

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRUS LAWON MCCLARY,

APPELLANT.

APPELLATE CASE NO. 2022-000688

RECORD ON APPEAL

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3 -----X
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff,)
6 vs.) Case No. 2018-GS-26-04177
7) 2018-GS-26-04178
8 DEMETRIUS LAWON McCLARY,) 2018-GS-26-04179
9 Defendant.)
10 -----X

Monday, May 9, 2022

JURY TRIAL - VOLUME 1 of 4

B E F O R E:

The Honorable H. Steven DeBerry, IV, Presiding Judge;
and a jury.

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Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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No.

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COURT REPORTER LEGEND

21

Dash (--) Indicates an interruption in speech

22

Ellipses (...) Indicates trailing off in speech

23

(ph) Indicates phonetic word

24

[Verbatim] Indicates the word is said as written

25

(Indiscernible) [Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 11:53 a.m.)

THE COURT: All right. Did you swear the jury? Is the State ready to proceed?

MS. WALTER: We are, Your Honor.

THE COURT: And the defense?

MR. FOX: Ready, Your Honor.

THE COURT: All right. Ladies and gentlemen, just to let you know, we're about to select the jury in a criminal trial. I'll ask the solicitor to call her case, and then we'll go from there. I'm also going to ask the clerk to go ahead and swear you in. We're going to have some more questions for you, and we'll go from there.

THE CLERK: Please stand and raise your right hand.

(The jury panel was duly sworn by the clerk.)

THE COURT: All right. Ms. Walter, do you want to call your first case?

MS. WALTER: Thank you, Your Honor. The State would like to call State of South Carolina, County of Horry, versus Demetrius Lawon McClary. He is charged in true bills of indictments: 2018-GS-26-04177 with assault and battery of a high and aggravated nature, 2018-GS-26-04178 with burglary in the first degree, 2018-GS-26-04179 with kidnapping, and 2018-GS-26-04180 with assault with intent to commit criminal sexual conduct in the first degree.

1 THE COURT: Thank you. Ladies and gentlemen, I need to
2 tell you the fact that this defendant was arrested, charged,
3 and indicted in this case is not evidence in this case and
4 cannot be considered by you as evidence of guilt in this case,
5 nor does this create any presumption or inference of guilt.
6 This document or these documents simply are the formal written
7 instruments which contain the charges made against this
8 defendant, and it's the formal document by which these cases
9 are brought into this court.

10 All right. So, at this time, we're going to have certain
11 questions to ask you. If you need to respond, again, please
12 stand and give your name and number and your explanation. All
13 right.

14 So is there any member of the jury panel that knows this
15 defendant, Mr. Demetrius Lawon McClary? If so, please stand.

16 (No response given.)

17 THE COURT: All right. At this time, I'm going to ask
18 Ms. Walter to stand and introduce yourself and co-counsel and
19 your office.

20 MS. WALTER: Thank you. I think we are still in good
21 morning. My name is Mary-Ellen Walter. I'm a senior
22 assistant solicitor of the 15th Circuit Solicitor's Office.
23 And trying the case today with me...

24 MS. ANDREW: Leigh Andrew. I'm a senior assistant
25 solicitor with the 15th Circuit Solicitor's Office.

1 THE COURT: Is there any member of the jury panel who
2 knows these solicitors or who has a close personal
3 relationship with them or has ever had any matters handled
4 whatsoever by the 15th Circuit Solicitor's Office? If that
5 applies to you, please stand.

6 (No response given.)

7 THE COURT: All right. At this time, I would recognize
8 Mr. Fox.

9 MR. FOX: Good morning, ladies and gentlemen. My name is
10 Eric Fox. I'm the chief public defender in Horry County, and
11 with me today is...

12 MS. CALDWELL: I'm Caitlyn Caldwell. I'm assistant
13 public defender in Horry County.

14 THE COURT: All right, ladies and gentlemen. Is there
15 any member of the jury panel who knows or has a close personal
16 relationship with Mr. Fox or Ms. Caldwell or has any ever had
17 any matters handled by the Horry County Public Defender's
18 Office? If that's the case, please stand.

19 (No response given.)

20 THE COURT: All right, ladies and gentlemen. I'm going
21 to read out a list of potential witnesses that may be called
22 to testify in this trial, then I'm going to ask you the same
23 questions about the potential witnesses. So please listen as
24 I read their names, and then I'll have some questions. Okay?

25 First, from the Myrtle Beach Fire Department, Jesse Cox.

1 The next list of individuals will be members of the Myrtle
2 Beach Police Department: The first being Justin Amos; Richard
3 Arroyo; David Bailey; Antonio Bellamy; Logan Cooper; Orion
4 Cozene; Joshua Eller; Whitney Fee, maybe with SLED at this
5 time; Shannon Fullwood; Nathan Howitt; Amanda Hudnall; Michael
6 Morlano; Paul Morrell; Justin Rutter; Malinda Shadoan; Nicole
7 Shelton; James Vetter -- James Vetter; Cameron Warren; Scott
8 Williamson.

9 From the Horry County Sheriff's Office, Lance Corporal
10 Stephen Donahue.

11 And from SLED, or the South Carolina Law Enforcement
12 Division: Bethany Davidson, Jackie Davis, Anglika Dodwani,
13 Gaile Heath, Adrienne Hefney, Verona Herrera, Michael Moskal,
14 Charlotte Pitts.

15 And as just civilians: Sergio Omar Aguilar-Alonzo,
16 Liliana Hernandez-Diaz, Sharon Jones, Cory Knight, Kevin
17 "Tony" Lee, John Nichols, Debra Rogers, Joseph Steven, and
18 Dr. Nora Rudin.

19 All right, ladies and gentlemen. Is there any member of
20 the jury panel who knows any of these individuals or has a
21 close personal relationship with any of the witnesses that
22 were just listed? If that applies to you, please stand.

23 (No response given.)

24 THE COURT: All right. Is there any member of the jury
25 panel -- are we good?

1 MS. WALTER: Juror just needed a water, Your Honor.

2 THE BAILIFF: Excuse me, Judge.

3 THE COURT: Is there any member of the jury panel have
4 any personal, political, religious, or philosophical beliefs
5 that would prevent you from being a fair and impartial juror?
6 If that applies to you, please stand.

7 (No response given.)

8 THE COURT: All right. Is there any member of the jury
9 panel a former law enforcement officer or have a family member
10 who is a law enforcement officer or a former law enforcement
11 officer? If that applies to you, please stand.

12 JUROR NO. 173: My son was a corrections officer at
13 J. Reuben Long.

14 THE COURT: All right. Ma'am, and your name and number?

15 JUROR NO. 173: Ann Cromley James at 173.

16 THE COURT: All right. Ms. James, the fact that your son
17 was a corrections officer at J. Reuben Long, would that affect
18 your ability to be fair and impartial if you're selected to
19 serve on this jury?

20 JUROR NO. 173: No, sir, not at all.

21 THE COURT: Thank you, ma'am.

22 Ma'am, your name and number?

23 JUROR NO. 244: Harriet Mercer, 244. My son is a police
24 officer in Horry County.

25 THE COURT: With the Horry County Police Department?

1 JUROR NO. 244: Yes.

2 THE COURT: And with that being the case, would that
3 affect your ability to be fair and impartial if you were
4 selected to serve on this jury?

5 JUROR NO. 244: No.

6 THE COURT: Thank you, ma'am.

7 All right, sir. Your name and number?

8 JUROR NO. 406: David Wetzel, 406. I don't know if this
9 applies, but I have a cousin who was an officer in Ohio and
10 not here.

11 THE COURT: Okay. And I appreciate that. The fact that
12 you have a cousin in Ohio that was a police officer, would
13 that affect --

14 JUROR NO. 406: No.

15 THE COURT: -- your ability to be fair and impartial if
16 you were selected to serve on this jury?

17 JUROR NO. 406: No, sir.

18 THE COURT: Thank you, sir.

19 And this lady right here, bless her heart, she takes down
20 every word that's said in the court. This is a court of
21 record, so she's a court reporter, and so it's important that
22 we just wait for one person to finish talking and then the
23 next can answer. No problem, I understand.

24 All right, sir. Your name and number?

25 JUROR NO. 44: Michael Calfee, No. 44. I'm a retired

1 police officer from North Carolina.

2 THE COURT: All right, sir. And the fact that you're a
3 retired police officer from North Carolina, would that affect
4 your ability to be fair and impartial if you're selected to
5 serve on this jury?

6 JUROR NO. 44: It would not.

7 THE COURT: Thank you, sir.

8 All right, sir? Your name and number?

9 JUROR NO. 213: Brian Lewis, 213. My stepfather is a
10 sheriff's deputy in North Carolina.

11 THE COURT: And the fact that your stepfather is a
12 sheriff's deputy in North Carolina, would that affect your
13 ability to be fair and impartial if you're selected to serve
14 on this jury?

15 JUROR NO. 213: No, sir.

16 THE COURT: All right. Thank you, sir.

17 All right. I understand that this case has not been
18 started yet. There's been no testimony, but is there any
19 member of the jury panel who may have formed or expressed any
20 opinion about this case whatsoever? If so, please stand.

21 (No response given.)

22 THE COURT: All right. Has there been any member of the
23 jury panel who has heard, seen, or read anything about this
24 case? If so, please stand.

25 MS. WALTER: Your Honor, may we approach for one minute,

1 please?

2 THE COURT: Sure.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and outside of
5 the hearing of the jury and others.)

6 (Open court resumes as follows:)

7 THE COURT: All right. And ladies and gentlemen, to help
8 you with the last question that I just asked, whether or not
9 any member of the jury panel has heard, seen, or read anything
10 about this matter, we're going to ask Ms. Walter at this time
11 to give a brief description of -- well, just as to the time
12 and place of when this may have happened.

13 MS. WALTER: Thank you, Your Honor.

14 These events took place March 19th and March 20th of 2018
15 at the Sheraton Convention Center in the Myrtle Beach section
16 of Horry County.

17 THE COURT: All right, ladies and gentlemen. Does that
18 information lead anybody to believe that you have heard, seen,
19 or read anything about this matter? If that's the case,
20 please stand.

21 (No response given.)

22 THE COURT: All right. Are you or any members of your
23 family a member of any victim's rights or law enforcement
24 organizations such as Citizens Against Crimes or CAVE or
25 People Against Rape, PAR, or Mothers Against Drunk Driving,

1 MADD, or any community watch program or other similar
2 organization? If that applies to you, please stand.

3 (No response given.)

4 THE COURT: All right. Is there any member of the jury
5 panel that knows another member of the jury panel? If that
6 applies to you, please stand.

7 All right, sir. We'll start with you on the front row.

8 JUROR NO. 417: John Windham, 417. Brian Lewis, his wife
9 and my wife work together.

10 THE COURT: All right. And what's his juror number?

11 JUROR NO. 213: 213.

12 THE COURT: And the fact -- is that who you know as well?

13 JUROR NO. 213: Yes, sir.

14 THE COURT: So I'll ask each of you in a moment -- is the
15 fact that y'all know each other, if you were both selected to
16 serve together on this jury, would that affect your ability to
17 be fair and impartial if that were the case?

18 JUROR NO. 213: No, sir.

19 JUROR NO. 417: No, sir.

20 THE COURT: Thank you, sir. Thank you, sir.

21 All right, sir. Your name and number?

22 JUROR NO. 41: 41, Kevin Bryant. Ronnie, through my
23 brother.

24 THE COURT: That's your brother?

25 JUROR NO. 41: No, through my brother. They're friends.

1 THE COURT: And your number?

2 JUROR NO. 375: 375.

3 THE COURT: And I assume you know this fellow?

4 JUROR NO. 375: Yes, sir.

5 THE COURT: And the fact that the two of you know each
6 other, if you were selected to serve on this jury -- if each
7 of you were selected to serve on this jury, would that
8 relationship affect your ability to be fair and impartial?

9 JUROR NO. 41: We never really see each other.

10 THE COURT: Is that a no?

11 JUROR NO. 375: Mm-hmm.

12 THE COURT: And, just for the record, your answer is no.
13 Is that right?

14 JUROR NO. 375: Yes. No.

15 THE COURT: All right. Thank you.

16 All right. And the last question: Is there any member
17 of the jury panel that knows, for any reason, that you cannot
18 give the State and this defendant a fair and impartial trial?
19 If that's the case, please stand.

20 THE COURT: All right. At this time, is there any
21 additional voir dire from the State?

22 MS. WALTER: No, Your Honor.

23 THE COURT: From the defense?

24 MR. FOX: Yes, Your Honor. I would request that you ask
25 if any member of the panel or a close relative has been the

1 victim of a violent crime in the past.

2 THE COURT: Has any member of the jury panel or their
3 family been the victim of a violent crime? If that applies to
4 you, please stand.

5 Sir, your name and number?

6 JUROR NO. 381: Kirk Traxler, 381.

7 THE COURT: 381. All right, sir. Was it yourself or a
8 family member?

9 JUROR NO. 381: It was my wife.

10 THE COURT: All right, sir. And the fact that that is
11 the case, would that affect your ability to be fair and
12 impartial if you're selected to serve on this jury?

13 JUROR NO. 381: My understanding of what the case is,
14 yes, sir.

15 THE COURT: I understand. We're going to excuse you from
16 this case. Thank you for serving.

17 JUROR NO. 381: Thank you, sir.

18 THE COURT: You have to stay with us until we get
19 finished.

20 JUROR NO. 381: My apologies, Judge.

21 THE COURT: No, you're fine. That's all right.

22 Anybody else?

23 Is there anything further from the State, from the
24 solicitor?

25 MS. WALTER: No, Your Honor.

1 THE COURT: Anything from the defense?

2 MR. FOX: No, sir.

3 THE COURT: All right. Madam Clerk?

4 JURY SELECTION

5 THE CLERK: When I call your name and juror number,
6 please come to the front of the courtroom, turn around, and
7 face the back of the courtroom, and bring any belongings that
8 you have with you.

9 Juror No. 256, Carrie Morse.

10 (Whereupon, a white female presented.)

11 THE CLERK: What say the State?

12 MS. WALTER: Please present Ms. Morse.

13 THE CLERK: Defense?

14 MS. CALDWELL: Please seat this juror.

15 THE CLERK: Please be seated in the jury box.

16 Juror No. 14, Samantha Barber.

17 (Whereupon, a white female presented.)

18 THE CLERK: What say the State?

19 MS. WALTER: Court's indulgence for one moment.

20 Please present Ms. Barber.

21 THE CLERK: Defense?

22 MS. CALDWELL: Please seat this juror.

23 THE CLERK: Please be seated in the jury box.

24 Court Number -- sorry. Juror No. 377, Terry Tindall.

25 (Whereupon, a white female presented.)

1 THE CLERK: What say the State?

2 MS. WALTER: Please present Ms. Tindall.

3 THE CLERK: Defense?

4 MS. CALDWELL: Please excuse this juror.

5 THE CLERK: You're excused from this particular case.

6 Juror No. 244, Harriet Mercer.

7 (Whereupon, a white female presented.)

8 THE CLERK: What say the State?

9 MS. WALTER: Please present Ms. Mercer.

10 THE CLERK: Defense?

11 MS. CALDWELL: Please excuse this juror.

12 THE CLERK: You're excused from this particular case.

13 Juror No. 263, Laronica Myers.

14 (Whereupon, a black female presented.)

15 THE CLERK: What say the State?

16 MS. WALTER: Court's indulgence for one moment.

17 Please excuse Ms. Myers.

18 THE CLERK: You're excused from this particular case.

19 Juror No. 328, Laura Schork.

20 (Whereupon, a white female presented.)

21 THE CLERK: What say the State?

22 MS. WALTER: Please present Ms. Schork.

23 MS. CALDWELL: Please excuse this juror.

24 THE CLERK: You're excused from this particular case.

25 Juror No. 318, Rose Saad. Sorry.

1 (Whereupon, a white female presented.)

2 MS. WALTER: Please present Ms. Saad.

3 THE CLERK: Defense?

4 MS. CALDWELL: Please excuse this juror.

5 THE CLERK: You're excused from this particular case.

6 Juror No. 406, David Wetzel.

7 (Whereupon, a white male presented.)

8 THE CLERK: What say the State?

9 MS. WALTER: Please excuse Mr. Wetzel.

10 THE CLERK: You're excused from this particular case.

11 Juror No. 129, Charles Guerin.

12 (Whereupon, a white male presented.)

13 THE CLERK: What say the State?

14 MS. WALTER: Please present Mr. Guerin.

15 THE CLERK: Defense?

16 MS. CALDWELL: Please seat this juror.

17 THE CLERK: Please be seated in the jury box.

18 Juror No. 365, James Strawn.

19 (Whereupon, a white male presented.)

20 THE CLERK: What say the State?

21 MS. WALTER: Please present Mr. Strawn.

22 THE CLERK: Defense?

23 MS. CALDWELL: Please seat this juror.

24 THE CLERK: Please be seated in the jury box.

25 Juror No. 259, Thomas Munn.

1 (Whereupon, a white male presented.)

2 THE CLERK: What say the State?

3 MS. WALTER: Please present Mr. Munn.

4 THE CLERK: Defense?

5 MS. CALDWELL: Please excuse this juror.

6 THE CLERK: You're excused from this particular case.

7 Juror No. 312, Travis Rogers.

8 (Whereupon, a white male presented.)

9 THE CLERK: What say the State?

10 MS. WALTER: Please present Mr. Rogers.

11 THE CLERK: Defense?

12 MS. CALDWELL: Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 Juror No. 44, Michael Calfee?

15 (Whereupon, a white male presented.)

16 THE CLERK: What say the State?

17 MS. WALTER: Please present Mr. Calfee.

18 THE CLERK: Defense?

19 MS. CALDWELL: Please excuse this juror.

20 THE CLERK: You're excused from this particular case.

21 Juror No. 417, John Windham.

22 (Whereupon, a white male presented.)

23 THE CLERK: What say the State?

24 MS. WALTER: Please present Mr. Windham.

25 THE CLERK: Defense?

1 MS. CALDWELL: Please seat this juror.

2 THE CLERK: Please be seated in the jury box.

3 Juror No. 49, Daynia Carroll.

4 (Whereupon, a white female presented.)

5 THE CLERK: What say the State?

6 MS. WALTER: Please present Ms. Carroll.

7 THE CLERK: Defense?

8 MS. CALDWELL: Please seat this juror.

9 THE CLERK: Please be seated in the jury box.

10 Juror No. 399, Gwen Watts.

11 (Whereupon, a white female presented.)

12 THE CLERK: What say the State?

13 MS. WALTER: Please present Ms. Watts.

14 THE CLERK: Defense?

15 MS. CALDWELL: Please seat this juror.

16 THE CLERK: Please be seated in the jury box.

17 Juror No. 375, Ronald Tilghman.

18 (Whereupon, a white male presented.)

19 THE CLERK: What say the State?

20 MS. WALTER: Please excuse Mr. Tilghman.

21 THE CLERK: You're excused from this particular case.

22 Juror No. 41, Kevin Bryant.

23 (Whereupon, a white male presented.)

24 THE CLERK: What say the State?

25 MS. WALTER: Please excuse this juror.

1 THE CLERK: You're excused from this particular case.
2 Juror No. 374, Laura Thomas.
3 (Whereupon, a white female presented.)
4 THE CLERK: What say the State?
5 MS. WALTER: Please present Ms. Thomas.
6 THE CLERK: Defense?
7 MS. CALDWELL: Please seat this juror.
8 THE CLERK: Please be seated in the jury box.
9 Juror No. 246, R'dris Miles.
10 (Whereupon, a black male presented.)
11 THE CLERK: What say the State?
12 MS. WALTER: Court's indulgence, please.
13 Please excuse Ms. Miles -- Mr. Miles.
14 THE CLERK: You're excused from this particular case.
15 Juror No. 39, Holly Brooke.
16 (Whereupon, a white female presented.)
17 THE CLERK: What say the State?
18 MS. WALTER: Please present Ms. Brooke.
19 THE CLERK: Defense?
20 MS. CALDWELL: Please excuse this juror.
21 THE CLERK: You're excused from this particular case.
22 Juror No. 93, Vernon Evans.
23 (Whereupon, a white male presented.)
24 THE CLERK: What say the State?
25 MS. WALTER: Please present Mr. Evans.

1 THE CLERK: Defense?

2 MS. CALDWELL: Please excuse this juror.

3 THE CLERK: You're excused from this particular case.

4 Juror No. 118, Deborah Gorby.

5 (Whereupon, a white female presented.)

6 THE CLERK: What say the State?

7 MS. WALTER: Please present Ms. Gorby.

8 THE CLERK: Defense?

9 MS. CALDWELL: Please seat this juror.

10 THE CLERK: Please be seated in the jury box.

11 Juror No. 169, Sabrina Irons.

12 (Whereupon, a white female presented.)

13 THE CLERK: What say the State?

14 MS. WALTER: Please present Ms. Irons.

15 THE CLERK: Defense?

16 MS. CALDWELL: Please seat this juror.

17 THE CLERK: Please be seated in the jury box.

18 Juror No. 242, Melanie Simons.

19 (Whereupon, a white female presented.)

20 THE CLERK: What say the State?

21 MS. WALTER: Please present Ms. Simons.

22 THE CLERK: Defense?

23 MS. CALDWELL: Please excuse this juror.

24 THE CLERK: You're excused from this particular case.

25 Juror No. 262, Lisa Murphy.

1 (Whereupon, a white male presented.)

2 THE CLERK: What say the State?

3 MS. WALTER: Please present Ms. Murphy.

4 THE CLERK: Defense?

5 MS. CALDWELL: Please excuse this juror.

6 THE CLERK: You're excused from this particular case.

7 Juror No. 173, Ann Cromley James.

8 (Whereupon, a white female presented.)

9 THE CLERK: What say the State?

10 MS. WALTER: Please present Ms. James.

11 THE CLERK: Defense?

12 MS. CALDWELL: Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 MS. WALTER: Two and one?

15 THE CLERK: Yeah.

16 MS. WALTER: If you-all approach just a moment.

17 BENCH CONFERENCE

18 (A bench conference was held off the record and outside of
19 the hearing of the jury and others.)

20 (Open court resumes as follows:)

21 THE CLERK: Juror No. 213, Brian Lewis.

22 (Whereupon, a white male presented.)

23 THE CLERK: What say the State?

24 MS. WALTER: Please present Mr. Lewis.

25 THE CLERK: Defense?

1 MS. CALDWELL: Please seat this juror.

2 THE CLERK: Please be seated in the jury box.

3 Juror No. 424, Andrew Woodward.

4 (Whereupon, a white male presented.)

5 THE CLERK: What say the State?

6 MS. WALTER: Please present Mr. Woodward.

7 THE CLERK: Defense?

8 MS. CALDWELL: Please excuse this juror.

9 THE CLERK: You're excused from this particular case.

10 Juror No. 161, Tindall Huggins.

11 (Whereupon, a white female presented.)

12 THE CLERK: What say the State?

13 MS. WALTER: Please present Ms. Huggins.

14 THE CLERK: Defense?

15 MS. CALDWELL: Please excuse this juror.

16 THE CLERK: You're excused from this particular case.

17 Juror No. 273, Brenda Ostrander.

18 (Whereupon, a white female presented.)

19 THE CLERK: What say the State?

20 MS. WALTER: Court's indulgence.

21 Please excuse this juror.

22 THE CLERK: You're excused from this particular case.

23 Juror No. 302, Roger Reinisch.

24 (Whereupon, a white male presented.)

25 THE CLERK: What say the State?

1 MS. WALTER: Please present Mr. Reinisch.

2 THE CLERK: Defense?

3 MS. CALDWELL: Please seat this juror.

4 THE CLERK: Please be seated in the jury box.

5 THE COURT: All right. Are there any objections or
6 motions that need to be made by the State or the defense with
7 regards to the impanelling of this jury?

8 MS. WALTER: Not from the State, Your Honor.

9 THE COURT: All right.

10 MR. FOX: Yes, Judge. We can approach or we can send the
11 jury out? I do have one request.

12 BENCH CONFERENCE

13 (The following bench conference was held outside the hearing
14 of the jury and others.)

15 MR. FOX: Judge, Juror 173, who was the last of the 12
16 that were picked, she is the one lady who has a son who
17 currently works at J. Reuben Long Detention Center, which is
18 where Mr. McClary has been housed. Now, she did say the fact
19 that he was law enforcement wouldn't affect her, but I would
20 request that she be removed for cause because there may have
21 been -- I don't know if there's been contact between the
22 corrections officer and Mr. McClary, but it wouldn't be
23 unusual for them to have some familiarity because people talk.

24 At the very least, I'd request Your Honor bring her up to
25 question her just a little more, you know, beyond, "Does the

1 fact that your son is law enforcement influence you?"

2 Now, she's also been asked whether she's heard anything
3 about the case. We would request that she -- but I would ask
4 that she be set aside for cause and, in the alternative, Your
5 Honor, question her a little more.

6 MS. WALTER: Your Honor, the State does not believe that
7 there's been any demonstration of cause. We went into the
8 facts of the case. We went into the defendant's name. She
9 was asked whether the fact that her son was a corrections
10 officer at J. Reuben Long would affect her, and anything else
11 at this point I believe would actually highlight the fact that
12 the defendant is in custody which, obviously, we try not to
13 highlight. We do not believe at this point that there's been
14 any showing of cause.

15 THE COURT: All right. All right. What I might do is
16 take it under advisement, and then, if I think that there's
17 reason to do this, then we can do it and use an alternate if
18 it becomes a problem.

19 MR. FOX: That's fine. Yes, sir.

20 THE COURT: Anything else?

21 MR. FOX: Nothing, Judge.

22 (Open court resumes:)

23 THE COURT: All right, ladies and gentlemen. I
24 appreciate your time and your patience and your service
25 already. One thing I can promise everybody in this room is

1 that I understand we all have lives and other things that we
2 need to be doing but, again, realize how important your
3 service is to our system of justice, and many people say it's
4 the greatest system of justice ever created, and certainly I
5 believe that as well.

6 So having said that, we're going to -- there's matters of
7 law that we have to take up, and we have to take up matters of
8 law outside of your presence. Tomorrow is also a state
9 holiday. So the plan is that we're going to take up these
10 matters of law this afternoon. We think they're going to take
11 all afternoon. And instead of having to keep y'all here
12 sitting around, waiting to see if we can get to it today,
13 we're going to begin this trial at 9:30 Wednesday morning.

14 So I ask that you be back here in your jury room about
15 9:15. And the County -- Horry County always has you something
16 to eat here. We're going to try to get this trial started
17 right at 9:30 and make the most efficient use of your time as
18 possible.

19 One thing I need to tell you is that everything that you
20 learn about this case -- and you, as the jury, your job is to
21 determine what the facts are in this case. In other words,
22 it's your job to be the judges of the facts to determine what
23 actually happened. And then, at the end of the case, I would
24 give you the law, and you would deliberate and apply that law
25 to the facts as you find them and reach a verdict.

1 But what's extremely important about this process is that
2 you only consider the facts and testimony and evidence that
3 are presented in this courtroom. So it's really -- it's
4 just -- it's extremely important that you not do any sort of
5 independent research, that you not talk to anybody about this
6 case, that you not go try to read anything. Or if you see
7 anything on the news -- I don't know if there will be -- don't
8 watch it. You know, the alternative is that we could have to
9 sequester you and put you in a hotel room, and we don't want
10 to have to do all that.

11 So please don't do any independent research, social
12 media, whatever. I'm not sure what's out there, if there is
13 anything, but anything that you would see that's not presented
14 in this courtroom through testimony and evidence would be
15 improper for you to consider.

16 Now, certainly you can go tell your spouse, your family,
17 whoever it may be, that you got selected to serve on a jury
18 this week, but until this trial is over with, okay, and I tell
19 you it's okay to do so, you cannot talk about this case with
20 anybody. All right?

21 You can tell them you're on jury duty but that's it. And
22 then, after this case, if you want to talk about this case,
23 you can talk about this case to anybody you want to. Or, if
24 you don't want to talk about this case, you don't have to talk
25 about this case ever again. That would be up to y'all. If

1 you need any assistance with that, we can certainly provide
2 that as well.

3 But until we come back here -- and that direction also
4 goes with conversations between yourselves, even when there
5 might be a break during court or you find yourself in the jury
6 room. Until I tell you it's time to deliberate, you're not to
7 talk about this case between each other. You can certainly
8 talk about anything else, but not about this case. Okay?

9 So, keeping all that in mind, I'll ask the bailiff,
10 Mr. Ropp, if he'll take you and show you your jury room, and
11 then tell you how to get out of here, and we'll see you
12 Wednesday morning. All right? Thank you very much.

13 (The jury exited the courtroom at 12:30 p.m.)

14 THE COURT: Ladies and gentlemen of the jury, for those
15 of you who did not get selected, we have reason to believe
16 that -- things may change, but that might be the only jury
17 that we need for the criminal court this week. Okay?

18 Now, unfortunately, I think what happens is y'all go back
19 into the entire pool and then maybe, if they have multiple
20 civil cases, you might have to see if you can dodge the bullet
21 one more time.

22 But, otherwise, what I'll ask you to do is call back
23 after 6:00 and just get your instructions for the next day.
24 If this does conclude your jury service for this week, then,
25 again, I want to thank you for your service and your time and

1 your commitment to being here and your willingness to serve as
2 well.

3 As I told you before, it's invaluable just that you show
4 up. It really makes the system of justice move when there's a
5 jury here, ready to work. So thank you very much for being
6 here. You're free to go. Again, just call back after 6:00
7 and figure out what you need to. Thank you so much.

8 (Jury panel left the courtroom at 12:32 p.m.)

9 BATSON MOTION

10 MR. FOX: Your Honor, I may have...

11 Just for the record, I am going to make a *Batson* motion
12 on two of the jurors: Nos. 263 and 246 were selected or
13 called out of this pool. Only two were called. They were
14 both struck by the State, and of course, Mr. McClary is also
15 an African-American individual. So I think the Court needs to
16 inquire of the solicitor of prima facie cases raised and then
17 Ms. Walter can offer her --

18 THE COURT: Sure. I don't see 246.

19 MR. FOX: 263 and 246 is the second one, both black
20 females.

21 MS. WALTER: Well, 246, I'm not sure, because it said
22 black male.

23 MS. CALDWELL: I believe that they were transgender. The
24 sentiments of a Black person.

25 MR. FOX: An African-American person.

1 MS. WALTER: 263 and 246, Your Honor. 263, Ms. Myers, is
2 the first State strike. When Your Honor was asking if anyone
3 knew the defendant, she specifically and quite markedly looked
4 away from the defendant, and that caused the State some
5 concern as to whether she might actually know him or didn't
6 care whether she knew him, but I made note of that, that she
7 specifically looked away from the defendant.

8 THE COURT: And that was 263?

9 MS. WALTER: 263.

10 And for, No. 246, downstairs during roll call, when that
11 individual was answering the questions at roll call, was very
12 disinterested and turned and looked at the wall while
13 answering. And the State believes that that showed a lack of
14 engagement with the process.

15 THE COURT: All right. During roll call?

16 MS. WALTER: Yeah, during roll call. The individual was
17 answering the questions. The individual was looking --
18 stretching and looking at the wall and just seemed disengaged
19 from the process.

20 MS. ANDREW: And I made the same note on mine. She was
21 turned and looking at the wall when answering questions.

22 THE COURT: All right. Mr. Fox?

23 MR. FOX: I think those explanations -- I don't have
24 anything to add beyond that, Judge. I made notes myself of
25 different things and reactions, so...

1 THE COURT: I understand. Can we go off the record for
2 just one moment?

3 (A discussion was held off the record.)

4 MR. FOX: Judge, there are -- Mr. McClary gave two
5 statements to law enforcement, and the first one, he denied
6 any involvement and knowledge, and the second one, he entered
7 into a confession.

8 My understanding is the State intends to introduce the
9 second one through their witnesses. I certainly intend -- so
10 we'll need to go through and sort out the redactions on that
11 one. I have been provided a transcript in discovery by the
12 solicitor's office. I think it's accurate. Of course, at
13 trial, they will play the actual recording and the interview,
14 but I think, for purposes of redaction, the transcript is
15 accurate, in my going through it, so we can work off of that
16 rather than taking the time to play the entire interview,
17 which is about 45 minutes or so.

18 I do intend, that first interview, I'm certainly going to
19 cross-examine and ask officers about it, and it may well be
20 put into evidence myself, depending, but we would perhaps wait
21 and see how that plays out. It may be that I choose not to.
22 So we would wait to see about that. Certainly, there would be
23 a way if I chose to -- so we can put off the determination on
24 that, I think, because I may well choose not to do that.

25 MS. WALTER: And I'm just curious as to how. And we can

1 deal with that, but it's the statement of the defendant, which
2 typically, the defense cannot introduce.

3 MR. FOX: Well, it might be through cross-examination,
4 but I don't think there's -- they're going to -- we can get
5 into all that. There's a rule of completeness. My position
6 is these are one statement. They are two different times --
7 one, the evening before, and one, the next day -- but you
8 can't completely understand and appreciate the second
9 statement without understanding what happened the evening
10 prior, and the contact with law enforcement and things that
11 were made and said and how that interview went. And if you
12 take the second interview in a vacuum, I don't think it's --
13 it's accurate for what it is, but it leaves out half the
14 pictures of what's going on there.

15 THE COURT: So is it more or less about what the events
16 that took -- the events that took place during the interviews
17 and less about what was actually said?

18 MR. FOX: The tone, the questions, the attitude of law
19 enforcement. Again, he said nothing incriminating in the
20 first one, but I believe it sets the stage for the second one.

21 MS. WALTER: I think we would need to play the statements
22 for you, then, if Mr. Fox intends to try to introduce them.
23 And I think I have -- if not with me here, certainly
24 downstairs, I have a transcript of the first one as well.

25 MR. FOX: And I also believe that's accurate.

1 MS. WALTER: But I think, for the record purposes, we
2 need to make clear that Your Honor has listened to both
3 statements.

4 MS. ANDREW: His demeanor.

5 MS. WALTER: Especially, if Mr. Fox is arguing about
6 demeanor of law enforcement or demeanor of the defendant.

7 MR. FOX: The context of it as written, yes.

8 MS. WALTER: And you're saying tone, which certainly does
9 not come across necessarily in a cold transcript.

10 MR. FOX: Yes. Well, I mean -- I disagree. At the
11 moment, that's semantics. My imprecision.

12 THE COURT: This is always kind of difficult when y'all
13 have been living with this and I haven't.

14 MR. FOX: Yes. And I don't disagree that it would be
15 helpful to hear those things.

16 THE COURT: All right.

17 MS. WALTER: And then one last issue, we have one last
18 case from the trial roster. I don't think it would be very
19 long, but we'd like to squeeze that in. And it's mine, so
20 I'll be here, and it's Mr. Pinkerton, who is here.

21 THE COURT: Hear it right now?

22 MS. WALTER: I can do it. That's fine.

23 THE COURT: Do it right now?

24 MR. FOX: Does that give us enough time? I want to eat.

25 THE COURT: Do we need Probation?

1 MS. WALTER: They're here. We can get Probation here if
2 they're not here. It's totally up to you.

3 (A discussion was held off the record.)

4 (A lunch recess was taken at 12:42 p.m. to 2:25 p.m.)

5 THE COURT: Are we ready to proceed?

6 MS. WALTER: We are, Your Honor. I'm just not sure
7 timing-wise how Your Honor wants to do this. The defendant
8 had been given a mental health evaluation for competency. He
9 came back competent, and I believe the defense is not
10 contesting that, so I don't know whether he would like to --
11 just make that part of the record now -- I have the copy of
12 the exam -- or whether you want to wait until Wednesday.

13 MR. FOX: That is true; I'm not going to contest it. I
14 have got my doctor ready and on hold. If the State would
15 rather not pay her -- not pay her to sit on hold, but it would
16 just be a matter of putting it on the record, Judge. He was
17 found competent, and we can make it a finding -- a physical
18 finding, the report itself as part of the record.

19 THE COURT: We'll be happy to hear from the witness. I'm
20 sorry; I didn't realize y'all were ready, but anyway...

21 MR. FOX: That's okay. Literally, we just finished
22 sorting the inevitable issues, Judge, but I believe we are
23 ready to go.

24 THE COURT: All right.

25 MR. FOX: Just so you're aware, so we can communicate,

1 Ms. Caldwell is going to have her phone on mute and texting
2 certain instructions and things that we may need during -- if
3 we can hear or different things. Just so you're aware of
4 what's going on. She testified in pretrial motions the same
5 way, and so we were able to avoid certain issues by doing it
6 that way.

7 DR. NORAH RUDIN,
8 after having been duly sworn, appearing by video
9 conference, was examined and testified to as follows:

10 DIRECT EXAMINATION

11 BY MR. FOX:

12 Q Good afternoon, Dr. Rudin.

13 A Good afternoon.

14 Q Or good morning for you. And you're aware we are --

15 A I see this is getting recorded. I'm just going to agree.
16 Yes.

17 Q Just so you're aware, and for the record here in court,
18 because of scheduling with the state holiday tomorrow and
19 different issues, your unavailability, we are taking your
20 testimony today. It will be exactly like any other procedure.
21 You're under oath. You'll be answering my questions and
22 subject to cross-examine and the rulings of the Court, of
23 course, if there any objections or any issues of law that need
24 to be taken up. It is being recorded, and then, at the
25 appropriate time, it will be played in its entirety for the

1 jury. Okay?

2 Now, if you would, please state your name for the record.

3 **A** Norah, N-o-r-a-h, Rudin, R-u-d-i-n.

4 **MR. FOX:** And, Your Honor, can you see and hear
5 everything?

6 **THE COURT:** Yes.

7 Madam Court Reporter, are you okay?

8 **COURT REPORTER:** Yes, sir.

9 **BY MR. FOX:**

10 **Q** And, again, Dr. Rudin, if you have any issues --
11 technical issues, seeing, hearing, etc., please just let us
12 know. Thanks.

13 If you would, please tell us where you live.

14 **A** Mountain View, California.

15 **Q** Okay. And what is your occupation?

16 **A** I am a forensic DNA consultant.

17 **Q** And how long have you been a forensic DNA consultant?

18 **A** More than three decades.

19 **Q** Okay. And do you have specialized training to be a
20 forensic DNA consultant?

21 **A** Yes. So that starts with my education. I have a Ph.D.
22 from Brandeis University, and -- in the Department of Biology
23 with a thesis concentration in molecular biology and genetics.

24 And then, in terms of the forensic part, I got a lot of
25 my training -- the first three years with my health start in

1 California, at the Department of Justice, forensic DNA
2 program.

3 Q Hold on; Zoom will be -- Zoom is going to try to time us
4 out, so we're going to upgrade so you're not cut off in the
5 middle.

6 (Pause in the proceedings for technical issues.)

7 BY MR. FOX:

8 Q All right. You can continue. Is that the extent of your
9 formal education?

10 A So, after I received my Ph.D., I did a post-doctoral
11 fellowship for the Lawrence Berkeley Laboratory out here in
12 California, and then, of course, I have taken a number of
13 courses. I took the THAD (ph) course and a few others. I
14 keep up with training, literature, as well as going to
15 conferences. But in terms of training, honestly, mostly, I
16 provide the training, not receive it at this point and for
17 quite a while.

18 Q Okay. And just an estimate, how often or how many
19 different training seminars/sessions have you done over the
20 years?

21 A Provided or received?

22 Q Well, you have told us about what you received.
23 Provided. Where you have been on faculty, so to speak.

24 A So I don't know I can repeat them name and verse. There
25 have been so many over the decades. Certainly dozens, if not

1 many dozens, for both of those.

2 Q And that's continued throughout your career up through
3 now?

4 A Yes.

5 Q Okay. Do you belong to any professional organizations?

6 A I do. I belong to the California Association of
7 Criminalists; the American Academy of Forensic Sciences where
8 I'm a fellow; the American Association for the Advancement of
9 Science; and then I'm also a diplomate of the American Board
10 of Criminalistics. That requires passing an exam in general
11 criminalistics and also required some recommendations. And it
12 requires renewal and upkeep, at this point, every five years.

13 Q Okay. Have you -- I'm going to start with books. Have
14 you published anything in forensic DNA?

15 A I have. I have published three books. I solely
16 published a dictionary in biology. That's not
17 forensic-specific, obviously. It's biology. I co-authored
18 two books in forensic science: "Principles and Practices of
19 Criminalistics" and then also "Introduction to Forensic DNA
20 Analysis."

21 Q Okay. And how about magazine articles or online
22 articles, journals? Have you published --

23 A And so -- yeah, in terms of peer-reviewed publications, I
24 have a number of academic publications, many of them, of
25 course, were -- or some of them were during my Ph.D., but in

1 terms of forensic science, I have published a number of
2 articles. Many of them have to do with probabilistic
3 genotyping. At least one of them had to do with bios in
4 forensic science. And those are the main peer-reviewed
5 articles.

6 Q Okay. Are you a member of any professional -- I'm sorry,
7 I have asked you about that. Professional associations. We
8 have already covered that.

9 Have you received any awards and honors related to your
10 profession?

11 A Yes. So I was invited to be on the President's Council
12 of Advisors on Science and Technology. I'm sorry, not on the
13 council, but I presented to them in 2016. That was the
14 gathering that resulted in the infamous PCAST (ph) report.
15 Along with some of my colleagues, I was a personal recipient
16 of a grant from the NIJ, National Institute of Justice, that
17 had to do with probabilistic genotyping. I was also on the
18 advisory committee for the Commonwealth of Virginia forensic
19 DNA laboratory. Those are a few.

20 Q Okay. Have you ever been qualified as an expert in
21 forensic DNA analysis in any of the state or federal courts in
22 the United States?

23 A Yes.

24 Q Can you estimate how many times?

25 A I believe it's 76 at this point.

1 Q And, again, that's state and federal level?

2 A Yes, yes.

3 Q Okay. Have you ever been qualified in state and federal
4 court in South Carolina?

5 A Yes.

6 Q Okay. And, in fact, you testified in this same matter,
7 Mr. Demetrius McClary, earlier this year when we had pretrial
8 motions and you testified at that time; correct?

9 A Correct.

10 Q And Judge Addy found you to be -- and qualified you as an
11 expert in forensic DNA analysis; correct?

12 A Correct.

13 Q All right. One moment.

14 MR. FOX: We're going to take -- Your Honor, apparently,
15 Zoom is going to squeeze a little money out of us. We thought
16 we had all that set. It should take just a moment. We have
17 the card and authorization.

18 Ms. Rudin, if you would take just a pause for a moment.
19 while we upgrade and enrich the people who own Zoom.

20 And I apologize, Your Honor. We thought we had an hour
21 and 40 minutes, not realizing, after ten, they were going
22 to...

23 (Pause in the proceedings for technical difficulties.)

24 BY MR. FOX:

25 Q Thank you for your patience, Dr. Rudin, and for saving

1 us.

2 MR. FOX: And Your Honor and Solicitor, thank you for
3 your patience.

4 BY MR. FOX:

5 Q All right. Dr. Rudin, so, you're qualified and had been
6 previously qualified as an expert in forensic DNA analysis,
7 and that's what we're going to talk about.

8 So did you review some materials that I provided you in
9 Demetrius McClary's case?

10 A Yes, I did.

11 Q Okay.

12 MS. WALTER: Your Honor, I don't believe that she has
13 been qualified for this court --

14 MR. FOX: She was qualified by Judge Addy, a pre-trial
15 motion. The whole reason we did pretrial motions was to get
16 through these steps, and she was, in fact, was qualified as an
17 expert by Judge Addy, as well as Ms. Hefney from SLED. So
18 that's something that was covered, settled, done, and dusted
19 back in February.

20 MS. WALTER: Not in front of the jury. I just wanted to
21 make sure that the jury understands whether your witness has
22 been qualified as an expert in front of them, not a hearing
23 that they will have no idea that they've ever heard.

24 MR. FOX: But they're going to hear it. They're going
25 to, I think, hear --

1 MS. WALTER: They are not going to hear anything that
2 happened in front of Judge Addy, so I'm simply suggesting
3 that, if she is going to testify for this jury, that this jury
4 be aware that the judge is going to qualify her as an expert,
5 which, typically, I at least have asked if they have any
6 questions.

7 MR. FOX: I asked her that question. I mean, I'm fine if
8 Your Honor wants to add to it, but I'm pretty sure I
9 specifically asked the question about her previously being
10 qualified. Because, yeah, the jury will have to -- I agree;
11 the jury will have to hear it.

12 THE COURT: Okay.

13 MR. FOX: But I did ask that question.

14 THE COURT: Are you contesting it, if he is introducing
15 her as an expert at this time?

16 MS. WALTER: Well, Your Honor, the issue is that I
17 understand it's probably a foregone conclusion that Your Honor
18 will qualify her as an expert, but if this is what is being
19 played to the jury, they are not aware of what happened at the
20 pre-trial hearing. This is as if she were live. And so I
21 certainly think that it is appropriate to at least offer the
22 State the opportunity to voir dire her on her qualifications.

23 MR. FOX: That's fine. We can do that. She has been.
24 And I thought we would --

25 THE COURT: I understand. I'll tell you what: At this

1 point in time, let's give the State the opportunity to voir
2 dire her or not object to her being found as an expert, and
3 we'll make a ruling.

4 MS. WALTER: I just have a couple of questions, as I did
5 at pretrial.

6 MR. FOX: So, Dr. Rudin, the State, as they have the
7 opportunity, may have some questions for you about your
8 qualifications and -- qualifications as an expert.

9 MS. CALDWELL: Mary-Ellen, if I may.

10 Your Honor, Dr. Rudin's having a little bit of trouble
11 hearing you personally. So if you could speak up, just to
12 make sure she hears you. I apologize.

13 THE COURT: Okay.

14 VOIR DIRE EXAMINATION

15 BY MS. WALTER:

16 Q Good afternoon, Dr. Rudin.

17 A Good afternoon.

18 Q Now, you said that your current title is forensic DNA
19 consultant; correct?

20 A Correct.

21 Q So, in essence, that means that you are a consultant who
22 gets hired by people to give your opinion?

23 A Correct.

24 Q Are you required by any entity to take and pass any sort
25 of proficiency exam?

1 **A** I'm not required. I have done one just to see what it
2 was and show that I could pass it, but it is not a
3 requirement.

4 **Q** And when was it that you voluntarily took this
5 proficiency exam?

6 **A** A couple of years ago.

7 **Q** Can you be more specific?

8 **A** No.

9 **Q** Okay. Is it fair to say that there have been changes in
10 DNA science since you took that voluntary exam several years
11 ago?

12 **A** Oh, DNA science is constantly evolving, but it actually
13 has nothing to do with the proficiency test. The proficiency
14 tests, first of all, are extremely basic and extremely
15 nominal. And what I did for that proficiency test is exactly
16 what I would be doing today. There would be no changes to
17 that.

18 **Q** And you talked about peer-reviewed journal articles. How
19 many peer-reviewed journal articles have you had published
20 specifically on Y-STR DNA profiling?

21 **A** Oh, I have not published peer-reviewed articles
22 specifically on Y-STRs.

23 **Q** And, then, you also mentioned professional -- I'm going
24 to hop back to the proficiency exams. You mentioned
25 professional organizations. None of those professional

1 organizations require a proficiency exam; correct?

2 **A** Not a proficiency exam. The American Association of
3 Criminalists requires me to take a test that is on general
4 forensic science, and it's considered a certification, not a
5 proficiency exam.

6 **Q** So, again, none of them require a proficiency exam in DNA
7 analysis?

8 **A** Not for me and not for anybody else.

9 MS. WALTER: Court's indulgence for just a moment.

10 BY MS. WALTER:

11 **Q** I want to go into a little bit more about this
12 proficiency exam that you took on your own. Was that
13 something that was administered by a particular organization
14 or is it something that you were able to just self-pace and
15 self-grade?

16 **A** It's the same organization that the labs used. It's CTS.
17 I think it's called Fibrogenic Testing Services (ph), and it
18 basically is the same -- the same way the labs do it. There
19 is no external grading. We all just take them and then
20 compare our results to our consensus result. And in terms of
21 the laboratory, if somebody says, yes, it's okay, and in terms
22 of me, I looked at it, and it was -- it agreed with the
23 consensus results, so there is basically no difference in that
24 sense.

25 **Q** Okay. But my question is: This is a test that you

1 administer to yourself; correct?

2 **A** Right. It's the same test that I receive, that the
3 laboratory receives from CTS. There is no difference. CTS
4 provides it, and anybody who wants and pays for it can take
5 it.

6 **Q** I'm going to phrase this -- perhaps I'm not phrasing this
7 clearly enough. Is there someone who is sitting in a room
8 with you, administering this exam or proctoring this test?

9 **A** No. Just like the laboratories, nobody administers it,
10 nobody proctors it. It is just taken, and the results are,
11 again, are compared to the consensus results. In terms of a
12 laboratory, somebody in the laboratory decides if it matches
13 or if it is in agreement or sufficient agreement, but there is
14 no proctoring, there is no sitting in a room. There's nothing
15 like that for even me or the laboratory analysts.

16 **Q** And so are you saying that you submitted your results to
17 a lab, and they agreed that there was a consensus, or you're
18 saying that you compared it and said there was a consensus?

19 **A** Just like the laboratory, I and the laboratory compared
20 the consensus, provided it on the CTS website. Nobody submits
21 it to another lab or submits it to CTS. It is basically a
22 soft comparison.

23 **Q** So you take your result, you look at a website, and you
24 say "I passed"?

25 **A** I say that my results are the same as the consensus

1 results, and that is basically the same as passing. That is
2 the same thing that the lab does. It is no different.

3 Q Have you ever been subject to proficiency testing by the
4 FBI?

5 A Well, no. The FBI doesn't offer proficiency tests, for
6 starters.

7 Q The QAS section of the FBI. There are certain standards
8 that the FBI requires be met before they will certify, for
9 instance, a lab or -- and then, in turn, the analyst; correct?

10 A So the FBI QAS is an accreditation. It essentially
11 applies to a laboratory, not to a private practitioner.
12 There's basically nothing I could do to be accredited by the
13 FBI or the QAS. The FBI, again, does not administer
14 proficiency tests. What they do is audit laboratories based
15 on the QAS, that, if they believe the laboratory has met
16 certain minimum qualifications -- that doesn't mean that any
17 of their case work is correct, it doesn't mean the protocols
18 are correct -- that QAS does have certain requirements for
19 analysts working in a laboratory to perform proficiency
20 testing. They don't administer or grade them.

21 Q So have you ever had anyone from FBI QAS evaluate
22 anything that you have done?

23 A Well, as I just mentioned, the FBI QAS audits
24 laboratories. I certainly underwent that kind of process when
25 I was the tech lead in various laboratories. I'm familiar

1 with all those laboratories passed, but, as a private
2 practitioner, I am neither subject to nor would they even
3 inform me of it on the -- if I requested it. It's simply a
4 disconnect.

5 Q And, to be clear, you were -- the most recent position
6 you had was acting DNA technical leader, and that was 20 years
7 ago; correct?

8 A So I had several positions, more than that. 30 years
9 ago, I was what is now known as the technical leader at
10 California Department of Justice. I was then acting tech lead
11 at the San Diego Sheriff's Department and also the Idaho
12 Department of Law Enforcement, and then, briefly, at the San
13 Francisco police crime laboratory. Yes, those were quite a
14 long time ago.

15 I also, as many people, I have moved on with my career
16 and am mostly doing private work, although I have provided a
17 fair amount of training to government laboratories, but the
18 tech lead positions were some time ago.

19 Q All right. And so, as I asked in my question, the most
20 recent, meaning the last position you had, was 20 years ago;
21 correct?

22 A In terms of -- approximately, yes.

23 MS. WALTER: Thank you. Nothing further at this time.

24 THE COURT: All right. At this time, I find that this
25 witness is qualified as a forensic DNA analyzer or a forensic

1 DNA consultant based on her testimony of her skill, knowledge,
2 experience, education, and training, and I'll recognize
3 Mr. Fox to continue with your interrogation.

4 MR. FOX: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. FOX:

7 Q Dr. Rudin, very briefly. So you did, in fact, consult
8 with me on Mr. McClary's case; correct?

9 A Yes, I did.

10 Q Okay. And my office, the public defender's office in
11 Horry County, South Carolina, provided you with discovery
12 materials, including material from the State Law Enforcement
13 Division, or SLED, laboratory in Columbia; correct?

14 A Correct.

15 Q And specifically with regard to DNA analysis; correct?

16 A Correct.

17 Q Okay. And you had a chance to review that material?

18 A Yes.

19 Q Okay. Specifically with regard to -- and can you explain
20 what Y-STR testing is?

21 A Sure. So laboratories may do several different kinds of
22 DNA testing. The sort of standard or more common type is
23 called autosomal -- a-u-t-o-s-o-m-a-l -- autosomal testing.
24 That testing detects DNA types of both men and women, male and
25 female. In certain situations, it can be advantageous to

1 detect just DNA on the Y-chromosome. The Y-chromosome is only
2 present in males. Males are XY and females are XX. And so
3 Y-STR testing basically detects DNA just on the Y-chromosome.
4 The STR part of it is the same between Y-STR testing and
5 autosomal STR testing. That just means short tandem repeat.
6 Basically, it means that we're looking at DNA repeat units,
7 counting the number on various locations on a chromosome, and
8 comparing them between different samples.

9 Q Okay. And specifically with regard to the Y-STR testing
10 in this case, done by SLED, what materials did you review?

11 A I received the reports, the laboratory notes, and the raw
12 data. I also received protocols in validation.

13 Q Okay. So what would the raw data be, generally? What
14 would that entail?

15 A So raw electronic data is what comes out the genetic
16 analysis instrument after the laboratory prepares the DNA
17 samples and amplifies them. That just means making them a lot
18 more so they can be detected. They're run through an
19 instrument called a genetic analyzer, and out of that
20 instrument comes some data that is ultimately provided in
21 what's called electronic data that can then be analyzed by
22 certain programs on a computer.

23 Q Okay. And then you mentioned protocols and validations.
24 What would those be?

25 A Protocols are the procedures that the laboratory follows

1 or is supposed to follow in doing their analysis. Validation
2 is what happens prior to implementing forensic DNA casework or
3 really any forensic casework. It means that the laboratory is
4 looking at known samples and attempting to determine the
5 capabilities and limitations. Ideally, it should lead very
6 specifically to interpretation part of the policy.

7 Q The protocol, for a layman, would that be sort of like
8 that lab's guidelines? They're kind of the rules of conduct
9 on how to conduct these analyses? Would that be the best way
10 to explain it?

11 A Yes. It is guidelines. In some sense, it is a recipe,
12 perhaps not that specific, but it does provide the guidelines
13 and instructions or directions for how the laboratory should
14 analyze and interpret the samples that they receive.

15 Q In other words, each analyst is not going to be a
16 freelancer and just go off and do things the way they think is
17 best; right?

18 A Ideally not.

19 Q Okay. Now, in this case, back to Mr. McClary's case,
20 what were you asked to do?

21 A I was asked to reanalyze the electronic data, review the
22 reports and notes, and then I also ended up looking at the
23 protocols and validations to determine whether the results
24 were reliable.

25 Q Were you asked to perform any additional testing or

1 statistical calculations?

2 **A** No.

3 **Q** So did you review the Y-STR validation document provided
4 by SLED?

5 **A** I did.

6 **Q** Okay. And is there -- and I'm going to ask you to
7 explain this term in a minute, but was analytical threshold
8 one of the parameters -- one of the items addressed in that
9 validation?

10 **A** Yes.

11 **Q** Okay. And please explain what is an analytical
12 threshold.

13 **A** Ideally, an analytical threshold should distinguish
14 between signal and noise. It's always a compromise.
15 Decisions are made, but, ideally, that is its role.

16 **Q** Okay. And what would be the consequence of setting an
17 analytical threshold?

18 **A** So the depending on the way your analytical threshold is
19 set, it could be correct, it could be too high, it could be
20 too low. If it is too high, it is going to miss real peaks
21 and potentially underestimate the number of contributors. It
22 could also falsely include or falsely exclude by failing to
23 take into account certain data.

24 If it's too low, obviously, the consequences are less.
25 You might be calling artifacts and noise, you might be

1 directing the computer to label them. But, for the most part,
2 those are actually fairly easy to pick out. Most analysts are
3 quite good at that. So it is far more of a consequence to
4 have it too high than too low. It is also a consequence to
5 fail to understand that there are different fluorescent colors
6 involved in this analysis. The instrument -- actually, prior
7 to running them on the instrument, during the application, the
8 DNA fragments are labeled in a test tube with different
9 fluorescent markers that are visualized as colors. Those
10 colors have different sensitivities, and the best common
11 analytical threshold would be color specific as well as
12 therapeutic (ph) based.

13 Q So did the threshold -- in your opinion, did the
14 threshold picked by SLED in this case accomplish that goal?

15 A It did not.

16 Q Okay. And why not?

17 A First of all, it was too high. It missed real peaks.
18 And, second of all, it was not color specific, also
19 potentially causing it to miss peaks.

20 Q And what's the consequences of that, again, if you
21 would --

22 A So the consequence of that, especially with a threshold
23 that is too high, is it has the potential to underestimate the
24 number of contributors, which, in fact, happened in this case.
25 And then, also, potentially to fail to detect peaks or

1 alleles, that we were interested in comparing, below that
2 analytical threshold that could be involved in either
3 including or excluding a potential contributor.

4 Q Okay. So in a -- generally speaking, in a given DNA
5 sample, there might be one person that contributed to that
6 material, but there might be multiple people that contributed
7 to that material?

8 A That's correct.

9 Q In other words, there might be -- there might be a
10 mixture of different individuals of what we have as one sample
11 that's been tested?

12 A Correct. The sample results in a profile. The profile
13 could overtly reflect one or more contributors. If it's more
14 than one, it is considered a mixture of multiple individuals.

15 Q Okay. And can the number of contributors affect -- or
16 how would the number of contributors affect the ultimate
17 analysis? In other words, if you have one contributor, you
18 can have a different set of conclusions than if there's two or
19 three or four?

20 A Right. One contributor is usually pretty easy to
21 compare, even if there's missing information. It's just a
22 one-to-one comparison. But the moment you get into mixtures
23 -- and Y-STR mixtures are potentially problematic -- there can
24 be ambiguity and uncertainty in trying to determine who could
25 have contributed, because you are trying to connect different

1 peaks at the different locations. And then you have to
2 provide a statistic, a weight of evidence, and that is also
3 far more complicated for mixtures than single-source samples.
4 So there's two issues: The interpretation and the statistical
5 weight.

6 Q So, if you set a threshold that's too high, and by doing
7 so, in a certain sample, you conclude that there are two
8 contributors rather than, say, three that you might have
9 gotten if you had a lower threshold -- in other words, there's
10 a noticeable, visible peak -- that that can affect, then,
11 ultimately the determination of who is the major or minor
12 contributor or who is even a contributor? In other words, if
13 you exclude a contributor, that can greatly affect the
14 statistical outcome you get as well; correct?

15 A Absolutely, and for a few different reasons. One is it
16 affects your interpretation. You may be missing data that
17 could include their interpretation, and then it also affects
18 your statistics because there are different statistics
19 depending on the number of contributors. So those are at
20 least two consequences.

21 Q Okay. And do you know what the threshold obtained by
22 SLED was in this case?

23 A 125 RFU. RFU stands for Relative Fluorescent Units.

24 Q And do you agree with the statement that taking a
25 threshold -- an analytical threshold higher indicated by the

1 data is a conservative process? Do you agree with that?

2 **A** Well, first of all, conservative is very much in the eye
3 of the beholder, so it's not really a scientific term. What
4 it fails to do is underestimate the interpretation and
5 statistic. Because it -- because it's scientifically
6 inaccurate, it can't be conservative. Ignoring data is never
7 conservative. And, again, conservative is very much in the
8 eye of the beholder.

9 **Q** Okay. Were mixtures another parameter that we're
10 addressing the validation of?

11 **A** Yes.

12 **Q** And what analytical threshold was used to interpret a
13 mixture?

14 **A** The laboratory, and typically as it did here, determined
15 their analytical threshold first. And so, when you're using
16 that analytical threshold for a mixture study, you are then --
17 like conditions in this case, excluding real data from your
18 mixture study. That then affects the conclusions of your
19 mixture study and how it might be applied to case work.

20 **Q** And did you see where the total number of alleles
21 detected are used as a measure of the ability to detect a
22 mixture?

23 **A** Yes, I do see that.

24 **Q** Okay. Explain that a little bit.

25 **A** So one of the sort of nominal things that a laboratory

1 will do is look at how many alleles -- alleles being different
2 genetic types -- are detected using their particular
3 parameters, and they will use that as sort of a placeholder
4 for sensitivity.

5 And, again, the problem is, if you are not detecting real
6 alleles, you are then underestimating the number of
7 contributors. It really kind of goes back to that same thing
8 that we discussed, and it means that the mixture study has the
9 same limitations as the sensitivity study, you're missing
10 data.

11 Q Did any of the analysis directly address the requirements
12 to deconvolve the profile into individual contributors? And
13 please explain again what "deconvolve" means.

14 A No, there was nothing like that.

15 Deconvolve means to attempt to separate a mixture into
16 its single contributors with, again, as least ambiguity and
17 certainty as possible, and there was really nothing specific
18 that addressed that.

19 Q Okay. Did any of the analysis directly address the
20 requirements to separate a profile into major and minor
21 components?

22 A There were some percentages mentioned, that those
23 percentages appeared to be ad hoc. In other words, they were
24 not derived from the validation, and there was no scientific
25 basis provided for those percentages, the percentages being

1 differences between larger peaks and smaller peaks, and also
2 mixtures were not really addressed specifically.

3 Q And did you note the statement that, quote, "Caution
4 should be taken with mixtures of multiple contributors and
5 with mixtures where the ratio of contributors appear very
6 unequal"?

7 A I did.

8 Q Okay. Did you note that these calculations were based on
9 unshared peaks?

10 A Yes, yes. And the reason that's important is because, if
11 the calculations are based on peaks that are unshared between
12 individuals, that may not apply to the case samples. The
13 reason is that, especially for Y-STRs, many men will share
14 specific of the alleles found in particular locis, and that
15 will result in something called stacking.

16 If you have a peak, it could contain more than one
17 individual. You know that's true when you're using known
18 samples for the validation, but of course, for a case sample,
19 you don't know the truth. You're using your validation data
20 in an attempt to provide guidelines for interpreting samples
21 of a known, and if you're basing calculations on unshared
22 peaks, that may or may not be appropriate for case samples
23 that could contain shared peaks and where you don't know which
24 peaks or if any of the peaks are shared.

25 Q Did you also review the Y-STR interpretation protocols?

1 **A** I did.

2 **Q** Okay. And did you note an instruction in that protocol
3 that, quote, "Peak height and balance and allelic dropout have
4 been shown to occur"? Please, again, tell us what peak height
5 imbalance and allelic dropout are.

6 **A** Yes. So, I did read that. Peak height imbalance, as
7 you'll probably see shortly or perhaps have seen, the data
8 from STR or Y-STR analysis results in a graph of peaks. The
9 peaks are of different heights, higher or lower. The higher
10 peaks reflect approximately more DNA. The lower peaks reflect
11 approximately less DNA.

12 In Y-STRs in particular, even with a single-source
13 sample, peak heights might not be exactly the same. There's
14 some variation. And when there's a mixture, when there's
15 variations, you don't know whether that is variation because
16 of inherent elements or because of more than one contributor
17 to a peak or if there's missing information.

18 **Q** Okay. And, so, in that instance -- so where you have got
19 the issue that you just described -- peak height imbalance and
20 allele dropout -- is it fair to say that all loci -- loci?
21 L-o-c-i? Loci? Okay -- that all loci should be considered
22 during interpretation to account for those issues?

23 **A** Correct, correct. And that's true regardless. Those
24 issues are exacerbated in mixtures, and all loci should
25 definitely be considered in the interpretation.

1 Q Okay. Now, in your review, there was one of the items
2 that was analyzed, was a combined swab from two pairs of
3 glasses; correct?

4 A Correct.

5 Q Okay. And that was sample L-18-0969-2.1.

6 A Correct.

7 Q Do you believe that instruction, to consider all loci,
8 was followed in the interpretation of the Y-STR profile from
9 that item -- from that sample? Did they follow their own
10 protocol for that sample?

11 A No. They ignored several loci in that sample, which led
12 to a problematic interpretation.

13 Q Okay. And while we're specifically talking about the
14 glasses, what we're talking about here, in this case, is
15 what's called touch DNA or trace DNA. Could you explain
16 roughly what those things are?

17 A So touch or trace or contact DNA are colloquial terms
18 used to describe DNA collected from an item that is not,
19 obviously, from a body fluid, such as semen, blood, saliva, or
20 anything else. It's simply DNA that you can't see with your
21 eye but that is collected from an item.

22 Q For any DNA sample, is the manner in which it is
23 collected and stored prior to analysis important? And, if so,
24 why?

25 A Absolutely. As I think we like to say, everything is in

1 motion, and, so, any errors made along the way are, then,
2 basically incorporated or reflected in any future analysis and
3 testing. So, for example, if there was contamination or
4 samples touched each other or something wasn't collected, that
5 will affect everything downstream. You can't recover. You
6 can only analyze it and interpret the item as it was received.
7 You can't sort of correct errors going backwards.

8 Q You can't uncontaminate an item once it's contaminated;
9 correct?

10 A That's correct.

11 Q Now, in this case, we were unable to determine how the
12 two pairs of glasses were collected and then packaged before
13 they went to the State lab.

14 A Yes.

15 Q And what was that exactly?

16 A So these two pairs of glasses were collected from the
17 crime scene. They were packaged together in the same package.
18 So that, in and of itself, is problematic. There were papers
19 showing, perhaps not surprisingly, that DNA can be transferred
20 between items in the same evidence bag.

21 The DNA protocols and systems that are used are extremely
22 sensitive these days, and so it's not hard to pick up very,
23 very small amounts of DNA.

24 So those two pair of glasses were, first of all, packaged
25 together, and then the person who received them took the same

1 swab and swabbed both items -- both pair of glasses with the
2 same swab. That means you can never go back and separate out
3 which DNA came from which pair of glasses. That would be -- I
4 don't think it's wrong to say that would be considered an
5 incorrect way of both packaging and collecting that evidence.

6 **Q** And, as initially packaged, these glasses were placed in
7 the same brown paper bag; correct?

8 **A** Correct.

9 **Q** Do you think a brown paper bag would be an ideal medium
10 for storing sensitive DNA material?

11 **A** Actually, the broken paper bag is fine. It is what
12 samples are collected in. It keeps items from getting too wet
13 and fostering degradation. The problem is the two pair of
14 glasses put in the same brown paper bag. The brown bag itself
15 is fine. It's the two glasses together.

16 **Q** Okay. And, then, that's compounded by using the same
17 swab, because, it seems obvious, once it gets to the lab, they
18 take the Q-tip-like swab and swab the surface of whatever it
19 is they're testing -- in this case, glasses -- and do their
20 testing from there. In this case, one swab for both pair of
21 glasses; correct?

22 **A** Correct. And if it had been done properly, the glasses
23 not put together and swabbed separately as they should have
24 been, among other things, they might not have an issue to deal
25 with. I don't know. I don't have my crystal ball with me,

1 but those actions definitely compounded the interpretation
2 issues of the profile in this case.

3 Q Do you think, given the way that it was collected,
4 stored, and then swabbed, that any interpretation resulting
5 from that is in any way reliable?

6 A No, it is not. Again, it's far short of just the
7 analysis interpretation and the statistics. Simply the
8 collection and swabbing makes it unreliable, because you can't
9 sort out what came from what pair of glasses. Again, it
10 contributed to the problem of the mixture interpretation,
11 which was then compounded by future actions.

12 Q Okay. So we are now, again, still talking about the
13 glasses. Did you note an instruction in the protocols that
14 alleles below the analytical threshold may be considered a
15 possible mixture?

16 A Yes.

17 Q Okay. Were the alleles below the SLED analytical
18 threshold of 125 RFU considered at all in the Y-STR profile
19 developed in this sample of the combined glasses?

20 A They did not appear to be.

21 Q Okay. And what would be the consequence of that?

22 A So the consequences of that is there are at least two
23 locations that -- well, actually, there were three locations,
24 sorry, that showed overt evidence of three contributors. The
25 lab interpreted the sample as a sample of only two

1 contributors. So, right there, that is a problem in terms of
2 what the interpretation and statistical weight is.

3 Q And you received the actual data files used in discovery;
4 correct?

5 A Yes, I did.

6 Q And then you, yourself, re-analyzed them using the same
7 genetic analysis software SLED used?

8 A Yes, I did.

9 Q Did you detect more real DNA peaks than acknowledged by
10 the SLED analyst for this profile?

11 A Yes, I did.

12 Q Okay. And I think you said there were at least three
13 male contributors?

14 A There's overt evidence of at least three male
15 contributors in the combined profile that was detected by the
16 SLED lab, yes.

17 Q Okay. And then you have -- what is an EPG?

18 A EPG is short for electropherogram, and that is basically
19 the peaks that I described previously that are produced from
20 the electronic data.

21 Q Okay. Do you have those for this sample? Can you show
22 some examples of what you have been describing?

23 A Sure. Give me one second. Did you want me to show the
24 one I produced or the one from the SLED notes?

25 Q Whichever you think is going to be better to explain what

1 you have been testifying about. It can be both if you need
2 to.

3 **A** Okay. Well, I think we'll start with the one from the
4 SLED notes. So let me share. So this is PDF, page 73, from
5 L-19-17807, DNA case file, pages 1 to 91. This is directly
6 from the SLED notes. And this particular electropherogram, or
7 EPG, is the one that they printed and annotated. You can see
8 it's L-18-09692.1, which is a combined swab from the glasses,
9 you can see it immediately that there's a number of peaks that
10 don't have labels. This peak, that peak, this one. There's a
11 small peak here. There are three peaks here that have
12 alleles, as well as the one here. Not labeling them is simply
13 a decision made by a person or the laboratory. It's not a
14 software decision. It's a human decision to direct software
15 to label certain peaks. In this case, they directed the
16 software not to label any peak above -- I'm sorry, below 125
17 RFU.

18 **Q** And if I can interrupt just for a moment. And that 125
19 number you're referring to, that relates to the numbers on the
20 left side of these graphs where it says 0 to 350 and 700 on
21 the top?

22 **A** Correct.

23 **Q** So 125 would be in the lower. You can imagine an
24 imaginary line running across horizontally there.

25 **MS. WALTER:** Your Honor, I'm just -- I'm sorry, but this

1 has not been marked. And, again, at some point, the jury is
2 going to hear this, and I think, for the record, it needs to
3 be clear what she's referring to.

4 MR. FOX: Yes.

5 THE COURT: Okay.

6 MR. FOX: I don't how you want to do it. Will it be
7 enough, Madam Reporter, if I refer to it and we label it as a
8 defense exhibit for identification? It will be preserved as
9 this recording --

10 COURT REPORTER: Do we have a hard copy?

11 MS. WALTER: Yeah, there should be. Yeah, just mark a
12 physical copy of it.

13 MR. FOX: We can mark the physical copy and then refer to
14 it.

15 Let's start with this one. I believe this goes on to a
16 second page. So I can mark it as 1. That's the same.

17 (Defendant's Exhibit No. D-1, DNA Lab Sheet, was marked
18 for identification.)

19 BY MR. FOX:

20 Q Dr. Rudin, for our purposes, for recordkeeping, we're
21 going to refer to this -- what you have up as Defense Exhibit,
22 for identification 1. Okay? We have the hard copy with us.
23 It will be an exhibit potentially for the jury to look at.

24 So you can continue. We talked about the analytic
25 threshold being a number relating to these numbers on the left

1 side of these graphs; correct?

2 A Correct.

3 Q So you continue from there, please.

4 A All right. So, yes, the left side is the vertical scale.
5 And you are correct in that the 125 relates to that. So, for
6 example, here on the left, it goes from 0 to 700. 125 is
7 probably around here somewhere. The top number here is the
8 allele poll (ph). So this is Allele 19. And it has 19
9 repeats. The 700 is the RFU value, so this particular panel,
10 is normalized by highest peak, which is the 700. And that
11 also brings me to the point that these vertical scales can be
12 visualized at different magnifications, which can affect, in
13 the per note, how big the peaks look.

14 So these peaks can be looked at in different
15 magnifications, and it can be sometimes misleading, how it's
16 printed out, when the peaks are bigger or smaller or look like
17 noise or look real. So I just wanted to point that out.

18 Q And the idea with the alleles or the top number being the
19 allele, the idea being that we're all genetically unique, each
20 one of us, and although we may share certain alleles and
21 certain DNA, that there should be a unique number or
22 combination of numbers for each one. In other words, this
23 person is a 19 whereas I might be a 20 or a 15 or something
24 like that; correct?

25 A So, just to clarify a little bit, we may all be

1 genetically unique, but that is, if you look at our entire
2 genome. In forensic DNA analysis, whether it be autosomal or
3 Y-STRs, we're only looking at a subset of locations or we're
4 looking at them in a various specific way.

5 Autosomal DNA analysis, the kind that detect both female
6 or male DNA, is far more discriminating; it's still not
7 necessarily unique, per se, but it's more discriminating.
8 Y-STR analysis is less discriminating for a variety of
9 reasons. First of all, everybody in the patrilineal (ph) line
10 nominally shows the same profile. So that means not just your
11 grandfather, your father, your son, but your grandfather, his
12 father, all the brothers, all male progeny from them are a
13 mutation which can happen but relatively rarely. It shows the
14 same profile. So that's one thing specific to understand
15 about the Y-STR analysis.

16 The other thing to understand is, whether people are
17 related or not, they can be the same or different at any one
18 of these locations. It's not unusual to see unrelated males
19 sharing many of these locations, but be differing by only a
20 few.

21 And so I just want to be clear that these profiles,
22 especially in particular, Y-STR profiles, unique is not a
23 descriptor that is apt. You can compare them. Again, it's
24 more difficult to compare mixtures than single-source samples,
25 but that's why you require a statistic to provide a weighted

1 evidence.

2 Q Okay. Do you recall, in the instruction, the directions
3 that no mixture interpretation will be offered for mixtures
4 where a major contributor cannot be identified?

5 A Yes.

6 Q Do the protocols provide further information about how to
7 identify a, quote, "major contributor"?

8 A They do.

9 Q And what is that instruction?

10 A In the protocol, it suggests that a major/minor ratio
11 should be 45 percent or less for a two-person mixture or 35
12 percent or less for a three-person mixture, that being the
13 difference between this peak -- I'm sorry -- this peak and
14 that one, for example, or this peak and that one, for example.

15 And the problem with those numbers is that they don't
16 draw any validation. There's no scientific basis for them. I
17 looked very carefully during the hearing, and I have yet to
18 understand any particular basis for them.

19 What would have had to have happened is they should have
20 been derived from validation data of 2 and 3, and maybe even
21 four-person mixtures, and then those percentages should have
22 been tested on an independent data set. Neither of those
23 things happened.

24 Q So this -- these distinctions, 45 percent and 35 percent,
25 they appear just to be arbitrary designations or arbitrary

1 numbers?

2 **A** I don't know if they're arbitrary, but I don't see a
3 scientific basis for them. I don't see a basis for them at
4 all, scientific or otherwise. So I don't know where they come
5 from. Yeah, I have no idea where they come from, and because
6 of that, I don't think they're reliable.

7 **Q** Okay. Finally, I'd like to discuss with you some of the
8 loci dropped from the interpretation and then the subsequent
9 statistical estimate. So, on DYS-627, which is there at the
10 end at the top right --

11 **A** Yes.

12 **Q** -- is that one of the loci that was dropped?

13 **A** It was.

14 **Q** And we have already seen only one of the two peaks
15 present in that location that's identified by a number;
16 correct?

17 **A** Correct.

18 **Q** So you see, to the far right, with the number 22 and 155,
19 and then, just to the left of that is the unidentified or
20 uncalled peak; correct?

21 **A** Correct.

22 **Q** But we're both talking about DYS-627.

23 **A** Correct. There are two apparent peaks at DYS-627.

24 Either laboratory particles, the 22 was called. The 22 is not
25 found in the profile of Mr. McClary.

1 Q Why was the one called and the other not?

2 A This peak is above the 125 laboratory threshold. This
3 peak is below it.

4 Q And, again, you believe that to be an artificial cutoff,
5 correct, the 125?

6 A Correct.

7 Q Okay. Is it possible to determine an unambiguous major
8 contributor for loci?

9 A No, it's not. I mean, clearly, the 22 is bigger than
10 this peak. It wasn't called, but, regardless, they are
11 reasonably similar in height, and because of the limitations
12 of Y-STR testing and the way these turn out, you actually have
13 no idea what the -- if there is a major here or what it might
14 be. You don't know if this 22 should be paired as it were
15 with the 30, the 22, the 14 or the 13 or the 19, or if this
16 unlabeled peak should be paired. If the 22 should be paired
17 with the 30, then that can't be Mr. McClary.

18 Q And that's because Mr. McClary, at that location, is
19 actually a 19; correct?

20 A Correct.

21 Q All right. So DYS-449?

22 A That's this one down here. I know it's hard to see
23 because of the red.

24 Q Yes. Thank you.

25 A 449, right here.

1 Q Is that another locus that was not considered?

2 A That's right. You can see that basically none of these
3 peaks were called. I can show you -- so this is the -- I
4 don't know if you want to mark this or talk about it.

5 Q Yeah.

6 MS. WALTER: Do you have a copy for the State?

7 MR. FOX: A copy? No. I have this giant board that I
8 blew up. Somewhere, I will see if I can find you a copy.
9 This is that.

10 So this will be, Your Honor, Defendant's Exhibit for ID
11 No. 2.

12 MS. WALTER: So do you have something that I can look at
13 while she's testifying?

14 MR. FOX: Would you mark that as Defendant's 2.

15 (Defendant's Exhibit No. D-2, Enlarged DNA Lab Sheet, was
16 marked for identification.)

17 BY MR. FOX:

18 Q All right. Dr. Rudin, you may continue. This has been,
19 again, Defense Exhibit 2 for identification.

20 A Okay. So the reason I brought this up, I'll show you two
21 more things. At this DYS-449 locus, there are very clearly
22 three peaks, and it's much easier to see when you use the
23 appropriate magnification or one that allows you to see these
24 peaks. They're very clearly there. They're not noise.
25 They're labeled at an empirical threshold.

1 There are three peaks here. There are also three peaks
2 here at DYS-576, and here at DYS -- I'm sorry, let me just --
3 it's hard for me to see the numbers too. DYS-6 -- sorry.
4 DYS-576, which is this locus, and then DYS --

5 **Q** 570?

6 **A** -- 570. Thank you. I just can't read it in the red
7 either.

8 There's clearly three peaks here, there's clearly three
9 peaks here, and there's clearly three peaks there. You can
10 see them here, but the way this is printed out, it's not as
11 obvious. There's these three peaks, there's these, and then
12 the three peaks here.

13 So, first of all, you can see that there's three peaks,
14 meaning there is overtly three contributors, meaning this
15 profile must be interpreted as three contributors. And then,
16 secondly, in both the case of DYS-627 and 449, the nominally
17 larger one, the 22 here or the 30, are not found in
18 Mr. McClary's profile.

19 Are they a major? No. This really is an
20 indistinguishable profile from which clearer individual
21 contributors cannot be separated out, and that means it needs
22 to be interpreted, and the statistical weight needs to be
23 provided for a mixture.

24 **Q** So, again, looking at 449 down here in the lower right as
25 you look at it in the red --

1 **A** Yes.

2 **Q** -- so the highest peak is 30?

3 **A** Correct.

4 **Q** And then the next is 35.

5 **A** Correct.

6 **Q** And then the next is 29.

7 **A** Correct.

8 **Q** Did Mr. McClary have a 30 in his profile?

9 **A** He does not.

10 **Q** Okay. Is it possible to determine an unambiguous major
11 contributor at this location?

12 **A** Not at this location and not for the profile.

13 **Q** Okay. So what's the ultimate -- we have talked about the
14 other loci and this one. What's the ultimate consequence of
15 dropping those two loci?

16 **A** So the ultimate consequence of dropping them -- well,
17 there's a few things. One is that anything that was ambiguous
18 that could have potential exclusionary value was not
19 considered. It was thrown away. That information and that
20 data was thrown away before they ever got to any sort of
21 statistic. And then there's the secondary consequence in that
22 the guidelines and the DNA analysis methods cite that, if you
23 are going to do a statistic using a, quote/unquote, "reduced
24 locus search," meaning dropping loci, you cannot drop loci
25 that may have potentially exclusionary value, and that's

1 exactly that what they did here.

2 Q So when you say "exclusionary value," that's just a way
3 of saying it can't be Mr. McClary, at least at that loci;
4 correct?

5 A I wouldn't say it can't be. I would say we can't
6 determine if it is or it isn't, and we can't pull his profile
7 specifically unambiguously out of this mixture of three males.

8 Q I understand. So, in other words, the statistics are
9 based only on peaks that happen to match McClary?

10 A Correct.

11 Q Do you think that's a fair or scientifically reliable
12 interpretation?

13 A It's not. Again, it is discarding data that can be
14 potentially exculpatory. At the very least, these ambiguous
15 loci -- one way, by the way, of resolving those could have
16 been to do additional amplifications. The laboratory didn't
17 do that. But barring some additional scientific work, these
18 had to be interpreted and statistically weighted as
19 indistinguishable mixtures, and then the statistical weighting
20 of YSR mixtures is particularly problematic.

21 Q Okay. Now, for both of these locations we've been
22 discussing, is there an analysis issue with autosomal STRs?

23 A There is. Historically, we, the community, used to do a
24 similar kind of analysis for regular autosomal. It was a long
25 time ago, but -- and most laboratories have moved on, but the

1 issues are well-known. The issues have been addressed. They
2 were addressed on autosomal using a different kind of
3 statistical technique. That technique was not available for
4 Y-STRs. This laboratory is aware of that, however they use
5 it, which makes it all the more surprising that they would
6 revert to a very manual, subjective, and unvalidated approach
7 to interpreting and weighing this Y-STR evidence.

8 **Q** Now, even if all the typing and interpretations were
9 perfect, is the final statistic -- again, we're talking about
10 these glasses -- is the final statistic of 1 in 9,700
11 reliable?

12 **A** No. Y-STR statistics, again, are quite difficult. They
13 way they're done is simply by taking a database count.
14 There's a database that is available online. It's uncurated
15 to the extent that nobody really checks it. There's relatives
16 or juvenile kids, is really what it represents, an appropriate
17 population set, and that simply -- one looks to see how often
18 a profile is found.

19 Most profiles are found zero or one times, which means
20 that the statistic has totally to do with the size of the
21 database on any particular day as well as how you search the
22 database. The database can be searched in any number of ways,
23 and the statistic can be presented in any number of ways.

24 So those statistics just are problematic, and in
25 addition, because of how male DNA is found in the population,

1 there's far more what we call population substructure, areas
2 that historically or ancestrally or genealogically were
3 founded by a male or a male family will have very different
4 subset of population male profiles than another area.

5 And, again, this database just uses general races or
6 ethnicities -- African-American, Caucasian, Hispanic, etc.
7 And so that number just is not all that meaningful.

8 Q Well, it occurs to me -- so what you're saying is that,
9 because of the databases -- and it sounds like what you're
10 saying, depending on what day and how you choose to run it,
11 that you can get different answers, doesn't that violate the
12 basic scientific method we all learned in third grade that
13 it's valid because you can replicate it, that someone else can
14 come in and do the exact same thing you did and sort of test
15 it, because they should get the same result if you have a
16 valid test or process?

17 A That's interesting, yes. It is true that, if somebody
18 else goes in on the same day, asking exactly the same question
19 in the same way, they'll get the same results, but that
20 doesn't mean that the result -- it means it is -- so --

21 Q In your opinion -- I hate to interrupt you --

22 A I'm sorry?

23 Q I said, I hate to interrupt you, but if I understood your
24 testimony, the way this is done, these calculations, there's
25 not one set of criteria that they can choose to go with this

1 database or that or this part or that. In other words, they
2 can change the process, not to necessarily mess with anybody
3 but just -- there's not uniformity; isn't that correct?

4 **A** Well, that is true. Different decisions can be made, and
5 that can definitely result in vastly different numbers. But,
6 again, to address your question, something can be reproducible
7 but not correct. And so if somebody goes in and asks the same
8 question the same way, they'll get the same results, but if
9 it's incorrect, the same incorrect will result.

10 I'm not saying this is correct or incorrect. I'm saying
11 we don't know if it's correct and we don't know if it's
12 necessarily applicable or if it really appropriately describes
13 the rareness of the profile. But, again, even before that,
14 the way the profile was searched, dropping the loci, it's not
15 reliable because they have discarded potentially exculpatory
16 information.

17 **Q** Okay. Almost there. So are you familiar with the
18 acronym SWGDAM. S-W-G-D-A-M?

19 **A** It's a working group in DNA analysis methods, yes.

20 **Q** Okay. So you're familiar with their Y-STR interpretation
21 guidelines?

22 **A** Correct.

23 **Q** Okay. And why is SWGDAM important? Who are they?

24 **A** SWGDAM is a group basically run by the FBI who has
25 members from mostly the law enforcement communities,

1 laboratories from all the over the country, and they make
2 guidelines. They're not perfect, they're not
3 all-encompassing, but there are guidelines ascribed to by the
4 community in general, and they are considered an authoritative
5 source at least to look to when assessing protocols and
6 approaches to interpreting them and statistically weighting
7 data.

8 Q And there are guidelines from 2014 and 2021?

9 A Correct. For Y-STRs.

10 Q Yes. And then, with regard to Guideline 10.1.1.2, is
11 that language the same in both 2014 and 2021 documents?

12 A It is. And I'm going to show you the document, if that's
13 all right. I know it's on top of these other ones but here it
14 is.

15 Q Hold on. Take that down just a moment, please, if you
16 would. I'm not sure I have hard copies, so can you take that
17 down? You can still refer to it.

18 A Oh, I'm sorry.

19 Q That's all right. That's not your -- that's my bad.

20 So you can refer to it, and, again, we're talking about
21 Guideline 10.1.1.2. Can you just read that for us, the part
22 that's relevant to you?

23 A Yes. Sorry. I need to find it again. Okay. So this is
24 on page 11 of the 2021 SWGDAM Y-STR Guidelines, which this
25 part of it is the same as the 2014, and it's Guideline

1 10.1.1.2: "When performing reduced locus sample searches,
2 caution must be taken to exclude any, quote/unquote, 'matches'
3 that would have been non-matches had more of the evidence
4 profile been searched. For example, a, quote/unquote, 'match'
5 at the 11 SWGDAM loci between the evidence and the population
6 database sample would not be included as a match for
7 statistical purposes if the profiles differed in any
8 additional loci for which they both had information."

9 Q Did SLED perform a reduced locus search in this case?

10 A They did.

11 Q Did they follow the instruction to exclude any matches
12 that would have been non-matches had more of the evidence
13 profile had been searched?

14 A They did not. And, in particular, DYS-267 locus where
15 SLED labeled Allele 22 at that locus, not found in
16 Mr. McClary's profile, that locus was dropped, and I believe
17 that violates this instruction in the SWGDAM Y-STR
18 Interpretation guidelines.

19 MR. FOX: Thank you very much. Please answer any
20 questions that Solicitor Walter has for you.

21 CROSS-EXAMINATION

22 BY MS. WALTER:

23 Q So we have talked a little bit about validation. The
24 validation is something that is done in a lab with the
25 instrumentation that they use; correct?

1 **A** It is done in a lab with the instrumentation they use,
2 correct.

3 **Q** So what threshold would you suggest SLED use?

4 **A** So the way I determine my thresholds is I, first of all,
5 use a run-specific threshold. I look at the negative controls
6 for the specific run, and I also use a color-specific
7 threshold. I change the threshold -- I use different
8 thresholds for the different colors. The specific one I would
9 have used in this case, I need to check; I don't have it in my
10 memory. It was lower and color specific. Let's see. I would
11 have to go back. I don't have it immediately available, but
12 it was lower.

13 **Q** And you came up with that threshold without using the
14 instrumentation that SLED uses; correct?

15 **A** Oh, no. Absolutely not. The runs are all using the
16 instrumentation that SLED uses. It is their instrumentation.
17 It is just a more specific interpretation of that data because
18 this run specific, I'm using the negative controls from the
19 instrument from the run for this profile. So I absolutely
20 used the data from their instrument, yes.

21 **Q** Okay. And please stop me if you don't understand the way
22 I'm asking a question.

23 So when I refer to instrumentation, I mean, were you in
24 the SLED lab using the instrument that SLED uses?

25 **A** I used the data from the instrument in the SLED lab. Did

1 I run the instrument? No, of course not.

2 Q So, again, you did not use the instrumentation that SLED
3 uses.

4 A I used the data from the instrumentation that SLED uses.

5 Q Did you have any information on the environmental
6 conditions in the SLED lab?

7 A No, but I had the output, and what is ultimately critical
8 is the output. The environmental conditions could affect it.

9 By the way, they didn't use that in their allegation
10 either. What they used is exactly what I use, which is the
11 output. That is why the run-specific, color-specific
12 threshold is the most reliable and specific threshold you can
13 use, because it uses the conditions for that specific run at
14 that specific time and uses the negative controls to determine
15 the analytical thresholds.

16 Q So are you testifying today that you know for sure that
17 SLED did not account for the environmental conditions of the
18 SLED lab when doing the validation?

19 A There was nothing in the validation that discussed that.
20 And, again, it's the output that matters. They're not going
21 to change anything. If they notice that the temperature was
22 110 degrees in the lab, they're simply going to discard that
23 data. They're not going to use it. It's not going to be
24 reliable.

25 I have to imagine that their climate controls are set,

1 and they are making sure that the climate controls are what
2 they expect when they are outputting the data to use in their
3 validation, but they didn't take some off environmental
4 data -- I'm sorry, some off environmental conditions and use
5 the data for that. That would simply be ridiculous.

6 **Q** You're aware of the fact that validation depends on the
7 instrumentalities and the environmental conditions in which
8 they are used; correct?

9 **A** It depends on both. Again, as I explained, the
10 instruments produce data, and the very specific data that I
11 used are from the instrument during the exact run. And the
12 environmental conditions are taken into account much more
13 specifically in the way I did it than the way they did it.

14 **Q** So how did you take into account environmental conditions
15 that you had no information on?

16 **A** Regardless of what's in SLED, the environmental
17 conditions are reflected in the run. You actually don't need
18 to know what they are. Again, if they were something extreme,
19 there's no -- they would have discarded the run, even in the
20 case of the validation.

21 It's not like I'm going to change something because
22 somebody set the thermostat at 65 or 64. It's reflected in
23 the run. And if the temperature, for example, is a little bit
24 different on the day of the run, that's exactly why the run
25 specific thresholds are more appropriate and more reliable.

1 Q Okay. And let me back up for a minute because everything
2 we have talked about here today dealt just with the
3 interpretation of the mixture from the two pairs of glasses;
4 correct?

5 A Correct.

6 Q So you are not here to dispute any of the Agent Hefney's
7 other findings?

8 A Correct.

9 Q Such as the defendant's DNA under the victim's
10 fingernails.

11 A I'm not here to discuss that one way or the other today.

12 Q Right. And you were not asked to perform your own
13 analysis here; correct? Your own interpretation, I mean.

14 A If, by that, you mean reanalyze the samples in a
15 laboratory? No, I did not.

16 Q You were not asked to provide your own interpretation; is
17 that correct?

18 A Oh, I did provide my own interpretation. You just saw
19 it.

20 Q Did you prepare a report with the conclusions and the
21 statistics of your interpretation?

22 A My -- no, I was not asked to provide a report. My
23 conclusions are simply that SLED's analysis is unreliable.

24 Q All right. But if you did your own interpretation, then
25 you would have reached a conclusion as to whether or not the

1 defendant could be included or excluded; correct?

2 **A** No, that's incorrect. My conclusion would have been that
3 making a distinguishable sample of three or more male
4 contributors and no reliable statistic can be provided.

5 **Q** And had you prepared a report, that's something that
6 would have had to be turned over to the State; correct?

7 **A** Correct.

8 **Q** You had the benefit of Agent Hefney's report, however,
9 and data and all of that other information; right?

10 **A** Correct.

11 **Q** Now, let's talk -- Mr. Fox spent a little bit of time on
12 the packaging of the glasses. So I want to try and -- and
13 he's wearing glasses now; I was going to have to use
14 Ms. Caldwell's. But I have on a pair of glasses. Mr. Fox has
15 on a pair of glasses. Ideally -- say these are the glasses
16 that were recovered from the crime scene. Ideally, had mine
17 been packaged separately and Mr. Fox's had been packaged
18 separately, what that would have enabled SLED to potentially
19 do is say, "Well, Mary-Ellen Walter's DNA" -- or the way it's
20 phrased is "It is more likely that Mary-Ellen Walter's DNA is
21 on this pair of glasses than not." And it is more likely than
22 not that Mr. Fox's DNA is on those glasses than not; correct?
23 That would be what would happen if you packaged them
24 separately?

25 **A** Potentially. I don't know who else has worn your glasses

1 or where else they have been, but if only your DNA is on your
2 glasses or only Mr. Fox's is on his, then it would be a pretty
3 easy comparison to do.

4 Q Right. So, now, we take Mr. Fox's glasses, and we take
5 my glasses and we jumble them up in a bag, really what that
6 prevents someone from doing is saying, basically, that I wear
7 these glasses and Mr. Fox wears those glasses.

8 A Potentially.

9 Q You cannot segregate a particular DNA statistic to one
10 pair of glasses. You have to talk about them combined.

11 A Correct.

12 Q But packaging them together is not going to, all of a
13 sudden, introduce Judge DeBerry's DNA, is it?

14 A That's an interesting question. In addition to
15 commingling the DNA from the two pairs of glasses, it could
16 also -- I mean, we know that DNA can be deposited by
17 breathing, by talking, by transfer, through multiple different
18 steps from the bag. So DNA could be introduced, and, in fact,
19 in this profile, we have at least three contributors, so we
20 clearly have at least -- if you say that one pair of glasses
21 is from one person and one is from the other, we have three
22 males, so there's clearly more DNA there than just somebody
23 who wore the glasses.

24 Q But that is not necessarily introducing an individual who
25 never had contact with them. So, for instance, let's just say

1 hypothetically that the sunglasses that the defendant admitted
2 to wearing had also been worn by other people. They could be
3 part of that mixture; correct?

4 A They could be.

5 Q But that doesn't mean that, including Mr. McClary on the
6 sunglasses that he admitted wearing is incorrect or
7 unreliable; right?

8 A Well, whether he admitted to wearing them or not doesn't
9 develop into any scientific-type analysis. The problem is,
10 when there's multiple people -- and, in this instance,
11 multiple males -- you don't know how to connect any of those
12 males with the particular event. You don't know how they got
13 there. You don't when they got there. There's clearly other
14 male DNA on these combined glasses, and it's impossible to
15 place that DNA in space or time.

16 Q Right. And I don't believe -- does Agent Hefney's report
17 indicate that she is offering an opinion as to when or how
18 Mr. McClary's DNA got there?

19 A Her report doesn't, but I suspect that you are.

20 Q Well, so is the defendant in his confession. But we're
21 dealing with Agent Hefney.

22 Agent Hefney's report does not try to offer a conclusion
23 as to how or when the defendant's DNA was deposited on those
24 glasses; correct? Agent Hefney's report.

25 A Yes. The reason I'm having trouble answering your

1 question is you say Mr. McClary's DNA was deposited on those
2 glasses, and I can't agree with that conclusion. And what the
3 report doesn't do is say whether or how any of the DNA was
4 deposited on these glasses.

5 Q Now, you talk sort of about missing peaks or dropped
6 peaks. It's not that the program somehow erases them. It's
7 really more about whether the analyst is calling that peak;
8 correct?

9 A Yes. And it's not the analyst. I mean, she is using her
10 laboratory's protocols. It's the laboratory's protocol
11 directs the software to do.

12 Q Right. So they're not missing. They are simply not
13 being called.

14 A Correct.

15 Q And so when we looked at D-2 -- and this is something
16 that you created because it's magnified? Can you see that?

17 A Yes, yes. Yeah, I know what it is.

18 Q All right. So then looking at DY-627 --

19 A Yes.

20 Q -- in Agent Hefney's report, which I think was D-1, that
21 same loci, DY-627, Agent Hefney simply called it 22; correct?

22 A Right. She didn't call it. The program called it, but
23 it is called.

24 Q She labeled it 22; correct?

25 A It was labeled 22 by the program, yes.

1 Q You have now or had a computer label 19 of that same
2 loci; correct?

3 A Yes.

4 Q And so can we turn -- or do you have access, I should
5 say, to the electropherogram for the defendant's DNA standard?

6 A I can pull it up, but I also know, because we've done
7 this so much, that he does have a 19 at that locus.

8 Q So by Agent Hefney's -- Agent Hefney actually didn't call
9 a peak that potentially could identify the defendant.

10 A So here's to make that simple. The program did not label
11 the 19. It did label the 22, and that's not conservative.
12 The 22 should have been taken as potentially exculpatory, and
13 because of that, it should never have been put in the
14 statistical program as a single-source analyst. She dropped
15 that locus in particular, and that is exactly where the
16 problem is.

17 Q Now, you're saying that they missed alleles. What
18 alleles are you saying that they missed?

19 A You mean what alleles did the program not call?

20 Q You said -- and I'm trying to read my notes. One nominal
21 thing they'll do is look at how many different alleles were
22 detected, and if they missed alleles, then that could affect
23 an interpretation.

24 A Okay. I think -- I'm not sure what part of my testimony
25 you're pulling that from.

1 Q Today.

2 A But it's true generally that, if threshold is too high,
3 will not label alleles and that will affect several things and
4 it will affect the determinative number of contributors. That
5 happened in this case. They interpreted this profile as two
6 males when it's overtly three males. And then it also could
7 either -- alleles -- the threshold can provide false
8 inclusions or false exclusions in general.

9 Q So I'll ask again: What alleles did Agent Hefney miss or
10 not include?

11 A Let's see. She -- again, not her, it's the program; she
12 didn't make that decision personally. So I will have to go
13 through and compare it here.

14 Q If you don't know, that's fine.

15 A Oh, I do know. I'm just getting ready to explain it to
16 you. So DYS-576 -- is that the first one? I still can't read
17 it. 576, she failed to label a 17 and a 20. At DYS-627, the
18 19 was not labeled. At DYS-19, a 14 and 15 weren't label. At
19 DYS-448, the 17 was not labeled. At DYS-391, the 10 was not
20 labeled. At DYS-390, the 24 was not labeled. And DYS-570,
21 the 16 was not labeled. At DYS-385, the 14 was not labeled.
22 At DYS-449, none of the peaks were labeled: The 29, 30, or
23 35. At DYS-439, the 12 was not labeled. At DYS- -- oh, what
24 is the actual -- DYS-F387, S1. The 38 and the 41 was not
25 labeled, and at DYS-533, the 11 was not labeled. So lots of

1 peaks not labeled.

2 Q Okay. And that's based on the threshold that was set?

3 A Correct.

4 Q And, so, you have already told us that you went through
5 and determined what thresholds you would recommend.

6 A Correct.

7 Q And did you write that down anywhere or would we have to
8 sit here and go through every single one?

9 A I do write down in my notes. I can go back to my data
10 analysis. That would take a few minutes.

11 Q That's okay.

12 Do you have at least a range that you use? What was the
13 lowest threshold you would have recommended, and what was the
14 highest threshold you would have recommended? And if you
15 can't give us the answer right away, I don't want to know it.

16 A Well, there's not a lowest and highest. There is a
17 threshold, and I can tell you that I called peaks in the blue
18 as low as 50, as well as peaks in the green, as well as 58. I
19 called peaks in the yellow as low as 52, peaks in the red as
20 low as 59, and peaks in the purple as low as 55.

21 Q Sorry; I'm bouncing around a little bit because I'm
22 trying to go through my notes from Mr. Fox's direct exam.

23 At one point, you said that all loci should be
24 considered. Does every DNA profile -- whether it's a mixture
25 or a single-source -- always contain information at every

1 loci?

2 **A** So there are certainly profiles that could have no
3 information at all at a locus and that is considered --
4 (inaudible/technical difficulties) at that
5 (inaudible/technical difficulties.)

6 **Q** And you talked about -- going back to your little chart
7 here. For DYS-449, Mr. Fox asked you, I believe -- well, does
8 the defendant -- or does Mr. McClary, he would have said --
9 have a 30 at DYS-449? And you said no. But you also called,
10 with your threshold, a 35 at DYS-449; correct?

11 **A** Correct.

12 **Q** And what is the defendant's -- what is his number or lack
13 of a better way to say it, at DYS-449? It's a 35; right?

14 **A** He has a 35. Let me make sure I'm giving you everything.
15 Yes, it's a 35, correct.

16 **Q** And that is a peak that Agent Hefney did not call,
17 despite the fact that it matches the defendant?

18 **A** Right. The problem, as I keep trying to emphasize, is
19 you can't look individually at loci to see whether there is an
20 allele there or not there, whether I called it or didn't call.
21 You have to look at the profile as a whole, and you have to
22 look at all the loci, and you cannot -- because of the peak
23 heights and the difficulty in this profile and multiple
24 contributors, you cannot say, "Oh, there's a 35 there;
25 therefore, that means the defendant is present," because you

1 don't know which of the other peaks it pairs with. You cannot
2 deconvolve or pull out a single profile, and it is highly
3 misleading to look at numbers or alleles at loci and say, "Oh,
4 they're common to the defendant's profile, it must be him."
5 That would be incorrect.

6 Q Say that last one part again.

7 A You cannot simply look at individual alleles and
8 individual loci and ask are they found in someone's profile,
9 and if they are, to say, oh, it must be it. That would be
10 incorrect.

11 Q Right. But, here, Adrienne Hefney -- Agent Hefney
12 arguably looked at DYS-449 because, again, the setting of the
13 threshold doesn't hide that information. It simply suggests
14 that it not be called as a peak. So it wasn't that Agent
15 Hefney looked and said, "Oh, Mr. McClary is not there, so,
16 therefore, I'm not going to look at it," because, in fact, he
17 was, or at least a number that matches Mr. McClary: 35.

18 A Well, she testified in the hearing that she considered
19 those peaks noise, so if that testimony is correct, she didn't
20 consider them one way or another.

21 Q And then, wrapping up, you talked about the database used
22 to generate statistics for Y-STR. And I believe it was
23 actually Mr. Fox that said, Well, does that mean -- does that
24 mean you can get different answers on different days?

25 But this is a database that presumably is added to it.

1 It's not stagnant. I mean, other profiles are being added to
2 it; correct?

3 **A** Right. That's exactly the point. Profiles are
4 continually added to it, and so, when you're counting, it's
5 going to be different -- different percentages on different
6 days, depending on the size of the database. That's exactly
7 right.

8 **Q** Right. Because it is comparing a particular profile to a
9 different number of profiles. But as long as it's tagged as
10 to that particular day, you would know the number of profiles
11 it's being compared to.

12 **A** It's true, but it misses the point that the actual number
13 is a moving target and doesn't really have a scientific basis,
14 because it changes based on the size of the database. The
15 size of the database is transparent. I'm not arguing with
16 that; I'm simply mentioning that the actual number is not --
17 doesn't really have a meaning in terms of the statistical
18 weight of the evidence.

19 And, again, they should never even have to (inaudible)
20 because there isn't a single profile here to compare it. So
21 while the database is a problem, all of cues leading up to it
22 -- the collection, the swabbing, the interpretation, trying to
23 pull out items, and then the database, again, is yet another a
24 source of ambiguity.

25 **Q** But if you have a database -- and I'm going to use simple

1 numbers, because I don't like math. If you have the Y-STR
2 database that the evidence is being compared to -- so we're
3 going to say that's one -- and then the database has ten
4 profiles, and the statistic is, well, one in ten; right? But,
5 now, if, all of a sudden, there are a lot of profiles added to
6 the database and it's 100, the statistic, presumably, if those
7 additional 90 profiles are different, would now be one in a
8 hundred which, statistically, is different. One in ten is
9 certainly not going to be interpreted the same as one in a
10 hundred or a thousand.

11 A Right. You're making my point for me. There are better
12 ways to do it. Laboratories have not adopted those ways, but
13 they are in the literature. Dr. David Mulding (ph) and
14 Dr. Mickel (ph) Henderson have written papers on better ways
15 to do this that are more reliable and more accurate.
16 Laboratories have not adopted them, but you have highlighted
17 the problem with this database counting, is it is entirely
18 reliant on the size of the database as well as different ways
19 in which it can be searched.

20 Q I was actually just dealing with the size of the
21 database. The size of the database, for any type of
22 comparison, is going to have an effect on a statistic?

23 A Correct.

24 Q And if you have -- all right. I have nothing further.

25 THE COURT: Mr. Fox?

1 MR. FOX: I have no follow-up questions.

2 Dr. Rudin, thank you very much, and that's all for today.

3 THE WITNESS: Thank you.

4 THE COURT: All right. Ms. Walter, as far as what we
5 have left to do this afternoon, about how long would you
6 anticipate that to take?

7 MS. WALTER: Well, the issue is that, for the first time
8 today, I heard that Mr. Fox may think of somehow introducing
9 the first statement, which I'm still not clear how he would do
10 that. That interview is significantly longer than the second
11 one.

12 The second one, which is what the State seeks to
13 introduce, is approximately 45 minutes. So I have provided
14 Your Honor with the transcript.

15 MR. FOX: And the issue with the redactions, Judge, we'll
16 start with the second statement. Again, the *Jackson v. Denno*
17 was heard by Judge Addy, and that statement was ruled to be
18 admissible, so we don't have an objection to that. It's only
19 about any redactions. We have already gone through it, so we
20 can refer to that.

21 In terms of the first statement, so what you had was
22 Mr. McClary was interviewed the evening before by Detective
23 Amos. He denied knowledge or involvement in anything.
24 Detective Morrell then interviewed him again the next day.
25 Detective Amos was not there.

1 I use the phrase "admit." I don't know if I'm going to
2 seek to introduce it into evidence, but I'm certainly going to
3 cross-examine the officers because, without going into the
4 details, one of the arguments I will make is, in his second
5 statement where he says, "it was me, I did this," I would say
6 that -- and you can only get this from asking about the first
7 statement. All of the details he provides, every single one,
8 were given to him by law enforcement at the time before, not
9 that they said, "Hey, remember this, do that."

10 It's striking to me that all of the information that he
11 provides in his supposed confession is all details. You'll
12 hear about a wig and glasses and -- sunglasses and items --
13 you know, everything -- a yellow rag. All of these things are
14 mentioned first by Detective Amos.

15 There is discussion about what would be worse: If he
16 went in there to rape this woman or if he went in there to rob
17 her and things got out of hand? And they agree, well, what
18 would be worse would be the robbery gone wrong rather than a
19 rape or just a, you know, horrible assault. And it's striking
20 when he confesses that it's a robbery gone wrong, is what he
21 described.

22 To give a complete and fair context of what happened in
23 the second interview, I believe -- at the very least, I should
24 be able to cross-examine fully Detective Amos and, to the
25 extent that he has knowledge, Detective Morrell about that

1 first interview. I don't know that I would want to introduce
2 it into evidence.

3 Now, depending on the answer I get, I may well play, you
4 know, "Did he tell you so and so?" "I don't remember."
5 "Okay. May I refresh your memory?" That sort of thing I do
6 with any witness. I clearly can do. And so I think it's
7 more -- and, again, there may be some redaction issues in
8 that.

9 So I believe I absolutely can cross-examine them on that.
10 Whether I even try to introduce it into evidence, we can
11 address that admissibility if I seek to do that, but I think,
12 clearly, I can cross-examine him about it.

13 THE COURT: Ms. Walter?

14 MS. WALTER: Well, I'm going to disagree with part of
15 that; shocking, I know. But I think Mr. Fox can question
16 Detective Amos, "Did you ask the defendant about a
17 multi-colored wig?" Presumably Detective Amos will answer
18 according to the interview. I don't think that -- say he says
19 "I don't remember." I don't think that gets Mr. Fox to being
20 able to play the defendant's portion of the interview. It may
21 be that he can take out a snippet and say, "well, Detective
22 Amos, did you -- is this your voice? Did you bring in a
23 multi-colored wig?" But I don't think it gets him to the
24 point where he can introduce the defendant's responses.

25 MR. FOX: And I don't disagree. And, again, I'm not -- I

1 get the solicitor's position that there's perhaps not a basis
2 to hearing the defendant say over and over again, "I didn't do
3 it, I didn't do it," denying it. For me, it's context. It's
4 not about Mr. McClary's denial. I'll ask the officer about
5 it, but it's more about the context and the things -- so I
6 don't disagree with that. So it's more about context and
7 setting the stage for that second one. And, again, in the
8 realm of cross-examination.

9 THE COURT: All right. And I certainly think you're
10 entitled to bring out, you know, points or facts that were
11 brought up and maybe suggested to the defendant, you know, as
12 part of your defense as to however you decide to attack the
13 confession, but, certainly, when it gets, then, to what the
14 defendant may have said during the first interview, then,
15 that's a bit of a gray area.

16 MR. FOX: And I understand. Just for clarification, my
17 intention would be to ask -- and not belabor it, but ask
18 broadly to Detective Amos, "Mr. McClary denied any
19 involvement." Just a question or two, not literally quoting
20 or playing each line by line because it goes over and over.
21 But to say broadly, did Mr. McClary admit any involvement, or
22 did he deny repeatedly, or something of that nature. I think
23 that would not step across the line without quoting specifics.

24 MS. WALTER: That's fine.

25 THE COURT: Yeah, I don't see any issue with that.

1 MR. FOX: Okay. We think that part would be easier.

2 THE COURT: I wouldn't see any issue unless there's
3 objections to even talk about it, if you needed to use this
4 transcript to refresh the officer's memory, I mean, as far as
5 what questions he might have asked the defendant.

6 MR. FOX: Yes.

7 MS. WALTER: Right.

8 THE COURT: Do you have any issue with that, Ms. Walter?

9 MS. WALTER: No, I mean, as long as -- I mean, if we're
10 not agreeing -- I don't quite -- it's not going back to the
11 jury, so anything to be used to refresh the witness's
12 recollection. If he wants to show it to Detective Amos,
13 assuming, of course, that Detective Amos needs his
14 recollection refreshed or testifies somehow contrary to a
15 question that he asks at the interview.

16 THE COURT: I thought it might be a way to somewhat more
17 streamline this --

18 MS. WALTER: Right.

19 THE COURT: -- than to cue up some kind of audio.

20 MS. WALTER: Right.

21 MR. FOX: And, in that instance, it would be more of a
22 general question, if that makes sense rather than specific,
23 "Did you say this exact thing?" I believe the transcript is
24 accurate. But it's not official and so it would be more of a
25 general type of guideline for everybody.

1 THE COURT: And, again, I think you can use any sort
2 of --

3 MS. WALTER: You can. It doesn't have to be certified.

4 MR. FOX: That's correct. That's right.

5 THE COURT: All right. So that brings us to the second
6 statement.

7 MS. WALTER: The second statement. So perhaps if we
8 wanted to deal with -- I think what would take less time is
9 the renewed motion to suppress any in-court identification.

10 MR. FOX: Yes.

11 THE COURT: All right. Let me just take this opportunity
12 to revisit the *Batson* motion that was brought up by the
13 defense. There were two individuals: Juror No. 263, who is a
14 black female, and 246, who is a black male, according to the
15 strike sheet, and both of those were struck by the State. The
16 defense has now made a *Batson* motion. And the reasons for the
17 strikes on Juror No. 263 is that, when asked if any of the
18 jury panel knew the defendant, that that individual looked
19 away from the defendant as if maybe there was some knowledge
20 of or relationship with the defendant. And then, No. 246,
21 during roll call, the State made notes that Juror No. 246
22 looked at the wall and not directly to the person asking the
23 question and seemed to be disengaged in the process.

24 And I find that those -- that those reasons are not
25 pretextual in nature and that they provide a race- and

1 gender-neutral sufficient reason for the strikes, so I'm going
2 to deny the motion.

3 MS. WALTER: And, Your Honor, may I just ask, I think,
4 more for clarification on the defense's request regarding
5 Juror 173, because Your Honor held it under advisement, but
6 the State is requesting that --

7 THE COURT: I don't have a 173.

8 MS. WALTER: 173 was the one where, after everyone was
9 seated, Mr. Fox said maybe I should have done this before, but
10 I want to strike her for cause because her son is a detention
11 officer at J. Reuben Long. And the State argued that, based
12 on her response, that that would not affect her ability to be
13 a fair and impartial juror. And I believe the way Your Honor
14 left the ruling was that you would hold it under advisement
15 and revisit it if it becomes an issue. But the State believes
16 -- the State would ask that you deny it for now, but if cause
17 develops during the trial, it would be revisited. But I think
18 holding it under advisement now just makes it a little too
19 nebulous.

20 THE COURT: Well, I certainly intended my ruling to mean
21 that I would just take it under advisement until we swear the
22 jury.

23 MS. WALTER: Oh, okay.

24 THE COURT: I was going to deal with it before we swore
25 the jury.

1 You know, I agree that the question was asked and
2 answered. There was no issue that was brought up. You know,
3 the objection was raised after we seated the entire jury.

4 But, Mr. Fox, I'll hear from you, if you have anything.

5 MR. FOX: Judge, part of the reason for waiting was to
6 wait and see how it played out in strikes and so forth. She
7 was at the very end; I think she was the last juror seated.

8 My position would be that asking a general question,
9 "Would the fact that you have a relative -- in this case, your
10 son -- that's in law enforcement affect your ability to be
11 fair and impartial," she said no, it was more of a generic law
12 enforcement, and the appropriate question to ask.

13 But I think, under the specific circumstances here, he's
14 a corrections officer. He works at a detention center here in
15 Conway at J. Reuben Long where Mr. McClary has been kept for
16 the last four years. I don't know if there's been any contact
17 between -- I have no idea. I don't have any indication that
18 there has been.

19 So I think it might be appropriate to ask her one or two
20 follow-up questions, and she may very well be able to satisfy
21 myself and Your Honor, most importantly, that she can, in
22 fact, be a fair and impartial juror, but I think, under the
23 circumstances, we may need just a couple more questions --

24 MS. WALTER: And -- I'm sorry, I'm sorry.

25 MR. FOX: And that's basically it.

1 MS. WALTER: And then, again, the concern that the State
2 raised is that that may highlight the fact that the defendant
3 is in custody, which we typically try not to. So I think it
4 needs to be made clear that, if we are going to ask her
5 pointed questions about any potential interaction between her
6 son and the defendant, that actually would inject cause into
7 it where it may not exist.

8 MR. FOX: Definitely not my intention. I don't think it
9 would. It's true, we don't discuss or reveal a defendant's
10 custody status during trial, but, frankly, I don't know if
11 there's any -- he is. You know, and this would be this juror.

12 I'll leave it to Your Honor. I think I had to raise the
13 issue, and I have raised it. If you feel it's appropriate to
14 go -- I would be comfortable with that, even though it might
15 perhaps bring awareness about his custody status, but if Your
16 Honor feels that's a step too far or that it's been covered
17 already, then I understand your ruling.

18 THE COURT: Okay.

19 MS. WALTER: And the issue would be that, "Well, your son
20 works at J. Reuben Long. By the way, this defendant is
21 there." And it's -- it's absolutely making -- it's injecting
22 cause when she has already said there was nothing about that
23 fact.

24 THE COURT: And that would tend to prejudice the
25 defendant and not the State, in my opinion.

1 MS. WALTER: But it could also make the juror
2 uncomfortable deliberating because now it's going to be,
3 "Well, I can't convict him because then he'll do something to
4 my son," or "While we're in trial, he's going to know that I'm
5 sitting on the jury." And let's just say the defendant is not
6 a model inmate.

7 So to have this idea that we're going to flesh out a
8 relationship between a juror and someone who works where he is
9 being kept; I think, is dangerous and unnecessary, given that
10 the juror clearly stated on the record there was nothing about
11 that that would cause me to be a fair and impartial -- that
12 would cause me not to be fair and impartial.

13 THE COURT: All right. I'm going to leave it under
14 advisement, because there's nothing I can do to question this
15 juror at this point in time. We'll settle this just before we
16 swear the jury in on Wednesday morning.

17 And I will say, for the record, that I remember her
18 saying that her son was a former corrections officer at
19 J. Reuben Long. Obviously, you know, that could be well
20 within the last four years, so...

21 MS. WALTER: I would have to look at that.

22 MR. FOX: I don't recall either way, Judge. I don't
23 doubt that, but...

24 THE COURT: And I might not have heard that right, but I
25 think that's what she said. But, anyway, we'll see.

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1 All right. So now we need to discuss the redactions in a
2 second.

3 MS. WALTER: The post -- the motion to suppress the
4 in-court identification?

5 MR. FOX: Yes.

6 MOTIONS/MATTERS OF LAW

7 MR. FOX: So, Judge, a quick background. At the time, we
8 had motions in February, Ms. Hernandez, who was the young
9 woman who was assaulted in this case, was unable, at the time,
10 to identify anyone partly because she had been beaten and her
11 eyes were shut.

12 So they did discuss -- and I'm not aware that an
13 identification was ever made. They discussed getting a
14 six-pack. No indication they ever took it to her. So there
15 was no identification by Ms. Hernandez. So my thought was,
16 Well, that doesn't implicate *Biggers* because that's where
17 you've got an out-of-court identification.

18 Literally, the next day, a LISTSERV that I'm a part of,
19 there was a message there from Katherine Hudgins, who is at
20 appellant defense, a brief that she filed with that very
21 issue. And it refers to this *U.S. vs. Green*, which is a
22 Fourth Circuit Court of Appeals case. And what *Green* says is,
23 is that -- and what Ms. Hudgins argues is that, even when
24 there hasn't been a prior out-of-court identification --
25 remember what we're talking about is the expectation or

1 possibility that Ms. Hernandez will come in and identify
2 Mr. McClary in court. She may not; I don't know. But we have
3 to address that possibility. And is that procedure in and of
4 itself inherently unfair? Is it inherently prejudicial?
5 Green says it can be, and the Court should make a finding.
6 And that is the thrust of the -- it's *State vs. Allen* --

7 THE COURT: Should that be in camera? I mean, should it
8 be outside the presence of the jury?

9 MR. FOX: What? The --

10 THE COURT: Whatever finding the Court needs to make. In
11 other words -- do you understand what I'm asking?

12 MR. FOX: I'm not exactly sure.

13 THE COURT: I'm just curious as to where -- I mean, is
14 this going to be a situation where we're going to have to take
15 this up regardless at the point in time that the victim may
16 testify in this trial based on the evidence and the testimony
17 that's been presented? I have to make some findings as to the
18 admissibility of the in-court identification, if there is one.

19 MR. FOX: Right. I think there does have to be -- the
20 objection I'm making is -- and what Green discusses -- is
21 this: Not because it's necessarily done improperly.
22 Ms. Hernandez was present, at least for part of the motions in
23 February. Mr. McClary came in the beginning. We did a
24 Farreta hearing. He decided not to participate and went back
25 to the detention center, and I honestly don't remember if

1 Ms. Hernandez was in the courtroom when he was. Because he
2 was not there all day. We were there all day. She was there
3 for a good chunk of it, and I honestly don't remember if she
4 was there when he was.

5 However, it would be very common, not for any nefarious
6 purpose, but it would be very common for the victim's
7 advocate, for the solicitor, prior to any court proceeding, to
8 say, "Ms. Hernandez, here's the layout of the courtroom.
9 You're going to be here. There's the witness stand. There's
10 where the judge is, the court reporter, the clerk. Here's
11 where we will be, and here's where the defense table is. This
12 is where Mr. Fox, the defense attorney, will be. And, by the
13 way, this person that we think attacked you, he's going to be
14 right next to Mr. Fox," not because they're trying to poison
15 the well in any way. That's just normal procedure.

16 Well, at that point -- in fact, most people, just from
17 watching TV know, Hey, the person next to the defense attorney
18 is probably the defendant. And so there is discussion. And
19 there is a split among the federal circuits as to whether or
20 not that can be. It's not, per se, inadmissible or improper,
21 but there's a split. Five circuits say you need to have a
22 finding that this is going to be okay or that, you know what,
23 it's just inherently not okay. It's too confront- -- too
24 prejudicial, rather, to the defendant from the context of that
25 in-court identification.

1 The Fourth Circuit is one of those five that says, "We
2 believe there needs to be a finding by the Court." Again, it
3 doesn't mean Your Honor couldn't find and say, "I think, under
4 all the circumstances, that an in-court identification would
5 be fine." It still may be that she testifies and says, "I
6 don't know." Right? That's possible, in which case it's not
7 an issue. But we need to cross that bridge before we get to
8 it. If Your Honor says -- and I take the position that it
9 just is inherently -- everybody knows who is sitting in next
10 to me.

11 THE COURT: But let me ask you this --

12 MR. FOX: Yes.

13 THE COURT: And I don't mean to interrupt you.

14 MR. FOX: That's okay.

15 THE COURT: Until I hear the evidence --

16 MR. FOX: Yes, sir.

17 THE COURT: -- you know, I haven't been with this case.
18 I don't know the facts of this case. So until I hear the
19 evidence and the testimony and what comes out during this
20 trial, then how am I going to know whether it's going to be
21 reliable or not?

22 MR. FOX: Well, it's not testimony. It's the
23 circumstances that the identification will take place.

24 Again, so, as a threshold issue, there needs to be a
25 determination by Your Honor that, yes -- and I agree; it gets

1 a little strange because you haven't heard the testimony. My
2 position is, it is, per se, not coercive but prejudicial,
3 because, again, she's going to -- it's going to be very
4 obvious who is who in this courtroom, if she's not a lawyer,
5 even if she's never testified before.

6 And the risk of mistaken identification is increased, and
7 I'd ask Your Honor -- and I'll make a copy for Ms. Walter as
8 well. I would urge the Court -- and I'm going to read Green
9 -- and I will hand you a copy of Ms. Hudgins' brief -- there's
10 a case pending now before the Court of Appeals, or at least
11 they've requested cert; I'm not sure they have taken it yet.
12 And it sets it forth, I think, in very plain language, and I
13 would urge, with a day off, if I could impose on you to look
14 at it. It's not particularly long. And then Ms. Walter, of
15 course, could address it perhaps Wednesday morning. I don't
16 mean to certainly prevent her from weighing in, having looked
17 at that, but I do believe there needs to be a finding prior to
18 her taking the stand, because I don't know how that would work
19 other than we can proffer her testimony outside the jury's
20 presence, and you see how it played out and whether you
21 thought it was a problem. I certainly don't think she could
22 do it in front of the jury, and then me object. At that
23 point, I think it would be too late.

24 THE COURT: I understand.

25 MS. WALTER: And, Your Honor, forgive the fact that I'm

1 trying to reply to this on the fly, because when I asked
2 Mr. Fox to give me the case that he was relying on to renew
3 the motion that he withdrew, he declined to share it with me.

4 But just on a brief review of this, first of all, South
5 Carolina is clear that if there has been no out-of-court
6 identification, we'd never get to a hearing about the
7 potential reliability of in-court identification.

8 Number two, as an officer of the court, I am telling Your
9 Honor that I have never shown this victim around the
10 courtroom. She is so traumatized by what the defendant did to
11 her that I am trying to reduce how much exposure she has. I
12 certainly did not, as it appears the prosecutor in *Green* did.
13 "The prosecutor blatantly directed her" -- and I'm at page, I
14 guess, 310 of 704 F.3d. "The prosecutor blatantly directed
15 her to look at the defendant. After she testified, she had
16 intentionally declined to look at Green during her entire time
17 on the witness stand and to describe the similarities with the
18 banker."

19 So there, yes, if I'm going, "Hey, look at him. Is he
20 the one that attacked you?" yes, of course that would be
21 suggestive, but that's not what we have here.

22 So simply because a victim exercised her constitutional
23 rights to be at a pretrial hearing where the defendant was
24 represented by not one but two attorneys to protect his
25 rights, now, all of a sudden, that's suggestive? So the fact

1 that a victim has a constitutional right to appear in court at
2 any critical juncture, that makes her in-court identification
3 suggestive? That's ludicrous, Your Honor. It's ludicrous.

4 MR. FOX: It's not. It's a due process issue. And,
5 again, I'd ask the Court to look that it can be inherently
6 suggestive. I take Ms. Walter absolutely at her word that
7 she -- and, again, I don't think it would have been done for
8 anything improper to set forth the layout.

9 But I'll hand up this brief. I think it addresses South
10 Carolina law. It is my argument. I'm adopting it as my
11 argument with Ms. Hudgins' permission, and the argument
12 specifically is it's a due process issue.

13 THE COURT: All right. I'll be happy to look at it. I
14 mean, I don't think it's something that warrants a ruling this
15 minute. But I certainly understand. I'll take a look at it.

16 MR. FOX: Yes, sir.

17 THE COURT: I would think that, you know, if she can
18 identify the person in court, then that's her right to do so.
19 I certainly will consider your argument.

20 MR. FOX: You can have that.

21 MS. WALTER: Thank you.

22 MR. FOX: And, Your Honor, I'll hand up --

23 THE COURT: All right.

24 MR. FOX: -- a copy as well.

25 THE COURT: Thank you.

1 Do y'all need a break? I was just wondering. We've been
2 here a while.

3 So now we need to --

4 MS. WALTER: We're just down to the redactions. I know
5 Mr. Fox, at one point, said there may be some now that he does
6 not oppose. I mean, honestly, we're kind of stuck because of
7 the State holiday tomorrow; otherwise, it's certainly
8 something that we could take care of tomorrow.

9 MR. FOX: I won't be here -- knowing it's a holiday, I do
10 need to be in Charlotte with my daughter tomorrow. It's not
11 long. If only we're talking about -- it's the shorter of the
12 two.

13 MS. WALTER: Right.

14 MR. FOX: Talking about the Morrell's statement.

15 MS. WALTER: Right.

16 MR. FOX: Because there's some that the State -- it's not
17 just my request. Some of them, I disagree with the State,
18 so...

19 THE COURT: Let me ask you this: Are these suggestions
20 all made under 403 analysis?

21 MS. WALTER: I'd have go through --

22 MR. FOX: Mostly.

23 MS. WALTER: But, honestly, if everyone wants a break, I
24 think this is something that we could -- I'm just trying to
25 figure out. The statement is going to be the last thing that

1 I introduce. I think Detective Morrell is going to be my last
2 witness.

3 MR. FOX: Okay.

4 MS. WALTER: It's certainly something where perhaps
5 Mr. Fox and I can narrow down what is still in contention.

6 MR. FOX: I think that's true. It's mostly not 403-type
7 stuff. There's a couple of things -- we agree on those. I
8 agree. It's not a huge amount of material. We're talking
9 about a line here, line there. We're not talking about big
10 blocks and stuff, for the most part.

11 And I agree with that. And, particularly, if we need --
12 I think we can do it early one morning or at lunch or
13 something.

14 MS. WALTER: Right.

15 MR. FOX: I think we can get that handled and probably
16 agree on 90 percent-plus of it.

17 MS. WALTER: So I'm just going to ask Mr. Fox to go --
18 and I'll go through the redactions that he has previously
19 suggested that I disagreed with; I'll see if I have changed my
20 mind. And if he could go through the ones that I had
21 previously suggested, that he did not agree with, and tell me
22 which ones he did or did not change his mind on, and then we
23 can -- I'll change my highlighting.

24 The reason why I did red, by the way, Your Honor -- I
25 figured it out -- but, no, the red means, like, stop; right?

1 So don't put that in there. So there was a sense to the red.
2 But I will redo the highlighting once we figure out, finally,
3 what we agree on and what we don't.

4 MR. FOX: And I think I can communicate with you during
5 the day tomorrow about that.

6 MS. WALTER: From Charlotte?

7 MR. FOX: Yes, I'm actually going to be sitting there
8 part of the time.

9 MS. WALTER: All right. Well, I will be working.

10 MR. FOX: So I think that should be it today.

11 MS. WALTER: And then we will just do the competency
12 Wednesday morning.

13 MR. FOX: Yes, just put that on the record.

14 MS. WALTER: And Your Honor --

15 THE COURT: If you want to put that on the record now, we
16 can do that.

17 MS. WALTER: Okay. That's fine.

18 Your Honor, I'd ask that this be marked as, I guess, a
19 Court's exhibit. It should not go back to the jury. Your
20 Honor, I would then hand up a report from MUSC dated April
21 27th of 2019, which details an evaluation for competency
22 conducted by Dr. Leahy, L-e-a-h-y, who is supervised by
23 Sheresa, S-h-e-r-e-s-a, Christopher -- Dr. Christopher --
24 finding the defendant competent to stand trial, and I believe
25 the defense is not contesting that.

MOTIONS/MATTERS OF LAW

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1 MR. FOX: That is correct, Your Honor. I have had an
2 opportunity to review that report, and I don't contest the
3 findings it contains.

4 MS. WALTER: So that will be Court's 1.

5 THE COURT: Court's Exhibit 1. We'll take notice of that
6 and certainly make that Court's Exhibit No. 1.

7 (Court's Exhibit No. CT-1, 4/27/19 MUSC Report, was
8 marked for identification.)

9 THE COURT: All right. Is there anything else for today?

10 MR. FOX: No, sir, not from the defense.

11 MS. WALTER: I think we're good.

12 THE COURT: So my understanding is, again, look at this
13 in-court identification case and the Juror No. 173 issue.

14 MR. FOX: Yes.

15 THE COURT: And that's what's outstanding; right?

16 MS. WALTER: Yes.

17 MR. FOX: That's right.

18 THE COURT: All right. Well, I appreciate it.

19 MS. WALTER: Thank you, Your Honor.

20 MR. FOX: Thank you very much.

21 (At 4:42 p.m., the above hearing was adjourned until May
22 11, 2022, at 9:30 a.m.)
23
24
25

CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Horry)

RE: State v. Demetrius McClary (Volume 1)

I, Bobbi J. Fisher, Registered Professional Reporter
(RPR) and Official Court Reporter III for the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the proceedings
had and evidence introduced in the trial of the captioned case
in the Court of General Sessions for Horry County, South
Carolina, on the 9th of May, 2022.

Submitted: August 8, 2022

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter III

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD

3 -----X
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff,)
6 vs.) Case No. 2018-GS-26-04177
7 DEMETRIUS LAWON McCLARY,) 2018-GS-26-04178
8 Defendant.) 2018-GS-26-04179
9 -----X

Wednesday, May 11, 2022

10 JURY TRIAL - VOLUME 2 OF 4

11 B E F O R E:

12 The Honorable H. Steven DeBerry, IV, Presiding Judge;
13 and a jury.

14 A P P E A R A N C E S:

15 Mary-Ellen Walter, Esq.
16 C. Leigh Andrew, Esq.
Assistant Solicitors for the State

17 Eric Fox, Esq.
18 Caitlyn Caldwell, Esq.
Attorneys for the Defendant

19
20
21
22
23
24
25 Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

1 P R O C E E D I N G S

2 (The following proceedings commenced at 9:34 a.m.)

3 (State's Exhibit Nos. 1 through 61 were marked for
4 identification.)

5 THE COURT: I understand we're still waiting on a juror.

6 MS. WALTER: One not really administrative thing, but
7 what I believe is easier with the jury is I have -- and I have
8 shown Mr. Fox all of the exhibits; I have provided him with an
9 exhibit list. I have the physical copies of the photos so
10 that, if they are admitted, they can go back to the jury room.
11 But to save having to walk back and forth in front of the jury
12 box, I have digital versions to show on the TV --

13 THE COURT: Okay.

14 MS. WALTER: -- so that everyone can see it at once.

15 MR. FOX: And I have no objection to that, Your Honor.

16 MS. WALTER: It's not shown until, obviously, it's
17 admitted and published.

18 THE COURT: Are there any stipulations to evidence?

19 MS. WALTER: No. I am going to have to jump through all
20 the hoops. The only one I think that we will have any -- two
21 that we'll have any real objection to -- I'm approaching with
22 Exhibits 30 and 31.

23 And, Your Honor, all the exhibits are premarked.

24 THE COURT: So do you want to talk about this now?

25 MS. WALTER: Well, I just -- if we're waiting for a

1 juror, it might make sense.

2 Your Honor, Exhibits 30 and 31 are photos of the victim
3 taken shortly -- at the hospital shortly after the assault.
4 The State believes that they are certainly probative to the
5 charges because the defendant is charged with assault and
6 battery of a high and aggravated nature; additionally, assault
7 with intent to commit CSC first.

8 I think that the extent of the victim's injuries
9 certainly are relevant and appropriate. We have only chosen
10 two photos, so I think that we have shown some restraint, and
11 we believe that we should be able to show those.

12 THE COURT: All right. Mr. Fox?

13 MR. FOX: Judge, I'll start with the last. I don't see
14 how either of those are probative -- either of those
15 photographs, 30 or 31, are probative of evidence of an assault
16 to commit criminal sexual conduct. They're photographs of the
17 face and a little bit of the upper torso of the victim in one.
18 I believe 30 shows a little bit more. 31 is a close-up of the
19 victim, but I don't see how they, in any way, are probative of
20 that charge.

21 THE COURT: But they're prosecuting for ABHAN as well;
22 right?

23 MR. FOX: Yes, they are, Your Honor.

24 And I believe they are meant to inflame the passions of
25 the jury. Testimony about her injuries can be provided from a

1 number of other sources: From Ms. Hernandez herself, from
2 EMS, from any persons that saw her in the hotel or in the
3 hospital, and of course the medical personnel from the
4 hospital.

5 So there's another way to do it that wouldn't implicate
6 the emotional aspect of it. We think particularly 30, which
7 shows dried blood, things that really doesn't show the
8 injuries the way that 31 shows her cleaned up a little bit.
9 The injuries are still visible but not as inflammatory as I
10 believe 30 is. I object to both. I think 30, in particular,
11 is more inflammatory with the dried blood all over her face.

12 THE COURT: All right. Anything further?

13 MS. WALTER: I was just going to say, Your Honor, that I
14 don't believe that there's any case law that says that we
15 cannot introduce those. Certainly, the victim's condition is
16 relevant to both the charge of ABHAN and assault with intent
17 to commit CSC first. We have to prove an assault. It doesn't
18 have to be an assault of the genital areas of the victim. It
19 can be an assault on any part of her body.

20 This was one continuous event, and, again, only those two
21 photographs -- just because we can get testimony about them as
22 well does not mean that the State should be precluded from
23 showing the jury exactly what happened, what she looked like.

24 THE COURT: And I agree. You know, given the proper
25 foundation, I don't think that these are overly prejudicial.

1 It just shows the fact of the injuries. All right?

2 MS. WALTER: Thank you, Your Honor. And I, obviously,
3 will lay the foundation.

4 THE COURT: All right. As far as the Juror No. 173, that
5 was the juror who was -- who -- I recall saying that she had a
6 family member that was a former corrections officer at
7 J. Reuben Long. She didn't say the years of that person's
8 service or anything along those lines but also didn't follow
9 up with any other information. Certainly, there was questions
10 that were asked of the jurors that was probative of any bias
11 or prejudice that they may have, and she didn't respond to any
12 of those.

13 And I think that the questions that were asked are
14 sufficient, and I think that there is some danger if we
15 brought her out and asked her specific questions as to that,
16 that it might cause some trouble as far as her remaining
17 impartial.

18 MR. FOX: And, Judge, very briefly for the record, in
19 looking back at our notes, I see that that is exactly what the
20 juror said on voir dire, is that she had a relative that used
21 to work there, and that is reflected in my notes as well. I
22 just wanted to make that clear.

23 THE COURT: All right. I have also looked into the
24 in-court ID issue or issue that's been raised by the defense.
25 I understand your position, certainly. I don't know that

1 there's any evidence, especially given the statement that was
2 provided by Ms. Walter, that suggests any of the factors in
3 *Biggers* have been violated or exist even at this time, as far
4 as what I have heard. And so, you know, unless that changes
5 throughout the course of the trial, then I think the -- if
6 there is an in-court identification that is elicited, then
7 I'll certainly reserve my right to change the ruling, but I
8 think, at this time, I certainly haven't heard anything that
9 would make that impermissible.

10 MS. WALTER: I'm sorry, Your Honor; I did have a chance
11 to skim what Mr. Fox had passed up. I think I mentioned
12 yesterday that in *United States vs. Greene*, which was the
13 Fourth Circuit case, that was where the prosecutor actually
14 basically said, "Hey, is that the person who attacked you,"
15 which certainly will not happen here. Again, I'm just sort of
16 going off of memory.

17 And then, in the appellate brief that Mr. Fox handed up,
18 there was a prior incorrect identification, which we do not
19 have here. I certainly think that both cases are factually
20 distinguishable from this one.

21 THE COURT: And I agree with that. And that's one issue
22 I have about trying to these do these pretrial criminal
23 motions with different judges. You know, there's one train --
24 there's one line of cases that says that the trial judge is
25 not bound whatsoever by any pretrial rulings, and then some

1 people think otherwise. But I'm not even familiar with this
2 case enough at this point in time to know. Was there any
3 pretrial identifications?

4 MS. WALTER: No, there wasn't, Your Honor. And this
5 motion actually has not been ruled on. The other motions were
6 ruled on by Judge Addy, but at the time of the pretrial
7 motions, Mr. Fox actually withdrew this motion, and then,
8 after that day of pretrial hearings, came across -- or the
9 Fourth Circuit case was brought to his attention, and he asked
10 to, I guess, renew the motion. But it had been previously
11 withdrawn and has not been ruled on. But there were no prior
12 identifications, no out-of-court identifications.

13 MR. FOX: That is correct, that summation of how we got
14 here. And, just for the record -- I understand the Court's
15 ruling, but just so it will be clear: In the event that
16 appellate consideration is needed, the *Greene* case that's been
17 referred to is *DeShawn Jamel Greene*, with an "E" at the end,
18 *vs. United States of America*. One moment, Your Honor. Had
19 them right at the top, and I was all prepared to cite it.

20 Well, that's the case name. And, as well, Your Honor, I
21 know I handed this up on Monday, and I'd like to make it -- I
22 guess it would be a Court's exhibit but part of the record. I
23 would adopt in full the argument of the Commission on Indigent
24 Defense and their brief in the case of *The State vs. Allen*
25 *Angelo Fields*. That is the lower case, not lower court. Case

1 number is 2017-GS-10-02131.

2 And so this is a request for cert to the Court of
3 Appeals. If Your Honor does not still have a copy, I can hand
4 it up. I'd request that we just make it part of -- I guess it
5 would be a Court's exhibit. We're adopting that argument in
6 full, and if it is being reviewed, we'd like the appellate
7 courts to consider this as well.

8 THE COURT: That's no problem. You can make that a
9 Court's exhibit.

10 And basically, the way I understand it is, if that
11 argument were to be adopted, then, basically, it would just
12 provide a *Neil vs. Biggers* analysis of an in-court situation
13 or identification; is that right?

14 MR. FOX: I believe so, yes, sir.

15 THE COURT: And, as I have stated, you know, considering
16 the factors in *Neil vs. Biggers*, I don't have any reason to
17 preclude an in-court identification at this time.

18 MR. FOX: Yes, sir, I understand.

19 (Court's Exhibit No. CT-2, Case Citation, was marked for
20 identification.)

21 MS. WALTER: And then the last thing -- and it won't take
22 long. I think, with the proposed redactions -- because, at
23 this point, I think Mr. Fox and I are focused on the second
24 interview, which is the one with Detective Morrell, and I
25 don't believe the arguments there are about tone or anything

1 of that sort. I think that Your Honor can make the rulings
2 based on just reading the transcript versus having to watch
3 the video, but I'll leave that to Mr. Fox. But our concern
4 yesterday was, if it was going to be about the tone used by
5 the detectives, then I think Your Honor would need to watch
6 the actual interview. My understanding -- and maybe I'm wrong
7 -- for the Detective Morrell interview, is that it's more of a
8 content of the proposed redactions.

9 MR. FOX: I agree with that, Judge. It's more --
10 although, I think we do need to be heard on it. It's shifting
11 rationale, but I agree. I don't know that you need to listen
12 to the interview when we can simply go to the page and line.

13 MS. WALTER: Right, that's what I was suggesting.

14 MR. FOX: Right. And I agree with that. We do that, I
15 think, fairly quickly.

16 THE COURT: Okay. And that's just something we need to
17 take up before a certain witness; right?

18 MS. WALTER: Well, Your Honor, my office will need -- the
19 redactions that have been previously agreed to have already
20 been taken out of the interview, but the ones where there is
21 no agreement have not been. So I just need time for them to
22 do the redactions and then, obviously, I want to give Mr. Fox
23 a copy so that he can make sure that it comports with the
24 Court's ruling. So I don't know whether maybe we can do that
25 at lunch.

1 THE COURT: We'll do it at whatever makes the most sense,
2 certainly, on how you're going to try your case. I mean, we
3 might take it up if we're waiting on a juror. Are we waiting
4 on a juror? Oh, we got all the jurors. All right.

5 All right. Is there anything further before we bring the
6 jury in?

7 MS. WALTER: I don't believe so, Your Honor. We took
8 care of competency yesterday.

9 Oh, when Your Honor reads the indictments, the indictment
10 for burglary was previously the subject of a consent motion to
11 amend the indictment. While the indictment does not contain
12 the handwritten changes, I was told by the clerk's office that
13 the motion and the form were attached to it. The only change
14 was that, instead of saying the dwelling of Liliana
15 Hernandez-Diaz, it just says "in the dwelling," I believe is
16 the change. So I just wanted to make sure that Your Honor was
17 aware of that before you read the indictment.

18 THE COURT: All right. And, basically, all I plan to do
19 is just read: "The defendant is charged by indictments filed
20 in this court with the grounds of..." and that's it.

21 MS. WALTER: That's fine.

22 THE COURT: Any objection to that?

23 MR. FOX: No, sir.

24 THE COURT: All right. And just so -- is there any order
25 in which we list the crimes? Does anybody have a position on

1 that?

2 MS. WALTER: When I talk about them, I just list them in
3 the order that they are in my file, but I don't think it
4 matters.

5 THE COURT: All right. Will you read those?

6 MS. WALTER: The first charge, which is indictment ending
7 4177 is the ABHAN charge; 4178 is the burglary, first charge;
8 4179 is the kidnapping; and 4180 is assault with intent to
9 commit CSC, first.

10 THE COURT: Attempt to --

11 MS. WALTER: Assault with intent to commit criminal
12 sexual conduct, first degree.

13 THE COURT: Does the victim require an interpreter?

14 MS. WALTER: Yes, Your Honor. The first two witnesses,
15 which would be the victim and her partner, both will be using
16 an interpreter.

17 THE COURT: And the interpreter is court approved?

18 MS. WALTER: Yes, Your Honor.

19 MR. FOX: And, Your Honor, the witnesses -- we'd move
20 that all witnesses be sequestered until they testify.

21 MS. WALTER: That's fine. Obviously, Your Honor, the
22 victim is permitted to stay. Detective Amos would be the
23 State's designated law enforcement officer. And Mr. Aguilar
24 Alonzo will actually be the State's first witness. So if
25 Mr. Fox wants him out until he's actually called, but...

1 MR. FOX: No, that's fine.

2 MS. WALTER: He'll be our first witness, and everyone
3 else is sequestered.

4 (Court talks to clerk off the record.)

5 THE COURT: All right. Can we have the jury, please?

6 (The jury entered the courtroom at 9:53 a.m.)

7 THE COURT: All right. Good morning, ladies and
8 gentlemen. Thank you for returning here and being ready to
9 go. I hope each of you had a good day yesterday.

10 So, at this time, we're going to ask the clerk of court
11 to swear you in, and we're going to begin this trial.

12 (Jury duly sworn by the clerk.)

13 THE COURT: All right, ladies and gentlemen. The case
14 we're about to try is the case of State of South Carolina
15 versus Demetrius Lawon McClary. Before we begin this trial, I
16 want to tell you that this trial might be different from what
17 you might expect. Many people don't have the chance to attend
18 actual court sessions as you're doing now. Many think, from
19 watching television or movies or reading books, that trials
20 are always full of high drama, intense action, and riveting
21 circumstances. And while sometimes all of these may be true,
22 this trial is not for entertainment. It's a fundamental part
23 of our democracy, a search for what happened, and an effort to
24 make sure that justice is done between the parties before this
25 Court. Doing so is often slow, deliberate, and repetitive,

1 and sometimes it might be the opposite of what you may have
2 seen on television and movies or read in books.

3 This courtroom is a place of honor, dedicated to the
4 protection and preservation of citizens' rights through what
5 many have called the greatest system of justice that's ever
6 been created. The attorneys appearing before you are
7 advocates for the parties that they represent, but first and
8 foremost, they are officers of this court and sworn to uphold
9 the integrity and fairness of our judicial system and to help
10 you in the search for what happened. You should expect them
11 to be professional, competent, and ethical in the
12 representation of their interest and their clients, and
13 remember that you have taken an oath to try this case and to
14 reach a verdict, and you're also expected to be professional,
15 reasonable, and ethical. So thank you for accepting the
16 responsibility of jury service and for your contribution to
17 our system of justice.

18 What I will now say is intended to serve as an
19 introduction to the trial of this case. These remarks are not
20 a charge on the law in this case. I will instruct you on the
21 law applicable to this case at the end of this trial before
22 you retire to consider your verdict. This is merely an
23 explanation of the procedure that we will follow in the trial
24 of this case so that you may better understand what's going on
25 during this case.

1 The defendant is charged by indictments filed in this
2 court with the crimes of assault and battery of a high and
3 aggravated nature, burglary in the first degree, kidnapping,
4 and assault with intent to commit criminal sexual conduct in
5 the first degree.

6 The elements of these crimes will be explained to you at
7 a later time. The indictments are simply the charges by which
8 the charge is brought into this Court. They are not in any
9 way and in any sense evidence of any allegations that they
10 contain.

11 The defendant has pled not guilty to these indictments.
12 The State, therefore, has the burden of proving each of the
13 elements of these indictments beyond a reasonable doubt, and
14 it will be your duty, ladies and gentlemen, to decide whether
15 the State has met that burden at the end of this trial.

16 Your purpose as jurors is to find and determine what the
17 facts are in this case. You, as the jury, are the sole judges
18 of the fact. And if, at any time, I, as the trial judge, make
19 any comment regarding the facts, you must disregard that. You
20 are to determine the facts from the testimony you hear and the
21 other evidence that's introduced during this trial. It's up
22 to you to determine the inferences which you feel may be
23 properly drawn from that evidence.

24 It's especially important that you perform your duty to
25 determine the facts diligently and consciously because,

1 ordinarily, there's no way to correct an erroneous
2 determination of the fact by you, the jury.

3 On the other hand, and with equal emphasis, the same law
4 that makes you the judges of the facts makes me the judge of
5 the law. The law, as given by the court, is the only law that
6 you can consider. You must accept and follow it even though
7 you might disagree with it. I can't tell you what the facts
8 are, and you can't disagree with me about what the law is or
9 what the law should be.

10 Your job is to take the law as I give it to you and apply
11 it to the facts as you find them from the testimony of the
12 witnesses and other evidence that's introduced during this
13 trial. After doing that, you will render a verdict, a verdict
14 under the solemn oath that you just took as jurors.

15 You must decide this case based solely on the evidence
16 here in this courtroom. It means that, during the trial, you
17 must not conduct any independent research about this case, the
18 facts of the case, evidence presented in this case, or the
19 people or organizations involved in any way in this case.
20 Please do not try to find out information from any source
21 outside of this courtroom. In other words, you must not look
22 at dictionaries or other reference materials, search the
23 internet, websites, social media, blogs, or anything else,
24 watch any TV related to this case, if there is any,
25 whatsoever. Again, it's important that you only hear -- that

1 you only decide the facts of this case based on the testimony
2 and the evidence that's presented in this courtroom.

3 It's important that you keep an open mind and not decide
4 any issue in this case until all of the evidence has been
5 presented, the parties have made their closing arguments, and
6 I have instructed you on the law in this case. It's your
7 solemn responsibility to determine the guilt or the innocence
8 of the defendant, and your verdict must be based solely on the
9 evidence as it is presented to you in this trial and on the
10 law as I instruct it to you during and at the close of this
11 trial.

12 In just a moment, the solicitor will make what's called
13 an opening statement in which the solicitor will explain to
14 you the issues in this case or at least what the solicitor
15 thinks the issues are in this case. The attorneys for the
16 defendant may also make an opening statement, although they're
17 not required to do so. What the attorneys tell you during
18 their opening statements is not evidence in this case. It's
19 only their contention as to what the issues are. The evidence
20 in this case will be presented to you by the testimony of
21 sworn witnesses from this witness stand and other exhibits and
22 documents that may be introduced into evidence during this
23 trial.

24 From time to time during this trial, you may hear one of
25 the lawyers ask or say something like, "Your Honor, I believe

1 we have a question of law or a matter of law to discuss with
2 you." At that time, we might have to send you to your jury
3 room. And, again, it's because I, as the trial judge, may
4 have to make some comment on the facts of this case, and
5 anything I have to say about the facts of this case should not
6 be heard by you whatsoever. So if that happens -- and it
7 probably will -- don't be upset. We'll be out here working
8 and we'll resolve the issues of the matters of law, and then
9 we'll bring you back out to resume the trial. Again, I
10 promise not to waste any of your time and try to make the most
11 efficient use of your time as humanly possible. All right.

12 So in determining what the facts are, you must decide
13 whether or not the testimony of the witnesses is believable.
14 It will be my responsibility to rule as a matter of law as to
15 whether certain testimony is admissible at all, or maybe not,
16 but once the testimony is admitted, whether or not you believe
17 it, is solely for you to determine.

18 In deciding whether to believe a witness, you have the
19 right to consider the interest of any witness, the bias of any
20 witness, the prejudice of any witness, the opportunity for the
21 witness to have seen the matters and things about which the
22 witness may testify, and the way the witness acts on the
23 witness stand. You have a right to consider anything that's
24 in the record that would help you evaluate the testimony of
25 the witnesses. That means it's your duty to pay close

1 attention to these witnesses, to observe them, to listen to
2 them, and to pay close attention to the attorneys and to the
3 Court. Don't let your thoughts wander but give strict
4 attention to the testimony in this case so that, at the end of
5 all the testimony, after arguments of counsel and the charge
6 on the law by the court, you will be in a position to
7 determine what the facts are and to apply the law to those
8 facts as I give it to you and render a verdict.

9 So, at this time, in order to preserve everyone's rights,
10 I'll give each side the opportunity to object to the opening
11 charge.

12 MS. WALTER: None from the State, Your Honor.

13 MR. FOX: None, Your Honor.

14 THE COURT: All right. And, at this time, I'll recognize
15 the solicitor for opening argument.

16 MS. WALTER: Thank you, Your Honor. May it please the
17 Court?

18 OPENING STATEMENT ON BEHALF OF THE STATE

19 MS. WALTER: On March 20th of 2018, Liliana
20 Hernandez-Diaz showed up for work at the Sheraton Convention
21 Center as she had almost every day for over 10 years. She was
22 a house cleaner there. Her normal floor was the fourth floor.
23 Excuse me. Her co-workers would describe her as kind, sweet,
24 a hard worker.

25 So she got there that day. She gathered her things. She

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1 got the master key, her cart, the cleaning supplies, and she
2 went up to begin her duties. She went to Room 405. She
3 pulled her cart right in front of the door so that it wasn't
4 blocking the hallway. She went inside the room, propped the
5 door open, and began vacuuming.

6 She'll tell you that the hall was mostly empty that day.
7 She's vacuuming, not thinking about anything else that might
8 happen, minding her own business, when, all of a sudden, the
9 defendant comes up behind her -- she had not been able to hear
10 him move the cart or open the door because she was vacuuming.
11 He comes up behind her and says, "Have you ever been raped?"
12 And he takes a yellow cloth and puts it over her mouth. And
13 she could smell something odd about that cloth and immediately
14 started trying to get it away from her face.

15 At that point, the defendant said, "Well, if you don't
16 want it the good way, then it will be the bad way," and he
17 turned her around and hit her. At that point, she was able to
18 see that he's wearing dark glasses and a multicolored wig, and
19 she began a fight for her life, a fight that would go on, in
20 her mind, for eternity.

21 He starts to punch her. He goes over to the room door
22 and tries to shut it to lock her in that room, but she had
23 propped it open with a doorstop, and it was still in there, so
24 he couldn't shut the door. Liliana took this opportunity to
25 run for the bathroom, thinking she could lock herself in there

1 and save herself. But during the struggle that had already
2 happened, the vacuum cleaner cord had gotten wrapped around
3 her leg, and so she wasn't able to shut and lock the door.

4 So the defendant came after her, grabbed her by the hair
5 and started pulling her back to where the initial assault
6 began, back towards the bedroom area of the hotel room. And
7 still, she's fighting and screaming, and he's yelling at her,
8 "Shut up, shut up," punching her.

9 He gets on top of her. He's pulling at her clothes.
10 She's desperately trying to get him off of her. She's able to
11 push him, and he falls into sort of a mirrored door, and all
12 that does is make him angrier.

13 Again, she tries to run into the bathroom. She tries to
14 hide under the vanity, again, just to escape. He pulls her
15 out. He gets on top of her again. And, this time, he wraps
16 his hands around her throat and chokes her, but she doesn't
17 lose consciousness.

18 Again, the struggle continues, and she's just doing
19 everything she can, trying to push him off. She pushes him
20 back. He falls into the corner of the vanity. And, again,
21 she tries to get up. This time, she falls. She's in between
22 the toilet and the tub. He starts hitting her again, and so
23 she grabs what she'll call his intimate parts and she holds
24 on. He keeps beating her and beating her. She's finally able
25 to get herself under the vanity.

OPENING STATEMENT ON BEHALF OF THE STATE

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1 So what does he do? He holds on, and he just starts
2 kicking her, kicking her, kicking her. She eventually
3 pretends that she has passed out, and he still just keeps
4 kicking her to see if she'll move.

5 Eventually, he gives up and leaves the room. And
6 Liliana, bloodied, cut, injured, and terrified, manages to get
7 to the hotel -- the room door, take the doorstop out, shut and
8 lock the door. She holds onto the wall as she stumbles to the
9 room phone, and she calls down to the front desk. There's no
10 answer. Somehow she has the presence of mind to find her cell
11 phone, and she manages to call her boyfriend, Sergio, who also
12 worked at the hotel, but he was not there that day. And she
13 said, "I need help. Can you call the front desk and tell them
14 to help me in Room 405?"

15 Security comes up. The head of security, Joe Steven, and
16 the head of maintenance, Tony Lee, and they see her cart still
17 in the door, still in front of the room, with blood spattered
18 on it, blood on the door, and they knock on the door,
19 "Security, security." And Liliana recognizes Joe's voice,
20 because she's worked there for so long. They know each other.
21 They saw each other on almost a daily basis.

22 And she's finally safe, so she opens up the door. And
23 you'll hear Joe tell you that she was so bloodied, so
24 battered, that the only way he was able to recognize her was
25 by her name tag -- someone that he had worked with on an

1 almost daily basis for over 10 years.

2 The police are called. The hotel had video surveillance
3 from a stairwell that was right near the room where this
4 happened. They pulled the surveillance video, and quickly
5 what we call a BOLO, or "be on the lookout," is issued. And
6 the defendant and his friends are stopped later that night.

7 The first time he speaks with detectives, he denies
8 involvement, but then he has some conversation with God or a
9 higher power and asks the detectives to return the next day, a
10 different set of detectives.

11 And, at that time, he finally admits to almost everything
12 that he did. He admits to going into the room and attacking
13 Liliana and just beating her and beating her and beating her,
14 but he won't admit, during that interview, that he was trying
15 to rape her, despite saying to her, "Have you ever been raped?
16 If you don't want it the good way, you'll get it the bad way."

17 So, in a nutshell, those are the facts that you're going
18 to hear. And you will hear Liliana testify to you through an
19 interpreter, Sergio will testify to you through an
20 interpreter, as to exactly what happened that day. Liliana
21 will tell you that the defendant's face is burned in her mind
22 forever. It's been burned in her mind since she turned around
23 and saw him with those dark glasses and that multicolored wig,
24 which, by the way, during the assault, she was able to rip off
25 the glasses and rip off the wig.

OPENING STATEMENT ON BEHALF OF THE STATE

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1 In addition to Liliana's testimony, you will hear
2 testimony from crime scene investigators. They recovered the
3 yellow rag, Liliana's glasses, and the defendant's dark
4 glasses, and the wig.

5 Now, I will tell you, the crime scene investigator made
6 some mistakes in this case. The yellow rag was not packaged
7 properly, so we will never know what, if anything, was on the
8 rag, but they did recover the yellow rag. When they recovered
9 Liliana's glasses and the defendant's glasses -- and they
10 didn't know whose was whose at that point -- they should have
11 packaged them separately, but they packaged them together.
12 And the defense will tell you, I'm sure, that that's a fatal
13 flaw with that evidence, but it's not, and you're going to
14 hear plenty of DNA evidence.

15 However, Liliana, as she was scratching the defendant,
16 trying to get his hands out of her face -- and she'll tell
17 you, her nails were cut short so she couldn't really inflict
18 any damage, but she was able to get his DNA under her
19 fingernails, and you'll hear evidence about that as well.

20 You will hear that crime scene did recover the
21 defendant's fingerprint from the tub, and mind you, the
22 defendant was not a registered guest at that hotel, had
23 absolutely no business in Room 405. And you will also hear
24 and see the defendant's statement where he admits to attacking
25 Liliana.

1 That is why we are here. Opening statements are sort of
2 like a table of contents or like a preface to a book because
3 other than what the judge just told you, you have no idea why
4 you're sitting here. And the evidence is going to come in not
5 necessarily in a chronological order, as it would in a movie
6 or on TV or in a book, because different witnesses have
7 different parts of what happened, and we are dependent
8 oftentimes on other people's schedules, so witnesses may need
9 to get called out of order. But this way at least you'll have
10 sort of the framework, and as you listen to evidence, you can
11 start to put it into place: Why does this matter to me?

12 Now, the judge read to you the charges, again, to the
13 defendant, and he absolutely is the judge of the law. So if I
14 say something that he later contradicts, he's right, and I'm
15 wrong. And I don't say that often about most people, but he
16 is right, I am wrong. He is the judge of the law.

17 But this is what the State has to prove to you. The
18 defendant is charged with assault and battery of a high and
19 aggravated nature. Assault and battery, most of you can
20 probably figure out. If I say -- if I go up to Ms. Andrew and
21 say, "I'm going to hit you," that's the assault. If I then
22 hit her, that's the battery.

23 So assault and battery of a high and aggravated nature,
24 as you might guess, needs some aggravating circumstance. And
25 there are a number of examples that you will be given as to

OPENING STATEMENT ON BEHALF OF THE STATE

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1 what can be an aggravating circumstance. Number one, an
2 intent to commit a felony, such as kidnapping or burglary or
3 rape; number two, a gender difference, male versus female, or
4 the infliction of bodily injury. And you will hear about
5 Liliana's injuries, and you will see photos of her injuries.

6 As for the burglary, first degree, that means that the
7 defendant entered a dwelling without consent. A hotel room is
8 a dwelling. He certainly did not have consent. With the
9 intent to commit a felony inside. Again, kidnapping, assault,
10 rape.

11 And it also becomes first degree if the defendant causes
12 physical injury -- serious bodily injury to a nonparticipant,
13 the victim, Liliana, during the course of that burglary.

14 He is also charged with kidnapping. Now, most people --
15 again, a lot of people base their idea of the law on movies
16 and TV. So, like, "Taken," Liam Neeson's series. Many people
17 think that kidnapping is --

18 [Cellphone rings.]

19 Many people believe that kidnapping is I take someone, I
20 take them away, and I demand ransom or something of that sort.
21 But kidnapping also is committed by confining someone,
22 preventing them from leaving, keeping them locked in a hotel
23 room as you beat them and beat them and beat them.

24 And then, lastly, assault with intent to commit criminal
25 sexual conduct in the first degree. Criminal sexual conduct

1 is the law's way -- South Carolina's way of talking about
2 rape. That's essentially what it is. So for assault to
3 commit -- assault with intent to commit criminal sexual
4 conduct in the first degree, again, the State has to prove
5 this assault, similar to what we are proving for assault and
6 battery of a high and aggravated nature, but it must be
7 coupled with the intent to commit the criminal sexual conduct
8 in the first degree.

9 Saying to a woman or to anyone, quite frankly, "Have you
10 ever been raped? Well, if you don't want it the good way,
11 you'll have it the bad way," and ripping at her clothes, that
12 all establishes the intent to commit criminal sexual conduct
13 in the first degree.

14 You will hear from Liliana's own mouth that she fought
15 for what she felt was an eternity. And she has been fighting
16 every day since March 20th of 2018 to bring closure to what
17 happened to her. And that fight is going to continue until
18 you, as a jury, unanimously find the defendant guilty of all
19 charges. Thank you.

20 THE COURT: Mr. Fox?

21 MR. FOX: If it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

24 MR. FOX: Some people's facts are other people's
25 allegations, and that's what you have right now. These are

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

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1 allegations. I don't think you'll have any doubt in your mind
2 that there was an assault that took place of some type. I
3 don't think that's really a question. We're not debating that
4 something happened. It's very much a debate and an argument
5 and a disagreement over what it is, as defined by the law, and
6 the judge, at the end of the case, will give you the law.
7 Right?

8 So these things -- these crimes that the solicitor just
9 described to you -- the first-degree burglary, kidnapping,
10 etc. -- those are crimes that are made so by the legislature
11 of the State of South Carolina, and they define those things,
12 and the judge will give you those definitions. Okay?

13 I'm not going to take the time to go through point by
14 point, but I want to say, we disagree a great deal on the
15 facts of the case, we disagree on the law that applies, and
16 I'll just give you a couple of examples.

17 I think Ms. Walter gave you an accurate description about
18 what burglary is, first-degree burglary, but the key in this
19 case would be dwelling. First-degree burglary first requires,
20 as a threshold, that the location involved is a dwelling.
21 That's a legal determination. It's also a factual
22 determination for you-all to decide. The judge will define
23 these things for you, but I'll tell you there is case law that
24 a hotel is not a dwelling -- an unoccupied hotel room is not a
25 dwelling. If it's not a dwelling, it's not a burglary. All

1 right?

2 Assault and battery of a high and aggravated nature. I
3 don't believe that's quite accurate. The elements that
4 Ms. Walter gave you, they are defined quite clearly by the
5 legislature. It is "great bodily injury to another person,"
6 and that is defined. I'm not going to do that; you're going
7 to get that from the judge. But great bodily injury is
8 specific. It doesn't just mean gross and bad. It is very
9 specific, and the judge will tell you exactly what that is.

10 And the act is accomplished by means likely to produce
11 death or great bodily injury. And, again, death is death, and
12 great bodily injury is defined. So those are just two
13 examples of the legal issues where we have a very different
14 view of things than the solicitor does.

15 I will point out, at the end of the case, issues I have
16 with the evidence as presented. I certainly disagree with
17 some of the characterizations that Ms. Walter has set forth.
18 This is argument. She's entitled -- she, of course, has her
19 view of the facts. I have my own, and that's what an opening
20 argument is. And we'll do the same thing at the end of the
21 case.

22 But there are things, based on what she said, that we're
23 hearing for the first time, and that would be interesting to
24 compare what was said and done and what was believed at the
25 beginning of the case and what was brought out in court.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

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1 I would say, as a general point, the police definitely
2 made some mistakes, and I think some critical mistakes.
3 Nobody is perfect. But when a woman has been attacked, she
4 deserves to have it done right so we can get the right person,
5 and certainly, when a man is on trial facing very, very --
6 short of murder, this is about as serious as you can get in
7 South Carolina. All right? So this is about as bad as it
8 gets.

9 And when you're on trial for that, I think you can expect
10 a certain minimal level of, frankly, competence and attention.
11 And I believe they were sloppy. Not intentionally. I don't
12 think anyone set out to frame Mr. McClary. But they were
13 sloppy in the evidence they collected. They got in there and
14 they got an idea in their mind. They fixed on Mr. McClary and
15 a couple of others because they had been in the hotel, and
16 then they proceeded to ignore evidence that didn't fit that
17 narrative. Okay?

18 You've heard about a yellow rag. It would be really
19 great if they had taken care of the yellow rag because maybe,
20 just maybe, there's evidence on there that would exclude
21 Mr. McClary. We will never know.

22 What Ms. Walter didn't mention to you was the rag that
23 was found going up -- this was on the 4th floor. The cameras
24 showing Mr. McClary and others, ascending, you can't tell what
25 floor they're on; but going down, the assumption was -- by the

1 police from the beginning, was whoever did this got out of
2 dodge right away.

3 The two persons from the hotel who responded to the
4 scene, to Room 405, went up and down, and one of them found a
5 rag, which he believed had blood on it, up. Well, what if the
6 attacker went up? It's a huge hotel. We're talking about the
7 Sheraton in Myrtle Beach, the convention center hotel. It's a
8 very large building. Okay? There's hallways at each end.
9 Stairwells, rather. Stairwells at each end of each hallway.

10 So what if the attacker, rather than going down and out,
11 which seems obvious, went up? That rag or towel up on the 8th
12 floor stairwell was collected, was taken downstairs, and then
13 we don't know what happened to it. Is that something? We'll
14 never know.

15 So there's other things. I'm just giving you a flavor of
16 the fact that it's not quite as straightforward as the State
17 would want you to believe. I'd ask you to keep an open mind
18 and pay very careful attention to what you hear and what you
19 don't hear, and I'll be back to talk to you at the end of the
20 case. Thank you.

21 THE COURT: All right. Ms. Walter or Ms. Andrew?

22 MS. ANDREW: Your Honor, the State calls Sergio Aguilar
23 Alonzo.

24 THE COURT: Ladies and gentlemen, this witness requires
25 an interpreter.

1 And your name is?

2 THE INTERPRETER: Miriam Berrouet. M-i-r-i-a-m.

3 Berrouet, B-e-r-r-o-u-e-t.

4 THE COURT: All right. And you have been approved by the
5 South Carolina Judicial Department?

6 THE INTERPRETER: Yes, sir.

7 THE COURT: All right. And I'll ask the clerk to swear
8 you in at this time.

9 THE CLERK: Please raise your right hand.

10 (Interpreter duly sworn.)

11 THE CLERK: Please raise your right hand and place your
12 left on the Bible.

13 SERGIO AGUILAR ALONZO,

14 after having been duly sworn, was examined and testified
15 to as follows:

16 THE CLERK: State your name for the record and spell your
17 last name.

18 THE WITNESS: Sergio Omar Aguilar Alonzo. A-g-u-i-l-a-r.

19 THE INTERPRETER: Interpreter is going to ask for
20 clarification.

21 THE WITNESS: Alonzo, A-l-o-n-z-o.

22 MS. ANDREW: May it please the Court?

23 DIRECT EXAMINATION

24 BY MS. ANDREW:

25 Q How do you know the defendant in this case, Liliana

1 Hernandez-Diaz -- I'm sorry, the victim. I apologize; I
2 misspoke.

3 **A** I have known Liliana since 2008, 2009, when I went to
4 work for the Marriott as a housekeeping supervisor. She
5 worked in this hotel as a housekeeper. So, for awhile, we
6 worked together in this hotel, and then, later, I stopped
7 working there. I was already working in Sheraton for that
8 time. And a few months later, she contacted me because she
9 was looking for a job as a housekeeper, and she asked for my
10 help.

11 So I spoke with the housekeeping manager at that time,
12 and she started working at the Sheraton. A few months later,
13 we started dating, and we have been a couple ever since.

14 **Q** Thank you.

15 Sergio, where do you currently work?

16 **A** A little while ago, I was accepted in a school that they
17 call a trade school. And, right now, I'm in a four-year
18 program studying industrial and commercial electricity.

19 **Q** I'm going to turn your attention back to March 20th of
20 2018. Where did you work at that time?

21 **A** So, at that time, I had two jobs. In the morning, I
22 worked at the Long Bay in Myrtle Beach, and in the afternoon,
23 I worked at the Sheraton as a waiter for room service.

24 **Q** And did Liliana also work at the Sheraton with you at
25 that time?

1 **A** Yes.

2 **Q** Do you recall how long you and Liliana had worked there?

3 **A** I worked at the Sheraton for 14 years, and she worked at
4 the Sheraton for approximately 10 years.

5 **Q** And I think you testified earlier that you got her a job
6 there shortly after you started there; is that correct?

7 **A** Yes.

8 **Q** Directing your attention back to March 20 of 2018, the
9 day of the incident that brings you to court today, were you
10 working that day at the Sheraton Hotel?

11 **A** No. That was my day off.

12 **Q** Do you recall if Liliana was working that day at the
13 Sheraton Hotel?

14 **A** Yes, she was working.

15 **Q** And did you receive any communications or phone calls
16 from Liliana that day while she was at work?

17 **A** Just the call that I received when she called me for
18 help.

19 **Q** And what was -- kind of, tell us about that call. What
20 was the nature of that call?

21 **A** Okay. I was cooking that day. My cell phone rang. And
22 I looked at the screen and saw that the name there was -- that
23 was Liliana's. I took the call and I made a little joke. She
24 didn't respond to my joke. She just said, "Don't worry" --

25 MR. FOX: Objection. Hearsay, Your Honor.

1 MS. ANDREW: Your Honor, this is an excited utterance
2 after an assault while she was still in the hotel room before
3 anyone else got there.

4 THE COURT: I'll allow it.

5 BY MS. ANDREW:

6 Q You can continue.

7 A She said, "Don't worry. I'm fine, but could you please
8 call the front desk and can you tell them that the housekeeper
9 in Room 405 needs help? I called, but nobody answered."

10 And I asked her, "What happened?"

11 And she only said, "Call, please."

12 So I hung up, and I called the front desk. So I told
13 them to please call emergency services and to send them to
14 Room 405 because the housekeeper needed help.

15 Q And what did you do -- did they agree to send help at
16 that point?

17 A Yes.

18 Q After you hung up the phone, what did you do?

19 A I was cold, frozen. I didn't know what to do because I
20 didn't have any more information about what was going on. But
21 a few minutes later, I reacted and I said to myself, "You have
22 to go to the hotel and to see what's going on."

23 So then I got in my car and I went to the hotel.

24 Q How long did it take you to get to that hotel?

25 A We used to live really close to the hotel. About five

1 minutes.

2 Q What did you do when you arrived at the Sheraton Hotel?

3 A So I went -- I was going to the security door where all
4 the employees enter, and I was in time to see one of the
5 employees from maintenance, and he called me to approach him.
6 And he said for me to go with him --

7 MR. FOX: Objection. Hearsay, Your Honor.

8 THE COURT: Sustained.

9 BY MS. ANDREW:

10 Q What did you and that worker then do?

11 A Can you repeat the question, please?

12 Q So after you -- you said you saw a fellow employee there,
13 and he told you to wait with him for a few minutes. What were
14 you waiting for?

15 MR. FOX: Objection, Your Honor. She just repeated the
16 hearsay statement. Small point, but thank you.

17 MS. ANDREW: I apologize.

18 BY MS. ANDREW:

19 Q Tell us what you were waiting for where you went.

20 A Because he was waiting for the paramedics to guide them
21 to Room 405 because I don't believe they know the hotel. And
22 he indicated to them that I was Liliana's boyfriend. And,
23 together, we went in the elevator and we went to the 4th
24 floor.

25 The paramedics -- when we arrived at the room, the

1 paramedics went in the room, and the chief of security and the
2 chief of maintenance of the hotel, they took me to the side.

3 And the chief of maintenance told me --

4 MS. CALDWELL: Objection. Hearsay.

5 THE COURT: Can't say what they told you.

6 BY MS. ANDREW:

7 Q So instead of telling us what they told you, let's back
8 up a little bit. Who were the two people that you saw?

9 A The chief of maintenance and the chief of security.

10 Q And did you know those two people?

11 A Yes. We worked together for several years.

12 Q Can you tell me their names, please?

13 A The chief of security, Joe Stevens, and the chief of
14 maintenance, Tony Lee.

15 Q And after you arrived on the 4th floor, did you find out
16 what happened to Liliana?

17 A Yes, because, after they told me what happened, I saw
18 when they were taking Liliana out in a stretcher. And with
19 her was the manager of Human Resources and the manager of
20 housekeeping.

21 Q Could you see what Liliana looked like at that point?

22 A Pardon me. She looked really, really bad. Beaten up,
23 covered in blood. You practically couldn't recognize her
24 face.

25 Q Did you go to her and speak to her at that time?

1 **A** No. I was frozen. And I didn't know what to do.

2 **Q** So did you speak to the police at that time?

3 **A** When the paramedics brought her to the hospital, the
4 chief of housekeeping -- so she asked if she could go with
5 Liliana in the ambulance to translate. And, in that moment, a
6 policeman approached me, if I was the person who had called
7 the front desk for them to call emergency. And he interviewed
8 me and he said how did I find out and how was it that I was
9 the one who called the front desk.

10 **Q** And did you tell him what you told us earlier today?

11 **A** Yes. That's what I told him.

12 **Q** After that, did you then go to the hospital to be with
13 Liliana?

14 **A** Yes.

15 **Q** What happened when you got to the hospital?

16 **A** I went to the emergency desk and asked for her so I could
17 find out where she was exactly. And they told me that the
18 doctors were taking care of her and I was to wait and they
19 would tell me when I would be able to go see her. And I
20 waited for an amount of time.

21 Later, the housekeeping manager arrived, and she took me
22 inside where I could find Liliana.

23 **Q** When you saw Liliana at the hospital, what did she look
24 like?

25 **A** She looked really bad, even though the doctors were

1 taking care of her. I tried to talk to her, to give her
2 uplifting words. And from what I remember, the only thing she
3 said to me was, "I'm fine. Don't worry."

4 Q Could she see you at that time?

5 A No.

6 Q Why not?

7 A Her eyes were completely closed from the -- from being
8 hit.

9 MS. ANDREW: May I approach the witness, Your Honor?

10 THE COURT: Yes, ma'am.

11 BY MS. ANDREW:

12 Q I'm going to show you what's been previously marked --

13 MR. FOX: I'm just going to renew the previous objections
14 to these photos.

15 THE COURT: Understood.

16 BY MS. ANDREW:

17 Q -- as State's Exhibit 30 and 31. Will you please look at
18 these photographs and tell me if those are fair and accurate
19 representations of what Liliana actually looked like in the
20 hospital that day. When you entered the room, is that what
21 you saw in real life?

22 A Yes.

23 MS. ANDREW: Your Honor, the State seeks to admit
24 Exhibits 30 and 31 and publish them to the jury.

25 THE COURT: All right.

1 MR. FOX: Again, Your Honor, I renew my previous
2 objections.

3 THE COURT: I understand.

4 30 and 31 are admitted into evidence over the defense's
5 objections.

6 MS. ANDREW: I'm going to just publish to the jury
7 quickly.

8 (State's Exhibit No. ST-30, Photograph, received into
9 evidence.)

10 (State's Exhibit No. ST-31, Photograph, received into
11 evidence.)

12 BY MS. ANDREW:

13 Q Sergio, do you remember how long Liliana stayed in the
14 hospital?

15 A I believe it was three or four days.

16 Q Do you recall what kind of treatment she received for her
17 injuries?

18 A They did a test on her head --

19 MR. FOX: Your Honor, I'm going to object, unless he has
20 firsthand knowledge, not what he heard from someone else.
21 Unless he performed the treatment or was there when it was
22 done, I'm going to object to any testimony about that from
23 this witness.

24 MS. ANDREW: Your Honor, he has personal knowledge of
25 what treatment his girlfriend received in the hospital after

1 she received these injuries. I'm sure he spoke to the
2 physicians and was there when this was going on.

3 MR. FOX: That would be hearsay. A physician can come in
4 and describe the treatment.

5 MS. ANDREW: Well, he's not saying what the physician
6 said. He's saying what kind of treatment she actually
7 received.

8 THE COURT: Okay. I'll allow this witness to testify as
9 to the treatment that he personally knows that she received.

10 A May I continue?

11 BY MS. ANDREW:

12 Q Sure, yes, please.

13 A I understand they --

14 THE INTERPRETER: Interpreter is asking for
15 clarification.

16 A That they did a physical evaluation to determine that she
17 would not have future problems related to what happened. And
18 a psychologist approached us to speak with both of us, to help
19 us manage this situation.

20 Q And after all that, did Liliana return to your home?

21 A Yes.

22 Q Can you tell me a little bit about what she was like at
23 home before this attack?

24 A Liliana is someone who really doesn't talk a lot, but
25 she's also someone who is always ready to support someone if

1 they need it. And I say this because she is a fundamental
2 part of the home. At that time, I had two jobs. And, at that
3 time, she dedicated herself to doing everything for the house
4 and to also ensure that I had everything that I needed.

5 So, to sum it up, she was dedicated to working, to taking
6 care of the house, and to having a good relationship with me.

7 Q After the attack, did you notice a change in the way she
8 acted or in her demeanor at home?

9 A Definitely, yes.

10 Q What kind of changes did you notice?

11 A In the beginning, she closed herself in the house. She
12 closed the curtains. She turned off lights. And I believe it
13 was to act as if there was no one in the house so that no one
14 would know that she was alone.

15 Later, she no longer spoke with any of her friends. And
16 the only person she had contact with was with me and her
17 family in Mexico. And, obviously, with the doctors that
18 treated her for several, several months.

19 Q Did Liliana ever return to work at the Sheraton Hotel?

20 A No. She can't even pass in front of the building.

21 Q Sergio, without saying what she may have said, has
22 Liliana ever told you that she was sexually assaulted or
23 anyone attempted to sexually assault her?

24 MR. FOX: Objection, Your Honor. That would still be
25 hearsay.

1 MS. ANDREW: Your Honor, evidence of a sexual assault
2 from the victim of a crime is defined as not hearsay under
3 Rule 801 under the Rules of Evidence.

4 MR. FOX: Take a moment on that. Could we get
5 clarification, which part of Rule 801?

6 MS. ANDREW: 801(2)(d). Oh, wait, I'm sorry. Let's see.
7 801(d)(1)(d).

8 MR. FOX: And the statement is limited to the time and
9 place of the incident.

10 MS. ANDREW: Yes, I specifically asked him not to say who
11 she said that to.

12 MR. FOX: If the answer is strictly about time and place,
13 yes, no objection. If it's about anything other than time and
14 place, then I would have an objection.

15 THE COURT: I understand.

16 BY MS. ANDREW:

17 Q You may answer.

18 THE INTERPRETER: Interpreter would like for the attorney
19 to repeat the question.

20 BY MS. ANDREW:

21 Q Sergio, did Liliana ever -- without saying who she may
22 have said did it -- did Liliana ever tell you that she was
23 sexually assaulted or that someone tried to sexually assault
24 her?

25 A After the incident, very few times I tried to talk to her

1 about the -- what happened, because I don't want to bring
2 those memories back to her. However, what I can say, one time
3 when we were in the living room watching television, she asked
4 me a question: "What does the word 'rape' mean?"

5 MR. FOX: Your Honor, I'm going to object. We may need
6 to proffer the testimony outside of the jury.

7 THE COURT: Ladies and gentlemen, if you'll just take a
8 short break. We'll bring you right back out. Please don't
9 discuss this case. Thank you.

10 (The jury exited the courtroom at 10:52 a.m.)

11 MS. ANDREW: So I believe, if I direct the witness to
12 answer the question of whether or not she ever told him that,
13 that will fix this. And then if I say, "And where and when
14 did she say that occurred?" If we can just instruct him,
15 through the interpreter, to answer without going into further
16 detail.

17 MR. FOX: Well, let me think on that for a minute. I
18 would ask -- I believe that the witness -- the last question
19 asked called for hearsay and he began to answer: "She asked
20 me what the word 'rape' means." And so I would say that is
21 hearsay. It doesn't go to time and place of the incident as
22 under Rule 801. And so I would ask that -- I think that's an
23 improper question. I'd ask that that be struck and a curative
24 instruction given as to that particular question. Now, I
25 don't know what's going to follow yet, and so that's why I

1 asked that the jury go out.

2 MS. ANDREW: Well, my question was, "Without saying who
3 she said did it, has Liliana ever told you that she had been
4 sexually assaulted or someone had attempted to sexually
5 assault her?" I don't think that question calls for hearsay,
6 and I don't think it's exactly what the rule contemplates.
7 It's just that the answer he gave went into more detail. So
8 what I would ask is that he answer just that question.

9 THE COURT: Mr. Fox?

10 MR. FOX: I think that does call for -- I think it does
11 go beyond 801. I think that question goes beyond time or
12 place of March 20, 2018; place at the Sheraton, Room 405.

13 MS. ANDREW: But you have to get to the fact that she
14 said she was sexually assaulted before you get to the time and
15 place.

16 THE COURT: And it can certainly be an explanation of his
17 answer was maybe proper. I understand and I appreciate
18 everybody trying to narrowly tailor this testimony. And let's
19 hear, through the proffered testimony, just what he was going
20 to say and go from there.

21 MR. FOX: Yes, sir.

22 MS. ANDREW: He can continue answering that question now.

23 PROFFERED DIRECT TESTIMONY

24 **A** Like I was saying, she told me -- she asked me, "What
25 does that word mean?" I told her what that meant in Spanish.

1 And I asked her, "Why did you ask me that question?"

2 "Because that word was repeated to me several times by
3 the person who was attacking me."

4 MR. FOX: Judge, I would object to that answer. That
5 doesn't go to the time or place.

6 THE COURT: It's indicating during the attack. That
7 certainly is a time and place, wouldn't you agree?

8 MS. ANDREW: And it's the whole underlying allegation.
9 The whole point of the rule is that the declarant says she was
10 either sexually assaulted or someone was attempting to
11 sexually assault her, and this testimony is directly on point.

12 It's contextual. The reason he's explaining is because
13 of the language barrier. She just didn't know what the word
14 "rape" meant precisely. So, when she asked, she said, "Yes,
15 that's what happened to me."

16 THE COURT: Mr. Fox?

17 MR. FOX: Well, again, my objection is the same. I won't
18 belabor it. I do believe it goes beyond the scope of the
19 rule.

20 THE COURT: I understand. And I appreciate your
21 objection. I think it falls within the parameters of the
22 rule, and I'm going to allow it.

23 MS. ANDREW: Thank you.

24 MS. WALTER: Your Honor, just as a matter, Ms. Berrouet
25 has been standing quite awhile. I'm not sure if it's

1 appropriate to have -- to pull a chair up over there. It
2 might also be easier for her to take notes, because she'll be
3 interpreting for the victim, too, and that will take some
4 time.

5 THE COURT: Are you doing okay?

6 THE INTERPRETER: I'm doing okay. There's a chair right
7 here. And I just want to drink some water.

8 THE COURT: Sure.

9 And, you know, while the jury is out, we might as well
10 take ten minutes.

11 MR. FOX: Yes, that would be good. Thank you.

12 MS. WALTER: And, Your Honor, the only other thing that I
13 noted -- and I don't know if you do it at a different time --
14 I'm not sure if the jury selected a foreperson or if you
15 appoint a foreperson. I know judges do it different ways,
16 but...

17 THE COURT: Technically -- or not technically, but
18 typically what I do is I allow the jury, at a certain point
19 after they have been with each other for some time, to decide
20 amongst themselves who the best person would be.

21 MS. WALTER: Okay. I just wanted to make -- I have to
22 speak when I'm thinking about it, otherwise...

23 THE COURT: Understood.

24 All right. We'll take a ten-minute break.

25 (A brief recess was taken at 10:58 a.m. to 11:10 a.m.)

1 THE COURT: Are we ready for the jury?

2 MS. WALTER: Yes, Your Honor.

3 MR. FOX: Yes, Your Honor.

4 THE COURT: And, Madam Interpreter, are you clear with
5 the rule?

6 THE INTERPRETER: Yes, Judge.

7 (Pause in the proceedings.)

8 (The jury entered the courtroom at 11:11 a.m.)

9 THE COURT: All right. Ms. Andrew?

10 DIRECT EXAMINATION (CONTINUING)

11 BY MS. ANDREW:

12 Q Sergio, before that short break, I believe you were in
13 the process of answering my question, which was: Without
14 saying who she said did it, did Liliana ever tell you she had
15 been sexually assaulted or that someone had attempted to
16 sexually assault her? You were in the process of explaining
17 your answer. Could you please continue?

18 A Okay. I was saying that, when we were watching
19 television, she asked me what was the meaning of the word
20 "rape." I told her what it meant. And I asked her why she
21 asked me that question. And she told me she heard that word
22 at various times during the attack.

23 MS. ANDREW: Court's indulgence one moment, Your Honor.

24 That's all the questions the State has for this witness.
25 Please answer any questions Mr. Fox has.

1 CROSS-EXAMINATION

2 BY MR. FOX:

3 Q Good morning, sir.

4 A Good morning.

5 Q This conversation you just described, that was at your
6 home or Ms. Hernandez's home?

7 A Yes, in the apartment where we both lived.

8 Q And when was this? When did it happen?

9 A It was a few months after the attack.

10 Q And that was the first time she asked you that question
11 or mentioned that to you?12 A That was the first time and only time that she mentioned
13 it.14 Q And you were present at the hospital when police
15 interviewed Ms. Hernandez; correct?16 A I was there; although, at one point, they separated both
17 of us.18 Q Did you assist in -- did Ms. Hernandez need someone to
19 interpret for her while she spoke with, I believe it was
20 Detective Arroyo?21 A There were two detectives. One spoke Spanish and the
22 other one did not.23 Q But even the detective that spoke Spanish, were there not
24 times that either yourself or other persons there needed to
25 help with the interpretation?

1 **A** There was the manager of housekeeping there. She was
2 there from the first time, helping with the translation.

3 **Q** What is that woman's name?

4 **A** Jana (ph). And I believe her name is Johnson.

5 **Q** During the time that you were present for this interview
6 at the hospital, did Ms. Hernandez mention what she told you
7 several months later?

8 **A** No.

9 **Q** When you arrived -- when you went to the hotel and went
10 up to Room 405, do you recall who was there or at least who
11 you recognized?

12 **A** Yes. There was the maintenance employee that I don't
13 remember that person's name, the two managers: The manager of
14 security and the manager of maintenance. All of them were
15 outside of the room. Inside the room was the manager of
16 housekeeping and the manager of Human Resources. They were
17 assisting Liliana until the paramedics arrived.

18 **Q** And the housekeeping manager was, I believe you said,
19 Ms. Johnson, who also went to the hospital; right?

20 **A** Correct.

21 **Q** Who is the -- what's the name of the Human Resources
22 manager?

23 **A** Sharon Jones.

24 **Q** Were any law enforcement personnel inside the room at
25 that time?

1 **A** Not that I saw.

2 **Q** Was EMS present inside the room at that time?

3 **A** We all arrived together.

4 **Q** Were you still there at Room 405 when the police did
5 arrive?

6 **A** I never entered the room. I was in the hallway when I
7 spoke with the police officer that came.

8 **Q** Okay. And I may have not explained this. Was that
9 officer present in the hallway when you got to Room 405?

10 **A** Yes, that's where I met him.

11 **Q** I understand. Were there other officers in the hallway
12 in the vicinity of Room 405 when you arrived?

13 **A** I only saw one police officer.

14 **Q** But you did not go in yourself; correct?

15 **A** No.

16 **Q** Okay. Is Ms. Hernandez -- you say she does not work at
17 the Sheraton. Does she work anywhere at this time?

18 **A** Yes.

19 **Q** Where does she work?

20 **A** She works in a hotel doing the same job with
21 housekeeping.

22 MR. FOX: Court's indulgence, Your Honor.

23 Thank you, no further questions.

24 THE COURT: All right. Any redirect?

25 MS. ANDREW: No, sir, Your Honor.

1 THE COURT: You may step down.

2 MS. ANDREW: We ask that this witness be excused from his
3 subpoena at this time.

4 MR. FOX: No objection, Your Honor.

5 MS. WALTER: And with the Court's permission, I was going
6 to -- I was intending to call the victim next, but I think
7 she'll take some time, so if we can call a witness out of
8 order who needs to be in Columbia at 5:30.

9 THE COURT: You can try your case any way you'd like to.

10 MS. WALTER: Okay.

11 MS. ANDREW: Your Honor, the State calls Cameron Warren.

12 THE CLERK: Please raise your right hand and place your
13 left hand on the Bible.

14 CAMERON WARREN,

15 after having been duly sworn, was examined and testified
16 to as follows:

17 THE CLERK: State your name and spell it for the Court.

18 THE WITNESS: Cameron Warren. C-a-m-e-r-o-n,
19 W-a-r-r-e-n.

20 DIRECT EXAMINATION

21 BY MS. ANDREW:

22 Q Mr. Warren, what's your current occupation?

23 A Currently, I'm with the Air National Guard, Security
24 Forces Unit in Columbia, South Carolina. I work full time out
25 there.

1 Q How long have you been with the Air National Guard?

2 A As a traditional, since 2014, and in a full-time capacity
3 since October of 2020.

4 Q Back on March 20 of 2018, what was your profession then?

5 A At that time, I was with the Myrtle Beach Police
6 Department in a full-time capacity. In 2018, I was a
7 detective intern, part of the internship program.

8 Q How long had you been at Myrtle Beach at that time?

9 A At that time, it would have been seven years.

10 Q Okay. And you just said you were part of the detective
11 intern program. Can you describe what that program was?

12 A Yes, ma'am. It was for potential future detectives.
13 Essentially, you did a three- to four-month program where you
14 worked with detectives daily. It was -- at that time, I was
15 assigned my own cases, responded to calls, conducted
16 interviews. Basically anything that a detective would do.

17 Q Were you assigned to a specific detective or did you work
18 with multiple people?

19 A I worked with multiple detectives.

20 Q Okay. So what -- in addition to that intern program,
21 what were your regular job duties at that time? What was your
22 job title?

23 A At that specific time, I was working nighttime patrol,
24 was my full-time job, my full-time position; but when you were
25 assigned to the internship, you are assigned full time,

1 working with the investigators.

2 Q Okay. So, on March 20 of 2018, you were working full
3 time with detectives who were investigating active cases at
4 the Myrtle Beach Police Department; is that correct?

5 A Yes, ma'am.

6 Q Okay. I'm going to turn your attention to the case that
7 brings you into court today. Were you asked to respond to the
8 Sheraton Hotel for an incident that occurred there on March 20
9 of 2018?

10 A Yes, ma'am.

11 Q Did you actually respond to that location?

12 A Yes, ma'am.

13 Q What did you do when you got there?

14 A When I responded, I was with Detective Arroyo. We first
15 went to the actual room in question, Room 405. I recall, when
16 I arrived, just seeing a pretty horrific scene, if I'm being
17 honest here. There was a lot of blood. I remember being very
18 taken aback.

19 I did not go into the room. At that time, the scene had
20 been deemed secured, so I didn't want to potentially
21 contaminate the scene. But just standing in the doorway
22 looking in, it was a pretty horrific scene.

23 After that, I did a series of interviews with different
24 detectives that were out there of different employees that
25 worked there and their various positions at the scene.

1 Q I'm going to take you back a little bit and let's talk a
2 little bit more about the scene. You said you didn't enter
3 the room; is that correct?

4 A Yes, ma'am.

5 Q But you could see the scene. So can you describe -- you
6 said it was horrific. Can you describe, kind of, some of the
7 details that you saw at that scene?

8 A Yes, ma'am. I mean, it was quite a while ago, but I just
9 remember seeing a lot of blood. At that time, that was one of
10 the more graphic scenes that I had been exposed to. I
11 remember there being a bathroom to my left. There was blood
12 all over the floor and on the walls. The room was in
13 disarray.

14 Q And I think you just said you could see into the
15 bathroom?

16 A Just kind of briefly, yes, ma'am. It was off to my left.

17 MS. ANDREW: Court's indulgence one moment, Your Honor.

18 May I approach the witness, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. ANDREW:

21 Q I'm going to show you what's been premarked as State's
22 Exhibits Nos. 2, 3, and 5. Can you tell me if you recognize
23 what's depicted in these photographs?

24 A Yes, ma'am.

25 Q Okay. Are those photographs of what you actually saw

1 when you arrived at Room 405 at the Sheraton Hotel on that
2 day?

3 A Yes, ma'am.

4 Q Are those pictures fair and accurate representations of
5 what that actually looked like in real life?

6 A Yes, ma'am.

7 MS. ANDREW: Your Honor, at this time, the State seeks to
8 admit Exhibits 2, 3, and 5 and publish them to the jury.

9 THE COURT: All right. Is there any objection?

10 MR. FOX: Without objection. No objection, Your Honor.

11 THE COURT: Thank you.

12 State's 2, 3 and 5 are in evidence.

13 MS. ANDREW: Thank you, Your Honor.

14 (State Exhibit No. ST-2, ST-3, and ST-5, Photographs,
15 were received into evidence.)

16 BY MS. ANDREW:

17 Q I'm going to first show you No. 2. Did you see this when
18 you arrived at the room?

19 A Yes, ma'am.

20 Q And what is depicted in this photograph?

21 A It's, like, a cleaning cart with various towels and
22 cleaning supplies on there. There's towels that are covered
23 in blood.

24 Q I'm going to now show you what's been marked as State's
25 Exhibit No. 3. What does this photograph depict?

1 **A** Yes, ma'am. This is standing in the doorway to the room.
2 Immediately to the left is the bathroom, and then there's the
3 entryway here into the main portion of the room. As you can
4 see, the room has blood smeared on the floor, the door there,
5 and there's something that's broken, lying on the floor.

6 **Q** And I'm going to show you State's Exhibit 5. Can you
7 tell me what this photograph depicts?

8 **A** Yes, ma'am. This is looking into the bathroom, which,
9 just like I stated before, was just to the left as you enter
10 the room. You can see a large amount of blood on the floor,
11 as well as what appears to be a vacuum cleaner knocked over.

12 **Q** Was the victim present at the scene when you arrived and
13 saw those -- what was depicted in those photographs?

14 **A** I did not see the victim at the scene, no, ma'am.

15 **Q** Okay. So you said -- I believe your testimony before I
16 took you back was that you interviewed some people who worked
17 with the hotel.

18 **A** Yes, ma'am.

19 **Q** Do you recall who you interviewed?

20 **A** May I look at my notes?

21 **Q** Yes. If you need to refresh your recollection, please
22 reference your report, and then, when you finish, turn it over
23 before you answer any questions. Okay?

24 **A** Yes, ma'am.

25 I conducted interviews with Corey Knight, a Joe Stevens,

1 and -- I'm sorry, I have to refresh one more time -- and an
2 Anthony Lee.

3 Q Did those individuals give you any information that
4 directed your investigation at that point?

5 A Yes, ma'am. During the course of those interviews is
6 when we learned about there being video evidence of a possible
7 suspect having been in the area. This is how we obtained an
8 initial suspect description as far as clothing. Additionally,
9 there was a rag that was covered in blood that was located in
10 a stairwell and had been moved back to the scene. This is how
11 we learned about that rag as well.

12 Q Do you recall which stairwell that rag was located in?

13 A I'll need to reference --

14 Q Please refresh your recollection.

15 A The rag that I was referencing before was found on the
16 8th floor in the stairwell on the north side of the building.

17 Q Okay. Do you recall or can you refresh your recollection
18 and tell us who found that rag?

19 A That was -- Mr. Corey Knight found that rag.

20 Q And did he give that rag to someone else?

21 A I'll need to refresh. I'm sorry.

22 Q Okay. And while you're doing that, if you can tell us
23 the color of the rag as well, when you refresh your
24 recollection.

25 A Yes, ma'am.

1 The rag was white in color. And Corey notified Joe, and
2 Joe is the one who moved the towel back to Room 405.

3 **Q** Okay. Thank you.

4 Did you receive any other information from those
5 interviews that directed your investigation in any way?

6 **A** I just want to make sure...

7 **Q** Please.

8 **A** (Reviewing document.) The only thing I'll just touch on
9 is the video description. That's when this really came to
10 light for us. In addition, this is when we learned that the
11 individual depicted in the video had potentially been part of
12 a group from the night before.

13 **Q** Okay. Okay. After you completed those interviews, did
14 you then respond to the Grand Strand Hospital?

15 **A** Yes, ma'am.

16 **Q** Did you go alone or did you go with another detective?

17 **A** I went with Detective Arroyo.

18 **Q** Okay. When you got to the hospital, did you see the
19 victim there?

20 **A** Yes, ma'am.

21 **Q** What was her condition when you saw her?

22 **A** I would venture to say she probably doesn't even know
23 what I look like because her eyes were swollen shut. She had
24 stitches in multiple place on her face and was, obviously,
25 highly emotionally. The entire time we spoke, someone had to

1 hold her hand to comfort her.

2 Q I'm going to show you what's been previously marked and
3 admitted into evidence as State's Exhibit No. 30 and 31. Is
4 that what she looked like when you saw her at the hospital
5 that day?

6 A Yes, ma'am.

7 Q Do you recall -- you just said that she was very upset.
8 Do you recall -- can you just elaborate on her demeanor?

9 A I mean, she was obviously very upset. Like I said, I
10 believe it was her friend that had to hold her hand to comfort
11 her. A large portion of the conversation took place in
12 Spanish. I'm not going to understand everything that was
13 said, but it was obvious to me that she was extremely upset
14 and, obviously, very injured.

15 Q Do you recall who the friend was that was holding her
16 hand?

17 A I can check. I don't recall offhand. (Reviewing
18 document.)

19 No, ma'am, I don't know her friend's name.

20 Q Thank you.

21 Do you recall, when Lilitana was being interviewed, how
22 detailed of an interview it was at that time?

23 A Most of the conversation was in Spanish, and every few
24 minutes, Detective Arroyo would kind of give me an update on
25 what was going on. It would be hard for me to comment on the

1 exact details.

2 Q Other than you, Liliana, Detective Arroyo, and the
3 friend, was anyone else present in the room at that time?

4 A I don't believe so but let me verify. (Reviewing
5 document.)

6 When we first arrived, Liliana's boyfriend was still
7 there; however, for the interview portion, I don't believe
8 that he remained.

9 Q Okay. Thank you.

10 MS. ANDREW: May I approach, Your Honor?

11 THE COURT: Sure.

12 MS. ANDREW: This doesn't have to be on the record.

13 BENCH CONFERENCE

14 (A bench conference was held off the record and outside of
15 the hearing of the jury.)

16 THE COURT: All right, ladies and gentlemen. We have got
17 to take a short break. We'll have you right back out as soon
18 as we get ready. Thank you so much. Please don't discuss
19 this case.

20 (The jury exited the courtroom at 11:39 a.m.)

21 THE COURT: All right.

22 MS. ANDREW: Thank you, Your Honor. I just needed a
23 minute. I apologize.

24 THE COURT: Just let us know when you're ready.

25 (A brief recess was taken at 11:39 a.m. to 11:43 a.m.)

1 THE COURT: I think a few of the jurors are using the
2 restroom, so I told them, as soon as they're ready, bring them
3 out.

4 MS. ANDREW: Thank you, Your Honor.

5 MS. WALTER: Your Honor, I think probably what will be
6 helpful is, when we're done with Mr. Warren, we can take the
7 break for lunch, if that works with Your Honor, and, that way,
8 start fresh after lunch.

9 THE COURT: Okay.

10 MS. WALTER: What's your title with the National Guard?
11 I don't want to disrespect you and call you "Mr. Warren."

12 THE WITNESS: No, you're good. It's tech sergeant.

13 MS. WALTER: Tech sergeant. You have earned that title.

14 (The jury entered the courtroom at 11:45 a.m.)

15 THE COURT: All right. Ms. Andrew?

16 MS. ANDREW: Thank you, Your Honor.

17 BY MS. ANDREW:

18 Q Sergeant Warren, after you responded to the hospital, did
19 you, at some point, interview the defendant in this case? Or
20 were you present for an interview with the defendant in this
21 case?

22 A Yes, ma'am. After the interview at the hospital, we went
23 back to the police department. Around that time is when I
24 learned that the defendant was at the police department, that
25 an interview was going to be conducted. I was a part of an

1 interview with the defendant and Detective Amos.

2 Q At some point during that interview, did you and
3 Detective Amos ask the defendant to provide what's known as a
4 suspect standard for a buccal swab?

5 A Yes, ma'am.

6 Q Did he consent to do that?

7 A Yes, ma'am.

8 Q Did he consent in writing?

9 A Yes, he did.

10 MS. ANDREW: May I approach the witness, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. ANDREW:

13 Q I'm going to show you what's been marked as State's
14 Exhibit No. 36. What is that document?

15 A This is our consent to search form. This is what we
16 would use any time there was a consent to search of some sort
17 and in the case of a buccal swab as well.

18 Q And who is the subject listed on that form?

19 A That is Demetrius McClary.

20 Q Is he the defendant in this case?

21 A Yes, he is.

22 Q Is your signature on the form?

23 A Yes, it is.

24 Q Is that a fair and accurate copy of the form he actually
25 signed that day at the police station?

1 **A** Yes, it is.

2 MS. ANDREW: Your Honor, at this time, the State would
3 like to introduce Exhibit No. 36 into evidence and publish it
4 to the jury.

5 THE COURT: Any objection?

6 MR. FOX: Without objection. I'm sorry. Without
7 objection, Your Honor.

8 THE COURT: All right. 36 is in evidence without
9 objection.

10 (State's Exhibit No. ST-36, Consent to Search Form,
11 received into evidence.)

12 BY MS. ANDREW:

13 **Q** Did you or Detective Amos coerce or threaten the
14 Defendant in any way to get him to consent to giving you that
15 buccal swab?

16 **A** No, ma'am.

17 **Q** Did you see the defendant actually sign that document?

18 **A** Yes, I did.

19 **Q** And, after that, did you take the defendant's buccal
20 swab?

21 **A** Yes, I did.

22 **Q** Can you describe the process of how you would take a
23 buccal swab and what it is?

24 **A** Yes, ma'am. Essentially, it's a large Q-tip, and you
25 swab the inside of an individual's cheek for approximately 10

1 to 15 seconds. And you do that on both sides. There are two
2 Q-tips, one for each side.

3 Q And did you do that for this defendant?

4 A Yes, I did.

5 Q Is that kind of what's commonly known as a DNA sample of
6 a defendant?

7 A Yes, it is.

8 Q Okay. I'm going to show you what's been marked as
9 Exhibit -- State's Exhibit No. 37. Do you recognize this? It
10 has some writing on it. And I realize it's been packaged, but
11 look at the envelope inside.

12 A Yes, ma'am. I sealed this.

13 Q After you took that buccal swab with that Q-tip, what did
14 you then do with the buccal swab?

15 A They are placed inside of an envelope, such as this one
16 here. They are sealed with evidence tape, which is marked
17 with a date and initialled. And then the case number is put
18 on there. There's also a computer system that we would enter
19 this in and indicate, for this case number, which item it is.

20 Q Okay. Do you see your initials on that evidence tape?
21 Are those your initials?

22 A Yes, they are.

23 Q What did you do with that after you sealed it and
24 initialled it and logged it into evidence?

25 A This gets dropped into the locker that is selected for

1 that specific drop.

2 Q Okay. And the locker, is that a locker at the police
3 station?

4 A Yes, ma'am.

5 Q Is that locker secure?

6 A Yes, it is.

7 Q So, once you put the buccal swabs in the locker, can
8 anyone -- could you access them?

9 A No, I could not.

10 Q Who could access them at that point?

11 A Only Property and Evidence can open those.

12 Q Okay. Was that the standard procedure for collecting and
13 storing evidence at the Myrtle Beach Police Department at that
14 time?

15 A Yes, ma'am.

16 Q Other than testifying here today, did you have any other
17 involvement in the investigation of the case that brings us to
18 court?

19 A I don't believe so, no, ma'am.

20 MS. ANDREW: That's all the State's questions. Please
21 answer any questions Mr. Fox has.

22 MR. FOX: Thank you.

23 CROSS-EXAMINATION

24 BY MR. FOX:

25 Q Officer Warren, with regard to the interview of

1 Ms. Hernandez at the hospital, you indicated there was a woman
2 there who held Ms. Hernandez's hand during the interview;
3 correct?

4 **A** Yes, sir.

5 **Q** And it's also true that, at times, because of the
6 language difficulties, there was some back and forth for
7 clarification of certain words or phrases; is that fair to
8 say?

9 **A** As far as with me specifically?

10 **Q** No, no. Just what you observed. So you had Detective
11 Arroyo who speaks some Spanish; correct?

12 **A** Well, compared to me, he speaks quite well, yes, sir.

13 **Q** But from what you observed and heard at times, did he
14 need to repeat a question or ask for clarification, or did
15 Ms. Hernandez need clarification of his questions -- Detective
16 Arroyo's questions?

17 **A** I'm not sure I can answer, sir, because it was in
18 Spanish.

19 **Q** All right.

20 **A** And I don't speak any Spanish.

21 **Q** Did the woman that was holding Ms. Hernandez's hand ever
22 provide responses?

23 **A** Yes, I believe she did.

24 **Q** Okay. Now, let's talk about at the hotel. When you
25 responded, you went to Room 405. When you opened the room

1 and -- I assume all the hallways in the room are the same.

2 But there's a little -- I mean, I call it a vestibule.

3 There's a little entryway, and then you have the bathroom to
4 the one side, and you go father on into the bedroom; correct?

5 A Yes, sir.

6 Q Okay. Did you actually step into that first little
7 entryway or you remained in the hallway?

8 A To be honest, I don't recall exactly how far into the
9 room I stepped. I know I didn't go all the way in.

10 Q Far enough to be able to observe the bathroom, though.
11 You testified to that.

12 A Yes, sir.

13 Q And then you indicated that you stepped back out. And
14 why was that?

15 A I didn't want to contaminate or potentially contaminate
16 the scene, as it was secure at that point.

17 Q What would be the problem with that?

18 A With me --

19 Q Contamination. Anybody, in general, any crime scene?

20 A It could potentially ruin a case.

21 Q Okay. And how might a person -- a police officer, a
22 layperson, anybody -- how might they contaminate a scene?

23 A Any time you enter a scene, it's possible you bring
24 something with you and potentially take something out with you
25 as well. So you could accidentally introduce evidence, in a

1 sense.

2 Q Okay. So, again -- and the phrase there, "accidentally,"
3 it wouldn't even have to be on purpose; correct?

4 A Yes, sir.

5 Q You might bring material on the bottom of your shoes.

6 A Correct.

7 Q Something you brushed up against that's on your clothes.

8 A Surely possible.

9 Q Something you might have touched.

10 A Certainly possible, yes, sir.

11 Q Thank you.

12 Now, at the hospital -- I'm sorry, at the hotel, you
13 spoke with Mr. Corey Knight, and he was one of the employees
14 there; correct?

15 A Yes, sir.

16 Q And, from him, you learned that he had located a white
17 rag or towel?

18 A Yes, sir.

19 Q And it was white?

20 A Yes, sir.

21 Q Did you see the towel?

22 A I don't recall if I actually saw it myself.

23 Q Okay. Understood it -- that there was potentially blood
24 on it?

25 A Yes, sir.

1 Q Okay. So something visible?

2 A As was described to me in the interview, yes, sir.

3 Q Okay. And that was not located on the 4th floor?

4 A No, sir.

5 Q In fact, it was in a stairwell up on the 7th or 8th
6 floor?

7 A 8th floor, yes, sir.

8 Q And I think Mr. -- it was described as being -- is there
9 only one stairwell going up and down the Sheraton at each
10 hallway?

11 A I believe there's two.

12 Q Okay. More or less one on each end of the hallway?

13 A Yes, sir.

14 Q And I think it was described that this rag or towel was
15 located on, quote, "the low end." In other words, where the
16 room numbers are, say, 405, 404, rather than 450?

17 A Yes, sir.

18 Q Okay. Do you know what happened with that towel?

19 A I don't, sir.

20 Q Okay. You didn't collect it into -- take it into
21 evidence?

22 A No, sir.

23 Q What would be the procedure if there's an item, whether
24 it's located on-scene or that is thought to be relevant to an
25 investigation? What would be the proper method for handling

1 that item?

2 A Sure. At a scene of this magnitude, our crime scene unit
3 would come out, and they would photograph and mark everything,
4 and they would begin the collection process. A detective,
5 such as myself, would not begin collecting items, but it would
6 be important for me to track down where it was located, if it
7 was manipulated in any way, things of that nature.

8 Q And, similarly, you just testified about the buccal swab
9 that you took, and you described the steps you took to both
10 preserve it but also document your involvement, correct --

11 A Yes, sir.

12 Q -- so that we can track it. We -- the Court, the jury --
13 people that later can track it as it moves from law
14 enforcement, potentially, to the State Law Enforcement
15 Division in Columbia, and then back until it comes to court;
16 correct?

17 A Sure, yes, sir.

18 Q And that would be true of any item of evidence?

19 A Yes, sir.

20 Q Okay. So collection, preservation, and documentation
21 would be three very important things with any piece of
22 evidence?

23 A I would agree, yes, sir.

24 Q Okay. Also, at the hotel, you spoke with the Director of
25 Security, Mr. Joseph Stevens. Do you recall that?

1 **A** Yes, sir.

2 **Q** And I believe he's the one that directed you to the fact
3 that there was a surveillance system, video system?

4 **A** Yes, sir.

5 **Q** And that covered what parts of the hotel?

6 **A** Parking garage, the lobby, a large portion of the
7 outside. I couldn't tell you exactly how much coverage for
8 which cameras covered where.

9 **Q** I understand. And, certainly, in one stairwells, because
10 that's specifically what he directed your attention to;
11 correct?

12 **A** Yes, sir.

13 **Q** Do you know if there were cameras in both stairwells?

14 **A** I don't know offhand. I believe there was, but I
15 couldn't say for sure.

16 **Q** Okay. In your experience as an officer, would it be a
17 little strange to have cameras in one stairwell but not
18 another?

19 **A** Yes, it would.

20 **Q** Are you aware of whether there were any cameras in the
21 hallways, specifically on the 4th floor?

22 **A** I'm not sure.

23 **Q** You were not shown or informed about any footage from the
24 hallway on the 4th floor, were you?

25 **A** Not that I recall.

1 Q And what you were shown, could you tell which stairway it
2 was from? Anything that indicated it was -- I'm going to use,
3 again, the word, the low end as opposed to -- or the north --
4 I think you referred to it as the north side of the hotel as
5 opposed to the opposite end?

6 A Yes, sir. It's been a few years, so I don't recall
7 exactly if there's an indicator in the video for it. A lot of
8 videos will have it marked, what location you're viewing or
9 what you're looking at, so...

10 Q But you don't specifically recall four years later.

11 A Correct.

12 Q And, in fact, what -- now, did you sit down with him and
13 view the video, or did he say, "Hey, look at this that I
14 found. I," Mr. Stevens, "have reviewed the video surveillance
15 from the stairwell, and here's what I found"?

16 So did you view it yourself to determine what was
17 relevant or did you view what Mr. Stephens had for you?

18 A As would be normal in this situation, we would have taken
19 an initial look at it. And then, at some point, we would have
20 collected it ourselves and taken more of a deep dive, so to
21 speak, where we watch every minute of it. But in an active
22 scene like that, when we're actively trying to find someone
23 and time is of the essence, we are going to put eyes on it
24 ourself and take a look at the segment in question.

25 Q Okay. Would it be relevant or important, perhaps, later

1 -- so in the moment that you're describing, there's sort of an
2 active investigation, this incident, this assault or this
3 happened, it's very recent?

4 A Yes, sir.

5 Q So there's reason to believe that perhaps acting quickly
6 would be important.

7 A Yes, sir.

8 Q Okay. Would it be relevant to have an idea, if possible,
9 as to the comings and goings of different people on the 4th
10 floor, say, an hour or two hours before to right immediately
11 afterwards?

12 A What exactly is the question?

13 Q That's a good -- good point.

14 Would it be useful to have that video footage from a
15 period of time -- and I'm just going to arbitrarily say maybe
16 an hour prior to -- showing that stairwell, specifically the
17 4th floor -- say, an hour before this assault?

18 A Sure.

19 Q Any reason -- did you ever go back and request or obtain
20 video beyond the little snippets that Mr. Stevens provided
21 you?

22 A I myself did not, no, sir.

23 Q Are you aware if any other officer did?

24 A Not offhand.

25 Q Okay. And material collected in general -- evidence,

1 statements, physical pieces of evidence -- that's what, in the
2 court system, we call discovery; correct?

3 A Yes, sir.

4 Q And one of the rules and one of the constitutional
5 principles is that the defendant is entitled to be confronted
6 with and have an opportunity to review the evidence that the
7 State intends to use to try and convict him at trial; correct?

8 A Yes, sir.

9 Q And there's an obligation by law enforcement and the
10 solicitor's office to provide that material or at least make
11 it available to defense lawyers like myself?

12 A Yes, sir.

13 Q So if anyone had gone back and collected more video than
14 what you saw, that would be something that would be required
15 to be turned over in discovery?

16 A Sure, absolutely.

17 Q Okay. And, in fact, the videos that you yourself saw
18 with Mr. Stevens, those are actually very short clips, were
19 they not?

20 A They would have been very short, yes, sir.

21 Q I mean, less than a minute, maybe even a few seconds?

22 A I don't recall exactly how long it was. It would have
23 been a shorter video. In that moment, like I said, it was an
24 active investigation.

25 Q It was almost literally -- and I think there were -- were

1 they all from the same time? Could you tell?

2 A What exactly is --

3 Q Well, did they all appear, from the timestamps, to relate
4 to more or less the same time?

5 A Yes, sir. I would imagine so.

6 Q Okay. There were actually four clips; correct?

7 A I would have to --

8 Q Okay.

9 A I'm not sure.

10 Q And there were exactly, I think, three videos that you
11 reviewed with Mr. Stevens; does that sound right?

12 A That sounds about right, yes, sir.

13 Q Okay. Now, you were present, because you took his buccal
14 swab, when Mr. McClary was interviewed by Detective Amos?

15 A Yes, sir.

16 Q Okay. And you participated in at least some -- I believe
17 you spoke some in that interview?

18 A Yes, sir.

19 Q Fair to say, though, Detective Amos kind of took the lead
20 in that interview?

21 A Yes, he did.

22 Q Okay. And Mr. McClary was Mirandized?

23 A Yes, sir.

24 Q Which means he was read his rights?

25 A Mm-hmm.

1 Q That's something you do in every interview, I assume.

2 A Yes, sir.

3 Q Because if someone says, "No thanks, I don't wish to talk
4 to you," then that's the end; correct?

5 A Correct.

6 Q Okay. And Mr. McClary did, in fact, sit through the
7 interview; is that right?

8 A Yes, he did.

9 Q And consented to provide a buccal swab, which is physical
10 evidence from his body?

11 A Yes, sir.

12 Q And answered or attempted to answer all of your
13 questions? And I say you -- collectively, you and Detective
14 Amos?

15 A Mm-hmm.

16 Q That interview took somewhat over an hour?

17 A I'd say that's fair to say.

18 Q Okay. And, during the course of that interview, did
19 Mr. McClary ever admit any involvement or knowledge about this
20 assault at the Sheraton?

21 A He did not admit to the assault, no, sir.

22 Q Okay. And at different times -- well, let me start back
23 at the beginning. Initially, Detective Amos said to
24 Mr. McClary, "We're here to interview you or talk to you about
25 that trespassing that happened on Mr. Joe White Avenue;"

1 correct?

2 A Yes, sir.

3 Q Okay. There's the old -- it's still referred to as the
4 old colored school there on the corner of Dunbar and Mr. Joe
5 White?

6 A Yes, sir.

7 Q And I think now it's sort of a historical place?

8 A Yes, sir.

9 Q Okay. And they were actually stopped, at least according
10 to law enforcement, he and two other individuals; right?

11 A Yes, sir.

12 Q Mr. Jamario Stevenson and Mr. Devion Slater?

13 A Yes, sir.

14 Q Along with Mr. McClary.

15 And, at that point, the "be on the lookout," the BOLO,
16 had been issued; is that right?

17 A I believe it would have been, I guess, at that point.

18 Q But the reason stated for stopping, talking to, and
19 ultimately taking into custody Mr. Slater, Mr. Stevenson, and
20 Mr. McClary was that they were allegedly trespassing at the
21 side of the old school?

22 A (No audible response.)

23 Q Okay. Are you familiar with that location?

24 A Somewhat, yes, sir.

25 Q Again, it sits on the corner of Dunbar Street and Mr. Joe

1 White. There's a little bit of a -- kind of -- it's not a --
2 kind of a little peninsula where Dunbar hits Mr. Joe White?

3 A Yes, sir.

4 Q Okay. And there's a walkway that cuts between Dunbar and
5 Mr. Joe White Avenue, isn't there?

6 A Yes, sir.

7 Q Sort of cuts the corner, so to speak?

8 A Okay.

9 Q Does that sound accurate?

10 A I believe it does.

11 Q Okay. And it's just a straight sidewalk that runs for
12 maybe a hundred yards, perhaps?

13 A Be hard to say. If you have a picture of it, I can
14 confirm for you.

15 Q Okay. And no gate on either end; correct? There's a
16 fence around part of the property but no gate at that
17 sidewalk, is there?

18 A I don't believe so.

19 Q Okay. But that was the mechanism -- the trespass was the
20 mechanism for Mr. McClary and his two companions to be taken
21 into custody. There is a -- I believe, a Myrtle Beach
22 ordinance, is there not, against trespassing?

23 A Yes, sir.

24 Q So you could be taken into custody just like you could
25 for a traffic ticket or littering or anything like that?

1 **A** Sure.

2 **Q** And that's what Detective Amos told Mr. McClary he was
3 there to interview him about, the trespassing?

4 **A** Okay.

5 **Q** Is that right? Is that your recollection?

6 **A** If I may?

7 **Q** Yes.

8 And I have got a transcript of that interview, if that
9 would help you.

10 **A** I have got it as well, yes, sir. (Reviewing document.)

11 Yes, sir.

12 **Q** Okay. Now, at some point, Detective Amos began to ask to
13 about Mr. McClary's whereabouts over the preceding two days?

14 **A** Yes, sir.

15 **Q** And then began to ask questions about what had happened
16 at the Sheraton. I'm not quite sure if it was the day before
17 or earlier that day; correct?

18 **A** Yes, sir.

19 **Q** And Detective Amos brought up several specific items that
20 had been recovered in Room 405. Does that sound right?

21 **A** Yes, sir.

22 **Q** And Detective Amos brought those up?

23 **A** Okay.

24 **Q** And, again, correct me I'm -- if that's not your
25 recollection, please say.

1 That being a pair of sunglasses that were found in the
2 bathroom? Does that sound right?

3 **A** I'm going to reference this.

4 **Q** Sure. Any time -- anything you need to do.

5 **A** (Reviewing document.)

6 **Q** Well, to move things along a little bit, you do recall
7 that there were certain items of evidence that had been
8 recovered in the hotel or Room 405 that Detective Amos brought
9 up and asked Mr. McClary about?

10 **A** Yes, sir.

11 **Q** Okay. And Mr. McClary denied knowledge about any of
12 them?

13 **A** I would say initially; however, you know, such as the
14 rainbow-colored wig and some other clothing items, you know,
15 eventually, he did say those were his things.

16 **Q** Did he say they were his or did he say that he had been
17 around them -- let's take one step back.

18 Mr. McClary, based on the interview, indicated, did he
19 not, that he was more or less without a permanent home, that
20 he stayed at Sea Haven, which is a shelter?

21 MS. ANDREW: Objection, Your Honor.

22 MR. FOX: I'll withdraw it. I'll rephrase that.

23 THE COURT: Thank you.

24 BY MR. FOX:

25 **Q** But he did offer an explanation for how he knew about the

1 wig and the sunglasses?

2 MS. ANDREW: Objection, Your Honor. He's getting into
3 what the defendant said.

4 THE COURT: All right. I'm going to allow this question.
5 If you want to rephrase it or ask it again, that would be
6 fine.

7 BY MR. FOX:

8 Q He did -- well, I'll just say it the same way, that he
9 did provide an explanation for any contact he would have
10 had with the wig -- specifically with the wig and the
11 sunglasses?

12 A Specifically the wig. I don't recall specifically on the
13 sunglasses, but, yes, he did talk about the wig.

14 Q Okay. Now, Mr. McClary was willing for you-all to take a
15 buccal swab, saliva sample. Was he not also willing to have
16 Ms. Hernandez brought to view him to see if she could identify
17 him?

18 A He did mention that, yes, sir.

19 MR. FOX: Thank you. No further questions.

20 THE COURT: Any redirect?

21 MS. ANDREW: Brief redirect, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. ANDREW:

24 Q Sergeant Warren, Mr. Fox just questioned you about the
25 interview that you witnessed involving the defendant,

1 Demetrius McClary.

2 **A** Yes, ma'am.

3 **Q** Do you recall, during that interview, did Mr. McClary
4 deny being present on the 4th floor of the Sheraton Hotel on
5 March 20 of 2018?

6 **A** Yes, he did.

7 **Q** In your experience as a law enforcement officer, as you
8 testified to earlier, is it common for a criminal defendant to
9 negate or minimize their involvement in a crime that they may
10 have committed?

11 **A** Almost always.

12 **Q** Is it also common, in your experience, for a criminal
13 defendant to initially deny involvement and then later, at
14 some time, admit their involvement in a crime?

15 **A** Yes, ma'am.

16 **Q** Based on your observations that I believe we saw in
17 Exhibits 30 and 31, Liliana's condition at the hospital that
18 day, was she, in your opinion, in any condition to be brought
19 to the police department to identify the defendant as the
20 person who attacked her?

21 **A** Absolutely not.

22 **Q** And why not?

23 **A** First of all, she would not have been able to see. I
24 mean, her eyes were swollen shut, and she needed medical care
25 due to the beating that she took. It would not have been

1 possible.

2 Q Okay. Thank you.

3 MS. ANDREW: No further questions.

4 MR. FOX: If I can just follow up with one relating to
5 that, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. FOX:

8 Q Just with regard to the identification, would there have
9 been anything to prevent, whether it was in person or through
10 -- let me ask you this: What's a six-pack in terms of a
11 six-pack lineup? What is that?

12 A A photo lineup.

13 Q Okay. And, typically -- and that's usually created by
14 SLED; is it not?

15 A That is one resource, yes, sir.

16 Q Okay. And a photo lineup is typically six individuals?

17 A Yes, sir.

18 Q And then it's presented to a -- doesn't have to be a
19 victim -- a witness to see if they can identify someone in
20 that lineup?

21 A Yes, sir.

22 Q Okay. Would there have been anything in this case to
23 prevent that from being done at a point when Ms. Hernandez was
24 physically able? In other words, once her eyes were healed?

25 A I can't see why not, unless it just wasn't needed.

1 MR. FOX: Thank you.

2 THE COURT: All right, sir. Is there any objection to
3 releasing Sergeant Warren from his subpoena?

4 MS. ANDREW: Not from the State, Your Honor.

5 MR. FOX: No, Your Honor.

6 THE COURT: All right, Sergeant Warren. Thank you for
7 being here. You're free to go.

8 All right, ladies and gentlemen. Due to scheduling, at
9 this time, we're going to break for lunch. We're going to ask
10 that you be back here at 1:30. It's 12:15. So if you'll come
11 back at 1:30, we'll resume this trial. Please don't discuss
12 this case. Thank you so much for your attention.

13 (The jury exited the courtroom at 12:15 p.m.)

14 THE COURT: Is there anything before we break for lunch?

15 MS. WALTER: No, Your Honor, not from the State.

16 MR. FOX: No, Your Honor.

17 THE COURT: All right. We'll be back at 1:30.

18 (A lunch recess was taken at 12:15 p.m. to 1:30 p.m.)

19 THE COURT: I think we're waiting on the jury to finish
20 getting up here.

21 (Pause in the proceedings.)

22 THE COURT: I'm going to check to see if we're not having
23 a miscommunication issue. I thought they were here.

24 MS. WALTER: Okay.

25 (Pause in the proceedings.)

1 THE COURT: So the Crafty Rooster had some sort of
2 service issue. That's where most of the jurors decided to go
3 to lunch. They brought their food and they're just finishing
4 up now.

5 (Pause in the proceedings.)

6 THE COURT: Who will be calling the next witness?

7 MS. WALTER: I will, Your Honor. And then we're
8 alternating after that. We had to take some out of order.

9 THE COURT: That's fine.

10 (The jury entered the courtroom at 1:42 p.m.).

11 THE COURT: All right. Ms. Walter?

12 MS. WALTER: Thank you, Your Honor. The State calls
13 Liliana Hernandez-Diaz.

14 THE CLERK: Please raise your right hand and place your
15 left hand on the Bible.

16 LILIANA HERNANDEZ-DIAZ,
17 after having been duly sworn, was examined and testified
18 to as follows:

19 MS. WALTER: And, Your Honor, I told Ms. Hernandez-Diaz
20 that, if she needs a break, that we would ask you for it.

21 THE COURT: Sure.

22 THE CLERK: State your name and spell it for the Court.

23 THE WITNESS: Liliana Hernandez-Diaz. H-e-r-n-a-n-d-e-z.
24 D-i-a-z.

25 MS. WALTER: I'm just going to move the microphone a

1 little bit closer.

2 THE COURT: Sure.

3 MS. WALTER: May I, Your Honor?

4 THE COURT: Yes, ma'am.

5 DIRECT EXAMINATION

6 BY MS. WALTER:

7 Q Liliana, I'm just going to ask you a couple of easy
8 questions first. And when you answer, just make sure that
9 you're answering verbally so that Miriam can hear what you're
10 saying. And if you need a break, let us know.

11 Liliana, did you, at one point, work for the Sheraton
12 Convention Center?

13 A Yes.

14 Q What did you do there?

15 A Cleaning of the rooms.

16 Q How long did you work there?

17 A Approximately, for 10 years.

18 Q Do you remember about when you started?

19 A More or less in 2002.

20 Q And did you, at some point, leave the Sheraton and then
21 go back?

22 A Yes.

23 Q Were you working at the Sheraton as a house clean --
24 housekeeper, excuse me, in March of 2018?

25 A Yes.

1 Q On those dates that you worked, can you tell us just sort
2 of how you would start your day? How would you get ready to
3 clean rooms?

4 A We would enter the office of housekeeping. And, there,
5 we would be given the list of the rooms we'd have to clean,
6 along with a master key.

7 Q Then what would you do?

8 A So, then, we would go on the floor that we were assigned
9 and then fill the cart with supplies.

10 Q So, back in March of 2018, were you typically assigned to
11 a particular floor in the hotel?

12 A I always worked for the 4th floor.

13 Q Were you the only housekeeper that would work on the 4th
14 floor?

15 A We're two per floor, but, that day, I was alone.

16 Q So I'm going to start to ask you questions about March 20
17 of 2018. Did that day start like every other day?

18 A Yes.

19 Q Were you assigned that day or was one of your tasks to
20 clean Room 405?

21 A Yes.

22 Q When you got to Room 405, can you tell us, what's the
23 first thing you did when you got there?

24 A I started to make the beds. And, after that, I started
25 to dust the furniture. Then, I started to clean the bathroom.

1 And, lastly, I started to vacuum.

2 Q Liliana, when you went into Room 405, did you leave the
3 door open or did you close it?

4 A I left the door open.

5 MS. WALTER: Your Honor, can I just get her some water?

6 THE COURT: Yes, ma'am.

7 MS. WALTER: And we have tissues here.

8 BY MS. WALTER:

9 Q So did you have a cleaning cart that day when you went to
10 Room 405?

11 A Yes.

12 Q Did you bring the cleaning cart into your room or -- into
13 the room or did you leave it in the hallway?

14 A In the hallway. At the entrance of the door.

15 Q Was the cart blocking the door to Room 405?

16 A Yes.

17 Q And, with the door, did you prop it open with something?

18 A Yes. A doorstop. I don't know how you say that in
19 Spanish.

20 Q And I see you're wearing glasses today. Were you wearing
21 glasses that day?

22 A Yes.

23 Q You just described your cleaning routine. Was vacuuming
24 the last thing you were doing?

25 A Yes.

1 Q Was the rest of the room, then, clean and orderly?

2 A I didn't understand.

3 Q You had finished cleaning the rest of the room?

4 A Yes.

5 Q I want to back up one minute. If you know, were there a
6 lot of guests or occupied rooms on the floor when you were
7 cleaning?

8 A No. That was a day that the 4th floor was empty. So the
9 rooms there were vacant.

10 Q Did something happen while you were vacuuming in that
11 room?

12 A I was trying to vacuum when I felt someone put a rag in
13 my mouth, and I felt the other hand here.

14 MS. WALTER: And indicating, for the record, Your Honor,
15 she put her hand on her right shoulder.

16 THE COURT: All right.

17 BY MS. WALTER:

18 Q Let me just stop you there for a second. This person,
19 were they in front of you or behind you?

20 A Behind me.

21 Q Did they say anything to you before putting the rag over
22 your mouth?

23 A He said to me, "Have you ever been raped?"

24 Q The rag that he put over your mouth, could you see what
25 color it was?

1 **A** It was a yellow rag.

2 **Q** Did you notice anything else about that rag?

3 THE INTERPRETER: Interpreter is going to ask.

4 **A** It had a strange smell.

5 BY MS. WALTER:

6 **Q** What did you do when this person put the rag over your

7 mouth and had his hand on your shoulder?

8 **A** I tried to defend myself, and I tried to take his hands

9 away from my mouth.

10 **Q** How did you do that? What did you do?

11 **A** He started to grab me here (indicating). Then he said to

12 me, "If you don't want it the good way, then you'll get it the

13 bad way." Then he grabbed me here and turned me around.

14 **Q** And when you say "grabbed me here" --

15 MS. WALTER: For the record, Your Honor, she's grabbing,

16 sort of, her left shoulder.

17 BY MS. WALTER:

18 **Q** So when he turned you around, were you then facing him?

19 **A** He turned me around, he hit me, and then we were in front

20 of each other.

21 **Q** Could you tell whether he was white, black, or something

22 else?

23 **A** Black.

24 **Q** Was there anything unusual about what he was wearing?

25 **A** He had on a wig and some glasses.

1 Q' The glasses that he was wearing, were they clear like
2 mine and yours? Or were they dark? Or were they something
3 else?

4 A They were dark.

5 Q Liliana, do you see that man in the courtroom with us
6 today?

7 MR. FOX: Your Honor, I'm sorry, I'd renew my previous
8 objection at this point.

9 THE COURT: So noted.

10 BY MS. WALTER:

11 Q You can answer, Liliana.

12 A He's covering his face.

13 MS. WALTER: And, Your Honor, I'll ask that the defendant
14 not cover his face.

15 MR. FOX: He's sitting up.

16 THE WITNESS: Yes.

17 MS. WALTER: Your Honor, I would ask that the record
18 reflect that the victim has identified the defendant.

19 THE COURT: All right. So noted.

20 BY MS. WALTER:

21 Q Liliana, you told us that he turned you around and hit
22 you. What happened next?

23 A When he hit me, I fell. And he ran to the door to try to
24 close it.

25 Q To which door?

1 **A** The door of the entrance.

2 **Q** Was he able to close that door?

3 **A** No. He tried to close it, but he never noticed the
4 doorstop that was in the middle of the door.

5 **Q** What did you do when the defendant tried to shut the door
6 to the room?

7 **A** I got up and I tried to run to the bathroom, but the cord
8 of the vacuum wrapped around my foot. He came back. He
9 pushed me towards the door and tried to [coughing
10 interruption] --

11 **Q** And when you say --

12 COURT REPORTER: I'm sorry, tried to what?

13 MS. WALTER: Miriam, I think she needs you to repeat her
14 answer.

15 **A** He pushed me towards the door and -- when he -- when he
16 tried to close the door, and I was going to the -- running to
17 the restroom, the cord of the vacuum didn't let me. He came
18 back and he started hitting me again.

19 BY MS. WALTER:

20 **Q** And I think you said that he was pulling or pushing you
21 back someplace?

22 **A** He grabbed me again by the hair, and he dragged me out of
23 the bathroom.

24 **Q** When he dragged you out of the bathroom, was he dragging
25 you towards the door to the hallway or towards the back of the

- 1 room where the bedroom was?
- 2 **A** Inside the bedroom.
- 3 **Q** What happened next?
- 4 **A** He mounted me, and he started hitting me.
- 5 **Q** Where was he hitting you?
- 6 **A** Just in my face.
- 7 **Q** What was he hitting you with?
- 8 **A** With his fist.
- 9 **Q** What happened next? You said he mounted you and hit you
- 10 in the face. What happened next?
- 11 **A** I pushed him how I could with my knees and my hands.
- 12 When I pushed him, I was able to get him off of me.
- 13 **Q** What happened next?
- 14 **A** Again, I tried to run to the bathroom. And, in the
- 15 bathroom, again, he hit me.
- 16 **Q** Where was he hitting you this time?
- 17 **A** In my face.
- 18 **Q** With what?
- 19 **A** With his fist.
- 20 **Q** What happened in the bathroom this time?
- 21 **A** Again, he mounted me. And he was squeezing my neck very
- 22 strongly with his hands.
- 23 **Q** How did that physically make you feel?
- 24 **A** He wanted to kill me.
- 25 **Q** Did you lose consciousness when he was choking you?

1 **A** No. I pushed him again towards the thing in the
2 bathroom. He got up again.

3 **Q** And what did you do?

4 **A** He hit me again.

5 **Q** Where did he hit you?

6 **A** In my face.

7 **Q** What happened next?

8 **A** I fell between the toilet and the tub. And how I could,
9 I got up.

10 **Q** What happened next?

11 **A** I grabbed his private parts.

12 **Q** What happened next?

13 **A** He grabbed me again. My knees started to hurt, and I
14 lost strength in that knee. And I fell beneath the counter.

15 **Q** The counter in the bathroom?

16 **A** Yes.

17 **Q** What happened next? What did the defendant do?

18 **A** He started kicking me in the face.

19 **Q** How many times did he kick you in the face?

20 **A** I don't know.

21 **Q** What happened next?

22 **A** I acted like I was passed out.

23 **Q** Why did you do that?

24 **A** Because my only hope was that he would think that I was
25 dead and he would leave.

1 Q What happened after you pretended to have passed out?

2 A He left.

3 Q Before we get to what you did, I want to just back you up
4 for a minute. You testified that, at some point, the
5 defendant dragged you back towards the bedroom part of the
6 room and mounted you. Besides hitting you, did he do anything
7 else?

8 A He pulled my clothes.

9 Q And you're pulling the clothes you're wearing now sort of
10 in your chest area. Is that where he was grabbing your
11 clothes?

12 A Yes.

13 Q What did you think he was trying to do?

14 A Take my clothes off in order to rape me.

15 Q You have also testified that, when you first saw the
16 defendant face to face, he was wearing dark glasses and a wig.
17 First of all, I'm going to ask: Can you describe that wig?
18 What did it look like?

19 THE INTERPRETER: Would you repeat the second half of the
20 question, please?

21 BY MS. WALTER:

22 Q What did the wig look like?

23 A It was a wig with colors.

24 MS. WALTER: One moment, Your Honor.

25 (Ms. Walter opens evidence bag and shows it to Mr. Fox.)

1 MS. WALTER: Your Honor, may I approach with what's been
2 previously marked as State's Exhibit 12?

3 THE COURT: Yes, ma'am.

4 BY MS. WALTER:

5 Q Liliana, I'm showing you State's Exhibit 12. Do you
6 recognize that?

7 A Yes.

8 Q Where do you recognize it from?

9 A From the person that attacked me.

10 MS. WALTER: Your Honor, I would ask that Exhibit 12 be
11 admitted and published to the jury.

12 THE COURT: Is there any objection?

13 MR. FOX: No objection.

14 THE COURT: All right. Plaintiff's -- or State's Exhibit
15 No. 12 is in evidence without objection.

16 (State's Exhibit No. ST-12, Wig, received into evidence.)

17 BY MS. WALTER:

18 Q And, Liliana, when you say the person who attacked you,
19 is that the same person you identified earlier, the defendant?

20 A Some years have gone by. Yes, it's the same person.

21 MS. WALTER: Sorry, Your Honor.

22 (Ms. Walter opens evidence bag and shows it to Mr. Fox.)

23 MS. WALTER: And, Your Honor, I am now approaching --
24 this should be State's Exhibit 13. If I may approach the
25 witness?

1 THE COURT: Yes, ma'am.

2 BY MS. WALTER:

3 Q Liliana, do you recognize the items in State's Exhibit
4 13?

5 A The white ones are mine, and the other ones are his.

6 MS. WALTER: Your Honor, I'd ask that State's Exhibit 13
7 be admitted and published.

8 THE COURT: Any objection?

9 MR. FOX: No, Your Honor.

10 THE COURT: State's 13 is in evidence without objection.

11 (State's Exhibit No. ST-13, Two Pairs of Glasses,
12 received into evidence.)

13 BY MS. WALTER:

14 Q And so the ones with the white earpieces were yours?

15 A Yes.

16 Q Was the defendant wearing those glasses and that wig the
17 entire time during the attack?

18 A Until we got to the bathroom. When we got to the
19 bathroom, I took them off.

20 Q When you say you took them off, can you describe how you
21 did that?

22 THE INTERPRETER: Interpreter wants to make sure she
23 understood.

24 A I grabbed the glasses and the wig, and I threw them.

25

1 BY MS. WALTER:

2 Q From the time that the defendant said to you, "Have you
3 ever been raped," until he left the room, are you able to tell
4 us how long that took?

5 A For me, it was an eternity.

6 Q Were the lights on in the room?

7 A That of the bathroom, yes. Those of the room, I'm not
8 sure. I don't remember.

9 Q As you sit here today, are you sure that the defendant is
10 the one who attacked you?

11 A Yes.

12 Q Liliana, after the defendant left the room, what did you
13 do?

14 A How I could, I got up. And I went to close the door of
15 the entrance.

16 Q Were you able to close it?

17 A Holding on to the wall like I could, I closed the door.

18 Q And why did you do that?

19 A I walked all along the wall towards the phone.

20 Q Towards the phone that was in the room?

21 A In the room. And I dialed zero.

22 MS. WALTER: Court's indulgence for one moment.

23 Your Honor, may I approach with Exhibit 28?

24 THE COURT: Yes, ma'am.

25

1 BY MS. WALTER:

2 Q Liliana, I'm going to show you what's marked as State's
3 Exhibit 28. Is that a picture of the phone that you used?

4 A Yes, yes.

5 MS. WALTER: Your Honor, I would ask that State's Exhibit
6 28 be admitted and published.

7 MR. FOX: No objection.

8 THE COURT: All right. 28's in evidence.

9 (State's Exhibit No. ST-28, Photograph of Phone, received
10 into evidence.)

11 BY MS. WALTER:

12 Q You said that you pressed zero. Was that the number for
13 the front desk?

14 A Yes.

15 Q Did anyone answer?

16 A No.

17 Q What did you do next?

18 A I got my phone and I called Sergio.

19 Q Sergio is your boyfriend or fiancé?

20 A My fiancé.

21 Q Did Sergio answer the phone?

22 A Yes.

23 Q What did you say to Sergio?

24 A I told him I needed help.

25 Q Did you tell him what had just happened to you?

1 **A** No.

2 **Q** Why not?

3 **A** I couldn't believe what had just happened to me. I told

4 him, "I need help. I'm fine."

5 **Q** Did someone eventually show up to the room for you?

6 **A** Security.

7 **Q** Do you know specifically who came to the room?

8 **A** Joe and Tony.

9 **Q** When they got to the room, did they just come in the

10 room? Or how did they get in the room?

11 **A** I unlocked the door. And they stood in the doorway.

12 **Q** What happened next?

13 **A** One of them said to me --

14 MR. FOX: Objection, Your Honor. Hearsay.

15 MS. WALTER: Your Honor, it's not offered for what was

16 said.

17 THE COURT: I'm going to allow it.

18 You can answer the question.

19 **A** One of them said, "Who did this?"

20 BY MS. WALTER:

21 **Q** What did you respond?

22 **A** "A black person."

23 He asked me if I knew him. I said, "No."

24 **Q** Meaning you had never seen him before that day?

25 **A** No.

1 Q Besides Joe and Tony, did anyone else come up to the room
2 to help you?

3 A When the two of them arrived, I felt, for one part,
4 relieved. And then I just heard voices, but no...

5 Q Were you able to see at that point?

6 A No.

7 Q Were you taken to the hospital?

8 A Yes.

9 Q Can you tell us what they did for you at the hospital?

10 A No.

11 Q Did you have any stitches or bandages or splints?

12 A I don't know how many there were, but, for me, there were
13 a lot.

14 Q A lot of stitches?

15 A Yes.

16 Q How long did it take before you were able to open your
17 eyes?

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

19 Q Did the police come and talk to you while you were at the
20 hospital?

21 A Yes.

22 Q How were you feeling emotionally when the police spoke
23 with you?

24 THE INTERPRETER: Interpreter is going to ask....

25 A I felt safe while I was in the hospital.

1 BY MS. WALTER:

2 Q Were you still upset from what had happened to you?

3 A It was a sensation of feeling safe, but, at the same
4 time, I was upset, anguished.

5 Q Did you tell the police everything at that time that you
6 have told us today, meaning every detail?

7 A I don't remember. I just remember telling them the
8 description of the person, how the person looked.

9 Q Do you know how long you were in the hospital?

10 A Four days.

11 Q During that time and in the four years since, have you
12 had any other medical visits or follow-up as a result of this
13 attack?

14 A Yes.

15 Q Can you tell us what you have had to do?

16 A I had visits with the neurologist, with the orthopedist
17 for the knee, and with my psychologist.

18 Q Do you still have any physical effects from the attack?

19 A I always feel afraid. I have a scar on my face. I have
20 a knot right here.

21 MS. WALTER: For the record, when she said a scar on her
22 face, she was pointing to the middle of her forehead, and "a
23 knot right here," indicating a spot over her left eyebrow.

24 THE COURT: So noted.

25

1 BY MS. WALTER:

2 Q Have you ever, since that day, been back to the Sheraton?

3 A No.

4 MS. WALTER: Court's indulgence.

5 Nothing further at this time. Please answer any
6 questions from Mr. Fox.

7 CROSS-EXAMINATION

8 BY MR. FOX:

9 Q Ms. Hernandez, when you spoke to the police at the
10 hospital, you indicated today, at that point, you felt safe.

11 A Yes.

12 Q There was a police officer there with you; correct?

13 A Yes.

14 Q Your boyfriend, Sergio, was there some of the time. I
15 think at one point he left the room, but he was there?

16 A Yes.

17 Q Ms. -- I believe -- correct me if I have the name wrong,
18 Ms. Johnson, who is the head of housekeeping at the Sheraton,
19 she was also there?

20 A Yes.

21 Q And, in fact, she held your hand through the interview;
22 is that right?

23 A Yes.

24 Q You were able to speak to the police officer?

25 A Yes.

1 Q You were able to answer his questions?

2 A Yes.

3 Q You understood his questions? Did you understand his
4 questions?

5 A They were translated.

6 Q Okay. But with the help of translators, you were able to
7 understand and communicate with Officer Arroyo?

8 A Yes.

9 Q And you were able to describe, as you have today, what
10 you were doing -- your cleaning duties that day in Room 405?

11 A I don't understand.

12 Q Okay. You were able to tell the officer what you were
13 doing in Room 405 before this attack?

14 A With details? No.

15 Q But you told him that this person came in the room while
16 you were vacuuming?

17 A Yes.

18 Q So that detail, you were able to tell Officer Arroyo?
19 You were able to tell him that detail; correct?

20 A I don't remember. I only remember that I could tell him
21 what the person looked like, the one who did it.

22 Q Do you remember telling the officer where you placed the
23 cart before you went into the room?

24 A Yes.

25 Q And you were able to give a description of the person

1 that came up behind you?

2 A Not only was he behind me, we were face to face.

3 Q I understand. And you were able to describe this person
4 for the officer?

5 A Yes.

6 Q You were able to specifically describe what that person
7 was wearing?

8 A Yes.

9 Q You were able to describe his race?

10 A Yes.

11 Q You were able to describe his hair?

12 A Yes, when I took -- when I took the wig off, I saw his
13 hair.

14 Q And you were able to tell the police that the person
15 had -- I think you described it as black person's hair all
16 over his head?

17 A I don't understand.

18 Q That's your description.

19 I'll back up a minute. Do you believe it would be fair
20 to say that you spoke to Officer Arroyo for about 24 minutes?

21 A I don't know how much time passed, but, yes, the officer
22 was there, asking me questions.

23 Q And you were able to participate throughout the entire
24 interview? And what I mean is you were able to answer his
25 questions and respond to him during the entire interview?

1 **A** Yes.

2 **Q** Did he hurry you at any time? Rush you?

3 **A** No.

4 **Q** He allowed you to explain everything that you needed to?

5 **A** Yes.

6 **Q** At no time during that 24-minute interview did you
7 mention or say that the person that attacked you said, "Do you
8 know what it's like to be raped?" or anything like that. You
9 never said anything like that to the police, did you?

10 **A** I remember that I did say that. Because that's what he
11 said to me when I went in. But -- but I don't know if the
12 person that was helping me said it.

13 **Q** So your testimony is you said it, but the person helping
14 you didn't translate that and tell the police?

15 **A** I don't know.

16 **Q** If you heard a recording of your interview, would it help
17 refresh your recollection on that point?

18 **A** Yes.

19 **Q** Okay. Would it help your recollection if I showed you a
20 transcript, which is just the written-out words of the
21 recording? If you could review a transcript, would that help
22 refresh your recollection?

23 MS. WALTER: Your Honor, I would object because,
24 certainly, we do not have a transcript, and one has never been
25 provided to us.

1 MR. FOX: It's the transcript the State provided in
2 discovery, Your Honor.

3 MS. WALTER: Actually --

4 THE COURT: Ladies and gentlemen, if you'll go out for a
5 few minutes. We'll have you right back out. I appreciate it.
6 Please don't discuss this case.

7 (The jury exited the courtroom at 2:45 p.m.)

8 MR. FOX: Judge, I do have a copy of the interview, the
9 audio, and we can play that. We can take a few minutes. I
10 think it's about 20 minutes. She can listen to it. But I
11 have some other questions, not just this one point. So I can
12 have a computer over here shortly, as in -- within five
13 minutes. We can take a quick break and give Ms. Hernandez a
14 chance to listen with the interpreter, because it's in English
15 and Spanish. So I would ask the interpreter to sit with her
16 and interpret the English portions, see if that refreshes her
17 recollection and go from there.

18 THE COURT: Seems to me that the only questions that
19 would be pertinent for this witness to answer would be hers,
20 as to her responses.

21 MR. FOX: Well, yes --

22 THE COURT: So I don't know why we would need it
23 translated.

24 MR. FOX: Well, there would be the responses to the
25 questions.

1 THE COURT: But she wouldn't understand the translation.

2 MR. FOX: Who --

3 MS. WALTER: Well, I think it's confusing because what
4 would be happening is you would have Jaira Johnson translating
5 -- and she's certainly not a court-certified translator,
6 translating -- what the victim said, and then saying it in
7 English, and then a court-certified interpreter interpreting
8 an uncertified interpreter's version of what the victim said.

9 MR. FOX: No, it's just -- no, the video is just a
10 recording of the interview. So present at the interview are
11 Detective Arroyo, who speaks some Spanish. So you'll hear
12 Detective Arroyo speaking in Spanish but sometimes Spanglish.
13 You have got Ms. Hernandez. You have Ms. Johnson to assist,
14 and so you sometimes hear Ms. Johnson offering a word or an
15 expression to help clarify both ways, both for the detective
16 and Ms. Hernandez. I think the court reporter -- I mean, the
17 interpreter here can certainly interpret Spanish.

18 THE COURT: I'm just trying to figure out the point in
19 having this interpreter interpret the video that's already
20 been interpreted.

21 MR. FOX: Well, I don't know that it actually has. I
22 mean, there is a transcript. It's not official. I mean, the
23 State did one. I -- through my office, we got someone, just
24 to make sure we weren't missing anything. But that wasn't
25 official. I mean, we got someone who we think is very fluent

1 in Spanish. I'm not suggesting that that's a -- and to avoid
2 -- although, apparently, she is -- that's Alvez -- or, I'm
3 sorry, Ms. Wilmer Alvarez (ph), who is a South Carolina
4 court-certified interpreter with ID No. 11069.

5 THE COURT: And is the only purpose for this to refresh
6 the witness's recollection?

7 MR. FOX: Yes. And I'm happy to -- I don't know if she
8 reads. I was about to ask if she read English and
9 understands. I'm happy to let her use this; the State can
10 look it over. And I'd be happy to use that rather than having
11 to play something, but we may still need an interpreter to
12 translate the English. That, I don't know.

13 MS. WALTER: And, Your Honor, I just want to clarify for
14 the record, the State did not transcribe that interview. The
15 defense requested that the State be forced to pay a
16 court-certified interpreter to interpret and transcribe it.
17 We did not.

18 To the best of my knowledge, no one in my office ever
19 asked for it to be transcribed or transcribed it. I don't
20 have a copy of the transcript. I have no idea whether it's
21 accurate.

22 THE COURT: Well, we have the video; is that right?

23 MR. FOX: Yes. Well, it's not video. It's audio. It's
24 audio.

25 THE COURT: All right. So what's the problem with

1 allowing her to hear the audio? No further translation. I
2 mean, as to only the audio to refresh her recollection and
3 then you can ask her questions?

4 MR. FOX: I'm perfectly fine with that.

5 THE COURT: Do we have any objection to doing that
6 outside the presence of the jury?

7 MS. WALTER: Oh, no, Your Honor. I think it should be.

8 MR. FOX: Yeah, I think it should be outside the jurors'
9 presence. Judge, we have a laptop on the way. It should be
10 here literally in just a minute or two. We'll take a quick
11 break, and we'll be ready to go after the break.

12 THE COURT: And you think it will take about 20 minutes?

13 MR. FOX: Yeah, based on the transcript --

14 MS. WALTER: Do you have a DVD or it's --

15 MS. CALDWELL: It's coming.

16 MS. WALTER: Well, I was going to offer to use the one
17 that's in the courtroom, and I'm asking what you have it on.

18 MR. FOX: I believe it's on a DVD.

19 MS. WALTER: Okay. We have a DVD player. We can save
20 some time.

21 MR. FOX: That would be wonderful. Let me locate it
22 under my mess of things.

23 THE COURT: What's everyone's position as to whether or
24 not that needs to be on the record?

25 MS. WALTER: I would think it can -- I mean, typically, I

1 don't think that the court reporter -- they normally just say
2 "audio played." I think, certainly, we could make it -- or
3 the defense could make it a Court's exhibit just so that it's
4 part of the record, but I don't think that Ms. Fisher needs to
5 try and transcribe it.

6 THE COURT: Sure. I understand that. I'm just trying to
7 determine whether the Court can be at recess.

8 MS. WALTER: I think the Court can.

9 MR. FOX: Yes.

10 MS. WALTER: And we'll stay here. But you're the judge;
11 you can do whatever you want.

12 THE COURT: I understand. All right. Well, we're going
13 to allow this to take place, and let us know when you're
14 ready.

15 MS. WALTER: Thank you, Your Honor.

16 (A brief recess was taken from 2:56 p.m. to 3:25 p.m.)

17 THE COURT: Are we ready?

18 MR. FOX: Yes, Your Honor.

19 THE COURT: All right. Let's have the jury.

20 (The jury entered the courtroom at 3:27 p.m.)

21 THE COURT: All right. Thank you for your patience.

22 Mr. Fox?

23 MR. FOX: Thank you, Your Honor.

24 BY MR. FOX:

25 Q Ms. Hernandez, have you had a chance to listen to a

1 recording of the interview you gave at the hospital with
2 Detective Arroyo?

3 A Yes.

4 Q And having listened to that, does it help refresh your
5 memory regarding that interview?

6 A Yes.

7 Q Now, we were talking about, before the break, statements
8 that you testified today that your attacker made to you.
9 Specifically today, you have testified that, when this person
10 came up behind you, they said, "Have you ever been raped?"
11 Did you ever say that or mention that to Detective Arroyo in
12 your interview?

13 A Yes.

14 Q Where was that that you said that to Detective Arroyo?
15 In the interview that you just listened to?

16 A Yes.

17 Q Okay. Good. I think we're going to play this -- let me
18 move along and then we'll play the interview.

19 Today, you testified that you said -- that the attacker
20 said, rather, "If you don't want it the good way, you'll get
21 it the bad way." You did not say that to Detective Arroyo
22 during your interview, did you?

23 A No.

24 Q Okay. And let me clarify. I might have misunderstood
25 the previous series of questions. Were you agreeing with me

1 when I said that you never told the police about the attacker
2 saying, "Have you ever been raped?" Were you just agreeing
3 with me?

4 **A** Can you repeat it again, please?

5 **Q** I'm confused, and I apologize. So I'm just going to ask
6 it again so I make sure I did not misunderstand you.

7 Today, in court, you testified that, when this person
8 came up behind you, he said, "Have you ever been raped?" And
9 that was your testimony today; right?

10 **A** Yes.

11 **Q** And so the question is: Did you ever say that to the
12 police during your interview at the hospital?

13 **A** Not with those words.

14 **Q** Okay. Now, we can agree that this interview at the
15 hospital lasted about 25 minutes?

16 **A** Yes.

17 **Q** Okay. And you were able to describe the person that
18 attacked you?

19 **A** Yes.

20 **Q** You were able to describe their skin color?

21 **A** Yes.

22 **Q** A wig?

23 **A** Yes.

24 **Q** Glasses?

25 **A** Yes.

1 Q And you described this person's hair?

2 A Yes.

3 Q And you described it, I think -- I think your phrase was
4 "black person's hair," curly hair?

5 A Yes.

6 Q And someone, I believe it was a detective, but someone
7 asked you very specifically whether the person that attacked
8 you, whether his hair was shaved on the sides. Do you
9 remember that question?

10 A Yes.

11 Q And you said, "No, no, no. All over." As in the hair
12 was all over, not shaved.

13 A I said he had long hair.

14 Q Okay. But not shaved at the sides. Is that correct?

15 A Yes.

16 Q And that long hair can mean different things to different
17 people. What did you mean by "long hair"? Can you describe
18 that for us?

19 A I'm referring to the length -- length -- not long like
20 this.

21 Q Long like how?

22 A This length.

23 Q Like dreadlocks? Do you know what dreadlocks are? Like
24 that?

25 A I don't know what that is.

1 Q Like a reggae star, like Bob Marley? That's okay.

2 Now, today, you testified in court that, at some point,
3 your attacker dragged you by the hair and drug you out of the
4 bathroom.

5 A Yes.

6 Q You did not say that to Detective Arroyo during your
7 interview, though, did you?

8 A I didn't tell him, but -- but -- but my hair here was
9 pulled because I always wear my hair in a ponytail, and this
10 part of my hair was pulled.

11 Q But my question was: Did you tell the police that you
12 were drug by your hair while you were in the bathroom, by your
13 attacker?

14 A Yes.

15 Q You did tell the police that?

16 A Yes.

17 Q Okay. We'll come back to that.

18 Do you work now?

19 A Yes.

20 Q Okay. You're physically able to work?

21 A Yes.

22 Q Okay. And please excuse me for jumping around, because I
23 think of things. Back to the description of the person that
24 attacked you, could you describe his clothes?

25 A Pants. Black-colored pants.

1 Q During your interview with the police, they asked if you
2 thought you'd be able to identify your attacker if you were
3 shown a picture. Do you recall that?

4 A Yes.

5 Q Okay. But they didn't have any pictures there at that
6 time to show you, did they?

7 A Yes, they brought a tablet with the pictures. But I
8 couldn't see.

9 Q Right. Did -- at any time, after your eyes got better,
10 did anyone bring you any -- any officer, bring you pictures to
11 try to identify your attacker?

12 A In the tablet, they had pictures.

13 Q Go ahead. Continue.

14 A That they had gotten from the cameras at the Sheraton.

15 Q Okay. At any time -- now, you say, at first, your eyes
16 were injured and you couldn't see; but after your eyes got
17 better and you could see, did anyone ask you to look at those
18 pictures, or any other pictures, to identify your attacker?

19 A No.

20 Q Okay.

21 MR. FOX: Court's indulgence, Your Honor.

22 BY MR. FOX:

23 Q Have you ever been present -- this happened four years
24 ago. Have you been present at any other court proceedings in
25 this case before today?

1 **A** Yes.

2 **Q** When was that?

3 **A** The day? I don't remember.

4 **Q** Okay. Was that recently or was it a long time ago?

5 **A** Recently.

6 **Q** Was that here in this courthouse?

7 **A** Yes.

8 **Q** And that was in a courtroom with a judge and Ms. Walter
9 and myself?

10 **A** The two of them were there.

11 **Q** Who were the two of them, please?

12 **A** The solicitor and yourself were here.

13 MR. FOX: Court's indulgence, Your Honor.

14 BY MR. FOX:

15 **Q** All right. Just one or two more, Ms. Hernandez. Again,
16 regarding your interview with Detective Arroyo, do you recall
17 them specifically asking you if the person that attacked you
18 said anything? Do you recall them asking you that?

19 **A** Something of what how [verbatim]?

20 **Q** You listened to your interview again, and Detective
21 Arroyo at some point asked you, "Did your attacker say
22 anything to you?"

23 **A** Yes.

24 **Q** Okay. And your answer was, "All he said was shut up,
25 shut up"; right?

1 **A** Yes.

2 MR. FOX: Thank you. I have no further questions.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. WALTER:

6 **Q** Liliana, this interview took place in the trauma room of
7 the hospital; right?

8 **A** Yes.

9 **Q** While you were being treated for your injuries or shortly
10 thereafter; correct?

11 **A** Yes.

12 **Q** Were you --

13 MS. WALTER: Court's indulgence.

14 BY MS. WALTER:

15 **Q** When you were talking to the police officers, were you
16 giving them as much detail as you have been asked to give
17 today, if that makes sense?

18 **A** No, not like today.

19 **Q** Do you know if they had given you any medicine for the
20 pain?

21 **A** Yes.

22 **Q** Were you still upset from the assault?

23 **A** Yes.

24 **Q** In fact, you're still upset today; correct?

25 **A** Yes.

1 Q And, again, you just listened to your interview. You
2 told the police that he had grabbed you by your neck; right?

3 A Yes.

4 Q You told the police that he tried to take off your
5 clothes?

6 MR. FOX: Objection to leading, Your Honor.

7 BY MS. WALTER:

8 Q Did you tell the police that he tried to take off your
9 clothes?

10 A Yes.

11 Q Did you tell the police that he tried to take off your
12 shirt two different times?

13 A Yes.

14 Q Did you tell the police about the multi-colored wig that
15 he was wearing?

16 A Yes.

17 Q And I believe Mr. Fox asked you something about what he
18 had been wearing. You said black pants. Did you mention any
19 kind of shirt that he was wearing?

20 A A white shirt.

21 Q When you were in court recently, when you saw the
22 defendant, did you recognize him?

23 A Yes.

24 Q Where did you recognize him from?

25 A The day of the accident.

1 Q Have you tried to forget his face?

2 A Yes.

3 Q Have you been able to?

4 A No.

5 Q I ask you again, as you sit there today, are you
6 identifying the defendant because he is sitting in court with
7 us today or because you remember him from March 20, 2018?

8 A Because I remember him from the day of the accident
9 [verbatim].

10 Q Is there any doubt in your mind?

11 A No.

12 MS. WALTER: Nothing further, Your Honor.

13 THE COURT: All right.

14 Anything further, Mr. Fox?

15 MR. FOX: Just one in response.

16 RE CROSS-EXAMINATION

17 BY MR. FOX:

18 Q Ms. Hernandez, at any time in the last four years, did
19 anyone from law enforcement, any police officer, try to do a
20 follow-up interview with you when you were not on painkillers
21 and in the hospital?

22 A No.

23 MR. FOX: Thank you.

24 THE COURT: All right. Thank you, Ms. Hernandez. You
25 may step down.

1 Ms. Andrew?

2 MS. ANDREW: Your Honor, the State calls Tony Lee.

3 THE CLERK: Please raise your right hand and place your
4 left hand on the Bible.

5 TONY LEE,

6 after having been duly sworn, was examined and testified
7 to as follows:

8 THE CLERK: And just state your name and spell it for the
9 Court.

10 THE WITNESS: Tony Lee. T-o-n-y, L-e-e.

11 MS. ANDREW: May it please the Court, Your Honor?

12 THE COURT: Yes, ma'am.

13 DIRECT EXAMINATION

14 BY MS. ANDREW:

15 Q Mr. Lee, where do you currently work?

16 A Sheraton Myrtle Beach Convention Center Hotel.

17 Q Is that hotel located in Horry County, South Carolina?

18 A Yes.

19 Q How long have you been employed at the Sheraton Hotel?

20 A 17-plus years.

21 Q So you were employed at the Sheraton back on March 20 of
22 2018?

23 A Correct.

24 Q What were your job duties back on March 20 of 2018?

25 A I'm the chief engineer at the hotel.

1 Q Chief engineer?

2 A Mm-hmm.

3 Q Is that your current job duty?

4 A It is.

5 Q Were are you also, back then, the chief of security?

6 A The director of security is a different position, but I
7 did oversee that position.

8 Q Okay. I'm going to turn your attention to the incident
9 that brings us in the court today. Were you working on that
10 day?

11 A Yes.

12 Q Do you recall how you first found out that the incident
13 had occurred at the hotel that day?

14 A Yes.

15 Q How did you find out?

16 A We got a call on our radio.

17 Q When you say "we," who do you mean?

18 A Myself and the director of security were together at the
19 time.

20 Q And who was the director of security at that time?

21 A Joe Stevens.

22 Q So when you and Joe got the call on your radio, what did
23 you do?

24 A We, obviously, ran straight to that area, to that room.

25 Q What information did you find out from the call that led

1 you to the room?

2 A We got a call saying that there was a medical emergency,
3 that a housekeeper needed assistance immediately.

4 Q Did they give you the room number?

5 A Honestly, I don't remember exactly if they gave us a room
6 number. We had to know where we were going, but I don't
7 remember how we got that information. But that's where we
8 went. We went to that room, so...

9 Q So you responded to Room 405 --

10 A Correct.

11 Q -- where this incident occurred?

12 A Correct.

13 Q And how did you get to Room 405?

14 A We went in two different directions, actually. Joe,
15 which is our director of security, went up the stairs, and I
16 took the elevator. So we came from two opposite directions.

17 Q And when you arrived at Room 405, was the door open or
18 closed?

19 A Joe arrived first, and the door was still closed when he
20 got there. He knocked on the door, and he did hear somebody
21 on the inside. About the time I arrived, we could hear
22 somebody on the inside. And so he was in the process of
23 opening the door with his passkey when she -- when she opened
24 the door. I was behind him when all this happened, so -- I'm
25 sorry.

- 1 Q No, that's fine. Thank you.
- 2 A So, I mean, when he stuck his head in to see what was
3 going on, I was behind him, and he turned around and said,
4 "You need to call 911." So that was when I stepped back,
5 called 911, and then I went to the lobby, so when the officers
6 arrived, I could get them there quicker, and he stayed.
- 7 Q Okay. So let's back up a little bit and talk about what
8 you actually saw when the door opened to the room. Could you
9 see that there was an individual in the room?
- 10 A Yes.
- 11 Q What was the condition of that person?
- 12 A Again, I was looking over the shoulder of Joe that was in
13 the door himself, but there was blood on the door, and you
14 could tell that her face was completely covered with blood.
- 15 Q Did you recognize the person?
- 16 A I could not.
- 17 Q Did you know Liliana Diaz-Hernandez previous to this day?
- 18 A Oh, yeah.
- 19 Q How long had you known her?
- 20 A Years. I don't know exactly, but years.
- 21 Q Did you work with her on almost a daily basis?
- 22 A Pretty much, yes.
- 23 Q So, normally, you would recognize her if you saw her?
- 24 A Yes.
- 25 Q And what kind of worker was she? You said you worked

1 with her a long time.

2 A She was one of our housekeepers. You mean what type of
3 work did she do?

4 Q What type of -- what kind of person was she? Was she
5 well-liked? Was she a good worker at the hotel?

6 A Yeah, absolutely.

7 Q Could you also see the condition of the room at that
8 time?

9 A Not right then, I didn't. After the police arrived, we
10 went in the room. But as soon as -- again, whenever I went to
11 make the phone call, our process is somebody goes down to the
12 lobby to cut down the time for them wanting to know where to
13 go.

14 Q Okay. So you said you called 911.

15 A I did.

16 MS. ANDREW: May I approach the witness, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. ANDREW:

19 Q I'm going to show you what's been marked as State's
20 Exhibit No. 48.

21 A Okay.

22 Q That's a DVD.

23 A Mm-hmm.

24 Q Have you ever seen this before?

25 A Yes.

1 Q How can you tell?

2 A My signature.

3 Q So your signature is on this DVD?

4 A Yes.

5 Q And is this a copy of the 911 call you made that day?

6 A Yes.

7 Q Did you listen to it to ensure that it's a fair and
8 accurate copy of the call that you made?

9 A I did.

10 MS. ANDREW: Your Honor, at this time, the State seeks to
11 enter Exhibit No. 48 and publish it to the jury.

12 THE COURT: Is there any objection?

13 MR. FOX: No, Your Honor.

14 THE COURT: All right. 48's in evidence without
15 objection.

16 (State's Exhibit No. ST-48, 911 Call/DVD, was received
17 into evidence.)

18 (State's Exhibit 48, audio plays.)

19 THE COURT: All right. Can we stop that?

20 MS. ANDREW: Court's indulgence. We'll try to get the
21 speakers on.

22 THE COURT: Yes, thank you.

23 (Pause in the proceedings.)

24 MS. WALTER: Do you want to start it over?

25 THE COURT: Yes, ma'am. I would think so.

1 (State's Exhibit 48, audio plays.)

2 MS. ANDREW: Was everyone able to hear the call?

3 JUROR: Yes.

4 BY MS. ANDREW:

5 Q Mr. Lee, you just listened to the 911 call. Was that the
6 call you actually made that day?

7 A Yes.

8 Q I believe you said on the call that you'd wait in the
9 lobby. And you testified that you waited in the lobby?

10 A Yes.

11 Q So who met you in the lobby? Who responded? What
12 emergency personnel?

13 A Honestly, I don't remember if it was the EMS or the
14 police that arrived first.

15 Q Well, whoever arrived, did you go back up to Room 405
16 with those emergency responders?

17 A I did.

18 Q And when you got back up to Room 405, were you able to
19 see inside the hotel room at that time?

20 A Yes.

21 Q What did it look like?

22 A It looked like there had been some -- somebody had beaten
23 somebody in there because the room was torn up a little bit.
24 There was blood and there was broken glass and, obviously, the
25 housekeeper was still in there, crying, and we were trying to

1 console her and keep her calm.

2 Q Did you personally speak to her at that time?

3 A I may have. I don't remember, honestly. She was pretty
4 shook up.

5 Q She was shook up.

6 A Very, very much so.

7 Q And did you see a lot of injuries to her face and person?

8 A Yeah.

9 Q Did you provide to the solicitor's office a diagram of
10 the 4th floor of the Sheraton Hotel?

11 A I did.

12 MS. ANDREW: May I approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. ANDREW:

15 Q I'm going to show you what's been marked as State's
16 Exhibit No. 49. Is this a copy of a floor plan you provided
17 to the State?

18 A It is.

19 Q And does this accurately depict what the 4th floor of the
20 Sheraton Hotel in Myrtle Beach actually looks like?

21 A Yes.

22 MS. ANDREW: Your Honor, the State seeks to admit
23 Exhibit 49 and publish it to the jury.

24 MR. FOX: Without objection, Your Honor.

25 THE COURT: All right. 49 is in without objection.

1 (State's Exhibit No. ST-49, Floor Plan, was received into
2 evidence.)

3 BY MS. ANDREW:

4 Q Do you mind holding it --

5 A No, not at all.

6 Q -- so we can see it.

7 Can you point out -- and I'll help you hold it --

8 A I got it.

9 Q -- Room 405 on this document?

10 A Right here.

11 Q Okay. Where is the closest access point if you were
12 coming up to get to that room? Like stairs or elevator?

13 A Stairs are right here.

14 Q So it's pretty close to the stairs?

15 A Correct.

16 Q Okay. Where is the elevator?

17 A The elevator would be right here.

18 Q Okay. And looking back on that day, do you remember how
19 you got back up to Room 405?

20 A The elevator.

21 Q Do you remember seeing anyone matching the defendant's
22 description when you came up to Room 405?

23 A Mm-mmm, I do not.

24 Q Do you remember seeing anyone going down on the mezzanine
25 that day?

1 **A** When we came back in, when we actually got the call, we
2 were in the parking garage. And I remember seeing a gentleman
3 going down the ramp. I don't know if that's who we're talking
4 about or not. It's just the time that -- the two happened to
5 happen at the same time.

6 **Q** Okay. So if that individual was coming down the ramp,
7 which of these access points would they have come from?

8 **A** This one.

9 **Q** That one?

10 **A** Yes, ma'am.

11 **Q** And was that based on your knowledge of the hotel and
12 your years of working there?

13 **A** Yes.

14 **Q** So you would come down this stairwell, then, to access
15 the mezzanine level?

16 **A** Correct.

17 **Q** Thank you.

18 **A** Mm-hmm.

19 MS. ANDREW: Court's indulgence.

20 BY MS. ANDREW:

21 **Q** Other than testifying here today, do you have any other
22 information about this incident that occurred at the Sheraton
23 that day?

24 **A** I do not.

25 MS. ANDREW: Please answer any questions Mr. Fox has.

CROSS-EXAMINATION

1
2 BY MR. FOX:

3 Q Mr. Lee, silly question, but if the stairs in the
4 Sheraton are like the stairs everywhere, they go up and they
5 go down?

6 A Correct.

7 Q How many floors in the Sheraton Hotel?

8 A Twelve.

9 Q So, from that stairwell that you were pointing out that's
10 closest to Room 405, you could go up all the way to the 12th
11 floor if you chose to?

12 A Correct.

13 Q And, obviously, down to the ground?

14 A Correct.

15 Q Same thing would be true with the stairwell at the other
16 end of the hall?

17 A Yes, sir.

18 Q You came up the stairs that would be closest to Room 405?

19 A I came up on the elevator.

20 Q I'm sorry; you said the elevator. I apologize. You did
21 say that.

22 And the elevator is kind of set up like not quite an "L"?
23 The elevator is --

24 A Right.

25 Q -- more or less --

1 **A** Centrally located.

2 **Q** Centrally located. That's a good way to put it.

3 On March 20th of 2018, the 4th floor was unoccupied at
4 that time; correct? No guests?

5 **A** I don't remember that.

6 **Q** Okay. That's something that Sheraton did, though, from
7 time to time?

8 **A** There are times when we did have unoccupied rooms and
9 unoccupied floors. I don't remember if that day that you're
10 talking about was that.

11 **Q** I understand. But that is the situation either because
12 of lack of demand or, I suppose, to perhaps give an
13 opportunity to clean an entire floor, and that's something
14 that happens from time to time?

15 **A** Renovation or something like that, correct.

16 **Q** And you're familiar -- I misunderstood. You indicated
17 you were chief engineer and then something about security.
18 What was your role in security back in 2018?

19 **A** In 2018, Joe Stevens, Director of Security, that he fell
20 under my umbrella. I would oversee Joe.

21 **Q** I understand.

22 Cameras in both stairwells?

23 **A** Yes.

24 **Q** Cameras in the hallways?

25 **A** No.

1 Q Cameras in the elevator?

2 A No.

3 Q Currently, you need a -- to make the elevators work, you
4 need a room pass or a key or something. If I'm a guest, I
5 need to use my room card to be able to hit a button to make
6 the elevator go up and down; correct?

7 A Correct.

8 Q I can step on it, but I'm just going to be stuck there
9 without that room card; correct?

10 A Not necessarily. If you get on on a guest floor, you
11 could go to the lobby.

12 Q Right, okay. But from the lobby....

13 A Correct.

14 Q Okay. But the stairs, once you're in the hotel, you can
15 just go in the door and go up or down either stairwell;
16 correct?

17 A You can't lock egress.

18 Q Okay. In other words, it's not like some buildings
19 where, say you're on the 4th floor and you go down; once you
20 exit, you can't go back in. In other words, the door kind of
21 locks behind you.

22 A Correct.

23 Q That's not the situation and it wasn't the situation in
24 2018.

25 A Right.

1 Q How long do those -- the cameras in the stairwells,
2 what's their capacity? How long can you look -- if I wanted
3 to go back and look, can I look a day back? A week back? How
4 much storage do you have?

5 A Joe will be the one to answer that question. He is the
6 director of security, and he over -- he took over the video
7 end.

8 Q I understand. Okay.

9 A I don't want to say something I'm not certain of.

10 Q If I can clarify for a moment, this person you saw in the
11 parking ramp, when was that?

12 A That was right after we got the call to -- that there was
13 an emergency in Room 405.

14 Q So you had -- where were you when you got the call?

15 A The parking garage on the mezzanine.

16 Q Okay. You weren't in your office when you got that call?

17 A Nope.

18 Q Okay. Thank you.

19 THE COURT: All right. Is there any redirect?

20 MS. ANDREW: No, Your Honor.

21 THE COURT: All right, Mr. Lee. Thank you for being
22 here.

23 Is there any objection to him being released?

24 MS. ANDREW: Not from the State, Your Honor.

25 MR. FOX: No, Your Honor.

1 THE COURT: You're free to go. Thank you, sir.

2 All right. Ms. Walter?

3 MS. WALTER: The State would call Joe Steven.

4 THE CLERK: Please raise your right hand and place your
5 left hand on the Bible.

6 JOSEPH STEVEN,

7 after having been duly sworn, was examined and testified
8 to as follows:

9 THE CLERK: Please state your name and spell it for the
10 Court.

11 THE WITNESS: Joseph Steven. J-o-s-e-p-h, S-t-e-v-e-n.

12 MR. WALTER: May I, Your Honor?

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MS. WALTER:

16 Q Good afternoon, Mr. Steven. How are you?

17 A Fine. Thank you.

18 Q I'm about to ask you a question, the answer to which will
19 make me jealous: Are you working now?

20 A I'm retired.

21 Q Where did you work before you were retired?

22 A At the Sheraton Convention Center Hotel.

23 Q And that's the one in Myrtle Beach, in Horry County?

24 A Yes, ma'am. 21st and Oak.

25 Q What time period did you work there?

1 **A** December the 29th, 2006, was my hire date, and basically
2 retired during the pandemic.

3 **Q** And when was that, approximately?

4 **A** Oh, gosh. That would have been March of, like, two years
5 ago.

6 **Q** So March of 2020?

7 **A** Yes, ma'am.

8 **Q** What was your position?

9 **A** Director of Loss Prevention.

10 **Q** What were your duties and responsibilities as Director of
11 Loss Prevention?

12 **A** Well, hiring and training of staff, maintaining all the
13 life safety equipment, fire and such; protecting the assets of
14 the hotel, as well as the associates and guests.

15 **Q** As part of your duties, did you have any knowledge or
16 participation in the surveillance system used at the hotel?

17 **A** Yes.

18 **Q** Tell us about that.

19 **A** I designed it.

20 **Q** You designed it.

21 Did that include placement of cameras?

22 **A** Yes.

23 **Q** Can you describe for us, generally, where cameras were
24 placed in the hotel?

25 **A** Largely, they were at points of sale and at entrances,

1 egress areas, and public space areas.

2 Q Were there any surveillance cameras in the elevators?

3 A No, ma'am.

4 Q Were there surveillance cameras on the interior of guest
5 hallways?

6 A No, ma'am.

7 Q Were there surveillance cameras in the guest rooms
8 themselves?

9 A No, ma'am.

10 Q And I'm going to show you what's been admitted as --

11 MS. WALTER: If I may approach, Your Honor.

12 THE COURT: Yes, ma'am.

13 BY MS. WALTER:

14 Q -- State's Exhibit 49. Do you recognize this?

15 A Yes, ma'am.

16 Q Is this -- well, it's already been testified to that it's
17 an accurate floor plan for the 4th level. So if you can,
18 point on here to Room 405.

19 A Right there.

20 Q And it's actually labeled "405"; right?

21 Where would be the nearest location of a security camera?

22 A If you went down this stairwell, and once you get below
23 the third floor, there's an exit out towards the garage.

24 There's a camera between 2 and 3 -- levels 2 and 3. We

25 actually -- it's called the mezz level. It's actually kind of

1 -- you have the third floor and you have the second floor.

2 There's a level actually between 3 and 2 that's called the
3 mezz level, and it was actually where the managers park their
4 cars.

5 Q So the mezz level would lead out to the parking garage or
6 a level of the parking garage?

7 A It would lead out to a level of the parking garage. If
8 you took it all -- the stairway all the way down, eventually,
9 it would lead outside.

10 Q And you pointed to this Stair No. 4. Is that
11 approximately two rooms down from 405?

12 A It's exactly two rooms down.

13 Q About how far is that distance-wise, if you know? And if
14 you don't, that's fine. I'm terrible with distances.

15 A 12 feet. 15 feet.

16 Q Okay. And if I understand you correctly, the camera
17 wouldn't be right inside of that stairwell. It's not until
18 you get down to the mezz level?

19 A It's between 2 and the mezz.

20 Q Now, let's kind of move directly to this case. Did you,
21 while you were working at the Sheraton, know Liliana
22 Hernandez-Diaz?

23 A Very well.

24 Q Would you see her frequently?

25 A Almost daily.

1 Q How would you describe her?

2 A Very sweet. Very quiet. And always very diligent.
3 She's just interested in going to do her job.

4 Q So -- and I think you said you had started in 2006. So
5 between 2006 and 2018, during those 12 years, approximately
6 how long did you know her during that period?

7 A The whole time. You know, they have to pass my office to
8 come to work.

9 Q So Lilibiana would pass your office as she was checking in
10 for the day?

11 A Yeah. That's where the -- she would clock in.

12 Q Did you have any responsibility with respect to the
13 master keys that the cleaning staff would use?

14 A Yes.

15 Q Tell us about that.

16 A I would issue them. I would create them and issue them.

17 Q So then --

18 A I'm sorry; I should say, I issued them to Housekeeping.
19 From that point, each day, they would distribute them.

20 Q And then would you get them back at the end of the day?

21 A I'd get them at the end of the day and inventory them.

22 Q Do you remember March 20th of 2018, the day that Lilibiana
23 was attacked?

24 A I do.

25 Q How did you first learn about what happened?

1 **A** I got a call on my Nextel that there was an incident
2 involving a housekeeper.

3 **Q** If you recall, do you know -- did that call tell you
4 where the attack had taken place?

5 **A** Yes.

6 **Q** Where?

7 **A** In Room 405.

8 **Q** Was anyone with you when you got that information?

9 **A** Yes.

10 **Q** Who was with you?

11 **A** Our Director of Engineering, Tony Lee.

12 **Q** Did the two of you, once you received that information,
13 go to Room 405?

14 **A** Yes.

15 **Q** When you got to Room 405, what did you see?

16 **A** Well, just the door. It was closed. But I could see
17 that there was what appeared to be blood on the door. And the
18 door was closed. It was locked. I knocked on the door.
19 That's what I saw.

20 **Q** Could you hear anything when you got to the door? Could
21 you hear anyone inside?

22 **A** Not initially. But, after I knocked a couple of times, I
23 could hear that somebody was in there.

24 **Q** Did you, at some point, gain entry into the room?

25 **A** Yes. I ascertained that the person that was in there was

1 in distress, and I went to open with my master key, but the
2 door opened almost as soon as I could get the key to the lock.

3 Q You said that you could tell that someone inside was in
4 distress. What led you to believe that?

5 A I heard a muffled cry.

6 Q When the door was eventually opened and you could see
7 inside the room, what did you see?

8 A It was -- it was a bit horrific. There was blood. There
9 was a shattered door, mirror. Liliana was on the floor. She
10 had sunken backward, dropped to the floor, with her back to
11 the wall.

12 I have known her for -- at that point, for well over a
13 decade, and I had no idea who she was. It was not until I saw
14 her name tag that I knew it was Liliana. She was
15 unrecognizable.

16 Q What was it that made her unrecognizable?

17 A She was covered in blood.

18 Q Can you describe her demeanor when you got into the room?

19 A She was a bit hysterical.

20 Q Crying?

21 A Oh, yes. Hyperventilating, I would add, as well.

22 Q How long did it take from the time you first got that
23 call until the time that you got into the room and saw who you
24 later realized to be Liliana?

25 A We went up immediately. I'm sorry, I can't be exact, but

1 I would say it took us between three and five minutes to get
2 from -- I was in Tony's office -- to get up to the room -- to
3 the floor. No more than five minutes.

4 Q So, once you got inside the room and saw who you later
5 realized was Liliana, what did you do?

6 A I actually -- at that point, I was the first one to stick
7 my head in the room. Tony was behind me, and I asked him to
8 dial 911. And I asked him also to contact one of our other
9 managers, our director of Human Resources.

10 Q And who is that? What's her name?

11 A Sharon Jones.

12 Q And then what happened after that?

13 A I tried to -- I was kneeling with her. I was trying to
14 ascertain the extent of her injuries. And I'm afraid I don't
15 speak Spanish, and with her being a bit hysterical and
16 hyperventilating, it was really difficult for me to get
17 information.

18 At that point, I asked to have the director of
19 Housekeeping come up, who was bilingual. I stayed with
20 Liliana until Sharon Jones got there. And she kind of took
21 over calming her down, comforting her while I started to look
22 at the scene, you know, in the room where there was blood,
23 where there was broken glass, closet door was just blown
24 apart. I was trying to ascertain what had happened to cause
25 that. I was getting information in just bits and pieces. By

1 that time, the police had arrived. And, at that point, we
2 took a step back and let the professionals do what they do.

3 Q At some point -- we have talked about the placement of
4 security cameras or surveillance cameras. At some point, did
5 you review footage from that surveillance system?

6 A Almost immediately when I returned to my office.

7 Q What, in fact, were you looking for?

8 A I was looking for anybody that was -- that had used the
9 stairwells because, just out of experience, I know that the
10 closest stairwell was likely to be where someone would exit a
11 crime scene from. I also went back and looked at any way that
12 you could get into the hotel, whether that was from the front
13 doors, the side entry doors, or the stairwells, if someone had
14 propped them open. And I just did a total search of all of
15 those going back even the day before.

16 Q Did you find anything that you believed related to the
17 attack on Liliana?

18 A I did.

19 Q What did you find?

20 A I saw a person that came down from the -- at least the
21 third level to the mezz level and paused, cracked open the
22 door that led to the parking area, peek out, then come back
23 in, and then put a jacket on, and then walk out that door.

24 Q Did the surveillance video have a date and timestamp on
25 it?

1 **A** I don't recall, ma'am.

2 **Q** And you said at least from the third floor. Is that
3 because there were no cameras higher than where -- between
4 those second and third floors?

5 **A** Right. I could determine that the individual came down
6 from the third level. I wouldn't have been able to tell you
7 how far he came down.

8 **Q** Right. And you said that he paused and looked out the
9 door. And what else did he do?

10 **A** To the best of my recollection, he then had a jacket, and
11 he put that over -- he had a shirt on. I don't want to say a
12 T-shirt or sweatshirt; it's hard for me to recall exactly what
13 it was. And then just go out the door.

14 **Q** Did you provide a copy of that footage to the police?

15 **A** I did.

16 **Q** Did you make any stills from that video?

17 **A** It's likely that I did. If I did, they were given
18 directly to Myrtle Beach Police.

19 MS. WALTER: Your Honor, if I may approach the witness.
20 I'm approaching with what's been marked State's Exhibit 47-A,
21 B, and C.

22 BY MS. WALTER:

23 **Q** And, Mr. Steven, if you could just look at those and then
24 tell me -- look at each one of them and tell me if you
25 recognize them.

1 **A** Oh, yeah. Yep.

2 **Q** Are those stills from the surveillance video that you
3 saw?

4 **A** Absolutely.

5 **Q** And does looking at those refresh your recollection as to
6 whether there is a date and timestamp on them?

7 **A** I can see that there is.

8 **Q** What is that date and time?

9 **A** It's March the 20th, and it looks like 1:39 and 34
10 seconds p.m. on the year of 2018.

11 **Q** That you recall, at the time, were the date and
12 timestamps accurate?

13 **A** They were.

14 MS. WALTER: So, Your Honor, I would ask that 47-A, B,
15 and C be admitted and published.

16 THE COURT: Any objection?

17 MR. FOX: No objection.

18 (State's Exhibit Nos. 47-A, 47-B, 47-C, Photo Stills, was
19 received into evidence.)

20 BY MS. WALTER:

21 **Q** So starting with 47-A -- and I'll show it to the jury --
22 can you tell me what that shows?

23 **A** He had just descended this staircase here. That door
24 leads out to the mezz level. In the garage, that's the level
25 between 4 and 5. It's only an area a quarter of the size of

1 the rest of the garage, and it's really just for staff.

2 Q I'm actually going to go out of order for just a minute.

3 47-C, what does that show?

4 A That's when the individual kind of peeked out onto the
5 parking deck.

6 Q And then, lastly, 47-B, what does that show?

7 A The individual is putting a jacket over his T-shirt.

8 Q And so the date and timestamp that's on there, which you
9 had said looks like 1:39 p.m. on March 20, 2018, was that
10 close in time to when you got the information about Liliana?

11 A Yes.

12 MS. WALTER: Court's indulgence.

13 BY MS. WALTER:

14 Q And other than what you have described to us so far, did
15 you see anything else between the time of getting the call
16 and, sort of, wrapping up your conclusion that would be
17 relevant to this?

18 A When I looked -- when I was reviewing video, I saw,
19 actually, the individual in that photograph, along with two
20 other individuals, coming in the hotel via a side entrance.
21 And that was actually the day before. And they went up --
22 instead of going up the elevators, they walked through the
23 lobby, up a spiral staircase to where our restaurant and bar
24 were located, and through that area in order to get to the
25 guest elevators.

1 Q And other than what you have told us, does that -- and
2 testifying here today, obviously -- does that conclude your
3 involvement in this case?

4 A Pretty much.

5 Q I don't have any further questions, but please answer any
6 questions Mr. Fox has.

7 A Absolutely.

8 CROSS-EXAMINATION

9 BY MR. FOX:

10 Q Steven, do you know what time you got that phone call
11 that you needed to go up to Room 405? Did you make note of
12 that?

13 A Sir, can you speak up?

14 Q Yes, I sure can. I apologize. I have a bad habit of
15 looking down.

16 Do you know what time it was that you got the phone call
17 telling you that you needed to assist?

18 A I don't recall, sir.

19 Q Any way that that would have been documented?

20 A No, sir.

21 Q Okay. When you got -- at some point after you arrived --
22 first, there was no one there -- when you up got there, there
23 was someone in Room 405. There wasn't law enforcement or EMS
24 yet; right?

25 A No, sir.

1 Q So you and Mr. Lee were the first ones to get to 405?

2 A That's correct.

3 Q Okay. Were you still there when law enforcement arrived?

4 A I was.

5 Q Okay. You spoke with law enforcement?

6 A I did.

7 Q Okay. You told them, just as you have today: Got a
8 phone call, went up. Do you recall if you gave them an
9 approximate time all these things happened?

10 A I don't recall, sir.

11 Q Okay. You have got -- you said the timestamp on these --
12 the still video pictures was accurate, and they show -- and
13 I'm specifically referring to 47-C, which is the man in the
14 white T-shirt opening the door, and the timestamp, again,
15 1:39; correct?

16 A Yes, sir.

17 Q And that's 12-hour time; right? That's not military
18 time. In other words, this is 1:30 p.m.?

19 A P.m. Yes, sir.

20 Q All right. Now, if I understand you correctly, you can't
21 say from this video where exactly that person entered the
22 stairwell; right?

23 A I can't, sir.

24 Q Okay. So anywhere from the 12th floor down at least to
25 that level?

- 1 **A** That's correct.
- 2 **Q** So what you can say is he didn't come up, but you don't
- 3 know at what point he entered the stairwell to go down.
- 4 **A** That's correct, sir.
- 5 **Q** Okay. No cameras in the elevators?
- 6 **A** No, sir.
- 7 **Q** Okay. And these are all pictures, appear to be, those
- 8 stills of the same person, correct, these three that we've
- 9 just been talking about?
- 10 **A** Yes, sir.
- 11 **Q** But, in fact, there were two other individuals?
- 12 **A** Not at that time.
- 13 **Q** Okay. But you located -- you had two other
- 14 individuals --
- 15 **A** The day before. The individual was traveling with two
- 16 other individuals.
- 17 **Q** The day before. Okay.
- 18 And it appeared that they were -- did you see them on
- 19 screen -- I say "on screen," in the surveillance video,
- 20 together or shortly behind each other?
- 21 **A** They were all three together, yes, sir.
- 22 **Q** In other words, it was obvious. It wasn't a break of two
- 23 minutes, five minutes, one, and then the next one and the next
- 24 one?
- 25 **A** No, they were closer than you and I.

1 Q Okay. Now, you say you, being the designer of the
2 security system, went back and, understandably, reviewed
3 different surveillance cameras to see people entering or
4 getting into stairwells near Room 405. Did anyone from law
5 enforcement sit down with you while you did that, or is that
6 something you did and then took to an officer?

7 A I did it initially on my own, and then I informed them.
8 Of course, they wanted to see if we had any video. And, by
9 that time, I had already looked at the video, so I was able to
10 share that with them. And they asked for a copy.

11 Q Right. And what you provided -- we have these still
12 shots from the video -- was, in fact, little short snippets of
13 seconds --

14 A Yes, sir.

15 Q -- showing that in real time; right? Showing, in this
16 case, the man in the white shirt and the blue hooded
17 sweatshirt.

18 A Yes, sir.

19 Q So rather than -- did you see anybody else up and down
20 the stairs during -- what time frame did you look at? How
21 long a period did you look at?

22 A I looked from real time, which would be with the time
23 that I sat down at the computer, backwards, all the way until
24 the day before.

25 Q I'm assuming you saw other individuals on those stairs at

1 some point during --

2 A Sure.

3 Q Okay.

4 A Mostly employees.

5 Q Sure.

6 But, as we have heard, the stairwells aren't restricted
7 access. Once you're in the hotel, you can just open the door
8 and go up and down the steps; correct?

9 A Yes, sir.

10 Q Okay. What about within, say, 30 minutes prior to the
11 pictures we have here of the man in the blue hoodie? So, say,
12 from 1:00 onwards?

13 A I don't recall, sir, whether I looked before 1:00. I
14 couldn't tell you whether I did or not.

15 Q And you looked in both stairwells?

16 A Every -- yeah, both stairwells, yes, sir.

17 Q Because you testified that it was your assumption that
18 the closest stairwell would be the most likely to show
19 something; correct?

20 A Right.

21 Q Closest to Room 405?

22 A Exactly. But I looked at every one of those, yes, sir,
23 including, also, the egress areas in the lobby.

24 Q And I think you answered, you also looked at the other
25 stairwell; correct?

1 **A** Yes, sir.

2 **Q** Okay. Now -- so you saw Room 405. When you went back
3 up, the door was open, and you're able to see with your eyes
4 the condition of that room?

5 **A** When I went back up how, sir? After?

6 **Q** At some point, you were in Room 405, and you've testified
7 you saw the blood on the floor.

8 **A** Yes.

9 **Q** And there was blood on the door outside?

10 **A** It looked like -- it appeared to be, yes, sir.

11 **Q** Do you recall the cart that Ms. Hernandez used being
12 outside the room? You know, it has towels and supplies --
13 cleaning supplies, etc.? Do you recall seeing that?

14 **A** I do.

15 **Q** Do you recall seeing any blood on that cart or any item
16 on that cart?

17 **A** I don't recall that, sir.

18 **Q** Now, I'm going to show you 47-A -- what's been admitted
19 as 47-A and 47-B. And, again, it's that same individual.

20 **A** Yes, sir.

21 **Q** And, in 47-B, you have him from the front view.

22 **A** Mm-hmm.

23 **Q** 47-A, got him from behind?

24 **A** Yep.

25 **Q** White T-shirt; right?

1 **A** Yep.

2 **Q** Okay. You saw the amount of blood that was in Room 405.
3 Do you see anywhere in here what appears to be, to the naked
4 eye, any kind of blood on this individual?

5 **A** No, sir.

6 **Q** When you got the phone call saying, "Please go to Room
7 405," you were in -- was it your office or Tony's office?

8 **A** Tony.

9 **Q** Tony's office. In his office, not in the parking garage;
10 correct?

11 **A** I believe it was his office, but I'm not 100 percent
12 sure, sir.

13 **Q** Well, that was your first answer when I asked --

14 **A** Yeah, I believe strongly that we were in his office.

15 **Q** Okay. And, just to be clear, the still-screen grabs that
16 I've been showing you that are in evidence, they do not show
17 anyone exiting from the 4th floor; correct?

18 **A** No, sir.

19 **Q** Thank you.

20 REDIRECT EXAMINATION

21 BY MS. WALTER:

22 **Q** They didn't show anyone exiting from the 4th floor
23 because there were no cameras there; correct?

24 **A** That's correct.

25 MS. WALTER: Nothing further.

1 THE COURT: Is there any objection to Mr. Steven being
2 released from his subpoena?

3 MS. WALTER: None from the State, Your Honor.

4 MR. FOX: No, Your Honor.

5 THE COURT: Mr. Steven, thank you for taking the time to
6 be here. You're welcome to step down. Thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MS. WALTER: Your Honor, the State would call Sharon
10 Jones. And while she's coming in, if we could just approach
11 on scheduling.

12 THE COURT: Sure.

13 COURT REPORTER: On or off?

14 MS. WALTER: It doesn't matter. It's a scheduling issue.

15 BENCH CONFERENCE

16 (A bench conference was held off the record and outside of
17 the hearing of the jury.)

18 THE CLERK: Please raise your right hand and place your
19 left hand on the Bible.

20 SHARON JONES,

21 after having been duly sworn, was examined and testified
22 to as follows:

23 THE CLERK: State your name and spell it for the Court.

24 THE WITNESS: My name is Sharon Jones, and it's spelled
25 S-h-a-r-o-n, J-o-n-e-s.

1 MS. WALTER: May I, Your Honor?

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. WALTER:

5 Q Good afternoon, Ms. Jones. How are you?

6 A I'm great. Thank you.

7 Q I see you have a name tag. Where do you work?

8 A I work at the Sheraton at Myrtle Beach.

9 Q That's a convention center and a hotel?

10 A It is.

11 Q How long have you worked there?

12 A I have been there 19 years.

13 Q Were you, in fact, there when it opened?

14 A I was. I pre-opened the hotel in August of 2002.

15 Q Now, as a hotel and a contention center, is there a
16 certain -- I'll call it an ebb and flow of number of guests
17 that are there?

18 A Yes. Typically, we are mostly a year-round hotel, so our
19 sales team is responsible for selling the convention space
20 throughout the year to try to keep our business year-round.
21 Typically, however, we're busiest starting in early spring,
22 and then our convention business slows down in the summer, and
23 we have transient business from June, July, and August. And
24 then, come September, we start peaking again for our
25 convention business.

1 Q So I want to ask you to think back to March of 2018, just
2 sort of that general time frame. Well, actually, do you
3 remember the day that Liliana got attacked?

4 A I do remember that day, yes.

5 Q So now, in that, sort of, surrounding time period, would
6 you say that the hotel was at full capacity? Low capacity?

7 A March typically is a slower month for us, yes, typically.
8 If we had any convention business in March, it would have been
9 strictly weekend business.

10 Q Do you remember actually looking at the capacity, at my
11 request?

12 A I do.

13 Q Does 16 percent sound about right?

14 A Yes, and it was -- which is extremely low.

15 Q Now, are you -- as the -- now I'll go back a little bit
16 into you. As a director of Human Resources, what are your
17 duties and responsibilities?

18 A My responsibilities are, basically, to onboard -- hire
19 and onboard all associates. I'm responsible for their
20 performance appraisal process, merit increases, employee
21 relations, a number of different duties.

22 Q As part of that position, did you get to meet Liliana
23 Hernandez-Diaz?

24 A I did. I'm actually the only human resource professional
25 at that building, so I am in charge and tasked with hiring all

1 associates, and she was one of those individuals that I hired.

2 Q What did you hire her to do?

3 A I hired her for a room attendant position. So her
4 responsibilities were to clean our guest rooms.

5 Q What type of employee was she?

6 A Liliana was a very good employee. Liliana was always
7 very positive about her job duties. She actually did some
8 training videos for us because she was very efficient in the
9 job that she did, and, thus, she trained some of our new hires
10 as well. But always very pleasant, always at work on time.
11 We never had any issues whatsoever with Liliana.

12 Q And you described her as pleasant. How else would you
13 describe her? Was she kind of loud and boisterous? Quiet?

14 A No, she was always very quiet, but she always had a smile
15 on her face, and she was always very kind to every other
16 person in the hotel.

17 Q How often would you see her?

18 A I would see Liliana a few times during the week. We
19 typically have a lunchroom where we feed all of our associates
20 on a daily basis. We have a free hot lunch. All of us do get
21 involved in eating lunch in the lunchroom to interact with our
22 associates. So I would see her, whenever she was working
23 throughout the week, there.

24 Q Are you also familiar with her boyfriend or fiancé,
25 Sergio?

1 **A** I am, yes.

2 **Q** And how are you familiar with him?

3 **A** I hired Sergio as well for our room service area.

4 **Q** Now, thinking directly to March 20th of 2018, how did you
5 first become aware that something had happened to Liliana?

6 **A** Joe Steven, who was our director of Security, called my
7 office on that day, and he told me that I needed to come to
8 one of the guest rooms; that one of the room attendants had
9 been beaten by someone. Someone had gained access to the room
10 that she was cleaning, and I needed to come immediately.

11 **Q** At that time, before you got to the room, did you know
12 that it was Liliana?

13 **A** I did not. I did not know who it was at that time.

14 **Q** So did you go to Room 405?

15 **A** I did.

16 **Q** Did you go immediately or did some time pass?

17 **A** I went immediately.

18 **Q** When you got to Room 405, what did you see?

19 **A** I walked into the room, and the first thing I saw -- as
20 you walk into our guest rooms -- all of them are laid out
21 pretty much the same. And when you first walk in, depending
22 upon if the rooms are on the left side or the right side, the
23 first thing you see, if the rooms are on the right side of the
24 building, you see the restroom immediately. And then, from
25 the restroom, you see the area where the beds are, an

1 occasional chair, and an armoire.

2 In 405, when you first walk into the room, the first
3 thing you visualize is the bathroom. Our bathrooms are tile
4 bathroom floors.

5 So the first thing I noticed when I walked in was there
6 was blood on the bathroom floor. As I proceeded to walk into
7 the room, I noticed that there was broken glass on the floor,
8 and the door to the closet had been pulled off the hook or it
9 was ajar. You could tell that it would not be functioning or
10 could not function.

11 And, then, as I looked to the right, I saw Liliana,
12 sitting with her back against the wall. And I also viewed
13 some bloodstains. We have an all-white bedding program, so
14 the sheets, the duvet covers, the pillows, everything is white
15 in the room. So I noticed bloodstains on the bedding as well
16 when I walked into the room. And then I immediately started
17 talking with Liliana when I saw her sitting on the floor. I
18 got on the floor and started talking with her.

19 Q So let me just back you up a little bit there. So when
20 you walk into Room 405 -- you were indicating with your left
21 hand. So it's the bathroom to your left?

22 A It is.

23 Q You said that it was a tile floor and you noticed blood
24 on the floor. Would you describe that as a couple of drops of
25 blood or a lot of blood?

1 **A** No, there was quite a big amount of blood on that floor.
2 I remember it to be very shocking when I saw it.

3 **Q** And then you --

4 MS. WALTER: Your Honor, if I may approach. I'm
5 approaching with what's been admitted as State's Exhibit 5 and
6 then what's been marked State's Exhibit 6.

7 THE COURT: All right.

8 BY MS. WALTER:

9 **Q** So I'm showing you State's 5. Is that how you recall the
10 bathroom looking?

11 **A** Yes, it is.

12 **Q** And now I'm showing you what's been marked State's 6. Is
13 this the white linen that you were describing earlier?

14 **A** Yes, that's correct.

15 **Q** And is that where you can see some blood?

16 **A** Yes.

17 **Q** Is that a fair and accurate representation of what you
18 saw that day?

19 **A** It is, yes.

20 **Q** Okay.

21 MS. WALTER: Your Honor, I would ask that State's Exhibit
22 6 be admitted and published as well.

23 MR. FOX: No objection, Your Honor.

24 THE COURT: All right. 6 is in evidence.

25 (State's Exhibit No. ST-6, Photograph, received into

1 evidence.)

2 BY MS. WALTER:

3 Q When you first noticed Liliana, did you recognize her as
4 Liliana?

5 A I am going to be honest. I could tell by her aura and by
6 her -- the shape of her face that it was Liliana. She's
7 petite and small; I could recognize that. But I will say that
8 she had a lot of blood on her face. There was a gash on her
9 head, but I do know that I recognized her immediately.

10 Q You're familiar with your staff.

11 A I am. Yes, I am.

12 Q So can you describe -- you have given us some information
13 about her physical condition. Can you describe her emotional
14 condition?

15 A I was very nervous at the time, when I saw her, that she
16 was going to go into shock. So -- she was mumbling. What I
17 remember from that day is that she was mumbling. So I just
18 got down on the floor and kept telling her that it was going
19 to be okay, and that she had a head wound and that they always
20 bleed a lot and that she shouldn't worry about the amount of
21 blood, and that 911 was on its way and she was going to be
22 fine. I remember that she was moaning and, you know, you
23 could tell she was in pain.

24 Q Did you say those things to her because her injuries did
25 not look that bad or in an effort to calm her?

1 **A** I did it in an effort to calm her because I wanted to
2 ensure that she didn't go into shock. You could tell by the
3 way she was mumbling and the stare on her face that she was
4 very shocked about what had just transpired.

5 **Q** Did -- and were you there when the paramedics came and
6 took her to the hospital?

7 **A** Yes.

8 **Q** After that day, did Lilliana ever return to work?

9 **A** She did not.

10 **Q** Has she ever, in fact, to your knowledge, been back to
11 the hotel?

12 **A** She has not, from my knowledge.

13 MS. WALTER: Court's indulgence.

14 I have nothing further for this witness. If you'd just
15 answer any questions from Mr. Fox.

16 MR. FOX: No questions of this witness, Your Honor.

17 THE COURT: All right. Is there any objection for Ms.
18 Jones to be released from her subpoena?

19 MS. WALTER: Not from the State, Your Honor.

20 MR. FOX: No, Your Honor.

21 THE COURT: Thank you, Ms. Jones, for being here.

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome to step down.

24 Would y'all approach just a minute?

25 BENCH CONFERENCE

1 (A bench conference was held off the record and outside of
2 the hearing of the jury.)

3 (Open court resumes as follows:)

4 THE COURT: All right. Ladies and gentlemen, given the
5 time, we're going to recess for the day. You know, I'm not
6 sure at what point this trial is going to wind up. Certainly
7 we're making the best use of your time as we possibly can.
8 What I would ask you -- and you don't have to let us know now
9 -- but tomorrow afternoon, that would give you an opportunity
10 to maybe make arrangements maybe to stay until 5:30 or maybe
11 6:00, try to get in as much testimony as we can. But if
12 that's a problem for anybody, then let us know, and we won't
13 do that. Okay? If you can just figure that out and let us
14 know in the morning, then we can proceed accordingly. Okay?

15 At this time, we're going to break for the afternoon.
16 I'd ask that you be back here again in the morning at 9:15.
17 We'll get started right after that time.

18 Please don't discuss this case with anyone. Don't look
19 at any -- try to do any research or anything. Again, it's
20 important that you only decide what the facts of this case are
21 based on this testimony and evidence that's presented in this
22 courtroom. All right?

23 So I hope you have a great evening. See you back in the
24 morning. Thank you very much.

25 (The jury exited the courtroom at 4:53 p.m.)

1 THE COURT: Is there anything before we break?

2 MS. WALTER: Well -- and this -- again, I will do
3 whatever Your Honor wants. At some point, we need to make our
4 arguments about the redactions, and I would like -- well, I
5 need enough time, once Your Honor has ruled on them, to give
6 my office a chance to do the remaining redactions, if any, and
7 to have Mr. Fox -- give Mr. Fox an opportunity to listen to
8 make sure that we have done it correctly.

9 So it's up to you whether you want to do it now or we
10 have tomorrow -- the statement is going to be the last thing I
11 play. I would think we can either do it now, or as long as we
12 can work into the lunch hour a little bit, and then I can give
13 some time then.

14 THE COURT: What if we took that up at 9:00 in the
15 morning?

16 MS. WALTER: That's fine.

17 THE COURT: Start with the jury at 9:30. And hopefully
18 we can give whoever can update it that morning.

19 MS. WALTER: That's perfect.

20 THE COURT: And if we need to do anything during the
21 lunch hour.

22 MS. WALTER: That's perfect, Your Honor. I think that
23 will work.

24 THE COURT: And we'll order lunch in for the jury
25 tomorrow.

1 MS. WALTER: So no more Crafty Rooster problems?

2 THE COURT: Just so we don't have anymore Crafty Rooster
3 problems.

4 MR. FOX: Just don't order from Crafty Rooster.

5 THE COURT: Well, it might be ready by then.

6 MS. WALTER: Order it now. All right. Thank you, Your
7 Honor.

8 THE COURT: All right. We'll see y'all at 9:00.

9 MR. FOX: Thank you, Your Honor.

10 (At 4:55 p.m., the trial was adjourned until May 12,
11 2022, at 9:00 a.m.)

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1 CERTIFICATE OF COURT REPORTER

2
3 State of South Carolina)
4 County of Horry)

5 RE: State v. Demetrius McClary (Volume 2)
6

7 I, Bobbi J. Fisher, Registered Professional Reporter
8 (RPR) and Official Court Reporter III for the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the proceedings
11 had and evidence introduced in the trial of the captioned case
12 in the Court of General Sessions for Horry County, South
13 Carolina, on the 11th of May, 2022.
14

15 Submitted: August 8, 2022
16

17 

18 /s/ Bobbi Fisher

19 Bobbi J. Fisher, RPR

20 Official Court Reporter III
21

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2 COUNTY OF HORRY) TRANSCRIPT OF RECORD
3 -----x
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff,)
6 vs.) Case No. 2018-GS-26-04177
7 DEMETRIUS LAWON McCLARY,) 2018-GS-26-04178
8 Defendant.) 2018-GS-26-04179
9 -----x

Thursday, May 12, 2022

10 JURY TRIAL - VOLUME 3 OF 4

11
12 B E F O R E:

13 The Honorable H. Steven DeBerry, IV, Presiding Judge;
14 and a jury.

15 A P P E A R A N C E S:

16 Mary-Ellen Walter, Esq.
17 C. Leigh Andrew, Esq.
18 Assistant Solicitors for the State

19 Eric Fox, Esq.
20 Caitlyn Caldwell, Esq.
21 Attorneys for the Defendant

22
23
24 Court Reporter: Bobbi Fisher, RPR
25 SC Official Court Reporter III

P R O C E E D I N G S

(The following proceedings commenced at 9:05 a.m.)

THE COURT: Do we have everybody? Ready to go?

MS. WALTER: Yes, Your Honor.

THE COURT: All right.

MS. WALTER: And Your Honor still has the color-coded copy of the transcript?

THE COURT: All right. I have both of them.

MS. WALTER: Okay. So we, I think, are specifically dealing with -- it's a statement of Demetrius McClary and then, in parentheses, Detective Morrell.

THE COURT: Got you. Okay.

MS. WALTER: And I can certainly make a copy of this as a Court's exhibit, if anyone feels that's necessary.

So on page 1 -- and the timestamps I have -- that reminds me. What I want to do, Your Honor, is -- I have an unredacted copy of the whole interview; put in as a Court's exhibit just for any future litigation.

THE COURT: Okay.

MS. WALTER: And, then, just so that it's clear for the future --

THE COURT: Well, let's get that marked. Is that Court's --

COURT REPORTER: Court's No. 3

(Court's Exhibit No. CT-3, Interview, was marked for

1 identification.)

2 MS. WALTER: And the timestamps go to the clock that's in
3 the interview room. So the one on the actual tape versus the
4 player time, just so it's clear.

5 On the first page of the transcript, Your Honor, the
6 parties have agreed that lines 41 through 48 come out.
7 Timestamps are roughly 12:18:01 to 12:18:09.

8 THE COURT: So just as you have got marked in red?

9 MS. WALTER: What's marked in red. And that's already
10 been taken out. The first one that is contested is on page 4,
11 lines -- it starts on line 2, ends on line 3. I have
12 timestamps 12:21:19 to 12:21:21. The language is, "It will be
13 a little warmer in your cell." The State's requesting that
14 that be redacted under Rule 403, prejudice to the defendant.
15 The defense has not agreed to that.

16 MR. FOX: I appreciate their concern for my client, but
17 I'd like the context to be there, and I'll look out for Mr.
18 McClary's interest. And I think that's fine if the jury knows
19 that he was in detention and in jail when this interview took
20 place.

21 MS. WALTER: As long as there is a strategic reason on
22 the record so that, if this comes through on a PCR, it is
23 clear that Mr. Fox has made a reasoned decision to let the
24 jury know that --

25 MR. FOX: And, again -- I'm sorry; I didn't mean to cut

1 you off.

2 MS. WALTER: -- the defendant is in jail.

3 And he's worrying about his client; I'm actually worrying
4 about making sure that this case remains final.

5 MR. FOX: Yes. I absolutely don't tank [verbatim]. And,
6 so, again, if it ever becomes necessary, I'll certainly
7 explain my decision-making process. And I just say that as we
8 go forward because I think there will be other places where
9 maybe that's an issue.

10 THE COURT: All right. So we'll leave it in.

11 MS. WALTER: Your Honor, the next is, on that same page
12 4, line 30 through 35, timestamps 12:21:44 to 12:22:07. The
13 language is -- the defendant says, "Mobile, Alabama, foster
14 home to foster home really. I don't know my parents."

15 And Detective Morrell says, "Man, I -- I'm glad you told
16 me that. I really am. And it's -- I'm not going to sit here
17 and -- and tell you I understand what it's like to grow up
18 without parents because I -- I don't know. Okay. But I can
19 just -- from everything I know and what I've read, that's got
20 to be a tough life."

21 "Right."

22 The State's basis for excluding that would be Rule 402,
23 that it is irrelevant, but the defense has not consented to
24 that.

25 MR. FOX: Well, Judge, I think it's contextual. I think

1 Rule 406, completeness, it's not prejudicial in any way to the
2 defendant. There's all kinds -- if we're going to take this
3 out for relevance, then any time that we have references to
4 the truth room and things like that, that have nothing to do
5 with the incident being questioned about, then, fine. But I
6 think it's relevant in the context of his state of mind and
7 his background, and their -- the jury assessing all those
8 things -- because they will ultimately decide if this is a
9 freely and voluntarily made statement. Judge Addy has said
10 they can hear, it's admissible. They make the ultimate
11 determination. And I think having all the information,
12 including the setting and Mr. McClary's background, is
13 relevant. And, Your Honor, for completeness, we'd ask it stay
14 in.

15 THE COURT: All right. We'll allow it to stay in.

16 MS. WALTER: Your Honor, on page 5, timestamps 12:24:09
17 to 12:24:15, Detective Morrell: "And you" -- this is probably
18 going to be the same argument from both sides -- "And you --
19 you told me you grew up without a father. Okay. And you know
20 --"

21 And then what the defendant says is indecipherable. We
22 would argue the same basis.

23 MR. FOX: And the same, Your Honor.

24 THE COURT: And let me just ask you for clarity. You're
25 going to play the audio; right?

1 MS. WALTER: It's video and audio.

2 THE COURT: Okay. So -- all right. I understand. So,
3 in other words, the jury is not going to see this transcript.

4 MS. WALTER: No. The transcript will not be sent back.

5 THE COURT: All right. And you're of the opinion that
6 you want this to remain in, Mr. Fox?

7 MR. FOX: Yes, sir.

8 THE COURT: For the same arguments?

9 MR. FOX: That's correct.

10 THE COURT: All right. It will remain in.

11 MS. WALTER: On page 6, I think we can deal with two
12 separate proposed redactions by the State together. So the
13 first would be lines 1 through 7, timestamp 12:24:43 to
14 12:24:48. The defendant says, "I have a daughter and
15 everything."

16 Detective Morrell: "You have a daughter? What's her
17 name?

18 The defendant says, "K [REDACTED] (ph)."

19 Detective Morrell says, "K [REDACTED]?"

20 And then, line 13 and 14, which is timestamps 12:24:51 to
21 12:25:01, the defendant says, "I suffer from PTSD and all
22 that. That's just -- I got anxiety, depression, and all that
23 stuff. I just don't take my medications and..."

24 And, actually, I think we can go to lines 21 through 23,
25 12:25:11 to 12:25:20. "Okay. So I'm sure" -- this is from

1 Detective Morrell. "Okay. So I'm sure somewhere in life with
2 your daughter, K [REDACTED], you had a plan for you, for her. Okay.
3 And, somehow, you and your plan parted ways. Okay."

4 So, again, the State's argument would be 402, that it is
5 irrelevant.

6 MR. FOX: And, Judge, I would just make the same
7 argument. I think it goes to, again, Mr. McClary's state of
8 mind, to his background, to the free and voluntariness of the
9 statement, and I think all of those things are relevant.

10 THE COURT: All right. I'll allow it.

11 MS. WALTER: Your Honor, beginning on line 28 going
12 through line 34, Detective Morrell begins with, "I want" and
13 then the defendant says, "I'm about to get some years, bro."

14 Detective Morrell says, "Man, listen to me, listen to me.
15 You're putting the cart before the horse. You're putting the
16 cart before the horse. We don't know what's going to happen
17 down the road. Okay? We're -- baby steps. Okay? This is a
18 step. This is step 1. Okay?"

19 The State is arguing, under Rule 403, that that's
20 prejudicial. Typically, there is no mention of any potential
21 sentence that the defendant may be sent to prison as a result
22 of any conviction, and we believe that that should be removed.

23 MR. FOX: I would agree with that, Your Honor.

24 THE COURT: All right. So 28 through 34?

25 MS. WALTER: Yes. So that's timestamp 12:25:32 to

1 12:25:47.

2 The next is proposed by the defense, not agreed to by the
3 State. Detective Morrell -- this begins line 44 on page 6.
4 It's timestamped 12:26:00 to 12:26:22. Detective Morrell
5 says, "Okay. What we're dealing with, okay? We have a young
6 lady who is just doing her job cleaning hotel rooms, and she's
7 laid up in a hotel. Okay. So we have -- I have people to
8 answer to. Okay? And the victims are one of those people.
9 Okay? We have to answer to her and her family. Okay? She's
10 hurt. All she was doing was cleaning the room."

11 MR. FOX: Judge, my argument would be, the first two
12 lines, 44 and 45, that would be hearsay on the part of the
13 officer. He can, of course, be called as a witness, and I
14 assume will be, and asked about things in the interview; but I
15 think *State v. Washington*, that that will be admitting it as
16 -- through the interview -- through the audio of the
17 interview. That part would be hearsay.

18 And the other part, I think, is just not proper: "I have
19 people to answer to." I think that is coercive. "I have to
20 answer to a victim. I got to get a result. I need something
21 from you." So we'd ask that all of 44 through 48 come out.

22 MS. WALTER: Just as Mr. Fox argued context, certainly
23 this helps put things in context. The mere fact that
24 Detective Morrell truthfully says there is a victim, she was a
25 cleaning woman, she was in a hotel room. If anything, at this

1 point, if Your Honor does deem it hearsay, it's certainly
2 cumulative of other things. So it's not going to have any
3 sort of prejudicial or negative effect on the jury. They
4 already know, quite extensively, that Liliana was a cleaning
5 woman at the Sheraton Hotel, she was in the hotel room, and
6 she was beaten. So we would ask that that stay in.

7 THE COURT: All right. I think what I'm going to do is
8 redact -- if this is possible -- where it starts on line 45
9 with, "Okay. So we have -- I have people to answer to. Okay.
10 The victims are one of those people. We have to answer to her
11 and her family." So, in other words, I would take that out.
12 And then start back with, "All she was doing was cleaning the
13 room." And then, "How bad is she hurt?" would follow it in.

14 MS. WALTER: Okay. And so I won't have the timestamp,
15 but I've marked on the transcript, for redaction, starting the
16 redaction at "Okay, so we have" going through the end of "All
17 she was doing was cleaning the room"? That comes out?

18 THE COURT: Going through, on line 47 "and her family."

19 MS. WALTER: Oh, okay.

20 THE COURT: So it redacts the "any obligation that the
21 police would have to the victim."

22 MS. WALTER: Okay.

23 MR. FOX: I understand, sir. Thank you.

24 MS. WALTER: And then, moving on to page 7, lines 12
25 through 29, timestamp 12:26:45 to 12:27:09. Detective Morrell

1 says, "So you're in the hotel yesterday; right?"

2 Defendant: "Yes, sir."

3 Detective Morrell: "Okay. And you had on -- you had on
4 the black Nike sneakers?"

5 Defendant: "Yes, sir."

6 Detective Morrell: "A white tank top?"

7 Defendant: "Yes, sir."

8 Detective Morrell: "A blue -- a blue sweatshirt? I
9 think it was a zip-up with a hood?"

10 Defendant: "Yes, sir."

11 Detective Morrell: "Okay. So you were in the hotel
12 yesterday. All right. And we know that. We agree on that;
13 right?"

14 This is proposed by the defense. The State objects to
15 it.

16 MR. FOX: Judge, I think I can break -- initially, when I
17 sent the email to Ms. Walter, it had lines 12 through 29 --
18 or, rather, through -- yes, through 29.

19 In looking back -- and I mentioned this to her yesterday
20 -- line 10, where Mr. McClary says, "I think something is
21 wrong with me," I would like that taken out. I think that is
22 prejudicial to him in a bad way, not probative of anything.

23 And then the remainder of that portion that Ms. Walter
24 just read, I would argue, falls under *State v. Washington* and
25 should be out.

1 MS. WALTER: Okay. Well, Your Honor, I don't know how we
2 are picking and choosing which is prejudicial to the defendant
3 and which isn't, because Mr. Fox argued to keep in about PTSD
4 and all of that. So the defendant saying, "I think something
5 is wrong with me," is really in the same vein as that.
6 There's no reason to take that out if we're leaving the others
7 in.

8 As for lines 12 through 29, during the interview,
9 Detective Morrell actually shows the defendant the stills from
10 the surveillance video showing the defendant in a white tank
11 top and blue jacket. So it's actually on the video, so it's
12 not just him saying it.

13 THE COURT: And what is the statement in the *State v.*
14 *Washington* argument?

15 MR. FOX: Judge, that is the -- and I'm going to step
16 back to line 10, "I think something is wrong with me." I'll
17 agree to that one staying in. I don't think I have -- it's
18 required that everything be consistent, but in this particular
19 case -- so line 10, we don't disagree on.

20 *State v. Washington*, Your Honor, was the case, South
21 Carolina Court of Appeals from 2020 -- October of 2020, which
22 basically says that, when there are recorded interviews of law
23 enforcement, that the officer's -- not every word the officer
24 says, but where the officer is basically summarizing or
25 relating facts, that that's a version of testimony of hearsay.

1 And rather than play it and have that hearsay -- you know, you
2 did this or this happened or this situation, right, relating
3 facts that were the officer's version that he knows from
4 hearing from other people, that that, in many instances, is
5 hearsay. It's not automatic. It's not across the board, but
6 that the proper procedure is to call the officer, who can then
7 testify and be questioned about things; but you can't
8 cross-examine an audio tape, basically, or a videotape.

9 So that's the general proposition. And so, again, it
10 doesn't bar officers from getting the same information, and it
11 doesn't mean everything they say is hearsay, but, basically,
12 the general rules of hearsay apply to these recorded
13 statements.

14 MS. WALTER: May I respond, Your Honor?

15 THE COURT: Yes, ma'am.

16 MS. WALTER: Number one, I think that that is a bit of an
17 overstatement of the *Washington* case, and the *Washington* case
18 is one of those cases where bad facts make for bad law. And,
19 in that case, the Court took exception to the way that the
20 detectives questioned the defendant by repeatedly,
21 essentially, testifying to the facts that would not have come
22 in any other way.

23 Here, again, Detective Morrell will be showing stills of
24 the defendant wearing the white tank top, wearing the blue
25 shirt. The jury has already seen those surveillance photos.

1 Number two, Detective Morrell will be on the stand, so he
2 can be questioned as to what he asked.

3 THE COURT: And Detective Morrell will be the witness by
4 whom you enter this into evidence; right?

5 MS. WALTER: Yes, Your Honor.

6 THE COURT: All right. So I'm going to allow in 12
7 through 29 -- lines 12 through 29 on page 7 of this
8 transcript.

9 MS. WALTER: Okay. And then, Your Honor, page 8 is
10 agreed to, lines 37 through 44; timestamp, 12:29:28 to
11 12:29:40. And that's really just about the defendant
12 squatting in hotel rooms.

13 On page 11, this is a defense request, lines 16 through
14 25; timestamp, 12:32:24 to 12:32:50. And, actually, the
15 defendant's response should be highlighted here as well, Your
16 Honor. I apologize.

17 Detective Morrell says, "Listen to me, listen to me. You
18 you're" -- and actually, maybe not, because Mr. Fox, I guess,
19 didn't include that; I'm not sure.

20 "Listen to me, listen to me. You -- you're doing --
21 you're doing the right thing, and I can tell, just by looking
22 at you a couple of minutes, you feel a whole big weight has
23 been lifted off your shoulders. Am I right?"

24 Defendant responds, "Yes."

25 Detective Morrell: "Okay. You -- you're doing the right

1 thing, and what's important is that you're telling the truth.
2 Okay? So let's go back. So before you went in to get the ID
3 card, what was the conversation like? What were you guys
4 talking about before you decided to go in and get the ID
5 card?"

6 MR. FOX: Judge, I don't think Detective Morrell's
7 interpretation of his body language -- Mr. McClary's body
8 language is relevant. I think it can be prejudicial. You
9 know, "you feel a whole big weight" -- the jury can make that
10 determination. They can look at him. It is a video, visual
11 as well as audio, and so they'll be able to look at Mr.
12 McClary's body language and his reactions and expressions,
13 etc., and determine for themselves, without suggestion from
14 Detective Morrell, whether he feels a whole big weight has
15 been lifted off his shoulders.

16 Same thing with "you're doing the right thing." That's
17 his interpretation. So I would request that, down through
18 line 23 where it says "the truth," and then the rest of that
19 paragraph from Detective Morrell, that's fine. So starting at
20 "okay, let's go back" and line 23, I don't have objection to
21 that.

22 THE COURT: And I was thinking the same thing. So that's
23 what I'll rule is that -- where it picks up on line 23,
24 "Okay," we'll leave that in, through the remainder of the
25 highlight. And then everything else that's highlighted, we'll

1 take out.

2 MS. WALTER: Okay. And I will also take out the
3 defendant's response "yes," only because that --

4 MR. FOX: Yes.

5 MS. WALTER: -- it wouldn't make sense otherwise.

6 MR. FOX: Yes. Thank you.

7 MS. WALTER: Okay. Just so that we're clear, we're
8 taking out lines 16 through 22 and going on to 23, the words
9 "the truth." So it would be Detective Morrell picking up
10 with, "Okay. So let's go back. So before you went in to get
11 the ID card."

12 MR. FOX: Yes.

13 THE COURT: Yes, ma'am.

14 MS. WALTER: Turning to page 14, the defense requests
15 lines 7 through 10. Detective Morrell: "The best way to do
16 that is to tell the truth."

17 "All right."

18 "And I feel like you're doing that because a lot of what
19 you're telling us matches up to the evidence that we have. So
20 you mean -- and I told you I would give you respect for
21 showing me respect, and now that I know you're telling me the
22 truth, I mean, I appreciate you doing that for me."

23 "Okay."

24 MR. FOX: Judge I'll withdraw my objection to those
25 lines. Those can remain.

1 THE COURT: All right.

2 MS. WALTER: And then --

3 THE COURT: Is the next color red?

4 MS. WALTER: Pardon me?

5 THE COURT: Because the next color looks orange to me.

6 MS. WALTER: That's pink.

7 THE COURT: Pink, we were just talking about; right?

8 MS. WALTER: Pardon me?

9 THE COURT: The pink, we were just talking about.

10 MS. WALTER: Yes. The next one is red, and that's by
11 consent.

12 THE COURT: Okay.

13 MS. WALTER: The next time, I'll pick colors that are a
14 little more contrasting.

15 THE COURT: All right. Sounds good. I don't know, maybe
16 my eyes are crossing.

17 MS. WALTER: By consent, timestamp 12:36:55 to 12:37:06
18 will be redacted, and that's, again, about putting the cart
19 before the horse.

20 MR. FOX: Right.

21 MS. WALTER: Beginning -- still on page 14, timestamp
22 12:37:27, and it continues all the way over to 12:38:58 on
23 page 15, line 42 -- and, again, this is the defendant talking
24 about his alleged PTSD and ADHD, taking medication, Waccamaw
25 Mental Health, and the State's argument is that that's

1 irrelevant.

2 MR. FOX: And my argument is the same as it was
3 previously, Your Honor. I think, if it's in previously, then
4 I think it should be in at this location.

5 (Pause in the proceedings while the Court reviews
6 documents.)

7 THE COURT: So what I think I'm going to do is, I'm going
8 to allow 33 through 46, and then we're going to take out 48
9 and then starting on page 15, line 2, line 4, and line 6, and
10 then allow the rest of it in, down to line 20. Take out 23,
11 22 where it says things about Mobile, Alabama. Take out 24,
12 26 and 28, 31, 33, 35, 37 through 40, and 42.

13 MS. WALTER: All right. I just want to recap, so I make
14 sure we get this correct. So staying in would be lines 33
15 through 46 on page 14.

16 THE COURT: Yes, ma'am.

17 MS. WALTER: Coming out is line 48 on page 14 through
18 line 6 on page 15. And then coming out on 15, lines 8
19 through --

20 THE COURT: No, that stays in.

21 MS. WALTER: Right. I'm sorry. Did I say out? I have
22 marked in. Staying in is line 8 through 18. And then line 20
23 through 42 is coming out.

24 THE COURT: Yes, ma'am.

25 MR. FOX: That's my understanding as well.

1 MS. WALTER: Okay. And I have an extra copy of the
2 transcript. I guess we can make that a Court exhibit so that
3 they understand what we're talking about.

4 COURT REPORTER: Court's No. 4.

5 (Court Exhibit No. CT-4, Transcript, was marked for
6 identification.)

7 MS. WALTER: Page 19 is by content. That's 12:44:47
8 through 12:45:02. The next contested one is on page 20. This
9 is a defense request. Lines 42 through 44, Detective --
10 timestamp 12:46:24 to 12:46:32. Detective Morrell: "Yeah, I
11 mean, she -- she bled a lot."

12 Defendant: "She bled a lot lot? Did she almost die?"

13 That's a defense request.

14 MR. FOX: It's the same argument I made, Judge, under
15 *Washington*, I believe. Detective Morrell's statement. And I
16 understand the argument that -- I believe that statement is
17 hearsay and should be precluded under *Washington*. I
18 understand the argument that there is evidence in the record
19 at this point that she did bleed a lot, but we'd object to
20 those two lines.

21 THE COURT: I understand. And I'm going to leave them in
22 based on the fact Detective Morrell is going to be on the
23 stand and subject to cross-examination.

24 MR. FOX: Yes, sir.

25 MS. WALTER: Then on page 21, timestamps 12:47:04 to

1 12:47:27, lines 14 through 22. The defendant: "The reason --
2 the only I didn't talk yesterday, because I just -- I just
3 felt uncomfortable, man, that happened that same day. When I
4 talked to God last night --":

5 Detective Morrell: "Okay."

6 Defendant: "-- and, um, he -- I just felt like I needed
7 to tell him (indecipherable) this time. So I know detectives
8 was going to come to me today and talk to me, so I had -- just
9 opened my mouth about it because the Lord would rather take
10 the truth than a lie, you know, so..."

11 I'm going to let him argue, but I will have a response to
12 that.

13 MR. FOX: I have no doubt.

14 Judge, I don't want to argue against the Lord; however,
15 it's no secret at this point that I am going to be arguing
16 against this statement on behalf of my client and have argued
17 against -- in general, his statements. And I'm just worried
18 that, in what is unquestionably a quite religious area, being
19 Horry County in South Carolina, that having the imprimatur of
20 God on a statement somehow will be elevate it; that, in other
21 words, we should not just these couple of lines -- this is
22 just a discussion about why he, apparently, changed his mind
23 from the day before -- but that, somehow, that puts the stamp
24 of approval from the Lord Almighty on his entire statement.

25 I don't think it's relevant. I think it risks, again,

1 taking something extraneous. They need to be evaluating the
2 statement on its voluntariness, you know, on all the things
3 that they would look at. Is it detailed? Is it believable?
4 Not "does it have the Lord's stamp of approval" or was that
5 the motivation for him to do it. So I'm concerned it will
6 introduce an improper element.

7 MS. WALTER: Well, Your Honor, if Mr. Fox is going to
8 argue that the defendant was motivated to make this
9 inculpatory statement because of police action, then,
10 certainly the fact that the defendant is saying "I'm doing it
11 because I spoke to the Lord" is relevant. And the defendant
12 is the one who is bringing the Lord in, not law enforcement.

13 So if Mr. Fox is putting the defendant's motivation for
14 confessing to this crime at issue, this speaks directly to it.

15 MR. FOX: I think it's -- improper influence outweighs
16 any probative value that would be gained, as Ms. Walter
17 indicated.

18 THE COURT: All right.

19 MS. WALTER: If Your Honor is thinking of taking it out,
20 then I would suggest that Mr. Fox cannot argue about the
21 defendant's motivation to make the second statement.

22 THE COURT: All right. I'm going to allow it to stay in.
23 That's a statement of the defendant. I don't think that
24 was -- I mean, you know, it was uttered by the defendant. And
25 I don't see where it was improperly elicited or anything else,

1 so...

2 MS. WALTER: Your Honor, on page 22, that is by consent,
3 lines 11 through 46, timestamps 12:49:04 to 12:50:09. On page
4 23, lines 16 through 31, timestamp 12:50:47 to 12:51:08, and
5 this is talk about the defendant's daughter, which has been
6 the subject of other argument. And that would be the same for
7 lines 45 through 46 -- or portions of 45 -- timestamp 12:51:34
8 to 12:51:41. Obviously, the State believes that that's
9 irrelevant.

10 MR. FOX: It would be the same argument previously, Your
11 Honor, and it's been left in other places. I think it is
12 relevant, and I would request that all of that remain in.

13 THE COURT: As I remember your argument, it was really to
14 set the context. I don't know that coming back to this
15 information serves that purpose again. So I agree that this
16 is irrelevant.

17 MR. FOX: Judge, I would say this goes a little bit
18 farther because it addresses his plans, his working and his
19 caring for his daughter. I believe it further explains what
20 was previously addressed previously, the fact that he had a
21 daughter and this explains that a little bit further.

22 MS. WALTER: Actually, it's the detective who is talking
23 about him working. So, you know, Mr. Fox has made the
24 argument time and time again that what the detective says is
25 hearsay --

1 MR. FOX: No, not everything the detective says is
2 hearsay, and I clearly said that. But, anyway, I don't think
3 it matters who it comes from. That's not my argument. I'll,
4 obviously, accept the Court's ruling, but my argument would be
5 this goes a little bit further in explaining that particular
6 point.

7 THE COURT: All right. Well, I don't know that it
8 matters, to be honest with you. Certainly, I understand each
9 side's position. And I'll just let it stay in.

10 And the same for 45 and 46.

11 MS. WALTER: Right. I considered that all together, Your
12 Honor.

13 MR. FOX: Yeah.

14 MS. WALTER: On page 24, the end of line 37 into 38,
15 timestamp 12:52:48 to 12:52:51, Detective Morrell is saying,
16 "I want to know you got a job and you're looking after
17 **K**." And I'll actually withdraw that since we're allowing
18 everything else about the daughter in at least.

19 MR. FOX: Well...

20 MS. WALTER: Page 25, lines 7 through 10 are by content.
21 Timestamps 12:53:20 to 12:53:30.

22 A portion of line 23, timestamp 12:54:03 to 12:54:06
23 relating to "if you're still in jail here in the county" is
24 out by consent.

25 Lines 28 through 40, timestamps 12:54:11 to 12:54:55,

1 Detective Morrell: "Okay. I'm proud of you for telling me
2 the truth. Okay. I -- and I don't want you to hang your
3 head. Okay?"

4 Defendant: "Yes, sir."

5 Detective Morrell: "You have to deal with what's
6 happened. Okay? If not now -- now, I have more respect for
7 you than I did when you walked in. I had the respect that you
8 were showing me when you walked in. I have more respect for
9 now because you told me the truth. Okay?"

10 The defendant: "Yes, sir. Yes, sir."

11 Detective Morrell: "And any person that tells the truth
12 is a man. Okay? You stood up for what you did, and I
13 appreciate you doing that for me."

14 THE COURT: I'm going to take it out.

15 MR. FOX: Thank you.

16 MS. WALTER: Lines 45 and 46 are been consent.

17 Timestamps 12:54:53 through 12:54:56.

18 And then just, finally, on the last page, lines 14 and
19 16, timestamp 12:55:04 to the end.

20 Detective Morrell: "Okay. So we'll get you back to your
21 cell."

22 The defendant: "Yes, sir."

23 MR. FOX: We can take that out, Your Honor. I'll agree
24 to take.

25 THE COURT: Thank y'all for your civility.

1 MS. WALTER: Your Honor, I'm going to pass up -- this is
2 a jury instruction from when I was a prosecutor in Arizona.
3 It deals specifically with redacted exhibits.

4 THE COURT: Okay.

5 MS. WALTER: They suggest -- and what we used to do is
6 that it's read at the time -- and I can -- that it's read at
7 the time that the redacted exhibit is introduced and then
8 again as part of the final charge, because the redactions, no
9 matter how well you do it, are obvious, and I think this
10 instructs the jury not to interpret it one way or the other.
11 So it's just that one highlighted paragraph.

12 MR. FOX: I don't have any objection to it, Your Honor,
13 if you feel that's necessary, but I agree. They're going to
14 know if something has been changed.

15 THE COURT: Okay. And you suggest doing this just prior
16 to playing it?

17 MS. WALTER: Just prior to the playing of the interview,
18 and then I would ask that it be included in the final
19 instructions to the jury.

20 THE COURT: Okay.

21 MR. FOX: I was just going to put -- Your Honor,
22 yesterday, I refreshed Ms. Hernandez's memory with her
23 interview. Overnight, I had someone in my office -- it was on
24 a disc that I had that had other interviews. So I've had them
25 take just Ms. Hernandez's interview, take it out, and put it

1 on a disc separately, and that was discussed with Ms. Walter,
2 and then we'd just like it to be a Court's exhibit, if there's
3 any question.

4 THE COURT: Do you have any concern to make sure that's
5 what that is?

6 MR. FOX: Would you rather -- I mean, if you'd like to --
7 to make sure that nothing got left --

8 MS. WALTER: If, at this point in his career, Mr. Fox is
9 going to do something like that, I think we have larger
10 problems.

11 MR. FOX: We do.

12 THE COURT: That's not what I was trying to implicate. I
13 just know, whenever I tried to chop up CDs, it didn't never
14 work the way I wanted it.

15 MS. WALTER: It's a Court exhibit, Your Honor, so...

16 If it were something going back to the jury, I might be a
17 little bit more worried about it, but it's a Court's exhibit.

18 MR. FOX: Yes, that's right.

19 THE COURT: I understand.

20 MS. WALTER: And so, then, the transcript will be marked
21 as 5, and I guess Mr. Fox's as --

22 COURT REPORTER: I need clarification. The transcript
23 was marked 4. And did you want the Arizona marked, the case?

24 MS. WALTER: I think because His Honor is giving it, we
25 don't have to. I just gave it to you so you'd have it.

1 COURT REPORTER: Okay. So then the DVD would be 5.

2 (Court's Exhibit CT-5, DVD, was marked for
3 identification.)

4 MS. WALTER: And, Your Honor, we're having the redactions
5 done now so that we'll be able to give it to Mr. Fox, and he
6 can listen to it over lunch.

7 THE COURT: All right.

8 MS. WALTER: Because I would expect we'll get it this
9 afternoon.

10 THE COURT: All right? So who is calling this witness?

11 MS. WALTER: I am.

12 MS. ANDREW: Oh, no, you'll do it better.

13 MS. WALTER: I am.

14 MS. ANDREW: It's Mary-Ellen and then me and then her.

15 THE COURT: Okay. Are we ready for the jury?

16 MS. WALTER: Sure.

17 MR. FOX: Yes.

18 THE COURT: All right.

19 MS. WALTER: Your Honor, may we take a quick comfort
20 break?

21 THE COURT: Is five minutes okay?

22 MS. WALTER: Five minutes is plenty.

23 (A brief recess was taken at 9:44 a.m. to 9:50 a.m.)

24 (The jury entered the courtroom at 9:50 a.m.)

25 THE COURT: Good morning, ladies and gentlemen.

1 Ms. Walter is going to call her next witness.

2 MS. WALTER: The State calls James Vetter.

3 JAMES VETTER,

4 after having been duly sworn, was examined and testified
5 to as follows:

6 THE CLERK: State your name and spell it for the Court?

7 THE WITNESS: James Vetter. J-a-m-e-s. Vetter, V as in
8 "Victor," e-t-t-e-r.

9 MS. WALTER: May I, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. WALTER: Thank you.

12 DIRECT EXAMINATION

13 BY MS. WALTER:

14 Q Officer Vetter, where do you work?

15 A The Myrtle Beach Police Department.

16 Q How long have you been there?

17 A A little over seven years now.

18 Q What is your current position with Myrtle Beach?

19 A Patrolman first rank, so, basically, just a patrol
20 officer.

21 Q Are you assigned to a particular part of Myrtle Beach?

22 A Yeah, the downtown area, the Boulevard, the water -- we
23 call it the waterfront area.

24 Q How long have you been assigned to that area?

25 A Seven years. The whole time.

1 Q And so, then, back on March 20th of -- 19th and 20th of
2 2018, you were in that area?

3 A Yeah, I would have been assigned that area.

4 Q What are the duties and responsibilities of a patrol
5 officer?

6 A To respond for calls of service and to patrol the area
7 I'm assigned to.

8 Q Can you, if you can, sort of give us the geographic
9 boundaries of the area, like streets?

10 A The waterfront area where I've primarily worked for that
11 time is about 21st North to 6th Avenue South, up to Kings
12 Highway.

13 Q Are there properties in that area that subscribe to the
14 TEAP, T-E-A-P, program?

15 A Oh, yeah, a lot of properties, whether it's the
16 trespassing or loitering. A lot of properties participate in
17 that program.

18 Q Can you explain to the jury what that program is?

19 A So our TEAP program standard for our Trespassing
20 Enforcement Assistance Program. And basically what that is is
21 a voluntary program that businesses and properties can sign up
22 for to where they don't need a representative of the property
23 to allow the police department to take trespassing enforcement
24 action or, like, loitering enforcement action on their
25 property.

1 So if a business is closed, for instance, and there's
2 people loitering, trespassing, we're able to take that
3 enforcement action without a property manager or employee
4 on-scene.

5 **Q** Now, directing your attention specifically to March 20th
6 of 2018, were you on duty that night?

7 **A** I was, yes.

8 **Q** Were you working alone or with a partner?

9 **A** I was assigned to -- with PFC Mike Morlano.

10 MS. WALTER: And that's M-a-r-l-a-n-o.

11 COURT REPORTER: Thank you.

12 BY MS. WALTER:

13 **Q** At sometime around ten of 7:00 that night, did you
14 respond to the area of Mr. Joe White Avenue on Carver Street?

15 **A** Yes, I did.

16 **Q** What's at that location?

17 **A** At that intersection of Joe White and Carver, right now,
18 there's a YMCA. The next block up around Joe White and Dunbar
19 is the historic colored school and museum.

20 **Q** What caused you to go to that area?

21 **A** We received -- there was a call for service that came out
22 about males that matched the description of an incident intent
23 that happened earlier in the day. Myself and PFC Marlano were
24 in that area, so we responded to that call. We were right
25 down the street when that call came out, which is why we

1 responded to it.

2 Q Were you familiar with an incident having occurred
3 earlier that day?

4 A Vaguely. That happened during day shift. I came on for
5 night shift, so I kind of -- I had heard, like, a little bit
6 about an incident that happened at the hotel. I didn't know
7 all the details about what happened, but I knew something
8 happened. I had either had seen a BOLO -- it was either an
9 email or, like, a photograph that was passed around at, like,
10 our briefing of subjects we were looking for in relation to
11 that incident.

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

13 THE COURT: Yes, ma'am.

14 MS. WALTER: And I'm approaching with State's Exhibit 61.

15 BY MS. WALTER:

16 Q Can you look at that? Do you recognize that?

17 A Yep.

18 Q Is that a copy of the "be on the lookout" that you
19 received?

20 A Yes, that's what I would have seen.

21 MS. WALTER: Your Honor, I would ask that Exhibit 61 be
22 admitted and published.

23 MR. FOX: Without objection, Your Honor.

24 THE COURT: All right. 61 is in evidence without
25 objection.

1 (State's Exhibit No. ST-61, BOLO, was received into
2 evidence.)

3 BY MS. WALTER:

4 Q When you got to that area, so Mr. Joe White Avenue around
5 Carver and Dunbar, what did you see?

6 A We observed three black males that matched that
7 description of what we had seen and similar to the description
8 that the caller gave about the -- for that call for service.
9 We observed them walking westbound down Mr. Joe Avenue.
10 Myself and PTC Marlano drove past them and realized, yep,
11 that's them.

12 It kind of started to rain. There wasn't anybody else
13 really walking on the sidewalk at all other than the three of
14 them. We drove past them, turned back around. We noticed
15 they weren't on the sidewalk anymore. We noticed that there
16 was, like, a cut-through to get on the historic colored school
17 and museum's property. So we drove down Dunbar and found them
18 on the property of the museum.

19 Q And when you say "them," was the defendant one of the
20 three people that you stopped?

21 A Yes.

22 Q Do you recall how he was dressed that night?

23 A He was wearing kind of tan clothes, like business attire.
24 He had a tie on, tan pants. It was a white-colored shirt.
25 I'm not sure if it was white or, like, a tan, beige-colored

1 shirt.

2 Q And you said that they turned onto the grounds of the
3 historic colored school and museum. Was it open at that
4 point?

5 A The museum was not open, no.

6 Q Were there TEAP signs posted?

7 A There were TEAP signs posted on that property, yep.

8 Q So once you saw the defendant and the two others on the
9 property marked with TEAP signs, what did you do?

10 A We got out with them. They were -- we detained them at
11 that point. We didn't put them in handcuffs, but they were in
12 a detainment based on the BOLO. I had asked them, basically,
13 just kind of what they were up to that day. They just said
14 they were walking around the strip.

15 An officer that had previous experience with the incident
16 showed up on scene, and then he started making phone calls to
17 notify detectives and such. Myself, I just kind of stood by
18 and waited.

19 Q Did you arrest the defendant and the others for the
20 trespassing?

21 A Yes. All three of them were arrested for the TEAP
22 violation.

23 Q Were they then turned over to detectives?

24 A At the jail. At the police department, I believe so,
25 yeah.

1 Q Okay. Thank you. Nothing further at this time. Just
2 answer any questions Mr. Fox may have, please.

3 CROSS-EXAMINATION

4 BY MR. FOX:

5 Q Detective, you mentioned this -- at the colored school
6 there on Mr. Joe White, there's a pathway or sidewalk that
7 runs from Mr. Joe White straight back to Dunbar Street;
8 correct?

9 A Yeah.

10 Q And it's completely open. There's no gate; correct?

11 A The property is surrounded by a fence, but there's no
12 gate on the sidewalk itself. I mean, it's its own individual
13 property. It's not totally open, so there is a fence
14 surrounding it, but the sidewalk is not gated.

15 Q In other words, access to the sidewalk on both ends, wide
16 open?

17 A Correct.

18 Q As the street officer in that area, you're familiar with
19 that area. In your experience, people use that constantly,
20 wouldn't you say, to get from the neighborhood there behind
21 Dunbar Street to the other side of Mr. Joe White?

22 A I don't know about constantly. I mean, it's a sidewalk,
23 so people could use it, but...

24 Q Are they trespassing each and every time they walk by
25 there?

1 **A** They might be if they're lingering on the property.

2 **Q** On State's 61, you didn't have anything further to do
3 with investigating the incident that led to the BOLO, did you?

4 **A** No, sir. I was not on duty when that incident took
5 place.

6 **Q** But you're familiar with State's 61, the BOLO with the
7 photographs?

8 **A** Mm-hmm.

9 **Q** Four paragraphs, do you know if they represent four
10 different people or two people or three people? Do you have
11 any idea?

12 **A** At that time, no, I didn't.

13 **Q** Okay. And the person in the bottom photograph has a
14 headband on. What would you describe his attire?

15 **A** His attire?

16 **Q** Yes.

17 **A** He's wearing a black jacket, white shirt, and gray pants.

18 **Q** Can you tell is the shirt -- does it appear to be, like,
19 a T-shirt?

20 **A** I would guess it's a T-shirt. It doesn't look like it
21 has a collar.

22 **Q** Okay. Can't tell if it's got sleeves or not, though,
23 from that, because of the jacket?

24 **A** No. Mm-hmm.

25 **Q** Thank you. No further questions.

1 THE COURT: All right, sir, you're free to --
2 Is there any objection to releasing this witness?

3 MS. WALTER: None from the State, Your Honor.

4 THE COURT: All right. You're free to go. Thank you for
5 being here.

6 Ms. Andrew?

7 MS. ANDREW: Your Honor, the State calls Scott
8 Williamson.

9 SCOTT WILLIAMSON,
10 after having been duly sworn, was examined and testified
11 to as follows:

12 THE CLERK: Thank you.

13 THE WITNESS: State your name and spell it for the Court.

14 THE WITNESS: Scott Williamson. W-i-l-l-i-a-m-s-o-n.

15 DIRECT EXAMINATION

16 BY MS. ANDREW:

17 Q Mr. Williamson, are you currently employed?

18 A No, ma'am. I'm retired.

19 Q You're retired. What did you do before you retired?

20 A I was an officer for the Myrtle Beach Police Department.

21 Q How long were you an officer at the Myrtle Beach Police
22 Department?

23 A For 26 years.

24 Q And did you have any law enforcement experience before
25 you joined the Myrtle Beach Police Department?

1 A I did.

2 Q You did?

3 A Yes, ma'am.

4 Q What was that?

5 A I worked in Ocean City, Maryland, for about a year as a
6 patrolman.

7 Q When you retired, when approximately was that?

8 A That was September of 2020.

9 Q What was your job duty title at the time you retired?

10 A I was a crime scene specialist.

11 Q Were you also a crime scene specialist back on March 20
12 of 2018?

13 A Yes, ma'am.

14 Q And can you tell us what a crime scene specialist did at
15 the Myrtle Beach Police Department while you were there?

16 A I'm responsible to responding to crime scenes where
17 there's potential evidence, photographing documentation,
18 searching for evidence, looking for any kind of trace or
19 obvious evidence, collecting that evidence, and then securely
20 packaging it for later analysis.

21 Q Did you received any kind of specialized training to be a
22 crime scene investigator at the police department?

23 A Yes, ma'am.

24 Q What kind of training did you receive?

25 A There's a two-week introduction to crime scene class.

1 I've had 40-hour classes in photography, trace evidence, blood
2 spatter, latent fingerprint identification and -- just a lot.

3 Q And I think you said you were there 25 years?

4 A Twenty-six.

5 Q Twenty-six years.

6 A Yes, ma'am.

7 Q So, during that 26-year period, it sounds like you did a
8 whole lot of crime scene investigation.

9 A About 12 years of it total, yes, ma'am.

10 Q Okay. I'm going to turn your attention back to March of
11 2018. Do you recall the incident where the victim, Liliana,
12 was assaulted at the Sheraton Hotel?

13 A Yes, ma'am.

14 Q And did you respond or were you asked to respond to the
15 Grand Strand Regional Medical Center for that case?

16 A Yes, ma'am. Detective Arroyo had asked me to go up there
17 with him.

18 Q And what was the purpose of your visit to the hospital?

19 A I was told that there was a person up there with
20 injuries, and I was asked to document the injuries and take
21 any probable trace or forensic evidence that might be present.

22 Q Okay. Did you actually meet and see Liliana at the
23 hospital that day?

24 A Yes, ma'am, in the emergency room.

25 Q Did you also take some photographs of her?

1 **A** I did.

2 MS. ANDREW: May I approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. ANDREW: This is 30, 31, 32, and 33.

5 BY MS. ANDREW:

6 **Q** I'm going to show you what's been previously admitted as
7 Exhibit No. 30.

8 MS. ANDREW: You can publish this one. It's been
9 admitted.

10 BY MS. ANDREW:

11 **Q** Is that the person you saw that day?

12 **A** Yes, ma'am.

13 **Q** Is that the condition that she was in?

14 **A** Yes, when I first arrived.

15 **Q** Did you actually take that photograph?

16 **A** I did.

17 **Q** Going to now show you what's been marked as State's
18 Exhibit No. 31 and previously admitted.

19 MR. FOX: Your Honor, can we -- can we approach just a
20 moment?

21 COURT REPORTER: I'm sorry; did you want this on the
22 record?

23 MR. FOX: Yes.

24 MS. WALTER: Yeah.

25 BENCH CONFERENCE

1 (The following bench conference was held outside of the
2 hearing of the jury and others:)

3 MR. FOX: I do know 31 has been admitted. I would object
4 to it being shown larger than life on the big-screen TV. It
5 can be published. I think that does enhance the prejudicial
6 effect. I understand Your Honor has ruled that it's
7 admissible, but I think it's one thing to have an 8-and-a-half
8 by 11 glossy, which is graphic enough. There is no reason to
9 blow it up. It's one thing to blow up, you know a BOLO of
10 people, but it's another thing to put up a very graphic injury
11 on a very -- what is that -- 55- or 60-inch TV.

12 The only purpose to do that is to highlight there's
13 nothing that can't be seen through what is a very clear color
14 print of a photograph. Hand it to the jurors, for them to
15 inspect. I think the only possible reason to blow it up is
16 for its inflammatory effect.

17 MS. ANDREW: That's certainly not our intention. We
18 intended, actually, to use the TV to show all the photographs.
19 We just didn't do it yesterday because there were so few of
20 them. The reason we're using it today is because there's so
21 many. The jury has seen that multiple times through multiple
22 witnesses. I don't see how it can possibly inflame them any
23 more than they already are.

24 MS. WALTER: And it saves walking --

25 MS. ANDREW: It just save --

1 MS. WALTER: -- walking back and forth.

2 MR. FOX: And I don't think there's any necessary intent,
3 but I don't think I have to prove their motive. I don't think
4 it's necessarily a motive on their part. I'm looking at the
5 effect. And I think it also emphasizes and highlights it to a
6 degree beyond -- I mean, from my point of view, it's bad
7 enough, but, again, it's already in. I think it only
8 emphasizes.

9 THE COURT: I understand. I just think it's a technical
10 aid that is permissible, and I'm going to allow it.

11 MS. ANDREW: Thank you, Your Honor.

12 (Open court resumes as follows:)

13 BY MS. ANDREW:

14 Q I was showing you State's Exhibit 31, which was
15 previously admitted.

16 A Yes, ma'am.

17 Q Is this another picture of Liliana from that day?

18 A Yes, ma'am.

19 Q And did you take that photograph as well?

20 A I did.

21 Q I'm going to show you what's been marked as State's
22 Exhibit 32. It has not been published yet. Is that a
23 photograph you took at the hospital that day?

24 A Yes, ma'am.

25 Q What does that photograph depict?

1 **A** It depicts her right hand with cuts, bruises, blood on
2 it.

3 **Q** Is that a true and accurate copy of the photograph of
4 what you actually saw at the hospital that day?

5 **A** Yes, ma'am.

6 MS. ANDREW: Your Honor, at this time, the State would
7 move 32 into evidence and published to the jury.

8 MR. FOX: Without objection, Your Honor.

9 THE COURT: 32 is in. Thank you.

10 (State's Exhibit No. ST-32, Photograph, was received into
11 evidence.)

12 MS. ANDREW: I don't know if I showed you 33.

13 MR. FOX: Yes.

14 BY MS. ANDREW:

15 **Q** All right. I'm going to show you what's been marked as
16 State's Exhibit No. 33. Is that also a photograph you took at
17 the hospital that day?

18 **A** Yes, ma'am.

19 **Q** And what does that depict?

20 **A** It depicts Mr. Hernandez's left hand, again, with lots of
21 blood, bruising, and hospital treatment and equipment on it.

22 **Q** Is that a photograph that actually depicts what you say
23 that day? Is it a fair and accurate representation?

24 **A** Yes, ma'am.

25 MS. ANDREW: Your Honor, at this time, the State moves

1 State's 33 into evidence and like to publish to the jury.

2 MR. FOX: Without objection, Your Honor.

3 THE COURT: All right. Thank you.

4 (State's Exhibit No. ST-33, Photograph, was received into
5 evidence.)

6 BY MS. ANDREW:

7 Q And you have taken these photographs that we just saw of
8 her hands. Did you collect any evidence from Liliana's hands
9 that day?

10 A Yes, ma'am.

11 Q Okay. What kind of evidence were you collecting?

12 A We collected what we call fingernail scrapings, which
13 would be taking a small sterile stick and scraping it under
14 her fingernails to get out any potential skin or blood or
15 anything that would be left behind when a person is struggling
16 with somebody.

17 Q And why do you -- what's the purpose of trying to get
18 that evidence? What do you do with it?

19 A We're hope- -- well, what we do with it is we package it
20 up into a sterile container and we send it to our SLED crime
21 lab in Columbia, and hopefully, they can analyze any DNA that
22 doesn't belong to the victim, and that would indicate that
23 that's the person that she's fighting with or struggling, that
24 it was transferred under her fingernail.

25 Q Okay. And I think you said you scraped both her left and

1 right hand?

2 A Yes. All ten fingers. Yes.

3 MS. ANDREW: I want to mark these two.

4 (State's Exhibit No. ST-39, Right Fingernail Scraping,
5 was marked for identification.)

6 (State's Exhibit No. ST-40, Left Fingernail Scraping, was
7 marked for identification.)

8 BY MS. ANDREW:

9 Q Would you like some gloves?

10 A Yes, ma'am, if I need to handle the evidence. I'd
11 appreciate it. Thank you.

12 MS. ANDREW: Approaching the witness, Your Honor.

13 THE WITNESS: Thank you.

14 BY MS. ANDREW:

15 Q I'm going to show you what's been marked --

16 MS. ANDREW: I'm sorry; I'll show you, Eric, first. I
17 apologize.

18 BY MS. ANDREW:

19 Q I'm going to show you what's been marked as State's
20 Exhibit 39. Can you identify that?

21 A Yes, ma'am. It's my Item No. 19, which is the number I
22 assigned to it at the scene, but it's scrapings from the right
23 hand of the victim, Ms. Hernandez.

24 Q And is your handwriting on there?

25 A Yes. That's my handwriting. And my initials and the

1 date are also on the evidence seal on the back.

2 Q Okay. So I think you testified, after you took the
3 scrapings, you placed them in the envelope and sealed them
4 with this red -- this tape?

5 A Yes.

6 Q And initially the back?

7 A That's correct.

8 Q I'm going to also show you what's been marked as State's
9 Exhibit No. 40. What is that?

10 A That's my Item No. 20, evidence item, and it's scraping
11 from the left hand of the victim, Mrs. Hernandez.

12 Q And does it also have your handwriting and initials on
13 it?

14 A Yes, ma'am.

15 Q Are these the actual scrapings you took that day?

16 A Yes.

17 MS. ANDREW: Your Honor, at this time, the State would
18 move Exhibits 39 and 40 into evidence.

19 MR. FOX: Without objection.

20 THE COURT: All right. 39 and 40 are in.

21 (State's Exhibit No. ST-39, Right Fingernail Scraping,
22 was received into evidence.)

23 (State's Exhibit No. ST-40, Left Fingernail Scraping, was
24 received into evidence.)

25

1 BY MS. ANDREW:

2 Q Do you know if those two items were then sent to SLED for
3 testing?

4 A I was told that they were. I did not send them myself.

5 (State's Exhibit No. ST-41, Victim Buccal Swab, was
6 marked for identification.)

7 BY MS. ANDREW:

8 Q I'm going to show you what's been marked as State's
9 Exhibit 41. And when you were at the hospital that day, did
10 you collect what was known as a victim standard or buccal
11 swab --

12 A Yes, ma'am.

13 Q -- from the victim, Lilliana?

14 A Yes, ma'am.

15 Q And can you tell the jury how you collected that item.

16 A We take, essentially, a large Q-tip about this long.
17 It's packaged in a sterilize package. When we receive it,
18 it's hospital-quality equipment. It has a little plastic cap
19 on the end of it.

20 And what we do is we swab the inside of her mouth, trying
21 to get buccal skin cells from the inside. Standard procedure
22 is to do two swabs: One on each side. Then, after that, we
23 cap the tip -- the absorbent tip and place it in the -- in the
24 -- I always used to use white envelopes so I know which
25 evidence is DNA versus other kinds of evidence. And then seal

1 it and put our initials and victim stamp on it.

2 Q And is the purpose of getting that buccal swab, so you
3 have a sample of that person's DNA?

4 A Right. It's an elimination standard so we can take -- we
5 have two kinds of DNA on something. If one person belongs --
6 one sample belongs to the victim, you can eliminate that.
7 And, then, the other one is an unknown they can try to
8 identify.

9 Q So does that sample also get sent to SLED and to the lab?

10 A Yeah, they do that report.

11 Q And is this Exhibit No. 41 the buccal swab you took from
12 Lillian that day?

13 A Yes.

14 Q Do you recognize the red, this as your handwriting?

15 A Yes.

16 Q And did you initial this?

17 A Yes, I did.

18 MS. ANDREW: Your Honor, at this time, the State would
19 move Exhibit 41 into evidence.

20 MR. FOX: Without objection, Your Honor.

21 THE COURT: All right. Thank you.

22 (State's Exhibit No. ST-39, Right Fingernail Scraping,
23 was marked for identification.)

24 (State's Exhibit No. ST-41, Victim Buccal Swab, was
25 received into evidence.)

1 BY MS. ANDREW:

2 Q And was that item also sent to SLED to the lab?

3 A As far as I know, yes, ma'am.

4 Q And you testified about how you packaged the fingernail
5 scrapings and the buccal swabs. Was that the standard
6 procedure at Myrtle Beach Police Department for packaging
7 evidence at the time?

8 A Yes, ma'am. That's the best practices that we learned in
9 basic crime scene classes, the best way to do it to preserve
10 the evidence.

11 Q And after you gathered the evidence, what did you do with
12 it? Did you keep it secured?

13 A We have an evidence room at our annex building, which is
14 the office that I work out of, our crime scene unit works out
15 of. Once all the evidence is -- all the evidence collected
16 and we complete all the requisite paperwork for it, at a later
17 date, it gets transferred up to our main police department,
18 Evidence -- Property and Evidence Section.

19 Q Once you deposit that evidence into the evidence
20 submission area, are you able to access it after that?

21 A I can access it but it has to be through our Property and
22 Evidence clerk, and there's paperwork that you do. You just
23 sign it, date it, you're taking it, and then you have to
24 return it to that same person. There's a process for it.

25 Q So if you were to access that property -- that evidence

1 at a later date, there would be a record of it?

2 A There would be, yes.

3 Q Other than collecting samples, did you also complete
4 what's called an AFIS request for an analysis of fingerprints?

5 A I completed a couple of them, yes, ma'am.

6 Q Okay. And can you tell us, what is AFIS?

7 A It stands for Automatic Fingerprint Identification
8 System. It's a computer program that does the mechanical part
9 of the fingerprint search for us so we don't sit and look
10 through what turns out to be millions of cards that SLED and
11 the FBI keep on file. The computer does the search for us and
12 brings back potential matches.

13 Q So just to back up a little bit. So if you had a
14 fingerprint that you wanted to compare and try to figure out
15 who it belonged to, would you use the AFIS program to help you
16 do that?

17 A Yes, I would.

18 Q Okay. So what kind of analysis did you perform on the
19 fingerprints in this case?

20 A On the fingerprints, there -- there were several
21 fingerprints taken from different places. The ones that I
22 actually collected were from the motel room, and then I also
23 approved another fingerprint that was collected by somebody
24 else, ran through the AFIS system, and then we have a
25 two-person verification system where the person who uses the

1 computer program says, "I think it's this fingerprint belongs
2 to this person." They collect all their paperwork and
3 evidence of that, and they give it to another person to verify
4 that. So I did the verification on it.

5 Q So you verified someone else's work?

6 A That's correct.

7 Q And we're going to hear from that person.

8 What kind of training did you receive to perform that
9 analysis, that verification?

10 A There's a 40-hour class taught at SLED in Columbia. It's
11 a latent fingerprint identification and analysis. Then you do
12 a couple hundred hours of work with an AFIS person using the
13 program and the machine and looking at various fingerprints
14 from different cases. And then you're required to take a test
15 at SLED, administered by the person who is over the AFIS
16 system. And that's, basically, an all-day test where they
17 give you fingerprints and you have to identify the kind of
18 fingerprint. Then they give you several unknowns you have to
19 match to knowns. And they give you palm prints. It's about
20 an eight-hour test that you have to take for it.

21 Q And had you done that type of verification work before at
22 the police department?

23 A Yes, ma'am. I was certified for that, I believe, in 2010
24 and have been doing work since 2010 on that program.

25 Q When the other officer gave you the information to verify

1 his work, what kind of information would he have given you?

2 A What he'll do is he'll give me printed-out copy of the
3 unknown print, like a photograph or a computerized printout of
4 it, that was taken by the machine. The machine has a digital
5 camera on it. And then he'll give me the unknown print, and
6 he'll say, "I think these two prints match," and I'll have to
7 go through and match points of minutia between the known print
8 and the unknown print, and if you find a sufficient number of
9 them, which is generally around five, you can say that it's a
10 high level of confidence that it's the same print.

11 Q You're basically verifying and checking his work?

12 A Yes, ma'am.

13 Q And so, after you did that, what conclusion did you draw
14 about his work?

15 A That the print -- the unknown print that I was handed
16 belonged to the person he identified out at the system, that
17 those two fingerprints were the same print.

18 Q So you agreed with him?

19 A I did agree, yes.

20 Q Other than testifying here today, did you perform any
21 work or investigation involving this case?

22 A No, ma'am. Once I was finished at the hospital, I
23 completed my paperwork and put my evidence into evidence
24 lockers, and then that was the end of my involvement in it.

25 MS. ANDREW: Please answer any questions Mr. Fox has.

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1 MR. FOX: One moment.

2 CROSS-EXAMINATION

3 BY MR. FOX:

4 Q Mr. Williamson, you personally -- did you go to Room 405
5 at the Sheraton?

6 A No, sir. I went to room -- I want to say it was seven
7 hundred -- I can't remember.

8 Q 715?

9 A 715. That's correct.

10 MS. WALTER: May I just have a moment?

11 A But I never went to the Room 400 [verbatim].

12 (Ms. Walter conferred with Mr. Fox off the record.)

13 BY MR. FOX:

14 Q All right. So you didn't dust for prints in Room 405?

15 A That's correct.

16 Q Okay. You simply assisted with the AFIS system with
17 another officer who did collect from Room 405?

18 A That and going to the hospital, yeah, that was my
19 involvement in the case.

20 Q Let's talk a minute about collection. So when you
21 collect fingernail scrapings -- I assume from both hands;
22 correct?

23 A Yes, sir.

24 Q Okay. And when you package them, you described the
25 process. You were trained in evidence collection?

1 **A** Yes, sir.

2 **Q** And have great experience doing that at this point or did
3 or at 20-some years; correct?

4 **A** Twelve years, yes, sir.

5 **Q** Twelve years. I'm sorry. Still a long time.

6 And I assume that part of your training was the
7 importance of not contaminating the things that you collect.

8 **A** Yes, sir. That's the most important thing.

9 **Q** Okay. Most important.

10 So that you were very careful to avoid contamination?

11 **A** Yes, sir.

12 **Q** You didn't put the fingernail scrapings in one envelope
13 or one package. You put them in two separate packages;
14 correct?

15 **A** Yes.

16 **Q** Because, conceivably, there might be evidence, DNA, under
17 one that is not under the other hand or the fingernails.

18 **A** That's correct, it's possible.

19 **Q** And if they are mixed, it then becomes impossible to
20 determine where they came from?

21 **A** Yes, sir.

22 **Q** Could be. Okay.

23 And that would be true with the buccal swabs you took.

24 You took buccal swabs from one individual, but you would not
25 mix those with another individual's samples.

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1 **A** That's correct.

2 **Q** Okay. That's just basic; correct?

3 **A** Yes, sir.

4 **Q** Okay. And that's not just -- well...

5 MR. FOX: Court's indulgence, Your Honor.

6 BY MR. FOX:

7 **Q** All right. I apologize; I'm trying to decipher
8 something.

9 Now -- I apologize, Officer.

10 And the officer that you assisted was Nathan Howitt, in
11 terms of the fingerprint that you assisted him with the AFIS
12 system?

13 **A** That's correct.

14 **Q** All right. Now, the -- you described your experience
15 with blood spatter; correct?

16 **A** Yes, sir.

17 **Q** Briefly, what does that entail or why is that potentially
18 important?

19 **A** Blood spatter will tell you -- well, you can interpret
20 blood spatter --

21 MS. ANDREW: Objection, Your Honor.

22 THE COURT: What's your objection?

23 MS. ANDREW: He's not an expert in blood spatter.

24 MR. FOX: I don't think he's been qualified as an expert
25 in anything.

1 MS. ANDREW: He hasn't been qualified.

2 MR. FOX: I'm asking him in his experience as a crime
3 scene investigator.

4 THE COURT: I'll allow it.

5 A Blood spatter will tell you generally where people were
6 standing in a room when violence has taken place and blood has
7 been flung through the air and it hits solid surfaces,
8 generally walls and floors and ceilings. It's possible to
9 interpret it sometimes how many times people was hit or
10 possibly what kind of weapon was used, if you don't know, and
11 also sometimes where the wound comes from on a person.

12 BY MR. FOX:

13 Q In your experience, if you had an individual assault
14 another close enough as in with hands, not from a distance
15 with a weapon, as in person-to-person contact -- I apologize
16 for these not being in the order that I was hoping --

17 MS. WALTER: Yeah, they were separated.

18 MR. FOX: I know. That's okay. I can handle it. I was
19 not expecting to need them. Things change.

20 BY MR. FOX:

21 Q Well, let's look at State's 51. And that's just one. I
22 know you were not on the scene, but do you see in that what
23 appears to be blood, in your experience?

24 A Yes, sir, I do.

25 Q How would you characterize the amount of blood in that

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1 photograph specifically on the floor?

2 **A** The amount of blood?

3 **Q** A little bit of blood? A lot of blood?

4 **A** It looks like a large amount.

5 **Q** Okay. Would you expect someone that was close enough to
6 inflict the amount of damage that result in this amount of
7 blood --

8 MS. ANDREW: Objection, Your Honor. He's asking a
9 hypothetical question.

10 THE COURT: Sustained. This officer can't give his
11 opinion.

12 MR. FOX: Okay.

13 BY MR. FOX:

14 **Q** In your experience, does a person who inflicts a great
15 deal of injury that results in a lot of blood, in your
16 experience -- not could, would, what might happen -- do they
17 often have the victim's blood on them?

18 **A** It does happen.

19 **Q** Okay. And, again, in your experience, the more blood,
20 the more likely it is and the more -- the length of time that
21 there was an altercation?

22 MS. ANDREW: Objection, Your Honor. That's another
23 hypothetical.

24 MR. FOX: I'm asking him his experience in investigating
25 crime scenes.

1 THE COURT: He's already answered. Please move on.

2 MR. FOX: Thank you.

3 Thank you. No further questions.

4 THE COURT: All right. Any redirect?

5 MS. ANDREW: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. ANDREW:

8 Q Mr. Williamson, you talked about, during direct and
9 cross-examination, about packaging left hand and right hand
10 fingernail scrapings in separate envelopes.

11 A Yes, ma'am.

12 Q And I'm paraphrasing Mr. Fox; he said something like, "If
13 you packaged them together, that would make it impossible to
14 tell where it came from or who it came from." Is that true or
15 is it just true that you'd only be unable to tell which hand
16 it came from?

17 A I'm not really sure I'm understanding.

18 Q I'm sorry; that was a poorly worded question.

19 So if you were to package the left hand and the right
20 hand fingernail scrapings in one envelope, would it introduce
21 DNA that wasn't there, just by the virtue of packaging the two
22 items together?

23 A No. The original DNA that was on the hands would be the
24 only way that it would be all in one place.

25 Q So my question is, instead of having with the one -- it

1 had the right hand -- scrapings from the DNA from the right
2 hand and one of the left hand, the left hand scrapings -- got
3 my hands backwards -- you would just have one envelope with
4 the DNA from both hands in the same envelope?

5 **A** That's correct.

6 **Q** So it wouldn't introduce any foreign DNA just by virtue
7 of packaging those together. It would just mean that you
8 couldn't tell which hand it came from; is that correct?

9 **A** That's correct.

10 **Q** He also asked you about blood spatter, and in your
11 experience, if someone had blood spatter on them. In your
12 experience, would it also be true that someone could remove
13 clothing to get rid of blood spatter?

14 **A** Yes.

15 **Q** Or they could wipe off blood spatter?

16 **A** Yes. It could be cleaned.

17 **Q** It could be cleaned up.

18 There's multiple ways in which, even if somehow during
19 the commission of a crime there was blood spatter on your
20 clothing, that you could remove that clothing or remove that
21 blood spatter?

22 **A** That's correct. For an accurate interpretation of the
23 blood spatter, it has to be the way it was when it hit the
24 object. You can't hit an object, take the object out of the
25 room, do some other stuff with it, bring it back, and then say

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1 this is what happened because the nature of the way the blood
2 impacts the surface changes.

3 MS. ANDREW: That's it, Your Honor. Thank you.

4 THE COURT: All right. Is there any objection to
5 Mr. Williamson being released from his subpoena?

6 MS. ANDREW: Not from the State, Your Honor.

7 MR. FOX: No, Your Honor.

8 THE COURT: All right, Mr. Williamson. Thank you for
9 being here. You're welcome to go.

10 THE WITNESS: Thank you.

11 MS. WALTER: I just need a moment to reorganize the
12 exhibits that I need for the next.

13 THE COURT: All right. Ms. Walter.

14 MS. WALTER: The State calls Crime Scene Investigator
15 David Bailey.

16 DAVID BAILEY,

17 after having been duly sworn, was examined and testified
18 to as follows:

19 THE CLERK: If you'll state your name and spell it for
20 the Court.

21 THE WITNESS: David Bailey. And the last name is
22 B-a-i-l-e-y.

23 MS. WALTER: Thank you, Your Honor.

24 DIRECT EXAMINATION

25

DAVID BAILEY - Direct by Ms. Walter

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1 BY MS. WALTER:

2 Q Investigator Bailey, where do you work?

3 A Myrtle Beach Police Department.

4 Q How long have you worked there?

5 A Twenty -- almost 23 years now.

6 Q And I'm going to ask you to slow down just a little bit.

7 A Okay.

8 Q Did you have any prior law enforcement experience before
9 starting with Myrtle Beach?

10 A Yes, ma'am, in West Virginia.

11 Q How long did you work in West Virginia?

12 A Six years.

13 Q What is your current assignment with Myrtle Beach?

14 A Crime scene investigator.

15 Q Slow down. We want the jury to understand your answers,
16 and the court reporter is trying to take it all down.

17 A All right.

18 Q And, I'm sorry; so you said you're in crime scene
19 investigation now?

20 A Yes, ma'am.

21 Q How long have you been a crime scene investigator in
22 total?

23 A Approximately 14 to 15 years.

24 Q What are some of the duties and responsibilities that you
25 have as a crime scene investigator?

1 **A** Document evidence, photograph evidence, collect evidence.
2 There's a wide range of things in it to do.

3 **Q** Does it depend basically on what kind of scene you're
4 responding to?

5 **A** Yes, ma'am, it does.

6 **Q** Have you had any particular training to prepare to be a
7 crime scene investigator?

8 **A** Yes, ma'am. Many, many schools and training.

9 **Q** Can you give us some of the highlights of what your
10 training includes?

11 **A** Photography -- many photography courses, courses in blood
12 spatter analysis, collection of evidence from scenes,
13 photographing different types of scenes, like car wrecks to
14 assaults. Mostly in that regards.

15 **Q** Were you called to the scene of an assault at the
16 Sheraton in Myrtle Beach on March 20th of 2018?

17 **A** Yes, I was.

18 **Q** What was your assignment when you got there?

19 **A** To process the scene.

20 **Q** So when you go to process the scene, do you have sort of
21 a standard procedure that you use when you first get there?

22 **A** Yes. The first thing I do is make sure the scene is
23 secure, and if there is a valid search warrant, if need be, or
24 a consent to search, if need be. And then I'll start by doing
25 overall photographs of the scene and then going in and

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1 collecting evidence as need be.

2 Q You talked about the scene being secure. What do you
3 mean?

4 A About officers standing by the scene, making sure it's
5 secure once I get there.

6 Q When you got to Room 405 at the Sheraton, was the scene
7 secured?

8 A Yes, it was.

9 Q Did you, in fact, begin with taking overall photographs?

10 A I did, yes.

11 Q And then, as you went through, did you take additional
12 photographs?

13 A Yes.

14 Q Okay.

15 MS. WALTER: Eric...

16 (Ms. Walter and Mr. Fox confer off the record.)

17 MS. WALTER: May I approach, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. WALTER:

20 Q For the record, some of these have been admitted, some
21 not. So I'm approaching with Exhibits 1, 2, 50, 3, 4, 29, 5,
22 6, and 28. So I want you to look through all those and tell
23 me if you recognize them, without showing them to the jury
24 yet.

25 A Yes, these are the photos I took.

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1 Q And are they fair and accurate representations of the
2 scene as you saw it that day?

3 A Yes, they are.

4 MS. WALTER: So, Your Honor, I would ask -- and I can go
5 over the numbers again. I would ask that these -- those that
6 have not yet been admitted be admitted and published.

7 MR. FOX: Without objection, Your Honor.

8 THE COURT: All right.

9 MS. WALTER: So that would be Exhibit 1, I do not believe
10 has been admitted yet.

11 (State's Exhibit No. ST-1, Scene Photograph, was received
12 into evidence.)

13 MS. WALTER: 2 has been admitted. Exhibit 50.

14 (State's Exhibit No. ST-50, Scene Photograph, was
15 received into evidence.)

16 MS. WALTER: 3 has been admitted. Exhibit 4.

17 (State's Exhibit No. ST-4, Scene Photograph, was received
18 into evidence.)

19 MS. WALTER: 29.

20 (State's Exhibit No. ST-29, Scene Photograph, was
21 received into evidence.)

22 MS. WALTER: 5 has been admitted. 6 has been admitted.
23 And 28 has been admitted.

24 THE COURT: Okay.
25

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1 BY MS. WALTER:

2 Q So, now, if we can look at Exhibit No. 1 first. And what
3 does Exhibit 1 show?

4 A It shows the hallway and, like -- looks like a maid or a
5 laundry cart in front of the room.

6 Q Now -- and is that your understanding of where the cart
7 was positioned at some point?

8 A Yes.

9 Q And, Exhibit 2. What does Exhibit 2 show?

10 A It's that same cart, and it appeared to have blood on it,
11 on front of the cart, like a little squirt bottle does that.

12 Q So had you moved the cart in order to get that
13 photograph?

14 A The cart had been positioned against the wall. I had to
15 turn it somewhat to get the photograph.

16 Q Exhibit 50. What was the purpose of that photograph?

17 A Just to show the front of the door and to show that there
18 was blood smear on the door just to the right of the handle.

19 Q Now, can you describe the layout of the room as you
20 walked into it?

21 A Yes. When you walk in the room, there's a bathroom to
22 your left, and just ahead of the bathroom, there will be a
23 closet on your left-hand side with, like, an ironing board in
24 it. And there was two bedrooms -- or two beds in a room, like
25 dressers and things like that on the right side of the wall.

1 Q So if we can look at Exhibit 3, so -- you can hold that
2 and then look at here. Is this portion, the right side of the
3 picture, is that the door to the room?

4 A Yes, ma'am.

5 Q And then what's this room to the left?

6 A That would be the bathroom.

7 Q Beyond the bathroom?

8 A Is the small closet area.

9 Q The door that seems open here, what was that door to?

10 A That was for, like, a small closet. It had, like, an
11 ironing board.

12 Q What was the condition of that door?

13 A It was broken.

14 Q And if, then, you continued walking back, that was the
15 bedroom portion of the room?

16 A Yes. You see two beds in there with the blood smear
17 actually on the bed away from me.

18 Q Just make sure you're keeping your voice up also. I'm
19 very demanding. I want your voice up and slow.

20 A I know that.

21 Q Now, now.

22 Exhibit 4? What was Exhibit 4?

23 A It was the inside of the door. If you were going to walk
24 outside the room, that's what you'd be seeing if you were
25 walking out of the room.

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1 Q And why did you take that photograph?

2 A Just to show there was -- on the right side of the door,
3 there were some blood smears on the right side of the door
4 where the handle is, that side of the door.

5 Q Exhibit 29?

6 A That's the edge of the door just -- it's just depicting
7 blood smears on the inside of the door, just above the handle
8 there.

9 Q And Exhibit 5?

10 A That is the first room you come to when you walk in the
11 room. This is the first room on the left-hand side, which is
12 the bathroom. And there's a vacuum cleaner and multiple blood
13 spots on the floor, blood smears on the floor, shoe prints in
14 blood on the floor.

15 Q And we're going to get back to those shoe prints.

16 And then Exhibit 6. I'm going to put that there because
17 I'm going to walk over here.

18 What was the -- what are we looking at in Exhibit 6?

19 A This is the room beyond the closet, when you walk in the
20 room, into the main part of the room. That's the dresser
21 there on the right-hand side towards you. And over on the
22 left-hand side, the furthest bed away has a blood smear just
23 on the side of the sheet there.

24 Q And is this also on the bed that, I guess, would be
25 closest to the door, blood also on the corner.

1 A Yeah, on the very corner of it also.

2 Q And then the last one of this would be Exhibit 28 for
3 this group.

4 A Yes, just depicting -- beside the bed, there's a little
5 nightstand between the beds, and there was a telephone there,
6 and there was blood droplets just below the phone. It looked
7 like the phone was partially off the hook.

8 Q And is that also blood on the handle, the cord?

9 A Yes, it is. It's on the very bottom of the phone and on
10 the right side of the phone where there's, like, numbers and
11 stuff like that. There's a small blood smear there as well.

12 Q And also on the sort of nightstand, I guess this is?

13 A Yes. The blood drops is on the nightstand.

14 Q As you were, I guess, surveilling the room and deciding
15 what to collect, what items, if any, caught your attention as
16 being relevant?

17 A The -- when I walked into the bathroom, I noticed some
18 glasses laying on the floor, two pair of glasses that appeared
19 to be broken. There was a yellow towel there on the floor and
20 there was, like, a rainbow colored -- like a clown wig in the
21 bathtub. And those definitely caught my eyes.

22 MS. WALTER: Your Honor, may I approach with Exhibit 9?
23 I do not believe it's been admitted yet.

24 THE COURT: Yes, ma'am.

25

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1 BY MS. WALTER:

2 Q I'm showing you first Exhibit 9. Do you recognize that?

3 A Yes, I do.

4 Q Is that a photograph that you took?

5 A Yes, it is.

6 Q Is it a fair and accurate representation of what you saw
7 that day?

8 A Yes, it is.

9 MS. WALTER: Your Honor, I'd ask that Exhibit 9 be
10 admitted and published.

11 MR. FOX: Without objection.

12 THE COURT: All right.

13 (State's Exhibit No. ST-9, Photograph, was received into
14 evidence.)

15 BY MS. WALTER:

16 Q And what is depicted in Exhibit 9?

17 A Like a yellow sort of, like, a microfiber towel, like a
18 cleaning towel, and there's blood drops as well on the floor
19 and a partial shoe print.

20 Q Let's focus first on the yellow towel. Is that something
21 -- or the yellow rag. Is that something that you collected?

22 A Yes, it is.

23 Q When you collected it, did you notice anything about it?

24 A Yeah, it was somewhat -- it wasn't wet. It was somewhat
25 damp, you know, like a little moist, and it had an odor to it.

1 So I collected it. I put it in a paper bag and sealed it in
2 the paper bag.

3 Q What was the purpose of collecting it? Did you intend it
4 to undergo any further analysis?

5 A I collected it just -- I didn't know exactly what it had
6 been used for. I thought it was a cleaning towel, and I just
7 collected it because it was just in the bathroom. It was in
8 an odd area to be in the bathroom, so that's why I collected
9 it.

10 Q You said that you put it in a paper bag?

11 A Yes.

12 Q Looking back in time, would you still package it in a
13 paper bag?

14 A Knowing what I know now, on the way it was tested, no.
15 But at that time, anything damp or wet would be in the paper
16 so it doesn't mold or mildew. But when you're testing for
17 certain -- if you were to be testing for a chemical substance,
18 you would not do that.

19 Q So is it your understanding that no testing could be done
20 on this because of the way it was packaged?

21 A Yes.

22 MS. WALTER: Court's indulgence for one moment.

23 Your Honor, I'm approaching with State's Exhibit 8, which
24 I do not believe has been admitted yet.

25 THE WITNESS: Yes, that's the clown wig from the bathtub.

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1 BY MR. WALTER:

2 Q And, then, is there anything else in the photograph?

3 A Yeah, you can see one pair of glasses just to the -- like
4 underneath the shower curtain there.

5 Q Is this a photograph that you took?

6 A Yes, it is.

7 Q Is it a fair and accurate representation of how those
8 items looked prior to your seizing them?

9 A Yes, ma'am, it does.

10 MR. WALTER: Your Honor, I would ask that Exhibit 8 be
11 admitted and published.

12 MR. FOX: Without objection, Your Honor.

13 THE COURT: All right.

14 (State's Exhibit No. ST-8, Photograph, was received into
15 evidence.)

16 BY MR. WALTER:

17 Q I won't make you touch the evidence.

18 So did you, in fact, in addition to that yellow rag, did
19 you collect that multicolored wig?

20 A Yes, I did.

21 MS. WALTER: And I'm approaching. This has been
22 admitted, I believe, Your Honor.

23 BY MS. WALTER:

24 Q Exhibit 12, do you recognize this paper bag?

25 A Yes.

1 Q And how do you recognize it?

2 A By -- one, by my writing on it, and our property stamp on
3 it as well.

4 Q And, then, are those your initials on the back?

5 A Yes, ma'am, they are.

6 Q Do you recognize that?

7 A Yes, I do.

8 Q What do you recognize it to be?

9 A That would be the clown, colored wig from the bathtub.

10 Q And that's the same wig that you collected?

11 A Yes.

12 Q How many pairs of glasses did you collect that day?

13 A There were two pairs.

14 Q So we saw the one that was depicted in Exhibit 8. Was
15 there also another pair by -- I think by the toilet?

16 A By the toilet, yes, ma'am.

17 Q And I'm showing you what's been admitted as Exhibit 13.
18 This is the paper bag. Do you recognize this paper bag?

19 A Yes.

20 Q How do you recognize it?

21 A By my signature, my writing, and our property tag on it
22 also.

23 Q And is that your signature and the date on the back?

24 A Yes, it is.

25 Q Are these the glasses that you recovered?

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1 **A** Yes.

2 **Q** And lenses?

3 **A** Yes.

4 **Q** Were the lenses out of the larger glasses when you
5 collected them?

6 **A** Yes.

7 **Q** When you collected them, how did you package them?

8 **A** I placed them in the paper bag you have there. And they
9 were both sort of close proximity to each other, and I placed
10 them in the paper bag.

11 **Q** So you placed them both in the same paper bag?

12 **A** Yes.

13 **Q** Looking back, would you have --

14 **A** Looking back, yes--

15 **Q** -- done that?

16 **A** I would have packaged them separately. Because -- just
17 because in close proximity on the scene, I collected both in
18 one bag, which I should have placed them each in separate
19 bags.

20 **Q** And why --

21 MS. WALTER: Sorry; I'm making noise here.

22 MS. ANDREW: We have the photographs. It's been
23 admitted.

24 MS. WALTER: So, Your Honor, I'm going to approach with
25 Exhibit 5. And that's been admitted.

1 BY MS. WALTER:

2 Q So, in Exhibit 5, is this -- what are we seeing here?
3 What evidence that you have collected?

4 A In front of the toilet, you'll see the lenses for the
5 glasses, and to the left of that, there's another pair of
6 glasses. I think they were a white pair.

7 Q Okay. That we just saw?

8 A Yes.

9 Q And is that a different photo of that same yellow rag?

10 A Yes, it is.

11 Q Let's just go back to the glasses for a minute. Why is
12 it important to package them separately as opposed to
13 together?

14 A You would get them packaged together, you could possibly
15 get multiple contributors when you get them tested. You could
16 have blood from one pair of glasses or DNA from one pair of
17 glasses get transferred to another pair that didn't originally
18 have something on it. That's why we would normally always
19 package them separately.

20 Q In other words, if you wanted to determine who wore or
21 whose DNA was on which pair of glasses --

22 A Yes.

23 Q -- it's important to package them separately?

24 A Separately, yes.

25 Q Does packaging them together introduce any DNA that's not

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1 already on one of the pairs of glasses?

2 MR. FOX: Objection, Judge. He's not been qualified or
3 has training in DNA.

4 BY MS. WALTER:

5 Q In your experience collecting evidence, would packaging
6 the glasses together introduce different DNA, or would it
7 simply mix whatever DNA was on both pairs of glasses?

8 A It would just mix what's on the glasses.

9 Q Now, I think when we were talking about one of the -- the
10 photo with the rag in it, you noted a shoe print on the floor.
11 Did you notice multiple shoe prints on the floor?

12 A There were.

13 Q Did you take photographs of those?

14 A I did.

15 MS. WALTER: I don't think these have been admitted: 7,
16 10, and 11. May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. WALTER: And I'm approaching with Exhibits 7, 10 and
19 11.

20 BY MS. WALTER:

21 Q Can you look at Exhibits 7, 10, and 11 and tell me if you
22 recognize them?

23 A Yes, I do.

24 Q And what do those represent?

25 A From the bathroom floor, there were shoe prints on the

1 bottom -- shoe impressions of the sneakers. One is in blood
2 with blood drops beside it. Another one is enhanced by
3 fingerprint powder.

4 Q Okay. And then what about Exhibit 7?

5 A That is another shoe print that was right before you walk
6 into the bathroom. Right before -- another shoe print right
7 before you walk into the bathroom.

8 Q Okay. So on the carpet?

9 A Yes.

10 MS. WALTER: Can we start -- I'm sorry, Your Honor. I'd
11 asked that they be admitted and published.

12 MR. FOX: Without objection.

13 THE COURT: All right. 7, 10 and 11.

14 MS. WALTER: Yes.

15 (State's Exhibit No. ST-7, Photograph, was received into
16 evidence.)

17 (State's Exhibit No. ST-10, Photograph, was received into
18 evidence.)

19 (State's Exhibit No. ST-11, Photograph, was received into
20 evidence.)

21 BY MS. WALTER:

22 Q So if we can start with Exhibit 7. And sort of in the
23 center of the picture, is that the shoe impression you're
24 talking about?

25 A Yes, it is.

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1 Q And Exhibit 10. And this is in the bathroom, did you
2 say?

3 A Yes.

4 Q Was the rag in that same position when you first
5 encountered it?

6 A Yes, yes.

7 Q And then this is the shoe impression that you were trying
8 to capture?

9 A Yes.

10 Q What is the purpose of the scale that's included?

11 A To give it scale to show an approximate size.

12 Q And then I think you said Exhibit 11 is enhanced with
13 fingerprint powder. What's the purpose of that?

14 A Just to -- you can -- when I was looking at the floor, I
15 use a flashlight to sort of glare the floor, make it really
16 shiny, bright, and I'm able to see scuff marks, and that's
17 when I could see the shoe prints. So I take black fingerprint
18 powder and a duster and dust it, and it enhances the shoe
19 prints already on the floor.

20 Q So these -- and it looks like maybe there are at least --
21 well, there are several. So these are different from the
22 bloody shoe impression in Exhibit 10?

23 A Yes. They're the same -- in the same room, but one's in
24 blood and one's not in blood.

25 Q Okay. Let me ask that more clearly.

1 So, in other words, you didn't use fingerprint powder on
2 the shoe impression that was in blood, did you?

3 **A** No.

4 **Q** So these are different shoe impressions than in Exhibit
5 10?

6 **A** Yes, they are.

7 **Q** Okay. In addition to -- so far, you have photographed
8 the room, you have collected evidence, you have photographed
9 shoe impressions. Did you do anything to attempt to lift any
10 latent fingerprints?

11 **A** Yes. In the bathroom, I processed the tub and found a
12 latent print off the tub, which I did collect.

13 **Q** So, first, let's back up a little bit. What is a latent
14 fingerprint?

15 **A** The only thing that latent means is just hidden. You
16 can't see it without, you know, either processing it in some
17 way. Basically it's just a fingerprint. You have oils and
18 things like that on your skin. Anytime you touch something,
19 you leave a little bit of that oil on whatever you touch, and
20 that's the fingerprint. And we use different types of
21 fingerprint powders to enhance that, which is what I did in
22 the bathroom.

23 **Q** And assuming you are able to find a print, can you
24 describe the process that you follow? What do you do?

25 **A** Yes. First off, when I did my overall photographs, when

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1 I find a print, I'll photograph the area where I found the
2 print. Once I see the print where I've enhanced it with
3 fingerprint powder, then I will lift it with fingerprint tape.
4 And then, once I get it lifted -- once I get all the evidence
5 collected and go back to my office or when I start doing all
6 my documentation, I do a request for that fingerprint to get
7 run through what we call AFIS. It's automatic fingerprint
8 system. And that's my part of it. And then it gets turned
9 over to whoever runs the print through AFIS.

10 Q As you were processing the scene, did you, in fact, find
11 several latent fingerprints that you did a lift of?

12 A Yes, I did.

13 Q Okay. Did you take photographs of the areas that you
14 processed for prints?

15 A Yes.

16 MS. WALTER: And, Your Honor, these will be Exhibits 51
17 through 59 and 34.

18 (State's Exhibit Nos. ST-51 through ST-59 and ST-34 were
19 marked for identification.)

20 BY MS. WALTER:

21 Q You can just look through those and let me know when
22 you're done.

23 A Okay.

24 Q Are those photographs that you took while you were trying
25 to collect latent fingerprints?

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1 **A** Yes, they are.

2 **Q** And they fair and accurate representations of what it
3 looked like when you were processing it?

4 **A** Yes.

5 MS. WALTER: So, Your Honor, I would ask that Exhibits 51
6 through 59 and 34 be admitted.

7 MR. FOX: Without objection, Your Honor.

8 THE COURT: All right. 34 and 51 through 59.

9 (State's Exhibit No. ST-51 through 59, Photographs, was
10 received into evidence.)

11 (State's Exhibit No. ST-34, Photograph, was received into
12 evidence.)

13 MS. WALTER: So let's start with Exhibit 51 and not the
14 zip file. The one above it, yep.

15 BY MS. WALTER:

16 **Q** So what are we looking at in Exhibit 51?

17 **A** That is the corner of the -- the door jamb for the
18 bathroom. Basically, if you were standing in front of the
19 bathroom, getting ready to walk in, I'm just to the right of
20 that a little bit.

21 **Q** Okay. And then, on the door jamb, sort of in the middle
22 of the photograph, what is that?

23 **A** That's a small number scale. And I placed it -- any time
24 I find a latent print, I'll place one of those beside the
25 print to give it scale.

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1 Q So, Exhibit 52, does that appear to be a latent that you
2 tried to lift?

3 A Yes.

4 Q With the scale?

5 A Yes.

6 Q Exhibit 53, what is this?

7 A And that's off of the mirror that was lying on the floor.

8 Q So had you used some sort of powder or enhancer for the
9 fingerprints that appear to be the right corner of the mirror?

10 A I did.

11 Q And then 54, does that --

12 A Yes, that's another -- just a closer image of that. Just
13 like a macro shot or up-close shot of it.

14 Q And, again, with the scale?

15 A Yes.

16 Q Exhibit 55, is that a print that you found on a different
17 portion of the mirror?

18 A Yes.

19 Q And I'm moving away from the mirror. Did you try to lift
20 latent prints off the door of the hotel?

21 A I did.

22 Q So showing you 56.

23 A Yes.

24 Q And so are all -- where these scales are, are those all
25 areas where you tried lifting a usable latent?

1 A Yes, ma'am.

2 Q And these we can go through a little more quickly. 57,
3 58, and 59, are those all the prints that we just saw in the
4 doorway and the scale?

5 A Yes.

6 Q That you recall, were you able to lift a latent print
7 from the tub in the bathroom?

8 A I was.

9 Q Showing you Exhibit 34 -- oh, is it mislabeled? Okay.
10 I'll hold it up. What is Exhibit 34?

11 A It's a photograph of a fingerprint on the tub.

12 Q And then, when you collect these, do you label them in
13 some way so whoever does the fingerprint analysis or
14 comparison is able to tell where they're from?

15 A Yes.

16 Q So after you collected -- do you know approximately how
17 many latent prints you were able to collect?

18 A I don't remember -- it was so long, I don't remember
19 exactly how many. The ones that stand out the most are
20 definitely ones of the bathroom. The bathroom, I remember
21 ones from the mirror and the door. And I remember the door.
22 So I'm going to say approximately maybe five to eight.

23 Q But you're not sure?

24 A I'm not sure.

25 Q Did you do, yourself, any of the fingerprint analysis?

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1 **A** No, ma'am.

2 **Q** Was there another member of the crime scene unit who did
3 that analysis?

4 **A** Yes. Officer Howitt.

5 **Q** And how does that work? Did you -- once you create these
6 latent lift cards, what do you do with them so that Officer
7 Howitt knows how to process them?

8 **A** I create another document. It's called an AFIS request
9 form, and I put on what -- what I had, basically, how many
10 latent prints I have or things like that, whether they're on a
11 card or a photograph. And then I turn it in to -- I put it in
12 our secure storage locker, which Officer Howitt has access to,
13 and he goes in and removes the latent cards and actually runs
14 it through the AFIS machine.

15 MS. WALTER: Court's indulgence.

16 BY MS. WALTER:

17 **Q** I think that's it for now. Please answer any questions
18 that Mr. Fox will have.

19 **A** Okay.

20 CROSS-EXAMINATION

21 BY MR. FOX:

22 **Q** You are a crime scene specialist?

23 **A** Yes, sir.

24 **Q** That's literally your job; right?

25 **A** Yes.

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1 Q Okay. And you have been trained to do that? You have
2 undergone special training to do that?

3 A Yes, sir, I have.

4 Q In other words, not every officer is a crime scene
5 specialist?

6 A Right.

7 Q And you have done that for a good long time.

8 A Yes, sir.

9 Q Okay. And you have testified about the importance --
10 we'll start right off with the glasses. You just testified
11 about the importance of not contaminating evidence, to the
12 best of your ability.

13 Let's talk about when you arrived at Room 405. Did you
14 go there yourself? You were alone? Did you have a partner?

15 A I went there myself.

16 Q Okay. At the time you arrived, were there any other
17 people -- law enforcement, hotel staff, Ms. Hernandez -- was
18 anybody still in the room when you arrived?

19 A Not in the room. There was law enforcement outside the
20 room when I arrived.

21 Q Okay. Do you know or are you aware of who had been in
22 that room -- other than Ms. Hernandez, who had been in that
23 room prior to your arrival?

24 A No, sir.

25 Q So you can safely assume some law enforcement had been in

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1 there?

2 **A** Yes.

3 **Q** Okay. But other than that, you can't say?

4 **A** I can't say.

5 **Q** Okay. Now, do you have any idea how long it was between
6 the time that the first person -- and we have had testimony
7 this week that it was another hotel employee who was first on
8 the scene. But from the time that Ms. Hernandez called for
9 help until you arrived, do you have any idea how long that
10 was?

11 **A** No, sir, I don't.

12 **Q** Now, with the glasses, you have admitted not properly
13 packaging them, together. And that would be true of any
14 number of things, not just in this case that happens to be
15 glasses but --

16 **A** Of course.

17 **Q** -- any kind of samples: Fingernail scrapings, buccal
18 swabs from different individuals. You wouldn't take
19 fingerprints on the same card; correct?

20 **A** Right.

21 **Q** From different locations. Okay.

22 And you have testified that one of the issues
23 specifically with the glasses is that they might -- and I'm
24 going to use -- I'm not trying to use it scientifically, and
25 you're not a DNA expert; I'm certainly not -- but that they

1 may transfer between. In this case, the glasses, that what's
2 on one pair of glasses might inadvertently transfer to the
3 other; correct?

4 **A** Correct.

5 **Q** Okay. So if that happens within a package, that could
6 happen just in general. I might hold an item and put it
7 somewhere else, put it on top of something or together with
8 something and it might transfer?

9 **A** If it touched, yes.

10 **Q** Right. Okay.

11 One thing that you can't do is know when, in this case,
12 DNA was placed on there; correct? In other words, you can
13 test for the presence of DNA. You cannot test for the
14 circumstances that it got there, can you?

15 **A** Correct.

16 **Q** Okay. But it wasn't just the glasses that were a
17 problem. The yellow cloth was a problem as well, wasn't it?

18 **A** Yes.

19 **Q** Okay. That was also not properly packaged, ultimately.

20 **A** Well, per Myrtle Beach protocol, it was, but not per
21 SLED.

22 **Q** Not per SLED. But you deal with SLED all the time. I
23 mean, they test your items in evidence frequently?

24 **A** True.

25 **Q** Because, frankly, Myrtle Beach simply doesn't have some

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1 of the equipment and labs and expertise that SLED does; right?

2 A Of course.

3 Q That's the whole reason for their existence.

4 A Right.

5 Q Okay. And this cloth, you testified that you noticed an
6 odor to it, so that got your attention. But more than the
7 odor, I'm going to show you what's State's --

8 MR. FOX: Is 10 in?

9 MS. WALTER: Yes.

10 MR. FOX: Okay. Thank you.

11 BY MR. FOX:

12 Q -- what's been admitted as State's No. 10, and that's the
13 yellow rag or washcloth; correct?

14 A Correct.

15 Q All right. Does there appear to be anything foreign --
16 you know, not yellow washcloth. Does there appear to blood on
17 it?

18 A Yeah, on the corner of the cloth.

19 Q So that would seem to be something that would be relevant
20 as well to this investigation?

21 A Yes.

22 Q Perhaps could be an identifying item?

23 A Yes.

24 Q In other words, potentially -- no way of knowing when you
25 got -- when you were there, but, potentially, the person that

1 assaulted Ms. Hernandez may well have left blood.

2 MS. WALTER: Objection. Hypothetical.

3 THE COURT: I'll allow it.

4 BY MR. FOX:

5 Q You can answer.

6 A Can you repeat it one more time for me, sir?

7 Q Well, I'll just say it this way: That that may help
8 identify persons that were in that hotel room.

9 A Yes.

10 Q Okay. Or eliminate?

11 A Yes.

12 Q Because -- all right. I won't ask that.

13 All right. Now, I mean there was blood all over the
14 floor in there, in the bathroom?

15 A Correct.

16 Q Blood on the door frame?

17 A Correct.

18 Q Blood on this towel.

19 You also took photographs of the cart, kind of the supply
20 cart -- were they cleaning supplies and towels and so forth,
21 sheets for the rooms -- that was in the hallway; right?

22 A Correct, it was.

23 Q Okay. And you took photographs of that?

24 A I did.

25 Q And I'm assuming you took that because there were blood

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1 over on some of those sheets or towels on the shelf
2 underneath?

3 **A** Correct.

4 **Q** Okay. So that also potentially could be identifying
5 evidence?

6 **A** Yes, but it was not collected because it was in the
7 hallway, unsecured.

8 **Q** Okay. So no telling who was through there; correct?

9 **A** True.

10 **Q** Okay. But you also testified you don't know who was in
11 the -- at least before you got there, who was in the bathroom.
12 All right.

13 Shoe prints that you took pictures of. I believe you
14 would have done a summary, an investigative report afterwards
15 detailing your activities and what you collected and what you
16 did as part of your job; correct?

17 **A** Yes.

18 **Q** On such and such a day, I went here and I did these
19 things; correct?

20 **A** Yes, sir.

21 **Q** And do you recall, in the report that you did on this
22 occasion, that you mentioned, of course, that you took
23 photographs -- saw some shoe prints and took photographs. And
24 your -- your belief was that, from those shoe prints, that
25 they may be -- they were from a Nike shoe and probably Air

1 Jordan; do you recall that?

2 A They appeared to be from a Nike shoe, an Air Jordan.

3 Q And Air Jordans being one of the most commonly sold shoes
4 in this country for many, many years.

5 MS. WALTER: Objection. Basis of knowledge, unless he's
6 a shoe expert.

7 THE COURT: Sustained.

8 BY MR. FOX:

9 Q All right. So, Officer, the last question I have to ask
10 is: Well intentions, I know; you improperly packaged --
11 collected and packaged the glasses. Same thing with the
12 yellow rag. How can this jury be sure that your other
13 processes were any more valid?

14 A Just from my experience and my time doing it for so long
15 and knowing what I did wrong. I have never done it before
16 this time. Just because it was close proximity that I
17 collected them together that way.

18 And the yellow rag, that was collected per department
19 protocol, which is what I have to follow first. That's why I
20 followed that protocol first.

21 Q But still knowing that the items were going to go to
22 SLED -- are you familiar with the SLED protocol? Let me ask
23 you that.

24 A I'm familiar with their collecting and publishing
25 protocol.

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1 Q Okay.

2 A But I follow my protocol first.

3 Q Well, I understand, but you would have been -- it would
4 have taken no foresight to anticipate that these items were
5 going to go to SLED for testing.

6 A Right.

7 Q And you say you're familiar with their protocol.

8 A I am. But, usually, I'm more familiar with what's on a
9 rag when I collect it. Just because it was an odd smell, it
10 could have been cleaner than I was expecting to be on the rag,
11 which it would have to be dried or else it could mildew if was
12 collected any other way than a paper bag.

13 Q Well, also blood, but you knew the SLED protocol.

14 A Yes. Well, the blood would be collected in a paper bag
15 also.

16 Q But that's not how SLED sees it. And you knew these
17 items would be going to SLED, didn't you?

18 MS. WALTER: Objection, Your Honor.

19 MR. FOX: Thank you. No further questions.

20 THE COURT: All right. Thank you.

21 REDIRECT EXAMINATION

22 BY MS. WALTER:

23 Q At the time that you collected the rag, were you familiar
24 with SLED's protocol on how to collect an item that could
25 potentially have chloroform or some other substance on it?

1 A No.

2 Q And, I'm sorry, I think I was speaking over you. You
3 said no?

4 A I said no.

5 Q And had you just been testing for the blood in a paper
6 bag, that would be the proper protocol; correct?

7 A Yes, per Myrtle Beach and SLED, yes, ma'am.

8 Q When was the first time that you learned that SLED would
9 require that that yellow rag be packaged in a different way?

10 A When I found out that they couldn't test it.

11 MS. WALTER: Nothing further.

12 THE COURT: Any objection to Officer Bailey being
13 released from his subpoena?

14 MS. WALTER: Not from the State.

15 MR. FOX: None, Your Honor.

16 THE COURT: Officer Bailey, thank you for being here.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: You're welcome to step down.

19 Ladies and gentlemen, we're going to take about a
20 ten-minute break, and then we'll come back in here for the
21 next witness. Please don't discuss this case.

22 (The jury exited the courtroom at 11:12 a.m.)

23 THE COURT: All right. Is there anything we need to take
24 up?

25 MR. FOX: No, Your Honor.

1 MS. WALTER: I don't think so.

2 THE COURT: We'll take about a 10-, 15-minute break.

3 (A brief recess was taken at 11:13 a.m. to 11:27 a.m.)

4 MS. WALTER: So, scheduling-wise, we do have one witness
5 who will be a shorter witness. And then the State's request
6 would be -- Mr. Fox and I are just trying to figure out a
7 discovery issue. If we could then break for lunch, give us a
8 chance to do that, it should give Mr. Fox or Ms. Caldwell a
9 chance to listen to the redacted interview.

10 MR. FOX: Yes, okay.

11 MS. WALTER: And if we can do that, then I'll push the TV
12 back now.

13 THE COURT: I think lunch should be here at 11:45.

14 MS. WALTER: That should be fine.

15 MS. ANDREW: It's a short witness.

16 THE COURT: Okay.

17 MS. WALTER: Thank you, Your Honor.

18 THE COURT: Otherwise, are we ready for -- well, we'll
19 give them a minute. No problem.

20 Mr. Fox, do you need more time?

21 MR. FOX: No, Your Honor. Thank you.

22 THE COURT: We'll have the jury.

23 Who is calling this witness?

24 MS. ANDREW: I am, Your Honor.

25 (The jury entered the courtroom at 11:30 a.m.)

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1 THE COURT: All right. Ms. Andrew?

2 MS. ANDREW: Your Honor, the State calls Malinda Shadoan.

3 MALINDA SHADOAN,

4 after having been duly sworn, was examined and testified
5 to as follows:

6 THE CLERK: Would you state your name and spell it for
7 the Court.

8 THE WITNESS: It's Malinda Shadoan. M-a-l-i-n-d-a. Last
9 name, S-h-a-d-o-a-n.

10 DIRECT EXAMINATION

11 BY MS. ANDREW:

12 Q Ms. Shadoan, where are you employed?

13 A I'm at the City of Myrtle Beach Police Department.

14 Q And how long have you been at the City of Myrtle Beach
15 Police Department?

16 A I'll be in my 15th year in July.

17 Q What is your position there?

18 A I am what they consider the senior or lead in the
19 evidence room, so I'm an evidence technician.

20 Q What does an evidence technician do?

21 A So we basically house and secure all evidence that comes
22 in either from road officers, detectives. We also are the
23 lost and found of the city. And we make sure that nothing is
24 tampered with. There's only a few people that have access to
25 my room. Along with that, I am one that usually takes the

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1 items to the State Law Enforcement Division for analysis in
2 cases like this where I transport it as well.

3 Q How long have you been the evidence custodian at the
4 Myrtle Beach Police Department?

5 A Ten years in Evidence.

6 Q Were your duties the same back in March of 2018?

7 A Yes, they were.

8 Q And for that whole year, basically since March of 2018 to
9 today?

10 A Yes.

11 Q Do you recall what kind of involvement you had in this
12 case? Was it to transport items to SLED or the State Law
13 Enforcement Division?

14 A Yes. I did that along with also take in the property
15 that came in for this case as well.

16 MS. ANDREW: May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. ANDREW:

19 Q I'm going to show what's been marked as State's Exhibit
20 38-A.

21 A Okay.

22 Q Can you tell me what that document is?

23 A This looks like a receipt from the State Law Enforcement
24 Division stating that items have gone to SLED. It's different
25 than ours.

1 Q It's different than yours.

2 A Yes.

3 Q Are you familiar with that document?

4 A Yes.

5 Q Do you see it frequently and routinely in your job?

6 A For the most part, yes.

7 Q And does that document show that you submitted certain
8 items of evidence to SLED?

9 A Can I look at it?

10 Q Of course.

11 A (Reviewing document.) Yes, ma'am.

12 Q Okay. I'm going to give you some gloves just because
13 we're going to touch some packages.

14 A Thank you.

15 Q I know you'll appreciate that.

16 A Yes.

17 Q Okay. And when you look at that chain of custody, does
18 it have a SLED lab number on it?

19 A And, again, bear with me just because this isn't my
20 normal. This is the SLED's paperwork.

21 Yes, it's right there on the top in the center.

22 Q And do you know if SLED assigns a unique lab number to
23 specific cases for which it does evidence work?

24 A It does. So, as we have our own case number, once things
25 go there to SLED, it provides it with a unique case number

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1 over there as well.

2 Q I'm going to show you what's been previously marked and
3 admitted into evidence as State's Exhibit No. 13.

4 A Okay.

5 Q And I don't know -- if you need to, you can pull the bag
6 out.

7 A I can see it right there.

8 Q You can see what it is?

9 A Mm-hmm.

10 Q Okay. And is that item -- are those glasses? Can you
11 tell?

12 A Yes. And I can refer -- if you want me to refer to my
13 notes, I can also show you --

14 Q That's fine. Please refer to your notes.

15 A (Reviewing document.) Yes. This correlates to the
16 glasses, which is our Group No. 53.

17 Q Okay. And did you receive those items into evidence at
18 the Myrtle Beach Police Department?

19 A I did.

20 Q Did you then keep them secure until you transported them
21 to SLED?

22 A Correct.

23 Q And does that chain of custody show the date that you
24 submitted them to SLED?

25 A Yes. It shows both the processing time and the back and

1 forth to SLED.

2 Q Okay. And what date did you submit them to SLED?

3 A I went and took them personally on July 5th of 2018.

4 Q Okay. And when you submit an item to SLED, how do you do
5 that?

6 A So I have the package -- the brown paper bag, for
7 instance, here. I make sure that it's not tampered with,
8 which there was evidence tape, and that is a tamper-free
9 system for our division, that if anybody tried to open it, you
10 would easily see.

11 I then put it in this, which is the State Law Enforcement
12 Division's packaging. This is all my handwriting. And then I
13 heat-sealed it, and this is my initials right here with the
14 date in which I did it.

15 Q Okay. Let me put it back just to clean up your area a
16 little bit.

17 A Sure, mm-hmm.

18 Q I'm going to show you -- I'll take back the --

19 A Okay.

20 Q So we don't get them confused.

21 I'm going to show you what's been marked as State's
22 Exhibit No. 38-B.

23 A Okay.

24 Q Is that also a document from SLED?

25 A It is.

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1 Q Does that show the chain of custody for other items of
2 evidence in this case?

3 A Yes.

4 Q And did you transport those items to SLED?

5 A Yes. Every single bit of them.

6 Q So there's a few of them on there. I'm going to hand you
7 each one, and we'll identify them separately. Okay?

8 A Okay. That's fine.

9 MS. ANDREW: I'm sorry, Your Honor.

10 THE COURT: You're fine.

11 MS. ANDREW: Just making sure I have got them all. I
12 think I got them all. We'll just go through them.

13 BY MS. ANDREW:

14 Q Okay. Start with State's Exhibit No. 37.

15 MS. ANDREW: Court's indulgence, one moment.

16 A Again, I can refer to my notes. Correct?

17 BY MS. ANDREW:

18 Q You can refer to your notes.

19 A Okay.

20 Q Just refresh your recollection and then turn them over
21 before you answer the question.

22 A Sure. Just date and times are going to be on here if you
23 ask me.

24 Q Yeah, that's perfect.

25 A Okay.

1 Q And can you tell what that item is?

2 A This is our Group 13, which is buccal swabs of Demetrius
3 Lawon McClary.

4 Q Did you receive that item into evidence at the Myrtle
5 Beach Police Department?

6 A Yes. It was received on 3/21/2018. And then it looks
7 like I took it to SLED on 9/24/2019.

8 Q Okay. And how did you submit it to SLED?

9 A Same process. Made sure that the item that was being
10 requested was inside a package like this. Again, this is my
11 handwriting. And I initialled it up on top the day that I
12 took it.

13 Q I'm going to show you what's been marked and admitted as
14 State's Exhibit 39. And this is 40. They kind of go
15 together, so I think we can talk about them.

16 And what is Exhibit 39?

17 A So that's our Group 19, and it's cuticle scrapings from a
18 right hand.

19 Q Okay. What is 40?

20 A Scrapings of the victim, left hand.

21 Q Did you receive those items into evidence?

22 A Yes, I did.

23 Q When was that?

24 A They both came in on March 26th of 2018, and I took them
25 to SLED on that same day of September 24th, 2019.

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1 Q Okay. Thank you.

2 A Sure.

3 Q I'm going to show you what's been marked as State's
4 Exhibit No. 41. Can you tell me what that one is?

5 A That's our Group No. 21, and that is known standards of
6 the victim.

7 Q Okay. And did you receive that item into evidence?

8 A Yes. That was also on the same day of March 26th, 2018,
9 and I took it to SLED that same day of September 24th, 2019.

10 Q Thank you.

11 And just a couple of questions about -- when you submit
12 items of evidence to SLED, does SLED have any rules or kind of
13 prohibitions about how many items of evidence you're allowed
14 to submit?

15 A That's more of a SLED question and maybe more on the
16 crime scene level. I'm just told what to do at that point,
17 but I know there are certain protocols to take.

18 Q Okay. So you have to follow SLED's protocols when it
19 comes to submitting evidence or asking evidence to be tested?

20 A Yes. The investigator or the Crime Scene Unit will tell
21 me when to take items and which ones, and they're more
22 proficient in knowing which items are able to go to SLED at
23 that time.

24 Q Other than testifying here today, did you have any other
25 involvement in this case?

1 **A** None whatsoever.

2 **Q** Please answer any questions Mr. Fox has.

3 **A** Sure.

4 CROSS-EXAMINATION

5 BY MR. FOX:

6 **Q** Officer, on that point, so you don't have discretion.

7 You submit what you're told to SLED. You submit the items of
8 evidence that you're told to submit; correct?

9 **A** Correct.

10 **Q** Okay.

11 MR. FOX: Mark that for identification, please.

12 (Defendant's Exhibit No. D-3, Property Inventory Sheet,
13 was marked for identification.)

14 BY MR. FOX:

15 **Q** And if an item that's collected during an investigation
16 doesn't go to SLED, that doesn't mean it's not held. I mean,
17 if you have ten items and five go to SLED, you still have the
18 other five; correct?

19 **A** Safe and secure, yes.

20 **Q** So let me show you, please, what's been marked as
21 Defense, for identification, No. 3. Tell me if, generally,
22 you recognize -- I'll talk about specifics in a minute -- but
23 if you generally recognize what that is.

24 **A** Yes, that is our property sheets that we submit to either
25 case files or whatnot. But it shows detailed information on

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1 each and every item that comes into my room.

2 Q Okay. And each item -- and it refers to, at the top
3 there, a bag number; correct?

4 A Correct.

5 Q So it's packaging. It might be a bag, it might be an
6 envelope, but --

7 A Right.

8 Q That just lets you know, more or less, one item of
9 evidence for one bag; is that correct?

10 A Correct. And it also has a property record number, which
11 is kind of like a fingerprint. Each one is unique to each
12 piece of evidence that comes in.

13 Q And that particular one, what does that item indicate is
14 in that -- Bag 25, what's in Bag 25?

15 A Looks like it's a tank top, men's.

16 Q And does it let you know where it was collected from?

17 A The location that it says it was seized from was 305-C
18 Highway 15 in our jurisdiction.

19 Q Does it give a description?

20 A It says, "One men's white tank top seized from Sea Haven
21 during follow-up assault investigation." And that was
22 time-stamped by Officer Fee.

23 Q So Officer Fee would then also be the collecting officer?

24 A I would -- yes.

25 Q Does it let you know who the collecting officer is on

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1 there?

2 A It would be -- yes, the seizing officer is the collecting
3 officer, and that is Whitney Fee, yes.

4 Q Okay. Thank you. I have no further questions.

5 THE COURT: Any redirect?

6 MS. ANDREW: Just one redirect.

7 REDIRECT EXAMINATION

8 BY MS. ANDREW:

9 Q Ms. Shadoan, isn't there a procedure whereby you can help
10 facilitate a defense attorney, say, or a defendant, get items
11 of evidence tested if they chose to?

12 A What's that --

13 Q I'm sorry; that was an inartfully asked question.

14 A I'm sorry; say that again.

15 Q Is there a procedure or is there a way that you could, as
16 evidence custodian, help facilitate a defendant get items of
17 evidence tested if they so chose?

18 A No.

19 MS. ANDREW: No further questions.

20 THE COURT: All right. Is there any objection to
21 releasing Officer Shadoan from her subpoena?

22 MS. ANDREW: Not from the State, Your Honor.

23 MR. FOX: None, Your Honor.

24 THE COURT: All right. Thank you so much for being here.

25 THE WITNESS: Thank you.

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1 THE COURT: Have a great day.

2 THE WITNESS: You too, thank you.

3 THE COURT: Would counsel approach?

4 BENCH CONFERENCE

5 (A bench conference was held off the record and outside of
6 the hearing of the jury.)

7 THE COURT: All right. Ladies and gentlemen of the jury,
8 we have ordered lunch in for you today. No more Crafty
9 Rooster, for obvious reasons. [Laughter] No, I'm just
10 kidding.

11 But they're picking it up right now, and it should be
12 here within about 10 minutes or so. The next witness is going
13 to be a longer witness. Also, there's a matter of law that we
14 need to take up outside of your presence. I'm going to give
15 you an hour, so we're going to try to shoot for starting back
16 at 12:45. All right? And you're welcome to go outside, do
17 whatever you need to. If you don't want to eat our food, we
18 understand that as well, but it's certainly here for you.
19 Just make sure you're back, ready to go at 12:45. Okay?

20 Please don't discuss this case.

21 Let me ask you one other thing: While you're out, since
22 you have had an opportunity to maybe get to know each other,
23 I'd like you to take this opportunity over lunch to elect
24 among yourselves a foreperson to serve as the foreperson on
25 the jury.

1 Now, the foreperson doesn't have any more power than any
2 other juror. The main purpose of the foreperson is to preside
3 over the deliberations in this case. Okay? So if you could
4 do that for me. Just let us know who it is when you get back,
5 I'd appreciate it. Thank you very much.

6 Please don't discuss this case.

7 (The jury exited the courtroom at 11:47 a.m.)

8 THE COURT: All right. If the Court's assistance is
9 needed, just let us know.

10 MS. WALTER: Okay.

11 MR. FOX: Yes, sir.

12 THE COURT: We'll try to get started at 12:45.

13 MS. WALTER: All right. Thank you.

14 THE COURT: Or as soon as we can.

15 MS. WALTER: Right, I was going to say, the redacted
16 video should be here momentarily.

17 MS. ANDREW: She should be on the way.

18 MS. WALTER: She was burning it a couple of minutes ago.
19 That's the only thing, to make sure that they have time to
20 view it to ensure it was done correctly prior to Detective
21 Morrell testifying.

22 THE COURT: All right. Well, we'll be at recess. If
23 we're needed, just let us know.

24 MS. WALTER: Thank you, Your Honor.

25 (A lunch recess was taken from 11:48 a.m. to 12:45 p.m.)

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1 THE COURT: Anything we need to take up?

2 MS. WALTER: No, Your Honor. We have resolved the
3 confusion, and I believe that the defense has looked at the
4 redacted version of the interview, and it's good to go.

5 MR. FOX: That's correct, Your Honor.

6 THE COURT: All right. Ready for the jury?

7 MS. WALTER: Yes.

8 THE COURT: Thank you.

9 MS. WALTER: And I'll be calling -- I think we're
10 flip-flopping again. I'm first, then Leigh, then me.

11 THE COURT: Okay. The foreperson is Ms. Gwen Watts,
12 No. 399.

13 (The jury entered the courtroom at 12:50 p.m.)

14 THE COURT: All right. Ms. Watts, you won the election?

15 JUROR NO. 399: I volunteered.

16 THE COURT: Thank you for doing that.

17 All right. Are we ready to proceed? Ms. Walter?

18 MS. WALTER: Thank you, Your Honor. The State calls
19 Nathan Howitt.

20 NATHAN HOWITT,

21 after having been duly sworn, was examined and testified
22 to as follows:

23 THE CLERK: Please state your name and spell it for the
24 Court.

25 THE WITNESS: Sure. Nathan Howitt. H-o-w-i-t-t.

1 MS. WALTER: May I, Your Honor?

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. WALTER:

5 Q And where do you work?

6 A The Myrtle Beach Police Department.

7 Q How long have you been there?

8 A 15 years.

9 Q If I do my math correctly, since about 2007?

10 A '07, yes, ma'am.

11 Q What is your current assignment?

12 A For the past seven years, I have been with the Crime
13 Scenes Investigations Unit.

14 Q We have heard a little about this before, but to your
15 mind, what are the duties and responsibilities of a crime
16 scene investigator?

17 A We do dual responsibilities. Some respond to scenes and
18 processes them, collects evidence, physical evidence. It
19 could be DNA or fingerprints. Some of it's photography.
20 Maybe have to do shooting reconstruction. Every scene is
21 different.

22 And then I do lab work. I'm also a task force officer of
23 the United States Secret Service, so I do lab work where I run
24 fingerprints and do digital forensics at our forensics lab
25 here in Myrtle Beach as well as sometimes the Secret Service

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1 office in Columbia.

2 Q Is it accurate, then, that you might do some further
3 examination or an analysis of items or evidence that other
4 crime scene investigators bring to you?

5 A Yes. I do not only Myrtle Beach, Fifteenth Circuit, but
6 state and some federal agencies.

7 Q Do you have any special training in different aspects of
8 crime scene investigation?

9 A Yes. I went to Horry Tech, where I took their crime
10 scene curriculum. I went to Columbia College. I took
11 forensic science and some classes through there. Been to the
12 American Academy of Applied Forensics, took a basic crime
13 scene class there, as well as a number of other trainings.

14 Q Did you attend any training at the State Law Enforcement
15 Division related to the Automated Fingerprint Identification
16 System, otherwise known as AFIS?

17 A Yes, I'm a certified SLED AFIS operator.

18 Q Did you also take classes at SLED for print recognition?

19 A With the South Carolina Criminal Justice Academy next
20 door.

21 Q Okay.

22 A But fingerprint recognition from them.

23 Q How are you assigned to a particular case?

24 A Sometimes just luck of the draw. If you're working when
25 a scene comes out, that's usually how it works.

1 Q And because you, I guess, specialize in lab work, if it
2 falls in your bailiwick, so to speak, would that be something
3 you would be assigned?

4 A Yes, ma'am. I have advanced skills, especially digital
5 forensics. So it gets assigned to me after the primary CSI
6 works a scene.

7 Q Did you do any analysis or processing of evidence for the
8 case that we're in court for today?

9 A I did.

10 Q First, did you ever respond to the Sheraton Hotel?

11 A The main incident location? No.

12 Q Were you, in fact, even on duty when that incident first
13 occurred?

14 A I don't believe so. I think that was at night when I was
15 not -- not on duty.

16 Q So did you appear for work the next day?

17 A Yes, ma'am.

18 Q Were you asked to help execute a search warrant?

19 A At the Lighthouse, yes, ma'am.

20 Q And what is the Lighthouse?

21 A I'm not sure what their designation is, to be honest with
22 you. It's a -- I'm not a hundred percent sure.

23 Q Is it -- are there facilities there where people can stay
24 or store things, to your knowledge?

25 A That would be accurate. I'm not sure who sponsors it,

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1 but that would be accurate.

2 Q And you said you were called to help execute a search
3 warrant. Did you yourself get that search warrant or did
4 someone else get it?

5 A There were numerous officers on scene, but I was given
6 the search warrant.

7 Q You were given the search warrant to execute?

8 A Yes, ma'am.

9 Q So can you tell us sort of just in general, not specific
10 to this case, just in general, when you execute a search
11 warrant, what do you do?

12 A A search warrant gives us authority to search a place, a
13 private entity. You review it. It will tell you what you're
14 collecting or what you're allowed to collect, I should say,
15 and the location of what you're collecting.

16 Q Were you told to search any particular part of
17 Lighthouse?

18 A There was a specific locker they wanted me to search.

19 Q And did you, in fact, take pictures both before and
20 during your search?

21 A I did.

22 MS. WALTER: This is 14 through 18.

23 May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25

1 BY MS. WALTER:

2 Q And I'm approaching with State's Exhibit 14 through 18.
3 I want you to take a look at those and let me know when you're
4 done.

5 A Yes, ma'am.

6 Q Are those all photographs that you took that day during
7 the execution of the warrant?

8 A Yes, ma'am.

9 Q Are they fair and accurate representations of the locker
10 and its contents as you saw it?

11 A They are.

12 MS. WALTER: Your Honor, at this time, I would ask that
13 Exhibits 14 through 18 be admitted.

14 THE COURT: Any objection?

15 MR. FOX: None, Your Honor.

16 THE COURT: All right. 14 through 18 are in evidence.

17 MS. WALTER: Thank you, Your Honor.

18 (State's Exhibit No. ST-14 through 18, Photographs of
19 Locker and Contents, was received into evidence.)

20 MS. WALTER: And may I publish them as well, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. WALTER:

23 Q And before we get to that -- excuse me. When you
24 executed the search warrant, did you know any of the details
25 of what had happened at the Sheraton?

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1 **A** I had a detective with me, but not really. I was kind of
2 brought in as an assisting, kind of blind, the next day.

3 **Q** Kind of do the search warrant, don't worry about anything
4 else at this time?

5 **A** Yes, ma'am.

6 **Q** So let's start with Exhibit 14. And it will be up on the
7 screen as well. Can you just describe for the jury what this
8 photograph shows?

9 **A** This is an overall photograph of the locker.

10 **Q** Do you recall which locker you specifically were
11 searching?

12 **A** It's going to be toward the top right, I believe.

13 **Q** Locker No. 5?

14 **A** No. 5.

15 **Q** And so then, Exhibit 15, is that -- what is depicted in
16 that?

17 **A** That's the locker, yes, ma'am.

18 **Q** At some point, were you able to open the locker?

19 **A** Yes.

20 **Q** Were you looking for anything in particular in the
21 locker?

22 **A** Just, in search warrants or for evidence. Could be shoes
23 or bloody items. Just evidence for our case.

24 **Q** So showing you State's Exhibit 16. Is that what the
25 locker looked like once you were able to open it?

1 A Yes, ma'am.

2 Q Okay. What, if anything, was of interest in this locker?

3 A A pair of shoes.

4 Q Did you, in fact, seize those sneakers?

5 A Yes, I collected them as evidence.

6 Q Showing you State's Exhibit 17. Are these the bottoms of
7 the sneakers that you collected?

8 A They are.

9 Q And what was the purpose of taking photographs of the
10 bottom of the sneakers?

11 A For identification purposes.

12 Q And the purpose of the scale that's on the side?

13 A Whenever we take forensically scaled photographs, it's
14 just the CSI way of doing things.

15 Q So you know the actual size is?

16 A The actual size, yes.

17 Q And then Exhibit 18? What's in Exhibit 18?

18 A It's going to be the top part of the shoes, but it's
19 going to be a sock and, I believe, the right shoe.

20 Q That piece of white that you can see?

21 A Yes.

22 Q After -- was that all that you seized from the locker?

23 A Yes, ma'am.

24 Q And then, after you seized them, what did you do with the
25 sneakers and the sock?

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1 **A** I collected them as evidence and transported them back to
2 the crime scene office.

3 **Q** At some point after that, did you perform any additional
4 testing or examination on them?

5 **A** Yes.

6 **Q** What did you do specifically?

7 **A** I performed a BLUESTAR test. BLUESTAR is a liquid that
8 we spray on items, and if it comes in contact with blood, it
9 gives a light blue or fluorescent blue color.

10 **Q** Does it do anything other than give you what we call a
11 presumptive, that there may a blood on an item?

12 **A** It's a presumptive positive. It turns blue.

13 **Q** It doesn't tell you anything about the type?

14 **A** No, ma'am.

15 **Q** It doesn't tell you anything about when it was there or
16 how it got there; right?

17 **A** No.

18 **Q** I won't make you touch these.

19 MS. WALTER: Your Honor, if I may approach with items
20 --Exhibits 26-A and 26-B.

21 THE COURT: Yes, ma'am.

22 BY MS. WALTER:

23 **Q** You don't have to open them unless you put on gloves,
24 unless you want to. Do you recognize those two items?

25 **A** The right shoe and the left shoe.

1 Q How do you recognize those?

2 A Well, it has my name on top. It's my handwriting. And
3 then I write on it "left shoe."

4 Q Okay. And this one says?

5 A The same thing: Right shoe.

6 Q Does that appear to be the right shoe that you examined?

7 A Yes, ma'am.

8 Q And does this appear to be the left shoe?

9 A Yes, ma'am.

10 MS. WALTER: Your Honor, I'd ask that 26-A and B be
11 admitted into evidence, if they were not already.

12 MR. FOX: Without objection, Your Honor.

13 THE COURT: All right. 26-A and B into evidence, no
14 objections.

15 (State's Exhibit No. ST-26-A and ST-26-B, Photographs of
16 Shoes, was received into evidence.)

17 MS. WALTER: Your Honor, if I can approach with State's
18 Exhibit 27.

19 BY MS. WALTER:

20 Q Can you tell us what State's Exhibit 27 is?

21 A It's going to be the sock that I collected.

22 Q How do you recognize that to be it?

23 A It has my name, the report number, and then I wrote
24 "sock" on it.

25 Q Are those also your initials and the date on the back?

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1 **A** And on the back is my initials and the day from when I
2 sealed it.

3 MS. WALTER: Court's indulgence for a moment.

4 BY MS. WALTER:

5 **Q** Does that appear to be the sock that you examined?

6 **A** Yes, ma'am.

7 **Q** Now, you testified about this testing that will show a
8 presumptive for blood. And I'm sorry to say this: Did you
9 perform that same test on the sock as well?

10 **A** Yes, ma'am.

11 MS. WALTER: Oh, I'm sorry, Your Honor. Can I ask that
12 Exhibit 27 be admitted?

13 MR. FOX: Without objection.

14 THE COURT: All right. 27 is into evidence.

15 (State's Exhibit No. ST-27, Photograph of Sock, was
16 received into evidence.)

17 MS. WALTER: Your Honor, if I may approach the witness.
18 And I'm showing him State's Exhibit 19 through 25.

19 THE COURT: Sure.

20 THE WITNESS: Yes, ma'am.

21 BY MS. WALTER:

22 **Q** Are those all photographs that you took?

23 **A** Inside the crime scene laboratory, yes, ma'am.

24 **Q** And are they all fair and accurate representations of the
25 items depicted as you took the photograph?

1 A Yes, ma'am.

2 MS. WALTER: Your Honor, at this time, I'd ask that
3 Exhibits 19 through 25 be admitted.

4 THE COURT: Any objection?

5 MR. FOX: I'm sorry. No, Judge.

6 MS. WALTER: Without objection.

7 MR. FOX: The photographs; right?

8 MS. WALTER: Yes, the photographs.

9 (State's Exhibit No. ST-19 through 25, Photographs, was
10 received into evidence.)

11 MR. FOX: Thank you.

12 BY MS. WALTER:

13 Q So, Exhibit 19, what is depicted in Exhibit 19?

14 A Just an overall photograph of the sock with no chemical
15 processing.

16 Q Was that because it had previously been in the sneaker?

17 A That's been previously in the sneaker, yes, ma'am.

18 Q So, now, when you use this BLUESTAR spray, what do you
19 need to do to see whether it is fluorescing?

20 A You have to turn off the lights because it glows in the
21 dark. So -- and we also do what's called a long-exposure
22 photograph, where our shutter opens up and just records for a
23 couple of seconds and absorbs the light coming off the item.

24 Q Just to give a better representation of the light?

25 A That's correct.

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1 Q So showing you Exhibit 20. What are we looking at in
2 Exhibit 20? And so this -- I guess this will be the left
3 shoe.

4 A Yes, ma'am.

5 Q And what is this kind of lit-up area?

6 A That's what a presumptive positive test for BLUESTAR
7 looks like, where it glows blue in the dark.

8 Q And, again, that's just a presumptive for blood. It
9 doesn't tell you any more detail than that.

10 A Just a presumptive positive. Blood could be there.

11 Q Okay. And Exhibit 21? So is this, I guess, the outside
12 sides of the shoes?

13 A Correct. And, again, that's a presumptive positive.

14 Q Exhibit 22. And this would be, I guess, the interior
15 sides of the shoe?

16 A Interior sides of the shoe, processed with BLUESTAR.

17 Q And Exhibit 23?

18 A The soles of the sneakers.

19 Q And now, this one sole is fluorescing. When you were
20 examining the soles of the sneakers, did anything pique your
21 interest or catch your eye?

22 A They appeared to be very similar to the crime scene
23 photos taken at the Sheraton.

24 Q Do you know who took those crime scene photos?

25 A I believe it's going to be Crime Scene Officer Bailey.

1 Q And then, Exhibit 24. And there appear to be a couple of
2 dots here. Why is it so red?

3 A In our laboratory, we have an exit sign, so the red from
4 the exit sign is coming down and just getting caught in the
5 photographs.

6 Q Okay. But are those blue dots of significance?

7 A It's possible that could be a presumptive positive test
8 for BLUESTAR.

9 Q And then, lastly, Exhibit 25. And what do we see in --
10 here, I'll give you the close-up one, too, so you can see it.

11 A Yes, ma'am.

12 Again, it's a picture of the sock processed by BLUESTAR,
13 and the light blue we're seeing is a presumptive positive test
14 for blood.

15 Q Thank you.

16 You now mentioned that you thought that the sneakers
17 looked similar to some photographs of shoe impressions that
18 Crime Scene Investigator Bailey took. Did you also, with
19 respect to an incident at the Sheraton, do some fingerprint
20 analysis?

21 A I did.

22 Q So before we get into specifics of that, can you tell me
23 what you do when you're doing a fingerprint analysis or
24 examination?

25 A We get a request from the officer who did the fingerprint

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1 lift or photograph. Then we run it through what we call an
2 AFIS terminal. It's a computer. And the AFIS terminal is
3 connected to the State of South Carolina. Whenever you get
4 fingerprinted, medical people, real estate, whatever, your
5 fingerprints get thrown into the system. So what I can do is
6 I can enter fingerprints into the AFIS terminal, and it
7 connects to the database at SLED, and it comes back and gives
8 you possible results.

9 **Q** So when AFIS spits back these results, is it just, well,
10 AFIS says it's a match, so, therefore, it's a match. Or what
11 do you do?

12 **A** We get 15 possible matches back. Just from experience,
13 if it is a match, it will be No. 1 or No. 2, because it
14 puts -- but then the computer will say, "Hey, we think this is
15 a match." I have to go through on the terminal and look at it
16 closely. Yes, I agree, I think this is a match.

17 But then there's a verification where I give it to
18 another AFIS operator, and he'll agree that the computer and
19 myself, it's a match.

20 **Q** What is it that you look for to determine whether or not
21 you feel that it is a match?

22 **A** There's what we call minutia. When you look at your
23 fingerprints, there's ridge lines, and when you look at them
24 closely, there is detail. What we look for is what's called
25 ridge ending. So when the lines come to a stop, ridge ending,

1 then verifications -- when there's a line that branches off
2 into two lines, we call that kind of like a tree that branches
3 out. That's a verification. We look for that. That's a
4 point as well.

5 Q And let me back up for a second. Are you also familiar
6 with the different ways in which latent fingerprints can be, I
7 guess, preserved, for example, later examination?

8 A There's different ways to capture latent prints. One is,
9 obviously, with tape. We lift it off of a surface. Or you
10 photograph it.

11 Q Are both accepted ways of preserving a latent print?

12 A Yes, ma'am.

13 Q Were you -- when you performed your examination in this
14 case, did you look at latents that had been preserved by two
15 different crime scene investigators?

16 A I did.

17 Q And who were they?

18 A Scott Williamson and David Bailey.

19 Q Did you look at them at the same time?

20 A I did.

21 Q And why was that?

22 A We work different shifts. It was all under the same
23 report number. So I examined both under the same report
24 number and generated one report.

25 Q Now, having lived with the case for four years, do you

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1 know whether Crime Scene Investigation Williamson's latent
2 prints were from the same or an unrelated investigation as
3 Crime Scene Investigator Bailey?

4 A That's correct. Unrelated.

5 Q Unrelated. Ideally, would you have completed your
6 analysis separately had you had that information at the time
7 you did your analysis?

8 A They were both under the same report number, so I did it
9 all under one report. But you're right; hindsight, I probably
10 would have done two separate reports.

11 Q In fact, does your report note a different room in the
12 hotel than we are here for today?

13 A That's correct.

14 Q And have you reviewed a copy of your report before we
15 got --

16 A I have.

17 Q Okay. So now I'd like to show you what's --

18 MS. WALTER: 34 is entered; right?

19 MS. ANDREW: Yes.

20 BY MS. WALTER:

21 Q -- what's been entered as Exhibit 34. Did you examine
22 this photograph of a latent print?

23 A I did.

24 Q Where did you find this photograph?

25 A Internally at the police department, we have -- it's

1 called the investigations network where we all put our
2 photographs, reports, videos, anything we have of an incident
3 in the same folder. That way, everyone has access to it.

4 So I went into the folder for this incident, and that's
5 where I found these photographs.

6 Q Okay. Now -- and, again, I'm sorry I'm jumping around a
7 little bit. You said that Investigator Williamson preserved
8 some latents and Crime Scene Investigator Bailey preserved
9 some latents. Was there a difference in the way in which they
10 preserved them?

11 A Crime Scene Officer Williamson lifted latent print cards
12 with tape and then on a card. Crime Scene Officer Bailey had
13 photographs.

14 Q And so that's one way that you can differentiate between
15 these two unrelated investigations?

16 A Yes, ma'am.

17 Q And so this photograph was from whose investigation?

18 A Officer Bailey's.

19 Q Okay. Did you -- do all prints that you see, like all of
20 the prints that you examine, are they all suitable for entry
21 into AFIS?

22 A No. That's the first step of fingerprint is we do an
23 analysis of: Is it runnable? And we'll look for different
24 things. You know, ridge flow and then we go to minutia.

25 Q So does it have to be of a certain quality before it's

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1 introduced into AFIS?

2 **A** Yes, ma'am.

3 **Q** Did you enter what is depicted in Exhibit 34 into AFIS?

4 **A** I did.

5 **Q** Did AFIS give you back any results?

6 **A** It did.

7 **Q** Did you then further your analysis?

8 **A** I did. I looked at the minutia, and I agreed with the
9 computer that I thought we had a match.

10 **Q** Okay. And who did that latent print lifted -- I believe
11 Investigator Bailey testified from the tub -- who did that
12 come -- who did you determine it matched?

13 **A** The defendant.

14 **Q** Demetrius McClary?

15 **A** Yes, ma'am.

16 **Q** I believe you testified to a verification process. Did
17 you ask another AFIS-certified investigator to verify your
18 conclusion?

19 **A** I did.

20 **Q** And who did you ask?

21 **A** Crime Scene Officer Williamson.

22 **Q** To your knowledge, did he agree with your conclusion?

23 **A** He did.

24 MS. WALTER: I have nothing further at this time. If
25 you'd just answer any questions from Mr. Fox.

1 CROSS-EXAMINATION

2 BY MR. FOX:

3 Q So the person who verified your conclusion, was, in
4 fact --

5 MR. FOX: Are you ready to push that back?

6 MS. WALTER: Oh, yeah, we can push it back.

7 MR. FOX: Thank you. I didn't know if you were finished.

8 MS. WALTER: No, we can push it back.

9 MR. FOX: Thank you.

10 (Pause in the proceedings to move equipment.)

11 BY MR. FOX:

12 Q So, Officer Williamson, who you got to basically
13 double-check your conclusion about the AFIS hit, he was
14 involved in this investigation; was he not?

15 A Yes, sir.

16 Q Okay. He wasn't, like, someone with no knowledge of or
17 familiarity with the investigation, right?

18 A (Nods head.)

19 Q Okay. Now, you said that photographs and latent cards
20 are both legitimate ways to, I'm going to say, process
21 fingerprints; correct?

22 A Preserve them, yes, sir.

23 Q Okay. You're aware that, in this case, both Officer
24 Williamson and I believe it was Room 715 but another room and
25 Officer Bailey did both? Were you aware that they both

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1 photographed and then lifted and transferred to latent print
2 cards?

3 **A** I'm not sure what they did on scene.

4 **Q** Okay. If you -- would you recognize kind of a standard
5 Myrtle Beach Police Department crime scene report? In other
6 words, do you have kind of --

7 MR. FOX: Would you please mark these for identification.

8 COURT REPORTER: 4 and 5?

9 MR. FOX: Yes.

10 (Defendant's Exhibit No. D-4 and D-5, Crime Scene Report,
11 was marked for identification.)

12 BY MR. FOX:

13 **Q** I'm going to show you what's been marked as defense
14 exhibits for identification 4 and 5. And, at first, just
15 generally tell me if you recognize what those would be, not
16 the details yet.

17 **A** It looks to be crime scene reports from Crime Scene
18 Officer Bailey and Williamson.

19 **Q** Okay. And this would be generally kind of a description
20 of their activities at the crime scene?

21 **A** That's correct.

22 **Q** Whether it's serving a search warrant or fingerprints
23 or collecting evidence. Whatever that is would be reflected
24 as a summary of that. Okay.

25 And, on the second page -- and I'm now referring to

1 Defendant's 4 which is Officer Bailey's report, it lists the
2 items collected; correct?

3 A Yes.

4 Q Okay. And it indicates that there were seven latent
5 print cards?

6 A That's what it states.

7 Q So, again, that's Officer Bailey and that's Room 405.
8 And he's already testified that he photographed those, and we
9 have those photographs in the evidence. But he also
10 transferred those to print cards; correct?

11 A That's what it says, sir.

12 Q Okay. And you would assume it would be as accurate as it
13 would possibly be. Right? In other words, it's important to
14 be accurate so that someone down the road can determine
15 exactly what happened.

16 All right. So now we have -- presumably that's in
17 Defense No. 5. And, at the bottom, does it appear that he did
18 the same thing, if you look at the highlighted portion at the
19 bottom, that he photographed and then put those prints --
20 transferred them to print cards?

21 A Yes, sir.

22 Q Okay. So they each did both.

23 Now, when you put in a request to AFIS, you do a written
24 document; correct?

25 A That's correct.

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1 Q Okay. And that basically sets forth this is what we are
2 requesting. And then you subsequently get back or at least
3 you print out the results.

4 (Defendant's Exhibit No. D-6, AFIS Results, was marked
5 for identification.)

6 BY MR. FOX:

7 Q So when you get the results back from AFIS, does that
8 produce a printout? Does the machine -- in other words, you
9 feed the information in, and they say, Here are 15 possible
10 matches?

11 A Yes, sir.

12 Q Does that just come up on a computer screen?

13 A Yes, sir.

14 Q Okay. But then from that, then, the requesting officer
15 generates -- and I'll just call it AFIS analysis results? Do
16 you recognize that?

17 A Yes, sir.

18 Q Okay. And this has the -- it's got you as the operator
19 name; correct?

20 A Yes, sir.

21 Q Okay. And it's got the incident number?

22 A Yes, sir.

23 Q And you testified that there was just a misunderstanding.
24 There were two separate incidents, and they were conflated.
25 They were combined; is that correct?

- 1 **A** That's correct.
- 2 **Q** Okay. And, at the beginning, it lists results for
3 several print cards; correct?
- 4 **A** That's correct.
- 5 **Q** And, at the bottom, it references photos.
- 6 **A** Yes, sir.
- 7 **Q** And, again, photos being of a fingerprint.
- 8 **A** Yes, sir.
- 9 **Q** Okay. And then a photo with an apparent match; is that
10 correct? I didn't mean to grab that away from you.
- 11 **A** No, you're good.
- 12 **Q** Okay. But you testified that, in fact, you really can't
13 distinguish cards that say, well, the cards only went to one
14 room and that was a separate incident, and the photographs
15 went to another room, because, in fact, there were cards and
16 photographs from both rooms?
- 17 **A** I processed fingerprint cards and photographs on the AFIS
18 machine, sir.
- 19 **Q** Right. But you also -- I think when I asked you to
20 review the crime scene unit report from Officer Williamson and
21 Officer Bailey, they each said -- photographed, you know, what
22 appeared to be fingerprints, and then transferred those to
23 print cards; correct?
- 24 **A** That's correct.
- 25 **Q** All right. So there are photographs and print cards for

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- 1 both rooms.
- 2 **A** Mm-hmm.
- 3 **Q** Okay. So it's -- and you have -- on the results --
- 4 **A** Yes, sir.
- 5 **Q** -- you have one incident. And, in fact, let me ask you
- 6 this: What does it have there at the top for incident
- 7 location?
- 8 **A** Sheraton Resort, 2101 Oak Street, Room 715.
- 9 **Q** Okay. When you get results out of the AFIS, you say you
- 10 get 15 possible matches.
- 11 **A** That's correct.
- 12 **Q** Is it always 15?
- 13 **A** That's what it's set to.
- 14 **Q** Okay. So you can set it. Depending on the case, you
- 15 might have some that are a lot -- have more potential as a
- 16 match than others?
- 17 **A** You can say that.
- 18 **Q** But they're going to get 15 --
- 19 **A** We get 15 regardless.
- 20 **Q** Yes. Didn't mean to cut you off.
- 21 How many, in this case, did you actually look at?
- 22 **A** What do you mean? The ones that I entered? I always
- 23 look at all -- if I enter the print, it will come back with 15
- 24 results.
- 25 **Q** Yes.

1 **A** Yes, sir.

2 **Q** Okay. Did you then -- and you indicated, then, you did
3 further follow-up with the known standard you had. And did
4 you -- which was Mr. McClary's.

5 **A** Mm-hmm.

6 **Q** Did you look at all 15 or just the top hits?

7 **A** Just the top.

8 **Q** Okay. How many of the top hits?

9 **A** I'm not sure if it was No. 1 or No. 2. If it's a match,
10 it's usually the top one or two.

11 **Q** And at the time you do that, you already have the suspect
12 name and you know who it is you're looking for, so to speak?

13 **A** I don't recall if I had his name at that time or not.

14 **Q** And I apologize for jumping back and forth. Back to the
15 reports and the prints and the confusion about the case
16 numbers and --

17 **A** Yes, sir.

18 **Q** -- what we just spent several minutes talking about.

19 This was all done -- the AFIS results, the fingerprint
20 lifts, etc. -- was all done back in March of 2018; correct?

21 **A** I don't have it in front of me, but I'll believe you if
22 that's what you're telling me.

23 **Q** Okay. Well, I want to make sure -- so that is the date,
24 in fact, that's on the AFIS?

25 **A** The 21st, yes, sir.

1 Q Okay. Of 2018?

2 A Of 2018.

3 Q So over four years ago.

4 And today was the first day that you or anyone else
5 associated with this case, from law enforcement, to the State
6 and solicitor's office -- caught that discrepancy that there
7 was one incident number for two separate events. Today is the
8 first day anyone caught that; right?

9 A Yes, sir.

10 Q Now, with the BLUESTAR and the shoes and sock, again,
11 that's a -- and I think, at one point, your phrase was
12 "possibly could be a presumptive positive." So, at most, it
13 shows you this is a presumptive for blood, but we don't know
14 without further testing; correct?

15 A That's correct. It's a presumptive positive. It's a
16 possibility it's blood.

17 Q Okay. To your knowledge, were the shoes -- either shoe
18 or both shoes or was the right shoe ever submitted for further
19 testing?

20 A Not to my knowledge.

21 Q Was the left shoe ever submitted for further testing?

22 A No, sir.

23 Q Was the sock ever submitted for further testing?

24 A Not to my knowledge.

25 Q Okay. And it could have been. They could have all been;

1 correct?

2 **A** Well, that depends. We're limited by the State Law
3 Enforcement Division how many items they take. So I don't
4 know how many items of DNA that we had sent.

5 **Q** What is that limit?

6 **A** It depends on -- well, in 2018, I'm not positive. I
7 think, for a violent crime in 2018, I think it might have been
8 five. Property crimes is two, I think. I'm not 100 percent
9 sure.

10 **Q** With any piece of evidence, obviously, y'all collect it
11 because you think it's relevant, right, whether it appears to
12 be a fingerprint or just anything, you think it has some
13 bearing, some importance to the case, to the investigation; is
14 that correct?

15 **A** Yes, sir.

16 **Q** Okay. And it is conceivable -- this isn't a
17 hypothetical -- in your experience, have you ever sent
18 something off and it comes back in a method that doesn't point
19 to -- in other words, it's not a defendant's blood or saliva
20 or hair or fingerprint?

21 **A** I'm sure --

22 **Q** Sometimes it's helpful to a defendant?

23 **A** I'm sure I have, but I'm not thinking any specific
24 examples off the top of my head, but I agree with you.

25 **Q** Okay. Again, you, not being the DNA tester, you can't,

NATHAN HOWITT - Cross by Mr. Fox

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1 when you collect an item, know whether it's going to be
2 something that tends to prove guilt or something that might
3 even possibly tend to prove innocence or not guilt. Right?

4 **A** Yes, sir.

5 **Q** Okay. Can I or anybody get SLED to test something for
6 us? I mean, they're the State Law Enforcement Division;
7 right? They're a prosecutorial agency?

8 **A** I'll be honest, I'm not sure if you have the access to
9 SLED that I have. I don't know the answer to that.

10 **Q** Okay. Fair enough.

11 All right. Thank you. No further questions.

12 MS. WALTER: Court's indulgence for just one moment.

13 Nothing further, Your Honor.

14 THE COURT: All right. Any objection to Mr. -- or
15 Officer Howitt being released?

16 MS. WALTER: None from the State, Your Honor.

17 MR. FOX: None, Your Honor.

18 THE COURT: All right. Officer Howitt, thank you for
19 being here. Appreciate your time. Have a nice day.

20 THE WITNESS: Thank you.

21 MS. WALTER: I was just making sure our next witnesses
22 were here, Your Honor.

23 THE COURT: Okay. Well, see if they're here.

24 MS. WALTER: They are. I got the nod.

25 THE COURT: All right. Ms. Andrew?

VERONA HERRERA - Direct by Ms. Andrew

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1 MS. ANDREW: Your Honor, the State calls Verona Herrera.

2 VERONA HERRERA,

3 after having been duly sworn, was examined and testified
4 to as follows:

5 THE CLERK: I need you to state your name and spell it
6 for the Court.

7 THE WITNESS: Verona Herrera. V-e-r-o-n-a,
8 H-e-r-r-e-r-a.

9 DIRECT EXAMINATION

10 BY MS. ANDREW:

11 Q Ms. Herrera, where do you currently work?

12 A The Department of Health or Environmental Control, or
13 DHEC.

14 Q And how long have you worked at DHEC?

15 A Approximately two and a half years.

16 Q Before you worked at DHEC, where did you work?

17 A The State Law Enforcement Division, or SLED.

18 Q How long did you work at SLED?

19 A Approximately 12 and a half years.

20 Q When you were at SLED, what did you do there?

21 A I was an evidence processing technician and a serologist
22 in the DNA department.

23 Q Can you briefly describe what a forensic or serologist
24 is?

25 A There's kind of two different aspects to a forensic

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1 serologist at SLED. The first is taking larger pieces of
2 evidence from crime scenes, such as clothing, car parts, guns,
3 any kind of thing that's probably bigger than about a piece of
4 paper, and looking at those for body fluids, hair. The body
5 fluids would be semen, saliva, blood.

6 And then the second part of it, if it's needed, is
7 determining whether those bodily -- those suspected areas of
8 blood fluids really are that body fluid.

9 **Q** And so can you tell me what the process you would use as
10 a forensic serologist is to determine if there were bodily
11 fluids present on an item?

12 **A** It depends on which body fluid is of interest. If it's
13 blood, we would have looked visually just if something looks
14 like a blood stain.

15 There's also a light source. You have probably seen it
16 on TV, like the wood's (ph) light or the black light that they
17 use. Well, for blood, it's a little different. It's similar,
18 but it doesn't fluoresce. Blood actually looks like the
19 absence of anything kind of. On very dark surfaces, that's
20 helpful.

21 If it's semen, we use what looks like the black light to
22 identify areas that fluoresce. Saliva is the same way; we
23 look for those areas.

24 Both the blood and the semen, there's a quick color
25 change test. The test is different for each one of them, but

1 the test is just a quick color change test. So that area is
2 swabbed, the chemicals are applied to the swab, and if there
3 is a color change, there's a chance that that substance could
4 be a bodily fluid. That you would go for further testing to
5 definitively determine whether semen or blood was present.

6 Q And did you receive special training in order to be able
7 to perform those job duties?

8 A Yes. At SLED, there is an in-house training. You're
9 under a court-qualified analyst until you can pass a mock
10 trial, a mock case, a written test, an oral test, a report
11 writing test. I think that's all five of them.

12 Q So would you classify all those different types of tests
13 as proficiency testing?

14 A No. Actually, proficiency testing is every year. You
15 have to determine whether you're still capable of performing
16 the job duties. So that's kind of a mock case that comes in
17 to us from a specific testing laboratory. These are before
18 you can even be put online to do the testing. And then, every
19 year, you're proficiency tested to determine whether you still
20 can perform your job duties.

21 Q Did you always pass your proficiency testing?

22 A Yes.

23 Q And what about your educational background? Can you tell
24 me a little bit about that?

25 A Sure. I have two associates degrees. One from

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1 Greenville Technical College in public safety, with a
2 certificate in forensics. I have a bachelor -- I mean, I'm
3 sorry, associate of science from Tri-County Technical College.
4 And then I have a bachelors of science degree from Liberty
5 University in criminal justice forensics.

6 Q And you mentioned a minute ago, you explained to us what
7 a forensic psychologist does. Are those processes that you
8 described used in labs throughout the country?

9 A To the best of my knowledge, yes, they are.

10 Q And is the SLED lab an accredited lab?

11 A It is, yes.

12 MS. ANDREW: Your Honor, at this time, the State would
13 offer Ms. --

14 BY MS. ANDREW:

15 Q Well, actually, I'll ask you this: Have you ever been
16 qualified as an expert in forensic serology in a court in
17 South Carolina?

18 A I have. Combined evidence processing, which is what I
19 did originally, which was rolled into the serology definition,
20 between that and the forensic serology, I'm -- it's right at
21 20 times across the State of South Carolina.

22 MS. ANDREW: Your Honor, at this time, the State would
23 offer Ms. Verona as an expert in the field of forensic
24 serology.

25 MR. FOX: I have no questions of this witness, Your

1 Honor.

2 THE COURT: All right. At this time, the Court finds
3 that Ms. Herrera is found as an expert in the field of
4 forensic serology.

5 BY MS. ANDREW:

6 Q All right, Ms. Herrera. Were you working as a forensic
7 serologist back in February of 2019 at SLED?

8 A I was, yes, ma'am.

9 Q Were you assigned to process evidence in the case that
10 brings us to court today? It's SLED No. L18-09696.

11 A Yes, ma'am, I did.

12 Q Okay. And does SLED give each case kind of a unique lab
13 number?

14 A Yes. As the cases are submitted to the laboratory,
15 they're given sequential lab numbers. So if it was the first
16 case to come in this year, it would have been 22-0001. And
17 each case after that, as it's submitted, gets the next lab
18 number.

19 Then every item within that case gets a unique number as
20 well. So it would be Item 1 of the lab number 22-0001. So --
21 and then any cuttings or swabs or pieces of that evidence that
22 are taken from that item get, like, 1.1, so that you know that
23 it came from that case, that item, and it's a separate piece
24 now, but it always links back to that parent item, is what we
25 called it.

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1 Q And does SLED maintain an internal record of every person
2 who handles a specific piece of evidence?

3 A We do, yes.

4 Q And what is that? Is that called a chain of custody?

5 A That is what we call it.

6 MS. ANDREW: May I approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. ANDREW:

9 Q I'm going to show you what's been previously marked as
10 State's Exhibit 38-A. Can you identify this document?

11 A Yes. This is the chain of custody prepared by SLED of
12 the record of everyone who touched an item of evidence in this
13 case.

14 Q And is this the one for that lab number I just gave you,
15 that L18-089696?

16 A Yes, ma'am.

17 MS. ANDREW: Your Honor, at this time, the State would
18 move 38-A into evidence.

19 Oh, I'm sorry, Eric.

20 MR. FOX: I know I have it. I just...

21 THE COURT: All right. 38-A is in evidence.

22 (State's Exhibit No. ST-38-A, Chain of Custody, was
23 received into evidence.)

24 BY MS. ANDREW:

25 Q So whenever you perform serology analysis on a specific

1 piece of evidence, do you generate a report?

2 **A** I do, yes, ma'am.

3 **Q** And is that report kept in the ordinary course of
4 business at SLED?

5 **A** It is, yes.

6 **Q** I'm going to show you what's been marked as State's
7 Exhibit 42. And please review that.

8 **A** Yes, ma'am. This is a copy of the report I produced.

9 **Q** And is this a fair and accurate copy of that report?

10 **A** Yes, ma'am.

11 MS. ANDREW: At this time, the State moves Exhibit 42,
12 the serology report, into evidence.

13 MR. FOX: Without objection.

14 THE COURT: All right. 42 is in evidence.

15 (State's Exhibit No. ST-42, Serology Report, was received
16 into evidence.)

17 BY MS. ANDREW:

18 **Q** So let's back up a little bit. Whenever you're asked to
19 perform serology analysis, are you told anything about the
20 case that directs your examination?

21 **A** There's two different ways. We get what's called an
22 incident report. So, basically, it's the police officer's
23 account of what happened when they were on the scene. We also
24 have something called a packing slip. So, basically, it tells
25 us the items of evidence were submitted at that time and what

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1 requested body fluids or processes they would like checked
2 for.

3 Sometimes what's in the incident report will alter what
4 we are able to do, but we take those two pieces of evidence
5 and do our best to do the most probative examination that we
6 can.

7 MS. ANDREW: Court's indulgence for a moment, Your Honor.

8 BY MS. ANDREW:

9 Q I'm going to show you what's been marked and admitted as
10 State's Exhibit No. 12. And you can refer to your report,
11 which is at 42, if you need to.

12 A I have a copy.

13 Q Okay. So the first item is this. Do you recognize this
14 item?

15 A Yes.

16 Q It's referenced in your report; right?

17 A Yes. It appears to be what was SLED's Item 1. On the
18 paper that it's wrapped in should be my initials and the lab
19 number and all that information.

20 Q Do you see that information on there?

21 A I do, yes.

22 Q And what kind of analysis did you perform on this item of
23 evidence?

24 A The request in this case was for hair. So I looked at
25 the inside of the wig and tried to determine anything that

1 looked like it was not colored in the same color as the wig
2 was. I pulled that out and microscopically examined it to
3 determine whether a root was present. Because, at SLED, the
4 type of DNA testing that is performed requires root material
5 on the hair.

6 Q And did you find any hairs on this particular item that
7 were suitable for further analysis?

8 A I did not. There were none.

9 Q Okay. I'm going to show you what's been previously
10 marked and admitted as State's No. 13. I'll show you the
11 packaging.

12 A Yes, that's my initials, the item number, the lab number,
13 and the date I processed it.

14 Q And is this item referenced on your report?

15 A Yes. Those are two pair of glasses.

16 Q And what kind of analysis did you perform on these two
17 pairs of glasses?

18 A The request in this case was for touch DNA or ownership.
19 So both items, since they were submitted together, were
20 swabbed together on one set of swabs to try to collect any
21 skin cells that might be present where someone would have worn
22 the glasses or touched the glasses.

23 Q Okay. And you just said that the items were packaged
24 together. Is that how you normally receive separate items of
25 evidence?

1 **A** Not typically. It does happen. It's not out of the
2 norm, but it's not the way that we prefer the evidence to be
3 packaged.

4 **Q** Okay. When you receive items that are packaged together
5 like that, is it your standard protocol or SLED's standard
6 protocol to swab them, one swab for both pairs?

7 **A** It is. Because, in their interaction within the
8 packaging, they could have shared skin cells. Like skin cells
9 could have come off one pair of glasses onto the other one, so
10 we would never be able to say, after they had been in the
11 package together, that they did not basically contaminate each
12 other.

13 **Q** Okay. And you said "contaminate each other." In your
14 experience as a serologist, would the fact that two items are
15 packaged together introduce material that wasn't there from
16 another source, or would it just cross-contaminate those two
17 items?

18 **A** Typically, it would only be between those two items.

19 **Q** I'm going to show you State's Exhibit 43. I don't
20 believe it's in evidence.

21 MS. WALTER: No, it's not in evidence.

22 BY MS. ANDREW:

23 **Q** Do you recognize this item?

24 **A** I do. This is the envelope in which I packaged the swabs
25 after they had dried. They were sealed in the envelope. My

1 initials and date are on the back. The lab number and where I
2 wrote was it is on the front. Also, my initials and the date
3 on the seal, and I filled out the front of the envelope.

4 Q So, once you did that, what did you do with those swabs?

5 MS. ANDREW: And, Your Honor, we'd like to admit Exhibit
6 43 into evidence.

7 THE COURT: No objection?

8 MR. FOX: No objection.

9 THE COURT: All right. 43 is in evidence.

10 (State's Exhibit No. ST-43, Swabs, was received into
11 evidence.)

12 A I returned those to our evidence control department.

13 BY MS. ANDREW:

14 Q Okay. Then what happens to them after that?

15 A They are stored in a secured location until the DNA
16 analyst is ready to work on them, and then she would request
17 them and take custody of them from the people in our evidence
18 control department.

19 Q That's all the questions I have. Please answer any
20 questions Mr. Fox has.

21 CROSS-EXAMINATION

22 BY MR. FOX:

23 Q Ms. Herrera, so what was submitted at this time -- and
24 this was in early 2019; is that right?

25 A I do believe so, yes, sir.

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1 Q Okay. Your report, I think, is -- the February 28th date
2 is the date of your report.

3 A That's the date of the report was through the review
4 process and finalized.

5 Q Exactly. So it would have been submitted at some period
6 of time before that?

7 A My testing was performed on February 13th of 2019.

8 Q Okay. And what was submitted at that time were three
9 items: The wig, glasses, and a yellow cloth; correct?

10 A Yes.

11 Q Okay. Because one I know it listed in that chain of
12 custody is the swab. The swab, you have testified, you
13 generated the swab of the glasses.

14 A The swab was -- the two swabs were taken from the
15 entirety of both sets of glasses.

16 Q Right. But that was at SLED. In other words, that
17 wasn't submitted from Myrtle Beach P.D. That was something
18 you did for testing purposes at SLED; correct?

19 A Correct. The glasses were submitted, and then I swabbed
20 them, and those swabs were then sent on for testing.

21 Q All right. And you testified blood is one of those
22 substances that can be tested for. You don't know what result
23 you'll get, but that's something that, depending on the
24 circumstances, can be detected, of course; right?

25 A It can be if it's present, yes, sir.

1 Q All right. And are you aware -- did you have any
2 dealings with any other items being submitted? Test any other
3 items in this case?

4 A No, sir, just the two pairs of glasses and the wig.

5 MR. FOX: Okay. Thank you.

6 MS. ANDREW: No further questions, Your Honor.

7 THE COURT: All right. Is there any objection to
8 releasing Ms. Herrera?

9 MS. WALTER: Not from the State.

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, ma'am. Thank you so much for
12 being here. Hope you have a wonderful day.

13 THE WITNESS: Thank you. You as well.

14 MS. WALTER: Your Honor, our next witness is the DNA
15 analyst. I expect her testimony to be as lengthy and perhaps
16 not as exciting as the jury might like, so maybe this would be
17 a good time for a break.

18 THE COURT: Okay. We'll take a break and we'll start
19 back at 2:00.

20 MS. WALTER: Thank you.

21 THE COURT: Ladies and gentlemen, please don't discuss
22 this case. Thank you so much.

23 (The jury exited the courtroom at 1:47 p.m.)

24 THE COURT: All right. We'll be at recess until 2:00.

25 MS. WALTER: Thank you, Your Honor.

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1 (A brief recess was taken from 1:47 p.m. to 2:00 p.m.)

2 THE COURT: Are we ready?

3 MS. WALTER: Yes, Your Honor.

4 THE COURT: All right. Can we have the jury?

5 MS. WALTER: We're down to our last two. We have Agent
6 Hefney and then Detective Morrell for the video, and then the
7 State should be resting.

8 THE COURT: Okay. Who is going to call this witness?

9 MS. WALTER: I have got the rest of it, Your Honor.

10 THE COURT: Okay.

11 MS. WALTER: Just going to let her sit here and relax.

12 (The jury entered the courtroom at 2:01 p.m.)

13 THE COURT: All right. Ms. Walter?

14 MS. WALTER: Thank you, Your Honor. The State calls
15 Agent Adrienne Hefney.

16 THE CLERK: Please raise your right hand and place your
17 left hand on the Bible.

18 ADRIENNE HEFNEY,

19 after having been duly sworn, was examined and testified
20 to as follows:

21 THE CLERK: If I can get you to state your name and spell
22 it for the Court.

23 THE WITNESS: Adrienne Hefney. H-e-f-f-n-e-y.

24 MS. WALTER: May I, Your Honor?

25 THE COURT: Yes, ma'am.

1 DIRECT EXAMINATION

2 BY MS. WALTER:

3 Q Good morning, Agent Hefney. How are you?

4 A Good. How are you?

5 Q Tired.

6 Where do you work?

7 A I work with the State Law Enforcement Division, more
8 commonly known as SLED.

9 Q How long have you worked at SLED?

10 A Since November of 1997, so just shy of 25 years.

11 Q What is your current assignment?

12 A I'm a senior forensic DNA analyst.

13 Q What does -- I'll start with what does a forensic DNA
14 analyst do, and then we'll get into being a senior.15 A Okay. Well, a forensic DNA analyst analyzes biological
16 materials that was left behind at a crime scene and compares
17 them to known standards, which are standards that are
18 collected from the person involved in the case. And they can
19 be a buccal swab from the inside of your cheek or blood that
20 was drawn from the vein.21 Q And then what does a senior forensic DNA analyst do in
22 addition to being, I imagine, a forensic DNA analyst?23 A Well, much of the same thing. We just analyze more
24 cases. We have more experience in doing it. We train other
25 individuals. I also serve as an auditor for what's called

ADRIENNE HEFNEY - Direct by Ms. Walter

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1 QAS. That's Quality Assurance Standards. They're the
2 standards that FBI mandates all DNA labs across the nation
3 follow.

4 So I serve as an auditor where I'll go to different labs
5 mainly in the Potomac region and audit them on a yearly basis
6 to make sure they are following those standards as well.

7 Q What is your educational background?

8 A I have a bachelor of science degree in biology from the
9 University of South Carolina. I also have a master of
10 business administration degree from Winthrop University. I
11 have taken post-graduate courses in the field of genetics and
12 population genetics, molecular biology, and statistics, I
13 believe it was, and cell molecular biology.

14 Q Did you -- you said you have been at SLED for 25 years.
15 Of those 25 years, how long have you been doing DNA forensic
16 analysis?

17 A I started as a non-sworn forensic technician in the DNA
18 casework department in November of 1997 and was promoted to
19 analyst in March of 1999.

20 Q When you started doing DNA analysis, did SLED provide you
21 with any sort of training?

22 A Absolutely. We receive our training on the job by a
23 court-qualified analyst.

24 Q Can you describe that training program?

25 A It's a pretty rigorous training program. We work

1 training samples and make sure we can do those, and then we'll
2 progress on to supervised case work. And, also, each year,
3 we're required to attend a symposium or have at least eight
4 hours of continuing education in the field of forensic DNA
5 analysis.

6 Q So let me go back, first, a step to the training program.
7 How long is that training program before you become, like, a
8 court-certified DNA analyst?

9 A Typically, it's about a year and a half to two years.

10 Q At the end of that year-and-a-half to two-year training
11 program, do you have to pass any sort of competency exam?

12 A Yes. We pass a competency exam before we're allowed to
13 be considered a qualified DNA analyst, and each year, we're
14 also proficiency tested to stay -- to make sure we remain
15 competent.

16 Q So did you pass that initial competency exam?

17 A I did.

18 Q Have you passed all the proficiency exams since then?

19 A I have.

20 Q So let's now get into a little bit about DNA. What is,
21 in layman's terms, DNA?

22 A DNA stands for deoxyribonucleic acid. And that's just a
23 chemical substance found in the certain cells of our bodies
24 that just make us who we are. We get half of our DNA from our
25 mom and half of it from our dad. No two people have the same

1 DNA with the exception of identical twins. And also, though,
2 99 percent of our DNA is the same. It's the DNA that codes
3 for us being human. It's giving us two arms, two eyes, two
4 legs. But, of course, you look around the courtroom, and
5 everyone looks different, so we know our DNA is different,
6 again, with the exception of identical twins.

7 Q So, although, humans tend to share about 99 percent of
8 our DNA, that other 1 percent is what makes us all look
9 different?

10 A Exactly.

11 Q Does a person's DNA remain constant throughout their
12 life?

13 A It does.

14 Q Short of having a full transfusion, is there any way to
15 change your DNA?

16 A There is not.

17 Q If you find DNA on an item, to be clear, is there any way
18 you can tell when it was left there or how it was left there?

19 A I cannot.

20 Q What types of fluids or substances can be tested for DNA?

21 A Blood, semen, saliva, skin cells, bone, teeth, hair,
22 roots, hair strands with a different type of DNA.

23 Q And are you familiar with the term "touch DNA" or "trace
24 DNA"?

25 A I am.

1 Q What does that mean?

2 A Touch DNA is typically if you touch an item and you come
3 along and swab that item behind where I touch, you may or may
4 not see skin cells that were left behind. It depends on how
5 you handle something, whether, if I'm touching it like that,
6 you probably won't get it. But if I'm remembering it for any
7 considerable length of time and you come back and swab it
8 after that, you may see some of my skin cells left behind.

9 Q So, essentially, it's skin cells -- it's DNA not from
10 blood or semen or saliva?

11 A That's correct.

12 Q Now, you said earlier that we get half of our DNA from
13 our mother and half from our father. Is there a way to
14 isolate what we get from our mother and what we get from our
15 father?

16 A Yes. We have a test at SLED or a type of DNA testing
17 that we can do known as Y-STRs. Y-STR testing will only
18 amplify male-inherited DNA, so the DNA that you get from your
19 father and his side of the family. So if you're -- say, the
20 son and the father will have the same DNA profile, Y-STR DNA
21 profile, but so will the paternal grandfather and uncle. So
22 that paternal DNA linkage is throughout the paternal side of
23 the family.

24 Q And that's if you're looking only at the Y-STR profile?

25 A That is correct.

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1 **Q** But if you looked at the full DNA profile, father, sons,
2 and anyone in a paternal line, they'll have different DNA
3 profiles?

4 **A** That is correct. If you look at what we call autosomal
5 DNA where you get from both your mother and your father, you
6 will have a different DNA profile.

7 **Q** Excuse me [coughing]. Is the process of developing DNA
8 profiles new?

9 **A** No.

10 **Q** How long has this idea of forensic DNA been around?

11 **A** Since at least the late '80s maybe. When I first started
12 at SLED, we were doing a type of DNA testing called RFLP, and
13 that stands for Restriction Fragment Length Polymorphism. Big
14 word, but you had to have a big span of DNA to get any kind of
15 DNA profile.

16 And I started off, actually, training as a DNA analyst in
17 that, and as soon as I was about to be qualified, we switched
18 technologies and went to what's known as PCR, is what we do
19 now. That stands for Polymerase Chain Reaction. And,
20 theoretically, that's just where you have to have a
21 pinhead-size stain to be able to get a DNA profile from it.

22 **Q** And is there a specific process of DNA analysis that's
23 used at SLED?

24 **A** We use the PCR.

25 **Q** Are there sort of like three separate steps that you

1 follow before you get to the actual analysis? Can you
2 describe the terms "extraction," "quantification," and
3 "analysis"?

4 **A** Yes. We extract DNA from whatever substrate we have,
5 usually swabs taken from an item. And then, once that is
6 extracted, we'll go through a process where it's purified and
7 we'll remove any extra salient materials and we have purified
8 DNA. From there, it's a quantitation step, so you see how
9 much DNA you have in that sample. And, from there, we'll know
10 whether we need it concentrated, if it's a small amount or
11 diluted, if it's a large amount, and go to an amplification
12 process.

13 And if you think about it, that's the whole concept of
14 PCR testing. It's like -- like I said, theoretically, you can
15 have a pinhead-size stain and get a DNA profile from it.
16 That's kind of like, if you were to put a piece of paper on a
17 Xerox copier and Xerox that piece of paper a million times,
18 it's still going to have that same information and look like
19 that original piece of paper, but you'll have a book now.

20 Same as with the DNA. It might start off as a
21 pinhead-size stain and will go through what's called an
22 amplification proces, and it's in a heat block where it's just
23 copying that DNA, the same amount of DNA. And then that's
24 where you are able to see a DNA profile from that pinhead-size
25 stain.

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1 Q So it doesn't change anything. It simply makes it easier
2 for you to interpret or read.

3 A Absolutely.

4 Q Has SLED's method of analysis, what you have just
5 described, gained acceptance in the scientific community and
6 been deemed reliable?

7 A Yes.

8 Q Is it, in fact, used in other labs?

9 A It is. Nationwide.

10 Q Is SLED accredited by any organizations?

11 A Yes, we are.

12 Q What organizations?

13 A Well, the law enforcement side of SLED is accredited by
14 CALEA. The laboratory side is accredited by what we call
15 ANAB. And I'm going to have to get my cheat sheet out to even
16 be able to tell you what that stands for. ANAB stands for
17 ANSI National Accreditation Board. And we're also, as I said
18 before, accredited by the FBI with our quality assurance
19 standards that we have to follow.

20 Q So that means that ANAB and the FBI have both certified
21 that SLED is using approved, reliable methods?

22 A Yes. And we are -- the FBI quality assurance standards,
23 we are annually audited with that. And ANAB, I think, is like
24 every four years.

25 Q Okay. Have you ever been certified as an expert in

1 forensic DNA analysis?

2 A I have.

3 Q Approximately how many times?

4 A About 90 times now.

5 Q And what courts have you been qualified as an expert in?

6 A In federal, state, and civil courts.

7 MS. WALTER: Your Honor, at this time, I would ask that
8 Agent -- well, if Mr. Fox has any questions; otherwise, I
9 would ask that she be qualified as an expert in forensic DNA
10 analysis.

11 MR. FOX: I don't have any questions, Your Honor. If we
12 may very briefly approach.

13 THE COURT: Sure.

14 BENCH CONFERENCE

15 (The following bench conference was held out of the
16 hearing of the jury and others:)

17 MR. FOX: I thought this would be a better time than the
18 middle of it. I just want to, for the record, renew the
19 objections that we had back in February before Judge Addy,
20 which was about -- specifically about the validity of any
21 calculations from those glasses because of contamination
22 issues, etc. That was fully explored and argued in front of
23 Judge Addy back in February, but I just want to make sure
24 that's on the record.

25 MS. WALTER: Right. It was a motion to suppress.

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1 MR. FOX: Yes.

2 MS. WALTER: And that Judge Addy denied.

3 MR. FOX: That's exactly right. So I'm just renewing
4 that motion for the record, and, that way, we won't have to
5 interrupt in the middle of the case. Thank you.

6 THE COURT: All right.

7 (Open court resumes as follows:)

8 THE COURT: All right, ladies and gentlemen. Agent
9 Hefney is found qualified as an expert witness in the field of
10 forensic DNA analysis.

11 MS. WALTER: Thank you, Your Honor.

12 BY MS. WALTER:

13 Q Agent Hefney, were you asked to perform DNA analysis on
14 items in -- and I'm going to give you two SLED numbers:
15 L-18-09696 and L-19-17807?

16 A That is correct.

17 Q And, just out of curiosity, can you tell us why there are
18 two different lab numbers for the same case?

19 A Apparently, it was logged in under the L-18-09696 case
20 number initially. And when additional evidence came in on the
21 case, it got a different lab number. A name search, I guess,
22 wasn't done, and it was given a brand new case number, and I
23 was able to just link the two, because it was the same names
24 in both cases but just didn't get under the right case number.

25 Q Okay. So both lab numbers refer to the same case?

1 A That's correct.

2 Q And let's jump ahead for a moment. After you complete
3 your analysis, do you create a report of your findings?

4 A That is correct.

5 Q I'm going to show you -- if I may approach with State's
6 Exhibit 44. Do you recognize that?

7 A Yes. This is the report I issued on August the 12th,
8 2021, and it has -- the last page has my signature and title
9 on the back.

10 Q So is that a fair and accurate copy of your report?

11 A It is the same copy I have in my case file.

12 Q Okay. And you have one for your own reference?

13 A I do.

14 MS. WALTER: Your Honor, at this time, we'd ask that
15 Exhibit 44 be admitted.

16 MR. FOX: Without objection.

17 THE COURT: All right. 44 is in evidence.

18 (State's Exhibit No. ST-44, Hefney Report, was received
19 into evidence.)

20 BY MS. WALTER:

21 Q And then let me also -- and your analysis, I think we
22 just said, combined items or involved items from both the L-18
23 lab number and the L-19 lab number?

24 A That's correct.

25 Q Does SLED have an internal mechanism to track everyone

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1 who comes into contact with items of evidence once they're
2 taken to SLED?

3 **A** Yes. We have a chain of custody.

4 **Q** Is that chain of custody kept in the ordinary course of
5 SLED's business?

6 **A** Yes, it does.

7 **Q** And it's specific to each individual lab number?

8 **A** And each individual item, yes.

9 MS. WALTER: Your Honor, if I can approach with 38-B.

10 BY MS. WALTER:

11 **Q** If you can look at State's Exhibit 38-B and tell me if
12 you recognize that.

13 **A** Yes. This is our chain of custody for L-19-17807.

14 **Q** Does that appear to be a certified copy, fair and
15 accurate copy of the internal chain?

16 **A** Yes. It has the stamp up here.

17 MS. WALTER: Your Honor, we would ask at this time that
18 38-B be admitted.

19 MR. FOX: Without objection, Your Honor.

20 THE COURT: All right. 38-B is into evidence.

21 (State's Exhibit No. ST-38-B, Chain of Custody, was
22 received into evidence.)

23 BY MS. WALTER:

24 **Q** So when a case is first assigned to you, what do you do?

25 **A** I prepare the case for DNA analysis. If there's serology

1 involved, I'll go through and perhaps take a cutting from it
2 to see if it's presumptive tested positive for blood or not.
3 And if that is not the case, then I make a cutting from the
4 substrate or the swab for DNA analysis.

5 Q Let me back you up; we just had Verona Herrera testify.
6 Has SLED -- since 2018, has SLED sort of had DNA analysis
7 analysts now do some serology as well?

8 A Yeah, or we have some serologists prepare it for DNA,
9 yes.

10 Q Okay. And are you given any information about the case
11 itself?

12 A Sometimes we get an incident report. Sometimes we don't.

13 Q Is a law enforcement agency -- say they're conducting an
14 investigation and they have -- let's use this banker's box.
15 They have a banker's box filled with evidence that they want
16 tested. Can they bring as many items of evidence to SLED as
17 they want for testing?

18 A No.

19 Q And why not?

20 A Of course DNA testing is a very timely and expensive
21 science that we do. We ask -- it's kind of an unwritten
22 policy, but it's a policy that we ask, for very violent
23 crimes, you submit five of your most probative samples; for
24 nonviolent, two.

25 Q It's called the South Carolina Law Enforcement Division.

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1 So how many counties does SLED test for?

2 **A** Forty-six counties in the state.

3 **Q** So every law enforcement agency in those 46 counties?

4 **A** Yes, except with the exception of a few that have their
5 own private labs, like Richland County. The City of Columbia
6 is in Richland County; we do their cases but -- and Richland
7 County only does Richland County cases. Just with that
8 exception, but we still do all 46 counties.

9 **Q** A lot of analysis requests?

10 **A** Yes.

11 **Q** So when you are doing your analysis, do you use any
12 particular software program to help you?

13 **A** Yes. We have -- recently, we added a software program
14 known as STRmix. What STRmix does is it allows us to be able
15 to interpret mixtures that, previously, we weren't able to
16 interpret. We had such strict guidelines as to, you know, did
17 it reach a certain level, was there, you know, one allele --
18 that's how we state DNA -- one allele up here and one there.
19 It had to reach some very strict criteria for us to be able to
20 interpret it just visually. So we employed a software program
21 to help us be able to do that interpretation, and it's a
22 software program that's used by labs all across the nation, so
23 it's not just SLED using it.

24 **Q** Would it be fair to say -- and this is absolutely not
25 technical language -- that STRmix is almost like a fancy

1 calculator when it comes to DNA analysis, and an analyst would
2 be able to do the calculations themselves if you weren't
3 servicing 46 counties?

4 **A** Well, it's -- you can say that, yes. I mean, we can
5 actually be able to do the calculations to come up with the
6 statistic that STRmix comes up with, but that would be very
7 time consuming and a lot of mathematical calculating.

8 **Q** And we're talking about mixtures. What do you mean by a
9 mixture?

10 **A** That's where you have more than one person's DNA on a
11 stain.

12 **Q** Is there a limit to how many people's DNA can be in a
13 mixture before you will say too complex, we cannot analyze it?

14 **A** Yes. For autosomal DNA, four is the limit. Anything
15 over four is uninterpretable. For Y-STR, three is the limit.
16 Anything over three, or four or more, is uninterpretable.

17 **Q** Okay. So for autosomal, which is the combined DNA of
18 both -- that you get from your mother and your father, you can
19 analyze a mixture of up to four people and no higher?

20 **A** Correct.

21 **Q** And Y-STR is three but no higher?

22 **A** Correct.

23 **Q** And what is the reasoning behind that?

24 **A** Just what we determined through our validation studies.
25 When you have autosomal mixtures, you know, potentially, there

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1 will be two alleles per person. So if you're analyzing up to
2 five people, you could have potentially ten alleles at one
3 location, and that's just -- we don't do that. Our validation
4 studies say that the four -- while our interpretation up to
5 four people is deemed the most reliable.

6 Q And I want to break down a couple of the words, because
7 you and I have spoken quite a bit about DNA. So you're
8 talking about locations. What do you mean when you're talking
9 about a location?

10 A Yes. We have 23 chromosomes in our body, or 23 pairs of
11 chromosomes. And so those are locations that we look at.
12 Like, for example, we have a location called D-3. That's
13 Chromosome 3 at site whatever on that chromosome, like 1353, I
14 think it is. But that's just -- we look at these different
15 chromosomal locations to be able to determine if that DNA
16 profile -- who that DNA profile came from and make a
17 comparison.

18 Q And then you're talking about alleles. What do you mean
19 when you say an allele at a location?

20 A An allele? It's just like in -- what we look at on this.
21 It comes in a form -- that's the half of the DNA you get from
22 your mom and the half from your father.

23 So, in PCR, we go by short tandem repeat segments. So
24 say that is how many times a certain pattern of your DNA
25 repeats. And let me look at our chart and give you an

1 example.

2 So everyone will have different repeat sequences. You
3 can say -- it's almost you think of, like, shoe sizes; no one
4 has the same shoe size or people have different shoe sizes.
5 So, for example -- and I'm looking at the known standards for
6 it.

7 So D-3, site 1358. Demetrius McClary is a 1517. So he
8 either got the 15 from his mom or his dad and the 17 from his
9 mom or his father.

10 And then Liliana Hernandez-Diaz has a homozygote of 15.
11 So that means she got 15 repeats from both her mom and her
12 dad.

13 Q And so that number that you're telling us, 15 or 15, 17,
14 that's what you're calling an allele?

15 A That's correct.

16 Q Now, when you're using the STRmix program, before we
17 start getting into your conclusions, can you talk to us about
18 proposition sets and sort of how things are worded?

19 A Absolutely. So when we're using the STRmix program, the
20 analysis is going to first look at the DNA profile and
21 determine how many contributors we have contributing, and
22 that's going to be based on the number of alleles, based on
23 the height difference of them.

24 And so, in this case, say we determine that that DNA
25 profile developed was from two people. Each STRmix -- with

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1 STRmix, we're going to give each a proposition set, each
2 standard that we receive. So, in this case, I received a
3 known standard from Demetrius McClary and a known standard
4 from Liliana Hernandez-Diaz. Each of those is going to get a
5 proposition set to where we're making a comparison that's
6 saying, like, this DNA profile was interpreted as a mixture
7 originating from two people.

8 I'm going to make the comparison to Liliana Hernandez and
9 unidentified, unrelated individual because we have to make two
10 people, and then two unidentified, unrelated individuals.

11 Now, each one of those is called HP, which is
12 prosecutor's hypothesis, and HD, which would be defense
13 hypothesis. By any means, it doesn't mean that that's this
14 case, this prosecutor's hypothesis or this defense attorney's
15 hypothesis. It's just a generalization because, in any court
16 case, it's going to be -- the prosecutors are going to say the
17 person on trial is the one that did it, and the defense is
18 going to say, no, anybody other than my client did it. So
19 that's how we phrase HP and HD in each proposition set that we
20 do.

21 **Q** Let me have you define a term. You said -- you talked
22 about standards. What's a standard?

23 **A** The known standard. The one that I said comes from the
24 buccal swab from the inside of your cheek or a blood standard
25 from your vein.

1 Q And so, for Y-STR -- excuse me -- for STRmix
2 interpretation, if one proposition set -- if you want to
3 say -- if someone is trying to say that my DNA is in a
4 two-person mixture --

5 A Mm-hmm.

6 Q -- are you saying -- it used to be that you would say,
7 "Oh, it's, you know, 1 in 300 septillion chances that that DNA
8 profile belongs to Mary-Ellen Walter."

9 A Mm-hmm.

10 Q Does STRmix phrase it in the same way or do you phrase it
11 in the same way?

12 A It does not. Now, we give -- and this is a trend that's
13 shifting nationwide that we're going to what we call
14 likelihood ratios. And let me explain likelihood ratios.
15 It's basically -- the definition of it is, given the evidence
16 that you have, what's more likely to have happened?

17 An example I like to use is if you had a plate of cookies
18 on a table at home, and you have two children in the house;
19 one child is not even one years old yet, so they're not
20 walking or anything, and the other child is four years old,
21 and they are walking and talking and climbing and everything.

22 Well, the plate of cookies is there, and all of them are
23 eaten. Which one is more likely to have eaten the plate of
24 cookies: The one that's just barely crawling or the one
25 that's walking and can climb things?

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1 That's the simple way to think of how likelihood ratios
2 are there. Given that the plate of cookies was there and now
3 it's gone, and you have these two people involved, which one
4 is more likely to have eaten the plate of cookies.

5 **Q** So one hypothesis would be one-year-old child and an
6 unidentified, unrelated individual versus two unidentified,
7 unrelated individuals. And then your next proposition set
8 would be four-year-old and an unidentified individual versus
9 two unidentified, unrelated individuals?

10 **A** That's correct.

11 **Q** Okay. And, so, now let's get into the nuts and bolts of
12 this case.

13 **A** Okay.

14 **Q** Did you, in fact, examine a number of items for this
15 case?

16 **A** I did.

17 **Q** And let me start with -- I think you actually said you
18 had two DNA standards.

19 **A** Mm-hmm.

20 MS. WALTER: If I may approach, Your Honor, I'm
21 approaching with State's Exhibits 37 and 41.

22 BY MS. WALTER:

23 **Q** So let's deal first with Exhibit 37. Do you recognize
24 what that is?

25 **A** Yes. This is -- here's my initials and date right here.

1 This is a known standard for McClary. My initials and date's
2 also on the back of the envelope.

3 Q Let me just pause here. And so I think you identified in
4 the upper right corner?

5 A No. My initials are right here on that.

6 Q Oh, there you go. Oh, I should know that. It's
7 backwards. There you go. Okay. Your initials are on the
8 backside, 10/17/19 ARH?

9 A Yes, that's correct.

10 Q So is this in -- and this is still sealed?

11 A Yes.

12 Q Is this in the same or substantially similar condition as
13 to when you were done with your analysis?

14 A Yes.

15 MS. WALTER: Your Honor, I would ask that State's Exhibit
16 37 be admitted.

17 MR. FOX: Without objection, Your Honor.

18 THE COURT: All right. 37 is entered without objection.

19 (State's Exhibit No. ST-37, McClary Buccal Swab, was
20 received into evidence.)

21 BY MS. WALTER:

22 Q And then Exhibit 41 has already been admitted. Can you
23 tell us what that is?

24 A Yes. This is identified as known standard from the
25 victim. There's my initials and date here and here. And so

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1 these were known standard, or buccal swabs, from the victim,
2 Liliana Hernandez-Diaz.

3 Q And, now, we heard, I think through Verona Herrera, that
4 SLED also assigns an individual item number to evidence that
5 it receives?

6 A Yes.

7 Q Okay. So is the defendant -- what SLED item number did
8 the defendant's standard go?

9 A Okay. The defendant's standard, Item 1, which is this
10 one, would be buccal swabs from Demetrius McClary. Item 4,
11 which is this one, would be buccal swabs from Liliana
12 Hernandez-Diaz.

13 Q Okay.

14 MS. WALTER: And I think these have all been admitted.
15 So, Your Honor, I'm approaching with State's Exhibit 39, 40,
16 and 43 that have all been admitted.

17 BY MS. WALTER:

18 Q If you can just look at those and tell me if you
19 recognize those items as items that you analyzed.

20 A I do. I see my initials and date on both of these
21 pouches, and Item 43 has our barcode label on the inside.

22 Q Okay.

23 A Or State's Exhibit 43. I'm sorry.

24 Q And what's the SLED item number for that?

25 A 2.1. L-18-9696 2.1.

1 Q And what specifically is that item of evidence?

2 A Swabs from glasses.

3 Q And then for State's Exhibit 39 and 40 -- and I think the
4 SLED lab was cut through. I got it. There we go. Did they
5 receive separate item numbers?

6 A They did: Item 2 and 3.

7 Q Okay. So what's Item 2?

8 A Item 2 are fingernail scrapings. Well, Item 2.1 was
9 swabs from fingernail scrapings of Liliana Hernandez-Diaz.

10 Item 3.1, which will be from this one, swabs from the
11 left fingernail scrapings of Liliana Hernandez-Diaz.

12 Q Okay. So this 2.1 is right hand; 3.1 is left hand?

13 A Left hand.

14 Q Okay. Okay. So let's start with the SLED Item 2.1,
15 which is the swabs from the two pair of glasses. And we went
16 through this with Ms. Herrera, but if you have two items of
17 evidence, would you, as a DNA analyst, prefer that they be
18 packaged separately or together?

19 A Separately.

20 Q Why is that?

21 A Because you could have the potential of introducing
22 biological material from one to the other when you package
23 them in the same package.

24 Q Would -- the way you just said it. So a pair of glasses
25 in my right hand, pair of glasses in my left hand. If they're

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1 packaged together, you wouldn't be able to tell whose DNA was
2 on which pair of glasses; right?

3 **A** Not if they were swabbed together, correct.

4 **Q** So it wouldn't introduce Judge DeBerry's DNA unless he
5 had touched them or worn them?

6 **A** Correct.

7 **Q** It just prevents you from being able to separate the
8 findings per pair of glasses.

9 **A** That's correct.

10 **Q** Can you tell us -- did you analyze the swabs from the two
11 pairs of glasses using both the defendant's standard and the
12 victim's standard?

13 **A** I did.

14 **Q** So let's look first at the Proposition Set 1 dealing with
15 the victim's standard.

16 **A** Okay.

17 **Q** Was it -- well, just tell us what your findings were.

18 **A** Okay. I'm going to read directly from my report: "The
19 DNA profile was interpreted as a mixture originating from two
20 individuals. The HP," or the prosecutor's hypothesis, "is
21 that Liliana Hernandez-Diaz and an unidentified, unrelated
22 individual contributed to the mixture. Defense hypothesis
23 would be two unidentified, unrelated individual contributed to
24 the mixture.

25 "My result for that one is the DNA profile is

1 approximately 260 sextillion times more likely if Liliana
2 Hernandez-Diaz and an unidentified, unrelated individual
3 contributed to the mixture than if two unidentified, unrelated
4 individuals contributed to the mixture."

5 My next set would be Proposition Set 2 --

6 Q Well, actually, let you stop you there before we go on to
7 the next proposition set. You mentioned a statistic: 260
8 sextillion times more likely. How many zeros are there in a
9 sextillion?

10 A That's 2.6 to the power of 23. So that would be -- I
11 need to get my other cheat sheet out for that one. A
12 sextillion, 10 to the 21. So we're looking at the cheat sheet
13 that breaks it down, because I have these on my desk at work.
14 A sextillion has six groups of three zeros after the thousand.

15 Q So it's a whole lot of zeros.

16 A Yes.-

17 Q And that -- would you expect to find someone's DNA on an
18 item that they wore regularly?

19 A Yes.

20 Q Now, turning to Proposition Set 2, did that focus on the
21 defendant's standard?

22 A It did.

23 Q And what was your conclusion in that case?

24 A The DNA profile, again, is interpreted as a mixture
25 originating from two individuals. The HP is that Demetrius

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1 McClary and an unidentified, unrelated individual contributed
2 to the mixture. The HD is that two unidentified, unrelated
3 individuals contributed to the mixture. And the result was:
4 An uninformative statistical result was obtained. No
5 conclusion can be made regarding Demetrius McClary as a
6 possible contributor to the mixture under the listed
7 propositions.

8 Q So let me stop you there for a second before we go on,
9 because I know that there's more after that. What do you mean
10 by an "uninformative statistic result"?

11 A When we get a likelihood ratio of one, that means we
12 can't say whether there was an inclusion or exclusion with
13 that one.

14 Q But were you able to -- we had talked before about being
15 able to isolate male DNA, or the Y-STR.

16 A That's right.

17 Q Were you able to do that in this case?

18 A I was.

19 Q And can you tell us what you found there.

20 A Again, I'll read directly from my report: "The Y-STR
21 profile developed is a mixture of at least two male
22 individuals. The partial Y-STR profile of the major
23 contributor to this mixture matches the Y-STR profile of
24 Demetrius McClary. Paternal male relatives of Demetrius
25 McClary may not be excluded as the major contributor of this

1 profile."

2 And then we develop a statistic, just like the likelihood
3 ratio; however, we don't use STRmix when we're doing Y-STR
4 testing. We use another database to get our statistic from.

5 So this one says, Y-filer-plus statistics for this
6 profile were calculated using the YHRD, or Y-Chromosome
7 Haplotype Reference Database. That's a database that has male
8 individuals only that we are able to develop a statistic for.

9 And, again, reading from my report: "The probability of
10 randomly selecting an unrelated male individual having a Y-STR
11 profile matching the major contributor to this item is
12 approximately 1 in 9,700. And a partial Y-STR profile of the
13 minor contributor is insufficient for interpretation."

14 Q So let me break down a couple of those things. What do
15 you mean by "major contributor" and "minor contributor"?

16 A Okay. So we have different concentrations of DNA.
17 You'll see somebody that may have worn something or -- let's
18 just use, for example, the steering wheel of your car. You
19 are going to be the major contributor to the steering wheel of
20 your car; however, your spouse may drive your car every now
21 and then. So if you were to swab your steering wheel, you may
22 or may not get a mixture of two people. The person that
23 drives the car is going to be the major. The person that
24 drives the least amount will probably be the minor.

25 In this case, we had a swab from two different pairs of

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1 glasses but one swab. So Ms. Liliana Hernandez-Diaz would be
2 the major contributor on these glasses, and somehow, with the
3 autosomal, she would probably mask whoever we could, you know,
4 see under there as a minor contributor. So a tool in our shed
5 there is to use Y-STR, and that way, we had two males having
6 contributed to this pair of glasses with Mr. McClary being the
7 major person, and a minor male may have worn it at some point
8 in time, and we picked him up, and he's the minor contributor.
9 And his minor contribution was so minor that it was
10 insufficient to even interrupt.

11 Q So, by looking at the Y-STR, you're sort of taking
12 Liliana out of it.

13 A That is correct, because it's strictly for male DNA.

14 Q And the statistic that you mentioned, 1 in 9,700,
15 obviously, is not a whole lot of zeros. So why is there that
16 difference in magnitude of statistic?

17 A Okay. Because with the initial database, you're using
18 female and males, for one. With this database, you're only
19 use males, and you're only using half of their DNA, so the
20 half that came from their paternal side. And so it's going to
21 be considerably lower than from the sextillion that involved
22 everybody and all of their DNA to the males that just involves
23 half of their DNA.

24 Q Who maintains the Y-filer or plus database?

25 A It's YHRD -- we call it YHRD. Like I said before, the

1 Y-Chromosome Haplotype Reference Database. And it's
2 maintained, I believe, by the scientists in California that
3 updates and maintains it, and we are able to access it.

4 Q Are samples added to that database on a regular basis?

5 A They are.

6 Q And so, in Y-STR statistic terms, what's the highest that
7 you generally see for a Y-STR statistic?

8 A That's one of the highest I have seen. I'm trying to
9 think, in my career, I may have seen, like, 12,000, but that's
10 been the most I have seen.

11 Q What do you see the most often?

12 A About 9,700. Around that number.

13 Q And you have talked about mixtures. Like, I want to keep
14 this, like, super layman's terms. How do you determine how
15 many people are in a mixture?

16 A If you have, like, for example, with Y-STRs, it's only
17 going to be one allele shown per male, okay, because you're
18 just using that half from his father's side. So if you have
19 two at a location, then that indicates that you have a mixture
20 of two males. If you have more than two, then you'll have a
21 mixture of at least three males.

22 Q And, then, before we move on to the fingernail scrapings,
23 I do want to get into -- the alleles, these are -- if you look
24 at an electropherogram or if you look at a chart, that's like
25 a peak that you'll see?

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1 **A** That's correct.

2 **Q** Do you -- and you would assign a number to the peak. So,
3 for instance, before, you were talking about Liliana being --

4 **A** 15.

5 **Q** -- 15 homozygote, whatever, that word. 15. And the
6 defendant being a 15 to 17.

7 **A** Yes.

8 **Q** So that peak is what you put the number on; correct?

9 **A** That's correct.

10 **Q** Do you call -- do you put a number or call every peak
11 that you see at a particular location?

12 **A** Yes. If it's above our analytical threshold, it's
13 called.

14 **Q** And how is your analytical threshold called?

15 **A** Through valuation studies. Our analytical threshold is
16 determined -- we'll do a validation before we even ever put
17 any process online. And that's a study done in-house. It may
18 necessarily be done by in-house personnel because sometimes
19 we'll outsource it, but they'll come in our house and do the
20 validation studies, because our instruments are
21 environmentally sensitive. So they'll have to do the studies
22 with the humidity level at SLED, the temperature at SLED, the
23 instruments at SLED.

24 All of that determines how we determine our analytical
25 threshold. And so it's what, say, anything below -- our

1 analytical threshold for Y-STR is 125 relative fluorescent
2 units. That's just on our instrument that we develop the DNA
3 profile on. It uses what we call capillary electrophoresis,
4 where DNA runs through a capillary and it's separated by size.
5 Anything below that 125 level may be just noise, basically,
6 from the capillary. Anything above that, we trust that that's
7 a legitimate allele or profile, and we call that.

8 Q So I'm going to try and break it down a little bit. The
9 analytical threshold, that sort of is how high the peak is;
10 correct?

11 A That's correct.

12 Q So, are you looking for a certain height, peak, before
13 you're confident that you can call that an allele?

14 A Yes, it has to be above 125.

15 Q And you talked about validation studies. So is the
16 threshold dependant on SLED's instrumentation and SLED's lab
17 environment?

18 A That's correct.

19 Q Would SLED be able to use an analytical threshold set --
20 I think you said Richland County has its own lab. If they
21 have the same brand of equipment, would you be able to say,
22 "Hey, Richland County, what's your threshold? Can we use it?"

23 A No, Richland County would need to do their own validation
24 study to determine what threshold is set for their lab, as
25 well as SLED would have to do it for theirs. While it may be

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1 the same instrument, it's in two different places.

2 Q When you are doing those validation studies, are you or
3 whoever is doing the validation, looking to make sure that you
4 are capturing as much useful information as possible?

5 A Absolutely. And leaving the unusual information, which
6 is the noise that's below that threshold, alone.

7 Q Now, let's turn to -- I'm actually going to do Item 3.1
8 first, which would be the swabs from the left fingernail
9 scrapings of Liliana Hernandez-Diaz.

10 A Okay.

11 Q Can you tell us what you found there?

12 A Sure. "The DNA profile developed is attributable to
13 Liliana Hernandez-Diaz. The presence of a minor male
14 contributor is indicated, however, is insufficient for
15 interpretation, and the partial Y-STR profile developed is
16 also insufficient for interpretation." And that's from her
17 left fingernail scrapings.

18 Q So does that mean there just wasn't enough -- there
19 wasn't even a pinhead size?

20 A That just means that, yeah, we could see that there's a
21 minor male there, but she's masking. She's the predominant
22 contributor there, so we were not able to pull him out,
23 per se.

24 Q Pull any male out.

25 A Yeah, any male.

1 Q Now looking at SLED Item 2.1, which are the swabs from
2 Liliana's right fingernails, can you tell us what you found
3 there?

4 A "A DNA profile was developed. Due to the" -- and this is
5 the STRmix or our autosomal part that's first. "Due to the
6 inability to determine the number of contributors, no further
7 interpretation will be offered."

8 So that is when we have -- say, we see peaks, and we --
9 some have a lot at a location and some have a little. When we
10 can't determine how many people are contributing to this
11 mixture, then we don't interpret it any further. But I kept
12 on to do "Y-STR profile developed matches the Y-STR profile of
13 Demetrius McClary. Paternal male relatives of Demetrius
14 McClary may not be excluded as a contributor of this profile."

15 And then again, "Y filer statistics for this profile were
16 calculated using the YHRD database. The probability of
17 randomly selecting an unrelated male individual having a YSTR
18 profile matching this item is approximately 1 in 9,700.

19 Q Okay. And that, I think, essentially concludes your --
20 the conclusions that you made.

21 A That's -- yes.

22 Q Now, in this case, you were actually asked to provide all
23 of your case notes, raw data, everything sort of that led to
24 your conclusions; correct?

25 A That is correct.

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1 Q And is that something that you do on a regular basis?

2 A If asked, yes.

3 Q You don't have a problem sharing that information?

4 A No.

5 Q And we have had some questions earlier or some ideas
6 floating around. Would SLED ever -- if a defendant or defense
7 attorney wanted something tested, would SLED do the testing
8 for them?

9 A No. But we can facilitate them finding a credible lab to
10 do it, if they wanted to. We can just give names. Of course
11 we can't tell them where to send it to; that's up to them.
12 But we can suggest different labs that we know of that do
13 private testing.

14 Q Nothing further at this time. So just please answer any
15 questions from Mr. Fox.

16 MR. FOX: Your Honor, we have been going about an hour.
17 I think this will take -- not extensive, too extensive. Can
18 we take a short break before we do the cross-examination,
19 maybe five minutes?

20 THE COURT: Okay. All right. Ladies and gentlemen,
21 we'll come back shortly after 3:00, and we'll hear from
22 Mr. Fox.

23 MR. FOX: Thank you, Your Honor. I appreciate it.

24 THE COURT: Please don't discuss the case.

25 (The jury exited the courtroom at 2:52 p.m.)

1 THE COURT: All right. We'll take about ten minutes.

2 Agent Hefney, you're welcome to step down.

3 THE WITNESS: Okay.

4 THE COURT: Just can't discuss your testimony.

5 MS. WALTER: I don't want to talk to her about it anymore
6 anyway.

7 THE COURT: I understand.

8 (A brief recess was taken at 2:53 p.m. to 3:04 p.m.)

9 THE COURT: Are we ready to go?

10 MS. ANDREW: We're ready, Your Honor.

11 THE COURT: All right. Can we get the jury, please?

12 (The jury entered the courtroom at 3:06 p.m.)

13 THE COURT: All right. Mr. Fox?

14 MR. FOX: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. FOX:

17 Q Hello, Agent Hefney. Good to see you again.

18 Now, we'll have to be patient. If I jump around a little
19 bit, my notes go all over the place, and I try to keep up.

20 So we talked about the glasses and the contamination of
21 them being packaged in one -- being collected and packaged in
22 one envelope or container. And Ms. Walter asked you, "Well,
23 it wouldn't introduce anything new." In other words, it might
24 transfer the DNA from one pair of glasses to another. That's
25 a real concern.

1 **A** That's correct.

2 **Q** And the question was asked, "Well, we wouldn't get Judge
3 DeBerry's DNA," but what if Judge DeBerry handled or touched
4 one of the pairs of glasses before they were collected?

5 **A** Right. If he had handled or worn them, yes, we could
6 potentially get him, but...

7 **Q** Okay. Could you describe a little bit what -- and if I'm
8 using the wrong term, but transfer. We talked about touch
9 DNA, literally touching. Sometimes called trace DNA, I've
10 heard it referred to that way. That's basically the same
11 thing?

12 **A** That's basically the same thing.

13 **Q** Okay. Transfer. And I think you have described it.
14 Could you explain to the jury what transfer would be with
15 relation to DNA?

16 **A** You say could I explain to them?

17 **Q** Yeah.

18 **A** That's typically where you have two persons' DNA. So in
19 the case with theses glasses, you have one pair that was worn
20 by one person and one pair that was worn by another person,
21 and you put them in the same package.

22 So, potentially, any DNA, skin cells, sweat, saliva -- I
23 don't know why saliva would be on there, but anything that was
24 left on one pair of glasses may or may not transfer to the
25 other. So that's what we mean by transfer.

1 Q And, again, I know you answered this question, but to
2 reiterate, one thing that DNA testing cannot tell us is when
3 something was left, material was left or how it came to be
4 there?

5 A That's correct.

6 Q Okay. Could you look at your report and just clarify.
7 On the second page, which is the swabs for entire two pairs of
8 glasses?

9 A Yes, sir.

10 Q And it's got -- that 2.1 -- it's got what I guess is the
11 SLED lab number, the L-18 number. Okay.

12 A That's correct.

13 Q That has 2.1. And, then, on the third page, there's also
14 a 2.1 for the right fingernail scrapings.

15 A That's correct.

16 Q If you explained and I just missed it, why do they have
17 the same number?

18 A Okay. Well, again, it was two different lab numbers
19 given to the same case. So the 2.1 -- and on the report, it
20 specified the swabs from the entire two pairs of glasses -- is
21 from the L-18-9696 case number. The 2.1 where it's not
22 specified is the 2.1 from the L-19-17807, which is where
23 everything was reported under.

24 Q Okay. So just a scrivener's error or clerical error,
25 would you say? They are clearly two separate items; right?

1 **A** Yes, sir. They are two separate items and two different
2 cases but the same case.

3 **Q** I understand. All right.

4 Now, you say sometimes in your files, for some cases that
5 you do, do you get an incident report, a police report, and
6 some cases you don't. In this case, you did have a police
7 report?

8 **A** I did have an incident report.

9 **Q** And so you were at least aware of the basic allegations
10 on who the various parties were?

11 **A** Yes, but, oftentimes, we don't read it until we're
12 preparing for trial, actually.

13 **Q** I understand. And --

14 **A** Or if we have a question about one of the items in the
15 case that wasn't explained.

16 **Q** The likelihood ratios, to be very clear for our jury, a
17 likelihood ratio is not a probability of guilt; correct?

18 **A** That's correct.

19 **Q** Okay. Now, you explained the analytical threshold, and
20 basically, you have got to draw a line somewhere, otherwise
21 every single thing that you might -- and I'm going to talk
22 about little peaks -- otherwise, every little bump, every
23 little thing would require interpretation; correct?

24 **A** That's correct. So we want to -- we analyze -- when
25 we're doing a validation, we don't just analyze one. We

1 analyze a lot of samples, and we look at a broad spectrum of
2 information, and we determine from every sample where we see
3 the useful data versus the nonuseful data, and then that is
4 how the threshold is determined from there.

5 Q So it has to be set somewhere. But you have indicated
6 and you referred to noise.

7 A Mm-hmm.

8 Q But, in fact, something that's close to the threshold,
9 it might be noise or could it possibly be DNA? In other
10 words, let's say you had something at 124. You know? And I
11 get it that you can't go forever, and at some point, there has
12 to be a line drawn literally to say we're not going to mess
13 with this because it will never be done. We'll be in the
14 weeds forever or something like that.

15 But if you have got, say, a 124, potentially maybe that
16 is DNA; is that correct?

17 A Well, typically, we set the analytical threshold at 125.
18 We didn't see anything at 124 or anything like that. We saw
19 everything of useful data at 125. And what I didn't mention
20 before is we also have -- so that's our analytical threshold.
21 We also have what's called stochastic threshold between 125
22 and 350. And that's where we interpret with a caution, so to
23 speak. So -- and if you would like to see my chart, you would
24 see anything -- any allele that fell between that would have a
25 parenthesis on it, and that just means we interpret that with

1 more caution.

2 So I guess, to answer the question, that would be our
3 cautionary range more so, the 125 to 350. And anything below
4 125 will be what we consider unuseful noise, background, so to
5 speak.

6 **Q** If the more contributors to a sample, then, the harder it
7 is to sort out between major and minor contributors; is that
8 correct?

9 **A** That's correct. Not really harder. So with Y-STR
10 testing, we have certain criteria that we use. If it's two
11 people in a mixture, those two people would have to be a
12 certain percentage apart for us to be able to call major and
13 minor. If they're not that percentage apart, then we don't
14 call them major or minor and use them as a statistic. And
15 then, with the two-person mixture, the major/minor ratio is 45
16 percent. With a three-person mixture, it's 35 percent. And
17 anything above three, we don't interpret for YSTRs.

18 **Q** Now, for the right fingernail scrapings, you're unable to
19 determine the number of contributors; is that correct?

20 **A** That is correct. That's Item 2.1 for the autosomal DNA.

21 **Q** And the autosomal is just the full profile.

22 **A** That's correct.

23 **Q** The numbers that are generated, that's through the
24 program that you use; correct? I think you testified that
25 although, you know, a person -- you or another analyst could

1 do the calculations manually, that it's time-consuming, and
2 you have got an awful lot to analyze and now you have this
3 program that at least assists you; is that correct?

4 **A** That's correct. When determining our likelihood ratios,
5 we use that program for it.

6 **Q** Okay. And how is that developed? Who is in charge of
7 that? Who -- is it a computer program?

8 **A** It is a computer program, and it was developed from a
9 scientist actually out of New Zealand, but it was also
10 validated in-house at SLED before we were ever able to put it
11 online.

12 **Q** Okay. Who maintains or updates that?

13 **A** It is updated, again, through software updates by this
14 developer, and any major software update, according to the QAS
15 guidelines, will also have to go through a validation.

16 **Q** With regard to the steering wheel analogy, makes sense
17 that the person that uses the car most and touches the
18 steering wheel the most would, in all likelihood, leave the
19 most material behind. My wife's little Cooper Mini, she's
20 more likely the major contributor.

21 So that can tell you who is likely to be the major and
22 minor contributor, but if you're trying to determine who
23 caused a crash or who was driving drunk, that's not really
24 useful information, is it? It gets you to a certain point,
25 but when you translate it over to a courtroom and criminal

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1 process, it only gets you so far.

2 MS. WALTER: Objection, Your Honor.

3 MR. FOX: I'll withdraw it.

4 THE COURT: Sustained.

5 MR. FOX: Thank you.

6 BY MR. FOX:

7 Q Agent, tell me -- this has been marked as Defense 2. And
8 I believe this is -- I don't know what's the proper word -- I
9 blew this up from material that you provided.

10 A Okay.

11 Q And I apologize. It's electro--

12 A --pherogram.

13 Q --pherogram. Thank you.

14 A Mm-hmm.

15 Q Does this look like an electropherogram from your work in
16 this case?

17 A No, because you have --

18 Q It's not?

19 A You have alleles on here that's like at 93 RFUs. That's
20 way below our stochastic threshold. So that wouldn't be
21 from --

22 Q But these -- let me ask you this --

23 A I can show you my electropherogram of that.

24 Q Yes. What I'm -- and maybe I phrased that incorrectly.
25 I didn't suggest that you prepared this.

- 1 **A** Oh, okay. Okay.
- 2 **Q** So let me maybe do that another way.
- 3 **A** Okay.
- 4 **Q** On -- let me get the right loci that we're looking at,
5 and then you can look at your material and I can look at mine.
6 So bear with me. On the DYS 627 locus --
- 7 **A** DYS 627?
- 8 **Q** Do you see that?
- 9 **A** For what item number?
- 10 **Q** That would be the combined glasses. So that would be
11 2.1. One of the 2.1s.
- 12 **A** I have it -- I have my copy.
- 13 **Q** Yes, that's fine.
- 14 So, on that, you determined -- you list one number for
15 some of the loci and two numbers for others; correct?
- 16 **A** That's correct.
- 17 **Q** Okay. And this means there's at least two -- where there
18 are two numbers, that would mean there's at least two
19 contributors present; correct?
- 20 **A** That's correct.
- 21 **Q** Could be more?
- 22 **A** And in some locations for YSTRs, it's automatically two
23 numbers. They just have two numbers and sometimes it's two
24 locations for the Y-STR.
- 25 **Q** I understand. And there could conceivably be more than

1 two contributors; correct?

2 **A** And my interpretation was for two contributors that I saw
3 for our -- from my interpretation.

4 **Q** I understand. In fact, many males, even unrelated ones,
5 might share certain numbers?

6 **A** Could you ask me that again? I couldn't --

7 **Q** That males, even those that unrelated, might, in a
8 certain location, share numbers?

9 **A** Possibly.

10 **Q** And where you put numbers in parenthesis, that means you
11 detected them in a lower amount, because that's -- I think you
12 indicated that's where there's some --

13 **A** In the stochastic threshold, yes, sir.

14 **Q** Exactly.

15 And the numbers in bold you decided was the major
16 contributor?

17 **A** That is correct.

18 **Q** Okay. So at -- and tell me if this -- again, if you
19 didn't prepare it -- this, at least, accurately reflects. So
20 we're on 627.

21 **A** Mm-hmm.

22 **Q** And, at that location, Mr. McClary has a 19; right?

23 **A** Mm-hmm.

24 **Q** And that fell below your analytical threshold?

25 **A** That's correct.

- 1 Q Okay. And the combined glasses shows a 22?
- 2 A Mm-hmm.
- 3 Q Can everybody see that? Okay. 19. And this would be
- 4 22. Okay?
- 5 A The 19 is not called --
- 6 Q Right.
- 7 A -- because of our analytical threshold.
- 8 Q That's right. So it was not detectable using SLED's
- 9 protocols?
- 10 A Yes.
- 11 Q Okay. But you didn't designate 22 as part of the major
- 12 profile, did you?
- 13 A I did not.
- 14 Q Okay. And the 22 is not found in the profile of
- 15 Mr. McClary; right?
- 16 A That's correct. So he was not considered at that
- 17 location and was not used in the statistics.
- 18 Q Okay. Now, on 449, DYS of the same glasses, 449.
- 19 A Mm-hmm.
- 20 Q Okay. And --
- 21 A There was nothing called.
- 22 Q So nothing called. 449. See the red down here?
- 23 So, again, below the thresholds that SLED protocols
- 24 called for; correct?
- 25 A That's correct.

1 Q But would you agree there are three visible peaks?

2 A I see blips, but I can't call them peaks.

3 Q Okay. And it looks as though there are -- then on DYS
4 570...

5 A Mm-hmm.

6 Q And 570, you have two peaks at that location.

7 A That's correct. Two called peaks at that location.

8 Q Two called ones. So this is under my finger. And there
9 is an unlabeled peak to the far left; correct?

10 A Mm-hmm. I wouldn't call it a peak. There's an unlabeled
11 mark.

12 Q An unlabeled mark. All right. I can live with mark.
13 All right.

14 MR. FOX: Court's indulgence.

15 Thank you. No further questions.

16 MS. WALTER: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. WALTER:

19 Q Mr. Fox said -- asked you that males might have the same
20 number at a particular loci; right?

21 A That's possible, but it wouldn't be over the entire
22 profile.

23 Q Right. So that's -- you don't call a profile based on
24 one loci.

25 A Absolutely not, no.

1 Q So you would have to have a match from the profile to the
2 standard of how many loci before you would consider it?

3 A At least ten, yeah.

4 Q And then, Defense 2, the peaks -- do the peaks look
5 different on Defense 2 because this is a greatly magnified
6 version of your electropherogram?

7 A And it's not using our interpretation guidelines, our
8 analytical thresholds, or anything, because, if it was, then
9 these peaks way down here at 59 and 94 and 66 would never have
10 been called.

11 Q Okay. And so -- right --

12 A Or these blips. I cannot call them peaks because I only
13 call peaks what's called.

14 Q So if your analytic threshold is 125, this one that is
15 labeled as a peak is less than half of that analytical
16 threshold; right? It's at 59 RFU?

17 A Yes.

18 Q Okay. So, then, Mr. Fox asked you about DYS-627, and in
19 his version, there is a peak labeled at 19 for that loci;
20 correct?

21 A Right.

22 Q And what is the defendant's allele at that loci?

23 A He is actually -- at that loci, he is a 19.

24 Q So by setting your analytical threshold at 125, you
25 actually excluded from your interpretation a loci that matches

1 the defendant's?

2 **A** That's correct.

3 **Q** Nothing further.

4 MR. FOX: Just one follow-up.

5 RECROSS-EXAMINATION

6 BY MR. FOX:

7 **Q** This is, indeed, as I indicated in my little exhibit,
8 magnified things like bigger. It seems silly; if you were to
9 reduce yours to a 3-by-5 card, all the things would look
10 smaller, wouldn't they, all the little bumps and peaks?

11 **A** Were you ask- -- was that a question?

12 **Q** Yeah.

13 **A** Okay. If I was to reduce it to a 3-by-5 card, it would
14 look smaller?

15 **Q** Everything would look smaller. In other words, it stands
16 to reason, yes, they do look bigger because they're blown up.

17 **A** I suppose.

18 **Q** They're not inaccurate. They have just been magnified.

19 **A** That's been magnified and not used within our
20 interpretational guidelines or our thresholds.

21 **Q** Does SLED have a specific size that they use, this is
22 accurate, this is not?

23 **A** I mean, we print our electropherograms on the 8 by 11
24 paper, just normal paper.

25 **Q** Is an 8 1/2 by 11 --

1 **A** We can expand it and make a chart like that, but it would
2 have to be with our analytical thresholds.

3 **Q** So there's nothing inherently wrong with having it be
4 larger or nothing magical about 8 1/2 by 11?

5 **A** Oh, there's nothing wrong with magnifying. It's just --
6 it would need to be magnified from what our analytical
7 thresholds are.

8 **Q** I understand. Thank you.

9 **A** Mm-hmm.

10 THE COURT: All right. Is there any objection to Agent
11 Hefney being released from her subpoena?

12 MS. WALTER: None from the State.

13 MR. FOX: No, Your Honor.

14 THE COURT: All right. Agent Hefney, thank you so much
15 for being here. I hope you have a wonderful day and a safe
16 trip --

17 THE WITNESS: Thank you.

18 THE COURT: -- to wherever it is that you're going.

19 MS. WALTER: Your Honor, the State calls Detective Paul
20 -- actually, Lieutenant Paul Morrell.

21 LT. PAUL MORRELL,

22 after having been duly sworn, was examined and testified
23 to as follows:

24 THE CLERK: Please state your name and spell it for the
25 Court.

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1 THE WITNESS: Sure. Paul Morrell. M-o-r-r-e-l-l.

2 MS. WALTER: May I, Your Honor?

3 THE COURT: Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. WALTER:

6 Q Lieutenant Morrell, where do you work?

7 A The City of Myrtle Beach Police Department.

8 Q How long have you been there?

9 A Fifteen years.

10 Q Do you have any prior law enforcement experience?

11 A Yes, ma'am. Seven years.

12 Q Where was that?

13 A With Horry County P.D.

14 Q With the Horry County Public Defender?

15 A No, police department. I'm sorry.

16 Q Sorry; I have, obviously, got Mr. Fox on my mind. Thank
17 you for catching me.

18 I'm going to ask you to slow down a little bit and just
19 speak into --

20 A Sure. Sorry.

21 Q -- the microphone. Sorry.

22 A Is that good?

23 Q Much better. Thank you.

24 What is your current assignment with the Myrtle Beach
25 Police Department?

- 1 **A** I'm a lieutenant in our administration division.
- 2 **Q** What are some of your duties and responsibilities?
- 3 **A** Hiring, recruiting, oversee all the new recruits, getting
- 4 them through the academy, training our current officers,
- 5 training our new officers, regulatory unit, special events.
- 6 It's a multitude of --
- 7 **Q** A little bit of everything?
- 8 **A** Yes, ma'am.
- 9 **Q** How long have you been in that assignment?
- 10 **A** Since the end of January.
- 11 **Q** Of this year?
- 12 **A** This year, yes, ma'am.
- 13 **Q** How long -- I'll ask it this way: What was your position
- 14 in March of 2018?
- 15 **A** I was assigned to our detective division as a detective
- 16 with the Myrtle Beach Police Department.
- 17 **Q** What are the duties and responsibilities of a detective
- 18 with the Myrtle Beach Police Department?
- 19 **A** Investigate crimes that are assigned to us, whether it's
- 20 violent crime, property crime. Conduct interviews, survey
- 21 crime scenes, track down leads. A multitude -- everything
- 22 that a normal detective would do.
- 23 **Q** Would you also assist other detectives in a case that was
- 24 assigned to them versus something that was assigned to you?
- 25 **A** Yes. Normally, it's a team effort regardless of what

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1 comes in. Everybody helps, everybody's tasks are assigned
2 out. Whether it's an interview or go to someone's residence
3 and interview them there or go to a different crime scene, a
4 different jurisdiction, different state sometimes. So it's a
5 multi-- it's usually a team effort with everybody involved.
6 We kind of work towards the same goal.

7 Q Are you aware of the investigation involving the attack
8 on Liliana Hernandez-Diaz?

9 A Yes, I am.

10 Q Were you on duty at the time of the assault?

11 A I was.

12 Q Did you, at some point, become involved in the
13 investigation?

14 A Yes. The day after the assault.

15 Q What happened the day after? What were you asked to do?

16 A I came in. I was assigned to day shift that day. I had
17 known about the assault that occurred the day prior in the
18 afternoon. When I came in for my morning shift, I was advised
19 by detective leadership that the defendant had reached out to
20 our detention center staff and wanted to speak to a detective.
21 So I had gone to our detention center and met with the
22 defendant and completed an interview.

23 Q So let me back you up a minute there. So you were on
24 duty the day of the assault?

25 A Yes.

1 Q But did you ever respond to -- did you have anything to
2 do with the investigation on March 20th, or did you begin on
3 March 21st?

4 A On the 21st. It was kind of, like, picking up where they
5 left off kind of deal.

6 Q When you were told that the defendant wanted to speak
7 with detectives, had you had an opportunity to read any
8 reports or review any of the evidence or anything?

9 A No, not yet.

10 Q Were you aware that he had been interviewed by Detective
11 Amos the day before?

12 A Yes, I was aware he completed an interview.

13 Q Did you review that -- it was videotaped and audio-taped?

14 A Yes.

15 Q Did you ever take the time to look at that?

16 A Not at that time.

17 Q Okay. Did anyone accompany you on the interview?

18 A Yes. We had -- at that time, we had interns, which are
19 junior officers, that were assigned to the detective division,
20 and I had an Officer Logan Cooper with me. He was one of the
21 detective interns that accompanied me with -- to the jail for
22 the interview.

23 Q And so did the interview, in fact, take place at the
24 jail?

25 A Yes.

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1 Q Was this the Myrtle Beach jail?

2 A Yes.

3 Q Where in the jail did it take place? Was there a special
4 room set aside?

5 A Yes. There are rooms that we have set aside for --
6 they're the DMT rooms, where someone arrested for DUI would go
7 in and give a breath sample. They're isolated away from the
8 jail. We routinely use those rooms for interviews because
9 they are audio- and video-recorded, and have that resource
10 available to us. It's a lot easier. Both us and the
11 defendant can sit down, so it's a little more comfortable
12 sitting there, conducting an interview.

13 Q And I'll jump ahead for one minute. So the room was
14 equipped with audio and video capabilities. Did you, in fact,
15 audio and videotape your interview with the defendant?

16 A Yes, I did.

17 Q Did either you or, at the time, Officer Cooper wear your
18 duty weapon into the interview?

19 A No. No weapons are allowed in the jail facility.

20 Q Prior to talking to the defendant, did you threaten him
21 in any way?

22 A No, ma'am.

23 Q Did you assault him in any way?

24 A No, ma'am.

25 Q Did you promise him anything if he spoke to you?

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1 **A** No, ma'am.

2 **Q** And I think you testified, in fact, that it was at the
3 defendant's request that you interviewed him?

4 **A** Yes, ma'am.

5 **Q** Prior to taking the defendant's statement, did you or
6 Officer Cooper read the defendant his Miranda rights?

7 **A** Yes, I did.

8 **Q** And is that memorialized in any way? Like do you use a
9 form?

10 **A** Yes, a standard form for every -- every interview we do.
11 We use the standard Miranda form.

12 **Q** Okay. And this would also be captured on the interview
13 tape?

14 **A** Yes, ma'am. Yep.

15 MS. WALTER: Your Honor, if I may approach with State's
16 Exhibit 45.

17 THE COURT: Sure.

18 THE WITNESS: Yes, this is my signature, and this is our
19 standard form that we use for every interview.

20 BY MS. WALTER:

21 **Q** Okay. Is that, in fact, the form that you used when
22 reading the defendant his Miranda rights?

23 **A** Yes. That's why I specifically used blue ink, so it will
24 show an original copy.

25 **Q** Okay. So can you -- well, I guess it will be on the

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1 tape. But when you read the defendant this form, are you --
2 and if you need that, that's fine. Are you trying to
3 determine if he, I guess, is of sound mind before you're
4 speaking to him?

5 **A** Correct. I call them qualifying questions. We have a
6 series of four questions to where we read to the defendant, to
7 make sure he's not impaired by drugs or alcohol, if he has an
8 education level to where he can understand what I'm asking
9 him, if he's coherent, if he understands the English language,
10 what's his primary language. We make accommodations for that.
11 It's four standards questions just to know he's competent
12 enough to understand what I'm asking him, and, then, if I can
13 determine what he's giving me back is, you know, a true and
14 accurate statement because he's not impaired with either
15 drugs, alcohol, or mental state or anything like that. And
16 everything seemed fine through the questions, so I continued
17 with the Miranda warnings.

18 **Q** Okay. So those first four qualifying questions -- so,
19 for instance, are you -- "What is your primary language?" And
20 he responded, "English"?

21 **A** Correct.

22 **Q** So were the answers that the defendant gave you to these
23 four qualifying questions responsive to those questions?

24 **A** Yes.

25 **Q** And did they seem to logically flow from the questions

1 that you asked?

2 **A** Yes. Also through my experience as an officer, you learn
3 what physical features or physical characteristics someone
4 would exhibit if they're impaired with either alcohol or
5 drugs. And, you know, when I asked him if he's currently
6 under the influence of drugs or alcohol, and he says no, and I
7 can tell he's coherent; one, he was in our detention facility
8 overnight, so I'm almost 100 percent certain he didn't do any
9 drugs or alcohol in our jail. And he -- his pupils, his eyes,
10 and mannerisms, his motor functions all seemed -- were
11 consistent with somebody being completely sober.

12 **Q** Okay. So prior to -- before going into the Miranda
13 warnings, you personally made a determination that the
14 defendant was coherent and was able to understand?

15 **A** Yes, coherent, understood what I was saying, could
16 understand English, and had an education level to where he
17 could ask me questions if he didn't understand something.

18 **Q** All right. So, now, can you just read for us the Miranda
19 warnings as you read them to the defendant?

20 **A** Sure. I said, "You have the right to remain silent and
21 refuse to answer any questions." And the way I conduct these
22 is I don't read them all at once. I read them individually,
23 and, at the end of each one, I ask, "Do you understand this?"
24 And I put a checkmark next to each question.

25 So the first question: "You have the right to remain

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1 silent and refuse to any answer my questions." I asked him
2 did he understand that. He said yes. I put a checkmark.

3 "Anything you say can be used against you in a court of
4 law." I asked him if he understood that. He said yes. Put a
5 checkmark.

6 "You have the right to talk to an attorney and have him
7 present while you're being questioned." I asked him if he
8 understood that. He said yes.

9 And I said, "If you cannot afford an attorney, one will
10 be provided, at government expense, before any questioning if
11 you wish." I asked him if he understood that. He said yes.

12 And I said, "If you desire to make a statement or answer
13 any questions, you have the right to stop at any time." And I
14 asked him if he understood that, and he replied with yes.

15 And then, at the bottom, it says: "The above rights have
16 been explained to me. I understand each and every one of
17 them." I asked him for his -- I put a little X there and
18 asked him for his signature. And before he signed it, I
19 wanted to explain to him -- I said, "Let me explain to you
20 what you're signing for," is that he just understands those.
21 He's not admitting to guilt or anything like that, is that he
22 just understands his rights. That's all his signature was
23 for. And then I sign and date it.

24 MS. WALTER: And I apologize, Your Honor. I would ask
25 that State's Exhibit 45 be admitted into evidence.

1 MR. FOX: Without objection, Your Honor.

2 THE COURT: All right. 45 is in evidence.

3 (State's Exhibit No. ST-45, Miranda Rights Form, was
4 received into evidence.)

5 BY MS. WALTER:

6 Q So after asking those questions, did the defendant agree
7 to speak with you?

8 A Yes, he did.

9 (State's Exhibit No. ST-46, Interview DVD, was received
10 into evidence.)

11 MS. WALTER: Your Honor, I'm approaching with State's
12 Exhibit 46.

13 BY MS. WALTER:

14 Q Lieutenant Morrell, are copies of the video turned over
15 to the solicitor's office so that we can, in turn, provide it
16 to the defense?

17 A Yes.

18 Q And have you had an opportunity to review the interview
19 prior to today?

20 A Yes.

21 Q Was that a fair and accurate recording of the interview?

22 A Yes, it was.

23 MS. WALTER: And, Your Honor, at this time, I would like
24 to play this, if Your Honor wants to --

25 THE COURT: All right. Ladies and gentlemen, it's

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1 important for you to understand that some of the exhibits that
2 have been admitted into evidence have had portions deleted
3 from them for legal reasons. So please don't concern
4 yourselves with the reasons why some portions of the exhibits
5 have been deleted. Do not speculate upon what the deleted
6 portions might or might not have contained.

7 As you have been in and out of the courtroom or,
8 actually, as you have been out of the courtroom and we were
9 talking up matters of law, that's some of the things that we
10 have been doing.

11 So, at this time, we're going to -- or the solicitor is
12 asking to publish this interview.

13 MS. WALTER: Right. And I wasn't sure if I had actually
14 said it. So I'd ask that Exhibit 46 be admitted and published
15 to the jury.

16 MR. FOX: Without objection. Just to clarify, I'd like
17 to renew previous objections made on this subject.

18 THE COURT: So noted.

19 MR. FOX: Thank you.

20 (State's Exhibit No. ST-46, Interview DVD, was received
21 into evidence.)

22 MS. WALTER: Your Honor, we'll adjust the volume, but if
23 anyone has trouble hearing it or seeing it, just let us know.

24 THE COURT: Do we need to adjust the lights?

25 MS. WALTER: It might help to turn them down a little

1 bit.

2 (State's 46/Video plays.)

3 THE COURT: Pause it for a second.

4 All right. Ladies and gentlemen, is there anybody that's
5 having trouble hearing or seeing? Is the volume okay?

6 JUROR: It's a little muffled.

7 JUROR: It's muffled. Yeah, it's kinda...

8 MS. WALTER: And they will -- Your Honor, they will have
9 a copy of it for their deliberations, but we can maybe push it
10 closer.

11 JUROR: I think that will probably do it, yes, ma'am.

12 (State's 46/Video continues to play.)

13 MS. WALTER: Pause it. Let me try and move it closer.

14 THE COURT: All right.

15 (Pause in the proceedings for technical issues.)

16 (State's 46/Video continues to play.)

17 MS. WALTER: I want to kind of take a gauge. Is that
18 better or worse? There's only so much we can do with it.

19 JUROR: Sometimes it sounds pretty clear and sometimes it
20 does not, at least that's what --

21 JUROR: It's hard to make out what he's saying.

22 JUROR: It's loud. We just can't understand what is
23 being said. Is there a transcript that we can all follow
24 along to?

25 THE COURT: All right. So I think what we'll do is we're

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1 going to play it through, and then we'll discuss, outside of
2 your presence, how we might can make it better for you.
3 Apparently, this is the best that we have at this time.

4 MS. WALTER: Well -- and it may be different in the jury
5 room just on the computer with speakers. I'm wondering if --

6 MS. ANDREW: Do you want to put up the speakers?

7 MS. WALTER: Well, I was going to say, if we use the
8 speakers from the computer versus the TV.

9 MS. ANDREW: That's better sometimes.

10 THE COURT: All right. We'll try that first and see.

11 (Pause in the proceedings for technical issues.)

12 (State's 46/Video continues to play.)

13 MS. WALTER: I'm going to show you -- 47-A, B, and C have
14 already been admitted, but I'm also going to D, E, F, G, and
15 H. These are not into evidence yet.

16 MR. FOX: Okay.

17 THE COURT: Do you have an H as well?

18 MS. WALTER: Yes. Sorry. That was an add-on.

19 BY MS. WALTER:

20 Q I'm showing you 47 A through H. If you can just look at
21 those and tell me if you recognize them.

22 A Yes, I do.

23 Q Are those simply the copies of the photos that you used
24 for the -- the actual photos that you used in the interview?

25 A Yes. Actually, I have notes on the names --

1 Q Identified?

2 A Yes, ma'am.

3 Q Other than appearing here to testify, did that
4 essentially wrap up your involvement in this case?

5 A Yes, ma'am.

6 Q Thank you. Nothing further at this time, but if you'll
7 answer any questions from Mr. Fox.

8 THE COURT: Did you want to put that exhibit in?

9 MS. WALTER: Oh, I'm sorry. Thank you, Your Honor.

10 The State would ask that 47-A through H be admitted into
11 evidence.

12 MR. FOX: Without objection.

13 MS. WALTER: Thank you.

14 Thank you, Your Honor.

15 (State's Exhibit No. ST-47A through H, Photographs, was
16 received into evidence.)

17 THE COURT: Mr. Fox?

18 MR. FOX: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FOX:

21 Q You interviewed -- Detective, you interviewed Mr. McClary
22 the day after the incident at the Sheraton Hotel; correct?

23 A Yes, sir.

24 Q Okay. You had no reason to believe his appearance had
25 changed in those 24 to 36 hours?

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1 **A** Other than his clothing, no, sir.

2 **Q** Right. And you were not present when he was interviewed
3 by Detective Amos; is that correct?

4 **A** That's correct.

5 **Q** And at the time that you interviewed Mr. McClary, were
6 you familiar with any of the details of that interview with
7 Detective Amos the day before?

8 **A** Not of his interview. I briefed myself with the photos,
9 kind of give myself a brief of what happened, so I had some
10 information going into the interview.

11 **Q** Had you spoken with Detective Amos about his interview?

12 **A** Mm-mm.

13 **Q** You just had word that, "Hey, we need someone to go
14 follow-up with Mr. McClary" basically; correct?

15 **A** That's correct.

16 **Q** Okay. What steps -- you testified that you read the
17 Miranda form to Mr. McClary. What follow-up, if any, do you
18 do or did you do to gauge the level of understanding? In
19 other words, you ask, "Hey, do you understand this right," but
20 is there any expiration of what that means with the defendant?

21 **A** I'm not sure what you're asking.

22 **Q** That's kind of a convoluted question, isn't it?

23 The right to remain silent. Did he understand that he
24 had the right to terminate his interview at any time; do you
25 know?

1 **A** He told me he did.

2 **Q** Okay. The details that he provided, would you agree that
3 most of that interview or a good portion of it, anyway, was
4 kind of general discussion about his background, about his
5 future going forward, his family, and that sort of thing?

6 **A** Some of it, yes, sir.

7 **Q** Okay. And so the details he provided were about the
8 clothes he wore, the sneakers, the white tank top, the blue
9 sweatshirt?

10 **A** Those are some of the details, yes.

11 **Q** The clown hat.

12 And that's basically the details that he provided;
13 correct?

14 **A** Yes, sir.

15 **Q** He indicated -- what's -- if you know, what is Sea Haven?

16 **A** It's kind of like a group home for young adolescents,
17 kind of in between family and foster care.

18 **Q** So, again, if you know, transitory people in and out?
19 It's not a long-term housing solution?

20 **A** They try not to make it long term.

21 **Q** Sure.

22 **A** Sometimes it is, sometimes it isn't.

23 **Q** Okay.

24 MR. FOX: Court's indulgence, Your Honor.

25 Thank you. No further questions, Detective.

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1 REDIRECT EXAMINATION

2 BY MS. WALTER:

3 Q Just very briefly. Mr. Fox was just asking you about
4 details that the defendant provided. And he covered the
5 pants, the shirt, the jacket, and the wig. Didn't the
6 defendant also tell you that he was wearing sunglasses?

7 A Yes.

8 Q Described the color and the color of the lenses?

9 A Yes.

10 Q Did he provide a detail about the rag that he used to
11 cover Liliana's face?

12 A Yes, he did.

13 Q Did he provide a detail that he had been on the 7th floor
14 the day before?

15 A Yes, he did.

16 Q Did he tell you that this attack happened on the 4th
17 floor?

18 A Yes, he did.

19 Q Did he tell you that -- which friends were there and
20 where they were?

21 A Yes.

22 Q Did he tell you that Liliana had grabbed his penis?

23 A Yes, he did.

24 Q And did he tell you that he knew where the surveillance
25 cameras were in the hotel?

1 **A** Yes, he did.

2 **Q** So those were all other details that the defendant
3 provided and not you?

4 **A** That's correct.

5 **Q** Nothing further.

6 THE COURT: All right. Is there any objection to this
7 officer --

8 MS. WALTER: Lieutenant Morrell.

9 THE COURT: I'm sorry; Lieutenant Morrell being excused
10 from his subpoena?

11 MS. WALTER: None from the State, Your Honor.

12 MR. FOX: I'm sorry. Nothing further.

13 THE COURT: All right, Lieutenant. Thank you for being
14 here. Appreciate your time. Hope you have a great rest of
15 your day.

16 MS. WALTER: Your Honor, the State rests.

17 THE COURT: All right. Ladies and gentlemen, at this
18 time, there will be matters of law that we have to take up
19 outside your presence. We're going to also talk about
20 scheduling. So if you'll return to your jury room just for a
21 few minutes, and then I'm going to either bring you back out
22 or send you a message to let you know how we're going to move
23 forward at this point.

24 Thank you so much for your attention. Please don't
25 discuss this case.