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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of

The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Vincent Thomas Shivers,

APPELLANT.

APPELLATE CASE NO. 2022-000425

RECORD ON APPEAL – Volume I

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF LEXINGTON) GENERAL SESSIONS
4
5 THE STATE,)
6 Plaintiffs,)
7 Vs.) CASE NO. 2020-GS-32-2491
8 VINCENT SHIVERS,) 2020-GS-32-2422
9 Defendant.)

10
11 MARCH 21-25, 2022

12 LEXINGTON, SOUTH CAROLINA
13

14 HONORABLE DEBRA R. MCCASLIN, JUDGE

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

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17 LEANNA S. MCMENAMIN, ESQUIRE

18 Attorneys for the Plaintiffs

19 BY: JACK B. SWERLING, ESQUIRE

20 DEBORAH B BARBIER, ESQUIRE

21 ALISSA L. WILSON, ESQUIRE

22 Attorneys for the Defendant
23

24 BETHANIE K. CREPPON,

25 OFFICIAL COURT REPORTER

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1 THE COURT: I'm going to get the State
2 to call their case, please.

3 MS. MAYES: Your Honor, may it please
4 the Court?

5 Your Honor, before you is Indictment
6 No. 2020-GS-32-2419A. This indictment is the State
7 of South Carolina versus Vincent Thomas Shivers.
8 This indictment is for murder.

9 Indictment No. 2020-GS-32-2422A, the
10 State of South Carolina versus Vincent Thomas
11 Shivers. This indictment is for possession of a
12 weapon during commission of a violent crime.

13 Your Honor, the State is ready for
14 trial in this case. The Defendant is present and
15 represented by counsel.

16 THE COURT: All right. And how does
17 the Defendant plead, Mr. Swerling?

18 MR. SWERLING: Not guilty.

19 THE COURT: Thank you.

20 All right. Ladies and gentlemen,
21 before we begin the jury selection, there are just
22 a few questions that I will need to ask you. If
23 you need to answer any of these questions, I'm
24 going to ask you to stand and I am going to call on
25 you individually. Do not blurt out any answer. I

1 I didn't want to bring you in because normally we
2 usually start the case the next morning. This case
3 is going to be a little bit different. We're not
4 starting tomorrow morning. We are probably going
5 to start about 2:15, 2:30 is when we're going to
6 start this case. I would ask that you be in your
7 jury room no later than 2:15 tomorrow. Okay. And
8 we're probably going to work a little late. And
9 when I say late, we might go till about 6:00 or
10 6:30. I'll try not to keep y'all that long. So
11 hopefully I can make it up to you the following
12 day.

13 All right. Mr. Alphonso, do me the
14 honor of being my foreman?

15 THE FOREPERSON: I will.

16 THE COURT: Thank you. They'll have
17 you a seat tomorrow when you come in. Okay. All
18 right. With that said, thank you. I hope you have
19 a good evening. Remember, absolutely nothing about
20 this case to anyone. Believe it or not we find out
21 about it, you'd be amazed. I'm amazed. But don't
22 do it, please. Thank you.

23 (WHEREUPON, the jury exits the
24 courtroom at 3:23 p.m.)

25 THE COURT: All right. Let me ask, any

1 motions from the State?

2 MS. MAYES: Independent of jury
3 selection?

4 THE COURT: Independent of jury
5 selection.

6 MS. MAYES: Your Honor, the Defense has
7 made a motion in this case to suppress the entry
8 into the residence by the Lexington County
9 Sheriff's Department on September 3, 2019. That is
10 the immediate motion. I believe that all parties
11 are prepared to deal with.

12 THE COURT: Okay. Is there any motion
13 as to jury selection?

14 MS. MAYES: None from your State, Your
15 Honor.

16 THE COURT: Anything from the Defense?

17 MR. SWERLING: We have none.

18 THE COURT: Okay. It is 3:24. Do
19 y'all mind if I have a ten minute break and we will
20 come back and do the suppression motion if the
21 Defense is ready?

22 MS. WILSON: Yes, Your Honor.

23 THE COURT: Okay. Give me ten minutes.

24 (There was a short break)

25 THE COURT: Let me just say this for

1 the record because it kind of bothers me. When the
2 lawyers came up to the bench, we were talking about
3 a juror who rolled their eyes. Now, I was talking
4 to the court reporter, it seems like he did more
5 than roll his eyes. In fact, I believe he said a
6 cuss word as he walked by. I've got enough jurors,
7 they haven't even been sworn in. I can take him
8 off. So I'd like to hear from y'all about that.

9 MS. MAYES: Your Honor, we consent. If
10 we had realized that he was so adverse to actually
11 serving as a juror, if he had approached about
12 whatever hardship he may be facing. Whatever it
13 may be, we would have taken that into account and
14 used a strike. But we certainly observed that when
15 he turned to be seated, he was angry, he had rolled
16 his eyes. Assistant Solicitor heard him curse as
17 well. And then --

18 THE COURT: It wasn't a very good word
19 either. One of the words that people don't -- I
20 haven't heard in a long time.

21 MS. MAYES: When he was seated, he then
22 glared in a look of disgust, turned away from the
23 other juror's and was huffing and puffing, I think
24 would be the correct term as he was seated in the
25 juror box.

1 THE COURT: Right. Well, my concern
2 was that he was glaring -- glaring at the State, is
3 what it appeared to be. Isn't that right,
4 Bethamine?

5 MS. CREPPON: Yes, ma'am.

6 THE COURT: Because we talked about
7 that. But, Ms. Barbier, I would be glad to hear
8 from you.

9 MS. BARBIER: Your Honor, I appreciate
10 the Court's concern. And I think that before a
11 decision would be made to remove him, we'd like you
12 to separately question him in the morning or when
13 they come in in the afternoon and just ask him if
14 there was a reason that he made the gestures that
15 he did or that -- and ask him for clarification
16 about what he said. I didn't hear anything, but I
17 trust that y'all are a lot closer.

18 I would like to know why he made those
19 gestures. He might say he was joking around.

20 THE COURT: Right.

21 MS. BARBIER: He might say he did it in
22 jest. He might be very happy to serve. I think
23 that we should give him the opportunity to address
24 it before taking him off completely.

25 THE COURT: Okay. Well, I'll address

1 him in the morning and then we'll take up that
2 matter. I just wanted to bring it to y'all's
3 attention after the court reporter said something
4 to me, I thought it was important.

5 Okay. Now we're going on for a motion
6 to suppress?

7 MS. MAYES: Yes, Your Honor. I believe
8 you have had an opportunity to see the memos
9 submitted by the State as well as the motion from
10 the Defense.

11 THE COURT: I do.

12 MS. MAYES: So we have two issues
13 before us. One is the initial entry of Deputy
14 Joshua Hale onto the premises at 216 Carriage Hill
15 Court which was for a welfare check. And that
16 welfare check was initiated by Steve Smith, the
17 general manager of Camping World where the
18 Defendant was employed. That is after the
19 Defendant had not appeared for work on both Tuesday
20 -- or Monday and Tuesday. That would be Monday the
21 2nd and Tuesday the 3rd. The deputy arrives on
22 Tuesday the 3rd to conduct a welfare check. So the
23 first issue before us is the Community Caretaker
24 Doctrine.

25 And then, secondly, Your Honor, as he

1 approaches the balcony of the backyard patio, he
2 can observe the victim within the glass doorway.
3 So the State will call Deputy Joshua Hale in
4 regards to the entry into the residence which is an
5 exigent entry as the State maintains pursuant to
6 extensive case law.

7 THE COURT: Okay. Go ahead -- is the
8 Defense ready?

9 MS. WILSON: We are, Your Honor.

10 THE COURT: All right. Then call your
11 next witness.

12 MS. MAYES: And just to back up a
13 little bit, Your Honor. Deputy Hale is here and
14 will be testifying. We also have Steve Smith from
15 Camping World. And we're going to start with him
16 since it is a welfare check.

17 THE COURT: Okay.

18 STEVE SMITH,
19 being first duly sworn, was examined and testified
20 as follows:

21 MR. SMITH: I do.

22 THE CLERK: Have a seat up there. If
23 you'll state your name and spell your last name for
24 the record.

25 MR. SMITH: Okay. Steven Smith,

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 S-M-I-T-H.

2 MS. MCMENAMIN: I beg the Court's
3 indulgence, Your Honor, while I move the podium.

4 THE COURT: Take your time.

5 DIRECT EXAMINATION

6 BY MS. MCMENAMIN:

7 Q. Mr. Smith, where are you currently
8 employed?

9 A. Camping world of Ashville.

10 Q. And what is your position with --
11 actually, can you move that microphone just a
12 little bit closer to you?

13 A. Camping World of Ashville.

14 Q. What is your position there?

15 A. General manager.

16 Q. And how long have you been working for
17 Camping World?

18 A. Ten years and a couple months.

19 Q. Were you previously employed at another
20 Camping World location?

21 A. Columbia Camping World.

22 Q. Were you working there at Columbia
23 Camping World in September of 2019?

24 A. Yes.

25 Q. How long had you been the manager there

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 at that time?

2 A. Four or five years.

3 Q. Four or five years or months?

4 A. Four or five years.

5 Q. Years. And in that time, did Vincent
6 Shivers, was he one of your employees?

7 A. Yes.

8 Q. Was he an employee in September of
9 2019?

10 A. Yes.

11 Q. About how long had he been working from
12 Camping World at that point?

13 A. I believe six or seven months.

14 Q. And what was his position there?

15 A. Finance manager.

16 Q. What would his duties entail as a
17 finance manager and how important is that to
18 conducting your business?

19 A. To sell anything through a bank, we
20 have to have a finance manager.

21 Q. Is a finance manager important to the
22 day-to-day?

23 A. Yes.

24 Q. Do you recall what normal business
25 hours were for Camping World on days like Monday or

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Tuesday?

2 A. 9:00 to 7:00.

3 Q. And do you know what normal business
4 hours were for weekends like Sunday?

5 A. 12:00 to 5:00.

6 Q. 12:00 to 5:00 on Sunday?

7 A. Yes, ma'am.

8 Q. Mr. Smith, do you recall working on
9 Labor Day of 2019?

10 A. Yes, ma'am.

11 Q. So September 2nd of 2019?

12 A. Yes, ma'am.

13 Q. Do you recall if the Defendant, as one
14 of your employees, was scheduled to appear for work
15 on that day, Monday, September 2nd of 2019?

16 A. Yes, he was.

17 Q. And had he appeared for work the day
18 prior, Sunday, September 1st?

19 A. Yes, he did.

20 Q. But on Monday, September 2nd, that day
21 rolls around and he doesn't show up for work?

22 A. No, ma'am.

23 Q. Did you expect him to be there?

24 A. Yes, ma'am.

25 Q. Had he called in or ask for any time

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 off?

2 A. No, ma'am.

3 Q. Had he asked for any vacation time?

4 A. No, ma'am.

5 Q. Can you tell us sorta how an employee
6 has to go about taking time off?

7 A. We have an app through ADP or they
8 e-mail me directly and I'll send an approval
9 letter.

10 Q. What is ADP?

11 A. It is our payroll cycle.

12 Q. So they request time off through the
13 payroll?

14 A. Yes.

15 Q. And how far in advance do you have to
16 request time off like substantial time for a
17 vacation?

18 A. Thirty days.

19 Q. When Vincent Shivers did not show up
20 for work on Monday, September 2nd, did this concern
21 you at all?

22 A. It did.

23 Q. And did you make any attempts to
24 contact the Defendant via phone?

25 A. I did.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. How did you attempt to contact him?

2 A. By cell phone and text message.

3 Q. Okay. And that was on Monday,

4 September 2nd?

5 A. Yes, ma'am.

6 Q. What number did you use? Or what
7 number did you have for the Defendant at that time;
8 do you recall?

9 A. It's in my cell phone. I would have to
10 see it.

11 Q. Would it refresh your memory if I
12 showed you a call log of calls between you and the
13 Defendant?

14 A. Absolutely.

15 Q. And, Mr. Smith, what was your phone
16 number at that time?

17 A. 336-880-2995.

18 Q. And in looking at State's Exhibit 12,
19 will this refresh your memory as to what number you
20 had for the Defendant at that time?

21 A. Yes, ma'am.

22 Q. What number did you have saved for the
23 Defendant?

24 A. 803-522-3431.

25 Q. That is 803-522-3431?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. Thank you, Mr. Smith. Had you used
3 that number to contact the Defendant on any
4 occasion prior to Monday, September, 2nd?

5 A. Yes, ma'am.

6 Q. How many times?

7 A. Hard to count.

8 Q. A lot of times or a little?

9 A. Multiple.

10 Q. Okay. Via phone call?

11 A. Via phone call and text.

12 Q. Okay. Previously?

13 A. (No response)

14 Q. And on this day you said you called him
15 and texted him?

16 A. Yes, ma'am.

17 Q. Were you able to get in touch with the
18 Defendant?

19 A. No, ma'am.

20 Q. Via phone call or text?

21 A. No, ma'am.

22 Q. Did he respond at all?

23 A. No, ma'am.

24 Q. And when you called, did the phone
25 ring?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. It went straight to voicemail.

2 Q. Do you recall if the Defendant was also
3 scheduled to work on the following day, Tuesday,
4 September 3rd?

5 A. Yes.

6 Q. Did he show up for work that day?

7 A. No, ma'am.

8 Q. And did you make any additional
9 attempts to contact him by phone on September, 3rd?

10 A. Yes, ma'am.

11 Q. Did you call him?

12 A. Yes, ma'am.

13 Q. Did you text him?

14 A. Yes, ma'am.

15 Q. Now, did you try to contact him through
16 any other potential phone numbers, like an
17 emergency contact?

18 A. Through our ADP service we had his
19 emergency contact that I did try, yes, ma'am.

20 Q. Who was listed as his emergency
21 contact?

22 A. Roselynn.

23 Q. And do you know her relationship to the
24 Defendant?

25 A. I believe they were boyfriend and

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 girlfriend.

2 Q. And so you tried calling a number for a
3 Roselynn; correct?

4 A. Yes, ma'am.

5 MS. MCMENAMIN: Permission to approach,
6 Your Honor?

7 THE COURT: You may.

8 Q. Mr. Smith, when I showed you Exhibit 12
9 earlier, I may have confused you. How many phone
10 calls do you remember making to the Defendant
11 between September 2nd and September 3rd?

12 A. It was multiple.

13 Q. Okay. And how many calls did you make
14 to Roselynn?

15 A. I believe two.

16 Q. Okay. Looking at these, Exhibit 12 and
17 Exhibit 14, can you confirm whether or not this
18 3431 number is actually the Defendant's or
19 Roselynn's? Based on the number of times you
20 called?

21 A. On the number of times I called that
22 would be Roselynn.

23 Q. Okay. So 3431 is Roselynn?

24 A. Yes, ma'am.

25 Q. And would this number here be the

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 number that you had for the Defendant at the time?

2 A. Yes, ma'am.

3 Q. Okay what number is that?

4 A. 864-978-2627.

5 Q. Okay. That was the number you had for
6 the Defendant, Vincent Shivers. And when you
7 called Roselynn at that 3431 number, did you get a
8 response?

9 A. Voicemail.

10 Q. It went to voicemail?

11 A. Yes, ma'am.

12 Q. And did you leave a voicemail?

13 A. I did.

14 Q. Did you follow-up with her phone number
15 in any other way?

16 A. A text message. It married to
17 voicemail.

18 Q. And when you couldn't get in touch with
19 either one of them via phone, what did you do on
20 Wednesday, September 3rd?

21 A. Discussed it with my manager team and
22 we decided to -- it was very out of character, so
23 we sent a -- or called 9-1-1 and sent a welfare
24 check.

25 Q. Did you do anything prior to that to

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 try and contact the Defendant at his home?

2 A. One of my managers did stop by.

3 Q. Okay. Who was that manager; do you
4 recall?

5 A. Eric Wier.

6 Q. So he went to the Defendant's home; is
7 that what you're saying?

8 A. Yes, ma'am.

9 Q. Do you know if he was successful in
10 making contact with the Defendant there?

11 A. He was not.

12 Q. And where did you know the Defendant to
13 live at the time?

14 A. I would have to see the address. He
15 had settled and just moved there.

16 Q. Okay. Do you know what town?

17 A. Lexington.

18 Q. Lexington. Now, you said you decided
19 to call for -- call law enforcement to do a welfare
20 check. Was there a particular reason why you chose
21 to do this?

22 A. It was very out of his character not to
23 show up.

24 Q. Were there any other concerns that you
25 had?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. We had discussions before, some health
2 issues that he had way in the past.

3 Q. Okay. Now, that day, Tuesday,
4 September 3rd, do you recall going to the
5 Defendant's home in Lexington?

6 A. I believe so, yes.

7 Q. So the second day he didn't show up for
8 work, did you go to his home after making the call
9 for a welfare check?

10 A. Yes.

11 Q. And when you got there did you speak
12 with any law enforcement officers?

13 A. I did.

14 Q. Were you able to provide them
15 identifying information for the Defendant?

16 A. His F-150 and he worked for Camping
17 World.

18 Q. And you said his F-150, is that a
19 vehicle that you knew him to drive?

20 A. Yes, ma'am.

21 Q. Did you know him to drive any other
22 vehicles?

23 A. No, ma'am.

24 Q. And do you recall if the Defendant's
25 truck was at the residence that day when you

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 arrived?

2 A. There were so many police I never got
3 close to his.

4 Q. Close to the home?

5 A. Absolutely.

6 MS. MCMENAMIN: Again, permission to
7 approach, Your Honor?

8 THE COURT: Absolutely.

9 Q. Mr. Smith, I'm handing you Exhibit 14.
10 Do you recognize this document?

11 A. It's the phone calls that I made to
12 him.

13 Q. Okay. And how do you know that these
14 are the phone calls that you made to him?

15 A. His phone number and my number.

16 Q. Okay. And do these fairly and
17 accurately depict the calls that you made to the
18 best of your knowledge?

19 A. Yes, I think they're doubled calls.

20 Q. Okay. And it doesn't appear that
21 they've been edited or altered in any way to
22 substantially modify them?

23 A. No.

24 MS. MCMENAMIN: The State would offer
25 Exhibit 14 as a Court's Exhibit, Your Honor.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 THE COURT: Any objection?

2 MS. WILSON: No objection, Your Honor.

3 (WHEREUPON, Court's Exhibit Number 14
4 was entered)

5 Q. I'm now handing you State's Exhibit 13.
6 This is a two page document. Do you recognize both
7 pages?

8 A. Yes, ma'am.

9 Q. Okay. What are those?

10 A. My text messages checking on him.

11 Q. Text messages to who?

12 A. Vincent.

13 Q. And they are fair and accurate?

14 A. Yes, ma'am.

15 MS. MCMENAMIN: Your Honor, State
16 offers Exhibit 13 as a Court's Exhibit.

17 THE COURT: Any objection?

18 MS. WILSON: I don't think that I've
19 seen 13.

20 MS. MCMENAMIN: I do apologize. This
21 was previously turned over as part of discovery,
22 Your Honor, the phone records.

23 THE COURT: All right. I've got them
24 as Court's Exhibit. Ms. McMenamin, let me ask you.
25 Number 13 --

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: Yes, Your Honor.

2 THE COURT: Is phone calls between who?

3 MS. MCMENAMIN: Text messages between
4 -- yes, Mr. Smith and the Defendant.

5 (WHEREUPON, Court's Exhibit Number 13
6 was entered)

7 MS. MCMENAMIN: Permission to approach
8 again, Your Honor?

9 THE COURT: You may.

10 Q. Now, Mr. Smith, with Exhibit 13, could
11 you please read this message that you sent on
12 September 2, 2019 to the Defendant?

13 A. You okay buddy?

14 Q. And was that the first message that you
15 sent to him?

16 A. Yes.

17 Q. And then on -- the second message on
18 September 2, 2019 what does this message say?

19 A. Let me know something. Unlike your
20 phone to be off.

21 Q. And then, again, 14 is where you made
22 phone calls to him?

23 A. Yes, ma'am.

24 Q. Do you see calls to him on September
25 3rd?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. On this page, the second page, do you
3 see calls to him on September 2nd as well?

4 A. Yes, ma'am.

5 Q. Do those carry over to the first page?

6 A. Yes, ma'am.

7 Q. So you called him numerous times over
8 the course of those two days?

9 A. Yes, ma'am.

10 Q. And be clear, did he ever pick up or
11 return your calls?

12 A. No, ma'am.

13 Q. All right. Again, Exhibit 12, do you
14 recognize this?

15 A. Yes, ma'am.

16 Q. What is this?

17 A. Phone calls between me and the witness.

18 Q. The witness -- can you give me a name?

19 A. Roselynn.

20 Q. Okay. Calls that you made to her?

21 A. Yes, ma'am.

22 MS. MCMENAMIN: We offer Exhibit 12 as
23 a Court's Exhibit, Your Honor.

24 THE COURT: Any objection?

25 MS. WILSON: No objection.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 THE COURT: Okay.

2 (WHEREUPON, Court's Exhibit Number 12

3 was entered)

4 Q. On what date did you make these calls?

5 A. 9/3/2019.

6 THE COURT: It's a Court Exhibit;

7 right?

8 MS. MCMENAMIN: Yes, Your Honor.

9 Q. State's Exhibit 11, do you recognize

10 this?

11 A. Yes, ma'am.

12 Q. What is that?

13 A. Text messages between -- that I sent

14 Roselynn.

15 Q. Okay. And is this fair and accurate?

16 A. Yes, ma'am.

17 MS. MCMENAMIN: We offer Exhibit 11 as

18 a Court's Exhibit.

19 THE COURT: Any objection?

20 MS. WILSON: No objection, Your Honor.

21 (WHEREUPON, Court's Exhibit Number 11

22 was entered)

23 Q. So this message on September 3, 2019

24 that you sent to Roselynn, would you read that for

25 me?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. This is Steve Smith from Camping World.
2 I'm trying to check on Vincent to make sure he is
3 okay. Can you have him text me or call me. Thank
4 you.

5 Q. And did you address her by name in this
6 message at all?

7 A. Yes.

8 Q. How so?

9 A. Roselynn.

10 Q. So that -- you started the message off
11 with her name?

12 A. (No response)

13 Q. Now showing you State's Exhibit 17. Do
14 you recognize this?

15 A. Yes, ma'am.

16 Q. What is that?

17 A. It's the message I left for Roselynn.

18 Q. A voice message?

19 A. Yes, ma'am.

20 Q. Okay. And how do you know that this is
21 a voice message you left her?

22 A. My signature and date.

23 Q. Okay. And is that date 3/21/22?

24 A. Yes, ma'am.

25 Q. Is that the date you reviewed this?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. And it's fair and accurate?

3 A. Fair and accurate.

4 MS. MCMENAMIN: We offer it as Court's
5 Exhibit Number 17, Your Honor.

6 THE COURT: Okay. Any objection?

7 MS. WILSON: No objection.

8 THE COURT: Okay. I've got it in.

9 (WHEREUPON, Court's Exhibit Number 17
10 was entered)

11 MS. MCMENAMIN: Permission to publish
12 the voicemail, Your Honor?

13 THE COURT: Yes, ma'am.

14 Q. And while we're pulling this up, Mr.
15 Smith, I know I asked you whether or not the
16 Defendant had requested time off. But do you
17 recall if he ever even mentioned the potential of
18 taking a vacation?

19 A. Not at that time.

20 MS. MCMENAMIN: This is Exhibit 17.

21 (WHEREUPON, playing the audio)

22 Q. And in this voicemail you address the
23 person that you were calling by what name?

24 A. Roselynn.

25 Q. And you identified yourself as?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Steven Smith.

2 Q. And that's your phone number that you
3 provided at the end?

4 A. Yes, ma'am.

5 Q. And that's you, that's your voice,
6 that's the voicemail that you left?

7 A. That is me.

8 Q. Do you recall the date of that
9 voicemail?

10 A. I believe it would be Tuesday night.

11 Q. Okay. Would that be Tuesday the 3rd?

12 A. Yes.

13 Q. Okay.

14 A. I think it's Wednesday the 3rd.

15 Q. Okay. Looking at Exhibit 12, on what
16 date does it show these calls between you and the
17 3431 number for Roselynn?

18 A. 9/3.

19 Q. Okay. And would you have called her
20 before or after you called in the welfare check?

21 A. I do not know.

22 Q. Okay. Not sure. Would reviewing your
23 previous written statement refresh your memory?

24 A. It would. It was before I called in
25 the welfare check.

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 Q. And do you recall what time you made
2 the welfare check call?

3 A. Had to be somewhere around 10:00 a.m.
4 You probably have more records of that than I do.

5 Q. Okay. So that refreshed your memory
6 and you know that you called Roselynn before the
7 welfare check?

8 A. Yes.

9 MS. MCMENAMIN: No further questions
10 for this witness at this time, Your Honor.

11 THE COURT: Okay. Ms. Wilson?

12 MS. WILSON: Yes, Your Honor. Beg the
13 Court's indulgence.

14 THE COURT: Take your time.

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q. Good afternoon, Mr. Smith. My name is
18 Alissa Wilson. Let's see. Mr. Shivers worked on
19 Sunday the 1st; correct?

20 A. Yes, ma'am.

21 Q. And isn't it true that if you work on
22 Sunday at Camping World you get a half day the
23 following day?

24 A. Yes, ma'am.

25 Q. So he would have -- isn't it true that

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 he would have had to report at 1:30 on Monday?

2 A. You leave at 1:30.

3 Q. So you would have worked from 9:00 to
4 1:30?

5 A. Yes, ma'am.

6 Q. Okay. Well, isn't it also true that on
7 the 1st, he had a discussion with you about taking
8 Labor Day off because he worked on the 1st?

9 A. I believe so, yes.

10 Q. So you did have a discussion with him
11 that he wanted --

12 A. But he was explained that we work half
13 days.

14 Q. Okay. But he did state to you that he
15 wanted to take the day off on Monday?

16 A. Yes.

17 Q. You had mentioned that Mr. Wier went
18 over to the house. Isn't the correct that he went
19 over -- that you went over to Mr. Shivers's house
20 twice? Once on Monday and once on Tuesday?

21 A. Yes, ma'am.

22 Q. And do you know what time he went over
23 to the house on Monday?

24 A. I do not recall.

25 Q. Was it after work?

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 A. Possibly. I do not recall.

2 Q. You had mentioned that Mr. Shivers had
3 just moved into his new house. How did you know
4 the address?

5 A. He had shared it with us multiple
6 times.

7 Q. And on Tuesday when Mr. Wier went over
8 to the house, do you know approximately what time
9 that was?

10 A. Early to midmorning.

11 Q. It was prior to calling 9-1-1?

12 A. Yes.

13 Q. Did Mr. Wier share with you that on
14 both occasions that he went to the house Mr.
15 Shivers F-150 was not home?

16 A. Correct.

17 Q. Which would lead you to believe that
18 Mr. Shivers was also was not home considering his
19 truck wasn't there?

20 A. He had a garage.

21 Q. Would the truck fit in the garage?
22 It's a pretty big truck.

23 A. I don't -- my truck fits in my garage.

24 Q. But it's possible he just wasn't home
25 because the truck wasn't there?

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 A. I guess.

2 Q. So according to these phone records it
3 looks like the first time that you called Mr.
4 Shivers on Monday morning was at 9:47. Does that
5 sound correct?

6 A. Yes, ma'am.

7 Q. Which would be approximately 47 minutes
8 after y'all opened?

9 A. Yes, ma'am.

10 Q. Is it customary for you to call an
11 employee who is 47 minutes late to work?

12 A. Absolutely.

13 Q. You also stated that you had called his
14 girlfriend's phone number, Roselynn?

15 A. Yes, ma'am.

16 Q. How did you have her phone number?

17 A. In our ADP. It was listed as his
18 emergency contact.

19 Q. Okay. Did you ever consider that maybe
20 Mr. Shivers had lost his phone or it got wet or
21 something happened to it?

22 A. That's why -- not his phone, that's why
23 I called the -- for the check.

24 Q. Okay. And so in calling a welfare
25 check you had reported that he had been missing for

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 two days, but really he -- when he left work on
2 Sunday, he was fine --

3 MS. MCMENAMIN: Objection, Your Honor,
4 this calls for speculation. Proper foundation has
5 not been laid.

6 THE COURT: I agree. You need to
7 rephrase that, Ms. Wilson.

8 MS. WILSON: Okay.

9 Q. Mr. Shivers was supposed to report to
10 work at 9:00 a.m. on Monday; correct?

11 A. Yes, ma'am.

12 Q. And when you called the welfare check
13 it was approximately 11:00 a.m. on Tuesday?

14 A. Yes, ma'am.

15 Q. So the time that he had been missing
16 from work would be approximately 26 hours?

17 A. Yes, ma'am.

18 Q. Not exactly two days?

19 A. Yes, ma'am.

20 Q. Did you and Mr. Shivers ever have a
21 conversation about him having a go bag?

22 A. Yes, ma'am.

23 Q. Can you tell the Court what that's
24 about?

25 A. He was always a conspiracy theorist.

STEVEN SMITH - CROSS-EXAMINATION BY MS. WILSON

1 Q. And so what was his go bag?

2 A. He always just said he had -- his
3 financial's, ID and stuff like that.

4 Q. And it was a bag that was -- he was
5 prepared to leave if he needed to?

6 A. Yes. That was more of a, I don't know,
7 I haven't met many people like that. That was more
8 of a, like if the financial market went to a hand
9 basket or a war started, the government, that kind
10 of stuff, we had some pretty interesting
11 conversations.

12 Q. He was prepared to leave?

13 A. Yeah.

14 Q. Did it ever cross your mind that maybe
15 he had just left?

16 A. No, ma'am.

17 Q. Have you ever called 9-1-1 and
18 conducted a welfare check on any other employee?

19 A. Yes, ma'am.

20 Q. How many times have you done that?

21 A. Once. Not at Camping World.

22 Q. How long had that employee been out
23 work for?

24 A. Two days.

25 Q. Two days or 26 hours?

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Two days.

2 MS. WILSON: Beg the Court's
3 indulgence.

4 THE COURT: Take your time.

5 MS. WILSON: That's all. Thank you.

6 MS. MCMENAMIN: Brief redirect, Your
7 Honor?

8 THE COURT: Yes, ma'am.

9 REDIRECT EXAMINATION

10 BY MS. MCMENAMIN:

11 Q. Mr. Smith, the Defense pointed out that
12 there may have been some confusion about whether or
13 not the Defendant was going to come in for work on
14 that Monday on Labor Day. Was there any confusion
15 about whether or not he was supposed to show up for
16 work the following day, that Tuesday?

17 A. No, ma'am, he was supposed to be there.

18 Q. He was scheduled to work?

19 A. Yes, ma'am.

20 Q. And did he appear?

21 A. No, ma'am.

22 MS. MCMENAMIN: Nothing further, Your
23 Honor.

24 THE COURT: Thank you. Can I excuse
25 Mr. Smith for right now?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: Yes, Your Honor.

2 THE COURT: Mr. Smith, I think you're
3 still under a subpoena, but for right now you're
4 excused.

5 MS. MCMENAMIN: The State's next
6 witness, Your Honor, is Eric Wier. And, Your
7 Honor, before he takes the stand, may I approach?
8 I think Mr. Smith may have left his witness
9 statement up there.

10 THE COURT: Yeah, he asked me what to
11 do with it and I just told him to leave it right
12 there.

13 ERIC WIER,
14 being first duly sworn, was examined and testified
15 as follows:

16 THE CLERK: Have a seat. If you'll
17 state your name and spell your last name for the
18 record.

19 MR. WIER: Eric Wier. Last name is
20 spelled W-I-E-R.

21 DIRECT EXAMINATION

22 BY MS. MCMENAMIN:

23 Q. I apologize for mispronouncing your
24 last name. Would it be okay if I just called you
25 Eric?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. That will be fine.

2 Q. Thank you. Eric, where are you
3 currently employed?

4 A. Camping World.

5 Q. How long have you been worked at
6 Camping World?

7 A. Going on eight years.

8 Q. And what is your position there?

9 A. I'm the business development manager.

10 Q. Okay. And so in September of 2019 were
11 you working at Camping World?

12 A. I was.

13 Q. Were you working in the same position?

14 A. Yes.

15 Q. And do you recall the date of Monday,
16 September 2nd or Labor Day of 2019?

17 A. I do.

18 Q. Do you recall if you worked that day?

19 A. I did.

20 Q. And when you were employed at Camping
21 World, did you have opportunity to work with the
22 Defendant Vincent Shivers?

23 A. I did.

24 Q. Do you recall what his position was
25 there?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Finance manager.

2 Q. And did you interact much?

3 A. Not a whole lot. If we ever did, it
4 would be like the end of the day if there's nothing
5 else going on we might just have a random
6 conversation, but it -- not much more than that.

7 Q. Okay. And about how long had you been
8 working together in September of 2019?

9 A. In just that month?

10 Q. Since he started working there?

11 A. If I'm not mistaken, I think he started
12 the beginning of that year. So about eight, nine
13 months maybe, something like that.

14 Q. Several months?

15 A. Several months, yeah.

16 Q. And, again, on Monday, September 2nd,
17 Labor Day of 2019 you said you were scheduled to
18 work. Do you recall if the Defendant was also
19 scheduled to work?

20 A. He was.

21 Q. Do you recall if he showed up for work
22 that day?

23 A. He did not.

24 Q. And had you worked with him at all in
25 the week leading up to that Monday, Labor Day of

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 2019?

2 A. We did. We worked -- yeah, all that
3 week and I imagine that Saturday as well.

4 Q. Do you recall during that time leading
5 up to Labor Day if he mentioned he was going to
6 take a day off for the holiday?

7 A. Never heard of such thing.

8 Q. Do you remember if he mentioned if he
9 had any vacations planned for the near future?

10 A. No.

11 Q. Now, on that Monday, Labor Day of 2019
12 when the Defendant did not show up for work, did
13 you have any concern?

14 A. Yeah, after a while we did get
15 concerned. We had heard previously of a heart
16 issue at one point, that he had a previous heart
17 attack. As the day went on, it was very out of
18 character for someone not show up especially in
19 finance, so, yeah, we got concerned.

20 Q. What do you mean that it was concerning
21 when someone in finance didn't show up?

22 A. Well, we have to have a finance manager
23 run the dealership. You know, in order to finish a
24 deal or get customers bought, you have to have a
25 finance manager present.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Now, when he didn't show up for work
2 that morning, do you know if the company or
3 employees made any efforts to get in touch with him
4 without going into the specific details of
5 conversations, did you witness anyone trying to
6 call him?

7 A. I did.

8 Q. Did you try to call him yourself?

9 A. No.

10 Q. But the company did. Did you make any
11 efforts on your own to get in touch with the
12 Defendant -- that day on Monday.

13 A. No.

14 Q. Okay. Did you make any efforts to get
15 in touch with him at his home, like in person
16 face-to-face?

17 A. At the end of the day, my sales manager
18 at the time, at this point we were very concerned
19 about where he might be. He had showed me on
20 Zillow where his house was.

21 Q. Now, let me stop you just to be clear.
22 Who had showed you where who's house was on Zillow?

23 A. Vincent had.

24 Q. Vincent had showed you where his house
25 was on Zillow?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Correct.

2 Q. Okay. And How did that play into
3 things on that Monday, Labor Day of 2019?

4 A. I remembered -- I remember him telling
5 me where he had moved to. I guess that was a new
6 home that he had moved into. I looked on Zillow,
7 you know, recently purchased homes. I recognized
8 the photo of the home that he had just bought. The
9 sales manager asked if I would swing by and see if
10 maybe there was anyone was home, any lights on,
11 something like that. Around, you know, about 6:30
12 which was 30 minutes of me getting off work. I
13 drove by, didn't see lights, didn't notice
14 anything, so I just went home.

15 Q. Okay. Did you stop at all?

16 A. I slowed down, but didn't stop.

17 Q. Okay. Did you go to the door?

18 A. No.

19 Q. Okay. And did you see a truck?

20 A. No.

21 Q. Do you know what kind of vehicle the
22 Defendant drove?

23 A. He always drove an F-150.

24 Q. And you didn't see that at the home?

25 A. No.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And is that home -- do you know what
2 city that home is located in?

3 A. It's in Lexington.

4 Q. Okay. Now, the next day, on Tuesday,
5 September 3rd, was the Defendant scheduled for
6 work?

7 A. He was.

8 Q. Were you scheduled for work?

9 A. I was.

10 Q. And when you got there, did the
11 Defendant show up?

12 A. He did not.

13 Q. Were anymore efforts made to get in
14 touch with the Defendant on that Tuesday?

15 A. Yes. Steve had made multiple phone
16 calls.

17 Q. Did you witness that?

18 A. I did.

19 Q. And did you reach out to him via phone
20 or social media or anything like that?

21 A. Yeah, we were friends on FaceBook, so I
22 sent him a simple message --

23 Q. Without going into the words of the
24 message, just to be careful, so you did send him a
25 message?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Correct.

2 Q. And did you attempt to locate him at
3 his home?

4 A. Yes. I drove over there a second time
5 that day. Sales manager suggested that I just
6 knock on the door to see if anybody would answer.
7 I went and did so and nobody answered.

8 Q. Did you see any vehicles at the home on
9 this day, the morning of Tuesday, September 3rd?

10 A. Yes. When I walked up to the door, I
11 noticed there was a sedan that was in the driveway,
12 yes.

13 Q. Did you go anywhere else on the
14 property that day besides the front door?

15 A. No.

16 Q. Did you attempt to knock on any other
17 doors of the home?

18 A. No.

19 Q. Did you go in the backyard?

20 A. No.

21 Q. And what did you do when no one
22 answered?

23 A. I got in my car and went back to work.

24 MS. MCMENAMIN: Permission to approach?

25 THE COURT: You may.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Eric, I am handing you what has been
2 marked as Exhibit 16. Do you recognize this?

3 A. I do.

4 Q. And without going into what's stated on
5 this document, can you describe it?

6 A. It's a FaceBook message.

7 Q. Is it the one you sent the Defendant?

8 A. Yes.

9 MS. MCMENAMIN: The State offers 16 --
10 Exhibit 16 as a Court's Exhibit.

11 THE COURT: I'm sitting here thinking
12 on this thing. Is this not the same thing that we
13 just moved in? I am sitting here looking at my
14 list here I've got.

15 MS. MCMENAMIN: I understand, Your
16 Honor. I can double check the numbers to make sure
17 they were not missed numbered.

18 THE COURT: And this is number 16?

19 MS. MCMENAMIN: 16.

20 THE COURT: I believe number 13 is a
21 text message; right?

22 MS. MCMENAMIN: Yes. That is a text
23 message between Steve Smith and the Defendant.

24 THE COURT: Okay. This is a FaceBook
25 message?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: Yes, Your Honor.

2 THE COURT: All right. Any objection?

3 MS. WILSON: No objection.

4 THE COURT: Okay. Then this in as a
5 Court Exhibit.

6 (WHEREUPON, Court's Exhibit Number 16
7 was entered)

8 Q. On 9/3 at 11:13, what message did you
9 send to the Defendant via FaceBook?

10 A. Hey bud you there?

11 Q. Did you get a response to that message?

12 A. No.

13 Q. State's 19, do you recognize this
14 photo?

15 A. I do.

16 Q. Okay. What is it?

17 A. It's a picture of a blue Sedan in the
18 driveway.

19 MS. MCMENAMIN: State's Exhibit 19,
20 Your Honor.

21 THE COURT: Gotcha. Any objection?

22 MS. WILSON: No objection.

23 THE COURT: It's in.

24 (WHEREUPON, State's Exhibit Number 19
25 was entered)

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. How do you know -- or how did you see
2 this vehicle before, Eric?

3 A. That day when I was walking up through
4 the drive -- not the driveway, excuse me. The
5 sidewalk to the door, I noticed -- you could see
6 the car in the driveway.

7 Q. Now, tell me, did you notice this car
8 when you first parked or at what point when you
9 were approaching the home did you notice it?

10 A. Only to when you start walking up,
11 that's a retaining wall right there obviously, so
12 from the street you can't see anything.

13 Q. Okay. And State's Exhibit 18, what is
14 this a photo of?

15 A. It's a photo of the front of the house.

16 Q. What house?

17 A. Vincent's house.

18 Q. So is that the house you went to?

19 A. Correct.

20 Q. On that Monday, Labor Day and that
21 Tuesday of 2019?

22 A. Correct.

23 Q. And that's the house as it was when you
24 went there?

25 A. Yes.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: State's Exhibit 18,
2 Your Honor -- Court's Exhibit 18, Your Honor.

3 THE COURT: Any objections?

4 MS. WILSON: No objection, Your Honor.

5 (WHEREUPON, Court's Exhibit Number 18
6 was entered)

7 Q. Now, does this demonstrate the
8 retaining wall that you were speaking of?

9 A. Yes.

10 Q. Okay. Now, if a larger -- is this a --
11 this blue Sedan, is that a large or a small
12 vehicle?

13 A. Small.

14 Q. Okay. If there was a larger vehicle
15 down there do you think you'd be able to see it?

16 A. More than likely, yes.

17 Q. Even just driving by the house?

18 A. Correct.

19 Q. But you didn't see any vehicles on the
20 evening of Monday, September 2, 2019, Labor Day?

21 A. Correct.

22 MS. MCMENAMIN: A moment to confirm
23 with cocounsel, Your Honor.

24 THE COURT: Take your time.

25 MS. MCMENAMIN: We have no further

ERIC WIER - CROSS EXAMINATION BY MS. WILSON

1 question for this witness at this time, Your Honor.

2 THE COURT: Ms. Wilson?

3 MS. WILSON: Beg the Court's
4 indulgence.

5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q. Good afternoon, Mr. Wier. I just have
8 a few question for you. Did you work on Sunday the
9 1st?

10 A. I didn't.

11 Q. You did not work. So you were not
12 aware of any conversation Mr. Shivers may have had
13 with Mr. Smith about working on Monday?

14 A. No.

15 Q. Were there other finance managers that
16 work on Monday?

17 A. No, I don't believe so at the time.

18 Q. He would have been the only manager
19 that worked that day?

20 A. Correct.

21 Q. Is that normal for only one manager to
22 work? A finance manager?

23 A. Yeah, just one manager -- one finance
24 manager there, yes.

25 Q. That's normal to just have one?

ERIC WIER - CROSS EXAMINATION BY MS. WILSON

1 A. Yeah, for a long time we only had one.

2 Q. You said you found his address by
3 searching new homes on Zillow?

4 A. Uh-huh.

5 Q. He had just shown you a picture of it
6 and you were able to find it on Zillow?

7 A. He had brought it up multiple times.
8 He had shown me the photo and I know the area well.
9 I grew up around here, so.

10 Q. He had told you -- so when you drove by
11 -- you said you drove by on September 2nd, so that
12 would have been Monday; correct?

13 A. Correct.

14 Q. About what time did you drive by, do
15 you remember?

16 A. It was after work so between 6:00 and
17 6:30.

18 Q. Okay. And you said there were -- you
19 said you did not stop; correct?

20 A. I didn't, no.

21 Q. Did you see any cars in the driveway
22 that night?

23 A. I didn't.

24 Q. And you said there were no lights on?

25 A. Correct.

ERIC WIER - CROSS EXAMINATION BY MS. WILSON

1 Q. So you weren't that concerned about
2 where he had been -- I mean, you didn't even stop
3 --

4 MS. MCMENAMIN: Objection, Your Honor.
5 That's improper commentary for the witness.

6 MS. WILSON: He said he was very
7 concerned, Your Honor. I mean, if he drives by
8 without even stopping to --

9 THE COURT: Yeah, but I think it's
10 probably more you testifying. Rephrase that.

11 MS. WILSON: Okay.

12 Q. You didn't see a reason to stop your
13 car that night?

14 A. I didn't really feel comfortable
15 stopping. I just drove by. I wanted to see if I
16 could notice lights on or if maybe the house was
17 occupied. That's all I was trying to do.

18 Q. And at 6:00 in September, would it have
19 been dark out that night?

20 A. Probably not. Probably not. But it's
21 a very wooded area. It would have been obvious if
22 lights were on.

23 Q. Even though it was still light out?

24 A. Right.

25 Q. And then you said you had driven by on

ERIC WIER - CROSS EXAMINATION BY MS. WILSON

1 the 3rd as well. You had mentioned in your direct
2 that you had driven by for the second time that
3 day -- is that -- did you drive by twice on the
4 3rd?

5 A. I went in the morning. I actually need
6 to reference my statement for sure just to verify.
7 But I went the second time which is on the second
8 day which was Tuesday and that's when I went and
9 knocked on the door.

10 Q. Okay. But you didn't go twice on the
11 3rd? You just went a second time?

12 A. On the 3rd -- well, after the police
13 had already arrived, I rode with my manager Steve
14 Smith and we went back, yeah.

15 Q. Okay. So the first time you went on
16 the 3rd when you stopped and knocked on the door,
17 you saw the blue vehicle in the driveway?

18 A. Correct.

19 Q. So neither time did you see his truck
20 in the driveway?

21 A. Correct.

22 Q. So what -- did you ever note Mr.
23 Shivers to drive any other car besides that F-150?

24 A. No.

25 Q. So with his truck not being there,

ERIC WIER - CROSS EXAMINATION BY MS. WILSON

1 would that lead you to believe he was not home?

2 A. More than likely, yes.

3 Q. As far as the FaceBook, had you ever
4 sent Mr. Shivers a message before on FaceBook?

5 A. No.

6 MS. WILSON: Beg the Court's
7 indulgence.

8 THE COURT: Take your time.

9 MS. WILSON: No further questions.

10 THE COURT: Any redirect?

11 MS. MCMENAMIN: No, Your Honor.

12 THE COURT: May I let Mr. Wier down?

13 MS. MCMENAMIN: For now, Your Honor,
14 yes.

15 THE COURT: You're still under a
16 subpoena, Mr. Wier. You're excused.

17 MS. MAYES: The State calls Deputy
18 Joshua Hale.

19 JOSHUA HALE,
20 being first duly sworn, was examined and testified
21 as follows:

22 THE CLERK: Have a seat. State your
23 name and spell your last for the record.

24 MR. HALE: Joshua Hale, H-A-L-E.

25 DIRECT EXAMINATION

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 BY MS. MAYES:

2 Q. Good afternoon. Can you give the Court
3 a little bit of information about your background.
4 How long have you been with law enforcement?

5 A. I've been certified in South Carolina
6 for a little over three years now. About a year
7 and a half of that was with Lexington County
8 Sheriff's Department.

9 Q. Okay. And we see you're in fatigues
10 today, why so?

11 A. Right now I'm a full-time soldier with
12 AGR, Active Guard Reserve, so I do recruiting for
13 the US Army in West Columbia and I also do police
14 work part-time as well.

15 Q. Okay. And are you still with the
16 Lexington County Sheriff's Department?

17 A. No, ma'am.

18 Q. And were you with the Lexington County
19 Sheriff's Department on September 3, 2019?

20 A. Yes, ma'am.

21 Q. So, Deputy Hale, I want to go back and
22 go through the series of events that occurred on
23 that date, September 3, 2019.

24 How did you first become aware that
25 Vincent Shivers was missing or needed a welfare

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 check?

2 A. Yes, ma'am. I was patrolling the west
3 region where I was assigned on patrol which covers
4 Red Bank, Gilbert area, West Lexington and
5 Batesburg. I received a call for service via my
6 CAD, MDT which is my computer in car where I could
7 receive the nature of the call, the notes and how
8 dispatch kinda of received the call. And I
9 observed that it came in as a welfare check to
10 check on the welfare of Mr. Shivers at his home
11 address which was 216 Carriage Hill Court. And
12 then I -- on the way to the house, I made contact
13 with Mr. Steve Smith which was his employer.

14 Q. All right. Do you have with you a copy
15 of your report, Deputy?

16 A. Yes, ma'am.

17 Q. And can you tell us what time you
18 initially became aware that a welfare check was
19 needed?

20 A. At approximately 11:07 a.m.

21 Q. Okay. And Is a welfare check something
22 you had done before in your job as a deputy?

23 A. Yes, ma'am.

24 Q. And can you tell us when you ordinarily
25 do welfare checks? Is that for a criminal

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 investigation?

2 A. No, ma'am.

3 Q. Is for what purpose?

4 A. To check for the safety and wellbeing
5 of the person who's reasonably occupied in that
6 home of who lives there.

7 Q. Does that include elderly citizens?

8 A. Yes, ma'am, a wide range. So anything
9 from, you know, juveniles that have been missing or
10 elderly people with any type of condition.

11 Q. All right. So that's a process that
12 you were familiar with?

13 A. Yes, ma'am.

14 Q. Now, I know you mentioned that you
15 spoke with Steve Smith, who's already testified,
16 that morning. How did you go about speaking with
17 him?

18 A. I called him on the phone. His phone
19 number was in my computer system, so I made contact
20 with him via phone on the way to the house to get
21 some more information. I wanted to alarm him to
22 call the law enforcement for the welfare check.

23 Q. All right. And did you note that
24 information in your report?

25 A. Yes, ma'am.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Did you also have information regarding
2 the girlfriend of Mr. Shivers being Roselynn
3 Cedenno?

4 A. Yes, ma'am.

5 Q. Did you have information as to whether
6 or not they were supposed to reside together at 216
7 Carriage Hill Court?

8 A. Yes, ma'am.

9 Q. And you can tell us regarding the
10 Defendant Vincent Shivers, whether you were aware
11 that Mr. Smith had attempted to contact him by
12 telephone?

13 A. Yes, ma'am.

14 Q. As well as text message?

15 A. Correct.

16 Q. And had been unable to do so?

17 A. Yes, ma'am.

18 Q. Were you aware that he had failed to
19 show up for work on both Monday the 2nd and Tuesday
20 the 3rd?

21 A. Yes, ma'am.

22 Q. And I'm going to refer you directly to
23 your report. Can you tell us whether or not Mr.
24 Smith reported to you that this was quote "very
25 unusual"?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am. On the way to the house I
2 called Mr. Steve Smith and he advised that he --
3 Mr. Shivers had missed two days of work and that
4 was very unusual given the amount of time that he's
5 been at work and he's never had an issue of being
6 late or missing work. None of us, no call, no show
7 for these two days as well. He had an important
8 role as a finance manager, so the business was very
9 important to what he did for that company. So it
10 was very unusual for him to miss those days of
11 work.

12 Q. Given all of those factors, did you
13 feel that a welfare check was needed at 216
14 Carriage Hill Court?

15 A. Yes, ma'am.

16 Q. Now, I know you mentioned you were
17 aware that there was also a girlfriend at that
18 residence. Take us through what occurred when you
19 first arrived?

20 A. When I first arrived, I walked down to
21 the driveway and observed a blue Honda Accord, I
22 believe it was in the driveway. You couldn't tell
23 from the roadway if there was a vehicle in the
24 driveway by the way it dipped and went around the
25 corner. It had a retaining wall right next to the

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 garage.

2 I knocked on the front door to see if I
3 could hear anything inside the residence, if I
4 could make contact with the owner of the home
5 whether it was Mr. Shivers or Ms. Roselynn which
6 Steve identified to me as them living together. He
7 also stated that Ms. Roselynn, to their belief,
8 didn't have a job, so she should have been home as
9 well. So I knocked on the door, rang the door bell
10 and had negative contact initially.

11 Q. All right. I'm going to show you what
12 is Court's 18 already before the Court. Do you
13 recognize that location?

14 A. Yes, ma'am.

15 Q. How so?

16 A. That is the front of the residence.

17 Q. Now, you indicated that you arrived at
18 approximately 11:07 a.m.?

19 A. Yes, ma'am. And that was the dispatch
20 time, so I arrived 11:31 a.m.

21 Q. Okay. You were dispatched at 11:07,
22 you arrived at that location at 11:31?

23 A. Yes, ma'am, on scene.

24 Q. Upon your arrival, how much time do you
25 think you spent at that front door area?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. Approximately 27 to -- 25 to 27
2 minutes.

3 Q. What were you doing that whole time?

4 A. I was knocking on the door, ringing the
5 doorbell. I waited for several minutes between
6 each attempt to kinda exclude the possibility of
7 somebody maybe being in the shower, in the bathroom
8 or possibly at a different part of the residence.
9 It was a fairly large residence, so I wanted to
10 give a little bit of time for that reaction. I
11 heard a dog that was mobile near the front door,
12 but there was obviously no contact at that time.

13 Q. Now, you mentioned you could hear a dog
14 inside?

15 A. Correct.

16 Q. What if any factor did that play for
17 you?

18 A. It was kind of unusual that nobody was
19 coming to the door, however, there was a dog that
20 was loose in the house as well as a car being home
21 in the driveway as well. And the dog barking
22 excessively on each knock and ring, did not prompt
23 anybody to come to the door.

24 Q. Okay. Now, you knew about the
25 girlfriend, Roselynn Cedeno?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. Correct.

2 Q. What efforts did you take to determine
3 whether anyone had recently checked the mail at
4 that location?

5 A. So I opened the mailbox to see if there
6 was any indication, if there was mail in the box,
7 if they had deliveries, which there appeared there
8 was. Outside of just the usual mail such as bills
9 in envelopes and seen there was a package similar
10 to FedEx or a UPS package that was laying in plain
11 sight right there.

12 So I grabbed the package to see what
13 information was on the front and it was Ms.
14 Roselynn Cedeno's name, phone number associated and
15 the address which was 216 Carriage Hill Court.
16 From there I attempted to make contact with Ms.
17 Roselynn via that cell phone number and I called
18 multiple times with no answer.

19 Q. And that's as you're standing outside
20 the residence?

21 A. Yes. I went back out to my patrol car
22 and checked the mailbox for mail and that's what I
23 observed.

24 Q. Okay. And that phone number for Ms.
25 Cedeno was that present on the exterior of that

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 package?

2 A. Yes, ma'am.

3 Q. And how many times do you think you
4 attempted to phone her?

5 A. Approximately four times in a row.

6 Q. Did you ever get a response?

7 A. No, ma'am.

8 Q. What did you do next?

9 A. From there I went back to the front of
10 the residence. I tried to knock on the garage,
11 announced myself as a deputy with the sheriff's
12 department. I tried the front door as well. Still
13 I had no response. I went back to my patrol car
14 and looked for social media profiles to see if
15 either Mr. Vincent or Roselynn had social media
16 accounts. Many times associated with those
17 accounts would be family members, tagged photos,
18 see if they uploaded any information there and I
19 had negative results with that as well. So from
20 there, I went to the backyard to see if there was
21 anybody there.

22 Q. Okay. Now, do you remember at any
23 point coming down the driveway?

24 A. Yes.

25 Q. Do you remember inspecting any vehicles

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | that may have been present?

2 | A. I did.

3 | Q. What vehicles did you observe?

4 | A. It was a blue Honda Accord on the right
5 | side of the driveway.

6 | Q. What if any action did you take
7 | regarding the Honda?

8 | A. I ran the license plate on it. It was
9 | from Louisiana. To kinda get an idea and who that
10 | car was registered to and it came back to Ms.
11 | Roselynn Cedenno.

12 | Q. And is this before you went into the
13 | backyard area?

14 | A. Yes, ma'am.

15 | Q. Okay. And what else did you do in
16 | relation to that car?

17 | A. I just kind of looked around on the
18 | outside to see if there was any indication inside
19 | and there was nothing really conclusive with that.
20 | That was really the only thing I did with that
21 | vehicle was run the tag on it.

22 | Q. Do you remember whether or not you
23 | touched the hood of that car?

24 | A. I did. I placed the back of my hand on
25 | the front of the hood. So you kinda get an

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | indication if that car had be driven recently. If
2 | it was hotter than usual, consistent with somebody
3 | driving that vehicle; however, it was kind of a
4 | natural heat. So it didn't indicate to me that
5 | that car had been driven recently.

6 | Q. Okay. And did you see the Ford F-150?

7 | A. I did not.

8 | Q. Now, did that alone dissuade you from
9 | pursuing the welfare check?

10 | A. No, ma'am.

11 | Q. Why or why not?

12 | A. I knew that there could have been other
13 | circumstances, maybe a friend borrowed the truck,
14 | maybe a family member. It could have been parked
15 | in the back of the residence. Just because it
16 | wasn't in the driveway it didn't mean that it
17 | wasn't at the residence or that Mr. Shivers was not
18 | at the residence as well.

19 | Q. All right. Do you feel that you
20 | exhausted all efforts along the front perimeter of
21 | the residence?

22 | A. Yes, ma'am.

23 | Q. At any time as you were knocking on the
24 | door or ringing the door bell, did you have any
25 | indication of someone inside other than that

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 animal?

2 A. I did not.

3 Q. What did you feel was the next
4 necessary step in your welfare check?

5 A. I needed to conduct a less intrusive
6 step by making sure that nobody was in the
7 backyard. I knew that that was a reasonable place
8 for somebody to be in their home. No other steps
9 were working. There was no contact to the front.
10 Exterior of the house. So I went to the back to
11 try to locate the homeowner.

12 Q. Okay. And did you have an opportunity
13 to view the size of this home?

14 A. I did.

15 Q. Did it indicate to you that the
16 backyard area may also have a back entrance to the
17 home?

18 A. Yes.

19 Q. Possible -- possibly a patio or deck?

20 A. Yes.

21 Q. And what effort did you take next?

22 A. I walked up to the back of the
23 residence, kinda did a visual scan of the backyard
24 looking for the vehicle. Any signs that somebody
25 may be in need of aid or just doing work back there

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 possibly, to make contact with the homeowner to
2 make sure they were okay.

3 From there I didn't see anything, so I
4 walked to the bottom floor of the patio and there
5 was a room I observed with a light on, so I went to
6 that room first on the outside.

7 Q. All right. And did you see any persons
8 inside that room?

9 A. I did not.

10 Q. What did you see there?

11 A. I observed a dog that was running loose
12 in the room. The lights were on and I noticed a
13 cell phone on the vanity where a lot of make-up
14 was placed as well.

15 Q. Okay. What steps did you take next?

16 A. From there I was on the phone with my
17 supervisor, my Master Deputy Dustin Pollard. I
18 advised him of what I had, things that weren't
19 really adding up. Things that led me to believe
20 that somebody was either at the residence and
21 needed serious help and that couldn't get it to.
22 Just kind of giving him my observations and seeing
23 what next steps needed to be done to adequately
24 complete the call.

25 Q. What happened next?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. From there I was on the phone with him
2 and there was a deck, a large deck, that led to the
3 second floor. So I walked up the stairs while on
4 the phone with him, Dustin Pollard, got to the
5 second floor and there was a gate that was open.
6 From there I walked straight up to the top of the
7 patio which led to a bedroom and in plain view,
8 through the windows, I could see what appeared to
9 be a deceased person that was covered in bedsheets.

10 Q. All right. Now, when you say you could
11 look through the glass door and you saw someone who
12 appeared to be deceased, describe to us what you
13 are seeing?

14 A. So the first thing that I saw was two
15 feet sticking straight up and they were covered
16 with blankets, so I knew that a person had been
17 covered up. I didn't know if it was a male or
18 female, Mr. Shivers. From that point it really
19 didn't matter, it was a human life that I observed.
20 It did not appear that they were breathing. There
21 was no respiratory movements under the blankets.

22 So from there, I knocked on the window,
23 on the glass. I also observed a fairly large dog
24 that was in the bedroom. The bedroom door was
25 opened and I could see this through the window

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | pains. The dog was alert. Knocked on the window,
2 | shined my flashlight through the window, announced
3 | myself as a deputy with Lexington County and I had
4 | no response at all.

5 | Q. Okay. And having no response, what was
6 | your next measure?

7 | A. My next measure was to check for life
8 | -- signs of life, so I had to get into the
9 | residence. That door to the bedroom was unlocked,
10 | so I opened the door and I tapped on the person on
11 | the floor and announced myself again as a sheriff's
12 | department deputy. Had no response, no movement.

13 | From that point, I saw several empty
14 | shell casings from a pistol on the left side of the
15 | body from the entrance. From there, had no
16 | response. The sheets that were covering this body,
17 | I slightly lifted up the sheets to get an idea of
18 | what the condition was, if they were unresponsive
19 | or how this occurred. From there I identified that
20 | person to be a female based on seeing what appeared
21 | to be breast underneath the sheets and laid them
22 | back down.

23 | Q. All right. So you first mentioned that
24 | you tapped on the person as you entered. Why did
25 | you lean down to tap on this person?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. So that was kind of the first -- first
2 measure to see if this person was still alive or
3 not. I couldn't be under the assumption that they
4 were not alive in case they needed aid and just by
5 passed that. So I did a tap to insure that life
6 and responsiveness and to see if they needed
7 immediate medical care.

8 Q. What if anything were you calling out
9 as this occurred?

10 A. While I was tapping, I said sheriff's
11 department, get up! Get up! Get up! Had no
12 response.

13 Q. Okay. And you mentioned that you
14 looked under the blanket?

15 A. Yes, ma'am.

16 Q. And when you did so were you able to
17 discern whether this was a male or a female?

18 A. I discerned that it was a female.

19 Q. All right. Now, you have testified
20 that the original subject of your welfare check was
21 a male?

22 A. Correct.

23 Q. What concerns did you have at this
24 point as for any other persons who may be inside
25 that residence?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. I was very concerned that the subject
2 of this welfare check was a male and he was still
3 to be missing. And now that I have what appeared
4 to be a female in the house, he could have been
5 located anywhere in the house as well in a similar
6 condition or maybe needed medical aid as well, so I
7 needed to protect that -- that scene as well as
8 prevent any destruction of evidence because now
9 it's a crime scene and as well as safeguard any
10 suspects that may have remained in the house that
11 may have tried to do harm to myself or if Mr.
12 Shivers was still in the residence, they were
13 actively trying to harm him, anybody else. And
14 then my fellow deputies and EMS workers that were
15 en route to the scene had to be protected for them
16 to come in the house as well.

17 Q. All right. So I want to back up and
18 cover a little bit of that. You mentioned your --
19 the EMS workers who may en route. At what stage do
20 you recall calling for backup -- backup from law
21 enforcement?

22 A. I was on the cell phone with my Master
23 Deputy Dustin Pollard prior to finding the victim.
24 I walked up to the top of the porch. When I -- the
25 top deck. When I looked through the window pains

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 and appeared that a body was in fact on the floor,
2 that's when I advised my supervisor. He advised
3 that he was en route to me, lights and sirens.

4 Q. You two were on the phone this entire
5 time you were inside the residence?

6 A. Correct.

7 Q. Okay.

8 A. And prior to being inside the residence
9 as well. So I actually called him while I was at
10 the base level up near the dog in that make-up
11 room. From there he advised he was en route,
12 lights and sirens, and that I needed to contain
13 that area and further residence as well.

14 Q. All right. And at this point, were you
15 aware that EMS would be en route as well?

16 A. Yes.

17 Q. Was EMS called in regards to the victim
18 who was there in the bedroom?

19 A. Yes.

20 Q. And was EMS also called in regards to
21 any other potential victims who may be inside that
22 residence?

23 A. Yes.

24 Q. Now, you mentioned that you also had
25 concerns that a suspect may still be inside?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. Correct.

2 Q. What measures did you take to protect
3 yourself during this course of action?

4 A. I did what's called a protective sweep.
5 So you're protecting the crime scene from
6 destruction of evidence, pervading the escape of
7 possible suspects and definitely insuring that
8 anybody that needs medical aid that's rendered to.
9 So we did what's called a protective sweep and
10 we're systematically going through the house at
11 gunpoint for safety reasons as well. And in
12 clearing this house and the scope of that clearing
13 is limited to where somebody could possibly be at.
14 So this is bathrooms, you know, bedrooms,
15 underneath the bed, in a closet. So we were going
16 through checking a, you know, closet door, things
17 like that.

18 Q. Are you alone through this protective
19 sweep?

20 A. Yes.

21 Q. You mentioned that your backup Master
22 Deputy Pollard was en route, but had he made it
23 there yet?

24 A. Not yet.

25 Q. And do you have your gun drawn

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | throughout this time?

2 | A. Yes.

3 | Q. Are you announcing yourself throughout
4 | this time?

5 | A. Yes.

6 | Q. Are you looking in closets?

7 | A. Yes.

8 | Q. And bedrooms?

9 | A. Yes.

10 | Q. And any place that a suspect could
11 | potentially hide?

12 | A. Correct.

13 | Q. Had you made Master Deputy Pollard
14 | aware of the situation and that you were going to
15 | gain exigent entry?

16 | A. I did.

17 | Q. Now, you mentioned EMS and you knew
18 | they were en route. What if any training do you
19 | have as a law enforcement officer about the
20 | circumstances which must be acquired before EMS can
21 | enter a scene?

22 | A. The scene has to be secured, meaning
23 | that the arriving deputy has to clear the residence
24 | or the area to protect that area to make sure that
25 | it's safe for them to come in and do their jobs as

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 well.

2 Q. All right. These actions that you
3 described, Deputy, can you tell us whether or not
4 they were recorded on your body cam?

5 A. They were.

6 Q. And have you had a chance to review
7 that body cam?

8 A. I did.

9 Q. Can you tell us whether or not it's a
10 fair and accurate representation of those events as
11 they occurred?

12 A. It is.

13 Q. I'm going to show you what is State's
14 -- Court's 15 and ask you whether or not you
15 recognize this item?

16 A. Yes, ma'am.

17 Q. How so?

18 A. By my signature.

19 MS. MAYES: This being the body cam of
20 Deputy Hale, the State would offer it as a Court's
21 Exhibit at this time.

22 MS. WILSON: No objection.

23 THE COURT: Okay.

24 (WHEREUPON, Court's Exhibit Number 15
25 was entered)

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Permission to publish, Your
2 Honor?

3 THE COURT: You may.

4 Q. Now, you mentioned at the outset you
5 had been in communication with Master Deputy
6 Pollard. Who were you on the phone with at the
7 outset of this recording?

8 A. I believe that was my sergeant, Caleb
9 Black at the time. That was my subsequent phone
10 call.

11 Q. Okay. What about as you're initially
12 depicted going up the stairwell?

13 A. Say again.

14 Q. As you're depicted initially going up
15 the stairway --

16 A. I was on the phone with Master Deputy
17 Dustin Pollard.

18 Q. Okay. That was with Deputy Pollard as
19 you're going up the stairway to the patio?

20 A. Correct.

21 Q. Initially?

22 A. Correct.

23 Q. Now, do you have sound the entire time
24 or just some of the time?

25 A. Just some of the time.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Was that the animal that you previously
2 described?

3 A. Correct.

4 Q. And that gate that we're looking at
5 there, is that the gate that you entered?

6 A. Yes.

7 Q. Any indications of a person down here?

8 A. There is a cell phone that was on the
9 vanity, but no indication that somebody was
10 actually in that room.

11 Q. What are you observing here?

12 A. That's when I observed the feet
13 underneath the bedding and the blankets and I
14 observed that white dog in the bedroom as well.

15 Q. You could tell that that was a person?

16 A. I did.

17 Q. And a separate dog at that location?

18 A. Correct.

19 Q. Just before this, we saw you tap down,
20 is that what you had referenced earlier?

21 A. Correct.

22 Q. Now you're calling?

23 A. My sergeant, Caleb Black.

24 Q. You've stepped back out, why so?

25 A. At the time, my radio inside, when I

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 initiated a transmission through my radio to our
2 dispatch system, it was beeping, signaling that the
3 reception was possibly bad at the time, so I just
4 initiated a phone call. Same thing happened with
5 my phone, it took a minute to connect there as
6 well. Possibly to the location of the residence I
7 was at. And I was also trying to figure out how to
8 properly get that -- that dog safely out of the
9 residence without causing harm to myself as well.

10 Q. Have you relayed to the sergeant what
11 you have observed?

12 A. Correct.

13 Q. What decision have you made at this
14 time?

15 A. To clear the residence.

16 Q. Now, does this continue throughout the
17 house?

18 A. It does.

19 Q. And ultimately does EMS arrive?

20 A. They do.

21 Q. Who lets EMS in?

22 A. I do from the front door.

23 Q. At any point in time, Deputy, do you
24 handle any items of evidence other than when you
25 lifted up that sheet to check on the condition of

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 the person underneath?

2 A. I did not.

3 Q. At any point in time did you seize any
4 items of evidence?

5 A. I did not.

6 Q. Other than opening closet doors,
7 bedroom doors and bathroom doors, did you take any
8 other action inside this home?

9 A. I did not.

10 Q. Now, there at the end we saw certain
11 persons on the outside coming in, who were those
12 individuals?

13 A. Those were EMS workers and fire
14 fighters that arrived on scene.

15 Q. And had you successfully cleared that
16 residence to your satisfaction for their entry?

17 A. I did.

18 Q. Now, I know that you mentioned you were
19 on the phone with Master Deputy Pollard, were you
20 informing him as to your state of mind and your
21 understanding of the circumstances prior to
22 proceeding up to that balcony deck?

23 A. I was.

24 Q. And what we just heard you say there at
25 that portion, was that your understanding of the

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | circumstances?

2 | A. Yes, ma'am.

3 | Q. And do you have with you the time in
4 | which you ultimately gained entry there at the
5 | upstairs balcony door?

6 | A. Approximately 11:59 is when I observed
7 | her on the floor.

8 | Q. And you said your initial arrival time
9 | was 11:31?

10 | A. Correct.

11 | Q. So you had been on the scene almost 30
12 | minutes?

13 | A. Correct.

14 | Q. And throughout that time had been
15 | unable to have anyone answer the door?

16 | A. That's correct.

17 | Q. Now, I know you said that you have been
18 | on welfare checks in the past, do you consider that
19 | part of your responsibility as a law enforcement
20 | officer?

21 | A. Yes, ma'am.

22 | Q. At the point that you went through the
23 | gate there on the premises, can you tell us why you
24 | considered that necessary?

25 | A. I believed that I exhausted all my

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 options as to contacting the owner of the home, in
2 this case was Mr. Vincent Shivers which was the
3 reason for the response. It wasn't investigative
4 in nature for a criminal aspect. It was solely to
5 check and make sure he was okay. Didn't get a
6 response for either of those. We had the mailbox
7 that had mail in it. Negative contact through
8 phone and social media as well.

9 Statements that I received prior to
10 arriving on scene as well as being there from Steve
11 Smith, so the next logical application was to
12 exceed that into the back -- backyard where
13 somebody could possibly be at.

14 Q. All right. And then once you saw the
15 two dogs there on the first level, did the lights
16 appear to be on?

17 A. They did.

18 Q. And you said you observed a cell phone?

19 A. I did.

20 Q. And still no signs of life?

21 A. Correct.

22 Q. And as you proceeded up to the balcony,
23 can you tell us what if anything prompted you to
24 enter?

25 A. The fact that I had what appeared to be

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 | somebody seriously hurt or injured right there in
2 | front of me through the window panes.

3 | Q. Did you also take into account that
4 | there was a second subject possibly inside the
5 | residence?

6 | A. I did.

7 | Q. You were aware that two persons shared
8 | that residence?

9 | A. Correct.

10 | Q. And did you consider that exigent
11 | circumstances?

12 | A. Yes, ma'am.

13 | MS. MAYES: Thank you. Nothing
14 | further.

15 | THE COURT: Ms. Wilson?

16 | MS. WILSON:

17 | CROSS-EXAMINATION

18 | BY MS. WILSON:

19 | Q. Good afternoon.

20 | A. Good afternoon.

21 | Q. So you were called to 216 Carriage Hill
22 | Court on September 3rd; correct?

23 | A. Yes, ma'am, on that Tuesday.

24 | Q. And you talked to Steven Smith on your
25 | way to the residence?

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 A. Yes, ma'am.

2 Q. Ms. Mayes asked you about some things
3 you had knowledge of. Did you have knowledge that
4 one of Mr. Shivers's coworkers had gone to the
5 house twice prior?

6 A. I did. I didn't know the exact number
7 of times. I contacted Mr. Steve Smith on the way
8 to the house and he just mentioned that he had sent
9 an employee to the residence and had negative
10 contact the last two days.

11 Q. Let me backtrack. As far as the
12 information provided to you, were you provided with
13 Mr. Shivers's vehicle, what he drove?

14 A. Not at the time. Not prior to arriving
15 on the scene.

16 Q. You didn't run a DMV check on him?

17 A. No, ma'am, not at the time.

18 Q. Is that something you usually would do?

19 A. Not typically. So I made a phone call
20 to Mr. Steve Smith just to get a basis before
21 getting on scene. Once I arrived on scene, then I
22 called him back and actually identified what he
23 typically drove to determine if that may have been
24 in the equation or not.

25 Q. So when did you call him back to

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 determine that?

2 A. After I arrived on scene. After I made
3 negative contact.

4 Q. So you did have that information on
5 scene, what he drove?

6 A. On scene after I had negative contact
7 at the front door.

8 Q. What time did you get that information?

9 A. I'm not sure exactly when I made the
10 phone call. But I arrived at 11:31, so it's
11 between there and maybe 11:50 prior to going into
12 the back of the residence.

13 Q. Okay. So you -- prior to entering the
14 back of the residence, you determined Mr. Shivers's
15 vehicle was not on the property?

16 A. Not in the driveway.

17 Q. Did you look in the garage?

18 A. I did.

19 Q. Was it in the garage?

20 A. I did not see it.

21 Q. Did you have any knowledge of that his
22 truck was not home at any of the two other
23 occasions when the other employee had gone to the
24 house?

25 A. They did not see any other vehicles

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 | that they recalled when I talked to Steve Smith on
2 | the phone.

3 | Q. Did you have knowledge that Steve Smith
4 | had a discussion with Mr. Shivers about taking
5 | Monday off?

6 | A. I did not.

7 | Q. Did you have knowledge that Mr. Shivers
8 | had what he called a "go bag" and leave with money
9 | and toiletries, clothes at a moment's notice?

10 | A. I did not.

11 | Q. Did you have knowledge that the two
12 | days that Mr. Shivers was not at work was actually
13 | only about 26 hours?

14 | A. No, ma'am.

15 | Q. You were not at the residence for a
16 | call on Roselynn; correct?

17 | A. It was initially for Mr. Shivers on the
18 | phone call with Steve Smith. He also stated to me
19 | that he lived with Ms. Roselynn. He believed them
20 | to be boyfriend and girlfriend to the best of his
21 | knowledge. She should have been at home as well
22 | because she didn't have a job, she didn't work. So
23 | that kind of extended to her as well because he was
24 | not able to get in touch with either of them and he
25 | stated that to me on the way to the house.

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 Q. But no one had -- there was no -- Mr.
2 Smith has no contact with Roselynn on a daily
3 basis; correct?

4 A. Correct.

5 Q. He has no -- to your knowledge, he has
6 no knowledge of where she would be on a daily
7 basis?

8 A. He advised me on the phone that she
9 should have been at the residence. It was
10 reasonable for her on a day-to-day to be at the
11 residence because she did not work.

12 Q. That would be information he obtained
13 from Mr. Shivers?

14 A. I'm not sure.

15 Q. You stated you opened the mailbox to
16 see if the mail was in there?

17 A. Yes, ma'am.

18 Q. Monday had been Labor Day; correct?

19 A. I presume.

20 Q. So no mail would have been delivered on
21 a Monday?

22 A. I'm not sure.

23 Q. Was there a lot of mail in the mailbox?

24 A. I don't recall the amount of mail that
25 was in the mailbox. I just recall that they had

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 mail that was still present in the mailbox.

2 Q. Was it possible they just hadn't picked
3 up their mail they day? It was 11 in the morning?

4 A. I wouldn't think it was impossible, but
5 given the situation and the circumstances as well,
6 it was unusual.

7 Q. To not pick up mail by 11 a.m.?

8 A. Yes.

9 Q. Okay. Did anyone tell you that a
10 friend had borrowed Mr. Shivers's truck?

11 A. They didn't.

12 Q. Okay. Did anybody ever tell you that a
13 neighbor had borrowed Mr. Shivers's truck?

14 A. No.

15 Q. Did anyone ever tell you that Mr.
16 Shivers loaned his truck to neighbors and friends
17 on a normal basis?

18 A. No, ma'am.

19 Q. You said you entered through the fence
20 on the side of the house?

21 A. Yes, ma'am.

22 MS. WILSON: May I approach? Judge,
23 may I approach?

24 THE COURT: Yes, you may.

25 Q. I have two pictures here. They show

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 both access points from the fences. Can you
2 identify which side you entered on?

3 A. On the right.

4 Q. So not the fence by the garage?

5 A. Correct.

6 Q. So in your statement you had said that
7 you had gone down and looked into -- looked in the
8 garage and then entered the backyard, but that's
9 not exactly correct; correct?

10 A. That was correct.

11 Q. Well, to get into this side of the
12 fence you would have had to go all the way back
13 around the side -- the front of the house?

14 A. My initial -- when I ran the tag of the
15 vehicle in the driveway, I also looked into the
16 garage windows as well.

17 Q. Right. And then you entered the
18 backyard according to your report?

19 A. After that, yes.

20 Q. But you entered the backyard from this
21 side?

22 A. Correct, from the other side of the
23 house.

24 Q. So you had to go all the way back
25 around?

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 A. I did. Because I tried to knock on the
2 door again, ring the doorbell as well. And that
3 side of the house had not been checked yet, I
4 didn't know if there was an exterior door or what
5 was on that side of the property as well, so I made
6 -- made my way through that side.

7 Q. Was there any particular reason you
8 didn't enter through the garage side?

9 A. No.

10 Q. Was the fence shut on the right side?

11 A. I believe it was.

12 Q. Was it shut on the left side?

13 A. Yes.

14 Q. Was it locked on the right side?

15 A. It wasn't locked.

16 Q. Was it locked on the left side?

17 A. I didn't checked that.

18 MS. WILSON: I'd like to offer this as
19 a Court's Exhibit.

20 THE COURT: Any objection?

21 MS. MAYES: No objection, Your Honor.

22 MS. WILSON: I guess it would be 1 and
23 2.

24 THE COURT: Ms. Wilson, that's a
25 picture of like the front of the house?

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 MS WILSON: One is a picture of the
2 right side of the house with the fence. And the
3 other one is a picture of the garage and the fence.

4 THE COURT: Gotcha. Any objection?

5 MS. WILSON: No objection, Your Honor.

6 (WHEREUPON, Court's Exhibit Numbers 1
7 and 2 were marked and entered)

8 Q. Is it Sargent Hale now?

9 A. Correct.

10 Q. Sargent Hale, can you tell me about the
11 size of this fence and the material of it?

12 A. It appeared to be a wood privacy fence.
13 I'm not sure of the specifications of it or the
14 size.

15 Q. Looking at these pictures, would you
16 say it was approximately six feet, five feet?

17 A. Sure.

18 Q. It was pretty tall; correct?

19 A. Yes.

20 Q. And you could not see through it?

21 A. Correct.

22 Q. Did you try to look over it or --

23 A. Not on that side.

24 Q. On the right side you tried to look
25 over it?

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 A. Correct.

2 Q. Could you see anything looking over it?

3 A. I could not.

4 Q. Which is why you entered?

5 A. I did.

6 Q. We saw your body cam video. However,
7 it appears not to show, I guess, the 25 minutes
8 where you were in the front of the house?

9 A. Correct.

10 Q. Is it common for you to turn your body
11 cam on when you do a welfare check?

12 A. So not all calls for service initially
13 required on that. In our policy it stated that you
14 could either have it activated upon entry on to a
15 call for service or when you come in contact with
16 somebody. At that point, I had no contact with
17 anybody or persons of the public or at the
18 residence, so I was within the bounds of that
19 policy. So I was just taking the preliminary
20 steps.

21 Q. So why did you turn it on when you
22 entered the backyard?

23 A. Just to document my due diligence of
24 being on the property and showing that I actively
25 tried to protect that property and make contact

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 with the owner in the case something was missed or
2 not found and it didn't come back on myself where
3 they can see. And more importantly that nobody was
4 left without some kind of medical attention just
5 from me not checking.

6 Q. The time on the body camera that we saw
7 in the video says 15:57 which would be 3:57?

8 A. So our body camera that time was in
9 Zulu time, so that is about four hour less, so
10 around 11:00.

11 Q. What is Zulu time?

12 A. It's not just the -- just the standard
13 time, so --

14 Q. I've never heard of that before. So
15 it's four hours difference?

16 A. Yes. And daylight savings time.

17 Q. So you would have turned it on at
18 approximately 11:57?

19 A. 11:57, yes, ma'am.

20 Q. Also on the body camera the audio seems
21 to come in and out?

22 A. Yes.

23 Q. Are you turning that on and off?

24 A. Yes. So that was also within the
25 policy that you can silence your body cam while on

JOSHUA HALE - CROSS EXAMINATION BY MS. WILSON

1 the phone with the supervisor, talking, tactics for
2 strategy or talking about what you have on the
3 scene.

4 MS. WILSON: Beg the Court's
5 indulgence?

6 THE COURT: Take your time.

7 Q. Sergeant Hale, do you know where --
8 where Zulu time comes from?

9 A. I don't necessarily. It's -- I don't
10 know how the body camera time works. It's separate
11 continuity that we don't control.

12 Q. Okay.

13 A. I just know that the equation is --

14 Q. Is four hours?

15 A. Yeah.

16 MS. WILSON: Beg the Court's
17 indulgence.

18 THE COURT: Take your time.

19 Q. Are most body cameras in Zulu time, do
20 you know?

21 A. I'm not sure.

22 MS. WILSON: I have no further
23 questions. Thank you.

24 THE COURT: Any redirect?

25 MS. MAYES: Yes, Your Honor.

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 REDIRECT EXAMINATION

2 BY MS. MAYES:

3 Q. The Zulu time, is that consistent with
4 the UTC or Greenwich time?

5 A. I believe so.

6 Q. Okay. So minus four in the summer,
7 minus five in daylight savings?

8 A. Yes, ma'am.

9 Q. So I want to go back and follow-up I
10 believe on the question about of were you aware of
11 circumstances at work. Did you talk to anyone else
12 at his job other than Steve Smith?

13 A. I did not.

14 Q. And Steve Smith was the caller who
15 requested the welfare check?

16 A. Correct.

17 Q. Did Steve Smith sound concerned?

18 A. He did and he also requested a call
19 back with the findings and the nature of the call
20 as well.

21 Q. And you were able to observe his tone
22 of voice and his urgency in that request?

23 A. I did.

24 Q. Did you consider that a valid request
25 under the circumstances?

JOSHUA HALE - RECROSS EXAMINATION BY MS. WILSON

1 A. I did.

2 Q. You were aware that he had not appeared
3 at work?

4 A. Correct.

5 Q. He had not responded to calls?

6 A. Correct.

7 Q. Or texts?

8 A. Correct.

9 Q. And when you yourself attempted to get
10 Roselynn Cedenon on the phone you were unable to do
11 so?

12 A. Correct.

13 Q. Altogether from the time you arrived at
14 11:31 until the time you entered up those balcony
15 steps at approximately 11:57, how long do you think
16 you spent in that front door area either knocking
17 on the door or ringing the bell?

18 A. Approximately 25 to 27 minutes.

19 Q. Thank you.

20 MS. WILSON: I just have one question.

21 RECROSS EXAMINATION

22 BY MS. WILSON:

23 Q. Did it ever cross your mind that maybe
24 they just weren't home?

25 A. It did not.

1 Q. Thank you.

2 THE COURT: Okay. Can I let him step
3 down?

4 MS. MAYES: Yes, Your Honor.

5 THE COURT: Okay. I think they still
6 have you under a subpoena, but you may step down.

7 MS. MAYES: Your Honor, this is the
8 extent of witnesses regarding the search, the
9 exigent entry, the Community Caretaker Doctrines
10 that are set forth in the motion. In the Defense
11 motion, they also juxtaposed it with a portion
12 addressing the duration of the search warrant.
13 We're prepared to go ahead and offer a witness in
14 that regard as well. We can address everything in
15 one argument.

16 THE COURT: Okay. So let me just make
17 sure I get this straight in my head because I've
18 been looking at this. You're going under the
19 Caretaker Doctrine to get the officer to the house?

20 MS. MAYES: Yes.

21 THE COURT: And he goes around, he sees
22 a body and then you're saying it's exigent
23 circumstances for him to enter the home?

24 MS. MAYES: That is correct, Your
25 Honor. A very -- a very strong distinction there.

1 THE COURT: A very strong distinction,
2 I'm going to tell you. I do -- so I want to make
3 sure that I get it right.

4 MS. MAYES: That is -- that is exactly
5 the State's position, Your Honor. He first comes
6 to the residence under the Community Caretaker
7 Doctrine. There was actually a welfare check
8 called in. He speaks with the complainant on that
9 welfare check. He responds to the residence. He
10 also proceeds through the back gate.

11 Your Honor, the State's position is
12 that once he looks through the window and sees what
13 he sees, at that point, Your Honor, the State's
14 position is he is no longer operating under the
15 Community Caretaker Act. This is exigent
16 circumstances and a clear manifestation of exigent
17 circumstances because he knows that there are two
18 individuals who reside there or who are believed to
19 reside there. He sees one person in immediate need
20 of assistance and believes there may be a second
21 person inside the residence as well as a
22 potentially a suspect once he's inside. He sees
23 shell casings. He briefly exits. He calls for
24 backup. He's aware EMS is also on the way and it
25 is very, very brief and he then reenters with gun

1 drawn.

2 THE COURT: Okay. All right. Do y'all
3 mind if we just take like a ten minute break and
4 then we will put the next witness up.

5 MS. MAYES: Yes, Your Honor. And if
6 need be, we can break up the arguments. I just
7 knew that is was all set forth in one motion and
8 the State responded to one motion, so we can do
9 that either way.

10 THE COURT: Okay. Let me hear from the
11 Defense. Are y'all ready to do that or --

12 MS. WILSON: We can, Judge. We may
13 want to argue this issue tonight and reconvene with
14 the other witness in the morning.

15 THE COURT: Other issues tomorrow?

16 MS. WILSON: I think it's going to be
17 lengthy as far as the search.

18 THE COURT: Can we get through -- I am
19 assuming now we're going to talk about, he's in the
20 house and if I read this correctly, search warrant
21 hadn't been signed yet and he says on a good faith
22 basis he's going to search the house; is that
23 right?

24 MS. WILSON: No.

25 MS. MAYES: Your Honor, no. So we

1 definitely want to back up then and make sure we
2 have all this clear.

3 THE COURT: Yeah, make sure I know
4 what's going on.

5 MS. MAYES: Okay. So Deputy Hale,
6 after we see him open the door for EMS, that is
7 their involvement. That is the extent of their
8 involvement.

9 THE COURT: That's when he leaves.

10 MS. MAYES: That there is no collection
11 of evidence. CSI does not enter. Your Honor, the
12 scene is maintained until that search warrant is
13 obtained. So I just want -- I just want that to be
14 clear.

15 THE COURT: Is that right?

16 MS. WILSON: Yes, Judge. So our issue
17 is basically with the scope of -- we're arguing
18 that he went outside the scope of a welfare check
19 by entering the backyard and going into that area
20 of the curtilage of the house.

21 Our issue with the search is the length
22 of the search. The fact that it took six days,
23 three of which they conducted no searches
24 whatsoever.

25 THE COURT: So this is after they had a

1 search warrant --

2 MS. WILSON: Correct. They did have a
3 search warrant.

4 THE COURT: Is there any time limit on
5 search warrants?

6 MS. WILSON: There's not a time limit,
7 but it deals with reasonableness. And I don't
8 believe it's reasonable for them to search for two
9 days, stop searching for three days and come back
10 of the sixth day and conducted additional searches.
11 Basically they were holding the search warrant open
12 for an autopsy to determine if there was a
13 projectile in the body, but they didn't take any
14 time to even attempt to search for the projectile
15 in the house. We just find that unreasonable.

16 MS. MAYES: All right. So, Judge, just
17 to back up there on that timeline. Once EMS
18 arrives and the officer has allowed them in, they
19 are maintaining that scene and that's going to be
20 approximately 12:08 until 1:34 when that search
21 warrant is signed. There are numerous officers
22 present at the scene, Your Honor, but they are not
23 performing a search.

24 The search warrant is signed, Your
25 Honor, at 1:34 p.m. CSI had arrived on the scene

1 at 1:30. But at 1:34 p.m. when that search warrant
2 is signed, the officer who gets the search warrant
3 who is Detective Brannon Marthers, he relays to an
4 officer back at the scene, search warrant is
5 signed, that's when the CSI officer at the scene in
6 good faith proceeds on as deputy -- or Detective
7 Marthers drives to the location with search warrant
8 in hand. He arrives at that location at 1:53 with
9 search warrant in hand.

10 So, I just want to be clear there was
11 no search of this residence prior to that search
12 warrant being signed.

13 THE COURT: He just called and said,
14 look I've got it, I'm on my way.

15 MS. MAYES: Yes. That's correct, Your
16 Honor.

17 THE COURT: But it had already been
18 signed?

19 MS. MAYES: That's correct, Your Honor.

20 THE COURT: So that's the good faith
21 basis?

22 MS. MAYES: Now, regarding the scope of
23 the search. Our crime scene report in this case,
24 Your Honor, consists of about, I believe there's
25 about 14 pages. I believe it's going to be about

1 12 to 14 pages. But that is the extensive nature
2 of this particular search.

3 Crime scene first comes in and that
4 first day they're dealing primarily with the master
5 bedroom where the victim is located. There are
6 numerous animals that they had to have animal
7 services come and remove from the residence. They
8 processed the body. The body is again removed from
9 the scene.

10 Coroner's office comes and so there's a
11 lot involved with that. But they are photo
12 documenting as well as conducting a search of the
13 immediate area. They're using forensic tools for
14 any signs of forced entry throughout this
15 residence. Every window is checked. Every door is
16 checked. They have taken DNA swabs. They're doing
17 gel lifts of an area in the foyer where there
18 appeared to be some type of a shoe print. They are
19 also dusting for latent prints. They're also using
20 a light source to try to determine through any
21 forensic tools that they have available whether
22 there might be any signs of an intruder and
23 collecting evidence. So that's the first day.

24 They don't even make it into the master
25 bedroom closet until the second day and that's

1 | where all of the firearms and the ammunition are
2 | contained. There are three bedrooms in this home.
3 | In addition, there's a large living area. On the
4 | main floor, a kitchen area and then below that is a
5 | large basement area. And in that basement area is
6 | where the victim's phone and iPad were located and
7 | it was clear that she was down there on this
8 | particular night because the lights are on and
9 | there were other indications of that.

10 | It's also clear that she has a separate
11 | bedroom from the Defendant and both bedrooms needed
12 | to be processed. So that takes up two days.
13 | Again, it's not just collecting evidence, it's a
14 | full crime scene investigation where they're using
15 | forensic tools.

16 | Ultimately, what they learned is that
17 | seven spent casings were found in the master
18 | bedroom all bearing the same headstamp, all .45
19 | calibers. Only six projectiles could be accounted
20 | for. Three in the master bedroom area and then
21 | three that were in her clothing or on her which
22 | went to autopsy. So they knew that they were
23 | missing a seventh projectile. And there was
24 | several possibilities. One is that it was in her
25 | body -- one possibility is that it's in her body

1 and that could be determined at autopsy if it is in
2 her body. And if it's not in her body, then it
3 could potentially be somewhere in that crime scene.

4 But it could also -- they also have a
5 duty to determine where the first shot may have
6 occurred. Did the first shot necessarily occur in
7 that room? Could it have been in another room? So
8 there's just a whole lot more to this. And then
9 they also wanted to make sure that one weapon was
10 used and that they weren't dealing with different
11 calibers where there could be a second weapon or
12 two possible suspects.

13 So taking all of that into account,
14 they wanted to wait on the autopsy. This was
15 around the time that the Lexington County Sheriff's
16 Department and the County as a whole switched to
17 MUSC providing autopsies after Dr. Ross in Newberry
18 retired. And in doing so it took a lot longer to
19 get it scheduled. And so ultimately that autopsy
20 was not scheduled until the 8th.

21 They did wait until that time. They
22 did learn that the seventh projectile was not in
23 the victim and the search warrant had remained open
24 during this time. The scene was monitored by law
25 enforcement the entire time both with crime scene

1 | tape, law enforcement had a key -- the only key to
2 | that residence for anyone to come or go. They had
3 | an officer stationed outside this entire time.
4 | There had been no indications of anyone coming from
5 | that scene other than law enforcement coming or
6 | going to that scene.

7 | And on the eight day, CSI Agent Tom
8 | Smith goes back. They reprocess. They complete
9 | the search. They continue to use forensic tools
10 | and they ended up finding the seventh projectile,
11 | Your Honor, once they removed the master bedroom
12 | carpet and found it underneath a piece of padding
13 | in the carpet.

14 | THE COURT: All right. So all this
15 | happened on 9/03, the autopsy -- I'm with you on
16 | where you're going. 9/8 is the autopsy because
17 | they know they've got a bullet missing. When did
18 | they unseal the house? When did they finish?

19 | MS. MAYES: My understanding is it was
20 | the close of the search on the 8th.

21 | THE COURT: On the 8th was the end of
22 | it?

23 | MS. MAYES: Yes, Your Honor.

24 | THE COURT: So really it lasted five
25 | days?

1 MS. MAYES: Yes, Your Honor. It was a
2 -- there was a thorough search on the 3rd, on the
3 4th, I believe on the 5th some K9s were used on the
4 outside perimeter looking for any type of evidence
5 that may have been dropped or left behind. And
6 then on the 8th, the final search within the
7 residence and it was closed at that time.

8 THE COURT: Okay.

9 MS. MAYES: And the case that was cited
10 by the Defense the which is the *Squillacote* case,
11 the federal case, the espionage case. In that
12 particular decision, the Forth Circuit affirmed and
13 upheld the sixth day search.

14 Our's is even far more in need where we
15 submit of an extensive search because we're dealing
16 with a homicide where the weapon has not been
17 retrieved. There is --

18 THE COURT: A missing person.

19 MS. MAYES: There is Vincent Shivers
20 who is missing, but they also have to explore this
21 from every theory, looking at every entrance for
22 signs of forced entry and using forensic tools.

23 MS. WILSON: Judge, the Court in
24 *Squillacote* held up that search because of the
25 specifics of that case and the condition of the

1 | house. It wasn't -- that was an espionage case and
2 | the government in that case had conducted
3 | surveillance on *Squillacote* for 550 days, so it was
4 | a very intensive --

5 | THE COURT: Yeah, I read it. He didn't
6 | have a very -- he wasn't a good housekeeper.

7 | MS. WILSON: Correct. The house was
8 | very cluttered. It was in disarray. It was
9 | undergoing on renovations, so the basement was
10 | filled with dust and it's a cat odor -- or an odor
11 | of cat urine, so the officers could only be down
12 | there for, you know, short periods of time to
13 | search.

14 | And, basically, the Court found the
15 | search warrant reasonable because of the conditions
16 | of the house. Here we don't have that. And, in
17 | fact, here there were two -- I said three days.
18 | There may have been K9s outside one day, but there
19 | were three full day where the State did not search
20 | the house at all. They didn't do anything inside
21 | the house.

22 | So to say it was held open for
23 | extensive searching just isn't true. Because it
24 | wasn't searched inside on the 5th, the 6th or the
25 | 7th. When the autopsy came back, I believe the

1 autopsy was completed around 11 a.m., the house was
2 unsealed 12:30. So it didn't take them that long
3 to find the missing bull -- the missing projectile
4 after the autopsy was closed.

5 And the autopsy really would only tell
6 them either it was in the body or it wasn't in the
7 body. It wouldn't give them any other indication
8 of where it might be in the house, where the first
9 shot occurred. I mean, that is not determined by
10 the projectile being in the body.

11 So we would just say -- the -- we would
12 ask the Court to find that the search was
13 unreasonable. The fact that it was held open for
14 so long without any additional searches being done
15 on those days. And to, you know, not to mention
16 the amount of law enforcement that it took to hold
17 the house open those days. I mean, that seems like
18 a really large waste of time for these officers to
19 be sitting in front of a house for three days
20 without any searches being conducted at all.

21 THE COURT: Okay. I saw the witness --
22 well, let me ask you this, Ms. Wilson. What about
23 your argument about him going through the backyard
24 and you think that this is not a let's go check on
25 your neighbor?

1 MS. WILSON: So as far as the Community
2 Caretaker Doctrine, it can justify warrantless
3 searches when there's no reasonable basis to
4 believe criminal activity was underway, such as in
5 the case of a welfare check.

6 However, the Courts have never -- the
7 Supreme Court has never applied the Caretaker
8 Doctrine to justify warrantless entry into a home.
9 It's only been used to justify entry into vehicles.
10 You know, vehicles that have been in an accident to
11 see if there's someone that needs medical attention
12 inside or a vehicle that is impeding traffic in
13 some way.

14 The Court in *Caniglia vs Strom* from May
15 of 2021, the Court stressed the distinction between
16 vehicles and homes and specifically declined to
17 expand it to permit entry into homes.

18 I believe that the officer went outside
19 the scope of that welfare check by entering the
20 gated area in the backyard. You know, you look at
21 it in comparison with a knock and talk kind of
22 situation, he's entering curtilage that is -- it's,
23 you know, it's barriered off. It's a private area
24 of this home. It's legally the same as entering
25 the home itself.

1 As far as the Emergency Doctrine, I
2 understand the testimony that his boss was
3 concerned about him. But the fact is, you know,
4 this is a 50-year old man who didn't show up to
5 work for approximately 26 hours. He didn't answer
6 his phone. There was discussion of him taking
7 Monday off because he had worked Sunday. No one
8 was answering the door, but his car was not in the
9 driveway.

10 I mean, in this day in age, people are
11 pretty much tied to their cars. You know, his
12 truck wasn't home. It was unlikely that he was
13 home without his truck being there. And I just
14 think that with those circumstances and the fact
15 that he entered the backyard, it just went outside
16 the scope of that welfare check.

17 THE COURT: Okay. All right. Are
18 y'all going to put up anymore testimony? I don't
19 think I need anymore testimony.

20 MS. MAYES: I just wanted to respond,
21 Your Honor, as council did just mention the
22 *Caniglia* case, I'm going to pass that up. The
23 *Caniglia* case being 141 S. Ct. 1596, it's a 2021
24 decision that they cited.

25 That one, Your Honor, is extremely

1 | important here because the Court actually, I
2 | believe it was Justice Cavanaugh address a similar
3 | situation in his opinion when he states consider
4 | that an elderly man is uncharacteristically absent
5 | from Sunday church and fails to answer his phone
6 | throughout the day and night. A concerned relative
7 | calls the police and asks officers to perform a
8 | wellness check. Two officers drive to the man's
9 | home, they knock, but receive no response. May the
10 | officers enter the home and his response is, of
11 | course.

12 | And, Your Honor, that is on page 7 of
13 | that decision. And in this situation, the State is
14 | not even maintaining that he went into the home
15 | under the Community Caretaker Doctrine. The State
16 | only submits that he went through the gate after 25
17 | minutes there at the front door pursuant to his
18 | testimony, he was unable to get a response to his
19 | knocking, to his ringing the doorbell, to phone
20 | calls, also being aware that the Defendant had not
21 | been seen at work which was very unusual according
22 | to the report, as he noted in his report those were
23 | the words of Steve Smith. Very unusual and that he
24 | could not get either of them on the phone either.

25 | So certainly, Your Honor, at this point

1 he is entering the backyard just to see if there's
2 anything back there that would shed more light on
3 the wellness of Mr. Shivers. And then of course
4 once he does review the body -- or what appeared to
5 be a deceased person, but he didn't know for sure,
6 as we see him enter and then reach down and tap and
7 speak to the person. Certainly, Your Honor, the
8 entry at that point was solely under the exigent
9 circumstances exception to the Forth Amendment.

10 And not a search other than going to
11 check on the status of that individual and then
12 ultimately determining whether anyone else in that
13 home may need aid rendered and whether or not a
14 suspect may be present inside that home.

15 And, finally, Your Honor, on the
16 subject of the *Squillacote* case which was the
17 espionage case, it was six days. There had been a
18 mention of strong cat odor in that opinion, but
19 that was not the sole factor for justifying the
20 duration. The Court repeatedly noted the extensive
21 and exhaustive nature of that search. And,
22 certainly, Your Honor, they also determined that to
23 require the government to obtain a new search
24 warrant for each continued day would impose an
25 undue burden.

1 And in this particular situation, they
2 had requested an autopsy, the scheduling of that
3 autopsy was outside the control of law enforcement,
4 it was done at the Medical University of South
5 Carolina and they expedited it to the extent
6 possible.

7 MS. WILSON: Just a few things, Your
8 Honor. Vincent is not an elderly man and his truck
9 wasn't home. So that's a little bit different
10 situation than *Caniglia*.

11 As far as the exigent circumstances,
12 had the officer not entered the backyard, he
13 wouldn't have seen the exigent circumstances. So
14 by, you know, going outside that scope it created a
15 situation that he shouldn't have seen in the first
16 place.

17 And in *Squillacote*, there were searches
18 conducted every single day of that six day search.
19 It wasn't -- there was no, you know, stopping
20 period. And I think it would be more reasonable
21 here for, you know, after the two and a half day
22 search with the dogs. If the State had needed to
23 come back -- well, A, if they had searched for the
24 projectile to begin with they would have found it
25 under the carpet. But, you know, if they didn't

1 find it, they could have come back with a search
2 warrant after the autopsy was completed just to go
3 in and search for that.

4 Mr. Shivers was arrested on the 5th, so
5 it wasn't like someone else was going to enter the
6 house and look for it. That's all. Thank you.

7 MS. MAYES: Just on that last note
8 regarding due process. I do think it is important
9 to note that the only two residents of this
10 location were Mr. Shivers and the victim. The
11 victim has been confirmed deceased. Mr. Shivers
12 was known by law enforcement to have been arrested
13 in Canada on September 5th. So, Your Honor, from a
14 due process prospective, there is no one else who
15 is being denied access to the home. Law
16 enforcement actually would have a duty at that
17 point to preserve evidence and to preserve the
18 crime scene with due diligence.

19 THE COURT: All right. Anything else?

20 MS. WILSON: No, Your Honor.

21 THE COURT: All right. So we're going
22 to be ready to hear the motions in the morning?
23 The other motions to the statements?

24 MS. MAYES: We still have, Your Honor,
25 yes, the motions regarding the statements that were

1 made to Jesse Dean of the Toronto Police Services.
2 Also we have prepared for the Court the photographs
3 that we addressed earlier from the crime scene and
4 we also gave a copy to the Defense.

5 So we have numerous crime scene photos,
6 but these would be the only one where the victim is
7 depicted. I think there are four from the crime
8 scene officer. And --

9 THE COURT: And y'all didn't agree on
10 those?

11 MR. SWERLING: Your Honor, we've agreed
12 on them. But the ones that have blood in them, we
13 would just request -- I think there's two, that
14 those be in black and white.

15 THE COURT: Can I see?

16 MS. MAYES: And, Your Honor, at the
17 bottom, we have noted what the exhibit number is.

18 THE COURT: Let me ask you something.
19 I think this -- the photo, State's Exhibit 3 and 4,
20 I don't see anything wrong with 1 and 2. Can I get
21 your objection to 1 and 2? I don't -- I don't see
22 anything in there that shocks me or -- but 3 --
23 number 3 and number 4, especially number 4, I think
24 you could probably do black and white. But I'm not
25 real sure you can do black and white with number 3.

1 | Because she's got black pants on and I don't know
2 | what that would look like.

3 | MS. MAYES: We'll attempt that, Your
4 | Honor, and see how they look and take a look at the
5 | final product. Just kind of using our various
6 | tools there for the best quality, black and white
7 | photos that we could potentially produce.

8 | Also I wanted to put on the record
9 | regarding the body cam. The version of the body
10 | cam that we intend to publish to the jury, Your
11 | Honor, will not have the -- any radio traffic in
12 | it. We've also by agreement of the parties
13 | redacted the room where there was a pig -- they had
14 | a potbelly pig that we're redacting that. But,
15 | otherwise, I don't think that the victim is
16 | depicted in that body cam that we just saw a few
17 | moments ago.

18 | THE COURT: Okay. You don't have any
19 | problem with that, Mr. Swerling?

20 | MR. SWERLING: We're okay with that.
21 | It's just that these two pictures, if they could be
22 | black and white we'd --

23 | THE COURT: Yeah. Well, I'm just
24 | telling you, State's Exhibit 1, I don't see any
25 | problem with it at all. State's Exhibit 2, I don't

1 see any problem. State's Exhibit 3, I'm just going
2 to be curious, she's entitled to a crime scene
3 photo. But I'd like to see it in black and white.
4 I think it might distort it because she's got on
5 black pants with a gray carpet and I don't know
6 what it would look like. Number 4 definitely needs
7 to be in black and white.

8 So if you could do those maybe y'all
9 can show each other tomorrow and we'll have those.
10 Are the other ones -- I didn't see anything that I
11 thought was shocking to my cuts on 8 or maybe I
12 just don't know what it is I'm looking at.

13 MS. MAYES: Those are still shots from
14 the body cam, Your Honor, and, again, we don't
15 believe that there are going to be any portions of
16 that body cam that are going to depict the victim.
17 We see him lift up the blanket, but even then she's
18 not visible, maybe just part of the foot. So those
19 that you're looking at there are still shots from
20 the body cam and we certainly don't believe those
21 are going to be objectionable.

22 THE COURT: Okay. All right.

23 MS. MAYES: Now, with that said, there
24 will be a later portion of the trial where the
25 victim is not present, but a blood stain is visible

1 and that's going to be relevant and probative to
2 the fact that there is no blood trail and
3 everything occurred in that room. Of course, we'll
4 cross that bridge when we come to it.

5 But certainly how the crime scene
6 appeared, the condition of the crime scene without
7 the victim visible has always been admitted in the
8 past. We certainly don't foresee any issues with
9 that.

10 Anything from the Defense?

11 MR. SWERLING: Well, are you talking
12 about the picture we have not seen yet?

13 MS. MAYES: It would just -- whatever
14 crime scene photos we have that you can see a blood
15 stain, but the victim was not there.

16 MR. SWERLING: I'd like to see them
17 which ones they are. I'm sure we're not going to
18 have a whole lot of problem with them.

19 THE COURT: Yeah, I don't think you
20 will. But you can look at them, if you've got an
21 objection, we'll note it for the record, I'll rule
22 on it and we'll go on. All right.

23 So I'm going to be ready to take care
24 of the Canadians tomorrow, the officers. And then
25 what else do we need to do? I have a funeral that

1 I need to drop in on and I need to be there at
2 about 1. I am going to be back here by 2. I just
3 have to go to St. Andrews Road and it's a must that
4 I go. And I'll be ready to start at 2:30.

5 MS. MAYES: That sounds good, Your
6 Honor. We should be able to get in opening
7 arguments and at least the first three to four
8 witnesses I would think.

9 THE COURT: Okay. Well, I'll be ready
10 to go on that. Let me make sure on these
11 statements. I looked at them over the weekend.
12 Let me make sure I got the story line straight in
13 my head.

14 Did anyone from the us go over to
15 Canada?

16 MS. MAYES: Only to retrieve the truck,
17 Your Honor, after it had been seized and that is
18 much, much, much later that is following his
19 arrest. So law enforcement learned that he was in
20 Canada I believe on the 4th. Give me one moment to
21 verify that. So he crosses the border into Canada
22 at Rainbow Bridge on the 3rd at 1:15 p.m. That is
23 around the same time law enforcement is gathered at
24 the crime scene because they had discovered her
25 body just around noon.

1 So all of this is happening at the same
2 point in time where they discover her body, have
3 multiple officers there. He is at that point in
4 time only known as missing. He had crossed the
5 border, but they were not yet aware of it.

6 Sometime in the next 24 hours, they do
7 become aware of it. Shannon Dykes through the US
8 Marshals Office as well as communication with many
9 other internationals, Your Honor, did learned that
10 he had crossed the border. They also were tracing
11 his American Express records by this point in time.

12 So they are aware of that by the 5th.
13 They obtained a warrant for his arrest on the 5th
14 for murder based on various aspects of the
15 investigation. He was detained by Canadian
16 officials there at the airport under their
17 Immigration and Refugee Act just prior to them
18 getting that warrant, so it's going to be around
19 6 p.m. on September 5th.

20 And, again, they were aware at this
21 point that he was at least wanted in connection or
22 a suspect in connection with this. They also
23 considered him under their Immigration Act to be
24 what they term a danger to the public. They issued
25 an arrest warrant. That was the Canadian Border

1 Services --

2 THE COURT: They issued the arrest
3 warrant?

4 MS. MAYES: They did. They had their
5 own arrest warrant. It's similar to our ICE, our
6 immigration department. Their immigration and
7 refugee department. Violations are prosecuted
8 under the what's called the Canadian Border
9 Services. And they had an agent there at the
10 airport with that warrant, with that paperwork and
11 there were also two officers with the Toronto
12 police services.

13 So they were all there to arrest and
14 detain him for violation of their Immigration and
15 Refugee Act and they find him there around 6 p.m.,
16 Your Honor.

17 THE COURT: Well, let me ask you.
18 Other than what the notes that I read from the
19 police officer when they picked him up, I read your
20 motion, voluntary statement, is where you're going
21 with it. Of course the Defense says something
22 else. Is there any other statement that he gave to
23 the Canadian officials?

24 MS. MAYES: No, Your Honor. It's all
25 going to be right there at the airport as the State

1 maintains contemporaneous with his arrest and
2 detainment. They do take him on to their
3 headquarters which is fairly nearby, but it
4 involved putting him in a vehicle, having him
5 transported there. At that location they actually
6 advise him of some formal rights that they have
7 under Canadian law which are separate obviously
8 than what we would do here under Miranda, but they
9 do have some formal rights. He declined to make a
10 statement. We are not offering anything in regards
11 to what happens at headquarters where he is advised
12 of rights and wishes to not make a statement.

13 He also at some point is given an
14 opportunity to use his phone and try to contact an
15 attorney. The State is not offering anything in
16 that regard. Everything is limited to his initial
17 detainment there at the airport. He is in custody.
18 But, again, the State's position as we'll have
19 witnesses to support who said it would all be
20 spontaneous in nature.

21 THE COURT: Okay. And, of course,
22 you're saying it's not voluntary?

23 MS. BARBIER: That's correct, Your
24 Honor.

25 THE COURT: I got it. Okay. Well,

1 I'll be interested to hear the witnesses tomorrow.

2 Would y'all like to start at 9 o'clock?

3 MS. MAYES: We can do that, Your Honor.

4 THE COURT: That way we can finish
5 early. I'll just rule on all of this at one time.
6 It does sound good to me.

7 MS. MAYES: Now, we submitted *State v.*
8 *Abdullah*. I believe the Defense submitted
9 *Squillacote*. We also submitted *Mollison*. If there
10 was any other case law that you may need, we have
11 plenty. And *Innis* and *Hart* are both cases dealing
12 with the statements.

13 *Hart* is the brand new Court of Appeals
14 decision which has just come out this month, but
15 it's a Lexington County case as well.

16 THE COURT: Okay. All right. Well
17 then, if y'all don't need me any further, courts
18 adjourned. I will see y'all at 9 o'clock in the
19 morning.

20 (WHEREUPON, court was adjourned at 6
21 p.m.)

22

23

24

25

1 **(MARCH 22, 2022)**

2 THE COURT: All right. Is the State
3 ready?

4 MS. MAYES: Yes, Your Honor.

5 THE COURT: Is the Defense ready?

6 MS. WILSON: Yes, we are, Your Honor.

7 THE COURT: Okay. Then go ahead and
8 call your --

9 MS. WILSON: Your Honor, we would move
10 for the sequestration of all witnesses. So anybody
11 that's going to testify are not just in the *Jackson*
12 *v. Denno* hearing, but throughout the trial be
13 sequestered.

14 THE COURT: Anything from the State?

15 MS. MAYES: Yes, Your Honor, a couple
16 things on that. So seated at the table is the
17 chief investigating officer, Nick Burt who would
18 certainly need to be present. Not today, but
19 during the course of the trial we're going to have
20 evidence custodians who will have all the evidence
21 that we intend to offer in this case present in the
22 courtroom. They're on the witness list, but would
23 need to be exempt because otherwise we're not going
24 to be able to access evidence as we go.

25 In addition --

1 THE COURT: But a lot of that was
2 stipulated to also, wasn't it?

3 MS. MAYES: The physical evidence, Your
4 Honor, we aren't able to access physical evidence.
5 It's sealed and there's multiple --

6 THE COURT: But, I mean, their
7 testimony?

8 MS. MAYES: As to the --

9 THE COURT: To the chain.

10 MS. MAYES: -- actual custodian such as
11 Candy Kyzer and Sandy Black and Beth Holliman, I
12 don't know that there's been a stipulation. But
13 all evidence would have been sealed when they were
14 handling it anyway, so I don't foresee calling them
15 as witnesses.

16 We also noticed yesterday that in the
17 crime scene log, Danny Lewis was also listed as one
18 of the people who had participated along the way
19 with securing the house, obviously he's --

20 THE COURT: Our Danny Lewis in the
21 courthouse?

22 MS. MAYES: He was on the crime scene
23 log, Your Honor. So with that said, he's courtroom
24 security.

25 Regarding the victim's family, Your

1 Honor. Pursuant to the victim witness Bill of
2 Rights, they would also be exempt from
3 sequestration. Present in the courtroom is
4 Roselynn Cedenos father, Ruben Cedenos and her son,
5 Tommy Cedenos.

6 THE COURT: All right. Any objection
7 to that, Ms. Barbier?

8 MS. BARBIER: Your Honor, we have no
9 objection to the lead case agent being present
10 during the testimony. As to the chain of custody
11 witnesses, let me confer with Mr. Swerling on that,
12 please.

13 We don't have any objection to
14 obviously the victims family being here, Your
15 Honor. And also with respect to the chain of
16 custody, custodians to which we've stipulated, we
17 don't have any objections with that either.

18 THE COURT: All right. Then I'm going
19 to tell you, Ms. Mayes, they've agreed with you.
20 If there's any chain of custody they haven't
21 stipulated to, then I am going to ask that they be
22 sequestered.

23 MS. MAYES: So bringing the evidence
24 over from the sheriff's department will probably be
25 either Sandy Black, Candy Kaiser or Beth Holliman.

1 They are only dealing with evidence once it's
2 sealed. They're not dealing with any evidence
3 that's unsealed. So from that standpoint, there
4 hasn't been a specific stipulation, but they're the
5 only people who can access the evidence that we're
6 going to need during the course of the trial.

7 The ballistics, the firearms, the
8 clothing, the swabs, anything else of that nature.
9 They have it all itemized, it's boxed, it's sealed
10 when they'll be in the courtroom, so we don't have
11 the means to access it without them.

12 MS. BARBIER: We don't have any
13 objection to that, Your Honor.

14 THE COURT: Okay. All right. Well
15 then, I think we have an understanding then between
16 the parties. So everyone else will be sequestered.

17 All right. Now, we're going into the
18 statement of the Defendant when he was taken into
19 custody; is that correct? That's the first motion
20 we're doing this morning?

21 MS. BARBIER: I believe so, Your Honor.
22 And that would be the alleged statement of the
23 Defendant.

24 THE COURT: The alleged statement,
25 exactly. Okay. Call your first witness.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: The State calls Chris
2 Collier, Your Honor.

3 CHRISTOPHER COLLIER,
4 being first duly sworn, was examined and testified
5 as follows:

6 THE CLERK: When you have a seat up
7 there, if you'll state your name and spell your
8 last name for the record.

9 MR. COLLIER: Okay. My name is
10 Christopher Collier. Last name is C-O-L-L-I-E-R.

11 DIRECT EXAMINATION

12 BY MS. MCMENAMIN:

13 Q. Mr. Collier, where do you currently
14 work?

15 A. I work at the Canada Border Services
16 Agency in Mississauga, Ontario, Canada.

17 Q. And what is your current position
18 there?

19 A. I am an inland enforcement officer.

20 Q. So are you an agent of CBSA, is that
21 the right abbreviation?

22 A. I'm an officer of -- yeah, of CBSA.

23 Q. Okay. So, Officer Collier, did you
24 have any trouble with your luggage getting here to
25 South Carolina?

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, my bags were misplaced.

2 Q. Gotcha. Do you know where they ended
3 up?

4 A. They say it was Huntsville, Alabama,
5 but I don't know if that's where they are now.

6 Q. Who knows; right?

7 A. Not me.

8 Q. But normally for court you would have
9 had your suit or your uniform?

10 A. Yes, I would have dressed much better.

11 MS. MCMENAMIN: I'm sure we could take
12 judicial notice that the Court understands the
13 situation, Your Honor?

14 THE COURT: The Court does understand.
15 I've had stuff land in Huntsville, Alabama without
16 me, so I know. I do understand. Don't worry about
17 it. It's just fine.

18 Q. Thank you for explaining, Mr. Collier.
19 Now, back to your employment with the Canada Border
20 Services Agency or CBSA, you said you're an inland
21 enforcement officer. How long have you been
22 employed in that position?

23 A. I've been there just over 14 years.

24 Q. Okay. And what do your duties entail
25 as an inland enforcement officer?

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. We have two streams that we have. One
2 is for removals, one is investigations. The
3 removal of people, they book people who are
4 inadmissible to Canada back to their home country
5 and those that have investigation streams, such as
6 myself, we investigate those who are suspected to
7 be inadmissible and have them brought forward
8 either arrested to determine their disability.

9 MS. MCMENAMIN: I'm going to approach
10 him, Your Honor, just to adjust this microphone a
11 little bit.

12 Q. Can you speak into that microphone just
13 a little bit louder for me?

14 A. Yep.

15 Q. Thank you, Mr. Collier. Now, you said
16 that as an inland enforcement officer, would it be
17 fair to say that part of your job is serving
18 warrants on individuals?

19 A. We execute warrants, yes.

20 Q. Did you execute a warrant in this case?

21 A. Yes, I did.

22 Q. Okay. Was that on September 5th of
23 2019?

24 A. Yes, it was.

25 Q. Tell us how did you become to be

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 involved in this investigation of the Defendant,
2 Vincent Shivers, on September 5th of 2019?

3 A. Our unit got a phone call from the
4 United States Marshals indicating that an American
5 citizen wanted for murder was in and around the
6 Mississauga area at a hotel. We ran checks to
7 determine if he had an outstanding warrant issued
8 out of Niagara Falls. Issued by CBSA, it's a
9 Canada wide warrant and that's how we were notified
10 that Mr. Shivers was in Canada.

11 Q. And this was on September 5th; correct?

12 A. Yes, it was.

13 Q. And so you were serving a Canadian
14 warrant on him, that was your goal?

15 A. Yes, it was a warrant issued by CBSA,
16 it's Canada wide.

17 Q. And you mentioned something about a
18 hotel, I think, did I get that right?

19 A. Yes. We were advised that he was at
20 the Marriott Hotel Airport by Pearson
21 International.

22 Q. Where is that located?

23 A. About five minutes from my office.

24 Q. Is that in the US or in Canada?

25 A. Sorry, that's in Canada.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And where in Canada?

2 A. In Mississauga.

3 Q. Okay. Is that near Toronto?

4 A. Yes, it is.

5 Q. And so did you go to that airport,

6 Marriott Hotel to look for the Defendant on

7 September 5th?

8 A. Yes, myself and other officers from the

9 Toronto police, we went to the hotel. We did not

10 see any vehicle that we believed belonged to Mr.

11 Shivers and we went in to talk to hotel management.

12 They advised us that he did stay there, but he had

13 already checked out.

14 Q. Okay. And, Officer Collier, are you

15 taking notes throughout your investigation?

16 A. Yes.

17 Q. What sort of notes?

18 A. We take notes just saying what time we

19 went there, who we were looking for, and sort of

20 the results of our talking to management.

21 Q. So are these notes handwritten or

22 typed?

23 A. They're handwritten notes.

24 Q. And what format are they from?

25 Chronological? Are they kind of random?

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. They're chronological notes written as
2 we go.

3 Q. Do you happen to have a copy of them in
4 front of you?

5 A. I do, Yes.

6 Q. Okay. Actually, I'm going to show you
7 a copy marked as Exhibit 27. Officer Collier, is
8 Exhibit 27 a copy of the notes you were just
9 describing?

10 A. Yes, those are them.

11 Q. Okay. In looking at the second page,
12 is that your notes?

13 A. Yes, they are.

14 Q. Can you tell by the way they're written
15 and the handwriting?

16 A. Yes.

17 MS. MCMENAMIN: We offer Exhibit 27, as
18 Court's Exhibit 27.

19 THE COURT: Any objection?

20 MS. BARBIER: No objection, Your Honor.

21 (WHEREUPON, Court's Exhibit Number 27
22 was entered)

23 MS. MCMENAMIN: Permission to publish,
24 Your Honor?

25 THE COURT: Yes, Ma'am.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Detective Collier, looking at your
2 notes, do you know about what time you arrived at
3 the Toronto -- the -- at the Marriott?

4 A. Yes.

5 Q. Okay. Can you tell us?

6 A. Approximately 1700 hours.

7 Q. Where would I see that on these notes?

8 A. Left-hand side of the middle it says
9 17:01, it's a 10-7, spoke to management who
10 confirmed subject was here, but not anymore. He
11 checked out earlier today.

12 Q. Okay. And You said 17:07, that equals
13 10:07 a.m.?

14 A. 17:07 is 5:07 p.m.

15 Q. Oh, 5:07 p.m., excuse me. I thought I
16 heard a ten there. 5:07 p.m. So this is this is
17 military time you're converting to a standard time?

18 A. Correct.

19 Q. Okay. Now --

20 MS. MCMENAMIN: And that was Exhibit
21 27, that's the same, Your Honor.

22 Q. Officer Collier, this was around
23 5:07 p.m. or 5:01 p.m. that you went to the Airport
24 Marriott and you did not find the Defendant there?

25 A. Correct.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. What about his vehicle?

2 A. That was also not there.

3 Q. And what sort of vehicle were you
4 looking for?

5 A. We had it listed as I believe -- it was
6 a pickup truck.

7 Q. Were other officers assisting you that
8 may have known what vehicle you were looking for?

9 A. Yes.

10 Q. Okay. But you did not find that
11 vehicle?

12 A. No.

13 Q. Now, once you realized he was not at
14 the Airport Marriott, where did you go from there
15 looking at your notes?

16 A. We regrouped and then another officer
17 received a phone call that the subject had made a
18 purchase with Air Canada. And just from personal
19 experience, Air Canada has a ticket booth and many
20 desks at Pearson International Airport, so we went
21 there to inquire where the Air Canada ticket was
22 for.

23 Q. Okay. Did you figure out where he was
24 flying to?

25 A. Yes.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Where was he flying?

2 A. The ticket was purchased to go to
3 London Heathrow.

4 Q. And did you find the Defendant in the
5 airport at Pearson International Airport looking at
6 your notes?

7 A. Yes, we did.

8 Q. And what time according to your notes
9 did you arrest the Defendant at the airport?

10 A. At 18:10 we arrested the subject.

11 Q. And what time would that be?

12 A. 6:10 p.m.

13 Q. Okay. And at that time, did you advise
14 the Defendant of any rights?

15 A. Yes, he was advised of his rights, to
16 contact counsel and advised of his right to contact
17 a representative of government. In this case would
18 have been the Consulate of the United States in
19 Toronto.

20 Q. And did you advise him of the basis of
21 the warrant that you were serving on him?

22 A. That he was unlikely to appear, yes, or
23 a proceeding by the administer and somebody made a
24 determination to the public.

25 Q. Now, the rights that you advised him

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 of, are those under the charter, the Canadian
2 Charter of Rights and Vienna Convention on Consular
3 Relations?

4 A. Yes, they are.

5 Q. Do those rights include a right to
6 remain silent?

7 A. No, they do not.

8 Q. But you did advise him he had a right
9 to an attorney?

10 A. Yes, I did.

11 Q. Okay. And when you got to that gate
12 for the flight to London, looking for the
13 Defendant, what do you remember observing about the
14 people at that gate?

15 A. They were all lined up ready to board.
16 Nothing really exemplary about it.

17 Q. So based on your observations, would
18 you say that the flight was preparing to leave the
19 airport?

20 A. Yes, it was.

21 Q. And was the Defendant, was he like the
22 others, was he standing?

23 A. Yes, he was.

24 Q. Do you recall if he had any luggage on
25 him?

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. I believe he had a small bag.

2 Q. Okay. And when you arrested him and
3 told him that there was this Canadian warrant, what
4 do you recall about his demeanor at that time?

5 A. Nothing special about it. Some people
6 cry or -- but he was very -- it was uneventful. He
7 didn't seem phased by it. So nothing really stuck
8 out.

9 Q. Did he seem coherent?

10 A. Yes.

11 Q. Did he seem like he was having any
12 issues understanding what you were telling him?

13 A. No.

14 Q. Did he appear intoxicated or anything
15 of that nature.

16 A. No, he was very cooperative.

17 Q. And after you arrested him, what did
18 you do next?

19 A. Once we address him, he was handcuffed
20 and we went from the gate back to our vehicles that
21 were curbside at the terminal.

22 Q. Okay. As you were walking him out of
23 the airport to those vehicles, did you question the
24 Defendant at all?

25 A. No, I did not.

CHRISTOPHER COLLIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And actually going back to when you
2 arrested him, did you question him then?

3 A. No, I did not.

4 Q. Okay. And you didn't question him
5 walking through the airport, did you question him
6 at the vehicle?

7 A. No.

8 Q. Did you do anything, Officer Collier,
9 to attempt to elicit any sort of incriminating
10 statements from the Defendant?

11 A. No, I did not.

12 Q. Did you hear him make any statements?

13 A. No, I did not.

14 Q. And to your knowledge, did any of the
15 other law enforcement officers working with you on
16 this case interrogate him in any way?

17 A. No, they did not.

18 Q. And is that generally the extent of
19 your involvement in this investigation on September
20 5th at the airport?

21 A. Yes.

22 Q. And you were able to properly identify
23 the Defendant, Vincent Shivers?

24 A. Yes. He confirmed his identity in the
25 lineup.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 MS. MCMENAMIN: We have nothing further
2 for this witness at this time, Your Honor.

3 THE COURT: Ms. Barbier?

4 MS. BARBIER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. BARBIER:

7 Q. Good morning, Officer Collier, I'm
8 Debbie Barbier. I represent Mr. Shivers.

9 A. Good morning.

10 Q. So, Officer Collier, you have been with
11 the Canadian Border Service for approximately 14
12 years; is that right?

13 A. Just over 14 years.

14 Q. Okay. And were you in law enforcement
15 previous to that?

16 A. No, I was not.

17 Q. Okay. You have been trained, I would
18 imagine, in how to detain a subject; correct?

19 A. Yes.

20 Q. Okay. And you have been trained in how
21 to advise a detainee of their Canadian rights; is
22 that right?

23 A. Yes.

24 Q. Okay. Are you familiar with what we
25 call in the United States, Miranda Rights?

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 A. A little bit.

2 Q. Okay. Have you ever advised anybody of
3 their Miranda Rights?

4 A. No.

5 Q. Have you been trained on how to take a
6 statement from a witness?

7 A. We don't take statements from witnesses
8 under the Immigration Refugee Protection Act. It's
9 a regulatory law not a criminal law, so it operates
10 a little differently.

11 Q. Have you been trained on how to
12 interview someone in the course of a law
13 enforcement investigation?

14 A. For purposes of the Immigration Refugee
15 Protection Act, yes, we fill out a form that
16 requires them to answer a few questions.

17 Q. For example, you went to the Marriott
18 in this investigation and you interviewed the
19 people who worked at the Marriott; correct?

20 A. I did ask them questions.

21 Q. Okay. And so you've also been trained
22 in how to convince someone that you are arresting
23 on how to get them to cooperate; correct?

24 A. We try. In what way?

25 Q. You've been trained on how to deal with

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 a subject of an investigation in order to convince
2 them that cooperation is a good route to take; is
3 that right?

4 A. No, I tell most people they can answer
5 my questions or not. They can always write, refuse
6 to answer. The report's already written and it
7 will be up to a member to decide whether they're
8 admissible or not.

9 Q. But that's a big part of your job,
10 isn't it, in informing whoever you're detaining or
11 arresting that they have a right to counsel, but if
12 they'd like to answer your questions they're
13 allowed to; right?

14 A. Yes.

15 Q. Okay. Now, you had discussions with
16 some law enforcement officers prior to making this
17 arrest; correct?

18 A. Yes.

19 Q. You had discussions with the US
20 Marshals in New York; is that right?

21 A. I did not. No, not myself.

22 Q. Okay. Did you personally have
23 discussions with any law enforcement officers?

24 A. My fellow Toronto police officers.

25 Q. Okay. Did you have any discussions

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 with anybody in the Lexington Police Department or
2 Sheriff's Department?

3 A. No, I did not.

4 Q. Okay. Did you have any discussions
5 with anyone in the US Marshals Service in any
6 office?

7 A. On that date for this case?

8 Q. Prior to this arrest?

9 A. No.

10 Q. Okay. So you were informed though that
11 this was a murder suspect; correct?

12 A. Yes.

13 Q. Okay. You were given a description of
14 Mr. Shivers; is that right?

15 A. Yes, it was provided to me.

16 Q. They sent you a picture of him, didn't
17 they?

18 A. Yes.

19 Q. Okay. And they told you that they were
20 interested in locating a firearm that might have
21 been used as a murder weapon; correct?

22 A. No.

23 Q. Okay. Did you know firearms were
24 involved in this alleged crime?

25 A. I understood there might have been.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Did your fellow officers give
2 you any description of the crime scene?

3 A. No, they did not.

4 Q. Did they give you any description of
5 what type of crime had occurred?

6 A. Other than a homicide that's all I
7 knew.

8 Q. Okay. Did you know it was a homicide
9 as a result of a shooting?

10 A. Well, I didn't know, but I heard.

11 Q. You understood that; correct?

12 A. Yes.

13 Q. Okay. Did they inform you as to what
14 Mr. Shivers's relationship was with Ms. Cedenno, the
15 victim of the crime?

16 A. I don't recall the relationship.

17 Q. Okay. Were you informed by anybody in
18 your -- of your fellow officers that the US
19 Marshals or the Lexington law enforcement officers
20 wanted you to try to get a statement from Mr.
21 Shivers when he was arrested?

22 A. No.

23 Q. They never asked you to do that?

24 A. It's not under my mandate under the
25 Immigration Refugee Protection Act.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. I'm not asking you whether it's under
2 your mandate. I'm asking you whether any of your
3 fellow officers informed you that one of the goals
4 of this arrest was to try to get a statement from
5 Mr. Shivers on what had happened; correct?

6 A. There was no such discussion about
7 trying to get that at all.

8 Q. Okay. You acted in making this
9 interviews at the Airport Marriott and at making
10 the arrest at the airport at the request of the US
11 Marshals; correct?

12 A. No. See once they advise us that
13 someone is in the country, there was already a
14 Canada Border Services Agency warrant issued. I
15 have no interest in extradition or anything like
16 that. I'm only there for removal purposes.

17 Q. So you would not have issued this
18 Canadian warrant without the information provided
19 to you by the US Marshals; correct?

20 A. Yes, whoever was issued the warrant
21 down in Niagara Falls with that information, likely
22 from the partner agency, I can't say whether it was
23 the US Marshals or not, but they received their
24 information enough so that I can write a report and
25 issue a warrant.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And you knew that a person had
2 been killed and that Mr. Shivers was a suspect;
3 correct?

4 A. Yes.

5 Q. And you were tasked with apprehending
6 him and getting him to tell you what had happened;
7 right?

8 A. No.

9 Q. Officer Collier, do you wear a body
10 camera?

11 A. No, I do not.

12 Q. Are you aware in the State of South
13 Carolina that law enforcement officers are required
14 to wear body cameras?

15 A. I did not know that, no.

16 Q. Okay. Is the Toronto Police Department
17 implementing a rule that body cameras must be worn
18 to your knowledge?

19 A. I believe they are rolling it out.

20 Q. Okay. And are the Canadian Border
21 security officers going to wear body cameras?

22 A. Not that I'm aware of, no.

23 Q. Okay. Now, there were six police
24 shootings in Toronto that's what prompted the body
25 camera mandate, isn't it?

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 A. There was a lot more than that, but if
2 that's --

3 Q. Six police shootings, I'm sorry.

4 A. Oh, I don't know why they're making the
5 decision.

6 Q. Okay. Are you familiar with Police
7 Chief Mark Saunders?

8 A. Yes.

9 Q. Okay. Are you aware that there was a
10 person, a 29 year old name Regis Korchinski-Paquet
11 who was shot by the Canadian --

12 MS. MCMENAMIN: Objection, Your Honor,
13 on the grounds of relevance. This is regarding the
14 voluntariness of the Defendant's statement. She's
15 asked him repeatedly and he's confirmed numerous of
16 times, he did not question him in any way.

17 MS. BARBIER: I'm getting to that, Your
18 Honor. I'll move on.

19 THE COURT: Okay. Thank you.

20 Q. So do you have a recording function on
21 your phone, Officer Collier?

22 A. My personal phone?

23 Q. Yeah.

24 A. Yeah.

25 Q. Okay. So if you wanted to record the

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 encounter with Mr. Shivers you could have; correct?

2 A. I guess I could have, yeah.

3 Q. Okay. And there are also security
4 cameras in the Toronto Airport; right?

5 A. Yes, there are.

6 Q. Okay. Did you obtain the footage of
7 your arrest of Mr. Shivers from the Canadian
8 airport?

9 A. No.

10 Q. Okay. But if you had done that, we'd
11 have an actual videotape of exactly what had
12 happened when you arrested Mr. Shivers, wouldn't
13 we?

14 A. Yeah.

15 Q. Or might have even an audio of that
16 event; right?

17 A. From what I understand.

18 Q. Okay. And so to your knowledge, you
19 have not produced, even though they may exist, you
20 haven't produced any recordings of your arrest of
21 Mr. Shivers?

22 A. Correct.

23 Q. Were you asked to produce the
24 recordings?

25 A. I was not.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. You indicated that when you approached
2 Mr. Shivers who was standing at the gate getting
3 ready to board a plane; is that correct?

4 A. Correct.

5 Q. You indicated to him that he was a
6 person of interest in a domestic dispute in the
7 United States; is that right?

8 A. No.

9 Q. Okay. What exactly did you tell him he
10 was being arrested for?

11 A. That he had a warrant issued by the
12 Canada Border Services Agency for unlikely to
13 appear for a ministers proceeding and that he would
14 have been deemed a danger to the public.

15 Q. Okay. Did you indicate to him why he
16 believed he was -- why Canada believed he was a
17 danger to the public?

18 A. That warrant wasn't issued by me, so
19 whatever grounds they had, they had.

20 Q. And that's exactly what you said to him
21 when you approached him?

22 A. First I asked if he was Mr. Shivers. I
23 might have mispronounced his name at the time as
24 She/vers, I don't recall. He corrected me and then
25 once we confirmed who he was, I identified myself

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 as Officer Collier of the Canada Border Services
2 Agency and that he was under arrest as a result of
3 a Canada wide warrant for unlikely to appear for an
4 administrative proceedings as well as being a
5 danger to the public.

6 Q. How many officers accompanied you when
7 you approached him in the airport?

8 A. I had four with me at the time.

9 Q. And who was tasked with being the lead
10 officer in that arrest?

11 A. It would have been me.

12 Q. Okay.

13 A. As it was a CBSA warrant.

14 Q. When you indicated to Mr. Shivers that
15 he was -- you had a Canadian warrant for his
16 arrest, did he tell you that he wanted to speak to
17 with an attorney?

18 A. No, not at the time.

19 Q. Did you tell him, isn't it correct, you
20 told him we just need your cooperation, we just
21 need to ask you a few questions?

22 A. No.

23 Q. You never told him we just need you to
24 cooperate?

25 A. No. I've never said that to anybody.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Did you ever tell him -- isn't
2 it true you did tell him that you don't need an
3 attorney at this point?

4 A. No.

5 Q. You handcuffed Mr. Shivers; is that
6 right?

7 A. No.

8 Q. Well, you testified on direct that you
9 handcuffed him before you took him on his walk down
10 the terminal?

11 A. I placed him under arrest, another
12 officer handcuffed him.

13 Q. Okay. He was handcuffed; is that
14 right?

15 A. Correct.

16 Q. Did anybody pat Mr. Shivers down?

17 A. Yes, that's the handcuffing officers
18 duty.

19 Q. Okay. And did they find any weapons on
20 this person?

21 A. No. No weapons were found at that time.

22 Q. Okay. Did they check all his pockets?

23 A. Yes.

24 Q. So you also indicated -- or did you
25 hear anybody indicate to Mr. Shivers that -- or

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 tell Mr. Shivers that we could get this handled
2 because we just need to resolve this one issue?

3 A. No.

4 Q. So your testimony is you walked him
5 down the terminal, all the way down the terminal,
6 to the parking garage and there was no conversation
7 amongst any of the officers to Mr. Shivers; is that
8 what you're testifying to?

9 A. I walked ahead of the group. I didn't
10 hear any conversations with Mr. Shivers.

11 Q. Who was physically handling Mr.
12 Shivers? Who was to him in walking him down the
13 terminal?

14 A. I believe it would have been Officer
15 Dean.

16 Q. When the officer that patted him down
17 -- patted him down, he took his car keys, didn't
18 he?

19 A. No.

20 Q. Who was the officer that patted him
21 down?

22 A. I believe it was Officer Dean.

23 Q. Okay. So he took his car keys; is that
24 right?

25 A. We usually take people's belongings,

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 yes, out of their pockets.

2 Q. Okay. You took his parking receipt for
3 the parking garage at the airport; is that right?

4 A. If it was in his pocket. Some things
5 get left behind like pieces of paper that really
6 aren't all that important, but I didn't take any
7 paper.

8 Q. Did you observe Officer Dean take
9 paper?

10 A. I didn't observe him take any paper.

11 Q. What did you observe Officer Dean take
12 from Mr. Shivers when he was patted down?

13 A. I wasn't really watching the pat down
14 to be honest with you.

15 Q. You're in the middle of detaining a
16 murder suspect and you didn't watch the pat down in
17 the middle of a crowded airport? You didn't watch;
18 is that right?

19 A. I wasn't watching every single thing
20 that come out of his pocket, no. But they were
21 patting him down, there was nothing again that seem
22 to struck me as odd or is special that came out of
23 his pockets like a weapon or something that could
24 have been used in the means of escape, nothing like
25 that. It was very standard.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Did you notice that they seized about
2 \$3400 in cash from Mr. Shivers when they patted him
3 down?

4 A. I did.

5 Q. Okay. So you did see them take the
6 cash from his pockets; is that right?

7 A. I do remember them making (inaudible)
8 about the cash, yes.

9 Q. Okay. And Mr. Shivers had multiple
10 credit cards on him as well, didn't he?

11 A. It's not un-normal.

12 Q. Okay. And Mr. Dean or Officer Dean
13 asked Mr. Shivers where his car was parked, didn't
14 he?

15 A. I do not recall hearing that.

16 Q. Okay. Did you ask Mr. Shivers where
17 his car was parked?

18 A. I did not.

19 Q. Do you think it would be logical to ask
20 a suspect who you're removing from the airport and
21 you know that he brought a car into Canada to ask
22 him where the car was parked?

23 A. Yes, at some point.

24 Q. Okay. And you would agree with me that
25 it's likely one of your officers asked him where

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 the car was parked; correct?

2 MS. MCMENAMIN: Objection, Your Honor.

3 This calls for speculation.

4 MS. BARBIER: Your Honor, I'm just
5 asking him what he observed.

6 MS. MCMENAMIN: Likely impossible is
7 the distinction, Your Honor. Is it likely
8 speculation. Is it possible.

9 Q. Is it possible, Agent Collier --

10 THE COURT: I'm going to let her do it.

11 MS. BARBIER: Thank you, Your Honor.

12 Q. Officer Collier, is it possible that
13 one of your officers asked Mr. Shivers where his
14 car was parked?

15 A. It's possible.

16 Q. Okay. Did you hear that conversation?

17 A. I did not.

18 Q. Okay. Did you hear Mr. Shivers say you
19 don't need to know where my car is parked because
20 there's nothing in there?

21 A. No.

22 Q. How far away were you from Officer Dean
23 and Mr. Shivers walking through the airport?

24 A. Perhaps seven feet ahead. Seven to ten
25 feet ahead.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And how many officers were in between
2 you?

3 A. In between us?

4 Q. Yes.

5 A. I think you had myself in the front,
6 two with Mr. Shivers, possibly one walking in the
7 back.

8 Q. Okay. And you all are walking a murder
9 suspect through a crowded airport and you're --
10 you're standing ten feet apart?

11 A. Well, I'd be standing in front, yes, to
12 clear the way.

13 Q. To clear the way?

14 A. Well, people -- we were trying to make
15 our way back. And everybody's walking towards the
16 gate, we're walking away, so I would try to create
17 an open corridor for us to walk through.

18 Q. Did you make any announcements to the
19 public about, you know, to move out of the way?

20 A. Nothing. No, I would not be yelling.
21 Just discreetly telling people excuse me. Pardon
22 me.

23 Q. Were you dressed in uniform?

24 A. Not in uniform. We're a plain clothes
25 unit.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. So you're a total of four
2 officers; is that correct?

3 A. I believe we had five.

4 Q. Okay. You're a total of five officers
5 walking through the airport?

6 A. Uh-huh.

7 Q. And the airport was crowded, wasn't it?

8 A. It's not overly crowded, but it's --
9 crowded is a very subjected term.

10 Q. You're escorting a murder suspect
11 through the airport and your job is to keep him
12 contained and not able to leave the five of your
13 sight; correct, so that you could get him to the
14 station to stay in custody; correct?

15 A. He's in our care and custody, yes.

16 Q. Okay. And after finding -- who was
17 charged with finding Mr. Shivers's car?

18 A. I don't know who took charge of finding
19 Mr. Shivers's car.

20 Q. Okay. Well, tell me what happened
21 after you walked him through the terminal and got
22 to your police vehicle?

23 A. Once we exited the terminal, we went
24 curbside, I went to my vehicle. We have a convoy
25 that we take. Everybody has their own car.

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 Officer Dean and I believe Officer Frigon took him
2 to Officer Douglas's Dodge Caravan. And they put
3 him in there for transport back to my office about
4 five minutes away from the airport.

5 Q. How many people remained with Mr.
6 Shivers at all times?

7 A. So from the transport it would have
8 only been Officer Douglas driving. I would have
9 been in my own car. And then we convoyed to the
10 airport -- or I'm sorry to the office from the
11 airport.

12 Q. So Officer Dean put Mr. Shivers in
13 Officer Douglas's car; correct?

14 A. Yes.

15 Q. Did he sit with him in the back seat?

16 A. I don't recall if he did.

17 Q. Okay. Did Officer Douglas transport
18 Mr. Shivers to the police station by himself?

19 A. At my office I believe so, yes.

20 Q. There's nobody sitting in the back seat
21 with him?

22 A. That's typically how we do it.

23 Q. One officer?

24 A. Uh-huh. The subject is usually -- has
25 their ankles shackled to the back seat so they

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 | can't attack the driver. But, yes, we usually have
2 | one driver, subject in the back and a convoy of
3 | vehicles that follow.

4 | Q. And you testified that you don't recall
5 | who found Mr. Shivers's car; is that right?

6 | A. Correct. I wasn't there for the
7 | finding of the car.

8 | Q. Okay. Were you present when -- if guns
9 | were retrieved from the car?

10 | A. I was not present for that either.

11 | Q. When is the next time you saw Mr.
12 | Shivers?

13 | A. When we left the airport and then
14 | shortly thereafter at my office when we arrived.

15 | Q. And what was your next communication --
16 | or interaction with Mr. Shivers?

17 | A. Handing him off to another officer to
18 | do the paperwork and processing.

19 | Q. Did you have anymore interaction with
20 | him?

21 | A. I believe I fingerprinted Mr. Shivers.

22 | Q. Anything besides fingerprinting?

23 | A. No.

24 | Q. Did you have any conversation with him
25 | while you fingerprinted him?

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 A. No.

2 Q. So your testimony is you did not
3 witness any conversations between Mr. Shivers and
4 any officer; is that correct?

5 A. Correct.

6 Q. Okay. After you got back to the police
7 station, did you have any conversation with Officer
8 Dean about anything that Mr. Shivers had said?

9 A. I did not talk to Officer Dean about
10 any of that, no.

11 Q. Okay. Are you aware that Officer Dean
12 alleges that Mr. Shivers made a statement while he
13 was detained in the vehicle?

14 A. I've since become aware, yeah.

15 Q. When did you become aware of that?

16 A. I don't remember off the top of my
17 head, but it wasn't right then and there.

18 Q. Was it weeks later?

19 A. No, like a day or two or whatever.

20 Q. But you assisted in processing him into
21 the detention center; correct?

22 A. Yeah.

23 Q. And Officer Dean gave you no special
24 information about anything Mr. Shivers had said
25 that would have been relevant to how he was

CHRISTOPHER COLLIER - CROSS-EXAMINATION BY MS. BARBIER

1 | processed at the detention center; right?

2 | A. I don't recall if Officer Dean was with
3 | us at that time when we first got back to my
4 | office.

5 | Q. Did Officer Dean give you any
6 | information that would have been relevant to your
7 | processing of Mr. Shivers at the detention center?

8 | A. No, I had everything I needed.

9 | Q. Okay. Well, for example, did Officer
10 | Dean tell you that Mr. Shivers had indicated he was
11 | suicidal?

12 | A. I don't know if it was Officer -- I
13 | don't think Officer Dean told me that. It isn't
14 | listed on the questions on our health form, but he
15 | may have been asked regardless. So how we became
16 | aware of any sort of suicidal tendencies if any
17 | would of.

18 | Q. Well, you would agree with me that when
19 | you're processing somebody in for detainment, the
20 | people processing them on the intake need to know
21 | whether they have expressed an intent to commit
22 | suicide; right?

23 | A. Yes, that's why we have it on the form
24 | that asks that question.

25 | Q. Right. And that's relevant information

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 for those people; right?

2 A. Which is why we have it on the form,
3 yes.

4 Q. To your knowledge, was anybody at the
5 detention center or the police station notified
6 that Mr. Shivers was allegedly suicidal?

7 A. Not when we he first came into the
8 office I don't believe.

9 Q. At any point in time were they ever
10 notified of that?

11 A. Again, I don't know if it would have
12 come from asking the questions on our health form
13 or come from Officer Dean, I don't know.

14 Q. Are you aware of any documentation that
15 was given to anybody at the detention center that
16 would indicate that Mr. Shivers was suicidal?

17 A. I don't recall having official
18 documentation, no.

19 MS. BARBIER: Beg the Court's
20 indulgence. Nothing else, Your Honor.

21 THE COURT: Any redirect?

22 MS. MCMENAMIN: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. MCMENAMIN:

25 Q. Officer Collier, you were asked

1 | numerous questions by the Defense regarding the
2 | arrest of the Defendant. To be clear, was he being
3 | arrested on US warrants or Canadian warrants?

4 | A. A Canadian warrant.

5 | Q. Did you advise him of the grounds on
6 | which he was being arrested on the Canadian
7 | warrant?

8 | A. Yes, I did.

9 | Q. And did he ask any questions about that
10 | warrant?

11 | A. No. He was very -- like I said, he was
12 | very cooperative, very polite, very average.

13 | Q. And when you advised him of his right
14 | to counsel, did he ask any questions?

15 | A. No.

16 | Q. Did he ask for an attorney?

17 | A. Not at that time, no.

18 | Q. And did you question him in any way
19 | whenever you were arresting him other than who are
20 | you?

21 | A. No.

22 | Q. And as you're walking him out of the
23 | airport, you're just leading the way; right?

24 | A. Yes, making sure there was a clear
25 | path.

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Did you, did you interrogate him in any
2 way?

3 A. No, I did not.

4 Q. Did you make any actions to try to
5 elicit a statement from him in any way?

6 A. I did not.

7 Q. And then when you got outside of the
8 airport, you said you did witness him being put
9 into the transport vehicle, but from there, where
10 are you headed?

11 A. My own vehicle.

12 Q. Okay. And where are you going from
13 there?

14 A. From there I would drive to my office.

15 Q. And what's your office?

16 A. The Greater Toronto Enforcement Center
17 at 6900 Airport Road. It's about five minutes from
18 the airport.

19 Q. And what do you have to do there at
20 your office?

21 A. Gather up the paperwork, fingerprint
22 and then be done with it.

23 Q. Okay. And you characterized yourself
24 as the lead officer on this case, but does that
25 mean that you do every single step of what needs be

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 done in an arrest?

2 A. No.

3 Q. Because how many people did you say you
4 had with you?

5 A. We had five people with us.

6 Q. Okay. So do you delegate out duties,
7 is that reasonable or normal?

8 A. A hundred percent we work as a team.

9 Q. And whose duty was it to actually
10 physically detain him and search him -- or who was
11 taking over that duty?

12 A. Officer Dean.

13 Q. And searches incident to arrest, are
14 those standard procedures in Canada as they are
15 here?

16 A. A hundred percent.

17 Q. Okay. And is part of that search
18 incident to arrest for the safety of both the
19 Defendant and officers?

20 A. Safety, yes, and means of escape.

21 Q. And are you aware that the suicidal --

22 MS. BARBIER: Your Honor, I'm going to
23 object on leading. This is her witness.

24 MS. MCMENAMIN: I do apologize, Your
25 Honor.

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 THE COURT: Okay. You going to
2 rephrase?

3 MS. MCMENAMIN: If I can remember what
4 the last question was, yes, Your Honor.

5 Q. Officer Collier, you're working as a
6 team -- are you working as a team?

7 A. Yes.

8 Q. Okay. And are you the one physically
9 detaining him?

10 A. No. That was -- he was handcuffed and
11 held by Officer Dean.

12 Q. And in the search incident to arrest,
13 did you find anything concerning?

14 A. Nothing concerning that I recall.

15 Q. And from there you're -- Officer
16 Collier, you're escorting him, where are you
17 escorting him?

18 A. From the airport to the vehicles that
19 we have and in the vehicles we convoy back to my
20 office.

21 Q. And is he making any comments, the
22 Defendant, at all?

23 A. No, I don't remember any comments being
24 made.

25 Q. Now, you were questioned an awful lot

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | about statements the Defendant made. Did you hear
2 | any of those statements once he got in the vehicle?

3 | A. I did not.

4 | Q. Since you were questioned about those
5 | statements, would it be helpful to you to answer
6 | further questions if you knew the exact content of
7 | those statements?

8 | A. Yeah.

9 | MS. BARBIER: Objection, Your Honor.
10 | She's leading him.

11 | MS. MCMENAMIN: It's an open ended
12 | question. They've asked him numerous questions
13 | about his statement that they have not actually
14 | provided to him, Your Honor.

15 | THE COURT: Okay. Go ahead.

16 | MS. MCMENAMIN: One moment just so that
17 | I can get it just right.

18 | MS. BARBIER: Your Honor, Mr. -- or
19 | Officer Collier has testified that he didn't hear
20 | the statement. He's not a witness to the
21 | statement. So I don't know what relevance it has
22 | to show him the statement.

23 | MS. MCMENAMIN: Your Honor, they asked
24 | him a lot of questions about suicidal tendencies
25 | and to express why this wouldn't have actually come

CHRISTOPHER COLLIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | into his purview. We need to go into the content
2 | of the statements. They've opened the door to it.

3 | THE COURT: All right. Y' all come up
4 | here just for a second let me see you. Because I
5 | don't know what kind of statement you're trying to
6 | introduce.

7 | (WHEREUPON, there was a bench
8 | conference)

9 | Q. Detective Collier, were you ever asked
10 | to interview the Defendant?

11 | A. I was not asked to interview him, no.

12 | Q. Question the Defendant?

13 | A. I was not asked to question the
14 | Defendant.

15 | Q. Did you question him at all?

16 | A. Only as it related to the Immigration
17 | Refugee Protection Act.

18 | Q. Getting personal identifying
19 | information?

20 | A. Yep.

21 | Q. And to your knowledge, no other
22 | officers questioned the Defendant?

23 | A. No.

24 | MS. MCMENAMIN: Nothing further, Your
25 | Honor.

1 THE COURT: Thank you. Anything else,
2 Ms. Barbier?

3 MS. BARBIER: Not for this witness,
4 Your Honor. Thank you.

5 THE COURT: All right. Well, can I let
6 Agent Collier down?

7 MS. MAYES: Yes, Your Honor. The State
8 at this time calls Robert Frigon.

9 MS. BARBIER: Your Honor, would you
10 make sure that this witness understands he's not
11 allowed to discuss his testimony with the other
12 witnesses?

13 THE COURT: Yes. Let me tell you, we
14 have something, I don't know if y'all do it in
15 Canada, but they've asked that the witnesses be
16 sequestered. That means you cannot talk to your
17 fellow officers until after they testify. Well,
18 really, if you're coming back and testifying, Mr.
19 Collier, you're not to talk to them at all about
20 this case. Is he still under subpoena?

21 MS. MAYES: He is, Your Honor. He'll
22 be testifying later in the trial.

23 THE COURT: Then I'm going to instruct
24 you, you cannot talk about this case at all with
25 any of your coworkers, okay?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 MR. COLLIER: I understand.

2 THE COURT: All right. Thank you.

3 MR. COLLIER: Thank you.

4 ROBERT FRIGON,
5 being first duly sworn, was examined and testified
6 as follows:

7 THE CLERK: When you have a seat up
8 there, if you'll state your name and spell your
9 last name for the record.

10 ROBERT FRIGON: Thank you. Robert
11 Frigon, F-R-I-G-O-N. Detective Constable, 4571 for
12 Toronto Police Service.

13 DIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Tell us a little bit more about
16 yourself. I know you indicated that you're with
17 the Toronto Police Services. How long have you
18 been with that agency?

19 A. So I've been a member of the Toronto
20 Police Service for approximately 33 years and four
21 months.

22 Q. And your entire experience with law
23 enforcement, how many years?

24 A. Thirty-three years and four months.

25 Q. All right. And currently, what unit

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 are you assigned to there at the Toronto Police
2 Services?

3 A. So I'm currently assigned to the
4 Professional Standards Investigative Support Unit
5 where I'm on a surveillance team.

6 Q. Okay. Now, back in September of 2019,
7 what unit were you assigned to within the Toronto
8 Police Services?

9 A. At that time, I was assigned to the
10 Toronto Police Services Fugitive Squad.

11 Q. Okay. And as a member of the fugitive
12 squad in 2019, how, if at all, did you become
13 involved in the search to locate the Defendant in
14 this case, Vincent Shivers?

15 A. So on September 5th of 2019, I was at
16 home when I received information of a gentleman
17 that was wanted as a suspect in a homicide in South
18 Carolina. This gentleman's name was Vincent
19 Shivers with a date of birth of 69/05/26. The
20 information that I received at that time was that
21 he was a male -- a male white, approximately 5'10",
22 241 pounds. And further to that, I'd also received
23 information that he was possibly staying at the
24 Airport Marriott. Which is located at Dixon Road
25 and Carlingview.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. It's adjacent to the airport, that
2 Marriott?

3 A. Yes, it is.

4 Q. Okay. Let me ask you this, do you have
5 any notes detailing your involvement in this case?

6 A. Yes, I do.

7 Q. And do you have those notes with you
8 today?

9 A. I have a copy of these notes; correct.

10 Q. And how detailed are these notes
11 regarding your contact with Vincent Shivers
12 throughout that contact at the airport?

13 A. They involve it essentially the arrest
14 and him being transport to a vehicle and ultimately
15 locating a vehicle that was associated to Mr.
16 Shivers.

17 Q. Okay. Being a Ford F-150?

18 A. Being a Ford F-150 crew cab black in
19 color.

20 Q. Let me show you what is marked as
21 Court's Exhibit 26 and ask you whether or not you
22 recognize this document?

23 A. I do.

24 Q. How so?

25 A. Those are a copy of my original notes.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Is this entire document
2 consisting of multiple pages of notes in your own
3 handwriting?

4 A. They are.

5 Q. Do all of these notes pertain to your
6 contact with the Defendant in this case, Vincent
7 Shivers?

8 A. They do.

9 Q. Or with his vehicle being the Ford
10 F-150?

11 A. They do.

12 Q. Do these notes fairly and accurately
13 summarize your involvement in this case beginning
14 with that involvement on September 5, 2019 at the
15 airport?

16 A. Yes, they do.

17 Q. And including the security of that Ford
18 F-150?

19 A. Yes.

20 Q. Throughout the time it was in the
21 custody of the Toronto Police Services?

22 A. Yes.

23 MS. MAYES: Your Honor, at this time,
24 we would offer this document as Court's Exhibit 26.

25 THE COURT: Any objection?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 MS. BARBIER: No objection, Your Honor.

2 THE COURT: Thank you.

3 (WHEREUPON, Court's Exhibit Number 26
4 was entered)

5 Q. Do you have your own set with you as
6 well?

7 A. Yes, I do.

8 MS. MAYES: Your Honor, I'll pass these
9 up to you momentarily. First I want to ask him a
10 few questions related directly to the content of
11 these notes.

12 Q. All right. Detective, starting here at
13 the top, tell us what date is reflected and the
14 name of the subject.

15 A. So the date indicated on the top right
16 would be the 5th of September, 2019. As well as
17 the IR would indicate information received and who
18 that information was received from. With the
19 subject's name, his date of birth. As I indicated
20 a bit of a description for that individual and
21 indicating that he was currently wanted or a
22 suspect in a homicide in the United States.

23 It also indicates that information was
24 also received that he could possibly be at the
25 Marriott Hotel by the airport or adjacent to the

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | airport located at Dixon Road and Carlingview.

2 | Q. All right. And after the note about
3 | the Marriott Hotel and that the subject is wanted
4 | in relation to a homicide in the United States,
5 | what is the next entry?

6 | A. The next entry would indicate en route
7 | and then the entry after that indicate at
8 | approximately 16:40 hours. I arrive at the hotel.
9 | Upon arriving at the hotel, I did know that we were
10 | looking for a Ford F-150 crew cab that was black in
11 | color with South Carolina plates. I did check the
12 | underground parking garage located on the west side
13 | of that hotel.

14 | At that time, CBSA Officer Collier had
15 | also arrived and we checked the immediate area.

16 | Q. All right. So let me ask you this,
17 | what does the notation S1 mean in your notes?

18 | A. It indicates the subject.

19 | Q. All right. And throughout these
20 | various time entries, how contemporaneous is this
21 | with the actions you're talking throughout the day?

22 | A. Almost at that time or shortly
23 | thereafter.

24 | Q. Okay. And of course this would be
25 | military time?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. Correct.

2 Q. So looking here, what is the next
3 notation regarding whether or not he is still at
4 the hotel?

5 A. So as a result of entering the hotel
6 and receiving information from employees, I was
7 advised that he had checked out earlier. I -- at
8 that time, I advised and indicate their advise 24
9 which would indicate Detective Constable Dean. And
10 then I attended Pearson International Terminal 1.

11 Q. Okay. Regarding the reference to
12 Pearson International, that is your airport in
13 Toronto?

14 A. That is correct. So PIA would be
15 Pearson International Airport Terminal 1.

16 Q. All right. And advise 24, you
17 mentioned that that is the signal number for Dean?

18 A. Yeah. That would indicate the agent
19 number that would be associated to him.

20 Q. All right. Who is Agent Dean?

21 A. Detective Constable Jesse Dean.

22 Q. And what agency is he employed with?

23 A. The Toronto Police Service fugitive
24 squad -- attached to the fugitive squad.

25 Q. So he was also a team member on the

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 fugitive squad?

2 A. He was, yes.

3 Q. All right. Please continue.

4 A. I also indicate who our crew was that
5 day. It consisted of Jesse Dean 24 as I indicated;
6 02 which would have been another officer; 46 which
7 was myself, as well as Agent 51 and that was CBSA
8 Officer Collier.

9 Q. Okay. Ultimately, where did you locate
10 Vincent Shivers?

11 A. Ultimately, we attended terminal 1 Air
12 Canada gate E76. Upon arriving at that gate, there
13 was quite a number of people that were just
14 preparing to board. And as a result of that, I
15 ended up speaking to another unrelated individual
16 who was not Mr. Shivers. And at approximately
17 18:10, Mr. Shivers was arrested by PC -- or Agent
18 Collier.

19 Q. All right. And I see up here, what is
20 this a reference to?

21 A. (No response)

22 Q. Did you have a photo of Vincent
23 Shivers?

24 A. We did have a photo; correct. Yes.

25 Q. Were you able to make an identification

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | there at the airport gate?

2 | A. When I did in fact view him, yes, I did
3 | think that it was Mr. Shivers.

4 | Q. All right. And the agency actually
5 | placing him under arrest?

6 | A. Was Agent Collier from Canada Border
7 | Services Agency.

8 | Q. Okay. So CBSA is a reference to the
9 | Canadian Border Service Agency -- Services Agency?

10 | A. Correct.

11 | Q. All right. Here, again, the date,
12 | September 5th, 2019, what if anything do your notes
13 | indicate about any statements made by Vincent
14 | Shivers at this point?

15 | A. So as you look a little further down
16 | those notes, while a conversation was being had
17 | after Mr. Shivers had been arrested and transported
18 | through the airport back to an awaiting vehicle
19 | that we use as a transport vehicle, as we were
20 | standing at the side of that vehicle, we were
21 | having a conversation --

22 | Q. When you say "we," who are you
23 | referring to?

24 | A. Constable Dean and myself. We were
25 | having the conversation in terms of who would go

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | where. I believe 02 which was Constable Douglas,
2 | we were going to use his vehicle to transport Mr.
3 | Shivers to GTEC, the Greater Toronto Enforcement
4 | Center. And myself and Jesse Dean were going to
5 | try and locate the subject's vehicle.

6 | Q. All right. Now, as you and Detective
7 | Dean were having this conversation, were you
8 | questioning the Defendant in any way?

9 | A. We were not.

10 | Q. Were you interrogating him in any way?

11 | A. No, we were not. We were having a
12 | conversation between ourselves.

13 | Q. Between you and Dean?

14 | A. Correct.

15 | Q. What if anything verbatim do your notes
16 | indicate occurred starting here at the top?

17 | A. So clear the gates being Gate E76, en
18 | route and I indicate while S1 being Mr. Shivers is
19 | going into the vehicle, he hears our conversation
20 | about locating that vehicle and at that point, he
21 | indicates where that vehicle was parked.

22 | Q. All right. So as you note, he hears
23 | our convo of Ford?

24 | A. Correct.

25 | Q. What does it state next?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. He had indicated against a wall located
2 on level six near I-29 which would indicate pole 29
3 -- I-29.

4 Q. Okay. And then, Detective Frigon, if
5 you could state exactly for the record what your
6 notes indicate occurs here as he hears our convo.
7 What is the next portion of that notation?

8 A. Oh, I apologize. He hears our
9 conversation regarding that vehicle and he tells us
10 where that vehicle is located.

11 Q. All right.

12 A. Where the Ford is parked.

13 Q. Specifically regarding this notation,
14 were you questioning Vincent Shivers in any way?

15 A. No, I was not.

16 Q. Was Detective Dean questioning him in
17 any way?

18 A. He was not.

19 Q. Was he intended to even be part or
20 privy to the conversation in any way?

21 A. I don't understand that question, I
22 apologize.

23 Q. Was he a part of the conversation
24 amongst you and Dean?

25 A. No, he was not.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. Based upon your observations of that
2 disclosure, can you tell us whether it appeared
3 free and voluntary?

4 A. I felt it was free and voluntary.

5 Q. Can you tell us whether or not it
6 appears spontaneous?

7 A. It happened in such close proximity to
8 us talking about it that I felt it was spontaneous.

9 Q. Can you tell us whether or not he
10 interjected that information?

11 A. He had indicated while we were talking
12 that it was where it was located. So it was
13 somewhat interjected, yes.

14 Q. All right. Did you threaten or coerce
15 him in any way?

16 A. No, I did not.

17 Q. Did Detective Dean threaten or coerce
18 him in any way?

19 A. No, he did not.

20 Q. After hearing the conversation and
21 making this statement, what happened next?

22 A. We stood by for a brief while. Mr.
23 Dean -- or Jesse Dean had to make a few phone calls
24 and do various logistical things. Ultimately, we
25 did attend level six near pole I-29 and that

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 vehicle with South Carolina plates with a license
2 marker of Kilo Delta Delta 528 and with a val tag
3 expiring in June of '20 was located against a wall
4 facing in a southerly direction where it was
5 located.

6 Q. All right. And is that the same
7 information he had provide to you?

8 A. Uh, yes.

9 Q. And so it was in fact in that same
10 location being level six near I-29?

11 A. Correct.

12 Q. What happened next?

13 A. I essentially stayed at that location
14 awaiting for our department to tow. And at
15 approximately 20:55 departmental tow 801 which was
16 the fleet number of that vehicle arrived. The
17 operator was Operator Harris. His Toronto Police
18 civilian badge number 86847 arrived.

19 After a conversation with Civilian
20 Harris, he had indicated to me that the vehicle
21 unfortunately the way it was parked in close
22 proximity to that wall and the wheels facing
23 immediately south would have to be entered to turn
24 the wheels to the left so he could essentially back
25 the tow truck up to it with the lifters --

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. To facilitate the towing process?

2 A. Correct.

3 Q. Let me ask you this, prior to that,
4 when he was placed under arrest, do you recall
5 which officer put handcuffs on Vincent Shivers?

6 A. I do not. As I indicated, I had been
7 dealing with another male, so I can't recall who
8 put handcuffs on him.

9 Q. Okay. Can you tell us whether or not
10 it's protocol to conduct a search incident to
11 arrest for any type of weapons or sharp objects?

12 A. It is.

13 Q. Okay. Was that done regarding Vincent
14 Shivers?

15 A. I believe it was.

16 Q. Do you know whether or not his keys had
17 been taken pursuant to his arrest?

18 A. I believe they were because they were
19 ultimately were turned over to me.

20 Q. All right. So you mentioned about the
21 towing process. Again, why did the steering wheel
22 need to be readjusted?

23 A. The steering wheel needed to be
24 readjusted because the wheels were pointed
25 immediately south or straight and unfortunately to

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | tow that vehicle they had to be turned to the left.

2 | Q. Now, is towing a vehicle in this
3 | situation a routine protocol?

4 | A. In this case, yes, it is.

5 | Q. Okay. And what if anything happened
6 | next regarding the request to move the steering
7 | wheel and the location of the tires?

8 | A. I did have a set of latex gloves. I
9 | placed those latex gloves on. I did enter the
10 | vehicle and locked it. I turned the steering wheel
11 | to the left. And upon turning the steering wheel
12 | to the left, I essentially wrapped the seat belt,
13 | the driver's seat belt around that steering wheel
14 | and locked it in place.

15 | Q. And is that what you have referenced
16 | here at this portion of your notes?

17 | A. Correct, at approximately 21:10.

18 | Q. Now, upon using the keys to enter the
19 | vehicle, what action did you take?

20 | A. The keys had a key fob on it, so I
21 | essentially used the key fob to unlock the vehicle
22 | and I entered that vehicle.

23 | Q. And did what?

24 | A. Turned that steering wheel as I
25 | indicated to the left and then used the seat belt

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 to lock that steering wheel.

2 Q. And what happened next? Was the
3 vehicle towed?

4 A. Yes, it was. I did again once -- I did
5 again lock that vehicle and we made our way out of
6 the parking garage.

7 Q. All right. So let me ask you this,
8 during that point and time when you entered and
9 touched the steering wheel with gloves on, did you
10 in any way search the vehicle?

11 A. I did not.

12 Q. Did you in any way retrieve evidence
13 from the vehicle?

14 A. I did not.

15 Q. Did you see any other officers enter
16 the vehicle?

17 A. I did not.

18 Q. It was solely you?

19 A. It was.

20 Q. At any point and time, did you see any
21 officer that day access the vehicle for a search?

22 A. I did not.

23 Q. What happened next?

24 A. As I indicated, we ultimately
25 transported that vehicle to James Street Garage

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | which is where our Forensic Ident Unit is located.
2 | And that vehicle was placed into a private, almost
3 | like a parking garage, a separate parking garage,
4 | and that vehicle was reversed in. And later on I
5 | ended up placing seals on various locations of that
6 | vehicle.

7 | Q. Did that include every door, every
8 | interior door of the vehicle?

9 | A. It did. So I did the front driver's
10 | side/passenger side, the rear driver's
11 | side/passenger side. I attached one to the
12 | tailgate and also one to the hood.

13 | Q. And did those seals remain in tact
14 | while it was there at that location?

15 | A. While it was at that location they did,
16 | yes.

17 | Q. And is that a secure facility used by
18 | the Toronto Police Services?

19 | A. Yes, it is.

20 | Q. And did you have an understanding as to
21 | whether or not any other law enforcement agency
22 | would ultimately retrieve that vehicle?

23 | A. I did have an understanding that at
24 | some point that vehicle would be making its way
25 | back here.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. To Lexington County in South Carolina?

2 A. Correct.

3 Q. And throughout that time that it
4 remained at the garage for the Toronto Police
5 Services was it searched by any member of your
6 agency?

7 A. No, it was not.

8 Q. Now, did there come a point in time
9 when the vehicle was relocated to another facility?

10 A. Yes, it was. Unfortunately, due to the
11 fact that a number of vehicles are seized, that
12 vehicle had to leave the forensic identification
13 services and be transported to another secured
14 location.

15 Q. Now, did the doors of the vehicle
16 remain secured throughout that process?

17 A. They did. I did have a look at that
18 vehicle prior to it leaving the FIS building
19 located on James Street and I did notice that all
20 the seals were in place.

21 Q. Okay. At some point and time, can you
22 tell us whether or not there was damage to the back
23 tailgate area?

24 A. So upon arriving at, I guess it used to
25 be Station 54, I believe it's now called the 55

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Substation, it was placed in a secure location
2 where the auto squad uses as well. It was placed
3 in a spot. And upon the tow truck disengaging the
4 boom, et cetera, the rear tailgate on the driver's
5 side above the rear taillight was damaged.

6 Q. All right. Other than that was there
7 any type of damage to the vehicle?

8 A. No. The seals were still in tact and
9 everything appear to be fine.

10 Q. All right. I'll show you two
11 photographs, they are Court's 28 and Court's 30 and
12 just ask you whether or not you recognize these
13 documents?

14 A. I do. That's the vehicle.

15 Q. Okay. And do you see the seals
16 reflected in both of these photographs?

17 A. I do.

18 Q. And who placed those seals?

19 A. I placed those seals there.

20 Q. And to your knowledge, did they remain
21 in tact throughout the time this vehicle was in the
22 possession of the Toronto Police Services?

23 A. Yes, they did.

24 Q. And ultimately was this vehicle
25 retrieved by Detective Nick Burt of the Lexington

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 County Sheriff's Department?

2 A. It was.

3 Q. Do you recall whether or not that was
4 on or about February 20th of 2020?

5 A. I believe it was, yes.

6 MS. MAYES: 28, Your Honor.

7 THE COURT: We making these Court's
8 exhibits without objection?

9 MS. MAYES: Yes, Your Honor.

10 MS. BARBIER: That's correct, Your
11 Honor.

12 THE COURT: Okay. I just didn't hear
13 it.

14 (WHEREUPON, Court's Exhibit Number 28
15 was entered)

16 Q. Looking here at 28, what do we observe
17 here?

18 A. So that would have been or that was the
19 two seals that I placed on that vehicle right at
20 the door hinges.

21 Q. That being the right side now looking
22 at 30 being the left side, can you tell us what we
23 are observing here?

24 A. The same thing. The two seals affixed
25 right at the -- right where the hinge -- or not the

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | hinge, but where the door meets the pillar.

2 | Q. All right. So during that time that
3 | the vehicle was present at Toronto Police Services,
4 | did you have any knowledge as to weapons inside
5 | that vehicle?

6 | A. I did receive information. I actually
7 | received information prior to us locating that
8 | vehicle. Detective Constable Dean had indicated
9 | some information to me.

10 | Q. All right. Did that regard possible
11 | presence of firearms inside the vehicle?

12 | A. Yes, it did.

13 | Q. And can you tell us whether or not that
14 | information was acquired on the date of his arrest,
15 | September 5th of 2019?

16 | A. Yes, it was.

17 | Q. Now, did you ever actually search the
18 | vehicle for those firearms?

19 | A. No, I did not.

20 | Q. Did any other member of the Toronto
21 | Police Services search that vehicle for those
22 | firearms?

23 | A. No, we did not.

24 | Q. Who was responsible for the custody,
25 | control and security of this vehicle during the

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | entire time it was in the possession of the Toronto
2 | Police Services?

3 | A. I retained the keys, so essentially I
4 | was responsible for the care and custody of that
5 | vehicle.

6 | Q. Okay.

7 | MS. MAYES: Beg the Court's indulgence.

8 | THE COURT: Take your time.

9 | Q. Now, just to follow-up a little bit.
10 | When you indicated that you had had a conversation
11 | with Detective Dean?

12 | A. Yes.

13 | Q. And the Defendant made a statement?

14 | A. Yes.

15 | Q. What happened immediately after that?

16 | A. It essentially almost happened
17 | simultaneously in Mr. Shivers being placed in the
18 | vehicle.

19 | MS. BARBIER: Objection, Your Honor.

20 | He's not testifying of his own personal knowledge
21 | and hearing that it's a statement, it's not
22 | admissible.

23 | MS. MAYES: I can rephrase that.

24 | THE COURT: Okay.

25 | Q. What did you observe?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. I observed Constable Dean placing Mr.
2 Shivers into the passenger side of the Dodge
3 Caravan that we had as the transport vehicle.

4 Q. Okay. Now, were you part of that
5 process actually buckling him into the vehicle?

6 A. I was not.

7 Q. Okay. Where were you at that point in
8 time as you were observing that?

9 A. I stayed to the exterior of the
10 vehicle. So essentially almost at the rear
11 passenger side of the vehicle.

12 Q. Okay. Was that within your line of
13 sight?

14 A. Yes, it was.

15 Q. How much time do you think transpired
16 between when you got the information from the
17 Defendant about the location of the vehicle and
18 when he was ultimately placed into a transport
19 vehicle by Detective Dean?

20 A. It was almost simultaneously as he was
21 going in and we had the conversation about that
22 vehicle. He indicated that and then almost at that
23 very moment he was placed inside the vehicle.

24 MS. MAYES: Nothing further.

25 THE COURT: Ms. Barbier?

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 CROSS-EXAMINATION

2 BY MS. BARBIER:

3 Q. Good morning, Detective Frigon.

4 A. Good morning, Counsel.

5 Q. I'm Debbie Barbier, I represent Mr.
6 Shivers here. Detective Frigon, you have been in
7 law enforcement you said for 33 years; is that
8 right?

9 A. That is correct.

10 Q. And you are now on a team that deals
11 with professional standards; is that right?

12 A. That is correct.

13 Q. Okay. So is one of your jobs to insure
14 that when an arrest is being effective that all
15 professional standards, best practices, if you
16 will, are met?

17 A. Yes.

18 Q. Okay. And you were a part of the
19 fugitive squad that arrested Mr. Shivers; is that
20 right?

21 A. Correct.

22 Q. Okay. And the information that you
23 have related to Mr. Shivers was gained from
24 Investigator Dean; is that correct?

25 A. Certain information, yes.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Did you have conversations with
2 anybody in the US Marshals office?

3 A. I did not.

4 Q. Okay. Did you have conversations with
5 anybody in the Lexington Police Department or
6 Sheriff's Department?

7 A. I did not.

8 Q. Who else besides Officer -- or
9 Investigator Dean did you have conversations with
10 related to this arrest?

11 A. Various officers on my team.

12 Q. Is that prior to the arrest taking
13 place?

14 A. Yes.

15 Q. Okay. Which officers on your team did
16 you have conversations with related to making this
17 arrest?

18 A. Essentially, the officers that I
19 indicated are crew members that day. So Detective
20 Constable Steven Douglas as well as CBSA Agent
21 Collier, Jesse Dean and myself.

22 Q. So that's four individuals; correct?
23 Yourself, Detective Dean, Detective Douglas and
24 Officer Collier; is that right?

25 A. Correct.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Were there any other officers
2 participating in the arrest of Mr. Shivers?

3 A. I don't recall.

4 Q. Okay. Now, you testified on direct
5 that you witnessed Mr. Shivers make a statement
6 about the location of his vehicle; is that right?

7 A. That is correct.

8 Q. Okay. Now, I'm trying to gain an
9 understanding of when in the timeline of events
10 this occurred, so help me if you will. You
11 participated in going to the Marriott Airport --
12 Airport Marriott to talk to the individuals at the
13 Marriott; correct?

14 A. That's correct.

15 Q. Okay. And after you went to the
16 Marriott, you went to the Toronto Airport; correct?

17 A. Correct.

18 Q. Okay. And you and the other officers
19 went to the gate that you determined to be to the
20 flight to London Heathrow; correct?

21 A. That's correct.

22 Q. And how long once you got to the gate
23 did it take you to find Mr. Shivers?

24 A. It was relatively quickly. There were
25 a number of people that were boarding or preparing

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 to board, so it was relatively quick.

2 Q. Okay. When you were advised about this
3 case, this investigation related to Mr. Shivers,
4 you were told that he was a murder suspect;
5 correct?

6 A. Correct.

7 Q. You were told that he could be armed
8 and dangerous; correct?

9 A. I can't recall at that time if there
10 was an indication that he was armed and dangerous.
11 I don't recall that information.

12 Q. Okay. But you were aware that Canada
13 had issued an arrest warrant for him indicating
14 that he was a dangerous person; correct?

15 A. Correct.

16 Q. So you knew there could be danger
17 associated with Mr. Shivers; correct?

18 A. Correct.

19 Q. And they had described to you that Mr.
20 Shivers was wanted for the shooting or murder of a
21 woman in South Carolina; correct?

22 A. Correct.

23 Q. So one of the things that you were
24 asked to do in the course of this arrest is
25 determine whether or not Mr. Shivers would want to

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 cooperate with law enforcement; correct?

2 A. It wasn't part of -- because I was not
3 the arresting officer that wasn't my
4 responsibility.

5 Q. But did you understand one of the
6 objectives in arresting with Mr. Shivers was to
7 determine whether or not he wanted to cooperate
8 with law enforcement?

9 A. I would say at any point when anybody
10 is arrested that is a consideration.

11 Q. Because that's a big part of your job,
12 isn't it? Attempting to get people who are
13 suspects in crimes to cooperate with law
14 enforcement; right?

15 A. Yes.

16 Q. And so you were a witness; is that
17 right, to the arrest that was made of Mr. Shivers?

18 A. I was.

19 Q. And is it fair to say that Officer
20 Collier took the lead in making this arrest?

21 A. He did, yes.

22 Q. Okay. So you all approached Mr.
23 Shivers at the same time; correct?

24 A. I was not part of the group that
25 approached Mr. Shivers. As I indicated, I was

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | dealing with another individual. I joined the
2 | group after he was already handcuffed and in
3 | custody.

4 | Q. Okay. Who did you observe approach Mr.
5 | Shivers to make this arrest?

6 | A. As I indicated, I didn't see who
7 | approached Mr. Shivers. As I indicated, I was
8 | dealing with another individual that I had thought
9 | could possibly be Mr. Shivers, so I didn't see the
10 | group actually locate Mr. Shivers.

11 | Q. How far away were you standing with
12 | this other individual from where Mr. Shivers and
13 | these other officers actually were?

14 | A. At a gate 10 feet away, 20 feet away.

15 | Q. Were you able to hear what was taking
16 | place during that arrest?

17 | A. No, I did not.

18 | Q. Okay. So you don't know whether Office
19 | Collier advised Mr. Shivers of his rights, do you?

20 | A. I did not personally hear that.

21 | Q. And you don't know what he told him he
22 | was being arrested for, do you?

23 | A. I did not hear that.

24 | Q. When did you come in close enough
25 | contact to Mr. Shivers and the other officers to

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | determine what was being said in transpiring while
2 | he was being arrested?

3 | A. Just prior to us leaving the location.

4 | Q. What did you witness at that point?

5 | A. Mr. Shivers was in handcuffs at that
6 | time and essentially he was in custody.

7 | Q. And Mr. Shivers was asking the officers
8 | why he was being arrested, wasn't he?

9 | A. I can't recall what Mr. Shivers had
10 | said at that point.

11 | Q. But you do recall that Mr. Shivers was
12 | asking some questions about why he was being
13 | apprehended and taken away; right?

14 | A. I recall -- I have an independent
15 | recollection that Mr. Shivers was cooperative and
16 | we were not having any issues with him.

17 | Q. Would you have been wearing a body
18 | camera on that day?

19 | A. I was not.

20 | Q. Okay. Did you have any means of
21 | recording the events that took place?

22 | A. I did not.

23 | Q. Do you have a camera on your phone -- a
24 | video camera on your phone?

25 | A. I do.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Was anybody in the group
2 including yourself charged with recording the
3 events of that arrest?

4 A. No, we were not.

5 Q. And you understand that now in Canada
6 the implementation of body cameras is coming in to
7 being a best practice now; correct?

8 A. Yes, it is.

9 Q. Okay. Because it allows the public to
10 see what actually transpires between the police and
11 a suspect during these types of situations;
12 correct?

13 A. Correct.

14 Q. But we don't have the benefit of that,
15 do we?

16 A. No, we do not.

17 Q. Okay. And we also know that the
18 Toronto Airport had security cameras; correct?

19 A. Correct.

20 Q. And you could have obtained that
21 footage so that we would be able to see what
22 transpired during the arrest as well; correct?

23 A. We could have, yes.

24 Q. But you did not do that, did you?

25 A. I did not.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And so we don't have the benefit
2 of having that recording either, do we?

3 A. No, we don't.

4 Q. Now, you're not aware of what Mr.
5 Shivers was told he was being arrested for;
6 correct?

7 A. No. Other than learning about it after
8 he had been arrested that he was arrested by CBSA
9 as a danger to the public.

10 Q. But at the time of the arrest taken
11 place, you didn't witness what he was told; right?

12 A. Correct.

13 Q. And everybody taking part in that
14 arrest knew that he was a murder suspect in South
15 Carolina; correct?

16 A. Yes.

17 Q. That's the only reason the Canadian
18 warrant issued; correct? Because they wanted to
19 apprehend him and get him back to the United
20 States; correct?

21 A. I wasn't involved in the warrant
22 application so I would guess, yes.

23 Q. Okay. When you approached the officers
24 with Mr. Shivers, isn't it true that one of the
25 officers said to Mr. Shivers, we just need your

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 cooperation and we just need to ask you a few
2 questions?

3 A. I don't recall that.

4 Q. Okay. Isn't true that Mr. Shivers
5 indicated at that point he didn't want to answer
6 questions without an attorney?

7 A. I wasn't privy to that conversation.

8 Q. Did you hear any of the officers tell
9 him he didn't need an attorney at that point?

10 A. I did not.

11 Q. Did you witness Mr. Shivers being
12 patted down?

13 A. I can't recall if I arrived just as
14 they completed that pat down. But I can't recall
15 who did the pat down of his arrest.

16 Q. As you were walking out of the terminal
17 with Mr. Shivers, explain to us where you were
18 located. Who was handling Mr. Shivers and how far
19 away were you from them?

20 A. My independent recollection, he was
21 being transported by Steven Douglas.

22 Q. Who was walking him down the terminal?

23 A. I think we were all walking him down
24 the terminal. I just can't recall exactly where
25 everybody was placed as we made our way to the

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | vehicles.

2 | Q. Did you have your hands on Mr. Shivers
3 | as you walked down to terminal?

4 | A. I did not.

5 | Q. Did Detective Dean have his hands on
6 | him?

7 | A. I can't recall if he did or if he
8 | didn't.

9 | Q. Okay. Well, would it be standard
10 | protocol for somebody to be escorting him down the
11 | terminal?

12 | A. It would have been, yes.

13 | Q. Okay. How far away were the officers
14 | that you were with standing from each other?

15 | A. We were all a pretty tight group as we
16 | traveled through the airport. So as close as you
17 | and I are.

18 | Q. Okay. And let the record reflect
19 | that's about 15 feet, perhaps?

20 | A. Approximately.

21 | Q. Okay. Would you have been able to hear
22 | any conversation taking place with any officer and
23 | Mr. Shivers while that walk was going through the
24 | terminals?

25 | A. Nothing that I was paying attention to.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Mr. Shivers though was having
2 conversation with these officers; correct?

3 A. I can't recall if he was or if he
4 wasn't.

5 Q. So they could have been asking
6 questions you just didn't hear; right?

7 A. I didn't hear any questions.

8 Q. Okay. And he could have been talking
9 to them, but you just didn't hear; right?

10 A. I did not hear any questions.

11 Q. Okay. Now, you took notes during these
12 series of events; correct?

13 A. I did.

14 Q. Okay. And you indicate in your notes
15 that at 8:10, that's about the approximate time of
16 the arrest in the airport; is that right?

17 A. That's correct.

18 Q. Okay. And you don't have any other
19 notations until I see 20:55, that's 8:55; correct?

20 A. Correct.

21 Q. Okay. So the only indication in your
22 notes that Mr. Shivers made any statements is he
23 tells us where it is and that you're referring to
24 his car; correct?

25 A. Correct.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Now, Detective Frigon, it would
2 be logical for you all to ask Mr. Shivers where his
3 vehicle was located rather than just wander around
4 the parking garage at the airport; correct?

5 A. Not necessarily.

6 Q. In every case you seek the Defendant's
7 cooperation in locating items like this; correct?

8 A. Yes; however, this was a different
9 scenario.

10 Q. Well, it wasn't different in that the
11 parking garage at the Toronto Airport is quite big,
12 isn't it?

13 A. It's a good size.

14 Q. Okay. And if you had to walk around
15 every level of the airport looking for a Ford
16 F-150, it would have taken you quite of bit of
17 time, wouldn't it?

18 A. It would have taken a while.

19 Q. Okay. And so it is logical that one of
20 the officers would have said, where did you park
21 your car?

22 A. I did not hear that.

23 Q. Okay. But you did hear Mr. Shivers
24 being cooperative and responding about where his
25 car was parked; correct?

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 A. I did.

2 Q. And you would agree with me that if he
3 hadn't been ask that question and he hadn't
4 responded as he did, it would have taken you all
5 maybe days to find that car; correct?

6 A. I wouldn't say it would have taken
7 days. A few hours.

8 Q. And so isn't fair to assume that your
9 officers saved some very valuable time by asking
10 Mr. Shivers where the car was located?

11 MS. MAYES: Objection, calls for
12 speculation. He's already answered that question.

13 THE COURT: I agree. It does call for
14 speculation.

15 Q. Do you recall seeing a receipt from the
16 parking garage that was taken off Mr. Shivers's
17 person?

18 A. No, I do not.

19 Q. So your testimony is you don't remember
20 having that taken off him during the pat down?

21 A. Correct. I wasn't involved in the pat
22 down.

23 Q. Okay. You have testified so far
24 that Mr. Shivers -- the only statement you've heard
25 Mr. Shivers say is where his car is located;

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 correct?

2 A. Correct.

3 Q. Okay. Did you hear Mr. Shivers say
4 anything else during the course of the time you
5 arrested him until the time he was taken to the
6 police station?

7 A. Nothing that I can recall, no.

8 Q. Okay. It's possible though that he
9 made other statements; correct?

10 A. Not to myself. It's possible. I was
11 not privy to any of those conversations.

12 Q. Okay. After you walked down the
13 terminal with Mr. Shivers, you stated that you
14 observed Mr. Shivers being placed in a patrol car
15 by Detective Dean; is that right?

16 A. So it would have been or it was a Dodge
17 Caravan and, yes, I did.

18 Q. Okay. And the Dodge Caravan is a
19 police vehicle; correct?

20 A. Yes, it is.

21 Q. Okay. And you witnessed that, but
22 didn't hear Mr. Shivers say anything, did you?

23 A. I heard Mr. Shivers indicate where his
24 vehicle was parked prior to being placed in that
25 vehicle. I did not hear a conversation that was

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 carrying on in that vehicle.

2 Q. And after Detective Dean, how long did
3 it take Detective Dean to place him in the vehicle?

4 A. Seconds.

5 Q. Okay. And after he's placed -- did
6 Detective Dean get into the vehicle and sit next to
7 Mr. Shivers?

8 A. I can't recall if he actually sat
9 beside him or if he kneeled in that vehicle. That
10 would be something you'd have to ask Mr. Dean.

11 Q. Did you witness Detective Dean sit in
12 that vehicle for any length of time with Mr.
13 Shivers?

14 A. He sat in the vehicle briefly. In
15 terms of how long he sat in there, I'm not sure.

16 Q. Okay. And you indicated that Detective
17 Dean came to speak with you after he put Mr.
18 Shivers in the car; is that correct?

19 A. Correct. And it was actually Mr. Dean
20 and I that attended level six to locate the
21 vehicle.

22 Q. Okay. So Detective Dean informed you
23 that Mr. Shivers had said his vehicle was on level
24 six; correct?

25 A. Correct.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Did he inform you of any other
2 statements that Mr. Shivers made?

3 A. Oh, I am sorry. As he was getting in
4 the vehicle, Mr. Shivers had indicated that it was
5 on level six near pole I-29, so I had already known
6 that.

7 Q. After Detective Dean placed him in the
8 vehicle, Detective Dean didn't tell you that Mr.
9 Shivers made any other statements, did he?

10 A. He indicated that as we were walking up
11 -- or going to make our way to locate that vehicle
12 that there were possibly two firearms in that
13 vehicle.

14 Q. And he indicated that Mr. Shivers said
15 that?

16 A. Correct.

17 Q. Okay. And he indicated that because
18 Detective Dean asked him whether or not there was
19 anything of danger in the car; is that right?

20 A. I'm not sure what Mr. Dean asked him,
21 but as a result of the information he received
22 that's what he told me.

23 Q. Okay. So Detective Dean tells you that
24 the vehicles -- that it's parked on level six?

25 A. Actually, Mr. Shivers indicates that

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 it's parked on level six.

2 Q. Okay. And then Detective Dean told you
3 that there are two possibly firearms in the
4 vehicle; correct?

5 A. Correct.

6 Q. Okay. And Detective Dean didn't tell
7 you at that time that Mr. Shivers made any other
8 statements, did he?

9 A. Not that I can recall.

10 Q. And you didn't hear any other
11 statements, did you?

12 A. I did not.

13 Q. Okay. So after you witnessed Mr.
14 Shivers being placed in that vehicle, my
15 understanding is you went to the vehicle and you
16 waited there until it was towed; is that right?

17 A. That's correct.

18 Q. Okay. And did you have any other
19 interactions with Mr. Shivers after that?

20 A. I did not.

21 Q. Okay. Did you see him at the police
22 station after that?

23 A. I did not attend the police station.
24 He actually went to the Greater Toronto Enforcement
25 Center which is a location that CBSA officers work

ROBERT FRIGON - REDIRECT EXAMINATION BY MS. MAYES

1 out of, so he was not at a Toronto police facility.

2 Q. Okay.

3 MS. BARBIER: No further questions at
4 this time. Thank you.

5 THE COURT: Thank you. Do you need to
6 redirect?

7 MS. MAYES: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. All right. Let me ask you a few
11 questions regarding how counsel posed to you the
12 word sitting. And I believe your response was that
13 he sat in the car. Let me ask you this, do you
14 know whether it was sitting verses kneeling or
15 anything else?

16 A. I do not.

17 Q. Okay. So when you use the word "sat,"
18 what are you referring to?

19 A. I wasn't certain whether or not he sat
20 in the vehicle beside Mr. Shivers. Unfortunately,
21 the way the seats are located in that vehicle, you
22 either have to lean right in to attach a shackle to
23 his leg or you can actually sit in the vehicle to
24 do that and then place a seatbelt on him.

25 Q. All right. And were you able to

ROBERT FRIGON - REDIRECT EXAMINATION BY MS. MAYES

1 visualize which one it was?

2 A. No, I was not.

3 Q. Okay. So you don't know the answer to
4 that?

5 A. I do not.

6 Q. All right. Now, one of the questions
7 that was posed was about any questions you
8 witnessed Dean asking the Defendant while he was
9 being placed into that vehicle. Did you ever hear
10 Detective Dean pose any questions during that
11 timeframe?

12 A. I did not.

13 Q. And regarding your notes and the
14 specific quote, he hears our convo of Ford and
15 tells us where it is, pertaining directly to that
16 statement, did you ever ask him where his car was
17 parked?

18 A. I did not.

19 Q. Did Detective Dean ever ask him where
20 his car was parked?

21 A. I didn't not hear.

22 Q. Based upon all of your observations was
23 that a spontaneous statement made by Vincent
24 Shivers?

25 A. I felt it was.

ROBERT FRIGON - REDIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Thank you. Nothing
2 further.

3 MS. BARBIER: No other questions, Your
4 Honor. And we have a member of our team that needs
5 a bathroom break.

6 THE COURT: Yes. The Court's in
7 agreement with that, 100 percent.

8 You can be excused, but let me tell
9 you, they've asked that the witnesses be
10 sequestered. That means you cannot speak to your
11 fellow officers about this case or what you
12 testified to.

13 MR. FRIGON: Okay.

14 THE COURT: All right. Let's take a 15
15 minute break.

16 (WHEREUPON, there was a short break)

17 THE COURT: Okay. You want to call
18 your next witness.

19 MS. MCMENAMIN: Yes, Your Honor. The
20 State calls Jesse Dean.

21 JESSE DEAN,
22 being first duly sworn, was examined and testified
23 as follows:

24 THE CLERK: When you have a seat up
25 there, if you would state your name and spell your

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 last name for the record.

2 MR. DEAN: Okay. My name is Jesse
3 Dean. I spell my last name D-E-A-N.

4 DIRECT EXAMINATION

5 BY MS. MCMENAMIN:

6 Q. Officer Dean, where do you currently
7 work?

8 A. I work for the Toronto Police Service.

9 Q. Do you have any special positions with
10 the Toronto Police Service?

11 A. Currently I'm assigned to the Toronto
12 Police Service Fugitive Squad.

13 Q. The fugitive squad?

14 A. Yes.

15 Q. And what is your position in the
16 fugitive squad?

17 A. I hold a position of a Detective
18 Constable. Which means I'm an investigator and I
19 work in a plain clothes capacity.

20 Q. How many years have you been working in
21 law enforcement?

22 A. For just over 16 years.

23 Q. And how many of those years have been
24 with TPS?

25 A. All 16.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And how about your time with the
2 fugitive squad?

3 A. I have been with the fugitive squad
4 approximately four years.

5 Q. Now, were you employed with TPS in the
6 fugitive squad in September of 2019?

7 A. Yes, I was.

8 Q. And can you describe what your duties
9 as a member of the fugitive task force entailed?

10 A. So our team typically investigates
11 files related to wanted persons and typically those
12 involve two types of files. Ones in which that
13 involve somebody who is a foreign national who is
14 wanted back home and has fled to the Toronto area.
15 And the second type of file we typically get is a
16 Canadian who has committed an offense abroad and
17 then has come back to the Greater Toronto Area and
18 is wanted in that jurisdiction.

19 Q. And, Detective Dean, could you pull the
20 microphone a little bit closer to you and speak up
21 just a little?

22 A. Yep.

23 Q. Now, were you working in sort of that
24 capacity under those duties on September 5th of
25 2019?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, I was.

2 Q. And do recall being asked by the US
3 Marshals to assist in the apprehension of the
4 Defendant, Vincent Shivers on that date?

5 A. Yes, I do.

6 Q. Okay. Can you tell us where your
7 efforts to locate the Defendant began?

8 A. Our efforts to locate Mr. Shivers began
9 when I received information that he had recently
10 used his credit card at the Airport Marriott Hotel
11 in Toronto.

12 Q. And, your know, I'm going to back up
13 just a little bit, Detective Dean. Were you aware
14 of what place the Defendant crossed the US and
15 Canadian Border?

16 A. Yes, I was. I had learned that he had
17 crossed at Niagara Falls by way of the Rainbow
18 Bridge and that he had crossed on September 3rd at
19 1:14 p.m.

20 Q. But on that date you said you believed
21 him to maybe at an Airport Marriott?

22 A. That's right. The information that I
23 received indicated that he just used his credit
24 card at the Airport Marriott Hotel in Toronto.

25 Q. And you said that's in Toronto?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. And when you went to the Airport
3 Marriott to look for the Defendant, did you have
4 any sort of identifying information to go off of?

5 A. I did. I received information which
6 included the name of the suspect which was Vincent
7 Shivers, his date of birth, his description and a
8 photograph of him.

9 Q. Did you have any information about the
10 vehicle he was driving when he crossed the border?

11 A. Yes, I did. I received information
12 that he believed to have crossed the border in a
13 black Ford F-150 pickup truck with a license plate
14 of KDD 528, a South Carolina license plate.

15 Q. At the Airport Marriott, did you locate
16 the Defendant there?

17 A. No, he was not located.

18 Q. And did you locate his truck?

19 A. No.

20 Q. So where did your efforts or your
21 investigation take you after that?

22 A. So after that, I had learned that Mr.
23 Shivers had purchased an airline ticket on an Air
24 Canada flight. And as a result of that, I went to
25 the airport.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. How close is the airport to the Airport
2 Marriott?

3 A. It's pretty close. Maybe a 10 to 15
4 minute drive approximately.

5 Q. And as you're conducting this
6 investigation, Detective Dean, are you taking any
7 notes?

8 A. Yes.

9 Q. Are these handwritten notes?

10 A. Yes, they are.

11 Q. Is this standard procedure for your
12 office?

13 A. Yes.

14 Q. Okay. Do you take these notes in -- do
15 you take these notes as you go along or are they
16 after the fact?

17 A. I made these particular notes both
18 before and after the arrest.

19 Q. Were they close in time to the events
20 as they were taking place?

21 A. As much as I could, yes.

22 Q. If I show you a copy of those notes
23 would you recognize them?

24 A. Yes, I would.

25 Q. I'm handing you Exhibit 23, Detective

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | Dean, that has 1, 2, 3, 4, 5, 6, 7, 8 pages. Are
2 | these your notes?

3 | A. Yes, these are my notes.

4 | MS. MCMENAMIN: Court's Exhibit 23,
5 | Your Honor. And I do apologize, I did not show
6 | these to opposing counsel.

7 | MS. BARBIER: I have an objection to
8 | the last page of these notes. It is my
9 | understanding that this last page of notes
10 | allegedly was supplemented in a report almost two
11 | years after Mr. Shivers's arrest. There is a
12 | Lexington County Sheriff's Department report that
13 | is dated March 29th of 2021 and it is indicating
14 | that there's a supplemental report that includes
15 | the notations on these notes that are not in the
16 | timeline of the notes that he's required to take as
17 | part of his job and are outside of that timeline
18 | and appear to be made two years later.

19 | THE COURT: All right. Well, I think
20 | I've got a copy of these and I got kind of confused
21 | reading them. Because I've got a -- I was provided
22 | with, I guess, Defendant's Exhibit, it says Number
23 | 2 at the bottom, but this is dated 3/29 of 2021.
24 | But it looks like it's from the Toronto Police,
25 | that's a supplemental report.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. BARBIER: Correct. But the
2 supplemental report is being made two years after
3 --

4 THE COURT: I've got that. But what
5 you're talking about the last page, I'm just asking
6 is that the page that's handwritten that's got 6:29
7 on it?

8 MS. BARBIER: Correct.

9 THE COURT: It's on a sheet all by
10 itself?

11 MS. BARBIER: Correct. I do not
12 believe that this document was been made at or near
13 the time of events. And that's the basis of my
14 objection. You know, she asked the authentication
15 questions were they made at or around the time the
16 events that happened.

17 And I believe that the first portion of
18 the report excluding this last page were made at or
19 about the time of these events. But I do not
20 believe that this last page was made at or near the
21 time of the events.

22 THE COURT: All right. Well, then that
23 starts -- let me make sure that I got it straight.
24 I got the first page would be -- it's marked as
25 Defendant's Exhibit 1 on what they gave me.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 State's 9/5 of 2019 starting at 0600. And it goes
2 all the way to 0000 is the very last thing report
3 off duty?

4 MS. BARBIER: Correct. I believe those
5 are contemporaneous notes.

6 MS. MCMENAMIN: Your Honor, if I may --

7 THE COURT: That's where you need to
8 start with this for an exhibit. If there's
9 testimony that pertains to the 6:29 that goes with
10 the supplemental, I think it ought to be different.

11 MS. MCMENAMIN: I can proffer further
12 testimony, Your Honor, that explains that this is
13 actually a -- that this was taken at the time the
14 statement was made.

15 This page is not separate. It is
16 separate from -- this is written on its own
17 separate page, Your Honor, but it was taken on
18 September 5th at 6:29. If you look to the notation
19 in this report, Your Honor, on the -- one moment to
20 look at my notes -- on the 5th page, Your Honor,
21 you're going to be looking for a page that has
22 18:10 at the top. In the top left corner. It
23 should be about the fourth or fifth page in. Fifth
24 page, Your Honor.

25 THE COURT: All right. I got 18:10

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 approach something team?

2 MS. MCMENAMIN: Yes.

3 THE COURT: Okay.

4 MS. MCMENAMIN: And below that you see
5 that they are ER, en route, out of airport in
6 transport vehicle. And you can see the note down
7 there after 18:10 -- they address the arrest at
8 18:10, arrest Shivers without incident out of
9 airport in transport vehicle with team about trying
10 to locate the Ford. You see where it's noted that
11 just after he's arrested at 18:10 and they're
12 coming out there's a note that Shivers says the
13 truck is parked in level six by pole I-29.

14 The next time, Your Honor, is 18:29.
15 That would be 6:29 p.m. in standard time.

16 THE COURT: Okay.

17 MS. MCMENAMIN: Assisting Shivers into
18 the backseat of DC Douglas or Detective Constable
19 Douglas's black van. Shivers volunteers info that
20 two guns are in the Ford F-150 truck and further
21 states he was going to shoot himself.

22 When you look to that page at the end,
23 it gives the detailed statement of what the
24 Defendant said. 18:29 is the summary that he put
25 in the chronological notes. This page with the

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | time 6:29 or 6:29 p.m. is where after the statement
2 | is made he steps right out of the vehicle and
3 | writes it down to ensure the accuracy, Your Honor.

4 | Listen be careful -- this is what his
5 | saying: Shivers says the arrows pointing down,
6 | listen, be careful, there's two guns in the truck.
7 | One in the middle console, it's loaded and another
8 | in an old briefcase in the back -- backseat also
9 | loaded. One's a Kimber .45 and one's a XT9. I was
10 | going to eat one in Niagara Falls for what I'd
11 | done.

12 | Detective Dean can testify, Your Honor,
13 | in more depth as to how he wrote this statement and
14 | why it's on its own individual page. But that it
15 | is from September 5th at 6:29 just after the
16 | Defendant made those statements. And then he added
17 | an additional summarized version of those
18 | statements into the chronological timeline.

19 | THE COURT: All right. Let me see the
20 | lawyers.

21 | (WHEREUPON, there was a bench
22 | conference)

23 | THE COURT: All right. Let me get some
24 | more testimony and hold on to your objection. Let
25 | me hear some more and see if they can tie it

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 together.

2 MS. BARBIER: Yes, Your Honor.

3 Q. Detective Dean, I'm going to leave
4 Exhibit 23 up here with you. You can reference
5 this document. I have a few more questions for
6 you.

7 So you were telling us that you were
8 taking notes sort of throughout your investigation
9 as it was happening?

10 A. Right.

11 Q. Some right when things happen, some a
12 little bit later?

13 A. Yes.

14 Q. Okay. Now, is this mandatory that you
15 have to take these notes or is it just sort of
16 standard procedure?

17 A. Yeah, that's how you take notes. Yes.

18 Q. Okay. And as you're taking these notes
19 -- you get to the Toronto Airport?

20 A. Yes.

21 Q. When you get there, what information do
22 you obtain in regards to where the Defendant might
23 be specifically in that airport?

24 A. So we obtained information indicating
25 that he was booked on a flight to London, England

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 and that that flight was departing out of Terminal
2 1, Gate E76.

3 Q. And what did you do with that
4 information?

5 A. At that point myself and other officers
6 on my team, we made our way to the gate in an
7 attempt to locate Mr. Shivers.

8 Q. Okay. And were you able to locate him?

9 A. Yes, we were. Once we got to the gate,
10 I observed that people had begun to line up. And
11 there's a large crowd of people who are waiting to
12 board the airplane. We kind of fanned out a little
13 bit. And another officer on my team indicated that
14 he thought that he had observed Mr. Shivers in the
15 crowd. He pointed out to me where he was. I saw
16 him as well and confirmed it was Mr. Shivers and we
17 approached him and placed him under arrest at that
18 time.

19 Q. When you placed him under arrest was he
20 restrained in any way?

21 A. Yes, he was. He was handcuffed.

22 Q. Did you do that yourself?

23 A. Yes.

24 Q. Was he searched incident to arrest?

25 A. Yes, he was.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. And who did that?

2 A. I did.

3 Q. Can you tell us about that search and
4 what you may have found?

5 A. So he was searched incident to arrest
6 and on him was a cell phone and keys.

7 Q. Did you seize these items?

8 A. Yes.

9 Q. Okay. And whenever you were searching
10 him or detaining him were you asking him any
11 questions?

12 A. No.

13 Q. Were you doing anything to try and
14 elicit information from him?

15 A. No.

16 Q. And at this time when he's arrested,
17 can you describe the Defendant's demeanor for us?

18 A. Yeah, he was calm. He didn't resist
19 arrest at all. He didn't try to fight, argue or
20 make the arrest a difficult one. It was a very
21 easy arrest that occurred without incident.

22 Q. And based on your training and
23 experience and your observations that day, did he
24 appear to be under any emotional distress?

25 A. No.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Did he appear to be disoriented in any
2 way?

3 A. No.

4 Q. Did he appear to be intoxicated?

5 A. No.

6 Q. Was there anything about his demeanor
7 that made you unsure of whether or not he was
8 comprehending what was happening?

9 A. No.

10 Q. So from there you have detained him,
11 you've searched him, what do you do next?

12 A. Next we walked him out of the airport.
13 And -- we walked him out of the airport back to the
14 departures area where our vehicles were parked.
15 And from there, once we got out of the airport
16 and --

17 Q. Let me interrupt you, I'm sorry,
18 Detective Dean. Thank you. So you're walking him
19 out of the airport?

20 A. Yes.

21 Q. Who is "we"?

22 A. Myself, Officer Frigon, Officer Collier
23 and Officer Douglas.

24 Q. Okay. And are you talking to the
25 Defendant as you're walking out of the airport?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. No.

2 Q. Was anyone questioning him?

3 A. No.

4 Q. Were you questioning him?

5 A. No, I was not.

6 Q. Were you trying to elicit information
7 from him?

8 A. No, I was not.

9 Q. Now, were any of you, the officers,
10 with the Defendant at that time, were any of you
11 having a conversation amongst yourselves?

12 A. Yes. So there was a discussion amongst
13 the officers at that point about trying to locate
14 the F-150 vehicle.

15 Q. And to be clear, is this inside the
16 airport or outside the airport?

17 A. Just outside of the building itself.

18 Q. Okay. Have you made it to a transport
19 vehicle at this point?

20 A. So we were just walking up and getting
21 to the transport vehicle at that point.

22 Q. Okay. And as you're having this
23 conversation, does the Defendant say anything?

24 A. So as the conversation was happening,
25 the Defendant told us where the vehicle was.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. His black F-150 that you'd been
2 looking for?

3 A. That's right.

4 Q. Where did he tell you it was located,
5 specifically?

6 A. So he said it was located on level six
7 near pole I-29.

8 Q. And were you ever able to recover that
9 black F-150?

10 A. Yes, we were able to locate it and
11 recover it.

12 Q. Was it where the Defendant said it
13 would be?

14 A. Yes, it was.

15 Q. Now, this statement regarding the
16 location of the truck the Defendant made to you,
17 based on your training and experience and your
18 observations at the time, would you say that this
19 was a statement that was compelled or that it was a
20 voluntary statement?

21 A. I felt like it was a voluntary
22 statement.

23 Q. You didn't do anything to prompt the
24 statement from him?

25 A. No.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Did you feel like the conversation you
2 were having would reasonably elicit that
3 information?

4 MS. BARBIER: Objection, Your Honor.
5 Leading.

6 THE COURT: It is leading. Unless you
7 got something that you want to tell me.

8 MS. MCMENAMIN: I'll rephrase, Your
9 Honor.

10 THE COURT: Sounds good. Thank you.

11 Q. Based on your training as an officer,
12 are you trained in interrogating defendants or
13 interviewing them? Maybe that's the word you use.

14 A. Right, yes. Yes, I've been trained in
15 interviews.

16 Q. Okay. And in interviewing tactics, do
17 you ever try to elicit information from defendants
18 without explicitly asking them a question?

19 A. Usually not, no.

20 Q. Okay. And in this situation were you
21 trying to do that?

22 A. No.

23 Q. So and based on your training and your
24 experience and your observations at this time, were
25 your logistical questions about finding where the

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 F-150 might be something that would elicit
2 information from a defendant in a spontaneous
3 perspective?

4 MS. BARBIER: Objection, Your Honor.
5 Leading.

6 MS. MCMENAMIN: I'm not inferring the
7 answer, it is open-ended for him to ask in any way
8 that he would like, Your Honor.

9 THE COURT: But I did think you're
10 testifying to it and it's leading.

11 MS. MCMENAMIN: I will rephrase, Your
12 Honor.

13 THE COURT: If you would.

14 Q. Were you trying to elicit any
15 statements from the Defendant?

16 A. No.

17 Q. In your conversation about the Ford
18 F-150?

19 A. No.

20 Q. Now, Detective Dean, after you got this
21 information about where to locate that vehicle,
22 what did you do next?

23 A. Right. So --

24 Q. And, actually, sorry. Let me pause
25 right there. Detective Dean, after you got this

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 information about where the vehicle was located,
2 did you make a note of that?

3 A. Yes.

4 Q. Okay. In your handwritten notes?

5 A. Yes.

6 Q. At what time did you make note of that
7 information?

8 A. It would have been sometime after he
9 had said it.

10 Q. Okay. Was it after the arrest?

11 A. Yes.

12 Q. And what time did you document that you
13 had arrested the Defendant according to your notes?

14 A. The arrest time occurred at 6:10.

15 Q. Okay. And is your note about where the
16 truck was located after that?

17 A. Yes.

18 Q. What about in regards to or
19 juxtaposition to without going into the wording,
20 the notes you take next regarding additional
21 statements from the Defendant?

22 A. Right. The note I made next about what
23 he told me I made right after he had said it.

24 Q. Okay. And what time did you put for
25 those notes?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. 6:29.

2 Q. Okay and where did you put -- we'll go
3 back to -- after you get to the vehicle, he's made
4 the comments about where the truck is located, what
5 happens next?

6 A. I was assisting him to get into the
7 back of our transport vehicle which is was a Dodge
8 Caravan and he was seated in the backseat. I was
9 helping him get in and getting the -- getting the
10 seatbelt on him and that's when he said to me,
11 listen, be careful, there's two guns in the truck.
12 One in the middle console, it's loaded and another
13 in an old briefcase in the backseat, also loaded.
14 One is a Kimber .45 and one is an XT9. I was going
15 to eat one in Niagara Falls for what I'd done.

16 Q. Again, Detective Dean, were you
17 questioning the Defendant when he made these
18 statements?

19 A. No.

20 Q. Were you doing anything to try and
21 elicit these statements from him?

22 A. No.

23 Q. Were you threatening him to make these
24 statements?

25 A. No.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Were you making him any promises to
2 make these statements?

3 A. No.

4 Q. Were you talking to him at all?

5 A. No.

6 Q. And did you document these statements?

7 A. Yes.

8 Q. How did you document them?

9 A. I wrote it down on a separate piece of
10 paper from my -- that I had and I wrote it in that
11 fashion. Because I wanted it to be very accurate
12 and close as possible to what he said and so I
13 wrote it down right after he said it. And I knew
14 that my notes were not in chronological order at
15 that point and the first open page, I had I wrote
16 it on that.

17 Q. So you didn't want to mess up the
18 chronological order?

19 A. Right.

20 Q. Okay. But on that page, did you
21 document what time you took this note just after
22 the Defendant made these statements?

23 A. Yes, I did.

24 Q. What time is that?

25 A. 6:29.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Where did you get that time from,
2 Detective Dean?

3 A. From my watch.

4 Q. Okay. So you just looked at your
5 watch? Is your watch in military time or standard
6 time?

7 A. I don't recall.

8 Q. Okay. Is -- if you looked at your
9 watch and you got the 6:29, is that different from
10 how you normally document time throughout the
11 chronological notes?

12 A. Yes. My notes are in military time
13 and, yes, I use standard time when I noted the time
14 of that -- what I wrote down.

15 Q. And in addition to writing down this
16 statement on this separate page in writing this,
17 were you using your words or the Defendant's words?

18 A. The Defendant's words.

19 Q. And did you document these statements
20 about the gun and the thought that he had planned
21 to commit suicide, did you document those anywhere
22 else that day?

23 A. I did. I documented those in my
24 chronological notes later on.

25 Q. Okay. And what time did you note for

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 that?

2 A. I wrote the time of 6:29 in military
3 time in my notes which is 18:29.

4 Q. And how did you -- what notes did you
5 write? Specifically, what did you write next to
6 18:29?

7 A. So the note I wrote beside 18:29 was
8 assist Shivers into backseat of DC Douglas's black
9 van and Shivers volunteers information that two
10 guns are in the Ford F-150 truck and further states
11 that he was going to kill himself.

12 Q. Now, is that last part, based on your
13 training and experience, an interpretation of what
14 was explicitly told to you by the Defendant?

15 A. Yes, it was. And I interpreted what he
16 said to what I thought he was going to do.

17 Q. Thank you, Detective Dean. So both --
18 page 5 and the last page of your notes are
19 referencing the statement made by the Defendant on
20 September 5th at 6:29; is that right?

21 A. Yes.

22 Q. And did you make both of these
23 statements that day just after he said them?

24 A. Yes.

25 Q. And why did you make them just after he

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | said them?

2 | A. To ensure that they are accurate and as
3 | close to exactly what he said as I could.

4 | Q. And did you have any orders at this
5 | point to try and elicit information from the
6 | Defendant?

7 | A. No.

8 | Q. And at this point, what sort of warrant
9 | was served on him?

10 | A. He was arrested under a Canada wide
11 | warrant issued by CBSA.

12 | Q. So you were not executing a US warrant?

13 | A. No, I was not.

14 | Q. And, Detective Dean, when you're
15 | looking at your notes, all the pages except for
16 | this last one, what can you note about the neatness
17 | of these notes?

18 | A. Right. I would say definitely my notes
19 | are pretty neat in comparison to the utterance that
20 | I wrote down.

21 | Q. How so?

22 | A. Just because they're obviously right on
23 | the line and somewhat indented where the note of
24 | the utterance is obviously a little bit messy, the
25 | writing is a bit messier and not necessarily on the

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 lines correctly.

2 Q. And why is that?

3 A. Because I wrote it down as quickly as I
4 could after he said it to make sure that it was
5 accurate.

6 Q. Can you tell us whether or not you
7 shared this information with other members of the
8 Toronto Police Service?

9 A. Yes, I did.

10 Q. And did that include Detective Charlene
11 Smith?

12 A. Yes.

13 Q. You provided that information to her?

14 A. Yes, I did.

15 Q. Do you recall why you provided that
16 information to her?

17 A. Because I felt like it was important
18 information particularly in regards to the firearms
19 that were -- that may have been in the truck as
20 well as the part about him wanting to shoot himself
21 for what he did.

22 Q. And at the time he made these
23 statements about his thoughts on taking his own
24 life, did he seem emotional?

25 A. No, he seemed normal.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And he talked about previous thoughts?

2 A. Right.

3 MS. BARBIER: Objection, Your Honor.

4 Leading.

5 MS. MCMENAMIN: I'll rephrase, Your

6 Honor.

7 THE COURT: Thank you.

8 Q. The way he worded it, did this -- how
9 did you take the way he worded this?

10 A. My thought was that he was saying that
11 he had contemplated shooting himself when he was in
12 Niagara Falls.

13 Q. And do you know what date that would
14 have been?

15 A. Yes. So he crossed into Niagara Falls
16 on -- I'm just referencing my notes here.

17 Q. Yes, take your time. Thank you.

18 A. So he had crossed the border at Niagara
19 Falls on September 3rd.

20 Q. And the date he made these statements
21 to you was on what day?

22 A. September 5th.

23 Q. And looking at your chronological notes
24 again, Detective Dean, looking at the very first
25 page where you note that you report on duty, what

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 time do you list for that?

2 A. So I reported on duty that day at
3 6:00 a.m. or 0600 hours as it is written in my
4 notes.

5 Q. And there's a zero in front of that 6?

6 A. Yes, that's right.

7 Q. For military time?

8 A. Yes.

9 Q. Was there a zero in front of the 6:29
10 on the page where you took the time to use the
11 Defendant's words to quote what he had said to you
12 on September 5th?

13 MS. BARBIER: Objection, Your Honor.
14 Leading.

15 THE COURT: I don't think that was
16 leading. She was just asking if there was a zero
17 on that page. I wanted to know if there was a zero
18 myself.

19 Q. Yes, was there a zero?

20 THE COURT: Okay.

21 A. No.

22 Q. Why was there not a zero?

23 A. Because it was 6:29 p.m.

24 Q. And are you using military time or
25 standard time?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. That is written in standard time.

2 Q. Detective Dean, you mentioned earlier
3 that you knew the information the Defendant
4 provided about the location of the car, that it
5 panned out. How did you know that?

6 A. Because I was there with Officer Frigon
7 when we found it.

8 Q. Okay. And whenever you located the
9 vehicle, was that the black F-150?

10 A. Yes.

11 Q. Did you search that vehicle at that
12 time?

13 A. No.

14 Q. Did you look through it in any way?

15 A. No.

16 Q. But based on your involvement in this
17 investigation are you aware if any firearms were
18 found in that vehicle?

19 A. I was made aware that two firearms were
20 eventually located.

21 Q. And the Defendant told you in that
22 statement that he had two firearms in his vehicle?

23 A. Yes.

24 Q. And was this statement -- how would you
25 consider it? Was it voluntary based on your

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 observation of the facts?

2 MS. BARBIER: Objection, Your Honor.

3 THE COURT: Go ahead and rephrase that.

4 I assume that was a leading objection?

5 MS. BARBIER: Correct, Your Honor.

6 THE COURT: Okay.

7 Q. What was the nature of this statement?

8 A. I felt like it was a spontaneous
9 statement.

10 Q. You didn't ask him any questions at the
11 time?

12 A. No.

13 Q. Was anyone else around when the
14 Defendant made this statement?

15 A. No, I was the only one dealing with him
16 at that point in the vehicle.

17 Q. And when you say "at the vehicle," can
18 you describe a little bit more for us, Detective
19 Dean, where you were in position to the Defendant?

20 A. Sure. So he was -- again, I was
21 assisting him into the back of our transport van.
22 And I got into the van as well, so that I was able
23 to help get him seated and get the seatbelt on him.
24 So that's why I was there.

25 Q. Where were you? Were you inside or

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 outside?

2 A. Inside the van.

3 Q. Okay. How much inside the van?

4 A. Like all the way inside it?

5 Q. Were you sitting down? Leaning in?

6 A. No, so I was like inside the van.

7 There was another seat kind of in front, so with my
8 knee on that seat reaching over to help get the
9 seatbelt around him and then clicked into the
10 seatbelt thing.

11 Q. And how long were you in this vehicle?

12 A. Not very long. Probably took less than
13 a minute to get him in and belted.

14 MS. MCMENAMIN: Your Honor, the State,
15 again, offers Exhibit 23 as a Court's Exhibit.

16 MS. BARBIER: I object, Your Honor, to
17 the last page being admitted.

18 THE COURT: She's laid testimony. I'm
19 going to allow it in and I'll note your objection
20 for the record.

21 MS. BARBIER: Thank you, Your Honor.

22 (WHEREUPON, Court's Exhibit Number 23
23 was entered)

24 Q. And just to clarify now so that it's
25 published. The way the notes look on the first

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 page.

2 A. Right. So I can just see right at the
3 bottom it looks like maybe the photo copy is cut
4 off on the last line.

5 Q. Okay. But do these notes on this first
6 page pertain at all to this case?

7 A. Yes. Oh, sorry. The very first page
8 does not pertain to this matter, no.

9 Q. But the nature of the writing, can you
10 describe it?

11 A. Yes, those are my notes and that is my
12 writing.

13 Q. And how does the writing on these pages
14 subsequent to the last page compare?

15 A. Right. So obviously the writing on the
16 last page is a little bit more messy and it's not
17 on the lines.

18 Q. But what date was this statement made?

19 A. On September 5, 2019.

20 Q. And at what time?

21 A. 6:29 p.m.

22 MS. MCMENAMIN: That is all for this
23 witness at this time, Your Honor.

24 THE COURT: Okay. Thank you.

25 CROSS-EXAMINATION

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 BY MS. BARBIER:

2 Q. Good morning, is it Detective Dean or
3 Officer Dean?

4 A. Technically it's Detective Constable,
5 but you can call me either or, it's fine.

6 Q. Okay. Well, let's go with Detective
7 Dean, how about that?

8 A. Okay.

9 Q. I'm Debbie Barbier, I represent Mr.
10 Shivers, okay?

11 A. Please to meet you.

12 Q. So I understand that you have been with
13 the Canadian -- with the Toronto police force for
14 16 years; is that correct?

15 A. Yes.

16 Q. Okay. And you participated in the
17 arrest of Mr. Shivers on September 5, 2019; is that
18 correct?

19 A. Yes.

20 Q. Okay. And you were in plain clothes on
21 that day; is that right?

22 A. Yes.

23 Q. Now, I would imagine that you've
24 received extensive training in how to detain a
25 subject; is that right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. And you have been trained to advise
3 someone about their Canadian rights?

4 A. Yes.

5 Q. Okay. And it's my understanding in
6 Canada that a subject does not have the right to
7 remain silent; is that right?

8 A. No, that's not -- no, that's not right.
9 So when Mr. Shivers was placed under arrest, he was
10 arrested as a result of being wanted on an
11 immigration warrant. And our team is comprised of
12 both police officers and immigration officers. And
13 when there's an immigration arrest, that's when one
14 of the immigration officers will effect the arrest.

15 Q. Correct. And the immigration officer
16 advised Mr. Shivers that he had a right to counsel;
17 correct?

18 A. Yes.

19 Q. And he advised him what he was being
20 arrested for; is that right?

21 A. Yes.

22 Q. Okay. But he did not advise him that
23 he had a right to remain silent, did he?

24 A. Right.

25 Q. And he did not advise him that he had a

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 right to know that anything that he said could be
2 used against him in a court of law, did he?

3 A. Right.

4 Q. Okay. He didn't receive that right,
5 did he?

6 A. No.

7 Q. Okay. And you witnessed Investigator
8 -- or Officer Collier tell him that he had a right
9 to counsel; correct?

10 A. Yes.

11 Q. And what did Officer Collier tell him
12 he was being arrested for?

13 A. That he is wanted on an immigration
14 warrant for being a danger to the public and for
15 not providing himself to an administrator's
16 hearing.

17 Q. Okay. And you understood at that time,
18 along with your fellow officers that Mr. Shivers
19 was a suspect in a murder case in South Carolina;
20 correct?

21 A. Yes.

22 Q. You had been given particulars about
23 that alleged crime before you arrested him; right?

24 A. Yes.

25 Q. You were told that he was dangerous;

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 correct?

2 A. Yeah, that was obvious. Yeah.

3 Q. And you were told that he was wanted
4 for murdering someone who was his girlfriend; is
5 that right?

6 A. Yes, I think they said they referred to
7 the victim as his wife, so I'm not sure what the
8 status was.

9 Q. And you were informed that this crime
10 involved a firearm; correct?

11 A. Yes.

12 Q. Because the victim had been shot
13 multiple times; correct?

14 A. Yes, that's right.

15 Q. So you understood that in your mind you
16 had been informed that he was a dangerous person;
17 correct?

18 A. Yes.

19 Q. And you were also informed that Mr.
20 Shivers and that this investigation was a very
21 important investigation in the United States to the
22 Lexington Police Department; correct?

23 A. I don't recall if I actually knew if it
24 involved the Lexington Police Department, but, I
25 mean, obviously it's a homicide, so it's a warrant.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Did you call the Lexington
2 County Sheriff's Department being involved?

3 A. I don't recall specifically at that
4 time if they were called or not.

5 Q. Okay. But you understood that they
6 needed your help in apprehending him; correct?

7 A. Yeah, if he was arrested.

8 Q. And they also wanted you -- they urged
9 you to help you to get him to cooperate; correct?

10 A. Later on they asked me to try to take a
11 statement from him, yes.

12 Q. And you were told by the US Marshals
13 that you had spoken to prior to this that one of
14 the objectives in arresting him would be to get a
15 statement from Mr. Shivers; correct?

16 A. No. Actually, initially, they only
17 asked us to locate him. And just -- so as he was
18 wanted in Lexington County for a crime, that
19 doesn't necessarily give me the authority to arrest
20 him in Canada for that crime, so it started out
21 being a locate. And then when we understood that
22 he was arrestable on the strength of the
23 immigration warrant, that's what gave us our powers
24 to arrest him at that point.

25 Q. You're trained as a law enforcement

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 officer to help convince suspects to cooperate with
2 law enforcement, aren't you?

3 A. Not necessarily.

4 Q. That's not part of your training?

5 A. To help suspects cooperate?

6 Q. No. To convince suspects that
7 cooperation is a good idea. That's part of your
8 training, isn't it?

9 A. To convince a suspect that cooperation
10 is -- I'm sorry, please say it again.

11 Q. Are you trained to help convince
12 suspects that cooperation is in their best
13 interest?

14 A. Not necessarily.

15 Q. Okay. So are you encouraged when you
16 are -- by your superiors when you apprehend people
17 to try to get them to cooperate in the
18 investigation?

19 A. If you're asking me about attempting to
20 get a statement --

21 Q. No, I'm just asking you about
22 cooperation.

23 A. Okay.

24 Q. Are you encouraged by your superiors
25 and the people who have trained you to get suspects

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 to cooperate in investigations?

2 A. I guess in general terms.

3 Q. Well, of course that's a big part of
4 your job; correct?

5 A. To get people to cooperate?

6 Q. To solve crimes; correct?

7 A. Solving crimes and getting people to
8 cooperate are two different things.

9 Q. Okay. But as a result of people
10 cooperating, that's typically how crimes are
11 solved; right?

12 A. In some cases they certainly are, but
13 not in every case.

14 Q. Okay. But it certainly helps, doesn't
15 it?

16 A. Absolutely.

17 Q. And you would agree with me that
18 sometimes when law enforcement officers are having
19 conversations in the presence of a defendant that
20 that prompts the defendant to make a statement;
21 would you agree with that?

22 A. It's possible.

23 Q. Okay. Now, you spoke with the US
24 Marshals prior this arrest; correct?

25 A. Yes.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And you spoke to people in the
2 Lexington County Sheriff's Department prior to this
3 arrest?

4 A. I did not, no.

5 Q. Okay. Did you speak with anybody else
6 in the United States besides the US Marshals about
7 this arrest before it happened?

8 A. No, I did not.

9 Q. Okay. But you did know it was a
10 shooting; correct?

11 A. Yes.

12 Q. And you did know that it involved
13 potentially a firearm that was .45 caliber; is that
14 right?

15 A. No.

16 Q. Okay. Did you know a firearm was
17 involved in the crime?

18 A. By virtue of it being a shooting, I
19 assumed so, yes.

20 Q. Okay. Were you wearing a body camera
21 on this day?

22 A. No.

23 Q. Okay. Are you aware that body cameras
24 are mandated by law in South Carolina for law
25 enforcement officers?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. No.

2 Q. Okay. Is the Toronto Police Department
3 implementing a rule that provides that body cameras
4 must be worn now by officers?

5 A. Yes. Some uniformed officers currently
6 do wear a body worn cameras. Plain clothes
7 officers do not.

8 Q. But you would agree with me that having
9 a video tape of an incident provides transparency
10 to the public; correct?

11 A. Certainly.

12 Q. Okay. But we don't have that in this
13 case, do we?

14 A. No, we don't.

15 Q. This arrest took place at the Toronto
16 Airport; correct?

17 A. Yes.

18 Q. And there's surveillance cameras there,
19 aren't they?

20 A. Yes.

21 Q. And they perhaps could have caught the
22 arrest being made of Mr. Shivers; correct?

23 A. Yes.

24 Q. Did you retrieve that footage?

25 A. No.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. So you can't give this Court an actual
2 recording of what happened because you failed to
3 get that; is that right?

4 A. Yes, I didn't get any video at all.

5 Q. You were asked by the Lexington County
6 Sheriff's Department and the solicitor's office to
7 provide all of the evidence that you had from the
8 arrest that you had made of Mr. Shivers; correct?

9 A. Yes.

10 Q. And you didn't provide the video tape;
11 is that right?

12 A. I was never detailed to get any video,
13 so, no.

14 Q. Well, you're a trained law enforcement
15 officer and you understand that there are video
16 cameras in airports; correct?

17 A. Right.

18 Q. And you understand that it would have
19 captured the arrest being made of Mr. Shivers with
20 very important information to have at this trial;
21 correct?

22 A. Right. I don't think I could have ever
23 anticipated at that time that I would be here
24 giving evidence, so I don't think I could have ever
25 anticipated that.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. You didn't anticipate that when you
2 arrested a murder suspect that you would be called
3 as a witness to testify about the events that
4 transpired during that arrest?

5 A. Like it's always a possibility, sure.
6 I can tell you I've arrested other murder suspects
7 in the past as well and not been needed as a
8 witness. But also the whole point of making notes
9 is so that you can provide obviously evidence to
10 the court. And I don't think I could have ever
11 anticipated where this was going to go at that time
12 necessarily.

13 Q. Have you ever testified in a court of
14 law before?

15 A. Yes, many times. And many times I've
16 made arrests where it was on video and I never got
17 the video for it because at that time it didn't
18 necessarily make sense to do so.

19 Q. It is your job though to gather all
20 pertinent information in an investigation; correct?

21 A. Yes.

22 Q. And you didn't do that in this case,
23 did you?

24 A. I think I got as much evidence as I
25 could at that time, yeah.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. You actually, when you approached Mr.
2 Shivers in the airport, you witnessed him being
3 apprised of the fact that he was being arrested;
4 correct?

5 A. Yes.

6 Q. And that was Officer Collier as I
7 understand it who arrested him and informed him he
8 was being arrested?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. Did you make any statements to Mr.
13 Shivers as you approached him or when you
14 handcuffed him?

15 A. No.

16 Q. So you handcuffed him and then as I
17 understand it, you patted him down and searched him
18 incident to his arrest; correct?

19 A. Right.

20 Q. Okay. And you testified on direct that
21 you took out a cell phone and some keys; is that
22 correct?

23 A. Yes.

24 Q. But you also removed other items from
25 Mr. Shivers as well, didn't you?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I don't recall any other items.

2 Q. You don't recall removing his wallet?

3 A. No.

4 Q. You don't recall the fact that it had
5 approximately \$3400 in cash in it?

6 A. I didn't remove that item, no.

7 Q. You didn't remove that? Did somebody
8 else pat him down?

9 A. Myself and Officer Douglas both
10 arrested him.

11 Q. Okay. And are you aware of what was
12 removed from his person?

13 A. I was aware of the things that I found.

14 Q. Okay. And you say that it was just
15 keys and a cell phone; is that right?

16 A. Right.

17 Q. Okay. Now, do you recall saying to Mr.
18 Shivers -- when Mr. Shivers was told he was being
19 arrested, do you recall him saying that he wanted
20 to speak with an attorney?

21 A. No.

22 Q. Okay. So your testimony is that when
23 he was told he was being arrested he was silent?

24 A. No, I don't recall if he said that or
25 not.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. What do you recall him saying?

2 A. I don't recall what he was saying.

3 Q. Okay. Do you recall anyone saying to
4 Mr. Shivers, we just need you to cooperate and we
5 just want to ask you a few questions?

6 A. Uh, no.

7 Q. So your testimony is that wasn't stated
8 to him?

9 A. It may have been, but I didn't hear it.

10 Q. Okay. And you were standing next to
11 him, but you didn't hear it; is that your
12 testimony?

13 A. I didn't hear it, no.

14 Q. Okay. And you also were witness to
15 when one of the officers said to him, we just need
16 to get this handled so we can resolve this issue.
17 Do you recall that?

18 A. No.

19 Q. So you walked with Mr. Shivers down the
20 terminal to the parking garage; is that right?

21 A. Right.

22 Q. And that took approximately --
23 according to your notes that took approximately 20
24 minutes; is that right?

25 A. Right.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. So for 20 minutes you walked Mr.
2 Shivers and you handled him; correct?

3 A. Yep.

4 Q. Okay. You walked him through the
5 terminal of the airport; right?

6 A. Yes.

7 Q. And you were aware at the time that he
8 was wanted in South Carolina for a murder; correct?

9 A. That's right.

10 Q. And you stated to him at that time that
11 we know you murdered your wife, didn't you?

12 A. No, I didn't.

13 Q. Okay. You told him that you knew that
14 he had assaulted his wife, didn't you?

15 A. I did not say that, no.

16 Q. You asked Mr. Shivers where his car was
17 parked, didn't you?

18 A. No.

19 Q. Okay. So wouldn't it be a logical
20 thing to ask a defendant who's got a car parked in
21 an airport parking lot how to locate it to save
22 your officers some time?

23 A. You're right it would be a logical
24 question to ask. But --

25 Q. And there's no right for Mr. Shivers --

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I was just going to say --

2 Q. -- to remain silent --

3 MS. MCMENAMIN: Objection, Your Honor.
4 She's not allowing the witness to finish answering
5 the question.

6 THE COURT: Yeah, let him finish.

7 Q. Okay. Go ahead. I'm sorry. Finish
8 your answer.

9 A. Sorry. I was just going to say,
10 finding the vehicle in an airport parking lot isn't
11 a very difficult thing to do, so I didn't need his
12 information about where the car was.

13 Q. Okay. But you've testified that Mr.
14 Shivers was told he has a right to counsel; right?

15 A. Yes.

16 Q. And Mr. Shivers is told why he's being
17 arrested; correct?

18 A. Yes.

19 Q. Okay. And Mr. Shivers wasn't told that
20 he had the right to remain silent; correct?

21 A. Right.

22 Q. So there was nothing preventing you
23 from asking him simple questions; right?

24 A. Not necessarily, no.

25 Q. Okay. And part of your job is that

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | you're an investigator; right?

2 | A. Right.

3 | Q. So your job is to ask people questions;
4 | correct?

5 | A. Yes.

6 | Q. So your testimony is, you walk with him
7 | for 20 minutes through the airport and didn't say
8 | one word to him; is that right?

9 | A. Yeah. We weren't talking to him, no.

10 | Q. Okay. Is there a reason you chose not
11 | to talk to him?

12 | A. There was no reason to talk to him.

13 | Q. Well, he's a person who is wanted in
14 | South Carolina for murder; isn't that a good reason
15 | to talk to him?

16 | A. Right. So our job at that time was to
17 | arrest him, which we did. And from there, there
18 | was no reason for me to have a conversation with
19 | him.

20 | Q. You in fact told Mr. Shivers that he
21 | was -- you said you were trying to flee the United
22 | States because you murdered your wife, weren't you?

23 | A. I did not say that.

24 | Q. Okay. Did you hear anybody else say
25 | that to him?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. No, I didn't.

2 Q. Okay. And it was repeated to him over
3 and over again from officers that he murdered his
4 wife, wasn't it?

5 A. No.

6 Q. Okay. When you got Mr. Shivers down to
7 the parking garage and you said that you were
8 putting him near the transport vehicle. You
9 indicated that he just spontaneously said, my car
10 is parked on the sixth level; is that right?

11 A. Yeah.

12 Q. And it's your testimony that nothing
13 prompted that statement? You didn't ask him where
14 his car was located?

15 A. No, I didn't.

16 Q. That's a very simple question to ask
17 someone, isn't it?

18 A. Sure it is, yeah.

19 Q. And you have the right to ask him that,
20 didn't you?

21 MS. MCMENAMIN: Objection, Your Honor.
22 Asked and answered.

23 THE COURT: Rephrase it.

24 Q. Now, you talked about your notes in
25 your direct testimony quite a bit; isn't that

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 right, Detective Dean?

2 A. Yes.

3 Q. And I would imagine that the protocol
4 as it stands in your office for writing
5 chronological notes on a day that you're at work is
6 for the purpose of insuring that everything that
7 you do in the order that it's done is documented;
8 correct?

9 A. Right.

10 Q. Okay. And you took the time in these
11 notes to make quotations over things that Mr.
12 Shivers said, didn't you?

13 A. Yes, I used quotations in one portion
14 of my notes here, I guess.

15 Q. You did. At 18:10 at the very last
16 line it says, Shivers says quote, "the truck is
17 parked on level 6 by pole I-29," do you see that?

18 A. Yes, I see it.

19 Q. So you quoted Mr. Shivers within these
20 notes, didn't you?

21 A. Yep.

22 Q. Okay. And your next notation is 18:29;
23 correct?

24 A. Right.

25 Q. That's military time for 6:29; right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. And all of your notes throughout this
3 day are in military time, aren't they?

4 A. Yes.

5 Q. Okay. And you've been right at 18:29,
6 assist Shivers into the backseat of DC Douglas
7 black van. Shivers volunteers information that two
8 guns are in the Ford F-150 truck and further states
9 that he was going to shoot himself; is that what
10 you wrote?

11 A. That's what I wrote, yes.

12 Q. Okay. And you wrote that
13 contemporaneously with Mr. Shivers having said that
14 to you?

15 A. So those notes I wrote -- that's what I
16 interpreted what he had told me in the back of the
17 van. I interpreted what that meant to me. What I
18 felt like he was trying to tell me.

19 Q. Well, you say that he states he was
20 going to shoot himself; correct?

21 A. You're right. And that was based on
22 him telling me that he was in Niagara Falls that he
23 was going to eat one. I interpreted that as him
24 telling me that his intention was to commit suicide
25 in Niagara Falls by shooting himself.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Right. In nowhere in this entry do you
2 say that he's going to do this because of what he
3 had done, do you?

4 A. Right.

5 Q. And your interpretation of what he says
6 was because of what I've done, is that -- you
7 indicate that you believe that's a confession to
8 the fact that he murdered his wife; right?

9 A. Yes.

10 Q. And that would be a very critical thing
11 to make note of in this entry, wouldn't it?

12 A. Right. So because I wrote it here sort
13 of as he said it, I didn't feel like I should
14 rewrite it a second time.

15 Q. But you didn't write in this entry that
16 he was going to eat one, did you? You wrote he's
17 going to shoot himself.

18 A. Right. Because to me that was my
19 interpretation of what that meant.

20 Q. Okay. And you didn't write in this
21 entry that it was because of what he had done, did
22 you?

23 A. You're right, I did not.

24 Q. Okay. And you make no indication in
25 this entry, see supplemental note on next page, do

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | you?

2 | A. No, I didn't write that.

3 | Q. Okay. So you took the time in the
4 | previous entry to quote Mr. Shivers and write what
5 | he said in quotes in this documentation; correct?

6 | A. Right. And that's because it was he
7 | said something that was very short in comparison to
8 | obviously what he told me in the back of the van.

9 | Q. Are you testifying that I was going to
10 | eat one because of what I've done was a long
11 | statement?

12 | A. The whole thing was.

13 | Q. That's not any longer than the truck is
14 | parked on level 6 by pole I-29?

15 | A. Right. That was part of the whole
16 | thing that he had told me about listen, be careful
17 | of the two guns. And then was all like one
18 | statement, right.

19 | Q. Right. But you could have quoted him
20 | within this entry and you chose not to; right?

21 | A. I would have been -- I would have just
22 | been rewriting these notes again, so there's no
23 | need to do that.

24 | Q. But you don't make any reference to
25 | that note in this entry, do you?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I don't specifically reference it, but
2 I can tell you it's one in the same.

3 Q. The person reading this would not know
4 that that additional note is part of the other,
5 would they?

6 A. I thought it was obvious that they
7 were.

8 Q. It's obvious even though there's no
9 notation to it? No reference to it?

10 A. So I thought it was obvious that this
11 is describing what he had told me and that's how I
12 remember it.

13 Q. That's how you remember it?

14 A. Right.

15 Q. And along those lines, you did not
16 inform anybody at the Lexington County Sheriff's
17 Department or in the solicitor's office of the
18 supplemental notes until March of 2021; is that
19 right?

20 A. So when I made my notes, my notes I
21 believe were provided by another officer. So I
22 didn't provide my notes -- not me, but they were
23 provided by somebody else, yes.

24 Q. Okay. And when did you provide your
25 notes to this officer to provide them to the

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | Lexington County Sheriff's Department?

2 | A. I don't know the specific time, but my
3 | notes were ready and complete and it would have
4 | been shortly after.

5 | Q. Well, was it in March of 2021?

6 | A. I don't know what the date was.

7 | Q. Pursuant to your protocol in your
8 | office, are you required to memorialize your notes
9 | into a memorandum or a report after they're made?

10 | A. I'm not sure what you're talking about.

11 | Q. Does your department require you to
12 | take these notes and memorialize them in a report
13 | of investigation or memorandum of interview or
14 | anything of the like?

15 | A. No.

16 | Q. Okay. So you don't have any reports
17 | from that day; is that right?

18 | A. No.

19 | Q. Okay. You just have these handwritten
20 | notes?

21 | A. Yes.

22 | Q. And you don't know when you turned
23 | those notes over, do you?

24 | A. I don't have date, no.

25 | Q. Okay. It could have been March 29th of

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 2021; is that right?

2 A. I have no idea.

3 Q. Okay. Do you recall on September 5th
4 of 2019 filling out an arrest warrant for probable
5 cause and giving a statement for that?

6 A. No.

7 Q. Well, let me show you. Do you recall
8 giving information to the Lexington County
9 Sheriff's Department or the solicitor's office
10 regarding information to include in an arrest
11 warrant for Mr. Shivers?

12 A. No.

13 Q. When did you first inform the sheriff's
14 department or the solicitor's office that Mr.
15 Shivers had made these statements to you allegedly
16 while he was in the car being detained?

17 A. So I did not.

18 Q. You never informed them of that?

19 A. No, I didn't. I believe that
20 information might have come from another officer.

21 Q. Okay. When did you inform the other
22 officers in your office about this statement that
23 Mr. Shivers allegedly made?

24 A. Right after it happened.

25 Q. Okay. And do you know when they

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 relayed that to Lexington County sheriff's law
2 enforcement?

3 A. I don't know.

4 Q. Okay. Would it surprise you if it
5 weren't for a year and a half, two years later?

6 A. Would it surprise me if it took that
7 long?

8 Q. Yeah.

9 A. Yes.

10 Q. Okay. You also indicated in your notes
11 at 19:25 that I am detailed to attend GTEC and
12 speak to Shivers about murder of his wife, do you
13 see that?

14 A. Yes.

15 Q. Okay. So you had been tasked with the
16 responsibility of asking Mr. Shivers questions
17 about the murder of his wife; correct?

18 A. Yes. Yes.

19 Q. Okay. And you did attempt to elicit
20 statements from Mr. Shivers at that time, didn't
21 you?

22 A. Right. I asked him if he wanted to
23 conduct an interview and he declined.

24 Q. And you told him at that time that we
25 know you murdered your wife, didn't you?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. No, I never said that.

2 Q. You told him that you had the murder
3 weapon, didn't you?

4 A. No, I never said that.

5 Q. You told him that you knew he was
6 trying to flee the United States because he
7 murdered his wife, didn't you?

8 A. No, I never said that.

9 Q. Now, when you placed Mr. Shivers in the
10 transport vehicle, you indicated that he
11 spontaneously said to you that he was going to eat
12 one and -- because of what he had done; is that
13 right?

14 A. Yes.

15 Q. Okay. Even though your notes indicate
16 at 16:29 -- or 18:29 that he said he was going to
17 shoot himself?

18 MS. MCMENAMIN: Objection, Your Honor.
19 This is asked and answered numerous times over.

20 MS. BARBIER: I'm just pointing out --

21 THE COURT: She didn't finish asking,
22 so I don't know.

23 MS. MCMENAMIN: Yes, Your Honor.

24 THE COURT: Go ahead and let me hear
25 the question.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Would you agree with me, Detective
2 Dean, that your notes at 18:29 are inconsistent
3 with the supplemental note that you indicate you
4 wrote afterwards?

5 A. I think they're consistent because what
6 I wrote at 18:29, that is how I interpreted what he
7 told me which I tried to write down verbatim.

8 Q. Right. But you left out what you
9 allege is I guess is a confession; right? The
10 reason he's going to shoot himself is because of
11 what he had done. You left that out; right?

12 A. Yes, it's not written there, no.

13 Q. So in that respect, these notes are
14 inconsistent with your other notes; correct?

15 A. I think they're consistent because -- I
16 wouldn't rewrite the same thing twice.

17 Q. Well, wouldn't it be important to
18 include in your original notes that he indicated he
19 was going to kill himself because he had murdered
20 his wife?

21 A. These -- where it say 6:29, those are
22 my original notes and those were written before I
23 wrote what I wrote at 18:29 in my chronological
24 sequence of the events that occurred.

25 Q. And why did you switch from military

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | time to regular time?

2 | A. Because I was writing it quickly and I
3 | looked at the time and just wrote it down as I saw
4 | it. And that's why. That's also why it looks
5 | messy and not on the lines properly.

6 | Q. Isn't true, Detective Dean, that you
7 | wrote that page subsequent to these events and
8 | sometime after you arrested Mr. Shivers?

9 | A. No, it's not.

10 | Q. Mr. Shivers repeatedly said to you that
11 | he wanted an attorney, didn't he?

12 | A. I don't recall that.

13 | Q. Okay. Mr. Shivers repeatedly told you
14 | that he did not want to make any statements, didn't
15 | he?

16 | A. Yes, when I asked him if he wanted to
17 | make a statement he did not.

18 | Q. Okay. And so you're testifying that a
19 | man who has told you -- and you've not informed
20 | that he has a right to remain silent and has told
21 | you he wants an attorney, has just spontaneously,
22 | magically come up with statements, one to the
23 | affect that he was going to kill himself and
24 | another to the affect that he was going to do it
25 | because he had murdered his wife; is that your

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | testimony?

2 | A. Right. So you asked me several things
3 | there. So he did talk to a lawyer. I'm aware of
4 | that. So normally in Canada, your lawyer -- if you
5 | want a lawyer, you speak to a lawyer over the
6 | phone. The lawyer doesn't come to the police
7 | station. And I think that's the way it occurs
8 | here. So, yeah, he definitely got to speak to a
9 | lawyer for sure.

10 | Q. Okay. You assisted in processing him
11 | at the police station, didn't you?

12 | A. I was there, but I didn't do any of the
13 | processing, no.

14 | Q. Okay. Did you inform the officers and
15 | the personnel at the police station that Mr.
16 | Shivers had indicated an intent to shoot himself?

17 | A. I think the other officers were aware
18 | of that, yes.

19 | Q. Okay. Was -- part of your job would be
20 | to give them that information because it would be
21 | pertinent to how he's detained; correct?

22 | A. Right. Yes.

23 | Q. Yeah. He would be placed on suicide
24 | watch; right? Because he indicated an intent to
25 | harm himself; correct?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I think in this case it may not have
2 necessarily been required.

3 Q. Okay. Well, I guess my question would
4 be, if indicating to someone the fact that you're
5 going to shoot yourself, doesn't constitute making
6 you suicidal, what does?

7 A. He may have been suicidal at that time,
8 but he had no access to a firearm while he was in
9 custody, so.

10 Q. Well, you are aware that people commit
11 suicide in jails; right?

12 A. It happens --

13 Q. That happens in Canada as well, doesn't
14 it?

15 A. It's happened, yes.

16 Q. Yeah. And so part of your job is to
17 inform personnel at that detention center if you
18 have any information related to this person being
19 suicidal; correct?

20 A. Right. So --

21 Q. And you didn't do that here, did you?

22 A. I did not, you're right. The other
23 officers --

24 Q. And that's part of your job --

25 MS. MCMENAMIN: Objection.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 THE COURT: Yeah, you got to let him
2 finish answering the questions.

3 A. So I was going to say, the other
4 officers who were involved in processing him
5 because again this was a -- he was processed on
6 immigration warrant, so the immigration officers do
7 not. I'm not the police officers. And they were
8 aware of him wanting to shoot himself before, so I
9 don't know what they did with that.

10 Q. You don't know. Did you indicate to
11 them that they should be mindful to report that to
12 the jail personnel so that they would know to put
13 him on suicide watch?

14 A. They knew about it. I don't know if
15 they informed anybody or not.

16 Q. Okay. Do you know if he was ever put
17 on suicide watch?

18 A. I don't know.

19 Q. Well, that would be a breach of
20 protocol if he wasn't; correct?

21 A. I don't know.

22 Q. But if he never actually said that to
23 you then it wouldn't have mattered; right?

24 A. If he never said --

25 Q. If he never told you that he was going

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 to shoot himself, he never made the statement you
2 alleged it wouldn't have been relevant; correct?

3 A. Right.

4 Q. And you also participated in taking him
5 the next day to Mapelhurst Correctional Complex;
6 correct?

7 A. No, I did not.

8 Q. Okay. Who did that?

9 A. I don't know.

10 Q. Did you have any other interactions
11 with Mr. Shivers?

12 A. No, I did not.

13 Q. Okay. So your last interaction with
14 him was at the police station when you were tasked
15 with trying to get a statement from him; correct?

16 A. Yes.

17 Q. And during that time, you put him in a
18 conference room, if you will, that had one very
19 small window and you and another officer were
20 present; correct?

21 A. I don't recall if there was another
22 officer, it might have just been me.

23 Q. And you told him that you knew he had
24 beaten his wife; correct?

25 A. No, I never said that.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. Describe for the Court what you
2 said to him in that conference room.

3 A. I asked him if he wanted to give a
4 statement about what happened in South Carolina and
5 he said, no, and that was it.

6 Q. And that was the end of the story; is
7 that right?

8 A. Yes.

9 Q. Okay. So you never said to him you
10 knew that he murdered her; right?

11 A. No, I did not.

12 Q. And you never said that he knew he had
13 choked her; is that right?

14 A. No, I did not.

15 Q. You didn't tell him that you knew she
16 was shot in the front room of his house?

17 A. No, I did not.

18 Q. And you didn't tell him that she'd been
19 shot multiple times?

20 A. No, I did not.

21 Q. And at the end of that, you didn't
22 curse at him and tell him he was going down for
23 this?

24 A. No.

25 Q. Okay. And there's no video of this

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 interaction, is there?

2 A. No.

3 Q. You had the ability to video tape it,
4 didn't you?

5 A. I don't think that's -- no, there's no
6 video camera there.

7 Q. You indicated to Mr. Shivers when you
8 took him in that room that this was being recorded,
9 didn't you?

10 A. No, I did not.

11 Q. Okay. Was it recorded?

12 A. No.

13 Q. After this interaction with Mr.
14 Shivers, did you have any other interaction with
15 him?

16 A. No, I did not.

17 Q. Okay. So it is your testimony, let me
18 just make sure I've this straight. Mr. Shivers
19 very clearly told you, during your interactions
20 with him, that he didn't want to make statements;
21 correct?

22 A. Right.

23 Q. He also told you that he wanted an
24 attorney; correct?

25 A. Yeah, I know that he spoke to a lawyer.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. But he told you that he wanted
2 an attorney, didn't he?

3 A. I don't recall.

4 Q. Okay. Do you have any other notes from
5 that interaction with Mr. Shivers?

6 A. No.

7 Q. Do you recall being interviewed in
8 March of 2021 by anybody from Lexington County or
9 the solicitor's office?

10 A. No, I don't recall specifically.

11 Q. Do you recall that being the first time
12 you've informed them that Mr. Shivers allegedly
13 made this statement?

14 A. No.

15 Q. Did you inform them at that time that
16 he had made the statement?

17 A. I think it was already known.

18 Q. Okay. Well, do you know why it was
19 deemed a supplemental report if it was already
20 known?

21 A. No, I don't.

22 Q. Would you agree with me that a
23 defendant having made a confession and indicating
24 they were going to commit suicide is a pretty
25 important thing to inform the investigating

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 agencies about?

2 A. Absolutely. And to my understanding
3 everybody knew about it.

4 Q. And if they did, it would be odd that
5 in March of 2021, almost two years after the crime,
6 a police report is being generated about that,
7 wouldn't it?

8 A. I don't know who generated that and I'm
9 not sure what that is, so I don't know if I can
10 really speak to it.

11 Q. Okay.

12 MS. BARBIER: Beg the Court's
13 indulgence.

14 Q. So just to be clear, Detective Dean,
15 there is no other formal -- there's no formal
16 memorialization of the Defendant's alleged
17 statement other than your handwritten notes from
18 that day in the Toronto Police Department; is that
19 right?

20 A. Not that I'm aware of, no.

21 Q. Okay. Are you aware of any other
22 officer who made any other reports about it?

23 A. Not that I'm aware of, no.

24 Q. And you never communicated those
25 alleged statements to the folks down here in

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | Lexington until sometime in March of 2021; is that
2 | right?

3 | A. So I did not. I assume that they had
4 | my notes and were well aware of it, so.

5 | Q. And do you know who was tasked with
6 | informing them of that?

7 | A. I think one of the other officers on my
8 | team, Charlene Smith, was dealing with all of that.

9 | Q. Okay.

10 | MS. BARBIER: Nothing else. Thank you.

11 | THE COURT: Any redirect?

12 | MS. MCMENAMIN: Redirect, please, Your
13 | Honor.

14 | REDIRECT EXAMINATION

15 | BY MS. MCMENAMIN:

16 | Q. Detective Dean, can you clarify for us
17 | what your job was on September 5th as far as the
18 | investigation of Vincent Shivers?

19 | A. Right. So our main objective was first
20 | to locate him and then once we knew he was
21 | arrestable to arrest him.

22 | Q. And arrestable on what grounds?

23 | A. On the warrant that had been issued by
24 | CBSA.

25 | Q. Not the US warrant?

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Right. I have no jurisdiction to
2 arrest somebody in Canada on a warrant issued from
3 another country.

4 Q. So if you were going to conduct an
5 investigation, what would that be an investigation
6 of, which warrant?

7 A. The -- our investigation was based on
8 him being arrestable on immigration warrant.

9 Q. Now, you were asked numerous times
10 about not questioning the Defendant as you escorted
11 him out of the airport, do you remember that?

12 A. Yes.

13 Q. Detective Dean, based on your
14 experience and training, can you tell us whether or
15 not questioning someone in a populated area is
16 ideal?

17 A. No, it's not.

18 Q. What would you have normally had done
19 in that situation if you wanted to question
20 someone?

21 A. You would conduct it like a proper
22 interview, that would be audio/video recorded.

23 Q. Where would that occur?

24 A. At the police station.

25 Q. So not at the airport?

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. No.

2 Q. And they asked you about ultimately
3 being tasked to see if the Defendant would speak
4 with you about the US investigation; is that
5 correct?

6 A. Yes.

7 Q. When were you tasked to do that?

8 A. So a long time after he was arrested
9 around 9:42, in or around that time, yes.

10 Q. So can you tell us whether or not that
11 was before or after he made the voluntary
12 statements to you at the airport?

13 A. That was after.

14 Q. And you made a note of that?

15 A. Yes.

16 Q. But can you tell us where in these
17 notes before that time you make notes about being
18 asked to question or investigate the Defendant?

19 A. Right. Prior to that, I had never
20 received the details to interview him.

21 Q. And you were asked numerous questions
22 about his advice of rights?

23 A. Yes.

24 Q. Was he advised of his rights upon
25 arrest?

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. Do you know if he had been advised of
3 his rights when you did eventually later that
4 evening go to the police station to see if he
5 wanted to speak?

6 A. I don't recall if he was given
7 additional rights or not.

8 Q. But when you spoke with him, do you
9 know whether or not he had an opportunity to speak
10 with an attorney?

11 A. Yes, he had spoken to a lawyer at that
12 point.

13 Q. And ultimately what did he decide to do
14 when you asked him if he would like to speak to
15 you?

16 A. He declined it.

17 Q. And did you respect that?

18 A. Yes, that was the end of it.

19 Q. Did you try to force him to speak with
20 you?

21 A. No.

22 Q. Did you offer him anything to speak
23 with you?

24 A. No.

25 Q. Did you promise him anything?

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. No.

2 Q. And once he said he didn't want to
3 speak with you, what did you do from there?

4 A. That was it. It was over and he was
5 transported to the immigration hold center after
6 that.

7 Q. And to back track a little bit. A lot
8 of questions were asked about locating the vehicle.
9 You mentioned that that would not a difficult thing
10 to do without the exact information of where it was
11 located. Could you explain that to us a little
12 further?

13 A. Right. So obviously finding the
14 vehicle in an airport parking lot is not extremely
15 difficult. There is numerous police agencies that
16 work within the airport and to get assistance to
17 find if they passed through one of the cameras in
18 the parking area wouldn't be hard to do.

19 Q. Oh, so there are cameras?

20 A. Right.

21 Q. And those could be used to locate the
22 vehicle?

23 A. Right.

24 Q. Do you know whether or not the vehicle
25 information including the tag number for the

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 Defendant's truck had been entered into some sort
2 of data base?

3 A. I don't know that. I don't know if
4 that happened.

5 Q. Okay. But you had that information?

6 A. Yes. I knew what the vehicle was and I
7 knew what the license plate was, yes.

8 Q. And can you tell us whether or not that
9 would aid you in finding the vehicle?

10 A. Yes.

11 Q. And did you ultimately locate the
12 vehicle?

13 A. Yes.

14 Q. Where?

15 A. In the parking garage for Pearson
16 International Airport on level 6 parked near pole
17 I-29.

18 MS. MCMENAMIN: Nothing further for
19 this witness, Your Honor.

20 THE COURT: Thank you. Anything?

21 MS. BARBIER: Just real briefly, Your
22 Honor.

23 RECROSS EXAMINATION

24 BY MS. BARBIER:

25 Q. So you indicated that the only thing

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 | you were tasked with doing is investigating the
2 | immigration warrant of Mr. Shivers at the time of
3 | his arrest; is that right?

4 | A. The only thing tasked? I think what I
5 | was saying was the immigration warrant gave us the
6 | ability to arrest him.

7 | Q. Right. But you understood that he was
8 | being arrested because he was a suspect murder in
9 | South Carolina; correct?

10 | A. Well, he was arrested because --

11 | Q. Is that right, yes or no?

12 | MS. MCMENAMIN: Objection, Your Honor.
13 | Again, not allowing the witness to finish his
14 | answer --

15 | THE COURT: Let him finish his answer,
16 | please.

17 | A. Right. So he was arrested because
18 | whatever he had done somewhere else made him
19 | inadmissible to Canada. However, he was able to
20 | get into Canada. That's what made him arrestable.

21 | Q. Okay. But you agree with me that when
22 | you were asked to question him and get a statement
23 | from him, they didn't want you to ask questions
24 | about his Canada immigration warrant, did they?

25 | A. No.

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 Q. They wanted you to ask questions about
2 him and whether he had murdered his wife; correct?

3 A. Right. And I think that the reason
4 they wanted me to do that was because they were
5 aware of what he had told me in the back of the
6 minivan.

7 Q. Correct. So, Detective Dean, you
8 indicated that it would be easy to find a car
9 parked in the Toronto Airport, is that your
10 testimony?

11 A. Yeah, it wouldn't be terribly
12 difficult, no.

13 Q. It wouldn't be terribly difficult. But
14 you would agree with me that there are thousands of
15 people coming and going from that airport every
16 day; correct?

17 A. Yes.

18 Q. Okay. And you would agree with me that
19 if you had to review video footage of a parking
20 garage and try to find his car going into the
21 parking garage that would have taken much more time
22 than it actually took to find his car the way you
23 did; correct?

24 A. I don't think it necessarily would
25 have. If you know what the tag is and the

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 | timeframe I don't think it would be great
2 | difficult, no.

3 | Q. It would have been easy to go through
4 | all that video footage, is that what your testimony
5 | is?

6 | A. I don't think I would have had to go
7 | through all the video footage. When he goes
8 | through, they make note of the tag and I think you
9 | can punch it right into a system and it will let
10 | you know if the car is either there or not there.

11 | Q. And you don't know what time he arrived
12 | at the Toronto Airport, do you?

13 | A. No, I don't specifically. No.

14 | Q. Okay. And you don't know what time he
15 | parked his car there, do you?

16 | A. No. I would assume it would be within
17 | a four hour window of that --

18 | Q. So you would have had to review four
19 | hours of videotape from a parking garage and you
20 | find that easy?

21 | A. Yes. If we had gone that route and we
22 | were going to have to review four hours of video, I
23 | would have just driven through the above ground
24 | parking and been able to find it fairly quickly I'm
25 | sure.

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 Q. But that's what what you ended up
2 having to do; correct?

3 A. No.

4 Q. How many levels is the parking garage
5 at the Toronto Airport?

6 A. Off the top of my head I'm not sure.
7 Probably eight.

8 Q. There's at least six; correct?

9 A. At least, you're right, yes.

10 Q. But maybe eight?

11 A. It's possible.

12 Q. Okay.

13 MS. BARBIER: Nothing else. Thank you.

14 MS. MAYES: Judge, we're aware you have
15 the witness may be released, we are aware you have
16 a scheduling issue.

17 THE COURT: Yes.

18 MS. MAYES: We have a witness who will
19 probably be -- I can handle his direct in five
20 minutes. But we leave that up to you.

21 THE COURT: Well, why don't we meet
22 back -- I told the jury to be here at 2:15.
23 Because I really, if I can get over there and walk
24 in and walk out, I can get back. Why don't we try
25 to be back at a quarter till two and do that

1 witness.

2 Let me ask you all something. You know
3 I've got, I've read the Defense's motion, they're
4 claiming a joint venture. Are y'all conceding that
5 this is a joint venture between Canada and the
6 United States?

7 MS. BARBIER: No, Your Honor.

8 MS. MAYES: There was coordination in
9 the extradition process. There were orders to
10 gather evidence and that was done between the
11 United States Department of Justice and the
12 Canadian authorities and that dealt with preserving
13 the truck, gathering some other items. And then
14 the extradition process ended up not being
15 challenged, so he was released to first New York
16 and then from New York to South Carolina. So I
17 think it was only to the extent of an extradition.

18 THE COURT: Well, the thing that kind
19 of, I guess, confuses me is that how did he get
20 this immigration detainer then? Because it sounds
21 to me like the US said, hey, we're looking for him,
22 we think he's up there and I think there was
23 testimony that says, can y'all try to locate him
24 for us.

25 MS. MAYES: That's correct, Your Honor.

1 THE COURT: And they've known about
2 this murder and then what really concerns me is
3 that they tell this agent, somebody told this agent
4 to interrogate this guy. And he even goes and
5 tries to attempt to interrogate him. So I'm just
6 wondering, because, you know, the law's a little
7 different. From what you gave me and I want y'all
8 to be prepared to answer this for me, because what
9 you gave me I was with you all the way. I read
10 their stuff, this is a joint venture. There's two
11 exceptions to the joint venture for voluntary
12 statements. And I just want to make sure for
13 voluntary statements there's two exceptions if it's
14 done by a foreign national.

15 MS. BARBIER: Your Honor, I would just
16 note that all of their investigative reports --

17 THE COURT: Am I missing though -- do I
18 have your point in what y'all are trying to do?

19 MS. BARBIER: Correct, Your Honor. And
20 I would note for the record that all of the
21 investigative reports indicate that this was a
22 collaborative effort with the United States
23 Marshals Service, the United States Department of
24 Justice and, you know, the officials here in
25 Lexington.

1 So there's no doubt that Mr. Shivers
2 would not have been arrested in Canada but for the
3 participation of the United States Representatives.
4 I mean, he wasn't -- it wasn't known to them that
5 he was a person of danger or whatever with having a
6 previous conviction and that's the reason they got
7 the Canadian warrant. The whole reason the warrant
8 was issued is because he's a murder suspect in
9 South Carolina, they need to get him deported,
10 detained and transferred back here. I mean, that
11 just strays, you know, common sense to believe
12 otherwise.

13 THE COURT: Well, you know, I've got
14 some case law that says mere presence in an
15 interrogation, of course there was nobody from the
16 US there. But coordination and direction of an
17 investigation or interrogation does.

18 MS. BARBIER: Your Honor, I believe the
19 US Marshal was present at the Toronto Police
20 Department.

21 THE COURT: Because that hasn't been
22 made clear to me and I don't know who told him to
23 interrogate this guy. This is after they brought
24 him back to the police station. I just had a
25 couple of questions thought maybe y'all all ought

1 to think about it. I do have to run. I will be
2 back. I'm going straight there. I need about 15
3 minutes and then I'm coming straight back. So I'm
4 going to give y'all -- hopefully, I will be back in
5 one hour. I'm going to St. Andrews on Woodrow
6 Street is where I'm going.

7 MS. MAYES: And, Judge, we acknowledge,
8 obviously that the information was shared with
9 Canada. That he was believed to be there. The
10 information that led to his arrest because he was
11 considered a dangerous person. So we'll address
12 this further when you return.

13 THE COURT: Okay. I just want to let
14 y'all know that it's a case law.

15 (WHEREUPON, lunch break)

16 THE COURT: All right. I have a note
17 from a juror. And I guess this is Juror Number 77.
18 He says he might have a possible relationship with
19 a witness. I don't know what that means, but I
20 guess I need to call him in here. And while I'm at
21 it, I might as well call Juror 150 too and just get
22 that done.

23 Number 77 was a Catherine Garner -- 71,
24 no, sorry. A Thomas Gladden. Which juror was he?
25 He was juror number 7 that we picked. All right.

1 smile on your face. It's really a great job, a
2 great experience and hopefully I'll see you later,
3 but, thank you, I'm going to let you go.

4 MR. NETHERCUTT: Yes, ma'am. Have a
5 good one.

6 THE COURT: You too. And I'll tell you
7 too, Mr. Nethercutt, when you go back to get your
8 belongings out of the jury room, please do not
9 discuss any of this with any of the other jurors by
10 order of the Court.

11 MR. NETHERCUTT: Yes, ma'am.

12 THE COURT: Okay. Are we ready for
13 that last witness?

14 MS. MAYES: We are, Your Honor. And to
15 clarify our position from earlier as we broke. The
16 State's position is that the role of the Canadians
17 executing that arrest warrant was solely an arrest.
18 It was not a joint venture. It will be explained
19 that further on later, hours later, once he's at
20 the police station there was communication about an
21 interview, but that's why the State takes the
22 position that it was not a joint venture when the
23 spontaneous statements were made at the airport.

24 The State calls Detective Nick Burt.

25 NICK BURT,

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 being first duly sworn, was examined and testified
2 as follows:

3 THE CLERK: Have a seat up there and
4 state your first and last name for the record.

5 MR. BURT: Nicholas Burt, B-U-R-T.

6 DIRECT EXAMINATION

7 BY MS. MAYES:

8 Q. All right. And, Sergeant Burt, for the
9 sake of brevity, let me ask you this, what role did
10 you play in this investigation?

11 A. I was the lead detective on this case.

12 Q. All right. And were you also serving
13 as lead detective at the outset of this
14 investigation which would have been the early days
15 of September of 2019?

16 A. Yes.

17 Q. And can you tell us whether that
18 included the date of September 5, 2019 in which the
19 Defendant was arrested in Canada?

20 A. Yes.

21 Q. Now, up until that point in time, had
22 you ever communicated with Toronto police or
23 Canadian officials about conducting any type of
24 interview with the Defendant, Vincent Shivers?

25 A. Before he was arrested?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Right.

2 A. No.

3 Q. Prior to September 5, 2019?

4 A. No, I did not.

5 Q. And at the time that he was arrested,
6 what was your understanding of where he was, where
7 he was physically located?

8 A. He had been taken from the airport back
9 to -- I believe going to Maplehurst.

10 Q. All right. Were you advised that he
11 was physically arrested at the airport?

12 A. Yes.

13 Q. Do you recall where you were when you
14 got word of that?

15 A. At the sheriff's department.

16 Q. Were other members of the sheriff's
17 department there including lieutenant and captains
18 of major crimes?

19 A. They were.

20 Q. At any point in time, had any of you
21 requested any action of Canadian authorities other
22 than to assist in his arrest?

23 A. We did not.

24 Q. Have you yourself ever spoken
25 personally with Jesse Dean?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. I have not.

2 Q. Have you yourself ever spoken
3 personally with Robert Frigon?

4 A. I have not.

5 Q. Have you yourself ever spoken
6 personally with Chris Collier?

7 A. No.

8 Q. You were aware however that authorities
9 in Canada were looking for him pursuant to that
10 immigration warrant?

11 A. Yes.

12 Q. Once you got word that he had been
13 arrested and detained, what if any action did you
14 take following word of his arrest?

15 A. So the US Marshals Service had assisted
16 with that and then I was put in contact with
17 Detective Constable Charlene Smith as to be my
18 point of contact with Toronto Police Services.

19 Q. All right. And how much time do you
20 think transpired between when you learned he had
21 been arrested at the airport and then transported
22 on to what I'm going to call the station house?

23 A. So we were aware that he had been
24 arrested, but I didn't talk to her until sometime
25 after that.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Okay. And can you tell us how much
2 time transpired?

3 A. It would be a guess, but maybe 30 to 45
4 minutes after he was arrested.

5 Q. You spoke with Charlene Smith?

6 A. Yes.

7 Q. At that point in time, did she make you
8 aware that any information had been acquired during
9 the course of contact between the Defendant and the
10 Canadian authorities?

11 A. Yes, she had said that he had made
12 statements to other officers about him having a XT
13 9mm and a Kimber .45.

14 Q. All right. So you were aware of a
15 statement being made already at that point
16 regarding two firearms?

17 A. Yes, and the truck had been apparently
18 located.

19 Q. And do you recall if she made any other
20 statements regarding his contact with authorities?

21 A. So we had originally while we were at
22 headquarters discussing about me going up there and
23 talking to him, so I asked her to see if he wanted
24 to talk and was asking about his demeanor. She did
25 say that the arresting officer said that he had

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 made some type of comment about being suicidal, but
2 I have no context of what that actually was.

3 Q. So all of that had occurred prior to
4 your communication with Detective Constable
5 Charlene Smith?

6 A. Yes.

7 Q. And, ultimately, did you ever travel to
8 Canada for purposes of interviewing him?

9 A. Not to interview him, no.

10 Q. Did you ever request them to conduct an
11 interview on your behalf?

12 A. I asked her if they would be -- to see
13 if he would be willing to discuss the incident.

14 Q. All right. And where was he located at
15 that point in time?

16 A. It was my understanding that he was at
17 the Maplehurst Correctional Facility.

18 Q. At the station house?

19 A. Yes.

20 Q. And is it your understanding -- can you
21 tell us whether or not you had an understanding as
22 to whether he agreed to speak to authorities there?

23 A. I was told he didn't want to talk about
24 it.

25 Q. All right. So is it your understanding

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | that all of that including your request for them to
2 | see if he was willing to talk occurred after they
3 | had learned of the firearms and the suicidal
4 | statement?

5 | A. Yes.

6 | MS. MAYES: Beg the Court's indulgence.

7 | Q. Ultimately, who retrieved the vehicle
8 | from Canada?

9 | A. Myself and Master Deputy John Paul.

10 | Q. And were you present for the execution
11 | of that search warrant?

12 | A. I was.

13 | Q. Can you tell us whether or not a Kimber
14 | .45 firearm was recovered from that vehicle?

15 | A. It was. It was located in a briefcase.

16 | Q. And can you tell us whether or not a
17 | Springfield XD was located in that vehicle?

18 | A. It was and it was in its case in the
19 | center console.

20 | Q. All right. Up until the point in time
21 | where you had that communication with Charlene
22 | Smith, following his arrest and following his
23 | transport to the Maplehurst, had you ever requested
24 | anyone in Canada to conduct an interview?

25 | A. No.

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Would they have even known the facts of
2 the case to conduct an interview?

3 A. I don't believe so. I didn't have any
4 communication with that part of it, no. That was
5 done through the Marshals Service.

6 Q. Have you shared any information about
7 the relationship, the type of homicide involved
8 here or the type of weapons used up until that
9 point and time?

10 A. I had not shared that with them, no.

11 MS. MAYES: Nothing further.

12 THE COURT: Ms. Barbier?

13 MS. BARBIER: Yes.

14 CROSS-EXAMINATION

15 BY MS. BARBIER:

16 Q. Good afternoon, Investigator Burt.

17 A. Afternoon.

18 Q. So you're aware -- you were the lead
19 detective as soon as this case was opened; is that
20 right?

21 A. Yes, ma'am.

22 Q. And that's after the authorities found
23 the victim in her home; is that right?

24 A. That would have been September 3rd.

25 Q. Okay. And after you had been assigned

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 | this case as the lead detective you contacted the
2 | US Marshals Service; correct?

3 | A. It was through one of our TFO's, which
4 | is a Task Force Officer, Shannon Dykes who works
5 | for the sheriff's department, but is also a US
6 | Marshal task force officer.

7 | Q. Okay. And did you -- are you saying
8 | that Officer Dykes made contact to the US Marshals
9 | Service?

10 | A. Yes, he would have been the one
11 | communicating with the Marshal Service after we
12 | learned that he had crossed the border.

13 | Q. Okay. Are you privy to the information
14 | that he provided the Marshal Service?

15 | A. I don't know exactly what he told them,
16 | no.

17 | Q. Okay. Are you privy to instructions he
18 | gave the Marshal Service once Mr. Shivers was
19 | arrested?

20 | A. My understanding was it was a locate.

21 | Q. Okay. Are you -- were you present for
22 | that conversation?

23 | A. There -- I don't know the initial --
24 | probably not for the very first conversation, but
25 | later on we were all back together at the sheriff's

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 department.

2 Q. Okay. Did you hear Agent Dykes tell
3 the US Marshals Service what he wanted done once
4 Mr. Shivers was located?

5 A. No, I wasn't part of that conversation.

6 Q. Okay. So you have no personal
7 knowledge about that, do you?

8 A. What he specifically told the Marshals
9 Service to begin with, no.

10 Q. Okay. And you have seen the notes of
11 Detective Dean that are a Court's Exhibit; correct?

12 A. Yes. I requested those notes sometime
13 after.

14 Q. Okay. And you're aware that there's a
15 notation at 16:08 which is 4:08 in the afternoon;
16 right?

17 A. Correct.

18 Q. That says received call from US Marshal
19 Bill Bolden; did you see that?

20 A. I think I did, but it would be helpful
21 if I could see as you're talking about it.

22 MS. BARBIER: It's Court's Exhibit
23 Number 23.

24 Q. Do you see where it says 16:08?

25 A. I do.

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And it says received call from
2 US Marshal Bill Bolden; correct?

3 A. It does.

4 Q. And then it says ADD period a suspect
5 wanted for murdering his wife in South Carolina
6 recently used his credit card at the Airport
7 Marriott Hotel in Toronto; correct?

8 A. Correct.

9 Q. So clearly the US Marshal Service had
10 been informed that this was a murder investigation
11 arising from a murder that had occurred in South
12 Carolina; correct?

13 A. Correct.

14 Q. Okay. So when you testified previously
15 on direct that you don't know whether they even
16 know what kind of crime it was being investigated,
17 you now know that they did; correct?

18 A. I'm not sure that's what I testified
19 to.

20 Q. Okay. Well, you said earlier, I have
21 it in my notes that you don't think they even knew
22 anything what crime we were investigating. It was
23 just a locate request.

24 A. I believe you're referring did I talk
25 to anybody from Canada.

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. So your colleague spoke to the
2 US Marshal Service; correct?

3 A. Correct.

4 Q. And the US Marshal Service contacted
5 the Canadian authorities; correct?

6 A. Correct.

7 Q. And you're not privy to all those
8 conversations, so you don't know exactly what they
9 were told to do or exactly what instructions were
10 given to the Canadian authorities, do you?

11 A. Correct.

12 Q. Okay. Now, right below that it says
13 Bolden, that's the US Marshal requests immediate
14 assistance in locating this suspect. Do you see
15 that?

16 A. I do.

17 Q. And this is two hours before Mr.
18 Shivers was apprehended; correct?

19 A. It appears so, yes.

20 Q. Okay. So they're asked to help
21 apprehend this murder suspect by the authorities in
22 South Carolina via the Marshal Service; correct?

23 A. Correct.

24 Q. Okay. And, in fact, when Charlene
25 Smith gave an affidavit in this case, she's the

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 | lead investigator in Toronto; correct?

2 | A. Yes, that's who I was put in contact
3 | with as the point of contact for me for Toronto
4 | Police Services.

5 | Q. Right. And the second paragraph of her
6 | affidavit she says the Eleventh Circuit Solicitor's
7 | Office requests the assistant as a part of its
8 | investigation into an alleged murder that took
9 | place in Lexington County. Do you recall that?

10 | A. I was not part of preparing that
11 | affidavit.

12 | Q. Okay. But it's clear Charlene Smith in
13 | Toronto received information and received a request
14 | to assist in a murder investigation; correct?

15 | A. Correct.

16 | Q. Okay. And then later, the Department
17 | of Justice also got involved in requesting the
18 | gathering of information pursuant to a treaty that
19 | we have with Canada and they were also making
20 | requests on behalf of Lexington County Solicitor's
21 | Office; correct?

22 | A. Yes.

23 | Q. Okay. So this was -- they were part of
24 | a collaborative effort to apprehend a murder
25 | suspect, Mr. Shivers; correct?

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 A. Who is? Who are you asking about?

2 Q. The Marshals Service, the Lexington
3 County Sheriff's Department, the Eleventh Circuit
4 Solicitor's Office, the Toronto Police. They all
5 took part and had a collaborative effort in
6 apprehending Mr. Shivers; correct?

7 A. Correct. Once we found out he crossed
8 the border that's when they were contacted.

9 Q. That's correct. And once you received
10 information about Mr. Shivers being missing, you
11 placed that information in NCIC, didn't you?

12 A. Correct.

13 Q. Okay. And when you place information
14 in NCIC, that's a data base to all law enforcement
15 worldwide who have access to that data base to look
16 for this suspect; correct?

17 A. It's my understanding, yes.

18 Q. Okay. And what exactly did you place
19 in NCIC?

20 A. He and his vehicle were placed in that
21 task.

22 Q. Okay. And did you put that he was a
23 murder suspect?

24 A. Initially, no, he was listed as a
25 missing person.

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Now, you indicated that in your
2 conversations with the Canadian authorities, you
3 were informed that he had made some statements
4 about a gun?

5 A. Yes.

6 Q. And you were informed that he made a
7 comment about being suicidal; correct?

8 A. Yes, it was a very generalized comment
9 that was relayed to me from Charlene Smith.

10 Q. Okay. But you were not informed that
11 he had said he was suicidal because of what he had
12 done; right?

13 A. No, I didn't learn that until I got the
14 notes from -- that were in Jesse Dean's notes.

15 Q. So you learned that approximately two
16 years later; correct?

17 A. That exact wording, yes, when I
18 received the notes.

19 Q. Okay. So -- gosh, if I were you I
20 would have been a little upset that I didn't see
21 that information that somebody confessed to a crime
22 until almost two years later. What was your
23 reaction to that?

24 A. It would have been very helpful to know
25 exactly what was said. I would have requested it

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 much sooner.

2 Q. Right. So when you asked the Canadian
3 authorities to question Mr. Shivers about the
4 murder after his arrest and detainment, did you
5 inform them that he was entitled to Miranda Rights?

6 A. When I asked them just to see if he
7 wanted to talk. But we didn't even get into
8 Miranda Rights or go into that.

9 Q. Well, so you did not ask them to give
10 him his Miranda Rights, did you?

11 A. I did not.

12 Q. Okay. And you knew that if he had
13 indicated he wanted to talk, they were going to go
14 ahead and talk to him and take notes about what he
15 said; right?

16 A. At the time we were discussing whether
17 I was going to go up there and attempt to do the
18 interview.

19 Q. Okay. But you understood that it was
20 possible that he would make statements in response
21 to their requests before you could get up there;
22 right?

23 A. I guess that's a possibility, yes.

24 Q. Okay. So you understood that he could
25 be questioned and not be given his Miranda Rights;

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 correct?

2 A. Possibly.

3 Q. And you understand that United States
4 citizens when they are detained, when they are in
5 custody and when they are being asked questions or
6 even anything that's a functional equivalent are
7 entitled to have their Miranda Rights told to them;
8 correct?

9 A. Correct.

10 Q. And you didn't ask them to do that, did
11 you?

12 A. Again, it wasn't a whether you did
13 something or not question, it was solely would he
14 be willing to talk about it.

15 Q. Did you instruct them to stop after
16 they got the answer to that and not ask anymore
17 questions?

18 A. It never got that far.

19 Q. But did you instruct them to do that?

20 A. I did not.

21 Q. Okay.

22 MS. BARBIER: One moment.

23 Q. So, Investigator Burt, you recall
24 making a case supplemental report in September --
25 on September 3rd -- well, it occurred on September

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 3, 2019, but you made up the report February 26th
2 of 2020?

3 A. Yeah, I keep a running --

4 Q. You have that in front of you?

5 A. If you have a page number on that, I
6 can probably refer to what --

7 Q. I'm looking at page 58 at the bottom.

8 A. Okay.

9 Q. Okay. And is this your report that you
10 created on or about February 26th of 2020?

11 A. Just to confirm, what is the first
12 sentence at the top say? Does it say in the
13 bedroom? I want to make sure I'm looking --

14 Q. It says Stephen advised that while he
15 and Vincent were talking one time about some
16 conspiracy theory, Vincent told him that --

17 A. It that might be a different page with
18 the discovery.

19 Q. Let me show you.

20 A. On mine it's on page 64.

21 Q. It looks like it's formatted a little
22 different too; right?

23 A. Yes.

24 Q. Okay. So, Investigator Burt, is it
25 correct that you had conversations with the

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 | Lexington County Sheriff's Department records
2 | person regarding the -- the customs and Border
3 | Patrol US Agency that had been running Vincent in
4 | NCIC?

5 | A. Yes, that was on the 5th.

6 | Q. Okay. And they were -- they indicated
7 | that they had an unconfirmed sighting of him in the
8 | Niagara Falls Canadian Border area; is that right?

9 | A. Records didn't, but that's what our
10 | fugitive task force officer had received word.

11 | Q. Okay. And so you were also working
12 | with that agency as well; correct?

13 | A. Which one?

14 | Q. The United States Custom and Border
15 | Patrol Agency?

16 | A. No, that was -- I was notified by our
17 | records division, I guess on a teletype they had
18 | received an alert that somebody with Customs and
19 | Border Patrol had run him in NCS.

20 | Q. Right. So my point is, when you all
21 | were looking for Mr. Shivers, you requested
22 | assistance from the US Marshal Service; correct?

23 | A. Yes, through Investigator Dykes.

24 | Q. Right. And you also received
25 | assistance from the US Customs and Border Patrol;

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 correct?

2 A. The only time I was aware that they had
3 anything to do with it would have been notated
4 through our records they had been running his name.

5 Q. That's what they're supposed to do;
6 right?

7 A. They will get an alert if somebody runs
8 the car through our records.

9 Q. Right. So they assisted you with the
10 investigation; correct?

11 A. I never dealt with anybody with the US
12 Border Patrol.

13 Q. Well, they alerted y'all to the fact
14 that he had crossed into Canada at the Rainbow
15 Bridge on September 3rd at 13:14 hours and he
16 presented his US passport; correct?

17 A. That information came from Canada.

18 Q. Okay. If you hadn't received that
19 information, you wouldn't have been able to locate
20 Mr. Shivers; correct? I mean, at this time?

21 A. At that time, correct.

22 Q. Okay. And so not only did you receive
23 from -- the assistance of the US Marshal Service
24 you also got the assistance of the Customs and
25 Border Patrol; correct?

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 A. I'm not aware of getting any assistance
2 from them. I don't know if this is a tag reader or
3 why that got ran. It was just something relayed to
4 me from our records division.

5 Q. Now, your report also says that you
6 were put in contact with US Marshal Service Senior
7 Inspector Bolden; do you recall that?

8 A. Yes, this would have been after the
9 arrest.

10 Q. Okay. And he said that he would be the
11 liaison for the processing of extraditing Vincent
12 and obtaining Vincent's property. And it was also
13 determined that an INLAP (phonetic) would have to
14 be completed for Canadian authorities; correct?

15 A. Correct.

16 Q. Okay. So would you agree with me that
17 before the arrest, during the arrest, and after the
18 arrest, the Lexington County Sheriff's Department
19 and the solicitor's office received assistance from
20 the US Marshal Service, the Border Patrol Agency
21 and the Canadian authorities?

22 A. I don't -- so we received assistance
23 beginning with the Marshal Service. I don't recall
24 anybody getting assistance from Border Patrol. And
25 then we did liaison through the Marshal Service

NICHOLAS BURT - CROSS-EXAMINATION BY MS. BARBIER

1 with Canadian authorities. Once we -- now this is
2 all the same day. It's not like we had this
3 information and then contacted everybody. This is
4 11:30 on the 5th as we get that notice from Border
5 Patrol. It's an unconfirmed sighting and then we
6 confirm he's crossed the border on the 3rd and the
7 ball started rolling rather quickly.

8 Q. Right. And you were able to arrest him
9 because you received the assistance of those
10 agencies; correct?

11 A. Yes.

12 Q. Okay. Do you have the entire report up
13 there?

14 A. I don't have the whole thing.

15 Q. Okay. Do you have the entire report up
16 there?

17 A. I don't.

18 Q. Okay. I'd like you to take a look
19 at -- it's marked in mine as page 58 and it says at
20 the very bottom that Assistant Solicitor Graham and
21 Assistant Solicitor Mayes were notified and briefed
22 of the case thus far. Through a combined effort of
23 Toronto Police Services and the US Marshal Services
24 utilizing fugitive investigative means. Do you see
25 that?

NICHOLAS BURT - REDIRECT EXAMINATION BY MS. MAYES

1 A. Yes. That starts on 65 on mine at the
2 bottom.

3 Q. Right. Okay. So you do see that?

4 A. Uh-huh.

5 Q. Okay. So that makes it pretty clear
6 that this is a combined effort; correct?

7 A. At this point in the investigation it
8 was.

9 Q. Yeah. Well, in order to have arrested
10 him it was a combined effort; right?

11 A. Yes.

12 Q. Okay.

13 MS. BARBIER: Nothing else.

14 REDIRECT EXAMINATION

15 BY MS. MAYES:

16 Q. All right. To follow-up on some of
17 these points for clarification. When someone is
18 arrested in a foreign country for a criminal charge
19 here in South Carolina, does that require
20 extradition?

21 A. Yes.

22 Q. Were you immediately pursuing the
23 extradition process?

24 A. Yes.

25 Q. Did that include consultation with the

NICHOLAS BURT - REDIRECT EXAMINATION BY MS. MAYES

1 | solicitor's office as well?

2 | A. Yes.

3 | Q. And the Department of Justice?

4 | A. Yes.

5 | Q. And the US Marshal Service?

6 | A. Yes.

7 | Q. Does it also require after the fact the
8 | preservation of evidence items in that foreign
9 | country?

10 | A. Yes.

11 | Q. Did you pursue that with them as well?

12 | A. I did.

13 | Q. Did that include the Toronto Police
14 | Services?

15 | A. It did.

16 | Q. U.S. Marshal Service?

17 | A. It did.

18 | Q. The solicitor's office?

19 | A. It did.

20 | Q. Can you tell us whether there was ever
21 | a combined effort at the time of his arrest to
22 | interrogate Mr. Shivers in that van outside of the
23 | airport?

24 | A. No, not at the time of his arrest.

25 | Q. Was there ever a combined effort

SHANNON DYKES - DIRECT EXAMINATION BY MS. MAYES

1 | between you and members of the sheriff's department
2 | and the Toronto Police Services to interrogate Mr.
3 | Shivers in that van outside of the airport?

4 | A. No.

5 | MS. MAYES: Nothing further. The State
6 | calls Shannon Dykes.

7 | SHANNON DYKES,
8 | being first duly sworn, was examined and testified
9 | as follows:

10 | THE CLERK: You can have a seat. If
11 | you'll say your name and spell your last name for
12 | the record.

13 | MS. DYKES: Shannon Dykes. Last name
14 | D-Y-K-E-S.

15 | DIRECT EXAMINATION

16 | BY MS. MAYES:

17 | Q. Good afternoon, Agent Dykes. Tell us a
18 | little bit about yourself and how are you are
19 | affiliated with both the Lexington County Sheriff's
20 | Department and the US Marshals Office?

21 | A. I'm employed by the Lexington County
22 | Sheriff's Department Fugitive Division. I'm
23 | currently assigned to the United States Marshal
24 | Service and I was assisting in this case as a
25 | liaison to a foreign country.

SHANNON DYKES - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. You mentioned that you were
2 serving as a liaison to a foreign country?

3 A. Yes, ma'am.

4 Q. And as a liaison, were you in
5 communication with other US Marshals, mainly Bill
6 Bolden in this case?

7 A. I was, yes, ma'am.

8 Q. And can you tell us whether or not that
9 involved the extradition of Vincent Shivers from
10 Canada to the United States?

11 A. Yes, ma'am.

12 Q. Did that also involve the preservation
13 of evidence and paperwork that would be needed in
14 that regard?

15 A. Yes, ma'am.

16 Q. Did that include paperwork generated by
17 the solicitor's office and the sheriff's
18 department?

19 A. Yes, ma'am.

20 Q. As well as other authorities including
21 the Department of Justice?

22 A. Yes, ma'am.

23 Q. Now, I want to go back before that and
24 ask you specifically about the arrest of Vincent
25 Shivers. Were you made aware of his arrest on

SHANNON DYKES - DIRECT EXAMINATION BY MS. MAYES

1 September 5, 2019?

2 A. Yes, ma'am.

3 Q. Or do you have knowledge of where he
4 was located physically when that arrest was made?

5 A. Yes, ma'am.

6 Q. Where was he?

7 A. Boarding a flight to London in Toronto.

8 Q. At any point in time when you were made
9 aware of his arrest, did you request for Canadian
10 authorities to interrogate or interview Vincent
11 Shivers?

12 A. No, I did not.

13 Q. Did you ever request any other person
14 to relay information or a request to interview
15 Vincent Shivers?

16 A. I did not.

17 Q. Did authorities have any details of the
18 crime other than knowing that he was wanted for a
19 homicide and that the victim was a wife or a
20 domestic partner?

21 A. To my knowledge, no.

22 Q. And did you ever observe any other
23 person within the US Marshals Office or the
24 Lexington County Sheriff's Department request for
25 the Defendant to be interrogated at the airport?

SHANNON DYKES - CROSS-EXAMINATION BY MS. BARBIER

1 A. No, ma'am.

2 MS. MAYES: Nothing further.

3 CROSS-EXAMINATION

4 BY MS. BARBIER:

5 Q. So, Officer Dykes, did you tell -- you
6 spoke with Bill Bolden at the US Marshal Service;
7 correct?

8 A. Yes, ma'am.

9 Q. Did you give Mr. Bolden any specific
10 instructions not to question Mr. Shivers?

11 A. No, I did not.

12 Q. Okay. Did you give him any specific
13 instructions not to try to elicit any statements
14 from him?

15 A. No, ma'am.

16 Q. Okay. And so you don't know -- did you
17 give him any explicit instructions to inform the
18 Canadian authorities that once he was in custody
19 he'd be entitled to Miranda Rights?

20 A. No, ma'am.

21 Q. Okay. And so you don't know what
22 information was relayed from US Marshal Bolden to
23 the Canadian authorities, do you?

24 A. No, ma'am.

25 Q. Okay. And you don't know whether he

SHANNON DYKES - CROSS-EXAMINATION BY MS. BARBIER

1 asked them to try to get a statement from them, do
2 you?

3 A. No, ma'am.

4 Q. Okay. And you also don't know whether
5 or not they believed it was part of their job as
6 helping in this investigation to try to get some
7 statements from Mr. Shivers; correct?

8 A. No, ma'am.

9 Q. And, in fact, that's what investigators
10 do, don't they? They investigate crimes; correct?

11 A. That's part of it, yes, ma'am.

12 Q. They're trained to ask questions,
13 aren't they?

14 A. In part of our duties, yes, ma'am.

15 Q. And they're trained to get defendants
16 to cooperate in those investigations so they can
17 get cases resolved; right?

18 A. Within certain parameters and lawful
19 duties.

20 Q. In your experience, is it easier to
21 prosecute a case where there's a confession verses
22 a case where there's none?

23 MS. MAYES: Objection, Your Honor.
24 This is outside the realm of what he would have
25 knowledge of regarding this particular

1 investigation.

2 THE COURT: You want to move on, Ms.
3 Barbier?

4 MS. BARBIER: I'll withdraw it. That
5 is all I have, Your Honor.

6 THE COURT: Thank you. Anything else?

7 MS. MAYES: Nothing further, Your
8 Honor.

9 MS. MCMENAMIN: Your Honor?

10 THE COURT: Are we done?

11 MS. MCMENAMIN: Yes. That is our final
12 witness, Your Honor.

13 THE COURT: All right. Let me hear
14 from you.

15 MS. MCMENAMIN: Thank you, Your Honor.
16 The State in this case of course argues that the
17 statements made by the Defendant at the airport to
18 Jesse Dean are admissible. They are not subject to
19 Miranda and they are voluntary, Your Honor, because
20 they were not subject to custodial interrogation.
21 He was not interrogated expressly or in the realm
22 of its functional equivalent. Every officer that
23 testified today said that they did not attempt to
24 elicit this information from him in any way, shape
25 or form. What it comes down to, Your Honor, is

1 | whether or not he was in custodial interrogation
2 | when the statements were made.

3 | The statements, Your Honor, that there
4 | were guns in his truck and that he was going to eat
5 | one in Niagara Falls for what he had done. We
6 | don't plan to go into any statements, none remain
7 | after that, Your Honor, but we don't plan to go
8 | into anything related after this point at the
9 | airport. Nothing with the attempted questioning at
10 | the headquarters, anything of that nature.

11 | And, actually, Your Honor, what happens
12 | after the fact doesn't apply. It's not irrelevant
13 | to this case when we're focusing on the statements
14 | that were given in that van spontaneously of the
15 | Defendant's own volition. We would argue due to
16 | his guilty conscience.

17 | Your Honor, when we look to -- even the
18 | cases cited by the Defense, the *Abu-Ali* case that
19 | is referenced in their memorandum. The Court says
20 | that, yes, there is this general rule regarding
21 | voluntary statements obtained by foreign officials
22 | and that there are exceptions. But those are for
23 | statements obtained by foreign officials during a
24 | custodial interrogation. And there's no custodial
25 | interrogation here.

1 No one asked him where the truck was.
2 No one ask him if he had guns on him. No one asked
3 him to divulge his deepest thoughts, Your Honor.
4 He gave these of his own volition just like the
5 Defendant did in -- give me a moment, Your Honor,
6 in *Hart*. The guilty conscience overcame him.

7 And when we look to the case of *Hart*,
8 Your Honor, this is *State v. Hart*. This is a very
9 recent case from right out here in Lexington
10 County, Judge Griffith was presiding. They talked
11 specifically about what custodial interrogation is
12 referencing *Innis* which I've referenced in my
13 motion for this court. And stated the Miranda
14 safeguards come into play whenever a person is in
15 custody and subject to the express questioning for
16 its functional equivalent.

17 Again, there was no evidence here that
18 expressed questioning occurred or the functional
19 equivalent. And we look at that objectively, Your
20 Honor. Was this something that law enforcement
21 should have known was likely to elicit statements
22 from a Defendant? We don't have that in this case.

23 When we look at *Innis*, Your Honor, and
24 even there he had actually been Mirandized already,
25 asked for an attorney, exercised his right to

1 remain silent. The statements he made after in
2 response to a conversation by law enforcement were
3 still found voluntary and admissible. These are
4 statements where they're talking about children
5 might get hurt if a gun's not found and the
6 Defendant just blurts out, turn around, I'll show
7 you where the weapon is. Even that was voluntary.

8 The officers here are asking expressed
9 questions. They're not having emotional
10 conversation, it's logistics. Where's the truck?
11 How are we going to find it? He offers that up.
12 That's his first voluntary statement and he keeps
13 talking. It's not the officer's fault that his
14 guilty conscience overcame him.

15 Again, Your Honor, it comes down to
16 whether or not there was a custodial interrogation.
17 There's no evidence to show that, Your Honor, at
18 the time the statements are made. Therefore,
19 there's no violation of Miranda. It would not
20 apply. These statements would be voluntary
21 statements of a party opponent and they would be
22 admissible in court.

23 Your Honor, further we would argue that
24 they are corroborated statements. Canadians didn't
25 search the truck. They sealed it up. They weren't

1 looking through it. They wouldn't have known that
2 the information that the Defendant gave was highly
3 accurate to what would later be found in that truck
4 when it got here to South Carolina.

5 Your Honor, look at just the nature of
6 how these notes are written by Officer Dean.
7 Quickly as they're being made by the Defendant in
8 his own words. We see a misspelling of Kimber.
9 It's spelled with a C, not even with a K. We see
10 XT9. It's an XD9 in the truck. If they were going
11 to fabricate a statement, Your Honor, I submit to
12 you they would have gotten it identical. Exactly
13 right. And I was going to eat one in Niagara Falls
14 for what I've done. That's corroborated by the
15 fact that he crossed the border at Niagara Falls
16 and had two firearms in the car with him with
17 ammunition.

18 Again, Your Honor, this comes down to
19 custodial interrogation which did not occur and we
20 would argue that these statements be admissible.

21 THE COURT: And you also argue that
22 it's not a joint venture?

23 MS. MCMENAMIN: Your Honor, we do argue
24 that it's not a joint venture. And even if it was,
25 we argue that it is not, but even if it was, it

1 comes down to custodial interrogation whether or
2 not this was a result of that and it was not. They
3 were voluntary outside of any interrogation
4 whatsoever. So even looking at *Abu-Ali*, that's the
5 standard that we have.

6 THE COURT: Okay.

7 MS. MCMENAMIN: And these are voluntary
8 statements as well in the *Abu-Ali* case, Your Honor.

9 THE COURT: I've read it. Thank you.
10 And I read the *Hart* case too.

11 MS. MCMENAMIN: Thank you.

12 THE COURT: All right. Ms. Barbier?

13 MS. BARBIER: Thank you, Your Honor.
14 First of all, Your Honor, we start with the notion
15 that this is hearsay. This is an out-of-court
16 statement. And in order to be admissible, as Your
17 Honor knows, it has to fall under an exception.
18 I'm assuming that the State is relying upon
19 803(b)(3) as the exception. A statement against a
20 party's interest.

21 I will submit to you, if that's what
22 they're relying upon, that this statement is not
23 necessarily a statement against interest. It is
24 capable of more than one interpretation. And it is
25 not clear even what the statement was based on the

1 conflicting notes of the agent who is the only
2 witness to this statement. And so it's apparently
3 unreliable in that respect alone.

4 But, first of all, Your Honor, starting
5 off with the fact that it's hearsay. The State
6 concedes that Mr. Shivers was in custody. They
7 have to concede that. He was arrested. He was
8 handcuffed. He was detained. The State concedes
9 he was not read his Miranda Rights. The State
10 apparently doesn't concede that this was a joint
11 venture, but I would submit to you, Your Honor,
12 that even the evidence they've placed in as Court's
13 Exhibits, everything that they have put into
14 evidence points to the fact that it was a joint
15 venture.

16 I mean, Mr. Shivers would not have been
17 arrested but for the collaborative efforts, that's
18 what all the reports say, all the discovery says,
19 the collaborative effort of the Lexington County
20 Sheriff's Department, the Eleventh Circuit
21 Solicitor's Office, the United States Marshals
22 Service, the Customs and Border Patrol Service --
23 the US Customs and Border Patrol Service, the
24 Canadian Boarder Patrol Service and the Toronto
25 Police Department. It was a joint and

1 collaborative effort.

2 And because they undertook a joint and
3 collaborative effort, it was incumbent upon the law
4 enforcement officers in the United States to inform
5 the Canadian authorities that once he was placed
6 into custody and once he was, you know, subject to
7 any questioning or the functional equivalent, he
8 was entitle to Miranda Rights. That's a very
9 fundamental difference between Canadian Rights and
10 Miranda Rights.

11 In Canada, you aren't told you have the
12 right to remain silent. In the United States, the
13 Fifth Amendment to the Constitution says we have
14 the right to not give incriminating information.
15 It is a fundamental core right in our justice
16 system. He was denied the right to have that read
17 to him and to be informed of that fact before he
18 made any statements.

19 Now, it's not only the State's burden
20 to demonstrate that he was read these rights. They
21 failed in that because they can't demonstrate that.
22 They had the burden to show that he fully
23 understood those rights and that he waived those
24 rights freely and voluntarily to talk with the
25 police. They also have the burden to prove that

1 the statement the police have documented is
2 accurate and is a product of the suspect's
3 freewill.

4 And I would submit to you, Your Honor,
5 they have not, they have failed in that burden.
6 Because what the statement is appears differently
7 in two sets of notes from the same witness. In one
8 set of notes, he said he was going to shoot
9 himself. Period. And the other set of notes,
10 which he claims were made at the same time, it says
11 something very different. Something innocuous, if
12 you will. It says he was going to eat one at
13 Niagara Falls because of what he'd done.

14 The idea that he would leave out the
15 confessional in the main part of his notes, when in
16 the very paragraph before that he's quoting the
17 Defendant. It strains credibility, Your Honor.

18 They also, Your Honor, at issue was
19 whether the police used coercive or other means
20 such as a promise or a hope of a benefit of reward
21 that would cause him to involuntarily give a
22 statement or the functional equivalent as the
23 Court's call it to custodial interrogation.

24 Now, according to Officer Collier and
25 Detective Dean, according to those officers, Mr.

1 Shivers was arrested by them simply walking up to
2 him in the Toronto Airport and saying, you're under
3 arrest on an immigration warrant and the rest is
4 silence. He's handcuffed and then walked 20
5 minutes down terminal in silence, according to
6 those officers. I would submit, Your Honor, that
7 also strains credibility. That's just is not how
8 it works in the real world when you're arresting a
9 murder suspect.

10 Now, Detective Frigon said something
11 different. He said there were conversations being
12 had, but he couldn't hear exactly what they were.
13 But he did however acknowledge there was
14 discussions and there was talking. And so, Your
15 Honor, I would submit to you that that's far more
16 believable than the other.

17 So the question, Your Honor, is was the
18 discussions being had, was it equivalent to
19 custodial interrogation. And if you look, Your
20 Honor, at the case cited to by the statement in
21 this case. The issue in this case was, was there
22 interrogation en route to the police station in
23 violation of his rights. And, basically, the Court
24 held in a 6-3 decision that when a person is in
25 custody and is subject to either express

1 | questioning or the functional equivalent, that the
2 | police, you know, have violated the rights when the
3 | police should know or it is reasonably likely to
4 | elicit a response. Okay. We have a very different
5 | situation here.

6 | First of all, what they would have you
7 | believe is that he walked down in silence. He sat
8 | in the car in silence and then not even knowing,
9 | according to them, that he's being picked up as a
10 | murder suspect, he just blurts out, I was going to
11 | eat one in Niagara and -- for what I'd done. How
12 | does that make any sense? I mean, that
13 | doesn't even -- it's ridiculous that someone would
14 | confess to a crime they don't even know they're
15 | being picked up for. According to them, the only
16 | thing they informed him of is that he's being
17 | arrested on a Canadian warrant.

18 | So, Your Honor, I don't think that that
19 | makes -- I think that strains credibility. I think
20 | if the officers truly believed that he was planning
21 | to commit suicide and was suicidal just hours or,
22 | you know, he's informing them of his intent to
23 | commit suicide, that that would have been
24 | communicated to people in the police station who
25 | were watching him and in charge of his detention.

1 And then would have been communicated to the next
2 day to the people at the correctional facility that
3 he was left at.

4 And I would imagine would be
5 communicated to the people who transported him back
6 to the United States. But none of that was done.
7 And so they're either extremely derelict in their
8 duties or that statement was never made.

9 So, Your Honor, pursuant to the case
10 law you're required to look at the totality of the
11 circumstances. And the totality of the
12 circumstances, the Court's have interpreted that to
13 mean at the background, the experience, and the
14 conduct of the accused, the length of the custody,
15 the threats of violence or promises of leniency, I
16 would submit to, Your Honor, the -- the evidence
17 has come out.

18 One thing is clear, Mr. Shivers was
19 sophisticated enough to say I don't want to make
20 any statements and I want to speak to -- I want to
21 have an attorney. That is not consistent with
22 somebody who would blurt out I was going to eat one
23 in Niagara Falls and, you know, because of what I
24 had done. Essentially confessed and then say that
25 he's suicidal. Those two things just don't make

1 any sense.

2 And so I would argue, Your Honor, that
3 under the totality of the circumstances this should
4 be kept out. If the State -- when I read their
5 memorandum, Your Honor, it sounded as if they were
6 trying also to rely upon that this was an excited
7 utterance.

8 As another hearsay exception, I would
9 cite to the Court to *State verses Washington*, it
10 doesn't qualify as an excited utterance and Courts
11 have been very reluctant to interpret statements
12 made while in custody as excited utterances. But
13 I'm not going to go into that in further detail
14 because there's been no discussion of it today.
15 But I would just say, I don't think it qualifies
16 under that.

17 And I would say too, Your Honor, at the
18 end of the day when the Court is looking at this
19 and analyzing these facts, under Rule 403 it is far
20 more prejudicial than probative. First of all,
21 because the statement is ambiguous. It is subject
22 to one officer's interpretation. It has no other
23 witness to it other than this investigator who
24 according to the other testimony was in a --
25 putting him in a vehicle and it took seconds to put

1 him in the vehicle, but he apparently said this in
2 these seconds. I think it's inherently unreliable.
3 I think the testimony related to it is not credible
4 and I would say under Rule 403 it should be kept
5 out being more prejudicial than probative.

6 So for all of those reasons and the
7 reasons outlined in our brief, Your Honor, we would
8 ask that you suppress the statement -- all the
9 statements allegedly made by Mr. Shivers. Thank
10 you.

11 THE COURT: Thank you.

12 MS. MCMENAMIN: If I may, Your Honor?

13 THE COURT: You may.

14 MS. MCMENAMIN: First and foremost,
15 under 801(d) (2), admissions made by a party
16 opponent are not hearsay. When a statement is
17 offered against the party it is not hearsay. We do
18 not need hearsay exceptions for these statements to
19 be admissible when they're statements against his
20 own interest.

21 The statement I was going to eat one in
22 Niagara Falls for what I had done, I submit to the
23 Court it does not take anyone with any background
24 whatsoever in criminal law or what we do or
25 psychology to know that that means you're going to

1 commit suicide by shooting yourself. This is very
2 clear. To argue that it's not and that it's not
3 relevant in a case where he's found with guns in
4 the vehicle and saying for what I've done, that's
5 direct evidence, Your Honor, of what he did of
6 murdering Roselynn Cedenno.

7 Your Honor, further, we have to prove
8 this by a preponderance of the evidence. And in
9 cases even where there's conflicting evidence such
10 as *Howard*, Your Honor, which is cited in the *State*
11 *verses Hart* case. When we looked at *Howard* here,
12 there was conflicting evidence as to the
13 voluntariness of the statements. I think the
14 Defendant had made statements -- there was
15 conflicting evidence, Your Honor, I do apologize,
16 regarding whether or not the probation officer had
17 elicited statements were officers after the fact.

18 But even there, Your Honor, it's
19 preponderance of the evidence. And when you look
20 to *State v Von Dohlen*, the same issue. The
21 Defendant argued that there were tactics and
22 promises and things made in that case. He
23 testified to that directly. And even in this
24 instance, Your Honor, those statements were
25 admissible in court. They were deemed to be

1 | voluntary. And when we look at the preponderance
2 | of the evidence burden of proof and from there it
3 | is up for the jury to decide the voluntariness.

4 | This does not go into admissibility.
5 | It goes to the weight of the evidence that the jury
6 | gets to decide. This is up to the jury to decide
7 | if it is voluntary, if we've met our burden --
8 | preponderance of the evidence which I submit that
9 | we have, Your Honor, when we look to *Howard* and we
10 | look to *State V Von Dohlen*.

11 | Again, looking to *Innis* and looking to
12 | *Hart*, we see very similar facts. And these were
13 | ruled to be voluntary statements, not the subject
14 | of custodial interrogation.

15 | THE COURT: Thank you. All right.
16 | Y'all give me about five minutes and I'll be back.

17 | (WHEREUPON, there was a short break)

18 | THE COURT: All right. Let me rule on
19 | both of these.

20 | This statement, I don't believe it was
21 | a joint venture. I think there was a combined
22 | effort that I would think they would probably do in
23 | any criminal case to extradite somebody when
24 | they're looking for somebody. And it's apparent
25 | they contacted the Department of Justice and US

1 Marshals. And I can't find where they participated
2 in the investigation of this crime in itself. It
3 just so happens that this Defendant was in Canada,
4 stayed at the Marriott and was boarding a plane.
5 And the only reason they know it is because of his
6 credit card use.

7 The other thing that I -- I'm going to
8 rule it's a voluntary statement. There is no
9 questioning of the Defendant. It was merely a
10 conversation between two officers that they were
11 looking for his truck. The statement was voluntary
12 not responsive. It's not that they elicited a
13 statement from him or tried to. And I don't
14 believe that he was being interrogated.

15 I know that the State concedes that he
16 was in custody. They concede that his Miranda
17 Rights were not read to him. But on a voluntary
18 statement, I don't believe it matters one way or
19 the other whether he was in custody. Because I
20 don't believe that there was a joint venture. I'm
21 going to rely on the *Hart* case in this case and I'm
22 going to allow the statement.

23 Now, as far as the warrantless entry.
24 The officer in this case was operating under the
25 Community Caretaking Doctrine. And I don't find

1 anything about him looking into the window. I
2 think that's part of his normal every day when you
3 go to go check on somebody, you're going to walk
4 around their house. They don't report. Somebody
5 called. I think there was testimony there was
6 three people. I think one worker went twice,
7 somebody else went once looking for him.

8 They were concerned. They called the
9 officer. He goes. And then I think when he sees
10 the body, he does not know whether this person is
11 deceased, needs help or not. And on top of that,
12 there's somebody else that lives in that house
13 also. So he goes in. I'm going to find that
14 entry. And it's a warrantless entry. It's under
15 the exigency exception allowable.

16 On top of that, I even watched his body
17 cam. He goes in, he doesn't touch anything. He's
18 not looking for anything. It's obvious that he's
19 trying to secure the scene. And then he goes
20 outside, calls and gets a warrant. I think I'm
21 going to allow it.

22 All right. Anything from the State?

23 MS. MAYES: Your Honor, there was one
24 more motion from the Defense regarding the Kimber
25 .45. Just to clarify, in the State's response, I

1 do think we made it clear. The Kimber .45 was
2 analyzed by SLED. It was excluded as the murder
3 weapon. We are absolutely not implying in any way
4 that it's connected to the murder. It is relevant
5 and probative because it contains identical
6 ammunition as to what these spent casings were at
7 the scene.

8 At the scene they found a 7 HPR .45
9 auto spent casings and there are five of those in
10 that Kimber. It's also relevant because it
11 corroborates the statement made to Jesse Dean. We
12 certainly are not eliciting any testimony trying to
13 connect it to the murder. In fact, a SLED firearms
14 analyst has already excluded it and will testify to
15 that. And in addition, there will be no testimony
16 whatsoever as to any of the firearms being stolen.

17 THE COURT: Are you planning on
18 introducing these guns as evidence?

19 MS. MAYES: Only testimony about them,
20 Your Honor, and the testimony about the contents of
21 the Kimber .45 in that magazine it had the five
22 rounds of matching ammo. So we do have that ammo.
23 We don't need to offer the guns themselves.

24 THE COURT: Okay. Let me hear from the
25 Defense.

1 MR. SWERLING: Judge, can you give me a
2 moment?

3 THE COURT: Sure.

4 MR. SWERLING: I didn't know we were
5 going to argue this right now.

6 THE COURT: I guess what she's saying,
7 Mr. Swerling, because I'm not inclined to let the
8 guns in as evidence. I'm just not. I think that
9 is -- there's no need to walk around here waving
10 guns that are not the murder weapon, period. I
11 think that's prejudicial. They're saying they
12 found the guns through testimony, but they've got
13 the casings that they want to introduce that are
14 identical. I'd like to hear from you on that.

15 MR. SWERLING: Judge, Suzanne said this
16 really won't come up until a little bit later --

17 THE COURT: Yeah, you what time?

18 MR. SWERLING: Yeah, I just wasn't
19 prepared. I thought we had really covered the
20 motions we were going to cover today.

21 THE COURT: All right. Let me ask the
22 lawyer's this. Can we at least let me get these
23 jurors -- do my general charge and do openings. It
24 is 3:30. We won't be able to start until 4:00.
25 None of this is going to be in your opening is it?

1 MS. MAYES: It's not, Your Honor. My
2 guess is that this would come in once they execute
3 the search warrant of the Ford F-150. There's
4 going to be a photograph of the briefcase which
5 contained the Kimber as previously been testified
6 to, so we have a photograph of that. We don't need
7 that firearm or the other. And then the ammunition
8 has been removed. We do have that ammunition in
9 evidence and because it matches, we would offer the
10 ammunition. My guess is that would be late
11 tomorrow at the earliest.

12 THE COURT: Well, why don't we just
13 revisit this motion? I'm not going to rule on it
14 and give Mr. Swerling time to look at it since it's
15 not going to be part of the opening and we can just
16 pick it up during a break.

17 MS. WILSON: Judge, just to clarify for
18 the record. Does your ruling on the warrantless
19 entry include the arguments about the length of the
20 search?

21 THE COURT: Yes, it does. Honestly,
22 they had I think three days in that house and they
23 used what, five or six days? Five days, I think it
24 was. I looked at that. You know, generally, you
25 got ten days to turn a warrant anyway in case of

1 something stale for probable cause. But I don't
2 find it unreasonable that they waited on the
3 autopsy to see if they were missing, to my
4 understanding, the bullet. They were looking for a
5 bullet. So I'm not going to find that that was
6 unreasonable.

7 All right. Everybody agree that maybe
8 we can get through the general charge? Openings?
9 Do we have a really short one witness?

10 MS. MAYES: Beg the Court's indulgence.
11 We probably have two that would be short if we get
12 that far.

13 THE COURT: Perfect. Okay. Let's
14 bring them in and get them sworn in.

15 (WHEREUPON, the jury enters the
16 courtroom at 3:44 p.m.)

17 THE COURT: All right. Is the jury
18 ready? Okay. Before we get started though, let me
19 ask anybody, does anybody have any problems with
20 anybody talking to you about this case? Did you
21 look up anything? Talk to anybody about this case
22 before we get started?

23 (No one responded)

24 THE COURT: All right. Just one quick
25 housekeeping. Juror Number 127, you are now Juror

1 11, so you are in the jury. And, Juror Number 24,
2 you are now Juror Number 12. I have one alternate
3 left. Okay. I'm going to get the clerk to swear
4 the jury in.

5 (WHEREUPON, the jury panel was sworn
6 in)

7 THE COURT: All right. I thought it
8 might be helpful if I explain to you basically how
9 a trial proceeds.

10 First, the State will make what is
11 called an opening statement. An opening statement
12 is not evidence. It is simply an outline to help
13 you understand what that party expects the evidence
14 will show. The Defendant may, if he wishes,
15 present an opening statement, but he does not have
16 to for reasons that I'll explain to you later.

17 Following the opening statements, you
18 will hear testimony and evidence in the case. This
19 will consist of testimony from State's witnesses,
20 as well as any physical exhibits which will be
21 introduced into evidence. Following the completion
22 of the testimony, the attorneys will again have an
23 opportunity to make what is called a closing
24 statement. This is an opportunity for the
25 attorneys to summarize the case from their points

OPENING STATEMENT BY MS. MCMENAMIN

1 MR. SWERLING: No, Your Honor.

2 THE COURT: All right. Is the State
3 ready to open?

4 MS. MCMENAMIN: Yes, Your Honor. May
5 it please the Court?

6 THE COURT: Yes, ma'am.

7 OPENING STATEMENT

8 BY MS. MCMENAMIN:

9 MS. MCMENAMIN: In September of 2019,
10 the Defendant, Vincent Shivers, murdered his
11 girlfriend, Roselynn Cedeno. He shot her seven
12 times, at least twice in her back. In the home
13 they shared right here in Lexington County. You'll
14 see that after he shot her, the Defendant tossed
15 blankets and pillows on top of her body literally
16 trying to cover up what he'd done and left her
17 there to die on the bedroom floor. While he hit
18 the road. Gassed up his black F-150 and drove up
19 the coast to Canada. Crossed the border. Putting
20 as much distance as he could between himself and
21 that home.

22 But, members of the jury, this would
23 not cover up what he'd done. This would not keep
24 him from being found. No. And I am confident that
25 that will not prevent you from finding justice for

OPENING STATEMENT BY MS. MCMENAMIN

1 Roselynn Cedenno.

2 See, the Defendant's actions are what
3 led to this trial. He sits before you today
4 charged would two crimes. Murder and possession of
5 a weapon during the commission of a violent crime.
6 And he's on trial. Throughout this trial you'll
7 see that we all play different roles. As
8 representatives of the State, it is our job to
9 prove to you the Defendant's guilt beyond a
10 reasonable doubt.

11 As members of this jury, it is your job
12 to make that final decision of guilt. This might
13 seem daunting. It might seem intimidating. It is
14 a serious job that you have before you. A job that
15 we thank you for doing. But I'd like to try and
16 ease some of the anxiety you might have about that.
17 If you think about your role in this trial like
18 putting together a puzzle, you'll see it's much
19 simpler than you might think.

20 When I put together a puzzle, I lay out
21 all the pieces on the table. I prop up the front
22 of that box where I can see it, the pretty picture
23 on the front. I look to it as I'm putting those
24 pieces together. In a trial, the picture on the
25 front of the box, it looks you for guidance, that's

OPENING STATEMENT BY MS. MCMENAMIN

1 the law. The pieces of the puzzle are of course
2 the evidence that we will present to you.

3 Members of the jury, witnesses will
4 take this stand right here. The words they say to
5 you in this courtroom, that's evidence.
6 Photographs, videos, things taken from the crime
7 scene, collected by CSI and so much more are
8 considered evidence and you get to use that in
9 making your decision. And I think you'll see,
10 members of the jury, that those pieces of puzzle,
11 they're going to fit together nicely. You won't
12 have to jam pieces together to make them fit. It
13 will come together as it is supposed to.

14 And at the end of this trial, you'll
15 see that the pieces of the puzzle you're putting
16 together, they match up to that picture on the
17 front of the box, the law. And when you are firmly
18 convinced of what you see, firmly convinced that
19 the evidence shows the Defendant is guilty, then
20 you must find him guilty.

21 Keep in mind, members of the jury,
22 there are few things in life that we know with
23 absolutes of certainty. Like when your phone is
24 going to go off.

25 THE COURT: We apologize. We don't

OPENING STATEMENT BY MS. MCMENAMIN

1 know whose phone that is. I'm so sorry.

2 MS. MCMENAMIN: No worries, Your Honor.
3 Like I was saying. There are few things in life,
4 members of the jury, that we know with absolute
5 certainty and you're not expected to know anything
6 in this courtroom with certainty. No. You may
7 want all the pieces of the puzzle sometimes, but I
8 think you'll find that kid loses some here and
9 there, maybe the dog eats one. You don't have to
10 have all the pieces at the end. Just enough to see
11 the big picture and be firmly convinced of the
12 Defendant's guilt.

13 Now, the picture on the front of the
14 box, members of the jury, that's the law. Murder,
15 possession of a weapon during a violent crime,
16 those are pretty self-explanatory. We all know
17 that murder is a taking the life of another. But
18 legally, to find the Defendant guilty, we must
19 prove that he committed an unlawful killing of
20 another person with malice aforethought.

21 Malice is that ill will, the hatred in
22 your heart, just before you commit that act.
23 Malice doesn't have to be in your heart for a
24 certain amount of time, it can happen in an
25 instant. And malice, members of the jury, it can

OPENING STATEMENT BY MS. MCMENAMIN

1 | be inferred from the Defendant's actions. Do his
2 | actions show a disregard for the value of human
3 | life? It's malice.

4 | For example, members of the jury, if
5 | you arm yourself with a weapon, you point it at
6 | another person and then you pull that trigger,
7 | again and again and again and again and again and
8 | again, you can infer malice from the Defendant's
9 | actions.

10 | Possession of a weapon during a violent
11 | crime. That one's pretty simple. We must show
12 | that the Defendant possessed a weapon. We will
13 | argue that he possessed a firearm and that he used
14 | that weapon during the commission of a violent
15 | crime. Murder, members of the jury, as I'm sure
16 | you've guessed is a violent crime in this state.
17 | It's as simple as that.

18 | Now that you know what the picture on
19 | the front of that box looks like, let's take a look
20 | at your puzzle pieces. What does the evidence look
21 | like? In this case, you'll see that the evidence,
22 | the evidence will show the Defendant killed
23 | Roselynn Ceden. Shot her seven times. At least
24 | twice in the back with a .45 caliber pistol. That
25 | he did this between the evening hours of Sunday,

OPENING STATEMENT BY MS. MCMENAMIN

1 September 1st and the morning hours of Monday,
2 September 8th.

3 Scientific evidence will show this,
4 members of the jury, but I'm going to leave that to
5 Dr. Beaver to explain to you because he'll do a
6 much better job than I could. Other evidence as
7 well is going to show this, members of the jury,
8 throughout this trial, I urge you not only listen
9 to conversations that were had, but conversations
10 that didn't happen. Pay attention to
11 communications that didn't go through. And look at
12 evidence like surveillance footage that you'll see.

13 Surveillance footage of the Defendant
14 gassing up that black F-150 at a Circle K in Irmo.
15 It's the one right next to the Kroger, it's on the
16 corner, you might know it. It's not far from
17 Lexington at all. We have him at on surveillance
18 footage and with financial records at that gas
19 station at 8:00 a.m. on the morning of Monday,
20 September 2nd. You'll see that, members of the
21 jury. And the evidence will show from there he hit
22 the road. He put as much space as he possibly
23 could from that house and himself.

24 From there, members of the jury, that's
25 Monday morning September 2nd, you'll hear that

OPENING STATEMENT BY MS. MCMENAMIN

1 | later that morning, Roselynn, her family, they were
2 | trying to get in touch with her and they couldn't.
3 | She wasn't responding. You'll hear that they never
4 | got a response back from her and that this was very
5 | out of character. And you'll also hear the same
6 | thing about the Defendant. His coworker's will
7 | testify, members of the jury, that they expected
8 | him to be at work on that Monday morning, But he
9 | didn't show. That he was sent texts, people
10 | called, he was unresponsive. No one knew him to be
11 | taking a day off. No one knew him to had a
12 | vacation coming up. He hadn't requested one
13 | through his boss. They were getting worried. Call
14 | after call went by with no response.

15 | You'll see that on the next day,
16 | Tuesday, September 3rd, it's the same deal. The
17 | Defendant's not at work, his not answering his
18 | phone, so they call in a welfare check. Deputy
19 | Joshua Hale with the Lexington County Sheriff's
20 | Department, he'll testify as well. He conducted
21 | that welfare check. He'll tell you how he went
22 | there hoping to make contact with the Defendant or
23 | the victim, Roselynn.

24 | He knocked on the door and rang the
25 | door bell and no one answered, but he could hear

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1 dogs barking inside. He could tell that this was a
2 large, two level home with a basement level for the
3 second story. So he went around through an
4 unlocked gate into the backyard. And you'll see on
5 his body cam as he walks up the steps to this
6 porch, this upper level, that walks right up to
7 where the bedroom is, you'll see the moment he
8 finds her body. How he taps and gets no response.
9 How the door is unlocked and he's able to go in.
10 Taps her body, nothing. And the moment he lifts
11 the blanket and he knows that she's gone.

12 He sees the casings, the bullets on the
13 floor and now he's realizing where is the
14 Defendant? Where is the guy I came here to check
15 on? You'll see him arm himself. Announce
16 sheriff's department and clear that house doing a
17 safety check. But the Defendant, he is long gone.

18 Little do they know that on this date,
19 September 3rd, that Tuesday, he was in New York by
20 7:00 a.m. The evidence will show that, members of
21 the jury. This welfare check was around 11:30,
22 12:00 o'clock they're finding her body. And by
23 1:00 p.m. he has crossed the border into Canada.
24 You'll see that. He is long gone.

25 Sheriff's department doesn't quite know

OPENING STATEMENT BY MS. MCMENAMIN

1 | that yet. It's early on. You'll hear that
2 | numerous officers responded to the scene. CSI did
3 | hours upon hours of investigation in this home and
4 | you'll see photographs and you'll hear how they
5 | didn't find anything that would indicate that
6 | someone unknown had come in. There were no forced
7 | entries to the doors, the windows were all intact.
8 | You'll hear how valuable items were just all about
9 | the house. Nothing to indicate that this was a
10 | robbery gone wrong, an intruder, anything like
11 | that. Valuable items in the home, members of the
12 | jury. Like firearms.

13 | You'll hear that there were gun boxes
14 | with a matching gun right inside. But there was
15 | one gun box that didn't have a gun in it. A .45
16 | caliber gun. Roselyn Cedenno, you will learn was
17 | shot by someone using a .45 caliber gun. There
18 | were .45 caliber bullets on the floor. And the
19 | headstamps matched .45 caliber ammo that he had in
20 | the house. That gun and the Defendant, long gone.

21 | September 4th, members of the jury, you
22 | will see that the Defendant is clearly in Canada.
23 | He's now in Toronto. And what you will learn is
24 | this is when he purchases a flight to London. He
25 | purchases that ticket on September 4th to fly out

OPENING STATEMENT BY MS. MCMENAMIN

1 the next day. But on September 5th, he didn't
2 board that flight. That's why he's sitting here.
3 The Canadian officers came to our aid and they
4 detained him at the airport, members of the jury.
5 They get there to that gate and there are people
6 standing up, they got their bags ready, they are
7 preparing to board that flight, but they found the
8 Defendant, Vincent Shivers.

9 Members of the jury, I submit to you
10 that this case is simple. There is a woman dead in
11 the home she shared with her boyfriend with seven
12 gunshot wounds. Two to the back. She's been
13 covered up with blankets and pillows and that
14 boyfriend she shares that home with, he's not in
15 the state, much less the country, and he's trying
16 to put an ocean's worth of space between himself
17 and that home. This case is simple. And that's
18 why at the end of this trial we'll ask that you do
19 what the law and justice requires. You find the
20 Defendant guilty. Guilty of murder and guilty of
21 possession of a weapon during the commission of a
22 violent crime. Thank you.

23 THE COURT: Thank you.

24 MR. SWERLING: Please the Court?

25 THE COURT: Yes, sir, Mr. Swerling.

OPENING STATEMENT

MR. SWERLING: Solicitors. Good afternoon, ladies and gentlemen. Nice to have you back. You won the lottery yesterday by getting selected for this case and you should be so lucky actually winning the lottery. We appreciate you being here and we anticipate as the Judge told you yesterday that the trial will probably last a week, at least till Friday.

And you've heard the summary that the Solicitors made about what they intend to prove. Well, I'm going to ask you to hold them to it. I am going to ask you to analyze everything that you hear in this case and you see in this case and see if the State delivers on what they promised you they would go ahead and prove in this case.

Vincent Shivers entered a not guilty plea before this Court. And when any person who's charged with a crime in this country, matter of fact, it's probably in almost every county, in every state throughout this country, there are trials going on right now just like here. Just like in Lexington County. But when someone is charged with a crime, certain basic principles of

OPENING STATEMENT BY MS. MCMENAMIN

1 law that are unique to the United States, unique to
2 South Carolina, unique to states in the United
3 States including South Carolina. Certain
4 principles arise that make us different than
5 everybody else.

6 Three things that I want to talk to you
7 about right now. One is, you're entitled to a jury
8 trial. Right to a jury trial. That's something
9 basic in our system of justice. You've seen TV
10 shows, you've seen movies, talk about jury trials
11 and watched some jury trials, the only difference
12 between a trial taking place now here in front of
13 you, is that we're not talking about two or three
14 questions of a witness or five minute summation of
15 a closing statement to the jury. These are real
16 life situations and you're going to hear a lot of a
17 real life situations over the next few days.

18 The second thing I want to talk to you
19 about would be the proof beyond a reasonable doubt.
20 Basic principle of law in the United States. The
21 State is not entitled to a verdict of guilty. As a
22 matter of fact, you are required under the oath
23 that you took to find a person not guilty if the
24 State fails in its proof beyond a reasonable doubt.

25 And the third thing I want to talk to

OPENING STATEMENT BY MS. MCMENAMIN

1 | you about just briefly is the presumption of
2 | innocence. You've heard that. That's not just a
3 | legal fiction. That is a real thing. That is what
4 | makes us different than any other country in the
5 | world. In the United States, people are presumed
6 | to be innocent unless and until the State proves
7 | their guilt beyond a reasonable doubt after you've
8 | heard all the evidence and the Judge's law and
9 | instructions on the law and you go into the jury
10 | room and you deliberate on the case.

11 | So, first thing as I said, I want to
12 | talk to you about as a jury. The right to a jury
13 | trial. My name is Jack Swerling and you met
14 | everybody. That's Kelly, she wasn't here the other
15 | day, Kelly Switzer, my paralegal. Of course,
16 | there's Vincent Shivers, you met him the other day.
17 | Alissa Wilson who is my associate and Debbie
18 | Barbier who is an excellent attorney and been a
19 | friend of mine for many years.

20 | We are going to represent Vincent
21 | Shivers in this case and we're going to hold the
22 | State to its burden of proof and we're going to
23 | hold the State to the promise that they've made to
24 | you. But, we ask you to do the same thing.

25 | When someone is accused of a crime, we

OPENING STATEMENT BY MS. MCMENAMIN

1 have a right to a jury trial as I said. So what
2 did we do? Yesterday we had a number of questions
3 that we asked the Judge to ask you. The Judge had
4 questions that she wanted to ask you. And the
5 State had questions that they submitted to the
6 Judge that they wanted to ask of you, of the entire
7 panel. And you heard the questions the Court asked
8 the jury. You saw that the Court excused certain
9 members of the jury. You saw that the State
10 excused certain members of the jury. And you saw
11 that the Defense excused certain members of the
12 jury. Those are called preemptory challenges when
13 the State or the Defense strikes someone. If the
14 Court excuses someone for, let's say, that they
15 have a preconceived opinion or they are not willing
16 to listen to the evidence or they're just not -- do
17 not appear to be someone who wants to listen the
18 evidence or is willing to listen to the evidence or
19 weigh everybody's credibility equally, then the
20 State -- the Judge can excuse that person for
21 cause.

22 Now, here we are, the 13 of you
23 represent the jury that the Judge, the State and
24 the Defense believe are the most fair and impartial
25 jurors that we could have gotten out of that jury

OPENING STATEMENT BY MS. MCMENAMIN

1 panel yesterday. You have no opinions, no bias, no
2 prejudice, you don't know anything about the case,
3 you haven't reached any kind of conclusions, so we
4 believed and we accepted you and the State accepted
5 you, and the Judge accepted you, we believe you are
6 the folks that can sit in judgment on this case
7 fairly and impartially.

8 As far as what you apply in this case,
9 we talked about the presumption of innocence. And
10 you're going to hear a lot of evidence. The State
11 has outlined what they intend to present. But the
12 presumption of innocence is a fairly -- it's a very
13 interesting concept of the law. Until the State
14 proves guilt beyond a reasonable doubt, until you
15 go into that jury room at the end of the case, and
16 as I said, hear the instructions on the law and
17 weigh the evidence and deliberate among yourselves,
18 who will ultimately will be 12 of you, a person is
19 presumed to be innocent.

20 Up until that moment that the State has
21 proven or you've decided that the State has proven
22 guilt beyond a reasonable doubt. So what does that
23 mean? Just in simple terms. It means of right now
24 you're supposed to be looking at Vincent Shivers
25 and presume that he is innocent of this crime.

OPENING STATEMENT BY MS. MCMENAMIN

1 Presume that there was -- that he's not guilty.
2 You have to believe that. And you have to believe
3 it with all your heart and with all your mind
4 because that is the law that's going to be applied
5 in this case.

6 And you cannot change your opinion
7 about that until you go into the jury room at the
8 end of the case and hear what the Judge tells you
9 the law is and apply it to the facts of the case
10 and until the State has proven guilt beyond a
11 reasonable doubt, that presumption of innocence is
12 still there.

13 That presumption of innocence can only
14 be removed from a Defendant who's charged with a
15 crime when the State proves guilt beyond a
16 reasonable doubt. And the presumption of innocence
17 alone is enough to warrant an acquittal, a not
18 guilty verdict in the case, if the State fails to
19 do that. That's how our system works.

20 Reasonable doubt. That's the standard
21 that you will use -- and, again, we are unique
22 among the world about reasonable doubt. Here's
23 what it means, just simple terms. If you hesitate,
24 something is presented to you and you are not
25 convinced beyond a reasonable doubt, if you

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1 | hesitate, if you have doubt about what is being
2 | presented to you, either what's being presented to
3 | you or what's being not presented to you,
4 | reasonable doubt can apply or can come about as a
5 | result of the evidence that's shown in the case or
6 | the lack of evidence. And you are going to be
7 | required to go ahead and sift through the evidence
8 | and determine whether or not the State has removed
9 | that doubt from your mind, that reasonable doubt.

10 | Now, if they've removed the reasonable
11 | doubt from your mind and you're convinced that the
12 | presumption of innocence no longer applies and the
13 | State is entitled to a verdict, the oath that you
14 | took requires you to find the Defendant guilty.
15 | But the other part of that oath, the other side of
16 | the coin, because there's always another side of
17 | the coin, so another side of the hand is this: If
18 | you are not convinced beyond a reasonable doubt, if
19 | you hesitate to act, if something bothers you,
20 | nagging on you, you're not firmly convinced that
21 | the person is guilty, and that presumption of
22 | innocence still applies, then the oath that you
23 | took requires you to find that person not guilty.

24 | At the conclusion of this case, we
25 | submit to you and I submit to you now, that you

OPENING STATEMENT BY MS. MCMENAMIN

1 will have a reasonable doubt from the evidence
2 that's presented or the lack of evidence that's
3 being presented. I've been coming over to
4 Lexington County for many, many years. I practice
5 in Lexington County and practice in Richland County
6 more than any other place in the state and I've
7 always enjoyed coming over here. I've always
8 enjoyed being in this courthouse or the old
9 courthouse because I've been around quite a long
10 time now, but I always look forward to appearing in
11 front of a Lexington County jury because they are
12 fair and they are impartial and they will listen to
13 the evidence and they will apply the law to that
14 evidence. And I have confidence in you as well.
15 Same way that I've had confidence for many years in
16 coming over here. Thank you very much.

17 THE COURT: Thank you, Mr. Swerling.
18 Is the State ready to call their first witness?

19 MS. MCMENAMIN: Yes, Your Honor. The
20 State calls Charles Watson to the stand.

21 CHARLES WATSON,
22 being first duly sworn, was examined and testified
23 as follows:

24 THE CLERK: Have a seat in the box. If
25 you'll say your name and spell your last name for

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 the record.

2 MR. WATSON: My name is Charley Watson,
3 W-A-T-S-O-N.

4 DIRECT EXAMINATION

5 BY MS. MCMENAMIN:

6 Q. Can you hear me okay, Mr. Watson?

7 A. Yes, ma'am.

8 Q. Actually, for me, can you pull that
9 microphone just a little bit closer to you so
10 everyone can hear you.

11 (Mr. Watson complies)

12 Q. Mr. Watson, where are you currently
13 employed?

14 A. I work at Camping World in Columbia,
15 South Carolina.

16 Q. And how long have you been working at
17 Camping World?

18 A. I was employed there in 2016, so from
19 then till now.

20 Q. And you remained employed there now?

21 A. Yes, ma'am.

22 Q. Have you left and come back at all in
23 that timeframe?

24 A. No Ma'am.

25 Q. So were you working at Camping World in

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 September of 2019?

2 A. Yes, ma'am.

3 Q. And through your employment there, did
4 you come to know the Defendant, Vincent Shivers?

5 A. Yes, ma'am.

6 Q. What was his position at Camping World?

7 A. He was a finance manager there.

8 Q. And do you recall if he worked with you
9 at Camping World on Sunday, September 1st of 2019?

10 A. Yes, ma'am, he was our manager on duty
11 that day.

12 Q. And in asking you about the days that
13 everyone worked, would it be helpful if you could
14 see a calendar from that month?

15 A. Sure.

16 MS. MCMENAMIN: Permission to approach,
17 Your Honor?

18 THE COURT: You may.

19 Q. Mr. Watson, I'm handing you what's been
20 marked as State's Exhibit 159. You said this would
21 aid you in your testimony. What is this, generally
22 speaking?

23 A. That's a calendar.

24 Q. Of what month?

25 A. September of 2019.

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And does it fairly and accurately
2 depict the days of that month?

3 A. Yes, ma'am.

4 MS. MCMENAMIN: Your Honor, at this
5 time, State offers exhibit -- State's Exhibit 159
6 into evidence.

7 THE COURT: Any objection?

8 MR. SWERLING: No, Your Honor.

9 MS. MCMENAMIN: Permission to publish a
10 demonstrative of this document, Your Honor?

11 THE COURT: Go ahead.

12 MS. MCMENAMIN: Thank you.

13 Q. Mr. Watson, this is State's Exhibit
14 159, the September of 2019 calendar. What date did
15 you say that you worked with the Defendant?

16 A. It was the Sunday, I don't remember the
17 specific day, I'm sorry.

18 Q. Was that Sunday, September 1st
19 according to this calendar?

20 A. I'm sorry, I don't remember the
21 specific day. I remember it was a Sunday.

22 MS. MCMENAMIN: Beg the Court's
23 indulgence, Your Honor.

24 Q. Do you recall giving a written
25 statement in regards to this case?

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am. I gave a statement to the
2 sheriff's department.

3 Q. Would reviewing that statement help
4 refresh your memory?

5 A. Yes, ma'am.

6 Q. Mr. Watson, you worked with him in
7 September of 2019; correct?

8 A. Yes, ma'am.

9 Q. And do you recall whether or not you
10 worked on Labor Day of 2019?

11 A. I do not remember what day Labor Day
12 was, I'm sorry.

13 Q. But do you recall if you worked on
14 Labor Day?

15 A. Camping World is open on Labor Day's.
16 I don't remember -- my shifts change. I didn't
17 have a consistent shift at that time.

18 Q. And in working with the Defendant, you
19 said that he was -- what was his position there?

20 A. He was a finance manager.

21 Q. Can you kind of explain what that
22 means?

23 A. Sure. Whenever someone purchases a
24 camper at Camping World, a lot of times they will
25 just finance it instead of paying the entire amount

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | altogether. So Mr. Shivers and others that work
2 | the finance office will arrange those details for
3 | them.

4 | Q. And so the Defendant would be who they
5 | would have spoken to to set that up?

6 | A. Yes, ma'am.

7 | MS. MCMENAMIN: Permission to approach,
8 | Your Honor?

9 | THE COURT: You may.

10 | Q. Mr. Watson, you said you remember given
11 | a written statement regarding this case?

12 | A. Yes, ma'am.

13 | Q. Is this your statement?

14 | A. Yes, ma'am, it is.

15 | Q. Okay. Take a look at that and see if
16 | that refreshes your memory about what day you
17 | worked in September of 2019.

18 | A. According to the statement I gave it
19 | was the 1st of September, 2019.

20 | Q. Okay. So looking at the calendar, the
21 | first was a Sunday?

22 | A. Yes, ma'am.

23 | Q. Okay. You worked with the Defendant on
24 | that date?

25 | A. Yes, ma'am.

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. Do you recall speaking with the
2 Defendant that day?

3 A. Casual conversations.

4 Q. In the conversations you had on
5 September 1st, did the Defendant ever mention -- do
6 you recall if he ever mentioned taking the day off
7 the next day?

8 A. No, ma'am, not to me.

9 Q. Do you recall whether or not he
10 mentioned a planned vacation in the near future?

11 A. He did not, not to me.

12 Q. And do you recall -- what normal
13 business hours for Camping World were in September
14 of 2019?

15 A. On a Sunday it would have been 12:00 to
16 5:00.

17 Q. Okay. And do you know what time the
18 Defendant left?

19 A. He would have left shortly after 5:00.

20 Q. Okay. Do you -- do you remember what
21 time you left?

22 A. I was there until around 5:18. I had
23 to close the store.

24 Q. And do you remember anymore detail --
25 anything more detailed about when the Defendant

CHARLES WATSON - DIRECT EXAMINATION BY MS. MCMENAMIN

1 left that day?

2 A. I believe he would have left about a
3 quarter past the hour, 5:15 because we had a
4 customer in the store.

5 Q. Okay. And that's 5:15 in the
6 afternoon?

7 A. Yes, ma'am.

8 Q. Working with the Defendant that day, do
9 you remember anything about his demeanor that stood
10 out to you?

11 A. Nothing unusual. He was friendly with
12 us and friendly with with the customers.

13 Q. So nothing out of the ordinary?

14 A. No, ma'am.

15 Q. And do you recall whether or not the
16 Defendant was scheduled to work the next day
17 looking at our calendar on Monday, September 2nd?

18 A. Yes, ma'am, he was on the schedule for
19 Monday the 2nd.

20 Q. Were you on the schedule for that day?

21 A. Yes, ma'am. I was there that morning.

22 Q. Okay. So you showed up Monday,
23 September 2nd. What about the Defendant?

24 A. He was not there.

25 Q. When he did not show up for work, did

CHARLES WATSON - CROSS-EXAMINATION BY MS. WILSON

1 | this cause concern?

2 | A. It did. My boss at the time, Steve
3 | Smith, ordered a wellness check.

4 | Q. Do recall if that was ordered on
5 | Monday, September 2nd, the first day he didn't show
6 | up for work?

7 | A. Yes, ma'am.

8 | Q. And, Mr. Watson, did you happen to work
9 | at Camping World on Tuesday, September 3rd?

10 | A. Yes, I believe I did.

11 | Q. And do you recall whether or not the
12 | Defendant showed up for work that day?

13 | A. He was not there that day.

14 | Q. Do you recall if he ever came back to
15 | work?

16 | A. No, not to my recollection.

17 | MS. MCMENAMIN: Nothing further for
18 | this witness at this time, Your Honor.

19 | THE COURT: All right. Any cross?

20 | MS. WILSON: Yes, Your Honor.

21 | THE COURT: Ms. Wilson?

22 | CROSS-EXAMINATION

23 | BY MS. WILSON:

24 | Q. Good afternoon, Mr. Watson. My name is
25 | Alissa Wilson. I just have a few questions for you

CHARLES WATSON - CROSS-EXAMINATION BY MS. WILSON

1 | today.

2 | So you worked with the Defendant on
3 | September 1st; correct?

4 | A. Yes, ma'am.

5 | Q. What area of the store do you work in?

6 | A. At the time I was a retail cashier that
7 | day.

8 | Q. Is that the same area of the store that
9 | Mr. Shivers works in?

10 | A. Yes. His office is right next to the
11 | retail store.

12 | Q. Is he in sales or was he in sales?

13 | A. He was in financial that we considered
14 | part of our dealership, so it would have been part
15 | of sales.

16 | Q. Okay. Isn't it true that he interacted
17 | with customers on that day?

18 | A. Yes, ma'am.

19 | Q. And he was friendly with the customers
20 | and with the staff; correct?

21 | A. Yes, ma'am.

22 | Q. He acted completely normal; correct?

23 | A. Completely normal, yes ma'am.

24 | Q. Was he in any hurry to leave when he
25 | left that night?

CHARLES WATSON - CROSS-EXAMINATION BY MS. WILSON

1 A. Not that I can recall.

2 Q. Isn't it correct that you've never seen
3 the Defendant get angry?

4 A. Not that I can recall.

5 Q. And is it also correct that you've
6 never heard him say that he was unhappy at home?

7 A. I did not hear that, no, ma'am.

8 MS. WILSON: Beg the Court's
9 indulgence.

10 THE COURT: Take your time.

11 MS. WILSON: No further questions.

12 THE COURT: Any redirect?

13 MS. MCMENAMIN: No redirect, Your
14 Honor.

15 THE COURT: May I excuse Mr. Watson?

16 MS. MCMENAMIN: Yes, Your Honor.

17 THE COURT: Mr. Watson, you are
18 excused. Thank you.

19 MS. MCMENAMIN: Our next witness, Your
20 Honor, will be Eric Wier.

21 ERIC WIER,
22 being first duly sworn, was examined and testified
23 as follows:

24 THE CLERK: Have a seat up there in
25 that chair. If you'll state your name and spell

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 your last for the record.

2 MR. WIER: My name is Eric Wier. Last
3 name is spelled W-I-E-R.

4 DIRECT EXAMINATION

5 BY MS. MCMENAMIN:

6 Q. Mr. Wier, where are you currently
7 employed?

8 A. Camping World.

9 Q. And what is your position there?

10 A. I'm the business development manager.

11 Q. How long have you been working there at
12 Camping World?

13 A. Going on eight years.

14 Q. All right. And were you still employed
15 there in September of 2019?

16 A. I was.

17 Q. Through your employment with Camping
18 World, did you come to know the Defendant, Vincent
19 Shivers?

20 A. I did.

21 Q. And do you recall what his position was
22 at Camping World?

23 A. Finance manager.

24 Q. Okay. And do you recall what the
25 normal business hours were for Camping World in

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 2019 on a Monday?

2 A. It would have been an 8:30 until 7:00.

3 Q. And do you recall what the normal hours
4 were on a Tuesday?

5 A. 8:30 to 7:00.

6 Q. Okay. And do you recall what the
7 normal business hours were on Sunday's?

8 A. I believe it was 12:00 or 11:00.

9 Q. Now, to your recollection, did you work
10 at Camping World -- actually give me just a moment.

11 MS. MCMENAMIN: Publishing State's
12 Exhibit 159 which is already in evidence.

13 Q. Looking at this calendar, Mr. Wier, do
14 you recall if you worked on Sunday, September 1st
15 in 2019?

16 A. I did not.

17 Q. Do you recall if he worked on Monday,
18 September 2nd in 2019?

19 A. He was not there.

20 Q. Were you there?

21 A. I was, yeah.

22 Q. Okay. Now, was the Defendant there on
23 Monday, September 2nd?

24 A. He was not.

25 Q. Based on your knowledge, did you know

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | whether or not the Defendant was supposed to be at
2 | work that day?

3 | A. He was.

4 | Q. And you said he didn't show up. What
5 | happened when the Defendant didn't show up for
6 | work?

7 | A. We were concerned for sure. It was
8 | very much out of his character. He was very good
9 | at his job. He was, I believe, number one in the
10 | company for finance and, you know, he had a sharp
11 | reputation for being on time. And as the day went
12 | on we got more and more concerned and, you know, we
13 | were starting to get worried for him.

14 | Q. By "we," do you mean you and your
15 | coworkers at Camping World?

16 | A. Yeah.

17 | Q. And in the week leading up to this day,
18 | Monday, when the Defendant doesn't show up for
19 | work, in the week leading up to that, did you work
20 | with the Defendant at all?

21 | A. I did.

22 | Q. And during the times that you worked
23 | with him, did he mention planning to take the day
24 | off that Monday?

25 | A. He did not.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. I don't know if you recall, was that
2 Labor Day that Monday?

3 A. It was.

4 Q. But he hadn't mentioned taking the day
5 off for the holiday?

6 A. No, ma'am.

7 Q. Do you recall whether or not he
8 mentioned that he was going to take any vacations
9 in the near future?

10 A. No.

11 Q. And so on Monday, September 2nd, he did
12 not appear. Do you remember if any of your
13 coworkers made efforts to get in touch with him
14 that you observed?

15 A. I did observe. My general manager
16 reached out to him a number of times by phone.

17 Q. And were you asked to do anything in
18 particular to help make contact with the Defendant
19 on that day, Monday, September 2nd?

20 A. Yes. My sales manager at the time, we
21 -- I knew where he lived because he showed me on
22 Zillow the new house that he had just bought. I
23 knew the area very well. I grew up around here, so
24 I said I would drive by and just simply see if
25 maybe I saw some lights on or something like that.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And did you end up doing that?

2 A. I did.

3 Q. What happened when you drove by the
4 home?

5 A. I drove by, I didn't notice any lights
6 on. Didn't look like there was any life in the
7 house. Soon after that, I simply drove by, didn't
8 stop, just kept driving.

9 Q. Did you have any knowledge at the time
10 of what vehicle the Defendant drove?

11 A. He always drove an F-150.

12 Q. Did you see an F-150 truck at the home
13 that night?

14 A. I did not.

15 Q. And how did you know where the
16 Defendant lived, Mr. Wier?

17 A. He showed me on Zillow. He had showed
18 a number of us on Zillow the house he had just
19 purchased.

20 Q. Okay. And Zillow, just to be clear,
21 make sure everyone is on the same page, what is
22 that?

23 A. It's just a real estate website where
24 you can see homes that are for sale.

25 Q. Can anyone access this?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. And he showed you his home he just
3 purchased on this app?

4 A. Yes, ma'am.

5 Q. Do you remember where the home was,
6 what city or county?

7 A. That was in Lexington.

8 Q. And how do you know that?

9 A. Well, he showed me on Zillow. I knew
10 it was clear, the address was there. When I went
11 to go back to references, you can go on Zillow and
12 you can see recently purchased homes. It was the
13 only one in the area that was purchased. I
14 recognize the photo of the front of the house, it
15 was obvious.

16 Q. And the home you drove by that evening
17 matched up with the photo saw online?

18 A. Correct.

19 Q. So that was on Monday, September 2nd.
20 What about on the next day? Tuesday, September
21 3rd, did you work on that day?

22 A. I did.

23 Q. Do you know recall if the Defendant was
24 expected to appear for work on that day?

25 A. He was.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Did he appear?

2 A. He did not.

3 Q. What if anything did your coworkers do
4 at this point?

5 A. At this time, we were very concerned.
6 I know he had a heart condition in the past and he
7 had had a heart attack, so we were -- myself, I was
8 worried that he has possibly had a heart attack
9 again. You know, that physically he could be in
10 danger or something. So that morning I decided
11 after speaking with my managers I rode over there.
12 Went and knocked on the door, try to see if
13 somebody would answer and never heard anything.

14 Q. Mr. Wier, when you got to the home that
15 day, what did you say you did?

16 A. Went to the front door and rang the
17 doorbell.

18 Q. Do you recall if anyone answered?

19 A. No one did.

20 Q. Do you recall hearing any sorta of
21 movement inside the home?

22 A. I heard dogs barking.

23 Q. And did you see any vehicles there that
24 day?

25 A. I did. As I was walking on the

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 sidewalk leading up to the front door, you could
2 see there was a blue Sedan in the driveway.

3 Q. If I showed you a photo of the house
4 and that vehicle, would you recognize it?

5 A. I would.

6 MS. MCMENAMIN: Permission to approach?

7 THE COURT: You may.

8 MS. MCMENAMIN: Your Honor, I'm
9 approaching the witness with what was previously
10 Exhibits 18 and 19. Exhibit 18, Court's Exhibit is
11 now State's Exhibit 163.

12 THE COURT: Okay. Wait a minute.
13 Court Exhibit 18 is now Exhibit --

14 MS. MCMENAMIN: 163.

15 THE COURT: 163. Okay.

16 MS. MCMENAMIN: And Court's Exhibit 19
17 for the record is now State's Exhibit 164.

18 THE COURT: Okay.

19 Q. Mr. Wier, taking a look at Exhibit 163,
20 what is this?

21 A. It's a photo of the front of the house.

22 Q. Okay. And that's what house?

23 A. That's Vincent's house.

24 Q. Okay. The home that you went to that
25 day?

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Correct.

2 Q. Does it fairly and accurately depict
3 the home and in its surroundings as they look on
4 the day you went there?

5 A. It does.

6 MS. MCMENAMIN: State offers Exhibit
7 163 into evidence.

8 THE COURT: Any objection?

9 MS. BARBIER: No objection, Your Honor.

10 THE COURT: It's entered.

11 (WHEREUPON, State's Exhibit Number 163
12 was entered)

13 Q. And now I'm showing you State's Exhibit
14 164, what is this?

15 A. It's a picture of the car that was in
16 the driveway.

17 Q. That's the car that you saw on that
18 day?

19 A. Correct.

20 Q. Is it fairly and accurately depicted in
21 this photo?

22 A. It is.

23 MS. MCMENAMIN: State offers Exhibit --
24 State's Exhibit 164.

25 MS. BARBIER: No objection.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 THE COURT: It's entered.

2 (WHEREUPON, State's Exhibit Number 164
3 was entered)

4 MS. MCMENAMIN: Permission to publish
5 to the jury?

6 THE COURT: You may.

7 Q. Mr. Wier, you said the first time you
8 went to the home was on Monday, September 2nd;
9 correct?

10 A. Correct.

11 Q. Was that in the morning hours or the
12 evening hours?

13 A. Evening hours.

14 Q. And did you stop or drive by?

15 A. The Monday?

16 Q. That Monday, the first time you went to
17 the home?

18 A. I just drove by.

19 Q. Okay. So 163, the home. When you
20 drove by that evening you said you didn't see any
21 vehicles?

22 A. Correct.

23 Q. But when you went there that day you
24 said you saw a vehicle?

25 A. Yes.

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Was it located in this area here? Can
2 you describe that?

3 A. It was. There's clearly a retaining
4 wall right there. So if you were on the street you
5 wouldn't be able to see vehicles. But if you
6 walked the sidewalk, it's obvious.

7 Q. And 164, that's the vehicle that you
8 said you saw that day?

9 A. Correct.

10 Q. So a blue Honda Sedan?

11 A. Yes.

12 Q. But what about the Defendant's truck?

13 A. I did not see it in the driveway.

14 Q. And did anyone answer the door at all
15 while you were at the property?

16 A. No, ma'am.

17 Q. Did you know the Defendant to drive any
18 other vehicles than the black F-150 you mentioned
19 earlier?

20 A. No, ma'am.

21 Q. And on that Tuesday, September 3rd, did
22 you make any efforts yourself to contact the
23 Defendant via social media?

24 A. I did. I messaged him on FaceBook.

25 Q. If I showed you a document or a record

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 of that message, would you recognize it?

2 A. I would.

3 MS. MCMENAMIN: Permission to approach?

4 THE COURT: You may.

5 MS. MCMENAMIN: For the record, Your
6 Honor, this is Court's Exhibit 16 will now be
7 State's Exhibit 165.

8 Q. Mr. Wier, I'm showing you 165 for
9 identification. What is this?

10 A. It's a FaceBook message.

11 Q. A FaceBook message sent by who?

12 A. Sent by myself.

13 Q. To who?

14 A. To Vincent.

15 Q. And does it fairly and accurately
16 depict the message you sent in regards to the
17 contents?

18 A. It does.

19 MS. MCMENAMIN: State offers State's
20 Exhibit 165 into evidence.

21 THE COURT: Any objection?

22 MS. BARBIER: No objection.

23 (WHEREUPON, State's Exhibit Number 165
24 was entered)

25 MS. MCMENAMIN: Permission to publish,

ERIC WIER - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Your Honor?

2 THE COURT: Yes, ma'am.

3 Q. Mr. Wier, can you read that message up
4 there?

5 A. Hey bud you there.

6 Q. Is that the message that you sent the
7 Defendant on September 3rd of 2019?

8 A. It was.

9 Q. And I understand that it says 15:13
10 next to that. In a Universal Time, would that be
11 11:13 a.m. standard time?

12 A. I believe so.

13 Q. Did the Defendant ever respond to your
14 efforts to reach out to him?

15 A. He did not.

16 Q. After going to the home and not
17 receiving a response, Mr. Wier, what did you do?

18 A. I got back in my car and went back --
19 back to work.

20 Q. Okay. And to your knowledge, did the
21 Defendant ever come back to work at Camping World?

22 A. He did not.

23 Q. And you've been working there this
24 entire time since 2019?

25 A. Correct.

ERIC WIER - CROSS-EXAMINATION BY MS. WILSON

1 MS. MCMENAMIN: I have no further
2 questions for this witness at this time, Your
3 Honor.

4 THE COURT: Ms. Wilson?

5 MS. WILSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q. Good afternoon, Mr. Wier. So on 9/2
9 which was Monday, you drove to Mr. Shivers house;
10 correct?

11 A. Correct.

12 Q. And that was at around 6:30 p.m.?

13 A. Yes.

14 Q. And that was at the request of a
15 manager?

16 A. Uh-huh.

17 Q. What manager was that?

18 A. It's my sales manager, Chad Lively.

19 Q. And when you drove by the house you
20 didn't see any vehicles; is that correct?

21 A. I did not.

22 Q. There was no F-150?

23 A. No vehicles that I could see.

24 Q. And there were no lights on in the
25 house?

ERIC WIER - CROSS-EXAMINATION BY MS. WILSON

1 A. Correct.

2 Q. And then you drove back by the house
3 again on Tuesday the 3rd; correct?

4 A. Correct.

5 Q. And what time was that approximately?

6 A. I need to refresh my -- I need to look
7 at the statement to know for sure to look at the
8 time.

9 MS. WILSON: May I approach?

10 THE COURT: You may.

11 A. Okay. I believe it was around 10:30.

12 Q. Around 9:30?

13 A. Did you say 10:30 or 9:30?

14 Q. So sometime in the morning?

15 A. Correct.

16 Q. And who was that at the request of?

17 A. My managers.

18 Q. Was that Chad Lively again?

19 A. Chad Lively and Steve Smith.

20 Q. Okay. But this time you said you
21 stopped the car and got out?

22 A. I did.

23 Q. And you knocked on the door?

24 A. I did.

25 Q. And you got no answer; correct?

ERIC WIER - CROSS-EXAMINATION BY MS. WILSON

1 A. Correct.

2 Q. But you noticed a dark blue Sedan in
3 the driveway?

4 A. I did.

5 Q. No truck though?

6 A. No truck.

7 Q. So after five minutes you decided that
8 no one was home; is that correct?

9 A. Right.

10 Q. Are you aware of Vincent's normal day
11 off during the week?

12 A. I couldn't remember at this point.

13 Q. And isn't it true that you never
14 corresponded with the Defendant over FaceBook
15 before?

16 A. Correct.

17 Q. So you had no knowledge if he would
18 respond to that message or not?

19 A. We were friends on FaceBook, I couldn't
20 tell.

21 Q. But he had never responded to any prior
22 message?

23 A. We had never communicated in the past
24 before on social media.

25 Q. Okay.

ERIC WIER - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. WILSON: Beg the Court's
2 indulgence.

3 THE COURT: Okay.

4 MS. WILSON: No further questions.

5 THE COURT: Thank you. Any redirect?

6 MS. MCMENAMIN: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MCMENAMIN:

9 Q. Mr. Wier, you were asked about whether
10 or not there were cars at the home on that first
11 Monday, September 2nd, the first time you went to
12 the home. Can you describe the area where you saw
13 that blue car parked the second time you went to
14 the home?

15 A. There's a retaining wall right there,
16 so, I mean, it's parked right next to the retaining
17 wall. From the street, there's no way you could
18 have seen it. But if you walk the sidewalk leading
19 up to the door, you can see what's in the driveway.

20 Q. So does State's Exhibit 64 (verbatim)
21 depict what you're talking about?

22 A. Yes, ma'am.

23 Q. Would this be -- right here, is this
24 the retaining wall?

25 A. Correct.

ERIC WIER - RECROSS EXAMINATION BY MS. WILSON

1 Q. This brick wall? So is that lower
2 level down there from the main yard?

3 A. Correct.

4 Q. And you said from the driveway, based
5 on your experience having been to this location and
6 both driven by it and walked up to the front door,
7 when you drove by, could you have seen a car parked
8 down here?

9 A. Driving by you wouldn't have.

10 Q. What about a big pickup truck?

11 A. Possibly, yes.

12 Q. But you didn't see any vehicles up here
13 in this parking area or down below when you drove
14 by on the night of Monday, September 2nd?

15 A. I did not.

16 MS. MCMENAMIN: Moment to confer.

17 Q. And then on the second time you went to
18 the home on Tuesday, September 3rd and you got out,
19 did you see any vehicles that day?

20 A. I did.

21 MS. MCMENAMIN: Nothing further for
22 this witness, Your Honor.

23 MS. WILSON: Just one question.

24 RECROSS EXAMINATION

25 BY MS. WILSON:

ERIC WIER - RECROSS EXAMINATION BY MS. WILSON

1 Q. You just stated you possibly could see
2 the truck when you drove by without getting out.
3 Is it also possible that you couldn't have seen the
4 truck when you drove by?

5 A. Possibly. Of course it's an F-150,
6 over that wall, more than likely I feel like you
7 probably could have seen it.

8 Q. But you don't know that for sure?

9 A. I couldn't say.

10 THE COURT: May I excuse Mr. Wier?

11 MS. MCMENAMIN: Yes, Your Honor.

12 THE COURT: Can I see the lawyers for a
13 second.

14 (WHEREUPON, there was a bench
15 conference)

16 THE COURT: All right. Mr. Foreman,
17 I'm going to let the jury go for the evening.
18 We're going to start at 9:30 in the morning, so I
19 need everyone in the jury room at 9:15. Let me
20 tell you, we can't start without you. We got to
21 have all of you. So try to be conscientious about
22 each other's time because we'll sit here and wait
23 on you just like y'all had to wait on us. I
24 apologize, but we got -- it lasted a little longer
25 than I thought this afternoon.

1 But remember, don't talk to anybody
2 about this case. Don't call anybody. Don't look
3 at any news articles, TV or do any research
4 whatsoever. And I hope y'all have a good evening
5 and I'll see you at 9 -- in the jury room at 9:15,
6 we're going to start at 9:30. Okay. Thank you.

7 (WHEREUPON, the jury exits the
8 courtroom at 4:55 p.m.)

9 (WHEREUPON, court was adjourned)

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1 **(MARCH 23, 2022)**

2 THE COURT: Are we ready?

3 MS. MAYES: Yes, Your Honor.

4 THE COURT: All right. Let's bring the
5 jury in.

6 (WHEREUPON, the jury enters the
7 courtroom at 9:38 a.m.)

8 THE COURT: All right. Mr. Foreman, is
9 the jury ready?

10 THE FOREPERSON: We are.

11 THE COURT: Everybody had a good
12 evening? Nobody had any problems with news or
13 newspapers or social media or being contacted?

14 (No one responded)

15 THE COURT: All right. Then we're
16 ready to proceed. The State can call their
17 witness.

18 MS. MAYES: May it please the Court,
19 Your Honor. The State calls Tommy Cedeno.

20 TOMMY CEDENO,
21 being first duly sworn, was examined and testified
22 as follows:

23 THE COURT: If you could have a seat
24 over there, please. State your name and spell your
25 last, please, for the record.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 MR. CEDENO: My name is Tommy Cedenó.
2 Spelled C-E-D-E-N-O.

3 DIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. All right.

6 MS. MAYES: Your Honor, if I may
7 approach?

8 THE COURT: You may.

9 Q. Tommy, tell us a little bit about
10 yourself. Where do you and your family reside?

11 A. We live in Beaufort, South Carolina.
12 Less than five minutes from Parris Island, South
13 Carolina.

14 Q. All right. And how close do you
15 actually live from the water there in that area?

16 A. Less than five minutes, ma'am. It's
17 right there. And parts of the river are a few
18 hundred football fields -- or a few hundred yards
19 away, a football field or so.

20 Q. Okay. And I'm going to ask you a
21 little bit about your family.

22 A. Yes, ma'am.

23 Q. How is it that you know the victim in
24 this case, Roselynn?

25 A. She's my mother. Yes, ma'am. I'm her

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 only child.

2 Q. Pull the microphone just a little bit
3 closer to you.

4 A. Yes, ma'am.

5 Q. And how do you know Roselynn?

6 A. She's my mother. I'm her only child.

7 Q. And are her parents still living?

8 A. Yes, ma'am, that is correct.

9 Q. And who are they?

10 A. Her father, Ruben Cedenno; and her
11 mother, Marie Cedenno; my grand parents.

12 Q. Now, can you tell us whether you and
13 your grandmother and grandfather that you've named,
14 Marie and Ruben?

15 A. Yes, ma'am. Ruben, that's correct.

16 Q. Can you tell us whether all of you live
17 together as a family?

18 A. We all live in Beaufort, South
19 Carolina. Yes, ma'am, as a family on the same
20 property; that's correct.

21 Q. And do you have children?

22 A. Yes, ma'am. Currently I have three.
23 At the time, I only had two.

24 Q. Okay. And do they live with you and
25 your grandparents as well?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am, that is correct.

2 Q. Now, did there come a time when
3 Roselynn left Beaufort County?

4 A. Yes, ma'am, she did. She moved to
5 Aiken to live with the Defendant; that's correct.

6 Q. So I want to ask you a little bit more
7 about that.

8 A. Yes, ma'am.

9 Q. When you say the Defendant, can you
10 tell us whether or not you recognize him in the
11 courtroom?

12 A. Yes, ma'am, I do. Vincent Thomas
13 Shivers III, he's sitting right there, ma'am.

14 Q. Okay. And how long were he and your
15 mother together as a couple approximately?

16 A. I'd say close to a decade if not more.
17 Maybe a few months less, few months more. Close to
18 a decade for sure; yes, ma'am.

19 Q. Okay. So approximately 2009?

20 A. Yes, ma'am, that is about correct I'd
21 say. Roughly.

22 Q. And after your mother met Vincent, can
23 you tell us whether or not they resided together
24 from that point on?

25 A. Yes, ma'am, they were together from

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 | that moment on.

2 | Q. And she left Beaufort County?

3 | A. Yes, ma'am, she left the family and
4 | went to be with him; that's correct.

5 | Q. And you mention Aiken County that they
6 | -- that she lived there at some point?

7 | A. Yes, ma'am, they lived there for some
8 | years together and at least two separate
9 | properties.

10 | Q. Now, can you tell us whether or not
11 | they eventually moved to Lexington County?

12 | A. Yes, ma'am, that is correct.

13 | Q. And are you familiar with whether or
14 | not they resided together at 216 Carriage Hill
15 | Court?

16 | A. Yes, ma'am, that is the address they
17 | resided together; that is correct, yes ma'am.

18 | Q. Now, did they have any children amongst
19 | themselves?

20 | A. No, ma'am, I'm her only child.

21 | Q. And can you tell us whether they had
22 | anyone else living with them?

23 | A. No, ma'am. They were very private
24 | people. They had no kind of parties, social
25 | gatherings, get-togethers. They had no neighbors

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 | visiting. Aside from my grandmother, my
2 | grandfather, I and my children, I don't think
3 | anyone had visited my mother five years before --

4 | MR. SWERLING: Your Honor, I'm going to
5 | object to this. This is hearsay. It's got to be
6 | based on hearsay.

7 | MS. MAYES: I can rephrase that.

8 | THE COURT: Thank you, please.

9 | Q. And did they reside only the two of
10 | them in that home?

11 | A. Yes, ma'am, that is correct.

12 | Q. Now, with that said, Tommy, did your
13 | mother work outside of the home?

14 | A. No, ma'am, she was a full-time
15 | homemaker.

16 | Q. And did the Defendant, Vincent Shivers
17 | work outside the home?

18 | A. Yes, ma'am, he worked full-time.

19 | Q. And where did he work?

20 | A. I believe he worked at Honda at one
21 | point and then Camping World at another.

22 | Q. And do you know whether or not that
23 | Camping World is the one here in Lexington County
24 | just near the border to Richland County?

25 | A. Yes, ma'am. That is the last place I

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 | knew that he was employed at, Yes ma'am.

2 | Q. So, Tommy, I want to take you back to
3 | early September --

4 | A. Yes, ma'am.

5 | Q. -- 2019. Specifically the day before
6 | Labor Day.

7 | A. Yes, ma'am.

8 | Q. First, I want to ask you about what is
9 | depicted in State's 164 and ask you to take a look
10 | at this?

11 | A. Yes, ma'am. I recognize this
12 | instantly. That's my mother's car.

13 | Q. Looking here at State's 164 already in
14 | evidence, you recognize that?

15 | A. Yes, ma'am, I do. That's my mother's
16 | car.

17 | Q. And do you know what type of vehicle
18 | the Defendant drove?

19 | A. I believe he drove an F-150. A big
20 | black F-150, it was newer.

21 | Q. I'm going to show you now what the
22 | State's 159. Looking here, Tommy.

23 | A. Yes, ma'am.

24 | Q. What do you remember about Sunday,
25 | September 1, 2019?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am. I remember it pretty
2 clearly. I remember that Hurricane Dorian was a
3 Category 5 hurricane and it was headed straight
4 towards our local area and the whole family was
5 worried and preparing for the governor to issue a
6 mandatory hurricane evacuation which is quite
7 normal for the costal areas during major hurricanes
8 like that. I remember that my mother had contacted
9 me and had wanted to know when we were going to --

10 MR. SWERLING: I'm going to have to
11 object to any hearsay.

12 THE COURT: Sustained.

13 Q. So, Tommy, I'm going to ask you some
14 questions and then if there's an objection we just
15 need you to stop for a moment.

16 A. Yes, ma'am.

17 THE COURT: You can't say what someone
18 else told you, okay?

19 MR. CEDENO: Yes, ma'am, I understand.

20 THE COURT: Thank you.

21 Q. So, we'll work through this piece by
22 piece. So you mentioned that on Sunday, September
23 1st there was a hurricane?

24 A. Yes, ma'am, Hurricane Dorian.

25 Q. You told us the name of that hurricane?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am; that's correct.

2 Q. At that point in time, do you remember
3 what cat number -- what category number Hurricane
4 Dorian was on Sunday, September 1st?

5 A. Yes, ma'am, it was a Category 5
6 hurricane.

7 Q. Okay. And you mentioned that you and
8 your entire family reside in Beaufort County?

9 A. Yes, ma'am, that's correct.

10 Q. With the Cat 5 hurricane forming --

11 A. Yes ma'am.

12 Q. -- what was your expectation as to what
13 was going to happen in regards to this hurricane
14 approaching?

15 A. I believe that it was going to be a
16 mandatory evacuation and power outage for at least
17 ten days, two weeks.

18 Q. Can you tell us whether living on the
19 coast you have experienced mandatory evacuations in
20 the past?

21 A. Yes, ma'am.

22 Q. Okay. And when there is a mandatory
23 evacuation, your grandparents, your children, what
24 is usually the plan?

25 A. The plan is almost 100 percent to go to

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Roselynn's, my mother's and for the family to all
2 get together with her because she always lived more
3 inland.

4 Q. Okay. And so on Sunday, September 1st
5 --

6 A. Yes, ma'am.

7 Q. -- what if any contact did you have
8 with your mom on that day?

9 A. Yes, ma'am. We texted and called each
10 other on that day.

11 Q. Okay. I'm going to show you some
12 documents and ask you whether or not you recognize
13 them.

14 A. Yes, ma'am.

15 Q. First without commenting on what these
16 documents depict, do you recognize what is marked
17 as State's 27?

18 A. Yes, ma'am, I do instantly.

19 Q. And do you recognize what is marked as
20 State's 28?

21 A. Yes, ma'am, I do.

22 Q. Okay. Do you know which or whose phone
23 these photographs were taken from?

24 A. Yes, ma'am, I do.

25 Q. Okay. Whose phone was that?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. That would be my phone, ma'am.

2 Q. Okay. And do you know whether or not
3 these photographs were taken by law enforcement?

4 A. Yes, ma'am, I believe they were.

5 Q. Okay. So I'm going to ask you if you
6 recognize the name of the contact in your phone?

7 A. Yes, ma'am, I do.

8 Q. And what is the name of that contact?

9 A. The name is Roselynn, my mother.

10 Q. Okay. And do you recognize the date
11 and approximate time that these messages are
12 occurring?

13 A. Yes, ma'am, that's right time.

14 Q. Okay. And what day is the first
15 message?

16 A. The first message would be on September
17 1st.

18 Q. Okay. And what day of the week is
19 that?

20 A. That would be Sunday, ma'am.

21 Q. All right. And do these messages
22 proceed on into a following day?

23 A. Yes, ma'am, they do.

24 Q. And does it reflect that as well?

25 A. Yes, ma'am, it does; that's correct.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Q. And do you recognize the content of all
2 of these communications?

3 A. Yes, ma'am, I do.

4 Q. As well as the contact in your phone?

5 A. Yes, ma'am, that's correct.

6 MS. MAYES: Your Honor, this would be
7 State's 27 and 28 for evidence.

8 THE COURT: Any objection?

9 MR. SWERLING: No objection.

10 THE COURT: Okay. They're admitted.

11 (WHEREUPON, State's Exhibit Numbers 27
12 and 28 were entered)

13 Q. I believe you've indicated that Sunday
14 or September 1st is what day of the week?

15 A. Yes, ma'am, a Sunday.

16 Q. All right. We're going to take a look
17 here at State's 27.

18 Tommy, looking there, what is the time
19 of a text sent to you from your mother?

20 A. Yes, ma'am. I believe that is 6:25
21 from what I can see.

22 Q. Let me show you the document.

23 A. 5:25.

24 Q. Okay. I'm going to show you a little
25 bit closer.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. I apologize.

2 Q. You can just use the naked eye to look
3 at this. Looking here at the first text.

4 A. Yes, ma'am, 5:36.

5 Q. And I'll make it a little bit bigger on
6 the screen.

7 A. Yes, ma'am. Thank you. Yes, ma'am,
8 that's correct.

9 Q. Did you receive this text?

10 A. Yes, ma'am, I did.

11 Q. And that text, was it a.m. or p.m.,
12 Tommy.

13 A. That was in p.m., ma'am.

14 Q. And the content of that text says what
15 about the hurricane?

16 A. Yes, ma'am.

17 Q. And what if any response did you give
18 your mom following that text?

19 A. I let her know that it was a Category 5
20 at the moment.

21 Q. Okay. Does she respond back to you?

22 A. Yes, ma'am, she does; that's correct.

23 MS. MAYES: And, Your Honor, if the
24 record may reflect this is subject to redaction.

25 THE COURT: Thank you.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Q. So there was a response here?

2 A. Yes, ma'am, there was.

3 Q. All right. And then what if anything
4 do you respond back?

5 A. I told her that I was staying behind,
6 but I would let my family know, my grandmother and
7 grandfather.

8 Q. Okay. So it says I'm staying behind,
9 but I'll relay the info over to everyone?

10 A. Yes, ma'am, that's correct.

11 Q. And can you tell us what was the plan
12 for your family at this point?

13 A. The plan was that she was going to
14 contact us in the morning and we were going to
15 leave about 7 to 8 a.m.

16 MS. MAYES: Your Honor, I believe
17 there's no objection to the unredacted versions if
18 we may have a moment.

19 THE COURT: Sure. Take your time.

20 Q. I'm going to show you what is State's
21 27 and 28 unredacted.

22 A. Yes, ma'am. Yes, ma'am, I recognize
23 all this. Yes, ma'am.

24 Q. Okay. Is that the full context of the
25 communications between the parties?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am, that is.

2 Q. Yourself and your mother?

3 A. Yes, ma'am.

4 MS. MAYES: This would be 27 and 28 for
5 evidence, Your Honor.

6 THE COURT: Now, is this the unredacted
7 one? You're using the same? Are we switching them
8 out?

9 MS. MAYES: We are going to use 28 and
10 27, Your Honor, and, yes, we are replacing the
11 previous.

12 THE COURT: And no objection?

13 MR. SWERLING: No objection. Because
14 it at least puts it in context.

15 THE COURT: Okay. And I'll put on here
16 that it's -- I just got to make this for the
17 record. It's replacing -- we're replacing 27 and
18 28 that was previously redacted to now show the
19 full message. Go ahead.

20 (WHEREUPON, the unredacted State's
21 Exhibit Numbers 27 and 28 were switched out from
22 the previous ones)

23 Q. And so that first text 5:36 it's going
24 to say what about the hurricane and you give a
25 response here?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am, that's correct.

2 Q. And next is a response from your
3 mother?

4 A. Yes, ma'am.

5 Q. If you need to evacuate come to
6 Columbia, you can have my bedroom?

7 A. Yes, ma'am, that is something she would
8 say. Yes, a hundred percent.

9 Q. Well, can you tell us whether or not
10 that's a reference to the family home that she
11 shared with Vincent Shivers at 216 Carriage Hill
12 Court?

13 A. Yes, ma'am, it is.

14 Q. The residence depicted here in 163?

15 A. Yes, ma'am, that is the residence.

16 Q. And what do you say in response to
17 that, Tommy?

18 A. I let her know that I'm going to stay
19 behind and watch over my grandparents' property,
20 but I was going to send my grandmother and
21 grandfather, my wife and both my kids over there as
22 well.

23 Q. Okay. So they were all going to come
24 to Lexington County?

25 A. Yes, ma'am, that was the plan.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Q. And then she says back, last time you
2 didn't have power for nine days?

3 A. Yes, ma'am, that was Hurricane Matthew.

4 Q. Get plenty of pizza and Taco Bell?

5 A. Yes, ma'am.

6 Q. Fill every glass and cup in the house
7 with water?

8 A. Yes, ma'am.

9 Q. Is losing water also sometimes a
10 consequence of the hurricane?

11 A. It's typical to have to fill -- clean
12 the bathtub the night before the hurricane and then
13 fill it full of water for safe drinking water in
14 case something happens. It's pretty typical for
15 coastal areas.

16 Q. And then there's a reference to
17 chainsaws, gas cans and fire extinguishers?

18 A. Yes, ma'am. A lot of trees come down
19 in the area, hundreds, maybe -- sometimes more.

20 Q. Okay. You respond back and say, I
21 don't have \$50 for food. Spent it all on gas and
22 water?

23 A. Yes, ma'am. Price gouging was starting
24 at that time period and they were running out of
25 gasoline and water on the shelves and gas stations.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. And I realize that the way
2 the photograph is depicted there is a little bit
3 blurry, so I'm going to show you State's 27 that's
4 going to show it in a little more clarity.

5 So that last text on Sunday, what is
6 the date or what is the time of that last text on
7 Sunday?

8 A. Yes, ma'am. That is Sunday, 6:22 p.m.

9 Q. All right. And that's where you
10 respond back to her?

11 A. Yes, ma'am.

12 Q. Were there any further communications
13 between yourself and your mother following this
14 communication on Sunday at 6:22 p.m.?

15 A. No, ma'am. None.

16 Q. Okay. Now, next we see a text. And
17 can you tell us what time and date that text
18 occurs?

19 A. Yes, ma'am. That would be Monday at
20 10:20 a.m. September 2nd.

21 Q. Let me show you this real quick.
22 Looking here at the calendar.

23 A. Yes, ma'am.

24 Q. Is that going to be Labor Day, Monday
25 the 2nd?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am, that was Labor Day; that is
2 correct.

3 Q. So Monday at 10:20 you send a text that
4 says what?

5 A. I told her to call grandma.

6 Q. And what time is that text sent, Tommy?

7 A. Yes, ma'am. That is at 10:20 a.m.

8 Q. Tommy, did you get any response at all
9 from your mother to that text that you sent her at
10 10:20 a.m.?

11 A. No, ma'am, I did not.

12 Q. On Monday morning?

13 A. No, ma'am, I did not hear anything from
14 her.

15 Q. Can you tell us whether that's usual or
16 unusual?

17 A. That's highly unusual, ma'am. She
18 always responds, always replies. She is faster at
19 replying in most cases, yes, ma'am.

20 Q. Okay. Now, the content of that text
21 that you sent her said, call grandma?

22 A. Yes, ma'am.

23 Q. Why were you asking her to call your
24 grandmother, her mom, Marie Cedeno?

25 A. The plan was to get in contact 7 a.m.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 and it was several hours later and my grandmother
2 had called her right in front of me --

3 MR. SWERLING: Your Honor, I have to
4 object to any hearsay.

5 MS. MAYES: We'll lay the foundation.

6 THE COURT: Thank you. And it is
7 hearsay. You can't say anything that somebody else
8 told you.

9 MR. CEDENO: Yes, ma'am.

10 Q. And, Tommy, did you actually see your
11 grandmother place that call?

12 A. Yes, ma'am, I did.

13 Q. All right. Was she the only person in
14 your family placing a call --

15 A. No, ma'am.

16 Q. -- to your mother on Monday, September
17 2nd?

18 A. No, ma'am. My grandfather and I both
19 also placed calls on that day.

20 Q. Were you there with them as they were
21 also attempting to place calls?

22 A. Yes, ma'am, I watched it happen with my
23 own eyes.

24 Q. And while you were present, was there
25 ever a call -- did anyone ever receive a call back

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 from your mother?

2 A. No, ma'am.

3 Q. Including yourself?

4 A. No, ma'am, I did not.

5 Q. I'm going to show you these documents
6 which are marked as 21 and 22 just to take a look
7 at.

8 A. Yes, ma'am.

9 Q. You mentioned that you were a witness
10 to your grandmother, Marie Cedeno, placing calls?

11 A. Yes, ma'am.

12 Q. Can you tell us -- just want to get
13 these numbers straight. Can you tell us what
14 number was for your mother?

15 MR. SWERLING: Can I see the exhibit?

16 MS. MAYES: Yes.

17 A. Ma'am?

18 THE COURT: Hold on just a second.
19 She's going to show the other lawyers.

20 TOMMY CEDENO: Yes, ma'am. Yes, Your
21 Honor.

22 MS. MAYES: And, Your Honor, for the
23 record, 21 and 20 are the Verizon records. Subject
24 to the previous stipulation, with the understanding
25 that the UTC time would be subtract four for

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Eastern Standard Time.

2 THE COURT: They're Verizon phone
3 calls, is that what it is?

4 MS. MAYES: It is, Your Honor.

5 THE COURT: I would assume no objection
6 as long as she lays the foundation?

7 MR. SWERLING: Your Honor, we have
8 stipulated.

9 THE COURT: Stipulated. Okay, go
10 ahead.

11 (WHEREUPON, State's Exhibit Numbers 20
12 through 22 were entered)

13 Q. So looking here at State's 20 and 21
14 and 22, these are in evidence. If you could hold
15 it as close to you as you need to.

16 A. Yes, ma'am.

17 Q. Do you recognize your mother's phone
18 number?

19 A. Yes, ma'am, I do.

20 Q. And what is your mother's phone number?

21 A. 803-522-3431.

22 Q. Do you recognize the phone number of
23 your grandmother, Marie Cedeno?

24 A. Sorry, I'm looking for the numbers. I
25 only see her numbers on these papers.

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 Q. And then do you also recognize the
2 phone number for your grandfather, being Ruben
3 Cedenno?

4 A. I only see the 803 number on this
5 paper --

6 Q. Okay.

7 A. Oh, I see his number right here, ma'am.
8 Yes, ma'am, I see it right there.

9 Q. Okay. Give me one moment.

10 A. The 843 number.

11 Q. All right. Looking at Court's 22. Do
12 you recognize your grandmother's phone number
13 anywhere on this document? And you may have to
14 hold this close to you.

15 A. Yes, ma'am, I recognize my grandmother
16 and my grandfather's numbers.

17 Q. All right. First with your
18 grandmother's number?

19 A. My grandmother's number is
20 843-812-1869.

21 Q. All right. And your grandfather?

22 A. My grandfather's number is
23 843-441-1172.

24 Q. All right. Can you tell us whether or
25 not those documents also reflect phone calls to

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 | your mother's number --

2 | A. Yes, ma'am, they do.

3 | Q. -- during the timeframe of September
4 | 2nd and September 3rd?

5 | A. Yes, ma'am, that is correct.

6 | Q. Now, who in your family was known as
7 | Coo-Coo Boy?

8 | A. That's a pet name for my mother and my
9 | grandfather.

10 | Q. Okay. Do you know how your mother --
11 | do you have personal knowledge as to how your
12 | mother had your grandfather, her dad, saved in her
13 | phone?

14 | A. I'm sorry. Can you repeat that?

15 | Q. Do you have personal knowledge as to
16 | the contact name that your mom had for your
17 | grandfather in her phone?

18 | A. Yes, ma'am, I do.

19 | Q. And what was that?

20 | A. Coo-Coo Boy. It was a family joke,
21 | like an in joke to the family.

22 | Q. Okay. And do you have personal
23 | knowledge as to how your mom had your grandmother
24 | saved in her phone?

25 | A. Yes, ma'am, I do. It was saved at

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 | grandma.

2 | Q. Okay. Now, going back to the timeline,
3 | Tommy.

4 | A. Yes, ma'am.

5 | Q. Did you and your family ultimately
6 | travel to Columbia or to Lexington County because
7 | of the hurricane?

8 | A. No, ma'am, we did not.

9 | Q. What happened regarding the hurricane?

10 | A. The hurricane came and it knocked
11 | Charleston out for about a week and it knocked
12 | Beaufort out for a little while as well. But we
13 | stayed back through it and I believe it dropped
14 | down to a Category 4 --

15 | Q. Did it require mandatory evacuation?

16 | A. If did for about a day, I believe.
17 | About a day or two.

18 | Q. Okay. You and your family, did you
19 | stay in Beaufort County that week?

20 | A. Yes, ma'am, we did.

21 | Q. After you did not hear back from your
22 | mother?

23 | A. Yes, ma'am, we had nowhere else to go.

24 | Q. And, ultimately, did you learn of your
25 | mother's death?

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 A. Unfortunately, yes, ma'am, I did.

2 Q. How were you notified of that?

3 A. The Beaufort County Sheriff's Office
4 and the Beaufort County coroner came to the house
5 and spoke with us personally.

6 MS. MAYES: All right. Beg the Court's
7 indulgence.

8 THE COURT: Take your time.

9 Q. Looking at the calendar.

10 A. Yes, ma'am.

11 Q. You've identified the last text with
12 your mother?

13 A. Yes, ma'am.

14 Q. Being here Sunday, 6:22 when you
15 respond back to her?

16 A. Yes, ma'am.

17 Q. I know you have mentioned numerous
18 phone calls?

19 A. Yes, ma'am.

20 Q. Were made on the 2nd and 3rd?

21 A. Yes, ma'am.

22 Q. Did you ever hear back from your
23 mother?

24 A. No, ma'am.

25 Q. Did you ever receive a text back from

TOMMY CEDENO - DIRECT EXAMINATION BY MS. MAYES

1 your mother?

2 A. No, ma'am.

3 Q. Did you ever get any other form of
4 communication back from your mother following that
5 last text on Sunday evening at 6:22 that you sent
6 to her?

7 A. No, ma'am. None.

8 Q. For identification I'm going to show
9 you these two documents. This is for ID only at
10 this time, Tommy, so I don't want you to comment
11 about these documents at all. I'm just going to
12 show you what is 125 and 123.

13 A. Yes, ma'am.

14 Q. Looking at those without commenting
15 further, do you recognize the contacts as they are
16 saved on this particular document?

17 A. Yes, ma'am, that is correct, I do.

18 Q. Okay. Looking at 125, can you tell us
19 whether you recognize the contact Coo-Coo Boy?

20 A. Yes, ma'am, that's correct, I do.

21 Q. Do you recognize the contact Tommy?

22 A. Yes, ma'am, I do.

23 Q. Who is Tommy?

24 A. That would be me, ma'am.

25 Q. Do you recognize the contact Vincent?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, ma'am, that's correct, I do.

2 Q. Who do you know Vincent to be?

3 A. Vincent is the Defendant, ma'am. My
4 mother's fiance, boyfriend, common law, I'm not
5 sure.

6 Q. And then finally, do you recognize the
7 contact grandma?

8 A. Yes, ma'am, I do.

9 Q. And who was grandma?

10 A. Her mother, my grandmother.

11 Q. Okay. And for identification only is
12 State's 123 and 125.

13 THE COURT: Thank you.

14 MS. MAYES: Nothing further from the
15 witness at this time, Your Honor.

16 THE COURT: Mr. Swerling?

17 CROSS-EXAMINATION

18 BY MR. SWERLING:

19 Q. Morning, Mr. Cedenno.

20 A. Good morning, sir. How are you doing?

21 Q. It's Ce-den-o or am I pronouncing it
22 wrong?

23 A. It can be pronounced either way, sir.
24 It's pronounced Ce-den-o, Ce-dan-o, and up north
25 they pronounce it Ca-dan-o. I accept all three.

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 Q. So it's okay no matter what --

2 Ca-dan-o's okay?

3 A. Yes, sir. I appreciate you asking me,
4 sir. Thank you.

5 Q. Pardon?

6 A. I appreciate you asking me. Thank you,
7 sir.

8 Q. So let me ask you, they have been --
9 you are how old?

10 A. I am 32 years old, sir.

11 Q. Okay. And so they were together you
12 said for about a decade?

13 A. Pretty close to it, sir. As far as my
14 knowledge.

15 Q. And during that decade that they were
16 together, Lexington is the last place they lived
17 together; correct?

18 A. Yes, sir, that's correct.

19 Q. Prior to that time they lived in Aiken?

20 A. And they lived in Louisiana as well.
21 Yes, sir.

22 Q. Yeah, I was going to go --

23 A. I apologize. Yes, sir, they lived in
24 Aiken.

25 Q. They lived in Aiken and that's where

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 Vincent's mother had lived?

2 A. Yes, sir. That was the first property
3 they lived in Aiken together was Vincent's mother's
4 house, Yes, sir.

5 Q. And he was working -- do you remember
6 where he was working at that time?

7 A. I believe it was the Honda dealership.

8 Q. And they stayed -- they were in Aiken
9 for a couple years?

10 A. Yes, sir, they were for a number of
11 years. Yes, sir.

12 Q. All right. And they moved into, I
13 believe it was Vincent's mother's house after she
14 passed away?

15 A. I'm not hundred percent sure of the
16 timeline, but I do know they were in Vincent's
17 mother's house and I never met her, she had already
18 passed.

19 Q. And you visited that house; correct?

20 A. Yes, sir, multiple times.

21 Q. Okay. And then I believe that Vincent
22 and your mother bought a house -- or Vincent bought
23 a house on the lake down in Aiken?

24 A. Yes, sir, that is correct.

25 Q. And a very nice house?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. It was beautiful, yes, sir.

2 Q. And from what you understand and what
3 you observed, Vincent worked very hard?

4 A. Yes, sir, that is correct. He was
5 always at work. I never seen him call out or miss
6 a day. Yes, sir.

7 Q. Okay. So he worked at Honda cars in
8 Aiken. Prior to that you had said they had lived
9 in Louisiana?

10 A. Yes, sir. I never visited them while
11 they were in Louisiana.

12 Q. And are you aware of the fact that he
13 was working for Camping World down there in
14 Louisiana?

15 A. Yes, sir. I was aware that he had
16 gotten --

17 Q. Pardon?

18 A. Yes, sir. I'm aware he had gotten a
19 higher position on the corporate chain of command
20 there.

21 Q. Okay. And he was the -- as far as you
22 knew, a finance manager; is that correct?

23 A. I wasn't positive what he did. I just
24 knew that he was one of the higher ups.

25 Q. And from what you knew the way your

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 mother and he lived, he had a pretty good
2 lifestyle?

3 A. Yes, sir. They were well above the
4 median.

5 Q. And prior to Louisiana, I believe you
6 had also told during the investigation, told
7 Detective Burt they lived in Oklahoma and also in
8 Mississippi while -- at other places similar to
9 Camping World or Honda dealerships?

10 A. I'm not entirely sure where all. But
11 they were moving -- bouncing around back and forth.
12 I believe for his job, but I am not hundred
13 percent. I just know they were moving around, back
14 and forth a lot.

15 Q. Okay. But you had indicated before
16 that you thought it was because of job movement and
17 improving himself?

18 A. Yes, sir.

19 Q. Okay. And in each occasion, they went
20 ahead, he bought -- at some point bought a home in
21 these places; is that correct?

22 A. I believe so. I'm not sure if they
23 stayed -- if they bought a home at the location or
24 if they stayed at an Extended Stay or something.
25 But I do believe that a home was purchased. But

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 I'm not hundred percent.

2 Q. All right. So in Lexington, he took a
3 position at Camping World?

4 A. Yes, sir, that is correct.

5 Q. And as far as what you understand that
6 was an advancement as well?

7 A. Yes, sir, from what I understood.

8 Q. Okay. And for a period of time they
9 lived in the Extended Stay motel until they could
10 find a house; is that correct?

11 A. I'm not sure of the exact length of
12 time, but it was for well over a few months from
13 what I understand.

14 Q. And then they bought the house on
15 Carriage Hill; is that correct?

16 A. Yes, sir, that's correct.

17 Q. And that's a pretty nice house?

18 A. Yes, sir, it is.

19 Q. And from what you understand, Vincent
20 spent a lot of money buying that house for your
21 mother and him?

22 A. Yes, sir. It was a nice house in a
23 nice neighborhood; that's correct.

24 Q. Okay. Had you ever visited Carriage
25 Hill?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir, I did, after my mother
2 passed.

3 Q. No, I'm talking about the prior to
4 that?

5 A. No, sir, I did not. They'd only lived
6 in the house for a month and a half before she
7 passed.

8 Q. When was the -- prior to what you have
9 here, these were just texts?

10 A. Yes, sir.

11 Q. When did you actually have the last
12 conversation with your mom?

13 A. We talked on the phone that same day,
14 sir.

15 Q. That same day?

16 A. Yes, sir.

17 Q. And approximately what time was it that
18 you had talk to your mom?

19 A. Approximately, it was around the same
20 time as the text, more or less, I believe.

21 Q. And how long was that conversation?

22 A. Five or so minutes. Long enough for
23 her to ask me am I coming and me to say, yes, I am.

24 Q. Okay. So there was a phone
25 conversation?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir, I believe so, yes.

2 Q. Okay. And who initiated that phone
3 call?

4 A. I cannot remember if I called her or
5 she called me.

6 Q. Okay. But it was strictly about coming
7 up to Lexington --

8 A. She was very worried, yes, sir.

9 Q. Okay. And from what I understand, her
10 concern was that you were going to get hit with
11 that hurricane?

12 A. Yes, sir, that is correct.

13 Q. And you had two children at that time;
14 is that correct?

15 A. Yes, sir. I had a two -- one toddler
16 and one infant. My daughter was only six months
17 old.

18 Q. Now, your plans were -- the family
19 plans were for you, your grandmother, your
20 grandfather, and your children to go to Lexington
21 to stay with Roselynn and Vincent?

22 A. No, sir. The plan was for me to stay
23 back and watch over the property and then for the
24 rest of the family to go. I was to stay back in
25 Beaufort. My children, my wife and my grandparents

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 | were going to go to Lexington.

2 | Q. Yeah, I'm sorry. I may have misstated
3 | it. That's what I meant.

4 | A. Yes, sir.

5 | Q. They were going to go. Your
6 | grandparents were going to go and your children
7 | were going to go?

8 | A. Yes, sir.

9 | Q. And was your wife going to go as well?

10 | A. Yes, sir, I believe so.

11 | Q. Okay. And they had actually packed up
12 | and they were ready to go?

13 | A. Yes, sir. They packed up the night
14 | before; that's correct.

15 | Q. And so your -- I mean, obviously you
16 | had no problem with them going to Vincent's house
17 | and Roselynn's house; is that correct?

18 | A. Of course not, sir.

19 | Q. Okay. And do you know why that
20 | decision was made to go ahead and stay in Beaufort?

21 | A. For my family?

22 | Q. Yes.

23 | A. Because we never heard back from her.

24 | Q. Okay. And that was -- the last time
25 | you said you heard back from her was when? I got a

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 | little confused.

2 | A. Would be on Sunday.

3 | Q. Sunday?

4 | A. Yes, sir, Sunday the 1st of September,
5 | 2019.

6 | Q. I'm sorry?

7 | A. Sunday, September 1, 2019 was the last
8 | time I heard back.

9 | Q. Okay. So neither you or your
10 | grandparents ever heard back from her after that 5
11 | -- is it 6:22 on Sunday evening?

12 | A. Yes, sir, that's correct. No one heard
13 | back from her.

14 | Q. Didn't have any contact on Monday,
15 | didn't have any contact on Tuesday?

16 | A. No, sir, none.

17 | Q. Okay. And why were you not going to
18 | go?

19 | A. I was going to stay back and watch over
20 | the property. I was going to watch over my
21 | grandparents' property. I just -- I decided that
22 | it would be the best bet for the elderly and for
23 | the youth to go where it's safe and then for me to
24 | stay back to make sure the property doesn't catch
25 | on fire or flood, things along that nature.

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 Q. Yeah. So the hurricane was downgraded
2 at some point I believe you said?

3 A. I believe it struck Charleston direct
4 on us at a 4.

5 Q. But did not do a whole lot of damage in
6 the Beaufort area?

7 A. It took hundreds of trees out in the
8 Beaufort area, yes, sir, it did. Destroyed several
9 houses as well.

10 Q. It did?

11 A. Yes, sir. Mostly mobile homes.

12 Q. All right. So the last message is at
13 6:22 on Sunday when -- and I believe you're saying
14 that you spoke to her about the same time on the
15 phone?

16 A. Yes, sir, that's correct.

17 Q. But you don't remember who initiated
18 the phone call?

19 A. Roughly, I'm not sure. If I could see
20 records that would help. But I'm not sure, but we
21 did speak.

22 Q. So you told the detectives that you
23 were the last person to speak with her as far as
24 you knew, that's the phone call you were referring
25 to?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir.

2 Q. Okay. Now, you're also aware of the
3 fact that they -- Vincent and your mom had -- and I
4 believe you told the detectives this, they had some
5 close ties in Coasta Rica and used to travel to
6 Coasta Rica?

7 A. Yes, sir, she loved Coasta Rica. It
8 was her dream to retire there.

9 Q. In fact, I believe you said that she
10 would have lived there if that opportunity had
11 arisen?

12 A. Yes, sir, she wanted to. She wanted to
13 I believe with all her heart, yes, sir.

14 Q. So they were very familiar with Costa
15 Rica?

16 A. Yes, sir, they had travel there.
17 That's correct.

18 Q. So as I understand, you never went to
19 the new home, but went to the home in Aiken?

20 A. Yes, sir.

21 Q. I just wanted to go ahead and make sure
22 I understood that correctly.

23 A. I visited every property they lived in
24 in the State of South Carolina while she was alive
25 with the exception of the Carriage home. I didn't

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 | visit that one until after she passed.

2 | Q. Now, you were going to -- I think you
3 | told Detective Burt that you were planning on going
4 | to the Carriage Hill house for Thanksgiving?

5 | A. Yes, sir. We were going to spend the
6 | holidays at the Carriage Hill as a family.

7 | Q. Okay. Sometime in November, I believe,
8 | you went to the house and went into the mailbox and
9 | retrieved a package addressed to Detective Burt; is
10 | that my understanding?

11 | A. Yes, sir, that is correct.

12 | Q. Okay. Why did you go to the house on,
13 | I think it was the 19th of November and pick up
14 | that mail?

15 | A. We were going to the house just to make
16 | sure it was secure. I believe in the month of
17 | February or March, a tree fell through the house
18 | and it was through the roof for six months until
19 | the HOA fixed it. It destroyed her spare bedroom
20 | and destroyed the roof. That was during another
21 | hurricane.

22 | Q. Yeah. And that was sometime well after
23 | September?

24 | A. Yes, sir. Six months later, yes, sir.

25 | Q. And a tree did actually fall --

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir, but I wasn't aware of that
2 until after the fact.

3 Q. Okay. So you had actually not yet gone
4 to Carriage Hill, but were going to go
5 Thanksgiving?

6 A. Yes, sir, we were planning to spend the
7 entire holidays there.

8 Q. And when you went down there in
9 November and got the mail, who went with you?

10 A. I believe my grandfather did.

11 Q. Did you go in the house?

12 A. Yes, sir, we did.

13 Q. So you had some keys to the house?

14 A. Yes, sir, we were given keys to the
15 house.

16 Q. Okay. When were you given the keys?

17 A. We were given the keys shortly after
18 she passed and then we came to Lexington to collect
19 her animals.

20 Q. So you never had any keys prior to that
21 time?

22 A. No, sir, she had only lived there for a
23 month and a half beforehand, before she passed.

24 Q. The -- you're aware of the fact that
25 your mom, and I'm not being critical of it, I just

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 want to bring up this fact that you're aware of the
2 fact that she was a marijuana user; is that
3 correct?

4 A. I believe that came up in the reports,
5 yes, sir.

6 Q. Okay. And so up until that time, you
7 were not familiar with the fact that she smoked
8 marijuana?

9 A. Yes, sir, I had heard that she did in
10 the '80s and the '90s.

11 Q. Okay. Well, do you know where she was
12 getting her marijuana from?

13 A. I believe she was getting it from
14 Vincent, but I'm not a hundred percent sure.

15 Q. Okay. Did you ever communicate that to
16 or any information about where she was getting her
17 marijuana from to Detective Burt?

18 A. Honestly, I'm not sure, sir. I'm not
19 sure what the marijuana has to do with her being
20 slayed.

21 Q. It's just a question I'm asking?

22 A. Yes, sir. I believe Vincent was
23 getting the marijuana through one of his coworkers.

24 Q. But you don't know --

25 A. I'm not a hundred percent sure. But I

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 | had personally seen him say and say that he could
2 | get it and stuff like that, yes, sir.

3 | Q. And I understand that. But what I'm
4 | trying to find out is did you communicate to
5 | Detective Burt that your mother was also a
6 | marijuana user?

7 | A. Possibly, I'm not sure.

8 | Q. You don't remember doing that?

9 | A. No, sir, I don't recall.

10 | Q. And you don't remember discussing with
11 | him the fact of where her possible sources of the
12 | marijuana might be?

13 | A. No, sir, I don't recall. I mean, it's
14 | possible. But at the time, I was so distraught
15 | from my mother being murdered that something as
16 | small as marijuana didn't cross my mind.

17 | Q. Well, I'm not suggesting it should
18 | have. I'm just asking if you did have a discussion
19 | with him about it?

20 | A. I'm not denying or confirming it. I am
21 | saying it is possible, but I cannot recall. Too
22 | much has happened in that time period.

23 | Q. Certainly if there was marijuana found
24 | in the house and marijuana found in her system that
25 | would be relevant?

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir, it would be I believe, but
2 I'm not sure.

3 Q. Certainly somebody would want to know
4 where the source was?

5 A. I would imagine, yes, sir.

6 Q. When you went ahead and got the
7 packages from the mailbox, they were from American
8 Express or FedEx packages?

9 A. I just remember it was a box and it was
10 addressed to the police. And as soon as I seen it,
11 I believe I called up the police department and
12 went down there and gave it to them immediately.

13 Q. And that's what I understand. It was
14 addressed to Detective Burt?

15 A. I just knew it wasn't for my mother or
16 for Vincent.

17 Q. And you did the right thing. You
18 called him and you took the package up to the
19 sheriff's department and gave him --

20 A. Yes, sir, I made sure I personally
21 turned it in. Yes, sir.

22 Q. You became aware later on that that was
23 an American Express package that had been sent to
24 Detective Burt?

25 A. I'm not sure a hundred percent. I just

TOMMY CEDENO - CROSS-EXAMINATION BY MR. SWERLING

1 | knew it was for the Lexington County police.

2 | Q. Okay. But you did the right -- you
3 | took it to him?

4 | A. Yes, sir.

5 | Q. I'm not suggesting you did anything
6 | wrong, okay?

7 | A. Yes, sir.

8 | Q. Okay. The car that your mother drove
9 | that was bought for her by Vincent?

10 | A. Yes, sir.

11 | Q. As far as you know?

12 | A. Yes, sir.

13 | Q. Your mom didn't work?

14 | A. Yes, sir.

15 | Q. Is that correct?

16 | A. No, sir, she was a homemaker by their
17 | agreement.

18 | Q. So whatever finances they had were
19 | coming from Vincent's source of employment;
20 | correct?

21 | A. Yes, sir, that's correct.

22 | Q. And they lived pretty well?

23 | A. Yes, sir, they did. Above the median.

24 | MR. SWERLING: Excuse me one minute,

25 | Your Honor.

TOMMY CEDENO - REDIRECT EXAMINATION BY MS. MAYES

1 THE COURT: Take your time.

2 MR. SWERLING: That's all I have.

3 THE COURT: Any redirect?

4 MS. MAYES: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MAYES:

7 Q. Tommy, regarding communications with
8 your mom especially that final weekend, can you
9 tell us whether or not your mom had an iPad?

10 A. Yes, ma'am, she did.

11 Q. Can you tell us whether or not she also
12 had app such as FaceTime?

13 A. I believe she did, yes, ma'am.

14 Q. Okay. Would you sometimes communicate
15 with her by iPad --

16 MR. SWERLING: Your Honor, that's
17 certainly not redirect.

18 THE COURT: I don't believe it is
19 either.

20 MS. MAYES: It's -- and I can follow-up
21 further, Your Honor. This is in response to the
22 questioning about the phone call.

23 THE COURT: All right. Let's see where
24 it goes.

25 Q. Mr. Swerling was asking you about

TOMMY CEDENO - REDIRECT EXAMINATION BY MS. MAYES

1 communication with your mother that last weekend?

2 A. Yes, ma'am.

3 Q. Can you tell us whether or not you also
4 communicated with her by iPad?

5 A. Yes, ma'am. Whenever I would text, it
6 would go straight to that number.

7 Q. Okay. Now, about the marijuana --

8 A. Yes, ma'am.

9 Q. -- that Mr. Swerling was asking you
10 about. What exactly did you hear the Defendant say
11 in regards to that?

12 A. At what time period, ma'am, at what
13 point?

14 Q. When he asked you who she was getting
15 marijuana from. Did you ever hear the Defendant
16 say anything in that regard?

17 A. Yes, ma'am. I heard him say that
18 something -- and I'm going to paraphrase.
19 Something along the lines of I got some dank stuff
20 from a coworker. And I was sitting in the living
21 room with her and --

22 MS. BARBIER: Your Honor, I'm going to
23 object on hearsay grounds.

24 THE COURT: I agree. It's hearsay.

25 MS. MAYES: It's directly from the

TOMMY CEDENO - REDIRECT EXAMINATION BY MS. MAYES

1 Defendant, Your Honor, in response to a question as
2 to where the marijuana was coming from.

3 THE COURT: And he also testified that
4 he didn't know. Let's ask another question. Move
5 on. I'm not going -- it's hearsay.

6 Q. So Mr. Swerling asked you if you knew
7 if your mother used marijuana?

8 A. Yes, ma'am.

9 Q. Do you know whether or not there was
10 sometimes marijuana in the home?

11 A. I'm not sure at the Carriage Hill.
12 I've never been to that property. And at the Aiken
13 property, I didn't see marijuana in the home,
14 but --

15 MR. SWERLING: Your Honor, if he didn't
16 personally observe it, then I object to hearsay.

17 THE COURT: I'm just going to tell you,
18 Ms. Mayes, he says he doesn't know. I'm not going
19 to let him sit up here and speculate.

20 Q. And in response to the Defense, Counsel
21 asking you whether your mom used marijuana?

22 A. Yes, ma'am.

23 Q. Was she the only person in the home
24 using marijuana?

25 A. I'm not sure. I believe --