot
24 from him, so his DNA was derived to use as your standard from
25 blood? Is that correct?

1 A That is correct.

2 Q So we have a presumptive blood compared to his actual blood
3 that you were told, it was sent to you. And the number was
4 again? I'm sorry.

5 A 2.7 octillion.

6 Q And an octillion is 27 zeros; is that right?

7 A That is correct.

8 Q Do you know all those? Do you know septillion,
9 sextillion -- do you know all of them?

10 A Uh-huh.

11 Q That's why I went to law school. So you would say that your
12 confidence in the identification of Mr. Salazar would be high as
13 to that particular glove. Correct?

14 I'm sorry, I'm going back. I shifted on you. The glove
15 that we were talking about earlier. I think you already
16 testified to it. I'll withdraw it. That's fine. You already
17 testified to the statistical likelihood.

18 Briefly. All you can do when you're looking at profiles is
19 determine likelihood ratios of whether the DNA matches are there;
20 correct? You don't know how DNA gets on substances?

21 A That is correct.

22 Q So with touch DNA, for example, if I touch this podium,
23 somebody else comes and touches it and walks off, and you collect
24 a DNA profile from their hands, you have no way of knowing what
25 happened other than my skin cells and their skin cells will

1 probably be there?

2 A That is correct.

3 Q And it can be that easy, can't it, touching a surface,
4 leaving behind DNA?

5 A That is correct.

6 Q Would you say that skin-cell transfer would give you less of
7 a profile to work with than, say, blood, hair, any of those
8 things?

9 A It would depend on the factors, environmental factors, such
10 as sweating could have a very strong DNA profile.

11 ATTORNEY WEHMAN: Beg the Court's indulgence.

12 THE COURT: Okay.

13 ATTORNEY WEHMAN: One last question, Judge.

14 THE COURT: Sure.

15 Q So can you say within a reasonable degree of scientific
16 certainty that Muanah Fortune's DNA is on that glove?

17 A Can you specify which item, please?

18 Q Absolutely. I do not want to confuse you. That would have
19 been on item 35.5.1.

20 A I would testify that, given the two scenarios where Muanah
21 Fortune and three unidentified, unrelated individuals contributed
22 to the mixture versus it being four unidentified, that DNA
23 profile is approximately 130,000 times more likely Muanah Fortune
24 and three unidentified, unrelated individuals contributed to the
25 mixture than if it was four. And this falls in our strong

1 support range.

2 Q Briefly, I just remembered, there was one exclusion in that,
3 for that item, I believe you testified to?

4 A That is correct.

5 Q And you had six samples that you received that you had
6 standards for, two victims and four defendants?

7 A That is correct.

8 ATTORNEY WEHMAN: Thank you, Judge. I don't have any other
9 further questions.

10 THE COURT: All right. Yes, ma'am?

11 ATTORNEY CORNWELL: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY CORNWELL:

14 Q I'm going to try not to be very repetitive on this. But
15 quickly, and I know that you stated that you don't do a lot of
16 computer coding analysis. But the way that this technology and
17 these algorithms get into these systems is by humans inputting
18 them into the computer system; correct?

19 A That is correct.

20 Q So there is always a likelihood of human error when they're
21 inputting these codes?

22 A Yes.

23 Q And are you aware that a recent study found that there were
24 33 percent of highly experienced programmers that missed just a
25 parenthesis and, as a result, tens of thousands of errors were

1 given on DNA samples?

2 A I'm unfamiliar with that article.

3 Q But you would agree that there is a capacity for human error
4 in inputting the algorithms and the updates in software?

5 A Yes.

6 Q And you've already touched on this but, when looking at the
7 likelihood ratios, you can get different likelihood ratios
8 depending on who is doing the analysis on the specimen. Right?

9 A No, that's incorrect. Each person running it would have the
10 exact same effect. It's just an input into the software program.

11 Q But it can also vary from lab to lab?

12 A Can you rephrase?

13 Q Sure. So if you test a buccal swab on, say, a glove in your
14 lab, and that same buccal swab and that same glove go to another
15 lab, they can get different likelihood ratios between the two
16 labs; correct?

17 A That is correct, because different labs have different
18 sensitivities in their instruments, and that's where the
19 validation process comes into play.

20 Q But when you use the same lab and the same analyst, as
21 you've done, can you explain how you can get different likelihood
22 ratios from testing a buccal swab from the same person against
23 the same evidence on two different occasions.

24 A Yes. STRmix uses a method called a sampling method. It's
25 impossible to test every single individual on the earth, so we

1 use a subgroup of the population to determine frequencies. This
2 subgroup is extensively validated, it's maintained by the FBI.
3 And so every single time you run a likelihood ratio, it will take
4 a part of that sample. And so if it takes it one time and it's
5 one million, it may take it just slightly off to the side, it may
6 be 1.1 million.

7 So it will always fall within the expected frequency, but it
8 may not be the exact same number each time.

9 Q I'm going to draw your attention to what's, I think, y'all's
10 no. 35.4.1. And I believe that that was swabs from the
11 interior -- I'm sorry, swabs from the entire pocketknife.

12 A That is correct.

13 Q And on your first proposition set, you've got that the DNA
14 profile is exactly 41 times more likely if Polo Salazar and an
15 unidentified, unrelated individual contributed to the mixture.
16 Correct?

17 A To see that DNA profile, yes.

18 Q And 41 is in your weak support. That isn't a very high
19 number; correct?

20 A That is correct.

21 Q And your second proposition on that is in regards to Joe
22 Weaver, and that was 340 septillion times more likely if Joe
23 Weaver and an unidentified person contributed?

24 A To see that DNA profile, yes.

25 Q Which is in your very strong support?

1 A That is correct.

2 Q But then your third proposition is that it is 140 octillion
3 times, which -- and I am with Mr. Wehman -- octillion is more
4 than septillion; correct?

5 A That is correct.

6 Q Okay. That it's 140 octillion times more likely if Polo
7 Salazar and Joe Weaver contributed to the mixture than two
8 unidentified males?

9 A That is correct.

10 Q And that's also in the strong support?

11 A Very strong support.

12 Q But then you've got a notation in here. Because it doesn't
13 make any sense that Polo Salazar has weak, very weak, support, as
14 41 times likely in the first proposition, but now all of a sudden
15 in this third proposition he's gone up to 140 octillion times
16 more.

17 So even within the same set and in your same propositions
18 you're stating that there is a discrepancy and, because of
19 disparity, you should put more weight on proposition set one than
20 proposition set three.

21 So you're saying it's more likely that it's not strong
22 support for his DNA than the very strong support, despite
23 proposition three?

24 A If I may explain this a little further. When we have two
25 people who could possibly be included we have to test them

1 individually and then test them together. When you test them
2 together, it's multiplying the frequency of them together, so
3 it's always going to be an additive effect.

4 Because there is such a large disparity, we do add a
5 disclaimer that we think you should focus on the individual
6 likelihood ratio rather than the combined. The combined is only
7 calculated to make sure that they can still possibly work
8 together.

9 Q But explain to me how -- and maybe you just did and I'm just
10 too stupid to understand what you just said -- but, how there is
11 very little support for proposition one.

12 So if they're saying that this DNA mixture likely is not
13 Mr. Salazar, how do they then get all the way to, okay, so we
14 said it's not but now we're saying that very likely it is.

15 There are two exact opposite conclusions. I don't
16 understand how you can say, Well, it's the same DNA sample, it's
17 going to get the same properties, and you've got either it's not,
18 or actually, yeah, it is.

19 A This occurs because we are calculating, we are multiplying,
20 their frequencies together. So in very simple terms, possibly,
21 let's say Polo Salazar was one out of ten, that was his chance,
22 and let's say that Joe Weaver was one out of a thousand, there's
23 a large discrepancy between them.

24 So what you would do, if they were actually included
25 together, you would multiply that together and it becomes a much

1 larger number.

2 But because those are so far apart, we want you to focus on
3 the individual likelihood ratio and not that large number,
4 because that large number is just determining that it's a
5 possibility that it could occur.

6 The inclusion is based on the individual likelihood ratios.
7 Not one of them can be included together.

8 Q But isn't that the whole problem with STRmix at this point,
9 is because now you're feeding information into the system that's
10 not reliable on whether it's going to be strong support or weak
11 support because you're inputting that information together?

12 A No. That's exactly how it is supposed to work. That's why
13 we calculate individuals first. That is their likelihood ratio
14 for that item. Calculating it together is just required to make
15 sure that they can work together, and it's just calculating their
16 frequencies together.

17 So it's always going to be larger because the second
18 individual has such a high likelihood ratio.

19 Q And so in any of these numbers, when you start adding people
20 together, their ratios are going to get higher and more likely
21 that it's going to be them?

22 A If they are all a possible includor -- or, a possible
23 contributor.

24 Q So that's why, on some of these things, you've got seven
25 proposition sets, because the more people you add in the

1 possibility, the higher the number potentially gets?

2 A Potentially.

3 Q And when it comes to touch DNA -- and you briefly touched on
4 it, you know -- if I touch this and somebody else comes and
5 touches this, there could be touch DNA from both sources. Let's
6 say I have put my hands on my jacket numerous times and then, as
7 I'm leaning over somebody, that part of my jacket touches another
8 person's jacket. That DNA could transfer, that touch DNA?

9 A That is correct.

10 Q So because you're finding mixtures of people, that doesn't
11 mean that someone, it's actually their property or something that
12 they've, themselves, possessed; it could just be that it was
13 placed in a vehicle and that person was sitting in that vehicle
14 and now their DNA has rubbed off on that item. Correct?

15 A That is possible.

16 Q And you would not know how to determine that or decipher
17 that or extrapolate that; correct?

18 A That's correct. Our technology cannot determine that.

19 ATTORNEY CORNWELL: I believe that's all the questions I
20 have. Thank you.

21 ATTORNEY OSBORNE: Briefly.

22 THE COURT: Yeah, redirect.

23 ATTORNEY OSBORNE: Just briefly.

REDIRECT EXAMINATION

BY ATTORNEY OSBORNE:

Q How many -- what's a loci?

A A loci/a locus is a location on the DNA that we test.

Q And how many loci are you testing nowadays? What are we at?

THE COURT: I can't hear you.

Q How many loci are we testing nowadays?

A Twenty-four.

Q Was there a time in which we tested less than that?

A Yes.

Q I don't know, I might be wrong. Weren't we down to like six at one point?

A Possibly, yes.

Q And now we're up to 24?

A That's correct.

Q And when you're looking at a loci, what's an allele?

A An allele is a variation of your DNA, and it's represented as a number. That's your DNA profile.

Q Half from your mom; half from your dad?

A That is correct.

Q So now we're getting into the numbers, that's really where the numbers are coming from; right? Is that right?

A That's correct.

Q That's where it kind of starts, I guess. So, and then just piggybacking off of Ms. Cornwell's position, let me wrap my head

1 around it like this. And this is why you're the expert. Now,
2 stop me when I go off the ledge.

3 If you have two individuals that are contributing to a
4 particular mixture, is it fair to say that when you look at the
5 loci of those DNA contributors you might find matches, like one
6 of the contributors might have the same alleles as the second
7 contributor?

8 THE COURT: Might have the same what now?

9 ATTORNEY OSBORNE: What's that?

10 THE COURT: You said they might have the same?

11 ATTORNEY OSBORNE: The same alleles.

12 THE COURT: Oh, alleles.

13 Q They might be identical?

14 A That is correct.

15 Q And so, therefore, since you might have some identical
16 alleles in certain loci, it would only make sense that if you
17 combine those individuals the numbers are going to go up. The
18 probability of two contributors that are sharing the same alleles
19 in a loci, that probability is going to go up. Is that fair to
20 say?

21 A Yes.

22 Q And that's why you're the expert and you come and you say,
23 All right, let's back up, you might want to put more weight on
24 this other proposition here, that's more accurate and it's more
25 conservative. Is that correct?

1 A That's correct.

2 Q Okay. You covered the different numbers, you explained
3 that. Oh. So, in fact, so you said that, I guess, the FBI has
4 profiles and that bank of profiles, I guess, can increase over
5 time, probably does increase. Is that fair to say?

6 A Yes.

7 Q And so, and that might explain then why the numbers changed
8 from, for 35.5.1, from 250 septillion back when you first did it,
9 to now, 260 septillion?

10 A To my knowledge, the database has not changed since then.
11 It's because of the sampling method.

12 Q The sampling method ---

13 A I'm sorry?

14 THE COURT: Everybody's getting tired, and your voices are
15 getting weaker and harder to hear.

16 ATTORNEY OSBORNE: Yeah, I'm about tapped out.

17 A I said to my knowledge the database has not changed between
18 the two calculations. It would be because of the sampling method
19 that the number changed.

20 Q This validation process that you talked about in reference
21 to errors and human errors, is the validation process, is that
22 part of what it's checking?

23 A Yes.

24 ATTORNEY OSBORNE: All right, no further questions. Your
25 Honor, I did have just one other brief, just quick, question.

1 THE COURT: Okay.

2 Q To a reasonable degree of scientific certainty, can you
3 testify -- well, can you say that the results that you've
4 testified are accurate to a reasonable degree of scientific
5 certainty?

6 A I cannot word it like that. I can say that if it falls
7 within our very strong support range, then that's our highest
8 level of support.

9 Q What I'm referring to -- I'm not talking -- what I'm saying
10 is, your numbers, to a reasonable degree of scientific certainty,
11 can you testify to the accuracy of your propositions, the
12 numbers, the statistics?

13 A Yes. And then we have two people who, two additional
14 analysts who, also review all of our data and all of our results
15 to make sure that they also agree and everything is correct.

16 ATTORNEY OSBORNE: Okay. Thank you, Your Honor.

17 THE COURT: Yes, sir, Mr. Wehman?

18 ATTORNEY WEHMAN: Briefly, Judge.

19 **RECROSS-EXAMINATION**

20 BY ATTORNEY WEHMAN:

21 Q So again, basically you just, what you were just testifying
22 to was about that everything was then properly hitting the button
23 to analyze. Correct?

24 A That is correct.

25 ATTORNEY HUBRICH: Pierce, I can't hear you.

1 Q So that everyone can hear, what you just testified to, what
2 you were testifying to with a reasonable degree of scientific
3 certainty, was that the process of hitting the button was done
4 correctly on your program?

5 A If I may add, that, yes, and as well as all the DNA
6 analysis.

7 Q Did you independently analyze any of this DNA?

8 A Yes.

9 Q So let me ask you this then. As to 35.5.1, within a
10 reasonable degree of scientific certainty, can you testify in
11 court, in front of a jury, that Polo -- I'm sorry, that Muanah
12 Fortune's DNA is on that glove?

13 A I apologize. Did you say 35.5.1?

14 Q Correct.

15 A The only thing I can say is that the two scenarios, one
16 being Muanah Fortune and three unidentified, unrelated
17 individuals contributed to the mixture versus the possibility
18 that it's four unidentified, unrelated individuals that
19 contributed to the mixture.

20 The result of that is the DNA profile is approximately
21 130,000 times more likely that Muanah Fortune and three
22 unidentified, unrelated individuals contributed to the mixture
23 than if it was four unidentified, unrelated individuals that
24 contributed to the mixture. This likelihood ratio falls within
25 our strong support range.

1 Q If I were to ask you the same question, within a reasonable
2 degree of scientific certainty, can you say that Muanah Fortune's
3 DNA is not on the glove, would you repeat the same thing? Would
4 you read the statistic?

5 A I would just read the statistic.

6 Q Okay. Within a reasonable degree of scientific certainty
7 would you testify that the likelihood of Polo Salazar being on
8 that glove is significantly more than Muanah Fortune?

9 A It is in the verbal scale range one step higher, which is a
10 very strong support range.

11 Q Is that a yes or a no?

12 A That is a yes.

13 ATTORNEY WEHMAN: Thank you.

14 THE COURT: Yes, ma'am?

15 ATTORNEY CORNWELL: Your Honor, I'm already to make my
16 arguments.

17 THE COURT: I got some questions.

18 **EXAMINATION BY THE COURT**

19 BY THE COURT:

20 Q What does that mean, very strong support? What does that
21 mean?

22 A We have a verbal scale based on our validation, and also
23 based on national standards, to give weight to what that number
24 means. If we were to just report 100, what is that out of? And.

25 So our strongest support range just means that is our

1 strongest confidence level that this scenario, based on the DNA
2 profile, is a true statement versus the other scenario.

3 Q There are no magical words, but the testimony of an expert,
4 under South Carolina law, must communicate to a jury that it is
5 more likely than not that the opinion given by the expert is in
6 effect, if you will.

7 Stated differently, in order for an expert to give an
8 opinion, under South Carolina law, to a jury the Court and the
9 jury must hear words that mean within a reasonable degree of
10 scientific certainty, that being more than enough, that XYZ is
11 so.

12 Is that what you're testifying to with your different
13 propositions?

14 A I believe that is what I'm testifying to. The scientific
15 community does not report to the highest degree of scientific
16 certainty anymore.

17 Q Within a reasonable degree. The highest degree has never
18 been required. A reasonable degree of certainty is all that has
19 been required. And an opinion has never been required to be any
20 more than more likely than not. In other words, something more
21 than equal, it is more likely than not, it is a preponderance.

22 When you give those opinions, those propositions, do you
23 testify within a reasonable degree of scientific certainty, that
24 being more likely than not?

25 A Yes.

1 Q How so?

2 A By representing the number with the verbal equivalent, I can
3 say that if a number is high enough, that it is in our highest
4 support range.

5 Q And highest support range means highest level of confidence?

6 A That is correct.

7 Q Weak range means not so much?

8 A That is correct.

9 Q Okay. So I gather what solicitor was talking about when he
10 was talking about the alleles, that those will appear when you
11 have people, perhaps, that have similar characteristics or are
12 related in some form or fashion. Is that right?

13 A That is correct.

14 Q In other words, I actually, when I practiced law, oh, I
15 don't know, probably a decade or so before you were born, I had
16 identical twins. The question was Who was the daddy. And
17 interestingly enough, they were brothers. And one of the
18 brothers tended to tell young ladies that he was the other
19 brother in case the young lady became pregnant. And I got
20 appointed to that case, and you had to try to use DNA to
21 differentiate between the two.

22 And at that point that was in the olden days and the
23 probability was 99.7 as opposed to 99.5, and that was the way you
24 could differentiate between the two. That, I understand.

25 This, however, is different. And it appears that the

1 comparison is not one individual with another, but you're
2 comparing the DNA only to unknown individuals. Is that right?
3 You're not comparing known sample with known sample; you're
4 comparing the known sample only with the unknown sample?

5 A That is correct.

6 Q All right. Tell me how then, explain to me a little bit
7 about how to factor out the alleles. How do you do that? Tell
8 me about that.

9 A If I may use a visual example, if we say that our evidence
10 DNA profile is represented by colored blocks, let's say that the
11 profile is a green block, a red block and a blue block, and that
12 allele is green, red and blue. We would say that this is a
13 mixture of two just based on that location.

14 So if you were to compare one person, let's say that they
15 have just a red block, meaning they got a red from their mom and
16 a red from their dad, individually, yes, they're included because
17 it's red, blue and green.

18 If we have another person, and they're red and blue, we can
19 compare them individually, and they would also be included.

20 However, when we compare them together, we see that they
21 can't be making up a mixture of two because there's this
22 unaccounted-for green block.

23 So this is why we compare each person individually and then
24 together.

25 THE COURT: All right. Okay. Thank you so much. Hang

1 tight, because there may be something more. All right.

2 MATTERS OF LAW

3 THE COURT: You've got to be a good proponent of the
4 admissibility of it, so you're up.

5 ATTORNEY OSBORNE: Well, I don't know what the actual
6 challenge is.

7 THE COURT: You just think it's admissible. And you want to
8 sit down and let them see why they think ---

9 ATTORNEY OSBORNE: Well, that's what I was hoping, I'd get a
10 free preview of what they're going to say.

11 THE COURT: I understand. All right. And, Mr. Wehman, are
12 you going first?

13 ATTORNEY WEHMAN: I can go first, Judge.

14 THE COURT: Sure.

15 ATTORNEY WEHMAN: I believe my argument overall, my written
16 motion, did not really contemplate the scientific standard as it
17 pertains to STRmix, just the overall science of it.

18 And but I do believe that, in looking at the analysis as to
19 Mr. Fortune independently, when looking at the results for
20 STRmix, I believe that Ms. DeWane testified to a number of things
21 that, I think, I would argue, should keep the evidence, as to him
22 specifically.

23 THE COURT: Okay.

24 ATTORNEY WEHMAN: One, she, at the end there, was speaking
25 as to a reasonable degree of scientific certainty, those last

1 questions I asked her, as to whether it was more likely than not
2 Mr. Salazar as to Mr. Fortune, specifically on 35.5.1. The only
3 time Mr. Fortune's name pops up in this DNA report is on this one
4 piece of evidence. And I believe she testified that it's a yes,
5 that more likely than not we are talking about his DNA than
6 Mr. Fortune's.

7 And then there was some back and forth, I think maybe when
8 she was speaking to Your Honor, about different levels of
9 support, very strong support, strong support. The difference is
10 a level jump. I mean, I think that she maybe even said that if
11 it was very strong support, that would be to the reasonable
12 degree of scientific certainty. Maybe I heard that incorrectly,
13 but that very strong support, that over one million, which
14 everything basically is except for this and maybe two other
15 items. And in this case we're talking about 130,000 as combined
16 to 260 septillion.

17 So based on that, I believe relevance, and the probative
18 versus prejudicial, I believe his name popping up in this DNA
19 report -- Judge, I've been looking at this for two nights now,
20 and I get confused. Just the fact that his name would pop up in
21 this analysis when the likelihood is so low compared to the other
22 DNA profile on that same item of evidence, I believe that it is
23 not probative at all to an issue of fact, which I think we're
24 certainly back to, does this help a jury decide an issue of fact.
25 And I don't believe it does.

1 The fact that he, at some point, could have touched a seat
2 of another person who touched the glove. One, I don't think
3 where the glove comes from. I don't think an orange-and-black
4 glove was identified. I don't want to regurgitate too much of my
5 memo to you, I know that you've read it, and I did it prior.

6 So I would argue, one, it doesn't help the jury determine
7 any issue of fact, and; two, that the significant deviation and
8 statistical likelihood from this one profile between these two
9 should exclude his introduction on that piece of evidence.

10 THE COURT: Got it. Hang tight. All right. What say you
11 now?

12 ATTORNEY OSBORNE: Okay. So as I have read the law and
13 phoned up on counsel last night, it seems to me like counsel
14 adopts two, and so there's a few elements here that counsel gives
15 us some assistance with.

16 First, will assist the trier of facts to understand the
17 evidence or determine a fact at issue, all right. Understanding
18 the evidence, clearly we're going to need an expert for that.
19 That's what she does. Or, determine a fact at issue.

20 As it relates to the DNA evidence in this case, Marcus
21 Porter has already testified that four suspects were masked. We
22 have masks. Some had gloves. We have gloves. The dog attacked
23 them. We have swabs from the dog's mouth. The victim's wallet
24 was taken. We have the wallet. And he said that he knew J.B. to
25 have a pocketknife. Well, we haven't got there yet but, in that

1 navy jumpsuit, they found a pocketknife.

2 And Ms. DeWane is testifying to one of the propositions,
3 which is one of the very likelihood proposition, is that victim's
4 DNA on that knife. Now, are we going to have a witness that's
5 going to come in here and say that J.B.'s, knife? No.

6 But what we are going to have, hopefully, is Ms. DeWane
7 testifying to there's a very strong likelihood that J.B. Weaver's
8 DNA is on that knife compared to an unknown individual's DNA
9 being on that knife. And that's the only way she can report it,
10 because that's what propositions do.

11 THE COURT: And it's in the pocket of a jumpsuit that she
12 takes the powder on.

13 ATTORNEY OSBORNE: So how do I get the jumpsuit back to the
14 car? Well, inside that jumpsuit was a pocketknife, but there was
15 also an orange-and-black glove, the matching orange-and-black
16 glove. We had a right and a left. One was found on the road;
17 the other one was found in the car, at the seat, at the floor
18 where he was sitting, Polo Salazar. So that's how I got that
19 jumpsuit back to the car.

20 You know, it's funny, I can't help but laugh, the defense,
21 in opening -- I got some quotes. Law enforcement jumped to
22 conclusions here. Made the arrest. Law enforcement didn't
23 examine the evidence critical. Come back with a not guilty and
24 tell law enforcement they just need to do more. When they did
25 the more, we don't want to hear that, we don't like that

1 evidence.

2 The absence of evidence is evidence, it shows that they did
3 do more. And the whole argument that was being made in opening
4 is they jumped to conclusions.

5 All right. The expert witness -- two on counsel -- the
6 expert witness is qualified. They stipulated to her
7 qualification as being an expert. The underlying science is
8 reliable.

9 Then we get into the *Jones* factors. The publications and
10 peer reviews of the techniques, she has testified that STRmix has
11 been published and peer-reviewed.

12 The prior application of the type of evidence involved in
13 this case. She says that they use it, FBI uses it, the U.S. Army
14 Investigation Lab, I guess, uses it.

15 Quality control procedures used to ensure the reliability.
16 She was on the validation team.

17 The consistency of the method with recognized scientific
18 laws and procedures. Again, we have the FBI using it. This
19 seems to be the wave of the feature. This is how she sees it.
20 Sixty-nine other labs are doing it. Sixty are in the process of
21 using it.

22 Well, I went ahead and pulled -- well, with the help of
23 Ms. DeWane -- I have the transcript here from Judge Kauch's
24 (phonetic sp) ruling in that case, and he kept it out for 403.
25 It was a very short ruling, if you would like to read it. I'd

1 like to know some of the facts ---

2 THE COURT: What's the name of the case?

3 ATTORNEY OSBORNE: I don't know that it's published. It's
4 *State v. Lennon*.

5 THE COURT: If it's not published, I don't want it.

6 ATTORNEY OSBORNE: Okay. I think that's my argument.

7 ATTORNEY WEHMAN: And, Judge, the case that I was kind of
8 referring to in my memo, I don't know if you pulled it or not, is
9 *State v. Phillips*. And that is a 403 case.

10 THE COURT: That's where I am. That's where I am. That's
11 exactly the case that I'm looking at, *it's State v. Phillips*.

12 ATTORNEY OSBORNE: What's the cite on that?

13 THE COURT: The site on it is 430 South Carolina 319. It
14 was decided June of 2020. I cannot tell, interesting enough in
15 the *State v. Phillip* case, I can't tell, because they're talking
16 about mixtures and they're talking about probabilities. And
17 given the date, this was a case that was tried in -- it was
18 decided in 2020. It was tried, it looks like, what in -- wait a
19 minute now. It was heard in October of 2019. It was filed June
20 of 2020.

21 So I can't tell which system was used.

22 ATTORNEY OSBORNE: And I believe this is the one -- I'm
23 still reading it right now. But I think this is the one that I
24 read a while ago where the real, the real problem, too, not only
25 was -- well, it was one and two, it was 50 percent of the ---

1 THE COURT: That's right.

2 ATTORNEY OSBORNE: And there's really nothing there. And we
3 don't have anything close to that here. But the other issue, if
4 I remember correctly -- and I might be talking about the wrong
5 case, but what I talked about the other day on Friday, too, the
6 solicitor, the solicitor didn't educate, made no attempt to
7 explain the science behind it; just came right out and said we
8 got DNA; we got touch DNA; we got our man.

9 That's not this case. This case, we are explaining the
10 science behind it. And, more importantly, like I said on Friday,
11 and I think it's a big deal in this case, that they didn't jump
12 to conclusions.

13 THE COURT: They talk about the mixture, and they talk about
14 you can't exclude the two folks.

15 ATTORNEY OSBORNE: Yeah. I mean, it was like one of two,
16 50 percent of the population. We're nowhere near that.

17 THE COURT: Okay. I'm just going to hold at this moment.
18 Okay. Do you have anything?

19 ATTORNEY CORNWELL: Your Honor, I've got similar arguments.
20 I believe that we sat here for at least two days now, between
21 Friday and today, talking about this, and we don't understand it,
22 so how is it going to assist the trier of fact in any of that?
23 It's confusion of the issues.

24 So when it comes to is it more prejudicial than probative
25 and is it going to assist the trier of fact, I think the answer

1 is it is more prejudicial than probative; it's confusing of the
2 issues; it does not assist the trier of fact under 702 in
3 assisting, you know, the jury in understanding the evidence.

4 We've all had a confusion of the questions, a confusion of
5 the issues. You've got some of the things in this report that
6 are contradictory in and of itself in the same piece of evidence,
7 and so when you start to put all that together, it confuses the
8 jury. There were gloves, there was a glove in the car. Okay,
9 there was also four people in the car. How is that probative of
10 these are facts of whether a murder occurred?

11 And when you look at the way that they solve it, that's the
12 only other thing we're going to have to get into, is the chain of
13 this, because I believe Ms. DeWane tests the DNA but she's not
14 the serologist. So she's not the person that gets the scraping,
15 that gets the swabs, that can testify how it came about.

16 If we're looking at her report, we're talking about the
17 entire interior of a glove, which I would assume would mean any
18 part that any person touches on the interior. So we don't even
19 know where this DNA is coming from in the interior of the glove.

20 I think that when you look at just the case law, the issues
21 that STRmix had, the human error factor, the unreliability of
22 those numbers and the fact that those numbers can be different
23 from lab to lab, they can be different from sampling to sampling,
24 as Ms. DeWane's were.

25 Her June 2020, June 14th, 2020, numbers on some of these

1 items is different from her May 21st report. And so if you're
2 going to have different numbers in two reports, how are we
3 relying on numbers and how is that assisting the trier of
4 fact in any way? Because as she tried to explain it, and as we
5 cross-examined and did a direct examination, all that's doing is
6 confusing the issues and not assisting the jury in any way based
7 on the evidence.

8 So, I mean, under 401, 403, 702, I think you've got problems
9 with all of it. I mean, there's no question that you've got
10 testimony that maybe an item came out of the car, maybe an item
11 was in the car, but I don't know that anybody's going to be able
12 to say, to a degree of scientific certainty, that it is
13 definitely this person's; definitely not this person's.

14 The proposition, when you add in more analysis and more
15 conclusions, it draws those numbers up so you have to look at
16 disparity rate at that point. I think that it's brought with a
17 couple issues. I think that it's confusing. I'm not -- I'm
18 don't know science, I don't know math or science. I'm an English
19 and a PE; give me English or PE, and I'm good. So the science or
20 the math, it's confusing. And I actually consider myself a
21 layperson when it comes to that part.

22 DNA, I understand. You touch something, blood, sweat, other
23 body functions, DNA. Get it. Touch DNA. And this is where the
24 complexity comes in and where all the argument comes in in touch
25 DNA, because you can say, yeah, someone touched something and

1 they may leave DNA there, but it doesn't tell you anything other
2 than at some point someone touched it. It doesn't say when they
3 were doing it, how they were doing it, what part of any of that.

4 And so when it comes to where we're at now, as a layperson
5 in science stuff, I think DNA might be there. Who's is it? You
6 don't know. And then you try to explain to me it might be this
7 person based on this ratio, but it might be this person, but it's
8 possible that if you put these two people together versus for
9 unrelated people it's this, I don't see how that assists the
10 trier of fact in any way, and I feel like it confuses the issues.
11 I'm confused.

12 And hopefully the jury is smarter than I am, but it's just,
13 I don't think that it's what the intent of the rules of evidence
14 are in assisting the trier of fact in understanding the evidence.

15 And for that reason, I think it should be excluded in its
16 entirety.

17 THE COURT: Okay. Yes, sir?

18 ATTORNEY OSBORNE: Just, I mean, they made it an issue, they
19 made it an issue already. It's an issue in every case. Was DNA
20 done? Did law enforcement jump to conclusions? That was the
21 entire argument in the opening.

22 ATTORNEY CORNWELL: I didn't say anything about DNA in my
23 opening.

24 ATTORNEY OSBORNE: Jumping to conclusions means not doing a
25 thorough investigation. Well, that's what they did, they did a

1 thorough investigation. Even if that evidence didn't implicate
2 either one of those defendants, we'd still want to introduce it.
3 The absence of evidence is evidence, it's evidence of a complete
4 investigation.

5 And if we're going to -- I don't think it's confusing.
6 That's exactly why we have an expert up here, to explain it. She
7 can explain the likelihood ratios and how she came about doing
8 those. That science has been validated. I think we've met
9 counsel, we've met the factors under *Jones*.

10 THE COURT: Okay. Now tell me when you intend to call this
11 witness if this witness is to be allowed? Later on?

12 ATTORNEY OSBORNE: I caught a couple audibles here. Give me
13 a second.

14 THE COURT: Sure.

15 ATTORNEY OSBORNE: I can call Swibaker up next. And then
16 after that, I was going to get in the crime scene.

17 THE COURT: Okay. Okay. All right. All right. I can say
18 this. And I want you to do this. I'm interested to know the
19 answer to this. I do not want this expert testifying to any
20 opinion that is not held within a reasonable degree of scientific
21 certainty, period.

22 And she's been wonderfully clear about that that there is a
23 level, and that's why they have the chart, the very likely, or we
24 believe this very strongly; we believe this strongly; ehh, this
25 is pretty weak.

1 In other words, if the opinion's not held within a
2 reasonable degree of certainty, I do not, I don't want it, I
3 don't want it presented to the jury. I don't want the opinion
4 presented to the jury when the mixture, when the numbers are
5 larger, when they're together, when it doesn't really mean what
6 it appears to mean. I don't want that before the jury, I can
7 tell you that. That's out. That is confusing and misleading.
8 Do you understand what I'm saying?

9 ATTORNEY OSBORNE: I think I do, Judge.

10 THE COURT: I don't think there was but the one instance of
11 that.

12 ATTORNEY OSBORNE: Yeah. And to be perfectly frank with
13 you, my thought was I didn't want to get into that, either. I
14 wanted to get into this -- because I think what -- Ms. DeWane and
15 I talked quite a bit about this. I think what's the best
16 presentation is, when you have the multiple mixtures, the first
17 thing they do is they look at the individual standards, the known
18 standards, and they compare. And many times that's your most
19 accurate representations.

20 THE COURT: Right. And particularly if there's exclusion of
21 the defendants, that opinion is held to more likely than not, I,
22 clearly, obviously that's appropriate to do, so I want that.

23 Cause there was some other -- I understand you've got lots
24 of variations. That's, particularly as we begin to learn, we
25 being -- you've been, you had this in your wheelhouse quite some

1 time. It's particularly, added on for the year of COVID, this is
2 fairly new for some of us trial judges. So that's what I want.

3 If she doesn't hold the opinion to within a reasonable
4 degree of scientific certainty and it's on that chart -- now, she
5 can call it what it's called on the chart.

6 ATTORNEY OSBORNE: Yes, ma'am.

7 THE COURT: I don't care. There are no magical words, are
8 no magical words. And if she wants to say we believe that to be
9 extremely, strongly, that says to me, within a reasonable degree
10 of scientific certainty, more likely than not. Beyond it. Yes.

11 ATTORNEY OSBORNE: And what I will do, Judge, out of an
12 abundance of caution, I'll shoot them an email on a proposition
13 to the SLED items, and cc Ms. DeWane in it, and we're all on the
14 same page what's coming in.

15 THE COURT: Yep. And then if we need to, we'll look it up.
16 With that, I think it will keep out, I think, the 403 objection
17 that you all have. So that's where I am with that.

18 ATTORNEY OSBORNE: Thank you, Judge.

19 THE COURT: You have been unbelievably patient with us. I
20 am so grateful, you know. And you've been sitting around all
21 day. You certainly don't look like it.

22 THE WITNESS: Thank you.

23 THE COURT: I really appreciate your patience. I really do.

24 ATTORNEY CORNWELL: Your Honor?

25 THE COURT: Yeah.

1 ATTORNEY CORNWELL: My brain hurts and I'm tired, but I'm
2 also going to have an objection with that now, with the fact that
3 the search warrant issue with the collection of buccal swabs, the
4 DNA, the refusing to comply with the second buccal swab so he
5 doesn't have the second buccal swab in there, because her numbers
6 are different and increasing in some things on re-testing the
7 evidence. So who's to say if she got the actual buccal swab the
8 second time around from this client, that it wouldn't have
9 impacted, particularly the evidence where they're both together.
10 It goes back to the original thing where the search warrant was
11 invalid; you had to get a second sample.

12 We should only be able to look at the report and analysis
13 from the second sample that he did not give, but somehow he's
14 been included into the second sample now. And so I don't know
15 how you get around those issues because you say, Well, we'll just
16 eliminate them completely. Well, then I think, as part of my
17 complete defense, get to say, But you didn't compare this to
18 Muanah Fortune's sample; did you? Well, no, because he didn't
19 give a sample.

20 THE COURT: I thought they used the first one.

21 ATTORNEY OSBORNE: They did. Yeah, they did.

22 THE COURT: Okay. They used the first one.

23 ATTORNEY OSBORNE: And then we got the solution to that.
24 And, really, I think it would be up Muanah how to handle it. We
25 don't talk about the proposition if he doesn't want it in, then

1 we get to the refusal. But if he wants it in -- I don't think
2 we're going to get that proposition in, I think it's too
3 convoluted. I think they're always going to be single source, or
4 a single comparison propositions.

5 ATTORNEY CORNWELL: Yeah, but what happens if he gives the
6 second sample like he's supposed to, and those numbers go up, and
7 now it's both of their DNA on it.

8 THE COURT: That has been analyzed.

9 ATTORNEY OSBORNE: That has been analyzed. That's what she
10 did.

11 ATTORNEY CORNWELL: He hasn't given a second sample so you
12 can't analyze it against the second ---

13 THE COURT: The DNA doesn't change.

14 ATTORNEY CORNWELL: But it does on their other report. The
15 June 14th report has different numbers ---

16 THE COURT: As I understand it, it changes because of the
17 static sample that they are using, which is a known unknown, if
18 you will. I gather there's a bunch of probably basic-training
19 Army, you know, whoever/wherever. For example, Fort Jackson,
20 they're like, Come here, you're going to spit in the cup and
21 we're going to take your DNA and you're going to be an unknown
22 sample; we don't care if you want to do it or not, because you
23 belong to us. I mean, think that's why it's different, because
24 they go grab a bunch this time, and then they go grab a bunch
25 next time. But they're all unknown.

1 I gather that's why there's a little bit of a change. But
2 that goes to weight rather than admissibility.

3 And let me tell you what. If you want to go into whether or
4 not it was he a refusal or not, I'm going to allow that he
5 refused it. Correct. You can go into the specifics if that gets
6 to be relevant, that he wanted to talk to his attorney first,
7 that there was a search warrant and he asked to speak with his
8 lawyer and his lawyer got to him just as soon as she hit the
9 Rocky Mountains, or wherever she was. But I'm not going to
10 allow -- I'm just not going to allow it.

11 A defendant is absolutely, particularly younger defendants,
12 they're entitled to a lawyer to have them say, I'm thinking about
13 what you want to do, but that's where it is. The fact that he
14 was trying to reach out to his lawyer, I'm not about to -- I
15 think that is a Sixth Amendment violation.

16 And if y'all want to get into the specifics, I've got no
17 problem with that. And the jury can decide whether or not the
18 gentlemen refused.

19 But I'm not going to allow that conduct to be wholesale
20 defined as his refusal. You know, there was a concern. It was
21 communicated to Ms. Hubrich. And she, you know, believe it or
22 not, and you know it from before, you're learning it again, you
23 got very little life. So when a lawyer has a little bit of life,
24 I can't, and at times they want to talk to their lawyer, I can't
25 take that way from the lawyer or the client. You know what I'm

1 saying?

2 ATTORNEY CORNWELL: Absolutely. I just wanted to note my
3 objection for the record with regard to my severance motion; to
4 the *Bruton*, all of the ---

5 THE COURT: Absolutely. You're welcome to. If you want to
6 cross-examine on it, knock yourself out. But we're not going to
7 wholesale communicate that to be a refusal. It is what it is.

8 ATTORNEY CORNWELL: And we talked about that during
9 testimony.

10 THE COURT: Am I right about that, Ms. Hubrich? Isn't that
11 your position that occurred?

12 ATTORNEY HUBRICH: I don't know what we're talking about at
13 this point.

14 THE COURT: I'll tell you what we are talking about. We are
15 talking about the collection of the second buccal swab of your
16 client.

17 ATTORNEY HUBRICH: Right.

18 THE COURT: And it was communicated to you that your client
19 was not cooperating, or whatever was communicated ---

20 ATTORNEY HUBRICH: Right.

21 THE COURT: --- because he wanted to talk to his lawyer.

22 ATTORNEY HUBRICH: Right.

23 THE COURT: And you were unable to make that connection
24 because you were with a child on a trip, you were hiking or
25 camping or ---

1 ATTORNEY HUBRICH: Right. Right. So, Judge, if they want
2 to talk about the fact that he refused to comply, then I just get
3 to bring in, No, he didn't, he actually did comply.

4 THE COURT: What I'm telling you guys is, I'm not going to
5 let you characterize it as he refused. It is what it is. You
6 can go through whatever, whatever that conduct was, but you're
7 not going to characterize it. You can do it in closing, but
8 you're not going to characterize it as your cross-examination
9 that he refused to comply.

10 ATTORNEY HUBRICH: Or on direct.

11 THE COURT: Yeah, yeah, yeah. Yeah, yeah. Yeah. I mean,
12 y'all can go into it. You can argue. When you close, I don't
13 care what you argue.

14 ATTORNEY CORNWELL: For purposes of the record, I mean,
15 regardless if DNA comes in or not and we cross that road, I'm
16 going to say, Your Honor, we object to the DNA.

17 THE COURT: I understand. That's fine. You have to.

18 ATTORNEY CORNWELL: But what I would like for the Court and
19 the record to reflect is I'm not going to object and then
20 re-object on two different standards. So when I object to the
21 DNA, I'm objecting to everything that I just said here. Just a
22 continuing objection just so I don't have to keep popping up and
23 having an objection every third sentence, saying ---

24 THE COURT: I know that. But this won't be sufficient when
25 it calls for it. I don't want you to go into that trap.

1 ATTORNEY CORNWELL: Okay.

2 THE COURT: I don't want you to go into it, because it will
3 be a trap for you. Because, as you know, when you have an
4 off-of-record and you come right back into court and then it's
5 presented, your objection's off the record. They certainly
6 apply. But when there's time and there's distance, you've got to
7 make it again.

8 ATTORNEY CORNWELL: Okay. I knew that the Court granted a
9 continuing objection. I'm basically trying to cover the basis on
10 ---

11 THE COURT: We'll see. I mean, I don't care. I mean, I
12 certainly want lawyers to have their objections. I'm not in the
13 business of trying to keep you guys from that.

14 As a matter of fact, I usually tell people, You can't object
15 at this point, you've got to wait. Like, for a charge, this
16 doesn't count now, you've got to do it again. So.

17 ATTORNEY HUBRICH: Judge, may I have 60 seconds just to put
18 my understanding on the record?

19 THE COURT: About what?

20 ATTORNEY HUBRICH: About what's going on here. This is what
21 I understand.

22 THE COURT: Okay, go ahead.

23 ATTORNEY HUBRICH: If Your Honor is denying our motion to
24 suppress, Muanah Fortune is only mentioned one time in that DNA
25 as being any possible contributor, and it's low, and it's on a

1 glove.

2 If Your Honor is finding that that's admissible because it's
3 not more prejudicial than probative, if that's what the state is
4 going to intend, I think he's going to forward us some things
5 about he intends to put that in, if that's the case, then we do
6 not object to them talking about -- if you're going to deny that,
7 that part of our argument, then we don't object to using the
8 second sample, using the first sample in the second testing.
9 We're not objecting to that.

10 ATTORNEY OSBORNE: I thought we might get there. I
11 understand, I'm tracking.

12 ATTORNEY HUBRICH: Does that make sense? Because I don't
13 want them to say he refused to comply. I just don't want them
14 commenting on that.

15 ATTORNEY OSBORNE: DNA doesn't hurt him.

16 ATTORNEY HUBRICH: So if you're going to deny us challenging
17 it just on the more prejudicial than probative, then we're not
18 objecting to it on the invalid search warrant issue. Does that
19 make sense?

20 THE COURT: Uh-huh.

21 ATTORNEY HUBRICH: That's where we are.

22 THE COURT: I don't know what this is going to be, quite
23 frankly, about the hundred thousand, I don't know what that's
24 going to be, because I don't. Because she's got to be
25 comfortable saying that the hundred thousand whatever it is, as

1 opposed to the numbers that don't exist except in DNA analysis --
2 you may be getting into it with a federal judge one day, but not
3 today. It's all good. Those are the only place I know in life
4 where those sorts of numbers are routinely batted about. But I
5 don't know where she is on a hundred thousand. But it sure is
6 different than a sextillion or an octillion, whatever. It's a
7 lot different. But you'll figure it on.

8 Got to be more likely than not. That's all I care about.
9 And then we'll see what we have. Great? Yes? Thank you.

10 ATTORNEY HUBRICH: 9:30?

11 THE COURT: Bye. 9:30.

12 (WHEREUPON, court recessed for the day at 6:37 p.m. and
13 reconvened at 10:10 a.m. on Friday, May 14, 2021.)

14 THE COURT: Anything from the state?

15 ATTORNEY OSBORNE: Yes, Judge. Can we approach real quick?

16 THE COURT: Sure.

17 (WHEREUPON, an off-the-record discussion is held at
18 sidebar.)

19 (WHEREUPON, Court's Exhibit 4 is marked for identification.)

20 THE COURT: There's another note. Here it is. Y'all just
21 take a look at it. You don't have to look at it right now. It's
22 just somebody's got a job interview next week, one of the jurors,
23 and they would like to be off next Wednesday. It's with Clemson.
24 And I'm going to tell him, we'll see.

25 (WHEREUPON, an off-the-record discussion is held at

1 sidebar.)

2 THE COURT: Anything from the state before we bring the jury
3 out?

4 ATTORNEY OSBORNE: No, Your Honor.

5 THE COURT: Mr. Fortune; Mr. Salazar?

6 ATTORNEY CORNWELL: No, Your Honor.

7 ATTORNEY HUBRICH: No, ma'am.

8 THE COURT: Bring the jury out.

9 (WHEREUPON, Court's Exhibit 5 is marked for identification.)

10 (WHEREUPON, the jury is seated in the courtroom at
11 10:22 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.

13 (Jury Responds.)

14 THE COURT: And I have the note. And let me, let me let you
15 know. I've got to understand the need for next week, but bear
16 with me just a little bit longer and I can let you know.

17 All right. Ladies and gentlemen, we can now continue with
18 the state's case.

19 Please call your next witness.

20 ATTORNEY GLOVER: The state calls Vera Martinez.

21 CLERK OF COURT: If you'll raise your right hand, and state
22 your full name for the record.

23 THE WITNESS: Vera Martinez.
24
25

1 VERA MARTINEZ,
2 having first been duly sworn, was examined and testified as
3 follows:

4 THE COURT: When you are seated, can you state your full
5 name for the record.

6 THE WITNESS: My name is Vera Martinez.

7 THE COURT: Spell your last name for us.

8 THE WITNESS: M-a-r-t-i-n-e-s.

9 THE COURT: Your witness.

10 ATTORNEY GLOVER: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY GLOVER:

13 Q Good morning, Ms. Martinez.

14 A Good morning.

15 Q How are you?

16 A I'm good. How are you?

17 Q Good. Where are you currently employed?

18 A I am currently employed at the South Carolina Law
19 Enforcement Division, also known as SLED.

20 Q How long have you employed with SLED?

21 A About 18 months.

22 Q What is your job with SLED?

23 A I am a forensic technician in evidence control.

24 Q What are your duties as a forensic technician?

25 A I accept and log in evidence submitted by other agencies,

1 outside agencies, along with SLED, that has been submitted for
2 analysis; log it in; store it in our evidence locker; and then
3 disperse it to analysts and scientists upstairs when requested.

4 Q When you come in possession of evidence do you check it to
5 ensure it has been properly sealed and packaged correctly?

6 A Yes, ma'am.

7 Q Now let's talk about the evidence in this case. Your SLED
8 number is L19-02-418.

9 A Yes.

10 Q On February 26th of 2020 did you come into possession of
11 samples from SLED serology?

12 A Yes, ma'am.

13 Q I'm showing you now what has been marked as State's 172 for
14 ID purposes only.

15 ATTORNEY GLOVER: Your Honor, may I approach the witness?

16 THE COURT: Yes.

17 ATTORNEY GLOVER: Thank you.

18 Q Do you recognize this?

19 A I recognize the packaging. Yes.

20 Q And what is it?

21 A It's a heat-sealed envelope that was submitted by the
22 agency, with contents inside.

23 Q And if you could remove the contents so that we could
24 discuss each.

25 A Oh, sure.

1 Q And you may need your notes for this, Agent Martinez.

2 A Sure.

3 Q But if you could walk us through how you came into
4 possession with each and what you did with them. So we'll start
5 first with the swabs from the ski mask. And that would be 34.1.

6 A Okay. Okay. These items here, when we get packages in, the
7 label indicates that it's a container, which means that there are
8 multiple submissions inside the envelope. I don't have access to
9 each individual piece when we get it to log it in.

10 It's included inside the contents, inside the envelope, and
11 it's a said-to-contain basis. So I don't actually physically
12 open the heat seals when we get them to log in. We just see
13 what's inside and check as well as we can, and then log it in.
14 So I don't have access to the individual pieces in.

15 Q And while we're talking about the individual pieces, do they
16 appear to be tampered in any way?

17 A No, ma'am.

18 Q When you came into possession of these, had they been
19 tampered in any way?

20 A No, ma'am.

21 Q If they had been tampered in any way, would you have taken
22 possession?

23 A It would have been noted and the supervisor would have been
24 contacted. It would not have been logged in until it was
25 addressed.

1 Q And while in your possession did you alter, tamper or damage
2 these in any way?

3 A No, ma'am.

4 Q So that we can establish our chain can we talk about -- and
5 you may need your notes to refresh yourself -- what you did when
6 you came into possession with the ski mask, swabs from the ski
7 mask. Can you walk us through what you did with each and how you
8 came into possession.

9 A Well, the items here were contained in a container, so I
10 received ---

11 Q And if you could use the microphone so all the jury can hear
12 you.

13 A Sure.

14 THE COURT: And you don't really have the benefit of it, so
15 you've got to remember to keep your volume up.

16 ATTORNEY GLOVER: Yes, Your Honor.

17 THE COURT: It's just the shields. You know, it really does
18 buffer the sound.

19 ATTORNEY GLOVER: Thank you, Your Honor.

20 THE COURT: And I want to hear you.

21 ATTORNEY GLOVER: Yes, ma'am.

22 A So when we receive a package in like this that has multiple
23 items, the packaging, or the contents, are sealed inside. We
24 verify, when we receive the package, that it is sealed and the
25 items inside -- it's a said-to-contain basis on their log-in

1 sheet. That gets logged in as a container, which is what this is
2 by looking at our computer lab, or our lab sticker. And this, as
3 this, as a whole, gets logged in, gets put on the shelf.

4 And then once it's assigned to the analyst or scientist
5 upstairs, they're the ones that open the package to touch
6 everything individually inside.

7 Q Is it safe to assume that you received each of these samples
8 from a shelf in the evidence room at SLED?

9 A In one whole package, yes. And it's all on a
10 said-to-contain basis based on their pre-log, the agency's
11 pre-log, as to what's inside the envelope.

12 Q And what did you do with the evidence when it came into your
13 possession?

14 A Once I log it in, it gets assigned to a specific shelf. If
15 it's, if they're requesting a DNA analysis, or analysis on it, it
16 gets put in on a DNA shelf, logged into the computer, and it
17 waits there until somebody calls for it for analysis.

18 Q And that's the only time you came in contact with the
19 serology?

20 A Yes, ma'am.

21 ATTORNEY GLOVER: Beg the Court's indulgence.

22 THE COURT: All right.

23 Q So, Ms. Martinez, everything that came in through, serology
24 is all inside, Of State's 172, in that package that you just ---

25 A Everything here that you handed me was, yes, inside that

1 package.

2 Q Perfect. Thank you so much, Ms. Martinez. Please answer
3 any questions the defense may have.

4 A Thank you.

5 THE COURT: Cross-examination?

6 ATTORNEY WEHMAN: I have no questions for this witness.

7 THE COURT: All right. Cross-examination?

8 **CROSS-EXAMINATION**

9 BY ATTORNEY CORNWELL:

10 Q Ms. Martinez, you're not saying that you collected the
11 buccal swabs; correct?

12 A No, I did not connect them.

13 Q And you don't know where they came from, only what's told to
14 you on a piece of paper?

15 A Correct.

16 Q You just take what's on that piece of paper, you make sure
17 that it's properly sealed, and you log into contain year?

18 A Yes, ma'am. Everything's a said-to-contain basis.

19 Q Thank you.

20 A You're welcome.

21 THE COURT: Any redirect?

22 ATTORNEY GLOVER: No, Your Honor.

23 THE COURT: Very well. All right. Is this witness feel to
24 leave? Any objection?

25 ATTORNEY HUBRICH: None.

1 ATTORNEY CORNWELL: No, Your Honor.

2 THE COURT: Thank you very much.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you so much.

5 All right. Call your next witness, please.

6 ATTORNEY GLOVER: Your Honor, at this point in time the
7 state would like to call Bethany Davidson.

8 CLERK OF COURT: If you'd please raise your right hand, and
9 state your full name for the record, please.

10 THE WITNESS: Bethany Davidson.

11 BETHANY DAVIDSON,
12 having first been duly sworn by an official of the Clerk of
13 Court, was examined and testified as follows:

14 THE COURT: And if you would state your full name for the
15 record, and spell your last name.

16 THE WITNESS: Bethany Davidson, D-a-v-i-d-s-o-n.

17 THE COURT: Your witness.

18 ATTORNEY GLOVER: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY GLOVER:

21 Q Ms. Davidson, where are you currently employed?

22 A The South Carolina Law Enforcement Division, also known as
23 SLED.

24 Q How long have you been employed with SLED?

25 A Approximately four years. I started July of 2017.

1 Q What is your job at SLED?

2 A I am currently the coordinator for our training unit.

3 Q What duties does that entail?

4 A I keep track of all of our tray requests, and I also keep
5 track of our training for our sworn and non-sworn personnel in
6 accordance to the South Carolina Criminal Justice Academy.

7 Q Have you worked in any other units at SLED?

8 A Yes. When I started in July 2017 I was an admin. specialist
9 for our NICS Unit. And then I was a forensic technician in our
10 evidence control department.

11 Q In January of 2019 what was your occupation with SLED?

12 A I would have been a forensic technician in our evidence
13 control department.

14 Q As a forensic technician, did part of your duties include
15 handling evidence or transferring evidence?

16 A Yes.

17 Q When you came into possession with evidence did you check it
18 to ensure it had been properly sealed and packaged correctly?

19 A That is correct.

20 Q Now let's talk about the evidence in this case, your SLED
21 number L19-02-418.

22 A Do you mind if I reference my notes?

23 Q Not at all.

24 A Okay. What was the lot number again? I'm sorry?

25 Q L19-02-418.

1 A Yes, that's correct.

2 Q On February 8th of 2019 did you come into possession of
3 bullet casings?

4 A Yes.

5 Q I'm showing you what has been marked as State's Exhibit 17
6 for ID purposes.

7 ATTORNEY GLOVER: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 Q Do you recognize this?

10 A I do.

11 Q What are they?

12 A This would have been container C, which contained items 15
13 through 24, which is what would have been sent to firearms.

14 Q And just for the jury's knowledge, 15 through 24, are they
15 all bullet casings?

16 A Yes, that's correct.

17 Q And those bullet casings, 15 through 24, SLED's evidence, is
18 all the inside of State's 17?

19 A Yes.

20 Q And who gave this evidence to you?

21 A I actually retrieved this from our secure evidence room from
22 the firearms evidence intake storage bin.

23 Q And what did you do with this evidence once you came into
24 possession of it?

25 A I retrieved this evidence because our forensic scientist,

1 Chad Smith, requested it. So I would have retrieved it from that
2 firearms evidence location and transferred it to our forensic
3 scientist, Chad Smith.

4 Q When you came into possession of these items did they appear
5 to be tampered with or damaged in any way?

6 A No, they were not.

7 Q If these items had appeared to have been tampered with or
8 damaged in any way would you have taken possession?

9 A Yes. Per our laboratory policy, if the evidence appeared to
10 be tampered with or unsealed, we would have made documentation of
11 that, we would have attached it to our file and made notes of
12 what appeared to be wrong with it.

13 Q While in your possession, did you alter, tamper or damage
14 these items in any way?

15 A No, I did not.

16 Q On February 8th of 2019 did you also come into possession of
17 two additional fire projectiles taken from the incident location?

18 A Yes, I did.

19 Q I'm showing you now what has been marked as State's
20 Exhibit 18.

21 ATTORNEY GLOVER: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 Q Do you recognize this?

24 A I do.

25 Q And what is it?

1 A This is our container A, which would be items 6 and 7, which
2 is described to be fired bullets, as spent projectiles located in
3 the living room.

4 Q And you came into possession of both of these on
5 February 8th of 2019?

6 A Yes. I would have retrieved this in this sealed envelope.

7 Q When you came into possession, did they appear to be altered
8 or tampered or damaged in any way?

9 A No, they did not.

10 Q If these items had appeared to be altered or tampered or
11 damaged in any way would you have taken possession?

12 A I would have taken possession, but we would have done the
13 same process of making documentation of what appeared to be wrong
14 with the evidence.

15 Q While in your possession, did you alter, tamper or damage
16 these in any way?

17 A No, I did not.

18 ATTORNEY GLOVER: Beg the Court's indulgence.

19 THE COURT: Yes.

20 Q And just for the jury's knowledge -- and you if you need
21 State's Exhibit 17, please let me know -- but I wanted make sure
22 that State's 17 also contains SLED items 18 through 24, which
23 would have been 9-millimeter bullet casings?

24 A Yes, it would have been. Yes. Items 15, 16, 17, 18, 19,
25 20, 21, 22, 23 and 24.

1 Q Thank you, Ms. Davidson. Please answer any questions the
2 defense may have.

3 A Okay.

4 THE COURT: Cross-examination on behalf of Mr. Fortune?

5 ATTORNEY WEHMAN: No questions for this witness.

6 THE COURT: Oh behalf of Mr. Salazar?

7 ATTORNEY CORNWELL: Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 BY ATTORNEY CORNWELL:

10 Q Ms. Davidson, when you received these items, you're not
11 saying that you collected them?

12 A No, ma'am, I did not collect them.

13 Q So when you indicate that these are shell casings from the
14 living room, that's just what is written on your paper? You
15 don't know that for a fact?

16 A That's correct. It's described as.

17 Q And so you're not testifying that you know where these came
18 from or what happened. You're just saying you received them in a
19 package, the package was sealed and identified?

20 A That's correct.

21 ATTORNEY CORNWELL: Thank you.

22 THE COURT: All right. Any redirect?

23 ATTORNEY GLOVER: No, Your Honor.

24 THE COURT: All right. Is this witness free to leave? Any
25 objection?

1 ATTORNEY HUBRICH: None.

2 ATTORNEY CORNWELL: No, Your Honor.

3 THE COURT: Thank you, you are free to go.

4 Call your next witness, please.

5 ATTORNEY GLOVER: Your Honor, at this point in time the
6 state would like to call Jackie Davis.

7 JACKIE DAVIS,

8 having first been duly sworn by an official of the Clerk of
9 Court, was examined and testified as follows:

10 ATTORNEY OSBORNE: Your Honor, may we approach?

11 THE COURT: Of course.

12 (WHEREUPON, an off-the-record discussion is held at
13 sidebar.)

14 THE COURT: Ladies and gentlemen, I need to -- I did not
15 ask -- those of you who are on the jury, when we were in the
16 qualification process I did not ask you if you knew Ms. Davis.
17 So I'm going to ask our juror members, are you related by blood
18 or marriage or acquainted with Ms. Jackie Davis? And here she
19 is, so you can put a face with the name. If you're related by
20 blood or marriage or acquainted with Ms. Jackie Davis, will you
21 please stand at this time.

22 (No response.)

23 THE COURT: And I find no one standing. Thank you all so
24 much. Ms. Davis is part of the chain of custody which was
25 communicated, as I understand it, to counsel.

1 And I will hear from counsel in just a little bit just to
2 put it on the record. But, I'm going to allow Ms. Davis to
3 testify. And without further ado, Ms. Glover.

4 ATTORNEY GLOVER: Thank you, Your Honor.

5 THE COURT: Yes.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY GLOVER:

8 Q Ms. Davis, where are you currently employed?

9 A South Carolina Law Enforcement Division, also known as SLED.

10 Q And how long have you been employed with SLED?

11 A Since February of 2015.

12 Q Which unit were you employed in in 2019?

13 A I was a forensic technician in the lab.

14 Q What duties did evidence control entail?

15 A We logged in evidence, and then put it in the evidence room.

16 Q When you came into possession of evidence did you check it
17 to ensure it had been properly sealed and packaged?

18 A Yes.

19 Q Do you recall handling evidence in this case?

20 A I do.

21 Q And that is SLED no. L19-02-18?

22 A 2-418.

23 Q Yes, ma'am, 2-418?

24 A Yes. Yes.

25 Q Thank you for that correction. Now let's talk about the

1 evidence in this case. On May 15th of 2019 did you come into
2 possession of what's marked as State's 187, which would have been
3 three projectiles?

4 A Can you tell me our item number? That's how I have it
5 listed.

6 Q Yes, ma'am. So the first piece of evidence would be SLED
7 41, 42 and 43.

8 A I did.

9 Q The next piece of evidence would be 40.

10 A Yes, I did.

11 Q The next piece of evidence would be 38.

12 A That was me, as well.

13 Q And the next piece of evidence would be 45.

14 A Yes.

15 (WHEREUPON, State's Exhibit 82 is marked for
16 identification.)

17 Q Just to make sure that your notes reflect what I have in my
18 hand, I'm going to show you what's been marked as State's 187,
19 State's 188, State's 186 and State's 82.

20 ATTORNEY GLOVER: Your Honor, may he I approach the witness?

21 THE COURT: You may.

22 Q What did you do with this evidence once you came into
23 possession of it?

24 A I pulled it out of the locker and I checked to make sure it
25 was correctly sealed, initialed and dated. And it was. And then

1 I took the packing slip and I logged it in, and I gave each piece
2 of evidence a unique lab number that goes with this cases.

3 Once I logged it in and gave it a lab number, I then
4 transferred it to the secure evidence room, and it stayed there
5 until the analyst requested it.

6 Q When you came into possession of these items, did they
7 appear to be damaged, altered or tampered in any way?

8 A No.

9 Q If these items had been damaged, tampered or altered in any
10 way, would you have taken possession of them?

11 A We would have taken possession of them. We would have made
12 note of it and taken pictures. But if it looked like it had been
13 tampered with, we would have called them back and said, You've
14 got to come fix this.

15 Q While in your possession did you tamper, alter or damage
16 these items in any way?

17 A I did not.

18 (WHEREUPON, State's Exhibits 19 and 20 are marked for
19 identification.)

20 Q On March 12th of 2019 did you come into possession what's
21 marked as State's 19, which would have been SLED 12 and SLED 13?

22 A I did.

23 Q Did you come in contact with State's 20, which would have
24 been SLED 14?

25 A Yes.

1 Q And how about --

2 ATTORNEY GLOVER: Beg the Court's indulgence.

3 Q And State's 206, which would be SLED 32?

4 ATTORNEY GLOVER: Your Honor, may I approach the witness?

5 THE COURT: Yes.

6 A Sorry. We go by the lab numbers, and that's what I'm
7 looking at. Okay.

8 Q And just for the jury's knowledge, without telling us
9 exactly what it is, can you ensure that your numbers correlate?

10 A They do. That's what I was looking at. The lab number that
11 put I put on that piece of evidence is what correlates with my
12 chain of custody.

13 Q And what did you do with this evidence once you came into
14 possession of it?

15 A Same thing. I checked to make sure it was properly sealed,
16 initialed and dated, and it was. And I logged it in, gave it a
17 unique lab number and transferred it to evidence room.

18 Q And when did you do this?

19 A According to my chain of custody, March the 12th, 2019, at
20 9:59 in the morning.

21 Q When you came into possession of these items did they appear
22 to be tampered or damaged in any way?

23 A No.

24 Q While in your possession did you tamper, alter or damage
25 them in any way?

1 A I did not.

2 (WHEREUPON, State's Exhibit 24 is marked for
3 identification.)

4 Q On May 15th of 2019 did you have the opportunity to come
5 into possession of, I have, State's 24, which would be -- could
6 you tell me which SLED number that is for you?

7 ATTORNEY GLOVER: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 ATTORNEY GLOVER: Thank you.

10 A No. 44. Okay, yes.

11 Q I also have State's 10. Could you tell me which SLED item
12 this would have been for you?

13 A Container G.

14 Q I have State's 11. Could you tell me which SLED evidence
15 number this would have been for you?

16 A That looks like it was taken out of the original container.
17 Is there a yellow lab number on that?

18 Q I'll let you ---

19 A Okay. Because when we get them they are sealed, initialed
20 and dated already. This probably came in another container
21 because I personally would have never taken this, because it's
22 opened right here. So this was in a different container, and
23 it's probably already been taken out of one of those boxes.

24 But I can look on my chain and see. This looks like a black
25 jumpsuit. I can look and see which container it came out of.

1 Q Okay. And could you take a look inside the bag to make sure
2 it's what you ---

3 A We take it on said-to-contain basis. So whoever from the
4 agency brought it in, this person was very good at putting the
5 evidence in a container, sealing it and initialing and dating it,
6 just like this was.

7 But the larger pieces of items, they would either put them
8 in a box or something and seal it, because I would have never
9 taken it like that because it could have been damaged. So that
10 was sealed, initialed and dated, and that's how we took it.

11 I've never seen that; don't know what's in it; we take it on
12 a said-to-contain. So whatever he said was in that box, that's
13 what I believe it to be.

14 Q And for the jury, you would have never taken anything like
15 this?

16 A No.

17 Q So when you get it it is typically closed like this?

18 A Correct.

19 Q So all you do is -- once you get the evidence -- I'll make
20 sure you testify -- once you receive this, what do you do with
21 it?

22 A Once I receive it -- may I see this?

23 Q Yes, ma'am.

24 A I look and I make sure this is sealed, nothing's been
25 tampered with. And it's even sealed here. The only reason we

1 don't take in paper bags is because they can rip.

2 So if this is sealed, initialed and dated I would have put
3 it in another bag, done it, sealed it, initialed and dated it,
4 and made a note. Because this is not incorrect. I then log it
5 in and give it this unique lab number.

6 So as in the same case as that, I have no idea what is in
7 there. We take it on a said-to-contain. They said what's in
8 there, that's fine. I don't open the evidence and I don't touch
9 it.

10 So that's why I don't know. I go by the lab numbers that we
11 give it.

12 Q Yes, ma'am, that makes perfect sense. If I could follow up
13 a bit, do you have notes for SLED 35?

14 A I do. Item 35, which was placed in container G, which means
15 there was more than one item, but it was sealed, initial and
16 dated, and then placed in a container, okay.

17 But item 35, according to the chain, says it is a sealed
18 paper bag containing clothing described as a black jumpsuit.

19 Q Okay. And you said it was described as clothing, described
20 as a black jumpsuit?

21 A Correct.

22 Q And just for the jury's knowledge -- and we are going to get
23 into the complete chain of the black jumpsuit. You can only
24 testify as to what you had the opportunity to ---

25 ATTORNEY WEHMAN: Objection, Judge. Leading.

1 ATTORNEY GLOVER: I'll rephrase the question, Your Honor.

2 THE COURT: All right. Thank you.

3 Q Is it true that you can only testify as to what you came in
4 contact with?

5 A That is true.

6 ATTORNEY GLOVER: Beg the Court's indulgence.

7 THE COURT: All right.

8 Q Going back to this, did you make any notations that this had
9 been tampered with or damaged in any way?

10 A No. And I know this is where it gets confusing. When the
11 officer brings in more than one piece of evidence that goes to
12 the same department, and they've been at SLED, they know, they
13 will seal it, initial and date it and put it in a box. And then
14 they will seal, initial and date that box, and then they will
15 write what is inside that box.

16 So when I pull it out of the locker I'm going, Oh, this is
17 blah-blah-blah-blah-blah, according to what they told me, is in
18 there. Does that make sense?

19 Q Perfect sense. So when you came in contact with it it had
20 not been altered with or tampered in any way?

21 ATTORNEY CORNWELL: Your Honor, I'm going to make an
22 objection at this point. The witness has testified that she has
23 never come into contact with this piece of evidence, so I don't
24 know why we're continuing on this path of what she's done with
25 this piece of evidence.

1 ATTORNEY GLOVER: Your Honor, the witness testified that she
2 did come in contact with a black jumpsuit. She is just the first
3 part of the chain. We plan on rectifying the rest of the chain
4 through later testimony later in the week of the trial.

5 We're just asking her to testify that at some point in time
6 she did come in contact with State's Exhibit 11. And she just
7 testified that she did.

8 THE COURT: All right. Very well.

9 ATTORNEY CORNWELL: Your Honor, may we approach?

10 THE COURT: Yes.

11 (WHEREUPON, an off-the-record discussion is held at
12 sidebar.)

13 Q Ms. Davis, if you could, based on your notes, you came in
14 contact with a box. Is that correct?

15 A Yes.

16 Q When you received your SLED 35, it was a box?

17 A Just a minute. Correct.

18 Q Did you have anything in your notes that may have been
19 notated as to what was in that box before you transferred it?

20 A Yes. They give us a packing slip. Each agency pre-logs
21 their stuff. And they have to tell us what they are submitting.
22 And then we double-check. So, like I said, they put it in a box.

23 And let's say, on their packing slip, it would have been
24 items 1, 2 and 3. I would look at all the evidence that they
25 gave us and look and make sure everything was there. And then I

1 could see this is what he said was in that box. And I took it on
2 a said-to-contain basis.

3 Q So once you received the box, it was not tampered?

4 A No.

5 Q You didn't tamper with it?

6 A That box was sealed, initialed and dated, or I would have
7 called him back and said, I can't accept this. But it was,
8 because there's no notation that he came back.

9 Q Thank you, Ms. Davis.

10 A Uh-huh.

11 (WHEREUPON, State's Exhibit 110 is marked for
12 identification.)

13 Q I'm showing you now what has been marked as State's Exhibit
14 10 -- State's Exhibit 110. This would be your SLED 36. And I
15 just want you to clarify that this is State's Exhibit 110.

16 A Yes.

17 Q And just for the jury's knowledge, what is this for your
18 SLED number?

19 A That's 36.

20 (WHEREUPON, State's Exhibit 109 is marked for
21 identification.)

22 Q And I'm also going to show you what has been marked as
23 State's Exhibit 109. And for the jury's knowledge, what SLED
24 number would this have been for you?

25 A That was also in a container, and it's J.

1 Q How about the SLED number?

2 A Oh. It's 19-02-418, no. 37.

3 Q And if you need to take a look at them, please free to. Did
4 you come into possession of State's 109 and State's 110?

5 A I did.

6 Q And what did you do with this evidence when you came into
7 possession of it?

8 A Again, I made sure it was securely sealed, initialed and
9 dated, gave it a unique lab number, and transferred it to the
10 evidence room.

11 Q And when did you do this?

12 A Seems to be May 29th.

13 Q When you came into possession of these items did they appear
14 to be tampered with, damaged or altered in any way?

15 A No.

16 Q Did you tamper with, alter or damage them in any way?

17 A I did not.

18 Q Did you have the opportunity to take possession of each of
19 these items again at a later date?

20 A All of them, or just particular ones?

21 Q Just particular ones. And if I could call your attention
22 back to State's 24, which would have been your SLED 44.

23 A I did. I logged this in. And then the analyst requested
24 it. And I actually pulled it off of the shelf and transferred it
25 to her so she could work it. Working it means she could actually

1 analyze it.

2 Q And which date would that have been?

3 A 6/4/2019 I pulled it off of the shelf and gave it to the
4 analyst.

5 Q And is that also the same for State's 10, which would have
6 been SLED 34?

7 A Yes.

8 Q Would that have been the same for State's 11, which is
9 SLED 35?

10 A That's correct.

11 Q State's 110, which is SLED 36?

12 A Yes.

13 Q State's 109, which is SLED 37?

14 A Yes.

15 Q And just for the record, are you an analyst of any sort?

16 A No.

17 Q All you do is come in contact with evidence?

18 A All we do is log it in, make sure it's sealed properly, and
19 transfer it to the evidence room. And then we will transfer it
20 to the analysts when they request it.

21 Q And of the items we discussed today, were any of them
22 tampered or damaged in any way when you came in contact with
23 them?

24 A No.

25 Q And did you alter, tamper or damage them in any way?

1 A No.

2 ATTORNEY GLOVER: Beg the Court's indulgence.

3 THE COURT: All right.

4 Q Thank you. At this point in time could you answer any
5 questions the defense may have.

6 A Yes.

7 THE COURT: All right. On behalf of Mr. Fortune?

8 ATTORNEY WEHMAN: Thank you, Judge.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY WEHMAN:

11 Q Morning.

12 A Morning.

13 Q Just to be clear --

14 ATTORNEY WEHMAN: May I approach, Judge?

15 THE COURT: You may.

16 Q State's 11, this right here ---

17 A Okay.

18 Q --- have you ever seen this before today?

19 A No. It was in a box. But we take it on a said-to-contain.

20 Q I understand. But this is the first time you've seen that?

21 A Uh-huh.

22 Q And that is what you identified as tampered with; correct?

23 A I said I wouldn't have taken it if it came in that way. And
24 that's not the way it came in.

25 Q If it had come in that way, you would identify that as

1 tampered with, if it came to you like that?

2 A I don't know if it's tampered. It's not sealed correctly.

3 Q Okay. What would tampered be?

4 A Tampered would be if it was hanging out and you could tell
5 damage could have been done to it, like latent prints. Like, it
6 would have been altered. If I grabbed that right now, I'm not
7 altering anything to that. It is still completely covered. It's
8 not sealed. Therefore, it can't come into the lab.

9 Q So you wouldn't have taken it?

10 A Oh, no.

11 Q Any of these items that you've been shown, would it be the
12 same answer, this is the first time you have seen every
13 individual item?

14 A Yes.

15 Q And I believe you testified to -- just to be clear, we've
16 gone through a number, and I can go through individually, but if
17 we can group together, I'm sure you'd rather. Each one of these
18 items you retrieved from a room; correct?

19 A Correct.

20 Q And did you give them to a particular person, or did you put
21 them in another room?

22 A Oh, no. I transferred them to a particular person.

23 Q Okay. Can you identify with me then -- do you have a list
24 of what we talked about today, what you did in this case?

25 A Uh-huh.

1 Q Can you walk me through who you gave what to? Was it all
2 the same person or different departments?

3 A It's different departments. Like, just to give you an
4 example, we took it out of the locker; I would log it in; we put
5 it in a secure evidence room.

6 And when I say it's secure, it's secure. It's got two
7 locks, there are two cameras, and it's got a security code. And
8 the only people allowed in there were the four technicians and
9 our two supervisors. Nobody else within the lab could go back
10 there. Not even the major or the chief of police could go back
11 there.

12 And it stayed there until the analyst requested it, and then
13 it was transferred to them through a window. They cannot come
14 back through there. But it depends on what kind of evidence as
15 to who I transferred it to.

16 Q And I understand that.

17 A Okay.

18 Q The gist of it is, they went to a particular person. I'm
19 trying to get to who you gave what piece to.

20 A Okay.

21 Q So if we can walk through them ---

22 A Okay.

23 Q And I understand you have different numbers.

24 ATTORNEY WEHMAN: So if I can approach again, Your Honor?

25 THE COURT: You can.

1 Q State's 11. And if you need to look at it to see your
2 number.

3 A I think that was in the box. Correct?

4 Q Okay.

5 A I need to know exact -- I'm sorry. I do not mean to be
6 rude. I've got 84 pages here.

7 Q I understand. And if you need to look at this for your
8 number ---

9 A Our number's not on that, that's what I'm saying. It came
10 out of a box. And it was container G., if I'm remembering
11 correctly. What does it say it is on that?

12 Q I will let you look. I don't want to -- do you need to look
13 at this?

14 A Okay. I've never seen that. That says it's a black
15 jumpsuit. There's got to be a container G over there somewhere.

16 Q So you don't know where that went?

17 A Yes, it was in container G. May I please see container G?

18 ATTORNEY WEHMAN: Judge, I don't have a container G. I
19 haven't seen it introduced.

20 Q So let's move on. State's 19.

21 A Okay. What's on that yellow label on the front?

22 Q Again, I'll let you.

23 A It's container B, okay. I did take that into possession,
24 and I transferred it to the analyst, Ryan DeWane. She is in DNA.

25 Q And we'll just continue up here. I'll try to keep my voice

1 loud. State's 20?

2 A Again, that was transferred to a DNA, Ryan DeWane.

3 Q And both of those that went to Ryan DeWane, did you take
4 those back or did those go somewhere else after? Or you don't
5 know?

6 A According to the chain, I gave them to Ryan. She put them
7 in the DNA room. And then they were transferred back to us, us
8 being evidence techs. Transferred. And then we sent it back to
9 the agency.

10 Q But did you take custody of it?

11 A No. But we all do the same things.

12 Q I understand.

13 A Okay.

14 Q No. 206.

15 A I did take possession of that from the evidence room. And
16 again, I transferred it to Ryan DeWane, the DNA analyst.

17 Q And you didn't personally come in contact with it again?

18 A I did not.

19 Q No. 24, State's 24, can you tell me who that went to?

20 A I logged that in. I put it in the evidence room. And then
21 another analyst, Charlotte Pitts -- not an analyst, I'm sorry --
22 a forensic technician, same person that worked with me,
23 transferred it and gave it to the analyst.

24 Q So that it went to someone else before the analyst got it?

25 A Yes. Another forensic technician pulled it and gave it to

1 them.

2 Q I understand. And then No. 10?

3 A That's container G.

4 Q Okay. That's back to --

5 A Uh-huh.

6 Q We already discussed State's 11. Only two more. That would
7 be 110. Is that the same?

8 A I logged that in and put it in the evidence room. The other
9 forensic technician pulled it, gave it to the analyst. And then
10 I took it back from the analyst and returned it to the agency.

11 Q So you did retrieve that one, personally, after the analyst
12 had it?

13 A Yes.

14 Q The last one is State's 109. And this one, I hope it
15 doesn't mess you up. It's cut.

16 A I logged that in. Put it on a shelf in the evidence room.
17 Another technician pulled it and gave it to the analyst. I took
18 it back from the analyst, put it back in the secure evidence
19 room. And that then I did return that to the agency.

20 Q As to the last two that you spoke about, you mentioned
21 another analyst. Was it the same analyst that took both of them?

22 A Yes. Charlotte Pitts.

23 Q Charlotte Pitts.

24 ATTORNEY WEHMAN: Judge, I don't have any further questions.
25 Thank you.

1 THE COURT: All right. Ms. Cornwell?

2 ATTORNEY CORNWELL: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY CORNWELL:

5 Q Just a couple things. When you received this evidence, you
6 aren't saying that you collected it in any way; law enforcement
7 delivers it to you?

8 A Correct.

9 Q Can you explain to me how it gets from law enforcement to
10 you.

11 A They bring it in. And at this time we were using the
12 evidence lockers, which, let me make sure because we changed
13 halfway through. Yes, these went to the evidence lockers.

14 The agencies bring them in. They seal it, initial and date
15 it, put it in a secure locker with the paperwork that has been
16 timestamped and signed by the person who dropped it off. And
17 then they lock that locker. No one can get into that locker but
18 the person who retrieves the key. And that key is held back in
19 the secure evidence room under cameras and lock.

20 And the only person who would have retrieved that is the
21 technician who would go and pull the evidence to log it in. And
22 that was me.

23 Q And how often do y'all go in and pull evidence? Do y'all do
24 that daily?

25 A Oh, two or three times a day.

1 Q And I believe you testified that the evidence that you
2 collected and logged in, you collected and logged that evidence
3 in on different dates. Some of it was submitted at different
4 dates and different times; it wasn't all submitted at once;
5 correct?

6 A Correct.

7 Q And a lot of these items are individually sealed and placed
8 in containers. You've never seen item 11?

9 A Uh-uh.

10 Q And you said it was in container G?

11 A Yes.

12 Q And you're reading off of some papers that I don't think I
13 have.

14 A It is a chain of custody.

15 Q Can you tell me what you have listed as what's in container
16 G?

17 A It's going to take a minute. I've got to go through this.
18 Okay. I'm having to go through this page by page. On
19 said-to-contain, he had already put it in a box and sealed it.

20 So according to his paperwork it said in container G was a
21 ski mask, a black jumpsuit, seemed to be some drugs in there, a
22 pocketknife, money, gloves. And that's all that I see on my
23 chain.

24 Q And I'm not trying to beat a dead horse; I'm just trying to
25 understand. So if State's 11 is in box G, you wouldn't have seen

1 this and you wouldn't have known that it was not properly sealed.

2 Correct?

3 A No, because it was properly sealed when I received it. It
4 was in a box, and that box was properly sealed, initialed and
5 dated. Therefore, the evidence we received met standards.

6 Q Yes. And I agree with you on that. Box G was properly
7 sealed. You accepted box G. You know that it was properly
8 sealed.

9 A Uh-huh.

10 Q You would not have opened box G, that's not what your job
11 is?

12 A No.

13 Q So if this is in box G, it's improperly sealed and you would
14 never have accepted this, sealed like this? Or, not sealed.

15 A May I see the top of that? This had been sealed, but it was
16 broken when they went in to analyze it. Because ---

17 Q But you don't know that because you've never seen this. You
18 can't testify to any of that. You're just making assumptions
19 right now?

20 A Well, the same as you are. It was in a box.

21 Q But I'm not asking -- I'm just asking you, you've never seen
22 this ---

23 THE COURT: Hold on. I'm going to ask you guys to ask the
24 question, and then answer the question. Thank you.

25 Q You don't know how this item was packaged inside that box?

1 A No.

2 Q Thank you.

3 THE COURT: Anything further, Ms. Cornwell?

4 ATTORNEY CORNWELL: No, Your Honor.

5 THE COURT: All right. Redirect?

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY GLOVER:

8 Q Thank you for being here, Ms. Davis.

9 A Thank you.

10 Q You testified that you received this evidence in a box. Do
11 you open all the boxes and go through all the evidence to make
12 sure what they tell you it is is what it is?

13 A No. That would be tampering, and we don't do that.

14 Q Are you an analyst?

15 A No.

16 Q Do you analyze any of the evidence?

17 A No.

18 Q Do you happen to know if the analysts might package an item,
19 repackage an item, say, from a box?

20 ATTORNEY WEHMAN: Judge, objection. Leading.

21 ATTORNEY GLOVER: I can rephrase the question, Your Honor.

22 THE COURT: Thank you.

23 Q Do you or do you not know if, say, for an instance, an
24 analyst would have to open the box to open the evidence and might
25 repackage it after they finish doing their analysis?

1 A Honestly, you would have to ask them. I'm not present when
2 they analyze it. I don't know how they do that.

3 Q Okay. And I have one final question for you, Ms. Davis.
4 And we really appreciate your time. Do you know who from
5 Summerville Police Department placed these items into the case --
6 from the case into the locker?

7 A I do.

8 Q And who would that be?

9 A Wade Rollings.

10 Q Thank you, Ms. Davis.

11 ATTORNEY GLOVER: No further questions from the state.

12 THE COURT: All right. Cross-examination?

13 ATTORNEY WEHMAN: Briefly, Judge.

14 **RECROSS-EXAMINATION**

15 BY ATTORNEY WEHMAN:

16 Q You haven't seen box G today; have you?

17 A No.

18 Q Where did box G go?

19 Q For the record, I'd ask you to answer verbally.

20 THE COURT: If you could respond, please.

21 THE WITNESS:

22 A I haven't seen it.

23 ATTORNEY WEHMAN: No further questions, Judge.

24 THE COURT: All right. Yes, Ms. Cornwell?

25 ATTORNEY CORNWELL: No further questions.

1 THE COURT: Very well. Is this witness free to leave, and
2 is there any objection?

3 ATTORNEY GLOVER: No objection from the state, Your Honor.

4 THE COURT: Very well. Thank you so much, you're free to
5 go.

6 Ladies and gentlemen, we're going to take our morning break.
7 We're going to take 15 minutes. Please step to your jury room.
8 Do not discuss this matter or allow anyone to discuss it with
9 you.

10 (WHEREUPON, the jury is escorted out of the courtroom at
11 11:24 a.m.)

12 THE COURT: Anything from the state before we take a break?

13 ATTORNEY GLOVER: No, Your Honor.

14 (WHEREUPON, court recessed at 11:24 a.m. and reconvened at
15 11:41 a.m.)

16 THE COURT: Let's have the jury, please. And your next
17 witness, are they already coming? Next witness coming?

18 ATTORNEY GLOVER: Yes, Honor. We're going to do David
19 Swibaker next.

20 (WHEREUPON, the jury is seated in the courtroom at
21 11:44 a.m.)

22 ATTORNEY OSBORNE: State calls David Swibaker.

23 LAW CLERK: If you could please raise your right hand and
24 state your full name for the record.

25 THE WITNESS: David Swibaker.

1 ATTORNEY OSBORNE: Thank you, Your Honor.

2 THE COURT: All right. Your witness.

3 DAVID SWIBAKER,

4 having first been duly sworn, was examined and testified as
5 follows:

6 **DIRECT EXAMINATION**

7 BY ATTORNEY OSBORNE:

8 Q All right, Mr. Swibaker, how old are you?

9 A Thirty-seven.

10 Q And where are you from?

11 A Tennessee.

12 Q Did you live there your whole life, or?

13 A No, until I was about 15. Then I moved here with my dad.

14 Q And you've been here ever since?

15 A Yes, sir.

16 Q And where did you go to high school?

17 A Fort Dorchester High School.

18 Q Okay. graduate?

19 A Yes, sir.

20 Q What type of work do you do?

21 A I'm a maintenance -- I'm an assistant maintenance supervisor
22 at an apartment complex.

23 Q Are you married?

24 A Not anymore.

25 Q Any kids?

1 A Four.

2 Q Four kids?

3 A Yes, sir.

4 Q All right. Let's go ahead and get into it. Going back to

5 the end of January '18, going back to the end of January '18,

6 into the beginning of 2019, where did you live?

7 A At 108 Myrtle Place.

8 Q Okay. And who did you live with?

9 A Marcus Porter.

10 Q Roommates?

11 A Yes.

12 Q And how did you and Marcus first meet?

13 A With my girlfriend.

14 Q And when was it that you moved in with Marcus? About.

15 A Maybe around June or so, July.

16 Q Of 2018?

17 A Yes, sir.

18 Q All right. So I guess we'll go ahead and get this out of

19 the way. And Marcus has already sort of testified to this, or

20 did testify to this. Did you know Marcus to sell marijuana?

21 A Not really. I mean, a little bit, but nothing that I would

22 be alarmed by, you know.

23 Q Is it fair or is it not fair to say, I mean, you knew him to

24 sell marijuana, just not like bulk?

25 A Right. I've never really seen him sell anything. So, I

1 mean, it's just what he said.

2 Q But you mean you weren't like there during transactions ---

3 A Correct.

4 Q --- but you knew he would?

5 A Right.

6 Q And again, it was just a little bit here, little bit there?

7 A Uh-huh.

8 Q And this has kind of come up once before.

9 ATTORNEY OSBORNE: May I approach, Your Honor?

10 THE COURT: You may.

11 Q I'm going to show you what's already been marked and
12 admitted -- and I won't show it to the jury again, we already
13 have -- that's State's 178. Do you recognize that guy?

14 A Yes, sir. I used to work with him.

15 Q Ask what's his name?

16 A Jaquavious. But I know him as Q.

17 Q Q, okay. You introduced Q to Marcus?

18 A Yes, sir.

19 Q So back on the night of January the 27th, going into the
20 early morning hours of January the 28th of 2019, were you home
21 that night?

22 A Yes, sir.

23 Q And who were you were home with?

24 A At first it was Marcus. And then I had been working that
25 day, and I was also working on a piece of furniture. And then I

1 went and took a nap. And then when I woke up, J.B. was there,
2 and so was Marcus.

3 Q Now let's stop for little bit and talk about J.B. Did he --
4 and I think we've already kind of heard this, but, did he live
5 there or was he just visiting?

6 A No, he was just visiting.

7 Q Was J.B. more of your friend or was he more of Marcus's
8 friend?

9 A Marcus's.

10 Q Okay. But did you know him?

11 A Yeah.

12 Q Did you hear J.B. speaking about anything in particular that
13 night that he was in a good mood about?

14 A His moped.

15 Q His moped?

16 A Yeah. He just hit, like, 500 miles on it, and he could
17 actually go like over 35 mile an hour at that time. He was like
18 restricted.

19 Q He broke it in?

20 A Yeah.

21 Q All right. And you Marcus had a dog?

22 A Yes, sir.

23 Q And we've already heard the name, mf'er.

24 A Yes, sir.

25 Q So just prior to the incident occurring, just prior to the

1 door being kicked in and suspects coming in, where was everyone
2 positioned in the house?

3 A I had just left my bedroom, walked into the living room.
4 Marcus was sitting on the couch. And J.B. was standing in the
5 kitchen, I'm assuming, getting ready to leave.

6 Q So J.B.'s sort of standing up and y'all are kind of next to
7 each other?

8 A Kind of. Yeah.

9 Q All right. Well, go ahead and tell the jury what happened
10 then.

11 A Well, we were all talking. And then I had left to go back
12 to my room to get my phone because I guess my girlfriend was
13 calling at the time, I do believe.

14 And then I hung up with her and then I started walking back
15 into the kitchen to work on that piece of furniture I was working
16 on for Marcus.

17 And then the back door gets kicked in. Somebody comes
18 running in. I take off because I was scared. And then the dog
19 comes -- as I'm going out, the dog's coming across, and then I
20 hear a gunshot. And then I go straight to the bathroom and I hid
21 in the shower.

22 Q Okay, all right. So the door's kicked in and you see
23 someone come in?

24 A A couple people started coming in as I'm running off.

25 Q So when that door's kicked in, you're getting out of there?

1 A Oh, yeah.

2 Q And while you're getting out of there, the dog, mf'er, Or
3 he's going after them?

4 A Yes.

5 Q I mean, pretty, was it like ---

6 A On the spot. He's running.

7 Q How many people at that point did you see make an entry for
8 sure?

9 A For sure, two, maybe three. I mean, I seen two come in,
10 coming straight in. And that's all I could see out of my, you
11 know. Whenever I started going around the corner, I couldn't see
12 anything else.

13 Q And so that I can sort of talk about what each one was doing
14 and when, can you give me any sort of description of the first
15 two to distinguish them as we go along with this story?

16 A As soon as I see them come, the first thing I see is a foot
17 flying through at the door, it was a white Nike. And after that,
18 I have no idea.

19 Q The first. Can you tell me anything about the first guy
20 that came in? Did he appear taller?

21 A He was tall.

22 Q I'm sorry?

23 A He was tall.

24 Q Would you say that -- can you tell me, light brown, dark
25 complexion?

1 A No.

2 Q Was he thin? Medium? Heavy?

3 A I guess kind of thin, maybe. I'm not exactly sure. I mean,

4 it kind of gets into a blur, because I'm running.

5 Q I gotcha. And the second guy coming in, can you tell me

6 anything about him?

7 A No. He was shorter, but that was it.

8 Q That was it. Nothing about his size or anything, don't

9 know?

10 A No.

11 Q So we got two. We got a taller and shorter guy?

12 A Uh-huh.

13 Q And you're just going to have to say yes or no, or answer

14 that way, so that the court reporter ---

15 A Yes, sir.

16 Q Can you tell me anything? Did they appear to be armed in

17 any way?

18 A Oh, yeah, they had a gun.

19 Q Each had their own gun?

20 A I can't say for sure but, I mean, yeah. In my opinion, yes.

21 Q You know you saw at least one gun?

22 A Uh-huh.

23 Q Yes or no?

24 A Yes, sir.

25 Q Did they appear to have their -- were they concealed in any

1 way, their faces covered in any way?

2 A Masks.

3 Q Masks?

4 A Uh-huh.

5 THE COURT: And that's a yes?

6 THE WITNESS: Yes, sir. Yes, ma'am. Sorry.

7 Q All right. So you said that the dog attacked; the dog was
8 shot.

9 A Uh-huh.

10 Q You're kind of running, but -- or, I guess, seeking
11 cover ---

12 A Uh-huh.

13 Q --- or hiding?

14 A Yes, sir.

15 Q And did you hear anything other than the gunshots? Did you
16 hear them saying anything?

17 A They were -- I don't recall.

18 Q All right. So where did you go first? You said that you
19 went ---

20 A In the bathroom and got in the shower and closed the shower
21 curtain.

22 Q Okay. Just kind of hiding, hoping they didn't see you?

23 A Yeah, exactly.

24 Q All right. While you were in the bathroom did you -- what
25 did you see and hear?

1 A Well, the door was kind of open still. And then I could see
2 through, like, the corner or out the side of the shower curtain
3 and on the edge of the door, like where the doorframe is. And
4 then as I'm seeing them yelling and saying stuff, or I hear them
5 yelling and saying stuff, and then I see them drag Marcus down
6 the hallway. And then that's whenever I came out of the bathroom
7 and darted to my bedroom to -- I mean, I don't know exactly what
8 I was trying to do.

9 Q All right. Let me just stop you right there. When you're
10 in the bathroom you said they were dragging Marcus into his
11 bedroom?

12 A Uh-huh.

13 Q Yes or no?

14 A Yes, sir. I'm sorry.

15 Q That's okay. That's usually how people communicate, but
16 we're in a different world here.

17 A Yes, sir.

18 Q So you saw two people dragging Marcus into the -- or, how
19 many people?

20 A Two.

21 Q Two people, I'm sorry. Could you tell if they were the same
22 two people who were the first two that made entry?

23 A No, sir.

24 Q You couldn't tell?

25 A I couldn't tell at the time.

1 Q I mean, is it possible there were two other people, or is it
2 one was the same, or you just don't know?

3 A I don't know. I just seen two people dragging Marcus down
4 the hallway, but that's all I could see through that crack.

5 Q Okay. Now, you said that -- is that when you decided maybe
6 go into your bedroom?

7 A Uh-huh. Yes, sir.

8 Q And what happened then?

9 A I got hit in the back of the head with a gun, and then I was
10 told to lay on the ground or they were going to blow my fucking
11 brains out.

12 Q Okay. And so Marcus is in his bedroom ---

13 A Uh-huh. Yes, sir.

14 Q --- with two people. And then you're hit in the back of the
15 head?

16 A Yes, sir.

17 Q And when you're hit in the back of the head, where are you?

18 A I'm in my room.

19 Q Okay. So we've kind of already seen a layout of your house.
20 When you're going down the hallway is your bedroom the first
21 bedroom on the right or first bedroom on the left?

22 A The first room on the left.

23 Q The first room on the left?

24 A Yes, sir.

25 Q And you would have been in the bathroom, which is the first

1 room on the right?

2 A Yes, sir.

3 Q And then from there you saw Marcus being dragged by two guys

4 into his room?

5 A Yes, sir.

6 Q And then you go into your room?

7 A Yes, sir.

8 Q And that's when you're hit on the back of the head?

9 A Yes, sir.

10 Q Okay. And what was said to you again?

11 A Telling me to lay on the ground or they're going to blow my

12 fucking brains out.

13 Q When you were hit in the back of the head did it feel like

14 it was a fist or did it feel hard?

15 A It felt hard.

16 Q Could you tell what you were hit with?

17 A It seemed like a gun.

18 Q All right. I guess you were on the ground then?

19 A Yes, sir.

20 Q And then what happened?

21 A They came into -- somebody else came into my room and

22 flipped my mattresses over, and then it landed a little bit on

23 top of me. And then they were rummaging through my things and

24 then stepped back across, or over my mattress, over me, and then

25 went back into the living room.

1 Q Okay. Do you know, do you know, if one of the persons that
2 hit you on the back of the head -- well, let me put it to you
3 like this. Do you know if the person that hit you on the back of
4 the head is the same person that flipped the mattress, or were
5 there two people in your room at that time?

6 A There was two people in my room at that time.

7 Q Do you know if the two people in your room at that time were
8 the same two people that were with Marcus, or ---

9 A They weren't, because Marcus was still in the back room.

10 Q They were not?

11 A Marcus was still in his room.

12 Q I'm sorry, so let me ask it again, because we kind of talked
13 over each other a little bit. Do you know for sure whether the
14 two people that were in your room were the same two people that
15 were with Marcus, or could they have been two different people,
16 or do you not know?

17 A It has to be two people different, because Marcus was still
18 in his room whenever I darted across. And then I get hit in the
19 head, and then somebody else comes in and starts searching my
20 room, and then they're dragging him back down the hallway.

21 Q While they're in your room you see Marcus being dragged back
22 down the hallway?

23 A Uh-huh, just looking backwards.

24 Q Is it accurate to say, you tell me, so while you only saw
25 two or three make entry when you first went to the bathroom ---

1 A Yes, sir.

2 Q --- at that moment, when we're in the heat of the home
3 invasion, it seems like there might be at least four?

4 A Yes, sir.

5 Q Okay. Where I stopped you, one of the individuals in your
6 room had flipped a mattress over on top of you. What was going
7 on then, what happened then?

8 A When they flipped it, I was just laying on the ground. And
9 then they flipped the mattress and was going through my things.
10 And then they stepped back over me and went out the room.

11 Q Were they saying anything to you?

12 A Not really, no. I figure it was more talking to each other,
13 but I was tuning all that out. I was scared. I don't know.

14 Q And I know you were hit on the back of the head and you were
15 on the ground. Can you tell the jury anything about descriptions
16 of those two guys that were in the room with you?

17 A No, sir.

18 Q All right. What happened next?

19 A So we're laying on the ground. And the next thing I know,
20 they're asking where it's at, or if we don't tell them where it's
21 at then they're going to start smoking motherfuckers. And it
22 wasn't long after that they just started shooting.

23 Q Were you still in the bedroom when the shots were fired?

24 A Yes, sir.

25 Q Do you happen to know or remember, was there -- we have the

1 first shots -- or, was it one shot or two shots that shot the
2 dog, mf'er, do you know?

3 A One shot at first that I heard. But then as I'm running,
4 there's another shot that goes off, so I don't know if that was a
5 hit on J.B. or whether that was to hit the dog, as well.

6 Q So one shot, you think that was for the dog. While you're
7 running, you heard another shot?

8 A Uh-huh. Yes, sir.

9 Q And then you said you heard some comments like, you know,
10 Where's it at, or we're going to start smoking everyone?

11 A Yes, sir.

12 Q And then you heard more gunshots?

13 A Yes, sir.

14 Q Do you know if that round, after that comment, was there a
15 separation there or was it just a volley of shots? Or, do you
16 remember?

17 A Honestly, I really don't remember. I just knew the guns
18 just going off. There was a lot of them.

19 Q I'm sorry?

20 A There was a lot of guns, like a lot of bullets being
21 discharged.

22 Q Okay. Do you remember -- I kind of asked you this a little
23 bit, but do you remember anything about what they were wearing at
24 all, description-wise, shoes?

25 A The white Nikes, for sure. And then there's, like, another

1 colorful set of shoes. It's not -- they're like a -- had orange
2 on the back heel, and I think they were blue and, I think, purple
3 and black.

4 Q Is that one pair of shoes that you're talking about?

5 A That's one pair of shoes.

6 Q Okay. Do you remember providing a written statement to law
7 enforcement on the night of the incident, looks like it was about
8 12:24 a.m., at your house?

9 A Yes.

10 Q Do you remember that night saying that one of the
11 individuals, to the best of your recollection, had on red, blue
12 and white shoes?

13 A If that's what I said, yes.

14 ATTORNEY OSBORNE: Your Honor, may I approach?

15 THE COURT: You may.

16 Q I'm just showing you. We'll just mark this as State's 300.
17 (WHEREUPON, State's Exhibit 300 is marked for
18 identification.)

19 Q Take a look at that and just tell me if that's your written
20 statement.

21 A That's my handwriting and signature.

22 Q And do you see the part that I'm talking about there with
23 the shoes?

24 A Yep.

25 Q And that's what you wrote on the night of the incident?

1 A Yes, sir.

2 Q All right. I'm just going to show you some pictures real
3 quick. I'm going to start by showing you State's 33, that's
4 already been marked and admitted. While looking at State's 33 --
5 and just kind of describe -- we're all looking at the picture --
6 just kind of describe where you would have been standing.

7 A Around the corner.

8 Q Okay. On the other side of the fish tank?

9 A Yes, sir. I wasn't standing. I was on the ground.

10 Q That was a poor question. At the moment of entry where
11 would you have been standing?

12 A Where the -- see where the chair is that's turned over?

13 Q Yes, sir.

14 A I was right where the colorful thing is, right around in
15 that area.

16 Q And where would Marcus have been?

17 A Sitting on the couch that was back where the carpet is.

18 Q To the right?

19 A Yes, sir.

20 Q And where would J.B. have been?

21 A Standing right in front where the refrigerator is right
22 beside the table.

23 ATTORNEY OSBORNE: Your Honor, may I approach the witness?

24 THE COURT: Any objection?

25 ATTORNEY HUBRICH: No, ma'am.

1 ATTORNEY CORNWELL: No.

2 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
3 admit, I think without objection, 67 and 117.

4 THE COURT: Is that correct? No objection; no objection?

5 ATTORNEY HUBRICH: No objection.

6 ATTORNEY CORNWELL: No objection.

7 (WHEREUPON, State's Exhibits 67 and 117 were marked for
8 identification and admitted into the record.)

9 Q I'm showing you now State's 67. What are we looking at
10 here?

11 A That's the hallway.

12 Q All right. The back two rooms to the left and the right, on
13 the left side, what room would that have been?

14 A That's like an office where Marcus kept things.

15 Q And to the back right?

16 A That was Marcus's room.

17 Q And just outside of the camera, if I were to take a step
18 backwards to the left and the right, what room ---

19 A Right would be the bathroom. And then just right to the
20 left would be my room.

21 Q Okay. I'm showing you State's --

22 A That's my watch.

23 Q Okay. State's 117, do you recognize that?

24 A Yes, sir.

25 Q Say it again. I'm sorry.

1 A I said That's my watch.

2 Q Okay. David, last question. Your dog was shot?

3 A Yeah. Yes, sir.

4 Q Your roommate was shot?

5 A Yes, sir.

6 Q J.B. was shot?

7 A Yes, sir.

8 Q You weren't shot?

9 A No.

10 Q Did you have anything to do with this?

11 A No, sir, not at all.

12 Q I'm sorry?

13 A I said, Not at all.

14 ATTORNEY OSBORNE: No further questions.

15 THE COURT: All right. Yes, ma'am, on behalf of
16 Mr. Fortune?

17 ATTORNEY HUBRICH: Thank you, Judge. May it please the
18 Court.

19 THE COURT: Yes.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY HUBRICH:

22 Q Did it surprise you to hear that your roommate thought you
23 set the whole thing up?

24 A Kind of, yes.

25 Q Yeah. You testified on direct that two, maybe three, guys

1 came in the back door, that's what you saw.

2 A Yes, ma'am.

3 Q On the night that this happened you gave a couple of
4 different statements on the scene to, I think, at least two
5 different police officers.

6 A Okay.

7 Q Do you remember that?

8 A No, ma'am.

9 Q You don't remember giving statements that night?

10 A Yeah, I remember giving a statement. Yes.

11 Q Do you remember telling the police officer that night, he
12 asked you, They kicked in the door, they means more than one?
13 And you responded, I know there was at least two.

14 Do you remember saying that on the night that this happened?

15 A Yes, ma'am.

16 Q Okay. You testified on direct that you introduced Q,
17 meaning Jaquavious Washington ---

18 A Yes.

19 Q --- to Marcus. Right?

20 A Yes.

21 Q You introduced him to Marcus so that Marcus could sell drugs
22 to him?

23 A Correct.

24 Q But yet you only knew Marcus to be a small-time dealer?

25 A Right.

1 Q You testified on direct that as soon as they came in the
2 door you went into the bathroom and got in the shower.

3 A Yes, ma'am.

4 Q You got a chance to take a look at the statement that you
5 gave right after this incident; right?

6 A Yes, ma'am.

7 Q And it's your written statement?

8 A Yes.

9 Q Everything in it -- did you write it?

10 A Yes.

11 Q So it's your handwriting; you wrote it; it's close in
12 proximity to when this actually happened. Right?

13 A Yes, ma'am.

14 Q And you signed it?

15 A Yes, ma'am.

16 Q And you just got a chance to look at it?

17 A Yes, ma'am.

18 Q Anywhere in this statement did you tell the police that you
19 went into the bathroom and got in the shower?

20 A No, ma'am.

21 Q Anywhere in this statement did you tell police that, They
22 hit me back in the back of my head with a gun?

23 A No, ma'am.

24 Q Anywhere in this statement did you tell police that they
25 told you they would blow your brains out?

1 A No.

2 Q At no point in this statement did you tell them that you had
3 been burglarized 10 days prior?

4 A No, ma'am.

5 Q In this statement -- I know he brought out that you said
6 something about white shoes with red, white and blue on them.
7 And it says that in this statement; right?

8 A Uh-huh.

9 Q It also says that the person that was wearing those shoes
10 had on shorts; doesn't it?

11 A Yes, ma'am.

12 Q And it doesn't have any other description other than what
13 these people were wearing and what their shoes were?

14 A Yes.

15 Q The other guy, you say, had hazel eyes and was
16 light-skinned.

17 A Correct.

18 Q Would you identify that person now as Elijah Green?

19 A Yes, ma'am.

20 Q So other than that, we don't know about hairstyle?

21 A No, ma'am.

22 Q These people didn't have -- they didn't have hats on; right?

23 A I'm not sure.

24 Q But you know they all had masks on?

25 A Masks on.

1 Q Do you know if they had gloves?

2 A That, I can't testify to.

3 Q You can't testify to because you don't remember?

4 A I don't know.

5 Q Okay, you just don't remember; right?

6 A Correct.

7 Q At any point did you ever tell law enforcement that your

8 house had been burglarized 10 days prior?

9 A I don't recall.

10 Q You don't recall if you ever told them that?

11 A I'm not sure if I ended up telling them. I know I told

12 them. I just don't know when.

13 Q Okay. The officer that you spoke to on the night that this

14 happened, do you remember that he asked you, Do you know if

15 anyone has issues with anyone? And you answered, No, I'm just

16 arguing with my girlfriend. Remember that?

17 A Correct.

18 Q And then he asked you, Does anyone owe anybody money or

19 anything like that? And you said, No, nothing like that, there's

20 nobody ever really here.

21 A Correct.

22 Q Right? And then he said to you, This whole thing, you just

23 don't see this happening every night. And you answered, This

24 hasn't happened in my life at all; this is so stupid.

25 A Right.

1 Q Right. Never at any point when he said that to you did you
2 say, Well, actually we had been burglarized 10 days prior?

3 A Well, they were just two different instances. The first
4 instance no one got killed. And it was just completely
5 different.

6 Q And then he asked you, Has anything out of the ordinary
7 happened to you recently? And you said no.

8 A Well, I was also in shock. Everybody just got shot up in my
9 house.

10 Q Is that correct that you said no?

11 A I'm guessing so, if that's what I said.

12 ATTORNEY HUBRICH: The Court's indulgence.

13 THE COURT: Yes.

14 ATTORNEY HUBRICH: No further questions. Thank you,
15 Mr. Swibaker.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Yes, ma'am?

18 **CROSS-EXAMINATION**

19 BY ATTORNEY CORNWELL:

20 Q Mr. Swibaker, you introduced Q to Marcus because you knew
21 tat Marcus could sell Q drugs?

22 A Yes.

23 Q And you and Q worked together?

24 A Yes, ma'am.

25 Q Y'all friends?

1 A I wouldn't say friends. We're just, like, work
2 acquaintances.

3 Q But Q had been over to the house with you before?

4 A No. Just the one time after he had asked me if I knew where
5 to get any weed, and he wanted like \$10 worth. And I said
6 possibly. And then I called Marcus.

7 And then we walked over by the house, but we didn't go into
8 the house. We were just standing outside in the yard by the car.
9 But I didn't bring anybody inside the house.

10 Q So when Marcus testified that Q had been to the house with
11 you a couple of times, he was lying?

12 A I never say that.

13 ATTORNEY OSBORNE: Objection, Your Honor. Competing
14 witnesses.

15 THE COURT: Sustained.

16 Q So it's your testimony that "Q" had never been to the house
17 with you?

18 A No, I never said that. I brought him over to the house one
19 time, and that was it. And after that, whatever Marcus did with
20 him is whatever they did.

21 Q And when law enforcement asked you about your relationship
22 with Marcus, you told them that y'all had a great relationship,
23 y'all were super close, you had been to momma's house.

24 A Yes, ma'am.

25 Q Were you surprised that Marcus gave a completely different

1 version of y'all's relationship?

2 A Yes, ma'am.

3 Q And, in fact, Marcus said that ---

4 ATTORNEY OSBORNE: Objection, Your Honor. Personal
5 knowledge. He wasn't there when that statement was given.

6 Q Do you know if there were cameras in the house?

7 A Yes, ma'am.

8 Q Why were there cameras in the house?

9 A Just when we're not there, just to make sure that if
10 anything was to happen it would be on camera.

11 Q Would it surprise you to learn that those cameras were in
12 the house because Marcus was afraid you were stealing from him?

13 A No.

14 Q That would surprise you?

15 A That would surprise me. The cameras were in the house
16 before I even moved in.

17 Q Okay. And were you surprised to learn that Marcus thought
18 you were the inside man on this?

19 ATTORNEY OSBORNE: Objection, Your Honor. Personal
20 knowledge.

21 ATTORNEY CORNWELL: I'm asking if he was surprised.

22 ATTORNEY OSBORNE: The question assumes a fact.

23 ATTORNEY CORNWELL: It's in evidence.

24 THE COURT: Let me hear the question again.

1 Q Were you surprised to learn that Marcus thought he had an
2 inside man on this?

3 A Yes.

4 Q Were you surprised to learn that Marcus thought that you may
5 have set this up?

6 A Yes.

7 Q Because your testimony is you and Marcus had a great
8 relationship?

9 A Correct.

10 Q And your testimony is that you brought Q to the house once
11 and then was never at the house with Q again?

12 A Correct.

13 Q When the door was kicked in, was it kicked in hard?

14 A It grabbed my attention, so yeah.

15 Q Do you recall telling law enforcement to go look at back
16 door, there's probably a footprint on there?

17 A I don't recall. But if that's what I said, then yes.

18 Q If that was on the law enforcement officer's bodycam?

19 A If it was, yes, ma'am.

20 Q When law enforcement entered the house you were still in the
21 house?

22 A Yes, ma'am.

23 Q And what were you doing?

24 A I was rendering aid to J.B.

25 Q You weren't standing there smoking a cigarette, on the

1 phone?

2 A That was after the police officer came in and relieved me.
3 If you got the bodycam, you'd see me doing CPR, or trying to do
4 chest compressions, on J.B. whenever the officer first walked in
5 the door. Yes.

6 Q You think that that's what's going to be on the officer's
7 body camera?

8 A It should be.

9 Q So ...

10 A Because she's the one that told me to stop, that she's got
11 it from there. And, yes, I got up and I smoked a cigarette and
12 was trying to contact my girlfriend. And I was trying to get
13 away from there. I was scared.

14 Q The first officer that walked in the door that you had
15 contact with, was that the officer that testified earlier this
16 week?

17 A Yes, ma'am.

18 Q So whatever's on her body camera would have been ---

19 A What I was doing.

20 Q --- what you were doing?

21 A Uh-huh.

22 Q So if that body camera shows you a smoking a cigarette and
23 talking on the phone ---

24 A Then I was smoking a cigarette and talking on the phone.
25 But she testified earlier that day that she relieved me from

1 giving him aid whenever she took over when she came in. That was
2 her first statement.

3 Q When all this happened, when you came out of your room, was
4 Marcus still in the house?

5 A No.

6 Q Did Marcus come back to the house ---

7 A When, that night?

8 Q --- before law enforcement got there?

9 A No. He was outside the whole time.

10 Q So he never came back to the house to see you before law
11 enforcement got there?

12 A No, ma'am.

13 ATTORNEY CORNWELL: Nothing further. Thank you.

14 THE COURT: Redirect?

15 ATTORNEY OSBORNE: Briefly, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY ATTORNEY OSBORNE:

18 Q When you came out of your bedroom after the suspects had
19 left, was Marcus in the house?

20 A No, sir.

21 Q And do you have any idea how long it took? And I know time
22 is going to be tough, but did it take some time for law
23 enforcement to arrive on scene?

24 A Everything was just slow and fast. So, I mean, I'd say
25 within 10 minutes.

1 Q Within 10 minutes?

2 A I think so.

3 Q And during that entire time what were you doing?

4 A I was giving CPR to J.B.

5 Q You were trying to save his life?

6 A Uh-huh. He was a good guy.

7 ATTORNEY OSBORNE: No further questions.

8 THE COURT: All right. Recross?

9 ATTORNEY HUBRICH: No, Your Honor.

10 THE COURT: Recross?

11 ATTORNEY CORNWELL: No, Your Honor.

12 THE COURT: All right. You can come back down. All right.

13 Call your next witness, please.

14 ATTORNEY OSBORNE: Your Honor, may we approach?

15 THE COURT: Yes.

16 (WHEREUPON, an off-the-record discussion is held at
17 sidebar.)

18 ATTORNEY GLOVER: At this time, Your Honor, the state would
19 like to call Jamie Hall.

20 CLERK OF COURT: If you'd please raise your right hand, and
21 state your full name for the record.

22 THE WITNESS: Jamie Hall.

23 JAMIE HALL,

24 having first been duly sworn, was examined and testified as
25 follows:

1 THE COURT: Your witness.

2 ATTORNEY GLOVER: Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY GLOVER:

5 Q How are you, Ms. Hall?

6 A Good.

7 Q Ms. Hall, what is your occupation?

8 A I'm a forensic technician for the South Carolina Law
9 Enforcement Division in the Forensic Services Laboratory.

10 Q And where are you currently employed?

11 A South Carolina Law Enforcement Division.

12 Q How long have you been there?

13 A Six years.

14 Q What are your duties as a forensic technician?

15 A My primary duties are to pick up and return evidence for the
16 Trace Evidence Department. I inventory GSR kits for analysis,
17 and I also collect potential GSR samples from clothing.

18 Q You mentioned GSR. What does that stand for?

19 A It stands for gunshot residue.

20 Q We'll have Nicole Harding explain what that means later but,
21 for your purpose, when you're being asked to collect GSR, what is
22 the procedure?

23 A When I'm collecting GSR, as I mentioned, that comes from
24 clothing and sometimes other inanimate objects, the first thing I
25 do is make sure all of my evidence is properly sealed and

1 initialed. If it's not, we document it and take that by a
2 case-by-case basis. In this case, everything was properly sealed
3 and initialed.

4 I then clean my space and prep it to pull the clothing out.
5 The clothing's laid out and photoed for documentation. And then
6 I use what is called a stub, it's a little aluminum peg that is
7 equipped with a double-sided carbon adhesive. And then I use
8 that to dab across the garment to collect any potential samples.

9 Q Now let's talk about the evidence in this case, your SLED
10 number L19-02-418.

11 A Yes, ma'am.

12 (WHEREUPON, State's Exhibit 191 is marked for
13 identification.)

14 Q I'd like to begin by showing you State's 191. And for the
15 record, do you see your SLED number on this envelope?

16 A I do.

17 Q What number is that?

18 A It's L19-02-418.

19 Q Okay. And we have this labeled as State's 193. Do you have
20 a two-digit SLED number?

21 A It is. It's item no. 29.

22 Q Next is state's 194. Is there a corresponding SLED number
23 on this one?

24 A Yes, ma'am, item no. 25.

25 Q Next I have what's been labeled as State's Exhibit 195. Is

1 there a corresponding SLED number on this one?

2 A Item no. 27.

3 Q 196, do you have a corresponding SLED number?

4 A Item no. 28.

5 Q And next is State's Exhibit 197. Is there a corresponding
6 SLED number on this?

7 A Item no. 26.

8 (WHEREUPON, State's Exhibit 207 is marked for
9 identification.)

10 Q And we also have what's been labeled as State's 207. Is
11 there a correspondent SLED number on this?

12 A That is referred to as a container, as a container L. So it
13 contains multiple items.

14 Q Do you know who gave these items to you?

15 A I can check my notes. I received the main item from Doris
16 Yarborough (phonetic sp). And the container L, I actually
17 created.

18 Q And container L is State's Exhibit?

19 A 207.

20 Q And what did you do with the evidence once you came into
21 possession of it?

22 A The evidence was brought upstairs to the Trace Evidence
23 Department. I then processed it. And then it was returned back
24 to evidence control when I was finished after it was resealed.

25 Q At this point in time could you explain to the jury what it

1 means to take GSR from clothing and how you take the lifts off of
2 the clothing?

3 A Yes, ma'am. In this particular case, all items were
4 long-sleeved tops, either jackets or hoodies. So that makes it a
5 little bit easier to explain.

6 We collect the samples from the areas that would be closest
7 to the discharge of the firearm. So for a long-sleeved garment,
8 we're going to collect from each individual arm, a left arm, a
9 right arm. And then from the midsection up, we divide it half,
10 the right chest and a left chest.

11 And the double-sided adhesive I mentioned earlier is just
12 dabbed repeatedly across each of those areas, and then the stub
13 is placed in its little container.

14 And we also do what we call a carbon-coding process. That's
15 a process where a very thin layer of carbon is added. That just
16 allows the analyst to get better images for the report.

17 Q At this point in time I am going to show you State's 201
18 through 205.

19 A Okay.

20 ATTORNEY GLOVER: Your Honor, may I approach the witness?

21 THE COURT: You may.

22 Q State's 201, do you recognize that?

23 A I do.

24 Q And what is it?

25 A It is a black jacket.

1 Q State's 202, do you recognize this?

2 A I do. It is a camouflaged hoodie.

3 Q State's 203, do you recognize this?

4 A Yes, ma'am. A black hoodie.

5 Q State's 204, do you recognize this?

6 A Yes, ma'am. A black jacket.

7 Q And State's 205, do you recognize this?

8 A Yes, ma'am, a black jacket.

9 ATTORNEY GLOVER: Beg the Court's indulgence.

10 THE COURT: All right.

11 Q And, Ms. Hall, I do have a quick question. Would it be
12 easier for you to stand and demonstrate for the jury how you
13 collect GSR, or would it be easier for us to display one of the
14 state's exhibits so that you can show how it was pulled?

15 A Either way is fine.

16 Q Could you maybe step around to the edge here so that the
17 jury can see you, and just describe to them briefly ---

18 A You want me the whole way around?

19 Q Whichever one is easier for you, Ms. Hall. We just want to
20 make sure the entire jury can see you.

21 A I'm taller right here. So for a long-sleeved garment, we
22 start here at the seam. And so each arm would be dabbed
23 repeatedly. It's just a small little stub, the front and the
24 back of it, as well as for each chest, you -- again we just
25 imaginary line straight down the center and about midways up.

1 And then we just repeatedly dab across it, as well.

2 Is that what you're looking for?

3 Q Thank you, Ms. Hall. Now, you mentioned that State's 207
4 contain lifts.

5 A Yes, ma'am. Those are the stubs that I mentioned.

6 Q And how were those stubs created?

7 A So each, in our system, I create a sub item. It comes from
8 each parent item which, in this case, would be the hoodies and
9 the jacket. And so those sub items correspond to each parent
10 item, and that then I physically collected the stubs.

11 Q Once you finished with these items, how were they stored?

12 A We put them in a secure location within the Trace Evidence
13 Department. And it's a filing drawer that only trace analysts
14 have access to.

15 Q And do you know who the analyst in this case was?

16 A Nicole Hartman (phonetic sp.)

17 Q Thank you, Ms. Hall. Please answer any questions the
18 defense may have.

19 THE COURT: Cross-examination on behalf of Mr. Fortune?

20 ATTORNEY WEHMAN: Thank you, Judge.

21 **CROSS-EXAMINATION**

22 BY ATTORNEY WEHMAN:

23 Q Good afternoon. How are you?

24 A Good.

25 Q Try to be brief. As to -- and I'm sorry, State's 197, I

1 don't know the corresponding SLED number to that, but there was
2 SLED item 29, 25, 27, 28, I'm guessing that would be SLED item,
3 26. All of these items you received from Doris Yarborough?

4 A I did. They were all in container D, I believe, at the
5 time.

6 Q So container D was brought to you?

7 A I picked it up from the evidence control department.

8 Q So container D, when you picked it up, would it have been
9 sealed?

10 A It would have been sealed and initialed.

11 Q And you would break that seal, and then you start to take
12 everything apart?

13 A Correct.

14 Q And again, did you testify that when you took these items
15 you took them to some sort of a secured location for your
16 technician or analyst?

17 A Yes, correct.

18 Q Did you have any other involvement after that?

19 A After I collected everything, I do return our evidence for
20 our department to our downstairs evidence control once analysis
21 is complete.

22 Q So to be clear, you didn't come in contact with anyone
23 directly when you are taking this evidence, when you swab it and
24 you're trying to get it to your analyst? You don't give it to
25 anyone personally?

1 A Correct.

2 ATTORNEY WEHMAN: No further questions, Judge. Thank you.

3 THE COURT: All right. Yes, ma'am?

4 **CROSS-EXAMINATION**

5 BY ATTORNEY CORNWELL:

6 Q So when you received the package which, I think you just
7 said, was container D ---

8 A D, yes, ma'am.

9 Q --- and you opened that container to pull out the individual
10 items ---

11 A Yes, ma'am.

12 Q --- they're all sealed?

13 A Yes. They were all individually sealed in each of the brown
14 paper bags.

15 Q And when you unseal them, I think you explained the process
16 where you have a table and you clean off the table?

17 A Yes, ma'am.

18 Q Do you take photographs of the packages before you unseal
19 them?

20 A Not typically, unless there is something out of the
21 ordinary. We might take it out to document it.

22 Q Do you take packages, or take photographs of the table, of
23 the area, before you start doing any testing?

24 A No, ma'am.

25 Q And do you take any photographs of the evidence as you're

1 testing it?

2 A I do take the pictures of the individual items. Since the
3 analyst does not put their physical hands on the clothing, that's
4 a way for them to reference the garment in the future, as well.

5 Q So when you lay the item out our table, you take a
6 photograph of it for analyst?

7 A Yes, ma'am.

8 Q And you explained that you put something down on the table
9 to make sure that ---

10 A Yes, ma'am. Everything's sanitized in between cases. We
11 sanitize the table before. And then we also have parchment paper
12 that is sterile to put down, as well.

13 Q And so you would put the individual item on top of the
14 parchment paper to do the testing?

15 A Yes, ma'am.

16 Q Do you keep that parchment paper?

17 A Yes, ma'am. The items inside should be wrapped in the
18 parchment paper.

19 Q And then when you are finished with those items you place
20 them back in the container?

21 A Yes, ma'am.

22 Q And when you receive these items you don't know where they
23 came from, what they have do with anything; you just receive them
24 in a box, open them and document what you received?

25 A Yes, ma'am.

1 Q Thank you.

2 ATTORNEY CORNWELL: No further questions, Your Honor.

3 THE COURT: Thank you. Any redirect?

4 ATTORNEY GLOVER: Thank you, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY ATTORNEY GLOVER:

7 Q Ms. Hall, for the record, was container D properly sealed?

8 A Yes, ma'am, it was.

9 Q Was the property inside of container D properly sealed?

10 A Yes, ma'am.

11 Q And container D, for the record, is it just a box?

12 A It's just a box.

13 Q And I know this sounds elementary, but did you open the box?

14 A I did.

15 Q Did you document anything out of the ordinary from what was
16 inside of the box?

17 A No, ma'am, I did not.

18 Q And the items inside of container D, they were all sealed?

19 A Yes, ma'am.

20 Q If this evidence was not correctly sealed, would you have
21 documented that?

22 A It would be documented. And, again, it's taken on a
23 case-by-case basis on how we proceed.

24 Q But again, you have no notes of that happening?

25 A No, ma'am.

1 ATTORNEY GLOVER: Thank you, Your Honor. No further
2 questions.

3 THE COURT: All right. Recross?

4 ATTORNEY WEHMAN: One question, Judge.

5 **RECROSS-EXAMINATION**

6 BY ATTORNEY WEHMAN:

7 Q Who sorted and sealed container D before you got it?

8 A I have no knowledge of that.

9 ATTORNEY WEHMAN: Thank you. No further question.

10 THE COURT: All right.

11 ATTORNEY CORNWELL: None, Your Honor.

12 THE COURT: Thank you. Is this witness free to leave, and
13 is there any objection? Thank you, thanks for being here.
14 You're free to go.

15 Please call your next witness.

16 ATTORNEY OSBORNE: The next one is lengthy.

17 THE COURT: Checking on lunch. Ladies and gentlemen, it is
18 my understanding that the next witness perhaps will take a little
19 longer than other witnesses have taken this morning. And it's
20 12:35. If your lunch is en route, I'd like to break for lunch
21 for an hour and then come back around 1:30. That seems to make
22 sense at this point. If lunch isn't en route, it will be very,
23 very shortly.

24 I know we've got folks that step out to your car and all of
25 that. We'll continue to do just as we have done the last two

1 days.

2 Ladies and gentlemen, please step to your jury room. I am
3 going to ask you to please be mindful not to discuss this matter
4 or allow anyone to discuss it with you. And lunch is on the way.

5 THE BAILIFF: It's en route.

6 THE COURT: It's en route, okay. You can tend to those
7 things, perhaps, before lunch, and you'll be ready for lunch.
8 We're going to start back at 1:30. Thank you. If you'll step to
9 your jury room, please.

10 (WHEREUPON, the jury is escorted out of the courtroom at
11 12:37 p.m.)

12 THE COURT: Anything before we take our lunch?

13 ATTORNEY OSBORNE: No, Your Honor.

14 THE COURT: No?

15 ATTORNEY HUBRICH: No, ma'am.

16 ATTORNEY CORNWELL: No.

17 THE COURT: Very well.

18 (WHEREUPON, court recessed at 12:38 p.m. and reconvened at
19 1:38 p.m.)

20 THE COURT: Anything from the state before we bring the jury
21 out?

22 ATTORNEY OSBORNE: No, Your Honor.

23 ATTORNEY HUBRICH: No, ma'am.

24 ATTORNEY CORNWELL: No, Your Honor.

25 THE COURT: Let's have the jury.

1 (WHEREUPON, the jury is seated in the courtroom at
2 1:42 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I certainly
4 hope you had a good lunch. At this time we will continue with
5 the state's case.

6 If you'll please call your next witness.

7 ATTORNEY OSBORNE: Hopefully he's here. The state calls
8 Officer Phillip Moy. I know he was just parking five minutes
9 ago.

10 CLERK OF COURT: If could please raise your right hand and
11 state your full name for the record.

12 THE WITNESS: Phillip Moy.

13 PHILLIP M. MOY,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: Let's just have a sound check. Just state your
17 name again, please.

18 THE WITNESS: Phillip Moy.

19 THE COURT: All right. Your witness.

20 ATTORNEY OSBORNE: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY OSBORNE:

23 Q Officer Moy, where do you currently work?

24 A I currently work for the City of Charleston Police
25 Department.

1 Q And what's your assignment with CPD now?

2 A Patrol training officer in the 4th -- WC4.

3 Q And that's West Ashley, Team 4?

4 A That's correct.

5 Q How long have you been with CPD?

6 A Since November 2nd, 2020.

7 Q So pretty recently moved over?

8 A That's correct.

9 Q Where were you at before that?

10 A With the Summerville Police Department.

11 Q And how long were you with Summerville Police Department?

12 A From 2017 to 2020.

13 Q And when you left what was your rank?

14 A Detective corporal.

15 Q Any other prior law enforcement experience?

16 A From 2013 to 2017 I was with the Metropolitan Police

17 Department in Washington, D.C.

18 Q Okay. Let's go back to the night of January the 27th of

19 2019. Were you working then?

20 A I was off.

21 Q Okay. Not for long. You got called in?

22 A Correct.

23 Q And so you were a detective corporal with the Summerville

24 Police Department at the time?

25 A I was a detective. Not corporal, but just detective, at the

1 time. Yes.

2 Q I see. You got promoted, I guess, sometime after that?

3 A Correct.

4 Q And what was your initial role in this investigation?

5 A I was the case agent.

6 Q And case agent, that's the guy who's kind of ---

7 A The lead detective.

8 Q Lead detective, okay. You had a lot of people helping you.

9 Is that fair to say?

10 A That's correct.

11 Q All right. When you were called in, where did you first

12 respond?

13 A I first responded to Trident Hospital to meet with one of

14 the victims.

15 Q Okay. And who was that?

16 A Mr. Marcus Porter.

17 Q All right. And so you spoke to him, it's fair to say?

18 A That's correct.

19 Q And while speaking to him did you make any observations of

20 Mr. Porter?

21 A I did, yes.

22 Q And what were they?

23 A That he was laid out on a bed and appeared to have sustained

24 at least a single gunshot wound through the chest. It appeared

25 to be a through-and-through shot.

1 Q All right. After speaking to Mr. Porter, what did you do
2 then?

3 A Then collected clothing from him.

4 Q Okay. And that's standard protocol?

5 A Correct.

6 Q Okay. All right. Let's get this out of the way first.

7 ATTORNEY OSBORNE: Your Honor, may I approach?

8 THE COURT: You may.

9 Q I'm showing you, for ID purposes, State's Exhibit 3. As a
10 police officer through your training, are you familiar with what
11 that is?

12 A This is the CAD notes.

13 Q CAD notes. On those notes are you able to tell when the
14 original call came in for the 911? On the front page.

15 A Yes. This looks like -- looks like just after midnight on
16 the 28th, January 28th, 2019.

17 Q Okay. Specifically 12:03 a.m?

18 A Correct.

19 Q Okay. And I think 12:03 a.m. and 23 seconds?

20 A Correct.

21 Q All right. Throughout your investigation did you have the
22 occasion to come into contact with one, and just in passing,
23 Devonte Major and Polo Salazar?

24 A I did, yes.

25 Q Oh, here we go. Let's do it like this. I'm showing you

1 what's already been marked and admitted as State's 201. Do you
2 recognize that?

3 A I do.

4 Q And what is that?

5 A That was the jacket worn by Defendant Major.

6 Q And I'm showing you State's 202.

7 A That is the jacket worn by Defendant Salazar.

8 Q Okay. Well, at a later time did you have the occasion to
9 attend the autopsy of the victim in this case?

10 A I did.

11 Q All right. I'm showing you what's been marked as State's
12 186, and then I'm showing you what's been marked as State's 187.
13 Can you take a look at those and tell me if you recognize them,
14 and then just call out the exhibit number and what they are if
15 you do.

16 A So State's Exhibit 187 is going to be items retrieved from
17 the autopsy, projectiles from the autopsy. And 186, appears, is
18 going to be the blood spot card from the victim.

19 Q And they were handed over to you?

20 A That's correct.

21 Q Okay.

22 ATTORNEY OSBORNE: Oh, I'm sorry. Beg the Court's
23 indulgence.

24 THE COURT: All right.

1 Q Okay. Later in the investigation did you have the occasion
2 to collect Mr. Fortune's DNA?

3 A I did.

4 Q Just how do you go about doing that ---

5 A You would --

6 Q --- with a Q-tip?

7 A You essentially, it's a sterilized, it's like a big Q-tip,
8 big, long Q-tip. And you would put gloves on, handle the Q-tip.
9 You'd swab one cheek, indicate that was, say, the left cheek,
10 place it in the bag. Change gloves to avoid any kind of
11 cross-contamination. Put on a new set of gloves, swab the other
12 cheek, place it in there and label it as such.

13 Q And you had the occasion to do that to Mr. Fortune in this
14 case, collect his buccal swabs?

15 A That's correct.

16 Q They call it buccal swabs?

17 A Buccal swabs.

18 (WHEREUPON, State's Exhibit 214 is marked for
19 identification.)

20 Q All right. I'm showing you what's marked as 214. Can you
21 take a look at that and tell me if you recognize that.

22 A Yes. This is going to be the buccal swab, evidence 214.

23 ATTORNEY OSBORNE: Okay. No further questions, Your Honor.

24 THE COURT: Cross-examination on behalf of Mr. Fortune?

25 ATTORNEY HUBRICH: Thank you, Judge. May it please the

1 Court.

2 THE COURT: Yes.

3 **CROSS-EXAMINATION**

4 BY ATTORNEY HUBRICH:

5 Q Good afternoon, Officer Moy.

6 A Good afternoon.

7 Q You're with the Charleston Police Department now?

8 A That's correct.

9 Q I think you testified you met Marcus Porter at the hospital
10 that night that this happened?

11 A Correct.

12 Q And that was, to your knowledge, probably at least the third
13 statement he had given to law enforcement at that time?

14 A I'm not sure of prior statements.

15 Q But he would have spoken to at least one other officer?

16 A He would have spoken to at least the initial responding
17 officers, I'm sure.

18 Q And you are a detective?

19 A Correct.

20 Q So you are actively investigating, so you were kind of
21 following up what the other officers are doing?

22 A Correct.

23 Q Ask you discerned that there were four black males; right?

24 A Correct. That was --

25 Q And that they all had masks on?

1 A Correct.

2 Q And that, I think in your report you say -- I'm going to
3 mispronounce this, please forgive me, I mispronounced it earlier,
4 I'm going to do it again. The black males were wearing
5 balaclava-type masks. Did I say that right?

6 A Sounds right. Yes.

7 Q What's a balaclava-type mask?

8 A I guess the easiest way to describe it would be sort of like
9 a ski mask type thing that you pull over your head that covers
10 portions of your face.

11 Q And that someone kicked in the door?

12 A Correct.

13 Q And the first black male was light-skinned?

14 A As reported by Mr. Porter, correct.

15 Q And that's the person who shot the dog?

16 A Correct.

17 Q And this is also the guy that shot Joe Weaver?

18 A I'm trying to think back to the statement, if those were the
19 exact words, but ...

20 ATTORNEY OSBORNE: Your Honor, I'm just going to object,
21 finally, to hearsay.

22 ATTORNEY HUBRICH: Admission of party-opponent, Judge. I'm
23 just asking him what Marcus Porter told him.

24 THE COURT: You're asking this witness what, if anything,
25 did Marcus Porter tell him?

1 ATTORNEY HUBRICH: Correct.

2 THE COURT: Oh, okay. I'll allow it.

3 ATTORNEY HUBRICH: Thank you, Judge.

4 Q In your report it says a light-skinned, black male stated,
5 Shut the fuck up, shot Weaver and then shot Porter. So I think
6 my question to you was -- and I'm going to go back to that --
7 this is also the guy that shot Joe Weaver?

8 A I believe so. If that's how he indicated it, yeah.

9 Q And your investigation concluded that this person was Elijah
10 Green?

11 A Based on the description as far as skin color and the eyes,
12 that was who we had determined was Green.

13 Q And ultimately Marcus Porter said, Yeah, it was Elijah
14 Green, I've seen him on TV, and that's the person that I'm
15 identifying as the light-skinned, black male with the
16 light-colored eyes. Right?

17 A He had said that at a subsequent interview.

18 Q And that's the man that shot the dog and shot Joe Weaver.
19 Correct?

20 A As described by Mr. Porter.

21 Q Yes. And the second person that Mr. Porter described was a
22 heavysset, black male with purple shoes?

23 A Correct.

24 Q And also, this was not Muanah Fortune? That's what your
25 investigation concluded, that this was not Muanah Fortune?

1 A The heavysset, black with shoes, purple shoes?

2 Q Correct.

3 A Correct.

4 Q That was Devonte Major?

5 A Correct.

6 Q Neither of those people are on trial today?

7 A Correct.

8 Q Upon questioning Porter at the hospital, he advised you that

9 he sold weed but that he didn't sell it out of his house. Isn't

10 that what he told you?

11 A At some interview. If it wasn't the initial interview, it

12 was a subsequent interview, he did say that he sold it out of his

13 house.

14 Q He did say he sold it out of his house?

15 A Correct.

16 Q Do you remember at the hospital if he told you he didn't

17 sell it out of his house?

18 A I don't know. I don't know if he said that specifically.

19 Q He told you that he didn't have any issues with anyone,

20 because you were trying to figure out who would do this. Right?

21 A Correct.

22 Q He told you that he didn't trust his roommate, David

23 Swibaker?

24 A Correct.

25 Q And that he thought Swibaker might have been setting this

1 whole thing up?

2 A That was a theory.

3 Q And that he had installed cameras before because Swibaker
4 was stealing from him?

5 A I believe that's what he said on the initial interview.

6 Q And eventually you talked -- I think you just mentioned
7 this -- you talked to Marcus Porter again, I think, at the
8 station. This time it would have been in Summerville at the
9 police station.

10 A Correct.

11 Q So that was at the hospital. And then you talked to him
12 again at the police station. Right?

13 A Correct.

14 Q And you returned his wallet to him?

15 A Correct.

16 Q And he's got counterfeit money in his wallet; isn't that
17 right?

18 A Correct. It's not so much that it's counterfeit, but it's
19 that movie-production money. I don't know if you've ever seen
20 it, it's like play money. If I remember it, it has like little
21 Chinese characters on it and stuff.

22 Q Okay. So you labeled it in your report as counterfeit
23 money, but it was more just play money?

24 A I don't know if you'd call it -- it's not real money,
25 essentially.

1 Q And at that point you confront him with some evidence that
2 you had already kind of gathered from phones and just from your
3 investigation, and that evidence was whether or not he had
4 actually been robbed 10 days prior?

5 A I believe the question came up. Yeah.

6 Q And he finally says, I've been robbed 10 days prior; my
7 house was robbed 10 days ago?

8 A Correct.

9 Q And that was the first time he ever mentioned it?

10 A Correct.

11 Q Would you agree with me that this would have been a lie of
12 omission, that it would have been relevant to your investigation
13 for you to know that?

14 A I mean, yeah. He did disclose it.

15 Q At no point during either of the times you spoke to him did
16 he tell you that the men who came into his house took Joe
17 Weaver's wallet?

18 A No.

19 Q He never mentioned anything about Joe Weaver's wallet to
20 you?

21 A I don't believe so.

22 Q And you also interviewed David Swibaker?

23 A Correct.

24 Q And it wasn't until you confront him with it that he also
25 tells you about a robbery 10 days prior?

1 A Correct.

2 Q And then you also go and interview someone by the name of
3 Jaquavious Washington?

4 A Correct.

5 Q And that was on February 4th of 2019?

6 A I believe so.

7 Q And in this interview, at that point -- let me ask you this.
8 At some point in your investigation did you think that some other
9 person was involved in this crime other than the four people that
10 you charged?

11 A I mean, it was a possibility.

12 Q And did you ask Jaquavious Washington about his
13 participation in this crime on February 4th, 2019, right after it
14 happened?

15 A We interviewed him to see if there was some kind of
16 connection.

17 Q And you decided not to charge him?

18 A Correct.

19 Q And then you went and got his cellphone call detail records;
20 right?

21 ATTORNEY OSBORNE: Objection, Your Honor. We're going to
22 authentication, foundation, hearsay.

23 ATTORNEY HUBRICH: I'm not trying to admit them, Judge. I'm
24 just asking him if he got them.

25 THE COURT: At this point she's asking, Did you get them.

1 You are correct, the next question, that would be.

2 Q At some point you went and got his cellphone call detail
3 records?

4 A That's correct.

5 Q And cellphone call detail records can show you where a
6 person was at a certain time; right?

7 A Can show where the phone was.

8 Q Yeah, that's good. And after you get those records, you
9 then go interview him again?

10 A Correct.

11 Q And that would have been two months later, on April 2nd of
12 2019?

13 A I believe so.

14 Q And at that point we've already charged Muanah Fortune, and
15 he has already been charged. Right?

16 A Correct.

17 Q And you go back and talk to Jaquavious Washington because at
18 that point you believe he was at the scene of the crime on
19 January 28th, 2019?

20 A I thought there needed to be some explaining based on the
21 location of the phone on that evening.

22 Q And you actually tell him in that interview ---

23 ATTORNEY OSBORNE: Objection, Your Honor. This is going to
24 be hearsay.

25 ATTORNEY HUBRICH: I'm just asking what he said, Judge.

1 ATTORNEY OSBORNE: Which is hearsay.

2 ATTORNEY HUBRICH: I'm just asking what he told the person.

3 THE COURT: And it is, it actually is, hearsay. But you may
4 answer what you said to him, not what he said to you.

5 ATTORNEY HUBRICH: Thank you, Judge.

6 Q And you actually say to him, I think you were part of this
7 crime on January 28th, 2019?

8 ATTORNEY OSBORNE: Objection, Your Honor. May we approach?

9 THE COURT: Sure.

10 (WHEREUPON, an off-the-record discussion is held at
11 sidebar.)

12 THE COURT: Sustained.

13 Q Okay, moving on. At any point -- typically you would do a
14 photo lineup. I'm going to go move on. Typically you would do a
15 photo lineup and have eyewitnesses identify people who were
16 present in the house, were present at a crime, right, the
17 perpetrators, but that was not done here?

18 A Are we talking about ...

19 Q Okay. No, sorry. Typically in a case, if you have a crime
20 you have the eyewitnesses do a photo lineup, let's say, of Muanah
21 Fortune. Did you have a photo lineup done of Muanah Fortune in
22 this case?

23 A I don't believe so. No.

24 ATTORNEY HUBRICH: Court's indulgence.

25 THE COURT: Yes.

1 ATTORNEY HUBRICH: I have no further questions, Judge.

2 THE COURT: All right. Yes, ma'am.

3 ATTORNEY HUBRICH: Thank you, Officer Moy.

4 THE WITNESS: Sure.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY CORNWELL:

7 Q Good afternoon, Officer Moy.

8 A Good afternoon.

9 Q Were you the lead investigator of this case, or was that ---

10 A That's correct.

11 Q And as the lead investigator on this case, did you have the
12 opportunity to review bodycam footage from the other officers
13 that responded to the scene that participated in this?

14 A Yeah. Over the course of the following months, yes.

15 Q And at any point in your investigation did you do what is
16 known as kind of canvass the neighborhood, talk to other
17 neighbors to see if they had surveillance cameras that might have
18 caught anything that could have helped identify anybody involved
19 in this incident?

20 A Yeah. So, the night of -- I spoke with the neighbors, the
21 direct neighbor that was involved that was the 911 caller. And
22 then also, yeah, we go through and we talk to the neighbors.

23 Q Would the neighbors that you spoke to have been in your
24 report?

25 A Might have been.

1 Q Have you had a chance to review your report before coming?

2 A I have, yes.

3 Q And other than the two neighbors, the one that called 911,
4 who else, what other neighbors did you talk to?

5 A I believe he lived there with maybe his wife or a
6 girlfriend.

7 Q Bernard?

8 A Bernard.

9 Q Bernard Seabrook. And that that would have been --
10 Mr. Seabrook and see his wife were the neighbors right nextdoor,
11 and his wife's the one that called 911?

12 A Correct.

13 Q Other than them, did you talk to any other neighbors in the
14 neighborhood?

15 A I don't believe so.

16 Q Didn't go around and check to see if, in the yards behind
17 them, if anybody had any sort of ring cameras or surveillance
18 cameras that that might have caught people run by or seen
19 anything?

20 A So we, Detective Davis and I, walked the residence and the
21 property. And those are things that we typically always look
22 for. But there was nothing of, you know, no help that would have
23 aided us as far as you're saying, like cameras and things like
24 that.

25 Q And when you first found out about this incident, you went

1 straight to the hospital and met with Mr. Porter?

2 A Correct.

3 Q And you got information from him?

4 A That's correct.

5 Q And then you came in contact with Devonte Major and Polo
6 Salazar?

7 A That's correct.

8 Q And after you met with them, through the course of your
9 investigation, you collected additional evidence such as
10 cellphone records. Correct?

11 A Correct.

12 Q And through your investigation you were given information
13 that all four of your suspects were also with another individual
14 by the name of Jaquavious Washington. Correct?

15 A Correct.

16 Q And that one of the individuals, Mr. Green, had actually
17 called Jaquavious?

18 ATTORNEY OSBORNE: Objection, Your Honor. Authentication.
19 Foundation. Same objections.

20 ATTORNEY CORNWELL: I'm asking, as part of his
21 investigation, did he get this information.

22 ATTORNEY OSBORNE: The question is eliciting evidence that
23 has not been authenticated. We have not received -- all of the
24 above.

25 THE COURT: I mean, I got it, but you're eliciting hearsay.

1 ATTORNEY CORNWELL: Your Honor, at this time I think we need
2 to take up a matter of law.

3 THE COURT: Come here.

4 (WHEREUPON, an off-the-record discussion is held at
5 sidebar.)

6 Q I apologize, Officer Moy. So during the course of your
7 investigation you were able to determine that the four suspects
8 you had in custody had a contact and were with a gentleman by the
9 name of Jaquavious Washington that day?

10 A Correct.

11 Q And also through the course of your investigation you were
12 able to speak with Marcus Porter, and Mr. Porter acknowledged
13 that he knew Jaquavious Washington?

14 A Correct.

15 Q And also sold marijuana to Jaquavious Washington?

16 A Correct.

17 Q I believe Mr. Porter indicated to you that Jaquavious
18 Washington had been to his house several times, and that ---

19 A Had been at least more than once, I believe.

20 Q And based on that information you went and met
21 with Jaquavious Washington; correct?

22 A Correct.

23 Q And Jaquavious Washington confirmed to you that he was
24 with ---

25 ATTORNEY OSBORNE: Objection. Calls for hearsay.

1 THE COURT: Sustained.

2 Q Were you able to confirm whether Jaquavious Washington was
3 with the four suspects earlier in the day?

4 A Correct.

5 ATTORNEY HUBRICH: I'm sorry, I can't hear. Can you speak
6 up, Ms. Cornwell.

7 ATTORNEY CORNWELL: Sure.

8 ATTORNEY OSBORNE: I'm going to object to that, the same
9 question. Hearsay.

10 ATTORNEY CORNWELL: I didn't ask him what he said.

11 THE COURT: It's already answered. Next.

12 Q And you informed him that you thought he was a suspect in
13 this case?

14 A I don't know if those were my exact words, but we were
15 looking at the possibility of that. Yes.

16 Q And you informed him that you were going to get cellphone
17 records?

18 A I believe so.

19 Q And at some point you did?

20 A Correct.

21 Q And based on those records you decided to go and speak ot
22 Mr. Washington again?

23 A Correct.

24 Q And during that interview with Mr. Washington you told him
25 that you knew he was at the incident location at the time of this

1 incident based on his phone records?

2 ATTORNEY OSBORNE: Objection, Your Honor. Calls for
3 hearsay. Authentication. Foundation. Same objections.

4 ATTORNEY CORNWELL: I'm just asking him what he told
5 Mr. Washington.

6 ATTORNEY OSBORNE: Which is an out-of-court statement which
7 is being offered for the truth of the matter.

8 THE COURT: Yes. I'll allow it. He can answer it.

9 A I'm sorry, can you repeat it?

10 Q I can try. So the second interview with Mr. Washington, you
11 informed him that it was your belief that he was in the area of
12 the incident at the time that the incident occurred based on his
13 phone records?

14 A As it pertained to direct confrontation in a criminal
15 investigation and interrogation, yes.

16 Q And at some point during that interview with him was that
17 information confirmed of him being in the area?

18 ATTORNEY OSBORNE: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q Was Mr. Washington ever charged in this incident?

21 A No, he was not.

22 Q And when you were doing your investigation are you aware of
23 evidence that was collected by Investigator Brooks?

24 A Yes.

25 Q And that included a footprint on the back door?

1 A I believe so.

2 Q And to your knowledge, as the lead investigator, do you know
3 if that footprint was matched to any of the shoes that were being
4 worn by any of the suspects?

5 A I do not know.

6 Q And during the course of your investigation did you discover
7 that the vehicle that the suspects were in belonged to Q, that
8 they got it from Q, which would be Mr. Washington?

9 A I' sorry, say it again.

10 Q The vehicle that the suspects were in, during the course of
11 your information, were you given, in this investigation, were you
12 given information that they got that car from Q?

13 A That was a statement made by one of the defendants. But our
14 investigation did not reveal that they got that from Q.

15 Q But you were informed that the car that they were in, they
16 got from Q?

17 A Is what they said.

18 Q So, Mr. Moy, based on your investigation, you know that Q
19 was with the suspects; you know that he knows the victims and
20 knows where the victims live. Correct?

21 A Correct. At least that night, the night prior going into
22 that morning, at some point during that time Q, who is Jaquavious
23 Washington, had met up with the suspects.

24 Q And during the course of your investigation, when you were
25 talking to Mr. Porter did Mr. Porter inform you that he had

1 spoken to Q the night before about fronting him some drugs and
2 re-upping?

3 A I don't know if it was the night before but, yes, I had that
4 conversation with him. Yeah. It would have been just -- if it
5 wasn't the night before, it would have been like the days prior
6 to.

7 ATTORNEY CORNWELL: The Court's indulgence.

8 THE COURT: Yes.

9 ATTORNEY CORNWELL: Mr. Moy, that's all the questions I
10 have. Thank you.

11 THE WITNESS: You're welcome.

12 THE COURT: Redirect?

13 ATTORNEY OSBORNE: Thank you, Your Honor.

14 THE COURT: Yes.

15 ATTORNEY OSBORNE: May I approach the witness?

16 THE COURT: You may.

17 (WHEREUPON, State's Exhibits 174, 175 and 176 are marked for
18 identification.)

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY OSBORNE:

21 Q I'm showing you what's been marked as State's 174 through
22 176. Through your experience in law enforcement, did you ever
23 deal with DMV at all?

24 A I have. Yes.

25 Q Do you recognize the individuals on these documents?

1 A Yes, I do.

2 Q Do those documents, the DMV documents, list the residence
3 that individuals live at?

4 A They do.

5 Q Okay. And did the location that these defendants live
6 become relevant in this investigation?

7 A They did.

8 ATTORNEY OSBORNE: Okay. Your Honor, at this time we'd seek
9 to admit -- and they've already been authenticated -- State's 174
10 through 176 in evidence.

11 ATTORNEY HUBRICH: No objection.

12 ATTORNEY CORNWELL: No objection, Your Honor.

13 THE COURT: Very well.

14 (WHEREUPON, State's Exhibits 174, 175 and 176 were admitted
15 into the record.)

16 Q All right. So we're start with 174. I know it's kind of
17 tough to see. Can you tell me who that is?

18 A Defendant Salazar.

19 Q Say it again?

20 A I'm sorry. Defendant Salazar.

21 Q Can you see, I guess, what town he lives in?

22 A It says Seabrook, South Carolina.

23 (WHEREUPON, State's Exhibit 177 is marked for
24 identification.)

25 Q Lives in Seabrook, okay. I'm showing you now 177. Can you

1 tell me, do you recognize that guy?

2 A It's Defendant Green.

3 Q Who?

4 A Defendant Green.

5 Q And where does he live, what town?

6 A Seabrook, South Carolina.

7 Q And now I'm showing you 175. Can you tell me who that is?

8 A Defendant Fortune.

9 Q Where does he live?

10 A Seabrook, South Carolina.

11 Q All right. Now I'm showing you 176.

12 A That's Defendant Major.

13 Q And where does he live?

14 A Beaufort, South Carolina.

15 Q And what's next to Seabrook?

16 A Beaufort.

17 Q And now let's go into Jaquavious, 178. Where does he live?

18 A It's Seabrook, South Carolina.

19 Q Okay. So is it fair to say -- and, you know, tell me if
20 it's not, is it fair to say -- that when you heard that Marcus
21 Porter had sold marijuana to an individual that was from Seabrook
22 and you knew that those defendants were from Seabrook, that you
23 explored the possibility that that might be the connection?

24 ATTORNEY HUBRICH: Objection. Leading.

25 THE COURT: I think -- and tell me if this is -- rephrase it

1 so our record is quite clear.

2 ATTORNEY OSBORNE: Yes, ma'am.

3 Q When you learned that these defendants were not from
4 Summerville and they were from another town, were you looking for
5 a connection?

6 A I was.

7 Q And were you trying to find out, How'd they find out about
8 that house?

9 A That's correct.

10 Q And through that investigation did you find someone else
11 that was from Seabrook?

12 A We did.

13 Q And who was that?

14 A Jaquavious Washington.

15 Q And what was Jaquavious -- I think we've already hammered it
16 down, but what was Jaquavious's connection to the house?

17 A He had been there prior and purchased some marijuana from
18 Mr. Porter.

19 Q Okay. And so when you were talking to Jaquavious were you
20 talking to him, trying to figure out whether he went in the house
21 or whether he was involved in directing the defendants to the
22 house?

23 A We explored the possibility of both.

24 Q You did. Did you find any evidence of putting him in the
25 house?

1 A No.

2 Q Did you find any evidence that put him in the getaway car?

3 A No.

4 Q Now, there was some discussion about the car belonging to or
5 coming from, I guess, Q. Does the name Salina Sheppard ring a
6 bell?

7 A I believe that's the registered owner of the --

8 ATTORNEY CORNWELL: Objection, Your Honor.

9 THE COURT: You object to him asking if you know Salina
10 Sheppard?

11 ATTORNEY CORNWELL: I'll withdraw the objection and wait
12 until he gets to what I anticipate.

13 THE COURT: Okay.

14 Q Ms. Hubrich said that, asked you -- and tell me if I'm right
15 because I want to make sure I got it right -- Ms. Hubrich asked
16 you, through your investigation, you learned that the Honda, the
17 car, the getaway car that her client is alleged to have been
18 driving, was given to them by Q.

19 ATTORNEY CORNWELL: Objection.

20 ATTORNEY HUBRICH: That wasn't me.

21 ATTORNEY OSBORNE: Mr. Cornwell, is that who said it?
22 Sorry.

23 THE COURT: So will you ask the question again?

24 ATTORNEY OSBORNE: Okay. And I want to make sure I got it.
25 Thank you.

1 Q Ms. Cornwell asked you that, through your investigation, you
2 learned that the Honda was given to them by Q? Is that correct?

3 A At least one defendant had explained that to me.

4 Q But you found out that that Honda actually, or did you not
5 find out that Honda actually, belonged to somebody else. Didn't
6 it?

7 A We did.

8 Q In fact, the Honda was reported stolen?

9 ATTORNEY CORNWELL: Objection, Your Honor.

10 A Correct.

11 THE COURT: And the ---

12 ATTORNEY CORNWELL: Hearsay.

13 ATTORNEY OSBORNE: Well, I can use the catch phrase.

14 Q Through your investigation, did you learn the Honda was
15 stolen?

16 ATTORNEY CORNWELL: Same objection.

17 THE COURT: Overruled.

18 A Yes.

19 Q Okay. And now -- let's try to get names right - Ms. Hubrich
20 said/asked you, through your investigation, you concluded, or you
21 believed, or the evidence showed, that Devonte Major and Elijah
22 Green were two of the individuals involved in the shooting?

23 A Correct.

24 Q And through your investigation did you learn that there were
25 also two other individuals that were involved in the incident?

1 A Correct.

2 Q Two individuals that were engaged with David Swibaker?

3 A I'm sorry, say it again.

4 Q The two other individuals being engaged with David Swibaker

5 during the incident?

6 A Correct.

7 Q Ms. Hubrich asked you about questioning Marcus Porter while

8 at the hospital and she said, you know, talking about marijuana

9 dealing. Were you asking him questions about marijuana dealing

10 or were you more focused on the murder?

11 A The murder, obviously.

12 Q And when you interviewed him at a later date is it, or is it

13 not, fair to say at a later date you were kind of hammering down

14 the whole picture then?

15 A Correct.

16 Q There was some question about Joe Weaver's wallet. Joe

17 Weaver's wallet, was it recovered in this case?

18 A It was.

19 Q And where was it recovered?

20 A It was recovered on the roadside on Central Avenue.

21 Q On the same path that the defendants were ---

22 ATTORNEY HUBRICH: Objection. Leading.

23 Q Was it on the same path that the defendants were fleeing?

24 A Correct.

25 Q Do you normally show lineups to witnesses who say, I think

1 the suspects were wearing masks, I didn't really see them?

2 A No.

3 Q Okay. Last thing.

4 ATTORNEY OSBORNE: Your Honor, may I approach the witness
5 and give him some scissors?

6 THE COURT: Sure.

7 Q Let's take a look at 194. If you don't mind, sir, if you'd
8 put some gloves on, tear into 194, and tell me if you recognize
9 194.

10 A Do I have to cut it a special way, or no?

11 Q Just take a look at it as best you can without showing
12 everyone. Do you recognize that?

13 A I do.

14 Q And what is that?

15 A This is the jacket that was worn by Defendant Salazar.

16 Q Okay. Did you actually see that jacket on the defendant ---

17 A I did.

18 Q --- on the night of the incident?

19 A I did.

20 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
21 admit 194 into evidence.

22 THE COURT: All right. Any objection, Ms. Hubrich?

23 ATTORNEY HUBRICH: None.

24 THE COURT: And?

25 ATTORNEY CORNWELL: Yes, Your Honor.

1 THE COURT: All right. Can you give me a word or two on the
2 basis?

3 ATTORNEY CORNWELL: Did he collect from Mr. Salazar? Just
4 chain.

5 THE COURT: Okay. Overruled.

6 (WHEREUPON, State' Exhibit 194 is admitted into the record.)

7 Q All right. So there was some question that was brought out
8 on cross. And I want so bad to say baklava but I know it's not
9 baklava. What is the type of sweatshirt it is again that you
10 talked about?

11 A I'm sorry?

12 Q Where you cover up your ---

13 A You're talking about the facemask?

14 Q Yes, the facemask.

15 A Almost like a winter mask, like a mask you'd wear to cover
16 your face from the elements.

17 Q But it's like balaklava (sic)?

18 A Baclava.

19 Q Baclava, okay. Do you mind holding that up and showing to
20 the jury.

21 A (Responds.)

22 Q And does that jacket, the one that was worn by Polo Salazar
23 that night, have that type of face guard where you can pull it up
24 and cover up your face?

25 A Yeah. It's like, this particular jacket, it's built in,

1 almost like a neck peter that you could pull up over your face.

2 So this is the hood, and this is the facemask.

3 Q So you put the hood on, you put the facemask on, you're
4 covering up your whole face just about, maybe not your eyes?

5 A Essentially except for your eyes, yeah.

6 Q And who was it that told you about that type of hoodie being
7 involved somewhere?

8 A It was Mr. Porter.

9 Q Mr. Porter, okay. You can just, as best you can. As we've
10 learned, when you pull out evidence, it's hard to repackage it
11 exactly correctly. So just do the best you can.

12 Last question. And you can sit back down. Through your
13 investigation, if you had been able to develop the evidence to
14 show that Jaquavious Washington pointed out Marcus's house to the
15 four defendants that entered the house, would he have gotten a
16 charge?

17 A Absolutely.

18 ATTORNEY OSBORNE: No further question.

19 THE COURT: Yes. Recross?

20 ATTORNEY HUBRICH: Yes, ma'am. Thank you.

21 **RECROSS-EXAMINATION**

22 BY ATTORNEY HUBRICH:

23 Q You stated on questioning by the solicitor, Did you find any
24 evidence that put Jaquavious Washington in the house? That was
25 his question to you. And you answered it no; correct?

1 A Correct.

2 Q So I want to talk about that. Is there any person that you
3 know of throughout your investigation that can come in and ID
4 Muanah Fortune as being a person that was in that house?

5 A Are you talking about as a photo lineup?

6 Q A photo ID or an eyewitness that can say Muanah Fortune was
7 in that house.

8 A No.

9 Q Fingerprints were collected in this case; right?

10 A Yes.

11 Q Are there any fingerprints that you can say put Muanah
12 Fortune in that house?

13 A Not to my knowledge.

14 Q Not to your knowledge. That was your statement; right?

15 A Correct.

16 Q DNA was collected in this case. You collected some of it
17 from my client, I believe. Right?

18 A Correct.

19 Q Is there any DNA that puts Muanah Fortune in that house?

20 A Not to my knowledge.

21 Q No. So let me ask you this. Did you find any of that
22 evidence that puts Muanah Fortune in that house?

23 A Of what you just said, no.

24 Q No. Just like Jaquavious Washington.

25 ATTORNEY HUBRICH: I have no further questions.

1 THE COURT: All right. Yes, ma'am?

2 **RECROSS-EXAMINATION**

3 BY ATTORNEY CORNWELL:

4 Q Officer Moy, did you collect a buccal swab from Jaquavious
5 Washington?

6 A I don't recall.

7 Q If you did, would it be in your report?

8 A It would have been.

9 Q So if it's not in your report, then you did not collect a
10 buccal swab from Jaquavious Washington?

11 A That would be a correct assumption.

12 Q So you wouldn't be able to tell if Jaquavious Washington's
13 DNA was in the house or not?

14 A We didn't collect it. No.

15 Q But following the same line of questioning, there is no one,
16 through the course of your investigation, that can say Polo
17 Salazar was in that house; is there?

18 A That's correct.

19 Q And there's no DNA that you're aware that puts Polo Salazar
20 in that house?

21 A That I'm aware of, no.

22 Q And there are no fingerprints that put Polo Salazar in that
23 house?

24 A That I'm aware of, no.

25 Q And going back to the mask, the word baklava or baclava,

1 that's your word, right, that was not what ---

2 A That was a word that I used to describe that face covering
3 of sorts.

4 Q In fact, Porter told you about a ski mask with two eyes and
5 the mouth cut out at first; correct?

6 A To my knowledge.

7 Q And then when asked about masks he said you know, I could
8 just see their eyes. So the word baclava is your word?

9 A Correct.

10 ATTORNEY CORNWELL: No further questions. Thank you.

11 THE COURT: All right. Yes. Is this witness free to leave?

12 ATTORNEY OSBORNE: Yes, Your Honor.

13 THE COURT: Any objection?

14 ATTORNEY HUBRICH: None.

15 ATTORNEY CORNWELL: No.

16 THE COURT: Thank you, sir, you are free to go.

17 All right. Call your next witness, please.

18 ATTORNEY OSBORNE: Your Honor, may we approach real quick?

19 THE COURT: Sure.

20 (WHEREUPON, an off-the-record discussion is held at
21 sidebar.)

22 THE COURT: Ladies and gentlemen, let me tell you where we
23 are. And we obviously, it probably dawned on you guys we're not
24 going to finish this week. And for that, I'm terribly sorry.

25 I am mindful of the note that I got with regards to the

1 things, it would be okay on Wednesday for the job interview.

2 Okay. I probably just jinxed this, but that's what I think.

3 I am mindful that we've got graduation this evening, and
4 there are celebrations for that.

5 Here's my concern. My concern is, our next witness is going
6 to take us into graduation, now, you know, into festivities. My
7 memory is there's dinner and you have to report at 6:00. Am I
8 right, am I remembering that correctly? I am, okay.

9 So we're really in a bit of a dilemma. And I really do
10 think that, in order to -- and I know, I know we have other
11 festivities. Where's my maid of honor? Where's my maid of
12 honor? See how that works? Are you packed and ready to go?

13 JUROR: Yes.

14 THE COURT: Okay. Well, that's perfect. So what I'm trying
15 to tell you is, the next witness is going to be lengthy,
16 sufficiently lengthy that it's going to be getting there where
17 you want to, and I'm going to run into dinner and I'm concerned
18 about that. Because I know you've got to go home, you've got to
19 change, you've got to pick up family, no doubt. There's a lot to
20 be done before graduation and dinner.

21 I say all that to tell you all we've got some work that we
22 need to do. And so I think it's a better use of your time for us
23 to do what we need to do and to excuse you all for the weekend.
24 Okay, got that?

25 Now, the same admonition. You know, I'm always concerned

1 when people go away for the weekend because it gets to be, in my
2 experience what jurors will do, you absolutely walk away from it,
3 it's little tired of having to sit and listen so intently. You
4 have no idea how intently you listened, but you have, and it's
5 tiring. And then you'll be delighted to put it down for a day.

6 Probably my concern arrives on Sunday afternoon, people
7 start thinking, Uhm, wait a minute, let me think about this.
8 That's when I get concerned about folks deciding, I'm just going
9 to do a little bit of research. No, cannot, you cannot.

10 Please be mindful that you cannot do any research about this
11 matter or anyone that has anything do with it. You cannot
12 discuss this matter with anyone or allow anyone to discuss it
13 with you. No blog, no LinkedIn, Facebook, any of the social
14 media platforms, you must certainly stay away from those with
15 regards to this matter. And, of course, keep your cellphones
16 away from the courthouse on Monday.

17 There's going to be a lot of curiosity about the matter as
18 the days go by. But, please, put it on the Judge that you cannot
19 discuss this matter or allow anyone to discuss it with you.

20 I know we are concluding a little earlier today but, I think
21 with the considerations of other jurors, I certainly don't want
22 to lose any jurors at this juncture. So please be mindful, do
23 not discuss this matter or allow anyone to discuss it with you.

24 We will start up on Monday morning at 9:30. And we've got a
25 vaccine Monday morning. Monday morning, who's got a vaccine? No

1 one does. Okay, good. I may be remembering that from one of the
2 folks that were on the general panel. All right. Wonderful.

3 Ladies and gentlemen, have a terrific weekend. Please be
4 mindful, please remember, do not discuss this matter, allow
5 anyone to discuss it with you. And we will -- I will see you
6 Monday morning at 9:30. And thank you so much.

7 (WHEREUPON, the jury is dismissed for the day at 2:47 p.m.)

8 MATTERS OF LAW

9 THE COURT: All right. You were talking about some sort of
10 proffer. And I wanted to know, what were you talking about?

11 ATTORNEY CORNWELL: Your Honor -- and I didn't want to get
12 too far into this. When it comes to the phone records, I'm not
13 asking them to be moved in for identification or anything like
14 that, but I do think that I get to question law enforcement on
15 their investigation. As part of your investigation, did you
16 subpoena phone records? Yes. And in your experience as a law
17 enforcement officer, when you received those records did you look
18 at them and determine that Jaquavious Washington's phone was at
19 the incident location in the area of the incident location?

20 I'm not asking him to authenticate, to prove. They got a
21 search warrant for phone records. They downloaded the phone
22 records through Cellebrite and all that. They looked at the
23 phone records. They're experience, as a law enforcement officer,
24 says that they can look at the records that they received. And
25 based on their experience in law enforcement, they can testify

1 how they understand those records.

2 THE COURT: So what you want to ask, you want to ask
3 somebody, Based upon your investigation, did you determine that
4 Mr. Washington was near this location at the time of the event?

5 ATTORNEY CORNWELL: That you believe Mr. Washington was
6 near. Yes.

7 ATTORNEY OSBORNE: So the problem with that is what she's
8 contemplating here is cellphone analysis data. If you're going
9 to get that data in, you need an expert. And I believe
10 Ms. Cornwell would know this, I know she does, when you're doing
11 this as a prosecutor, if you're going to do that, boy, there are
12 a lot of steps. The first thing you need to do is you need
13 to ---

14 THE COURT: I've done it a number of times. And it's your
15 position because that's based upon expert testimony?

16 ATTORNEY OSBORNE: Yes.

17 THE COURT: Because you've got to have the pin and you've
18 got to do the triangulation and blah-blah. And you don't think
19 the officer actually did the triangulation at all?

20 ATTORNEY OSBORNE: I know he didn't.

21 ATTORNEY CORNWELL: I'm not asking him to testify to any of
22 that. And that's what you have to do if you want to move phone
23 records in. If you want to throw up a map and show the jury
24 exactly where the phones are and all that, I get that. That's
25 not what I'm doing, that's not what I'm asking.

1 But I also think that he can testify that, in his
2 experience, when he subpoenas records, he reviews it. And, when
3 he reviews what he's been given, he, based on what he's looking
4 at, can come to a conclusion based on what he's looking at.

5 But I think he did get the phone records. He got mapping of
6 phone records because he goes to Jaquavious Washington and shows
7 him, This is where it shows that you're here at this incident
8 location.

9 I'm not trying to move those into evidence. I'm not trying
10 to move any of that into evidence. But I think he can testify
11 that, when he reviewed the evidence that he collected, his
12 assumption is, and based on what he has seen in the phone
13 records, Jaquavious Washington was at that incident location
14 during the incident time.

15 Not asking to move the maps into record; not asking to move
16 the cellphone records into evidence; not asking to move anything
17 into evidence. I just want Davis to testify that, when he saw
18 those records, he determined, based on his experience, that
19 Washington, or at least Washington's phone, was in the area at
20 the time of the incident.

21 ATTORNEY OSBORNE: Paper is evidence, but testimony is also
22 evidence. And when you elicit testimonial evidence talking about
23 stuff that has not been authenticated, stuff that he didn't do --
24 and I know, and I bet Sergeant Davis knows, too, that cellphone
25 analysis data stuff, you've got to have the right guy up there,

1 because I've seen on a number of occasions where that cellphone
2 mapping stuff comes back and it's not accurate. That's why you
3 need an expert.

4 There's one guy in this state that I use all the time,
5 that's FBI Clay Simmonds. He's the best I've seen. I've seen
6 other guys get up there, and he looks at it, and he's like, It's
7 junk, it's all wrong.

8 ATTORNEY CORNWELL: I'm not asking if it's accurate. I'm
9 asking if, when he looked at it he saw ---

10 ATTORNEY OSBORNE: She's trying to introduce that for the
11 truth of the matter. And he didn't do that.

12 ATTORNEY CORNWELL: I'm not asking him to tell me if it's
13 right or wrong, if it's accurate or not. I'm asking him, when he
14 saw them, did he believe that it placed Washington at the scene.

15 THE COURT: Let me ask you this question. If he's not going
16 for qualification to qualify to answer that and that is
17 information that must be, that you cannot, that is uniquely to be
18 provided by the expert, and he's not an expert, why am I not
19 asking for speculation?

20 ATTORNEY CORNWELL: The only person that can testify as to
21 what he thought based on what he saw was him.

22 THE COURT: Yeah. But you've got to have a lot --

23 ATTORNEY CORNWELL: Because I think, and the opposite of it,
24 if you arrest someone falsely and then, you know, you would
25 definitely want him to say, Based on what I saw, this is what I

1 saw happen, but then I found out later on, and that's why he was
2 arrested, I found out later on the phone records weren't
3 inaccurate. And so we move on, whatever.

4 So in that case you're not moving into evidence the records.
5 You're asking, As part of your investigation, you examined
6 evidence and you came to conclusions based on what you saw.

7 So at some point did you get a search warrant for a
8 cellphone record? Yes. At some point did you receive those
9 cellphone records? Yes. At that point did you go and interview
10 Washington again? Yes. And is it because, once you received
11 those records, your interpretation of them placed Washington at
12 the scene at the time of the incident?

13 I'm not asking no for mapping, I'm not asking for cell
14 towers, I'm not asking for any of that. I'm just asking, You
15 asked for evidence, you got that evidence and, based on what you
16 looked at, this is the assumption you made? Otherwise, why do
17 they even go back and talk to Washington?

18 ATTORNEY OSBORNE: If we were going to elicit that
19 testimony, I would have to provide them with notice that I plan
20 on eliciting testimony about these business records, and then I
21 would try to move those records in either by calling in a
22 custodian -- and you don't move in the records, that's not the
23 point, I wouldn't put the CD in the records. What I would end up
24 doing is saying, What am I looking at here? We're looking at
25 cellphone records. Did you have the occasion to look at those

1 cellphone records? Yes. How did you tie those cellphone records
2 into that defendant?

3 We're getting into, that's the way you would go about doing
4 it. They didn't analyze the records, they didn't look at the
5 records. There's an expert with SLED, I assume he's an expert, I
6 don't know who he is, he's the one that looked at the records,
7 he's the one that come up to it.

8 And that's assuming that the records, I think, which is the
9 strongest argument to keep it out, it's hearsay, it's
10 authentication, it's foundation.

11 But the last part, it's classic third-party guilt. And this
12 is the whole point to our whole motion of third-party guilt.
13 This is the evidence we're trying to keep out.

14 What she's trying to do, she's trying to skip a bunch of
15 steps, authentication, hearsay, everything else, and all she's
16 trying to do is introduce evidence that it was Jaquavious
17 Washington and not my guy.

18 And here's the evidence to prove it. But, guess what? Just
19 like Officer Moy just said, Just because Jaquavious is in the
20 area doesn't mean that they didn't do it. And that's what
21 third-party guilt is, it's casting mere suspicion. And that's
22 the evidence. Because even if that evidence were true, it does
23 not exonerate them.

24 And like what Your Honor said on Friday, what I need for
25 third-party guilt is you take him and you pluck them out. Well,

1 even if you take that evidence, it does not pluck them out.

2 Jaquavious could have been right there, but they're still there,
3 too. And that's what third-party guilt is.

4 And this is the evidence that we've been trying to keep out
5 the entire trial. And if I had known they were going this way,
6 that they wanted to bring it in this way, had been provided
7 notice, we would have been ready to fight it.

8 THE COURT: You would have been ready to what?

9 ATTORNEY OSBORNE: Fight it. I would have had ---

10 THE COURT: Well, you know, you do okay.

11 ATTORNEY OSBORNE: I'd have got my guy, Clay Simmonds. Take
12 a look at these records, what are we looking at here?

13 THE COURT: You're doing okay. Here's what you can do. Let
14 me shortcut it for everybody. Here we go. You can ask all the
15 questions that you just talked about, right. You cannot ask him,
16 Did you have a lack of, did you make a wave (phonetic sp) that he
17 was in the area?

18 And let me tell you, let me put on the record why. It's
19 because you're using the triangulation -- that's the wrong term,
20 isn't it, triangulation?

21 ATTORNEY OSBORNE: No, that's correct.

22 THE COURT: Is that the right term, triangulation? You
23 know, I sign those things all the time with, help me, the guy
24 from Columbia, you know who I'm talking about. You know who I'm
25 talking about?

1 ATTORNEY CORNWELL: Yes.

2 THE COURT: I sign those all the time for the marshal
3 service, comes in, gets them.

4 ATTORNEY CORNWELL: Kane (phonetic sp).

5 THE COURT: Yes. And then they get those records. And
6 someone takes that data and triangulates to to figure out where
7 the cellphone was.

8 And you can ask the other questions that you mentioned.
9 Based on, You got those records; right?, based on this, you went
10 and talked to him because you were concerned, I was concerned.

11 What you cannot do is, You made a determination, that based
12 on your review of the records, that he was flie (phonetic sp).
13 And the reason is, is unless that he can testify that he is
14 someone who is qualified to make that determination; that, yes,
15 he's had sufficient knowledge and training that he can make that
16 determination based on those records. If he says that, you've
17 got it.

18 But that is information that triangulation has to be done.
19 I mean, as I understood it, it's a mathematical formula. You can
20 ask him anything other than that. Unless he's qualified to
21 answer it. Now, if he's qualified to answer it, then you go for
22 it. But he's going to have to be qualified to answer it.

23 ATTORNEY CORNWELL: And just going a little further now into
24 my third-party defense which ---

25 THE COURT: Let me stop you for a second, because I'm a

1 little bit worried about that. I don't know that they got the
2 records, right. But if they did, did you get the records in
3 discovery?

4 ATTORNEY CORNWELL: Yes.

5 ATTORNEY HUBRICH: Yes.

6 THE COURT: Okay. Then I'm not worried.

7 ATTORNEY CORNWELL: We actually have the triangulation and
8 where it shows everything. I'm not testifying to the accuracy,
9 but I can look at them and say, oh, yeah, I think this person's
10 here based on this.

11 THE COURT: So you can testify as an ---

12 ATTORNEY OSBORNE: Not that easy.

13 ATTORNEY CORNWELL: Going more into the third-party guilt,
14 when Davis testifies I'm going to ask him if he interviewed
15 Elijah Green. And Elijah Green says, I went to three white guys'
16 house with Jaquavious Washington and his girl. And he can say
17 hearsay.

18 ATTORNEY OSBORNE: Of course.

19 ATTORNEY CORNWELL: And I think it goes to third-party guilt
20 because it takes, there's no footprint. Green, who is the
21 suspect has been firmly identified as being in that house, tells
22 law enforcement that he goes inside that house, in the three
23 white guys' house, with Jaquavious Washington.

24 We've got Green identified; we've got Major identified;
25 we've got Fortune who hasn't been identified, at least not as of

1 yet; and you've got Polo who has not been identified, at least as
2 of yet.

3 And so I think that I can definitely say that there are
4 facts inconsistent with my defendant's guilt, and raise a
5 reasonable inference as to his innocence.

6 It puts Jaquavious Washington in that house with Green.
7 Green said, I went to three white guys' house with Jaquavious and
8 his girl. And so I think there is credible evidence of
9 third-party guilt; that any strict restrictions on admissibility
10 of such evidence is unreasonably infringing upon a criminal
11 defendant's right to present a complete defense. That is what is
12 in *Holmes*.

13 THE COURT: Tell me what you're referring to. What piece of
14 evidence are you worried about? What are you arguing to me now?
15 You're arguing about Elijah Green? Have you left the phone and
16 we're now talking about Green?

17 ATTORNEY CORNWELL: I left the phone now.

18 THE COURT: You've got to give me, like, a map. You know,
19 because you leave me behind every single time ---

20 ATTORNEY CORNWELL: I apologize, Your Honor.

21 THE COURT: --- and you move on. So you moved on to Elijah
22 Green. But didn't you hear the solicitor say, I knew you were
23 going to ask that, did you hear that? I heard it.

24 ATTORNEY CORNWELL: He also said he's going to object to it.

25 THE COURT: Yes, on the basis of hearsay.

1 ATTORNEY OSBORNE: Yes.

2 ATTORNEY CORNWELL: And I think under third-party guilt it
3 still comes in. It's not hearsay, one.

4 THE COURT: What does he say? What does he say?

5 ATTORNEY CORNWELL: He says ---

6 THE COURT: Elijah Green.

7 ATTORNEY CORNWELL: He says, I went to three white boys'
8 house with Jaquavious Washington and his girl, and they left me
9 there.

10 THE COURT: Where's the there?

11 ATTORNEY CORNWELL: At the three white guys' house.

12 ATTORNEY OSBORNE: That's not accurate. What he was talking
13 about was what he had did earlier in the night. He's not
14 confessing, Elijah Green never confessed to this crime. What
15 he's talking about is, This is what I was doing earlier in the
16 night. Again, that's mere suspicion, that's casting a doubt.

17 And not to mention, I'm going to look up this unavailable
18 witness issue, but what you she's trying to do now, to say that
19 Elijah Green is somehow affiliated with the state is really
20 getting out into left field. So to introduce a party-opponent
21 ---

22 THE COURT: He's not --

23 ATTORNEY OSBORNE: Yeah. So that's --

24 THE COURT: He's not.

25 ATTORNEY OSBORNE: So it shouldn't come in as a part of a

1 hearsay, and it should come in ---

2 THE COURT: This has to be non-hearsay if he came in as
3 being associated with party ---

4 ATTORNEY OSBORNE: That's right. That's non-hearsay.
5 Right.

6 THE COURT: So where your brain jumped to is, Is that an
7 admission, is that admission against his interest?

8 ATTORNEY OSBORNE: And it's not.

9 THE COURT: And we're saying it's not because he's not
10 talking about ---

11 ATTORNEY OSBORNE: He adamantly -- not only is that not a
12 statement against his interest, it's a statement for his
13 interest. He's saying, I had nothing do with this. And then, So
14 where were you earlier in the night? I was with some white guys.

15 ATTORNEY CORNWELL: I mean, I think he can say it. He can
16 just say, I went to go smoke weed with them. He still places
17 himself at three white guys' house with Jaquavious Washington on
18 the day of the incident. And it is exculpatory evidence that my
19 client, under third-party guilt defense, was not there; that it
20 was Jaquavious Washington that was there.

21 And if look at *Chambers v. Mississippi*, it says as a general
22 rule, the accused, in exercise of this rights, to present a
23 complete defense, must comply with established rules of procedure
24 and evidence, but where constitutional rights directly affecting
25 the ascertainment of guilt are implicated, those rules may not be

1 applied mechanistically to defeat the ends of justice.

2 And in that case it stated that they established that the
3 accused, in a criminal proceeding, had a constitutional right to
4 introduce any exculpatory evidence unless the state can
5 demonstrate that it is so inherently unreliable as to leave the
6 trier of fact with no rational basis for evaluating it for its
7 truth.

8 ATTORNEY OSBORNE: Elijah Green said he was 15 miles away
9 from the incident location. We just looked it up, 15.6 miles
10 away. How in the world does that help exculpate Mr. Salazar?

11 ATTORNEY CORNWELL: Because he's confronted with evidence
12 that goes against his statement. And when he is confronted with
13 that evidence, it states, when confronted with the fact fact they
14 found gunshot residue, Green changed his story and said he was
15 around the white guys that were firing a gun. He then said he
16 left Quay's house with the Quay and female and went to the white
17 guys' house, and the female left him at the residence where the
18 white guys were smoking marijuana.

19 So that statement right there that, hey, here's your
20 conversation, that now he's saying, okay, yeah, their place, I
21 was there; I left. It places Jaquavious Washington with Elijah
22 Green in that house on that day.

23 ATTORNEY OSBORNE: That's the leap that she's having a
24 problem with. It's not that house, it's 15.6 miles away on
25 Roberta Drive. But even if, even if, he said that he was in the

1 house, he would have to say something that would have to be
2 against his own interest to meet that unavailability requirement.
3 And this is not against his interest; this is very a self-serving
4 statement.

5 ATTORNEY CORNWELL: I'm not worried about his interest. I'm
6 worried about my client's interest.

7 ATTORNEY OSBORNE: That's what the rule says.

8 ATTORNEY CORNWELL: And he gets to present a complete
9 defense in showing that it could have been someone else. I mean,
10 he says three white guys and, oddly enough, there are three white
11 guys in this particular house. So if you want to, also, you
12 know, redirect or whatever and say, Could it have been Roberta
13 Drive?, go for it.

14 But I think that if he said he was in a house with three
15 white guys on the night this happened with Jaquavious Washington,
16 that is incredibly compelling third-party guilt evidence, and it
17 is my client's constitutional right to present that complete
18 defense to a jury and let a jury decide whether or not Elijah
19 Green's full of it and wasn't with Jaquavious.

20 I've also got phone records that place Jaquavious Washington
21 there; I've got a footprint that doesn't match; I've got nothing
22 that puts my client in the house.

23 THE COURT: You've got pieces of it.

24 ATTORNEY CORNWELL: I should be able to present these to the
25 jury.

1 THE COURT: There are pieces of it already in. You've got
2 pieces of it already in. Like footprints, for example, that is
3 before this jury. And you just got some, you certainly just got
4 some, discussion about Jaquavious Washington with his past. You
5 were investigating; you were concerned about his involvement?
6 Yes, I was. You got the phone records, I mean, the DMV records
7 that show that they do have an association. You have some stuff.

8 But here's the problem that I'm having. I'm having
9 difficulty with the notion, that because it's third-party guilt,
10 that the rules of evidence don't apply. And we keep bumping into
11 each other a little bit because you keep thinking that I'm
12 keeping it out because of third-party guilt. Uh, no. We have
13 walked across that footbridge, we're into the land of third-party
14 guilt. But you still must comply with the rules of evidence.

15 In other words, if you subpoena Mr. Alltel or Horizon, or
16 whoever they are, Mr. AT&T or whoever they are, and they show up
17 Monday, Tuesday, Wednesday, maybe Thursday of next week, you get
18 that. Do you see what I'm saying? If you get Mr. Expert to
19 triangulate, you know what I mean, you get all that.

20 My concern is that third-party guilt does not aggregate the
21 rules of evidence. That's where you and I are having a little
22 bit of a ---

23 ATTORNEY CORNWELL: And I argue to you it's not hearsay
24 because I'm not asking -- I'm asking Davis, as part of his
25 investigation, in how he developed suspects ---

1 THE COURT: You did that, you asked him all that. I mean,
2 you asked him. You did that. You got it in.

3 ATTORNEY CORNWELL: Moy didn't meet with Green. Davis did.
4 And so Davis is getting additional information that, you know, is
5 developing suspects. And part of how he's developing suspects in
6 his investigation is based on the statement from Green.

7 THE COURT: So the question that you're having is, How do I
8 get in Green's statement; right?

9 ATTORNEY OSBORNE: Green's self-serving statement. And
10 that's the issue. If Green came in and he confessed and he said
11 Look, I did it, and it was me, Jaquavious, Polo, and poor Muanah
12 wasn't even there, that's a pretty bad statement against his own
13 interest. He's unavailable because he's asserting the Fifth. So
14 that brings in the unavailable witness. You get there because
15 it's a statement against self interest.

16 You don't get there by saying, I didn't do it; I didn't do
17 it; and I was over there 15 miles away with some white guys at
18 the time. That's not a statement against self interest; that's a
19 very self-serving statement.

20 ATTORNEY CORNWELL: And, Your Honor, because I'm trying to
21 get to it from, This is your investigation and this is how you
22 develop suspects, I'm not putting the truth of the matter
23 asserted.

24 ATTORNEY OSBORNE: Well, if that were true, it's like, why
25 have rules; right?

1 ATTORNEY CORNWELL: It's part of an investigation. The
2 state has already argued and tried to jump on me about my opening
3 about not doing a complete investigation. Well, I'm bringing
4 that in through your investigation; I'm asking you about your
5 investigation; what statement did you get in your investigation
6 in helping you do this? I'm not asking for the truth of the
7 matter asserted.

8 THE COURT: All right, here we go.

9 ATTORNEY CORNWELL: Further, there's no one to prejudice
10 because Washington hasn't been charged and Green's not on trial
11 right now. So there's no one to be prejudiced of any, to any, of
12 those people.

13 ATTORNEY OSBORNE: Your Honor, in anticipation of this, I
14 found some cases that I thought gave some pretty good ---

15 THE COURT: All right.

16 ATTORNEY OSBORNE: So I believe she is -- well, the way I
17 see this, the way I saw it playing out, was you don't get to
18 introduce the out-of-court statement for the truth, so that gets
19 you to calling Green. Green then asserts his Fifth Amendment.
20 That brings us into 804(b), and then that gets us to statement
21 against interest. *State v. Doctor* 306 S.C. 527, that's how he
22 asserts the Fifth, that's where we get to 804(b).

23 But then we have *State v. Wannamaker*, 346 S.C. 495, and I
24 thought this was pretty instructive, a defendant seeking to offer
25 a statement against interest made by an unavailable declarant --

1 that would be Green in this case -- who allegedly committed the
2 crime -- there's the quote -- formidable burden of establishing
3 that corroborating circumstances clearly indicate the
4 trustworthiness of the statement.

5 In this case, one, it's not trustworthy, it's self-serving.
6 But, more importantly, it's just not a statement against
7 interest. And that's -- in my opinion, she fails there.

8 ATTORNEY CORNWELL: Again, I'm not going for the truth of
9 the matter asserted. I'm just getting it in because it goes to
10 the third-party guilt; it's part of the investigation; it's
11 information that's given ---

12 THE COURT: Well, stop. You said it's not being admitted
13 for the truth of the matter asserted. Well, about what is
14 contained within that statement that you say goes to third-party
15 guilt? You want the jury to believe that; right?

16 ATTORNEY CORNWELL: Yes.

17 THE COURT: Okay. Well, then that's for the truth of the
18 matter asserted. Right?

19 ATTORNEY CORNWELL: Not because of what Green said; it's
20 because how he uncovers through the investigation.

21 THE COURT: What? Because I don't have the statement. You
22 know what I mean?

23 ATTORNEY CORNWELL: In going through all this ---

24 THE COURT: Yes.

25 ATTORNEY CORNWELL: --- he wants to say, well, self-serving

1 statements aren't reliable. I don't think there's any evidence
2 of that. But I think that it's ---

3 THE COURT: No, it just goes to the admissibility of it. In
4 other words, there is not a rule with regards to being an
5 exception to hearsay that an exception to the hearsay rule exists
6 for statements which are self-serving. There's not an exception
7 to the hearsay rule for that, that's what he's saying. Right?
8 Isn't that what you're saying?

9 ATTORNEY OSBORNE: Yes.

10 ATTORNEY CORNWELL: Yes, I think it's what he's saying. But
11 I also think that, one, and again, the U.S. Supreme Court as
12 cautioned against enforcing the evidentiary rule that ---

13 THE COURT: Wait a minute. Has cautioned against what?

14 ATTORNEY CORNWELL: The enforcement of state evidentiary
15 rules that leave without sufficient justification to establish
16 guilt by suppression of evidence supported in this case. And I
17 think, in this case, to not allow me to get in a statement that,
18 one, if he places himself at the scene of the crime or at three
19 white guys' house on the night of the incident with Jaquavious
20 Washington, I believe that that certainly is, would be evidence
21 supporting my case that my guy's not there, because Jaquavious
22 Washington is there. And somebody else even puts Jaquavious
23 Washington inside that three white guys' house.

24 ATTORNEY OSBORNE: I think, again, Your Honor, and I know
25 I've said this a bunch of times, if he said he was in Marcus

1 Porter's house, that's a tough hill for me to climb, I think that
2 might be a problem. He didn't. He said he was at somebody
3 else's house, and he even puts it, almost 16 miles away at ---

4 THE COURT: He identifies the location himself ---

5 ATTORNEY OSBORNE: --- Roberta Drive.

6 THE COURT: In his statement?

7 ATTORNEY CORNWELL: No.

8 ATTORNEY OSBORNE: Sorry. One second. Roberta Drive.
9 That's almost 16 miles away.

10 ATTORNEY CORNWELL: What he says, or what the investigation
11 slows, is that they went to Roberta Drive looking for Quay. He's
12 not there. They are directed, they call Quay. He gives them
13 directions to find him to where he's at. They go and meet him
14 there and go to three white guys' house and shoot guns and smoke
15 marijuana.

16 So he's not put the three white guys' house that he was at
17 at Roberta Drive. That's where he tried to meet Quay, didn't
18 meet him there, go somewhere else. And then he's saying went to
19 three white guys' house with Quay. Not went to Roberta Drive to
20 meet Quay; went to three guys' house with Quay.

21 THE COURT: Do you have the statement? Any of it make
22 sense?

23 ATTORNEY OSBORNE: I mean, it does, Your Honor. But, again,
24 the way you introduce that -- all right. I'm going right
25 straight to witness unavailability. But, really, we shouldn't

1 even get there. The analysis, in my opinion ---

2 THE COURT: Witness unavailability, or it doesn't matter
3 whether the witness is available or not.

4 ATTORNEY OSBORNE: Yeah. So that's where I was headed.
5 But, really, to say that she's not trying to introduce the
6 statement for the truth of the matter asserted is awfully
7 disingenuous because that's clearly what she's trying to do. So
8 now it is hearsay, so you don't get it in.

9 So now what's the other avenue to get it in? The only other
10 avenue to get the statement in, put him on the stand, let him
11 declare the Fifth. When he asserts his Fifth Amendment right,
12 well, now he's unavailable. Once he's unavailable, there's an
13 avenue to get it in, and then that's the statement against
14 interest.

15 THE COURT: Right.

16 ATTORNEY OSBORNE: And the only way it can be conceived as
17 being a statement against his own interest is if he confessed,
18 which he did not. He said I did not do this. That was very much
19 for his interest.

20 THE COURT: Is somebody going to give me that statement?

21 ATTORNEY CORNWELL: I've got a recording. He doesn't give a
22 written statement; I've just got the interview, and I've got
23 what's in Davis' report, which basically puts it all.

24 ATTORNEY HUBRICH: Do you want to play it, Judge, over
25 the --

1 THE COURT: No.

2 ATTORNEY HUBRICH: Okay, never mind.

3 THE COURT: I was hoping somebody had it in writing.

4 ATTORNEY HUBRICH: No. I have it on an ---

5 ATTORNEY CORNWELL: The fact that I never burned it onto a
6 CD should authenticate how self-serving his statement was.

7 THE COURT: Let's see.

8 ATTORNEY CORNWELL: Your Honor, again, introducing it
9 doesn't prejudice anybody in this case except for my client in
10 not allowing it in.

11 I think that the jury should be able to hear everything and
12 make, as a finder of facts, make their own decision based on
13 whether or not it's reliable or not, and that that is ---

14 THE COURT: That's not just where the rules of evidence come
15 from. You know what I mean?

16 ATTORNEY CORNWELL: But that's why *Chambers v. Mississippi*,
17 that's why *Holmes v. South Carolina*, cautions so heavily on
18 relying strictly on evidentiary rules when it comes to
19 third-party guilt, because sometimes those same evidentiary
20 rules, obviously they're put in typically to protect defendants
21 but, when it comes to third-party guilt, you can't rely solely on
22 those rules of evidence because it does take away the ability for
23 a defendant to have a complete defense in introducing potential
24 exculpatory evidence.

25 THE COURT: Let's talk about -- probably what you want to do

1 is just shoot -- did you give us the cites? Then we can take a
2 look at them over the weekend, to see if you're onto where the
3 rules of evidence don't apply to third-party guilt. I am not
4 aware of that, but I'm certainly willing to learn about it.

5 ATTORNEY OSBORNE: Your Honor, I can just give you some
6 summaries that I've got. I can provide a copy of the interview
7 to you once I get a blank CD, I'll copy it over and I can give
8 that to you. But I can give you some summaries here from my
9 notes that indicated to me I would not ever, ever, play this
10 statement in front of a jury.

11 THE COURT: You can shoot the audio file. You've got the
12 same on audio file?

13 ATTORNEY OSBORNE: It's video, so it might be hard to email.

14 ATTORNEY HUBRICH: I have it right here, Judge.

15 ATTORNEY OSBORNE: Do you have the transcript?

16 ATTORNEY HUBRICH: No. You transcribe this stiff?

17 ATTORNEY OSBORNE: Yeah, I listened to it and transcribed
18 it. Yeah.

19 ATTORNEY HUBRICH: Oh, my gosh. No. We have attached to
20 this if you want ---

21 ATTORNEY OSBORNE: So real sure I don't want to play it.

22 THE COURT: I don't want it now. I'm not going to hold you
23 all here while I do that. That's gruesome.

24 ATTORNEY OSBORNE: The white peoples' house he described was
25 a two-story house. Marcus Porter lives in a single story.

1 THE COURT: So, okay. I'll take a look at that over the
2 weekend. But I do want to raise an issue, because you've got a
3 problem, and here's your problem. Hold on a second. You'll get
4 me that. Y'all gonna get me the statement?

5 ATTORNEY OSBORNE: If I can make a copy. I'm sure we have a
6 CD here, a blank CD. If I make a copy, can I just give it to
7 you?

8 THE COURT: That will be cool. So that's that. What else?
9 What else were we going to try to do? Anything else?

10 ATTORNEY OSBORNE: The only thing Ms. Hubrich and I spoke
11 about, is if Detective Davis testifies regarding the *Denno* and
12 the impeachment and all that, I just asked for her to let me
13 think about it a little bit. I think we're in a good spot as far
14 as cross-examination.

15 I just want to contemplate whether I'm going to argue she
16 needs to move in her impeachment or her clips to put in to
17 describe the atmosphere of the interrogation, or whether I feel
18 like I've already proven the rules of completeness or satisfied
19 that with what I'm introducing. I just asked her, just give me
20 till Saturday to really think about that.

21 THE COURT: Okay.

22 ATTORNEY HUBRICH: So, you know, he's going to mark the
23 entire confession as ID'd, and then he's just going to put clips
24 with Davis, and he's going to enter those into evidence and show
25 the jury just clips of Muanah Fortune's confession and say, See

1 now, he confessed to doing this whole thing.

2 And then I get up on cross -- and I argued this in pretrial,
3 I say, Judge, at this point I get to put the whole thing on. But
4 then we're going to implicate *Bruton*. And so we had this whole
5 debate. And I said, listen, if you're going to object to me
6 putting the whole thing in and I'm going to be limited to clips,
7 do I have to admit those as evidence? Because at this point I
8 have last close.

9 THE COURT: You have not what?

10 ATTORNEY HUBRICH: I have last close, one of us, at this
11 point in the trial. And I think it would be dirty to some degree
12 to say, Hey, I get to admit just pieces and parts, but you don't
13 get to bring in the voluntariness of the confession. If I'm
14 going to be limited to bring in the whole or just parts, so I
15 said, Can you just consent to these clips.

16 ATTORNEY OSBORNE: And I don't think the rules of
17 completeness is in my favor on this particular argument.

18 ATTORNEY HUBRICH: Exactly. That's right.

19 ATTORNEY OSBORNE: I just wanted to go back and take a look
20 at it before I just commit to saying, Yeah, go ahead and play it.
21 So just wait till Saturday to double-check. I think I'm losing
22 this argument. I just want to double-check.

23 THE COURT: Got it. Okay. Okay. Yeah, cool.

24 (WHEREUPON, an off-the-record discussion is held in open
25 court.)

1 THE COURT: All right, you're going to give us that, we'll
2 take a look at that. And I like where you all are heading in
3 terms of completeness. I do. I'm less happy here, but we'll
4 look at the stuff over the weekend.

5 What else we got? That's it?

6 ATTORNEY OSBORNE: That's it for us.

7 THE COURT: That's it. That's it. Oh, let me ask this. I
8 do want the defense to know about what's going to be offered with
9 the DNA.

10 ATTORNEY OSBORNE: Oh. I sent them an email last night.
11 And I think we're good. Oh, we've got one issue with Mr. Wehman.
12 So it was my understanding with the ruling that you said, you
13 know, I can talk, I can ask the question. And Ms. Ryan sent me a
14 long email, I just haven't read it yet. But I can ask the
15 question, Who you were you able to exclude? And then we get to,
16 then we get, there's only one sample, one proposition from them
17 in regards to, I think it was, a glove.

18 ATTORNEY HUBRICH: A glove.

19 ATTORNEY OSBORNE: And the glove had a proposition of 1 in
20 300, 1 in 130,000?

21 ATTORNEY WEHMAN: One in 130,000.

22 ATTORNEY OSBORNE: And that's, so it wasn't very strong; it
23 was just strong. And I think we just want a clarification on
24 that. I thought that was admissible. And I think your position
25 was that it's not.

1 ATTORNEY WEHMAN: Well, I thought that you took that under
2 advisement and you hadn't ruled on the relevance of that yet.
3 You were going to. And I might be wrong. I didn't know that you
4 had ruled on whether that came in under 403 yet or not.

5 THE COURT: There are a couple of hurdles. Hurdle number
6 one is, Does she maintain that that is more likely than not.
7 Yes?

8 ATTORNEY OSBORNE: Yes.

9 THE COURT: And she has made that determination?

10 ATTORNEY OSBORNE: The wording she will use is that is a
11 strong -- the likelihood of that proposition is strong. And it's
12 right next to -- very strong is the highest she'll go, and strong
13 is the one right underneath that. And everything below that, I
14 cut it out, everything below that's gone. So now this is the
15 only proposition that had strong on it.

16 All the very strongs were good when they're single source,
17 when they're single comparisons.

18 THE COURT: Yes.

19 ATTORNEY OSBORNE: So that was the only one that was kind of
20 a little bit questionable.

21 THE COURT: Okay, so here's what we'll do. On that, I
22 wanted to know where she was. I presumed on the 100,000 as
23 opposed to the nine, you know, 4,500 zeros with regard to
24 Mr. Salazar, I think, was the other person ---

25 ATTORNEY HUBRICH: Yes.

1 THE COURT: --- regarding the glove. Then what I am willing
2 to do on that issue, because it's sort of been all over the
3 waterfront, is to allow an examination, in camera, just on that
4 one to allow you an opportunity to establish, now that everything
5 else, we're sort of down to that one, is that 403. You with me?

6 ATTORNEY WEHMAN: Yes, Judge.

7 THE COURT: And it just seems to me that that will give you
8 an opportunity, now that that that's where it is and you know
9 that's where it is, that she maintains that her opinion is, as an
10 expert, that more likely than not he's in that, he's inculcated.
11 And so based now on 403 you can examine, but just on that one.

12 ATTORNEY WEHMAN: Judge, I understand.

13 THE COURT: I think that just makes more sense. Then you
14 can really focus, and I can focus, on 403. Because my first
15 concern was given the whole new software and given, probably
16 given the fact, that the analysis is not one against the other
17 but the analysis is against an unknown population, and that's how
18 they're doing it. And they call them propositions, but nothing
19 is ever compared one to the other; it's compared to this unknown
20 population once the DNA puts you there.

21 So I'm good with you doing now your examination on 403
22 analysis. And if you impeach yourself, that's fine. If you
23 don't want to do it, that's fine. But I'm going to offer you
24 that opportunity.

25 ATTORNEY WEHMAN: I appreciate that, Judge.

1 THE COURT: Okay. You, madam, on the other hand, let me
2 just tell you where my head is so that you know what to smack
3 with me on Monday.

4 I do not believe, I do not believe -- and I'm going to give
5 you an example of where my head is, okay, because we've got the
6 weekend, the idea of the inapplicability of the rules of evidence
7 when it comes to third-party guilt. Because I want you to know
8 exactly where my head is, and then come back, come back at me,
9 okay.

10 I can see this happening with third-party guilt. I can see
11 where this whole circumstance, right, and your argument that you
12 said, if it was a statement against his interest, that it would
13 come in. But if that statement implicated *Bruton*, then it's a
14 problem; right?

15 ATTORNEY CORNWELL: Right.

16 THE COURT: And in my mind, in my mind, the question is,
17 does *Bruton* get -- well, I can't use that, I won't use that
18 phrase. Is it more important that it would be admissible because
19 otherwise would exclude the third-party guilt because of *Bruton*,
20 when it otherwise would be admissible? You see what I'm saying?

21 ATTORNEY CORNWELL: Yes, ma'am.

22 THE COURT: That's kind of where I am in my mind, that there
23 would be gradations, you don't actually take the rules of
24 evidence and pitch them. But that's what I mean, your research
25 over the weekend, I'd love for you to do.

1 ATTORNEY CORNWELL: And I gave her a few citations ---

2 THE COURT: Yep, I got it.

3 ATTORNEY CORNWELL: I just put a picture and a message to
4 you. I texted it because I didn't take a picture. I wrote it
5 down real fast.

6 THE COURT: And just so I'm clear if there are any subpoenas
7 that you want to serve over the weekend that you have not served
8 for telephone records?

9 ATTORNEY CORNWELL: Probably not. Probably not.

10 THE COURT: Because I don't want you to give anything away.
11 I just want to make myself available in the event that you need
12 something like that.

13 ATTORNEY CORNWELL: Yes. In full candor, I doubt I'll be
14 able to get anybody here. My experience with phone records is it
15 would have to be someone from Verizon or wherever who's is in
16 Maryland who, you know. But again, and I know I'm not -- I was
17 just wanting to get ---

18 THE COURT: I know.

19 ATTORNEY CORNWELL: --- his theory of it, not ---

20 THE COURT: I just don't want to shut the door for something
21 you may need.

22 ATTORNEY CORNWELL: I appreciate that.

23 THE COURT: And if you do, I will provide that for you.
24 I'll do my part.

25 ATTORNEY CORNWELL: Thank you.

1 ATTORNEY OSBORNE: And I'm copying it over right now and
2 I'll give it to your law clerk, Judge. And that's an interesting
3 point, right, because then you're pitting two rules. I don't
4 think you're going to hear *Bruton* being implicated by Elijah
5 Green.

6 THE COURT: In other words, the Supreme Court, they're going
7 to be more inclined to say that the rules of evidence can't, if
8 it would otherwise be admissible and there is, and you've got two
9 competing rules of evidence, no, no, no, no, you have got to make
10 it work.

11 ATTORNEY OSBORNE: Yeah.

12 THE COURT: You cannot keep a person from having the
13 third-party guilt because of, say, *Bruton*, particularly if the
14 *Bruton* is the guy. You know what I mean?

15 ATTORNEY OSBORNE: And we don't have that. Not that I've
16 seen. We don't have that. So what we have, in my argument,
17 we're back to the rules.

18 THE COURT: Right. But that example is to say I think
19 that's where I think -- but come back at me now, because I'm
20 willing to hear otherwise. But, anyway, so that's where we are,
21 everybody. Got it? Let me just see you for one more second, and
22 then we're out, everybody's peacing out for the weekend.

23 (WHEREUPON, an off-the-record discussion is held at
24 sidebar.)

25 (WHEREUPON, court recessed at 3:39 p.m. and reconvened at

1 9:41 a.m. on Monday, May 17, 2021.)

2 MATTERS OF LAW

3 THE COURT: All right. Now, before we begin, anything from
4 the state?

5 ATTORNEY OSBORNE: Just two very brief preliminary matters,
6 Judge. We ended on Friday, I was talking to Ms. Hubrich. My
7 research of the cases over the weekend indicates to me that it is
8 a loser argument to try to force her to introduce clips for
9 impeachment purposes, I guess, or, more importantly, to set the
10 stage during the interview with Davis whenever he testifies. So
11 I think that she can do that without introducing anything.

12 And what was the other one. Oh. I don't know that I would
13 couch this as an offer, but there was something related to the
14 defense saying that, you know, if they were to plead, I already
15 talked to the victim's family, if they were to murder on the
16 charges, that no one would take a strong position on sentencing;
17 in fact, almost be acquiesced to a minimum sentence, although not
18 happy. That is ending this morning. If they're not interested
19 in pleading by the time we call the first witness, all bets are
20 off.

21 THE COURT: And I think you said that in an email to
22 them ---

23 ATTORNEY OSBORNE: Yes, ma'am.

24 THE COURT: --- and copied it to me, as well. Very well.
25 Ms. Hubrich, anything on behalf Mr. Fortune this morning?

1 ATTORNEY HUBRICH: No, ma'am.

2 THE COURT: All right. Yes, ma'am?

3 ATTORNEY CORNWELL: No, ma'am.

4 THE COURT: Thank you all so very much.

5 Yes, let's have the jury.

6 (WHEREUPON, the jury is seated in the courtroom at
7 9:47 a.m.)

8 THE COURT: Good morning, ladies and gentlemen. I sure hope
9 you had a good weekend. Weather was pretty spectacular.

10 At this time we will continue the state's case. If you'd
11 please call your next witness.

12 ATTORNEY OSBORNE: Thank you, Your Honor. The state calls
13 Detective Matthew Brooks.

14 CLERK OF COURT: If you could please raise your right hand,
15 and state your full name for the record.

16 THE WITNESS: Detective Matthew Adam Brooks.

17 MATTHEW ADAM BROOKS,

18 having first been duly sworn, was examined and testified as
19 follows:

20 **DIRECT EXAMINATION**

21 BY ATTORNEY OSBORNE:

22 Q All right, detective. Where do you currently work?

23 A I currently work for the Summerville Police Department.

24 Q And if you want to pull that mic up. I know it's a little
25 bit awkward. How long have you been with the Summerville Police

1 Department?

2 A I've been with the Summerville Police Department for seven
3 years.

4 Q And prior to joining the Summerville Police Department did
5 you have any other prior law enforcement experience?

6 A I did. I worked for the North Myrtle Beach Police
7 Department, as well as seven years or eight years as volunteer in
8 Edison, New Jersey.

9 Q In New Jersey. Is that where you're from?

10 A Yes, sir.

11 Q While with Summerville police what have been some of your
12 various assignments?

13 A I worked as a training officer. I've been with the bike
14 patrol team. And currently I'm assigned to the forensic service
15 department.

16 Q Okay. So what are some of your duties with the forensic
17 services department at the Summerville Police Department?

18 A The forensic service department's a combination of both CSI,
19 as well as evidence technician. We handle both at Summerville.

20 Q So let me just ask you some, what seem like, silly
21 questions. So you're in charge of the evidence room?

22 A I work with other employees. Yes.

23 Q I mean, that's part of your duties, is sort of keep track of
24 what's going on in the evidence room?

25 A Yes, sir.

1 Q What type of things go into the evidence room?

2 A We get all sorts of items into our evidence room. We have
3 items that are for evidentiary purpose for criminal cases,
4 safekeeping items, as well as items that are found property that
5 we're holding until owners can be identified.

6 Q And in relation to a criminal investigation like a murder,
7 evidence would go into an evidence room?

8 A Yes, sir.

9 Q As part of your duties with the Summerville Police
10 Department, do you transport evidence to SLED? Do sometimes you
11 make that ---

12 A Yes, sir.

13 Q And when you're transporting a lot of evidence do you or do
14 you not sometimes put that evidence in a box?

15 A I do.

16 Q Okay. So is the box evidence?

17 A No, sir. Everything's properly packaged prior to placing it
18 in the box. The box is just used for transport purposes.

19 Q Because if the box were evidence, that would then need to go
20 into a box; right?

21 A Yes, sir.

22 Q And that box would then need to go into a box?

23 A Yes, sir.

24 Q All right. And what type of training have you received in
25 your position with Summerville?

1 A I have had inhouse training for crime scene, as well as
2 photography. And after this incident I have had additional
3 training in bloodstain pattern, shooting reconstruction, as well
4 as crime-scene training through the academy, and latent process,
5 or latent analysis.

6 Q Any training in fingerprint recognition?

7 A Yes, sir. That would be the latent process or latent
8 recognition training.

9 Q Latent is just a fancy word for invisible?

10 A Yes, sir.

11 Q And fingerprints are invisible?

12 A They're -- yes.

13 Q Well, I guess they can be.

14 A Yes, sir. There's different classifications for them.

15 Q All right. Let's go back to the night of January the 27th,
16 going into January the 28th of 2019. Were you working that
17 night?

18 A I was the on-call detective.

19 Q Okay, so on-call. So you weren't working. You had to
20 respond to the scene?

21 A No, sir. I was off but on-call. I had to respond out when
22 called.

23 Q Now, as a crime-scene detective, when you respond to the
24 scene of a violent crime like this one, what's one of the first
25 things that you do when you get on scene?

1 A One of the first things I do is I photograph the scene so I
2 can properly document it.

3 Q Okay. And did you do that in this case?

4 A Yes, sir.

5 ATTORNEY OSBORNE: Beg the Court's indulgence.

6 THE COURT: All right.

7 ATTORNEY OSBORNE: Your Honor, may I?

8 THE COURT: You may.

9 (WHEREUPON, State's Exhibits 27, 28, 29, 30, 35, 36, 37, 38,
10 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55,
11 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74,
12 75, 77, 78 and 81 are marked for identification.)

13 Q I'm going to show you, we're just going to kind of move
14 things on a little bit, State's 26 through 81. And some of these
15 may already be admitted. But can you take a look at those, and
16 just, you know, not to go through every single one, but do you
17 recognize those and what are they?

18 A These are printed copies of the photos I took out at the
19 scene.

20 Q Okay. All of them, 26 through 81?

21 A It appears so.

22 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
23 admit State's 26 through 81 -- and if anything's duplicate, I
24 apologize -- into evidence.

25 THE COURT: Any objection on behalf of Mr. Fortune?

1 ATTORNEY CORNWELL: Yes, ma'am. Objection to 81.

2 THE COURT: All right. And with regards to Mr. Salazar?

3 ATTORNEY OSBORNE: No, Your Honor.

4 THE COURT: All right. May I see 81, please.

5 ATTORNEY HUBRICH: Yes, ma'am.

6 THE COURT: So you are withdrawing the request to admit 81?

7 ATTORNEY OSBORNE: No, Your Honor. That one's already been
8 admitted. I was duplicating my efforts.

9 ATTORNEY HUBRICH: Eighty has been admitted into evidence;
10 81 has not.

11 THE COURT: I agree.

12 ATTORNEY OSBORNE: Oh, I'm sorry, I apologize. I'll
13 withdraw this. Sorry.

14 THE COURT: Okay. Very well. Now 81 is withdrawn.

15 (WHEREUPON, State's Exhibits 27, 28, 29, 30, 35, 36, 37, 38,
16 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55,
17 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74,
18 75, 77 and 78 are admitted into the record.)

19 ATTORNEY OSBORNE: Sorry, Judge.

20 Q All right. Start by showing you State's 26. What are we
21 looking at here?

22 A That was the front of the residence that I responded to.

23 Q Okay. Now we're moving right into 27?

24 A That is the back yard.

25 Q And what are we looking at over here off to the right?

1 A That is a chain-link fence.

2 Q And what goes all the way around the residence?

3 A I do not recall.

4 Q Showing you State's 28.

5 A Again, the back of the residence.

6 ATTORNEY HUBRICH: Our video is not working over here on

7 counsel table. It might have become unplugged. Hang on one

8 minute.

9 THE COURT: Okay.

10 Q Just backing up real quick. Twenty-six, that was the front?

11 A Yes, sir.

12 Q Twenty-seven, back?

13 A Yes, sir.

14 Q And then we were at 28.

15 A And again, this is the back yard of the residence.

16 Q Okay. Twenty-nine?

17 A The back yard of the residence, as well.

18 Q Does this photograph give you a better indication of whether

19 there's a fence in the back?

20 A Yes, sir. I believe that was on the left side of the yard.

21 Q And 30?

22 A Again, the back yard.

23 Q Thirty-one?

24 A The back door of the residence.

25 Q And 32?

1 A That was a scooter parked in the front driveway.

2 Q All right. So you said that the first thing you do is
3 photograph the overall scene.

4 A Yes, sir.

5 Q And what do you do after that?

6 A After that I mark any evidence that we have located;
7 rephotograph; process the scene, as necessary.

8 Q And so the next step then is you're going into the actual
9 residence?

10 A Yes, sir.

11 Q All right. So we're going to see some things on some of
12 those photographs, like placards and whatnot. So walk the jury
13 through your process as a crime-scene detective of how you go
14 about photographing and collecting evidence inside of a
15 residence.

16 A What I do first when I enter a residence is I actually
17 photograph the residence in its entirety prior to moving or
18 manipulating anything.

19 After evidence has been located and the scene has been
20 photographed I'll place down yellow, plastic crime-scene markers
21 to mark the located evidence, and I'll rephotograph those
22 evidence prior to collection.

23 Q Is that a way of just keeping track of what you're taking
24 and where you're getting it from?

25 A Yes, sir.

1 Q All right. We'll start with 33. What are we looking at
2 here?

3 A That is the living room from the front entrance.

4 Q Okay. So your back is to the front door?

5 A I'm actually standing in the front doorway.

6 Q Thirty-four?

7 A That's the kitchen past the prior photo.

8 Q Thirty-five?

9 A Again, the kitchen.

10 Q Thirty-six?

11 A Further into the kitchen.

12 Q Okay. And then off into the distance here, what am I
13 looking, or what am I putting the curser at over here?

14 A That would be my yellow crime-scene marker, marker 7.

15 Q So obviously you put that there?

16 A Yes, sir.

17 Q Going into 37?

18 A Again, this is another shot of my yellow marker, marker
19 no. 7.

20 Q And I think you said this, but this is your way of
21 identifying evidence and tracking where you located it?

22 A Yes, sir.

23 Q Thirty-eight?

24 A Another photo of my marker and the evidence.

25 Q All right. And what was the evidence in this case?

1 A Marker 7 was a spent Blazer 9-millimeter shell casing.
2 Q And by spent, you mean?
3 A It was a discharged shell casing.
4 Q Fired?
5 A Yes.
6 Q And 39?
7 A Another photograph of the kitchen.
8 Q And on the chair, what is on the chair?
9 A That is a red Nike bag. Later it was assigned marker Y.
10 Q Okay. Moving then to State's 40?
11 A That's the interior of the bag.
12 Q State's 41?
13 A That's where I placed down the marker, marker Y, for that
14 bag.
15 Q And State's 42. What are we looking at inside the shoe
16 there?
17 A That was another spent shell casing that was located in the
18 shoe.
19 Q Forty-three?
20 A The spent shell casing.
21 Q All right. Forty-four?
22 A That's where I assigned marker 14 to that spent shell
23 casing.
24 Q And what type of shell casing was that?
25 A Marker 14 was also a Blazer 9-millimeter shell casing.

1 Q Same make?

2 A Yes, sir.

3 Q Same caliber?

4 A Yes, sir.

5 Q Forty-five, what are we looking at here?

6 A That is marker C in the kitchen.

7 Q Okay. Forty-six?

8 A That is a closer shot of marker C and the evidence.

9 Q All right. And what is marker C, what is that?

10 A Marker C was a FC 9-millimeter spent shell casing.

11 Q So just a different make?

12 A Different brand. Yes, sir.

13 Q Oh, brand, okay. All right. Forty-seven?

14 A This is another photograph of the kitchen, the table.

15 Q And 48?

16 A That was a mason jar located on top of the table.

17 Q Okay. And it looks like ---

18 A There was a green plant-like material inside the mason jar

19 consistent with marijuana.

20 Q Move on to 49?

21 A That's where I assigned that mason jar marker no. 12.

22 Q Fifty?

23 A That is the top of the table and located evidence.

24 Q And what is in front of the ---

25 A That was a spent shell casing.

1 Q And what are we looking at in 51?

2 A That's where I assigned that spent shell casing marker

3 no. 13.

4 Q And what type of casing was that?

5 A Marker no. 13 was an FC 9-millimeter spent shell casing.

6 Q All right. Fifty-two, what is that?

7 A That is the couch from the living room.

8 Q Is that the way you saw the couch when you got there?

9 A Originally it was actually on its side. It was tipped over

10 with all the cushions pulled off.

11 Q The entire couch was on its side?

12 A It was on its side, sir.

13 Q Fifty-three?

14 A I believe that's going to be located evidence that was under

15 the couch cushion.

16 Q And that's a better photo of 54?

17 A Yes, sir. That's where I assigned that evidence item no. 5.

18 Q And what is marker no. 5?

19 A Marker no. 5 was a FC 9-millimeter spent shell casing.

20 Q All right. Now we're moving into 55. What is that?

21 A That is located evidence in front of the couch.

22 Q Okay. And 56. What is marker no. 6?

23 A Marker no. 6 was a FC 9-millimeter spent shell casing.

24 Q Okay. Fifty-seven?

25 A That is a photograph of the table in the living room, or the

1 coffee table, that was in front of the couch.

2 Q Okay. And now 58?

3 A Fifty-eight is the table, as well as one of my markers in
4 front of it.

5 Q And I know that's hard to tell, but I think it's going to be
6 marker 8. What do you have for marker 8?

7 A Marker 8 was a spent RP 9-millimeter shell casing.

8 Q Okay. So we have, so far you've said, we've had a Blazer
9 9-millimeter shell casing Luger, an FC 9-millimeter Luger, and RP
10 9-millimeter Luger?

11 A Yes, sir.

12 Q It's a different photograph. Fifty-nine?

13 A That is located evidence on the carpet in the living room.

14 Q And 60?

15 A An additional photograph.

16 Q All right. And now we have marker no. 9 for 61. What type
17 of shell casing is that? Or, is it a shell casing? What is it?

18 A Marker no. 9 was a spent projectile, the bullet.

19 Q A bullet?

20 A Yes, sir, not a casing.

21 Q What is right next to marker 9?

22 A That was camo pants that was located in the living room.

23 Q Okay. And it's obvious, but that's on a rug?

24 A Yes, sir. It's on the rug that was in the living room.

25 Q Sixty-two?

1 A An additional photograph of the pants prior to moving them.

2 Q Sixty-three?

3 A That was evidence located under the pants when I did move
4 them.

5 Q And what is that?

6 A That was an additional spent projectile. Another bullet,
7 sir.

8 Q And now what is marker 10?

9 A That's the same located evidence. It was assigned
10 marker 10.

11 Q All right. Now we're moving into 65?

12 A That was also in the living room.

13 Q And marker no. 11, what do you have down for marker no. 11?

14 A Marker no. 11 was blood pool that was in the living room.

15 Q And did you take a sample of that?

16 A Yes, sir. I collected a DNA swab from that.

17 Q How do you go about doing that?

18 A What I do when I collect a DNA swab is I take a sterile swab
19 out of a package. I open it up. I place the swab directly down
20 into the suspected blood or whatever I'm trying to retrieve.
21 After retrieving it, I put it back in its proper packaging, and I
22 change clothes.

23 Q All right. Sixty-six, what is this?

24 A That is the back door.

25 Q Did you find any evidence -- did you or did you not find any

1 evidence that this back door, the frame had been damaged in any
2 way?

3 A I did not.

4 Q All right. Sixty-seven?

5 A That is the hallway off of the living room.

6 Q Is it fair to say now we've left the living room and we're
7 going down the hall?

8 A Yes, sir. From my position in this photo, the living room
9 would be directly behind me.

10 Q All right. Sixty-eight?

11 A This is the back bedroom.

12 Q Would this be the back right bedroom or the back left?

13 A The back right.

14 Q Sixty-nine?

15 A An additional photograph of the back right bedroom.

16 Q Was the bed in that position when y'all got there?

17 A That's how I located it upon my arrival.

18 Q Seventy?

19 A An additional photograph of the bedroom.

20 Q Seventy-one?

21 A That is the closet in the back right bedroom.

22 Q And now we have a marker S for 72. What is that?

23 A Marker S was assigned to the evidence located in the leather
24 jacket that the marker's being held in front of.

25 Q Seventy-three, this is what ---

1 A That's us opening the jacket and retrieving the evidence.
2 Q And 74?
3 A And that's the located evidence that was inside of the
4 jacket packet.
5 Q Okay. I'll show that to you in a second. Seventy-five?
6 A That's further photographs of the evidence located inside
7 the jacket pocket.
8 Q Seventy-six?
9 A Further photos of the evidence located inside the pocket.
10 Q All right. Now 77?
11 A That was a handgun located in the closet on the top shelf.
12 Q And 78?
13 A That's where we assigned the evidence marker B.
14 Q Seventy-nine?
15 A That is the dresser that was inside of the closet with the
16 two markers that were assigned to the evidence located.
17 Q Okay. And just so we're all -- you're still in that same
18 room?
19 A Yes, sir.
20 Q And 80?
21 A That was the deceased canine that was located on top of the
22 bed.
23 Q All right. How many fired cartridge cases did you recover
24 from the scene?
25 A We located a total of seven spent shell casings from the

1 scene.

2 Q All 9 millimeter?

3 A All were the 9 millimeter.

4 Q And how many projectiles did you recover from the scene?

5 A Two projectiles were recovered.

6 Q Okay.

7 ATTORNEY OSBORNE: Beg the Court's indulgence.

8 THE COURT: All right.

9 Q I'll start off by showing you 17 and 18. Can you take a
10 look at those and tell me if you recognize those.

11 A Yes, sir.

12 (WHEREUPON, State's Exhibits 21 and 23 are marked for
13 identification.)

14 Q And while you're looking at 17 and 18, go ahead and look at
15 19, 20, 21, 22, 23, 24 and 25.

16 A Yes, sir. Sir, would it be all right to open this so I can
17 get a better look?

18 Q Yes. All right. If you would, just speak real loudly, and
19 we'll go through each one individually, okay. But, do you
20 recognize them?

21 A I do.

22 Q All right. Let's start with State's 18. If you recognize
23 that, can you tell us what it is.

24 A State's evidence 18 is the two spent projectiles I located
25 at the scene.

1 Q Two spent projectiles. And what corresponding -- do you
2 remember the marker numbers that those corresponded to, 9 and 10?

3 A Yes, sir.

4 Q All right. And now let's move to State's 19. What was
5 that? Or, what is that if you recognize it?

6 A State's 19 is the extraction from the DNA swab I got from
7 the floor in the living room, marker no. 11.

8 Q Okay. And State's 20, what is that?

9 A This is the extraction from the DNA swab that I collected
10 from inside the deceased canine's mouth. I assigned that marker
11 no. 1.

12 Q You were trying to collect DNA from inside the canine's
13 mouth?

14 A Yes, sir.

15 Q And the thought being?

16 A The thought being that at the time I did not know if the
17 canine had bit any of the suspects in the case, so I was
18 attempting to recover some of their DNA should the dog have
19 bitten someone.

20 Q State's 21?

21 A That would be the mason jar that was located on the table in
22 the kitchen.

23 Q All right. And let's go into State's 22.

24 A This would be the green plant-like material that was located
25 in the closet in the back right bedroom.

1 Q Inside the ---

2 A The jacket pocket.

3 Q The leather jacket?

4 A Yes.

5 Q And State's 23?

6 A State's 23 was a notepad that was located inside of the red
7 duffle bag in the kitchen.

8 Q Okay. Marker Y, the red duffle bag?

9 A Yes, sir.

10 ATTORNEY OSBORNE: While we're at that, may I approach, Your
11 Honor?

12 THE COURT: You may.

13 (WHEREUPON, State's Exhibit 120 is marked for
14 identification.)

15 Q I'm going to show you State's 121 and 120, or 120 and 121.
16 Do you recognize those?

17 A I do.

18 Q And what are they?

19 A Those are photographs of the notepad, which would be
20 State's 23.

21 Q That was inside the red bag?

22 A Yes, sir.

23 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
24 move -- I think 121 might have already been in -- but 120, as
25 well, into evidence.

1 ATTORNEY HUBRICH: No objection.

2 ATTORNEY CORNWELL: No objection, Your Honor.

3 THE COURT: Very well.

4 (WHEREUPON, State's Exhibit 120 is admitted into the
5 record.)

6 Q And 24, what are we looking at there?

7 A 24 were latex gloves that were located at the scene.

8 Q When you respond to scenes where there's, you know, blood
9 and whatnot, do you wear gloves?

10 A Yes, sir.

11 Q And I assume you've seen EMS also arrive on scene throughout
12 your experience?

13 A Yes.

14 Q Do they wear gloves, too?

15 A Yes, sir.

16 Q Were those gloves consistent with those type of gloves?

17 A They were.

18 Q And State's 25, do you have that up there?

19 A Yes, sir.

20 Q And what is that?

21 A State's 25 is a Taurus PT-738, a .380 handgun.

22 Q And this is the gun that was recovered from the closet?

23 A It is, sir.

24 Q So housekeeping question. You collected each one of these
25 items?

1 A Yes, sir.

2 Q And did you properly package and seal those items?

3 A I did.

4 Q And when you transport items to SLED do you just throw all
5 the items in a box, or do you properly package each one before
6 putting them in the box?

7 A Everything is properly packaged and sealed prior to being
8 placed in the box.

9 Q And did you do that in this case?

10 A I did.

11 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
12 admit 18 through 25 into evidence.

13 THE COURT: Any objection?

14 ATTORNEY HUBRICH: Yes, ma'am.

15 THE COURT: All right.

16 ATTORNEY HUBRICH: Improper chain regarding 17 and 18. And
17 25.

18 ATTORNEY OSBORNE: We've already covered the chain earlier.
19 And this is the collector.

20 THE COURT: Got it.

21 ATTORNEY HUBRICH: May we approach?

22 THE COURT: Sure.

23 (WHEREUPON, an off-the-record discussion is held at
24 sidebar.)

25 ATTORNEY CORNWELL: For the record, I join in that

1 objection.

2 THE COURT: Thank you.

3 (WHEREUPON, State's Exhibits 19, 20, 21, 22, 23 and 24 are
4 admitted into the record.)

5 Q Let's just -- well, I am going to ask you a question. Skip
6 ahead a little bit. Did you later transport State's 18 to SLED?

7 A I don't recall. Do you have the chain of custody from SLED,
8 the transport paperwork?

9 Q I do. Hang on one second. We'll come back to that.

10 A Yes, sir.

11 Q Okay. After you finished processing the crime scene at 108
12 North Myrtle Place did you have occasion to collect evidence
13 found by Officers Cramer and Reynolds?

14 A I did.

15 Q And what was that?

16 A Officer Cramer turned over to me a blue jumpsuit, a wallet
17 that was located, as well as a ski mask.

18 Q Okay. All right.

19 ATTORNEY OSBORNE: Your Honor, it was my understanding -- I
20 just want to make sure I got this right, going back to -- 18 is
21 still the one that's still up in the air, all the others were in?
22 Because I was going to publish it.

23 THE COURT: It was 17, 18, 25. And you just showed him the
24 SLED -- 17, 18, 25.

25 ATTORNEY OSBORNE: Beg the Court's indulgence.

1 THE COURT: Sure.

2 ATTORNEY OSBORNE: May I approach the witness?

3 THE COURT: You may.

4 Q All right. I'm showing you -- do you recognize this?

5 ATTORNEY OSBORNE: We can mark this as 301.

6 (WHEREUPON, State's Exhibit 301 is marked for
7 identification.)

8 A I do.

9 Q I draw your attention down to the bottom there in regards to
10 SLED -- I think it's going to be SLED -- item 7. You see that?

11 A Yes, sir.

12 Q And what is SLED item 7?

13 A SLED item 7 is one sealed envelope containing fired bullet
14 described as spent projectile located in living room, marker 10.

15 Q All right.

16 A Potential biohazard - blood.

17 Q And who brought that to SLED?

18 A I transported that and submitted it into evidence at SLED.

19 THE COURT: And that's represented by Exhibit?

20 ATTORNEY OSBORNE: That is represented, Your Honor, by,
21 that's part of, Exhibit 18. And I'm going to cover the other
22 part right now.

23 THE COURT: Okay.

24 Q All right. Now I want to direct your attention to the
25 bottom of this chain of custody on item no. 6. Can you tell me

1 what that is?

2 A Item no. 6 is one sealed envelope containing fired bullet
3 described as spent projectile located in living room, marker
4 no. 9.

5 Q Okay. And who transported that to SLED?

6 A I transported that and entered that into SLED's evidence.

7 ATTORNEY OSBORNE: Your Honor, I think that covers it for
8 State's 18. We'd seek to admit that into evidence.

9 THE COURT: Over the objection of the defense as
10 articulated, it is admitted.

11 (WHEREUPON, State's Exhibit 18 is into the record.)

12 Q All right. So now let's go ahead and publish these items.
13 And I think all of this should be in, 18 through 25.

14 Let's look at one, in particular, that I'd like to show the
15 jury, is State's 22. And you got that from the leather jacket in
16 the closet?

17 A In the back closet of the back, right bedroom.

18 Q All right. That's good enough. Thanks.

19 ATTORNEY OSBORNE: Beg the Court's indulgence.

20 THE COURT: All right.

21 Q I'm going to show you now what's been marked as State's 10,
22 11 and 12. Can you take a look at those and tell me if you
23 recognize those?

24 A I do recognize those items.

25 Q Okay. What is State's 10?

1 A State's 10 is the original packaging for the jumpsuit and
2 the ski mask that were turned over by Officer Cramer.

3 Q And is the ski mask in there, in State's 10?

4 A Yes, sir, it is.

5 Q Okay. Don't publish it yet. The handwriting that's on the
6 outside of that, do you recognize that?

7 A No.

8 Q The backside. Or, let me ask it another way. Who packaged
9 that?

10 A That would have been packaged by me.

11 Q And how do you know?

12 A Because it was submitted to me and turned into evidence by
13 me and transported by me.

14 Q Okay. And when you transported it and you packaged it did
15 you follow proper protocols in packaging it?

16 A Yes, sir. Items were separated and packaged.

17 Q All right. So let me just pause here for a second. Now, we
18 had noticed you opening evidence and looking at evidence since
19 we're sitting right here. Correct?

20 A Yes, sir.

21 Q In your evidence room at the Summerville Police Department
22 do you have equipment to help you package evidence?

23 ATTORNEY HUBRICH: Objection, Your Honor. Leading.

24 THE COURT: Overruled.

25 A We have butcher paper and we have a stand that we keep

1 everything on for packaging purpose.

2 Q And do you have a heat-seal ---

3 A We do.

4 Q --- mechanism that can actually help you heat seal?

5 A Yes, sir.

6 Q Do you have tape, big packing tape?

7 A Yes, sir.

8 Q Do you have bags?

9 A Yes, sir.

10 Q Gloves?

11 A Yes, sir.

12 Q Lots of different things to package?

13 A Yes, sir.

14 Q Do you see any of those items in this courtroom?

15 A I do.

16 Q What do you see?

17 A On the desk I see some of our evidence packaging bags, as
18 well as the evidence as in the butcher paper that we use at the
19 police department. State's evidence no. 12 is in one of the
20 paper bags that we use for packaging purposes, as is State's 21.
21 Envelopes that we've used for packaging, State's 23, 24, 17,
22 State's 20, State's 19, State's 18. And the cardboard box that
23 we package guns in, State's 25.

24 Q And if I were to ask you to go back and repackage and
25 re-seal all the evidence that you've opened up, do you have the

1 necessary equipment here in the courtroom to do that?

2 A Not in the courtroom.

3 Q Okay. All right. So going back to, I think we left off,
4 where was it, State's 10?

5 A Yes, sir.

6 ATTORNEY OSBORNE: All right. Your Honor, at this time we'd
7 seek to admit State's 10 into evidence.

8 THE COURT: Any objection?

9 ATTORNEY HUBRICH: Yes, Your Honor. Again, chain of
10 custody. This has to do with the container G that we have not
11 seen. Also with 11.

12 THE COURT: Okay.

13 ATTORNEY CORNWELL: Same objection, Your Honor.

14 THE COURT: Got it. Overruled.

15 (WHEREUPON, State's Exhibit 10 is admitted into the record.)

16 Q Now, we were talking about State's 11. What is State's 11
17 again?

18 A State's 11 is the jumpsuit containing the broken lighter and
19 knife that were transported to SLED. This is currently in SLED's
20 packaging.

21 Q You said broken lighter, and pocketknife, I think you said?

22 A Yes, sir.

23 Q Is it fair to say, or is it not fair to say, that when it's
24 transported to SLED you didn't know that was what was in there?

25 A I was told that items were in there but not itemized.

1 Q It was turned over to you, this item; right?

2 A Yes, sir.

3 Q Why didn't you itemize them?

4 A Due to the fact that we were going to do additional testing
5 on it, not to compromise the evidence, the items were left in
6 place.

7 Q So you didn't go through the pockets or anything to see what
8 was in there?

9 A No, sir.

10 Q But did you properly seal the navy jumpsuit?

11 A I did.

12 Q And is that the packaging that you sealed it in, going back
13 to that day when it was originally given to you by Corporal
14 Cramer?

15 A No, sir. This is the packaging that SLED submits the
16 evidence back to us in.

17 Q That SLED submitted. They packaged it like that?

18 A Yes, sir.

19 Q Well, not like that, but they packaged it?

20 A This is the paper that SLED uses for packaging purposes.

21 Q The paper. And if it had been opened up by a prior witness
22 during his testimony, that might change the appearance?

23 A Yes, sir.

24 ATTORNEY OSBORNE: Your Honor, may I approach?

25 THE COURT: You may.

1 Q I'm going to show you what's been marked as State's 301.
2 Can you take a look at that and tell me -- well, actually, I
3 think I need 302.

4 (WHEREUPON, State's Exhibit 302 is marked for
5 identification.)

6 Q 302, do you recognize that?

7 A I do.

8 Q And what is that?

9 A This is the original package that the jumpsuit and ski mask
10 were in when I first packaged it.

11 Q And how do you know that?

12 A The marking on the bag.

13 Q Is that yours?

14 A That was my packaging. Yes, sir.

15 Q Your packaging?

16 A Yes.

17 Q Now, this bar code up here at the top ---

18 A Yes.

19 Q --- is that your bar code?

20 A No, sir.

21 Q What does this say over here, this letter over here at the
22 end?

23 A That is letter G.

24 Q Letter G. So this package that you put together was sent to
25 SLED?

1 A Yes, sir.

2 Q Is that fair to say?

3 A Yes, sir.

4 Q And then once at SLED, it was repackaged?

5 A Yes, sir.

6 Q Do you use brown?

7 A We use brown paper bags and brown butcher paper.

8 Q And what color does SLED use?

9 A White.

10 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
11 move in 302 and 11 into evidence.

12 THE COURT: Any objection?

13 ATTORNEY HUBRICH: No objection other than the previous
14 objection that I made regarding 11.

15 THE COURT: All right.

16 ATTORNEY HUBRICH: Improper chain.

17 ATTORNEY CORNWELL: No, ma'am.

18 THE COURT: All right. Admitted.

19 (WHEREUPON, State's Exhibits 11 and 302 is admitted into the
20 record.)

21 ATTORNEY OSBORNE: Beg the Court's indulgence.

22 THE COURT: Okay.

23 Q Let's talk about something that happens in criminal trials.
24 What are we looking at in 168?

25 A 168 is the navy blue jumpsuit, or the black jumpsuit, that

1 was turned over to me by Corporal Cramer.

2 Q And when you open this -- is it fair to say that this was
3 opened after it went to SLED?

4 A Yes. This is after I had received it back from SLED.

5 Q Okay. And what were the circumstances in which you opened
6 it after it came from SLED?

7 A It was brought back, signed back into evidence, and it was
8 photographed for court purposes.

9 Q Okay. Pretrial?

10 A Yes, sir.

11 Q Is that unusual, to go through what evidence that you have
12 in a criminal case before trial?

13 A No, sir.

14 Q Is it fair to say it would be unusual not to?

15 A Yes, sir.

16 Q But to be clear, it had already been analyzed at this point
17 by scientists?

18 A Yes, sir.

19 Q Okay.

20 ATTORNEY OSBORNE: Sorry, Judge. Just caught a couple quick
21 audibles here. Give me one second.

22 THE COURT: Okay.

23 Q All right. I'm going to show you State's 170. Do you
24 recognize that?

25 A I do.

1 Q And was the manner in which that photograph was taken
2 similar, pretrial?

3 A Yes, sir.

4 Q And then 171?

5 A Yes, sir. That is the same mask, just the backside of it.

6 Q Okay. All right, so let's move on. So after you left the
7 scene did you later have the occasion to respond to the area of
8 78 and Palmetto Commerce Parkway?

9 A I did, sir.

10 Q And for what purpose?

11 A I was advised by Corporal Cramer that additional evidence
12 had been located during an article search.

13 Q I'm going to show you 13, 14, 15, 16 and 17. Take a look at
14 those and tell me if you recognize those. Did you recognize
15 them?

16 A I do recognize those items.

17 Q And did you collect and package these items?

18 A I did.

19 Q And were they properly sealed?

20 A They were.

21 ATTORNEY OSBORNE: All right. Your Honor, at this time we'd
22 seek to move 13 through 17 into evidence, if it's not already.

23 ATTORNEY HUBRICH: Objection, Your Honor. May we approach?

24 THE COURT: Sure.

25 (WHEREUPON, an off-the-record discussion is held at

1 sidebar.)

2 Q Detective Brooks, when you were documenting these firearms
3 did you make specific notations of identifying characteristics
4 like serial numbers and things of that nature?

5 A I did.

6 Q And did they correspond to the serial numbers that you're
7 seeing right here? I mean, do these appear the exact same guns?

8 A These appear to be the same guns.

9 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
10 admit 13 through 17 into evidence.

11 THE COURT: Over the objection of the defense, so admitted.

12 (WHEREUPON, State's Exhibits 14 and 15 were admitted into
13 the record.)

14 Q So if you don't mind, I'm going to ask you, we'll start with
15 13, and I want you -- when you got the gun, what did you do with
16 it?

17 A The first thing that I did out on the scene was I
18 photographed the firearms in their location. Measurements were
19 taken from their resting position. And then after the
20 measurements were collected, I then collected the guns and
21 packaged them individually.

22 Q And prior to collecting, did you see if there was any
23 bullets in the guns?

24 A I did. I unloaded the weapons and did a safety check on
25 them.

1 Q Let's start with 13. If you don't mind showing 13 to the
2 jury.

3 A Yes, sir.

4 Q Publishing.

5 A State's 13.

6 Q And that was a 9-millimeter pistol? I know it's on your
7 notes. So I'm asking you to do two different things.

8 A Yes, sir. This is a 9-millimeter firearm.

9 Q And what is the capacity of that magazine?

10 A It's a 17-round capacity magazine.

11 Q Is the magazine 17, or is the magazine 16? I don't know,
12 I'm asking.

13 A Magazine's 17.

14 Q Magazine's 17. How many rounds did you find in that gun?

15 A I found 17 rounds.

16 Q Okay, 17-round mag, 17 bullets found in the gun?

17 A Yes, sir.

18 Q Was there a bullet in the chamber?

19 A There was.

20 Q All right. Let's move on to State's 14. And if you could,
21 just show that to the jury and tell us what we're looking at, and
22 go through the same routine. Were there any bullets in the gun?

23 A State's evidence 14, Smith & Wesson, this was a model 10.5,
24 .38 special revolver. This did have rounds in it, as well as due
25 to the fact that it was a revolver, it had three spent casings in

1 it, as well.

2 Q How many rounds did it have in it?

3 A Six rounds in total; three live, three spent. Live rounds
4 are undischarged firearm -- or, undischarged bullets.

5 Q And the three fired shell casings in that, that's in State's
6 17, what we talked about earlier, were also in State's 17?

7 A I believe so, but let me double-check. Yes.

8 Q All right. So let's move on now to State's 15. And you
9 said that was a .38 revolver. State's 15, the .380, can you
10 publish that to the jury and go through the same routine. Tell
11 us the magazine capacity.

12 Well, on this case you weren't able to identify the magazine
13 capacity; is that fair to say?

14 A Yes, sir, I was unable to identify. This is, again,
15 State's ---

16 Q Fifteen.

17 A --- Fifteen. And this was a Jimenez Arms .380, model JALC
18 380.

19 Q Did you or did you not make a notation of the type/brands of
20 ammunition that was in this gun?

21 A I did, sir.

22 Q And what did you learn?

23 A The firearm contained a total of 14 rounds. It had Hornady
24 .380 auto ammunition, as well as a Tulammo -- I believe I'm
25 pronouncing that correctly, Tulammo -- .380 ACP.

1 Q Tulammo and Hornady?

2 A Hornady.

3 Q And was there a live round in the chamber in this gun?

4 A There was.

5 Q All right. Let's go to the last one, Springfield -- well,

6 State's 16. Go through the same routine.

7 A State's 16 is going to be a Springfield Armory XD, also a

8 9-millimeter.

9 Q And what about the magazine capacity on that one?

10 A Magazine capacity is 15 rounds.

11 Q All right. And how many bullets did you find in that gun?

12 A That gun contained nine rounds.

13 Q All right. And do you mind double-checking the mag capacity

14 on that?

15 A Magazine capacity -- I'm sorry, is 16 rounds. It's marked

16 16 on the magazine.

17 Q That's okay. So we had nine bullets still in the gun?

18 A Yes, sir.

19 Q So that would have been, assuming fully loaded, we're

20 missing seven?

21 A Yes, sir.

22 Q And was there a round in the chamber then in that gun?

23 A There was.

24 Q Oh. Well, let me ask you, did you find seven fired shell

25 casings on the scene?

1 A Yes, sir.

2 Q And what were the type -- or, the type of ammunition that
3 was in the gun?

4 A The type of ammunition in the Springfield was FC Luger
5 9-millimeter, as well as Blazer 9-millimeter Luger.

6 Q You found those type of shell casings on the scene?

7 A I did, sir.

8 Q All right. Did you make any attempt to try to fingerprint
9 these guns?

10 A I did.

11 Q And you're certified in that area. Did you have any luck?

12 A I did not.

13 Q What condition were they like when you found them? Were
14 they -- well, tell the jury.

15 A The firearms were found. Two of them were actually in mud;
16 two of them were on grass, which was wet at the time.

17 Q Does that affect your abilities to get fingerprints?

18 A It does.

19 (WHEREUPON, State's Exhibit 185 is marked for
20 identification.)

21 Q Okay. I just want to, just for ID purposes only, and this
22 is just for ID so this doesn't go back, do you recognize 185?

23 A I do.

24 Q And what is that?

25 A That's the live ammunition that was collected from all of

1 the firearms.

2 Q Okay. I'm sorry. You can go ahead and sit down.

3 A Thank you.

4 Q So while we're talking about fingerprints, would you expect
5 to find fingerprints on an item if an individual was wearing
6 gloves when they touched the item?

7 A No.

8 Q Would you expect to find DNA on an item if someone were to,
9 I don't know, talk or spit on that item if they were wearing
10 something over their face to prevent that DNA from getting to the
11 item?

12 A No. If they were wearing masks, no.

13 Q You had mentioned taking measurements.

14 A Yes, sir.

15 Q When you took the measurements did you then go back later on
16 and plot specifically where the guns were recovered from?

17 A Yes, sir.

18 Q Would it assist the jury in your testimony in relaying where
19 you recovered the guns if you were to be able to present them or
20 show them that presentation?

21 A Yes, sir.

22 ATTORNEY OSBORNE: Your Honor, may I approach?

23 THE COURT: You may.

24 (WHEREUPON, State's Exhibit 122 is marked for
25 identification.)

1 Q I'm going to show you State's 122. Do you recognize that?

2 A I do.

3 Q And what is that?

4 A This is the approximate location of the firearms that I
5 prepared.

6 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
7 admit State's 122 into evidence.

8 THE COURT: Any objection?

9 ATTORNEY HUBRICH: I didn't hear. Did he -- did you state
10 you prepared it?

11 THE WITNESS: Yes, ma'am.

12 ATTORNEY HUBRICH: No objection.

13 ATTORNEY CORNWELL: No objection, Your Honor.

14 THE COURT: Very well. So admitted.

15 (WHEREUPON, State's Exhibit 122 is admitted into the
16 record.)

17 Q I know this is going to be a little bit difficult to read.
18 The numbers that we're seeing on here, 13, 14, 15 and 16, what is
19 that corresponding to?

20 A Those are corresponding to the firearm locations. Thirteen
21 was the Taurus. Fourteen was the Smith & Wesson revolver.
22 Fifteen was the Jimenez. And 16 was the Springfield.

23 Q Okay. Now, again, a little bit difficult. If you were
24 coming up Palmetto -- well, where is this location?

25 A This is off of 78. If leaving the incident location,

1 turning left onto Highway 78, this would be on the right-hand
2 side.

3 Q All right. I'm now showing you what's been marked -- well,
4 after you collected the firearms did you have the occasion to
5 search the Honda?

6 A I did.

7 (WHEREUPON, State's Exhibits 87, 88, 89, 90, 91, 92, 93, 94,
8 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and
9 108 are marked for identification.)

10 Q I'm showing you what's been marked as State 87 through 108.
11 Could you take a look at those and tell me if you recognize them.

12 A I do.

13 Q And what are they?

14 A These are a photographs taken of the Honda.

15 ATTORNEY OSBORNE: Your Honor, at this time, we'd seek to
16 admit 87 through 108.

17 ATTORNEY HUBRICH: No objection.

18 ATTORNEY CORNWELL: None, Your Honor.

19 THE COURT: Very well. So admitted.

20 (WHEREUPON, State's Exhibits 87, 88, 89, 90, 91, 92, 93, 94,
21 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and
22 108 are admitted into the record.)

23 Q When you're dealing with a car and you're processing a car
24 like this, just walk the jury through your steps in processing
25 it.

1 A The first thing I do is photograph the vehicle from multiple
2 angles in its current position prior to touching or entering the
3 vehicle.

4 After I photographed the vehicle from multiple angles, I'll
5 make sure to get identifying markers on the vehicle such as a
6 license plate or VIN, if available.

7 After that I'll open the doors, photograph the interior of
8 the vehicle in its current position without touching or moving
9 anything.

10 After photographing the vehicle, then a more evasive search
11 of the vehicle takes place.

12 Q All right. So 87?

13 A Eighty-seven is the exterior of the vehicle.

14 Q Eighty-eight?

15 A The back of the vehicle.

16 Q Eighty-nine?

17 A That is the side of the vehicle. That is one of the rims.

18 Q You're just trying to depict the tires were flattened?

19 A Yes, sir.

20 Q Ninety?

21 A Again, another side of the vehicle.

22 Q Ninety-one?

23 A The interior, the front compartment.

24 Q And 92, what are we looking at here?

25 A Ninety-two is the floorboard under the steering wheel in the

1 Honda.

2 Q Okay. And down on the floorboard, what are those items?

3 A That was a glove that was located on the floorboard.

4 Q And next to the glove? And if you need to refer to your
5 notes -- or, better yet, in the driver's side compartment what
6 did you collect other than the glove?

7 A There was also a cellphone, I believe, that was located in
8 that area. Bear with me one second, I'll refer to my notes. In
9 the front there was a black, knit hat and a black glove with
10 orange trim.

11 Q Okay. When you were going through the evidence that was in
12 State's 11, what did you see in State's 11 that corresponded to
13 what we're seeing in State's 92?

14 A I located an additional glove while processing the
15 prepackaged jumpsuit.

16 Q Okay. Well, how did they compare to each other?

17 A They looked the same.

18 Q Was one a left?

19 A Yes, sir. One was a left, one was a right.

20 Q All right. Ninety-three?

21 A That's a further photograph of the black glove with the
22 orange trim that was under the steering wheel.

23 Q Ninety-four?

24 A The palm of that glove.

25 Q Ninety-five?

1 A The door panel inside the vehicle.

2 Q And now 96, what are we looking at here?

3 A Ninety-six is between the front passenger's seat and the

4 door. There is a brown bag that was located on the floorboard in

5 front of the seat, as well as watches next to the seat.

6 Q And what do we have here stuffed into the seat?

7 A I believe that was a glove.

8 Q Check your notes on that. And we're talking about the

9 passenger's side. Is this the passenger's side?

10 A Yes, front passenger. One second, sir. That was a face

11 shield.

12 Q A face shield?

13 A Yes, sir.

14 Q Moving on to 97?

15 A That, again, is the brown bag and one of the watches.

16 Q And this watch here, again, it's on the front passenger's

17 side floorboard?

18 A Yes, sir.

19 Q Ninety-eight?

20 A An additional photograph of the brown bag in front of the

21 seat on the front passenger.

22 Q All right. Let's stop for a second and talk about this

23 brown bag. Did you have the occasion to look at the

24 contents/look into the contents of that brown bag?

25 A I did.

1 Q And what, if anything, did you find?

2 ATTORNEY HUBRICH: Objection, Your Honor. May we approach?

3 THE COURT: You may.

4 (WHEREUPON, an off-the-record discussion is held at
5 sidebar.)

6 (WHEREUPON, State's Exhibit 208 is marked for
7 identification.)

8 Q I'm showing you what's been marked as State's 208. Can you
9 take a look at that and tell me if you recognize that.

10 A Yes, sir.

11 Q Okay. Do you recognize that?

12 A I do, sir.

13 Q And what is that?

14 A That is the brown GUCCI bag that was located on the front
15 passenger floorboard.

16 Q And when you searched that GUCCI bag did you find any loose
17 ammunition in there?

18 A Yes, sir. I found four live rounds of .380 ammunition.

19 Q And did that .380 ammunition match any other combinations of
20 .380 ammunition that you had seen earlier?

21 A The brands matched the ones that were located in the
22 Jimenez.

23 Q Which was the, what was it, Hornady and Tulammo?

24 A That was three rounds of the Hornady and one round of the
25 Tulammo.

1 Q Matching the .380 that was found on the scene?

2 A Yes, sir.

3 Q Or, out there on the scene. And did you find an ID in that
4 bag?

5 A Yes, sir.

6 Q And whose ID was it?

7 A That was Polo Salazar's ID.

8 Q Polo Salazar's, his ID?

9 A Yes, sir.

10 ATTORNEY OSBORNE: I'm not sure if I moved that in. Your
11 Honor, if I haven't, at this time I'd seek to move into evidence
12 State's 208.

13 ATTORNEY HUBRICH: No objection.

14 ATTORNEY CORNWELL: No objection, Your Honor.

15 THE COURT: Very well.

16 (WHEREUPON, State's Exhibit 208 is admitted into the
17 record.)

18 (WHEREUPON, State's Exhibits 112, 118, 119, 123 and 124 are
19 marked for identification.)

20 Q Just some other housekeeping matters here. All right.
21 Before we leave the Honda, I'm going to show you 112 through 124.
22 Can you take a look at those and tell me if you recognize them?

23 A Yes, sir. I do recognize them.

24 Q And what are they?

25 A These are photographs of the evidence that was collected

1 from the front passenger's seat, the face shield and the three
2 watches.

3 ATTORNEY OSBORNE: Your Honor, at this time I would seek to
4 admit 112 through 119 into evidence.

5 THE COURT: Any objection?

6 ATTORNEY HUBRICH: No objection.

7 ATTORNEY CORNWELL: No, Your Honor.

8 THE COURT: Very well.

9 (WHEREUPON, State's Exhibits 112, 113, 114, 115, 116, 118
10 and 119 were admitted into the record.)

11 Q We're going start off with 112.

12 A That is the face shield on the right and the three watches
13 on the left.

14 Q So this is what you described as being a face shield that
15 was by the passenger's side door?

16 A Yes, sir.

17 Q And three watches, again, by the passenger's side?

18 A Yes, sir.

19 Q 113?

20 A One of the watches.

21 Q 114?

22 A The backside of the same watch.

23 Q 115?

24 A One of the watches again.

25 Q 116?

1 A Backside of that watch.

2 Q 117?

3 A The third watch.

4 Q 118?

5 A And the backside of that watch.

6 Q And lastly, 119?

7 A The face shield itself.

8 Q Did you have the occasion to photograph, well, collect and
9 photograph, the clothing that the defendants were wearing in this
10 case?

11 A I did.

12 ATTORNEY OSBORNE: Your Honor, may I approach?

13 THE COURT: You may.

14 (WHEREUPON, State's Exhibits 125, 126, 127, 128, 129, 132,
15 133, 134, 135, 136, 137, 138, 139, 140, 143, 144, 145, 146, 147,
16 151, 152, 153, 154, 155 and 156 are marked for identification.)

17 Q Showing you 123 through 156. Can you take a look at those
18 items and tell me if you recognize those items?

19 A I do.

20 Q And what are they?

21 A These are the clothing that was collected from the suspects,
22 packaged and then photographed individually.

23 Q Okay.

24 ATTORNEY OSBORNE: Your Honor, at this time I would seek to
25 move in --

1 Q What are those numbers again?

2 A 123 to 156.

3 ATTORNEY OSBORNE: 123 to 156 into evidence.

4 THE COURT: Any objection?

5 ATTORNEY CORNWELL: Yes, ma'am. May we approach?

6 THE COURT: Sure.

7 (WHEREUPON, an off-the-record discussion is held at
8 sidebar.)

9 Q And you are the individual who packaged all this clothing?

10 A Yes, sir.

11 THE COURT: And you're referring to an exhibit which has
12 been marked?

13 ATTORNEY OSBORNE: Thank you, Judge. 123.

14 Q I'm just looking at 123 specifically. And you are the
15 individual that packaged the clothing in this case?

16 A Yes.

17 Q So is it fair to say that another individual pulled it off,
18 another officer took it off, their back and then gave it to you?

19 A It was collected at the jail when they were transported, and
20 then brought back to the Summerville Police Department and placed
21 in the evidence locker. And then I collected it from there for
22 packaging purposes.

23 Q And the clothing that they were seen wearing -- well, the
24 clothing that you ended up collecting here is the same clothing
25 that you saw them wearing earlier, like in the investigation?

1 A I didn't see them during the investigation, but it was
2 submitted directly from patrol, put into an evidence locker, and
3 collected from there.

4 Q Okay. Any sort of in-car camera, anything like that
5 involving these individuals, they were wearing the same clothing?

6 A I believe so.

7 ATTORNEY HUBRICH: Objection, Your Honor. Leading.

8 THE COURT: Yeah, don't lead.

9 ATTORNEY OSBORNE: Okay. All right, your Honor. At this
10 time we would seek to admit State's 123 to 159 into evidence.

11 ATTORNEY HUBRICH: Continuing objection, Your Honor.

12 THE COURT: I understand. Over the objection, it is
13 admitted. They are, I should say; they are admitted.

14 (WHEREUPON, State's Exhibits 123, 124, 125, 126, 127, 128,
15 129, 132, 133, 134, 135, 136, 137, 138, 139, 140, 143, 144, 145,
16 146, 147, 151, 152, 153, 154, 155 and 156 are admitted into the
17 record.)

18 Q We're going to start with 123. What are we looking at here?

19 A That is some of the collected clothing that was submitted
20 into evidence.

21 Q And who did this clothing belong to?

22 A That would belong to Mr. Green.

23 Q All right. Now, I notice that you have on here a sticker
24 labeled biohazard.

25 A Yes, sir.

1 Q And what does it say on there?

2 A Vomit.

3 Q Did you see any evidence that Mr. Green had vomited?

4 A Yes, sir. There was vomit in the back passenger side of the

5 Honda that was being photographed previously.

6 Q So that clothing -- we're just going to show you pictures,

7 okay.

8 A Yes, sir.

9 Q All right. 124, what are we looking at?

10 A I believe that is the T-shirt that was packaged.

11 Q 125?

12 A Again, the shirt.

13 Q 126?

14 A His socks.

15 Q 127?

16 A Shorts.

17 Q 128?

18 A Pants.

19 Q And 129?

20 A An additional photograph of the pants.

21 Q All right. Moving along. And what is 132?

22 A This was clothing collected from Major.

23 Q 133?

24 A This is the individual packaged clothing that was inside

25 that bag.

1 Q Thirty-four?

2 A A belt and belt buckle.

3 Q Thirty-five?

4 A A T-shirt.

5 Q 136?

6 A The back of the T-shirt.

7 Q 173?

8 A Pants.

9 Q Thirty-eight?

10 A An additional shirt.

11 Q Thirty-nine?

12 A The shirt unfolded.

13 Q Forty?

14 A Pants.

15 Q 141?

16 A Those are shoes that were collected from Major.

17 Q And 142?

18 A The side of the shoes.

19 Q Just double back. I think I might have forgot to show you

20 this. 130?

21 A Those were the shoes collected from Green.

22 Q And 131?

23 A The side of the shoes.

24 Q Okay. All right. And 143?

25 A The clothing that was collected from Fortune.

1 Q 144?
2 A The individual items inside that bag.
3 Q I'm sorry. 145?
4 A His socks.
5 Q Forty-six?
6 A A T-shirt.
7 Q 147?
8 A Pants.
9 Q 148?
10 A The shoes that were collected from him.
11 Q 149?
12 A The top of the shoes.
13 Q And lastly, 151?
14 A The clothing that was collected from Salazar.
15 Q Fifty-two?
16 A The individual packaged items inside the bag.
17 Q Fifty-three?
18 A An undershirt, the front.
19 Q Fifty-four?
20 A The back of the undershirt.
21 Q Fifty-five?
22 A I believe that was a shirt.
23 Q Fifty-six?
24 A Pants.
25 Q Fifty-seven?

1 A The shoes that were collected from Salazar.

2 Q Fifty-eight?

3 A The top of the shoes.

4 Q And 59?

5 A The side of the shoes.

6 Q I just want to make sure that this is in. I want to show
7 you -- and I know we're kind of going back a little bit, but I
8 want to make sure -- 109 and 110, and then 160, 162 and 163.

9 If you could just go ahead and say what they are, go through
10 the exhibits.

11 A 163 is the Nike shoes that were marked from Salazar. 162 is
12 the shoes that were marked from Fortune. 160 are the Nike shoes
13 marked from Green. State's 110 is the camo glove. And State's
14 109 is the black hat and black glove with the orange trim from
15 the front driver's seat of the Honda.

16 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
17 move in 160, 162, 163, 109 and 110.

18 THE COURT: All right. Any objection?

19 ATTORNEY HUBRICH: Continuing objection to not personally
20 collected these items. Improper chain.

21 THE COURT: Anything else you want to put on the record?

22 ATTORNEY OSBORNE: No, Your Honor.

23 THE COURT: All right. And you would join in that; is that
24 correct?

25 ATTORNEY CORNWELL: Yes, Your Honor.

1 THE COURT: Very well. Overruled.

2 (WHEREUPON, State's Exhibits 109, 110, 160, 162 and 163 are
3 admitted into the record.)

4 Q Last thing. Did you have the occasion to collect buccal
5 swabs in this case?

6 A I did.

7 Q And we're going to talk about three that you collected. And
8 just for the jury, what exactly is a buccal swab?

9 A A buccal swab is a DNA swab taken from both the left and the
10 right cheek individually for the purpose of collecting a known
11 standard for DNA comparison.

12 Q And I'm going to show you 211. Do you recognize that?

13 A I do.

14 Q And what is that?

15 A This is the buccal swab I collected from Elijah Green.

16 Q And 210?

17 A 210, I recognize, as well. This is the buccal swab I
18 collected from Devonte Major.

19 Q And 209?

20 A 209 I recognize as the buccal swab I collected from Polo
21 Salazar.

22 ATTORNEY OSBORNE: No further questions, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, we're going to
24 take our morning break. We'll take 15 minutes. Please step to
25 your jury room. Do not discuss this matter, and do not allow

1 anyone to discuss it with you. Fifteen.

2 (WHEREUPON, the jury is escorted out of the courtroom at
3 11:19 a.m.)

4 THE COURT: Anything from the state before we take a break?

5 ATTORNEY OSBORNE: No, Your Honor.

6 THE COURT: Anything from the defense? Mr. Fortune or
7 Mr. Salazar?

8 ATTORNEY HUBRICH: No, ma'am.

9 ATTORNEY CORNWELL: No.

10 THE COURT: All right. You may step down, sir. Do not
11 discuss your testimony with anyone.

12 THE WITNESS: Thank you, Your Honor.

13 (WHEREUPON, court recessed at 11:19 a.m. and reconvened at
14 11:31 a.m.)

15 ATTORNEY OSBORNE: I forgot to ask him three questions.
16 Because chain has become such an issue, he's the one who
17 transported the last buccal swabs, 209, 210 and 211 to SLED on
18 April the 9th. And I forgot to ask him that. So I would just
19 ask permission to ask him that if that becomes ---

20 THE COURT: Sure. Sure. Jury.

21 (WHEREUPON, the jury is seated in the courtroom at
22 11:35 p.m.)

23 THE COURT: All right, ladies and gentlemen. At this time
24 we will continue with the state's case on direct examination.

25 ATTORNEY OSBORNE: Thank you, Your Honor. Just three quick

1 questions I forgot to ask him.

2 **DIRECT EXAMINATION** (cont.)

3 Q Those last two items that I showed you -- or, the last
4 three, 209, 210, 211, the buccal swabs of Polo Salazar, Devonte
5 Major and Elijah Green, did you have the occasion, on April the
6 9th, to transport those to SLED?

7 A I did.

8 Q And were they properly packaged and sealed?

9 A They were.

10 Q And were they damaged at all or altered while you were
11 transporting them to SLED?

12 A No, sir.

13 ATTORNEY OSBORNE: Thank you, Your Honor. No further
14 questions.

15 THE COURT: All right. Yes, ma'am, cross-examination?

16 ATTORNEY HUBRICH: Thank you, Judge. May it please the
17 Court.

18 THE COURT: Yes.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY HUBRICH:

21 Q It's Detective Brooks?

22 A Yes, ma'am.

23 Q I want to talk to you first -- I have a whole host of
24 questions to ask you, but I want to talk to you first about some
25 things you testified to on your direct examination.

1 I'm going to show you State's Exhibit 143 that's been
2 admitted into evidence. On that, it says clothing Fortune?

3 A Yes, ma'am.

4 Q Did you write that?

5 A I did not.

6 Q Who wrote that?

7 A That would probably be the submitting officer, but I don't
8 have direct knowledge of that.

9 Q So you testified on direct that you collected Muanah
10 Fortune's clothing.

11 A From the evidence locker. Yes, ma'am.

12 Q So who actually collected it?

13 A That was collected by the patrol officer who did the
14 transport.

15 Q And who is that?

16 A I do not recall.

17 Q So someone other than you took the clothing from Mr. Fortune
18 when he was arrested?

19 A Yes, ma'am.

20 Q Somehow packaged it up like this, because this is not your
21 official packaging. Correct?

22 A No, ma'am.

23 Q And brought it to the police station, I guess?

24 A Yes, ma'am.

25 Q Do we know anything about how it was transported?

1 A It was transported in the officer's vehicle.

2 Q Okay. Do we know anything about how it was collected?

3 A It was collected when they were changed out from their
4 clothes that they were in to the jail's attire.

5 Q And so you say, they. I'm assuming you mean all four
6 defendants?

7 A Yes, ma'am.

8 Q Were they all in a room together?

9 A That, I don't know. I wasn't present.

10 Q What did they do with the clothes once they took them off of
11 them? Did they put them in a pile?

12 A Again, I wasn't present. I do not know.

13 Q Okay. All you know is that it was brought to you in this
14 packaging, and you don't know how, when or where it was
15 collected?

16 A Yes, ma'am.

17 Q I'm going to talk to you a little bit about the crime scene
18 now. As I said, I'm talking to you about what you testified to
19 on direct. This crime scene, when you got there, was it unusual
20 to you? Did it seem, did anything seem, unusual or out of place?

21 A No, ma'am.

22 Q I'm going to show you State's Exhibit 81. This is a picture
23 of the deceased dog lying over the end of the bed. Correct?

24 A Yes, ma'am.

25 Q And this was the picture you took when you got to the scene,

1 right, this is what it looked like when you got there?

2 A After we entered the residence, yes.

3 Q And on this edge there is a box spring, I guess, sitting up?

4 A Yes, ma'am.

5 Q I'm going to show you what was just admitted as State's
6 Exhibit 69. This is another view of that box spring; right?

7 A Yes, ma'am.

8 Q There was some testimony that this was a double box spring.
9 Does that look like a twin bed to you?

10 A I'm not certain.

11 Q Does it look unusual that that box spring is sitting like
12 that?

13 A It looks like it had been moved prior to my arrival.

14 Q Again, does it look like it was moved before or after the
15 dog got up on the bed?

16 ATTORNEY OSBORNE: Objection. That calls for speculation.

17 THE COURT: I'll allow it.

18 A That, I don't know if it was moved before or after.

19 Q And, again, you testified on direct -- this is State's No.
20 52 -- that when you came in this couch was on its side.

21 A Yes, ma'am. I believe so.

22 Q And on its side, you mean it was flipped on this side,
23 flipped over on that side?

24 A I believe it was flipped towards the front.

25 Q Uhm. So down here you found some projectiles?

1 A Yes, ma'am.

2 Q Was the couch flipped over on top of those?

3 A That, I don't know. It was moved, the cushions were moved,
4 prior to that photo.

5 Q Well, here, these cushions here, that's where the projectile
6 was, right there; correct?

7 A Yes, ma'am.

8 Q Was the couch flipped over on top of that projectile? Do
9 you know?

10 A Possibly.

11 Q Uhm. That didn't seem unusual to you?

12 A No, ma'am.

13 Q Okay. When you responded to 108 Myrtle Place there were
14 quite a few people there when you got there?

15 A Yes, ma'am.

16 Q Police had been there?

17 A Yes, ma'am.

18 Q EMS had been through there?

19 A I believe so.

20 Q There were some witnesses that had kind of come and gone?

21 A I believe so.

22 Q And your job is to observe and collect?

23 A Yes, ma'am.

24 Q And one of the first things you did, and I think you
25 testified to this, is you observed the outside of the area?

1 A Yes, ma'am.

2 Q And there were three cars in the driveway?

3 A I believe so.

4 Q One didn't have a tag?

5 A I believe so.

6 Q Behind the residence you found three more cars and a
7 trailer?

8 A Yes, ma'am, I believe so.

9 Q Two of the cars didn't have license plates?

10 A I believe that's correct.

11 Q And the trailer was missing a VIN number?

12 A I believe so.

13 Q VIN numbers are important; correct?

14 A Yes, I believe so.

15 Q Was it scratched off or was the plate just pried off?

16 A I do not recall.

17 Q You also, I think, testified that you went and collected
18 guns from the side of the road?

19 A Yes, ma'am.

20 Q You put up a map and you showed where you got them.

21 A Yes, ma'am.

22 Q You collected a Smith & Wesson .38 special revolver?

23 A Yes, ma'am.

24 Q You called that gun no. 1?

25 A Yes, ma'am.

1 Q There were three live rounds and three spent casings in that
2 gun?

3 A Yes, ma'am.

4 Q Reasonable to believe that that gun had been fired at least
5 three times at some point?

6 A Yes, ma'am.

7 Q You collected -- I'm going to mispronounce it -- Jimenez
8 Arms .380?

9 A Yes, ma'am.

10 Q You called that gun gun no. 2?

11 A Yes, ma'am.

12 Q There was one round in the chamber and 13 rounds in the
13 magazine?

14 A Yes, ma'am.

15 Q You located a Taurus 9 millimeter?

16 A Yes, ma'am.

17 Q You called that gun no. 3?

18 A Yes, ma'am.

19 Q You testified it had one round in the chamber and 16 in the
20 magazine?

21 A Yes, ma'am.

22 Q It had the capacity for 17 rounds total?

23 A Yes, ma'am.

24 Q Reasonable to believe that that gun had not been fired; it
25 was fully loaded?

1 A Yes.

2 Q You located a Springfield Armory 9 millimeter?

3 A Yes, ma'am.

4 Q You called that gun gun no. 4?

5 A Yes, ma'am.

6 Q It had one round in the chamber and eight rounds in the

7 magazine?

8 A Yes, ma'am.

9 Q Capacity for 15 rounds?

10 A After reinspecting, it was 16 rounds.

11 Q Sixteen rounds, okay. But at least one of those guns hadn't

12 even been fired?

13 A Yes.

14 Q You returned to the house after collecting those guns. You

15 then went back to Marcus Porter's house, 108 Myrtle Place?

16 A Yes, ma'am.

17 Q And you went to collect evidence?

18 A Yes, ma'am.

19 Q And in the search of the house you found a jar of green

20 plant material that you suspected was marijuana?

21 A Yes, ma'am.

22 Q You found counterfeit money?

23 A Yes, ma'am.

24 Q You found seven cellphones?

25 A Yes, ma'am.

1 Q In this house, seven cellphone?
2 A Yes, ma'am.
3 Q You found two digital scales?
4 A Yes, ma'am.
5 Q Then you found another bag of green plant material that you
6 suspected was marijuana?
7 A Yes, ma'am.
8 Q You found syringes?
9 A Yes, ma'am.
10 Q You found another clear, plastic bag with 24 grams of green
11 plant material that you suspected was marijuana?
12 A Yes, ma'am.
13 Q And we're going to go on. You found sandwich bags?
14 A Yes, ma'am.
15 Q And you put in your report that's consistent with someone
16 who packages drugs?
17 A Yes, ma'am.
18 Q You found 11 pills in a bag?
19 A Yes, ma'am.
20 Q You found two more digital scales?
21 A Yes, ma'am.
22 Q So that brings it up now to four digital scales that you
23 found?
24 A Yes, ma'am.
25 Q You found three more clear, plastic bags that had green

1 plant material in them that you suspected was marijuana?

2 A Yes, ma'am.

3 Q You found multiple clear plastic bags in a drawer consistent
4 with ones used for packaging illegal drugs?

5 A Yes, ma'am.

6 Q You found a glass pipe?

7 A Yes, ma'am.

8 Q You found more counterfeit money?

9 A Yes, ma'am.

10 Q I'm just going through your report. You found another
11 digital scale?

12 A Yes, ma'am.

13 Q You've now found one, two, three, four, five digital scales
14 in one house?

15 A Yes, ma'am.

16 Q And then you found a gun?

17 A Yes, ma'am.

18 Q You collected DNA from the living room floor, a projectile,
19 and the dog's mouth?

20 A Yes, ma'am.

21 Q You collected a shoe print from the back door?

22 A I photographed.

23 Q Oh, that's right. And you also collected Muanah Fortune's
24 shoes, or someone did, at the jail?

25 A Yes, ma'am.

1 Q And they came into your possession?

2 A Yes, ma'am.

3 Q And you compared that shoe print on the back of the door to

4 Muanah Fortune's shoe?

5 A Yes.

6 Q And it's not the same?

7 A I couldn't match it.

8 Q And I think you put in your report the tread on his shoe did

9 not match the print on the back door?

10 A Yes, ma'am.

11 Q You also collected fingerprints?

12 A Yes, ma'am.

13 Q From a mason jar?

14 A Yes, ma'am.

15 Q And a mason jar lid?

16 A Yes, ma'am.

17 Q And neither of those matched Muanah Fortune?

18 A No, ma'am.

19 Q You went to the jail?

20 A Yes, ma'am.

21 Q And someone else, I think it was, testified, collected

22 Mr. Fortune's clothes?

23 A Yes, ma'am.

24 Q Packaged it up and gave it to you. And we don't know what

25 happened to his clothes, how they were taken or who took them or

1 what was done with them before they came to you?

2 A I can't testify to that.

3 ATTORNEY HUBRICH: The Court's indulgence.

4 THE COURT: All right.

5 ATTORNEY HUBRICH: I have no further questions. Thank you,
6 Detective Brooks.

7 THE COURT: All right. Yes, ma'am?

8 ATTORNEY CORNWELL: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Yes.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY CORNWELL:

13 Q Detective Brooks ---

14 A Yes, ma'am.

15 Q --- you just talked about the shoe print on the back door
16 that didn't match the shoe tread of Muanah Fortune.

17 A Yes, ma'am.

18 Q It also did not match the shoe tread of Polo Salazar; did
19 it?

20 A Not that I was able to match.

21 Q Nor did it match the shoe treads of Elijah Green?

22 A That's correct.

23 Q Nor did it match the shoe tread of Devonte Major?

24 A Correct.

25 Q So you would agree that the shoe print on the back door

1 didn't match any of the shoe prints from the suspects?

2 A That's correct.

3 Q And you say you photograph everything as you see it before
4 it's collected, before it's manipulated, before it's marked?

5 A Yes, ma'am.

6 Q However, you didn't take any photos of the couch while it
7 was on its side before it got turned over?

8 A I took many photos. I do not recall if that was one of the
9 ones taken.

10 Q But we haven't seen that photo.

11 A Not that I've seen put on the screen, ma'am.

12 Q And you indicated in direct that you photograph everything
13 as you see it; and then it's marked; it's photographed again; and
14 then it's collected?

15 A Yes, ma'am.

16 Q And that you were the one who did all that?

17 A Yes, ma'am.

18 Q But that's not true; is it?

19 A For what?

20 Q Well, you photographed the evidence, but when it came to
21 marking the evidence, collecting the evidence and placing it in
22 evidence bags you were not the person that did that.

23 A For which piece of evidence?

24 Q For any of the evidence inside the home.

25 A I did collect the evidence from the home.

1 Q Who is Wade Rollings?

2 A Wade Rollings is a former sergeant with the Summerville
3 Police Department. He assisted me on the scene.

4 Q So if his reports states that he followed you and, while you
5 photographed the evidence, he placed the markers and then he
6 collected the evidence and he placed them in paper bags ---

7 A I collected them and handed them to him.

8 Q And Wade Rollings is no longer with the Summerville Police
9 Department?

10 A That is correct.

11 Q And that's because he was fired and charged with misconduct
12 in office?

13 A I believe so.

14 Q For tampering with evidence?

15 ATTORNEY OSBORNE: Objection, Your Honor. That goes beyond
16 his personal knowledge. He did not conduct that investigation.

17 THE COURT: If he doesn't know, he can certainly answer.

18 A I don't know. I was not part of the investigation. I was
19 just an employee.

20 Q And you indicated that you didn't take items out of a
21 jumpsuit and itemize them because they were going to be tested
22 and you didn't want to --

23 A To make sure I didn't compromise any of the evidence. Yes,
24 ma'am.

25 Q However, you took items out of a wallet to photograph all of

1 those before it was sent for testing. You took items out of a
2 bag, I believe, that you said found ammunition in it. You've
3 taken plenty of other items out of items to photograph and to
4 itemize; correct?

5 A Yes, ma'am.

6 Q By just didn't want to do it on this one particular piece?

7 A Not on the clothing, because the clothing was going to be
8 submitted for trace analysis.

9 Q I want to go through kind of what you put in your report
10 regarding what you observed in the home.

11 A Yes, ma'am.

12 Q You indicated that when you went in the kitchen you noticed
13 that the kitchen drawers were neat and not rifled through.
14 Correct?

15 A Let me refer to my report.

16 Q Absolutely.

17 A I observed the cabinets were open, but the contents appeared
18 neat and did not appear to have been rifled through.

19 Q And there was a laundry storage area that had a deadbolt on
20 the door; correct?

21 A Yes, ma'am.

22 Q And that deadbolt was engaged?

23 A Yes, ma'am.

24 Q That door was undamaged?

25 A Yes, ma'am.

1 Q And once you went inside that room it looked to be
2 untouched?

3 A Yes, ma'am.

4 Q You went into bedroom 1, and there were a lot of items in
5 that bedroom, including SIM cards, a wallet, a phone, two
6 backpacks?

7 A Yes, ma'am.

8 Q And the closet door in that room, it was open?

9 A I believe so, yes.

10 Q And the clothes were hung neatly?

11 A Yes.

12 Q And there were also baskets of clothing on the floor that
13 were still neatly on the floor?

14 A That, I don't recall.

15 Q If it was in your report, would that refresh your
16 recollection?

17 A Yes, ma'am.

18 Q Would you like to refer to your report?

19 A Yes, ma'am.

20 Q And, yes, there was clothing just neatly on the floor?

21 A Yes, ma'am.

22 Q You were able to glance in the bathroom, and nothing looked
23 out of place?

24 A Correct.

25 Q In the master bedroom you were able to see a phone, a

1 nightstand at an angle and a closet opened with a dresser on the
2 left side of the closet, and again you stated that the clothes
3 were hanging and there was also clothing folded neatly on the top
4 shelf?

5 A Yes, ma'am.

6 Q And in bedroom three was a storage kind of a bedroom, it had
7 multiple bins and boxes. All of those bins and boxes were neatly
8 stacked and did not appear to be rifled through?

9 A Yes, ma'am.

10 Q There was also a closet with a lock in that room?

11 A I believe so.

12 Q And that closet was undisturbed?

13 A I believe so.

14 Q And that was just kind of your cursory glance. I believe
15 you said afterwards a more intensive search was done.

16 A A more evasive search, yes, ma'am.

17 Q And in bedroom number one, just located right on top of the
18 nightstand, was marijuana; correct?

19 A Yes, ma'am, I believe so.

20 Q And then in bedroom number two, on the nightstand there were
21 phones, there's a phone book and an iPad?

22 A Yes, ma'am, I believe so.

23 Q All items of value?

24 A Yes, ma'am, I believe so.

25 Q And the top drawer of the dresser, right on top, there was a

1 clear, plastic bag containing multiple bags of what was suspected
2 to be marijuana?

3 A Yes, ma'am.

4 Q There was a pill bottle with various pills?

5 A Yes, ma'am.

6 Q And the closet, in the jacket you found more marijuana in
7 multiple bags?

8 A Yes, ma'am.

9 Q And a fully loaded gun?

10 A Yes, ma'am.

11 Q And you indicated you collected buccal swabs through the
12 course of your investigation?

13 A Yes. I conducted, or I collected, the second set of buccal
14 swabs.

15 Q Did you ever collect a buccal swab for Jaquavious
16 Washington?

17 A No, ma'am.

18 Q And you were able to collect fingerprints off of some of the
19 items taken from inside the alleged victim's home; correct?

20 A Yes, ma'am.

21 Q And none of those fingerprints matched Polo Salazar; did
22 they?

23 A Correct.

24 Q I want to talk about the items in the Honda.

25 A Yes, ma'am.

1 Q We saw where you had photographed the Honda?

2 A Yes, ma'am.

3 Q Where was the Honda when you took those photographs and
4 collected those items?

5 A The Honda was in our sally port at the Summerville Police
6 Department.

7 Q So when you're photographing those items and everything,
8 that's after there was a 30-minute pursuit?

9 A Yes, ma'am.

10 Q After the car had been towed?

11 A Yes, ma'am.

12 Q After other officers had looked in the car on scene to
13 ensure there was nothing that they needed to collect?

14 A Yes, ma'am.

15 Q And you have no knowledge of what actually happened in the
16 car before it got to you; correct?

17 A That is correct.

18 Q So you are not testifying that the items you found in the
19 car and where they were found in the car are where they were at
20 anytime other than when you saw them?

21 A That is correct.

22 Q And it would be safe to say, that during transport and
23 during driving, that items can shift around in a car; correct?

24 A That is possible. Yes, ma'am.

25 Q And that if people are inside of a car, they can put things

1 inside of things that weren't originally in there?

2 A Yes, ma'am.

3 Q And when you take items to SLED you submit them into an
4 evidence locker?

5 A Yes, ma'am.

6 Q You do not know who received that evidence once you've
7 placed it in the evidence lock year?

8 A No, ma'am.

9 Q And you do not know what they do with once placed inside
10 that evidence locker?

11 A No, ma'am.

12 Q And you're not the only one that took evidence to SLED in
13 this case; correct?

14 A That is correct.

15 Q Wade Rollings also took evidence?

16 A Yes, ma'am.

17 ATTORNEY CORNWELL: I believe that's all I have. Thank you.

18 THE WITNESS: Thank you.

19 ATTORNEY CORNWELL: Thank you, Your Honor.

20 THE COURT: Yes. Redirect?

21 ATTORNEY OSBORNE: Briefly, Judge.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY OSBORNE:

24 Q Fair to say you're not a fan of Wade Rollings?

25 A No comment, sir.

1 Q But you were with Wade when that was going on, y'all were
2 there together?

3 A Yes, sir.

4 ATTORNEY OSBORNE: Your Honor, may I approach the witness?

5 THE COURT: You may.

6 (WHEREUPON, State's Exhibits 303 and 304 are marked for
7 identification.)

8 Q I'm going show you what's been marked as 303 and 304. Can
9 you take a look at those and tell me if you recognize those.

10 A Yes. These are photos of the couch on its side.

11 Q So what I've showed you before and what was shown to you by
12 defense before, it would have already been turned up?

13 A Yes.

14 Q Well, let's just go ahead and show -- I know they're not
15 great photographs but --

16 ATTORNEY OSBORNE: Well, Your Honor, at this time I seek to
17 admit 303 and 304 into evidence.

18 THE COURT: Any objection?

19 ATTORNEY HUBRICH: No objection.

20 THE COURT: Any objection?

21 ATTORNEY CORNWELL: No, Your Honor.

22 THE COURT: Very well.

23 (WHEREUPON, State's Exhibits 303 and 304 are admitted into
24 the record.)
25

1 Q All right. We'll start off by showing you 303.

2 A That is the couch on its side.

3 Q And then 304?

4 A Again, the couch on its side.

5 Q And so does 303 and 304 represent the photographs that y'all
6 took during the initial ---

7 A Yes, prior to moving or manipulating anything.

8 Q Okay. I'm now showing you State's 53. I think this was
9 shown to you before. Okay. So I know you can't -- well, can
10 you, do you have the abilities as a crime-scene technician to
11 know when that fired projectile appeared on the floor there?

12 A No, sir.

13 Q If the fire projectile had appeared on the floor first and
14 then the couch was flipped, would the couch then be on top of the
15 fired projectile?

16 A Yes.

17 Q Which might indicate that the gun was fired prior to the
18 tossing of the room?

19 A Yes, sir.

20 Q Okay. A lot of evidence that there was an individual who
21 sold marijuana in that house?

22 A I believe so.

23 Q Are you able to put a timestamp on the shoe print that was
24 on the back of the door?

25 A I am not.

1 Q Is anybody able to do that?

2 A Not that I'm aware of.

3 Q There were some fingerprints found on the mason jar. Who
4 did those prints come back to?

5 A I believe they came back to Swibaker.

6 Q One of the alleged victims in this case?

7 A Yes, sir.

8 Q Did you find any fingerprints inside the house that came
9 back to anyone other than the alleged victim?

10 A I don't believe so.

11 Q Oh. There was some questions about marijuana that was found
12 in various locations in the home. Is it fair to say that you
13 found, like, loose marijuana at various locations in the home?

14 A Yes, sir.

15 Q But is this the bulk?

16 A That is the bulk that was located in the back right closet.

17 Q And that's some pretty nice kind bud; isn't it?

18 ATTORNEY HUBRICH: Objection, Your Honor.

19 ATTORNEY OSBORNE: No questions.

20 THE COURT: Sustained. And did you identify ---

21 ATTORNEY OSBORNE: I'm sorry, Judge. State's 22.

22 THE COURT: Thank you.

23 ATTORNEY OSBORNE: No further questions.

24 THE COURT: All right. Recross?

25 ATTORNEY HUBRICH: The Court's indulgence. Briefly, your

1 Honor.

2 THE COURT: All right.

3 **RECROSS-EXAMINATION**

4 BY ATTORNEY HUBRICH:

5 Q You just testified that you took this evidence to SLED.

6 A Which evidence specifically?

7 Q Well, let's see.

8 ATTORNEY HUBRICH: May I approach?

9 THE COURT: You may.

10 Q Let's look at this one, State's Exhibit 11. This is one of
11 the ones you took to SLED?

12 A I'd have to check the paperwork, but I believe so.

13 Q Do you need your paperwork? Do you have it with you?

14 A I do not have the SLED paperwork. No, ma'am.

15 Q I think I've got it.

16 A Give me one second to read through this real quick and I'll
17 answer. I apologize. There was a lot taken. The black jumpsuit
18 was submitted to SLED by former Sergeant Wade Rollings. Thank
19 you.

20 ATTORNEY HUBRICH: The Court's indulgence.

21 THE COURT: Yes.

22 Q And Wade Rollings is the one that's been fired from the
23 Summerville police force for misconduct?

24 A I believe that was the reason. Yes, he's been fired.

25 Q And you said you didn't know whether it was a crime of

1 dishonesty that got him fired?

2 A I don't know what the actual charge was.

3 Q Do you know whether he was tampering with the evidence?

4 A Again, I wasn't privy to the outcome of the investigation.

5 Q Or the accusations that he was tampering with the evidence?

6 ATTORNEY OSBORNE: Objection, Your Honor. Again, this goes
7 to personal knowledge. He wasn't involved in conducting that
8 investigation.

9 ATTORNEY HUBRICH: I'm just asking if he has that knowledge,
10 Judge.

11 THE COURT: And he can certainly say whether or not he does.
12 You may proceed.

13 A I believe that was the accusation.

14 Q The accusation was that Wade Rollings was tampering with the
15 evidence?

16 A I believe so.

17 Q And he's the one who submitted that black jumpsuit?

18 A He's the one who transported it and turned it into SLED's
19 evidence. Yes, ma'am.

20 Q Okay. I want to ask you about, you testified that you
21 didn't know what happened once it got to SLED.

22 A Yes, ma'am.

23 Q Do you know anything about a container G? Have you ever
24 seen a container G?

25 A I'm unfamiliar with it.

1 Q You're unfamiliar with it, is that what you just said?

2 A Yes, ma'am.

3 Q Would it surprise if from someone from SLED got on this
4 witness stand just last week and testified that this looked like
5 it had been tampered with? Would that surprise you?

6 A That does look like it's been tampered with and been opened,
7 ma'am.

8 ATTORNEY HUBRICH: I have no further questions.

9 THE COURT: All right. Yes, ma'am?

10 ATTORNEY CORNWELL: No recross, Your Honor.

11 THE COURT: Very well. Is this witness free to leave, and
12 any objection?

13 ATTORNEY OSBORNE: No, Your Honor.

14 THE COURT: Very well. You're free to go.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Thank you. All right. Call your next witness,
17 please.

18 ATTORNEY GLOVER: Your Honor, the state would like to call
19 salina Sheppard.

20 CLERK OF COURT: If you'll please raise your right hand, and
21 state your full name for the record.

22 THE WITNESS: Salina Sheppard.

23 SALINA SHEPPARD,

24 having first been duly sworn, was examined and testified as
25 follows:

1 THE COURT: Your witness.

2 ATTORNEY GLOVER: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Okay, yes.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY GLOVER:

7 Q Hi, Ms. Sheppard, how are you?

8 A Hello. I'm good, I'm doing good.

9 Q Do you mind speaking extremely loud, or removing your mask
10 only if you feel comfortable, so the jury can hear you?

11 A Sure.

12 Q And could you speak directly into the mic.

13 A This good?

14 Q That's perfect, thank you. Ms. Sheppard, where are you
15 from?

16 A I'm from Walterboro.

17 Q Are you married or engaged?

18 A Married.

19 Q Do you have any children?

20 A I have eight children.

21 Q What do you do for a living?

22 A I own a small store selling natural products.

23 Q Did you recently have a vehicle stolen?

24 A Yes, I did.

25 Q What kind of vehicle was it?

1 A It was a Honda CR-V. I was actually borrowing it from my
2 grandmother.

3 Q And how was that Honda CR-V stolen?

4 A It was a Saturday night. I got off of work, and I stopped
5 to El Cheapo, and I ran in for a second, and it was gone.

6 Q Did you report it stolen?

7 A I did.

8 Q And you said you were borrowing the car from your
9 grandmother?

10 A Yes. Mine was having issues, so I just borrowed hers for
11 that one night to slide into work. That's when I was working.
12 And, yeah. Like that evening I went to the gas station and came
13 out, for a quick second, and it was gone.

14 Q And did you leave the car running at the gas station?

15 A It wasn't running, but the keys were in it. My fault.
16 Because, you know, I didn't see -- I thought I was going to be
17 like really quickly. But I left -- I turned it off and left the
18 keys in the ignition.

19 Q And whose name is the car's registration under?

20 A Sarah and Joseph Goss.

21 Q Do you know any of the individuals that allegedly stole your
22 vehicle?

23 A No, I don't know.

24 Q Was your vehicle ever recovered?

25 A It was recovered.

1 Q What happened with the car after it was returned?

2 A I got a phone call saying they spiked it. And then it went
3 to a Honda dealer, I guess. My grandparents didn't want the car
4 anymore. I didn't actually see it anymore, I just saw pictures
5 of it. But it was recovered by Summerville police.

6 And the Honda company that it came from, they just kept it,
7 and my grandparents got an upgraded car.

8 Q Do you know anyone of the name of Polo Salazar?

9 A No.

10 Q How about Elijah Green?

11 A No.

12 Q Devonte Major?

13 A No.

14 Q Muanah Fortune, Jr?

15 A No.

16 Q All right, Ms. Sheppard. I am going to show you what's been
17 marked and admitted into evidence as State's 87 through 108. And
18 we'll start with State's 87. Do you recognize that vehicle?

19 A Yes.

20 Q Is that the vehicle that was stolen from you?

21 A Yes.

22 Q Do you recognize anything odd about the vehicle?

23 A Just the tires are messed up.

24 Q Okay. Anything about 89, 88 that stands out?

25 A The tags are missing.

1 Q Okay. Eighty-nine?
2 A Yeah, a busted tire.
3 Q Ninety?
4 A Same. It looks like busted up.
5 Q How about 91?
6 A Just a little dirty.
7 Q Do you see anything in the vehicle that belongs to you?
8 A To me? No.
9 Q Anything here that belongs to you?
10 A No.
11 Q Are you familiar with the black-and-orange glove on the
12 floorboard?
13 A No.
14 Q Have you ever seen that glove before?
15 A Never.
16 Q And we're looking at State's Exhibit 94. Again, have you
17 ever seen that glove before?
18 A No.
19 Q We're looking at 95. Anything in the car that belongs to
20 you?
21 A No.
22 Q We're looking at 96. Anything that looks familiar?
23 A No.
24 Q This is ninety-seven. There is a brown GUCCI bag on the
25 floorboard. Have you ever seen this bag before?

1 A No.

2 Q How about the watch that is right next to it, have you ever
3 seen that watch before?

4 A No.

5 Q We're looking at Exhibit 98. And again, you've never seen
6 this Gucci bag?

7 A No.

8 Q Ninety-nine, anything in this picture look familiar,
9 anything belong to you?

10 A No.

11 Q This is 100. Can you recognize the Rollos, or the paper
12 that are commonly used to wrap marijuana? Do you recognize any
13 of that?

14 A No.

15 Q How about anything on the seat, maybe the lids, some mason
16 jars?

17 A No.

18 Q Do you recognize the license plate?

19 A I don't know if that's the license plate that was on there
20 or not. I'm not sure.

21 Q Is there anything else that you recognize? Do you recognize
22 these watches?

23 A No.

24 Q Anything on the seat that you recognize?

25 A No.

1 Q Anything under the seat that you recognize?

2 A No.

3 Q This is State's Exhibit 102. Do you recognize anything

4 here?

5 A No.

6 Q This is 103. Do you recognize anything in this picture?

7 A No.

8 Q 104? Again, do you remember the license plate number on the

9 car?

10 A I don't remember the number. Uh-uh.

11 Q 105, here we have a pink iPhone. Do you recognize that

12 iPhone?

13 A No. I was missing a phone, but it didn't have a pink cover

14 on it.

15 Q That's not the phone you were missing, though?

16 A No.

17 Q It looks like a Crown Royal bag. Do you recognize that bag?

18 A No.

19 Q Anything else in this picture you recognize?

20 A No, nothing.

21 Q Okay. We're looking at State's Exhibit 106. Do you

22 recognize this glove?

23 A No.

24 Q 107? Again, do you recognize the glove?

25 A No.

1 Q We're looking at 108. Does that license plate look
2 familiar?

3 A No. That might be the license plate that was on the car.

4 Q Okay. So does this license plate look familiar to you?

5 A A little. The trim on the outside. I don't know the exact
6 numbers, but I think that's the one that was on the car.

7 Q Okay. Thank you, Ms. Sheppard. Please answer any questions
8 the defense may have.

9 A Okay.

10 THE COURT: Cross-examination?

11 ATTORNEY HUBRICH: I have no questions, Judge.

12 THE COURT: All right. Cross-examination?

13 **CROSS-EXAMINATION**

14 BY ATTORNEY CORNWELL:

15 Q Ms. Sheppard, you would agree that likely one of those
16 license plates belonged to your car?

17 A Yes, possibly. The outside trimming kind of reminds me, the
18 Hendrick Auto.

19 ATTORNEY CORNWELL: Thank you. That's all.

20 THE COURT: All right. Any redirect?

21 ATTORNEY OSBORNE: No, Your Honor.

22 THE COURT: Very well. Is this witness free to leave, and
23 any objection?

24 ATTORNEY HUBRICH: None.

25 ATTORNEY CORNWELL: No, Your Honor.

1 THE COURT: Very well. Thank you, ma'am, and you are free
2 to go.

3 If you'd call your next witness, please.

4 ATTORNEY OSBORNE: State calls serologist Rachel Nguyen.

5 CLERK OF COURT: If you'll please raise your right and, and
6 state your full name for the record.

7 THE WITNESS: Rachel Nguyen.

8 RACHEL L. NGUYEN,

9 having first been duly sworn, was examined and testified as
10 follows:

11 **DIRECT EXAMINATION**

12 BY ATTORNEY OSBORNE:

13 Q If you want while you're testifying, it's up to you, if you
14 want to remove your mask, you certainly can. All right. He
15 Ms. Nguyen, what is your occupation?

16 A I am a forensic serologist at the South Carolina Law
17 Enforcement Division.

18 Q And if you don't mind, because some juror members are way
19 back there, could you pull the mic up to you. And how long have
20 you been a forensic serologist at SLED?

21 A I have been a forensic serologist at SLED for a little over
22 three-and-a-half years.

23 Q And what do you do at SLED as a forensic serologist?

24 A So forensic serology is basically body-fluid identification.
25 So I'm going to take various items of evidence that are submitted

1 to the SLED forensics lab, and I am going to screen them for the
2 presence of either potential body fluids such as blood, semen,
3 saliva, or attempt a collection for skin cells, which would be
4 what you know as touch DNA.

5 Q And how do you actually go about doing that?

6 A Depending on the item, we -- for example, clothing, we are
7 going to scrape areas of high friction to kind of loosen up the
8 skin cells. And then we'll go with a swab, which is pretty much
9 like a Q-tip, and try to collect the skin cells on that Q-tip.

10 Q Okay. And what is your educational background?

11 A In 2010 I received two bachelors of science degree from the
12 University of New Haven, one in forensic science and one in
13 biology.

14 Q Have you had any additional training in the area of forensic
15 serology?

16 A So I have SLED inhouse training with the DNA department.
17 Approximately it's a year long, and it's under a senior,
18 court-qualified forensic serologist. I begin by observing the
19 different techniques of collection, different types of testing
20 and analysis we do. That's followed by me performing these types
21 of testing, or collection, under supervision.

22 After that I will go through kind of a pretest. We call
23 them training samples, so they're non-casework samples. And I
24 have to perform the tests independently.

25 Once I successfully do that, I then enter a testing phase,

1 so I'm given a written exam, an oral exam, a mock case which is
2 another fake case. And then once those are all completed
3 successfully, I then do a mock court. After all those components
4 are completed, I am then deemed independent to perform casework
5 in those areas.

6 In addition to evidence processing and serology, I am also
7 qualified to do a portion of DNA process. The outline is the
8 same. I went through a period of observation. I then did some
9 practice samples. And then I went through the same phase with an
10 oral test, written test, mock case and mock court.

11 Q And how many samples of evidence would you estimate that
12 you've attempted to collect serology from?

13 A Since being deemed independent, I would say I have processed
14 probably over a thousand samples.

15 Q A thousand, did you say?

16 A Uh-huh.

17 Q Have you ever been qualified as an expert in the field of
18 forensic serology before?

19 A I have been qualified as an expert in the field of forensic
20 serology before.

21 ATTORNEY OSBORNE: Your Honor, at this time we'd offer
22 Ms. Nguyen as an expert in the field forensic serology.

23 THE COURT: All right. And is there any voir dire or
24 objection?

25 ATTORNEY WEHMAN: No, Your Honor.

1 ATTORNEY CORNWELL: No, Your Honor.

2 THE COURT: Very well. She's so qualified.

3 Q All right. So let's talk about something, and generally
4 speaking. When law enforcement submits evidence into SLED and
5 they ask for a DNA analysis to be done or attempts to collect DNA
6 from particular items, what is the process for that, how does
7 that work?

8 A So when a submitting agency wants testing done on items of
9 evidence, they'll have to submit, we call it, a pre-log form, so
10 basically it's saying what kind of evidence they want to bring
11 in. Then they have the option to select the various types of
12 processing they want done. Like I mentioned, whether they want
13 blood or touch DNA, for example. That will come into our
14 evidence control department. They will log those cases in.
15 They'll give them a unique case number and item number.

16 Then they kind of go into our system. And then we'll be
17 notified that a submission was submitted to our department for
18 analysis.

19 Q So let's say that a submitting agency puts a bunch of items
20 into one particular box, and each one of those items is
21 individually wrapped and sealed but it's in a box.

22 Who then comes and opens the box and divvies it out to these
23 various different locations?

24 A Do you mean like if they had different departments?

25 Q Yes. Yes, was going to different spots.

1 A From my understanding of how the evidence control department
2 works, if they just in come with a large box and it has various
3 requests on it, depending if they see an evidence control
4 technician, the evidence control technician can separate it out.

5 Or if it gets passed them, then whoever is the first
6 department to receive it would separate out the items of
7 evidence.

8 Q So it literally could be either/or; right?

9 A Yes.

10 Q I mean, just out of curiosity, do you happen to have your
11 information in this case?

12 A My report?

13 Q Yes.

14 A I do.

15 Q Would that tell you like -- I know this is stupid. Would
16 that tell you like who actually opened the box?

17 A The report wouldn't say who opened the box. You would refer
18 to the chain of custody to see who received it first.

19 Q All right. If you had opened the box, okay, a box -- I know
20 where we're going here. But if you had opened the box and you
21 then put that item into another box, would it then show where it
22 went from one box to another box?

23 A So if there's an item in a box ---

24 Q Yep.

25 A And are you referring to after I'm done and I --

1 Q Or both. Yeah, or both.

2 A Okay. So for my analysis, I will take -- the primary
3 purpose of my job is to take large items and screen them. If
4 they're positive for whatever we're looking for, whether it be
5 touch DNA or body fluid, I am going to to either take a set of
6 swabs off of that section or a cutting. Then those cuttings or
7 swabs will be forwarded to the DNA section in a smaller package.

8 Q All right. I'm tracking; I'm tracking.

9 A Is that where you were going?

10 Q Well, partly.

11 A Okay.

12 Q So I think it will be easier if we look at the individual
13 items.

14 A Okay.

15 Q So with regards to this case, your lab no. L9-02-418, did
16 you have the occasion to examine some evidence submitted by the
17 Summerville Police Department?

18 A I believe so. May I refer to my notes?

19 Q Yes, ma'am.

20 A So you said L19-02-418?

21 Q Yes.

22 A Yes.

23 Q All right.

24 ATTORNEY OSBORNE: And if I may, may I approach, Your Honor?

25 THE COURT: You may.

1 Q I'm going to show you some items up here. They should all
2 be up here. And if you want to step up and come over here,
3 because we're going to be looking for your item 34, which is
4 going to be State's item 10.

5 A Do you want me to find it?

6 Q Yes, you can help me. You have a little better angle than
7 me.

8 And then we're going to be talking about State's 10, State's
9 11, 109, 110, and 24 is the last one. So State's 10, State 11,
10 State's 109, State's 110 and State's 24. And do you have the
11 chain of custody with you?

12 A I do just the portions that I'm a part of.

13 Q Let's talk about State's 10, your item 34.

14 A Okay. Okay. You said my item 34?

15 Q Yes.

16 A Okay, I have it.

17 Q All right. Well, can you tell us what that is, and did you
18 come into possession of that?

19 A So item 34 is an orange ski mask. I did come into
20 possession to it by -- from my report, I'm in the chain of
21 custody. And when we receive evidence, I label it with the
22 unique case number, item number, my initials and each date that
23 I've gone into the item.

24 Q And when you came into possession of that item was that item
25 properly sealed and packaged?

1 A Yes.

2 Q If it had not been properly sealed and packaged, what would
3 you have done?

4 A I would have made a note on my evidence worksheet. I also
5 would have made a note in, what we call, a narrative of the case.
6 So that's something that anyone who accesses the case can see.

7 Q Okay. Did you make such a notation in this case?

8 A I did not.

9 Q May I see that again. And I'm noticing on here that it
10 says G.

11 A Yes.

12 Q What does that notation mean, G?

13 A So when we have multiple items of evidence in one
14 heat-sealed pouch, we'll give it a container number. So the G is
15 referring to at one time there was multiple items within that
16 pouch.

17 Q Or if we have another item that also has a G on it, is it
18 fair to say that that, too, would have been in the same
19 container?

20 A We don't typically have multiple pouches with the same
21 container number. So it would be one pouch per letter.

22 Q Well, take a look at this case right here.

23 A Okay.

24 Q You have your chain of custody?

25 A Chain of custody.

1 Q Look at page 50, the orange ski mask.

2 A Oh, okay. Orange ski mask.

3 Q And that came to you, and is it fair to say that came to
4 you, in container G?

5 A Orange ski mask, container G. Yes.

6 Q And then I'm noticing right here, if you notice a little
7 further down, it turns to container I.

8 A Okay, yes.

9 Q Are the containers just vehicles to move things from one
10 location to the next? Yes or no.

11 ATTORNEY WEHMAN: Objection, Judge. Leading.

12 THE COURT: Don't lead.

13 Q Yes or no. Or don't let me put words in your mouth. Are
14 these containers ---

15 A I'll explain.

16 Q Yes, please.

17 A Okay. So, like I mentioned, a container should have
18 multiple items within it. When I make, as I mentioned, the
19 cuttings or the swabs off of the items, when I create them they
20 are going to show in the chain of custody that they originated in
21 the same container as what we call the parent item. So the ski
22 mask is going to show that it was in container G. And anything
23 I've taken off of it will originally show that it was in
24 container G. And then I separate it out to forward it to the DNA
25 section, so that is why it says I after it.

1 Q And then just while we're on the container -- I'm sorry, I
2 know ---

3 A That's okay.

4 Q --- while we're on the container situation, go down to item
5 no. 35 on page 54. When you received that, was that also in
6 container G?

7 A Yes.

8 Q And then I'm noticing -- and we don't need to say what this
9 is, but going on after that when you started breaking down items,
10 they then go into various containers to go to various locations?

11 A That's correct. So if I take something else off of these
12 items and they're not going to the DNA department, they may
13 perhaps go to another department, they will get a different
14 container number -- or, a letter.

15 Q All right, I think we're through with that. So I'm going
16 show you State's 170. All right. Does this correspond back to
17 State's 10, the orange ski mask?

18 A Yes. So this would be the orange ski mask. I can identify
19 it by the unique case number, the item number and my initials in
20 the corner. The other numbers, since there's two numbers on it,
21 the 34.1 is just showing where I collected DNA from.

22 Q And how do you know that was you other than having seen and
23 it done it?

24 A My initials, R.L.N, in the corner on the bottom.

25 Q Now we're going on to 171.

1 A This is just showing, once again, that these subitems, 34.1,
2 I also swabbed this side with the same set of swabs as the other
3 side.

4 Q Okay. And when you, I'm going to kind of -- we'll do it for
5 this one, and then I think we can kind of go a little bit quicker
6 on the other ones.

7 A Okay.

8 Q I'm showing you now 172. Can you take a look at that and
9 tell me if you recognize that.

10 A I do.

11 Q And what is that?

12 A These appear to be all of the subitems, which, once again,
13 subitems are the swabs or cuttings I took off of the various
14 items I analyzed. And these are the individual envelopes I
15 placed them in to forward to the DNA department.

16 Q And you said you've testified as an expert before in trials?

17 A Correct.

18 Q And we notice what you just did there. You actually opened
19 it up and went inside and looked at the evidence. Is that
20 uncommon when you're doing trials?

21 A To show the jury?

22 Q Yes.

23 A Yes, that's common.

24 Q That's common, okay. Have you ever, ever testified in a
25 criminal case and opened evidence, looked in it and then

1 heat-sealed it back while you're on the witness stand to ensure
2 that it was properly packaged?

3 A In my experience, no. Usually the items are already opened
4 and accessible for trial, and I've never resealed them.

5 Q I think we can move on now. And once you get through with
6 172 and all those samples, that's then forwarded to DNA?

7 A Correct.

8 Q Okay. All right. So now let's move on to, I think that's,
9 11, let's deal with this jumpsuit here. Did you come into
10 contact with State's 11, your item 35?

11 A Yes.

12 Q And when you came into possession of those items, did you
13 take note of what was in there?

14 A Yes.

15 ATTORNEY OSBORNE: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 (WHEREUPON, State's Exhibits 164, 165, 166 and 167 are
18 marked for identification.)

19 Q I'm showing you 164 through 167. Can you take a look at
20 those items and tell me if you recognize those.

21 A I do.

22 Q And what are they?

23 A They appear to be everything that was packaged together with
24 item 35, the navy jumpsuit.

25 Q And you actually processed those items that were in that

1 navy jumpsuit; is that correct?

2 A Some of them.

3 Q Okay. We'll talk about that.

4 A Okay.

5 ATTORNEY OSBORNE: Your Honor, at this times we would seek
6 to admit 167 -- well, I'm sorry -- 164 through 167 into evidence.

7 THE COURT: All right. Any objection?

8 ATTORNEY WEHMAN: Judge, just our continuing objection as to
9 chain to these photographs.

10 THE COURT: Okay. Any objection?

11 ATTORNEY CORNWELL: Same, Your Honor.

12 THE COURT: You join in that?

13 ATTORNEY CORNWELL: Yes, ma'am.

14 THE COURT: All right. Overruled.

15 (WHEREUPON, State's Exhibits 164, 165, 166 and 167 are
16 admitted into the record.)

17 Q So let's start with 167. I know, I realize, I'm presenting
18 these backwards, okay.

19 A No worries.

20 Q What are we looking at on 167?

21 A This would be, when I take an item of evidence to process
22 it, we put it on a white butcher paper, just basically so any
23 movement of the items, any debris that's on it, will be contained
24 in one area in case we ever have to go back, or just to keep it
25 all together.

1 So this is going to be the exterior of that butcher paper
2 which I labeled with unique case number, item number, my initials
3 and the date that I packaged it.

4 Q May I see that again?

5 A This one?

6 Q Yes, State's 11.

7 A Yes.

8 Q And so does that correspond with your initials right there
9 on State's 11?

10 A Yes.

11 Q When you received this item, it wasn't on white paper; was
12 it? Or do you remember?

13 A You mean how was it packaged?

14 Q By law enforcement. And if you don't remember, that's okay.

15 A Can I just see it?

16 Q But either way, that's you. What we're looking at right
17 here is you repackaging it after you got done with the analysis?

18 A Yes. So, for example, what I was looking for is this
19 plastic exterior. If it had come with it when it was submitted,
20 I would have also initialed, dated, labeled with the case number
21 and the item number if I had received it.

22 Q Okay. And if a witness actually looked at that evidence
23 prior to you testifying, it didn't look like that when you were
24 through with it; right?

25 A You mean in the process?

1 Q When you got finished analyzing the item and then
2 repackaging it, you didn't package it like that; correct?

3 A Oh, no. It would have been neat.

4 Q Okay. All right.

5 A And sealed.

6 Q And sealed, right. Okay. All right, so let's move on. And
7 what we're looking at here, again just to make sure I understand
8 you correctly, on 164, what we're looking at, this is you after
9 you're finished with everything, putting it back into the
10 package? That's what it looked like?

11 A Yeah. And it would be taped shut.

12 Q Okay. All right, 165, what are we looking at here?

13 A This picture appears to be the navy jumpsuit. The
14 pocketknife, I found within it, and the black-and-orange glove.

15 Q Okay. So when you received the navy jumpsuit, it was
16 properly package and sealed; is that correct?

17 A Yes.

18 Q And when you broke that seal and then opened it, this is
19 what you found?

20 A Yes. There were various items contained with the navy
21 jumpsuit. So these are just two of the things I found within the
22 packaging.

23 Q Well, what else did you find in there?

24 A I found a green, leafy substance, a teal, sneaker-shaped
25 tablet, a dime, the pocketknife, the black-and-orange glove. And

1 that is it that was found inside.

2 Q Okay. All right, let's go to 166. Are these just the items
3 spread out?

4 A It appears to be.

5 Q All right. So I want to hammer down on some of these
6 notations here. When we're looking at the pocketknife, did you
7 put those arrows on there?

8 A Yes.

9 Q And what is that, what are you trying to show there?

10 A As you saw, the orange mask, I am going to draw arrows for
11 the areas that I swabbed for collection. So if you were to open
12 the pocketknife, you would probably see a subitem number to
13 notate where the swabs were collected on the pocketknife.

14 Q Moving to 167. Were you able, or do you know what that item
15 is right there within the little baggie?

16 A So I noted on my evidence worksheet that the navy jumpsuit,
17 the pockets contained pieces of plastic, springs, metal pieces
18 and et cetera, that were placed in a plastic pouch.

19 Q Hard to know what -- hard to put that back together?

20 A Yes.

21 Q Okay. 168, what are we looking at here?

22 A That would be the navy jumpsuit.

23 Q And 169?

24 A The navy jumpsuit, the back.

25 Q The back, okay. Let's move now to your item 36, my item

1 110. Do you recognize that item? I don't have any photographs.
2 It's actually, I think, right in front of you.

3 A Thirty-six. Item 36, I have as a camouflaged glove.

4 Q And did you perform some analysis on that?

5 A I did.

6 Q What did you do?

7 A It appears that I did ownership processing, which is,
8 ownership processing is the purpose is to find the primary wearer
9 of the item. So for the glove, we wanted to see who was the
10 owner of the item.

11 Q And how did you go about processing that? I know you
12 mentioned your technique before, but.

13 A So for a glove, I scrape the inside of the glove, so flipped
14 it inside out. I don't know if you noticed the white stick in
15 the previous photo, but I'm going to use it the scrape the inside
16 of the glove to loosen up any skin cells. And then I'm going to
17 take a swab and swab the entire area that I scraped.

18 So I have that I scraped the entire interior of the
19 camouflage glove.

20 Q All right.

21 A In addition to ownership processing, a component is looking
22 for hair. And it appears, for this item, I did collect hair.

23 Q You did collect a hair from that camouflaged glove?

24 A I did.

25 Q And I want to draw your attention back to 172 -- and I'm not

1 going to keep doing this, but once you made those collections, is
2 that what is then later properly sealed and put into State's 172,
3 that bag?

4 A The white bag?

5 Q No, with all the serology samples.

6 A Oh, you mean the other. This one?

7 Q Yes, 172.

8 A Yes.

9 Q All right. Let's move next to State 109, that's your item
10 37. What analysis did you perform on that?

11 A Item 37, I have as a black knit hat and a black-orange
12 glove.

13 Q All right. And what analysis did you perform on that?

14 A Once again, those two items had ownership processing done.
15 So for the black-and-orange glove, I scraped the interior of the
16 glove. Also, I collected hair.

17 For the black knit hat, I scraped the entire interior of the
18 black hat.

19 Q Okay. And lastly, State's 24, your item 44. What analysis
20 did you do on that and what was that?

21 A Item 44 was multiple latex-style gloves located near the
22 scene. This item was submitted for blood processing. I took two
23 cuttings off of the glove. One cutting was from the middle
24 finger of the glove, and then another cutting was from below the
25 pinky of the glove.

1 Both of these cuttings were presumptively positive for
2 phenolphthalein, which is an indication of the presence of blood.

3 Q On latex gloves?

4 A Yes.

5 Q And I think I mentioned, but just to make sure because I
6 know I kind of went a little bit out of order, the
7 black-and-orange glove that was found on the navy jumpsuit, did
8 you perform analysis on that?

9 A Yes, I did.

10 Q And that analysis?

11 A Was, once again, ownership processing. So I scraped the
12 interior of the glove.

13 Q And you did ownership processing also on the jumpsuit
14 itself?

15 A Yes, I did. I scraped the entire neckline of the navy
16 jumpsuit, as well as collecting hair from the jumpsuit.

17 Q Okay. And you already said this, but you came into
18 possession of these items. Did you come into possession of these
19 items on May the 22nd of 2019?

20 And while you have that, if you don't mind just telling the
21 jury who was it, what forensic technician, gave those items to
22 you.

23 A Okay, so the jumpsuit. May the 22nd of 2019, at 11:49. And
24 you said you wanted to know who I received from it?

25 Q Yes, ma'am.

1 A I received it from Charlotte Pitts, who is a forensic
2 technician within the evidence control department.

3 Q And then going back to State's 172, I think you testified
4 that contains all the samples and the items that you were able to
5 collect from that evidence. What did you do with State's 172
6 once you properly packaged and sealed it?

7 A So once I properly package and sealed all the cuttings and
8 swabs that I collected off of these items, I returned it to the
9 evidence control department. Specifically, the items that came
10 off of the navy jumpsuit, I brought it back on June 4th, 2019, at
11 10:21. And Jackie Davis, who is a forensic technician within the
12 evidence control department, received it.

13 Q Okay. And the other items? I'm sorry.

14 A That was, I believe I said, container H.

15 Container I, I returned it to the evidence control
16 department on June 13th of 2019 at approximately 11:06. And that
17 was received to Charlotte Pitts, who is a forensic technician
18 within the evidence control department.

19 And I believe that covers the two times I returned evidence
20 to the control department.

21 Q And the second time, that being 172, all the samples of
22 serology?

23 A The second time was just container I, which was a portion of
24 them. It appears I made two containers. So I and E.

25 Q Okay. So you had would have made two container. And then

1 his since it's all in one container now, Ryan DeWane, if that's
2 where it went, she would have been the person to put it all in
3 one, assuming that's where it went?

4 A No. Container I, which would have had my swabs and
5 cuttings, would have went to Ryan DeWane.

6 Container H appears to have the green, leafy substance and
7 the teal, sneaker-shaped tablet, which would have been brought to
8 the evidence control department, and then distributed to the drug
9 analysis department.

10 Q Clearly then all of the DNA went to Ryan DeWane?

11 A That's correct.

12 Q Okay.

13 ATTORNEY OSBORNE: No further questions, Your Honor.

14 THE COURT: All right. Cross-examination?

15 ATTORNEY WEHMAN: Thank you, Judge.

16 THE COURT: Yes.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY WEHMAN:

19 Q Good afternoon. How are you?

20 A Good afternoon.

21 Q All right. So again, to make sure I understand correctly,
22 as a serologist you are receiving pieces of evidence ---

23 A Correct.

24 Q --- and analyzing them for different sources of potential
25 DNA?

1 A Correct.

2 Q And you said, I think, that you receive some sort a pre-log
3 form.

4 A Correct.

5 Q And on that form, is it indicated to you what you should be
6 looking for?

7 A Correct. In the sense of what analysis types they're
8 looking for. Not specifically anything in particular, but the
9 options would be blood, saliva, semen, touch or ownership DNA.

10 Q So for example, if you are receiving a piece of clothing and
11 law enforcement thought it might have blood on it, they would
12 indicate that to you; correct?

13 A That is correct.

14 Q So you have an idea, you're not just flying blind; you know
15 what you're supposed to be looking for?

16 A That is correct. If they perhaps don't, we can call them.

17 Q In this case let's -- if you don't mind, we've talked a lot
18 about containers.

19 A Yes.

20 Q Container I that you testified you created, you're able to
21 look through your notes, and it's clear that you made that
22 container; correct?

23 A That is correct. And that would be because I am where the
24 chain of custody starts for that container.

25 Q So likewise if you see another container, say, for example

1 container G, it should be clear who sorted and created that
2 container; correct? I'm not asking who did it, but the same
3 logic holds for that?

4 A Yes.

5 Q And that would be done at SLED?

6 A May I just quickly look?

7 Q Sure.

8 A Yes.

9 Q Now, specifically item 35, just so that I'm making sure I'm
10 correct, that's the jumpsuit we've been talking about; is that
11 correct?

12 A Thirty-five. I'm sorry.

13 Q I know it's a lot.

14 A Thirty-five is the jumpsuit. Correct.

15 Q And that's the piece of evidence that you found evidence
16 inside of that piece of evidence; is that right?

17 A Correct. So the submitting agency submitted what they said
18 was a navy jumpsuit. But when I find extra things, I will give
19 them their own unique item number.

20 Q And do you have in your notes who actually submitted that
21 jumpsuit to you from the agency? And to rephrase, who submitted
22 it to SLED, not you personally.

23 A Yes. So item 35, the jumpsuit, was submitted by Sergeant
24 Wade Rollings of the Summerville Police Department into the
25 evidence submission lockers.

1 Q So the piece of evidence, where you find other pieces of
2 evidence inside, by Wade Rollings; correct?

3 A That is correct.

4 ATTORNEY WEHMAN: I don't have any further questions, Judge.
5 Thank you.

6 THE COURT: All right. Yes, ma'am?

7 **CROSS-EXAMINATION**

8 BY ATTORNEY CORNWELL:

9 Q Good afternoon, Ms. Nguyen.

10 A Good afternoon.

11 Q So when you received these items, you can look and see if
12 it's package and sealed properly; correct?

13 A That's correct.

14 Q However, you don't know what was done to those items before
15 they were package and sealed?

16 A I do not.

17 Q So they could have been manipulated prior to being packaged
18 and sealed, and you would never know that?

19 A Can you rephrase that?

20 Q Sure. So if somebody had tampered or manipulated with the
21 evidence prior to packaging and heat-sealing it, you would have
22 no knowledge of that?

23 A No. I just describe the evidence as I receive it on my
24 evidence worksheet.

25 Q And I believe that we were looking at the jumpsuit. In

1 addition to the jumpsuit, the orange ski mask, the camo gloves,
2 the knit hat and black-orange glove, all those items that you
3 tested, they were all submitted on April 30th by Wade Rollings?

4 A My chain of custody doesn't have a date, so I can't confirm.

5 Q But your chain of custody doesn't have that Wade Rollings is
6 the person that submitted it?

7 A It does. It's the header of the item.

8 ATTORNEY CORNWELL: Nothing further. Thank you. Thank you,
9 Your Honor.

10 THE COURT: All right. Redirect?

11 ATTORNEY OSBORNE: None, Your Honor.

12 THE COURT: Is this witness free to leave, and is there any
13 objection?

14 ATTORNEY OSBORNE: None, Your Honor.

15 ATTORNEY WEHMAN: No, Your Honor.

16 THE COURT: Thank you. Thank you very much, you are free to
17 leave at this time.

18 Ladies and gentlemen, we're going to take our lunch break.
19 It's about 10 minutes until 1:00. We will take our lunch, and we
20 will start back about 10 minutes until 2:00. I understand that
21 your lunch is waiting for you.

22 Over our lunch break, same rules will continue. Please do
23 not discuss this matter or allow anyone to discuss it with you.
24 If you need to make a phone call -- you've done it before -- just
25 be mindful you must not have a communication device/cellphone

1 with you while you're in the jury, and certainly on the jury.
2 Please leave your communication or cellphone somewhere other than
3 the courthouse. And please enjoy your lunch. I'll see you in
4 about an hour.

5 (WHEREUPON, the jury is escorted out of the courtroom at
6 12:55 p.m.)

7 MATTERS OF LAW

8 THE COURT: Anything. All right. Anything before we take
9 our break?

10 ATTORNEY OSBORNE: No, Your Honor.

11 ATTORNEY HUBRICH: Judge, we have some things we'd like to
12 put on record regarding chain. I don't know if you want to do
13 that now or you want to do ---

14 THE COURT: Yeah, go ahead.

15 ATTORNEY HUBRICH: At this point, Your Honor, we have some,
16 I guess at this point it would be couched in a motion for a
17 mistrial regarding evidence that's been submitted to the jury.

18 Specifically, Judge -- and we've got a bunch of them --
19 items 10 and 11 -- and I'm going to focus on item 11 because it's
20 certainly the one that's most relevant to the case, it's the
21 navy/blue/black jumpsuit that's been testified to.

22 And the reason why it's relevant is because there's a
23 black-and-orange glove in the car and there's a black-and-orange
24 glove that they say is found in the pocket, and they're trying to
25 match that to the car, and then the car to the crime scene, and

1 then the use of the gloves, and Devonte Major has on these
2 gloves. And so I believe there's some DNA testimony regarding
3 the codefendant and that blue jumpsuit, also.

4 So it's relevant, that is a very relevant piece of evidence.
5 And the testimony that we heard from Detective Brooks was that, I
6 took this evidence to SLED, he testified to that, I submitted
7 this to settled.

8 And we objected for other reasons, because we objected,
9 actually, because of the container G issue with this blue
10 jumpsuit, and we objected for that reason.

11 What we now find with this witness that has just testified
12 is that Brooks actually didn't take to it SLED; Wade Rollings
13 took it to SLED. So we now have Detective Brooks who got on the
14 witness stand -- I don't know if he lied, I don't know what -- I
15 don't know why he testified that he actually took this,
16 transported this, blue jumpsuit to SLED.

17 But what we now find, through SLED, is that, no, Wade
18 Rollings, the gentleman who has not testified, who has been fired
19 from the Summerville Police Department for misconduct in office
20 and tampering with evidence, and he's part of this chain, he
21 brought this stuff to SLED. He more than likely packaged it. I
22 believe he's the one who packaged it and brought it to SLED.

23 And so now we have a real problem with their chain of
24 custody, because Wade Rollings has not testified. We were under
25 the impression that Detective Brooks was the one who submitted it

1 which, I believe, is why the Court allowed it in, because he
2 testified under oath that he's the one that took it to SLED. And
3 then we find out today that he isn't.

4 And so that's a real problem for chain. And certainly we'd
5 like to cross Wade Rollings, too, about what did he do with this.

6 And the chain has got to be complete. You know, case law,
7 it's got to be complete as far as practicable, in order, because
8 we are allowed to cross-examine about tampering.

9 In addition to that, we have this container G issue. The
10 SLED individual, Bethany Davidson, testified that she received
11 this and other evidence from a container G. The case law
12 instructs us that any person that sorts evidence, even if it's
13 already sealed, has to be part of the chain in order for us to
14 cross on that, and they have to present that. That's part of the
15 chain evidence, that if you are sorting it.

16 And that's what I'm understanding the testimony to be from
17 all of these people from SLED, these are how these containers are
18 made. It's received in SLED by the agency. They take and it,
19 they sort it, this is DNA; this is gunshot residue; this is
20 ballistics.

21 And that person has to come and say, Yeah, I got it all from
22 Wade Rollings, and then I took it and sorted to container G.
23 This woman testified she made it container I. And so she's part
24 of the chain.

25 What we haven't heard and what we keep crossing on is who

1 made container G, how did container G get made. It didn't come
2 that way from the agency. It just somehow came from Wade
3 Rollings, we think, and then it's container G. And we don't know
4 who took that and created that so that it would go to the
5 different, the serologist or the ballistics or the gunshot
6 residue.

7 And that so that's a real problem with item 11, and
8 specifically because that is really relevant evidence for both
9 the state and the defense.

10 Regarding items 13, 14, 15 and 16, this is the evidence --
11 and I believe we approached the bench about this and I just
12 wanted to put this on the record -- Bethany Davidson testified
13 that she had given that evidence, actually 13, 14, 15, 16, 17,
14 and 18, she had given that evidence to Chad Smith.

15 When you look at the chain of custody provided to us by the
16 state, this evidence was actually given to Chad Smith, given back
17 to a forensic tech, and then given back to Chad Smith, and then
18 and only then did it go to the examiner that they had come in to
19 testify. That gentleman's name was, James Green. Some of the
20 evidence went to Chad Smith for three months. Other parts of
21 evidence went to Chad Smith for five months.

22 We have no idea what happened to the evidence while Chad
23 Smith had it, because he's not testified. And we would ask that,
24 you know, for chain and for that evidence to be admitted, that
25 Chad Smith come and be subject to cross regarding chain and

1 tampering.

2 Then we want to talk about the clothes that were submitted
3 into evidence, by Muanah Fortune. The officer was very clear
4 that he was not the one who collected the clothes from Muanah
5 Fortune; that he doesn't know who collected the clothes; he
6 doesn't now how they were treated; where they were collected;
7 whether or not they were intermingled with codefendants' clothes.

8 He did testify he took them. He thinks they were all
9 together and they took all their clothes at the same time. Not
10 going to be as relevant now, right now they're just admitting
11 parts of the clothes. In the future they're going to try to
12 admit my client's sweatshirt, and then they're also going to try
13 to admit gunshot residue and analysis from that sweatshirt.

14 And that's going to be a real problem when we get to where
15 the want to say that my client's sweatshirt had gun residue on it
16 but we can't say who collected it and how it was treated at the
17 very beginning.

18 And it's a real problem that the officer got on the witness
19 stand and testified that he was the one who collected it, and it
20 was only subject to cross where he said, No, I didn't actually
21 collect it, someone else did that I can't testify to.

22 And so, based on all that, Judge, we are moving for a
23 mistrial.

24 THE COURT: Okay. Yes, sir.

25 ATTORNEY OSBORNE: I'll try to cover all that, that's quite

1 a bit. I didn't hear Detective Brooks say that he's the one who
2 collected it. He said he's the one that packaged it. He looked
3 at the packaging. He said those are my signatures. I think it
4 was pretty clear.

5 Summerville policy, they transport individuals to the jail.
6 The transporting officers bag up the clothing; they bring it
7 back; they put them in the locker. He's the one that takes it,
8 he's the one that collects it and then packages it.

9 The chain that she's referring, I mean, we've already
10 established it with -- I can't remember what she was saying, but
11 187, we got Moy taking it from the autopsy; Moy to Rollings. We
12 don't have Rollings, but we did have Davis. Davis to Charlotte.
13 We don't Charlotte, but we do have Green.

14 And I think the case law that I'm reading on this, It is
15 unnecessary that the police account for every hand transfer of
16 the evidence in order to establish a chain of custody. And
17 that's *State v. Patrick*, 392 S.C. '86. And that's what we have
18 here.

19 And then the whole box thing, I thought, we pretty well
20 covered in explaining just how -- I mean, all the items were
21 properly sealed and packaged and put into a box. The box is
22 nothing more than a mechanism to get the items from one point to
23 the next. Whoever opens the box and then divvies it out is
24 really unimportant. But even if -- even if -- well, I didn't
25 catch this, but Ms. Glover said that Jamie Hall actually said she