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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DIONTE J'CHON HABERSHAM,

APPELLANT.

APPELLATE CASE NO. 2021-000805

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**[STATE’S EXHIBITS #17 (EXTERIOR OF CRIME SCENE), #18 (INTERIOR OF
CRIME SCENE), #21.9 (PHOTO OF SHOE IMPRESSIONS), #22 (PHOTOGRAPH), #24
(DEFENDANT’S INTERVIEWS), #83 (PHOTOGRAPH), #84 (PHOTOGRAPH), #98
(PHOTOGRAPH), AND #106 (FACEBOOK POST) ARE ON FILE WITH THIS COURT]**

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT
2 COUNTY OF JASPER 14th JUDICIAL CIRCUIT

3

4

5

STATE OF SOUTH CAROLINA,

6

vs.

CASE NO.: 2018-GS-27-00673, -674
2019-GS-27-00640

7

8

DIONTE J'CHON HABERSHAM,
Defendant.

TRANSCRIPT OF JURY TRIAL
VOLUME I
(PAGES 1 - 105)

9

10

11

TRIAL BEFORE:

THE HONORABLE BENTLEY PRICE

12

DATE:

JULY 19, 2021

13

REPORTED BY:

KYMBERLEE M. WILLIAMS, CSR/RPR

14

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STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 come in to collect evidence from Mr. Habersham pursuant to some
2 search warrants?

3 A. Yes, sir.

4 Q. Do you recall who that officer is?

5 A. Sergeant Detective Phillips.

6 Q. Is that the same Jared Phillips who now works for
7 the Solicitor's office as an investigator?

8 Q. I will show you what has been marked for
9 identification as Court's Exhibit Number 4. I will ask you if
10 you can identify that for me.

11 A. Yes, sir. That is the Miranda Rights form we gave
12 that night.

13 Q. When you say that the Miranda Rights form you gave
14 that night, is that the one that you used for Mr. Habersham?

15 A. Yes, sir, it is.

16 Q. Other than that it has a sticker on it and it's a
17 photocopy, does it appear to be an accurate representation of
18 the form that you used that day?

19 A. Yes, sir.

20 Q. Does it look like it has been altered or changed in
21 any way?

22 A. No, sir.

23 MR. THORNTON: Judge, I would ask at this time for
24 the purposes of this hearing the Court's Exhibit 4 be entered
25 into evidence.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT

2 COUNTY OF JASPER 14th JUDICIAL CIRCUIT

3

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5 STATE OF SOUTH CAROLINA,

6 vs. CASE NO.: 2018-GS-27-00673, -674
2019-GS-27-00640

7

8 DIONTE J'CHON HABERSHAM, TRANSCRIPT OF JURY TRIAL
9 Defendant. VOLUME II
(PAGES 106 - 228)

10

11 TRIAL BEFORE: THE HONORABLE BENTLEY PRICE

12 DATE: JULY 20, 2021

13 REPORTED BY: KYMBERLEE M. WILLIAMS, CSR/RPR

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State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1

PROCEEDINGS

2

* * *

3

TUESDAY, JULY 20, 2021

4

RIDGELAND, SOUTH CAROLINA

5

* * *

6

7

8

(The following proceedings were held in open court. The defendant was present along with his attorney, as well as the Solicitor for the State of South Carolina.)

9

* * *

10

11

12

THE COURT: All right. Before we get started, which witness are you attempting to get the the Facebook post in with?

13

14

15

16

17

18

MR. THORNTON: What I will do is elicit that from Hallie Godley, who you saw testifying yesterday. She actually went on the defendant's Facebook page and saw the post. They screen-shotted it, and -- they didn't send a search warrant to Facebook. There isn't anything in the Facebook records, original than the original post that they saw.

19

20

21

22

So Hallie Godley is the one who went onto his public Facebook file and saw the post. She took a screenshot of it. That is actually what I would use. We didn't get anything additional from Facebook.

23

THE COURT: Is she testifying today?

24

25

MR. THORNTON: Yes, sir, she would be testifying, depending on how everything goes, Judge. Yes, sir. I would

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 imagine she would testify at some point.

2 THE COURT: Let's take that motion up at one of the
3 breaks real quick. It shouldn't be a problem then. I didn't
4 know if she was going to be first.

5 MR. THORNTON: She will not be first.

6 THE COURT: That's fine. Then we will take it up
7 up at one of the breaks.

8 Anything else before we get started?

9 MR. THORNTON: Yes, sir, Your Honor. I was just
10 informed about 30 seconds ago. I have very little information
11 about this. We at least need to look at -- we had a potential
12 issue with a juror yesterday, Tameka Bailey with the Sheriff's
13 office may have had some contact. The juror may have come up
14 to her yesterday at the post office. I got a real quick two
15 seconds. She is here and she is right here in the courtroom,
16 Judge. Out of abundance of caution, I thought we better check
17 into it real quick. I just notified Mr. Bax. It was
18 apparently the post office yesterday afternoon. I don't think
19 there was any substance discussed, but I thought you should do
20 it on the record.

21 THE COURT: Sure.

22 Yes, ma'am.

23 MS. BAILEY: Good morning.

24 THE COURT: Your name is.

25 MS. BAILEY: Tameka Bailey.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE COURT: Yes, ma'am.

2 MS. BAILEY: One of the jurors, I saw them at the
3 Post Office. I used to be an SRO at the school, and he was a
4 former student. He spoke to me. He said, "Are you ready for
5 tomorrow?" I said, "Yes." That was pretty much it.

6 THE COURT: It seems innocuous at best.

7 These things come up in the smaller towns.
8 Everybody kind of knows everybody, so it happens. It's not a
9 problem. Any objection?

10 MR BAX: Not necessarily, Judge. The only thing I
11 would ask is whether we can know which juror it was, the number
12 was.

13 MS. BAILEY: Antonio Wright.

14 THE COURT: Number 245.

15 MR. BAX: No objection, Your Honor.

16 THE COURT: All right. If you will bring them out.

17 (Jury enters courtroom.)

18 THE CLERK: Good morning.

19 Madam Clerk, if you will give them the oath.

20 (Witnesses duly sworn and impaneled.)

21 THE COURT: All right. Good morning Ladies and
22 Gentlemen of the Jury. Thank you so very much for being here
23 and being on time. As I indicated, we are going to go ahead
24 and begin the trial at this point in time. I'm going to allow
25 both of the attorneys to give opening statements. All that

6 * * *

7 OPENING STATEMENT BY MR. THORNTON

9 THE JURY: Good morning.

19 A lot of times as an attorney, when you get up in
20 front of juries and you do opening statements and things like
21 that, you always worry the juries have watched too much
22 television, too many Law and Order shows, too many CSI shows,
23 because oftentimes trials in real life bear nothing in
24 resemblance to what you see on television.

25 As the Judge indicated, the opening statements and

1 the closing arguments of the attorneys that you will hear at
2 the end -- at the end of this case, they are not evidence. The
3 evidence is what you will hear from the witness stand and any
4 exhibits that come in or documents that come in or photographs.
5 Anything, basically, that is introduced. It will usually have
6 a number associated with it, Exhibit 1, Exhibit 30, Exhibit 27,
7 whatever the number is. Only when the Judge says that is
8 admitted is that to be considered a finding. That's something
9 that's important, because it's not just something that -- that
10 you hear.

11 Of course, I hear it in every trial as does Mr.
12 Bax, the attorney for the Defendant in this case. When we talk
13 about what -- what the attorneys say is not evidence, because
14 it's not the questions that get asked that's the evidence.
15 It's the answer, because the witnesses are the people with the
16 information.

17 The other thing that the Judge is going to tell
18 you -- and I'm assuming he's going to tell you several times as
19 we go through this process -- is don't start trying to
20 deliberate in this case, until all the evidence is in. There's
21 a reason for that. Because until all the evidence is in, you
22 don't know everything you need to make your decision on it.
23 One of the things that -- that's always important for jurors to
24 know is, when you walk into that room at the end of this case,
25 once the Judge says, "It's okay for you to begin

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 deliberations," and you get whatever the evidence was that was
2 introduced into the trial -- all of that goes back with you.

3 When you get that and when you start your
4 deliberations, it's always helpful to remember that you don't
5 leave your common sense at the door with that, okay? You,
6 ultimately, in this case are going to be the finders of fact.
7 You get to decide what is true and what is not true. When you
8 are sitting as a jury, that's really what your job is, is to
9 find the truth and to bring a truthful verdict based on the law
10 that the Judge will give you at the end of this case.

11 The important thing to remember is this: On August
12 the 16th of 2018, Dionte Habersham, because of a property line
13 dispute with some of his relatives, fired multiple shots into
14 the trailer occupied by two-year-old, Moises Montano and his
15 parents at [REDACTED] Fordville Road. That's right here in Jasper
16 County. Because of that senseless, tragic, malicious act,
17 Moises Montano was killed. That's why you're here today.
18 Thank you.

19 MR. BAX: May it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. BAX: Good morning, Ladies and
22 Gentlemen.

23 THE JURORS: Good morning.

24 MR. BAX: Thank you for being here. I'm
25 going to take my mask off, but I'm going to stand a little bit

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 back. I appreciate you all being here, because this is -- this
2 is tougher now than it ever has been before. It's tougher for
3 you. It's tougher for us. If we had our choice, we wouldn't
4 be doing it this way, but we have to move forward.

5 It's important for you to be here for a lot of
6 reasons, and I'm going to talk to you about that. Obviously,
7 when people are charged with a crime, that has to be resolved.
8 Sometimes the only way to resolve that, and, luckily for us in
9 this system, this is our ultimate way to resolve that. I have
10 talked with a lot of juries over the years, and the best way I
11 have ever come to -- I'm going to move this little Clorox here
12 so I can see you in the corner. I'm sorry -- is, we can't
13 travel back in time.

14 If we could all get in the time machine and travel
15 back to August 16th, 2018, right to that field and watch what
16 happened, we wouldn't need this process, would we? We could
17 just send the video camera back, and we would all know.
18 Unfortunately, that's not how life works. Sometimes things
19 happen, and there's not a clear answer as to how it happened,
20 or who did it, okay? This is one of those cases.

21 The prosecution is going to put forward evidence
22 that they want you to believe proves their case. One thing you
23 have to remember, and the Judge is going to charge you on this,
24 is that the State bears the burden of proof. That's a legal
25 term, okay? What does that mean?

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1 It means that we have written into our Constitution
2 from the very beginning of this country that the government
3 cannot lock up an individual unless they can prove that they
4 committed a crime beyond a reasonable doubt. That means they
5 have a job to do. They have to prove it to you, okay?

6 Now, in this case there has been an absolute
7 tragedy. No one in this Courtroom is, I believe, certainly not
8 from our side, is going to come forward and say, "This is not a
9 tragedy." No two-year-old should ever lose their life, not
10 like that. But I'm sure, as all of you know, because the
11 Solicitor talked about your common sense. Your common sense is
12 one of the most important things about the jury system, and it
13 what makes the jury system work as well as it does that is,
14 each of you brings your own life's experiences.

15 Life experience comes in a lot of different forms.
16 You go out every day and you transact your business, right?
17 You go to work, you go to church, you go to school, but when
18 you're doing that and you're -- and even now in this time where
19 we have to wear masks and stuff, we still interact with other
20 people, right? You know, one of the things we used to do is be
21 able to see everybody's full face, right? When we saw
22 everybody's full face, what did we do?

23 Without even thinking about it, we would think
24 about whether that person is telling me the truth or not. You
25 do it almost subconsciously, but whenever you're talking or

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 interacting with somebody, or you're observing somebody even
2 that you're not interacting with, your mind is constantly
3 making kind of calculations. Does that person have another
4 motive for what they're saying? Is that person telling me the
5 truth? If they're trying to sell me a car, are they just
6 trying to sell me the biggest car they can get me to buy even
7 though I don't need it, or are they answering my questions
8 truthfully and honestly?

9 There's a lot that goes into that. It's not just
10 the answer that you hear, okay? We have to go forward in this
11 process, because we don't have that time machine. What your
12 job and what you have taken an oath to do, that's what makes
13 the system work, when jurors look at things critically, knowing
14 that the State has to prove the case. This is a tragedy, but,
15 unfortunately, tragedy more times can beget more tragedy.

16 What I ask you to do is look at this evidence as it
17 gets presented and understand that it would be a tragedy
18 compounded that would not help the young Moises Montano to put
19 the wrong person away for life because of that, okay?

20 It is a tragedy that child was killed. Whoever did
21 do this absolutely acted in a callous and terrible manner, but
22 it wasn't Dionte Habersham. You will find, as you look at the
23 evidence here, that it is circumstantial and it does not
24 actually put him there.

25 When there are multiple, reasonable explanations

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 for the evidence they have that does not put the Defendant
2 there, when the Defendant does not have any motive -- the
3 Solicitor talked to you about the fact that this was about a
4 property dispute. What you will hear in the evidence is that
5 it was a property dispute with his cousin's momma's house that
6 he hadn't been to in years.

7 You all live in this community. There are a lot of
8 families in this community that have a lot of members, okay?
9 There's certain names that I know that are Jasper names, even
10 in our own profession. Malphrus, that's a Jasper name right
11 there. I talk to Judge Malphrus all the time. She's from
12 Jasper, you know. That's where a lot of Malphrus' -- that's
13 the groups.

14 Habersham is also a Jasper name. As you all know,
15 there are a lot of Habershams. Some of you may have large
16 families. Some of you may share a lot of relatives in this
17 city, in this town, in this county, but the things that your
18 other families do is that necessarily something that you want
19 to be held accountable for?

20 Did you tell your aunt, uncle, or second cousin to
21 do something? You have got to think about it. Just because
22 there's a dispute with somebody's cousins, does that make
23 motive? You will see that there was no motive for my client to
24 be the one that did this. You will see evidence that law
25 enforcement started out looking for someone else. You will

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1 hear the name Fabian Habersham brought up multiple times.

2 As you look at this case, you will realize that
3 this was a case that, ultimately, got investigated halfway.
4 They looked at one guy and couldn't get the evidence on him.
5 They got just enough to get Dionte and then dropped it. That's
6 it. It doesn't make it all the way.

7 Now, I talked to you earlier about common sense. I
8 talked to you earlier about the fact that the Solicitor talked
9 about the fact that my questions, his questions, they're not
10 the evidence. That's true, but just the spoken answers that
11 you hear from the witnesses, that's not all either. Just like
12 I talked to you about before, you're going to use your common
13 sense. When you watch the answers that are given on the stand,
14 you're gonna be thinking not just what the witnesses have said,
15 you're going to be thinking about what they don't say, what
16 they clearly try not to say, their body language, their facial
17 expressions.

18 I mean, that's why you guys are having to come here
19 physically to do this even when we're in these times. We
20 cannot do this remotely. This is just not a process that works
21 like that. You have to be here to hear the witnesses speak.
22 You have to see the evidence for yourself. Then you have to
23 use your common sense and you have to deliberate about that at
24 the end of the case.

25 What the Solicitor says is correct. We don't want

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 you to deliberate before then. Hold your minds open until all
2 of the evidence has been presented. When you are sent back at
3 the end of this case and the evidence is sent back to you, then
4 we will ask you all to deliberate.

5 I will talk to you more about this at the end of
6 this trial, but your opinion about the evidence, your
7 understanding of what the evidence is, is certainly something
8 you are to talk to the other jurors about. If other jurors
9 make valid points, fine, but you are not going to be -- you are
10 not required to be influenced by anyone else.

11 At the end of the day, if in your heart you don't
12 believe that the State has proven their case, if you see there
13 is not enough evidence and you see that this was most likely
14 someone else. That is your conscience and you must vote that
15 conscience. Thank you.

16 THE COURT: All right, Mr. Thornton. Call your
17 first witness, please.

18 MR. THORNTON: Thank you, Your Honor. The State
19 calls Rusty Wells.

20 **RUSSELL W. WELLS,**

21 being first duly sworn testified as follows:

22 * * *

23 DIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q. Good morning, sir.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. Good morning.

2 Q. Mr. Wells, could you please state your entire
3 name for the record?

4 A. Russell W. Wells.

5 Q. Are you also known as Rusty Wells?

6 A. I am, sir.

7 Q. Mr. Wells, who do you work for?

8 A. Jasper County Emergency Services.

9 Q. And did you work for Jasper County Emergency
10 Services on or about August the 16th of 2018?

11 A. Yes, sir.

12 Q. And what do you currently do for Jasper County
13 Emergency Services?

14 A. I was recently promoted to the Director of
15 Emergency Services.

16 Q. And is part of that job with Director of
17 Emergency Services to keep its records 911 calls?

18 A. Yes, sir.

19 Q. And is that part of the ordinary conduct of your
20 business, to maintain and record 911 calls of dispatches that
21 come in and out?

22 A. Yes, sir.

23 (State's Exhibit Number 4, Copy of 911 calls, was
24 marked for identification.)

25 BY MR. THORNTON:

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Mr. Wells, I'm going to hand you what's been
2 marked for identification as State's Exhibit 4.

3 A. Yes, sir.

4 Q. Do you recognize that?

5 A. (Reviews document). I do.

6 Q. And what is that, sir?

7 A. So that will be a copy of the 911 calls
8 requested.

9 Q. All right, and were those calls for calls for
10 service on August the 16th of 2018 to [REDACTED] Fordville Road?

11 A. Yes, sir.

12 Q. And when someone makes a call to 911, is it --
13 how does the -- and I don't want to get too technical, but does
14 the recording start when the operator answers, or does it
15 actually start before then?

16 A. Actually, it would start before then.

17 Q. So in other words if -- if the Jury were to hear
18 a 911 call in its entirety, you would actually see a -- a
19 little bit, like, as the phone is ringing you can hear -- the
20 -- the system automatically records, even before the operator
21 answers; is that --

22 A. It does.

23 Q. -- correct?

24 A. Yes, sir.

25 Q. And I believe they're actually on the time -- on

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 the calls themselves, but do you recall approximately what time
2 in the evening on August the 16th of 2018 these two calls came
3 in?

4 A. It should be 9:45, 9:45.

5 Q. Okay. And would that be typically in the
6 recordings?

7 A. Typically.

8 Q. All right. Did you review this disk at my
9 request?

10 A. I did.

11 Q. And did you sign it, and it looks like, I think,
12 on the 13th of July, 2021?

13 A. I did.

14 Q. And is this a true and accurate copy of the two
15 911 calls that came in for [REDACTED] Fordville Road?

16 A. Yes, sir.

17 Q. And have they been altered or changed in any
18 way?

19 A. No, sir.

20 MR. THORNTON: Your Honor, at this time I'd ask
21 that State's Exhibit Number 4 be moved into evidence.

22 THE COURT: All right, any objection?

23 MR. BAX: No, Your Honor.

24 THE COURT: Without objection.

25 (State's Exhibit 4 was marked and accepted into

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 evidence.)

2 MR. THORNTON: Your Honor, may we -- I apologize
3 may we approach briefly?

4 THE COURT: Sure.

5 (Bench conference.)

6 MR. THORNTON: Your Honor, I would just point
7 out for the benefit of the Jury that these audio calls I'm
8 about to play have been transcribed, basically, to assist the
9 Jury. Sometimes these calls are a little bit hard to
10 understand, but, obviously, the -- the disk that is entered
11 into evidence will not contain the transcription, because
12 that's just a demonstrative for them, and is not going to be
13 presented by us, as evidence.

14 THE COURT: All right.

15 (End of bench conference.)

16 THE COURT: What he's indicating, Ladies and
17 Gentlemen of the jury as well is that the evidence that will go
18 back into the jury room will not have the transcription, it'll
19 just have the audio itself, okay? The transcription is just
20 for you-all'S benefit for the courtroom, okay?

21 MR. BAX: And -- and -- and, Your Honor, if I
22 might, just we would like to add that it be drawn and everybody
23 agrees that what the Jury hears is controlled versus -- because
24 I think some of the audio's a little bit hard to hear, and it
25 doesn't get caught by the transcription, but if they hear stuff

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 that's not on the transcription, I certainly want them to know
2 they can consider that.

3 THE COURT: Absolutely. Which the audio --
4 basically, the audio is what is going to -- is the evidence,
5 okay? The transcription is not, all right?

6 (911 Call audio being played.)

7 MR. THORNTON: Put the display on the screen for
8 one second, please. Your Honor, and I'll play the second of
9 the two calls. Ready to go.

10 (911 Call Audio being played).

11 BY MR. THORNTON:

12 Q. And were those the accurate 911 calls on that
13 day?

14 A. Yes, sir.

15 MR. THORNTON: Your Honor, I don't have any
16 further questions for Mr. Wells.

17 MR. THORNTON: Please answer any questions Mr.
18 Bax has.

19 MR. BAX: No questions, Your Honor.

20 THE COURT: All right. Thank you, sir, very
21 much for being here, sir, you may be excused. Enjoy the rest
22 of your day.

23 MR. WELLS: Thank you.

24 (Witness exits witness stand.)

25 THE COURT: Yes, sir. All right, call your next

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 witness.

2 MR. THORNTON: The State calls Sandy Montano.

3 * * *

4 **SANDY MARIA MONTANO,**

5 being first duly sworn testified as follows:

6 * * *

7 DIRECT EXAMINATION

8 BY MR. THORNTON:

9 Q. Ma'am, if you would for me, could you please
10 give us your full name.

11 A. Sandy Maria Montana.

12 Q. And Ms. Montana, was that your voice that we
13 heard on the second 911 call?

14 A. Yes.

15 Q. And -- and I want to ask you to make sure --
16 and, if you need to, you can pull the microphone a little bit
17 closer to you. We want to make sure that -- that the Jury and
18 everybody can hear you, so we can make sure everything gets
19 taken down; so if you need to, just pull that up to you, or
20 bend it closer to you, if you want. And I know, obviously,
21 some of these questions were answered already, but can you tell
22 us what your address was on or about August the 16th of 2018?

23 A. [REDACTED] Fordville Road.

24 Q. And when you called 911 that day -- just -- I'll
25 -- I'll go back in a second, but when you called 911, you were

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 giving your address, was that because you felt, like, that the
2 -- that your hus- -- is Nelson your husband?

3 A. Yes.

4 Q. And was he already on the phone with 911?

5 A. Yes.

6 Q. And did it seem that they were having some
7 trouble with [REDACTED] versus [REDACTED]?

8 A. I don't even know.

9 Q. Okay. Well, let me ask you this, do you still
10 lived at [REDACTED] Fordville Road?

11 A. Yes.

12 Q. And where exactly is that? Is that located
13 inside Jasper County?

14 A. Yes.

15 Q. Now, on August the 16th of 2018, could you tell
16 me what you were doing that evening, say right before you -- I
17 know you -- we'll get to it in a minute about the shots, but
18 before any of that happens, what were you doing, and where were
19 you at in the house?

20 A. I was in the bedroom. I had just taken Moi- --
21 Moises to bed, he was sleeping with me, and --

22 Q. And let me ask you a question, I -- and -- and
23 forgive me, because I know we've talked about this before, is
24 it -- is -- is -- is it Moises or Moises?

25 A. Moises.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Moises, and I apologize. You know, of course,
2 we've talked before, you know I'm probably going to get that
3 wrong, but how old was Moises at the time?

4 A. Two-years-old.

5 Q. And was he your son?

6 A. Yes.

7 Q. And, again, you -- where were you with -- with
8 him?

9 A. In our bedroom, in the bed.

10 Q. And if -- if I was looking at the -- the front,
11 the widest part of the -- is -- is this a mobile home?

12 A. Yes.

13 Q. All right, if I was looking at the front door,
14 you know, the widest part of the home, where was that -- where
15 would that bedroom be?

16 A. If you're looking at the front door, it would be
17 on the -- the left-hand.

18 Q. All right, at the very end of the mobile home?

19 A. Yes.

20 BY MR. THORNTON: (Continuing)

21 Q. Ma'am, I'm gonna show you what's been marked as
22 State's Exhibit 22, for identification, and ask you, can you
23 identify that for me, that photograph?

24 A. (Reviews photograph). Yes, that's an aerial
25 view of our home.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. All right, and is that -- does that appear to be
2 accurate, as to that time, that day, or I guess within the next
3 day, when the picture was taken August the 16th and 17th of
4 2018?

5 A. Yes.

6 Q. And does it look like it's been altered or
7 changed in any way to you?

8 A. No.

9 MR. THORNTON: Your Honor, at this time I'd ask
10 that State's Exhibit 22 be entered into evidence.

11 THE COURT: All right, any objection?

12 MR. BAX: Without objection, Your Honor.

13 THE COURT: All right, without objection.

14 MR. THORNTON: Thank you, Your Honor.

15 (State's Exhibit 22 was marked and accepted into
16 evidence's.)

17 BY MR. THORNTON:

18 Q. Ma'am, can you see the -- the picture of the
19 photograph?

20 A. Yes.

21 Q. And can you tell me what this structure right
22 here is?

23 A. That's our mobile home.

24 Q. And is this at the open -- open field that was
25 there, at that time?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. All right. And who lives right here next to
3 you?

4 A. Angenia Habersham.

5 Q. All right, and have you had any issues -- recent
6 issues with Ms. Habersham, negative, say?

7 A. Yes.

8 Q. And what was that -- without getting into what
9 anybody said, what was that issue about?

10 A. It was about the property line.

11 Q. All right, and is your property line about right
12 there, where that property line is?

13 A. Yes.

14 Q. And had -- had there been some dispute as to --
15 to they were parking vehicles on your side of that line?

16 A. Yes.

17 Q. And at some point, did you try to prevent that
18 by -- and I don't mean just you, personally, but you -- you and
19 your husband, did you put up a -- a -- a fence line, or
20 something, to try to prevent that?

21 A. What you see there --

22 Q. Yes, ma'am.

23 A. -- that line or the logs.

24 Q. Okay.

25 A. My husband felled those trees and put those logs

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 there, and that was what was preventing her from coming onto
2 our property.

3 Q. And had that caused some issues?

4 A. Yes.

5 Q. And I know it was mentioned earlier, is -- does
6 Ms. -- Ms. Habersham that lived next to you, did she have --
7 does she have a -- a son?

8 A. Yes.

9 Q. All right, and had you had the same issues with
10 him, as far as the -- the property line?

11 A. Yes.

12 Q. Okay, and what is his name?

13 A. Fabian.

14 Q. All right, and to your knowledge, did he live
15 there, or did he live somewhere else?

16 A. He lived there off and on, so --

17 Q. Okay.

18 A. -- there and somewhere else.

19 (Court Reporter marks Plaintiff's Exhibit Number
20 23, Photograph, as attached hereto.)

21 BY MR. THORNTON:

22 Q. Okay. Ma'am, I'm going to show you what's been
23 marked for identification, as State's Exhibit 23, and ask you,
24 if you can identify that photograph.

25 A. (Reviews photograph). Yes.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. And what is that a photograph of?

2 A. Our mobile home.

3 Q. And is that -- does it indicate [REDACTED] Fordville?

4 A. Yes.

5 Q. And does it appear to have been altered or
6 changed in any way?

7 A. No.

8 Q. Is that how this -- how everything would have
9 appeared the -- the night of August the 16th of 2018?

10 A. Yes.

11 Q. All right.

12 MR. THORNTON: Your Honor, at this time, I'd ask
13 that State's 23 be moved into evidence.

14 THE COURT: All right, any objection?

15 MR. BAX: No, Your Honor.

16 THE COURT: Without objection.

17 (State's Exhibit 23 was marked and accepted into
18 evidence.)

19 BY MR. THORNTON:

20 Q. All right, ma'am, and is that the location where
21 you and Moises were inside that mobile home on August the 16th
22 of 2018?

23 A. We were in the mobile home, but we were on the
24 far end.

25 Q. You were on the other end, you said to the left,

1 so it would be at the far end of the other end?

2 A. Yes.

3 Q. And is that room where there was a bedroom?

4 A. Yes.

5 Q. And, ma'am, if you could go ahead and talk about
6 -- you said you were in the bedroom -- the far bedroom on the
7 left with Moises. Can you tell me what happened next?

8 A. I know we went to bed after 9:00. I don't know
9 exactly what time. I was in the bed playing with my phone and
10 Moises was jumping around the bed, and then I kept trying to
11 get him to lay down, and --

12 Q. And at some point, were you successful? Were
13 you able to get him to lay down?

14 A. Yes.

15 Q. Then what happened?

16 A. And then I heard what I thought were
17 firecrackers behind the house.

18 Q. And when you say behind the house, do you mean
19 behind -- at the end, where that field is?

20 A. Uh-huh.

21 Q. That direction?

22 A. Yes.

23 Q. And, again, and I want to be clear about that.
24 I'm going to put this back up for you. So when you say behind,
25 are you meaning the area of this field?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. Thank you, ma'am, go ahead, I'm sorry to
3 interrupt.

4 A. I heard what I thought were firecrackers in the
5 field or behind the house, and then I felt his body vibrate on
6 the bed. And I thought maybe he had put his finger in the
7 electric socket, because my -- I wasn't face him, and I was on
8 my phone. So when I turned over and looked, he was laying
9 there, but he wasn't moving and he wasn't breathing.

10 Q. Okay, and what did you notice after that?

11 A. I don't know. I know I remember calling out for
12 Nelson to help me.

13 Q. And did you see anything --

14 MR. THORNTON: Or, excuse me, Judge.

15 THE COURT: Take your time.

16 BY MR. THORNTON:

17 Q. You called out for Nelson. At some point, did
18 Nelson come into the bedroom?

19 A. Yes.

20 Q. And were you able to see any injuries on Moises,
21 at that time?

22 A. I don't remember that.

23 Q. Do you remember what you did after that? At
24 some point, did you bring him out of the bedroom?

25 A. Yes. After we called 911, they said to put him

1 flat on the floor. We took him to the living room, where there
2 was more space, put him on the floor, and I started the CPR,
3 the breathing, and the compressions, and Nelson went outside to
4 look to see what happened.

5 BY MR. THORNTON:

6 Q. Ma'am, and take a minute, if you need to, I'm
7 gonna show you what's been marked as State's Exhibit Number 55,
8 for identification. And I realize there's what we would call
9 evidence tape, or marker tape put up; other than that, ma'am,
10 can you tell me what that that photo is a picture of?

11 A. (Reviews photograph). My bedroom.

12 Q. And is that where Moises was with you?

13 A. Yes.

14 Q. And is that where he was laying down with you,
15 when you heard what you thought, at the time, were
16 firecrackers?

17 A. Yes.

18 Q. So after that, now, you said you brought him out
19 -- you brought Moises out to the living room, and then Nelson
20 went outside?

21 A. Yes.

22 Q. Did Nelson, at some point, and I think we heard
23 that, actually, on the 911 call, when he said that -- that the
24 -- his baby was in the house, so were you with Moises at that
25 time?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. What -- what happened after that? Do you
3 remember when -- well, let me back up for a second.

4 Do you recall whether or not law enforcement and
5 EMS showed up; so you remember that happening?

6 A. Yes.

7 Q. So, at some point, they did come?

8 A. Yeah.

9 Q. And did they take over, at that point, CPR?

10 A. Yes.

11 Q. Now, from where you were in -- in your bedroom,
12 were you able to see anything, as far as the shots themselves,
13 or anything; or did you just hear the noises and felt Moises
14 convulse, for lack of a better word?

15 A. I didn't see anything.

16 Q. And then -- but, at some point, law enforcement
17 did come?

18 A. Yes.

19 MR. THORNTON: Your Honor, the Court's
20 indulgence, please.

21 THE COURT: All right.

22 BY MR. THORNTON:

23 Q. Ma'am, a second ago I asked you about State's
24 Exhibit 55, and -- and other than the addition of the tape that
25 was put up, you indicated that was an accurate representation

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 of -- of your bedroom and your bed, where Moises was -- was
2 with you; is that correct?

3 A. Yes.

4 Q. And, again, other than the tape, does it look
5 like it's been altered or changed; or is that how it appeared
6 when this all happened?

7 A. No change.

8 Q. Okay.

9 MR. THORNTON: Your Honor, at this time, I'd ask
10 that State's Exhibit 55 be admitted.

11 THE COURT: All right, any objection?

12 MR. BAX: Your Honor, I have no objection.

13 MR. THORNTON: Yes, and that will be SLED,
14 Judge, and they'll be here probably this afternoon.

15 THE COURT: All right, without objection.

16 (State's Exhibit 55 was marked and accepted into
17 evidence.)

18 BY MR. THORNTON:

19 Q. And, ma'am, I know it's -- it's on your screen
20 now, so just so that the jury understands that that's the
21 picture that we're looking at, so that would be the bed, where
22 Moises was laying with you?

23 A. Yes.

24 Q. Ma'am, I don't have any other questions at this
25 time. If you would please answer any questions that Mr. Bax

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 has.

2 MR. BAX: I don't have any questions, Your
3 Honor.

4 THE COURT: All right, you can step down, ma'am.

5 MR. THORNTON: The State calls Nelson Montano,
6 Your Honor.

7 **NELSON MONTANO,**

8 being first duly sworn testified as follows:

9 * * *

10 DIRECT EXAMINATION

11 BY MR. THORNTON:

12 Q. Mr. Montano, pardon me, if you would, would you
13 please state your full name for the record?

14 A. Nelson Ramone Montano.

15 Q. Mr. Montano, was that your voice we heard on the
16 -- the longer of the two 911 calls, the first one we just
17 listened to?

18 A. Yes, sir.

19 Q. All right. And -- and I realize some of these
20 questions are gonna be repetitive, Mr. Montano; but as you and
21 I have talked about before, there's just certain things I have
22 to ask you about. So on August the 16th of 2018, sir, where
23 did you live?

24 A. [REDACTED] Fordville Road.

25 Q. And do you actually still live at [REDACTED] Fordville

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Road, sir?

2 A. Yes, sir.

3 Q. And -- and, Mr. Montano, there's a -- there's a
4 Kleenex right there in front of you, you feel free to use that
5 as you need to, sir. On August the 16th of -- of 2018, sir,
6 you indicated you lived at [REDACTED] Fordville Road; is that here in
7 Jasper County?

8 A. Yes, sir.

9 Q. And can you describe for me what happened that
10 night? Obviously, your wife, Sandy, just testified, so at some
11 point did you hear her call -- did -- call your name, or scream
12 your name?

13 A. Yes, she -- like she said she heard some -- some
14 shots or stuff in the back, and the baby was sleeping and she
15 was in the bed. I was on the couch in the living room,
16 watching TV, and then she heard -- and then she called me up
17 screaming.

18 Q. What did you do?

19 A. I ran in the back, and I ran to the room, and
20 trying to turn the lights on, and the light won't come on, and
21 she was telling me, you know, that the baby was shaken, or
22 something. I checked on the baby and he wouldn't move.

23 Q. What did you do, at that point?

24 A. I tried calling 911, and -- I tried to call 911,
25 and tried to get the baby to respond.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. And when you say trying to get the baby to
2 respond, so were you just trying to get some signs of life from
3 Moises?

4 A. Yes.

5 Q. And -- and, I'm sorry, I know these are tough
6 questions, but were you able to see any injuries on Moises,
7 that you remember?

8 A. Yes. I tried to grab his head and stuff when I
9 was looking for him, and when I touched his head and stuff, I
10 could see a little blood in his head.

11 Q. So it appeared to you that he had a wound to his
12 head?

13 A. It appeared to me that he was dead.

14 Q. And you saw blood on his head?

15 A. Yes.

16 Q. And -- and, again, I know we've heard some of
17 this on the 911 call, but you were not able to -- to get any
18 signs of life from him?

19 A. No.

20 Q. But you -- did your -- you and your wife
21 continue to try CPR?

22 A. Yes, just it seemed like the only thing that was
23 happening was the milk. Of course, she wasn't feeding him, but
24 milk was just coming out of his mouth.

25 Q. And at some point, sir, did you -- did you go

1 outside?

2 A. Yes. I went outside. I ran outside, and I saw
3 Stevenson, the guy next door, leaving their house, and then I
4 looked in the field, where the shots were coming from, and I
5 just saw the taillights and stuff of a car, you know, going
6 out.

7 Q. Okay. And would that have been fairly close to
8 -- fairly -- about the same time as right after the shots went
9 out?

10 A. Right.

11 Q. And, I'm sorry, that was a really -- really
12 poorly --

13 A. Yeah.

14 Q. -- phrased question, so I'm gonna do that again.
15 When you saw -- you -- you said you saw Mr. Stevenson. Where
16 did you see him?

17 A. Stevenson was next door, like, where the
18 neighbor lives.

19 Q. All right, and let me -- just so we're all
20 clear, Mr. Montano, let me go ahead, this is State's Exhibit
21 22, which is already in evidence, and just give it a second,
22 and I believe that the -- the contrast should fix itself; if it
23 doesn't, I'll fix it. So is this your house right here?

24 A. (Reviews photograph). Yes.

25 Q. All right, so you saw Mr. *Stevenson --

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Here.

2 Q. -- right here?

3 A. Yes, up a little bit more. Up, right there.

4 Q. All right.

5 A. Yeah.

6 Q. Now, is -- is that like a parking area?

7 A. Yes.

8 Q. All right. Now, the shots you'd indicated came
9 from this field?

10 A. Yes.

11 Q. So you -- you said you saw some sort of --

12 A. Car.

13 Q. -- taillights or something?

14 A. Yes, farther down this road at the bottom.

15 Q. All right, is this -- is this a dirt lane?

16 A. Yes, it's like a dirt road in the back.

17 Q. All right.

18 A. In the front of the house, if you can see where
19 -- where my house is in the front, like a little porch in the
20 back in the front, right there, you can see all the way back
21 here.

22 Q. All the way here?

23 A. All the way back there. Those -- those -- you
24 can see at almost all the way up to the end.

25 Q. All right, and did you see taillights, at that

1 time?

2 A. Yes.

3 Q. Okay. So -- and I just want to make sure, in a
4 different area from where you saw Mr. Stevenson. He was way
5 back over here?

6 A. That's where he was mostly living.

7 Q. All right.

8 A. I don't know what was happening, that's what I
9 was trying to tell the -- the --

10 Q. We heard you on the 911 call, yes, sir, but you
11 actually saw taillights on this road?

12 A. Yes.

13 Q. All right, and is this -- is this Bees Creek?

14 A. Yes, sir.

15 Q. -- right here? Okay. So this dirt lane
16 connects to Bees Creek?

17 A. Yes.

18 Q. So after you saw the taillights, and -- and we
19 heard you trying to describe that. obviously, it was very
20 difficult with what was going on, to the 911 folks, at -- at
21 some point did you go back inside?

22 A. Yes, I went back to try to do what the Operator
23 was telling me to do, trying to get the baby to wake up.

24 Q. And were you successful ever getting any signs
25 of life from Moises?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. No, just milk coming out of his mouth and just

2 --

3 Q. Yes.

4 A. -- just milk coming out of his mouth, that was
5 it.

6 Q. And at some point, sir, did law enforcement and
7 EMS get there?

8 A. Yes.

9 Q. And just to -- I know your wife talked about
10 this just a moment ago, have you had some sort of -- I mean you
11 were sitting, obviously, in the courtroom, did you have some
12 sort of property line dispute going on with Ms. Habersham next
13 door?

14 A. Yes, the property lines that separates the two
15 properties, but into that open field, where -- that's where's
16 the drainage field is, and I just didn't want those people
17 driving on the drainage field of the septic tank.

18 Q. Right, and is that why you put the logs up?

19 A. Yes.

20 Q. And all that area is actually your property and
21 -- is that correct?

22 A. Yes.

23 Q. So they had been parking on your property, and
24 then you put the logs up?

25 A. Yes.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. And was that kind of the -- the gist of the
2 dispute?

3 A. Yeah, it was.

4 MR. THORNTON: Your Honor, the Court's
5 indulgence, please.

6 BY MR. THORNTON: (Continuing)

7 Q. I don't have any further questions for you, Mr.
8 Montano. Thank you very much, sir. Please answer any
9 questions that Mr. Bax has.

10 MR. BAX: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 * * *

13 CROSS-EXAMINATION

14 BY MR. BAX:

15 Q. Sir, I'm gonna put this back up, so we can -- we
16 can see it. This is State's 22, let's see if I can put this up
17 correctly, where everybody can see it. Mr. Montano, can you
18 see that okay?

19 A. Yes.

20 Q. Okay, thank you. All right, first of all, Mr.
21 Montano, my -- my deepest condolences for your loss. I just
22 have a few questions.

23 You have already stated, you know, when you have
24 come up here to talk to us that -- that this is your house
25 here.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. Okay, and this house is, you know, I think the
3 front door is -- is on the side facing this other house; is
4 that correct?

5 A. Yes sir.

6 Q. Okay. And this house here is where Ms. Gina
7 Habersham lives; is that correct?

8 A. Yes, sir.

9 Q. Okay. And who all lives with Gina Habersham?

10 A. Her son, Bud, and -- and *Kip, one of the people
11 that aren't supposed to live there.

12 Q. Uh-huh.

13 A. And Fabian and stuff, he comes and goes.

14 Q. Okay, so -- so you say the son, Bud, and also
15 the son, Fabian; is that -- did I hear that correctly?

16 A. Yes.

17 Q. Okay. And Fabian comes and goes you said?

18 A. Yes.

19 Q. And then she has a -- a daughter that lives
20 there, as well?

21 A. Yes, sir.

22 Q. Okay, all right. And you also mentioned that
23 you saw a Mr. Stevenson leaving that night; is that Donald
24 Stevenson?

25 A. Yes.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. Okay, and -- and who is Donald -- what is your
2 understanding of who Donald Stevenson is?

3 A. I call her -- I call him her fuck friend.

4 Q. Okay, did you --

5 COURT REPORTER: I'm sorry, I didn't hear it.

6 BY WITNESS: I called him her fuck friend.

7 BY MR. BAX:

8 Q. Okay. And as you have heard, and I know that
9 was difficult, you heard the -- the 911 call that you had made.

10 A. Yes.

11 Q. In that 911 call, we -- we hear you saying
12 something about the neighbor is leaving out the back, and your
13 wondering where he's going. Who are you talking to -- or
14 talking about it, when you say that?

15 A. Stevenson.

16 Q. Stevenson. So when you say neighbor, you're
17 talk -- you're actually referring to Donald Stevenson?

18 A. Yes.

19 Q. But Donald Stevenson does -- would you consider
20 him living in that house?

21 A. At night, yes.

22 Q. At night? And I -- and I think on the 911 tape
23 it says something about him leaving out the back.

24 Was there something odd about the way he was
25 leaving the house?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, because he doesn't park his car in front of
2 the house. He parks it all the way in the back.

3 Q. Now, and, you know, I -- I -- I'm not from
4 Jasper, I've kind of goin' around and tried to get the lay of
5 the land a little bit. When you say from the back of the
6 house, do you mean just a few --

7 A. Right there. Right there.

8 Q. Right over here --

9 A. Yes.

10 Q. -- where I'm pointing at right there?

11 A. He goes all the way around the house, because
12 when I see him --

13 Q. So he goes around and --

14 A. Yes.

15 Q. -- parks back there?

16 A. Park right there, because he's married.

17 Q. Uh-huh.

18 A. And he goes whenever he needs his stuff at
19 night, 10:00, 11 o'clock and stuff, he goes back and stuff and
20 try to -- he tried to go as far as he can.

21 Q. Now, I see here what appears to be kind of like
22 a driveway coming down, and we'll talk about that.

23 Does he go back out that way, or does he go --

24 A. Yes.

25 Q. -- out a different way?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. He goes out that same way.

2 Q. Okay, so he parks back here, generally, and then
3 he goes back around and goes back out here; am I saying that
4 correctly?

5 A. Yes.

6 Q. Okay. And that's a pretty regular thing, based
7 on what you're saying, right?

8 A. Yes.

9 Q. Almost every day, or how often would you say?

10 A. I don't know, whenever he wants something. I
11 don't know, whenever they maybe call him, I guess, I don't
12 know.

13 Q. Okay, all right. But you are familiar with --
14 enough with Mr. Donald Stevenson, you -- you recognized him?
15 You -- you know him on-site?

16 A. I know his truck, yes.

17 Q. And do you know his truck?

18 A. Right, I know it.

19 Q. What kind of truck was -- what -- is that?

20 Does he have more than one truck?

21 A. Yes, he does.

22 Q. What kind of trucks does Mr. Stevenson have?

23 A. I think it was a -- he has a Chevy, and he has a
24 big dump truck, and then he got a Sienna -- no, no.

25 COURT REPORTER: I'm sorry, the last one?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE WITNESS: A Toyota -- Toyota truck, I think.

2 BY MR. BAX:

3 Q. Oh okay, okay, so like a Chevy pickup truck, a
4 Toyota pickup truck, and you said a dump truck?

5 A. Yes.

6 Q. Okay.

7 A. What he uses for work and stuff.

8 Q. And, now, that night, do you remember which one
9 of those he was driving, Mr. Montano? Was it one of the pickup
10 trucks or --

11 A. It was -- I think it was the -- that Toyota.

12 Q. The Toyota?

13 A. Yeah. I think, I'm not 100 percent sure, if
14 it's black or brown, I don't know.

15 Q. Now, you also said, you know, he was leaving out
16 the back, and it was a little bit odd. Did he seem to be doing
17 anything unusual? Was he going in a hurry, or what -- what
18 made you comment on that, if you can recall?

19 A. I was trying to give the best information I
20 could to the operator.

21 Q. Yes, sir. Yes, sir.

22 Do you recall anything unusual about his leaving
23 the house the way he did that night?

24 A. Well, it -- it was -- it was unusual just to
25 hear somebody -- you hear the shots, and then he -- he takes

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 off.

2 Q. And so he -- he shot off, right?

3 A. Yes.

4 Q. But you also testified, I believe, that you also
5 saw taillights of another car exiting, and I think if we can
6 see it correctly, somewhere around in here; is that --

7 A. Yes.

8 Q. -- right?

9 A. Yes.

10 Q. Okay.

11 A. At the same time.

12 Q. Now, this was around about 9:45 to almost 10
13 o'clock at night; is that right?

14 A. Yes.

15 Q. So was it dark outside?

16 A. Yes.

17 Q. Yes? Okay. The vehicle taillights that you
18 saw, could you identify that vehicle at all?

19 A. No.

20 Q. So you just saw some red lights, basically, is
21 that --

22 A. Yeah. You can see the brake lights and stuff
23 all the way to the back to the front.

24 Q. Now, does anybody live off of this road back
25 here, that you're aware of?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. In the back right here at the bottom.

2 Q. Uh-huh, right there?

3 A. Right there, yes, there's some houses all the
4 way to the back, but nothing up here.

5 Q. Okay. And this -- this area, this is just a
6 clear area, right?

7 A. Yes.

8 Q. Okay. What I want to ask you, you -- you
9 testified that you -- you were having -- or -- or you all were
10 having kind of a property dispute with Ms. Habersham.

11 Like I see here, that what appears to be kind of a
12 driveway, and then there appears to be kind of a line down that
13 driveway, and you mentioned logs. Tell me about that.

14 What -- what were -- was it a fence, or just logs
15 laid down? What was it?

16 A. Just trees. I cut some trees down, so that it'd
17 prevent them and their stuff, you know, from coming to my
18 driveway.

19 Q. Uh-huh.

20 A. And it wasn't just her and stuff, just delivery
21 trucks and stuff like that, you know, driving on any of the
22 property, and --

23 Q. Now, it appears from here, this -- thi- -- was
24 this a -- was this a gravel drive, or a paved drive?

25 A. That's a drive -- that's my driveway. All --

1 everything that's clear --

2 Q. Uh-huh.

3 A. -- is -- that's my driveway.

4 Q. So --

5 A. She drives on the very edge of it.

6 Q. But these logs appear to be kind of partially in
7 that gravel drive; is that correct?

8 A. Yes, she think that her property is in -- she's
9 -- I did a survey, and her property is in the middle of that
10 driveway, and she still hasn't cleared her property yet --

11 Q. Okay.

12 A. -- until this day.

13 Q. So it was your contention that the property line
14 was actually in the middle of the driveway, or in the driveway?

15 A. Uh-huh, her driveway. My driveway's clear.

16 Q. Okay. And I'm a little confused. I -- I see
17 kind of one drive here, how -- where do they separate at? Is
18 it -- do they separate?

19 A. In that corner from there --

20 Q. Right here?

21 A. -- where those logs are, all the way to the --
22 like where everything that's clear.

23 Q. Uh-huh, okay. Now, as a result of these logs
24 being placed here in -- in -- in the -- in the gravel there,
25 you said that there was some problems from that.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Was there any verbal arguments that you had with --
2 with Ms. Gina Habersham?

3 A. No. I -- I told her and stuff that -- that I
4 actually asked my wife to go tell her that, you know, I was
5 going to block that -- that, so they won't come into my septic
6 -- septic tank, the field and the septic tank drain field.

7 Q. So did you ever speak directly with Gina
8 Habersham about this?

9 A. I asked her a few times, yes.

10 Q. And -- and what did she say?

11 MR. THORNTON: Objection, Your Honor, that's
12 hearsay.

13 THE COURT: I'll sustain the objection.

14 BY MR. BAX:

15 Q. Well --

16 THE COURT: I'll sustain the objection.

17 BY MR. BAX:

18 Q. Let me ask you this. Was she upset about these
19 -- the idea of these logs being there?

20 A. Yes, she ran a couple of times and stuff. She
21 run those -- she'd push those logs and stuff out of the way,
22 and then she actually broke the -- a couple of posts that I --
23 that I had buried in there.

24 Q. Uh-huh.

25 A. I called the cops and stuff and reported all

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 that stuff too.

2 Q. Uh-huh. And you mentioned that -- that she has
3 a Fabian, and another son.

4 Did you ever have any conversations -- not going
5 into what you said, but did you have any conversations with
6 Fabian or the other son about this

7 A. No.

8 Q. Did they ever talk to you or yell at you or
9 anything like that, that you can recall?

10 A. Before this or after this?

11 Q. Before -- well, during this property dispute,
12 but before -- before August 16th.

13 A. No.

14 Q. And you said the logs had been moved on a couple
15 occasions, and one of the logs had been broken; is that right?

16 A. Yes.

17 Q. Did you see when and where and by how -- or who
18 moved them, or who you broke them?

19 A. No.

20 Q. No?

21 A. Nobody else has been back there.

22 Q. And you had mentioned that -- that you had
23 called the police about this.

24 Had you also called the police when Mr. Stevenson
25 had come through with his dump truck at one point?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. Okay, tell me about that.

3 What happened with that?

4 A. He was driving into my driveway. He always
5 drive into my driveway to clear her -- her property --

6 Q. Okay, to --

7 A. -- in the back.

8 Q. -- to do some kind of clearing or work on her
9 property, or --

10 A. Yes. Actually, I caught him like a week before
11 that happens. I called the cops and did a report on that. And
12 he would -- I have pictures of him start driving into my
13 property doing this.

14 Q. Uh-huh. So how many times do you think that --
15 that you called law enforcement about this issue before August?

16 A. I don't know. I couldn't recall.

17 Q. Two or three times? Four or five times? Could
18 you ballpark it?

19 A. I don't recall, no.

20 Q. You don't recall?

21 A. Yeah.

22 MR. BAX: A moment's indulgence, Your Honor.

23 THE COURT: Take your time.

24 MR. BAX: Thank you, sir.

25 MR. BAX: No further questions, Mr. Montano.

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1 more in the bathroom.

2 THE COURT: Not a problem. All right. Call
3 your next witness.

4 MR. THORNTON: Thank you, Your Honor. The State
5 calls Joe Frierson.

6 **JOSEPH FRIERSON,**

7 being first duly sworn testified as follows:

8 * * *

9 DIRECT EXAMINATION

10 BY MR. THORNTON:

11 Q. I want to keep calling you Corporal Frierson,
12 but I don't know that that's accurate anymore. Mr. Frierson,
13 could you state your full name for the record for all?

14 A. Joseph Frierson.

15 Q. And where do you currently work, sir?

16 A. I currently work at Darlington County Sheriff's
17 Office.

18 Q. All right. Darlington County Sheriff's Office?

19 A. Yes, sir.

20 Q. And what do you do there at Darlington County --

21 A. I'm a Patrol Deputy.

22 Q. All right. Deputy Frierson, let me ask you a
23 question, who did you work for on or about August the 16th of
24 2018?

25 A. The Jasper County Sheriff's Office.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. And what -- what did you do for Jasper County,
2 at that time?

3 A. I was the supervisor on patrol.

4 Q. So at that time would you have been Corporal
5 Frierson?

6 A. Yes, sir.

7 Q. All right. Deputy Frierson, did you have
8 occasion to respond out to [REDACTED] Fordville Road --

9 A. I did.

10 Q. -- on that date, August the 16th?

11 A. Yes, sir.

12 Q. And do you recall what -- how you got dispatched
13 out there, meaning, what -- what kind of call went out?

14 A. I didn't hear the call come out on the radio, I
15 was in the Jail dropping off a prisoner. That was most likely
16 by telephone.

17 Q. And was it -- was the notification that there
18 had been a shooting?

19 A. Yes, sir.

20 Q. And did you go out to [REDACTED] Fordville Road

21 A. I did.

22 Q. And were you one of the early units on-scene?

23 A. I was.

24 Q. All right. so -- and I'm gonna show you what's
25 already been entered into evidence, as State's Exhibit 22, and

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 is this the trailer at [REDACTED] Fordville Road?

2 A. (Reviews photograph). Yes, sir.

3 Q. All right. sir, and is that where you went that
4 day?

5 A. Yes, sir.

6 Q. Or that -- I should say night, yeah, I believe
7 it was about 9:45, when the first 911 call came out.

8 A. Yes, sir.

9 Q. So once you got there, sir, can you tell me what
10 you did?

11 A. Upon my arrival, I made entry into the house. I
12 observed the baby down on the floor. He had blood on the top
13 of his head. I saw blood and brain matter coming out.

14 Q. All right. well, let me back up. You say you
15 went in the house, so did -- I'm sorry, I'm gonna show you
16 what's been entered into evidence already, as State's Exhibit
17 23. So would it appear that's the -- is that the front door --

18 A. (Reviews photograph). Yes, that's the --

19 Q. -- that you --

20 A. -- the front.

21 Q. -- went in?

22 A. Yes, sir.

23 Q. All right. sir. And so was the -- at that time
24 was -- was the baby still -- still in the back bedroom, or was
25 the baby out in the living room?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. She -- he was out in the living room by that
2 time.

3 Q. All right. So you -- you indicated that it
4 appeared to you that the child had suffered a -- a bullet wound
5 to the head?

6 A. Yes, sir.

7 Q. All right. and without needing to be over --
8 overly graphic, you indicated there was blood and what you
9 believe to be brain matter?

10 A. Yes, sir.

11 Q. Did you see any signs of life at -- on the
12 child, at that time?

13 A. No, sir, I didn't.

14 Q. All right. Did you attempt to do CPR anyway?

15 A. I did.

16 Q. All right. and why?

17 A. It's a two-year-old, I'm gonna try at least.

18 Q. And did -- did you begin CPR yourself, at that
19 point?

20 A. I did.

21 Q. And was -- was anybody already performing CPR --

22 A. Them two.

23 Q. -- or attempting to.

24 A. Ms. Montano was performing it, and when I got
25 there, I took over from her, and when EMS arrived, they took

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 over from there.

2 Q. Okay, so you performed CPR you said until EMS
3 got there; is that correct?

4 A. Yes, sir.

5 Q. All right. What, if anything, did you do after
6 that?

7 A. I then began to help assist with securing the
8 crime scene.

9 Q. Uh-huh.

10 A. That field behind the trailer.

11 Q. All right. let me go back to State's 22 in
12 evidence, is this the field you're referring to?

13 A. (Reviews photograph). Yes, sir. All right
14 myself and Detective Davis, at the time, we entered that field
15 looking for any kind of evidence, anything like that.

16 Q. All right. and let me stop you for a second,
17 and, I'm sorry, this is not gonna be as closeup as I would like
18 it. I'll try to zoom in some. So did you -- were you able to
19 walk around the trailer, to look for any signs -- you indicated
20 already that you saw a bullet wound to the child's head.

21 A. Yes, sir.

22 Q. Were you able to see any holes in the -- the
23 trailer a [REDACTED] --

24 A. Yes, all --

25 Q. -- Fordville?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. All the evidence came from -- I guess facing the
2 canopy on the left side of the trailer.

3 Q. All right. you said all -- I think you just said
4 all the trailers.

5 A. I'm sorry, bullet holes.

6 Q. Okay. So this end right here?

7 A. Yes, sir.

8 Q. All right. so you saw holes into the exterior of
9 the trailer?

10 A. Yeah.

11 Q. All right. and did you see any exit holes out
12 the -- out the -- let me back up for a minute. Did you see any
13 holes out the other side?

14 A. I don't believe so, no, sir.

15 Q. So is that why you felt you knew kind of where
16 the shots had -- would have come from?

17 A. Yes, sir.

18 Q. All right. So is this -- is that why you -- you
19 located your search around that field?

20 A. That's correct.

21 Q. All right. And you said you were with Detective
22 Davis?

23 A. That's correct.

24 Q. And is that Ray Davis with -- who, at that time,
25 was Jasper County Sheriff's Office?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. So you indicated that you all started some sort
3 of search. Were you able to find anything, in particular?

4 A. I found footprints in the field, that's right.

5 Q. And is that you and Detective Davis?

6 A. Yes, sir.

7 Q. All right. and what -- what, if anything, did
8 you do at that -- after that, after you found footprints?

9 A. I then proceeded across the field to meet with
10 Ms. Deidre Dara and Mrs. Brittany Mack.

11 Q. All right. And -- and -- and, like I said,
12 please don't get into anything they said, but would that have
13 been at this trailer? I'm sorry, I've got it backed out too
14 far, I apologize. Would that have been at this trailer right
15 here?

16 A. Yeah.

17 Q. Or, I'm sorry, I don't know that that's a
18 trailer, at this house right here?

19 A. That's correct.

20 Q. All right. and how did you know to talk to them?
21 Had you -- did you see them somewhere?

22 A. They were outside.

23 Q. All right. and were they in the front yard area?

24 A. Yes, sir.

25 Q. All right. And did you go ahead and speak to

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Ms. Dara, at that point?

2 A. I did.

3 Q. All right. and what, if anything, did you do
4 after that? Did you help secure the scene, at that point, or
5 --

6 A. I --

7 Q. -- what else did you do?

8 A. I went back to the crime scene, and I took over
9 the crime scene.

10 MR. THORNTON: Thank you, sir. I don't have any
11 further questions. Please -- please answer questions that Mr.
12 Bax has.

13 MR. BAX: If it please the Court, Your Honor.

14 * * *

15 CROSS-EXAMINATION

16 BY MR. BAX:

17 Q. Good morning, Officer Frierson. How are you
18 doing?

19 A. All right. and yourself?

20 Q. Good. Thank you for being here. You said
21 you're with Darlington. Is -- is that what you said, you're
22 with Darlington now?

23 A. Yes, sir.

24 Q. Yeah, okay, so a little bit of a drive this
25 morning, huh?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Just a little over two hours.

2 Q. Okay, well that's good. A couple of questions
3 for you. Now, you indicated that you -- you arrived. Were you
4 the first officer to arrive?

5 A. I was.

6 Q. Okay, and were there any other Officers that
7 arrived like right at the same time, or kind of pulled up right
8 as you got there?

9 A. I believe Deputy Riley or Robinson, but I'm not
10 sure.

11 Q. Okay.

12 A. I believe I wound up on the scene before they
13 got there.

14 Q. Well, that -- that -- that goes -- I -- I think
15 you're right, I -- I -- I -- I've got, you know, some incident
16 reports, and if -- if Deputy Riley had indicated that he met
17 with you, as he arrived; is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, did -- from your remembrance, did
20 both you all make entrance into the home, at that time?

21 A. I made entrance before Deputy Riley came inside.

22 Q. Okay. Did you speak with -- and now, obviously,
23 you indicated that you -- you took over CPR, and that -- and
24 that Ms. Montano had been trying to do that. Did you talk with
25 her, at that time?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. That she had took a shot. She only -- when I
2 entered the house she stated to me, do I know CPR?

3 Q. Okay. And -- and, like the Solicitor said,
4 without getting into anything, did you ever speak with Nelson
5 Montano about what he --

6 A. No.

7 Q. -- thought had happened? You did not? Okay.
8 Now, you have indicated that you -- and this was, I guess,
9 after EMS arrived and took over medical attention, at that time
10 --

11 A. Yes.

12 Q. -- that -- that you went back outside the house?

13 A. Yes, sir.

14 Q. How -- if you can remember, how long before EMS
15 arrived after you got there?

16 A. Maybe five, ten, because I passed them on my way
17 there.

18 Q. Okay. And let me back up, I apologize. If you
19 were the first Officer coming in, how did you -- did you come
20 in from Fordville Road down the gravel driveway?

21 A. I pulled out from the Sheriff's Office --

22 Q. Uh-huh.

23 A. -- hit 17 --

24 Q. Uh-huh.

25 A. -- Captain Bill, and then I went on Fordville,

1 and then I turned into the driveway.

2 Q. Okay, okay. Yeah, because Fordville kinda makes
3 a -- almost an elbow from Captain Bill, I think it is --

4 A. Uh-huh.

5 Q. -- over to Bees Creek, right?

6 A. That's correct.

7 Q. Okay. And I -- and I want to put up State's
8 Exhibit 22, so we have something to reference for the jury, and
9 I might be putting in there upside down. So based on what you
10 can see on your screen, Deputy, you can see a little bit of
11 road right here, is that Fordville Road right over here?

12 A. I can't see the road.

13 Q. Oh, I'm sorry, look -- look at me, I'm pointing
14 with my thumb. Let me try that again. It look -- looks like I
15 see a road right here, it looks like it's going this way.

16 A. (Reviews photograph). I do.

17 Q. Can you tell if that's Fordville Road there?

18 A. I believe that is Fordville Road.

19 Q. Okay. And here, as we talked with Nelson, that
20 -- that there appears to be kind of a gravel drive coming into
21 both of these properties from the road; is that how you came
22 into the road?

23 A. Yes, sir.

24 Q. So if you were coming from Captain Bill, you
25 would have come up this way, and then turned into this road; is

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 that correct?

2 A. That's right.

3 Q. Did you observe any other cars leaving the
4 property, as you were coming in?

5 A. Not to my memory. I haven't really recalled
6 that, but I don't think so.

7 Q. Okay, and you don't recall seeing a Toyota
8 pickup truck pull out of there, or anything like that?

9 A. I don't recall.

10 Q. Okay. I know you indicated that you were at the
11 Jail, and that you got notified by phone about the incident had
12 -- was going on, correct?

13 A. Uh-huh.

14 Q. And so you went straight from there down to
15 Captain Bill, as you have said, correct?

16 A. Yes, sir.

17 Q. Okay. About how long after you got the phone
18 call do you think you arrived at the -- at the location?

19 A. Maybe five minutes.

20 Q. Now, explain to us a little bit about the phone
21 call. Like, if -- if something goes out on dispatch and other
22 people don't get it, the phone calls, do they come from --
23 where -- where do the phone calls come from?

24 A. That phone call originated from my Staff
25 Sergeant at the time.

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1 Q. Okay, so in addition to putting something out on
2 an overall dispatch band to patrol units, your supervisor
3 called his people, basically; is that right?

4 A. I was -- the way I understand it, if we get a
5 phone call from him --

6 Q. Uh-huh.

7 A. -- I was the closest one to the incident
8 location.

9 Q. Okay.

10 A. My radio --

11 Q. So based on your proximity is why you think you
12 got that call?

13 A. My radio was off in the Jail, because there's no
14 radio reception in the Jail, so that's why I had to be reached
15 via phone.

16 Q. Okay. So based on your proximity, that's
17 probably why you got there before any other officers got there,
18 based --

19 A. Yes, sir.

20 Q. -- on your recollection? Okay. Now, you
21 indicated that you -- you -- after EMS arrived, which you said
22 was above five -- maybe five minutes after you got there, that
23 you exited the home, and -- and started looking around. Did
24 you go all the way around the house, before you found these
25 holes in that side; or did you just go to that side, based on

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 what you could observe?

2 A. I can't recall if I did or not. I don't know if
3 I walked all the way around it or not.

4 Q. Uh-huh. But at some point, you found -- you
5 found some holes that -- that looked like they might have been
6 bullet holes; is that right?

7 A. Yes, sir.

8 Q. Okay. And they were on, as we said before, this
9 side, which is closest to this open kind of sandy area, right?

10 A. That's correct.

11 Q. Okay. Now, you said that you -- you -- you and
12 Detective Davis started searching the field. Did you search
13 the field in a particular way? Did you grid it? Did you just
14 kind of start looking around? How did --

15 A. Basically, I started walking through the field.

16 Q. Okay. And this was approximately -- of course,
17 what we've heard from testimony so far, this was, you know,
18 between 9:45 and 10 o'clock at night and after. About what
19 time do you think it was, when you started going into that
20 field?

21 A. I cannot testify to that answer.

22 Q. Okay.

23 A. I can't answer that.

24 Q. Can you tell us about the lighting conditions?

25 A. It was dark.

1 Q. It was dark, okay. Did you and Detective Davis
2 have some kind of light sources, whether either flashlight from
3 your phone or flashlights that you held?

4 A. We had handheld flashlights.

5 Q. Handheld flashlights, okay. And this looks to
6 be kind of -- just kind of scrub and -- and sand. I mean how
7 would you describe that ground?

8 A. It was very sandy.

9 Q. Very sandy, okay, but there were a lot of other
10 stuff, sticks and grass and things like that in there, right?

11 A. Yes.

12 Q. That's what we see kind of in there?

13 A. Yes, sir.

14 Q. Okay. How many -- how many footprints did you
15 find, or were you the only one that found them, or did -- did
16 Detective --

17 A. He --

18 Q. -- Davis find some too?

19 A. Detective Davis found them, as well, but I can't
20 really tell you how many --

21 Q. Okay.

22 A. -- I found in there.

23 Q. Now, you also testified after that, that you --
24 after you found some of the footprints, how -- how long do you
25 think you were in that field looking around?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Maybe ten, 15 minutes or so.

2 Q. Okay. And you indicated that -- that you -- you
3 went over and met with or spoke with a Deidra Dara and a
4 Brittany Mack, was that just because you saw them standing
5 outside, or --

6 A. Yes, sir.

7 Q. And on this picture right here, I want to make
8 sure I point at stuff that you all can see, not just what I can
9 see, whereabouts were they -- were they in this yard here?

10 A. Yes, sir.

11 Q. Okay. So you saw them from this field standing
12 out there?

13 A. Yes, sir.

14 Q. Okay. Were there lights coming from their home,
15 or anything like that?

16 A. I don't recall.

17 Q. You don't recall? Okay. How were you able to
18 see them standing in the yard?

19 A. I looked at them.

20 Q. Yeah, I mean because it was dark, I'm just
21 saying did you see a cigarette, a flashlight?

22 A. They were just outside smoking.

23 Q. Yeah, so you could see that, and then with your
24 flashlight you saw people standing there?

25 A. Yes, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Okay. Were you the only one that went over and
2 talked to them, or did Detective Davis go over there with you?

3 A. I don't think he did, but I'm not sure if -- I
4 know someone went with me, but I can't recall who went with me.

5 Q. Okay. Now, as a result of that, did you do any
6 paperwork with them, take any written statements, or anything
7 like that; do you recall?

8 A. No, sir, I didn't.

9 MR. BAX: A moment's indulgence, Your Honor.

10 THE COURT: Take your time.

11 MR. BAX: Thank you, sir.

12 BY MR. BAX:

13 Q. One -- one quick additional question. From your
14 recollection, Officer, that night did you speak with any other
15 neighbors, people that -- that might have been witnesses? Did
16 you talk to anybody else?

17 A. Yeah. I talked to Mr. Dorian Hopkins.

18 Q. And did you ever speak with a gentleman by the
19 name of Chris Johnson, or do you recall?

20 A. No, sir, I didn't.

21 MR. BAX: No further questions at this time,
22 Your Honor.

23 THE COURT: Thank you. All right. anything else
24 as follow-up?

25 MR. THORNTON: Nothing, Your Honor. I'd ask

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 that Deputy now Frierson be allowed to go back to Darlington.

2 THE COURT: All right.

3 (Witness exits witness stand.)

4 THE COURT: Call your next witness.

5 MR. THORNTON: Yes, sir. Your Honor, at this
6 time the State calls Deputy Riley.

7 **DOMINIQUE RASHAWN RILEY,**

8 being first duly sworn testified as follows:

9 * * *

10 DIRECT EXAMINATION

11 BY MR. THORNTON:

12 Q. Good morning -- I guess we're still morning.
13 Good morning, Mr. Riley; how are you doing?

14 A. Good.

15 Q. All right. Sir, if you don't mind, would you
16 please give your full name for the record?

17 A. Yes, sir. Dominique Rashawn Riley.

18 Q. And, Mr. Riley, who do you work for?

19 A. Jasper County Sheriff's Office.

20 Q. And what do you do for them?

21 A. I'm a Patrol -- I work in the Patrol Division.

22 Q. All right. So would it be proper to call you
23 Deputy Riley?

24 A. Yes, sir.

25 Q. All right. Deputy Riley, did you work for the

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Jasper County Sheriff's Office on August the 16th of 2018?

2 A. Yes, sir.

3 Q. All right. Sir, on that evening, a little after
4 -- right -- right around 9:45 did you respond out to [REDACTED]
5 Fordville?

6 A. Yes, sir.

7 Q. And, excuse me, do you recall, were you -- were
8 you dispatched out to that scene, or did you hear the call come
9 out over the radio? How does that work for you?

10 A. I heard the call come over the radio.

11 Q. And was it for a shooting?

12 A. Yes, with an unresponsive child.

13 Q. And did you head that way?

14 A. Yes, sir.

15 Q. So -- and just -- I've asked this a couple of
16 times, Deputy Riley, but you know how this works, so is [REDACTED]
17 Fordville, is that in Jasper County?

18 A. Yes, sir.

19 Q. Once you got out there, were you the first
20 on-scene, or was somebody else there kind of at the same time,
21 or a little ahead of you?

22 A. Deputy Frierson that -- that had just left out
23 of there, he was first, and I arrived after him.

24 Q. All right. And did you -- when you got there,
25 did you make entry into the house at [REDACTED] Fordville?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. And what did -- what, if anything, did you see?

3 A. I'd seen Frierson giving the child aid, and I'd
4 seen the child unresponsive on the floor.

5 Q. All right. And when you say giving the child
6 aid, did it appear he was attempting to do CPR?

7 A. Yes, sir.

8 Q. And did he continue to do that until -- until
9 EMS got there?

10 A. Yes, sir.

11 Q. And once EMS got there, did they take over the
12 CPR?

13 A. Yes, sir.

14 Q. And is that -- is that kind of standard
15 procedure, as to what you would do?

16 A. Yes, sir, it is.

17 Q. Deputy Riley, one -- one -- while he was doing
18 that -- while he was doing CPR, what, if anything, were you
19 doing?

20 Were you assisting him, or were you doing other
21 things?

22 A. Yeah, well, I was trying to see who was in the
23 area on -- on-the-scene, at that time, which was just the mom
24 and dad from what I saw.

25 Q. Okay.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. I didn't really want to bother them too much,
2 obviously, so I just kind of left them alone for a moment to
3 let them gather their thoughts.

4 Q. All right. and at some point, once EMS got
5 there, did you take over the crime scene security, along with
6 other Deputies?

7 A. Yes, sir, I secured the scene.

8 Q. Okay, and did -- did yo take over some of that
9 responsibility, I think, from -- from Ashby?

10 A. What was --

11 Q. From -- was there a Deputy Ashby out there that
12 you took that over from?

13 A. I believe so, yes.

14 Q. All right. At some point, and -- and, again, do
15 not tell me what anybody else said.

16 But at some point, did you collect some basic
17 information from the parents. I know you said you gave them
18 some time to themselves. At some point, did you collect --

19 A. Yes, sir.

20 Q. -- information from them?

21 A. Yes, sir, I -- I gathered information about the
22 child and them, and --

23 Q. All right. And other than that, and then taking
24 over the crime scene, was that pretty much the extent of your
25 involvement in this case?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 MR. THORNTON: Your Honor, the Court's
3 indulgence, please, one moment.

4 BY MR. THORNTON:

5 Q. And as part of when you -- again, just so that
6 the jury understands this, because different people have
7 different experiences, but as part of -- of dealing with a
8 crime scene, is -- is some of that that you tape off the area,
9 or other Deputies tape off parts of the area?

10 A. Yes, sir, we would put crime scene around the
11 area, so nobody comes into contaminate the scene or mess the
12 scene up at least.

13 Q. All right. and -- but other than that, was that
14 pretty much your involvement, as to what you have testified to?

15 A. Yes, sir.

16 Q. All right. Thank you, sir. I don't have any
17 other questions. Please answer any questions that Mr. Bax has
18 for you.

19 MR. BAX: If it please the Court, Your Honor.

20 THE COURT: All right.

21 * * *

22 CROSS-EXAMINATION

23 BY MR. BAX:

24 Q. Good morning, Deputy Riley.

25 A. How you doing?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Good, good, thank you for being here. A couple
2 of things.

3 You testified that -- that -- that you arrived
4 on-scene, you -- you got the call over the radio, right?

5 A. Yes, sir.

6 Q. So you were in a -- a patrol unit at the time,
7 your car?

8 A. Yes, sir.

9 Q. Okay. And where were you, when you got the
10 call?

11 A. I was on Grays Highway located in Jasper County,
12 right down from, I believe, Ball Park Road.

13 Q. Okay. So what route would you have taken to get
14 to Fordville Road?

15 A. I took Highway 278, and then I got onto Highway
16 17 --

17 Q. Uh-huh.

18 A. -- which is also known as Jacob Smart.

19 Q. Uh-huh.

20 A. And then I went to take a left and go on Captain
21 Bill Road, and then make a left onto Fordville Road.

22 Q. Okay, so -- and I -- I want to make sure you can
23 see this.

24 Does this appear to be to you a -- a -- an aerial
25 photograph of the incident location which is there at [REDACTED]

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Fordville Road?

2 A. (Reviews photograph). Yes, sir.

3 Q. Okay. And in the top, to me, left-hand corner
4 of this, it looks like there's a road there, is that Fordville
5 Road there?

6 A. That -- that would be Fordville.

7 Q. Okay. And as I -- as -- as we talked about
8 before with Corporal -- with Officer Frierson, one direction it
9 goes to Captain Bill Road, and the other it intersects with
10 Bees Creek; is that right?

11 A. Uh-huh. Yes, sir.

12 Q. Okay, so you would have been coming from, just
13 like him, the Captain Bill direction?

14 A. I'm not sure where he came from, honestly. I
15 came from the Captain Bill area.

16 Q. Okay. Let me ask you this, you -- you indicated
17 that you arrived kind of right after him.

18 A. Uh-huh.

19 Q. Was he already out of his vehicle by the time
20 you arrived?

21 A. Yes, sir.

22 Q. Okay.

23 So you wouldn't have not necessarily been as close,
24 where you could see him pulling in right in front of you?

25 A. No. I didn't see him pull in.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Okay. All right. So -- but you would have
2 traveled down Captain Bill, and then made that, and I think it
3 would have been a left onto Fordville?

4 A. Yes.

5 Q. And then come around and then come into the same
6 drive that you see here?

7 A. Yes, sir, I'd make a right into the incident
8 location.

9 Q. Okay. All right. Now, you also testified that,
10 you know, you made entry into the home, that Officer Frierson
11 was attempting to give aid to the minor child; is that --

12 A. Yes.

13 Q. -- right? Okay. And while he was doing that,
14 you spoke with Ms. Montano?

15 A. I attempted to speak with them, but, of course,
16 it was kind of hard to speak with them at the moment --

17 Q. Okay.

18 A. -- to gather information from them.

19 Q. Without going into what the information was, at
20 some point during your attempts to communicate with them, were
21 you able to at least kind of talk to them about what had
22 happened?

23 A. To just gather basic information.

24 Q. Okay.

25 Did you talk with them about any possible reason

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 that this could have happened?

2 A. Yes.

3 Q. Any problems with any other people that --

4 A. Yes.

5 Q. -- they had? Okay. And as a result of that,
6 did you communicate any of that information to any other
7 Officers that -- that arrived to investigate?

8 A. I believe so.

9 Q. Okay. Do you remember who you spoke to?

10 A. I'm not sure.

11 Q. Now, other than, you know, the crime scene log
12 and securing the scene, did you do any other searching that
13 night for evidence, or did you go over to the field behind the
14 house?

15 A. No.

16 Q. Okay. After the initial investigation here and
17 -- and -- and medical attention and EMS, did you -- were you
18 asked to go canvas the neighborhood, talk to anybody, talk to
19 any neighbors, or anything like that?

20 A. Yes.

21 Q. You were? Okay.

22 Do you recall who you might have spoken with?

23 A. Oh, with the Defendant's mother and sister.

24 Q. Okay. You -- so you -- you're talking about Ms.
25 Angenia Habersham?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes.

2 Q. Okay. So you spoke with Angenia Habersham and
3 you said her daughter?

4 A. And her daughters.

5 Q. That would be like Nakia or Akia Singleton
6 (phonetic)?

7 A. I believe so.

8 Q. And that would have been a little later that
9 night after -- was it -- was it right away, or was it a little
10 later after things calmed --

11 A. It wasn't immediately, I went --

12 Q. Okay. Was there anybody else present, when you
13 went over to speak with those two people at that home?

14 A. I don't recall. What I remember is it just
15 being them two upset.

16 Q. Okay.

17 A. When we had knocked on the door and they came
18 outside.

19 Q. Okay. So you didn't make entry into the home,
20 or look around to see if there were any other people inside the
21 home?

22 A. No.

23 Q. Okay. Did you look around the home, or check
24 like what vehicles were there, or anything like that --

25 A. No.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. -- at that home? And so that would have been,
2 just to make sure that I'm being clear, this -- this home right
3 here, is that -- is --

4 A. That's -- that's --

5 Q. -- that correct?

6 A. That's correct.

7 Q. That's correct? Okay. So you would have just
8 -- did you just walk over there after you were done with the
9 scene securing --

10 A. Yes, sir.

11 Q. -- at some point? Yeah?

12 A. Yes.

13 Q. Okay. And I think -- is there a front door
14 here? It looks like that's a medium covered porch; is that
15 your recollection?

16 A. I -- I think it is. Yeah, I believe that it is.

17 Q. Would that have been, do you think, where you
18 would have spoke to them?

19 A. No, it was more by the -- it looks like a white
20 palm in this picture.

21 Q. Uh-huh.

22 A. It would, I guess, be by --

23 Q. Over to the side here?

24 A. Yeah, if you would point in between that --
25 their front porch area and that car, if you move closer to the

1 victim's address, somewhere over there.

2 Q. So -- so it would have been outside, maybe on
3 the grass or the gravel --

4 A. Yes, sir.

5 Q. -- or something like that?

6 A. Yes, sir.

7 Q. Okay. And they came out to you, at that point?

8 A. Yes, sir.

9 Q. Okay. Do you know if they were already outside,
10 or -- or did you have to call out?

11 A. I believe I had to make contact with them, they
12 had come outside.

13 Q. Now, was there any other Officers with you, when
14 you went and spoke with Ms. Habersham or Ms. Singleton?

15 A. I don't recall, but I don't think so.

16 MR. BAX: A moment's indulgence, Your Honor.
17 Thank you so much.

18 BY MR. BAX:

19 Q. All right. Real simple. Just to clarify, and --
20 and I apologize, and then I'll be done. Now, without going
21 into what anybody said, did you go to speak to the neighbors,
22 because you'd gotten information that there may have been a
23 property dispute between these two, or some kind of problem?

24 A. That's correct.

25 Q. Okay. And so this is based on information you'd

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 been provided, when you were speaking with Mr. or Mrs. Montano?

2 A. Yes.

3 Q. Okay.

4 A. And even if I didn't -- even if they didn't tell
5 me that, I would still ask the neighbors did they hear
6 anything, that's a --

7 Q. Right, right.

8 A. Yeah, no.

9 Q. But it -- it would, obviously, with what Mr.
10 Montano had indicated, you had more questions than just, "Did
11 you hear anything," correct?

12 A. I asked them, did they hear any gunshots?

13 Q. Okay. Without going into what they said, did
14 you also ask him about the property dispute?

15 A. I don't recall asking them about the property
16 dispute.

17 Q. Okay. And just to make sure we're clear, is
18 Angenia Habersham, to your understanding, is she Fabian's --
19 Fabian Habersham's mother, or Dione Habersham's mother?

20 A. I'm not -- I guess both of their mom -- their
21 mother. I'm not sure which, if they -- if that's the stepmom,
22 or whether -- I -- I believe that's their mother, both of them.

23 Q. Okay. So you -- if you were told that -- that
24 -- that she is not Dione's mother -- did you have direct
25 information about Dione at all that night?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. No.

2 Q. No, none? Okay.

3 MR. BAX: No further questions.

4 THE COURT: All right. Anything as follow-up?

5 MR. THORNTON: No follow-up, Your Honor. I'd
6 ask -- I apologize, Judge, no follow-up. I ask he be excused,
7 and the State would call Jason Ronberg with EMS.

8 MR. RILEY: Thank you, Your Honor.

9 THE COURT: Thank you, sir.

10 (Witness exits witness stand.)

11 **JASON RONBERG,**

12 being first duly sworn testified as follows:

13 * * *

14 DIRECT EXAMINATION

15 BY MR. THORNTON:

16 Q. Mr. Ronberg, could you please state your full
17 name for the record?

18 A. Yeah, Jason Russell Ronberg.

19 Q. And -- yeah, you can go ahead and pull --

20 A. Oh.

21 Q. -- your mask off, so we can --

22 A. Thank you.

23 Q. -- at least while you're up there, we've got
24 this screen, and all that stuff, so -- so everybody's
25 protected. So make sure you talk into that microphone for me.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Okay.

2 Q. Mr. Ronberg, who do you work for, sir?

3 A. Jasper County Fire Rescue.

4 Q. All right. and -- and I probably misspoke
5 earlier. I said EMS, but it's actually Fire Rescue.

6 So it's a combination of the Fire Department and
7 EMS kind of into one department?

8 A. Yes, sir.

9 Q. All right. And did you work for Jasper County
10 Fire Rescue on or about August the 16th of 2018?

11 A. Yes, sir.

12 Q. And in what capacity?

13 A. Firefighter and paramedic.

14 Q. All right. So are you -- are you then
15 cross-trained, as both a firefighter and a paramedic?

16 A. Yes, sir.

17 Q. Could you go into me a little -- or go into for
18 me a little bit, so the jury understands, what the different
19 levels of -- and I'm just gonna say EMS, because it's that side
20 of it. Not a firefighter, but are there different levels of
21 EMS experience and training?

22 A. Okay. Standard EMT basic is just an entry
23 level, basic vital signs, blood pressures. Then we have
24 advanced EMTs, which just has a little bit more training,
25 recognize cardiac rhythms, pushing certain medicines and stuff,

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 and then the paramedic is in charge of the ambulance.
2 Extensive training with cardiology, medications, life-saving
3 procedures, invasive procedures, when entering the endotracheal
4 tubes or ET tubes, breathing tubes, stuff like that.

5 Q. So as a paramedic, you would be the person who
6 would be in charge of the medical team on the ambulance?

7 A. Yes, sir.

8 Q. And on August the 16th of 2018 did you get
9 dispatched out to [REDACTED] Fordville Road?

10 A. Yes, sir.

11 Q. And do you recall, was -- was it over -- was it
12 just put out over dispatch and you responded, or did you get a
13 direct call, or do you recall how that worked?

14 A. It was put over our Station radio.

15 Q. And did you go out to the scene?

16 A. Yes, sir.

17 Q. And what, if anything, did you do, when you got
18 there, and what did you see?

19 A. Once PD put us -- or secured the scene, we got
20 pinged out to a GSW involving a two-year-old.

21 Q. Now, keep in mind you're --

22 A. I'm sorry.

23 Q. -- you're in a room full of people, who are --
24 are -- are selected, you know, they don't have the experience
25 you do, so --

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. All right.

2 Q. -- what is a GSW?

3 A. Gun Shot Wound.

4 Q. Fine. So you're dispatched out to a gunshot
5 wound. What is the normal procedure you, as a firefighter and
6 a paramedic follow, as regards to going out to the scene?

7 A. PD or the Sheriff's Office, the first on scene.
8 They secure the scene of all weapons, and make it safe for us
9 to come in and establish medical treatment.

10 Q. Okay. So basically, you wait for the Sheriff's
11 Department to clear it and say it's okay for you to come in?

12 A. Correct.

13 Q. All right. And did that occur in this case?

14 A. Yes, sir.

15 Q. All right. So once the scene is secured, at
16 least from a safety perspective, you get there, what do you
17 see, what do you do?

18 A. We got there. I was met by one of the Sheriff's
19 Officers with the child, the patient in question, and on the
20 floor inside the victim's house.

21 Q. All right. and were they attempting -- or
22 attempting to do CPR, at that point?

23 A. Initially.

24 Q. And did you take over, at some point?

25 A. Yes, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. And did you, at any time, either while you
2 observed them doing CPR or you doing CPR, did you observe any
3 signs of life from -- from the two-year-old child?

4 A. No, sir.

5 Q. And did you, at some point what -- what were the
6 kinds of things that you would do and did in this case?

7 In other words, what procedures did you follow?

8 A. With the whole trauma assessment, we did find a
9 single entrance wound from a firearm to the right side of the
10 skull. There was brain fragments or skull fragments, a little
11 bit of brain matter, about 20 cc's of blood on the ground.

12 No exit wound. Usually, there's an entrance and an
13 exit wound, there wasn't one. That usually means the bullet's
14 still inside the victim. We established -- you know, we
15 started CPR, moved the patient to a backboard for ambulance and
16 started advanced cardiac lifesaving procedures, to include
17 starting the IVs, put in breathing tubes, continuous CPR,
18 certain medications that involved in the advanced cardiac
19 lifesaving procedures, Epinephrine.

20 We continued this all the way to the hospital.

21 Q. All right. at any time did Moises Montano, the
22 -- the two-year-old in this case, at any time, did you receive
23 any signs of life?

24 A. No, sir.

25 Q. And once you got to -- you did -- you said you

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 did continue that all the way to the hospital.

2 Once you got to the hospital, was he, at some
3 point, then pronounced deceased?

4 A. The doctors at the hospital, yes.

5 Q. And once that is done, sir, is that -- once you
6 have gotten them to the hospital, do you then turn them over to
7 the doctors?

8 A. We do.

9 Q. And would that be the last -- the last contact
10 you would have had with this case, as far as any active
11 participation?

12 A. Yes, sir.

13 MR. THORNTON: Your Honor, I have no other
14 questions for Mr. Ronberg.

15 If you would, sir, please answer any questions
16 Mr. Bax has.

17 THE WITNESS: Uh-huh.

18 MR. BAX: No questions, Your Honor.

19 THE COURT: All right. Thank you so very much.
20 You may be excused. And enjoy the rest of your day.

21 (Witness exits witness stand.)

22 MR. THORNTON: The State calls Todd Harvey, Your
23 Honor.

24 **TODD HARVEY, M.D.,**

25 being first duly sworn testified as follows:

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1

* * *

2

DIRECT EXAMINATION

3

BY MR. THORNTON:

4

Q. Mr. Harvey, would you please state your full

5

name for the record.

6

A. Michael Todd Harvey.

7

Q. And, Mr. Harvey, who do you work for, sir?

8

A. At the time of this incident in 2017 I was Chief

9

Deputy Coroner of Jasper County Coroner's Office.

10

Q. All right. And let me refer you back, it's

11

August the 16th of 2018, not '17.

12

A. 2018. Okay. Sorry.

13

Q. Totally fine. Yes, sir.

14

At that time, you would have been --

15

A. Chief still with the Jasper County Coroner's

16

Office.

17

Q. And as -- as part of your duties with the

18

Coroner's Office, is one of the things that you had to do is --

19

is follow-up and -- and determine -- or -- or pronounce folks

20

deceased, along with the doctors?

21

A. Yes, sir. That's correct.

22

Q. And just to be brief, at some point, did you get

23

called out and go to -- go to the hospital, in relation to a

24

two-year-old who'd been shot at [REDACTED] Fordville?

25

A. Yes, sir. I received a phone call, as I

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1 normally do, notifying us of it, if I don't hear it via radio.

2 At that time of night I had my radio off.

3 I responded to Coastal Carolina and met with the ER
4 staff and Dr. Fernard (phonetic.) They advised me of the
5 incident, which I'd already listened to the radio coming to --
6 responding to Fordville. And I proceeded to view -- view the
7 young man, Moises, and -- and prepared him for the family to
8 come inside.

9 Q. So -- so you -- you actually do a brief physical
10 examination in cases like this, so in this case, did you -- did
11 you perform just a brief physical examination of Moises
12 Montano?

13 A. Yes, sir.

14 Q. And was he deceased?

15 A. He was deceased.

16 Q. And at some point was a death certificate for
17 him done, showing his -- that he had, in fact, died on August
18 the 16th of 2018?

19 A. Yes, sir.

20 MR. THORNTON: Thank you, sir. I have no further
21 questions. If you would please answer any questions that Mr.
22 Bax has for you.

23 MR. BAX: No questions, Your Honor.

24 THE COURT: All right. Thank you very much.
25 You may be excused.

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1 (Witness exits witness stand.)

2 MR. HARVEY: Thank you, Your Honor.

3 MR. THORNTON: The State calls Deidre Dara.

4 * * *

5 **DEIRDRE DARA,**

6 being first duly sworn testified as follows:

7 * * *

8 DIRECT EXAMINATION

9 BY MR. THORNTON:

10 Q. Ms. Dara, could you please state your full name
11 for the record.

12 A. Deidre Lynn Dara.

13 Q. And Ms. Dara, where do you currently live?

14 A. I'm in Tillman on Floyd Road.

15 Q. All right. On or about August the 16th of 2018
16 were you visiting anybody off of the -- I'll just call it the
17 Fordville Road area -- somewhere off of Fordville Road?

18 A. And Bee's Creek. Yes, sir.

19 Q. All right. I'm going to show you -- this is
20 already actually up, so you should be able to turn to the side
21 there. State's Exhibit 22. I'll back it up just a little bit.

22 So is this road right here that I'm pointing to, is
23 that Bee Street?

24 A. Yes, sir.

25 Q. All right. and then I believe Fordville goes

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 this way and that tight corner. Is that right?

2 A. I believe so.

3 Q. Okay. Is -- do you see -- actually, I'll just
4 ask you. Do you see the house that you were visiting at on
5 that map?

6 A. (Reviews photograph). Yes, sir.

7 Q. And I'm just gonna -- just describe for me where
8 it is.

9 A. On the main road's here. It's down this little
10 dirt road.

11 Q. All right. Down the dirt road.

12 A. And it's the very first trailer right here.

13 Q. Is it right here?

14 A. Yes, sir.

15 Q. All right. And that's where you were visiting?

16 A. Yes, sir.

17 Q. All right. On August the 16th of 2018, can you
18 tell me if you -- if you heard or -- or saw anything unusual?

19 A. We heard gunshots.

20 Q. All right. Let me stop you for a second. We.

21 "We" who?

22 A. Me and my stepsister.

23 Q. All right. And what is her name?

24 A. Brittany Mack.

25 Q. All right. So you said you heard what you

1 believed were gunshots?

2 A. Yes, sir.

3 Q. Did you hear just one or or several?

4 A. We heard several, between six and eight. I'm
5 not really exactly sure. It was so bundled up.

6 Q. All right. So you heard what -- what you
7 believed were -- were between six and eight gunshots?

8 A. Uh-huh.

9 Q. And could you tell, you know, kind of where you
10 thought they came from, or directionwise?

11 A. They sounded very close to us. Like in the
12 field area.

13 Q. All right. and -- and I'm not trying to put
14 words in your mouth. You say the field area. There's only one
15 kind of obvious --

16 A. Yes, sir.

17 Q. -- is that the area you're talking about?

18 A. Yes, sir.

19 Q. All right. So you -- you heard what you
20 believed were six to eight shots coming from the field.

21 What, if anything, did you do once you heard that?

22 A. We waited a minute, and then we walked outside,
23 so I could smoke a cigarette, and --

24 Q. Okay.

25 A. -- a -- a few minutes after that we saw blue

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 lights and cop cars and --

2 Q. All right.

3 A. -- ambulances.

4 Q. And did you -- did you see anything else?

5 A. No, sir.

6 Q. All right. Or hear anything else at that time?

7 A. We heard screaming after the ambulance had
8 showed up.

9 Q. Okay.

10 A. We heard screaming from across the way.

11 Q. And -- and I know time is one of those things
12 that's hard to remember, especially this long after.

13 Do you remember approximately how long it was
14 between the time that you heard the shots and the time that law
15 enforcement got there?

16 A. Three to five minutes.

17 Q. Okay. So several minutes had gone by?

18 A. Right.

19 Q. All right. At some point, did an officer come
20 over and speak with you?

21 A. Yes.

22 Q. And did you relate to -- to them the information
23 you now testified to to the jury?

24 A. Yes, sir.

25 Q. All right.

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1 MR. THORNTON: Your Honor, the Court's
2 indulgence please, one moment.

3 THE COURT: Okay.

4 MR. THORNTON: Thank you, ma'am. I have no
5 further questions at this time. If you would, please answer
6 any questions Mr. Bax has.

7 THE WITNESS: Sure.

8 * * *

9 CROSS-EXAMINATION

10 BY MR. BAX:

11 Q. It's still technically morning. Good morning,
12 Ms. Dara, how --

13 A. I'm doing --

14 Q. -- are you?

15 A. I'm doing well. How are you?

16 Q. Good. Thank you for being here. A couple of
17 questions for you.

18 So you were -- you were visiting your stepsister,
19 Ms. Mack; is --

20 A. Yes.

21 Q. -- that right?

22 A. That's correct.

23 Q. Okay. And so referring to State's 22, the
24 aerial photograph here. That's this location here at the
25 bottom of the picture, the --

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. (Reviews photograph). Yes, sir.

2 Q. -- bottom to me, I guess, right?

3 A. Yes, sir.

4 Q. Okay. And you have already testified this here
5 is Bees Creek, right?

6 A. Yes, sir.

7 Q. Okay. And do you access that home by going down
8 this road here?

9 A. Yes, sir.

10 Q. Okay. Is that how Ms. Mack accessed that home
11 as well?

12 A. It is.

13 Q. Is there any other way to access that home?

14 A. I'm -- I'm not really sure.

15 Q. Okay.

16 A. I know that right beside it there's a -- a
17 little dirt road that goes back. There was some homes back
18 there, but I'm not sure if there was another access.

19 Q. Now, you're talking about this little road?

20 A. No. Right on the other side.

21 Q. Here on this road?

22 A. Yes, sir.

23 Q. Oh, I see. I see, okay. So that goes back and
24 there may be some other residences off the picture?

25 A. Yes, sir.

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1 Q. Okay. Now, you indicated that you and Ms.
2 Mackwere there. I mean what -- what -- your recollection,
3 about what time -- well, let me ask you this.

4 When did you arrive that night, do you remember
5 when you got to --

6 A. I'd been there since early morning.

7 Q. So you'd been there pretty much all day?

8 A. Yes, sir.

9 Q. Obviously. And do you recall noting the time
10 when you heard these shots? Do you know about when it was?

11 A. No, sir. It was -- I know it was dark, but it's
12 been so long, I don't -- I don't recall the time.

13 Q. Ms. Dara, when you heard the shots, were you
14 inside or outside of the home?

15 A. Inside.

16 Q. Inside.

17 A. We were sitting in the kitchen.

18 Q. Okay. In the kitchen, all right. Now, was Ms.
19 Mack in the kitchen with you, at that time?

20 A. Yes, sir.

21 Q. Okay. Was there anybody else in the home?

22 A. No, sir.

23 Q. Okay. Where in the -- in the home here -- well,
24 let me ask you this. From this picture it looks like there may
25 be an entrance in the -- what I would say the -- the -- the

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1 part of the home facing the access here. Is that the front
2 door?

3 A. Yes, sir.

4 Q. Okay. Where in relation to the front door is
5 the kitchen?

6 A. It's towards the back of the house to the -- it
7 would -- would be, I guess, your left.

8 Q. Okay, so back to my left --

9 A. I'm sorry, your right.

10 Q. (Indicating.)

11 A. Yeah, your left, right.

12 Q. To my right, okay. Like in this area?

13 A. No, on the other side.

14 Q. Other side?

15 A. Yes, sir.

16 Q. Okay.

17 A. Right -- right in there.

18 Q. So that will be where the kitchen's at?

19 A. Yes, sir.

20 Q. Okay. So are there any windows looking out of
21 the kitchen?

22 A. I do recall there being a window, but it had a
23 sheet over it, so we didn't look out.

24 Q. Okay. All right. And any windows they would
25 have been facing either the back or the side; is that --

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1 A. Correct.

2 Q. -- is that right? So --

3 A. There was windows in the front, but there was an
4 entertainment center blocking that as well.

5 Q. Okay. Now, you said you'd been there all day --

6 A. Uh-huh.

7 Q. -- and, obviously, you'd come down this road.

8 Well, before the shots, did you hear anything else? Did -- can
9 you all hear when cars go by on this road here?

10 A. No, sir.

11 Q. You can't? Okay. Did you all -- obviously, you
12 -- you indicated that -- that you all went outside and smoked
13 cigarettes. Obviously, you'd probably been outside before to
14 do that prior in the day.

15 A. Right.

16 Q. At any time, when you were outside before this,
17 did you see any cars coming down this road?

18 A. No, sir, not that I recall.

19 Q. Okay. Once you heard the shots, you indicated
20 you waited a period of time before going outside.

21 Can you give us any kind of estimate about how long
22 you waited before you and -- and Ms. Mackwent outside?

23 A. A minute, maybe two minutes --

24 Q. Okay.

25 A. -- tops.

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1 Q. Okay. A minute to two minutes tops. And when
2 you went outside, you would have come out in the front here?

3 A. Yes, sir.

4 Q. Obviously, in order to see anything, you'd have
5 to come out through the front, right? In order to see the
6 police cars you said you saw and all that, you'd have to come
7 out --

8 A. We did. We walked to the -- to the edge to the
9 road line.

10 Q. So right about up in here?

11 A. Yes, sir.

12 Q. Okay. And when you and Ms. Mack exited her home
13 there about one to two minutes later, did you see any vehicles
14 leaving the scene?

15 A. No, sir.

16 Q. And, obviously, it being dark, anything would
17 have had, you know -- lights would help. So you didn't see any
18 taillights, or anything like that?

19 A. No, sir.

20 Q. Now, when you went up here, did you guys look
21 towards Bees Creek at all, or were you looking over here to --

22 A. I -- I did look both ways.

23 Q. Uh-huh.

24 A. I saw a commotion on this side of the field, so
25 that's the -- that's where my main focus was, but I did look in

1 the other direction, and I didn't -- I didn't see anything that
2 I --

3 Q. Didn't see anything.

4 A. -- recall.

5 Q. Okay, all right.

6 Now, you indicated that when you heard them, you
7 heard them from the direction over here. How could you all
8 kind of tell what direction they were coming from?

9 A. They were shooting out there a lot, so it kind
10 of -- we heard shots all -- all the time really, and it just
11 sounded like that's -- that was where they came from; and then
12 when we walked out a few minutes later the -- the police showed
13 up. So we knew that that was the area that it came from.

14 Q. So this was not the first time you'd heard shots
15 coming from that general area from --

16 A. On that day, yes, but prior to that, no, we had
17 heard plenty.

18 Q. Plenty, okay. And, in fact, just to make sure,
19 it -- now, does Ms. Mack still live at that residence?

20 A. Yes, sir.

21 Q. Okay. So is -- has it -- how long has it been
22 since you have been back to that residence?

23 A. Three years.

24 Q. Okay. But at that time there was also this
25 large area, was that also a field at that time; do you recall?

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1 A. I feel like there was some trees there. No, no,
2 it was -- it was a field.

3 Q. Okay.

4 A. Yeah. Yeah, these were the only trees that I
5 can remember.

6 Q. Okay. And --

7 A. But this stuff with the -- where we thought the
8 shots came from that was being newly -- I guess they were going
9 to put something there.

10 Q. Okay. And so how could you tell that it was
11 over on this side versus over here on this side, or could you?

12 A. I -- I mean I couldn't really tell exactly, but
13 we were standing on that side of the trailer, so it just
14 sounded very close to us.

15 Q. Okay. How -- how -- how far do you think that
16 is, from -- from -- from Brittany's place here out to them? I
17 mean how far do you think that is?

18 A. I couldn't -- I couldn't tell you.

19 Q. A five-minute walk, a ten-minute walk?

20 A. No, three minutes --

21 Q. Three minutes?

22 A. -- across, maybe to get across the whole field.

23 Q. Right, okay. You know, initially, let -- I
24 remember one other thing, you -- you and your sister were out
25 there, and -- and somebody from law enforcement approached you

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1 all; is that right?

2 A. Yeah.

3 Q. All right. okay.

4 A. I -- I guess they saw us walking to see what was
5 going on, and then asked us if we saw anything.

6 Q. Okay. Now, did they have flashlights?

7 A. Yes.

8 Q. Okay. Did you all have any flashlights?

9 A. No, sir.

10 Q. Okay.

11 A. We had our cell phones, but --

12 Q. Cell phones?

13 A. Yeah.

14 Q. So maybe your cell phones were emitting at least
15 a little bit of light?

16 A. I'm sure.

17 MR. BAX: A moment's indulgence, Your Honor.

18 THE COURT: All right.

19 BY MR. BAX:

20 Q. Real briefly, just a real quick follow-up to
21 clarify. You -- you had testified that you were in the house
22 when you could hear the shots, right?

23 A. Yes.

24 Q. And later on, after, you know, blue lights
25 showed up across the way, you said you could hear screaming.

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1 A. Yes, sir.

2 Q. Okay. Were you outside when you heard that?

3 A. Yes.

4 Q. Okay, and could you tell, if that was coming
5 from the inside of the home, outside of the home?

6 A. It sounded like it was coming from outside.

7 Q. Okay.

8 MR. BAX: No further questions, Your Honor.

9 THE COURT: All right. thank you. Any
10 follow-up?

11 MR. THORNTON: No follow-up, Your Honor. Thank
12 you very much. Thank you.

13 THE COURT: Thank you very much. You can step
14 down.

15 (Witness exits witness stand.)

16 THE COURT: All right. Ladies and Gentlemen, we all
17 agree now is a good stopping point, so we're going to give you
18 an opportunity to go get lunch, stretch your legs, so we'll
19 have you back here -- in here about 1:30, all right? Enjoy
20 your break.

21 (Jury exits courtroom.)

22 MR. THORNTON: Judge, I'm sorry, can we --
23 before we take them back --

24 THE COURT: Yeah.

25 MR. THORNTON: -- we're gonna -- we're gonna

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1 need to meet just for a minute. I mean, more of -- and, Judge,
2 I'm not -- obviously, that's your call, but I -- we --

3 THE COURT: No, I agree --

4 MR. THORNTON: -- can't resolve this.

5 THE COURT: Just get to what are the motions,
6 just to make it easier.

7 MR. THORNTON: Your Honor, my understanding is,
8 there's a -- we've got two outstanding issues; one being the --
9 and -- and I can't say it will be the next witness, but within
10 the next two to three witnesses after lunch --

11 THE COURT: Okay.

12 MR. THORNTON: -- it will come up, so we have
13 both the Facebook posts and the photographs, and I -- I need to
14 grab my notebook, and then I'm prepared, Your Honor, to do them
15 in whichever order, Your Honor, wishes to do them in.

16 THE COURT: All right. let's do the Facebook
17 post -- post first, please.

18 MR. THORNTON: All right.

19 MR. BAX: Yes, sir, Your Honor. And -- and Your
20 Honor -- for Your Honor to have some context, we may need to
21 just pass up the proposed exhibit, if we are supposed to work
22 through that.

23 MR. THORNTON: Yeah, I'll -- I can pass it up,
24 or I can put it on the board, Judge, whichever you prefer. And
25 I'll just show you what that one actually is.

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1 THE COURT: Just put it on the board, so that I
2 can view it.

3 MR. THORNTON: Yes, sir. I'm sorry, Judge,
4 hopefully, that'll --

5 THE COURT: I can see it, no problem, okay.

6 MR. THORNTON: I'm sorry, Mr. Bax, go ahead,
7 sir.

8 MR. BAX: That's all right. No problem. Your
9 Honor, the issue that we have a objection that the defense
10 would have to this is twofold. Number one, from a relevance
11 and a 403 standpoint, but even before that I think there's a
12 foundational issue.

13 Clearly, this would fall within the definition of
14 an out-of-court statement, and we believe it would be hearsay;
15 and it can't even really be attributed to a particular person.
16 Now, my understanding is, is that they would attribute it to my
17 client's Facebook account, but there is no evidence that can be
18 offered that they can say who put it on there, who has access
19 to his account, and -- and/or what it relates to. It -- it,
20 you know, the understanding is, is that the records indicate it
21 was -- it was posted some time in the day prior to the
22 incident, or in a time prior to the incident; but,
23 specifically, foundationally, Your Honor, as far as an
24 out-of-court statement, as Your Honor's well aware, we have to
25 have an exception to the hearsay rule for it to be admissible,

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1 and here, and I'm -- I'm sorry, I'm flipping back a little bit
2 from -- from my notes.

3 The only exceptions that I think they could try to
4 -- to say that it falls under, would be 8036, a regularly kept
5 business records. The rule specifically states that that would
6 need to be authenticated by a custodian. I don't believe they
7 have one to testify here today. It's not self-authenticated.
8 It's not like you can look at this and identify who did it,
9 where it came from. I mean it's basically a digital clip, and
10 so that -- there could be -- authentication is one that would
11 need to come from the source, and not just self-authentication.
12 Without a custodian, the -- the records -- the exception
13 wouldn't apply, and there's no way to even say that this is
14 actually a statement of the Defendant, so it would not be a
15 statement against interest from the Defendant for two reasons.

16 Number one, you can't say it was even the Defendant
17 that -- that made the statement. Just being his account is not
18 enough to establish that he actually did the post, or that it
19 wasn't something that got reposted from somewhere else. In
20 other words, there's no indication that it was even something
21 that was typed up by the owner of the -- of the page that it
22 was found on. So when you take those things into
23 consideration, then you move -- if you move past those, then
24 you have the issue of 403, and the problem is, the prejudicial
25 effect far outweighs any probative value here, and for a lot of

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1 the same reasons. You cannot attribute this statement directly
2 to the Defendant, and you can't directly say what it -- it's
3 relevant to.

4 There's no mention of any of the parties in this
5 case. There's no direct mention of Fordville Road, there's no
6 mention of the address, there's no mention of the Montanos,
7 there's no mention of even the name Habershams. Well, at the
8 bottom I think one of the things that they -- and I'd have to
9 look back at that, because that has a little piece at the
10 bottom --

11 MR. THORNTON: It -- yeah, it does.

12 MR. BAX: The only thing I think that even
13 connects it at all is, something about -- and I'm looking here,
14 Judge, at the top, and it's a little small for me, and I don't
15 know if you can read that, that has the name of Habershams on
16 there; but like I said before, other than that, it does not
17 relate to this incident in any way, and it really amounts to
18 just kind of unfoundational, unconnected character
19 assassination. I just don't see how it would be admissible in
20 a murder trial.

21 THE COURT: All right. Yes, sir.

22 MR. THORNTON: Thank you, Your Honor. Your
23 Honor, there -- there's three, I think, arguments that -- that
24 Mr. Bax talks about. The first one is -- is relevance. This
25 is a threat made -- I mean it's clearly a threat, "Don't beef

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1 with my family, because there's a lot of us, and we can't
2 control each other, so, boom," with a skull on it, and then
3 hashtag the Habershams.

4 Now, there's been -- already been testimony that
5 there was a dispute between the victims and the Habershams, and
6 this is the day of this event, Judge. It is very close in
7 time, it's the day of the event, it's clearly a threat, so I
8 believe, certainly, relevance is -- is very easily shown.

9 So moving on from relevance, what Mr. Bax is
10 talking about there is -- is authentication really. First of
11 all, let's deal with the hearsay thing, it's an admission by a
12 party opponent. I would put Your Honor to Rule, which is going
13 to be -- and -- and, obviously, because of this, Judge, because
14 it's an admission by a party opponent, there is no exception
15 necessary, because by definition it is not hearsay. So the
16 Court looks at 801D2, that defines it as not hearsay. And it
17 says that the statement is offered against the party, and is
18 the party's own statement, either in an individual, or a
19 represented capacity, or a statement in which the party has
20 manifested an adoption of.

21 So it's posted on Dione Habersham's public
22 Facebook account, and I realize there hasn't been testimony of
23 that; but I don't think Mr. Bax would argue that that would be
24 the testimony by Hallie Godley, who would testify that she went
25 on there the night this occurred, or in the early morning hours

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1 after that -- after that night.

2 So either late the 16th or the 17th, saw that post
3 from the 16th and they screenshotted it. So it's on his
4 Facebook account. It has his Facebook picture on it, so
5 whether he wrote that meme or posted that meme, he has adopted
6 it, so he's the author of it regardless. What Mr. Bax is
7 talking about as far as, "Well, you can't prove he wrote it,"
8 again, all that goes to the weight and cross-examination, and
9 not the admissibility. I would point the Court as far as the
10 auth- -- so that's the second thing, that's whether or not it's
11 hearsay, so I don't think you need a -- an exception, because
12 it isn't hearsay.

13 The second thing -- because even, if, again, Judge,
14 it's either his statement or it's one he's adopted by posting
15 it to his Facebook account, here's what the Courts have said
16 about Facebook authentication. I would point the Court to
17 State vs. Green, which is 427SC223, which deals exactly with
18 Facebook authentication. And what it says, Judge, is, "That --
19 that a Court decides whether a reasonable jury could find the
20 evidence authentic.

21 Therefore, the proponent need only make a prima
22 facie showing that the true author is who the proponent claims
23 it to be." Because as you know, Judge, under the
24 authentication document -- or doctrine, whether you're talking
25 about Civil Court or Criminal Court, it's the same standard,

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1 which is, is the thin that you have what it purports to be?
2 Everything else goes to the weight of the evidence and not the
3 admissibility.

4 Once the Trial Court determines that the prima
5 facie showing has been met, the evidence is admitted, and the
6 jury decides whether to accept the evidence as genuine, and, if
7 so, what weight it carries. That case, Judge, also quotes, as
8 far as I can tell, kind of the -- the preeminent, at least
9 recent case on this, which came out of a civil case, which is
10 D. Field, LLC vs. Atlantic Private Equity Group, LLC
11 (phonetic), which can be found at 413 South Carolina 58. And,
12 Your Honor, in that case, here's what the -- what the Supreme
13 Court said. "Rule 901A, the authentication requirement is
14 satisfied by evidence sufficient to support a finding that the
15 matter is -- the matter in question is what the proponent
16 claims. The burden to authenticate is not high, and requires
17 only that the proponent offer a satisfactory foundation, from
18 which the jury could reasonably find that the evidence is
19 authentic.

20 The authentication requirement does not demand the
21 proponent of evidence conclusively demonstrate it's genuine.
22 In other words, as I understand it, based on D. Field, Judge,
23 and based on the Green case, I have to, basically, give you
24 enough that a jury could find that it was -- that it's a
25 statement by him, that it's authentic, as his Facebook account.

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1 In this case, Hallie Godley will indicate she
2 looked it up by going to his name, and looks at his face, and
3 she pulls -- she pulls the screenshot of it. It just so
4 happens to be on the exact same day, where he -- somebody said,
5 or Dionte Habersham says, "Don't beef with my family, because,
6 boom," and there's a shooting of somebody beefing with his
7 family.

8 So as to relevance, as to the authentication
9 requirement, and as to the fact that I do not believe it's
10 hearsay, Judge, I think clearly this comes in under all three
11 of the arguments by Mr. Bax, and though D. Field and State vs.
12 Green are the -- the two preeminent basis. I will, Judge, pass
13 also up Waley v. State (phonetic), and let me -- let me go
14 ahead and say, this is an unpublished opinion, Your Honor, but,
15 again, it deals exactly with Facebook, and it has a pretty good
16 discussion albeit brief.

17 This was a South Carolina Court of Appeals case
18 2020, and what it talks about, there was -- this dealt with
19 Facebook messages, and they, basically, the witnesses testified
20 they recognized it as something that the petitioner sent to
21 them. The message indicted the petitioner was the sender, and
22 it included a photograph of th petitioner; in other words, what
23 we have here. It purports to come from his account, the
24 account has his photograph on it, that's how they find it,
25 under his name. It says hashtag the Habershams. It see relate

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1 to an incident that has just occurred, and that they said was
2 -- and, again, I -- again, just to make sure the Court
3 understands me, that certainly is an unpublished opinion, but,
4 again, it deals directly with Facebook. So it is a very low
5 standard, it's just a prima facie showing, and the test is, is
6 there enough that a jury could find that it did come from
7 Dione Habersham? Anything else, Judge, goes to weight and not
8 admissibility. Thank you, Your Honor.

9 MR. BAX: Your Honor, in -- in response, I'd
10 certainly argue against the idea that -- that all the
11 uncertainty goes to weight, and Your Honor is the gatekeeper.
12 I mean that -- your job is to look at these things, that's why
13 they wrote the Rule 403. You do have a -- a job, as far as
14 deciding whether something or probative value is outweighed by
15 its prejudicial effect.

16 So I would -- it's not, you know, the idea that
17 anytime there's uncertainty, as to where it came from is always
18 the weight, goes against the reason that they wrote the 403
19 Rule in the first place and have it. There has to be some
20 gatekeeper from the Court serves, especially in a trial -- in a
21 criminal trial, where someone's liberty is at stake.

22 I would also note that these cases are
23 distinguishable, because, specifically, the unpublished opinion
24 from -- and I'm looking at it, it looks like Wade vs. the State
25 of South Carolina, there's specific showings from people that

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1 received these messages on the other end, and there was also
2 testimony presented -- we have none of that.

3 We have no testimony about who received these
4 messages, if there was such a thing. We have no evidence, as
5 to whether there is a password required, whether -- who all has
6 the password. And to label this as a threat is -- is -- is
7 really taking it factually much further than what it is on its
8 face. There is no direction at a particular individual,
9 certainly, not the individuals involved with this case.

10 And so say some meme on here saying "There's a lot
11 of my family, don't mess with us, because we can't control each
12 other," I think is stretching beyond the bounds of the language
13 that we're seeing, to say that that is a threat, much less a
14 threat in this case.

15 As Your Honor's well aware, if someone had evidence
16 of threats against other individuals who are not related in
17 this case, we would have to have a whole wild hearing on
18 whether that would even be relevant in this trial; and most of
19 the time that's not, unless they can make those connections.
20 The attorney -- a -- a meme that's put on a Facebook page into
21 way more than what it is, and once you allow that in,
22 specifically, in the Heel case (phonetic), that was a -- an
23 issue of a contract. The -- the document they're talking about
24 authentication, was a contract, and it was not authored for the
25 -- whether or not the -- the individual who signed it, it was

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1 just proffered for the existence of the contract, was why it
2 was offered and why it was allowed in, and after discussion of
3 authentication in that case.

4 So this is a very different matter, when you're
5 talking about a murder trial, when you're talking about
6 something that they're going to label as a threat, that's not
7 directed at anybody, in particular, and they can't authenticate
8 who put it on there, or it's relevance.

9 I think really when you come down to it, 403 -- it
10 clearly can't come in under 403, because this is, literally,
11 just a hearing per se. This is trying to create a motive,
12 where there is no motive. And that's a problem the State has
13 in this case, is trying to bolster motive, where there is no
14 motive.

15 THE COURT: All right. What about the pictures?
16 Which ones have you all not been able to agree upon?

17 MR. BAX: Yeah, and, Judge, there are -- they've
18 remarked them as State's Exhibits 28, 29, 101, and 102, offered
19 that -- that's moments ago. Yeah, I think these are the ones
20 -- it's all ones that we -- we took out.

21 And so do you want to pass those up to you, so that
22 you can take a look at them, or --

23 MR. THORNTON: Yeah. And, Your Honor, we can go
24 through the same procedure one at a time, if you'd like, what
25 we just did, so the Defendant can see them, whatever Your Honor

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1 MR. THORNTON: May it please the Court, Jacklynn
2 McKay.

3

4

JACKLYN MCKAY,

5

being first duly sworn testified as follows:

6

* * *

7

DIRECT EXAMINATION

8

BY MR. THORNTON:

9 Q. Ms. McKay, could you state your full name for the
10 record, please, ma'am.

11 A. My full name is Jacklynn McKay.

12 Q. Ma'am, who do you currently work for?

13 A. I currently work for RTI International, which is
14 located in Durham, North Carolina.

15 Q. Are you in the process of moving to Durham, North
16 Carolina at some point?

17 A. That's correct.?

18 Q. What is it that you do for RTI in Durham, North
19 Carolina?

20 A. I work as a forensic scientist in their center of
21 forensic sciences. I work on projects that try to strengthen
22 and improve the field of forensic science.

23 Q. Did you work for RTI back on August 16, 2018?

24 A. I did not.

25 Q. Who did you work for then?

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1 A. In August of 2018, I worked for South Carolina Law
2 Enforcement Division, commonly referred to as SLED.

3 Q. You were a SLED agent in 2018?

4 A. That's correct.

5 Q. What did you do for SLED in 2018?

6 A. I worked as a special agent in the crime scene
7 forensic services laboratory.

8 Q. How long did you -- when did you leave SLED to work
9 for RTI?

10 A. I left SLED in June of 2021.

11 Q. So basically just recently you left SLED?

12 A. That's correct.

13 Q. How long did you work for SLED?

14 A. About six-and-a-half years.

15 Q. Did you work primarily in crime scene?

16 A. Four-and-a-half years in the crime scene
17 department. Prior to that, I worked as a forensic serologist
18 in the DNA casework department.

19 Q. Tell me some of the things that you would typically
20 do, in a -- as an agent with SLED working crime scene. Just
21 kind the basics of what you were doing.

22 A. As a crime scene investigator for SLED, I assisted
23 law enforcement agencies across the state in investigating
24 crime scenes. That included documenting, collecting, and
25 preserving evidence for future laboratory analysis.

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1 Q. Turning to August the 16th and 17th, 2018, did
2 you have occasion to come down to Jasper County to assist the
3 Jasper County Sheriff's Office?

4 A. I did.

5 Q. Do they just request SLED crime scene come down,
6 and that's how you get notified, or how does that work?

7 A. That's correct. A call from the Jasper County
8 Sheriff's Office came into the SLED operations desk. They
9 notified a crime scene investigator to go and respond to that
10 request for crime scene assistance.

11 Q. Did you, in fact, come to [REDACTED] Fordville Road here
12 in Jasper County on that day?

13 A. That's correct.

14 Q. Is part of what you do, in addition to collecting
15 things, just transportation to SLED?

16 A. That's correct.

17 Q. If there are items that are collected, even if you
18 don't collect them yourself, do you sometimes transport things
19 to SLED?

20 A. That's correct. If we are involved in evidence and
21 there is evidence that needs to go to the lab for laboratory
22 analysis, we can transport that evidence.

23 Q. Ma'am, I am going to hand you what has been
24 marked -- this is only for identification at this point,
25 State's Exhibit 1. Did you transport that item to SLED?

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1 A. That is correct.

2 Q. When you received State's 1 for identification,
3 would it have been in a sealed condition?

4 A. That's correct.

5 Q. Had it not been in a sealed condition, would you
6 have accepted it for transport?

7 A. That's correct. I would not have accepted it if it
8 was unsealed.

9 Q. Same question as to State's Exhibits 2 and 3 for
10 identification. Did you also transport those items to SLED?

11 A. I did transport those items.

12 Q. Likewise, in a sealed condition?

13 A. That's correct.

14 Q. State's 1, 2, 3 did you alter them or change them
15 in any way or did you simply provide transport from Jasper
16 County to SLED evidence?

17 A. I did not alter those items in any way. I just
18 provided transport from the Jasper County Sheriff's Office to
19 the SLED forensic services laboratory.

20 Q. As to State's Exhibit 19 marked for identification,
21 did you also transport this item to SLED?

22 A. I did.

23 Q. Was it in a sealed condition when you received it?

24 A. It was.

25 Q. Did you change or alter it in any way?

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1 A. I did not.

2 Q. Let's get a little bit more into the specifics of
3 what you have done.

4 First, I will show you what has been marked for
5 identification only as State's 35 through 50, a series of
6 photographs. In general terms, can you identify as a group
7 what those photos are of.

8 A. I do recognize these photos. They were taken by my
9 team on scene. They show the suspected defects that are in the
10 exterior of the residence, as well as a projectile found on the
11 ground outside the residence.

12 Q. Is it fair to say that State's 35 through 50 are
13 exterior shots of the trailer at at [REDACTED] Fordville Road?

14 A. That's correct.

15 Q. You said these were taken by your team. So that
16 was by you or in your presence?

17 A. That's correct.

18 Q. Are these true and accurate representations of the
19 scene as you found it when you got there?

20 A. That's correct.

21 Q. The jury has seen one photograph with what appears
22 to be yellow tape and some white tape around different things.

23 Is that you and your team who placed that?

24 A. That's correct.

25 Q. I will now hand you what has been marked for

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1 identification as State's 51 through 68. Same general
2 question.

3 Can you identify what these would show: Exterior,
4 interior, etc.

5 A. These State's exhibits show the bedroom at the end
6 of the residence. So the interior, south side of the
7 residence.

8 Q. Do they note several, what I would call bullet
9 defects?

10 A. That's correct.

11 Q. Is State's Exhibits 51 through 58 a true and
12 accurate representation of how you found the interior of the
13 home upon your arrival? Obviously, you added tape and other
14 things. Is this a true and accurate representation?

15 A. That's correct.

16 Q. Have they been altered or changed in any way?

17 A. The photos themselves have not.

18 MR. THORNTON: Your Honor. I think that is a good
19 break point. While he is looking at those. This is 69 through
20 72, those four photos. In general, can you identify those that
21 are for identification only at this point.

22 A. These photos depict suspect bullet defects with
23 trajectory rods through them.

24 Q. Is that still the exterior of [REDACTED] Fordville Road?

25 A. The exterior, but the last photo was interior.

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1 Q. So 69, 70, 71 are exterior. 72 is interior?

2 A. That's correct.

3 Q. Are State's 69 through 27 a true and accurate
4 representation of the scene as you found it?

5 A. Other than the additional work that we did on the
6 scene, yes, it is.

7 Q. Other than that additional work, have the
8 photographs been altered or changed in any way?

9 A. No. They have not.

10 MR. BAX: Your Honor, States Exhibits 35 through 68
11 no objections. I think 55 was already in.

12 MR. THORNTON: 55 was already in. As to the rest
13 of them, at this time the State would move the remaining ones
14 into evidence. Mr. Box is correct. That is 35 through 68,
15 although 55 is in evidence.

16 MR. BAX: No objection.

17 THE COURT: All right. Without objection.

18 (State's Exhibits 35 - 68 were accepted and entered
19 into evidence.)

20 BY MR. THORNTON:

21 Q. Ma'am, for the record, anything that has
22 measurement tape or other items -- what what I would call
23 trajectory rods -- those would have been added by your team at
24 the time; is that correct?

25 A. That's correct. We added those after we took the

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1 initial overall photos.

2 MR. THORNTON: Your Honor, at this time I would ask
3 that State's 69, 70, 71, and also 72 be moved into evidence.

4 THE COURT: Any objection?

5 MR. BAX: Without objection.

6 THE COURT: Without objection.

7 (State's Exhibits 69 - 72 were accepted and entered
8 into evidence.)

9 BY MR. BAX:

10 Q. As to State's 35 through 72, can you go through
11 these. Take them one at a time. Please reference the State's
12 Exhibit numbers so the court reporter can get that straight.

13 A. So this is a photo, State Exhibit 35. This is the
14 south end of the residence. As you can see, we have Marker one
15 down here, which indicates a fired projectile. Then this tape,
16 the yellow tape and the white tape was added by me or in my
17 presence on scene in order to document suspected bullet
18 defects. This is an overall photo of defect .

19 Q. Let me ask you a quick question. When we talk
20 about bullet defects, what are we talking about?

21 A. Essentially holes in the residence that are
22 suspected to come from an actual bullet that was fired from a
23 gun. We call them suspected bullet defects until we can
24 confirm or have any firearms-related evidence that can show
25 that those are a bullet that was fired from a gun.

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1 This is the location of suspect bullet Defect A.
2 Suspected bullet Defect B, C, D, and then E..

3 State's Exhibit 36, mid-range photo of Marker 1,
4 which is marking a projectile. This is suspected bullet Defect
5 B.

6 State's Exhibit 37, a mid-range photo of the bullet
7 defects that were in the south end of the residence. Again, we
8 have A. B, C, D., E. Down here is Marker 1.

9 State's Exhibit 38. This is A mid-range close-up
10 of Defect A.

11 State's Exhibit 39. This is a close-up photograph
12 of Defect A. The white tape was added by me on scene to help
13 denote the size measurements of the hole.

14 This is State's Exhibit 40. State's Exhibit 40,
15 this is a close-up photograph of suspected Bullet Defect B.

16 State's Exhibit 41, additional photograph of
17 suspected Bullet Defect B.

18 State's Exhibit 42, a mid-range photograph of
19 suspected Bullet Defect C.

20 State's Exhibit 43, this is a mid-range photograph
21 of suspected Bullet Defect D.

22 Stat'e Exhibit 44, this is a close-up photograph of
23 suspected Bullet Defect D.

24 State's Exhibit 45. This is a mid-range photograph
25 of suspected Bullet Defect E.

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1 State's Exhibit 46, a close-up photograph of the
2 suspected Defect E.

3 Q. Is that what you believe is represented by the
4 marker one that we saw a few photos ago, where there was a
5 fired projectile that was on the ground?

6 A. That's correct.

7 State's Exhibit 47, east side of the residence.
8 All of the other photographs were on the south side, this
9 facing side right here. This is Defect F.

10 State's Exhibit 48 is a close-up photograph of
11 Defect F.

12 State's Exhibit 49, Marker 1 that was back on the
13 south side below Defect E. It was found on the grass right
14 here.

15 State's Exhibit 50, a close-up photograph of the
16 projectile that was found at Marker 1.

17 State's Exhibit 51. This is the inside of a dryer
18 drum inside of the residence. This is a bullet defect that
19 entered into the dryer drum.

20 52, a close-up photograph of that same suspected
21 bullet defect; however, we labeled it. It's Defect D-5. That
22 number just indicated the flight path of the bullet that we
23 were able to follow.

24 State's Exhibit 53, a photograph of the projectile
25 that we were able to find in the dryer drum. It was placed on

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1 this ridge for photograph's sake. As you can see, the defect
2 is right below it.

3 This is State's Exhibit 54. This is an additional
4 photograph of the projectile that was found inside the dryer
5 drum.

6 Q. Let me just, again -- so when we talk about these
7 terms, could you talk to the jury briefly about what a
8 projectile is?

9 A. A projectile is kind of an over-arching term that
10 we can use for any piece of item that was kind of forced
11 through another item. In this case, that is what I referenced
12 as a projectile is actually a bullet that is fired from a
13 weapon, a handgun or a gun of some sort.

14 Q. Would it be fair to say that the projectile is the
15 item that is expelled from the gun?

16 A. That's correct. The projectile is ejected from the
17 front of the gun. It is one of the components of a bullet that
18 gets inserted into a handgun or a firearm.

19 Q. Thank you.

20 A. State's Exhibit 55. This is the bedroom that is on
21 the other side of that south-facing wall that had all the
22 suspected bullet defects in it. This is the continuation of
23 the flight path of the bullet from suspected Bullet Defect B.
24 This is marked as B.-1. This is the continuation of Suspected
25 Bullet Defect D. This is D-1.

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1 State's Exhibit 56. This is the bed seen in the
2 previous photo. This is the mattress. There is a defect in
3 the mattress. That is labeled as C-3.

4 A. This is State's Exhibit 57. This is a mid-range
5 photograph of Defect C-3 that essentially came through that
6 south wall through the mattress then exited the mattress.

7 This is State's Exhibit 58. This is a plastic
8 storage container that was on the opposite side of the
9 mattress. This is the continuation of the bullet that was the
10 flight path of Suspected Bullet Defect C.

11 This is State's Exhibit 59. This wall is on the
12 other side of the bedroom that was referenced in some of the
13 other photos. This is going to be the further continuation of
14 the D flight path.

15 State's Exhibit 60. This is a close-up of the
16 Suspected Bullet Defect that was shown in the previous photo.
17 This one is labeled as D-3.

18 This is State's Exhibit 61. On the opposite side
19 of where D-3 was, there is a dryer. This is Defect D-4, which
20 is a continuation of the D flight path.

21 State's Exhibit 62. This is the bedroom. This is
22 that wall that has D-3. Then down here is the continuation of
23 the bullet that exited the mattress, entered this plastic
24 storage container, and exited this wall here.

25 This is State's Exhibit 63, a close-up photograph

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1 of Defect C-5, which is the lower bullet defect on that wall.
2 That is the continuation of the C flight path.

3 State's Exhibit 64. Opposite that wall, the bullet
4 entered a cardboard box. This is a defect showing where it
5 entered.

6 This is State's Exhibit 65. One that the bullet
7 entered the cardboard box. It entered this circular cardboard
8 box or tub. This is a bullet defect into this circular tub.

9 State's Exhibit 66. Inside that circular tub was
10 an angel ornament. There was a projectile that was lodged
11 within it.

12 There is State's Exhibit 67, a close-up of that
13 projectile.

14 This is State's Exhibit 68. This is the photograph
15 of the projectile once it was removed from the ornament.

16 State's Exhibit 69, the south side of the residence
17 that had all the bullet defects in it. This is the east side
18 that had only Defect F. This photo shows the the rods that we
19 had placed in order to show the general area where the shots
20 may have been coming from or the flight path of the bullets.

21 State's Exhibit 70, the same thing, just from a
22 different angle. It's closer towards the south end of the
23 house.

24 State's Exhibit 71. Showing the flight path roads
25 but oriented on the west side of the residence.

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1 State's Exhibit 72. This shows the flight path
2 rods coming into the bedroom from the exterior.
3 Again, this is Defect B-1 and D-1.

4 Q. If you can leave that one up. Just one quick
5 question. The area in yellow tape at the bottom where the rod
6 is. On the bed itself and on the pillow, why is there tape
7 there?

8 A. We observed suspected blood on the pillowcase here
9 and on the brown sheet here. We scaled that to try to document
10 the stains that we saw.

11 Q. I will ask you if you can, just remain there, if
12 you are comfortable doing that.

13 Look at each of the items that I have handed you in
14 this bag. Just for the record, what I am handing you is a bag
15 containing smaller bags with State's for identification, 5, 6,
16 7, 8.

17 Would you please look at those and tell me if you
18 can identify those items.

19 A. I can identify these items. State's Exhibit 6 was
20 the projectile that was collected from Marker 1 next to the
21 residence.

22 A. State's Exhibit 7 was a projectile that was
23 collected from inside the dryer.

24 State's Exhibit 8 was a projectile that was
25 collected from the angel ornament.

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1 State's Exhibit 5 was a projectile collected from
2 autopsy. I do recognize them based on the lab number, item
3 number, and my initials.

4 Q. Were those items collected by you or at some point
5 transported by you to SLED?

6 A. They were collected by me or transferred to me.

7 Q. In other words, specifically as to Items 6, 7, 8,
8 were those items collected by you and your team on scene?

9 A. That's correct.

10 Q. As to the projectile that is labeled as from the
11 victim, were you present at the autopsy for that or not?

12 A. I was not.

13 Q. That would eventually have been transferred to
14 SLED; is that correct?

15 A. It was transported to SLED, and it was signed over
16 to me. I submitted it to the lab.

17 Q. Were any of these items altered or changed in any
18 way by you while they were in your custody?

19 A. They were not.

20 Q. Did they come to you in a sealed condition?

21 A. The items I collected on scene I sealed on scene.
22 And the item that was transferred to me, it was sealed when it
23 was given to me.

24 Q. As to State's 6, 7, 8 those would have been sealed
25 by you and/or your team on scene?

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1 A. That's correct.

2 Q. Item 5 was transferred to you in a sealed
3 condition?

4 A. That's correct.

5 MR. THORNTON: Your Honor, at this time I would ask
6 that Items 6, 7, 8 be moved into evidence. Item 5 we will have
7 to move into evidence with another witness.

8 THE COURT: Any objection?

9 MR. BAX: No, Your Honor.

10 THE COURT: Without objection.

11 (State's Exhibits 6 - 8 were accepted and entered
12 into evidence.)

13 BY MR. THORNTON:

14 Q. Can you please describe these items.

15 A. This is State's Exhibit 6. This is the projectile
16 that was collected from Marker 1.

17 This is State's Exhibit 7. This was the projectile
18 that was collected from inside the dryer.

19 State's Exhibit 8. This is the projectile that was
20 collected from the angel ornament.

21 Q. It you would, as long as you comfortable there, I
22 will leave you where you are.

23 I will show you what has been marked for
24 identification as State's Exhibits 73 through 82. Tell us
25 generally if you recognize those photographs and what those are

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1 a photograph of.

2 A. I do recognize these photos. They were taken on
3 scene. They are photographs of a field that was behind the
4 residence. They depict cartridge cases that were marked prior
5 to our arrival.

6 Q. You said these were taken by you and/or your team,
7 is that correct?

8 A. That's correct.

9 Q. Fair and accurate representation of how you found
10 that area on the night of August 16, 2018?

11 A. We arrived on August 17, yes that's correct.

12 Q. Early in the morning hours of August 17?

13 A. Yes.

14 Q. Have you altered or changed these photographs in
15 any way?

16 A. No. I have no.

17 Q. I will also ask you to look at State's 83 through
18 98. I will ask you the same question.

19 Can you identify those photographs in general term.

20 A. I do recognize these photographs. They were taken
21 by me and my team on scene. They represent suspected footwear
22 impressions that were found in the field behind the residence.
23 Photographs .

24 Q. Were these taken by you and your team on the early
25 morning hours of August 17, 2018?

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1 A. That's correct.

2 Q. They are a fair and accurate representation other
3 than some placards that were placed by Jasper County?

4 A. That's correct.

5 Q. Other than the fact that you may have added some
6 extra markers, is that a fair and accurate depiction of the
7 scene?

8 A. That's correct.

9 Q. Were they altered or changed in any way?

10 A. They are not.

11 MR. THORNTON: Your Honor, at this time I would ask
12 that State's 73 through 98 be admitted into evidence.

13 THE COURT: Any objection?

14 MR. BAX: No, Your Honor.

15 THE COURT: Without objection.

16 (State's Exhibits 73 - 98 were accepted and entered
17 into evidence.)

18 BY MR. THORNTON:

19 Q. Please just publish these to the jury in the same
20 fashion you did before. Just go one at a time, please.

21 A. State's Exhibit 73. This A general overview of the
22 field. It might be a little dark, but you can see some markers
23 here and a cluster of markers here. This is -- if your back
24 was to the residence looking towards the field.

25 State's Exhibit 74. These markers were placed

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1 prior to our arrival on scene by the Jasper County Sheriff's
2 Office. They are all marked "cartridge cases."

3 State's Exhibit 75. This is a close-up photograph
4 of the cartridge case found at Marker 1.

5 State's Exhibit 76 is a close-up photograph of the
6 cartridge case at Marker 2.

7 State's Exhibit 77 is a close-up of the cartridge
8 case at Marker 3.

9 State's Exhibit 78 a close-up of the cartridge case
10 at Marker 4

11 This is State's Exhibit 79. This is a close-up of
12 the cartridge case at Marker 5.

13 This is State's Exhibit 80. This is a close-up or
14 mid-range photograph of the cartridge case found at Marker 6.

15 State's Exhibit 81. This is a photograph of the
16 cartridge case found at Marker 7.

17 State's Exhibit 82 is an overall photograph of the
18 field oriented from near the cartridge cases. These markers
19 that you see are indicating footwear impressions.

20 Exhibit 83 is a mid-range photograph of Markers 12
21 - 15. They are all indicating footwear impressions. They were
22 placed on scene by Jasper County Sheriff's Office prior to my
23 arrival.

24 State's Exhibit 84 is mid-range photograph of some
25 of the footwear impressions that were found in the field.

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1 State's Exhibit 85, a close-up photograph of the
2 footwear impression found at Marker 16.

3 State's Exhibit 86. A close-up photograph of the
4 footwear impression found at Marker 11.

5 State's Exhibit 87, another footwear impression
6 found at Marker 12.

7 State's Exhibit 88, another close-up of a footwear
8 impression at Marker 13.

9 State's Exhibit 89, a close-up of a footwear
10 impression at Marker 15.

11 This is State's Exhibit 90. This is an overall
12 photograph depicting the footwear impressions shown at Markers
13 9 and 10 oriented back towards the cluster of cartridge cases.

14 State's Exhibit 91. This is a close-up photograph
15 of the footwear impression found at Marker 9.

16 This is State's Exhibit 92. This is a impression
17 found at Marker 10.

18 This is State's Exhibit 93. This is an overall
19 photograph of the footwear impressions oriented, looking back
20 towards the opposite end. So the residence would be kind of --
21 you are looking away from the residence, essentially. Footwear
22 impression at 10, 17, and then a cluster of some other footwear
23 impressions.

24 State's Exhibit 94, a mid-range photograph of the
25 footwear impression at Marker 17.

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1 State's Exhibit 95, a close-up of the footwear
2 impression at Marker 17.

3 State's Exhibit 96, the footwear impression at
4 Marker 18.

5 State's Exhibit 97, this is the footwear impression
6 at Marker 19.

7 State's Exhibit 98. This is an overall photograph
8 looking towards the residence. It's kind of dark, but the
9 residence is right here. In this general area is a cluster of
10 cartridge cases. All of these markers are footwear impression

11 Q. Thank you, ma'am. Go ahead and take the stand
12 again.

13 MR. THORNTON: Your Honor may we approach?

14 THE COURT: Absolutely.

15 (Bench conference.)

16 MR. THORNTON: Thank you, Your Honor.

17 BY MR. THORNTON:

18 Q. I am going to hand you what has been marked for
19 identification as State's Exhibits 9 through 16. I will ask if
20 you can identify those items.

21 A. I do recognize State's Exhibits 9 through 16 as the
22 cartridge casings collected on scene.

23 Q. Is that the reference that you have already done
24 with the photographs showing the different markers where the
25 shell casings were collected?

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1 A. That's correct.

2 Q. Those were collected by you or your team?

3 A. That's correct.

4 Q. Were they sealed by you.

5 A. That's correct.

6 Q. Does it appear they have been altered or changed in
7 any way, other than that they may have been analyzed?

8 A. It does not.

9 MR. THORNTON: Your Honor, at this time I would
10 move State's 9 through 16 into evidence.

11 THE COURT: Any objection?

12 MR. BAX: No objection.

13 THE COURT: Without objection.

14 BY MR. THORNTON:

15 Q. We will just go through them one at a time. I will
16 ask you if you can kind of reference it, which location these
17 were found at.

18 Would you be able to do that?

19 A. Should be.

20 Q. Showing you what has been marked for identification
21 as State's 9. Is Marker 1, collected from Marker 1 Field, is
22 that because there was more than one Marker 1 on the scene?

23 A. Yes. That is to clarify it was Marker 1.

24 Q. The way that you would read this so the jury
25 understands, the way you would read this is it's a cartridge

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1 case found at Marker 1 in the field, so they can find that on
2 the pictures that you just saw?

3 A. That's correct.

4 Q. 9 is Marker 1. I know this says this. Let's go
5 through it for record purposes.

6 Where was 10 located?

7 A. 10 is from Marker 2. Marker 2 was inadvertently
8 used twice as well. That is why there was the designation of
9 the field next to it.

10 Q. Do these then go through numerically, and then 11
11 is Marker 3, 12 is Marker 4, and so on?

12 A. That should be correct.

13 Q. The marker number will be indicated in the
14 envelope; is that correct?

15 A. That's correct.

16 Q. Ma'am, it is going to be for identification
17 purposes at this time. That is State's Exhibit 29. Do you
18 recognize that photo?

19 A. I do.

20 Q. Is that an interior shot of the trailer at 1764
21 Fordville Road?

22 A. That's correct.

23 Q. That is the living room area?

24 A. That's correct.

25 Q. Is this one of the photographs taken by you or your

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1 team?

2 A. That's correct.

3 Q. Fair and accurate representation?

4 A. That's correct.

5 Q. Appear to have been altered or changed in any way?

6 A. It does not.

7 MR. THORNTON: Your Honor, at this time the State
8 would move State's Exhibit 29 into evidence.

9 THE COURT: Over the objection, correct?

10 MR. BAX: That's correct. Just restating my prior
11 objection.

12 THE COURT: Yes, sir.

13 (State's Exhibit 29 was marked and accepted into
14 evidence.)

15 BY MR. THORNTON:

16 Q. Did you indicate that this appeared to be in the
17 living room area?

18 A. That's correct. The picture is oriented as if you
19 were standing in the front door looking into the residence.

20 Q. What was the reason for the taking of that shot?

21 A. We saw suspected blood leading from the front door
22 to a pool-like area in the middle of the living room floor.
23 Then that pool-like area we suspected there might be vomit as
24 well as blood. That pool-like area we marked as Marker 2.

25 Q. Showing you what has been marked for identification

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1 as State's Exhibits 17 and 18. I will ask if you can identify
2 those two items.

3 A. I can identify these items as my diagram I included
4 with my report.

5 Q. Were those prepared by you?

6 A. They were.

7 Q. A fair and accurate depiction. I think it says on
8 there it's not necessarily to scale. Are those an accurate
9 depiction of how you found the scene to try to orient where
10 your found different items?

11 A. That's correct.

12 Q. Does it appear it was changed or altered in any
13 way?

14 A. This is a black-and-white version. My original was
15 in color.

16 Q. Other than that, has it been altered or changed?

17 MR. THORNTON: Your Honor, 17 and 18 I would ask to
18 be moved into evidence.

19 MR. BAX: Without objection, Your Honor.

20 THE COURT: Without objection.

21 (State's Exhibits 17 - 18 were accepted and entered
22 into evidence.)

23 BY MR. THORNTON:

24 Q. So as to 18, I will just point out a couple of
25 things. Is the bullet defect -- is that where you had

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1 testified earlier, suspected blood. All of these different
2 bullet defects shows the orientation if you were looking down
3 into the trailer?

4 A. That's correct. It's a top view. Looking from the
5 ceiling down towards the floor.

6 Q. I would point out -- so this is where the
7 footprints and shell casings were located. I believe you got a
8 legend here that the jury can look at that will indicate where
9 everything was found.

10 The footwear impressions are the darker ones here?

11 A. That's correct.

12 Q. The shell casings next to them here.

13 A. That's correct.

14 Q. I see you have Fordville Road and Bees Creek Road.

15 This is State's Exhibit 22. Already in evidence.

16 If you are looking at State's Exhibit 17, the orientation would
17 be this way.

18 A. That's accurate.

19 Q. What you located is the bullet casings at this end
20 of the house and the shell casings somewhere in this area and
21 the footprints going back this way.

22 A. That's correct.

23 THE COURT: Let's take our-mid afternoon break. We
24 have been going for about an hour and 20 minutes. Let's go
25 ahead and take a bathroom break. Stretch your legs a little

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1 bit. We will get you right back in in just a couple of
2 moments.

3 (Jury exits courtroom.)

4 (Recess.)

5 THE COURT: Anything before we get started?

6 MR. THORNTON: Nothing from the State, Your Honor.

7 THE COURT: All right. Bring them up, please.

8 (Jury enters courtroom.)

9 THE COURT: You may continue.

10 * * *

11 DIRECT EXAMINATION CONTINUES

12 BY MR. THORNTON:

13 Q. Agent McKay, once you have done the collection, you
14 did the photographs and the sketches and all the stuff that we
15 have seen now and did the transport. That would end your
16 participation with this case; is that correct?

17 A. That's correct.

18 MR. THORNTON: At this time I have no further
19 questions. I would ask you to answer any questions of Mr. Bax.

20 MR. BAX: Thank you.

21 * * *

22 CROSS-EXAMINATION

23 BY MR. BAX:

24 Q. Good morning, Ms. McKay.

25 A. Good afternoon.

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1 Q. Just a couple of questions. You HAD indicated that
2 a call comes into SLED's operation desk. They notify you that
3 the local law enforcement agency has called for assistance on a
4 crime scene; correct?

5 A. That's correct.

6 Q. I know that SLED's headquarters is in Columbia,
7 down there on Broad River Road. Is that where you were located
8 when the call came in?

9 A. We are required to live in a 30-minute response
10 time to Columbia, South Carolina, so that is where I responded
11 to.

12 Q. So this far-away corner of South Carolina where we
13 all live in. Obviously, there was some time for you all to get
14 to the location; is that correct?

15 A. That's correct.

16 Q. Did you and your team travel together in one
17 vehicle? Travel in separate vehicles? How do you do that?

18 A. I can't quite remember during this time, but
19 depending on the circumstance we could drive together or we
20 could drive separately.

21 Q. Just the reason I asked -- do you recall about
22 when -- I know you said to the Solicitor that it was in the
23 early-morning hours of the 17th. It had gone past midnight and
24 turned into August 17. Is that correct, by the time you got
25 there?

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1 A. That's correct. We got there a little after
2 midnight on August 17th.

3 Q. You testified when you are were going through the
4 State's Exhibits, the photographs, some of the things that we
5 saw in those pictures were scale markers that had been placed
6 by you and your team. Scale tapes on the side of the residence
7 near the bullet defects, correct?

8 A. That's correct.

9 Q. Some of the markers that were in the field near
10 where the suspected casings and footwear impressions were,
11 those were markers put down not by you all but by someone with
12 the Sheriff's Department; is that correct?

13 A. All of the cartridge case markers were placed down
14 sometime before our arrival. Most of the footwear impression
15 markers were placed prior to our arrival by someone with Jasper
16 County. That's correct.

17 Q. Do you remember -- if it was most of the markers
18 for the footwear, do you remember which ones you all placed
19 versus which ones the Sheriff's Department had done.

20 A. We placed Markers 17, 18, 19 for the footwear
21 impressions.

22 Q. Additionally, State's Exhibits 17 and 18 are some
23 diagrams of the scene that were done by you, correct?

24 A. That's correct.

25 Q. I will just put State's Exhibit 17 up so we can see

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1 it. I see here that there are lines with arrows and numbers in
2 there. Is that a measurement of distance?

3 A. Yes. It's an approximate measurement.

4 Q. How did you approximate that measurement?

5 A. We have what we call range finders. It's
6 essentially a laser that determines distance. We utilize that
7 on the scene to try to calculate our measurements.

8 Q. So the range finder or laser approximated the
9 distance between Markers Numbered 1 through 8, I am pointing to
10 here with my pen. 160 and a half feet, is that correct?

11 A. That's correct. However, it was measured
12 specifically from Marker 1.

13 Q. So specifically to Marker 1 is 160 -- 5 inches.
14 160 feet and 5 inches?

15 A. That's correct.

16 Q. I see another one going here and pointing to Marker
17 15; is that correct?

18 A. That's correct.

19 Q. That range -- that is over 250 feet; is that
20 correct?

21 A. That's correct. 250 feet 6 inches.

22 Q. That is going to Marker 15, which is obviously not
23 the closest marker, is that correct?

24 A. That's correct.

25 Q. These markers indicate what were suspected shoe

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1 impressions or footwear impressions; is that correct?

2 A. That's correct.

3 Q. You have an arrow here that indicates dirt road.

4 Cross-reference State's Number 22 while we are at it. To make
5 sure we are looking and comparing. When you have that arrow,
6 referring to State's Exhibit -- referring to dirt road, is that
7 this dirt road here?

8 A. That's correct.

9 Q. Was there any estimation of the distance from that
10 dirt road here and any of these markers?

11 A. Unfortunately, I didn't collect that measurement on
12 scene.

13 Q. These markers are where the casings were found,
14 correct?

15 A. That's correct.

16 Q. To your knowledge, were there any firearms
17 collected that night by your team on this scene?

18 A. There was not. No firearms were collected by me or
19 my team that night.

20 Q. Obviously, if you had collected a firearm, that
21 would be have been transported to SLED as well like the other
22 items we discussed?

23 A. That's correct.

24 Q. Just want to make sure that I am correct on this
25 one. This appears to be a pretty detailed diagram of the

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1 residence that we talked about. Am I getting that correct?

2 A. That's correct.

3 MR. BAX: Your Honor, approach the witness.

4 THE COURT: Absolutely.

5 BY MR. BAX:

6 Q. I am going to hand you this and see if you can
7 identify that.

8 Q. Yes. This is the rough draft of the scene that I
9 made on scene.

10 Q. That would have been your rough draft of the
11 finished product that we are seeing here?

12 A. That's correct.

13 Q. Those rough drafts -- did you do those that night
14 or later in the morning?

15 A. The rough drafts are done on scene. I don't know
16 exactly what time it would have been while I was still present
17 on scene.

18 Q. Okay. Speaking of on scene, I know that you have
19 indicated that you were there on scene. You had a team. At
20 some point the projectiles that we have talked about that is
21 one of the exhibits was transferred to your possession that was
22 recovered at the hospital.

23 Would that have been one of the last things you did
24 before you left Jasper County to return back to SLED?

25 A. I believe the projectile that was collected from

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1 the hospital was transferred to me on a different day.

2 Q. After you guys wrapped up, about how long had you
3 and your team been there at [REDACTED] Fordville?

4 A. We arrived on scene at approximately 12:32 a.m. We
5 cleared at approximately 5:10 a.m.. We were there for about
6 five hours.

7 Q. Finally, some of these photographs I see some
8 evidentiary tape. That tape seems to have measurements on it;
9 is that correct?

10 A. That's correct.

11 Q. For establishing relative distance from one piece
12 of evidence or another and/or a scale?

13 A. That is correct.

14 Q. I also see on some of the close-ups of these
15 defects that there is some white marking tape that has
16 measurements on it?

17 A. That's correct.

18 Q. To establish some kind of visual estimate to try to
19 estimate the size of the defects or whatever is being placed
20 there?

21 A. That's correct.

22 Q. I think that in the photographs -- do you ever
23 place any kind of scale markers that are not permanent around
24 things like casings or shoe impressions on the ground, ruler or
25 anything like that?

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1 A. For shoe impressions, we do.

2 MR. BAX: No further questions.

3 MR. THORNTON: No follow up, Judge. I would ask
4 that she be excused subject to recall. We moved through a lot
5 of territory today, but in case we missed anything.

6 THE COURT: You may be excused for the rest of the
7 day. Have a wonderful day.

8 (Witness exits witness stand.)

9 THE COURT: Call your next witness.

10 MR. THORNTON: Your Honor, the State calls Tavera
11 Edwards.

12 TAVARA EDWARDS,

13 being first duly sworn testified as follows:

14 * * *

15 DIRECT EXAMINATION

16 BY MR. THORNTON:

17 Q. Ma'am, please state your full name for the record.

18 A. Tavera Edwards.

19 Q. Who do you currently work for?

20 A. Walterboro Police Department.

21 Q. Who did you work for on or about August 16, 2018?

22 A. Jasper County Sheriff's Office.

23 Q. Did you have occasion to -- I will ask you if you
24 can identify what has been marked as State's Exhibit 5.

25 A. This is a projectile from an autopsy.

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1 Q. Is this the Moises Montano case?

2 A. Yes, it is.

3 Q. Were you the officer assigned to collect the
4 projectile from the autopsy?

5 A. Yes, sir.

6 Q. Did you actually receive this from the doctor and
7 staff that were doing the autopsy?

8 A. Yes, sir, I did.

9 Q. Was it given to you in a sealed condition?

10 A. Yes, sir, it was.

11 Q. Is it in the little envelope when you get it?

12 A. Yes, sir, it is.

13 Q. Did you alter or change this in any way?

14 A. No, sir.

15 Q. Once you receive this from the team doing the
16 autopsy, did you then transfer it to SLED's custody?

17 A. Yes, sir.

18 Again, did you alter or change it in any way?

19 A. No, sir. I did not.

20 MR. THORNTON: Your Honor, at this time I would ask
21 that State's Exhibit 5 be moved into evidence.

22 THE COURT: Any objection?

23 MR. BAX: No objection, Your Honor.

24 THE COURT: Without objection.

25 State's Exhibit 5 was marked and accepted into

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1 evidence.)

2 MR. THORNTON: Your Honor, subject to being
3 recalled as discussed at sidebar, I don't have any further
4 questions of Ms. Edwards at this time. I would ask that she
5 answer any questions as to this issue from Mr. Bax.

6 MR. BAX: For this limited issue, I don't have any
7 questions for Ms. Edwards.

8 THE COURT: Thank you very much. You may be
9 excused.

10 (Witness exits witness stand.)

11 THE COURT: Call your next witness.

12 MR. THORNTON: Your Honor, the State calls Michelle
13 Eichenmiller.

14 MICHELLE EICHENMILLER,
15 being first duly sworn testified as follows:

16 * * *

17 DIRECT EXAMINATION

18 BY MR. THORNTON:

19 Q. Ma'am, please state your full name for the record.

20 A. My name is Michelle Eichenmiller.

21 Q. Ma'am, what is it that you currently do?

22 A. South Carolina Law Enforcement Division, commonly
23 known as SLED. I work in the forensics lab in the firearms
24 department.

25 Q. In general, what kind of work do you do in the

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1 firearms department?

2 A. Examine any evidence from a crime that involves
3 firearms. We look at firearms, cartridge cases, bullets, and a
4 couple of other related items that we can look at.

5 Q. Is it appropriate to call you Agent Eichenmiller?

6 A. That is fine.

7 Q. How long have you been with SLED?

8 A. I have been with SLED 15 years.

9 Q. Have you spent that entire time in the -- I know
10 you have testified for me a number of times. I always mess
11 this up. You work in the firearms and tool marks department?

12 A. Correct.

13 Q. Have you been in that department the entire time?

14 A. Yes, I have.

15 Q. What kind of training and experience do you have to
16 be able to do your job at SLED?

17 A. I have a Bachelor's degree. I also have a Master's
18 of Science in forensic science. In order to be a firearms
19 examiner, there is no college you can go to. You have to learn
20 with firearms examiners at your agency.

21 Sled has a 3- to 4-year training program that I
22 completed. Doing a lot of readings and examinations on my own.
23 Microscopic work. Then sitting in the offices of the trained
24 examiners and seeing how they do casework.

25 At the end of that, I took a comprehensive exam.

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1 Once I passed it, I was able to do casework on my own.

2 Q. A Bachelor's and a Master's degree in forensic
3 science. This is an on-site training program that SLED has for
4 firearm and tool mark identification?

5 A. Correct.

6 Q. You said it's three- to four-years long?

7 A. Yes.

8 Q. You went through that entire program.

9 A. Yes.

10 Q. You indicated at some point you had to take an exam
11 before you were allowed to do casework?

12 A. Correct.

13 Q. Do you have any idea what year it was that you
14 became qualified to do your own cases?

15 A. I believe it was 2010.

16 Q. How many cases do you think you have worked for
17 SLED since 2010?

18 A. Probably close to 1,000 if not more.

19 Q. As part of that casework, do you look at different
20 combinations of firearms, projectiles, casings, tool marks, all
21 of those things?

22 A. Yes, we do.

23 Q. Explain to the jury what types of things you are
24 comparing or asked to compare.

25 A. We will compare cartridge cases, which is the part

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1 of the cartridge that holds the bullet and the gunpowder.
2 Firearms will leave marks on those, so we will look look at
3 those. We also look at the bullets. After they have passed
4 through a firearm, they sometimes have marks on them that we
5 can examine.

6 We compare those items to any firearms that we
7 receive to try to determine if they were fired by that firearm.

8 Q. Let me ask you briefly. You said you had worked
9 thousands of these cases. Was all of your work and training
10 done at SLED, or do you sometimes go to other outside-of-SLED
11 training classes?

12 A. I have attended the ATF Serial Number Restoration
13 class. Also attended several Glock armors classes. We attend
14 training through the Association of Firearms and Tool Mark
15 Examiners, which is an international organization of people who
16 are firearms examiners. Once a year they have a meeting that
17 we can attend.

18 Q. Do you have some sort of proficiency exams or
19 anything that you have to take as part of your work with SLED?

20 A. Yes. Once an accreditation cycle we will take a
21 proficiency test in the areas that we are qualified in. Tool
22 marks. I do a firearms and a serial number restoration.

23 Q. How often is that done?

24 A. Once in an accreditation cycle, so once every three
25 to five years.

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1 Q. Have you been deemed proficient in every one of
2 those exams?

3 A. Yes.

4 Q. Have you ever been qualified as an expert in
5 firearms and tool mark identification before?

6 A. Yes.

7 Q. Approximately how many times?

8 A. Approximately 100 times.

9 MR. THORNTON: Your Honor, at this time I would ask
10 that Agent Eichenmiller be recognized as an expert in the area
11 of firearms and tool mark identification.

12 THE COURT: Any objection?

13 MR. BAX: Subject only to my prior statement to the
14 Court.

15 THE COURT: All right. Ladies and gentlemen, She
16 has been qualified as an expert; therefore, she can give her
17 opinion, whereby a lay witness would not be able to give an
18 opinion.

19 BY MR. THORNTON:

20 Q. Agent Eichenmiller, I am going to hand you what has
21 been entered into evidence at this point as State's Exhibits 9
22 through 16. I will ask you if you recognize those items.

23 A. Whenever I receive evidence in a case, I mark it
24 with the lab number, the item number, and my my initials. When
25 I am finished with it, I will heat seal the bag and add the

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1 date and my initials on there.

2 This is the evidence I examined in this case.

3 Q. So what sort of an examination did you do in this
4 case on Items 9 through 16? Just describe for the jury what
5 you are doing and what you are looking for.

6 A. In this case I received these fired cartridge
7 cases. I examined them. First, I take picture of how I
8 receive them. I document the caliber, any marks I see on them,
9 any trace evidence that might be present on a worksheet. Then
10 I look at them underneath my comparison microscope.

11 Q. So can you tell us a little bit about what marks
12 are you looking for. I know you talked a little bit about that
13 firearms can leave marks on casings.

14 If you would, please, first describe what we are
15 talking about round versus projectile or bullet versus casing.

16 Can you talk about what those things are actually
17 are and then specific as to the casings.

18 What types of mark would you be looking for?

19 A. The cartridge case is the part that holds the
20 bullet and the gunpowder together along with the primer.
21 During firing, the firing pin of the firearm will hit the
22 primer, which ignites the gunpowder, which will cause the
23 bullet out of the firearm through the barrel.

24 I can examine the cartridge cases for marks left by
25 the firing pin. Also, other variety of marks left by the

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1 breach phase during firing. That cartridge will get pushed
2 back the breach face, the back of the firearm. It can make
3 marks on there.

4 We look at impressions or striations, which are
5 scratches on the cartridge case.

6 Q. Are you sometimes able to determine whether or not
7 different casings were fired by the same gun?

8 A. Yes.

9 Q. Is that the purpose of what you are looking for
10 when you are looking at cases?

11 A. Yes.

12 Q. Did you examine the casings that are marked State's
13 Exhibits 9 through 16 that was testified earlier were collected
14 from the field next to [REDACTED] Fordville Road?

15 A. Yes. I examined 9 through 16.

16 Q. What, if any, conclusions were you able to reach?

17 A. I found matching individual identifying
18 characteristics, which led me to believe that they were fired
19 by one firearm.

20 Q. Is it your expert opinion that 9 through 16 were
21 all fired by the same gun?

22 A. Yes.

23 Q. Were you able too determine what caliber these
24 casings came from?

25 A. They are all .9 Luger caliber.

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1 Q. So they are all .9, and they were all fired by the
2 same weapon, is that your opinion?

3 A. Yes.

4 Q. I am now going to hand you what has been entered
5 into evidence, as State's Exhibits 5, 6, 7, 8, the bullet
6 fragments -- 5 is a bullet fragment pulled from the autopsy.
7 6, 7, 8 were fragments from [REDACTED] Fordville Road.

8 I will ask you if you examined those as part of
9 your work on this case.

10 A. Yes. I examined these in this case as well.

11 Q. You talked about the cartridge casings that you
12 looked at, which is State's 9 through 16. The fact that you
13 are looking for breach marks, breach face, and scratches.

14 What, if any, kind of marks are you looking for
15 specifically with the expelled projectiles that would be
16 State's 5, 6, 7, 8?

17 Q. Bullets were get marked by the barrel of the
18 firearm. Manufacturers can choose what kind of rifling they
19 want to put in there. Rifling helps a bullet keep its path.
20 It's like a quarterback throwing a football. It keeps it going
21 on a straight path. Manufacturers can pick the number of lands
22 and grooves they want to put in there, how wide they are, and
23 what direction of twist they are.

24 Q. You indicated you did, in fact, look at and examine
25 State's 5, 6, 7, 8, which are all bullet fragments?

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1 A. Yes.

2 Q. What were your conclusions, if any?

3 A. In the case of the cartridge cases, they were
4 damaged, and they had insufficient marks for me to determine if
5 they were fired by the same firearm.

6 Q. You just said cartridge cases. These would be
7 fired projectile. As to State's 5 through 8, the fired
8 bullets, what were your conclusions?

9 A. The fired bullets are microscopically compared to
10 each other. Due to damage and insufficient corresponding
11 marks, I couldn't determine if they were fired by one firearm.

12 So in firearm identification, we have four answers
13 that we can give: yes, it was fired by a gun. One is, no.
14 One is, we can't tell. In this case, my answer was
15 inconclusive because I couldn't tell.

16 Q. You couldn't tell whether these were fired by the
17 same gun or not?

18 A. Correct.

19 Q. As to State's 5 through 8, were you able to
20 determine whether or not they were consistent with any
21 particular caliber?

22 A. Yes. I determined that they were all .9 Luger
23 caliber.

24 Q. As to State's 5 through 8, were you able to
25 determine whether there were any particular firearms? Not a

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1 specific one, but particular brand of firearms?

2 Were you able to do any limit at all on these?

3 A. In the case of not receiving a firearm in a case,
4 we have a database that we can put the general rifling
5 characteristics, which would be the number of lands and
6 grooves, the width, the direction of twist.

7 Put that in the database, and the database will
8 tell us what kinds of manufacturers make firearms with those
9 specifications.

10 In this case, I was able to do that and come up
11 with three manufacturers.

12 Q. What were those three manufacturers?

13 A. Fabrique Nationale, Ruger, and Smith and Wesson.

14 Q. Just to recap, in your expert opinion, all of the
15 cartridge casings that were found on scene, State's 9 through
16 16, those were all fired by the same gun?

17 A. Yes.

18 Q. All .9 millimeter?

19 A. Correct.

20 Q. The bullet fragments, three being pulled out of the
21 home, one being from the autopsy of Moises Montano, you cannot
22 say that they were all fired by the same gun, but you can say
23 they are all consistent with the same three makers: Fabrique
24 Nationale, Ruger, Smith & Wesson.

25 Is that fair?

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1 A. That's correct.

2 Q. All .9 millimeter?

3 A. Yes.

4 MR. THORNTON: Thank you very much, Agent. Please
5 answer any questions Mr. Bax has.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. BAX:

9 Q. Good afternoon. How are you today?

10 A. I'm fine.

11 Q. So to some degree, this is academic because there
12 is no firearm that was presented to you to compare these to,
13 correct?

14 A. Correct.

15 Q. You were talking to the jury a little bit about
16 projectiles and how do you that. You talk to them about
17 rifling. Correct me if I am wrong. Basically, there are
18 rotating marks inside the barrel of a lot of guns, maybe not
19 every gun, that causes the projectile to spin, which makes it
20 stay on a more consistent path. Is that correct?

21 A. Correct. That is the point of rifling.

22 Q. Those raised and depressed areas are grooves and
23 lands that will leave a mark on the projectile as it spins down
24 the barrel; correct?

25 A. Correct.

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1 Q. Number one, based on the damage and lack of other
2 information, you couldn't conclusively say that marks such as
3 that on the projectiles could allow you to say it was all fired
4 from the same gun, necessarily, correct?

5 A. Correct.

6 Q. Some of these projectiles were so far damaged that
7 there would be little to compare it. One of them was smashed
8 flat, correct?

9 A. Yes.

10 Q. Additionally, you testified that you have looked at
11 the cartridges. That is Items 9 through 16 that you testified
12 to. In your comparison, you can't specifically match a
13 projectile to a specific casing, can you?

14 A. No. There is no testing for that.

15 Q. So you can't say that a casing found at Marker 9
16 matches up to projectile found -- projectile Number 5 or
17 something like that?

18 A. No. We can't do that.

19 Q. Once again, if you had a suspected firearm, you
20 would make additional tests, correct?

21 A. Correct.

22 Q. In this case, there was no firearm that was ever
23 presented to you to test against these pieces of evidence; is
24 that right?

25 A. Correct.

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1 MR. BAX: No further questions, Your Honor.

2 THE COURT: Anything further from this? Witness

3 MR. THORNTON: Nothing further for this witness. I
4 would ask that she be excused.

5 THE COURT: Thank you for being here. Have a
6 wonderful rest of your day.

7 Call your next witness, Mr. Thornton.

8 MR. THORNTON: Thank you. Your Honor, the State
9 calls Raymond Davis.

10 * * *

11 RAYMOND DAVIS,

12 being first duly sworn testified as follows:

13 * * *

14 DIRECT EXAMINATION

15 BY MR. THORNTON:

16 Q. Mr. Davis, if you would please give your full name
17 for the record?

18 A. Raymond Cecil Davis.

19 Q. Mr. Davis, I think you have testified several
20 times. I know these are silly questions.

21 Where do you work currently, sir?

22 A. Colleton County Sheriff's Office.

23 Q. What do you do for the Colleton County Sheriff's
24 Office?

25 A. I am a canine officer on the road.

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1 Q. You are a deputy for the Sheriff's Office?

2 A. Correct.

3 Q. Back on August 16 2018, who did you work for at
4 that time?

5 A. Jasper County.

6 Q. When you say Jasper County, Jasper County Sheriff's
7 Office?

8 A. Yes, sir.

9 Q. What did you do for Jasper County Sheriff's Office?

10 A. Part of a special unit called the Crime Suppression
11 Unit. I was a detective within the agency.

12 Q. You were a detective with Jasper County at that
13 time?

14 A. That's correct.

15 Q. How long have you been in law enforcement?

16 A. Going on seven years now.

17 Q. When you were with Jasper County back in 2018,
18 specifically August 16, did you have occasion to be called out
19 to [REDACTED] Fordville Road?

20 A. Yes, sir.

21 Q. Were you dispatched, or did somebody give you a
22 call? Different folks have testified that different people got
23 there different ways.

24 A. Me and my partner was just clearing the jail, so we
25 didn't hear the initial call go out. But when we got out and

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1 we heard everything on the radio, we immediately responded.

2 Q. Who was your partner at that time?

3 A. That was Detective Godley.

4 Q. Hallie Godley?

5 A. That's correct.

6 Q. All right, sir. Once you got outside the jail --
7 is that because there is no radio reception inside the jail?

8 A. Yes, sir.

9 Q. Once you get outside the jail, you hear the
10 dispatcher's call going on. Do they specify that it was a
11 child that has been injured?

12 A. I don't think we realized that until we got on
13 scene.

14 Q. As you go out to [REDACTED] Fordville Road, tell me what
15 you see when you get there.

16 A. I immediately exit Detective Godley's vehicle from
17 the passenger's side. I jumped up on the porch, the wooden
18 porch on on the front house with no rail. I immediately see a
19 baby on the floor that they are working on.

20 Detective Godley and -- I can't. I go back out and
21 I start trying to find out what is going on and what happened
22 at that point in time.

23 Q. You exited the residence. You went outside. At
24 some point were you able to see what appeared to be bullet
25 defects in the trailer at [REDACTED] Fordville Road?

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1 A. Yes.

2 THE COURT: Mr. Thornton, will you all come up here
3 really quick.

4 (Bench conference.)

5 THE COURT: You may continue.

6 BY MR. THORNTON:

7 Q. Do you recall, if you were facing the front door,
8 do you recall off the top of your head which way the bullet
9 defects would have been? Which end of the trailer they were
10 on?

11 A. Yes, sir. The left-hand side of the trailer.

12 Q. I will show you what has been entered into evidence
13 as State's 69 and 70.

14 As to State's 70, is that the end of the trailer
15 that you were looking at?

16 A. That's correct.

17 Q. As you were looking at the trailer and you see
18 these bullet defects, were you able to observe the holes in the
19 trailer?

20 A. Yes, sir, I did.

21 Q. Were there holes on the other side of the trailer?

22 A. No, sir.

23 Q. Were you able to get a rough estimate on which
24 direction you felt like the shot had come from?

25 A. Exactly. That is where I went to start with.

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1 Q. I will show you what has been entered into evidence
2 as State's Exhibit 22.

3 Can you tell me what that building right there is?

4 A. That is the trailer.

5 Is that [REDACTED] Fordville Road?

6 A. That's correct.

7 Q. Is it this end --

8 A. That's correct.

9 Q. -- where the bullet defects are located?

10 A. Yes.

11 Q. When you began searching, where did you search?

12 A. Right here. If you look from the --

13 Q. Deputy, just come on down and reference that map so
14 the jury understands what you did and where you went.

15 A. Right here at the end of the trailer, there were
16 bullet holes that were consistent to coming from that end where
17 the child was in his bed.

18 I immediately started searching all of this area
19 right here. In our favor, this had all just been cleared.

20 Q. Let me stop you there. It looks like that is
21 almost like two different terrains or two substances on that.

22 A. Correct.

23 Q. What was the light-colored?

24 A. All this here (indicating) looks like a sand. I
25 referenced it in my mind from that night almost like a beach

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1 sand that had just come over it and wiped everything clean.

2 Like if you took a tree cutter and cut so it was
3 very low, it was like old pine debris right here.

4 Q. But definitely two different kinds of substances
5 around?

6 A. Yes, sir.

7 Q. What, if anything, did you find -- were you walking
8 around with anyone in particular?

9 A. Yes. Sergeant Frierson, I believe, was out with
10 me.

11 Q. What, if anything, did you all find?

12 A. I started walking all along here and constantly
13 looking back at the trailer. I get in here. Again, all of
14 this is white. No tracks. I don't even think we found any
15 deer tracks or any kind of animal tracks here at all.

16 I found a set of shoeprints that were going this
17 way. I walked and I followed these footprints. It leads me
18 almost to this corner right in here where this rough stuff
19 starts.

20 Q. Were you careful not to step in these shoeprints?

21 A. Yes, sir.

22 Q. Did you see any other tracks in that area?

23 A. No, sir.

24 Q. As you followed those shoeprints, did they lead you
25 to anything in particular?

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1 A. Yes, sir.

2 As I said, right in here in this corner going this
3 way was a pile of shell casings, spent shell casings.

4 Q. Did you alert other officers what you found?

5 A. Yes, I did.

6 Q. If you would, just please retake the stand.

7 I will show you what has been entered into evidence
8 as State's Number 98. Is this the area you are talking about
9 that you are following these footprints?

10 A. Yes, sir.

11 Q. When you got there, there were no markers. Is this
12 the general area that you followed?

13 A. Yes, sir.

14 Q. Is this referencing the shell casings up here?

15 A. Yes.

16 A. So your testimony is you followed the shoeprints
17 more or less to here?

18 A. Correct.

19 Q. Did you have flashlights out there or cell phones
20 with --

21 A. Flashlights.

22 Q. Deputy Davis, while you were out there, were you
23 able to see some pretty decent impressions in the ground?

24 A. Absolutely.

25 Q. I will show you what has been marked and entered

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1 into evidence as State's 95.

2 Is that one of the prints that we are talking
3 about?

4 A. Yes, sir.

5 Q. There are also items, like where the marker 10 was,
6 where it is much less pronounced.

7 Is that fair to say?

8 A. Yes, sir.

9 Q. So varying degrees of detail?

10 A. Yes, sir.

11 Q. So are all these the pictures that have been
12 testified to and entered into evidence -- these are all the
13 photographs of the shoe impressions that you followed to the
14 shell casings?

15 A. That's correct.

16 Q. Once you discovered the shoe impressions and the
17 shell casings, was that area secured?

18 A. Yes, sir.

19 Q. Again, just to be clear. There were -- you all put
20 plastic markers out. Somebody with Jasper County and then
21 eventually SLED came?

22 A. That's correct.

23 Q. Did you leave the scene at some point before SLED
24 got there?

25 A. No. I was there when SLED was there.

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1 Q. I am sorry. Did you leave and come back to the
2 scene at some point?

3 A. Correct. I first initially left. Once I found
4 that, I alerted them to that. I started looking, and I found
5 tracks leading, which were consistent to a running track. It
6 is not a clear impression. It's a toe push, indicative of
7 somebody running.

8 MR. BAX: Objection, Your Honor. That is opinion
9 testimony. He has not been qualified as an expert.

10 MR. THORNTON: I will move on, Judge.

11 THE COURT: All right. I will sustain the
12 objection.

13 BY MR. THORNTON:

14 Q. Let me ask you a question. You said you saw
15 basically footprints leaving; meaning, going the opposite way,
16 away from the house?

17 A. That's correct.

18 Q. Were those tracks going to -- so what direction, if
19 you can tell me --

20 A. Come straight down on the picture. My right going
21 towards the main highway. The road, that is a dirt road. Came
22 up all the way up almost to the intersection of Bees Creek.

23 Q. So you are following stuff out, or what you
24 believed to be the same impressions?

25 A. Right. Consistent with the same shoeprint.

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1 Q. When you are following this out, can you see
2 anybody else out there at that time?

3 A. No, sir.

4 Q. At some point, I want to be careful when we talk
5 about this. Don't get into the specifics of what anybody told
6 you. At some point -- it has been testified to -- was there
7 information about some issue or problem regarding the
8 Habershams next door, which would be Gina or Angina Habersham
9 or maybe some of her kids?

10 A. Yes, sir.

11 Q. Is one of those people Fabian Habersham?

12 A. That's correct.

13 Q. Based on that information what, if anything, did
14 you and Detective Godley, your partner, do?

15 A. We left. Once I got back with her, SLED kind of
16 took over. We went to where Fabian lived. We drove in and
17 nobody was there, so we drove back out from that residence.

18 Q. When you drove back out -- where is Fabian's
19 residence?

20 A. In the back of Ingram Lane.

21 Q. Does Fabian have any relatives that live near him
22 at Ingram Lane?

23 A. Yes, sir.

24 Q. Who would that be?

25 A. The defendant.

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1 Q. Do you know what the defendant's name is?

2 A. Dione Habersham.

3 Q. Does Dione live in a trailer -- at the time on
4 August 16, 2018, did Dione live in a trailer on Ingram Lane?

5 A. Correct.

6 Q. Where did Fabian live in relation to him?

7 A. Behind that trailer in a camper.

8 Q. They live, basically, on the same piece of
9 property?

10 A. Yes, sir.

11 Q. So you go out to Ingram Lane. At that time, who
12 were you going to talk to or try to talk to?

13 A. Fabian.

14 Q. You said you didn't see any vehicles anywhere, so
15 you pulled back. Where did you pull back to?

16 A. There is a residence diagonally across. It's a
17 brick house. We backed into the driveway right there.

18 Q. Once you did that, what, if anything, happened
19 next?

20 A. We saw Fabian and Dione walk to the end of the
21 road.

22 Q. Fabian and Dione were together?

23 A. Correct.

24 Q. Dione Habersham is here and he has been present
25 during this trial. Are he and Fabian the same size or

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1 different sizes?

2 A. Absolutely not. Different sizes.

3 Q. Have you met and dealt with Fabian before? I know
4 it's a dumb question. Have you seen him more than once?

5 A. Yes. Quite a few times.

6 Q. Do you have a rough estimate on how tall Fabian is?

7 A. 6, 3, or 6'4 easily.

8 Q. How much do you think Fabian weighs?

9 A. Close to 300 pounds.

10 Q. 6'4, 6'5, 300 pounds as opposed to Dione?

11 A. Correct.

12 Q. Fabian and Dione walk to the head of the road.

13 And, again, we are not going to get into right now exactly what
14 anybody said.

15 Did you have a conversation or did other people in
16 your presence have a conversation with Dione and Fabian?

17 A. Correct. Myself and my partner, Detective Godley.

18 Q. Was some of that interaction caught on Detective
19 Godley's bodycam?

20 A. Yes, sir.

21 Q. At that point when you are having these
22 conversations -- let me ask you this.

23 What is the road in front of Ingram Lane? You said
24 you pulled back across the road. What is that road?

25 A. A dirt road.

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1 Q. Let me back up. Ingram Lane, is that paved or
2 dirt?

3 A. It's dirt.

4 Q. What about the main road it is off of?

5 A. It's paved.

6 Q. What is the name that road?

7 A. Bees Creek.

8 Q. If you don't know, that is fine. Just out of
9 curiosity, how far are we talking about from Fordville Road
10 over to Ingram Lane? A one-minute drive? 20-minute drive?
11 What is it?

12 A. Nowhere close to a 20-minute drive?

13 Q. A couple of minutes?

14 A. Yes.

15 Q. All right. So Bees Creek Road is paved. So the
16 area you are talking to Fabian and Dione, is it paved or dirt
17 or both?

18 A. Sandy, gravel kind of, in the front of it.

19 Q. While you are talking to Dione and Fabian, do you
20 notice anything in particular about their shoes?

21 A. Yes, sir. I see immediately. Not immediately, but
22 in the time we are talking, they were both walking around and
23 talking. I seen an impression on the dirt that was consistent,
24 in my opinion, what --

25 Q. You are clearly not an expert in that field. Did

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1 the tread pattern look the same to you?

2 A. To me, absolutely.

3 Q. To the impressions you had just seen at Fordville
4 Lane in the field?

5 A. Yes, sir.

6 Q. Were you able to tell by looking who was leaving
7 those impressions?

8 A. Absolutely.

9 Q. Who was leaving those impressions?

10 A. That was Dionte, the defendant.

11 Q. Did the Fabian have a similar-looking pair of shoes
12 on?

13 A. No. He had a pair of Crocs on.

14 Q. Did they look substantially bigger?

15 A. Absolutely.

16 Q. So you see an impression that appears similar to
17 you as the tread pattern you had just seen?

18 A. That's correct.

19 Q. At some point, did either you or Detective Godley
20 or someone else ask Dionte to hold up his foot?

21 A. Correct. I notified Detective Godley. I said,
22 check this out. I think -- I believe she sent a picture to the
23 crime scene. We got one back, and it solidified it. It was
24 consistent. She at some point asked him to lift his foot up.

25 Q. Did he lift his foot up?

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1 A. Correct. Yes, he did.

2 Q. First let me step back just for a minute. I am
3 going to hand you what has been marked as State's Exhibits 30,
4 31, 32, 33, 34. These have not been entered into evidence yet.

5 I will ask you if you would look through those and
6 tell me in general what those pictures are of, if you know.

7 A. 30 is --

8 Q. I will have to put them into evidence first.

9 Would it be fair to say that those are exterior
10 shots of [REDACTED] Fordville Road?

11 A. Yes, sir.

12 Q. Is that before the markers had been put up or
13 marking tape or anything that SLED did?

14 A. Yes, sir.

15 Q. You were out there that evening before SLED got
16 there?

17 A. Correct.

18 Q. Is that a fair and accurate representation of all
19 of those pictures of how the scene appeared that evening?

20 A. Yes, sir.

21 Q. Does it look like those pictures have been altered
22 or changed in any way?

23 A. No, sir.

24 MR. THORNTON: Your Honor, at this time the State
25 would move into evidence State's Exhibits 30, 31, 32, 33, 34.

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1 THE COURT: All right.

2 MR. BAX: No objection on these, Your Honor.

3 THE COURT: Without objection.

4 (State's Exhibits 30 - 34 were accepted and
5 into evidence.)

6 MR. THORNTON: Your Honor, may we approach?

7 THE COURT: Sure.

8 (Bench conference.)

9 THE COURT: All right, ladies and gentlemen, let's
10 take a quick break. There is a matter I need to take up with
11 the attorneys. I will just ask that you stretch your legs, use
12 the rest room, and we will bring you right back in.

13 (Jury exits courtroom.)

14 THE COURT: Yes, sir.

15 MR. THORNTON: I don't think it's necessary for the
16 witness to be on the stand for this. I will just tell the
17 Court that what I intended to do next was to introduce what has
18 been marked as State's Exhibit 20, which is a photograph of the
19 shoe that Mr. Habersham was wearing on that night.

20 Mr. Bax indicated -- I heard him say, I don't have
21 an objection to those, so I assume he had an objection to this.

22 Out of an abundance of caution, I thought we
23 probably should take that up outside of the jury's presence.

24 MR. BAX: First off, obviously, I want to reiterate
25 my objection based on the motion to suppress everything that

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1 came from the search. My argument was in the totality of the
2 circumstances. Anything that came from the time that he was
3 detained or even prior to my motion. I know Your Honor has
4 already ruled on that. As you know, I have to make a
5 contemporaneous objection to that.

6 Secondly, it may be that there are just a few more
7 foundational questions that need to be asked, I guess. There
8 are a couple of things that don't appear to be clear from the
9 record. It hasn't been clear from the record when exactly this
10 picture of this shoe was taken. It appears to still be
11 attached to my client.

12 Also, I don't know who took the pictures. They
13 testified that the picture was sent from the scene to someone
14 there. If you recall from the pretrials, Officer Godley
15 testified that it didn't go to her phone. It went to
16 somebody's phone. I don't believe that she was able to testify
17 to whose phone.

18 I don't know if I would have further objection
19 without that information, I guess, is what I am trying to say.
20 It could be that there are some foundational issues here. They
21 are saying they had him lift his foot. I don't know when that
22 happened. I don't know what pictures they are comparing it to.

23 There were several footprints found on the scene.
24 I don't know which one got sent.

25 THE COURT: All right.

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1 MR. THORNTON: Your Honor, what I would elicit from
2 the witness -- he did say -- I think Deputy Davis indicated
3 that this was while they were talking, he noticed the
4 footprints.

5 THE COURT: He said Godly asked him to raise his
6 foot.

7 MR. THORNTON: As you know, Your Honor, it doesn't
8 matter who took the photograph. It matters if it's a fair and
9 accurate representation of what it was at that time. That is
10 what I would of have asked him. I understand Mr. Bax is
11 concerned about what specific shoe impression it was. I don't
12 think we will ever know that. What I am seeking, of course, he
13 is wearing them at the time. I tried to be really easy. I am
14 just saying it looked consistent with the prints that you saw
15 there. I am not trying to isolate it to one particular set. I
16 don't think he is qualified to do that.

17 I do believe that we have got a foundation. Again,
18 I would rather do this outside the presence of the jury. I
19 think foundationally, he can cover it if he says it's a fair
20 and accurate representation of the photograph and the shoes
21 that were on Dionte at that time when he lifted his foot.

22 THE COURT: I will allow you to lay that
23 foundation. Address the Court at that point in in time. If he
24 still has an objection, I will make a ruling either over it or
25 for it.

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1 All right. Let's take a quick break.

2 MR. THORNTON: Yes, sir.

3 Thank you, Your Honor.

4 (Recess.)

5 THE COURT: Let's bring them out.

6 (Jury enters courtroom.)

7 THE COURT: Yes, sir.

8 * * *

9 DIRECT EXAMINATION CONTINUES

10 BY MR. THORNTON:

11 Q. Let's go back to the scene right off of Ingram Lane
12 where you were working talking with Dionte. I believe you said
13 Fabian was there as well.

14 You had indicated that you had seen some
15 impressions that seemed consistent to some that you had seen at
16 [REDACTED] Fordville, and that someone -- I think you said Detective
17 Godley -- had asked Dionte to pick up his shoe.

18 A. Yes.

19 Q. I will show you what has been marked as State's
20 Exhibit 20. Can you identify that picture, sir?

21 A. Yes, sir. That is the shoe on the defendant's
22 foot.

23 Q. Is that a fair and accurate representation of the
24 shoe that was on his foot that day?

25 A. Yes, sir.

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1 Q. Was he wearing that shoe at the time that this was
2 taken?

3 A. Yes, sir.

4 Q. Has it been altered or changed in any way?

5 A. No, sir.

6 MR. THORNTON: Your Honor, at this time, I would
7 move State's Exhibit 20 into evidence.

8 THE COURT: All right.

9 MR. BAX: Subject to my prior objection, Your
10 Honor.

11 THE COURT: All right. Over the objection.

12 (State's Exhibit 20 was marked and accepted into
13 evidence.)

14 BY MR. THORNTON:

15 Q. That is the shoe that was on Dione's foot at the
16 time?

17 A. Yes, sir.

18 Q. At some point was Dione then taken into custody,
19 based on that information?

20 A. Correct. Detective Godley made contact with the
21 investigator back at Ridgeland --

22 Q. Without getting into what anybody said --

23 A. Yes.

24 Q. So that we keep that part straight. At some point,
25 did you all take him into custody?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Was he transported to the detective division?

3 A. Correct.

4 Q. You did not speak with him at the detective
5 division in an interview, did you?

6 A. No, sir.

7 Q. To your knowledge, did Detective Godley talk to
8 him?

9 A. Yes.

10 Q. And to your knowledge, was he released at that
11 point?

12 A. After the interview, correct.

13 Q. He was released sometime later that next day?

14 A. Yes.

15 Q. Later on, sir, did you have another opportunity to
16 talk to Dione on Ingram Lane during the day some several days
17 later?

18 A. Yes. Several days later, myself and my partner,
19 Detective Godley, went to the residence of Dione.

20 Q. Did you speak to him?

21 A. Yes, sir.

22 Q. Is some of that interaction also caught on a
23 bodycam?

24 A. I believe Detective Godley's.

25 MR. THORNTON: Detective Davis, thank you very

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 much. I don't have any further questions at this time.

2 Please answer any questions Mr. Bax has.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. BAX:

6 Q. Good afternoon, Detective Davis.

7 A. Good afternoon, sir.

8 Q. Couple of things. Let me put a couple of pictures
9 back up here so we have a frame of reference here.

10 Detective, you testified that after looking at the
11 residence there at [REDACTED] Fordville that night, you found some,
12 what appeared to be bullet holes?

13 A. Yes.

14 Q. They were on this end of the home?

15 A. Yes.

16 Q. Which led you and Sergeant Frierson to come out
17 into this field area?

18 A. Yes.

19 Q. You testified that once you found these foot
20 impressions, that you followed them to the shell casings?

21 A. Yes.

22 Q. Let me see if I can get that straight.

23 Did you come all the way out here and then come
24 over and find them and then go back?

25 A. First of all, I don't remember how I articulated

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 the field. I went into the field just looking. I will not
2 tell you a pattern. I don't remember that. I don't remember
3 if I went around or directly through or what.

4 Q. You said you followed the shoe prints back to the
5 shell casings, correct?

6 A. That's correct. When I found the shoeprints it led
7 me to the shell casings. That is how I found the casings.

8 Q. I will put up State's Exhibit 17. This was done by
9 Agent McKay. It indicates the markers on the field. It has
10 here [REDACTED] Fordville, the mobile home here. That is the left
11 side or end of the home.

12 Here is the door. This is the field where these
13 things were found. Can you orient yourself?

14 A. Yes.

15 Q. So if you followed these foot markers back, you
16 would be going back towards this direction?

17 A. Yes, sir.

18 Q. You started getting into the field from this
19 direction?

20 A. Yes, sir.

21 Q. You started getting into the field from this
22 direction?

23 A. Yes, sir.

24 Q. At some point, you had to have gone all the way out
25 here and then come back?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Apparently so.

2 Q. Does that make sense?

3 A. Yes.

4 Q. So in your direct testimony, you testified it
5 appeared that the footprints were going in one direction, going
6 towards these cases that were found?

7 A. The original ones, yes.

8 Q. As you found these shoe impressions, you didn't see
9 any shoe impressions going back in the other direction?

10 A. I did afterwards.

11 Q. You indicated that some of these were marked or at
12 least there were yellow evidence markers placed next to these
13 shoe impressions at some point or another, correct?

14 A. Yes.

15 Q. Were you the one that placed any of these markers?

16 A. No, sir. I wasn't present.

17 Q. Do you know who did?

18 A. No, sir.

19 Q. You were not present for any of those markers being
20 placed?

21 A. No.

22 Q. You testified in response to questions from the
23 Solicitor that you had seen the shoe print that was shown by
24 Marker Number 17; is that correct?

25 This is 94. It's from a different angle. You

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 testified in your direct that was one of the shoeprints that
2 you are familiar with when you testified earlier.

3 A. Yes, sir.

4 Q. So the problem is -- the testimony reflects that
5 this was not actually marked by the Sheriff's Department. This
6 was marked by SLED later. SLED found this print. The
7 Sheriff's Department did not.

8 A. I followed the shoe print there. I alerted and
9 notified how I found the shell casings.

10 Q. Out of over a dozen prints, you can specifically
11 remember which prints you found, even though your compatriots
12 didn't find that?

13 A. No, sir.

14 Q. So you can't remember every specific footprint?

15 A. No. I can't remember every specific footprint.

16 Q. Now, you also testified that you found some
17 footprints going back towards -- I will go back to Exhibit
18 22: -- back towards this gravel or dirt lane after you found
19 the shell casings, correct?

20 A. That's correct.

21 Q. That you said that you were able to, even though
22 there are no markings or pictures of these, that you found
23 prints that were going all the way out to Bees Creek Road that
24 you followed?

25 A. Short of Bees Creek Road. The trailer -- if you

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 are going out to the trailer, on the right is where the
2 footprints stopped.

3 Q. Would that be this trailer here?

4 A. No, sir. Up at the end of the road. It's to the
5 road. Right in here.

6 Q. Is this close to where my pen is at?

7 A. No. Further up. That's correct.

8 Q. So your testimony is you saw prints going all the
9 way out here near to a trailer up here?

10 A. No. In the roadway. They stopped in the roadway.

11 Q. But near this trailer all the way out near Bees
12 Creek?

13 A. That's correct.

14 Q. Did you let the other officers know of these
15 footprints that you found?

16 A. Yes, sir.

17 Q. Why were these footprints not marked?

18 A. I don't have a clue.

19 Q. Obviously -- are you aware of whether anybody
20 indicated that to the crime scene investigators that came from
21 SLED?

22 A. No, sir. I do not.

23 Q. You testified that you were there when SLED
24 arrived? You said you had left and come back. You were there
25 when they arrived; is that right?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. They testified, Agent McKay testified that she
3 arrived around 12:30. Does that sound consistent that you were
4 there around 12:30 that night?

5 A. I remember when they got there. I remember we had
6 left. I don't remember specific time. I can't remember the
7 time the call came out.

8 Q. You testified when you were on Ingram Lane, that
9 you received a picture from someone on scene?

10 A. No, sir. I did not.

11 Q. I believe your testimony is that you all received a
12 picture. Someone received a picture from the scene.

13 A. You said I did.

14 Q. Who received the picture, Detective Davis?

15 A. If I remember correctly, Detective Godley.

16 Q. Detective Godly received the picture?

17 A. Or she sent the one that we took. One or the
18 other.

19 Q. That is a little different.

20 Do you know or do you not know who received the
21 picture from the crime scene?

22 A. No, sir. I said that. I said, I believe. I did
23 not specifically say.

24 Q. You are under oath. When you say you believe --
25 you have a belief that you are testifying that she received the

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 picture.

2 A. Yes, sir.

3 Q. Just for timeline purposes. Do you recall around
4 the time that -- what time it was of day when you arrived at
5 Ingram Lane?

6 A. No, sir. I don't.

7 Q. The incident -- it has been testified that the
8 incident occurred somewhere around 9:45ish.

9 Do you know about what time you and Agent Godley
10 arrived on scene initially?

11 A. No, sir. I don't. I know we were not the first
12 ones there.

13 Q. So if you were at Ingram Lane and you were able to
14 get back to Fordville Road before State Law Enforcement
15 Division arrived, it's fair to say that SLED was not on scene
16 while you were out there on Ingram Lane dealing with the
17 Habershams; is that correct?

18 A. I don't remember. I know at some point when I was
19 on scene, sLED was there. Whether it was initially or after.

20 Q. I am just trying to clarify. I think it's a very
21 serious matter, and having a timeline of when things happened,
22 I think, is important.

23 A. I am being honest with you. That night was a blur,
24 as far -- especially time. You are not really -- in your mind,
25 you have a two-year-old that has just been shot. You are just

1 focused on what you have in front of you.

2 Q. At that time, you were a detective with the Jasper
3 County Sheriff's Office, right?

4 A. Yes.

5 Q. Part of your job was to investigate cases that
6 involve violence, correct?

7 A. No, sir. I assisted. We were specifically on
8 drugs, crime suppression.

9 Q. So your primary focus was not on violent crime,
10 necessarily.

11 A. Whatever we had to help them that could tie back
12 into drugs, correct. We were not the investigators. Crime
13 scene investigation was not what we were there for.

14 Q. It's your testimony that you haven't received any
15 training for how to investigate a situation that involves
16 violence?

17 A. That's correct.

18 MR. BAX: No further questions at this time. Thank
19 you.

20 THE COURT: Anything as a follow-up?

21 MR. THORNTON: Just a couple of brief things.

22 * * *

23 REDIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q. I apologize. When I was indicating something

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1 Mr. Bax asked you about -- when I was putting up different
2 prints and shoeprints, my intent was not to ask you about any
3 specific prints, just were those the footprints that we were
4 talking about that you followed, not as to any specific print?

5 A. Yes.

6 Q. I believe what your testimony was a minute ago was
7 that -- as to Mr. Bax' question about some of the time
8 differences that you have indicated you couldn't remember.

9 Would there likely be a time on a bodycam? I
10 believe you testified that some of the Ingram Lane interaction
11 was on bodycam. would there be a time on that?

12 A. Absolutely.

13 Q. Would you have any reason to doubt the time on
14 that?

15 A. No Not at all.

16 MR. THORNTON: I don't have any further questions,
17 Judge.

18 THE COURT: Thank you very much. You may be
19 excused.

20 (Witness exits witness stand.)

21 THE COURT: Ladies and gentlemen of the jury --

22 MR. BAX: I just wanted to make one point. Defense
23 would just ask that Detective Davis be available for recall, if
24 necessary.

25 THE COURT: It just means you are still under your

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. THORNTON: Hallie Godley.

2 * * *

3 HALLIE GODLEY,

4 being first duly sworn testified as follows:

5 * * *

6 DIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q. Good morning, ma'am. Tell us your full name for
9 the record, please.

10 A. Hallie Godley.

11 Q. Ms. Godley, who do you currently work for?

12 A. South Carolina Law Enforcement Division.

13 Q. Is that also known as SLED?

14 A. It is.

15 Q. What do you do for SLED?

16 A. I am a narcotics investigator.

17 Q. I am going to ask about a specific date on August
18 16, 2018. Who were you working for?

19 A. Jasper County Sheriff's Office.

20 Q. In what capacity?

21 A. I was part of the crime suppression unit.

22 Q. On August 16, 2018, did you have occasion to go out
23 to [REDACTED] Fordville Road?

24 A. I did.

25 Q. Can you tell me -- did you get dispatched out

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1 directly? The jury has heard different folks have gotten there
2 in different ways. Is that something is you heard over the
3 radio, or how did you know to go out there?

4 A. It was over the radio. We were leaving the jail,
5 myself and Detective Davis.

6 Q. Is that the Detective Davis who testified
7 yesterday?

8 A. Yes, sir.

9 Q. When you and he got out of the jail, is that when
10 you heard the call?

11 A. Yes, sir.

12 Q. Did you respond out to the scene at that time?

13 A. Yes, sir.

14 Q. Do you know about what time you would have arrived?

15 A. 10:05 p.m.

16 Q. When you got there, what, if anything, did you see?

17 A. When we got there, I went up to the front porch of
18 the residence and went inside. The medics were already there
19 working on the child. The child was laying on the floor with a
20 gunshot wound to the head.

21 Q. Did you stay inside for a time and try to assist?
22 What did you do?

23 A. I did. I asked the medics what I could do to help
24 them. They asked me to do chest compressions on the child.

25 Q. You assisted in doing CPR on Moises Montana?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. I did.

2 Q. Did you continue that for some length of time, or
3 at some point did somebody take that back over? How did you
4 end up stopping doing that?

5 A. I don't recall if somebody took it over. They put
6 him on a backboard to transport him out pretty quickly.

7 Q. Was that a very long period of time that you were
8 doing chest compressions, or a fairly short time?

9 A. Fairly short.

10 Q. After that, what did you do?

11 A. Went outside and started checking the property for
12 any evidence.

13 Q. Were you one of the officers, along with Detective
14 Davis, who was walking on the outside of the residence?

15 A. I was.

16 Q. What, if anything, did you find? I say you find,
17 you and the other officers. Anything that you personally saw.

18 Did you find anything that would have been
19 significant

20 A. Yes, sir. On the left end of the trailer, there
21 were bullet holes going to the trailer.

22 Q. I will show you State's Exhibit 22. I believe you
23 can see that on the monitor next to you.

24 The left end of the trailer. As you are facing it,
25 this end here?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Correct.

2 Q. There is measuring tape up. State's 35, is that
3 the end of the trailer you were referring to?

4 A. Yes, sir.

5 Q. What is the significance or why is that important
6 if you were looking for things to talk about the left side of
7 the trailer?

8 A. It gave us a direction to start looking for
9 casings.

10 Q. Is that where you started to look?

11 A. Correct.

12 Q. Were you the only person out there, or were there
13 other officers as well?

14 A. There were other officers.

15 Q. Was it daylight or night? I think you said it was
16 10:05. Was it dark outside?

17 A. Yes, sir.

18 Q. How were you able to see?

19 A. Flashlights.

20 Q. What, if anything, did you find?

21 A. Myself and other officers located footprints in the
22 field off the left end of the trailer that led to casings.

23 Q. What do you mean by casings?

24 A. Projectiles from the gun that was fired. When you
25 fire a bullet, the casing kicks out.

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1 Q. So bullet casings?

2 A. Correct.

3 Q. I asked this inartfully yesterday.

4 Without regard to any specific marker or specific
5 print or anything, State's Exhibit 82, some of the markers have
6 been laid down.

7 Were any markers laid down when you first saw these
8 casings?

9 A. No, sir.

10 Q. These are the casings that you saw?

11 A. Yes, sir.

12 Q. State's 84 is also a representation of some of
13 those items?

14 A. Yes, sir.

15 Q. After finding these prints and the shell casings at
16 the scene, had there been some dispute that you were made aware
17 of between the victim parent and the Habershams next door?

18 A. Yes, sir.

19 Q. As a result of that, did you go to talk to or try
20 to attempt to talk to anyone in particular?

21 A. Yes, sir.

22 Q. Who were you going to talk to?

23 A. Fabian Habersham.

24 Q. We talked about this a little bit yesterday. To
25 reiterate, where did Fabian Habersham live on or about August

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 16, 2018?

2 A. At the end of Ingram Lane.

3 Q. Is anyone else he is related to at the end of
4 Ingram Lane?

5 A. Yes.

6 Q. Who is that?

7 A. Dionte Habersham, the defendant.

8 Q. Where do they live in relation to each other? How
9 close do they live to each other?

10 A. A fairly short dirt lane. Roughly 100 yards.
11 There is a camper in back where Fabian lived in at the time.
12 Right before that camper is A single-wide trailer that the
13 defendant lived in.

14 Q. They basically lived on the same piece of property
15 Is that fair to say?

16 A. Yes, sir.

17 Q. Did you see any vehicles when you -- I don't know
18 if you said this. Did you go out there with anybody?

19 A. Yes, sir. Detective Davis.

20 Q. When you and Detective Davis went out there, did
21 you see any vehicles when you first pulled up?

22 A. No, sir.

23 Q. What, if anything, did you do?

24 A. We backed out and parked across Bees Creek Road in
25 a driveway.

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1 Q. At some point, did you see Fabian and/or Dione
2 Habersham?

3 A. Yes, sir.

4 Q. Describe that for me.

5 A. They walked out to the end of Ingram Lane where it
6 met Bees Creek Road and began calling my name.

7 Q. Together or separately?

8 A. They were together.

9 Q. There some testimony yesterday. Are Dione and
10 Fabian Habersham the same size?

11 A. No, sir.

12 Q. Is there a small difference between them or a large
13 difference?

14 A. Large difference.

15 Q. How tall, if you know, is Fabian?

16 A. Roughly 6,3, 6,4.

17 Q. Slender guy or a bigger guy?

18 A. Bigger guy.

19 Q. Bigger than 280?

20 A. Yes, sir.

21 Q. Fabian is somewhere around 6'3, 6'4 and 300 pounds?

22 A. Correct.

23 Q. Markedly different from the defendant, Dione
24 Habersham?

25 A. Correct.

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1 Q. You said that Fabian and Dione came down Ingram
2 Lane and were talking with you -- began calling your name. Did
3 you get out of the car and have a conversation with them?

4 A. Yes, sir. I moved my patrol car to the end of
5 Ingram Lane and Bees Creek Road and got out.

6 Q. When you backed out of Ingram -- you said you went
7 up there and then you backed out. Where did you back out to
8 Where did you park your car?

9 A. Mary Solomon's driveway.

10 Q. Can you tell me where that is in relation to Ingram
11 Lane? If I was standing at Mary Solomon's front door looking
12 this way -- standing looking at her house out her front door,
13 what do you see?

14 A. Diagonal to the left would be the head of Ingram
15 Lane.

16 Q. The head of Ingram Lane would be this way?

17 A. Correct.

18 Q. Later -- and I know we are a little off here. At
19 some point later, did you attempt to secure a videotape of
20 Ms. Solomon's house?

21 A. Yes, sir.

22 Q. Did you notice that night you were there that there
23 was a camera up?

24 A. Yes, sir.

25 Q. Did you at some point go back with another

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 detective to secure a video?

2 A. Yes, sir.

3 Q. Who was that detective?

4 A. Detective Davis and Detective Phillips.

5 Q. Jared Phillips?

6 A. Yes.

7 Q. Was Jared Phillips able to pull video from

8 Ms. Solomon's?

9 A. He was.

10 Q. You left Ms. Solomon's and pulled out into the

11 intersection.

12 A. Correct.

13 Q. Tell me, do you then have a conversation with

14 anybody?

15 A. Yes, sir. Fabian and Dione.

16 Q. Did you end up talking to both of them?

17 A. Yes, sir.

18 Q. Do you have a bodycam on?

19 A. Yes, sir.

20 Q. Does it capture at least parts of this interaction?

21 A. It does.

22 Q. Is there a time referenced on your bodycam?

23 A. Yes, sir.

24 Q. Is your bodycam set to eastern time, the time zone

25 we are in?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. It was not.

2 Q. What time zone are those set to?

3 A. Zulu time.

4 Q. Is that referenced by a "Z" at the end of the time?

5 A. It is.

6 Q. When we are talking to the jury, I want you to
7 correct the time from what time it would have been that night.

8 Your testimony is so far that you and Detective
9 Davis got to the scene about 10:05 approximately. That is when
10 you got to the scene of [REDACTED] Fordville Road.

11 Do you remember -- I know it will be on the cam.
12 Do you remember approximately what time you started this
13 conversation with Dionte and Fabian?

14 A. 10:48 p.m.

15 Q. So around an hour after -- a little over an hour
16 after the shooting, the first 911 call was at 9:45. An hour
17 and three minutes or so after that, and less than an hour after
18 you left [REDACTED] Fordville Road; is that accurate?

19 A. Correct.

20 Q. As you were talking to Fabian and Dionte -- first
21 of all, let me ask you. Ingram Road is a dirt Lane; isn't that
22 right?

23 A. Yes, sir.

24 Q. What about the road you were parked on? Dirt road
25 or pavement?

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1 A. Bees Creek is paved.

2 Q. Do you know how far it would be between the
3 incident location and Ingram Lane?

4 A. Roughly just over a mile.

5 Q. Drivable in a minute or two, a couple of minutes?

6 A. Correct.

7 Q. Where Fabian and Dione -- and hopefully some of
8 this will be visible on the bodycam. Where you are talking
9 with them, is that pavement? Dirt? A little bit of both?

10 A. Dirt, gravel.

11 Q. While you all were talking, you said you were
12 there. You said you went with Detective Davis.

13 Did other officers at some point show up?

14 A. Yes, sir.

15 Q. Did you have blue lights on?

16 A. Yes, sir.

17 Q. In fact, there is some comment on the video about
18 why do you have your lights on, and you don't have emergency
19 lights because you are not DOT or something like that.

20 A. Correct.

21 Q. More than one car was out there?

22 A. Correct.

23 Q. You testified you had your blue lights on. While
24 they are talking walking around, are you and other officers
25 paying attention or noticing anything in particular?

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1 A. Yes, sir.

2 Q. What are you looking at?

3 A. Shoeprints left in the sand.

4 Q. Why would you be looking at that?

5 A. They appeared similar to the prints left at the
6 crime scene.

7 Q. You had just left the crime scene where you have
8 testified you saw prints. So you were looking. Did somebody
9 have on a pair of shoes that looked similar to you?

10 A. Yes, sir.

11 MR. BAX: Objection to leading. He needed he needs
12 to ask a couple more open-ended questions.

13 THE COURT: All right. Just ask a couple of
14 open-ended questions as to her investigation.

15 BY MR. THORNTON:

16 Q. What, if anything, did you see?

17 A. The shoes that the defendant, Mr. Habersham, had
18 on.

19 Q. Which Habersham?

20 A. Dionte.

21 Q. The defendant in this case?

22 A. Correct.

23 Q. What about the shoes he had on?

24 A. When he was walking around in the dirt, I was
25 noticing the prints left in the dirt by his shoes were similar

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1 to those at the crime scene.

2 Q. I will show -- we will do it this way. State's 20,
3 is that the picture that was testified to earlier. Do you
4 recognize State's 20?

5 A. Yes, sir.

6 Q. What is that?

7 A. The shoes on Dione's foot that night.

8 Q. Did you notice what kind of shoes Fabian had on?

9 A. Yes, sir.

10 Q. What were they?

11 A. Crocs.

12 Q. Do they wear the same size or a similar size?

13 A. No, sir.

14 Q. Whose would you say is bigger?

15 A. Fabian.

16 Q. How much?

17 MR. BAX: She can't visualize that. She is not
18 qualified as an expert.

19 MR. THORNTON: I can say that was a lay opinion. I
20 can look at two pairs of shoes and tell if one is bigger.

21 THE COURT: I agree. I will overrule the
22 objection.

23 BY MR. THORNTON:

24 Q. At some point do you take Dione Habersham into
25 custody?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Where do you take him?

3 A. The investigations building.

4 Q. Did you conduct a longer interview with him at that
5 time?

6 A. Yes, sir.

7 Q. Was there anybody in particular with you?

8 A. Yes, sir.

9 Q. Who was that?

10 A. Tavera Edwards.

11 Q. Was she employed with the Sheriff's Office at that
12 time?

13 A. Yes, sir.

14 Q. Was that interview recorded as well?

15 A. It was.

16 Q. Was Mr. Dionte Habersham, the defendant in this
17 case -- was he allowed to leave at some point after that
18 interview?

19 A. Yes, sir.

20 Q. Did you have any other occasion to talk to Dionte
21 Habersham about this case?

22 A. Yes, sir.

23 Q. Do you recall how many days later that was after
24 the night of the 16th, the morning of the 17th -- do you
25 remember what day it was you talked to him?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. August 22.

2 Q. Did he come to you? Did you go to him?

3 A. Detective Davis and I went to his residence.

4 Q. Did you speak with him?

5 A. I did.

6 Q. Is that also on your bodycam?

7 A. Yes, sir.

8 Q Ma'am, I'm going to hand you what has been marked
9 for identification as State's Exhibit 24 and ask you if you
10 recognize those?

11 A. Yes, sir.

12 Q. What are those?

13 A. Bodycam videos and the interview videos from the
14 night of the incident on Ingram Lane where we spoke to Dione
15 and Fabian, one video from the interview room when Detective
16 Edwards and interviewed Mr. Dione Habersham. The third video
17 is from Dione Habersham's residence where Detective Davis and
18 I went back and talked to him again.

19 Q. The videos that you just testified about?

20 A. Correct.

21 Q. Did you at my request review the content of the
22 videos as well as the demonstrative transcripts that are added?

23 A. Yes, sir.

24 Q. Other than the editing that we always have to do
25 pursuant to the rules of Court and the addition of the

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 transcripts, have they been altered or changed in any way?

2 A. No, sir.

3 Q. Are they a true and accurate reflection of the
4 occurrences that were captured by audio and video, other than
5 the editing we have to do pursuant to the rules of Court and
6 the addition of the transcripts?

7 A. Correct.

8 MR. THORNTON: Your Honor, at this time I would ask
9 that State's Exhibit 24 be moved into evidence.

10 THE COURT: All right. Any objection?

11 MR. BAX: No, Your Honor. I would ask that you
12 repeat the same instruction as you did before.

13 THE COURT: Yes. I would be happy to.

14 What they are indicating is -- demonstrative is a
15 fancy word for to demonstrate to the jurors. They have gone
16 ahead and taken it upon themselves to transcribe what they feel
17 is being said in the actual audio portion of the video, but the
18 actual disks themselves will not have the transcription.

19 So if you ask to see them later in the deliberation
20 room, it will not contain the transcript. What you hear is
21 what you hear. That is the evidence for yourself.

22 MR. BAX: Just for the record, I would like to
23 renew my previous objections at this time.

24 THE COURT: Fair enough. Over the objections.

25 (State's Exhibit 24 was marked for identification

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 and accepted into evidence.)

2 (State's Exhibit 24 was published to the jury.)

3 BY MR. THORNTON:

4 Q. Very quickly Detective, who is the woman's voice on
5 the tape that we just heard?

6 A. Me.

7 Q. Who is speak right now?

8 A. Fabian Habersham.

9 Q. Which one is Dione and which one is Fabian?

10 A. If you are currently looking at the center of the
11 screen, Dione is on the left-hand side of the screen.

12 Q. Thank you, ma'am.

13 Q. Detective Godley, is that when you transported
14 Dione Habersham, the defendant, to the investigations
15 building?

16 A. Yes, sir.

17 Q. Is that what we see pictured here?

18 A. Yes, sir.

19 Q. Detective Godley, we had already talked about the
20 fact that not all of that encounter obviously was captured on
21 bodycam, but at some point as you were taking Dione Habersham
22 and putting him in the vehicle, did you make another statement
23 to anybody?

24 MR. BAX: I would like to renew my prior objection
25 to this testimony.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE COURT: Preserved for the record.

2 BY MR. THORNTON:

3 Q. Did he make a particular statement to anybody?

4 A. Yes, sir.

5 Q. Who did he make the statement to?

6 A. Fabian Habersham.

7 Q. What did Dan tell Fabian?

8 A. "Don't worry, cuz. I got you."

9 Q. Just to recap a couple of things very early on, did
10 you at some point go out to the location where you had parked
11 on Bees Creek -- I think you said Mary Solomon. Did you at
12 some point go back to that location?

13 A. I did.

14 Q. Did you ask Ms. Solomon about anything in
15 particular?

16 A. Yes.

17 Q. What was that?

18 A. If the video cameras on her house were active.

19 Q. Did she provide access to Jared Phillips to pull
20 videos from that location?

21 A. Yes, sir.

22 Q. Going back to the night of August 16th and early
23 morning hours of August 17, 2018 -- I will show you a document.
24 For right now this is just for identification as State's 106.
25 In general terms, I want you to tell me if you recognize

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 State's 106?

2 A. Yes, sir.

3 Q. What is it?

4 A. It's a Facebook post Dione Habersham posted the
5 night of the incident.

6 Q. This would have been the night of the incident.

7 MR. BAX: Objection to that testimony. She doesn't
8 know who posted it. I don't think she can testify to that,
9 Your Honor.

10 THE COURT: I will sustain the objection.

11 BY MR. THORNTON:

12 Q. Was this Facebook posted to Dione Habersham's
13 account?

14 A. Yes, sir.

15 Q. Did you search that account?

16 A. Yes, sir.

17 Q. Did you look at it online?

18 A. Yes, sir.

19 Q. Did you take a screen-shot of the post?

20 A. I did.

21 Q. Is this a fair and accurate depiction of what that
22 post is, this being State's 106?

23 A. Yes, sir.

24 Q. Has it been altered or changed in any way?

25 A. No, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. THORNTON: Your Honor, at this time I would ask
2 that State's Exhibit 106, the Facebook post to Dionte
3 Habersham's Facebook account, be entered into evidence.

4 MR. BAX: Your Honor, I would object again to
5 relevance and admissibility.

6 THE COURT: All right. Over the objections.

7 MR. THORNTON: Thank you, Your Honor.

8 (State's Exhibit 106 was marked for identification
9 and accepted into evidence.)

10 BY MR. THORNTON:

11 Q. Would you please you read this aloud so the jury
12 can hear it.

13 A. Yes, sir. The post itself states: "Don't beef
14 with my family 'cuz it's a lot of us and we can't control each
15 other. Then several emojis, one being a skull. It says: So,
16 hash tag, boom, with explosion marks. He also tagged it at the
17 top with the addition of the Habershams within 100 feet.

18 Q. What is the date of that post?

19 A. August 16th.

20 Q. That is posted the same day that Moises Montano
21 was killed?

22 A. Yes, sir.

23 MR. THORNTON: Your Honor, at this time, I have no
24 further questions. Detective Godley will likely be subject to
25 recall. Please answer any questions that Mr. Bax has for you.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

* * *

CROSS-EXAMINATION

BY MR. BAX:

Q. Investigator Godley, you testified that you are currently with SLED, correct?

A. Yes, sir.

Q. I believe you testified that what you do at SLED is narcotics investigations or related to that, correct?

A. Yes, sir.

Q. Back in February you were with the Jasper County Sheriff's Office. I think you said you were with the crime suppression unit; is that correct?

A. Yes, sir, in August.

Q. That is also a narcotics-related investigation unit, correct?

A. Yes, sir.

Q. You testified that you arrived at 10:05 at the scene?

A. Yes, sir.

Q. How do you know that?

A. From the dispatch log where we signed out of the scene itself. Over the radio.

Q. You testified in this case outside the presence of the jury earlier, correct?

A. Yes, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. At that time you were not really sure about what
2 time you arrived. You have since reviewed things that reminded
3 you?

4 A. Yes, sir.

5 Q. You testified to a couple of things. Let me back
6 up and just do this generally.

7 As part of your duties at the Jasper County
8 Sheriff's Office, did you ever and issue incident reports,
9 detailing what you would do in an investigation?

10 A. Yes, sir.

11 Q. Is that a fairly common thing in law enforcement to
12 do that?

13 A. Yes, sir.

14 Q. Did you do any incident reports and/or supplemental
15 reports in this particular case?

16 A. Yes, sir.

17 Q. In your testimony on direct, you have already
18 stated to the jury that after you did your best to assist EMS
19 and the young child that was in distress, the medical
20 attention -- you did get to go ask some questions about what
21 was going on and what might be the cause of this from the
22 family, correct?

23 A. Yes, sir.

24 Q. Did you speak to both Mr. Montano and Mrs. Montano?

25 A. I remember speaking to Ms. Montano.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. As a result of talking with her, you became aware
2 that there was some kind of property dispute with the neighbors
3 across the way?

4 A. Yes, sir.

5 Q. We have looked at the picture enough. The mobile
6 home that has a green metal roof. From the picture that looks
7 like straight across the yard there?

8 A. Yes, sir.

9 Q. What is your understanding of who lives there?

10 A. Fabian Habersham's mother. I believe her name is
11 Angenia Habersham.

12 Q. Is there anybody else that lives there, to your
13 knowledge, that you investigated?

14 A. Potentially at the time her boyfriend and her
15 daughter.

16 Q. When you mean her boyfriend, who do you mean by her
17 boyfriend?

18 A. I don't recall his name. I apologize.

19 Q. Would the name Donald Stevenson?

20 A. That sounds right.

21 Q. Did you know whether or not Fabian stayed with his
22 mom occasionally or not or how regularly that was?

23 A. No, sir.

24 Q. When you spoke with Ms. Montano, she did mention
25 Fabian directly, is that correct?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. She did confirm that he had been involved in these
3 arguments about the property dispute?

4 A. Yes, sir.

5 Q. Words were exchanged?

6 A. Yes, sir.

7 Q. Let me ask you this. Was that one of the primary
8 reason why you decided with Detective Davis to go out to Ingram
9 Ingram Lane?

10 A. Yes, sir.

11 Q. Before we get on to Ingram Lane. You also
12 testified that you did go into the field. I know we have heard
13 that there were a couple of officers, including Detective
14 Davis, who went out into the field. Were they already out
15 there when you went out there?

16 A. Yes, sir.

17 Q. How many officers were out there in this field when
18 you were out there out there with you?

19 A. Three for sure. Myself, Detective Davis, and
20 Sergeant Frierson at the time. I am not sure if there were a
21 number of others.

22 Q. Some could have come after you or to the right or
23 left you didn't see?

24 A. Correct.

25 Q. Were you the first one to find the prints, or did

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 you get shown where they were by the other officers or how did
2 that work?

3 A. Detective Davis initially located them, and we
4 followed them together towards the casings.

5 Q. At some point or another, did you and Detective
6 Davis leave the scene to go to Ingram Lane?

7 A. Yes, sir.

8 Q. Did you guys leave the field go to your car and go
9 to Ingram Lane?

10 A. Yes, sir.

11 Q. How long were you in the field, do you think?

12 A. 15 minutes, perhaps. 20 minutes.

13 Q. When you and Detective Davis left that field, were
14 there any markers that had been placed by you or anyone else
15 around any of the evidence?

16 A. No, sir.

17 Q. Moving to Ingram Lane. I think you testified in
18 your direct that upon review of your bodycam and these other
19 things -- what time did you say that you arrived at Ingram Lane
20 approximately?

21 A. 10:48.

22 Q. Let me back up. One thing real quickly. About
23 what time were you informed when you arrived on scene that the
24 shooting happened? Did you ever get told approximately when
25 they thought the shooting had happened?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Not an approximate time. Dispatch gave out the
2 call. We cleared the jail, myself and Detective Davis, we went
3 that way.

4 Q. If dispatch shows 911 calls came in at 9:47, there
5 would be no reason that you would have to disbelieve that; is
6 that correct?

7 A. Correct.

8 Q. If you are arriving on Ingram Lane at approximately
9 10:48, that is about an hour after those 911 calls came in.

10 A. Yes, sir.

11 Q. As you are going to Ingram Lane, first you
12 indicated you drove up the lane. I know for those of us who
13 haven't been there, it's a sandy lane and curves a little bit,
14 right?

15 A. Yes, sir.

16 Q. It's about 100 yards long?

17 A. Give or take. Yes, sir.

18 Q. It's a dead end. It doesn't go anywhere or connect
19 to anything?

20 A. Correct.

21 Q. When you and Detective Davis went down this road in
22 your -- let me ask you this. The unit that you were driving,
23 is it marked or unmarked?

24 A. Unmarked.

25 Q. Is it recognizable as a police car? Is it a Dodge

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Charger or something like that?

2 A. Yes, sir.

3 Q. Did you have any lights on of any kind going down
4 the road?

5 A. Headlights.

6 Q. Is it a white car, white Dodge Charger?

7 A. Yes, sir.

8 Q. You testified earlier that you didn't see any cars
9 on Ingram Lane?

10 A. Correct. At the two residences up the road.

11 Q. At the two. You were specifically going to look at
12 Fabian's place and looked at the place Dionte was at as well,
13 correct?

14 A. Yes, sir.

15 Q. And there were no cars there?

16 A. No, sir.

17 Q. You have already testified that the reason that you
18 were going there was Fabian. Fabian is the one that has this
19 direct connection to this incident, correct?

20 A. Yes, sir.

21 Q. That is what we see on all the video we just saw on
22 the road there?

23 A. Yes, sir.

24 Q. Fabian wasn't cooperative. He refused to do the
25 GSR test?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Did you ever conduct a GSR test on Fabian
3 Habersham?

4 A. No, sir.

5 Q. We all heard this. I don't want to be redundant,
6 but I do want to cover it. Initially, when he was talking --
7 you asked both of them, but you asked him where he had been.
8 Where he was in the last little while, right?

9 A. Yes, sir.

10 Q. At several different points, he gave multiple
11 versions of where he was at, correct?

12 A. Yes, sir.

13 Q. First he said that he was at the store. I think he
14 is referencing the BP gas station. He said that he was there
15 about an hour ago?

16 A. Correct.

17 Q. Later he says he was at his mom's house dropping
18 off his son about an hour ago, correct?

19 A. Correct.

20 Q. As we established, about an hour prior to you
21 talking to him is when the shooting occurred?

22 A. Correct.

23 Q. So Mr. Fabian Habersham, whose mother lives across
24 the way and who has had words with the victims, puts himself
25 there right at the time of the shooting, correct?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Correct.

2 Q. You all didn't detain Mr. Fabian Habersham that
3 night?

4 A. No, sir.

5 Q. You didn't take him to the investigation center and
6 interview him?

7 A. No, sir.

8 Q. You didn't sit him there and tell him that you were
9 going to let him go and then let him sleep in there until you
10 got a search warrant for his clothing?

11 A. No, sir.

12 Q. Did you take his clothes or shoes or anything like
13 that?

14 A. No, sir.

15 Q. Did you take a picture of his shoes that night?

16 A. No, sir.

17 Q. In fact, I think when you were speaking with my
18 client at the back of the car, you said to him that Fabian
19 putting himself there at the time of the shooting, that was a
20 problem, wasn't it?

21 A. Yes, sir.

22 Q. When you were there on the roadside, you had talked
23 to them. Then you would also step away. Were you able to hear
24 what was going on with other officers?

25 Did you have a hear unit -- how were you hearing

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 the other officers talk to you while you were doing your
2 interview?

3 A. At the crime scene or Ingram Lane?

4 Q. Ingram Lane. You were talking to them, then we
5 hear you say, Delta 9, Delta 10. Then you step away. It seems
6 like you are talking to the officer, because you mentioned
7 something about GSR and we don't have a kit?

8 A. Correct.

9 Q. Were you asking officers whether they wanted a GSR
10 done? Explain that?

11 A. The lieutenant asked me to offer them GSR on Ingram
12 Lane. I told them I would, but I didn't have a kit. I
13 needed -- if they were willing to take it down to Ingram Lane,
14 I would need somebody to bring a kit for it.

15 Q. What we saw later on, that very thing that they did
16 to Dionte later with the magnet, is what you are talking about?

17 A. Yes, sir.

18 Q. You already had in your mind that GSR was
19 potentially going to be an issue here, correct?

20 A. Yes, sir.

21 Q. Later you -- we have talked about this. You
22 testified that you were looking at their shoes. Fabian even
23 noticed right away that you were looking at his shoes?

24 A. Yes, sir.

25 Q. One of the first things he said is, why are you

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 looking at my shoes?

2 A. Yes, sir.

3 Q. You have testified on direct that you noticed the
4 prints that Dionte was leaving there on the road?

5 A. On Ingram Lane.

6 Q. On Ingram Lane?

7 A. Yes, sir.

8 Q. When you see them on the video, they are standing
9 at Bees Creek?

10 A. They are at the intersection of both. They walked
11 around on Ingram Lane pacing back and forth.

12 Q. On the bodycam, we don't see you go over to the
13 dirt part and look down at anything. So was that done off
14 camera?

15 A. I don't recall.

16 Q. You have testified about seeing his prints. Did
17 you take a picture of the prints on Ingram Lane?

18 A. Not on Ingram Lane.

19 Q. We talked about the fact that you did incident
20 reports in this case. You detailed the things that were told
21 to you. There is no mention whatsoever in all of your incident
22 reports of any prints on Ingram Lane; is that correct?

23 Do you recall ever writing in your incident report
24 that you saw prints on Ingram Lane?

25 A. No, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Why didn't you put that in the incident report?

2 A. I do not recall.

3 Q. As you said, you do incident reports quite a bit.

4 You have been in law enforcement for a while. As a part of
5 being in law enforcement, did you have to go to the academy up
6 in Columbia?

7 A. Yes, sir.

8 Q. How long is that course?

9 A. At the time it was 12 weeks.

10 Q. As part of the training at that course, do they go
11 over incident reports and the importance of them and how to
12 fill them out?

13 A. Yes, sir.

14 Q. Part of that is to detail your memories while they
15 are relatively fresh and get the details down, so that three
16 years later when you testify, you can be accurate?

17 A. Correct.

18 Q. You don't think it would have been important to put
19 in these prints that you say gave you probable cause to detain
20 my client for four hours in your incident report?

21 A. I am not sure why it wasn't in there.

22 Q. Now, you also testified earlier that a picture was
23 sent to somebody there, one of the officers, of one of the
24 prints at the scene for you all to compare to my client's
25 shoes, correct?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. You testified it wasn't sent to you. It was sent
3 to another officer?

4 A. Correct.

5 Q. You also testified that you took the picture of my
6 client's shoe, correct?

7 A. I don't recall that. In the bodycam video, I
8 believe I mentioned it to the defendant, they just took a
9 picture of your shoe.

10 Q. We can refer back. It's your testimony that you
11 did not testify in pretrial that it was you who took that
12 picture?

13 A. I don't recall.

14 Q. The picture that was sent to either you or to other
15 officers of a print on the scene -- we have heard testimony
16 that the picture that was taken of his shoe was sent to them.
17 Then we have also heard testimony that a picture from them was
18 sent to you all to make a comparison there.

19 Let me ask you this. Do you have any shoe
20 comparison training?

21 A. No, sir.

22 Q. Can you tell us, did you all send a picture of his
23 shoe to them, or did they send a picture of the prints to you?

24 A. Both.

25 Q. The picture that they sent to you or to whatever

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 officer there, why is that not in evidence?

2 A. I am not certain.

3 Q. In the video we can see this. You initially asked
4 my client to step away from Fabian. You escort him to the back
5 of one of the patrol units. Was it your car or someone else's
6 car?

7 A. Yes, sir.

8 Q. Your car?

9 A. Yes, sir.

10 Q. I think you did testify earlier that you were the
11 one that put handcuffs on Dionte Habersham?

12 A. Yes, sir.

13 Q. Now, moving on to the interview at the
14 investigation building. Before we do that, after you cuffed
15 him, we see on the video that you asked him whether he wanted
16 to call his mom, right?

17 A. Yes, sir.

18 Q. He didn't actually ask to speak to his mom, but you
19 asked him if he wanted to call his mom?

20 A. Correct.

21 Q. He was like, why, initially on the video?

22 A. Yes.

23 Q. Of course you were videoing the -- the bodycam got
24 the whole conversation with him on your phone, correct?

25 A. Correct.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. We have gone over a time a little bit. Let's make
2 sure we get it. You were there on Ingram Lane. You arrive
3 around 10:48. The first video that we see is approximately
4 about 14 minutes long, correct?

5 A. Yes, sir.

6 Q. At the end of that first video on Ingram Lane, my
7 client, Dione, doesn't have any handcuffs on. He comes back
8 and does have cuffs on. We assume the cuffs were put on in
9 that interim time period that we don't see?

10 A. Yes, sir. Between 11:03 and 11:07.

11 Q. That is when the cuffs went off?

12 A. Yes, sir.

13 Q. If you arrived about 10:48, it means about 15
14 minutes into this whole interaction?

15 A. Yes, sir.

16 Q. I believe you testified earlier that you thought
17 you were on the side of the road on Ingram Lane for
18 approximately 30 minutes total?

19 A. Yes, sir.

20 Q. He is in handcuffs between 11:03, and 11:07. The
21 next thing we see is him in an interview room still in the
22 cuffs. At that point it's approximately 11:39 when you all
23 first go in there?

24 A. Yes, sir.

25 Q. He has been there for at least another 30ish

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 minutes?

2 A. I believe my bodycam cuts off at 11:14.

3 Q. Between Ingram Lane to Carters Mill is about how
4 much drive time?

5 A. Five to ten minutes. Not long.

6 Q. When Mr. Habersham was in your car, do you have any
7 kind of dash camera in the car? Other than the bodycam, do you
8 have a dash cam in your car?

9 A. Yes, sir.

10 Q. Was that cut on at all?

11 A. It should have been.

12 Q. Any reason why that is not in evidence?

13 A. No, sir.

14 Q. Did you have any conversations with my client on
15 the way to the building?

16 A. No, sir.

17 Q. You said the drive time between Ingram Lane and
18 Carters Mill is about what?

19 A. Less than 10 minutes.

20 Q. So he is there -- ten minutes. That puts it at
21 about 11:24 roughly. You come in at 11:39. Another 20-plus
22 minutes. Start the interview around 11:40. You have to go
23 through the form first, correct?

24 A. Yes, sir.

25 Q. Dan, he keeps talking to you all? You all seem to

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 be pretty friendly. He continues to say he wasn't there and
2 don't go around Fordville Road?

3 A. Correct.

4 Q. You asked about -- a couple of times you asked
5 about his brother, I think you are referring to as Woody, is
6 that right?

7 A. Yes, sir.

8 Q. You are familiar with this gentleman named Woody.

9 A. Yes, sir.

10 Q. Have you ever investigated Woody for --

11 MR. THORNTON: Objection, Your Honor. Hearsay and
12 relevance.

13 MR. BAX: I am not asking her to give a statement
14 from out of the Court. I am asking whether she investigated
15 someone else who she has brought up in this hearing.

16 THE COURT: I will overrule the objection.

17 BY MR. BAX:

18 Q. Have you ever investigated Woody for any narcotics
19 issues?

20 A. Yes, sir.

21 Q. You went over to Dione's because Woody ran from
22 you or something like that?

23 A. Yes.

24 Q. Fabian mentioned at one point he is mad because
25 Woody steals from him?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. Dione does, yes, sir.

2 Q. Dione says that about Woody?

3 A. Yes, sir.

4 Q. He also told you that Woody a lot of times will
5 stay at that location?

6 A. Yes, sir.

7 Q. Additionally, you talk about Fabian. Fabian is
8 very much implicated here. Have you ever investigated Fabian
9 for anything?

10 A. Narcotics.

11 Q. In fact, you were involved in a case with Fabian
12 that resulted in him being in prison now, correct?

13 A. Yes, sir.

14 Q. That was kind of the basis for a lot of the
15 information that you already had that you were talking to
16 Dione that night about?

17 A. Yes, sir now.

18 Q. Now, that interview goes for a little while. You
19 can see on the timer that is on the camera. It seems to be on
20 a 23-hour clock, military kind of time?

21 A. Yes, sir.

22 Q. We were starting off at 2339. We go into zero.
23 That will be after 12 o'clock. By the time you all are
24 starting to wrap up, Dione asked if he can go home?

25 A. Correct.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. I think from the cam that was about 12:05. If I am
2 remembering correctly. Then you guys leave. You and
3 Ms. Edwards leave the room about 7 after.

4 Does that sound about right?

5 A. Yes, sir.

6 Q. At that point you tell them, We will let you go in
7 a minute and go with your mom?

8 A. Correct.

9 Q. When the officers come back in and you come back
10 in, the camera has skipped forward to 57 after. Almost 1:00 in
11 the morning?

12 A. Correct.

13 Q. You left him in there for another 50 minutes?

14 A. Correct.

15 Q. He has already told you he had been up since 7:30
16 that morning. We are now at almost one in the morning?

17 A. Yes, sir.

18 Q. At that time you admit to him you all had to go
19 wake up a judge to get the search warrant for him?

20 A. Correct.

21 Q. The last video we saw was you and Detective Davis
22 going out to Ingram Lane?

23 A. Yes, sir.

24 Q. I believe you testified that was on August 22 or
25 August 27?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. 22.

2 Q. If you all went into the morning of August 17, you
3 are talking about maybe four to five days later?

4 A. Correct.

5 Q. Fabian is still there, right? Dionte is still
6 there?

7 A. Yes, sir.

8 Q. He comes out. Right?

9 A. Yes, sir.

10 Q. You asked him where his roommates are, correct?

11 A. Correct.

12 Q. We hear him say that they moved. They left.

13 A. Correct.

14 Q. You asked him if you can confirm that. He says, go
15 ahead and check. You go in to look for the individual?

16 A. To confirm they have moved out.

17 Q. You also go into his room and rifle through some
18 stuff?

19 A. Correct.

20 Q. That was on the 22. You and Detective Davis leave.
21 That whole interaction probably lasted ten minutes tops?

22 A. Give or take. Yes, sir.

23 Q. Ultimately, my client was arrested for these
24 offenses. You are aware of that?

25 A. Yes, sir.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. Were you the officer that went and served arrest
2 warrants on him?

3 A. Yes, sir.

4 Q. That wasn't until September or October?

5 A. September.

6 Q. Not quite a month later, correct?

7 A. Correct.

8 Q. He was still there?

9 A. He was at his mother's residence.

10 Q. At his mother's house?

11 A. Yes, sir.

12 Q. He hadn't fled the town or anything like that?

13 A. No, sir.

14 Q. I missed something. I apologize. I am trying to
15 stay organized here. Going back real quickly in between
16 letting Dione go that night and going to see him again,
17 something else happened.

18 Did you have any additional contact after the 16th
19 with Fabian Habersham?

20 A. Yes, sir.

21 MR. THORNTON: Objection, Your Honor. May we
22 approach?

23 THE COURT: Yes, sir.

24 (Bench conference.)

25 THE COURT: Ladies and gentlemen of the jury, we

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 need to take up a matter outside of your presence. Take this
2 opportunity to stretch your legs, use the rest room, and we
3 will bring you right back in.

4 (Jury exits the courtroom)

5 THE COURT: All right. Mr. Thornton

6 MR. THORNTON: Thank you, Your Honor. I hope I did
7 not get this wrong when I objected. There is some information
8 in Officer Godley's incident report which details in between
9 the times -- Mr. Bax is correct -- in between those two times
10 on the 17 or the 18 of August -- that Ms. Godley had received
11 kind of word on the street or notifications through different
12 people that Fabian had possibly put out some sort of hit on
13 her. She drove over there to ask him about it, and he denied
14 it. I don't know any way that that isn't not just hearsay, but
15 double and triple hearsay.

16 THE COURT: Fabian put a hit on who?

17 MR. THORNTON: Detective Godley. A, so anything
18 that she would have heard from somebody else would have been
19 hearsay. B, anything that Fabian told her about it would have
20 been hearsay.

21 I think it's also extremely prejudicial in a case
22 where you are alleging third-party guilt, and it would have
23 nothing to do with the case itself. The allegation was a hit
24 on her. Again, it would be double and triple hearsay.

25 THE COURT: All right. Mr. Bax.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. BAX: Yes, Your Honor. I was probably not
2 going to ask her to say, price on my head, which is what is in
3 her -- I was going to ask if she had been communicated
4 something that sounded threatening or something that was
5 concerning about . Fabian.

6 Ask her about her continued contact with him. It
7 is absolutely relevant. It's not hearsay if it's -- I am not
8 offering any statement that was made outside of court for the
9 truth of the matter asserted.

10 I think it's absolutely admissible to talk about
11 the actions that this officer took even before the arrest of my
12 client. It is directly related to this case.

13 There is no way you can say that the Facebook post
14 is directly related when it happened and this is not. This
15 happens literally the day after this happens. I think the jury
16 can definitely show that if he made some sort of threats
17 towards Officer Godley the day after, it would have been
18 related to this incident.

19 THE COURT: Don't yell. They can hear you.

20 MR. BAX: I'm sorry.

21 THE COURT: That's all right. Softly tell me what
22 question you are going to ask her.

23 MR. BAX: If she had gotten any concerning
24 communications about Fabian, and if that resulted in her going
25 to have more contact with him after the fact.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE COURT: She will say, yes and yes. What is
2 your next question?

3 MR. BAX: I will ask her what that contact was, and
4 whether he told her anything else of interest?

5 THE COURT: I don't think she can answer that one.
6 I think that is hearsay. I think she can answer the first one.
7 In the course of your investigation, did you have an
8 opportunity to have interaction with Fabian again?

9 That is fine. Obviously, that is in the course of
10 her investigation. She can answer that. Did you all have
11 further communications? Yes.

12 I don't think you get to say then, what were those
13 communications, I think that would be hearsay.

14 MR. THORNTON: I do too, Your Honor. The only
15 other thing I would ask is what Mr. Bax said just a minute ago
16 was that it was threatening in some way. I don't know how you
17 can say that I am trying to elicit that it was threatening and
18 then claim you are doing it for the truth of the matter
19 asserted.

20 What Your Honor is saying, I do think that is
21 appropriate. He think he can ask if they had communication,
22 but I don't think they can ask what it was and the tenor.

23 MR. BAX: The word I used was concerning.

24 THE COURT: I don't have a problem with that. I
25 mean, in the course of her investigation, if she received any

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 concerning information whereby she would reach back out and
2 have continued communication with Fabian. She will say, yes
3 and yes.

4 Bring them back out, please.

5 (Jury enters courtroom.)

6 THE COURT: All right. Mr. Bax.

7 MR. BAX: Thank you very much, Your Honor.

8 * * *

9 CROSS-EXAMINATION CONTINUES

10 BY MR. BAX:

11 Q. Continuing on, Officer Godley, after the 16th -- at
12 any time after the 16th in 2018, did you receive any concerning
13 information about Fabian Habersham that made you have any other
14 contact with him?

15 A. Yes.

16 Q. Did you have any other contact with him?

17 A. Yes, sir.

18 THE COURT: Hang on for a second. We are missing
19 one.

20 (Juror enters courtroom.)

21 BY MR. BAX:

22 Q. I am going to go back through it. After the 16th,
23 Officer Godley, did you get any other concerning information
24 about Fabian Habersham that made you have some more contact
25 with him, after the 16th?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Did you have contact with him?

3 A. Yes, sir.

4 Q. Can you tell us where that contact occurred?

5 A. His residence at the time, at the end of Ingram
6 Lane.

7 Q. You testified earlier that is a camper that is
8 behind or further down from the single-wide trailer that we saw
9 in that last video; is that correct?

10 A. Correct.

11 Q. Why is it a camper? Describe for us what the
12 difference is between that and the trailer?

13 A. It's physically a camper.

14 Q. Smaller? How small?

15 A. I think it only has one bed in it, one bathroom,
16 small kitchen. Typical smaller-size camper.

17 Q. It has been there for a while, is that correct?

18 A. Correct.

19 Q. Do you know if anybody else lives in that camper
20 with Fabian or stays there?

21 A. I am not aware.

22 Q. Did you do any research or did you pull the
23 property tax records to see whether or not they are actually on
24 the same actual piece of property?

25 A. No, sir.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. They could be on different lots?

2 A. Possibly.

3 Q. They could be owned by different people, depending
4 on how the ownership works out?

5 A. Potentially.

6 MR. BAX: A brief moment, Your Honor.

7 Thank you, sir. I appreciate it.

8 (Discussion off the record.)

9 BY MR. BAX:

10 Q. Couple follow ups that I forgot to ask, Officer
11 Godley. You testified earlier that the crime suppression unit
12 investigates primarily, at least a lot, of narcotics-related
13 offenses, correct?

14 A. Correct.

15 Q. Drug enforcement basically?

16 A. Correct.

17 Q. You already testified that in the past you have
18 investigated his brother Woody and you have investigated
19 Fabian. There are some statements made in the videos that we
20 see where both Fabian -- and even Dione says, you all are
21 known for that.

22 He is talking about drug busts and drug raids and
23 things of that nature, correct?

24 A. Correct.

25 Q. Obviously, they were aware of that when they saw

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 your vehicle, correct?

2 A. Yes, sir.

3 Q. It seemed to be that they knew to call your name
4 when they got out to the head of the road?

5 A. Yes, sir.

6 Q. So it's safe to say that somebody must have seen it
7 was you in that car, right?

8 A. Yes, sir.

9 Q. Then you testified to this Facebook post. You were
10 obviously able to access my client's Facebook account. It
11 obviously was not marked as private, correct?

12 A. Correct.

13 Q. Do you have any information as to whether it was
14 password protected or whether anybody else had access to it?

15 A. No, sir.

16 MR. BAX: I think I am done, Judge. Just one quick
17 second.

18 (Discussion off the record.)

19 BY MR. BAX:

20 Q. One final question. Obviously, that evening you
21 had a bodycam on you. I think we see you have some other
22 equipment. You had your service weapon with you, correct?

23 A. Yes, sir.

24 Q. And we see all of that in the video and in the
25 photo?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. You had your phone with you that you utilized for a
3 few things throughout that time, correct?

4 A. Yes, sir.

5 MR. BAX: No further questions, Your Honor.

6 THE COURT: All right. Mr. Thornton, any
7 follow-up?

8 MR. THORNTON: No redirect, Your Honor, subject to
9 recall. Ask that she be excused.

10 THE COURT: All right. Thank you so very much.
11 You may be excused.

12 (Witness exits witness stand.)

13 THE COURT: Come up here real quickly.

14 (Bench conference.)

15 THE COURT: All right. We are just trying to get
16 some scheduling conflicts down. No worries.

17 We will take up one more witness. They have
18 indicated that witness will only take about three to four
19 minutes. That witness needs to get back to work. Then we will
20 break for lunch after that witness.

21 Okay.

22 MR. THORNTON: Thank you, Your Honor.

23 Tavara Edwards.

24 TAVARA EDWARDS,

25 being first duly sworn testified as follows:

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

* * *

DIRECT EXAMINATION

BY MR. THORNTON:

Q. Good afternoon, Officer Edwards.

A. Good afternoon.

Q. I know you already testified in this case briefly.

I am assuming that you still work for the Walterboro Police Department?

A. Yes, sir, I do.

Q. I will hand you what has been marked for identification as State's Exhibit 107. I will ask if you can identify that.

A. Yes, sir. This is the Statement of Miranda Rights form for Mr. Habersham.

Q. The jury just finished watching the video of the interview of the defendant in this case, Dionte Habersham.

Is that you in the interview along with Officer Godley?

A. Yes, sir, it is.

Q. Are you the one who read him his Miranda Rights?

A. Yes.

Q. Did you read him all of the rights on this Miranda Rights form?

A. Yes, sir, I did.

Q. Is that what was captured on video?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Was he able to initial beside each of his rights?

3 A. Yes, sir.

4 Q. Did he appear to understand your questions? Was he
5 able to communicate with you?

6 A. Yes, sir.

7 Q. Did he appear to be under the influence of any
8 alcohol or drugs to the extent that he didn't know what was
9 going on or unable to communicate with you?

10 A. No, sir.

11 Q. Did anyone in your presence, either you or anybody
12 else, make any threats or promises to him of leniency to try to
13 get him to talk?

14 A. No, sir.

15 MR. THORNTON: Thank you, Your Honor. No further
16 questions. One more thing.

17 BY MR. THORNTON:

18 Q. Has State's 107 been altered or changed in any way?

19 A. No, sir.

20 Q. That is the Miranda Rights form and a true and
21 correct copy as you read it to him and we saw him sign it on
22 the video?

23 A. Yes, sir.

24 MR. THORNTON: Your Honor, at this time I would ask
25 that State's Exhibit 107 be moved into evidence.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE COURT: Any objection?

2 MR. BAX: No, Your Honor.

3 THE COURT: Without objection.

4 (State's Exhibit 107 was marked for identification
5 and accepted into evidence.)

6 MR. THORNTON: Thank you, Your Honor. No further
7 questions.

8 THE COURT: All right.

9 * * *

10 CROSS-EXAMINATION

11 BY MR. BAX:

12 Q. Ms. Edwards, just a couple of things real quickly.
13 Obviously, in addition to going through the Miranda form with
14 Dionte, you also assisted with the interview. You were part of
15 that conversation that occurred?

16 A. Yes, sir.

17 Q. We can see that on the video, correct?

18 A. Yes, sir.

19 Q. In that interview, you kind of clearly state to
20 Dionte, much to his disbelief, that his name was called out as
21 part of that?

22 A. Yes, sir.

23 Q. Nobody said his name at the scene?

24 A. Another officer did.

25 Q. Another officer said his name to you?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Correct.

2 Q. You said it as if someone who was involved said
3 that he was involved, correct?

4 A. I don't recall that.

5 Q. You said your name was called. Did you have any
6 actual -- were you aware of any evidence that actually pointed
7 from the scene that pointed to him?

8 A. I was told that he was being brought to the
9 investigations office to be talked to.

10 Q. Obviously, if someone believed that you were saying
11 he was being accused by the victims, that wouldn't be correct,
12 would it?

13 A. Not the victim. I didn't speak to him, no, sir.

14 Q. You didn't have that knowledge at that time?

15 A. No, sir.

16 Q. You made those statements to him, correct?

17 A. His name was called by another officer.

18 Q. As a police officer, you are trained to know you
19 can lie to a defendant in order to get him to confess You know
20 that?

21 A. Yes, sir, I do.

22 MR. BAX: No further questions for Ms. Edwards.

23 * * *

24 REDIRECT EXAMINATION

25 BY MR. THORNTON:

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. So when you said your name was called, you were not
2 referring to some independent witness? What you were referring
3 to at that time was who?

4 A. An officer who said his name.

5 Q. Not the victims. You hadn't talked to any of those
6 folks?

7 A. No, sir.

8 Q. You just knew he needed to be talked to?

9 A. That's it.

10 MR. THORNTON: Thank you. I don't have anything
11 further, Judge.

12 THE COURT: All right. Thank you so very much.

13 (Witness exits witness stand.)

14 MR. THORNTON: Your Honor, that is probably a good
15 breaking point, based upon what we talked about earlier.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, we will need to take up some matters of law. I will give
18 you a bit of an extended lunch today.

19 If you will be back here ready to go at 2:15, we
20 will resume the trial. I hope you enjoy your lunch. Remember,
21 do not discuss anything about the case.

22 (Jury exits courtroom.)

23 THE COURT: Since we have been going pretty hard,
24 let's go ahead and let the staff and everyone eat lunch so we
25 can come back fresh to begin all the arguments for the GSR and

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 for SLED. I think we will need to give ourselves about 45
2 minutes to an hour. All right?

3 Then we have got to do some other hearings, and we
4 have to work on the jury charges and some other stuff.

5 MR. BAX: Just to make sure I put this on the
6 record. We gave you our best guess based on where we are at in
7 the trial. Obviously, I would like to reserve the ability to
8 readdress if anything else comes up.

9 Obviously, I don't know exactly what all the
10 rulings will be going forward. That may change my request.

11 THE COURT: Yes. We don't need to worry about time
12 at this point. There is no way for us to get finished today.
13 Jury deliberations -- I am not going to start another trial
14 tomorrow. And for me to do pleas and motions on Friday. You
15 all have all day today and tomorrow. So we are good to go.

16 I will just release the jury at the end of the day.
17 There is no way we can -- that is just too much for us to be
18 juggling two juries. We only have one jury deliberation room,
19 so we wouldn't have a place to put them anyway.

20 We will be in recess.

21 (Lunch recess)

22 PROCEEDINGS CONTINUED

23 * * *

24 THE COURT: Mr. Bax, happy to hear from you.

25 MR. BAX: Thank you, Your Honor. I have here two

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 pieces of evidence that is my understanding would be coming up
2 next. We have the witnesses associated with the reports. As
3 Your Honor has been here for this trial, I am sure you
4 anticipate the evidence that I am speaking of. We can handle
5 it in any particular order that you desire, if you wish. We
6 have the individuals from the SLED lab for a shoeprint analysis
7 comparison and also for gunshot residue.

8 My motions today prior to going in front of the
9 jury are based on the Council's Standards for Admissibility of
10 Scientific Evidence. I think without any preference from Your
11 Honor, I will start with the shoeprint, and we will go from
12 there.

13 MR. THORNTON: I can go ahead and get started.

14 THE COURT: Sure.

15 MR. THORNTON: Dawn Claycomb.

16 DAWN CLAYCOMB,

17 being first duly sworn testified as follows:

18 * * *

19 VOIR DIRE EXAMINATION BY MR. THORNTON

20 BY MR. THORNTON:

21 Q. Ms. Claycomb, please state your name for the
22 record.

23 A. Dawn Claycomb.

24 Q. Who do you work for right now?

25 A. Duke Energy in Charlotte, North Carolina.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Previously back in 2018 who did you work for?

2 A. South Carolina Law Enforcement Division.

3 Q. At that time, what did you do for SLED?

4 A. I was a crime agent, as well as footwear
5 examination.

6 Q. You said crime scene and footwear examination?

7 A. Yes, sir.

8 Q. How long have you been with -- how long had you
9 been with SLED at that time?

10 A. At that time it would have been approximately six
11 years.

12 Q. Can you tell me what types of things you did for
13 SLED from the time you started there until -- obviously, now
14 you work for Duke Energy.

15 When did you leave SLED?

16 A. I left SLED in in June of 2019. I started there in
17 2012.

18 Q. About seven years there?

19 A. Right.

20 Q. What did you do for SLED during that time?

21 A. I was a crime scene agent. I responded to crime
22 scene requests throughout the State of South Carolina. That
23 included death investigations, officer-involved shootings, any
24 crime scene requests throughout the state for local agencies.
25 I also did footwear examinations, whether that be from crime

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 scene responses that we actually responded to or footwear
2 evidence that local agencies would have submitted with footwear
3 requests.

4 Q. When you talk about footwear requests, did you
5 receive -- first of all, what is your educational background?

6 A. Bachelor's of Science degree in forensic science.

7 Q. Did you receive any training in -- first of all,
8 did you receive any training in crime scene to be a crime scene
9 analyst?

10 A. Yes. When I started in SLED in 2012, I went
11 through approximately eight months to a year of inhouse
12 training, which consisted of written exams, practicals, and
13 hand-on experience, actively responding to crime scenes. At
14 the end of that training, it would have consisted of a
15 competency test where I was being competent to respond to crime
16 scenes and process -- to document, photograph, process evidence
17 to crime scene requests.

18 Q. How many crime scenes do you think you went out to
19 or responded to during your time with SLED?

20 A. Within my almost seven years, over 300 crime
21 scenes.

22 Q. You talked about -- you also talked about your time
23 as a footwear examiner. Is there a specific training protocol
24 that you have to do or classes that you have to take to be a
25 footwear examiner at SLED?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes. There is also an inhouse training program
2 with SLED for footwear examination. That was approximately
3 three years. While I was at SLED with that training, there was
4 also external training that I attended. Within the three years
5 at SLED for footwear examination, there were similar to the
6 crime scene training, practical exams, written exams, mock
7 court. Actively working, supervised casework with a competent
8 footwear examiner.

9 Multiple cases I was actively working with that
10 competent footwear examiner. The external courses, that would
11 be forensic ITC, a 40-hour course for footwear examination I
12 attended, as well as William Bozdiak's workshops at an
13 International Association of Identification conference that I
14 also attended that consisted of recovery of footwear evidence,
15 barefoot evidence, and then two additional workshops for gait
16 analysis.

17 Q. Did you at the end of that three-year training
18 period, did you complete the training?

19 A. Yes. I completed the training and took a
20 competency test at the end of the training.

21 Q. Were you found to be competent?

22 A. Yes, sir.

23 Q. Did you also have to take a proficiency exam at
24 some point after that? We have had some testimony earlier like
25 once an accreditation period, whatever that is?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Right. Once you are deemed competent, within that
2 annual, within that year, you would take a proficiency test
3 just to show that you are proficient still within that test.

4 Q. Did you take a proficiency test?

5 A. Yes.

6 Q. Did you pass it?

7 A. Yes.

8 Q. Explain for the Court and the record what exactly
9 it is that you do when you are doing a footwear analysis
10 comparison?

11 A. With a footwear examination, there are several
12 things that we look at. It's basically in steps. Initially,
13 looking at an unknown footwear impression. You would look at
14 anything you see within that impression. It starts with class
15 characteristics, which refer to the size, shape, and design.

16 Q. Would that be the same thing as the tread pattern?

17 A. Correct. The tread or the outsole of the bottom of
18 the shoe.

19 Q. Go ahead, ma'am.

20 A. Class characteristics. If those appear to be
21 similar, you would continue to the next step, wear
22 characteristics. If those were observed, you would note those.
23 Then further on to look at randomly acquired characteristics.
24 Those would be non-repeatable characteristics from normal wear
25 and tear of someone wearing a shoe.

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1 Q. What physically or what protocols do you use when
2 you are trying to come up with whether two items match, don't
3 match? Talk about what the actual process is.

4 A. There are side-by-side comparisons. If you have an
5 unknown impression and then a known shoe, you can do a side by
6 side. There is overlay or superimposition, overlay a test
7 impression of that known shoe over top of the unknown
8 impression. You can see similarities or dissimilarities.

9 There is also what we call ACD methodology.
10 Analyze, compare, evaluate, and then you verify. After you
11 come to your conclusion and evaluate it, it is then verified by
12 a secondary competent footwear examiner or peer review or
13 technical review is what it would be called.

14 Q. Is a peer review -- does the peer reviewer conduct
15 their own examination of all the materials?

16 A. Yes. They themselves will look at unknowns and
17 knowns along with my results and review those results.

18 Q. Is there then a collaboration between the two of
19 you to make sure everyone is in agreement?

20 A. Yes. They will review that, and a report will not
21 be put out until there is an agreement between two competent
22 footwear examiners for the result.

23 Q. Are you able to even issue your report until both
24 you and the peer reviewer are in agreement with one another as
25 to what is or is not either a match or consistent or whatever?

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1 A. Right. Both examiners have to agree on the result
2 and the final conclusion until the report is actually put out.

3 Q. Do you use any specialized equipment or anything to
4 make these -- first of all, to actually get to the point of
5 comparing things?

6 A. Yes. Are you referring to the collection of the
7 unknown impressions?

8 Q. Sure. Let's start with the collection process.

9 A. Collecting unknown impressions from a crime scene,
10 for instance, the collection itself and the documentation needs
11 to be done a certain way. The photos should be photographed
12 with a camera on a tripod at 90 degrees, as well as with a
13 scale in the photograph.

14 That is your initial. With several different
15 angles of lighting. Lighting can show different depths,
16 especially if it's a 3-D impression. That would enhance
17 certain things within the impression to be able to see it
18 throughout the photographs.

19 Once it is documented and photographed correctly,
20 it is then sent to photography and printed. It's printed one
21 to one from photography. One to one ratio. Kind of like a
22 life-size image. You wouldn't print an 8 by 5 photo of the
23 impression. You would have a one to one, full size of the
24 footwear impression to be able to compare it to the actual
25 known shoe.

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1 Q. I am going to hand you, what has been marked as --
2 and for the Court reporter's benefit, I haven't written these
3 down for her yet. State's Exhibit 19.2L and 19.2.R for left
4 and right shoe. Can you tell me what these are?

5 A. These are transparencies of the test impressions
6 that's I did. These are test impressions of the actual known
7 shoe, basically with ink on the outsole or the bottom of the
8 shoe. That is rolled, and then placed within these -- on these
9 transparencies to get an idea of what the impression would look
10 like as a 2-D representation of the actual known shoe.

11 Q. We talked about the collection. Is this one of the
12 things making these ink impressions? Is that part of the
13 analysis, the procedure that you would follow?

14 A. Yes. That is a step within the examination
15 comparison process.

16 Q. State Exhibit's 21.7, can you just briefly tell the
17 Court what that is?

18 A. Yes. This is a photograph of the unknown
19 impression that was found at the crime scene. This is printed
20 one to one. In other words, a life-size photograph of the
21 unknown impression with the marker, as well as the L-scale
22 within the photo.

23 Q. And both as to this case, but just in general, is
24 that the type of photograph or equipment that you were
25 referring to?

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1 A. Yes. That's correct.

2 Q. When you are actually doing these comparisons,
3 ma'am, do you have some sort of way to magnify these to look at
4 them? Do you look at them with your naked eye?

5 Do you do both? How does that work?

6 A. Both and as much as needed. There is a side by
7 side that you can do, as well as the digital Adobe Photoshop
8 looking at them side by side to be able to magnify or zoom in
9 on certain areas of the actual photo, if needed.

10 Q. As part of your classes, did you receive or read
11 publications by people other than yourself in the field of
12 footwear examination?

13 A. Yes, I have.

14 Q. Ma'am, have you ever been qualified as an expert in
15 South Carolina before?

16 A. Yes, I have.

17 Q. How many times?

18 A. For footwear, it was one time before.

19 Q. For other disciplines?

20 A. Yes. For crime scene as well.

21 Q. How many times?

22 A. Two to three times.

23 Q. About how many cases do you think -- outside of
24 testimony. About how many cases do you think that you worked
25 on footwear impressions or reviewed with footwear impressions?

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1 A. At least 15 to 20 probably, once deemed competent.

2 Q. That was after the three years and the passing of
3 the proficiency test?

4 A. Right.

5 MR. THORNTON: Your Honor, with the Courts
6 permission, unless Mr. Bax disagrees, I will go ahead and get
7 into the specifics of this case as well as to each, and then we
8 can argue the science and the testimony at the same time.

9 THE COURT: All right.

10 BY MR. THORNTON:

11 Q. I did want to show you one other thing.

12 This is 19.1L. and 19.1R. Tell the Court what
13 these items are?

14 A. Yes. These are bio-foam impressions, which are
15 also test impressions. They are similar to the inked
16 impressions of the known shoes.

17 Q. Is that one of the other ways that you used to
18 analyze knowns versus unknowns?

19 A. Yes. Another method to do test impressions on the
20 known shoe.

21 Q. Did you do the bio-foam on 19.1L and R. Did you do
22 that in this case, State v. Dione Habersham?

23 A. Yes, sir.

24 Q. These are not in evidence yet. We have not had the
25 full chain of custody. I will tell the Court that we saw Jared

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1 Phillips take these shoes into custody, Judge. Jacklynn McKay
2 already testified she transported them.

3 For purposes of this hearing, I will be referencing
4 State's Exhibit 19.

5 THE COURT: All right.

6 BY MR. THORNTON:

7 Q. Ma'am, I will hand you State's Exhibit 19 and ask,
8 as part of your work in this case, did you examine those shoes?

9 A. Yes.

10 Q. Are those the shoes that were the known comparison
11 in this case?

12 A. Yes.

13 Q. Did you compare those shoes against unknown
14 impressions found at the crime scene.

15 A. Yes, I did.

16 Q. As part of the your analysis, ma'am, did you
17 prepare these inked impressions?

18 A. Yes, I did.

19 Q. What else did you do?

20 A. The inked impressions, the bio-foam impressions.
21 Then the examination itself would be a side-by-side overlay,
22 and the examination itself.

23 Q. There was a report done in this case, was there
24 not?

25 A. Yes, there was.

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1 Q. Who was the peer reviewer for this case?

2 A. Tom Darnell.

3 Q. In that process, would he have done his own
4 independent examination?

5 A. Yes.

6 Q. Were the two of you able to reach a consensus, and
7 were you able to issue the report in this case?

8 A. Yes.

9 Q. I won't go over each one of the photos. Is it fair
10 to say that there were several of the shoe impressions that
11 were -- that did not have enough detail to be conclusive one
12 way or the other?

13 A. Yes. That's correct.

14 Q. Were there three that you were able to make a
15 decision on?

16 A. Yes.

17 Q. As to State's 21.7, 21.9, and 21.11, which I will
18 hand to you. Just go through them, and please reference the
19 photograph number and/or the exhibit number and what your
20 findings were as to the comparison to the shoes from Dionte
21 Habersham.

22 A. Item 21.7, which is a photograph of the unknown
23 impression at Marker 15 and corresponding characteristics.
24 Came to the conclusion it could have been made by the known
25 shoe.

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1 Q. When you say it has --

2 THE WITNESS: Can I refer to my notes for the exact
3 terminology of it?

4 THE COURT: Sure.

5 THE WITNESS: The actual results would be
6 corresponding and combined class characteristics, wear
7 patterns, and some random identifying characteristics with the
8 Item 19 left shoe.

9 Q. Is another way to say that, it's consistent with it
10 both in size, shape, and tread pattern?

11 A. Correct.

12 Q. It could have been made by that shoe or another
13 shoe of the same brand, same size, and it would need to be the
14 left shoe?

15 A. Correct.

16 Q. Go ahead to the next one.

17 A. The next one is 21.9, the unknown impression at
18 Marker 17. The final result on that is the item 21.9
19 impression was made by the Item 19 left shoe. That basically
20 means this unknown impression was made by the Item 19 left
21 shoe.

22 Q. That is a definitive match?

23 A. Correct.

24 Q. It's not that it was made by that shoe or one of
25 the same size, shape. It was made, in your expert opinion, by

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1 that shoe?

2 A. Correct.

3 A. Next one, please.

4 Q. 21.11, the unknown impression at Marker 19. The
5 results for that is similar to the one at Marker 15,
6 corresponding and combined class characteristics, wear
7 patterns, and some random identifying characteristics. It
8 could have been made by that shoe or any other shoe that may
9 have the similar class characteristics.

10 Q. Same size, same shoe, left or right, and the same
11 tread pattern?

12 A. Correct.

13 Q. So it's consistent.

14 A. Correct.

15 Q. At the end of the day, we have two consistent and a
16 match?

17 A. Correct.

18 MR. THORNTON: Your Honor, I don't know if I did
19 all of that in the correct order. In front of the jury, I will
20 ask to have her admitted as an expert, but I believe she
21 testified to the training and what she did in this case.

22 Just so Mr. Bax and the Court know what I would do.
23 It's the same thing that I would do in front of the jury both.
24 Since she examined them and Tom Darnell with SLED examined
25 them. I would call them both, and then the GSR person the same

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1 thing. That is how we will proceed unless you tell me
2 otherwise.

3 THE COURT: Sounds good to me.

4 * * *

5 VOIR DIRE EXAMINATION BY MR. BAX

6 BY MR. BAX:

7 Q. Good afternoon, Ms. Claycomb?

8 A. Good afternoon.

9 Q. How was the drive down from Columbia?

10 A. It was long.

11 Q. It has been that way for me too. A couple of
12 things. Going back to -- just to try to stay on the same kind
13 of track to track along with what Solicitor Thorton asked you.
14 You talked about your training, right? You included in there
15 that you do some mock trial training; correct?

16 A. Yes. That's correct.

17 Q. Some of the training involves how to testify in
18 trial, correct?

19 A. Correct.

20 Q. You would agree that that is not a scientific-based
21 training?

22 A. The court testimony, the mock Court testimony, is
23 basically just for your comfortability in front of testifying
24 front of others.

25 Q. They are teaching you how to testify is not a

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1 scientific training?

2 A. I wouldn't refer to it as that. Not per se, no.

3 Q. I know you also testified that you had to take an
4 exam before being qualified by SLED.

5 Who administers that exam?

6 A. CTS at the time is the competency test, if that is
7 what you are referring to.

8 Q. CTS is a company or is that something made by SLED?

9 A. No. That is an external company that provides the
10 tests themselves.

11 Q. What does that test consist of?

12 A. It consists of unknown impressions. You basically
13 conduct the entire examination and come to a conclusion with
14 results of your examination.

15 Q. What is the permissible error rate on that test?

16 A. That I don't know.

17 Q. So there can be some IDs that are not correct, and
18 you can still pass. You don't know if it's one fail or two
19 fails or whatever?

20 A. No. You have to pass it ultimately. Your results
21 are either -- it's inconclusive. It's a match or it's a
22 no-match.

23 Q. You don't -- do they ever come back and tell you
24 that all of those are 100 percent right or anything like that?

25 A. If you were to get anything wrong, you would have

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1 to take another competency test or go through additional
2 training.

3 Q. You testified that you don't know what their
4 standard for error rate is, correct?

5 A. No. I do not.

6 Q. You said the company does the test. You do the
7 test there in. -- you where do you take the test?

8 A. At SLED at the lab. It has been submitted to CTS
9 for a review.

10 Q. You also testified -- and I think it's towards the
11 end of your report. You referenced the fact that the
12 impression evidence in the case was examined using the ACE V
13 methodology, correct?

14 A. Correct.

15 Q. Ace V stands for analyzation, comparison
16 evaluation, and verification.

17 A. Correct.

18 Q. That is a comparison method that is most often
19 associated with fingerprint analysis, correct?

20 You know that that is also used by fingerprints for
21 comparison?

22 A. Correct.

23 Q. You also talked a little bit about the peer review.
24 That peer review, obviously, is inhouse. Someone else that
25 works with you, correct?

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1 A. Correct.

2 Q. The person who does the per review, they know that
3 you have already reached a particular conclusion at that point,
4 correct?

5 A. Correct.

6 Q. If you find that you cannot make any kind of match,
7 whether it's -- let me say this. If it's inconclusive, does it
8 still go to peer review?

9 A. Yes. The results would still go.

10 Q. If it's a definitive no-match, does it still go to
11 peer review?

12 A. Yes.

13 Q. It always goes to peer review. The peer reviewer
14 knows what your conclusion is, correct?

15 A. Yes.

16 Q. They start out with what you have already found?

17 A. They do know what my conclusions were, yes.

18 Q. Additionally, you testified you have been qualified
19 to testify as an expert in footwear impressions one time.

20 A. Correct.

21 Q. You testified you have examined approximately 15 to
22 20 pieces of footwear in total during the time that you have
23 done that kind of work for SLED?

24 A. Correct.

25 Q. Out of the 15 to 20, only one of them resulted in

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1 evidence that ended up being brought up in trial that you would
2 have to testify to?

3 A. Correct.

4 Q. As far as the ACE V is concerned, are you familiar
5 with any reports done by any scientist that was published
6 addressing the validity of the Ace V method?

7 A. I am not -- you would have to be more specific.

8 Q. Are you familiar with an article called scientific
9 validation of fingerprint evidence under Daubert, by Lynn
10 Havart and Ralph Norman Havart, published in 2006?

11 A. No. I am not aware.

12 Q. You are not familiar with the conclusion that they
13 find in that study that ACE V is not a reliable method or a
14 valid scientific comparison method?

15 A. No, sir.

16 Q. You mentioned a couple of different things. Class
17 characteristics, being size, brand, tread pattern, correct?

18 A. Size and design.

19 Q. Tread pattern. Those things would be class
20 characteristics that would be the same for every shoe that came
21 off of that manufacturing line. If it was the same exact NIke
22 shoe, those class characteristics would be the same for every
23 one of those Nike shoes?

24 A. Correct. Repeatable manufacturing characteristics.

25 Q. Is there any databases that you utilize in looking

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1 up who manufactured that particular shoe? How many of those
2 were manufactured? What years they came out?

3 A. Yes. We did have a Foster & Freeman database.

4 Q. Solemate.

5 A. Yes.

6 Q. Solemate database has approximately about 35,
7 36,000 shoeprints on there as of now, correct?

8 A. I don't know the number, the exact number, but
9 there is a lot of, yeah, footwear within the database.

10 Q. All of those footwear -- that is just what a new
11 shoe would look like coming off the line, correct?

12 A. It's outsole designs that were manufactured that
13 may be in the database, yes. Not necessarily every single shoe
14 produced.

15 Q. Even that database would not necessarily contain
16 every single shoe that has ever been manufactured?

17 A. Correct.

18 Q. Those shoes are not going to contain any of these
19 randomly acquired characteristics that we talked about,
20 correct?

21 A. Correct.

22 Q. Does that database tell you how many of that
23 particular shoe was manufactured?

24 A. No. It's mainly if you have an unknown impression
25 and you have no known shoe. You can look at the design to get

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1 an idea of a possible make or brand of the shoe itself.

2 Q. So they are just sticking the prints in the
3 database. They are not necessarily giving you the background,
4 statistical information about whether there was 5,0000 of those
5 shoes produced in 2009.

6 A. Not necessarily, no.

7 Q. Is there any way for you to be able to get a hard
8 number from any kind of database as to how many shoes would
9 match the class characteristics in any given area?

10 A. No, sir.

11 Q. Now, the class characteristics -- we talked about
12 randomly acquired. Things that make a mark on the shoe that
13 stays that you acquire that you walk along every day?

14 A. Correct. Randomly acquired characteristics, yes.

15 Q. Cuts, dents, scrape, teeth missing?

16 A. Yes. A tack in the bottom of the mail. Anything
17 that is random within the outsole.

18 Q. What probability studies do you have to utilize to
19 show how many times that particular randomly acquired
20 characteristic can happen over a population?

21 A. I don't have a number or any probability to give
22 for that.

23 Q. Let's assume that there is approximately 350
24 million people in the United States. Do you have any way of
25 breaking down how many of those people would wear, say, a size

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1 12?

2 A. The numbers would be so variable. There wouldn't
3 be a number to apply to it. There are shoes out there that may
4 be sold online or that are not mass produced. I don't know
5 that there would be an actual number that could be applied for
6 a probability for it.

7 Q. So it's your testimony that such information is
8 unachievable, correct?

9 A. At this time, yes.

10 Q. What could change in the future that would make
11 that different?

12 A. In my opinion, that would be difficult. You would
13 have to track every single shoe within the entire world as well
14 as know how many people were wearing those shoes or if they are
15 just sitting in the closet, or if they are thrown away. I
16 don't know that would be an accurate number or a database that
17 to be able to keep that would be actual and definite with a
18 number.

19 Q. Assuming that we can't track all the people in a
20 particular country, let's say -- what databases have you looked
21 at and used in your analysis that you use just a sample size.
22 Say 10,000 randomly selected people, or 50,000 randomly
23 selected people, or 2,000 randomly selected people.

24 A. I did not use a database. I did not apply a new
25 number to my examination for comparison.

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1 Q. To your knowledge, does any database like that even
2 exist?

3 A. I don't know. I can't answer that.

4 Q. So you work in this field. You are asking the
5 Court to qualify you as an expert, and you are not aware of it
6 My research show that there is none. You are not aware of it,
7 so that certainly backs that up?

8 A. When it comes to randomly acquired characteristics,
9 this really comes down to you examining the shoe, the suspected
10 shoe and the suspected print, looking at what looks like to be
11 some kind of randomly acquired defect and comparing across the
12 two, so, yes, it matches or, no, it doesn't. Correct?

13 A. There is more that goes into it than that.

14 Q. What more goes into it? We are here to talk about
15 that.

16 A. There are several steps that need to be followed
17 during the examination. It's not just, let me look at this and
18 look at that and match them. If the class characteristics from
19 the start don't match, either you can't come to a conclusion or
20 you can't move on to the next step to be able to possibly
21 identify anything further.

22 Q. Let's assume that the class characteristics match.
23 Other than scanning the shoes on the footprint, or the shoe or
24 the overlay onto Photoshop and looking from one side to the
25 other, what else is involved?

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1 A. Like I said, there is more. The class
2 characteristics that you start with, the location and the size
3 of those randomly acquired characteristics are really what sets
4 shoes apart or individually from one another. The class
5 characteristics will break down into a group initially of
6 shoes, rather than all of the shoes. Those class
7 characteristics will break it down to a group of shoes. Then
8 the randomly acquired characteristics could possibly break down
9 even further to a more individual shoe or a pair of individual
10 shoes.

11

12 Q. So when it comes to those other things, how many
13 randomly acquired characteristics are you required to find at a
14 minimum before your lab will let you report that out as a
15 match?

16 A. Not a threshold or a number. You have to take
17 other things into account when doing an examination.

18 Q. You keep talking about these other things. What
19 are these other things?

20 A. Class characteristics. Obviously, the more that
21 are similar or consistent, the more weight would go to the
22 result. The class characteristics, the wear of the shoe. The
23 everyday wear and tear. Someone who works on a construction
24 site, normal wear and tear may have more randomly acquired
25 characteristics than someone who works in an office on carpet

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1 or a hard floor.

2 So class characteristics. The wear, the random
3 identifying characteristics. The more of those characteristics
4 that are similar, the better on the back end that your result
5 may be.

6 Q. You have testified that there was no minimum number
7 that you have to reach. In your report, you conclude -- the
8 result from Item 21.9. You said Item 21.9 impression was made
9 by Item 19 shoe. That is a pretty definitive statement. It
10 does not give a percentage. It sure sounds like there is 100
11 percent surety that it was made.

12 You don't list the number of randomly acquired
13 characteristics that you found, do you?

14 A. Correct. With unknown impressions, each one may be
15 different. One may show better quality than another unknown
16 impression. It's really dependent on what the unknown
17 impression and what it displays.

18 Q. Let's talk about this case then. How many RACs did
19 you find on the shoe?

20 A. There were approximately four on the one that I
21 identified, as well as wear within the toe and heel area of the
22 unknown impression.

23 Q. What were the measurements of those RACs?

24 A. What do you mean?

25 Q. How many centimeters wide was it? Do you use

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1 inches or centimeters?

2 A. The scale is in millimeters. We don't document
3 measurements itself as far as millimeters.

4 Q. You don't measure these RACs. You don't measure
5 width and a depth or anything like that?

6 A. There may be calipers that we can use or with the
7 scale. We don't document the number or the size of each
8 individual characteristic. Just because I said the unknown
9 impression, it's unknown. How well that impression will show
10 or how good of an impression it is. That is also dependent on
11 the substrate or whatever the actual shoe or sole is impressing
12 onto, whether it's dirt or a hard surface. It's dependent on
13 how that unknown impression is displayed.

14 Q. You don't document the size. Did you take
15 measurements of the RACs in this case?

16 A. Not measurements, I would call it. When you do an
17 overlay or a superimposition. When you overlay those ink
18 impressions that I showed. That is where the size of things
19 and the measurements would line up.

20 Q. That is still just you comparing with your eyes
21 these two images, these two things with defects on them. You
22 are not taking an instrument, such as even just a ruler and
23 using that to measure both and compare with data that is
24 collected using some rudimentary tools, such as a measuring
25 device.

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1 A. You could use a caliper or a scale. However, the
2 measurements would not be documented in my notes.

3 Q. You didn't do that in this case; is that correct?

4 A. No.

5 Q. How often have you used calipers or any other
6 measuring device in your comparisons?

7 A. It's dependent on the unknown impression.

8 Q. That is not what I asked. How many times have you
9 used that -- you talked about 15 to 20. How many times have
10 you used it?

11 A. I don't have a number on that. It's not
12 necessarily every examination. It is really dependent on that
13 impression that I am looking at.

14 Q. I understand. Out of 15 or 20, you can't remember
15 how many times you used it?

16 A. No. I don't have an accurate number for that.

17 Q. Is it your testimony that you have done it before,
18 or is it zero?

19 A. I have used calipers before, yes.

20 Q. You have used calipers in a comparison of footwear
21 before?

22 A. Yes.

23 Q. But you can't tell us how many times?

24 A. No. I do not know the number.

25 Q. Before your test is peer reviewed by someone else

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1 at SLED, such as Mr. Darnell, does he share his results back
2 with you?

3 In other words, whatever he does, he communicates
4 that back to you afterwards?

5 A. If my conclusion -- if he agrees with my
6 conclusion, then, yes. That is when we know that a report will
7 be issued.

8 Q. If he doesn't agree, you all just don't talk in the
9 hall for a couple of weeks?

10 A. No. If we don't agree or can't come to an
11 agreement on the result, then it goes to a technical reviewer.
12 Like a technical meter to determine what the next step is.

13 Q. Out of the 15 to 20 times that you have done a
14 comparison, how many times has the peer review disagreed with
15 your results?

16 A. I don't know a number on that.

17 Q. So out of 15 or 20 times, you don't remember the
18 number of times somebody disagreed with you?

19 A. No. I don't keep track of that.

20 Q. My kids keep track of every time that they
21 disagree. I am amazed that you would not remember that.

22 A. I am not a kid, and I don't keep track of the
23 number of times that someone disagrees with me.

24 Q. Do you know if SLED keeps that data?

25 A. I don't know.

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1 Q. Final question, same as the question about the
2 calipers. You said you can't remember how many times the peer
3 reviewer has disagreed. Has the peer reviewer ever disagreed?

4 A. When you say disagreed, that is difficult to
5 answer. There is more than just reviewing a result. They also
6 do an administrative review, spelling, grammar, those types of
7 things. So when you say disagreement --

8 Q. Well, Ms. Claycomb, I thought it was pretty
9 obvious. We are talking about evidence that is going to be
10 admitted in trial against someone who is being charged with a
11 crime.

12 A. Correct.

13 Q. How many time when you have made a comparison of
14 evidence has the peer reviewer disagreed with your result?

15 A. Which I have said, I don't know the number of how
16 many times.

17 Q. My follow-up question was. If you don't remember
18 the number, has it ever happened at all?

19 A. Yes. It would get routed back to us if there is
20 something that needs fixed or revised or a correction within
21 the report.

22 Q. Your testimony is that the peer reviewer has
23 disagreed with your results in the past, but you just can't
24 tell me how many times?

25 A. No. I am saying if there needs to be revision on

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1 the report, that would be sent back for a revision; however,
2 that doesn't mean a disagreement with the results of my
3 conclusions.

4 MR. BAX: Your Honor, I feel like the witness is
5 specifically trying not to answer the question. I would ask
6 Your Honor to instruct the witness to answer the question.

7 THE COURT: I disagree.

8 BY MR. BAX:

9 Q. I don't see how I can make it any clearer. You
10 have testified under oath that you have examined 15 to 20
11 pieces of footwear evidence, one of which you have testified
12 about.

13 You have testified that you don't remember how many
14 times the peer reviewer has disagreed with your results.

15 A. That's correct. There are so many reports, not
16 only footwear but crime scene.

17 Q. I am just asking about the footwear, the 15 to 20.
18 Those are the only ones I am asking about.

19 A. Right. I don't track a number of how many times
20 it's sent back or routed back for revisions or corrections.

21 Q. You also cannot answer the question of, was there
22 ever a time when the peer reviewer disagreed with your results
23 on a footwear impression comparison.

24 A. That is what I am saying. I know that reports have
25 been routed back to me, yes. As far as the reason for that, if

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1 it was a disagreement and conclusions, I can't answer that. I
2 don't know what the reasoning was.

3 MR. BAX: No further questions for Ms. Claycomb.

4 THE COURT: All right.

5 MR. THORNTON: Nothing on redirect. Ask that she
6 momentarily be allowed to step down.

7 State would call Tom Darnell.

8 TOM DARNELL,

9 being first duly sworn testified as follows:

10 * * *

11 VOIR DIRE EXAMINATION BY MR. THORNTON

12 BY MR. THORNTON:

13 Q. Mr. Darnell, please state your full name for the
14 record?

15 A. Thomas Edward Darnell.

16 Q. Mr. Darnell, who do you currently work for?

17 A. I work at SLED in Columbia.

18 Q. How long have you worked with SLED, Mr. Darnell?

19 A. Total? I started in 1990. I actually retired and
20 went back to work in 2012.

21 Q. So a long time.

22 A. A long time.

23 Q. What do you do for SLED currently?

24 A. I am currently a latent print fingerprint examiner
25 within the forensic services laboratory.

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1 Q. Have you also performed services as an expert in
2 other areas?

3 A. Yes, sir.

4 Q. What other areas have you performed as an expert?

5 A. Crime scene investigation. I have done blood stain
6 pattern analysis. I have done footwear. I have done tire
7 tread, crime scene reconstruction. Pretty much anything to do
8 with crime scene.

9 Q. Could you tell me a little bit about your
10 educational background?

11 A. I have a Bachelor's of Science degree in criminal
12 justice from the University of South Carolina. I graduated in
13 1982. I have taken numerous courses in the forensic field
14 throughout my career.

15 Q. Specifically as to footwear analysis, have you
16 attended any SLED trainings or done any -- we have heard
17 obviously, from Dawn Claycomb that she did a training at SLED.

18 Did you do something similar to be qualified as an
19 expert?

20 A. Yes, sir. We had to complete an inhouse training
21 program that was designed by our supervisor at that time. The
22 training consisted of a lot of reading, a lot of written tests,
23 some practical examinations, moot court. In addition to the
24 SLED training, to the inhouse training, I have taken numerous
25 courses from recognized individuals in the field of forensic --

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1 or forensic footwear examinations, to include Mr. Ernie Hamm
2 who at that time worked at the Florida Department of Law
3 Enforcement. He was in the field for 30-plus years.

4 I also trained under Mr. William Bodziak, who is a
5 retired FBI footwear examiner. He was also at the FBI for
6 30-plus years.

7 Also, I trained under Mr. Dwane Hilderbrand, who is
8 from the State of Arizona. He too had quite a few years in the
9 field.

10 Q. During your many years with SLED, how many cases
11 with footwear impression cases do you think you worked?

12 A. It would be have to be a large number. The reason
13 I say a large number is that any crime scene that we go to, we
14 are looking for footwear impressions. That would pretty much
15 happen at any crime scene that we go on. Back in my early
16 days, I have gone to probably 1,000 crime scenes. I would say
17 it was -- I would say in excess of 1,000 or so footwear
18 examinations that I have done.

19 Q. Mr. Darnell, have you ever been qualified in either
20 Federal Court or the Courts of South Carolina as an expert in
21 footwear impression analysis? Have you been qualified before
22 as an expert in foot wear analysis?

23 A. Yes, I have.

24 Q. How many times?

25 A. Probably about 40 times, plus or minus.

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1 Those mostly State Court. I have had the occasion
2 to testify in Federal Court a couple of times.

3 Q. Not to reiterate the previous testimony. When you
4 are examining a known versus an unknown shoe impression, can
5 you talk a little bit about the procedure.

6 A. Yes, sir. First of all, you have what is called a
7 two dimensional impression, or a three-dimensional impression.
8 In this particular case, we are talking about a 3-D impression,
9 three-dimensional. So by that what I mean is you have an
10 impression that is indented into the sand. You have to make
11 your test impressions correspond to the type of impression that
12 you are looking at.

13 In this case, the bio-foam was used. That gives
14 you the indentation in the bio-foam, which makes it sort of give
15 you the appearance as it appears in the sand, if that makes any
16 sense.

17 A. It does, yes, sir. Since you have referenced this
18 case, State v. Dione Habersham, did you conduct an examination
19 of the known versus unknown prints that have been already
20 testified to by Dawn Claycomb?

21 A. I did.

22 Q. And were you, in fact, the peer reviewer on this
23 case?

24 A. Yes, sir.

25 Q. When you conduct a peer review, do you just pull up

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1 some proposed reports and say, that looks like she dotted all
2 of her "I"s and crossed all of her "T"s and move on, or are you
3 actually looking at everything yourself?

4 A. I get everything that she had when she made her
5 comparison.

6 Q. Would that include the bio-foam?

7 A. Yes, sir.

8 Q. And the inked impressions?

9 A. Yes, sir.

10 Q. And the one-to-one photograph comparison of the
11 unknowns?

12 A. Yes, sir.

13 Q. And the shoes themselves?

14 A. Yes, sir.

15 Q. You do, in essence, a complete, independent
16 examination of the items?

17 A. Yes, sir.

18 Q. So I will ask you, sir. I will hand you what has
19 been marked as State's Exhibit 21.7, 21.9, and 21.11. I will
20 ask you, sir, if you reviewed those as part of your analysis?

21 A. Yes, I did.

22 Q. Can you tell me what your conclusions were as to
23 each of those impressions?

24 A. If you need to refer to your notes, you certainly
25 can, sir.

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1 A. Looking at the final report. 21.7, it was
2 basically consistent. In other words, it combined, it
3 corresponded with combined class characteristics, wear
4 characteristics, and also it corresponded by having the same
5 random identifying characteristics or sum.

6 Q. I think the word you used at first, it's consistent
7 with.

8 A. Yes, sir. Consistent. It actually goes one step
9 further than just consistent. By that what I mean is, we are
10 able to say it has some random identifying characteristics. It
11 makes it a little more unique than just any other shoe just
12 like it.

13 Q. Okay. As to the next, I believe it's 21.9.

14 A. 21.9. The final result was this impression was
15 made by the left shoe of the shoes that we received for
16 comparison.

17 Q. Does that mean it's a match?

18 A. Yes, sir.

19 Q. 21.11.

20 A. 21.11 is basically the same as 21.7. It is
21 basically consistent. It had combined class characteristics,
22 wear, and some individual characteristics that did correspond.

23 Q. That one step above just any other shoe just like
24 it?

25 A. Yes, sir.

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1 Q. And just for the Court's edification -- and I know
2 Mr. Bax already knows this. There were several other
3 footprints that were analyzed that no conclusion was reached
4 on. Is that fair to say?

5 A. That's correct.

6 Q. In other words, you didn't say that all of these
7 are consistent or all of them matched. In fact, you only had
8 one match.

9 A. That's correct. The most common result that was in
10 the report was no conclusion can be rendered due to the quality
11 of the impression.

12 Q. Mr. Bax had asked the ACE V method. You had
13 mentioned you did fingerprints or you have done fingerprints
14 before?

15 A. Yes, sir. That has been my primary discipline all
16 these years.

17 Q. When you say there is not enough detail, is that
18 like a smudged print, unknown that you get sometimes and you
19 are not just able to say one way or the other?

20 A. That's correct.

21 Q. Have you, in the course of your 31 years with
22 SLED -- have you read publications? And I know you said you
23 have taken classes. Have you read publications and other
24 materials and study about footwear impression evidence?

25 A. Yes, sir. In fact, several of these books we were

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1 required to read as part of our training from the very
2 beginning. So, yes, sir. I have read several.

3 MR. THORNTON: Your Honor, I don't have anything
4 further. Again, I am being a little bit abbreviated, but for
5 time I am trying to get through it.

6 I have no further questions at this time. Please
7 answer any questions that Mr. Bax has for you.

8 * * *

9 VOIR DIRE EXAMINATION BY MR. BAX

10 BY MR. BAX:

11 Q. Mr. Darnell, good afternoon.

12 A. Good afternoon.

13 Q. How people do footwear impressions at SLED
14 currently?

15 A. Currently?

16 Q. Yes, sir.

17 Q. I believe there is one person in crime scene that
18 is proficient to do footwear. And then there are two of us,
19 including myself, that are able to do the case reviews.

20 Q. So one person doing the tests. Is that Ms.
21 Claycomb?

22 A. No, sir. I am referring to -- she is not at SLED
23 at the moment. Back when she was there, there were two.

24 Q. At the time she was there, there were two people
25 that would be doing that comparison. You said yourself and one

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1 other that could do the reviews?

2 A. Yes, sir. The other person I am referring to is my
3 supervisor. He is also considered a technical leader in that
4 area.

5 Q. So you would be potentially the one peer reviewing,
6 at that time, either one of those two testers at that time for
7 footwear impressions, correct?

8 A. Yes, sir.

9 Q. Does it always go to you first and then to your
10 supervisor, or does it randomly go to one or the other of you
11 two for review?

12 A. It's pretty much who is around at the time. We
13 typically try to balance it out. We don't go to the same
14 person all the time. We try to distribute the work.

15 Q. There can't be too much bouncing. We are talking
16 about two reviewers and two testers. That is four people.
17 That is barely a big lunch right there.

18 A. That is a fair statement.

19 Q. You said that you had trained under -- you referred
20 to as William Bodziak. I know Bill from a case that I did with
21 him years ago.

22 Did you do training through the things that he has
23 published, or did you go to seminars he was teaching or both?

24 A. I actually went to a footwear symposium, which was
25 at the FBI academy in the early 90s. I don't remember if he

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1 was there or not. I would imagine he was close by. I have
2 actually sat in on his classes. He travels around now. He is
3 retired, and he travels around and teaches footwear and tires.

4 I have actually participated in his classes. We
5 had to take tests and do practical examinations and also had
6 moot court with him.

7 Q. Are you aware of whether or not the FBI lab is now
8 currently today still doing impression evidence examinations?

9 A. As far as I know, they are. I couldn't -- I have
10 not -- I have not had any contact with the FBI in quite a few
11 years. To answer your question, I really don't know.

12 MR. BAX: Thank you Mr. Darnell.

13 No further questions of Mr. Darnell, Your Honor.

14 MR. THORNTON: No redirect. I would ask that he be
15 allowed to step down. We can move straight into GSR testimony,
16 or we can do this argument, whatever is the Court's pleasure.

17 THE COURT: We still have to do GSR too?

18 MR. BAX: Yes.

19 THE COURT: I didn't know this was going to take
20 this long. I would have just kept right on rolling through.

21 Go ahead and make this argument for the foot
22 impressions, please.

23 MR. BAX: Yes, sir. A couple of things. First
24 off, obviously, Your Honor, a lot of this would be based on the
25 standards that our Supreme Court has given for the

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1 Admissibility of Scientific Evidence under Rule 702. I would
2 cite State v. Council, 515 SE 2d, 508. 335 South Carolina 1.
3 It's a 1999 case. It talks about the standards that South
4 Carolina courts told for evaluation of scientific evidence and
5 whether or not it's admissible in Court.

6 I would also cite for Your Honor that specifically
7 cites the Council case, State v. Jones II. That case, Your
8 Honor, is 681 SE 2d 580. That is a 2009 case.

9 There are two reasons for me citing the Jones II
10 case. One is purely vanity, because it was definitely a case
11 that I tried back in 2007. That is where we had actually hired
12 William Bodziak to be our expert in that case. It was a
13 capital case, and the only evidence in that case was -- there
14 were two elements to it. There was a footprint in blood at the
15 scene where the two victims had been murdered in West Columbia.

16 The original murders happened either in '96 or '98.
17 This was a retrial. The case is still pending now. It got
18 overturned a second time.

19 There was a footprint in the blood of one of the
20 victims. Later, based on their investigation, they had seized
21 some boots from a suspect's house or residence, Mr. Jones'
22 residence. The residence he shared with another suspect who
23 actually was the testifying corroborating witness for the
24 State.

25 In that case, they were trying to present sole

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1 impression testimony in addition to the footprint testimony.

2 It was specifically on that issue.

3 There were really only two people who were
4 testifying about those kinds of things. One was William
5 Bodziak. The other was a gentleman by the name of Kennedy from
6 the Canadian mountains. That evidence was excluded in that
7 case for not meeting the standards in Council and Jones. A lot
8 of the same issues apply here.

9 As Your Honor has heard, while this may have been
10 something that has been admitted in courts previous to now,
11 there has also been a lot of studies that have shown that this
12 is really not evidence that should have been admitted
13 heretofore. It's very comparable to fingerprint evidence.
14 Finger print evidence for a very long time was kind of like the
15 gold standard in forensic evidence.

16 However, as you may be aware of, things have come
17 to light over the years, including FBI examiners and State
18 examiners that they found their results were inconsistent or
19 frankly just falsified.

20 Part of the reason that sheds light on this issue
21 is the fact that at its core, there are several quote/ unquote
22 forensic sciences that have been used. If you boil them down,
23 they are just the examiner and the integrity of that examiner
24 and that examiner's opinion.

25 What we need to be looking at is whether or not the

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1 examination and the methodology used for that examination are
2 actually scientifically valid. There are a couple of different
3 standards by which the methodologies have been looked at.

4 As I have said before, there is an article that was
5 published in 2006, Scientific Validation of Fingerprint
6 Evidence under Daubert. It specifically talks about the
7 validation of the ACE V method, the method that the expert has
8 used in this particular case.

9 That scientific paper finds that it's not
10 scientifically valid. Part of the reason is there are two
11 different things you are looking at. It's alternatively
12 referred to as validity for accuracy. Basically, they are
13 talking about the fact that several examiners can all reach the
14 same conclusions. Unless that conclusion is actually correct
15 and ground truth, it doesn't matter.

16 In other words, the goal is to get to the truth,
17 not just consistent results. So consistency alone is not the
18 bellwether of whether something is science. It is something
19 that has to have the kind of numbers validated by actual fact
20 to know that the examiners under that methodology are getting
21 the right answer 99 percent of the time or whatever probability
22 you can assign. Hopefully, you can assign probability.

23 As you heard from the testimony from Ms. Claycomb,
24 we don't have that here. This is literally just the examiner
25 looking from one thing to another. You can see there is not

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1 actually any scientific measurements to cite. There are not
2 any databases as to how many times a particularly randomly
3 acquired characteristic had occurred over a general population.
4 There is no determination as to whether or not there is a
5 particular number of shoes in a particular area that had the
6 same class characteristics. They have none of that backup
7 data.

8 I would also cite for Your Honor in 2016, The
9 President's Council of Advisors of Science and Technology, a
10 very large group of high-level scientists, including people
11 from NASA, Harvard, Yale, Princeton were commissioned by the
12 White House to do a very indepth report on forensic science.

13 Shoe impression or footwear impression evidence was
14 analyzed by that commission. The results that -- PCAST --
15 finds that there are no appropriate and comparable studies to
16 support the foundational validity of footwear analysis to
17 associated shoeprints with particular shoes based on specific
18 identifying marks, sometimes called randomly acquired
19 characteristics.

20 Such conclusions are unsupported by any meaningful
21 evidence or estimates of their accuracy, and thus are not
22 scientifically valid.

23 I know I am asking you a lot, jump out ahead of
24 your peers here, but this stuff has been shown. There might be
25 some very talented people in law enforcement, but it's still

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1 just a person comparing two things. To call that science is
2 not the definition of science.

3 THE COURT: All right. Yes, sir.

4 MR. THORNTON: Thank you, Your Honor.

5 Judge, I have got for you and also for Mr. Bax,
6 State v. Little, a South Carolina Court of Appeals case. It is
7 unpublished. I will tell you that now. The reason I pulled
8 it, Judge, it was actually interesting. This is a really good
9 analysis. It also happens to be Dawn Claycomb when she was
10 qualified as an expert in a previous case that she talked
11 about. They go through the Council factors. They talk
12 specifically about the factors that the publications peer
13 review the technique prior to publication. The quality of the
14 control procedures, and the consistency of the method. They go
15 through the fact that she has testified -- Claycomb has
16 testified that she read publications on the subject, as she did
17 here. It explains she was familiar with other expert's
18 research on fundamental footwear patterns, as she did here.

19 She testified about the methods she used, as she
20 did here. So on and so forth. They also go through an
21 explanation on the fact that this has been used for quite some
22 time. I would point out to the Court -- I pulled some
23 different cases. United States v. Ford, which is a Third
24 Circuit case. It can be found at 481 Fed 3d 215. It's a 2007
25 Third Circuit case.

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1 Frankly, Judge, there are not a lot of times that
2 this comes up in South Carolina, because it hasn't been
3 challenged, I guess, a lot, because it's kind of accepted. I
4 went back through myself this morning and did a search. The
5 foot footwear analysis that I could find in any court was where
6 it showed up in an appellate case was 1951. The last one was
7 last month. It would appear to me that there is at least a
8 good 70 years' worth of prior use of this all the way up until
9 last month.

10 I will also give Your Honor U.S. v. Allen, 390 F3d,
11 944, the Seventh Circuit. It's a 2004 case where footwear was
12 approved. I would point Your Honor to State v. Gay, a Supreme
13 Court of New Hampshire case from 2016. That can be found at
14 145 Atlantic 3d, 1066. Bart v. State, Your Honor, Arkansas
15 Court of Appeals, 203-427, which is a 2013 case. I will stop
16 now.

17 We have several of these. As I have said, since
18 they extend from 1951 until last month, there is an awful lot
19 of cases where they say footwear impression is acceptable. I
20 would point out to the Court that Jones II -- I will have to
21 defer to Mr. Bax, since he worked that case. In Jones II, what
22 was thrown out in that case was the barefoot sole impression
23 inside the boot, which has nothing to do with what we are here
24 about today.

25 What we are here about today is shoeprint evidence,

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1 which has been accepted, again, for the last 70 years. While I
2 realize it's unpublished, it was just upheld directly on point
3 with this examiner this year in the State of South Carolina.
4 So with all due respect to Mr. Bax, I would ask that the Court
5 find that this is a reliable science. Both of these examiners
6 are qualified to testify. I will be calling both of them in
7 the case in chief, If Your Honor rules that this testimony and
8 evidence is admissible. Thank you, Your Honor.

9 THE COURT: All right. Anything further for the
10 record?

11 MR. BAX: No, Your Honor. Just quickly. Only two
12 things. Number one, the reason I think Jones II is relevant
13 here is the fact that William Bodziak was testifying in that
14 trial that those barefoot insoles was valid science. The same
15 guy that iks training thinks it was. The Supreme Court
16 disagreed. I think that is relevant.

17 Number two, just because something has been
18 considered science for 70 years doesn't mean it is. As is
19 noted in the article about the ACE V method for several hundred
20 years. All scientists around the world all agreed that the
21 earth was flat. That was the known science at the time. That
22 was the held opinion. So science can be wrong. When they
23 cannot admit they are wrong, it kind of loses the moniker of
24 science. That's it.

25 MR. THORNTON: Your Honor, the State calls Megan

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1 Fletcher. This would be the GSR now we scheduled.

2 * * *

3 MEGAN FLETCHER,

4 being first duly sworn testified as follows:

5 * * *

6 VOIR DIRE EXAMINATION BY MR. THORNTON

7 BY MR. THORNTON:

8 Q. Ma'am, would you please state your full name for
9 the record.

10 A. Megan Fletcher.

11 Q. Who do you work for?

12 A. I am employed by the South Carolina Law Enforcement
13 Division, commonly known as SLED, in the forensic services
14 division in the trace evidence laboratory.

15 Q. What specifically do you do for them in the trace
16 laboratory?

17 A. I analyze various types of evidence, to include
18 paint, fibers, explosives, tape, fire debris, and gunshot
19 primer residue.

20 Q. Let me ask you a question. What is your
21 educational background?

22 A. I have my Bachelor's Degree from Chatham College in
23 Biochemistry and English.

24 I have a Master's in forensic science from Marshall
25 University in computer forensics and forensic chemistry.

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1 Q. What kind of training have you received to allow
2 you to analyze gunshot residue for SLED?

3 A. While employed at SLED, I underwent a year-long
4 training program that included practical, written, and oral
5 examinations.

6 During that time, I worked under a competent
7 gunshot primer residue analyst. I learned the different types
8 of instrumentation that were employed at the lab at the time.
9 I took tests on those instruments. I used those instruments.
10 I worked cases under those analysts.

11 I also had to undergo a competency exam. I had to
12 correctly interpret the results of my examination in that
13 competency exam. Then I had to undergo a mock trial, in which
14 I had to defend the science and my results.

15 Q. Ma'am, about how long have you been an analyst for
16 SLED for gunshot residue?

17 A. Over 13 years.

18 Q. How many cases involving gunshot residue do you
19 think you have work for South Carolina Law Enforcement
20 Division?

21 A. Probably over 1,000 at this point.

22 Q. Have you ever been qualified as an expert in the
23 field of gunshot residue or gunshot residue analysis?

24 A. Yes, sir. 29 times.

25 Q. Let me back up for a second.

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1 Tell me what gunshot residue is.

2 A. Gunshot residue is everything that comes out of the
3 gun when it's fired. That includes smoke, soot, debris. It
4 also includes something that we refer to as gunshot primer
5 residue. This residue specifically comes from the primer part
6 of the cartridge. Gunshot primer residue contains three
7 elements: Lead, barium, antimony. When they come together in
8 a molten form to create a singular particle, an individual
9 particle, containing lead, barium, and antimony, we call that
10 characteristic of gunshot primer residue.

11 Q. How do you examine that? In other words, what is
12 the actual physical process you use to examine to find out
13 whether there is gunshot residue or not?

14 A. Evidence that has potential gunshot primer residue
15 on it is collected using particle lifts or stubs. It's
16 basically a stamp with a sticky surface. Those stubs are then
17 analyzed using a standing electron microscope. A powerful
18 microscope that allows us to see very small particles and also
19 determine the elemental composition.

20 Q. Ma'am, have you received outside of SLED trainings
21 given by other agencies, companies, or individuals as to the
22 analysis of gunshot residue?

23 A. I have received outside training from the
24 individual vendors from our scanning electron microscopes and
25 the electron energy dispersive X-ray detector companies as

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1 well.

2 Q. Are there any certifications that you have to have
3 with SLED or proficiency exams that you have to take as an
4 analyst with SLED?

5 A. SLED deems us competent to perform a particular
6 analysis. So in 2008 SLED deemed me competent to perform
7 gunshot primer residue analysis. Then every year since 2009, I
8 have taken a proficiency test. 2008 I obviously took the
9 competency test, and then in 2009 forwarded to the proficiency
10 test in gunshot primer residue analysis.

11 Your Honor, I will try to keep this short.
12 Ma'am, thank you very much. I have no further questions.
13 Please answer any questions Mr. Bax has.

14 THE COURT: Madam court reporter, do you need a
15 break?

16 THE COURT REPORTER: No, Your Honor. I am fine
17 until after this witness.

18 THE COURT: All right.

19 * * *

20 VOIR DIRE EXAMINATION BY MR. BAX

21 BY MR. BAX:

22 Q. Good afternoon, Ms. Fletcher?

23 A. Good afternoon.

24 Q. You have testified that what you are looking for is
25 what you have referred to as gunshot primer residue, correct?

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1 A. Correct.

2 Q. That is particles that contain three elements:
3 Lead, barium, and antimony; correct?

4 A. Correct.

5 Q. Generally, would you agree that you would want to
6 be looking for rounded lead particles in order to show that
7 those particles were molten versus other shapes that can be
8 found from other sources?

9 A. There are actually very few other sources. The
10 only other source known to contain the elements of lead,
11 barium, and antimony was one set of brake pads. Those
12 particles were crystalline, which is very different from molten
13 ton or specifically spherical or round. They also contain
14 large amounts of the element iron. We actually use that
15 element as a decider as to whether it can be considered gunshot
16 primer residue in our laboratory.

17 Q. So your testimony is that they have not discovered
18 rounded lead particles with barium and antimony in them from
19 fireworks being shot off.

20 A. Not to my knowledge. I am sorry. Let me explain
21 that. Without a large presence of magnesium as well.

22 Q. So you are familiar with what was found from
23 fireworks being fired off.

24 A. It's an exclusionary element.

25 Q. Your protocol as of now is it's not required that

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1 the particle that you find be rounded or spherical?

2 A. No. It must have a molten shape. It cannot be
3 crystalline in nature.

4 Q. What is a molten shape?

5 A. It must appear to have rounded edges. It looks
6 like it went through high heat and energy. It just doesn't
7 look like something like an ice cube, per se.

8 Q. In other words, obviously, when you do a test for
9 the elements in a particle, lead, barium and antimony, you are
10 using machine assistance. In other words, you are looking
11 through a microscope. You are also using something like a GCMS
12 to test whether it has those elements in it you are getting in
13 that report, correct?

14 A. That is incorrect. So the scanning electron
15 microscope is a microscope that does allow us to see the
16 particles. It's an energy dispersive X-ray detector that
17 actually provides us with the elemental composition of the
18 particles, not a GCMS.

19 Q. It's a machine. It's not Susan, right?

20 A. It's instrumentation.

21 Q. You use instrumentation to determine the elements
22 contained in a suspected particle, correct?

23 A. Correct.

24 Q. But when it comes to whether it's molten or not,
25 that is a physical observation that you are making, correct?

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1 A. Correct.

2 Q. You are making a judgment call as to whether you
3 think that that fits the description of molten based on what
4 you said, rounded edges, et cetera, correct?

5 A. Correct.

6 Q. Now, gunshot primer residue, what has been referred
7 to as GSR, it is not just dispersed on a person who fires a
8 gun. If there is someone close enough to that firing, it can
9 get on them too, correct.

10 A. Correct. It can go outwards of three feet to
11 either side. It can go, to some extent, behind the shooter.
12 It has also been shown to go as far as 60 feet in front of the
13 shooter.

14 Q. Gunshot primer residue also has been shown it can
15 be transferred from one surface to another, correct?

16 A. Correct. That is referred to as secondary
17 transfer. It has even been shown to undergo tertiary transfer.

18 Q. That can be between solid surfaces as well as
19 between people's hands, correct?

20 A. Correct.

21 Q. Are you aware of whether or not the main FBI lab in
22 Quantico does gunshot residue examinations anymore?

23 A. The FBI stopped doing gunshot primer residue
24 analysis before I even started at SLED as a result of their
25 deference to anti-terrorism. They also were not receiving

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1 enough gunshot residue kits in order to maintain the
2 instrumentation and maintain the discipline.

3 Q. Are you familiar with reporting that, in fact,
4 there was an internal report from the FBI lab showing that
5 there was cross-contamination and that the cross-contamination
6 was the reason that they had closed it down. They were finding
7 gunshot residue particles, primer residue particles or what was
8 consistent, all over the areas around the lab and in the lab
9 that didn't come from their evidence.

10 Are you familiar with that reporting?

11 A. If you are referring to the newspaper article out
12 of Maryland, I think out of Baltimore?

13 Q. The Baltimore Sun. Yes.

14 A. That is actually incorrect, according to the FBI.
15 The FBI did find particles of gunshot primer residue in their
16 firearms laboratory, which I would absolutely expect to find,
17 but they were not found in the areas that they processed
18 gunshot primer residue evidence.

19 Q. That is not actually what the report says. The Sun
20 had a comment.

21 MR. THORNTON: Objection, Your Honor. That is not
22 a question.

23 MR. BAX: She characterized this article. I am
24 re-characterizing it back. I can provide the article. Your
25 Honor can make his own decision, but that is not what it says.

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1 They have got the papers from the FBI's own internal. It was
2 leaked to this reporter, and that is not what it said.

3 MR. THORNTON: If I could finish. All I was saying
4 was, he is disputing her answer. If he wants to ask a
5 question, he ought to ask a question. He is not up to argue
6 with the witness is my point

7 THE COURT: All right.

8 BY MR. BAX:

9 Q. You work at the SLED campus off of Broad River Road
10 in Columbia?

11 A. Correct.

12 Q. How many people work in gunshot primer residue?

13 A. Currently, we have seven, including myself.

14 Q. Do any of the people -- let me ask you this.

15 Do you do any other kinds of analysis besides
16 gunshot primer residue?

17 A. I do everything that the trace evidence department
18 performs. So paint, fibers, explosives, fire debris, duct
19 tape, general chemical physical unknown comparisons.

20 Q. Is that the same for the other -- when you said
21 seven, does that include yourself?

22 A. Yes. It includes myself.

23 Q. Do the other six individuals that work in that same
24 area, do they also do everything in trace like you just said as
25 well?

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1 A. No, sir. We have one technician as part of the
2 group that only processes gunshot primer residue evidence, and
3 we have three other analysts that are trained in every
4 discipline -- well, two other analysts are in training for
5 every other discipline.

6 MR. BAX: No further questions, Your Honor.

7 THE COURT: Anything else?

8 MR. THORNTON: No redirect, Your Honor.

9 THE COURT: All right.

10 MR. THORNTON: Ask that she be allowed to step
11 down.

12 THE COURT: Absolutely.

13 (Witness exits witness stand.)

14 THE COURT: Any motions?

15 MR. BAX: Yes, Your Honor. The motion having to do
16 with gunshot primer residue is a bit different. I am not
17 here -- I don't believe that there is an argument that the
18 science behind finding primer residue particles is really so
19 much of a problem. The problem is when you look not just at
20 the Council factors but at the rule under 702. It specifically
21 talks about whether the evidence is probative enough to be
22 something that would aid the tryer of fact.

23 The problem is, regardless of what the agent said
24 on the stand, gunshot residue is just not probative enough,
25 because it can be transferred. It can spread out in a cloud.

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1 It can move from place to place to place. When you compare
2 that to the cost as well as the issues of contamination, you
3 run into the fact that basically you are spending a lot of
4 money for something that is really just not that probative.

5 Like I said, I thought I got my paralegal to print
6 out the Baltimore Sun article. I will print it out or send it
7 to to Your Honor, if you like. Either way. I don't know if
8 you have a preference if it's electronic versus paper. I will
9 make sure that I get that to your law clerk. The real issue
10 here is that fact the regardless of whether it's a
11 contamination issue or a transference issue, the evidence in
12 this case is basically one particle from the sample from the
13 hand, and I think a couple of particles from the samples taken
14 from the clothing.

15 Being around who he was around, having this go to
16 the lab, there is more chance that it's contamination of
17 transfer more than anything else. It is not probative. It
18 does not prove that he was even in the area a firearm was
19 fired. That is not what the science says. The science says we
20 were there, and it can be transferred a couple of different
21 times and a couple of different ways.

22 I think the problem with GSR is, you are really
23 stretching the evidence further than it really can go. She
24 can't testify whether he shot a gun or was around it. She can
25 testify to whether it was a second transfer or third transfer.

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1 She can only say that that is what she found there. It's just
2 not probative enough to admit.

3 THE COURT: Yes, sir.

4 MR. THORNTON: Thank you, Your Honor. 702
5 testimony by experts. If scientific or other specialized
6 knowledge will assist the tryer of fact in understanding the
7 evidence or to determine a fact in issue, a witness qualified
8 as an expert who has knowledge, skill, experience, may testify.
9 I believe what Mr. Bax has talked about, the probative value
10 and the all the problems inherent in it. It really goes to the
11 weight of the evidence and not it's admissibility. Those are
12 certainly all ripe cross-examination questions that you would
13 have.

14 Again, I am not going to ratchet off a bunch of
15 other cases. GSR -- I understand that Mr. Bax and I may just
16 disagree about that stuff. It has been used since, as far as I
17 can tell, the early 70s. The latest case dealing with it that
18 I found that referenced GSR was filed Monday. It is certainly
19 not just an old science. It's one that is currently in use.

20 I think that certainly under the Council factors, it
21 qualifies as a valid science. As far as its probative value,
22 ultimately that is up to the jury. I don't think there has
23 been any showing that the prejudice associated with it would
24 substantially outweigh the probative value. Thank you, Your
25 Honor.

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1 THE COURT: I agree. It all goes to the weight,
2 not to the admissibility. As to all the experts, I will allow
3 them to testify. We will take a quick break and then come
4 right back.

5 (Recess.)

6 THE COURT: Bring them out.

7 (Jury enters courtroom.)

8 THE COURT: All right, ladies and gentlemen of the
9 jury. I apologize. To say we had a scheduling snafu would be
10 an understatement, but we got it all sorted out now. We will
11 continue with the trial.

12 Call your next witness, Mr. Thornton.

13 MR. THORNTON: Thank you, Your Honor.

14 State calls Dr. Thomas Beaver.

15 THOMAS BEAVER, M.D.,

16 being first duly sworn testified as follows:

17 * * *

18 DIRECT EXAMINATION

19 BY MR. THORNTON:

20 Q. Dr. Beaver, who do you work for, sir?

21 A. I work for the Medical University of South
22 Carolina.

23 Q. If you would, pull that microphone down a little
24 bit. What do you do for the MUSC?

25 A. I am a clinical associate professor in pathology.

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1 Basically, I do autopsies.

2 Q. Dr. Beaver, did you perform an autopsy on a
3 two-year-old Moises Montano in August of 2018?

4 A. Yes, sir, I did.

5 Q. Can you explain to me a little bit about what your
6 background is, as far as pathology. When did you get started?
7 What is your degree in, all of those sorts of things?

8 A. Certainly. I have an undergraduate degree from the
9 University of Southern California. I have a medical degree
10 from St. George's University School of Medicine. I completed a
11 five-year residency training program in anatomic and clinical
12 pathology at the University of Colorado. I completed a
13 fellowship in forensic pathology at the Denver County Coroner's
14 Office. I have taken the certifying examinations given by the
15 American Board of Pathology in anatomic pathology, clinical
16 pathology, and forensic pathology, passing all of those exams
17 on the first attempt.

18 I have a medical license in California, Florida,
19 West Virginia, South Carolina. I have been doing autopsies and
20 appearing in Court since 1992.

21 Q. About how many autopsies do you think you have
22 performed?

23 A. I think it's pretty close to 20,000.

24 Q. Have you ever been qualified as an expert in the
25 field of forensic pathology in court before?

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1 A. Yes, sir. Many times.

2 Q. How many times?

3 A. Hundreds.

4 MR. THORNTON: Your Honor, at this time I would ask
5 that Dr. Beaver be recognized as an expert in the field of
6 forensic pathology.

7 MR. BAX: No objection, Your Honor.

8 THE COURT: As I stated before, ladies and
9 gentlemen of the jury, he has been qualified as an expert. He
10 can thus give his opinion.

11 BY MR THORNTON:

12 Q. Dr. Beaver, let me start by asking you. This is
13 for identification only at this point. We will not publish to
14 the jury yet.

15 I am going to hand you State's, 102, 103, 104, 105. In general
16 terms, do you recognize those photographs?

17 A. Yes, sir, I do.

18 Q. Are those photographs, sir, that either you took or
19 were taken in your presence during the autopsy of Moises
20 Montano?

21 A. I took two of them, and two of them were taken in
22 my presence.

23 Q. Are they a fair and accurate depiction of Moises
24 Montano or -- I think some of them are X-rays -- of Moises
25 Montano during his autopsy?

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1 A. Yes, sir.

2 Q. Have they been altered or changed in any way, other
3 than that I put stickers on them?

4 A. No. It looks exactly like what I took.

5 MR. THORNTON: Your Honor, at this time I would ask
6 that State's Exhibits 102, 103, 104, 105 be moved into
7 evidence.

8 THE COURT: Any objection?

9 MR. BAX: Just one of them was subject to the
10 prior. That was Number 102 subject to my prior.

11 THE COURT: All right.

12 (State's Exhibits 102 - 105 were accepted and
13 entered into evidence.)

14 BY MR. THORNTON:

15 Q. Just to make the record clear, Dr. Beaver, would
16 having these photographs or being able to refer to these
17 photographs -- would that assist you in trying to explain some
18 of the things that you found to the jury?

19 A. Yes, sir.

20 Q. We will get to that in just a minute. If you
21 would, please, Dr. Beaver, can you go through what you found
22 when you did the autopsy on Moises?

23 What was the evidence of the injury, if any?

24 A. Yes. So there was a gunshot wound on the right
25 side of the head above the ear. That wound enters at an angle.

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1 It's pretty much coming straight down. If she was standing, it
2 would be straight down. It passes through part of the brain,
3 through the base of the skull, towards the rear. It passes
4 through the neck, passes through the chest cavity, passes
5 through the liver and the kidney on the left side. I recovered
6 the bullet behind the left kidney.

7 Q. I am going to ask you with the Court's permission
8 to step down and come over here. We are going to use the ELMO.

9 MR. THORNTON: Your Honor, just to make sure, we
10 did hear the Court say these are admitted now, correct?

11 THE COURT: That's correct.

12 MR. THORNTON: Thank you, Your Honor.

13 BY MR. THORNTON:

14 Q. I will hand you one of these at a time. If you
15 will, please -- when you performed his autopsy, if you would
16 just go through these photographs and describe what you are
17 seeing -- what the jury would be seeing for me. This is
18 State's 102.

19 A. This is a photograph taken at the time of autopsy.
20 She is laying face down, so the face into the table. We are
21 looking at the right side of the head. You can see the right
22 ear in the lower right corner of the picture.

23 Q. I may have misheard you. I think you said, she.
24 Moises obviously is a male. I know that is referenced in your
25 report. I just wanted to make sure we were clear.

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1 A. Yes. Looking at the right side of the head. The
2 right ear is there. In the center of the frame is a small
3 ruler with a case number on. That is the case number. Unique
4 identifier for the case. Then we see a gunshot. There is a
5 defect, a hole in the center. Around it is a reddish
6 discoloration of hemorrhage. You can see that the wound is not
7 perfectly circular. It's elongated. That is as it came in
8 from the top. It kind of skids along the surface of the scalp
9 before entering and then proceeding towards the feet.

10 Q. I will show you -- if you could explain Picture
11 103. If you need to, sir, you can point to anything there?

12 A. This is a picture. This is an X-ray. We take
13 X-rays at the autopsy for the purpose of locating bullets,
14 locating bullet fragments. We can see this is a lateral view,
15 so it will be the side of the head. Towards the right of the
16 screen is the nose and the mouth. You can see the two sets of
17 teeth. This is a child that doesn't have their permanent teeth
18 yet.

19 Towards the left of the screen is the back of the
20 head. You can see the cervical vertebrae towards the bottom of
21 the screen. And the top of the head is at the top of the
22 screen.

23 You can't really see the hole from the bullet, but
24 you can see some skull fractures. We don't see any bullet
25 fragments. We don't see any other bullets.

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1 Q. Next will be State's Exhibit 104.

2 A. At this point, we are taking the X-rays before we
3 do the internal examination. So we know we have an entrance
4 wound for a bullet. We took an X-ray of the head, and we don't
5 see any bullet. Now we are hunting for the bullet. Now I
6 take an X-ray. This is a lateral view. It is showing us --
7 it's rotated. The head is at the top of the screen. The spine
8 goes towards the left side of the screen. The chest is towards
9 the right side of the screen. The feet would be at the bottom
10 of the screen.

11 We can see some bones and some kind of shadows of
12 viscera. The thing that stands out, towards the spine is a
13 very opaque, white projectile.

14 Q. Would that be this right here?

15 A. Yes, sir. That is it. Now we have located the
16 bullet. Now we know where the bullet is. We want to do that
17 before we start the internal examination, which is the next
18 step after the X-rays.

19 Q. Finally, Doctor, same thing with 105.

20 A. Here we are looking at the body straight on. At
21 the top of the screen would be the head. It's cut off right at
22 the top of the shoulders. The shoulders are right at the top
23 of the screen. The hips are right at the bottom of the screen.
24 The spine runs down the center. You can see the curvy ribs
25 running side to side.

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1 You can see the "L" for the left side. Then the
2 large kind of whitish gray structure in the middle, that is the
3 liver. In the center right above that is the heart. You can
4 see the projectile right near the L that we used to mark the
5 left side of the body. That is the bullet. That is where we
6 are going to recover it.

7 Q. Thank you, Doctor. If you would, please, if you
8 don't mind, please go back over the evidence. Starting where
9 the bullet went and what it did in his body?

10 A. Yes. So the bullet enters the skull. It passes
11 through the skull, through the brain, which in and of itself
12 would be fatal. It continues through the soft tissues of the
13 back of the neck. It continues into the chest cavity. It goes
14 through the lungs, goes through the liver, and through the
15 kidney. Then I find it. Probably any one of those organs
16 damaged in that way would lead to death. It's a pretty
17 extensive wound.

18 Q. Dr. Beaver, I will ask you. This is already in
19 evidence. Do you recognize State's Exhibit 5?

20 A. Yes, sir, I do.

21 Q. What is that, sir?

22 A. That is the bullet recovered from behind the left
23 kidney.

24 Q. Doctor, as part of your work as a pathologist, do
25 you determine both the cause and what is called the manner of

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1 death?

2 A. Yes, sir.

3 Q. Did you do that in this case?

4 A. Yes, sir, I did.

5 Q. What is the cause -- what is the cause of death for
6 Moises Montano?

7 A. So the cause of death is gunshot wound to the head.
8 Even though as we talked about, it goes through other organs,
9 the entrance wound is on the head. It's easiest to understand
10 if we talk about that. So gunshot wound to the head. I made
11 the manner of death homicide.

12 MR. THORNTON: Thank you very much. I have no
13 further questions. Please answer any questions that Mr. Bax
14 has.

15 MR. BAX: No questions, Your Honor. Thank you.

16 THE COURT: Thank you.

17 MR. THORNTON: Thank you, Your Honor. Ask that he
18 be excused?

19 THE COURT: Absolutely. Thank you very much.

20 Call your next witness.

21 MR. THORNTON: State calls Chris Johnson.

22 CHRISTOPHER JOHNSON,

23 being first duly sworn testified as follows:

24

25

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1 DIRECT EXAMINATION

2 BY MR. THORNTON:

3 Q. Mr. Johnson, gave your full name for the record,
4 please.

5 A. My name is Christopher Johnson.

6 Q. Mr. Johnson, where do you currently live, sir.

7 A. On Bees Creek Road.

8 Q. Mr. Johnson, if I showed you an overview, would you
9 be able to pick out where you live?

10 A. Yes, sir.

11 Q. Let me ask you a couple of questions. I asked you
12 where you live currently. Have you lived there a long time,
13 sir?

14 A. Yes, sir.

15 Q. Were you living in the same place on Bees Creek
16 back in August of 2018?

17 A. Yes, sir.

18 Q. Well, Mr. Johnson, as to the case we are here about
19 today, back on August 16, 2018 -- have you been talked to about
20 that by law enforcement and other people, as far as what you
21 may have heard or seen that day?

22 A. Yes, sir.

23 Q. Let me first -- I found now State's 22.

24 Can you see that on the screen, next to you, sir?

25 A. Yes, sir.

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1 Q. Now, I have been told, because I am not from
2 Jasper. This is Bees Creek Road. Is that accurate?

3 A. Yes, sir.

4 Q. You know this area where we are talking about?

5 A. Yes, sir.

6 Q. If I point, from here where do I go to get to your
7 house?

8 A. Go on down the road.

9 Q. Down this dirt road?

10 A. Beside the dirt road.

11 Q. Right here?

12 A. Yes.

13 Q. You are right here at this intersection?

14 A. Yes, sir.

15 Q. Mr. Johnson, on August 16, 2018, do you remember
16 anything in particular happening that you saw or heard that
17 night?

18 A. Gunshots. A car was parked to the hill of my road.
19 Cars are parked there sometimes. I went outside and I seen
20 somebody walk down the road, like jogging down the road.

21 Q. Let me ask you a question.

22 You said you saw a car that was parked. Was this
23 at night?

24 A. Yes, sir.

25 Q. Were the lights on the car on or off when you saw

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1 them?

2 A. Off.

3 Q. You said you saw someone -- you made a motion kind
4 like jogging?

5 A. Jog, yes.

6 Q. Were you close enough to see who it was or get a
7 description of him or anything?

8 A. No. I would say medium build. I couldn't see who
9 it was.

10 Q. Did you see that before or after the gunshots?

11 A. Before and after.

12 Q. So let's stick with before for now.

13 What your testimony is so far is that you have seen
14 a car with its lights off. You see a medium-build fellah
15 jobbing. You can't ID who it is?

16 A. No, I can't see.

17 Q. You said it was dark outside?

18 A. Yes.

19 Q. You see the fellah. Can you tell me which way -- I
20 am going do put my finger on where you said your house was.

21 Which way did you see him jogging?

22 A. Down the dirt road.

23 Q. Down this way?

24 A. Yes, sir.

25 Q. For right now, that is before you said the

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1 gunshots?

2 A. Yes, sir.

3 Q. At some point, do you hear gunshots?

4 A. Yes, sir.

5 Q. One or several?

6 A. A couple of them. I can't remember much about it.

7 A couple of shots.

8 Q. That is fine, sir. After you hear that, do you see
9 anything else?

10 A. I see somebody running at full speed coming back to
11 the end of the road and jump in the car and went down the other
12 way.

13 Q. Does the car then leave?

14 A. Yes, sir.

15 Q. Mr. Johnson, other than that, did you see or hear
16 anything that evening, or was that pretty much what you told
17 law enforcement when they talked to you?

18 A. That is what I told them.

19 Q. Mr. Johnson, just one other question.

20 Do you recall -- when you saw the person, did did
21 they have anything with them or were they carrying anything?

22 A. One of them was carrying something in his hand kind
23 of one side. Carrying it kind of down to his side.

24 Q. Could you tell what it was?

25 A. I really can't.

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1 MR. THORNTON: Thank you, sir. I don't have any
2 other questions. Please answer any questions Mr. Bax has.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. BAX:

6 Q. Hello, Mr. Johnson. How are you today?

7 A. I am good.

8 Q. All right, sir. Just a couple of things.

9 I appreciate you coming. I know we had given you
10 the subpoena too. I think that you saw Ms. Sandra came and
11 served you over at the nursing home the other day?

12 A. Yes, sir.

13 Q. You were really nice. I appreciate that.
14 Mr. Johnson, just so I am clear, you did talk to some officers
15 that night. They came around talking to different people and
16 knocking on doors?

17 A. Yes.

18 Q. Do you remember which officer you spoke to?

19 A. I think it was a lady.

20 Q. It was a lady? Was it Officer Godley? Like
21 Hallie?

22 A. Yeah.

23 Q. Your trailer -- or your home here, is it the first
24 home on this road?

25 A. Yes. First one.

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1 Q. So you are kind on the corner of that intersection?

2 A. Yes, sir.

3 Q. So you said when you saw a car parked there, did it
4 just pull onto the dirt road and park right at the head of the
5 dirt road there?

6 A. Yes. Parked off right here.

7 Q. About how far from -- you said you went out of your
8 front door. Was you on a porch?

9 A. Yes. On the porch.

10 Q. About how far from your porch was the car?
11 Was he on the far side here or the near side?

12 A. Right through here.

13 Q. You think that would maybe be 50 feet or so.
14 Something like that?

15 A. Probably.

16 Q. It was obviously nighttime. Was it dark outside?

17 A. Yes, sir.

18 Q. Are there any streetlights in that area?

19 A. Pole light. Yes, sir.

20 Q. How good is the pole light? Not that great, is it?

21 A. Not that great.

22 Q. I think you had told the officer that it looked
23 like a dark-colored car?

24 A. Yeah.

25 Q. Could you tell anything other than dark?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. No, sir.

2 Q. You couldn't tell what kind of make or model it was
3 I think you said you think it might have been a Buick?

4 A. Buick, yeah. The newer model Buick.

5 Q. It wasn't a car you had recognized before like you
6 had seen going in and out of there a lot?

7 A. No, sir.

8 Q. You said a medium-build fella. Could you tell if
9 it was a black guy or a white guy?

10 Could you tell the difference at all?

11 A. No, sir. He had dark-colored clothes.

12 Q. Could you see his shoes at all?

13 A. No, sir.

14 Q. You said he kind of jogged down the road?

15 A. Yes, sir.

16 Q. You heard some shots?

17 A. Yeah.

18 Q. Was it -- when you saw this guy park and jog down
19 the road, did you go back in the house after that?

20 A. I went to the bathroom. Drive around the house. I
21 heard pop, pop, pop. That is when I came back out on the
22 porch.

23 Q. So between the time that you heard the shots and
24 when you poked out and saw this guy running back, how much time
25 do you think? A minute or so or less?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. About a couple of minutes.

2 Q. You said that this person was running back full
3 speed?

4 A. Yes, sir.

5 Q. Now, when this individual got in his car, could you
6 tell which way they left?

7 A. Yes, sir.

8 Q. Let's look at the picture. Which way did they go
9 coming out of here? Did they go this way on Bees Creek or this
10 way?

11 A. This way.

12 Q. That way would be back towards where Fordville Road
13 comes up to Bees Creek?

14 A. The other way. He went back through.

15 Q. He went back towards town, really, or back
16 towards -- if he was going back to toward the church back
17 there?

18 A. Yeah. The new road behind the church.

19 Q. Mr. Johnson, those are all the questions I have for
20 you. Thank you for coming in today, sir.

21 MR. THORNTON: I do not have any redirect. Your
22 Honor, I ask that he be allowed to step down.

23 THE COURT: All right. You are free to go. Have a
24 great day.

25 MR. THORNTON: Your Honor, may we approach?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 THE COURT: Sure.

2 (Bench conference.)

3 THE COURT: All right. Call your next witness.

4 MR. THORNTON: Pablo Perez.

5 * * *

6 PABLO PEREZ,

7 being first duly sworn testified as follows:

8 * * *

9 DIRECT EXAMINATION

10 BY MR. THORNTON:

11 Q. Would you please state your name for the record.

12 A. Pablo Perez.

13 Q. Mr. Perez, where do you currently live?

14 A. Me? Where I live?

15 Q. Yes.

16 A. Yes. ■■■ JJ Road. Thomas Street.

17 Q. Is that here in Jasper County?

18 A. Yes.

19 Q. In August of 2018, where did you live?

20 A. On Shady Street.

21 Q. Mr. Perez, do you have a nickname?

22 A. They call me Chamaco.

23 Q. Do you know the defendant in this case, Dionte
24 Habersham?

25 A. Yes. I knew him.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. Did you know him in 2018?

2 A. Yes.

3 Q. I am going to show you what has been marked as
4 State's Exhibit 99. I will ask you if you can identify that
5 picture?

6 A. Yes.

7 Q. What is that a picture of?

8 A. What is it the picture of?

9 Q. Yes.

10 A. Of Ingram Lane. Where Mary lived.

11 Q. Who else lived in the house with Mary?

12 A. There was a guy called Ruben.

13 Q. Let me ask you this. Did Dione Habersham live in
14 that trailer also?

15 A. Well, yes. He stayed there.

16 Q. Did you -- on the picture, did you circle the
17 trailer that we were talking about?

18 A. Yes.

19 Q. Is this photograph accurate?

20 A. What?

21 Q. Is it correct?

22 A. Yes.

23 MR. THORNTON: Your Honor, I would ask that State's
24 Exhibit 99 be moved into evidence.

25 THE COURT: Any objection?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. BAX: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit 99 was marked for identification
4 and accepted into evidence.)

5 BY MR. THORNTON:

6 Q. You said in 2018 you lived on Shady Street; is that
7 correct?

8 A. Yes.

9 Q. Were you roommates or did you live with Dionte
10 Habersham at that trailer at any time in 2018?

11 A. I went there a lot before Mary was arrested.

12 Q. What about after Mary was arrested?

13 A. I went with Mr. Ariel to check on his things,
14 Mary's things.

15 Q. Were you staying there after that? Were you living
16 there after Mary was arrested?

17 A. I would go and spend some afternoons with them to
18 look at some things.

19 Q. The day I want to ask you about is August 16, 2018.
20 It is the date that Moises Montano was killed.

21 Did you find out about the shooting involving
22 Moises Montano after the 16th, after it happened?

23 A. A long time after. Like around a week or so.

24 Q. On the night that it happened, were you with Dionte
25 Habersham in the trailer all night?

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 A. I don't remember the exact day exactly -- what day
2 it was.

3 Q. Do you remember seeing a lot of police cars at the
4 head of the road?

5 A. That was the last time. When I saw the lights.

6 Q. That was the last time you were there was when you
7 saw the lights?

8 A. Yes.

9 Q. On that day -- when I say lights, I mean police
10 lights.

11 A. Yes. I was inside with Ariel.

12 Q. Was Dione Habersham there with you all that
13 evening?

14 A. No.

15 Q. Had you seen Dione -- did you see Dione outside
16 with the police?

17 A. No. I saw when the lights were out there. And
18 then when the lights left, Dione came in.

19 Q. Had you seen Dione before he came in later that
20 night?

21 A. Before the light?

22 Q. Before the lights on that day.

23 A. No.

24 MR. THORNTON: Thank you very much, sir. I don't
25 have any further questions. Please answer any questions that

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Mr. Bax has.

2 * * *

3 CROSS-EXAMINATION

4 BY MR. BAX:

5 Q. Hello, Mr. Perez. You said you don't remember the
6 exact dates that you were over at Shady Lane?

7 A. No.

8 Q. I think you said before that you would go over a
9 lot and visit them in the afternoons. Is that right?

10 A. We went to check on the things.

11 Q. Did you go to check on the things more than once?

12 A. Yes.

13 Q. Mr. Perez, when you were over at Ingram Lane or
14 Shady Lane, did you all smoke weed?

15 A. Yes.

16 Q. Did you do that most times that you went over
17 there?

18 A. No.

19 Q. How often would you go over there and smoke weed?

20 A. I went with Mary. Mary and I worked together. I
21 would go to his house.

22 Q. When you were with Mary, you all would smoke weed?

23 A. Sometimes.

24 Q. When you were at the house there on the night that
25 the police cars showed up, you were not with Mary that time,

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 right?

2 A. No. I was with his dad.

3 Q. That is -- tell us Mary's dad's name.

4 A. You want to know his name?

5 Q. Yes. Mr. Jacino?

6 A. Yes.

7 Q. When you were there with Senior Jacino, where in
8 the house were you?

9 A. What?

10 Q. Was he in the living room? In a bedroom? In the
11 kitchen?

12 A. In the living room.

13 Q. You were in the living room when the police car
14 lights showed up?

15 A. Yes. I was watching television with Aerial.

16 Q. You said you were not staying there. You were just
17 visiting; is that correct?

18 A. Yes. Sometimes we would spend some time there.
19 Sometimes when Ariel and I were there, it would be late. Then
20 we might stay.

21 Q. Mr. Perez, do you know Fabian Habersham?

22 A. No.

23 Q. You were there in the living room with Mr. Jacino.
24 Mr. Fabian has been never came in the house that night?

25 A. No.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Were you and Mr. Jacino Gin smoking weed that
2 night?

3 A. No. We were just watching television.

4 Q. Was there anybody else in the house?

5 A. No.

6 Q. So you and Mr. Jacino were just sitting in the
7 living room at a house that you didn't live in, and no one else
8 was in. Did you get permission to go in the house?

9 A. The house was Mauricio's. That is why we would go
10 there. The things that were there were his. The house wasn't
11 Dionte's or anyone else. It was Mauricio's house. He paid the
12 rent, and he had another month rent.

13 He was who rented the house, Mauricio. So we had
14 permission, because it was his son.

15 Q. Where was Mauricio at this time?

16 A. In Mexico.

17 Q. So you had A permission from a guy in Mexico to be
18 at this trailer on Ingram Lane. So you didn't need permission
19 to go in?

20 A. He wasn't in Mexico yet. He was arrested.

21 Q. I am confused. Mauricio was arrested at that time?

22 A. Yes. He was in jail for about a month.

23 Q. Is that the same fellah who he was talking about
24 when he said Mary?

25 A. Yes.

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 Q. So since you all believe that Mauricio was the
2 owner of that place, did you all have a problem with Dione
3 staying there?

4 A. Mauricio already was renting the house. We had
5 already talked to him and told him that he needed to leave. He
6 never put any rent towards it or anything.

7 Q. So you and Mr. Jacino had a problem with Dione.
8 You all wanted to get him out of there right?

9 A. We didn't kick him out. We asked him if he could
10 leave. We didn't have a problem.

11 Q. So the police showing up and solving that problem
12 for you was pretty convenient, right?

13 A. I just saw the police. I don't when or anything by
14 the police showing.

15 MR. BAX: Moment's indulgence, Your Honor.

16 BY MR. BAX:

17 Q. One quick follow-up question. That afternoon when
18 you and Senior Jacino were at Shady Lane, did you your boss
19 come and give you payment for a job that day?

20 A. No.

21 MR. BAX: No further questions at this time, Your
22 Honor

23 MR. THORNTON: No redirect, Your Honor. Ask that
24 he be excused.

25 THE COURT: Thank you very much. You are excused.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 (Witness exits witness stand.)

2 MR. THORNTON: State calls Detective Jared
3 Phillips.

4 JARED PHILLIPS,

5 being first duly sworn testified as follows:

6 * * *

7 DIRECT EXAMINATION

8 BY MR. THORNTON:

9 Q. Mr. Phillips, state your full name for the record.

10 A. Jared Phillips.

11 Q. Who do you currently work for, Mr. Phillips?

12 A. The 14th Circuit Solicitor's Office.

13 Q. Did you work for the 14th Circuit Solicitor's
14 Office back in August of 2018?

15 A. No, sir.

16 Q. Who did you work for then?

17 A. Jasper County Sheriff's Office.

18 Q. What did you do for the Jasper County Sheriff's
19 Office at that time?

20 A. I was in investigations.

21 Q. Did you have occasion to help out or assist in the
22 case that we are here about today involving the death of Moises
23 Montano?

24 A. I did.

25 Q. Are you the detective that we saw on camera doing

State of South Carolina v. Dione Habersham - 2018-GS-27-00673, etc.

1 collection of certain items from Dione Habersham?

2 A. Yes, sir.

3 Q. I will hand you what has been marked for
4 identification as State's Exhibit 1. I will ask you if you can
5 identify that for me.

6 A. Yes, sir. That is a GSR kit I collected.

7 Q. Is that the kit that we saw that you did with the
8 magnet?

9 A. Yes, sir.

10 Q. I will ask you if you can identify State's 2 and 3.
11 I have two identifiers that is on one bag. Tell me what those
12 two items are?

13 A. The dark in color T-shirt and the silver shorts, I
14 collected.

15 Q. Is that also the items of clothing that you
16 collected on camera?

17 A. Yes, sir.

18 Q. Once you collected those items, sir, would you have
19 done anything with them?

20 A. They would have been sealed and secured in our
21 evidence processing room.

22 Q. From there, would they have been taken to SLED?

23 A. Yes, sir.

24 Q. While you had these in your care, custody, and
25 control, did you alter or change them in any way?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. No, sir.

2 Q. Once they were sealed, did you yourself unseal
3 something?

4 A. No, sir.

5 MR. THORNTON: Your Honor, I believe it was already
6 testified to. These were transferred to SLED. At this time,
7 Judge, I would ask that State's 1, 2, 3 be moved into evidence.

8 THE COURT: Any objection?

9 MR. BAX: No, sir.

10 THE COURT: Without objection.

11 MR. BAX: Subject to prior objection. That is all,
12 Your Honor.

13 (State's Exhibits 1 - 3 were accepted and entered
14 into evidence.)

15 BY MR. THORNTON:

16 Q. Sir, I will show you now what has been marked as
17 State's Exhibit 19 for identification. Remove that bag. Can
18 you identify that?

19 A. Yes, sir. That is the pair of shoes I collected.

20 Q. Were those the ones that were collected on the
21 night of the early morning hours of the 17th by you from Dionte
22 Habersham?

23 A. Yes, sir.

24 Q. Same question, sir. What would you have done with
25 these once you collected them?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. They would have been taken and secured in the
2 evidence processing room until they could be transported to
3 SLED.

4 MR. THORNTON: Your Honor, for the record, this is
5 the same as Jacklynn McKay. She also testified as to Item 19.

6 BY MR. THORNTON:

7 Q. Sir, while they were in your care, custody, and
8 control until they were turned over to the evidence room, did
9 you alter or change them in any way?

10 A. No, sir.

11 MR. THORNTON: Your Honor, at this time I would ask
12 that State's Exhibits 19, Dionte Habersham's shoes, be moved
13 into evidence.

14 THE COURT: Any objection?

15 MR. BAX: Subject to my prior objection.

16 THE COURT: All right.

17 (State's Exhibit 19 was marked for identification
18 and accepted into evidence.)

19 BY MR. THORNTON:

20 Q. Did you tell us -- Detective Phillips, did you also
21 have occasion to go out to a residence on Bees Creek Road?

22 A. Yes, sir, I did. [REDACTED] Bees Creek Road.

23 Q. Is that the home of one Mary Solomon?

24 A. It is.

25 Q. Once you got out there, what was the purpose of

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 your visit to Ms. Solomon's house on Bees Creek Road?

2 A. I received contact from Detective Godley that they
3 located video cameras at the residence. They reviewed the
4 video, and they needed it collected. So I was sent out there
5 to obtain that video from the recording system.

6 Q. Can you tell the jury as an orientation where this
7 is on Bees Creek? In other words, what is across the street
8 from her house?

9 A. It is Ingram Lane.

10 Q. The testimony has been that that is where the
11 defendant, Mr. Habersham lived; is that correct?

12 A. Yes, sir.

13 Q. So if I was standing -- we will just do it from
14 your perspective. If you are looking out from Ms. Solomon's
15 house, can you tell me where Ingram Lane would be?

16 A. It's just to the left.

17 Q. Right over here?

18 A. Yes, sir.

19 Q. Does some of the video -- did you actually go
20 collect the video yourself?

21 A. I did.

22 Q. Did you pull it from her system?

23 A. I did.

24 Q. Did you check and see what the timing was? In
25 other words, was the timing accurate or was it off?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. No, sir. It was off. It was approximately four
2 hours.

3 Q. So four hours which way?

4 A. You would have to subtract four hours from what the
5 time shows.

6 Q. So Zulu time on the bodycam?

7 A. Yes.

8 Q. So whatever the time shows on this, you have to
9 subtract four hours?

10 A. Yes, sir.

11 Q. I will show you what has been marked as State's
12 Exhibit 25 for identification.

13 Can you tell me what that is?

14 A. Yes. That is the Bees Creek video.

15 Q. Did you review this at my request?

16 A. I did.

17 Q. Is that an accurate representation of the video
18 that you pulled from the Bees Creek address?

19 A. It is.

20 Q. Does it contain several clips at different times?

21 A. Yes, sir.

22 Q. Have you altered or changed it in any way?

23 A. No, sir.

24 MR. THORNTON: Your Honor, at this time I would ask
25 that State's Exhibit 25, the video from Ms. Solomon on Bees

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Creek be moved into evidence.

2 THE COURT: Any objection?

3 MR. BAX: No, Your Honor.

4 THE COURT: Without objection.

5 (State's Exhibit 25 was marked for identification
6 and accepted into evidence.)

7 BY MR. THORNTON:

8 Q. Did you also have occasion to go out to the
9 Taylor's BP?

10 A. Yes, sir.

11 Q. I believe that is where Fabian Habersham indicated
12 he was at some point in that evening.

13 Did you go check the Taylor's BP?

14 A. I did.

15 Q. Did you pull video from there?

16 A. I did.

17 Q. I will show you what has been marked for
18 identification as State's Exhibit 26. Can you tell me what
19 that is?

20 A. That is the video from Taylor BP.

21 Q. Did you review this at my request?

22 A. I did.

23 Q. Is it a fair and accurate copy of the video with
24 different clips on it from Taylor's BP?

25 A. It is.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Have you altered or changed it in any way?

2 A. No, sir.

3 MR. THORNTON: Judge, at this time I would ask that
4 State's Exhibit's 26 be moved into evidence?

5 THE COURT: Any objection?

6 MR. BAX: No, Your Honor.

7 THE COURT: Without objection.

8 (State's Exhibit 26 was marked for identification
9 and accepted into evidence.)

10 BY MR. THORNTON:

11 Q. Mr. Phillips, can you see on the screen?

12 A. Yes, sir.

13 Q. Is that where the video camera is that you just
14 discussed off of Bees Creek?

15 A. It is.

16 Q. As we are looking at that, sir, where would Ingram
17 Lane be?

18 A. If you are looking at your screen, it's to the left
19 side.

20 Q. Would it be over in this area?

21 A. More to your right, probably.

22 Q. Somewhere in there?

23 A. Yes, sir.

24 Q. Is there another road right there, or is Ingram the
25 only one across?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Ingram is the only main road over there.

2 Q. This says 8-17-2018, 0140 in the morning. So if
3 subtract four, that would make that approximately 9:40 p.m. on
4 the 16th, is that correct?

5 A. Yes, sir.

6 Q. Detective, after you reviewed this and reviewed the
7 scene, where would that car have to be coming from?

8 A. Ingram Lane.

9 Q. That would be at about 9:40 in the evening?

10 A. Yes, sir.

11 Q. Detective, can you tell me if you know the
12 direction that car just came off of Ingram, would that be
13 toward the incident location or away from it?

14 A. It would be toward the incident location.

15 Q. This would be approximately eight minutes later?

16 A. Yes, sir.

17 Q. Where would that car be stopping?

18 A. In front of Ingram Lane.

19 Q. Is there a stop sign there?

20 A. No, sir. There is not.

21 Q. Stoplight?

22 A. No, sir.

23 Q. This would be approximately 10:15, 10:16, if I have
24 gotten my math right, on the 16th?

25 A. Yes, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. Are there other clips later on in the evening that
2 would have been later?

3 A. Yes, sir.

4 Q. One that shows some of the police cars?

5 A. Yes, sir.

6 Q. At least the lights from the cars?

7 A. Yes, sir.

8 Q. Did you review this video, Detective?

9 A. Yes, sir.

10 Q. It's now up on the screen. Based on your review,
11 can you tell me who pulled up in this gray Focus?

12 A. Fabian Habersham.

13 Q. Is that Mr. Habersham right there?

14 A. It is.

15 Q. What time is this?

16 A. This is 2158, around 2159.

17 Q. What time did you say this showed?

18 A. Directly right now, 2158.

19 Q. Which is -- I know it's military time. 9:58?

20 A. 9:58.

21 Q. Is that basically the substance of the video that
22 you received from Taylor's BP with just different camera angles
23 at that time showing Fabian Habersham in the store at 9:58?

24 A. Yes, sir.

25 MR. THORNTON: Subject to recall, I have no further

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 questions for Mr. Phillips at this time. Please answer any
2 questions Mr. Bax may have.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. BAX:

6 Q. At this time you were working for the Jasper County
7 Sheriff's Office, correct?

8 A. I was.

9 Q. As a result -- are you familiar with completing and
10 submitting incident reports?

11 A. Yes, sir.

12 Q. Which document whatever it is that you did or
13 whoever you interacted with, right?

14 A. Yes.

15 Q. In fact, there was a narrative incident report in
16 this case that involved all the supplements filed by all the
17 officers who did stuff in this case, correct?

18 A. Yes, sir.

19 Q. They should have been paying you more. You did a
20 lot in this case. You were all over, everywhere that you could
21 be.

22 Do you recall submitting those supplemental reports
23 just indicating the different things that you did in this case?

24 A. Yes, sir.

25 Q. At one time you indicated that you were out in the

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 field at one point, the sandy field behind the [REDACTED] Fordville
2 Road residence. Isn't that right?

3 A. Yes, sir. On 8-17-2018.

4 Q. At one point you indicated in the incident report
5 that the footprints -- you indicated that in your observation
6 the footprints were consistent to a shoe similar to Mr.
7 Habersham's but another print similar to a flip flop, is that
8 correct?

9 A. Yes, sir. There was flip flops and someone not
10 wearing a pair of tennis shoes. There were bare feet
11 impressions.

12 Q. So bare foot impressions, flip flop impressions,
13 and there were these other impressions, correct?

14 A. Yes, sir.

15 Q. Obviously, additionally, you collected a lot of the
16 surveillance video that we just talked about and looked at,
17 correct?

18 A. Yes, sir.

19 Q. The BP that we just watched there, that said 529
20 East Main Street. That is right down on main. If you were
21 coming --

22 A. Where the Dairy Queen is located.

23 Q. The Dairy Queen and the BP. Almost like they are
24 connected right there.

25 A. Yes, sir.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 Q. If you headed toward the Courthouse and you go
2 under the 95, it's on the right there?

3 A. Yes, sir.

4 Q. You indicated that that was approximately 12:58,
5 12:59 that it shows Mr. Habersham. The time on that camera was
6 actually incorrect. You had to figure that out, right?

7 A. No. Not at BP. BP is pretty straight forward.

8 Q. The 911 calls you indicated came in at 12, 13, 14,
9 minutes before that, correct?

10 A. Yes, sir.

11 Q. You also interviewed a number of people in this
12 case, correct?

13 A. I did.

14 Q. Including Ms. Toni King, I think, correct?

15 A. No, sir.

16 Q. I might have that wrong. I will move on.

17 Did you interview someone by the name of Chante
18 Anderson?

19 A. I did.

20 Q. In that interview, had you obtained -- before that
21 interview, had you obtained copies of direct messages or text
22 messages between her and someone else?

23 A. I did.

24 Q. Did you ask her about those messages?

25 A. I did.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. THORNTON: Your Honor, may we approach.

2 THE COURT: Yes, sir.

3 (Bench conference.)

4 THE COURT: All right. Ladies and gentlemen, this
5 would be a good time to take a break, stretch your legs, and we
6 will get you right back in.

7 (Jury exits courtroom.)

8 THE COURT: Yes, sir.

9 MR. THORNTON: Your Honor, I apologize if I jumped
10 the gun. I believe Mr. Bax was about to ask about a text
11 message -- which I think he may need to mark -- for the Court
12 to be able to look at it. It's a text message that is supposed
13 to be from Chante Anderson to another person where she talks
14 about Fabian Habersham.

15 When Detective Phillips goes to talk to her about
16 it, she says, that is just what I heard on the street.
17 Regardless, it's not his message. He didn't say it. My
18 objection is, it's improper for him to ask Detective Phillips
19 what someone else said to another person. That is like two
20 levels of hearsay. He didn't make the statement. The
21 statement wasn't made to him. It was made by Chante Anderson.

22 THE COURT: I think it would violate the
23 confrontation clause, because she is not here to testify as to
24 what the message meant, and you have the opportunity to
25 cross-examine her as to what her intentions were.

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 MR. THORNTON: Exactly, Your Honor. So for several
2 reasons, I would object to even referencing it in any way.

3 THE COURT: All right.

4 MR. BAX: Your Honor, the problem here is, the
5 State did get the opportunity talk to her and cross-examine her
6 about it, at least through Mr. Phillips. The problem is she
7 has moved to Texas, and I can't get to her.

8 THE COURT: That is just bad luck.

9 MR. BAX: Always bad luck. The problem is, Your
10 Honor, all the hearsay in the world, as long as it's the
11 defendant's or alleged to be part of the defendant's or barely
12 related to the defendant because it's just on his Facebook
13 page, that is all admissible. The moment we try to defend our
14 client with other things that are on social media that they
15 investigated and there is a video of the interview with her,
16 just because back luck, she went out and stayed.

17 THE COURT: I don't think it's social media. It's
18 a text message.

19 MR. BAX: I didn't know if it was DM's or text
20 message. I was going to ask him that question. I wasn't clear
21 about that.

22 THE COURT: What is it?

23 THE WITNESS: A text message.

24 THE COURT: I am not going to allow it. I think it
25 violates the confrontation clause. She would need to be here

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1 to testify.

2 MR. BAX: Your Honor, if Your Honor would allow
3 it, I would just like to mark it for the record so it will be in
4 the record.

5 THE COURT: That would certainly be just fine. I
6 have got no problems with that whatsoever. Let's use the rest
7 room really quick and come right back.

8 (Recess.)

9 * * *

10 PROCEEDINGS CONTINUED

11 THE COURT: All right.

12 MR. BAX: Your Honor, one brief thing before we get
13 back to the jury. I would like to add to that, I would submit
14 that this would be something I can get in under the exception
15 for declarant unavailable, which is under 803. One-and-a-half
16 of your break has made me a little bit slow on my rules of
17 evidence, unlike I usually do.

18 Our contention would be that the declarant is not
19 available. We do not have subpoena powers outside of the
20 state. I don't even know where she is. The only thing I was
21 able to find with my investigator is that she moved to Texas.

22 I have no forwarding address. I have no way to get
23 ahold of her. I wouldn't have been able to try to get a South
24 Carolina subpoena recognized in Texas, unlike my Federal cases
25 where I can just call up the marshals and it gets done, which I

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 love. I can't do that in a State case.

2 THE COURT: All right. Thank you.

3 You can bring them out.

4 (Jury enters courtroom.)

5 THE COURT: You may continue.

6 MR. BAX: Thank you, Judge.

7 * * *

8 CROSS-EXAMINATION CONTINUES

9 BY MR. BAX:

10 Q. Mr. Phillips, additionally -- I know you had
11 contact with a couple of different individuals. Did you ever
12 have contact with a Donald Stevenson, Jr?

13 A. I did.

14 Q. At any time did he have contact with you where he
15 didn't want to identify himself, and he was referred to as just
16 the concerned citizen?

17 A. Yes, sir.

18 Q. I think Mr. Stevenson, to your personal knowledge,
19 was later interviewed. I don't know if it was by you.

20 A. No, sir, it was not.

21 Q. Without going into what Mr. Stevenson told you,
22 what was the nature of your contact with Mr. Stevenson?

23 Can you tell us that?

24 A. He was part of a traffic stop at the time. I came
25 out to assist other officers on it. I made contact with him.

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1 He advised me that he had --

2 MR. THORNTON: Objection, Your Honor. That would
3 be hearsay.

4 BY MR. BAX:

5 Q. Without going into what he said, it was a traffic
6 stop, and you went out to assist other officers?

7 A. Yes, sir.

8 Q. What kind of traffic stop?

9 A. Just a moving violation, from what I was told.

10 Q. Any particular reason why you were responding, or
11 was it just coincidence?

12 A. No, sir. I was just in the area at the time.

13 Q. Can you tell us when this traffic stop occurred?

14 A. It was on 8-18-2018.

15 Q. So approximately two days after the incident that
16 is the subject of this trial, is that correct?

17 A. Yes, sir.

18 Q. Was there any way that you could tell why he picked
19 to talk to you versus anybody else?

20 A. I do not know at that time.

21 Q. Were you in uniform at that time or plain clothes?

22 A. It was uniform, but our vests would say,
23 "Detective" instead of "Sheriff".

24 Q. He would have known that you are a detective,
25 correct?

State of South Carolina v. Dionte Habersham - 2018-GS-27-00673, etc.

1 A. Yes, sir.

2 Q. Have you had any subsequent contact with Donald
3 Stevenson, Jr., since then?

4 A. No, sir.

5 Q. Do you recall who it was that did the interview on
6 Mr. Stevenson?

7 A. It would be Detective Tamika Bailey.

8 MR. BAX: No further questions for Detective
9 Phillips.

10 THE COURT: All right.

11 MR. THORNTON: No redirect, Your Honor. I would
12 ask that he be allowed to step down.

13 THE COURT: Yes, sir. You can be excused.

14 (Witness exits witness stand.)

15 MR. BAX: Your Honor, may we approach?

16 THE COURT: Sure.

17 (Bench conference.)

18 THE COURT: Ladies and gentlemen of the jury, we
19 will adjourn today a couple minutes early. We have three
20 witnesses left, and they are going to be lengthy. You don't
21 want to be here until 7:00 or past. So I will allow you all to
22 go a little bit early today.

23 Again, don't discuss anything about the case. Just
24 be back here tomorrow morning at 9:30 as usual. I will keep
25 you posted on where the tie was tomorrow. Have a great

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1

PROCEEDINGS

2

THURSDAY, JULY 22, 2021

3

RIDGELAND, SOUTH CAROLINA

4

* * *

5

(The following proceedings were held in

6

open court. The defendant was present along with his

7

attorney as well as the attorney for the State of

8

South Carolina.)

9

THE COURT: Anything we need to take up before we

10

begin today?

11

MR. THORNTON: Nothing from the State, Judge.

12

MR. BAX: No, Your Honor. Thank you.

13

THE COURT: Let's bring them out.

14

(Jury enters courtroom.)

15

THE COURT: Good morning, ladies and gentlemen of

16

the jury. Thank you so very much for being on time.

17

Mr. Thorton, call your next witness.

18

MR. THORNTON: Thank you, Your Honor. The State

19

calls Dawn Claycomb to the stand.

20

* * *

21

DAWN CLAYCOMB,

22

being first duly sworn testified as follows:

23

* * *

24

DIRECT EXAMINATION

25

BY MR. THORNTON:

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 Q. Ms. Claycomb, please state your full name for the
2 record.

3 A. Dawn Claycomb.

4 Q. Who do you currently work for?

5 A. Duke Energy in Charlotte, North Carolina.

6 Q. Did you work for Duke Energy back in August of
7 2018?

8 A. No, sir. I worked at SLED, South Carolina Law
9 Enforcement Division.

10 Q. What did you do for SLED?

11 A. I was a crime scene agent. I also did footwear
12 examination.

13 Q. When you say footwear examination, do you mean like
14 footwear impressions comparisons, things like that?

15 A. Yes. Footwear impressions.

16 Q. What kind of education do you have to be able to
17 that sort of work for SLED?

18 A. I have a Bachelor's degree in forensic science from
19 Waynesburg University. I also have -- once I achieved my
20 Bachelor's degree, I accepted a position with Ridgeland County
21 Sheriff's Department. I was there for about three years
22 working uniformed patrol.

23 From there I went to SLED as a crime scene agent.
24 I was there for approximately seven years. That is where I
25 also did the footwear examination as a second duty aside from

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 the crime scene agent position.

2 They do have an internal training program that
3 consists of -- it took three years to complete my footwear
4 examination training, which consists of written exams,
5 practicals, on scene hands-on experience, responding to crime
6 scene for footwear impressions, as well as external training
7 examination and recovery of footwear evidence, 40 hours.

8 Then additional workshops, barefoot evidence, also
9 gate analysis, which is just the study of how a person walks.
10 That is internal to SLED training, as well as external training
11 outside of SLED.

12 Q. How many cases did you work on -- at the conclusion
13 of the three years of training, do you have to take any exams
14 or anything like that?

15 A. Yes. Once the training is completed, there is a
16 competency test which is required to be passed before you can
17 be deemed competent to do any footwear examinations.

18 Q. Did you take that test?

19 A. Yes.

20 Q. Were you deemed to be competent?

21 A. Yes.

22 Q. After that, do you have to take any tests later on
23 to make sure you are still doing it correctly?

24 A. Yes. Once you are signed off, there is a yearly or
25 annual once-a-year proficiency test that you also have to pass

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 to continue doing footwear examination.

2 Q. During your time at SLED, did you take a
3 proficiency test?

4 A. Yes.

5 Q. Did you pass it?

6 A. Yes.

7 Q. As part of your training, ma'am, did you have to
8 read textbooks or articles or other items about footwear
9 impression analysis?

10 A. Yes, sir.

11 Q. You said you worked in crime scene. How many years
12 in crime scene did you work?

13 A. Almost seven years within crime scene.

14 Q. Did you have to do a training program for that as
15 well?

16 A. Yes, sir.

17 Q. How long was that?

18 A. That was eight months to a year of training.

19 Q. Tell me a little bit about the process that you go
20 through when you were doing -- first of all, just talk about
21 what exactly footwear impression analysis is.

22 If I have said any of that wrong, please feel free
23 to correct me. Kind of explain TO the jury what it is that you
24 are doing and then go into how you actually do it.

25 A. Sure. Footwear analysis is basically, obviously, a

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 shoe or a piece of footwear that comes in contact with another
2 substance, whether it be dirt, sand, mud, any footwear outsole
3 that comes in contact with another item and impresses its
4 impression into that certain substrate, whatever that might be.
5 That impression, for example, from a crime scene can then be
6 photographed and documented and then examined by footwear
7 examiners to determine if it was made by the shoe, was it not
8 made by the shoe.

9 Q. Would that be like saying you have a known and an
10 unknown, and you are comparing the two to see if they are
11 similar or the same?

12 A. Correct. Unknown --

13 MR. BAX: Objection, leading.

14 MR. THORNTON: Just trying to go through the
15 process, Judge.

16 THE COURT: All right. I will overrule the
17 objection.

18 BY MR. THORNTON:

19 Q. Please continue, ma'am?

20 A. For example, if you see a suspected footwear
21 impression, that would be your unknown impression. You may not
22 know where that impression came from or what shoe made that
23 impression. If a shoe is later collected from a possible
24 suspect, that may be a known shoe. You know this shoe belongs
25 to this person, and then comparing the two, the unknown and the

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1 known.

2 Q. What procedure do you follow when you are comparing
3 these?

4 What types of things do you do to make the
5 comparison?

6 A. There are several steps to go through. You have to
7 start with class characteristics of the shoe. In other words,
8 the size, shape, and the outsole tread design on that shoe.

9 Once you look at those things, you can look for
10 wear characteristics. In other words, A person who has high
11 arches may walk on the outside of their feet or supinate. A
12 person with a flat foot may walk pronated and walk on the
13 inside of their foot.

14 So that would be wear characteristics you would
15 look for. Then after that you can go to the next step and look
16 for randomly acquired characteristics. Those would be anything
17 that would be not repeatable or individualized to that shoe and
18 and that person. If you are walking -- you are a construction
19 person, you have a boot. You walk on screws, nails, sharp
20 objects. You will have defects in the bottom of the outsoles
21 of rubber on that shoe. It may be gouges, scratches, holes in
22 particular positions. That kind of individualizes that shoe or
23 that outsole on that shoe.

24 There are steps that you have to go through. If
25 you don't see those first initial class characteristics, you

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 can't necessarily go to the next step to identify the shoe.

2 Q. When you are performing the tests, what steps do
3 you go through to actually make a comparison between a known
4 and an unknown?

5 A. So if you have a known shoe, basically you would
6 make test impressions of that shoe. Depending on the unknown
7 impression, if it's a two-dimensional or three-dimensional
8 impression, that would depend on which test impressions that
9 you do.

10 You can do inked test impressions from the shoe.
11 In other words, you just roll ink on the bottom of the outsole
12 of that known shoe. Then impress it onto a transparency, which
13 would then show a two-dimensional impression or design of that
14 shoe.

15 A three-dimensional, you could use Bio-foam. It's
16 a very soft foam. You would impress that shoe into the foam,
17 then you can get the actual three-dimensional of the outsole,
18 which would be your depth, weight, and height of the shoe.

19 Q. Are those the common procedures that you would use
20 when making a determination of a known versus an unknown
21 impression?

22 A. Yes.

23 Q. Ma'am, have you ever been qualified as an expert in
24 footwear analysis before either in South Carolina or in any
25 other courtroom?

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 A. Yes. Once before in South Carolina.

2 Q. Was that as an expert in footwear analysis?

3 A. Yes.

4 MR. THORNTON: Your Honor, at this time I would ask
5 that Dawn Claycomb be recognized by the Court as an expert in
6 footwear analysis.

7 THE COURT: All right.

8 MR. BAX: I renew my objection to that, Your Honor.

9 THE COURT: All right. I will qualify her as an
10 expert in shoe impressions. As I stated earlier, she can give
11 an opinion.

12 BY MR. THORNTON:

13 Q. First, I am going to hand you -- let me ask you
14 before I get started on that. During your time at SLED as a
15 footwear impression analyst, did you analyze a known versus
16 unknown in this case?

17 A. Yes, I did.

18 Q. I will hand you what is already in evidence as
19 State's Exhibit 19. We have gloves if you need them. I will
20 ask you if you can identify State's Exhibit 19.

21 A. Outside the bag it says, Item 19. I am removing
22 the shoe from the bag. Yes, this is Item 19, black Puma shoe.

23 Q. Did you analyze or use Item 19 in your analysis?

24 A. Yes. On the side of the shoe is the lab number,
25 item number, and my initials.

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1 Q. Put that back in the bag. The Item 19 shoe, which
2 has already been testified to as being removed from the
3 defendant, Dionte Habersham, would that be the known or the
4 unknown, just so we are all clear?

5 A. That would be the known shoe.

6 Q. Ma'am, I am now going to hand you these. These are
7 not in evidence yet. They are for identification. I have them
8 labeled as 19.2L and 19.2R.

9 Can you identify these items?

10 A. Yes. These are the test impressions of the known
11 shoe, labeled 19.2, the left and the right. This is where I
12 had explained --

13 MR. THORNTON: Before you put those up, ma'am, are
14 those a fair and accurate representation of the inked
15 impressions from Item 19 shoes?

16 A. Yes.

17 Q. Have they been altered or changed in any way?

18 A. No.

19 MR. THORNTON: Your Honor, at this time, I would
20 ask that State's Exhibit 19.2L for left and 19.2R for right be
21 moved into evidence.

22 THE COURT: All right.

23 MR. BAX: Subject to my prior objection to this
24 evidence.

25 THE COURT: All right.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 (State's Exhibits 19.2L and 19.2R were accepted
2 and entered into evidence.)

3 BY MR. THORNTON:

4 Q. All right ma'am.

5 A. This is what I was talking about before with the
6 test impressions.

7 Q. I will put those on the ELMO. You can then view
8 them on your screen, and the jury will be able to see that as
9 well.

10 This is going to be State's 19.2R. Just describe
11 for the jury what this is.

12 A. That is what I was referring to in reference to
13 test impressions of the known shoe, where black ink is placed
14 on the bottom or the outsole of the shoe, rolled on it, and
15 then impressed onto that transparency. That would be an
16 example of a two-dimensional-type impression from that known
17 shoe.

18 Q. Where did that inked impression come from?

19 A. The known shoe, Item 19.

20 Q. This is 19.2L.

21 A. That would be the left shoe. So I do impressions
22 of each shoe. That is why there are two on one. One shows
23 both left impressions, and one shows both right impressions.

24 Q. Ma'am, I am now going to hand you what has been
25 marked as State's Exhibit 19.1L and another one that is 19.1R.

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1 I will ask you if you can identify those items.

2 A. Yes. These are the test impressions and Bio-foam
3 from the known shoe, the right and the left. This is the
4 three-dimensional test impressions of it.

5 Q. Are these items sealed?

6 A. Yes. They are both sealed and taped shut.

7 Q. Were they created by you?

8 A. Yes. With my initials and date.

9 Q. Do they appear to be still sealed with your
10 markings?

11 A. Yes, they do.

12 MR. THORNTON: Your at this time I would ask that
13 State's Exhibits 19.1R and 19.1L, the Bio-foam impressions be
14 moved into evidence.

15 THE COURT: All right. Over the objections.

16 (State's Exhibits 19.1L and 19.1R were accepted
17 and entered into evidence.)

18 BY MR. THORNTON:

19 Q. Ma'am, I will hand you what has been marked as
20 State's Exhibits 21.1, .2, .3, all the way through .11.

21 I will ask you if you can identify these.

22 A. Yes. These are photographs from the unknown
23 impressions from the crime scene.

24 Q. There was testimony earlier -- obviously, you were
25 not here -- about the different markers at the crime scene and

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1 the impressions in the field.

2 Is that where those came from?

3 A. Yes.

4 Q. Why are they printed on long paper?

5 A. The photos themselves are on DVDs. The photos are
6 then printed on what is called one-to-one ratio. It's
7 life-sized image, so there can be a comparison with those test
8 impressions, along with the unknown impressions.

9 Q. Are those photographs a true and accurate
10 representation and a one-to-one image of the impressions found
11 in the field at [REDACTED] Fordville Road?

12 A. Yes, they are.

13 Q. Do they appear to have been altered or changed in
14 any way?

15 A. No.

16 MR. THORNTON: Your Honor, at this time I would ask
17 that State's Exhibits 21.1 through 21.11 be moved into
18 evidence.

19 MR. BAX: Subject to my prior objection.

20 THE COURT: All right. Over the objections.

21 (State's Exhibits 21.1 through 21.11 were accepted
22 and entered into evidence.)

23 BY MR. THORNTON:

24 Q. Ma'am, what, if anything, did you use 21.1 through
25 21.11 for? Where do they fit into your process of analysis?

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 A. So each one was examined. Initially, I would look
2 at the unknown impressions themselves to look at the
3 characteristics and see if anything jumps up.

4 Then the known test impressions, the inked
5 impressions and the 3-D Bio-Foam impressions would be used to
6 do a side-by-side comparison, as well as the inked impressions,
7 you could do an overlay or superimposition. You would lay that
8 transparency over top to see if any characteristics line up
9 between the two.

10 Q. Were you able to come a conclusion as to every
11 photograph that you have up there, all 11 of them?

12 A. Yes. Two out of the 11, I came to the conclusion
13 that they were corresponding. They could have been made by the
14 known shoe. Then one was a match to the known shoe.

15 Q. Were you you able to come to a conclusion, in other
16 words, whether it's a match or what you said a minute ago --
17 the first one is consistent with?

18 A. Consistent. Corresponding.

19 Q. Were you able to do that on every single
20 impression?

21 A. No. There were eight, I believe, that were no
22 conclusion; meaning, they were not of value or there was not
23 enough detail to come to a conclusion.

24 A. So the three that you were able to come to a
25 conclusion, if we can start with Item 21.7.

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1 As to Item 21.7, that impression, were you able to
2 determine anything about that impression versus Item 19, the
3 known shoe from Dionte Habersham?

4 A. Yes. That one would have been corresponding.

5 Q. What does that mean when you say corresponding?

6 A. Basically, class characteristics were similar.
7 There wasn't quite enough to say, this is a match. So it could
8 have been made by the shoe; however, there was not enough to
9 determine it is a match or it was the shoeprint.

10 Q. When you say it's consistent --

11 MR. BAX: Objection, Your Honor. I have to object
12 to the language. She said corresponding several times. He is
13 using different words. It's inconsistent with the witness'
14 testimony.

15 THE COURT: Okay.

16 MR. THORNTON: Your Honor, I believe she said
17 consistent just a minute ago as well as corresponding. I can
18 ask.

19 THE COURT: All right.

20 BY MR. THORNTON:

21 Q. When I say consistent, would that be incorrect, or
22 is that another way of saying what you were saying?

23 A. We use the terminology corresponding.

24 Q. So tell me what corresponding means.

25 A. Basically those characteristics were similar or

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 lined up with those of the known shoe.

2 Q. What characteristics are those? What
3 characteristics are the same or line up?

4 A. The class characteristic: Size, shape, and tread
5 design. Possibly there could be wear in some random
6 identifying characteristics, but not necessarily enough for
7 there to say it is a match.

8 Q. What was that last part about it could have been
9 made by that shoe or what?

10 A. It could be made by that shoe or another shoe that
11 has the same corresponding class characteristics. A shoe that
12 is manufactured has the same outsole design or the same design
13 on the bottom of the shoe.

14 Q. Would it need to be the same size as well?

15 A. Correct.

16 Q. As Item 19?

17 A. Correct.

18 Q. As to Item 21.11.

19 A. Yes, sir.

20 Q. Were you you able to reach a conclusion as to Item
21 21.11?

22 A. This is similar to the last one we just did.
23 Corresponding class characteristics. It would line up with the
24 size, shape, tread design of the outsole of the known shoe
25 corresponding.

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1 Q. Finally, as to 21.9. Were you able to get a
2 conclusion, as to 21.9?

3 A. Yes. This is the one that I was able to say that
4 the corresponding -- it had corresponding class
5 characteristics, wear characteristics, and randomly acquired
6 characteristics.

7 Q. What does that mean? What is the actual answer?

8 A. That Item 19 did make that impression.

9 Q. As part of your analysis and procedures at SLED, do
10 you go kind of any of peer review process?

11 A. Yes. Once I do my examination and come to a
12 conclusion, it's then sent to another footwear examiner who is
13 also competent that will tech review or peer review those
14 conclusions that I came to.

15 They do a separate examination aside from mine.
16 They will either agree or disagree or review my results and
17 conclusions.

18 Q. Who was it that did the separate or independent
19 examination in this case?

20 A. The other footwear examiner was Tom Darnell.

21 Q. Was he at that time also with SLED?

22 A. Yes.

23 Q. To your knowledge, is he still with SLED?

24 A. Yes.

25 MR. THORNTON: Your Honor, subject to recall, I

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 don't have any other questions. Please answer any questions
2 that Mr. Bax has.

3 * * *

4 CROSS-EXAMINATION

5 BY MR. BAX:

6 Q. A couple of things to go over. I will try to stay
7 in order here. You talked to the jury here today about your
8 training and things that you did to become a footwear examiner,
9 correct?

10 A. Yes, sir.

11 Q. You talked about the qualifications and the classes
12 that you have taken, et cetera, is that correct?

13 A. Yes, sir.

14 Q. You have already testified in this case just
15 outside the presence of the jury. You mentioned before that
16 you would also go through a mock trial training, correct?

17 A. Yes, sir.

18 Q. That is a training that covers how to testify,
19 things like that, correct?

20 A. Yes, sir.

21 Q. You indicated that you took a test, and that that
22 test was conducted there at SLED?

23 A. Yes.

24 Q. You physically sat down and took the test at SLED?

25 A. Yes.

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1 Q. That is sent away to another company to grade it or
2 review it, correct?

3 A. Correct.

4 Q. And that is the same company who composes the test?

5 A. Yes.

6 Q. Are you aware of what their error rate is? What
7 rate they use to judge whether that is a right or wrong answer?

8 A. No. I do not.

9 Q. In your report, you have indicated that you
10 utilized what is referred to as the ACE V method or technique
11 for comparison, correct?

12 A. Yes.

13 Q. That stands for Analyzation, comparison,
14 evaluation, and verification?

15 A. Correct.

16 Q. Obviously, the verification is what you were
17 referring to when you spoke about peer review; is that correct?

18 A. Yes, sir.

19 Q. Yesterday I asked you if you were aware of some
20 scientific articles that have said that the ACE V method is not
21 valid scientifically.

22 A. No, sir. I am not aware of that specific article.

23 Q. You have talked about this analysis, comparison.
24 So you are analyzing first. Looking at the known and the
25 unknown. Or perhaps just one or the other if you have don't

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1 have the other to look at. And then you will compare, if you
2 have things to compare between?

3 A. Correct.

4 Q. You testified earlier that you have testified one
5 time before. You have been qualified as an expert in footwear
6 impressions one time before?

7 A. Yes, sir.

8 Q. That was here in South Carolina, isn't that right?

9 A. Yes.

10 Q. Do you recall in that case there was an objection
11 to you being qualified as an expert, correct?

12 A. Yes.

13 Q. That issue went all the way up to the Court of
14 Appeals?

15 A. Correct.

16 Q. Today would be your second time being qualified as
17 an expert in this particular field to testify, correct?

18 A. Correct.

19 Q. We will get to peer review in a minute. You talk
20 about comparison. You talk about class characteristics. Class
21 characteristics are things that would be common to that same
22 shoe and same shoe size that came off the line. So every Size
23 9 of Puma with that particular tread pattern would have the
24 same class characteristics; correct?

25 A. Correct.

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1 Q. You utilize a database named Solemate to find those
2 kinds of manufactured prints; correct?

3 A. Correct.

4 Q. Solemate only has in it pictures of or impressions
5 impressions of those prints hot off the line. Shoes that are
6 new, not shoes that they have taken off of some person,
7 correct?

8 A. I don't believe that there is every single shoe out
9 there in that database. There is a set number within there
10 that they have within the database. If that is every shoe in
11 the world, I don't believe that is the case, but there is a
12 certain amount within the database to review.

13 Q. Would you know whether or not how many shoes they
14 have in there? Do you have a number?

15 A. I believe they do have a running count of what is
16 currently in the database at the time.

17 Q. If I told you it was around 36,000, would you have
18 any reason to disagree with that?

19 A. No. I wouldn't know the number at this time.

20 Q. That database as you use it, does it tell you how
21 many of those shoes -- in other words, if it's a Nike or it's a
22 Puma, Size 9 that has been sold in the United States in the
23 last year, two years, three years?

24 A. No, sir.

25 Q. It doesn't give you any kind of numbers or

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1 probabilities about how many people might be wearing that kind
2 of shoe in a particular area?

3 A. No, sir.

4 Q. You have also talked about your training and that
5 you are looking for these class characteristics. Then you
6 moved on to what you called randomly acquired characteristics.

7 Those characteristics are anything from a scratch,
8 chip, a nail, a hole, anything like that, correct?

9 A. Correct.

10 Q. Is there a minimum number of randomly acquired
11 characteristics that you have to find before you can say
12 something is a match?

13 A. No. There is not a set number or a threshold to
14 come to a match.

15 A. Correspondingly, are there any databases that you
16 utilize to show numbers as to how many people might acquire
17 holes in a particular area over a given population. Sample
18 size is 10,000, 50,000, 100,000?

19 A. No, sir. That database would mostly be for an
20 unknown impression we don't have a known shoe for. It would be
21 more reliable to use the unknown impression to then determine a
22 possible mate or brand of the shoe if we don't have one.

23 Q. Your testimony is it wouldn't be useful for showing
24 how many times a particular randomly acquired characteristic
25 could be acquired by different people across the population?

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1 A. It does not do that. I wish it did.

2 Q. There is no such database, so I don't think you can
3 say whether it does or not, correct?

4 A. Correct. The number of shoes throughout the world
5 would be difficult to track.

6 Q. There has also been some studies into shoeprint
7 comparison, fingerprint comparison.

8 Are you aware that they say that is part of why
9 these comparisons are not actually science, because they don't
10 have the data behind them to support that conclusion.

11 Are you aware of those studies?

12 A. I know of studies out there in reference to
13 research on footwear and latent prints, for example, but
14 studies that are out there, I can't confirm or deny any of
15 that.

16 Q. In fact, the Ace V method that we're talking about
17 is primarily used in fingerprint analysis, correct?

18 A. Correct.

19 Q. You also talked about size, the size of the shoe.
20 What was the size of the shoes in this case?

21 A. Size 10.

22 Q. You had knowns to compare it to, correct?

23 A. Correct.

24 Q. So you were able to just open the shoe and look at
25 it and say, that is a size 10, right?

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1 A. The tag on the shoe will determine the actual size
2 that was assigned by the manufacturer for that shoe.

3 Q. The size assigned by the manufacturer in the shoe
4 is 10, is that correct?

5 A. Yes, correct.

6 Q. When you are looking at these randomly acquired
7 characteristics, what instrumentation do you use? Do you
8 measure them in millimeters? Centimeters? Do you use some
9 form of measuring device?

10 A. So the scale in the photos that you saw would be in
11 millimeters. We do have calipers that can be used if needed to
12 measure. In this particular case, I did not use any calipers
13 or measuring devices, other than the scale and the photo.

14 Q. You didn't use any calipers to measure. You have
15 got your prints and you have got your big pictures. Basically,
16 you are looking at one randomly acquired characteristic and
17 looking at the imprint on the other side, correct?

18 A. Correct.

19 Q. You are just looking at these two and you are
20 saying, based on my experience, that is a match?

21 A. Correct.

22 Q. That is what you want to say is science?

23 A. That is -- I don't --

24 Q. I think you testified earlier that over your career
25 there as a footwear comparison person at SLED, you examined

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1 around 15 to 20 pieces of footwear during that time, correct?

2 A. Yes.

3 Q. Out of those 15 to 20 times prior to this, you had
4 only testified one time, correct?

5 A. Correct.

6 Q. Out of those 15 to 20 pieces of footwear evidence,
7 how many times did you use a caliper to make exact measurements
8 of a defect?

9 A. I don't know that number.

10 Q. You can't remember how many times you used a
11 measuring device?

12 A. No. Not on these specific cases.

13 Q. I am asking about these 15 to 20 cases.

14 A. I don't recall and I don't track every time that I
15 will use a caliper within those cases.

16 Q. You have indicated that there is this peer review.
17 This is the verification part of the Ace V. That is done by
18 another person there at SLED, correct?

19 A. Correct.

20 Q. At the time, this would have been 2018, how many
21 people in the were lab were conducting the initial comparisons
22 of footwear impression evidence?

23 A. Overall, I think we may have had four examiners
24 total.

25 Q. Of those examiners, were they also the ones that

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1 would be doing the peer review?

2 A. Out of that group, yes.

3 Q. You have four people. Did all of them peer review
4 any of the other three?

5 A. No. Just one.

6 Q. Only one person is doing the peer review?

7 A. Correct.

8 Q. That person was a supervisor of you all, correct?

9 A. No. Tom Darnell would have tech reviewed my cases.

10 Q. Is he the same rank as you? Does he have any
11 supervisory capabilities? Anything like that?

12 A. He is considered in the latent print department. I
13 am in the crime scene unit. Two separate departments.

14 Q. So he is the only one reviewing. Is there anyone
15 else that can do peer review that is there?

16 A. Yes.

17 Q. Who is that.

18 A. Mindy Worlie, the other footwear examiner who is
19 also a crime scene agent. Jeff Crooks, who is a supervisor
20 over latent prints.

21 Q. The supervisor over latent prints. The other
22 person is the one that is doing comparisons as well, correct?

23 A. Correct.

24 Q. So that is four of you.

25 Now, when Mr. Darnell is reviewing your work, he

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1 knows what your conclusion is, correct?

2 A. Correct.

3 Q. He already knows what conclusion you have reached
4 before he looks at it, correct?

5 A. Correct.

6 Q. Obviously, if he agrees, you have testified that
7 once that peer review agrees with that conclusion, that is when
8 you report it out, correct?

9 A. Correct.

10 Q. How many times has there been a disagreement with
11 the peer review? How many times in your cases has Mr. Darnell
12 disagreed with your conclusions?

13 A. That number I don't know either how many times an
14 examiner would disagree. When we route it to someone for a
15 tech review, they could be routed back to us for corrections or
16 revisions. That may include anything from a grammar, spelling,
17 wording. We are leaving a phrase out of a word within a
18 sentence -- if it's a run-on sentence.

19 As far as disagreeing with actual conclusions, I
20 don't know that number or track that number during tech
21 reviews.

22 Q. I am specifically asking about footwear. You
23 testified only 15 to 20 times. Out of those 15 to 20 times,
24 your testimony is you can't tell the jury that you remember how
25 many times your peer review disagreed with your conclusions?

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1 Not your grammar or your spelling or your formatting. Your
2 actual conclusion that you will testify to, you can't remember
3 how many times that happened?

4 A. Correct. I don't know an actual number. If it's
5 routed back, it doesn't necessarily mean a disagreement on the
6 results. It's not really separated as to what the reasoning
7 is. If it comes back or if it's routed back, it's for
8 corrections of some sort.

9 Q. But you will need to know what corrections are
10 needed to be made. It wouldn't make any sense for them to send
11 it back to you because they want you to correct spelling but
12 not tell you that that is what they wanted.

13 If there is a disagreement, it's going to be --
14 when it's sent back to you, it will say what the disagreement
15 is; correct?

16 A. Correct.

17 Q. So you would know if they had disagreed with your
18 conclusion on whether something is a match or corresponding or
19 not when you looked at that paperwork, correct?

20 A. Correct. I am just saying at this time I don't
21 have a number or know that number of how many times that may
22 have occurred.

23 Q. Is that because it never happened?

24 A. I can't answer that either. I don't know whether
25 it's a yes or no answer.

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1 Q. In other words, you can't say for sure if the
2 reason you can't remember is because the peer reviews always
3 agreed with your conclusions or not?

4 A. I can't answer either way. I just don't know what
5 the reasoning for each case would have been on each separate
6 case.

7 Q. It is your testimony that it's something you spent
8 three years getting competent to do, that you would potentially
9 have to come and testify and deal with a guy like me. Nobody
10 wants to do that.

11 You can't remember how many times you might have
12 been disagreed with on those conclusions?

13 A. No, sir. I don't.

14 Q. Here what has been entered is obviously photographs
15 of the alleged prints that were found on the scene in this
16 particular case, correct?

17 A. Correct.

18 Q. Photographs obviously are two-dimensional, right?

19 A. Two-dimensional and possibly three-dimensional
20 impressions, yes.

21 Q. We know that a picture is going to be a
22 three-dimensional thing. The physical picture itself, that is
23 2-D.

24 A. Correct.

25 Q. Right here?

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1 A. Yes.

2 Q. Can you stick a measuring device in here to see how
3 deep something is?

4 A. No, sir.

5 Q. Does State Law Enforcement Division have any
6 protocols or manuals about how they want their agents to
7 conduct testing, crime scene investigations, collection of
8 evidence, things like that?

9 A. Yes. Many manners of collection for footwear, yes.

10 Q. Are you familiar with the fact that in footwear
11 impression cases that you can, in some instances, take a cast
12 of the print on the scene?

13 A. Yes, sir.

14 Q. If you took a cast off the print off the scene, you
15 would have a three-dimensional representation of that print in
16 the dirt or sand or whatever; correct?

17 A. Correct.

18 Q. Obviously, you testified to this before. It would
19 have to be an impression into something. It wouldn't be like
20 as if somebody just stepped in paint and stepped on concrete
21 like it's just a flat picture, right?

22 A. Yes.

23 Q. This is three-dimensional. You testified to that
24 before, correct?

25 A. Correct.

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1 Q. Why didn't you take a cast in this case?

2 A. In my opinion, dental stone is what is usually used
3 to make a cast of an impression. It takes longer to dry. It
4 can take up to 24 to 48 hours to completely dry through the
5 actual cast. At times, it can break after the fact, or
6 possibly disturb the original impression that you are actually
7 casting.

8 In this particular one, I chose to just do the
9 photographs.

10 Q. So you were in part concerned about the cast
11 breaking while it is sitting there. Is that because it was in
12 sandy soil?

13 A. No. In the transport after the fact.

14 Q. But clearly time time was a concern.

15 A. Yes.

16 Q. That was a longer option for you.

17 Q. Correct.

18 Q. I know I asked you this before. I want to make
19 sure I am more specific about it. You had testified that you
20 do training which includes courses in reading on the subject of
21 impression evidence, correct?

22 A. Correct.

23 Q. You indicated you are not familiar with an article
24 entitled, Scientific Validation of Fingerprint Evidence under
25 Daubert. It talks about the validity of the ACE V method?

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1 A. No. You mentioned it's fingerprint evidence?

2 Q. Well, it specifically talks about the ACE V method
3 here. It's addressing the ACE V method and whether that is a
4 valid scientific method.

5 Are you familiar with that article? It was printed
6 in 2006, October.

7 A. No.

8 Q. Published with the Alternate University Press.

9 A. Not aware.

10 Q. So you are not familiar with the conclusions that
11 the ACE V method is not a scientifically valid method.

12 A. No, sir.

13 Q. Additionally, are you familiar with the -- in 2016,
14 a report was done by Presidents Council Advisors on
15 Science and Technology. It was commissioned by the White House
16 in 2013 or 2014. The report was put out in 2016.
17 Specifically, it's about forensic science in criminal Court.

18 Are you familiar with that report?

19 A. Yes. I am familiar with that report.

20 Q. You are familiar with the fact that in that report,
21 this is a Council that is staffed by leading scientists across
22 the country, including people with NASA --

23 MR. THORNTON: Your Honor, is Mr. Bax going to
24 testify? He has asked her if she is familiar with it. She has
25 indicated, yes. Is he just going to read an article that is

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1 not admissible?

2 MR. BAX: Number one, I don't know if it's not
3 admissible. Number 2, I need to ask her if she is familiar
4 with who would have been the authors of that.

5 THE COURT: All right. Ask her the question.

6 BY MR. BAX:

7 Q. Are you familiar with who was on the Council of
8 Advisors, as far as scientists involved?

9 A. I know there were several different scientists,
10 engineers. Specifically names? No. I don't know their names.

11 Q. Obviously, this is something that would -- or was
12 it your understanding that that is something that had some
13 commentary in your specific field?

14 A. Yes.

15 Q. Can you tell the jury what your understanding is of
16 what their conclusions about footwear impression evidence was?

17 A. Basically, they were questioning the validity of
18 footwear. Ultimately, at the end of the article I think they
19 mentioned more research needs to be completed in order to show
20 validities throughout the actual study or footwear examination
21 process.

22 MR. BAX: Thank you, Ms. Claycomb.

23 No further questions at this time.

24 THE COURT: Anything as a follow-up?

25 * * *

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1 REDIRECT EXAMINATION

2 BY MR. THORNTON:

3 Q. Just one quick question.

4 Ms. Claycomb, do you recall what year -- other than
5 you have already been qualified as an expert in this Court --
6 what year you were qualified as an expert in a previous case
7 Do you remember what year that was?

8 A. I don't remember the year of it. I think the
9 appeal was finalized January of 2021.

10 MR. THORNTON: I don't have anything else. Ma'am,
11 if you would, please step down. I would ask that she be
12 excused, Judge. She has to go testify in Richland County.

13 MR. THORNTON: All right. Have a great rest of
14 your day. Travel safely.

15 (Witness exits witness stand.)

16 THE COURT: Call your next witness.

17 MR. THORNTON: State calls Tom Darnell.

18 * * *

19 THOMAS EDWARD DARNELL,

20 being first duly sworn testified as follows:

21 * * *

22 DIRECT EXAMINATION

23 BY MR. THORNTON:

24 Q. Mr. Darnell, please state your full name for the
25 record.

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1 A. Thomas Edward Darnell.

2 Q. Thank you, sir.

3 Mr. Darnell, who do you currently work for?

4 A. I work for SLED in Columbia. I am in the forensic
5 services laboratory.

6 Q. How long have you worked for SLED in the forensic
7 services laboratory?

8 A. Prior to coming to work at SLED, I worked at
9 Richland County Sheriff's Office from 1982 to 1990. I started
10 with SLED in 1990. I retired in 2009. I worked a couple of
11 other different places for about two years. I returned to SLED
12 in 2012. I am now currently working as a contract employee or
13 temporary full time.

14 Q. What has most of your time at SLED been? What have
15 you been doing for them for most of your 30 years?

16 A. Most of my time has been in the forensic services
17 latent fingerprint department. When I first started, I was
18 working crime scenes as well. I did crime scene
19 investigations. I did footwear examinations. Tire tread
20 examinations. Blood stain pattern analysis. Most anything
21 that came with crime scenes. In 1998 I was actually promoted
22 to lieutenant over the department where I worked as a
23 supervisor until 2004.

24 Q. Have you done -- you said you worked crime scenes.
25 How many crime scenes do you think you have been to over the

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1 years?

2 A. Hundreds, probably closer to 1,000 or so, all over
3 the state.

4 Q. You indicated one of the things that you have done
5 for SLED is footwear impression analysis. Is that the same
6 thing that Dawn Claycomb, who just testified, was doing for
7 SLED?

8 A. Yes, sir.

9 Q. How long have you been doing that type of work for
10 SLED specifically?

11 A. Probably around 17 years or so throughout my
12 career. That's probably a close estimate.

13 Q. Describe a little bit of your education background.

14 A. I graduated from the University of South Carolina
15 in 1982 with a Bachelor's of Science degree in criminal
16 justice. Upon graduation is when I started my employment at
17 Richland County Sheriff's Department, where I worked for about
18 eight years.

19 When I started at SLED, I took a number of courses
20 in crime scene investigations. I completed the in-house
21 training program. I completed a large number of external
22 courses taught by various individuals across the country.

23 Q. Your testimony earlier about a training program
24 specifically as to footwear impressions. Did you complete that
25 same training program?

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1 Yes, I did. That would have been -- basically, it
2 was all-inclusive training program when I started in 1990. It
3 included crime scene, and it also included an area in footwear
4 comparison.

5 Q. How many cases do you think, sir, that you have
6 worked involving footwear impression analysis?

7 A. Footwear impression is something we look for at
8 every crime scene we go to. So having worked at over 1,000
9 crime scenes, I have looked at footwear at probably every scene
10 I go to.

11 I have also worked a large number of cases that
12 have been submitted to the laboratory by outside agencies,
13 where they have requested a comparison be done.

14 Q. Mr. Darnell, have you been qualified, sir, as an
15 expert in the State of South Carolina as a footwear impression
16 analyst?

17 A. I have.

18 Q. Approximately how many times?

19 A. Give or take about 40 times across the state, as
20 well as a couple of times in Federal Court.

21 MR. THORNTON: Your Honor, I would ask that Agent
22 Darnell be recognized as an expert by the Court in footwear
23 impression analysis.

24 THE COURT: All right.

25 MR. BAX: Your Honor, obviously, same objections I

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1 have already lodged. Can we approach, Your Honor?

2 THE COURT: Yes.

3 (Bench conference.)

4 THE COURT: Ladies and gentlemen of the jury, we
5 are going to take up something really briefly. Take a couple
6 of moments to give you an opportunity to stretch your legs and
7 use the rest room, and we will bring you right back in.

8 (Jury exits courtroom.)

9 THE COURT: All right. Yes, sir, Mr. Bax.

10 MR. BAX: Thank you, Your Honor. As I discussed
11 with Your Honor at the bench, obviously we have had the hearing
12 outside the presence of the jury on some of my other prior
13 objections. This is different. As I conceded to Your Honor, I
14 certainly understand why the State called Mr. Darnell during my
15 hearing. The intention was to the validity of the science, to
16 the validity of the process. Mr. Darnell can testify about
17 that process.

18 Your Honor has ruled that admissible, and now we
19 are in front of the jury that creates -- it comes into play
20 under a different standard, that is, you still have to look at
21 702 to determine whether something is additional help for the
22 jury or whether it's just cumulative and bolstering.

23 The thing is here, the State has gotten their
24 expert in. She has testified to the results. She has
25 testified that it was peer reviewed by Tom Darnell. She

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1 reported it out only because he had agreed with her. They have
2 already got all of that.

3 The only purpose that Mr. Darnell could serve here
4 would be to add cumulative evidence that only bolsters another
5 witness. The only thing he can really testify to in this
6 particular case is, yes, I looked at her work, and she was
7 right.

8 You have the second expert saying the first expert
9 is right. There is no other purpose for that, other than
10 bolstering. It's cumulative to the testimony that has already
11 been offered.

12 THE COURT: Thank you. Yes, sir.

13 MR. THORNTON: Thank you, Judge. What I would say
14 is a couple of things. Number one, I made it very clear
15 repeatedly that I was calling all three witnesses in front of
16 the jury. I had them here yesterday to do that very thing.

17 It's frankly unfortunately pretty late in the game
18 to be making that objection. It has already gotten in front of
19 the jury. Two, it is not bolstering my intent. I will tell
20 the Court right now, I am not going to say, sir, did you look
21 at her report? Is she right?

22 That is not what the testimony is. The testimony
23 is going to be as part of that process, did you independently
24 review all of these things? I agree with Mr. Bax. If all he
25 had done is pulled up her report and looked at it and said,

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1 yes. She is good to go, that would be bolstering.

2 He didn't do that. He did his own independent
3 analysis. His did own work on it. Did he come to the same
4 conclusion? Yes. I will not ask him, is she right? That
5 would be improper.

6 As an expert that has been recognized by the Court,
7 he can testify that he did his own analysis and what the
8 conclusions were he came to. That is Number one.

9 Number two, the test, Your Honor, is under 403 is
10 if the evidence is relevant. Certainly, the Court has already
11 found it relevant. It's the danger of needless cumulative
12 testimony that substantially outweighs the probative value.

13 This is a crucial aspect of this case, Judge. I
14 think the word needlessly cumulative gets left out. That
15 needlessly part.

16 If I have two eyewitnesses to a crime, I am not
17 forced to just pick one of the two witnesses who could solve
18 it, even if they saw the same thing. I don't believe this is
19 needless and cumulative, because part of his attack on this
20 witness and on the previous witness was, Well, she only did
21 this one time, has only been qualified one time.

22 Had I known that was going to be -- this was going
23 to be an issue at this point, we could have dealt with this
24 yesterday and resolved it. The point is, it's not needlessly
25 cumulative and it's not bolstering. Thank you.

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1 THE COURT: I will allow it over the objection.

2 Are they ready?

3 THE COURTROOM OFFICER: I think they are ready.

4 They are ready.

5 THE COURT: All right. Let's bring them out.

6 (Jury enters courtroom.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, I am going to qualify the agent as an expert. Again, he
9 can give his opinion.

10 * * *

11 DIRECT EXAMINATION CONTINUES

12 BY MR. THORNTON:

13 Q. Agent Darnell, as part of your work with SLED
14 specifically, did you review some items in this case that we
15 are here about today?

16 A. Yes, I did.

17 Q. Did you perform your own analysis of those items?

18 A. I did.

19 Q. I will hand you what has been marked as State's
20 Exhibit 19, sir. I will ask if that was part of the review and
21 analysis that you did.

22 A. Yes, it was.

23 Q. Just to briefly talk about this again.

24 As to State's Exhibit 19, which has already been
25 testified to, the shoes pulled off of Dionte Habersham, would

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1 that be a known or an unknown print?

2 A. That would be a known print, known pair of shoes.

3 Q. What would you compare that known print to?

4 A. You would compare it to any unknown or questioned
5 impression that might be found at a crime scene.

6 Q. Sir, these have already been entered into evidence.
7 This is State's Exhibit 19.2R and 19.2L. If it's all right
8 with you, Mr. Darnell, I see you wear glasses as I do, so if
9 you can see those from there.

10 Are you aware of whether or not you also examined
11 these items?

12 A. Yes, sir. It has my initials at the bottom of it.

13 Q. Did you conduct -- did you use State's Exhibit
14 19.2L and R as part of your examination?

15 A. Yes, I did.

16 Q. I am also going to hand you 19.1L and 19.1R.

17 Were those also reviewed by you as part of your
18 examination?

19 A. Yes, sir.

20 Q. Is that your initial, T.D. on the box?

21 A. Yes, it is.

22 Q. Sir, as part of your analysis, did you compare the
23 known shoes, State's Exhibit 19 and the other items that we
24 have already referred to, the inked impressions and the
25 Bio-Foam. Did you compare that known impression to State's

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1 Exhibit 21.7?

2 A. Yes, I did.

3 Q. Were you able to reach a conclusion?

4 A. Yes, sir.

5 Q. What is the conclusion that you were able to reach
6 on 21.7?

7 A. 21.7 was found to correspond and combined class
8 characteristics, wear patterns. And it also had some random
9 identifying characteristics within the questioned impressions,
10 which were also found consistent with the left shoe from Item
11 19.

12 Q. So you said -- I do not want to get this wrong.
13 The characteristics, the combined class characteristics?

14 A. Yes, sir.

15 Q. You said something else. It also had something
16 else. What does that mean?

17 A. Class basically talks about the overall design of
18 the shoe. The size and the shape of it. That is really all I
19 am talking about when I say class.

20 Then the next level we found some wear. Wear
21 characteristics are just when you walk every day, you are
22 constantly wearing away at a part of your shoe. We found some
23 wear in this questioned impression that was also present in the
24 left shoe. Then there were a few random identifying
25 characteristics within the questioned impression that were also

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1 found in the left shoe.

2 So the result was that this Item 19, left shoe,
3 could have made this impression or another shoe like it, as
4 long as it had the same class characteristics, the same wear
5 pattern, and it would also have the same random identifying
6 characteristics in order for it to be another shoe, other than
7 the one that we looked at in this case.

8 Q. As to State's 21.11, did you also review that as
9 part of your analysis?

10 A. Yes, I did.

11 Q. Were you able to reach a conclusion on that
12 photograph of the impression.

13 A. Yes, sir.

14 Basically the same conclusion that I just explained
15 about 21.7 also relates to 21.11. Again, class
16 characteristics, wear pattern, and some random identifying
17 characteristics that were also found in the left shoe from Item
18 19.

19 Q. So finally, 21.9, did you review that impression as
20 part of your analysis?

21 A. Yes, I did.

22 Q. Were you able to reach a conclusion as to 21.9?

23 A. Yes, I was.

24 Q. As to 21.9, what is that conclusion?

25 A. 21.9 was made by the left shoe of Item 19.

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1 Basically, what sets this one apart from the other two that I
2 just testified to is this one obviously has the same class. It
3 has to have that. It has the same wear patterns. It has a
4 sufficient number of random identifying characteristics that
5 when a test impression is made, it reproduces.

6 In other words, the same areas in this impression
7 that we were able to find the same areas that were torn away or
8 cuts. We found the same areas in the known shoe. In order to
9 do that, a test impression was made.

10 When the test impression was made, the areas that
11 we were looking at as far as calling them random identifying
12 characteristics, it reproduced. It was reproduced in the
13 Bio-Foam that was previously testified to. That was used when
14 we made the comparison.

15 MR. THORNTON: Thank you very much, sir. I don't
16 have any further questions. Please answer any questions Mr.
17 Bax has.

18 * * *

19 CROSS-EXAMINATION

20 BY MR. BAX:

21 Q. Good morning, Mr. Darnell.

22 A. Good morning.

23 Real quickly. This is really important. You can't
24 testify -- we know you testified about these conclusions. I
25 think no one has asked you, and I think the jury probably wants

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1 to hear it. Can you testify who was wearing the shoe that made
2 that print?

3 A. No, sir. I can only go by what was documented in
4 the case file when I received it to look at.

5 I just wanted to be clear. You are obviously
6 testifying about a comparison between a shoe and a print, but
7 your expertise cannot tell the jury who was in that shoe when
8 it made that print, if that is the case; correct?

9 A. That would be correct.

10 Q. I wanted to be sure I clarified that. That is not
11 the results that we are here to talk about. It's just a shoe
12 to a print; correct?

13 A. That's correct.

14 Q. You testified that you did your own independent
15 review of this evidence, correct?

16 A. Yes, sir.

17 Q. Mr. Thornton handed you the overlays -- what I am
18 calling overlays -- the clear laminate with the inked prints.

19 A. Yes, sir.

20 Q. Were these prepared by you or by Ms. Claycomb?

21 A. They would have been prepared by Dawn Claycomb. I
22 did not prepare them.

23 Q. In your review, though, you didn't make new ones of
24 these?

25 A. No, sir. There was no need. It had a sufficient

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1 amount of tread that I needed to make my review.

2 Q. The Solicitor has shown you the boxes that are
3 sealed up. It had some kind of Bio-foam impressions, is that
4 correct?

5 A. That's correct.

6 Q. Those were prepared by Ms. Claycomb or yourself?

7 A. They were prepared by Ms. Claycomb.

8 Q. Did you do new Bio-foam impressions for your
9 review?

10 A. No, sir.

11 Q. So your review is using the materials that
12 Ms. Claycomb has already prepared, correct?

13 A. That's correct.

14 Q. You talked about, for example with Item 21.7 and
15 Item 21.11, that they correspond because they have some class
16 characteristics similarities, some random acquired
17 characteristics. What is the minimum number of RACs that you
18 have to see so that it corresponds? What is the minimum
19 number?

20 A. One. I can identify a shoe with one, if that
21 characteristic is unique enough. In other words, as an
22 example, if someone has a nail in their shoe. If a part of the
23 the nail head is missing or if the nail head has a scratch in
24 it, anything that might make that nail make it reproduce or
25 make a test impression. So I can identify a shoe with one

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1 characteristic. There is no set number. There is no minimum
2 number required. You have to look at the whole shoe. Consider
3 the actual case and consider what you have in front of you.

4 Q. So you said you could identify with just one if
5 it's unique enough, correct?

6 A. That's right.

7 Q. You are the one who defines what constitutes unique
8 enough, correct?

9 A. Yes, sir. That is based on all my years and all my
10 training and all my experience. Yes, sir.

11 Q. In this particular case, you said there was some
12 additional wear and some random acquired characteristics, how
13 much wear?

14 How many wear marks did you find on these shoes in
15 particular, 21.7 and 21.11?

16 A. It had -- it was in a toe area and in the heel,
17 which is really common. A lot of folks are going to have wear
18 in the same area of their shoe, the toe area or the ball of
19 your foot and on the heel. Sometimes on the side. I think
20 there was some on the side here and a little bit on the heel
21 and in the ball of the foot, which is common.

22 It means that -- wear patterns alone are not
23 something I can use to identify a shoe. That is one area of
24 characteristic that we do look for.

25 Q. There are some things, like wear patterns, that you

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1 find that are common across shoes?

2 A. Absolutely.

3 Q. You also indicated -- you talked about sufficient
4 number. Your testimony is a sufficient number is determined by
5 the examiner, correct?

6 A. Yes, sir.

7 Q. Lastly, we talked about this a little bit the other
8 day, Mr. Darnell.

9 Reviewers -- explain to the jury. You said that at
10 the time that this happened, there were two people doing
11 testing and two people were doing reviewing; is that correct?

12 A. I think that is right. Yes, sir.

13 Q. I think you might have testified the other day --
14 correct me if I am wrong -- now you are down to one doing the
15 examining. So it's a little bit smaller department right now.

16 A. Right. One doing casework and two of us are doing
17 case reviews.

18 Q. The other person doing case reviews is your
19 supervisor, I think you testified the other day, correct?

20 A. Yes, sir. I think that is right.

21 Q. You have testified that you do a lot of these peer
22 reviews. Can you tell us generally how many of these peer
23 reviews that you do say in a given year?

24 A. In the area of footwear, I assume?

25 Q. Yes, sir.

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1 A. I would have to guess. Probably 10 or 12 a year,
2 something like that. It could be a few more.

3 Q. Can you tell us just generally, how many times do
4 you find a different result than the examiner? Say out of 10
5 to 12 in a year?

6 A. It happened. To give you a number, I would have to
7 say maybe one or two. I might go on to say that anytime we
8 find a difference, it gets routed back to the examiner for
9 discussion.

10 All of that information is tracked in our system.
11 It's tracked in our computer system at SLED. If I had to go
12 back and give you an exact number, I could. Our computer
13 system, our laboratory keeps track of that.

14 Q. So the data about tracking that is available. So
15 if someone from SLED was coming to testify, they could check
16 those numbers prior to testimony, correct?

17 A. If that is something that they needed to know, yes,
18 sir. It is possible that you could go back and track that.

19 MR. BAX: Moment's indulgence. Thank you, Tom.

20 No further questions. Thank you, Your Honor.

21 MR. THORNTON: No redirect, Your Honor. I would
22 ask that Mr. Darnell be excused.

23 THE COURT: Agent Darnell, you may be excused.
24 Have a wonderful rest of your day.

25 (Witness exits witness stand.)

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1 THE COURT: Call your next witness.

2 MR. THORNTON: State calls Megan Fletcher.

3 MEGAN FLETCHER,

4 being first duly sworn testified as follows:

5 * * *

6 DIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q. Ma'am, if you would please state your full name for
9 the record.

10 A. Megan Fletcher.

11 Q. I am just going to go ahead and say Agent Fletcher.
12 Agent Fletcher, who do you work for?

13 A. I work for the South Carolina Law Enforcement
14 Division, commonly known as SLED, in the forensic services
15 laboratory in the trace evidence department.

16 Q. How long have you been with SLED?

17 A. Over 13-and-a-half years.

18 Q. Have you spent that entire time in trace evidence?

19 A. Yes, sir.

20 Q. Tell me a little bit about your educational
21 background.

22 A. I have my Bachelor's degree in biochemistry and
23 English from Chatham College. I also have a Master's in
24 forensic science from Marshall University in computer forensics
25 and forensic chemistry.

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1 Q. Have you received any training while at SLED to
2 help you do your job in trace evidence?

3 A. Yes, sir. I have received training in all of the
4 different disciplines that I perform analyses: Fiber, paint,
5 fibers, duct tape, bank dye analysis, explosives, general
6 physical chemical unknowns, and gunshot primer residue
7 analysis.

8 Q. Gunshot primer. Is that also known as GSR?

9 A. That is another word for it, yes.

10 Q. How many cases do you think you have worked that
11 involved gunshot primer residue?

12 A. Well over 1,000.

13 Q. Have you ever ever been qualified as an expert in
14 the field of gunshot primer residue analysis?

15 A. Yes, sir. 29 times.

16 Q. Was that in the State of South Carolina?

17 A. Yes, sir.

18 Q. Can you explain to the jury a little bit about
19 --when we say gunshot primer residue, what exactly are we
20 talking about and what kind of analysis are you typically
21 performing?

22 A. Talking about gunshot residue in general, it's
23 everything that comes out of the gun when it's fired. The
24 smoke, soot, fire, fragments of the bullet, and gunshot primer
25 residue. Gunshot primer residue is specifically coming from

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1 the primer of the cartridge. The primer of the cartridge
2 contains the elements, lead, barium, and antimony.

3 When a firearm is discharged, those elements will
4 combine in general in spheroidal or molten particles. Those
5 particles will combine, to contain all three elements, lead,
6 barium, and antimony. We consider those characteristic of
7 gunshot primer residue.

8 Q. How would you look for these particles?

9 A. These particles are examined using a scanning
10 electron microscope with an energy dispersive X-ray detector.
11 It's a really fancy name for a microscope that allows us to
12 detect the different elements of lead, barium, and antimony.

13 Q. How many of these cases have you worked?

14 A. Well over 1,000.

15 MR. THORNTON: Your Honor, at this time I would ask
16 that Agent Fletcher be designated as an expert in the area of
17 gunshot residue primer analysis.

18 MR. BAX: Subject to my prior objection.

19 THE COURT: I will qualify her as an expert.
20 Again, ladies and gentlemen of the jury, she is allowed to give
21 her opinion.

22 BY MR. THORNTON:

23 Q. Ma'am, I am going to hand you State's Exhibit 1.
24 Ask if you yourself can identify that.

25 A. State's Exhibit 1 is a sealed paper bag containing

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1 the SLED bar code of our Lab Number L18-12142, Item Number 1,
2 with my initials and the date in which I opened this evidence
3 on August 17, 2018.

4 Q. What is that evidence?

5 A. This was a GSR kit from Habersham.

6 Q. State's Exhibits 2 and 3, can you tell me what that
7 is and also, did you analyze it at all?

8 A. This is, again, a sealed paper bag. State's
9 Exhibits 2 and 3 are SLED Lab Number L18-12142, Items 2 and 3,
10 with my initials and the date in which I opened this, August
11 17, 2018. This is the clothing that was submitted from
12 Habersham.

13 Q. Did you do analysis on the items State's Exhibits 1
14 and 2 and 3?

15 A. Yes, sir, I did.

16 Q. Now handing you what has been marked for
17 identification at this point as State's Exhibit 108. I will
18 ask you if you can identify it, and then we will publish it to
19 the jury if it is admitted.

20 A. Yes, sir. I can identify it by my lab number and
21 my initials and the date in which I sealed this evidence as
22 well as the contents.

23 Q. In general terms, what is State's 108?

24 A. These are gunshot residue particle lifts collected
25 from articles 2 and 3.

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1 Q. The clothing from Mr. Habersham?

2 A. Yes, sir. It would be.

3 Q. Did you collect these yourself?

4 A. I did, sir.

5 Q. Did you keep them or place them in a sealed
6 container pending your analysis or however that works?

7 A. I placed them in that bag and analyzed them on the
8 same day.

9 Q. Are they still sealed?

10 A. Yes, sir. My initials are on the top of the seal
11 on the top of the bag.

12 Q. Does it appear to have been altered or changed in
13 any way?

14 A. No, sir.

15 MR. THORNTON: Your Honor, at this time I would ask
16 that State's Exhibit 108 be moved into evidence.

17 MR. BAX: Subject to my prior objection.

18 THE COURT: Over objections.

19 (State's Exhibit 108 was marked for identification
20 and accepted into evidence.)

21 BY MR. THORNTON:

22 Q. Ms. Fletcher, first, if you would, just tell the
23 jury exactly what the process. You talked about particle lifts
24 and things like that. When you get -- in this case you have
25 testified that you got the GSR kit collected from the defendant

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1 in this case and the clothing collected from him.

2 What did you do with it?

3 A. So let's start with the gunshot residue kit. A
4 gunshot residue kit IS an item of evidence that contains
5 particle lifts, which are stamps with a sticky surface that are
6 used to collect potential gunshot residue from a person who was
7 suspected to have been in the vicinity of a gun when it has
8 been fired.

9 These lifts are dabbed over a person's hands. In
10 this particular case, it was dabbed over the right palm of the
11 individual's hand, the right back of that individual's hands,
12 as well as the left palm and the left back.

13 That gunshot residue kit was then submitted to SLED
14 through Special Agent McKay. She handed that gunshot residue
15 kit over to me.

16 The clothing was submitted to me to process for
17 potential gunshot residue evidence. What I do in that
18 particular case is a clean a work area. I lay out a clean
19 particle lift, one that has never been used. I open it up. I
20 lay down a piece of clean butcher paper. I open the bag of
21 clothing. I make sure that the bag is sealed and check to make
22 sure the integrity of the evidence is intact.

23 I pull out the items of clothing. Then I dab with
24 the same type of particle lifts over different areas of the
25 clothing.

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1 In this particular case, I had a short-sleeved
2 T-shirt. I collected from the right chest and right sleeve
3 area for one participate lift. The other particle lift was
4 collected from the left sleeve and left chest area.

5 I also had a pair of shorts, so I collected from
6 the right side, the front of the shorts, as well the left side.
7 I then recapped all of those particle lifts, and I packaged
8 them back in that heat-sealed pouch. They are all labeled
9 appropriately. I take them to the instrumentation for
10 analysis.

11 Q. You talked about the clean particle lift and the
12 butcher paper.

13 What is the purpose of that?

14 A. These are all preventive measures to prevent any
15 potential contamination in our laboratory. We just want to
16 make sure that we have the best possible product, so we have a
17 number of different procedures. First of all, we don't allow
18 anybody who has a firearm or been in the vicinity to the
19 discharge anywhere in the laboratory where we process gunshot
20 residue.

21 We also use these blanks when we process clothing.
22 We also use a blank on our instrument to show that there is no
23 cross contamination within our instruments as well.

24 A. Once you are done with your analysis, do you look
25 at the clean particle lift again? What is its purpose

1 specifically?

2 A. The clean particle lift is analyzed at the exact
3 same time that the evidence is analyzed. It's pretty much
4 right next to it on the scanning stage on the scanning electron
5 microscope. So the scanning electron microscope is set up, and
6 it runs through its analysis. It identifies different
7 particles that it might be GSR.

8 The next day I can come in, and I can look at all
9 those particles that the instrument thought it might be gunshot
10 residue. I go back and I relocate to those particles. I
11 definitely identify them or definitely don't identify them.

12 What I am looking for is the morphology or the
13 shape of the particle to make sure it's consistent with gunshot
14 residue. I am also looking to make sure that it contains those
15 three elements: lead, barium, antimony. I also look at the
16 sample blank, the clothing blank. I make sure that no
17 particles were transferred to that clothing blank during my
18 processing of the clothing.

19 Q. What you would expect is is that if everything is
20 going according to plan, your clean blank that you laid out
21 remains a clean blank from when you analyzed it?

22 A. That's correct. At SLED we have never had a
23 clothing blank come up positive for injury from a particle of a
24 characteristic of gunshot primer residue.

25 Q. You testified you conducted an analysis in this

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1 case; is that correct?

2 A. Yes, sir, I did.

3 Q. As to Item 1 of the GSR kit from Dionte Habersham,
4 were you able to reach any conclusions?

5 Q. For Item Number Gunshot residue kit from Dionte
6 Habersham, one particle characteristic of gunshot primer
7 residue residence was found. In general, particle
8 characteristics of gunshot primer residue are microscopic,
9 molten particles that contain the elements of lead, barium, and
10 antimony.

11 Gunshot primer residue can come from discharging a
12 firearm, being in the vicinity of a discharged firearm or
13 coming into contact with a surface that has gunshot primer
14 residue on it.

15 As to Items 2 and 3, you said you pulled lifts of
16 State's 2 and 3 and state's 108 would be the particle lifts
17 that you pulled. Let me back up to make sure that is clear for
18 the record.

19 Did you pull particle lifts from both the shirt and
20 the shorts that you testified to?

21 A. I did collect particle lifts from the shirt and the
22 shorts. Those are SLED Items 2.1 and 3.1.

23 Q. To make sure we are clear. 2.1 is associated with
24 which item of clothing?

25 A. 2.1 was the particle lifts collected from the gray,

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1 short-sleeved Beverly Hills Polo Club T-shirt.

2 Q. Item 2, and State's 2?

3 A. Yes, sir.

4 Q. Particle lift 3.1 came from?

5 A. The silver Nike athletic shorts.

6 Q. State's Item Number and SLED Item Number?

7 A. 3.

8 Q. 2.1 comes from 2; 3.1 comes from 3?

9 A. Yes, sir.

10 Q. And as to your lifts, 2.1 and 3.1 coming from the
11 shorts and the T-shirt, ma'am, were you able to reach a
12 conclusion?

13 A. Yes.

14 Q. What was it?

15 A. Because they were packaged together, I did combine
16 the results for those two items. In the samples collected from
17 the gray, short-sleeved Beverly Hills Polo Club T-shirt and the
18 silver Nike athletic shorts, particle characteristics of
19 gunshot primer residue were found.

20 In general, particles of gunshot primer residue are
21 microscopic, molten particles that contain the elements of
22 lead, barium, and antimony. Gunshot primer residue can come
23 from being in the vicinity to the discharge of a firearm or
24 coming into contact with a surface with gunshot primer residue
25 on it. This is where it is different for clothing. No

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1 information can be provided as to the time frame in which these
2 particles were deposited.

3 Q. Thank you, ma'am.

4 MR. THORNTON: I have no further questions. If you
5 would, please answer any questions that Mr. Bax has.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. BAX:

9 Q. Good morning, Ms. Fletcher.

10 A. Good morning.

11 Q. Just a couple of questions for you.

12 I think you really covered a lot of it here.

13 Obviously, as you have said before -- you testified about the
14 need to make sure that your work area is clean in order to
15 avoid contamination. Can you tell the jury, that is because,
16 as you have testified before, gunshot primer residue particles
17 can actually transfer from one surface to another, correct?

18 A. That's correct. Gunshot primer residue is very
19 easily transferred from one item to another.

20 Q. I think as you testified before, there even been
21 findings that they can transfer at least a third time. What we
22 would say a secondary and I think you said a tertiary time.

23 A. That's correct.

24 Q. Which would just be a third transfer; correct?

25 A. Yes, sir.

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1 Q. Those particles would still be potentially able to
2 be seen by your instrumentation, even after a secondary or
3 tertiary transfer?

4 A. They would still be the same types of particles of
5 lead, barium, and antimony.

6 Q. I think that is why in your results you are careful
7 to qualify that you cannot necessarily say where they came
8 from, if there was any transfer. The particle doesn't show you
9 that it has been transferred; correct?

10 A. That's correct. I can't tell you where that
11 particle came from.

12 Q. Now, you also indicated that you cannot, at least
13 on results for Items 2.1 and 3.1, number one, you indicated
14 they were packaged together, correct?

15 A. Correct.

16 Q. So part of reporting those results out together,
17 obviously they were together, obviously, if all of the
18 particles had started out on one item, they could have spread
19 between the two items in that bag alone, correct?

20 A. Yes, sir.

21 Q. Then, obviously, there is also an indication that
22 you cannot give a time frame, because these are inanimate
23 objects. A T-shirt is just a T-shirt; it's not alive. It will
24 not move around; correct?

25 A. That's correct. Gunshot residue will stay on an

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1 object until it's actively removed by brushing it off or
2 washing it, for example.

3 Q. On some kind of inanimate object without anyone
4 ever touching it or doing anything to it, it could potentially
5 last for quite a long time, correct?

6 A. There is potential. Yes.

7 Q. You have testified that you take these efforts to
8 make sure your work area is clean. You get a blank standard
9 that you put out, I think you testified to, correct?

10 A. Yes, sir.

11 Q. That is to determine whether or not there is any
12 particles that would be floating around. I don't think they
13 float too much. That is to show that there is nothing on that
14 blank that would cause you to have concern, correct?

15 A. That's correct.

16 Q. However, do you control necessarily -- if you get
17 samples that are collected by a local agency, do you get to
18 control how those are taken? What room it's in and whether
19 that room is clean.

20 Do you have any control over that

21 A. I have no control over a local agency.

22 Q. You also testified one of the things that you do or
23 your lab does is you don't allow anybody into your lab that is
24 carrying a firearm, correct?

25 A. Correct.

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1 Q. Would it be fair to say that it's pretty common to
2 find gunshot primer residue particles on guns themselves?

3 A. Occasionally. It depends on how somebody takes
4 care of their gun, whether it's cleaned regularly, whether it's
5 fired regularly.

6 Q. Or how long before it had been recently been fired?

7 A. Yes, sir.

8 Q. Additionally -- I think you testified a little bit
9 about this. Gunshot residue, obviously, or all these particles
10 come out of a gun when whether it fires. They are not
11 discriminate as to what they land on, correct? They just don't
12 just land on the firer of the weapon, correct?

13 A. No, sir. They will actually go 3 feet to either
14 side. To some extent behind the shooter and as far as 60 feet
15 in front of the shooter.

16 Q. So once gunshot residue is found, it is really only
17 that you are finding that gunshot residue has gotten there
18 through any of these means that you have testified to, correct?

19 A. Correct. It can be from discharging the firearm or
20 being in a vicinity to the discharge or a firearm, or coming
21 into contact with something that has gunshot residue on it.

22 Q. That is exactly what you got in your results,
23 including a surface. If someone who has gunshot residue on
24 them touches something like a car or a desk and another
25 individual touches that same area, that can potentially

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1 transfer to that person?

2 A. If that car had a good population of gunshot
3 residue on it, yes, that could possibly transfer particles.

4 Q. One quick last question, Agent Fletcher. We talked
5 about transference from one surface to another. It's possible,
6 in fact, for someone who has gunshot residue on their hand or
7 on their skin who touches someone else to transfer it to that
8 other person; correct?

9 A. Yes. It has been known to transfer through
10 handshakes.

11 Q. Thank you.

12 MR. BAX: No further questions, Your Honor.

13 THE COURT: All right.

14 MR. THORNTON: No redirect, Your Honor. Ask that
15 she be allowed to step down.

16 THE COURT: All right. Have a wonderful rest of
17 your day. Travel safe.

18 MR. THORNTON: Your Honor, the State rest.

19 * * *

20 STATE RESTS

21 THE COURT: Ladies and gentlemen of the jury, the
22 State has rested. As you have seen in the past, there are some
23 matters that we need take up outside your presence. I am going
24 to give you an hour-and-a-half lunch break today. Just be back
25 here at 1:00, and we will look forward to seeing you then.

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1 THE COURT: You have between now and then to talk
2 to anybody you would like. I will ask for your decision when
3 we return; okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. You may be seated.

6 MR BAX: Thank you very much, Your Honor.

7 At this time I would move for directed verdict in
8 favor of Mr. Habersham. In support of that motion, obviously,
9 as Your Honor has seen, the State's case is purely and only
10 circumstantial. There is no direct evidence of my client's
11 guilt in this case. The South Carolina Supreme Court has made
12 a lot of commentary on cases that are circumstantial in nature.

13 It is a generally held rule that there has to be a
14 showing that that circumstantial evidence is substantial.
15 There is a lot of comments on what substantial is.

16 I would refer Your Honor specifically to State v.
17 Bostick, Roger Bostick. I will hand copies to Mr. Solicitor
18 and Your Honor.

19 State v. Bostick summarizes about four different
20 cases that involve only circumstantial evidence. Many of them
21 are, in fact, murder cases. One of the cases that is
22 referenced by Bostick is State v. Shrop. For the record, Your
23 Honor, State v. Bostick can be found at 708 SE 2d 774. It's a
24 2011 decision. State v. Shrop which is referenced in Bostick
25 is found at 322 SE 2d 450. It is a 1984 case.

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1 These cases, along with the cases referenced in
2 Bostick discuss a number of factors scenarios, all of which
3 involve only circumstantial evidence.

4 State v. Bostick was a case involving the
5 unfortunate murder of a woman and robbery. She was murdered in
6 her house, according to the evidence. The house was then set
7 on fire. Before the fire was over, before it could consume
8 everything, she was discovered. Subsequently, in their
9 investigation, law enforcement searched the residence of the
10 defendant who lives several doors down from his mother. In the
11 back of the house was a burn pit. In that burn pit, they found
12 remnants of things that were in the possession of the deceased,
13 including items that were in the fire pit.

14 Later, they also found a half-burned -- I think it
15 was a bag or a satchel that was hers. She was actually the
16 treasurer from her church, and she would collect the money for
17 the church.

18 The alleged motivation for this murder was robbery,
19 because the money was missing from that bag. The other things
20 found in the bag were personal items of hers that fell out of
21 the bag while being burned.

22 Additionally, the defendant's clothing was seized
23 by law enforcement and tested and found to have, I believe it
24 was gasoline in the shoes and the pants. Gasoline was
25 determined to be accelerant used that started fire at the

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1 deceased's house.

2 That was all presented to the jury. That was their
3 case. There was no eyewitness; there was no confession. The
4 Supreme Court stated, that is not enough. That was evidence
5 that only raised a mere suspicion. It was evidence that the
6 defendant may have had some contact with someone who had
7 committed the robbery at best, or the destruction of evidence
8 at best. That is what the Supreme Court talks about in that
9 case.

10 That case is analogous to this case in that we do
11 not have an eyewitness. We do not have a confession. We do
12 not have a murder weapon. We have one footprint. That
13 evidence supports my contention that it's weak and
14 inadmissible. At the very best it says: "A shoe that he was
15 wearing later might have been at the scene." They can't date
16 when that shoe was there, so they can't take that footprint.
17 Gunshot residue was found on his hand, one particle.
18 Particles, plural, it was not defined as how many, were found
19 on the clothing that was shipped to SLED as well.

20 Let's go through the pieces of evidence again.
21 Here, that's it, I think when you look at that case.

22 Also the Shrop case, the reason I specifically
23 pointed that out to Your Honor is it actually involved a
24 footprint. Shrop involves a case where the only evidence was a
25 footprint and a cigarette butt. They did test that cigarette

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1 butt for Marlboro. They were able to elicit some testimony
2 that Mr. Shrop does smoke those same brand of cigarettes, but
3 no conclusive DNA was found on that cigarette butt, so there
4 was no DNA evidence to present.

5 In this case, I would cite to Your Honor that it
6 says: "All the facts proved must be consistent with each other
7 and taken together should be conclusive in nature and tendency
8 producing a reasonable and moral certainty that the appellant
9 and no one else committed the offense charged. It is not
10 sufficient that they create a probability, even a strong one;
11 therefore, assuming all the facts to be true, which the
12 evidence tends to establish, they may get and be accounted for
13 any hypothesis which does not include the guilt of the
14 appellant. Then the proof fails in the directed verdict
15 stage."

16 Basically, the Supreme Court has made clear that
17 cases that rely only on circumstantial evidence, circumstantial
18 evidence that leaves open the possibility for the guilt of
19 others besides the defendant cannot pass the directed verdict
20 stage.

21 THE COURT: All right. Yes sir.

22 MR. THORNTON: Your Honor, as you know, the test is
23 whether there is evidence and not the weight of it. Although
24 the courts have talked about the substantial evidence as it
25 pertains to circumstantial evidence. The biggest difference in

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1 trial -- and I am looking at it right now is -- of course, I am
2 referencing State v. Bostick just handed to me by Mr. Bax.
3 They are talking about Shrop.

4 Nothing placed Shrop at the scene of the crime.
5 Experts could not definitively testify that the footprint was
6 made by shoes belonging to Shrop.

7 "While witnesses could testify that Shrop was
8 wearing tennis shoes, they could not place him less than 3 or 4
9 miles away from home, and the shoes presented were not
10 identified by any witness who had seen Shrop wearing tennis
11 shoes."

12 Just that one paragraph, Judge, we actually have
13 people who definitively said that the shoes that were being
14 worn by Dionte Habersham less than an hour after the murder
15 were the shoe that made that print.

16 So you actually have a definitive print in this
17 case. You also have two consistents with it. He was actually
18 wearing the shoes less than an hour -- the shoes that had been
19 matched to that print less than an hour after the murder.

20 You also have the Facebook post that I am calling a
21 threat that seems to establish his desire for some sort of
22 retribution for messing with the Habersham family.

23 You also have his proximity -- again, we are
24 talking about -- I think the testimony was about a mile
25 different from where he was found from the scene.

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1 I think just based on those two things alone, Shrop
2 does not apply, Judge.

3 We also have gunshot residue, which you did not
4 have in Shrop and do not have in these other cases.

5 Again, what Mr. Bax is talking about with the
6 number of particles goes to the weight of the evidence and not
7 its existence.

8 Thank you, Your Honor.

9 THE COURT: All right. I find there is sufficient
10 evidence to go to the jury, and they will give it whatever
11 weight they deem necessary.

12 Anything else?

13 MR. THORNTON: I do have one other matter, Your
14 Honor.

15 THE COURT: Okay.

16 MR. THORNTON: I think we probably ought to take
17 this up now as opposed to when we come back.

18 THE COURT: Okay.

19 MR. THORNTON: If I am incorrect in this case, Mr.
20 Bax jump in there. My understanding is he intends to call
21 Fabian Habersham. Mr. Habersham is represented by two people,
22 one of whom is Carolyn Carmody who is in Court. He just pled
23 guilty to a couple of charges. There is one still outstanding.

24 Ms. Carmody informed me yesterday that
25 Mr. Habersham would be pleading the Fifth if he was brought

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1 into Court.

2 Your Honor, what I would argue, if that is true and
3 we know that, under State v. Hughes, that that is completely
4 improper for either side to do; neither the State nor the
5 defense is allowed to call a witness who they know is going to
6 plead the Fifth. It raises an improper inference that then
7 cannot be fixed or looked at, and I can't cross-examine him.

8 Hughes actually applies to both. What it says,
9 Your Honor, is "Although most of decided cases deal with the
10 the prosecution's attempt to draw improper inferences, it has
11 been recognized that neither the State nor the defendant should
12 be allowed to call witnesses who either side knows will invoke
13 the Fifth Amendment in front of the jury and be subject to
14 inferences in a form not subject to cross-examination."

15 This is -- I apologize, Judge. I should have given
16 you the citation. State v. Hughes is 328 SC 146. This case
17 makes it pretty crystal clear, Judge. This is absolutely
18 improper. Neither the State nor the defense is allowed to do
19 that allowed to do that. I would object to him attempting to
20 call Mr. Habersham, if, in fact -- Ms. Carmody is here. That
21 is what I have been told; that he would plead the Fifth if
22 asked questions.

23 That would be my motion, Your Honor. He should not
24 be allowed to even attempt to call him, if that is the case.

25 THE COURT: All right. Ms. Carmody -- Am I

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1 MR. BAX: No. I would argue I can put that in
2 front of the jury. That means I am not calling him for the
3 sole purpose of him invoking. I will not ask him about the
4 Fifth Amendment if that is Your Honor's ruling.

5 THE COURT: I am confused. Go ahead.

6 MR. THORNTON: Judge, that is not at all what
7 Hughes says. It says that, "Here defense counsel knew that
8 Pierce would would invoke the privilege. Period. So now he is
9 saying he wants to put him up because he supposedly made
10 --because people had told Godley that he had made a threat
11 against her.

12 MR. BAX: I was saying in order to ask him have you
13 had contact with Officer Godley about narcotics offenses
14 unrelated to this. We have some evidence in the record already
15 about that. I think I am entitled to call him to that effect.

16 THE COURT: I disagree. I don't think that that is
17 relevant in this case. The testimony has already been that he
18 is -- I think the exact testimony was that he is currently
19 incarcerated. They said, yes, he was sent to prison for some
20 drug charges that I was involved. Godley testified as to that.
21 I don't think we need to bring him up here just to verify that.

22 Do you have any issue with me bringing him up here
23 in-camera and allowing him to invoke his right?

24 MR. THORNTON: I do not have an issue with that,
25 Your Honor. I want to make two very quick points. One, I ask

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1 that whatever we do, we do it as quietly as possible, because
2 they are that close. And I know that Mr. Bax will not do that
3 intentionally, but he and I both have one volume.

4 Two, I disagree with Mr. Box that he has to admit
5 that there is incriminating information that he has.

6 THE COURT: Right. If he is going to invoke, he is
7 going to invoke it. That's fine.

8 Are you okay with me bringing him up and talking to
9 him?

10 MS. CARMODY: Yes, Your Honor.

11 THE COURT: Bring him up.

12 (Fabian Habersham enters the proceedings.)

13 FABIAN HABERSHAM,

14 being first duly sworn testified as follows:

15 * * *

16 THE COURT: It's my understanding that you had a
17 conversation with your attorney; is that accurate?

18 MR. FABIAN HABERSHAM: Yes, sir.

19 THE COURT: It's my understanding that you were
20 subpoenaed to testify in this trial, and if you were to testify
21 in this case you would invoke your right to plead the Fifth
22 Amendment. Is that correct?

23 MR. FABIAN HABERSHAM: Yes.

24 THE COURT: Again, you are invoking your Fifth
25 Amendment right to remain silent; is that correct?

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1 MR. FABIAN HABERSHAM: Yes.

2 THE COURT: All right.

3 Anything else?

4 MR. THORNTON: No, sir. I think that covers it,
5 Judge.

6 THE COURT: Anything?

7 MR. BAX: That is fine, Your Honor.

8 (Mr. Fabian Habersham exits the proceedings.)

9 * * *

10 DEFENDANT'S RIGHT TO TESTIFY CONTINUED

11 THE COURT: All right. Mr. Habersham, please
12 stand.

13 It's my understanding that you are intending to put
14 up a defense in this case; is that correct?

15 MR. BAX: I think you need to explain it to him
16 with regard to any witnesses we may call in his defense. Also,
17 please confirm that he does not wish to testify on his own
18 behalf.

19 THE COURT: All right. Do you intend to testify
20 during your case?

21 (OFF-THE-RECORD DISCUSSION BETWEEN MR. BAX AND MR.
22 DIONTE HABERSHAM.)

23 MR. BAX: He is not going to testify, Your Honor.

24 THE COURT: All right. Have a seat.

25 Anything further before we bring out the jury?

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1 MR. BAX: One other thing. I want to check on my
2 witnesses. I told them to be back at 1:00, Your Honor. Just
3 give me a few minutes.

4 THE COURT: Sure. Not a problem.

5 (Recess.)

6 MR. BAX: Your Honor, one of my witnesses is back.
7 I had two witnesses who were here this morning. I told them
8 after your instructions to be back at 1:00. One of them is
9 back. Ms. Angenia Habersham is not back.

10 THE COURT: Do you want me to go ahead and take a
11 break, or do you want to continue without her?

12 MR. BAX: If Your Honor would allow five minutes, I
13 would greatly appreciate it.

14 THE COURT: No problem.

15 (Recess.)

16 MR. BAX: Your Honor, my witnesses are here.

17 THE COURT: Anything before we bring the jury out?

18 MR. THORNTON: Nothing from the State, Your Honor.

19 THE COURT: All right. You can bring them out.

20 (Jury enters courtroom.)

21 MR. BAX: Thank you, Your Honor. If it please the
22 Court, defense will call Ms. Angenia Habersham to the stand.

23 * * *

24 ANGENIA HABERSHAM,

25 being first duly sworn testified as follows:

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* * *

DIRECT EXAMINATION

BY MR. BAX:

Q. Ms. Habersham, good afternoon.

A. Good afternoon.

Q. Can you give us your full name for the record.

A. Angenia Theresa Habersham.

Q. Just so I make sure I have got it correctly, how do you spell your first name, Ms. Habersham.

A. Angenia, A-n-g-e-n-i-a.

Q. Thank you, Ms. Habersham.

Can you tell us, where do you live currently reside, Ms. Habersham?

A. [REDACTED] Fordville Road.

Q. Back in August of 2016, did you still reside there at [REDACTED] Fordville Road?

A. I did.

Q. How long have you lived on Fordville Road, Ms. Habersham?

A. Twenty-three years.

Q. Do you know the people across from you, the Montanos?

A. Yes, sir.

Q. Do you have a son by the name of Fabian?

A. I do.

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1 Q. In 2016, did he stay with you at that time,
2 sometimes or --

3 A. Sometimes.

4 Q. Do you know a Dionte Habersham?

5 A. I do.

6 Q. Is that your son?

7 A. No. It's not my son.

8 Q. Is he a nephew?

9 A. No, he is not.

10 Q. What is his relation to you?

11 A. He is my first cousin's son. So he would be my
12 second cousin.

13 Q. Do you know if Dionte ever been to your house there
14 at [REDACTED] Fordville Road?

15 A. No. The only time he has ever been to my house is
16 when I used to take him to school. This is Live Oak. It has
17 been --

18 Q. Years?

19 A. Yes.

20 Q. In your memory, would it have been accurate that he
21 would be maybe 13, 14, at most, the last time you had him at
22 your house?

23 A. It could have been. I am not even sure how old he
24 is now.

25 Q. So it would be more than five years, you think, at

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1 this point?

2 A. Yes.

3 Q. Was there -- at any time there was a property line
4 or property dispute between yourselves and the Montanos?

5 A. No, sir.

6 Q. There was no property dispute?

7 A. No, sir.

8 Q. Was there ever a time where -- let me ask you this.

9 Did Mr. Montano ever call the police about cars
10 being parked on his property, there were about people visiting
11 you or things of that nature?

12 A. Yes. I can remember back in 2017. I had a
13 refrigerator delivered from Home Depot. When that refrigerator
14 was delivered, I was thinking that when I ordered the
15 refrigerator -- I was thinking it was going to come on a little
16 small truck as if they are delivering it from Home Depot.

17 I am not sure if they had more orders on the truck,
18 but it was a really big truck that they brought out. When they
19 came, they backed it up in the driveway. They went over on
20 their property and made ruts in the front yard. He did call
21 the police. They did come out. I am not sure who that is.

22 On the same day, they had asked him to get with me
23 to find out who delivered the refrigerator, because I was not
24 liable for the rut that was made in the yard.

25 Then after that, anything that was put in the road,

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1 Nelson put those trees in the road, it went on from there.

2 Q. Those trees or logs or whatever they were, they
3 were right in that driving path on the gravel there at that
4 time?

5 A. Yes.

6 Q. That would have been something that would have
7 impeded you from getting to your house, correct?

8 A. Correct.

9 Q. Was Fabian aware of the issue going on with the
10 logs in the road?

11 A. When he came around, they were down there.

12 Q. Do you know if he ever had words with anybody over
13 -- either Mr. or Ms. Montano?

14 A. Not that I am aware of.

15 Q. He was aware of that issue; right?

16 A. Yes.

17 Q. Who is Donald Stevenson?

18 A. He is a friend.

19 Q. Do you ever recall a time when someone, or perhaps
20 the Montanos, may have called the police about Mr. Stevenson's
21 dump truck?

22 A. Yes.

23 Q. You do remember that?

24 A. Yes.

25 Q. What do you remember about that, Ms. Habersham?

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1 A. He came to drop some crush or dirt or something.
2 When he backed, it was like a whole -- it got stuck or
3 something there. I don't know the whole story of that, but the
4 truck got like in a dip, like in a hole.

5 Q. So like Temporarily stuck?

6 A. Yes.

7 Q. And do you remember the police coming out at that
8 time?

9 A. Yes.

10 Q. Did they talk to you at all at any time?

11 A. They asked me, but it wasn't my residence.

12 Q. What was your understanding of who called the
13 police in that situation?

14 A. My neighbors did.

15 Q. Do you recall the evening of August 16, 2018?

16 A. Is that the date of the shooting?

17 Q. Yes, ma'am.

18 A. I do.

19 Q. Do you remember who all was at your house when you
20 became aware? Did you see police lights first? Is that what
21 alerted you about what was going on or something?

22 A. No. I heard about five or six shots.

23 Q. Okay.

24 A. It was me, Donald, my grandson, and my daughter.
25 My grandson -- he jumped up. He is four. He said, did you

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1 hear the gunshots. I said, yes. I said, but we are in the
2 right place. I didn't hear anything hit our house.

3 I sat there for probably about maybe 2, 3, minutes.
4 I looked out the blind on the front. When I looked out the
5 blind, I saw a flashlight came in their back door. There was
6 no other lights on in the house.

7 So I want to say about maybe five minutes later, I
8 walked out on the porch. That is when I saw my neighbor,
9 Nelson, standing on the porch. He never said anything to me,
10 and I never said anything to him.

11 Q. So it was you, Donald, your grandson, and your
12 daughter. So four people?

13 A. Yes.

14 Q. At some point did Donald leave that evening?

15 A. He did.

16 Q. About when did he leave?

17 A. Probably about 15 minutes after that happened,
18 after the shooting.

19 Q. Had law enforcement arrived before or after he
20 left?

21 A. After he left.

22 Q. After he left?

23 A. Uh-huh.

24 Q. Was he driving a pickup truck or a dump truck that
25 night?

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1 A. He was driving a pickup truck.

2 Q. Do you remember which pickup truck he was driving?

3 A. I don't.

4 MR. BAX: Moment's indulgence, Your Honor.

5 THE CLERK: Yes, sir.

6 BY MR. BAX:

7 Q. Just one quick clarification. Do you remember that
8 evening speaking with law enforcement a little bit later in the
9 evening?

10 A. I do.

11 Q. Did they ask you to write out a statement in that
12 case?

13 A. No. They asked me for my identification.

14 Q. I will show you something and see if it refreshes
15 your memory, Ms. Habersham.

16 A. It does.

17 Q. Do you remember now writing a little bit of
18 something out that evening?

19 A. Yes. It wasn't that evening.

20 Q. So this was done later?

21 A. Yes. Like two weeks later.

22 Q. Based on looking at it, what date was it that you
23 think you did that?

24 A. September 4.

25 Q. So it was later. You are correct.

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1 A. Yes.

2 Q. When you were writing that out, when you referred
3 to Freddie, you are talking about Mr. Montano?

4 A. Yes.

5 Q. Last couple of questions, Ms. Habersham, and then
6 I'm done.

7 You said law enforcement did talk to you that
8 evening. Obviously, you did that statement sometime later?

9 A. Yes.

10 Q. So they must have come back?

11 A. Yes.

12 Q. When law enforcement came and talked to you -- do
13 you remember which officers you talked to?

14 A. I don't.

15 Q. Did they ask you about or did you talk to them
16 about the property dispute issues that have come up in the
17 past?

18 A. I have not.

19 Q. You never told the officers there had been a
20 property dispute with the --

21 A. No, sir. Never did.

22 MR. BAX: No further questions for Ms. Habersham.
23 Thank you, Your Honor.

24 MR. THORNTON: May it please the Court.

25 THE COURT: Yes, sir.

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* * *

CROSS-EXAMINATION

BY MR. THORNTON:

Q. Ms. Habersham, maybe just one question.

The night of the 16th, the night of the shooting, you did speak with a couple of officers briefly, correct?

A. I spoke to one officer.

Q. I think what you told them was similar to what you just said here; that you heard five or six shots; is that right?

A. Yes.

Q. Did you also tell him that it sounded like it came from the field, that big empty field near your house?

A. Yes. I can't tell where it came from. All I heard was the shots. I know it was somewhere in the area, because I could hear it inside the home.

MR. THORNTON: Thank you, ma'am. No further questions.

THE COURT: Anything as follow up?

MR. BAX: No, Your Honor. I would be happy to allow Ms. Habersham to be released from her subpoena.

THE COURT: Thank you. You may be released from your subpoena. Enjoy the rest of your day.

MR. BAX: At this time the defense will call Donald Stevenson, Jr.

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1 ?

2 DONALD STEVENSON, JR.

3 being first duly sworn testified as follows:

4 * * *

5 DIRECT EXAMINATION

6 BY MR. BAX:

7 Q. Good afternoon, Mr. Stevenson.

8 A. Good evening.

9 Q. How are you doing today?

10 A. Good.

11 Q. Thank you for being here.

12 First of all, give us your full name for the
13 record.

14 A. Donald D. Stevenson, Jr.

15 Q. Mr. Stevenson, where do you reside, or what is your
16 address?

17 A. [REDACTED] Bees Creek Road, Ridgeland, South Carolina
18 29936.

19 Q. Mr. Stevenson, do you know Angenia Habersham?

20 A. Yes, I do.

21 Q. Who is she to you?

22 A. Just a friend.

23 Q. Mr. Stevenson, have you ever been over to Ms.
24 Habersham's residence on Fordville Road?

25 A. Yes.

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1 Q. I think she said it was [REDACTED] Fordville Road; is
2 that right?

3 A. Yes.

4 Q. How many times do you think you have you been over
5 there?

6 A. What's that again?

7 Q. How many times do you think you have been over
8 there, Donald?

9 A. Quite a few.

10 Q. At any time when you were over at Fordville Road,
11 did -- let me ask you this. Let me back up.

12 Do you know the house across the yard in front of
13 Ms. Habersham's house?

14 A. Yes.

15 Q. And are you familiar with the Montanos that live
16 there?

17 A. A little bit.

18 Q. And have you ever had contact with Mr. or Ms.
19 Montano?

20 A. Yes.

21 Q. Was there ever an occasion when you were over at
22 [REDACTED] Fordville Road where the police responded to a call from
23 Mr. Montano about your dump truck?

24 A. Yes.

25 Q. Tell us what happened there.

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1 What was that about?

2 A. He said that I crossed the line.

3 Q. What do you mean by that? What do you understand
4 that to mean?

5 A. I guess there is a property line between the two.
6 He said I crossed over it.

7 Q. What were you driving at that time?

8 A. A dump truck.

9 Q. Let me ask you. What kind of business are you in,
10 Mr. Stevenson?

11 A. Landscaping, clearing.

12 Q. We are talking full-size dump truck?

13 A. Mid-size.

14 Q. And why did you have the dump truck that day, Mr.
15 Stevenson?

16 A. I was fixing some holes in the road.

17 Q. You relayed to law enforcement, I believe, that you
18 were there filling some holes for Ms. Habersham that day,
19 correct?

20 A. Correct.

21 Q. At any time that you went over to [REDACTED] Fordville
22 Road, did you observe some logs in the road that were right in
23 that gravel driveway?

24 A. Yes.

25 Q. And did you ever find out who had put those logs

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1 there?

2 A. No. I didn't.

3 Q. Were you aware that there was some dispute about
4 where the property line was that Mr. Montano had?

5 A. Not really. I just was hired to fix the road. As
6 you are going down the road, it would be on the left side of
7 the property.

8 Q. You did see those logs when they were there;
9 correct?

10 A. Yes.

11 Q. And you saw that they were obstructing the driveway
12 that had been typically used before, correct?

13 A. Yes.

14 Q. Mr. Montano did call the police when you crossed
15 the line. Was it a visible line?

16 A. No.

17 Q. It's a property line, but not necessarily something
18 you can see?

19 A. Right.

20 Q. He did call -- do you remember when it was when
21 that happened, when he called the police when you had your dump
22 truck?

23 Do you remember when that was

24 A. No. I don't.

25 MR. BAX: Moment's indulgence, Your Honor.

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1 THE COURT: Yes, sir.

2 BY MR. BAX:

3 Q. Let me try to find you something that will help you
4 remember.

5 Let me ask you this question.

6 Do you recall being pulled over for a traffic
7 infraction a little bit later after August 16, about August 21?
8 2018, do you remember that?

9 A. I am not sure.

10 Q. Did you ever get pulled over by the police for a
11 traffic ticket or something like that in August of 2018?

12 A. I'm not sure.

13 Q. Do you ever remember speaking with a Detective
14 Jared Phillips on the road during a ticket?

15 A. Faintly. Very vaguely.

16 Q. Do you recall telling him that you had information
17 that Fabian Habersham was involved with the shooting that had
18 happened a few days before?

19 A. I never said anything like that.

20 Q. Do you remember telling him you didn't want your
21 name associated with it. You didn't want anybody to know, but
22 you wanted to talk to him about it.

23 Do you remember talking about that?

24 A. I never talked to anyone about Fabian.

25 Q. Did you ever end up giving a statement in this

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1 case?

2 A. Did I do what now?

3 Q. Did you ever give a statement in this case?

4 A. I gave a statement on what?

5 Q. Did you ever go and talk to the police about this
6 case and do a written statement?

7 A. Yes.

8 Q. When was that?

9 A. I guess a few days later after.

10 Q. I believe you testified -- let me ask you this.

11 Do you remember what all you said -- let's back up.

12 Do you remember August 16, 2018 the night that
13 there was a shooting over at [REDACTED] Fordville Road?

14 A. Yes. Vaguely.

15 Q. Were you there Mr. Stevenson?

16 A. Yes, I was.

17 Q. Did you hear anything?

18 A. I just heard some shots.

19 Q. And could you tell where the shots were coming from
20 at that time?

21 A. No. Somebody is always shooting around there.

22 Q. Your testimony is it's relatively common to hear
23 shots?

24 A. Yes.

25 Q. Is it any particular time of day that you hear

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1 shots?

2 A. No. Not any particular time.

3 Q. So it could happen at any time, day or night?

4 A. Correct.

5 Q. You didn't think that was out of the ordinary when
6 you heard those shots?

7 A. No.

8 Q. And do you recall hearing anything else after that?

9 A. When I came out of the house, I heard someone
10 saying, "It should have been me. It should have been me. It
11 should have been me."

12 Q. Did you identify who was saying that?

13 A. It was dark. I didn't really try to look to see
14 who was talking or anything else. I just went on about my
15 business.

16 Q. You were at [REDACTED] at that time. Who all was in the
17 house at that time?

18 A. Angenia and her grandson.

19 Q. And do you know, how old was her grandson at that
20 time, Donald?

21 A. I think he is probably in the second grade now.

22 Q. Would he have been around four or five a couple of
23 years ago?

24 A. I would say that.

25 Q. Anybody else?

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1 A. No. I didn't see anybody else.

2 Q. Do you know who Fabian Habersham is?

3 A. Yes.

4 Q. Who is that?

5 A. That is her son, her oldest son.

6 Q. Was he there that evening?

7 A. No. I didn't see him.

8 Q. Did you see him at all that day?

9 A. No, I didn't.

10 MR. BAX: Moment's indulgence, Your Honor.

11 BY MR. BAX:

12 Q. Mr. Stevenson, you testified that you were there
13 that evening. You heard the shots, and then you heard someone
14 making those statements.

15 Did you leave [REDACTED] Fordville Road at some point
16 that evening?

17 A. Say it again.

18 Q. Did you leave Angenia's house at some point that
19 evening?

20 A. Yes, I did.

21 Q. When did you leave?

22 A. Probably about 9:15.

23 Q. 9:1?

24 A. Yes.

25 Q. Well, if I were to say that the 911 calls came in

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1 on this at about 9:45 indicating a shooting that didn't happen
2 until 9:40, are you saying you left before the shooting
3 happened?

4 A. I can just tell you that the timewise, I am not
5 sure, but the shots, I did hear them.

6 Q. Let's just go off of that.

7 Regardless of the time on the clock, Donald, about
8 how long after the shots did you leave Angenia's house?

9 A. Probably about 15 minutes.

10 Q. 15 minutes?

11 A. Yes.

12 Q. Had any law enforcement flashing lights, et cetera,
13 arrived at that time?

14 A. No.

15 Q. Did you see anybody else as you were leaving,
16 Donald?

17 A. No. I didn't.

18 Q. There has been some testimony about an open, sandy
19 field back behind those residences.

20 Do you know what I am talking about?

21 A. Yes.

22 Q. Did you look over in that area.

23 A. No, I didn't.

24 Q. If you didn't look over there, you wouldn't have
25 seen or heard anybody over there, is that right?

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1 A. From where I was parked, there is no way I could
2 see over to that side.

3 Q. Are there trees in the back of Angenia's house --
4 between that and the field, are there trees there?

5 A. Yes, there are.

6 Q. Finally, it's your testimony that on the 21st, if
7 you were pulled over, you didn't speak to anybody about Fabian
8 Habersham?

9 A. No. I didn't.

10 MR. BAX: Moment, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. BAX:

13 Q. Did the ticket that occurred -- it might have
14 occurred on August 18, two days later. Does that ring a better
15 bell for you?

16 A. Say that again.

17 Q. When you were pulled over, I might have had the
18 date wrong.

19 Do you remember being pulled over for a traffic
20 infraction of some kind on August 18, 2018, two days after
21 this?

22 A. I may have. I don't remember.

23 Q. Do you recall talking with a detective by the name
24 of Jared Phillips at that time?

25 A. That name sound familiar. It really just doesn't

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1 really ring a bell.

2 Q. Do you remember what you talked to him about?

3 A. No.

4 Q. So you don't remember talking to him about
5 Mr. Fabian Habersham being involved?

6 A. Sir, that has been a while back. I am not
7 saying -- I may have -- I mean, I just really -- I can't say
8 yeah or no. It's just too far back. That is not what I am
9 focusing on. There are a lot of distractions when I am out
10 there working. Basically, I am on my own getting my work done.
11 They may asked me something about it, it's not that it just ups
12 that I answered, because that's not what I am doing.

13 Q. Do you remember any officers at that time giving
14 you a business card?

15 Do you remember getting a business card from any
16 officers?

17 A. Sir, I get thousands and thousands of people
18 calling on my phone, ringing my phone up, wanting stuff done
19 every day. To sit here and say one particular one, I couldn't
20 say yes right now.

21 Q. The reason I asked is just because we are talking
22 about talking with an officer about something like this, not
23 necessarily a job; right?

24 A. Yes.

25 Q. That doesn't make it stand out in your mind?

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1 A. I talk to policeman all the time. They want me to
2 do stuff. It don't ring any -- it's just not coming to me.

3 MR. BAX: Thank you, Mr. Stevenson.

4 No further questions at this time.

5 Please answer any questions Mr. Solicitor has.

6 * * *

7 CROSS-EXAMINATION

8 BY MR. THORNTON:

9 Q. Mr. Stevenson, just a few questions, sir.
10 I will just reference the written statement that you gave.

11 So you did talk to law enforcement when they asked
12 about the night of the 16th when the shooting happened; is that
13 correct?

14 A. Yes.

15 Q. You told them that you were at [REDACTED] Fordville Road
16 that night?

17 A. Yes.

18 Q. You told them that you left at 9:45 or 9:55 p.m.

19 Does that sound about right?

20 A. Basically.

21 Q. So sometime after you heard shots, you left.

22 A. Right.

23 Q. On this -- I know it's a little bit different than
24 what you testified to -- but you told them that you saw Nelson,
25 and he said, "It should have been me."

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1 You testified you heard somebody say, "It should
2 have been me." I understand this is awhile back. You heard
3 somebody say, "It should have been me."

4 Did you then tell them that you got in your truck
5 and left?

6 A. Right.

7 Q. I think Mr. Bax asked you if you had not seen
8 Fabian that day? You didn't see him drop his son off? Is that
9 correct?

10 A. No, I didn't.

11 Q. But his son was there?

12 A. His son was there, and I didn't see him that day I
13 didn't see him drop him off I didn't see him.

14 Q. Mr. Stevenson, is that -- what I have asked you, is
15 that accurate as to what you said when you talked to the
16 police? Is that right?

17 A. Yes.

18 Q. Is that all the information you know about this
19 case?

20 A. Yes, sir.

21 MR. THORNTON: Thank you. I don't have anything
22 further.

23 MR. BAX: Your Honor, may we approach?

24 THE COURT: Yes.

25 (Bench conference.)

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1 THE COURT: Ladies and gentlemen of the jury, just
2 excuse us for just a couple of moments, and we will bring you
3 right back out.

4 (Jury exits courtroom.)

5 MR. BAX: I just need a few minutes, Your Honor.

6 THE COURT: Take your time.

7 (Recess.)

8 MR. BAX: Your Honor, when you bring them back in,
9 we will rest. I know that we will have some post motions to
10 do. I don't know if you want to discuss this at this time.

11 Mr. Thornton and I have discussed the idea that we
12 need a few minutes to get ready for our closing arguments.

13 MR. THORNTON: I think 30 minutes is probably
14 sufficient for me, if that is sufficient for Mr. Bax?

15 MR. BAX: Yes, sir.

16 THE COURT: Okay. Bring them back out, and you can
17 rest. I will tell them that we are going to take about a
18 30-minute break. Then I will tell you what I am going to
19 charge, and then I will bring you back in. We will hear
20 motions, then we will go right into the closings arguments and
21 I will come back and charge them.

22 MR. BAX: My motions don't need to be in front of
23 the jury.

24 MR. THORNTON: Thank you, Your Honor. The only
25 thing I think we need to do is let Mr. Stevenson get off the

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1 stand.

2 THE COURT: We will bring them back in and then
3 release him from the stand. Then you can rest in front of the
4 jury.

5 (Jury enters courtroom.)

6 THE COURT: Mr. Bax.

7 MR. BAX: Thank you, Your Honor. I would ask that
8 Mr. Stevenson be excused.

9 THE COURT: Mr. Stevenson, you may be excused.
10 Have a wonderful rest of your day.

11 (Witness exits witness stand.)

12 THE COURT: Mr. Bax, call your next witness.

13 MR. BAX: Your Honor, at this time the defense
14 rests.

15 * * *

16 DEFENSE RESTS

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, as I discussed with you previously when the trial began,
19 I give the attorneys an opportunity to give you an opening
20 statement. That is not to be considered as evidence, but
21 simply what they believe the evidence will show.

22 At this time in just a couple of moments, I will
23 give them an opportunity to give you what is called a closing
24 argument. It is simply what the believe the evidence has now
25 shown.

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1 They have indicated they need a couple of minutes
2 to get some of their technology up and running. We are going
3 to take about a 30-minute break, then we will come back in.
4 Then I will allow them to give their closing arguments. Also
5 at that point in time, I will charge you on the law. Then we
6 will allow you to deliberate.

7 We have about another hour left in the case, but
8 just give us about 30 minutes of time, and we will get
9 everything set up for you.

10 All right. Thank you very much.

11 (Jury exits courtroom.)

12 THE COURT: Really quickly. What motions do we
13 need to undertake?

14 MR. BAX: Primarily, Your Honor, I would just need
15 to renew all the motions I have made throughout the course of
16 the trial. Obviously, we have had extensive argument in this
17 case, quite a bit of case law.

18 So at this time I would renew all of my arguments
19 that I have made, all my exclusions and objections, for the
20 reasons that have already been made, including about Mr. Fabian
21 Habersham, et cetera, et cetera.

22 THE COURT: All right. Noted for the record.

23 Anything further from the State?

24 MR. THORNTON: Nothing on that. The only thing I
25 would ask -- I need to talk with Mr. Bax -- if he wants me to

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1 murder charges. I have gotten about 25 back. They all seem to
2 be exactly the same. So somebody has done this once before to
3 make sure we have the right one.

4 The first thing I will charge is concerning the
5 arrest. The indictment, not as evidence; duties of jury and
6 trial judge. Multiple charges; that he has to be found guilty
7 or not guilty on each charge; presumption of innocence;
8 reasonable doubt; direct and circumstantial evidence;
9 credibility of witnesses; expert witnesses; failure of the
10 defendant to testify; intent. Obviously the charges; murder,
11 possession of a weapon during the commission of a violent
12 crime; discharging a firearm into a dwelling.

13 And then -- I don't know you feel. I give them the
14 actual charge in the jury room so they can apply the facts with
15 the law as they see fit in their deliberations.

16 Any objections to that from the State?

17 MR. THORNTON: I have no objections. Is it all
18 right if I just read the murder charge? I don't want to object
19 to it. I just want to know which one it is.

20 One more thing. I am just trying to run over this
21 in my head. When you talked about each charge has to be done
22 individually. There is one charge in here that will be
23 different, which is the possession of a weapon during the
24 commission of a violent crime. I just wanted to make sure that
25 is in there.

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1 THE COURT: I say in there that murder is
2 considered a violent crime. Why don't you just look at it, and
3 if there is anything, we can change it really quickly.

4 (Brief pause.)

5 THE COURT: Anything further?

6 MR. THORNTON: Nothing from the State, Your Honor.

7 THE COURT: All right. Bring them out.

8 (Jury enters courtroom.)

9 THE COURT: Ladies and gentlemen, as I indicated
10 before, I will now give the attorneys an opportunity to make
11 closing arguments. Mr. Bax.

12 MR. BAX: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 * * *

15 CLOSING ARGUMENT BY MR. BAX

16 MR. BAX: Ladies and gentlemen, I know you are
17 happy to hear that this is the last time you will get to hear
18 from me.

19 First of all, thank you all again. This has been
20 three to four long days out of your life that you have had to
21 give over. That is very important. If you are not able to do
22 this for someone else who is a stranger to you, then we do not
23 have the system that can help everybody when they need it. So
24 it is very important. First of all, I just wanted to say that.

25 Right now is our opportunity to talk to you about

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1 the evidence that you have seen. You have had pretty much over
2 three days of evidence being presented, witnesses coming up
3 here and testifying. I think you have seen and heard a lot
4 from when we talked first.

5 We were telling you at first what we thought you
6 were going to see. As the Judge said now, you have seen it.
7 Remember that the trial is designed so that the due process can
8 determine, based on our rules, what can be offered that is
9 allowable under the rules. You are to make a decision based on
10 what has been presented and nothing else, nothing outside of
11 that. The judge will talk to you a little bit more about that.

12 Ladies and gentlemen, at the beginning of this case
13 I talked to you about the fact that no one will dispute this is
14 a tragedy. You all heard that. We know that. Someone
15 asserting their rights to defend themselves when they have been
16 wrongly accused, is not disrespecting what happened.

17 Adding to that, putting the wrong person in jail is.
18 I talked to you a little bit when we first started about
19 compounding the tragedy that has occurred by creating more.

20 I think you all have seen that that tragedy has
21 already been compounded in this case. There has been a
22 botched, incomplete investigation. It did not answer
23 questions. It provided incomplete answers that did not go down
24 the roads that need to be gone down. You have all have seen
25 that. That is not just unfair to the person facing this

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1 charges, it's unfair to the people who need justice, because
2 they are not getting it if we failed to find the truth, that
3 leaves justice unserved. Justice can't come from injustice.

4 Now, I want to talk to you about what you have seen
5 here. You have heard about the incident that night. There are
6 really no disputed facts that at [REDACTED] Fordville Road someone
7 fired a weapon. Those projectiles hit this house and a tragic
8 result occurred. There is no dispute about that. However,
9 when you are investigating a situation where you don't know who
10 did it, it's a whodunit.

11 There are things you have to look at. At first
12 that was done. What was the first thing they did? Who would
13 have motive to do this? In other words, a reason. This is
14 where your common sense comes in. We would all generally know
15 that someone would have to some kind of reason to do something
16 like this. Whether or not we agree with the reason, there has
17 to be a reason. That is just general human behavior. What is
18 the first thing that happens? They find a motive. The motive
19 is as to the people that live across the way. Property dispute
20 which came from them.

21 You heard the testimony from Ms. Habersham, she
22 kind of denied that she didn't tell the officers that, but you
23 have multiple officers that the State that put up, saying, we
24 were told this is a property dispute. You had that confirmed
25 by Mr. Montano. You had this confirmed by Ms. Montano when she

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1 talked to Hallie Godley. There is the property dispute.

2 Of course, Ms. Montano says that Fabian Habersham
3 had words with her about that. You have a motive. That sends
4 them in that direction. They head down to Ingram Lane.

5 I want to talk about motive. I also want to talk
6 about missed opportunities that occurred when they went looking
7 for motive. What happens? They go down Ingram Lane. She sees
8 Fabian. She asked questions of Fabian.

9 One thing that we will ask you to, because you have
10 the ability to do this. You have got the evidence in front of
11 you. It will be sent back in the room when you deliberate,
12 including the multitude of dashcam, bodycam videos. You see
13 these interactions. You see them come up and start talking to
14 Fabian Habersham. You see the fact that he is immediately
15 uncooperative. He doesn't want to answer questions. He
16 immediately said, why are you looking at my shoes? They don't
17 say that. They don't say, let me see your shoes. He said, why
18 are you looking at my shoes. He is right to that thought.

19 Why is he right to that thought? They are seeing
20 that he didn't want to cooperate. They have this quiet little
21 guy walking around. They realize, hey.

22 Godley testified is like, Fabian is our guy. She
23 knew Fabian. She knew him from investigations into his
24 narcotics behavior. She knew him. She also knew how obstinate
25 he is. When she got there, what did she see? She saw a weak

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1 link. She saw Dionte. And she said, that is guy I can
2 squeeze.

3 She started thinking, how do I squeeze this weak
4 link? Let's test its strength. Not because I want the link,
5 but I want what this link is attached to, attached to Fabian.
6 Who got Dionte to the head of that road that night? Fabian
7 did. Think about it.

8 She said gunshot residue. She starts thinking, I
9 need something. All of a sudden, we get this evidence comes
10 out of nowhere. We saw a print in the sand. You watch that
11 video, ladies and gentlemen, and you will see them walking back
12 and forth. You look what they are walking on. They are
13 walking on pavement. Bees Creek there has a little bit of
14 gravel on the side. You never see any of the officers go down
15 there. You never see any of that.

16 Footprint in the sand on Ingram lane. No one takes
17 a picture of this. You don't have that print for evidence.
18 They don't mention it in their incident report. Hallie Godley
19 doesn't. I saw a print on Ingram Lane as Dionte walks by. She
20 doesn't say that to him when she pulls him to the side. She
21 goes off to the side with her phone after she has talked about
22 gunshot residue. I don't have a kit. You see her messing
23 around with something, and you hear a gunshot and the shell hit
24 the ground.

25 I don't know what that is. You look at it and

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1 listen to that. Hear that gunshot. Will you hear that shell
2 hitting the ground? It sounds like somebody fired a shot.
3 They went and touched Dionte Habersham, who goes over and gets
4 Dionte and pulls him to the side. Dionte puts his hands right
5 there. You have officers all over the place all with their
6 firearms and talking on the phone about gunshot residue.

7 You can see it. Right after the gunshot sound
8 or -- it's no wonder that particles were found on Dionte later.
9 They think there was no chance that it wasn't Dionte. Not only
10 did she escort him back, not only did she touch the car, right
11 where she touched the car she handcuffed him too. She
12 testified the officers had weapons on her. Then you get all
13 the back and forth, pictures from the scene.

14 What came to us? I don't know. Was the picture
15 sent back to the scene? I don't know. Officer Godley was
16 saying, I did not receive the picture from the scene.

17 It was Godley who got it. But I don't know if my
18 belief is right. You have officers who are investigating a
19 murder saying it was all blurry. I don't have any details for
20 you. These are law enforcement officers who are supposed to be
21 investigating the crime. The reason we call it a crime is
22 because it was a tragedy. You are going to have to investigate
23 this kind of thing. You look at it. Does she touch his shirt?
24 She cuffs him. Talk about the fact that even though he didn't
25 have motive. He told her, I didn't do it. She detains him for

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1 four hours. He sits there and tells them over and over again,
2 I didn't do it. They take him to the investigation unit, the
3 interrogation room. They have no testimony that they wiped
4 that clean. Multiple officers going in and out of there with
5 their guns on. They sit them at the table. They sit them
6 there so long he falls asleep on the table.

7 When you lean over on it, your shirt -- let's talk
8 a little bit about missed opportunities. You had Fabian
9 Habersham standing right there on camera. He has been directly
10 connected to the scene. He has motive. He admitted that he
11 was at the incident location about an hour earlier. He said on
12 there, I was at my mom's house dropping my son off about an
13 hour ago. That time line shows that was almost exactly when
14 the shooting happened, but they don't detain him. They now
15 they realize he is asking about the shoes. They don't detain
16 him. They know he has motive, but they don't detain him.

17 Instead, they lied to Dionte and say that his name
18 was called. And you know it was clear what she implied there.
19 She was not implying that other cops told her his name. She
20 was -- you know, now that is not the case. They are going to
21 lie to him and say that. What else were they saying? Give us
22 Fabian.

23 You heard from Ms. Habersham, who is his first
24 cousin who hasn't seen him in over five years. He doesn't come
25 over there. Fabian does. They don't ask Fabian a single

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1 question on that roadside about the shooting. Think about it.
2 You are standing right there. The guy's name has been
3 mentioned at the scene by the mother of a dead child. And you
4 don't ask that guy one question? Was there a property dispute
5 over there? Did you have words with them about the logs in the
6 road? What did you think about those logs in the road? Do you
7 know the Montanos?

8 Nothing. Not a single question to Fabian on the
9 side of that road. After that, did they ever come in here and
10 tell you, we went and we identified Fabian. He told us -- the
11 only person who even said they had any other contact was Hallie
12 Godley. She said she heard some concerning things she had more
13 contact with him the next day. That is it. Done. Over. They
14 wake up a judge and get a search warrant to take his shoes.
15 Did they ever go get a search warrant for Fabian's camper where
16 he said he was that day? No. Maybe that is why we don't have
17 a murder weapon in this case.

18 Now, the prosecution as they said at the beginning
19 of this case has the burden of proof. They have to prove their
20 case beyond a reasonable doubt. I want you to think about it
21 like this. The prosecution has to build a bridge. They have
22 got to get you across that bridge. They have to build a bridge
23 for you to walk across safely. You have to understand it is
24 not your job to do their job. That bridge has got gaping holes
25 in it. It's coming apart. There are places you are going to

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1 have to jump. They want you to jump.

2 It's not your job to jump. It's theirs to pave
3 that bridge. They want you to do this on a case with extremely
4 weak case that has nothing but circumstantial evidence. There
5 is no confession. There are no eyewitnesses. You heard from
6 Mr. Johnson. He could not identify who he saw. He could not
7 tell what they are hearing. He said it was a dark-colored
8 Buick. You got none of that. No eyewitnesses. No murder
9 weapon.

10 All of the evidence they have, really goes down to
11 two things. Two things. One is fake science. The footprint.
12 The footprint is not science because a guy is saying, yeah,
13 that is a match. That is not science. I am sorry. I don't
14 care how many years you have been doing it. You heard from the
15 State's expert on this footprint. She couldn't remember how
16 many times she has ever used a measuring device in doing this.
17 You heard from her while she was at SLED doing this. A couple
18 of years she moved onto other employment.

19 She doesn't remember how many times she even used a
20 measuring device. At the end of the day, you are looking here
21 and here, and you are saying, yep. It's a match. That is just
22 common sense. That is not science.

23 The other thing you heard from that expert is, even
24 if my match is right, maybe -- no one ever disagrees with
25 anybody. They certainly can't remember it. They are human.

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1 If you are human, you can't come in here and tell us that you
2 made a mistake before. You are not being honest. We all make
3 mistakes. I make mistakes. I talk too loud. I have misquoted
4 things. It happens.

5 We all have jobs. You go to work and you do your
6 best every day. You are not going to have a good day every
7 day. To come in here and say, maybe somebody disagreed with
8 me, but I can't remember. It they are not going to work
9 together in the office, just three or four of them -- really?
10 How often do you see someone say, I am going to go into work
11 and violently disagree with someone I work with about their
12 results? Not generally. It's not the first thought that comes
13 to mind. Maybe it's a match. They can't tell you who was
14 wearing the shoe. That evidence does not tell you who was in
15 that shoe.

16 As everyone knows, shoes might be yours today.
17 They might not be yours tomorrow. When we go home, we all wear
18 shoes. Most of us have got more than one pair of shoes. When you
19 got other people in the family, it's a mess. You heard
20 testimony about the fact that [REDACTED] Ingram Lane was kind of --
21 that it was a rotating door over there. People in and out.
22 Nobody asking permission who actually owns the place. It's
23 kind of a hot mess, isn't it? Everybody thinks that. They
24 can't put someone in that shoe. They desperately want you to
25 do that for them.

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1 That is a hole in the bridge they want you to pave
2 over for them or hop across it. That is not the oath that you
3 took. You are not to hop over, jump over, or ignore holes in
4 the bridge. Your job is to look at them and say, I can't cross
5 this bridge.

6 Now, who else had access to that house? The baby.
7 You heard it. He lived right there. The door obviously ain't
8 locked. I don't know if you could lock that door. It probably
9 wouldn't work.

10 GSR. We talked about that already. They have got
11 fancy machines to find it. As that person said to you, that
12 scientist said to you, I can't tell you where it came from.
13 How many times has it been transferred? I can't tell you when
14 it got put on there. I can't tell you. I can't even
15 definitively say you have to been around a fired gun for it to
16 get on there.

17 It can be transferred two times, three times. It
18 can come from an object, a person shaking your hands. It can
19 come from somebody cuffing you. From somebody like Fabian
20 giving you some -- go to the end of the road and see what these
21 officers are up to. A little hug. A little shirt-to-shirt
22 contact.

23 How many other places could that GSR have come
24 from? We did also hear from Mr. Perez. You get to make your
25 decision. You observed the witness. He said that they didn't

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1 like him. They wanted him out. If he is place in jail, we can
2 come and go as we please. We come in there whenever we want.
3 We want him gone.

4 They tried to say they didn't see him. We were
5 there until the cops arrived. You already know that Dionte was
6 there. He didn't come out of smoke. He just came from his
7 house. He was right there. They would have seen him. That
8 doesn't even bear any kind of credibility whatsoever.

9 I said to you at the beginning of this trial that
10 it's not just about the answers that are given to our
11 questions. It's about what people won't say. It's about their
12 body language. Their eyes. All those things that you look at
13 in modern life when you are talking to somebody.

14 THE COURT: That is what you have to go thinking
15 Mr. Perez was up there. He admitted that he wanted him out.
16 He said, I come there. Sometimes I smoke weed; sometimes not.
17 What about that time? I don't know. Look, a lie is a lie. It
18 doesn't matter what language it's in., English Spanish or cop
19 speak. You all have to apply common sense to see a lie. You
20 have seen a lot of them today, a lot of them this week.

21 Now, finally, I want to talk to you about some of
22 the other evidence the State put up. Video surveillance. They
23 have a theory, to be honest with you, think about the State's
24 theory.

25 The problem is the State's theory doesn't make any

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1 sense just on its face. They have only proposed evidence that
2 this was Dionte and Dionte alone. However, they have not
3 offered any evidence that Dionte by himself had access to a
4 vehicle. You heard from his interview he walks from his mom's
5 house and back. His boss picked him up. He doesn't work that
6 day. That is it. He gets a ride with the guy in the pickup
7 truck. At best, that is it. This was summertime. He had been
8 walking all day. He goes in the shower. Their theory is, I
9 guess, that he did this on his own. No one else is charged
10 with this crime at all. Yet, they want you to believe somehow
11 he got borrowed a car or somehow he was dropped back off. If
12 he was dropped back off, there is a near criminal out there to
13 aid somebody in a crime. They don't have anybody else charged.

14 They want you to imagine there is another phantom
15 there to fill in any holes for you. More holes in the bridge
16 that you cannot get across.

17 Their theory by itself does not make sense. You
18 will hear from the Judge that this is a case that involves
19 circumstantial evidence. All the circumstantial evidence has
20 to be consistent to each other. All of that consistent
21 evidence has to point to the guilt of the defendant only, not
22 to the guilt of someone else. If it is not consistent, points
23 in different directions, points at someone else, you must find
24 the defendant not guilty.

25 Holes in the bridge. Huge gaping holes. What they

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1 did show you was a surveillance video from a house across the
2 way. Cars that you cannot identify by looking at them. You
3 cannot identify those cars. What you do see is a car coming
4 out of Ingram Lane at 9:40. The shots in this case happened
5 somewhere between 9:40 and 9:45.

6 It takes less than five minutes to drive from
7 Ingram Lane to Fordville Road. Bees Creek -- you see a car
8 come back at 9:48. Pause there. They think, hey. Maybe I
9 should go create an alibi for myself and then drive on.

10 You then see a gray car pull into the B.P. right
11 down here. Right over here. The B.P. that Fabian called the
12 police gas station. There are always cops there. If you watch
13 those gas things, it's an SUV. You see him go there and buy a
14 drink and leave. This happens at 9:58, 9:59. That is a
15 minimum of 12 minutes after the shooting. You can get from
16 Bees Creek behind [REDACTED] Fordville Road to Ingram to that station
17 in 12 minutes easily.

18 You don't see another car pull in over there until
19 almost 10:15. Another 15 minutes. It takes less than 15
20 minutes to get from the B. P. back over to Ingram Lane, unless
21 you need to go somewhere and throw your gun, which is what
22 Fabian did. The evidence more consistently shows that Fabian
23 did this and acted alone than it does Dionte being involved.

24 If he went by his cousin's trailer and heard him in
25 there taking a shower, grabs the work shoes, does his thing,

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1 brings them back, make sure that his sliders -- if you listen
2 to the interview that he gives, he said when he came back
3 out -- he was talking about it the second or third time -- I
4 have been wearing my sliders. Basically, the slip-ons that you
5 see. They were gone. Why were they gone? Somebody made sure
6 that all he had to do was put on his work shoes, the ones
7 somebody like Fabian then snagged to go do his thing.

8 Why did you come out here? Put your shoes on.
9 Let's go. Done.

10 This case has got enough reasonable doubt that the
11 trucks going right through the bridge are going right to the
12 bottom. I think you all know that. Let's not compound one
13 tragedy with a third or a fourth here and send someone who did
14 not commit a crime away.

15 Thank you, Your Honor.

16 THE COURT: Thank you.

17 Yes, sir.

18 * * *

19 CLOSING ARGUMENT BY MR THORNTON

20 MR. THORNTON: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. THORNTON: A couple of things. First of all,
23 anything I tell you or anything Mr. Bax tells you differs from
24 what you, the jury, remembers as far as what the facts are, you
25 have to go with what you remember and not what we say. What

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1 Mr. Bax and I remember on a lot of it is completely different.
2 I don't know if you all noticed this, but just about witness
3 who came up and presented evidence, the defense disagreed with
4 what they had to offer. We talked about common sense. Please
5 keep in mind to use your common sense while you are talking
6 about this during your deliberations.

7 While we are talking about these things, it is
8 alleged that the investigators did a bad job investigating it
9 or there was some massive conspiracy with the Jasper County
10 Sheriff's Department, Fabian and SLED. All of these other
11 people were all conspiring to put innocent Dionte in prison.

12 The truth ladies and gentlemen is not even close.
13 We want to talk about there is no motive for that. Fabian has
14 a relative who has a property dispute with the victim's family,
15 but so does Dionte. It's not just true that Fabian isn't
16 cooperating. Neither is Dionte. How many times did they ask
17 him to take the gunshot residue test and he said, no.?

18 Another thing -- I will say one thing we do agree
19 on. A lie is a lie. Dionte said it couldn't have been me. I
20 was with Chamarco and Pops. Been there all day. They said,
21 who else has been in your house, right? Who else has been
22 there? Nobody. So-and-so came by. That was like 5:30.
23 Anybody else been in your house? Not until Fabian got there.

24 Who got the shoes? A 6,5, 300 pound guy got your
25 size 10 shoes without you knowing about it, ran out to the

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1 scene. You have to be the unluckiest person on the face of the
2 planet if any of that is true.

3 There is a problem. What the problem is is Pablo
4 Perez said he wasn't there. He didn't see Fabian. What is
5 interesting is that now the defense wants to say, Pablo had a
6 motive to lie and all this other stuff. The state didn't have
7 him as an alibi. Dionte did. Because now he doesn't say what
8 you wanted him to say, now you get to say, don't believe him?
9 You picked him for the alibi. Dionte sat up there and said, I
10 was with him. He was brought to Court and got up on the stand
11 and said he didn't see him. Dionte has been charged with
12 crimes. In this case, murder, firing a gun into a dwelling and
13 possessing a weapon during the commission of a violent crime.

14 One thing specifically about murder, you will hear
15 the charge so you will know what this is. If I say anything
16 that is not right, listen to the Judge's instructions about the
17 law. You are the finder of the facts. He is the finder of the
18 law.

19 You don't have to intend to harm -- or the malice
20 doesn't have to go to the actual victim. It's a reckless
21 disregard for others. So the fact that when Dionte fired that
22 gun he didn't aim at a two-year-old that he couldn't see. It's
23 the fact that he fired into an occupied dwelling in and of
24 itself is enough to show that reckless disregard.

25 Let's talk about what the evidence is. Frankly,

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1 all the stuff about Fabian is created out of thin air. Fabian
2 must have gone to hide the gun. What testimony was there that
3 any of that occurred? Was there any testimony of that? No.
4 What have you been told repeatedly about this case? This
5 case is about the evidence that you hear from the witness stand
6 and the exhibits that go in. The reason is so you can
7 determine who is telling you the truth and who is not. That is
8 it.

9 So the evidence is the witnesses on the stand and
10 the exhibits and the other items that were admitted by the
11 Judge. Let's talk about it. Sandia and Nelson Montano. What
12 did they tell you? They told you on August 16, 2018, that
13 evening, they hear multiple shots. Multiple shots fired.
14 Moises Montano is lying in bed with his mother. Does that make
15 what she says more or less believable?

16 Likely more believable when you see the photographs
17 of the bed and where Moises was laying. They call 911. The
18 first 911 call was about the shots. The second 911 call was
19 about 9:47. You know that it's slightly before. There is
20 enough time to rush there and then make the 911 call. You know
21 approximately when the shooting is.

22 Most everyone who testified indicated that it
23 sounds like it came from that field. It makes sense. At the
24 end of the trailer, next to the field, in that direction.

25 When law enforcement comes, they see bullet holes

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1 into that end of the trailer, and they start their search.

2 Detectives Davis and Godley and Corporal Frierson,
3 they are out looking. They know which end of the trailer the
4 holes are. They go out there and what do they see?
5 Shoeprints. What do they tell you? The shoeprints led you
6 exactly to the casings. There were lots of casings.

7 They testified it was only one set of prints that
8 went all the way out into that field and by the same or similar
9 shoe. That is the evidence for you to consider.

10 They hear about this property dispute pretty much
11 immediately. They look for a motive. fine. Let's start with
12 that. It's interesting because oftentimes you heard all of the
13 police had tunnel vision. They just stayed with that opinion
14 the whole time. They didn't look at anything else.

15 That is not what they did in this case. They go
16 out to Ingram Lane. You can look and see. Not sure exactly
17 what the dispute is about, but from the condition of the
18 ground, you can look at it and see what the condition of the
19 ground is. That is the shoe. That is the shoe that Dione was
20 wearing less than an hour after the murder.

21 Is that that big of a coincidence?

22 So you can look at the ground and see where Ingram
23 Lane meets a paved road. Jasper County is not unlike any other
24 county. Dirt and paved roads meet. A little bit out into the
25 pavement, the testimony was we looked down and Dione was

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1 making impressions. We asked him to lift his shoe. We took a
2 picture of it. Eventually, those shoes are secured. Dionte
3 says, it couldn't have been me. I was with Chamarco. No, you
4 weren't. Chris Johnson. What does Chris Johnson tell you? I
5 walk out and I see this guy. He is a medium-build guy. A
6 medium-build guy, about 180 pounds. He said in his interview,
7 Fabian, in his interview said he is over 300 pounds.

8 He said it's a Buick. What is interesting about
9 the Buick -- it's in the interview. You know who else
10 mentioned he had been riding around in a Buick that day?
11 Dionte. He gives me rides sometimes. What kind of car? I
12 don't think it's a Ford. It's a Buick. It's on the tape.

13 So Chris Johnson says he sees this. He hears
14 gunshots. He sees the same person. He cannot identify him
15 running back from that field. Is that consistent with what
16 they found in the field? Yes. They found the footprint and
17 shell casing. Is that consistent with anyone else? No.

18 Nelson got up and he said, I saw Donald Stevenson
19 over here and over on that road. He saw what? Taillights.
20 All of that is consistent. About three times during the
21 interview they talked about the shoes. I went out and I put my
22 shoes on. I put my shoes on.

23 Then at some point he says something about -- those
24 are not my shoes. Those were Mary's shoes. When did Mary get
25 arrested? About four months ago. You have been wearing those

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1 shoes for four months?

2 A lot was made of the fact he hadn't been to his
3 aunt's or cousins, Ms. Habersham's house in a long, long time.
4 Why are his shoeprints out there? I go out there all the time.
5 If he is not supposed to be going out there, why are his
6 shoeprints out there?

7 We didn't present any evidence that he was wearing
8 the shoes? He was wearing them less than an hour later.
9 Again, it goes back to he just said he just jumped out of the
10 shower and put those on. Except the alibi he gave is that is
11 not true. Where else could he have been? He didn't come out
12 of smoke. Fabian has a camper right there. They were together
13 when they walked to the head of the road. Maybe he was at
14 Fabian's.

15 I can tell you where he wasn't. He wasn't where he
16 said he was. He has lied. His alibi does not hold up. At the
17 end of the day, ladies and gentlemen, what you have to figure
18 out in this case is what the evidence is and where does it lead
19 you? Again, as I have said, the truth is not multiple choice.
20 It isn't. Well, we didn't do it because somebody else did it.
21 Or, we didn't do it because the police screwed up. Or if you
22 don't like that one, how about we didn't do it because it's a
23 conspiracy? They are shootings off guns that aren't here so we
24 can run gunshot residue all over Dionte right before we give
25 him a gunshot residue test.

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1 You don't get to pick and choose the truth. Talk
2 about circumstantial evidence. The Court will tell you that
3 cases have both circumstantial and direct evidence or one or
4 the other. The law makes no distinction between the weight you
5 give any evidence, circumstantial or direct. This case is no
6 different than any other. You have to take what the evidence
7 is. Remember what I talked to you about before, about waiting
8 until all the evidence is in before you make your decision.

9 So what is the evidence in this case? Well, you
10 have a Facebook post on Dione Habersham's Facebook account.
11 Don't beef with my family. It's a lot of us and we can't
12 control each other, so boom. The date that the shooting
13 occurred where you have a big pile of shell casings in the
14 field that are all shot by the same gun. They are 9
15 millimeter.

16 You have slugs pulled out of the trailer and a slug
17 pulled out of a two-year-old Moises Montana, which are all
18 consistent with a 9 millimeter. You have shoeprints, two of
19 which are consistent and one of which are a definitive match to
20 these shoes, specifically the left shoe, which Dione is
21 wearing less than hour after the murder.

22 You have gunshot residue on his hands, you have
23 gunshot residue on his shirt, and you have gunshot residence on
24 his shorts. Before he gets taken into the car, he says, don't
25 worry. I got you cuz. Why?

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1 There is one other thing that I found interesting
2 in the interview. They kept talking about why mess with guns.
3 You heard the interview. He said, I don't mess with guns. I
4 am not old enough to have a handgun. How did he know it was a
5 handgun? Why not a shotgun or a rifle? How did he know?

6 Finally, ladies and gentlemen, he lies about where
7 he was. You have a match to his shoes. You have all the shell
8 casings fired from the same gun, the same caliber as the
9 bullets pulled out of the house. There is a medium-sized man
10 who is seen running from the scene. He has got gunshot residue
11 on his hands and clothes. He lies. Innocent people don't have
12 to lie about where they were and what they were doing.

13 When you consider the threat, that shows the
14 motive. Why post that the same day? When you consider the
15 threat, when you consider the gunshot residue on his hands, on
16 his shirt, on his shorts. Three separate shoeprints, two of
17 which are consistent and one of which is a match, all of the
18 other things and the fact that he lies, ladies and gentlemen,
19 there is only one conclusion you can come to.

20 There is no hole or bridge or chasm. Where does
21 the evidence lead you? Where did those shoeprints lead you?
22 They only lead to one place. Dionte Habersham. It would be a
23 tragedy to let the death of two-year-old Moises Montano go
24 unanswered, because the person who did it --

25 MR. BAX: That's improper.

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1 MR. THORNTON: I don't believe it's improper, but
2 I'll move on.

3 THE COURT: Okay.

4 MR. THORNTON: When the person who did it, ladies
5 and gentlemen, is seated right there at the defense table.

6 How much more evidence do you need? How much more
7 science do you need? How many more lies about where he was and
8 what he was doing did he have to tell? Thank you.

9 * * *

10 JURY CHARGE

11 THE COURT: All right.

12 Ladies and gentlemen of the jury, it's my turn at
13 this point to charge you on the law which you will apply to the
14 facts in this case. It's not overly lengthy, but please give
15 me your full attention. I will just state that at the end, I
16 will allow you to have this in the back for your reference if
17 you need it, because it is the law in the case.

18 Indictment Number 2018-GS-27-00673, charges Dionte
19 Habersham with the charge of murder.

20 2019-GS-27-00640 charges Dionte Habersham with the
21 charge of discharging a firearm into a dwelling.

22 2018-GS-27-00674 charges the indictment for
23 possession of a weapon during the commission of a violent
24 crime. I remind you that the fact the defendant was arrested,
25 charged, and indicted in this case is not evidence in this case

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1 and cannot be considered by you as evidence of guilt in this
2 case, nor does it create any presumption or inference of guilt.
3 These documents are simply the formal written instruments which
4 contain the charges made against the defendant. It is the
5 formal document by which this case is brought into this Court.

6 I also remind you that during this trial, you and I
7 had certain duties to perform. As the trial judge, it's my
8 responsibility to preside over the trial of this case. I also
9 have the duty to rule on the admissibility of the evidence
10 offered during this trial. You are to consider only the
11 competent evidence before you. If there was any testimony
12 ordered stricken from the record during this trial, you must
13 disregard that testimony. You are to consider only the
14 testimony which has been presented from this witness stand, any
15 exhibits which have been made a part of the record in this
16 case, and any stipulations of counsel.

17 I have the additional duty to charge you the law
18 applicable to this case. As the presiding judge, I am the sole
19 judge of the law of this case. It is your duty as jurors to
20 accept and apply the law as I now state it to you. If you
21 already have an idea as to what the law is or what the law
22 ought to be and it does not agree with what I now tell you the
23 law is, you must abandon this idea, because you are sworn to
24 accept the law and apply the law exactly as I state it to you.

25 In every case tried in this court before a jury,

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1 the jury becomes the sole and exclusive judge of the facts in
2 the case. A trial judge cannot intimate, state, comment on, or
3 make any statement to a trial jury about the facts in a case.
4 Since you the jury are the sole judge of the facts of this
5 case, you are not to infer what I have said during the progress
6 of this trial and ruling upon the admissibility of evidence or
7 otherwise or anything that I say now during the course of this
8 instruction to you that I have any opinion about the facts in
9 this case. The law does not allow me to have any opinion about
10 the facts in this case. This is a matter solely for you, the
11 jury, to determine. As jurors, it is your duty to determine
12 the effect, value, weight, and truth of the evidence presented
13 during this trial.

14 The indictments in this case allege several
15 difference offenses against the defendant. Each of these
16 charges are separate and distinct offenses. You must decide
17 each charge separately on the evidence and the law applicable
18 to it, uninfluenced by your decision as to any other charges.

19 The defendant may be convicted or acquitted on any
20 or all of the offenses charged. You will be asked to write a
21 separate verdict of guilty or not guilty for each indictment.

22 Also the defendant has pled not guilty to these
23 indictments. That plea puts the burden on the State to prove
24 the defendant guilty. A person charged with committing a
25 criminal offense in South Carolina is never required to prove

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1 himself innocent. I charge you that it is an important rule of
2 law that the defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be presumed to be
4 innocent of the crime for which the indictment was issued
5 unless guilt has been proven by evidence satisfying you of that
6 guilt beyond a reasonable doubt. This presumption of innocence
7 does not end when you begin your deliberations. It accompanies
8 the defendant throughout the trial until you reach a verdict of
9 guilt based on evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is not mere legal
12 theory. It is not just a legal phrase. It is a substantial
13 right to which every defendant is entitled unless you, the
14 jury, are satisfied from the evidence of the defendant's guilt
15 beyond a reasonable doubt.

16 What is reasonable doubt? The State has the burden
17 of proving the defendant guilty beyond a reasonable doubt.
18 Some of you have served in a civil case where you were told
19 that it is only necessary to prove that a fact is more likely
20 true than not true, such as by the greater weight or
21 preponderance of the evidence. In criminal cases, the State's
22 proof must be more powerful than that. It must be beyond a
23 reasonable doubt.

24 Reasonable doubt is the kind of doubt that would
25 make a reasonable person hesitate to act. Proof beyond a

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1 reasonable doubt is proof that leaves you firmly convinced of
2 the defendant's guilt. There are very few things in this world
3 that we know with absolute certainty. In criminal cases, the
4 law does not require proof that overcomes every possible doubt.

5 If based on your consideration of the evidence you
6 are firmly convinced that the defendant is guilty of the crime
7 charged, you must find the defendant guilty.

8 If on the other hand you think there is a real
9 possibility that the defendant is not guilty, you must give the
10 defendant the benefit of the doubt and find him not guilty.

11 Facts and circumstances that merely place upon the defendant a
12 grave suspicion of the crime charged or that merely raises
13 speculation or conjecture of the defendant's guilt are not
14 sufficient to authorize a conviction of the accused.

15 There are two types of evidence which are generally
16 presented during a trial. Direct evidence and circumstantial
17 evidence. Direct evidence directly proves the existence of a
18 fact and does not require deduction.

19 Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of a fact.
21 Crimes may be proven by circumstantial evidence. The law makes
22 no distinction between the weight or the value to be given to
23 either direct or circumstantial evidence.

24 However, to the extent the State relies on
25 circumstance evidence, all of the circumstances must be

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 consistent with each other, and when taken together point
2 conclusively to the guilt of the accused beyond a reasonable
3 doubt.

4 If these circumstances merely portray the
5 defendant's behavior as suspicious, the proof has failed. The
6 State has the burden of proving the defendant guilty beyond a
7 reasonable doubt. The burden rests with the State regardless
8 of whether the State relies on direct evidence, circumstantial
9 evidence, or some combination of the two.

10 Also, necessarily you must determine the
11 credibility of the witnesses who have testified in this case.
12 Credibility simply means believability. It becomes your duty
13 as jurors to analyze and to evaluate the evidence and determine
14 which evidence convinces you of its truth. In determining the
15 believability of witnesses who have testified in this case, you
16 may believe one witness over several witnesses or several
17 witnesses over one witness. You may believe a part of the
18 testimony of a witness and reject the remaining part of the
19 testimony of that same witness. You may believe the testimony
20 of a witness in its entirety or reject the testimony of a
21 witness in its entirety.

22 You may consider whether any witness has exhibited
23 to you any interest, bias, prejudice, or other motive in this
24 case. You may also consider the appearance and manner of the
25 witness while they were on the witness stand.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 As to expert witnesses, the rules of evidence
2 ordinarily do not permit witnesses to testify to opinions or
3 conclusions. An exception to this rule exists for witnesses we
4 call expert witnesses. A witness who by education and
5 experience has become an expert in some art, science,
6 profession, or calling may state an opinion as to relevant and
7 material matter in which the witness claims to be an expert and
8 may also state the reasons for their opinions. You should
9 consider any expert opinion received in evidence in this case,
10 and like any other evidence give it the weight you think it
11 deserves. If you decide that the opinion of an expert witness
12 is not based on sufficient education or experience or you
13 conclude that the reasons given in support of the opinion are
14 not sound or that the opinion is outweighed by other evidence,
15 you may disregard the opinion in its entirety.

16 An expert witness; testimony is to be given no
17 greater weight than that of other witnesses simply because the
18 witness is an expert. Further, you are not required to accept
19 an expert's opinion, even though it is not contradicted.

20 Also, I instruct you and emphasize that the fact
21 that the defendant did not testify is not a factor to be
22 considered by you in any way in your deliberation and your
23 consideration on the question of the guilt or the innocence of
24 the defendant. It must not be considered by you in any manner
25 whatsoever. A defendant has the constitutional right to remain

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 silent. The assertion of this right must not be considered by
2 you in your deliberations. I repeat, under your oath you are
3 to draw no conclusion whatsoever from the fact that the
4 defendant in this case did not testify. The fact that this
5 defendant did not testify should not even be discussed in the
6 jury room at all. The burden of proof, as I have stated to
7 you, is on the State. The defendant is not required to prove
8 his or her innocence. The burden of proof remains on the State
9 to prove guilt beyond a reasonable doubt.

10 In order to establish criminal liability, criminal
11 intent is required. For example, the mental state required to
12 be proven by the State for a particular crime might be purpose,
13 intent, knowledge, recklessness, or criminal negligence.
14 Criminal intent must be proven by the State beyond a reasonable
15 doubt. Criminal intent is always a matter that must be
16 determined by the jury from the circumstances surrounding the
17 situation. There is no way to prove intent to a mathematical
18 certainty. There is no way medical science can dissect a
19 person's brain and determine what the person had in mind. So
20 the law says that criminal intent may be inferred from the
21 circumstances shown to have existed. This is how you make a
22 determination of whether or not the element requiring intent
23 was present. It is not necessary to establish intent by direct
24 and positive evidence. Intent may be established by inference
25 in the same way as any other fact by taking into consideration

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 the acts of the parties and all the facts and circumstances of
2 the case. Criminal intent is a mental state, a conscious
3 wrongdoing. It is up to you to determine what the defendant
4 intended to do based on the circumstances shown to have
5 existed.

6 Criminal intent can arise from action or a failure
7 to act. It may arise from negligence, recklessness, or an
8 indifference to duty or to consequences that is considered by
9 the law to be equivalent of a criminal intent.

10 The defendant in this case has been charged with
11 murder. Under South Carolina law murder is defined as the
12 killing of another person with malice aforethought, either
13 express or implied. In order to find the defendant guilty of
14 murder, you must find that the State proved beyond a reasonable
15 doubt that the defendant killed another with malice
16 aforethought. Malice is the wrongful intent to injure another
17 and indicates a wicked or a depraved spirit intent on doing
18 wrong. It is the intentional doing of a wrongful act without
19 just cause or excuse and with an intent to inflict an injury or
20 under a circumstance that the law will infer an evil intent.

21 In the context of murder, malice does not
22 necessarily require ill-will toward the individual that was
23 injured. Rather, it signifies a general malignant recklessness
24 of the lives and safety of others or a condition of the mind
25 which shows a heart, regardless of social duty and fatally bent

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 on mischief.

2 Although malice must be an aforethought, the law
3 does not require malice to exist for any appreciable length of
4 time before the commission of the act. Malice may conceive at
5 the very moment the act occurred. But there is the requirement
6 that the evil intent must exist at the time of the act that
7 produces the killing. Malice aforethought may be either or
8 expressed or implied. The terms express and implied do not
9 mean different kinds malice, but merely manner in which the
10 malice can be shown to exist. This is either by direct
11 evidence or by inference from the facts and circumstances which
12 are proved.

13 Express malice is when there is a deliberate
14 intention to unlawfully take the life of another. Express
15 malice can be shown when a person speaks words which expresses
16 hatred or ill-will for another, or when the person prepared
17 beforehand to do the act that was accomplished. Malice can
18 also be implied or inferred when the circumstances demonstrate
19 a person had a wanton or reckless disregard for human life, or
20 when a reasonably prudent person would have known that
21 according to common experience there was a plain and strong
22 likelihood that death would follow the contemplated act.

23 The defendant is also charged with possession of a
24 weapon during the commission of or attempt to commit a violent
25 crime. The State must prove beyond a reasonable doubt that the

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 defendant was in possession of a firearm or visibly displayed
2 what appeared to be a firearm during the commission of a
3 violent crime. A firearm means any machine gun, automatic
4 rifle, revolver, pistol, or any weapon which will as designed
5 to or may be readily converted to expel a projectile.

6 In order to find the defendant guilty of possession
7 of a weapon during the commission of a violent crime, you must
8 first find the defendant guilty of either committing a violent
9 crime or attempting to commit a violent crime. Murder is
10 considered a violent crime. The State must prove beyond a
11 reasonable doubt that the weapon further advanced or helped in
12 the commission of that crime.

13 Also, the defendant is charged with discharging a
14 firearm at or into a dwelling, structure, enclosure, vehicle,
15 or equipment. It is unlawful for a person to discharge or
16 cause to be discharged unlawfully firearms at or into a
17 dwelling, house, other building, structure, or enclosure
18 regularly occupied by a person or persons.

19 All right. I know that is a lot. Again, you will
20 have it in the back. What I am going to ask you to do in just
21 a couple of moments is, if you will excuse us and retire to the
22 jury room, there are a couple of matters I need to take up with
23 the attorneys before I send everything back. At that time we
24 will send all of the evidence that was allowed in this case
25 back, and I will ask the bailiffs to instruct you to begin your

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 deliberations.

2 Mr. Foreman, I will now inform you of your
3 continued duties. This is the jury verdict form. I will give
4 it to you along with the charge. The verdict form simply says,
5 State of South Carolina v. Dionte Habersham, as to the charge
6 of murder on or about August 16, 2018, we the jury unanimously
7 find the defendant not guilty or guilty. Just check one. The
8 same for the other two charges.

9 Once you have completed your deliberation, you will
10 sign it, date it. Please knock on the door and give it to the
11 bailiff and we will bring you out. Another duty that you
12 have -- this is a unanimous verdict. All right. All 12 of you
13 must agree on the verdict. If someone excuses themselves to go
14 to the rest room or has some type of side conversation, please
15 stop the deliberation. It needs to be everybody's unanimous
16 deliberation, okay, or verdict.

17 So with that, I am going to excuse you all to the
18 jury deliberation room. Please do not begin discussing the
19 case. I will send everything in in just a couple of moments.

20 Again, Mr. Foreman, if you have any questions
21 throughout the deliberations, I task you with the duty of
22 reducing it to writing, whoever has the actual question. Sign
23 it, date it, and give it the bailiff and they will bring it to
24 me, and I will answer each and every questions if you all have
25 any questions. All right. Thank you all so very much.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 (Jury exits courtroom.)

2 THE COURT: Anything as to the charge from the
3 State?

4 MR. THORNTON: Nothing from the State.

5 THE COURT: From the defense?

6 MR. BAX: Nothing as to the charge, Your Honor.

7 THE COURT: Okay.

8 MR. BAX: Briefly, I do want to put on the record
9 that I had an objection during the closing. I just want to
10 make sure that I put it on the record. I hope I quoted this
11 correctly. The comment was to the effect that it would be a
12 tragedy to let the death of Moises Montano go unanswered. The
13 objection I had to that. I hope I am recalling the law
14 correctly for the prosecution to make a comment to the jury
15 that if they don't have this verdict, then there won't be
16 justice. In other words, this is the last opportunity if they
17 don't do it. I think that that goes to the idea that it would
18 go to the jury's sympathy versus their factual analysis of the
19 law. The idea of whether or not anyone else was ever tried for
20 the offense is not relevant for the jury. That was the basis
21 for my objection.

22 I think, not that I want to -- I think Shawn and I
23 have worked really hard on this case. I think I have to move
24 for a mistrial based on that.

25 THE COURT: I understand compassionate nature of

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 the jury, but I didn't find it rose to that level, so I will
2 deny your motion for a mistrial.

3 MR. BAX: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. BAX: Your Honor, the other thing I wanted to
6 say is make sure we pull out the alternates.

7 THE COURT: Not until this goes back. When you
8 take it back, I send this back with you all to remind me to
9 bring the alternates back out to me.

10 MR. THORNTON: Your Honor, with the Court's
11 permission, I will try to get this organized so we can all go
12 through it. I will try to get it in order.

13 (At 3:37 p.m., the court stands in recess while the
14 jury deliberated on their verdict.)

15 THE COURT: All right. They have requested they be
16 allowed to review the Bees Creek Road video, Exhibit 25. They
17 have attached the video.

18 Do we have the ability to allow them to do that?

19 MR. THORNTON: Yes, sir. It depends. We can do
20 that. Do you want one sent back to them, or do you want them
21 brought out to look? I am here with the clerk. We will do
22 either. I don't have a clean laptop, but if she has one, I
23 have a disk drive. If we can get it to work, we can send it
24 back with them. I will just have to set it up, because it's a
25 proprietary player.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 THE COURT: How long is this?

2 MR. THORNTON: There are several clips on it. The
3 first two clips were the ones I played. They are probably not
4 more than two minutes.

5 THE COURT: Let's just do it in here then. Go
6 ahead and it get wound up, and we will bring them in.

7 MR. THORNTON: It will just take me a couple of
8 minutes to get it ready.

9 (Jury enters courtroom.)

10 THE COURT: Mr. Foreperson, what would you like to
11 see?

12 THE FOREPERSON: The first interview of Dionte
13 Habersham.

14 THE COURT: The initial -- the bodycam. There was
15 three. Do you all want to see all three? It's about an hour
16 long. There are three videos in all?

17 They want to see the one where she initially drives
18 up and begins speaking to Dionte and Fabian. They just gave me
19 all the disks. I don't know which one it is.

20 MR. THORNTON: I will have to figure it out. It
21 will take me a minute.

22 THE COURT: They submitted all the disks back out.
23 They gave us 24, 26 --

24 MR. THORNTON: It's on 24, I believe.

25 THE COURT: Give us just a second, please.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 Ladies and gentlemen of the jury, as we indicated
2 previously, the disk that went into the back is not
3 transcribed, but for the purposes of showing you all what was
4 produced at trial, we are going to show you the same one.
5 Again, what you hear is what you hear. Whatever is transcribed
6 is just for demonstrative purposes. That is not considered to
7 be evidence. So listen up for what you want to hear.

8 You okay with that?

9 MR. THORNTON: Yes, sir.

10 MR. BAX: Yes, Your Honor.

11 THE COURT: Give us one second. We can pull that
12 one up a lot faster than we can do the other one.

13 (Video played for the jury.)

14 MR. THORNTON: Your Honor, that is the end of the
15 first one.

16 THE COURT: Is that sufficient, Mr. Foreperson?

17 THE FOREPERSON: Yes.

18 THE COURT: All right. Then please continue your
19 deliberations. If you have any other questions, just reach
20 out, and we will be happy to help you. All right.

21 We will be in recess.

22 (Jury exits courtroom.)

23 * * *

24 READING OF THE VERDICT

25 * * *

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 THE COURT: Mr. Foreman, it's my understanding that
2 you have a verdict.

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: Give the verdict form to Madam Clerk.
5 Mr. Habersham, please stand.

6 As to Indictment Numbers 2019-GS-00640, 0673, 0674,
7 we the jury unanimously find as to murder, guilty. As to the
8 charge of discharging a firearm into a dwelling on or about
9 August 16, 2018, we the jury unanimously find the defendant
10 guilty.

11 As to the charge of possession of a weapon during
12 the commission of a violent crime on or about August 16, 2018,
13 we the jury unanimously find the defendant guilty.

14 I certify that this is the unanimous decision of
15 the jury, signed the foreperson and dated today's date, July
16 22, 2021.

17 If this is your verdict, please indicate by raising
18 your hand. Is it still your verdict?

19 Let the record reflect that all 12 have been
20 polled, and it still remains their verdict. All right.
21 Anything as to the verdict?

22 MR. THORNTON: Nothing from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. BAX: I would ask that the jury be polled, Your
25 Honor.

STATE v. DIONTE J. HABERSHAM - 2018-GS-27-00673, etc.

1 I want to thank you so very much for your constant
2 attention to this case. You asked questions. Obviously, you
3 wanted to re-watch video. I want to thank you for all of that.
4 In doing so, I always allow the jury to stay for the sentencing
5 so they can indicate, kind of see what is going on as to what
6 the verdict is.

7 Mr. Habersham, if you will stand. I am going to
8 submit you to the State Department of Corrections for a term of
9 33 years. All right. Good luck to you.

10 Anything further?

11 MR. THORNTON: Nothing from the State, Your Honor.
12 Thank you.

13 THE COURT: All right. I will fill the sentencing
14 sheets out.

15 Ladies and gentlemen of the jury, you are free to
16 go. Again, thank you for all your time and effort.

17 (At 7:06 p.m. the proceedings were concluded.)

18 * * *

19 END OF VOLUME V

20 END OF TRANSCRIPT

21

22

23

24

25

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WITNESSES

CJ Lowery - JCSO

DOCKET NO. 2018GS2700673

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Dionte D'Chon Habersham

ARREST WARRANT NUMBER

2018A2710100134

ACTION OF GRAND JURY

TRUE BILL
NO BILL
FOREMAN
DATE

9/26

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date: 7-22-2024

INDICT

STATE OF SOUTH CAROLINA

INDICTMENT

493

COUNTY OF JASPER

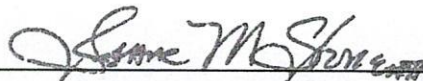
2018GS2700673

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about August 16, 2018, the Defendant, Dionte D'Chon Habersham, did, with malice aforethought, kill Moises R Montano and Moises R Montano did die as a proximate result of Dionte D'Chon Habersham's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF

JASPER

STATE

VS.

DIONTE D'Chon HABERSHAM

AKA:

Race: BLACK Sex: MAGE Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] CHELSEA LANE

City, State, Zip: RIDGEWOOD, SC. 29936

DL#* [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2018-GS-27-00673

A/W#: 2018A2710100134

Date of Offense: 8/16/2018

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: MURDER

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 33 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

WITNESSES

DOCKET NO. 2018GS2700674

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

CJ Lowery - JCSO

The State of South Carolina

County of Jasper

Defendant

COURT OF GENERAL SESSIONS

August Term 2019

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2018A2710100135

THE STATE

vs.

Dionte D'Chon Habersham

ACTION OF GRAND JURY

Indictment For

**Possession of Weapon During
Violent Crime**

SC Code: 16-23-490

CDR Code: 0549

Defendant

VERDICT

GUILTY

Witness:

Foreperson of Grand Jury
Date: 9/26

Foreperson of Petit Jury

Date: 7-22-2021
INDICT

C.C.C. PLS. and G.S.

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STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

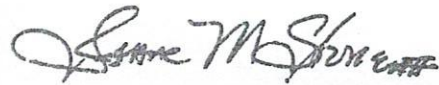
INDICTMENT
2018GS2700674

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about August 16, 2018, the Defendant, Dione D'Chon Habersham, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime and Dione D'Chon Habersham was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Jasper

STATE

VS.

AKA:

Race: BLACK Sex: MALE Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] Chelsea LnCity, State, Zip: Ridgeland, SC 29936DL#* [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2018-GS-27-00674

A/W#:

Date of Offense: 8/16/2018

S.C. Code §:

CDR Code #:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession of Weapon During Violent CrimeIn violation of § 16-23-420 of the S.C. Code of Laws, bearing CDR Code # 0548 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2018-GS-27-00673☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

AB

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WITNESSES

CJ Lowery - JCSO

DOCKET NO. 2019GS2700640

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

August Term 2019

THE STATE

vs.

Dionte D'Chon Habersham

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Direct Indictment For

Discharge Firearm At or Into
Dwelling

SC Code: 16-23-440(A)

CDR Code: 0052

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7-22-2021

INDICT

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

)
)
)

DIRECT
INDICTMENT

499

COUNTY OF JASPER

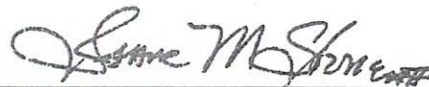
2019GS2700640

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Jasper County present upon their oath:

Discharge Firearm At or Into Dwelling

That in Jasper County, South Carolina, on or about August 16, 2018, the Defendant, Dionte D'Chon Habersham, did discharge, or cause to be discharged, a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons, all in violation of Section 16-23-440(A), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

500

STATE OF SOUTH CAROLINA

COUNTY OF

Jasper

STATE

VS.

AKA:

Race: Black Sex: Male Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Cheivea Ln

City, State, Zip: Ridgeland, SC 29936

DL#* [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2019-GS-27-00640

A/W#:

Direct indictment

Date of Offense:

8-16-2018

S.C. Code §:

16-23-440(A)

CDR Code #:

0052

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Discharge Firearm At or Into Dwelling

In violation of § 16-23-440(A) of the S.C. Code of Laws, bearing CDR Code #

0052

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

2018-GS-27-00673

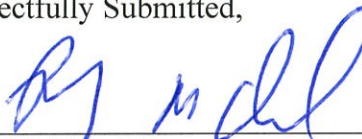
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Jun 01 2023

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of May, 2023.

From: [Warren, Kaylynn](#)
To: [SC - BROWN MELODY](#)
Cc: [Angela Brown](#); [Dudek, Robert](#)
Subject: 2021-000805 The State v. Dione J"Chon Habersham
Date: Monday, May 22, 2023 1:50:00 PM
Attachments: [2021-000805 The State v. Dione J"Chon Habersham Proposed Transportation Order and Cover Letter.pdf](#)
[2021-000805 The State v. Dione J"Chon Habersham Record on Appeal.pdf](#)

Good Afternoon,

Attached for service in the above-referenced case is the Record on Appeal and Proposed Transportation Order which will be filed today, May 22, 2023, with the Court of Appeals via OneDrive.

Respectfully,
Kaylynn

Kaylynn Warren

Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330