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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 II

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STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MR. SWERLING: Objection. He's not
2 sure.

3 THE COURT: That's his answer and
4 that's it.

5 MS. MAYES: Thank you, Your Honor.

6 THE COURT: Thank you. All right. May
7 I let him step down or may he be excused?

8 MS. MAYES: No objection, Your Honor.

9 THE COURT: You can be excused.

10 TOMMY CEDENO: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MS. MCMENAMIN: The State calls Steve
13 Smith to the stand, Your Honor.

14 STEVEN SMITH,
15 being first duly sworn, was examined and testified
16 as follows:

17 THE CLERK: Have a seat over there,
18 please. If you'll state your name for the record.

19 MR. SMITH: Steven Smith.

20 DIRECT EXAMINATION

21 BY MS. MCMENAMIN:

22 Q. Mr. Smith, can you tell us where you're
23 currently employed?

24 A. Camping World of Ashville.

25 Q. And how long have you been employed at

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Camping World of Ashville?

2 A. One year.

3 Q. Did you work at any of the other
4 Camping World locations prior to your current
5 employment?

6 A. Camping World of Columbia.

7 Q. How long did you work at Camping World
8 of Columbia?

9 A. Nine years.

10 Q. So were you employed there in September
11 of 2019?

12 A. Yes, ma'am.

13 Q. What was your role at that time?

14 A. General manager.

15 Q. How long had you been the general
16 manager there?

17 A. Five years, six years.

18 Q. Okay. And in your position as the
19 general manager at the Camping World in Columbia;
20 right?

21 A. Yes, ma'am.

22 Q. Did you come to know the Defendant?

23 A. Yes, ma'am.

24 Q. And do you recall when he was hired?

25 A. He had worked there for six or eight

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 months.

2 Q. Okay. In September of 2019?

3 A. Yes, ma'am.

4 Q. And what was his position?

5 A. Finance manager.

6 Q. What does that job entail?

7 A. You get deals done. Submit them to
8 banks. Sign contracts with all of our buyers.

9 Q. And, Mr. Smith, if you could maybe pull
10 that microphone just a little bit closer to you.

11 How important is that particular role
12 in day-to-day business at Camping World?

13 A. You can't do it without it.

14 Q. And what were normal business hours for
15 Camping World on a weekday such as Monday?

16 A. 9 to 7.

17 Q. And what about Tuesday?

18 A. 9 to 7.

19 Q. That was at that time in 2019?

20 A. Yes.

21 Q. And in 2019, what were normal business
22 hours for camping World on a Sunday?

23 A. 12 to 5.

24 Q. Do you recall the weekend of Labor Day
25 of 2019?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. Do you recall whether or not you worked
3 on Sunday, September 1st?

4 A. I did not.

5 Q. And do you recall whether or not the
6 Defendant worked on Sunday, September 1st, based on
7 your knowledge as a manager?

8 A. Yes, ma'am, he did.

9 Q. Now, based on your knowledge as a
10 manager at Camping World, do you know whether or
11 not the Defendant was scheduled to come in to work
12 on that Monday, September 2nd?

13 A. Yes, ma'am.

14 Q. Do you recall if you were working on
15 that day?

16 A. I was.

17 Q. Do you recall if the Defendant showed
18 up for work on that day?

19 A. He did not.

20 Q. Steve, can you tell me, if an employee
21 wanted to take time off, how would they go about
22 doing that?

23 A. E-mail myself or through ADP.

24 Q. What is ADP?

25 A. It's our payroll processing.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And if they wanted to take a
2 substantial time off for like a vacation, a week or
3 so, how would they go about requesting that time
4 off?

5 A. Same thing. Go through ADP. I would
6 accept it or send an e-mail and I would accept it.

7 Q. How much advanced notice were they
8 required to give?

9 A. Thirty days.

10 Q. For a vacation?

11 A. Yes, ma'am.

12 Q. And I asked you about the normal hours
13 for weekdays and you remembered it was a -- there
14 was a holiday, Labor Day, in 2019. Was that a
15 Monday, September 2nd?

16 A. Yes, ma'am.

17 Q. Do you recall if the business hours at
18 Camping World --

19 A. Normal hours.

20 Q. It was normal hours on that holiday.
21 Now, you said you came in to work, the Defendant
22 did not show up. Was he expected to show up that
23 morning or was he expected to show up that
24 afternoon?

25 A. That morning.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. When he didn't show up on Monday,
2 September 2nd of 2019, were you concerned?

3 A. I made a phone call, yes.

4 Q. And you said you made a phone call, so
5 you had a phone number for him at that time?

6 A. Yes.

7 Q. Did you have that through his
8 employment?

9 A. Yes.

10 Q. Had you communicated with him via that
11 particular phone number before this date?

12 A. Yes, ma'am.

13 Q. Do you recall whether or not you
14 communicated via phone call?

15 A. That day?

16 Q. Before, prior to that day?

17 A. Oh, yes, ma'am.

18 Q. You had communicated via phone call
19 with the Defendant prior?

20 A. Yes, ma'am.

21 Q. And had you -- prior to that date, do
22 you recall whether or not you communicated with him
23 via text?

24 A. Yes, ma'am.

25 Q. And were all these communications

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 successful?

2 A. Ninety percent.

3 Q. So you had received responses from him
4 before through that number?

5 A. Yes, ma'am.

6 Q. Was it normal or abnormal for him to
7 respond to you readily or quickly?

8 A. It was normal.

9 Q. And you said you made attempts to
10 contact him on Monday, September 2nd. Do you
11 remember whether in particular you made any phone
12 calls?

13 A. Yes, ma'am, I did.

14 Q. Did you make -- do you recall whether
15 or not these were one or more calls?

16 A. Multiple phone calls and text messages.

17 Q. Do you recall whether or not the
18 Defendant answered when you called?

19 A. He did not.

20 Q. Any of your calls?

21 A. He did not.

22 Q. Do you recall whether or not the phone
23 rang or if it went straight to voicemail?

24 A. Straight to voicemail.

25 Q. Every time?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Every time.

2 Q. Do you recall whether or not you texted
3 him on Monday, September 2nd?

4 A. I did.

5 Q. Was that one time or multiple times?

6 A. I believe it was twice.

7 Q. Do you recall whether or not he
8 responded to your texts?

9 A. He did not.

10 Q. Now, do you recall if the Defendant was
11 scheduled to show up for work the next day,
12 Tuesday, September 3rd?

13 A. Yes, ma'am.

14 Q. Were you there that day?

15 A. I was.

16 Q. And do you recall whether or not the
17 Defendant showed up for work that day?

18 A. He did not.

19 Q. So he did not show up for work as
20 scheduled on Tuesday, September 3rd?

21 A. Correct.

22 Q. What did you do at this point?

23 A. I believe I called. I texted. I
24 looked at his -- we sent Eric to drive by the
25 house. I looked at his -- Roselynn's phone number

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 on his ADP, his emergency contact. Called and
2 texted her. No response again. And then I call a
3 welfare check.

4 Q. Okay.

5 MS. MCMENAMIN: Beg the Court's
6 indulgence, Your Honor.

7 THE COURT: Take your time.

8 Q. Now, you said you communicated with the
9 Defendant via phone call and/or text between the
10 days of Monday, September 2nd and Tuesday,
11 September 3rd; am I correct in that?

12 A. I attempted communication, yes.

13 Q. Thank you. And do you remember what
14 phone number you had at that time?

15 A. My phone number now 336-880-2995.

16 Q. Okay. What did you say your number
17 was?

18 A. 336-880-2995.

19 Q. 2995?

20 A. Yes, ma'am.

21 Q. Now, I don't know about this question,
22 but do you remember -- have you memorized the phone
23 number that you used to call the Defendant back in
24 2019?

25 A. I have not.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. If I showed you phone records of those
2 calls or messages between the two of you, would
3 that refresh your memory as to what his phone
4 number is?

5 A. Yes, ma'am.

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

8 THE COURT: Absolutely.

9 MS. MCMENAMIN: Your Honor, these are
10 Court's Exhibits we're changing the numbers on for
11 your reference.

12 THE COURT: Okay. If you just tell me
13 the Court Exhibit number and what you're going to
14 make it.

15 MS. MCMENAMIN: Yes, Your Honor. Court
16 Exhibit 13, that is now State's Exhibit 202.

17 THE COURT: Okay.

18 MS. MCMENAMIN: Court's Exhibit 14,
19 Your Honor, is now State's Exhibit 203.

20 THE COURT: Thank you.

21 Q. Mr. Smith, I'm showing you State's
22 Exhibit 202 and State's Exhibit 203. Particularly,
23 looking to State's Exhibit 202 which is two pages.
24 Do you see two different messages?

25 A. Yes, ma'am.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Do you recognize these messages?

2 A. Yes, ma'am.

3 Q. Okay. Are these messages -- who are
4 they between?

5 A. Myself and Vincent.

6 Q. Okay. And do you happen to see your
7 phone number on here?

8 A. I do.

9 Q. Okay. So that's that number ending in
10 2995, you see that here?

11 A. Yes, ma'am.

12 Q. What about the Defendant's number? Do
13 you see that number and recognize it?

14 A. I do.

15 Q. So that refresh's your memory?

16 A. Yes, ma'am.

17 Q. Can you now tell us what the
18 Defendant's number was you had for him at that
19 time?

20 A. 864-978-2627.

21 Q. And, again, you said you recognize
22 these content of these messages?

23 A. Yes, ma'am.

24 Q. And they appear accurate?

25 A. Yes, ma'am.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And then State's Exhibit 203, do you
2 recognize these?

3 A. Yes, ma'am.

4 Q. These call logs?

5 A. Yes, ma'am.

6 Q. Do you see your phone number on here?

7 A. Yes, ma'am.

8 Q. And the Defendant's phone number?

9 A. Yes, ma'am.

10 Q. So yours ending in 2995?

11 A. Yes, ma'am.

12 Q. And his ending 2627?

13 A. Yes, ma'am.

14 Q. And this appears accurate?

15 A. Yes, ma'am.

16 Q. Showing like you stated earlier you
17 called on 9/2 and 9/3?

18 A. Yes, ma'am.

19 MS. MCMENAMIN: We offer State's
20 Exhibit 203 and 202 into evidence, Your Honor.

21 THE COURT: Any objection?

22 MR. SWERLING: No.

23 THE COURT: They're admitted.

24 MS. MCMENAMIN: Thank you.

25 (WHEREUPON, State's Exhibit Number 202

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 and 203 were entered)

2 MS. MCMENAMIN: Permission to publish,
3 Your Honor?

4 THE COURT: Yes, ma'am.

5 Q. Now, just to clarify before we go into
6 the contents of these documents. You stated that
7 the Defendant's number was that 864-978-2627?

8 A. Yes, ma'am.

9 Q. What day did you first begin trying to
10 make contact with the Defendant?

11 A. Monday the 2nd.

12 Q. Looking at State's Exhibit 203. Let me
13 know if I need to zoom in or anything of that
14 nature for you, Mr. Smith, to make this easier to
15 read. But at the top of this page, do we see a
16 call at 9:03 on 2019 at 18:02?

17 A. Yes, ma'am.

18 Q. And is that a call from you to the
19 Defendant?

20 A. Yes, ma'am.

21 Q. Okay. And your calls though started on
22 9/2?

23 A. Yes, ma'am.

24 Q. So does this appear this was the last
25 call that you made to him?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. So this call on 9/2/2019 at 12:47,
3 would that be the first call that you made?

4 A. I think it was at 10:47.

5 Q. Okay. So in the Greenwich Time, if we
6 subtract four, that would be 8:47?

7 A. Yes, ma'am.

8 Q. Okay. So you believe that's the first
9 call that you made to him?

10 A. Yes, ma'am.

11 Q. At 8:47 a.m. on 9/2?

12 A. (No response)

13 Q. Give me just a moment. Yes, Mr. Smith,
14 if we look at this call, this first call that's
15 showing up for 9/2 12:47 with that being Greenwich
16 Time, we subtract four and that would be 8:47 a.m.?

17 A. Yes, ma'am.

18 Q. Okay. And then here, Mr. Smith, we see
19 -- we go from 9/2 to 9/3; is that correct?

20 A. Yes, ma'am.

21 Q. So your last call to him on 9/2 that
22 says 23:52 in Greenwich Time. And if we subtract
23 four and convert, that's 7:52 a.m. -- I mean, p.m.?
24 Excuse me.

25 A. Yes, ma'am.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. And then the next call is on
2 9/3?

3 A. Yes, ma'am.

4 Q. And that call would be 11:09 Greenwich,
5 converts to 7:09 a.m.?

6 A. Yes, ma'am.

7 Q. So you made numerous calls to try and
8 get in touch with him?

9 A. Yes, ma'am.

10 Q. Can you tell me -- had you ever had to
11 call in a welfare check for an employee prior to
12 this?

13 A. Yes, ma'am.

14 Q. When did you do that?

15 A. Six, eight years ago.

16 Q. Okay. Can you tell me sort of -- so
17 what happened? Did the employee show up or not
18 show up for work?

19 A. He did not show up --

20 MR. SWERLING: Your Honor, I object.
21 That's not relevant.

22 THE COURT: I'll be glad to hear from
23 you on the relevance.

24 MS. MCMENAMIN: Your Honor, it will go
25 to the relevance of the urgency in which he makes

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 the welfare call for the Defendant in this case.

2 MR. SWERLING: He made a welfare check.

3 He made a call. That's not in dispute.

4 THE COURT: I agree. They're not

5 disputing it, so let's move on.

6 MS. MCMENAMIN: Okay. Thank you, Your

7 Honor.

8 Q. Now, Mr. Smith, you said you sent text
9 messages to the Defendant and you said you sent
10 those on 9/2?

11 A. Yes, ma'am.

12 Q. Here we see a text message at 12:47
13 Zulu time, or Universal Time. If we subtract four,
14 that's 8:47 a.m.; correct?

15 A. Yes, ma'am.

16 Q. 8:47 a.m.? State's 202?

17 A. Yes, ma'am.

18 Q. 9/2 at 8:47 a.m. you sent a message to
19 the Defendant?

20 A. Yes, ma'am.

21 Q. And what does this message say?

22 A. You okay buddy.

23 Q. Do you recall if the Defendant ever
24 responded to that message?

25 A. He did not.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. On the second page of State's 202, we
2 see a message again on September 2nd at 14:36.
3 When we subtract four from this Zulu time, we get
4 10:36 a.m.?

5 A. Yes, ma'am.

6 Q. Okay. And who is this a message from
7 and to?

8 A. From me to Vincent.

9 Q. Can you read this message for me?

10 A. Let me know something unlike your phone
11 to be off.

12 Q. Do you recall if he ever responded to
13 this message?

14 A. He did not.

15 Q. I believe you stated earlier that in
16 addition to trying to call the Defendant, that once
17 he didn't show up again on Tuesday, September 3rd,
18 you tried an emergency contact number?

19 A. Yes, ma'am.

20 Q. Whose number was that?

21 A. Roselynn's.

22 Q. Okay. And do you remember whether or
23 not you tried to make contact with her via phone
24 call?

25 A. Phone call and text.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Do you remember whether or not you left
2 a voicemail?

3 A. Yes, ma'am, I did.

4 Q. And that was on Tuesday, September 3rd?

5 A. Correct.

6 Q. Again, do you happen to remember the
7 phone number for -- that you had for Roselynn?

8 A. I would have to see it.

9 Q. Okay. And just to clarify, did you
10 have any understanding of what her connection was
11 to the Defendant?

12 A. They were dating, I believe.

13 Q. Okay. Do you recall whether or not you
14 knew if they lived together?

15 A. Yes, ma'am, they did.

16 Q. How did you know?

17 A. Multiple conversations with Vincent.

18 Q. Do you recall knowing whether or not --
19 knowing where they lived?

20 A. They had just bought a house in
21 Lexington.

22 Q. Do you recall how long ago before
23 September 1st they bought that house?

24 A. It was pretty soon, maybe a month.

25 Q. So your understanding was they hadn't

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | lived there long?

2 | A. No, ma'am, they had not.

3 | Q. Okay. If I showed you records of the
4 | message or phone calls you sent to her, would that
5 | refresh your memory on her phone number?

6 | A. Yes, ma'am.

7 | MS. MCMENAMIN: Permission to approach?

8 | THE COURT: Yes, ma'am.

9 | MS. MCMENAMIN: Beg the Court's
10 | indulgence. We need to switch out some exhibits --
11 | Court's Exhibit numbers. Those, Your Honor, are 11
12 | and 12.

13 | THE COURT: All right.

14 | MS. MCMENAMIN: I'll provide you with
15 | the new number for those.

16 | MR. SWERLING: Your Honor, I'm going to
17 | object unless he can identify Roselynn's voice.
18 | Because he's leaving a voicemail at a number. So I
19 | would have to object because -- unless he can
20 | identify that voice on that voicemail.

21 | MS. MCMENAMIN: I will lay the
22 | foundation for that, Your Honor, absolutely.

23 | THE COURT: If she lays the foundation,
24 | do have any objection?

25 | MR. SWERLING: Well, I'd like to hear

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 the foundation.

2 THE COURT: Okay.

3 MS. MCMENAMIN: So, Your Honor, State's
4 11 -- I mean, Exhibit 11 is now going to be State's
5 211.

6 THE COURT: Okay.

7 MS. MCMENAMIN: Court's Exhibit 12 is
8 now going to be State's 212.

9 THE COURT: Okay. They're not going to
10 be admitted yet until you lay a foundation.

11 MS. MCMENAMIN: Absolutely, Your Honor.

12 THE COURT: And let Mr. Swerling decide
13 whether he wants to object.

14 MS. MCMENAMIN: Yes, Your Honor.

15 Q. Mr. Smith, could you assist me in
16 removing that? Thank you. Looking at what was
17 Court's Exhibit 11, do you recognize this?

18 A. Yes, ma'am.

19 Q. What is this?

20 A. The text message I sent to Roselynn's
21 phone.

22 Q. Okay. Do you see your phone number
23 ending in 2995 in this document?

24 A. Yes, ma'am.

25 Q. Do you see the number that you used to

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 reach out to Roselynn?

2 A. I do.

3 Q. Does this refresh your memory now?

4 A. Yes, ma'am.

5 Q. Can you tell us what her phone number
6 was that you used?

7 A. 803-522-3431.

8 Q. And the contents of this message
9 appears correct?

10 A. Yes, ma'am.

11 Q. A message you sent to her?

12 A. Yes, ma'am.

13 MS. MCMENAMIN: We offer State's
14 Exhibit 211.

15 MR. SWERLING: No, that's fine. No
16 objection.

17 THE COURT: No objection. It's
18 submitted.

19 (WHEREUPON, State's Exhibit Number 211
20 was entered)

21 Q. And showing you State's 212, do you
22 recognize this?

23 A. Yes, ma'am.

24 Q. Do you see your phone number on here?

25 A. Yes, ma'am.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Do you see her phone number on here?

2 A. Yes, ma'am.

3 Q. The one ending in 3431?

4 A. Yes, ma'am.

5 Q. Does this reflect that you made calls

6 to her on September 3rd of 2019?

7 A. Yes, ma'am.

8 Q. Is that accurate?

9 A. Yes, ma'am.

10 MS. MCMENAMIN: State's 212, Your

11 Honor.

12 MR. SWERLING: No objection.

13 THE COURT: No objection. It's

14 admitted.

15 (WHEREUPON, State's Exhibit Number 212

16 was entered)

17 Q. Now, I'm showing you Court's Exhibit

18 17, do you recognize this?

19 A. I do.

20 Q. What is it?

21 A. The message I left on the phone.

22 Q. How do you know it's the message that

23 you left on Roselynn's phone?

24 A. My signature and the date.

25 Q. And did you listen to it on the date

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | that you signed it? I think that's -- what date is
2 | that?

3 | A. 3/21/22.

4 | Q. Did you listen to this?

5 | A. Yes, ma'am.

6 | Q. Whose voice it on here?

7 | A. Mine.

8 | Q. Do you identify yourself? Do you
9 | recall if you identify yourself?

10 | A. I do.

11 | Q. Okay.

12 | MS. MCMENAMIN: Your Honor, what was
13 | Court's Exhibit 17, we would like to offer as
14 | State's Exhibit 213.

15 | THE COURT: Any objection?

16 | MR. SWERLING: No.

17 | THE COURT: No objection. It's
18 | entered.

19 | MS. MCMENAMIN: So 17, Your Honor, is
20 | now State's 213.

21 | THE COURT: I gotcha.

22 | MS. MCMENAMIN: Thank you.

23 | (WHEREUPON, State's Exhibit Number 213
24 | was entered)

25 | Q. To confirm, Mr. Smith, you said that

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | this 803-522-3431 number was the number for
2 | Roselynn?

3 | A. That was the emergency contact, yes.

4 | Q. And you believed that to be Roselynn?

5 | A. Yes, ma'am.

6 | MS. MCMENAMIN: Permission to publish
7 | these exhibits to the jury?

8 | THE COURT: Yes, ma'am.

9 | Q. Looking at the calls, Mr. Smith, that
10 | you identified as being from yourself to the number
11 | you had for Roselynn. Let me know again if I need
12 | to zoom in at all for you for these dates and
13 | times, would that be helpful?

14 | A. Yes, ma'am.

15 | MS. MCMENAMIN: Might be helpful for
16 | everyone.

17 | THE COURT: Yes.

18 | Q. And you can see all the phone numbers
19 | and the dates?

20 | A. Yes, ma'am.

21 | Q. So we see here on 9/3, that's a call
22 | from you to her?

23 | A. Yes, ma'am.

24 | Q. At 14:21 Greenwich Time. If we
25 | subtract four, is that 10:21 a.m.?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, ma'am.

2 Q. We see a second call, 15:16 Greenwich
3 Time on the same day; is that right?

4 A. Yes, ma'am.

5 Q. Would that be 11:16 a.m. then?

6 A. Yes, ma'am.

7 Q. And then we see this text message,
8 September 3rd 14:23, that would be 10:23 a.m.?

9 A. Yes, ma'am.

10 Q. Comparing this to the call logs, was
11 that sent in between the two phone calls?

12 A. Yes, ma'am.

13 Q. Okay. And can you on State's 211
14 showing September 3rd at 14:23 or 10:23 a.m.
15 message from you to the number for Roselynn ending
16 in 3431, can you read the contents of this message
17 that you sent?

18 A. This is Steve Smith from Camping World.
19 I'm trying to check on Vincent to make sure that he
20 is okay.

21 Q. Do you want me to zoom in?

22 A. Yes, please. If he is okay can you or
23 him please text or call me. Thank you.

24 Q. And do you begin this message by
25 addressing a Roselynn?

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. I do.

2 Q. And is that the communications you
3 tried to make with her that day?

4 A. Yes, ma'am.

5 Q. Do you recall whether or not they were
6 successful?

7 A. They were not.

8 Q. Do you recall whether or not she ever
9 responded?

10 A. She did not.

11 Q. And you stated that after one of these
12 calls you do remember leaving a voicemail because
13 you listened to it?

14 A. Yes, ma'am.

15 Q. While we're getting the audio set up,
16 I'd like to just clarify some information. And if
17 you need me to provide you with the documents to
18 refresh your memory, please let me know.

19 The first text you sent to the
20 Defendant was at 10:36 a.m. stating, unlike your
21 phone to be off?

22 A. Yes, ma'am. I think the first text was
23 are you okay buddy.

24 Q. Oh, yes. Are you okay buddy. Give me
25 just a moment. And that was at 8:47 a.m., are you

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 okay buddy?

2 A. Yes, ma'am.

3 Q. And then the next one was at 10:36; is
4 that correct?

5 A. Yes, ma'am.

6 Q. 10:36 a.m.?

7 A. Yes, ma'am.

8 MS. MCMENAMIN: Permission to publish
9 the audio to the jury?

10 THE COURT: You may.

11 (WHEREUPON, playing the audio for the
12 jury)

13 Q. Was that your voice?

14 A. Yes, ma'am.

15 Q. And you said in this message that this
16 was out of character for the Defendant?

17 A. It was.

18 Q. And does this indicated that you were
19 having trouble getting in touch with him?

20 A. Yes, ma'am.

21 Q. Besides calls and texts to the
22 Defendant and Roselynn, did you make any other
23 efforts on Tuesday, September 3rd to make contact
24 with the Defendant?

25 A. We sent Eric by his house. Eric Weir.

STEVEN SMITH - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Who is Eric?

2 A. Another manager.

3 Q. And based on your knowledge from being
4 involved in that, was this attempt successful?

5 A. No, ma'am.

6 Q. And from there what did you decide to
7 do?

8 A. We discussed it and called in a welfare
9 check.

10 Q. What did you do? Did you ultimately
11 make that call or not?

12 A. Yes, ma'am, I did.

13 Q. Okay. Do you recall whether or not on
14 Tuesday, September 3rd, after making that call for
15 a welfare check if you ever went to the Defendant's
16 home?

17 A. Later that afternoon.

18 Q. Okay. And when you got there, do you
19 recall whether or not law enforcement was on scene?

20 A. A lot of them.

21 Q. Do you recall whether or not you spoke
22 to any of them?

23 A. I believe I did, yes.

24 Q. Do you recall whether or not you
25 provided any identifying information for the

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Defendant to law enforcement?

2 A. Just make and model of the car.

3 Q. Okay. What sort of vehicle did you
4 know him to drive?

5 A. Ford F-150.

6 Q. Do you remember the color?

7 A. Blue or black.

8 Q. Okay. Dark blue or a light blue?

9 A. It had to be a dark blue.

10 Q. And did you know him to drive any other
11 vehicles?

12 A. I did not.

13 Q. And do you recall if his truck was at
14 the residence that day?

15 A. I never got close enough to the house.

16 MS. MCMENAMIN: A moment to differ,
17 Your Honor.

18 THE COURT: Take your time.

19 MS. MCMENAMIN: I have nothing further
20 for this witness at this time, Your Honor.

21 MR. SWERLING: Excuse me one minute.

22 THE COURT: Sure.

23 CROSS-EXAMINATION

24 BY MR. SWERLING:

25 Q. Good morning, Mr. Smith.

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Good morning.

2 Q. I was following the different times
3 when you made phone calls to his number, to
4 Vincent's number. That was on 9/2 when you started
5 making phone calls?

6 A. Yes, sir.

7 Q. All right. He worked on 9/1; correct?

8 A. Correct.

9 Q. All right. And that was that Sunday
10 before Labor Day?

11 A. Correct.

12 Q. And was it -- is there some policy
13 there if you work on Sunday you can have half a day
14 off the next day?

15 A. Yes.

16 Q. Okay. And didn't he ask you whether or
17 not he could have that half day off?

18 A. He could have a half day because it's
19 the policy.

20 Q. So that was not a surprise that he
21 would not have been there on 9/2?

22 A. Working a half day from 9:00 to 1:30.

23 Q. Okay. Oh, I see -- okay, I see what
24 you're saying. So on Sunday, the following day
25 you'd work a half a day?

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Correct.

2 Q. Okay. Fine. Okay. So he was
3 scheduled at what point to come in?

4 A. 9:00 a.m. Monday.

5 Q. All right. And the -- didn't he --
6 that's what I guess what I was asking before.
7 Didn't he ask you whether or not he could have the
8 whole day off?

9 A. Not positive.

10 Q. So that is a possible yes that he did?

11 A. Correct.

12 Q. Okay. And so if he asked you for the
13 day off, do you remember whether or not you told
14 him it was okay or not?

15 A. I would not have if I called him at
16 8:47 that morning and asking if he --

17 Q. Well, that's another question I had.
18 At 8:47, I mean, you haven't even started yet.
19 It's open at 9:00; correct?

20 A. I show up at 7:00 a.m. and different
21 employees come in at different times and at 8:47,
22 Vincent would have been there.

23 Q. Okay. But he was -- schedule would
24 have been to come in at 9:00?

25 A. Yes.

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. It opens at 9:00?

2 A. Yes.

3 Q. And yet you called him before the place
4 even opened, technically?

5 A. Technically, yes.

6 Q. All right. So no dispute about that?

7 A. No.

8 Q. And so -- you're saying that you don't
9 remember whether or not you -- I'm sorry. You
10 don't remember whether or not you had the
11 conversation or not, but you would not have given
12 him the day off?

13 A. I do not remember If I had the
14 conversation. I would have not made the phone call
15 if I didn't I would have remembered I had that
16 conversation for that day off.

17 Q. So I assume what you're saying is it's
18 possible that you may have had that conversation?

19 A. Sure.

20 Q. Okay. Now, if you had that
21 conversation and he was expected to take off it
22 would not be unusual for him to be there if in fact
23 you had that conversation and he was going to take
24 off?

25 A. Most likely it would have been

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | documented in an e-mail.

2 | Q. In a what?

3 | A. In an e-mail.

4 | Q. Okay. Have you checked the e-mails?

5 | A. I have.

6 | Q. Okay. And there's no documentation on
7 | it?

8 | A. No, sir.

9 | Q. But even with checking the e-mails you
10 | still don't remember?

11 | A. I do not remember that conversation,
12 | no, sir.

13 | Q. Did he also have a conversation with
14 | you earlier about that not to expect him in
15 | September, that he would like to take off in
16 | September for vacation?

17 | A. No, sir.

18 | Q. So that -- you don't remember that
19 | conversation or it did not happen?

20 | A. Do not remember that conversation.

21 | Q. So that means it could have happened?

22 | A. I do not remember that conversation.

23 | Q. So you tried several times to call him
24 | and -- but you do agree that at least one of those
25 | phone calls took place even prior to the shop

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 opening?

2 A. Yes, but we have meetings at 8:30, so
3 our management team --

4 Q. Well, was there a meeting that day --

5 A. There was a meeting every single day
6 with the sales staff.

7 Q. Pardon?

8 A. There was a meeting every single day
9 with the sales staff.

10 Q. And he was not in sales force, was he?

11 A. He was part of the management staff.

12 Q. Pardon?

13 A. He was part of the management staff.

14 Q. Working in finance?

15 A. Correct.

16 Q. How many people worked in finance?

17 A. Two at that time.

18 Q. So if he was not there, there was some
19 other individual there who could be working in the
20 finance department?

21 A. I could work finance.

22 Q. You and was there one other person?

23 A. Yes.

24 Q. So there were three of you actually who
25 could work finance?

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Correct.

2 Q. Okay. So if he was not there you had
3 two other people that could go ahead and do the
4 financing?

5 A. Correct.

6 Q. Now, he had come -- he had been with
7 Camping World before down in Louisiana; is that
8 correct?

9 A. Correct.

10 Q. And would you tell the jury, do you
11 remember having conversations with him as to one of
12 the reasons why he was not happy with Camping
13 World?

14 Well, let me be more specific. Wasn't
15 there a period of time there where Camping World
16 cut some of the commissions and bonuses and Vincent
17 was unhappy about that?

18 A. We've always cut pay cuts and pay
19 increases coming.

20 Q. But you have pay cuts?

21 A. I do not believe he did.

22 Q. Do you know what happened in Louisiana
23 if he had a pay cut or not?

24 A. I do not.

25 Q. So did he ever -- my question back is

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | did you ever have a discussion with him where he
2 | was dissatisfied because they had knocked a number
3 | of dollars off of his bonus or commission?

4 | A. Yes.

5 | Q. You did have it?

6 | A. Yes.

7 | Q. So that would express some
8 | dissatisfaction if you are not getting what you
9 | think you're supposed to get?

10 | A. But in those conversations it was still
11 | this is the best gig out there.

12 | Q. But it wasn't as good a gig as it had
13 | been; correct?

14 | A. Depending on the year.

15 | Q. And so if -- I mean, you just said it
16 | would -- may have not been as good which means
17 | there would be some dissatisfaction if the money
18 | went down; correct?

19 | A. Correct.

20 | Q. Okay. And wasn't it also a policy pass
21 | that your spouse or Roselynn particularly in this
22 | case because they were not married, could not be
23 | covered under the health insurance?

24 | A. I have no idea.

25 | Q. You don't have any -- you never -- have

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 no recollection of whether that ever happened in
2 the company?

3 A. I do not.

4 Q. But Vincent did express some
5 dissatisfaction with Camping World on occasion
6 because of the money; isn't that correct?

7 A. Not more than any other employee;
8 correct.

9 Q. That's not the question. The question
10 was, did he have conversations with you about his
11 dissatisfaction with the money? I don't care about
12 any other employee.

13 A. Correct.

14 Q. When --

15 MR. SWERLING: Indulge me one moment,
16 please.

17 THE COURT: Take your time.

18 Q. So Camping World is in Bossier or
19 Bosner -- I guess it's Bossier, Louisiana; is that
20 right?

21 A. There is one there, yes.

22 Q. Yeah. And that's where he transferred
23 from?

24 A. Correct.

25 Q. Okay. Vincent did pretty well at the

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 financing; correct?

2 A. Correct.

3 Q. And you had told the police that he was
4 pretty dedicated to his work?

5 A. Correct.

6 Q. And he was bright and earned money for
7 Camping World?

8 A. Correct.

9 Q. So he was a valued employee?

10 A. Correct.

11 Q. Okay. And if you're a valued employee
12 and you don't get what you think you're going to
13 get you may look otherwise -- other where; isn't
14 that correct.

15 A. I wouldn't.

16 Q. But some people might?

17 A. It's possible.

18 Q. You were aware of the fact that he had
19 -- and I think you told law enforcement that you
20 were aware of the fact that he was investing in a
21 clothing manufacturing company in California?

22 A. I'd have to see the document.

23 Q. You don't remember telling Detective
24 Burt that?

25 A. It's two and a half years ago.

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. Well, that's fine. But you don't deny
2 that you knew that, do you?

3 A. I believe he was.

4 Q. He was investing in a manufacturing
5 company -- a clothing manufacturing company?

6 A. If I recall he was a silent partner,
7 yes.

8 Q. That's what I was asking. Okay. So
9 that was an option that he had and was pursuing at
10 that time; is that correct?

11 A. Yes.

12 Q. And that was something he was investing
13 in in a start-up?

14 A. I don't know much about the company --

15 Q. But you remember the conversation, you
16 remember what was going on about it?

17 A. We had multiple conversations, yes.

18 Q. Okay. You remember that Vincent had
19 what's called or he called a go bag?

20 A. Yes.

21 Q. Okay. And a go bag was if he ever had
22 to leave if some kind of emergency or whatever it
23 might have been, if he had to leave suddenly, he
24 had a go bag that was prepacked; is that correct?

25 A. To my understanding, yes.

STEVEN SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. It had money in it and it had
2 essentials that you would have?

3 A. Correct.

4 Q. Okay. And that's if something happened
5 unexpectedly that he had to leave?

6 A. Yes.

7 Q. Are you aware of the fact -- or were
8 you aware of the fact that he had a pretty
9 considerable amount of money in his house?

10 A. No.

11 Q. He never told you that?

12 A. No.

13 Q. There's no question that he was a --
14 that he gave you the impression that he wanted to
15 succeed financially and in management as well?

16 A. Correct.

17 MR. SWERLING: Excuse me one minute,
18 Your Honor.

19 THE COURT: Take your time.

20 Q. Were you aware of the fact that he had
21 firearms in his house?

22 A. I was aware of the fact that he was a
23 gun holder, yes.

24 Q. Okay. And that he had weapons in his
25 house? You're aware of that?

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes, we had spoken about guns before.

2 Q. And you -- and he bought a pretty nice
3 house. When he started working with Camping World,
4 he moved in after a stay in the motel?

5 A. Correct.

6 Q. He -- you thought that that house was a
7 pretty nice house?

8 A. Yes.

9 MR. SWERLING: That's all I have.

10 THE COURT: Any redirect?

11 MS. MCMENAMIN: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. MCMENAMIN:

14 Q. Mr. Smith, you were asked questions
15 about the Defendant's work schedule for the
16 beginning of September of 2019?

17 A. Yes.

18 Q. Can you tell us whether or not you
19 expected him to be at work on Sunday, September
20 1st?

21 A. I did.

22 Q. Did he show?

23 A. Yes.

24 Q. Can you tell us whether or not you
25 expected him to be there on Monday, September 2nd?

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. I did.

2 Q. And did he show?

3 A. No.

4 Q. Can you tell us whether or not you
5 expected him to be at work on Tuesday, September
6 3rd?

7 A. I did expect that.

8 Q. Did he show?

9 MR. SWERLING: That's just
10 rehashing the direct.

11 MS. MCMENAMIN: I'm getting to a point,
12 Your Honor. I'll move on.

13 THE COURT: Okay. Let's move on.

14 Q. You were also asked questions about the
15 hours and that you technically called the Defendant
16 on Monday, September 2nd approximately 15 minutes
17 before the store would open?

18 A. Yes, ma'am.

19 Q. Is it common business practices to open
20 the store without knowing all employees are there
21 that are necessary?

22 A. No, it's not.

23 Q. And whether or not there was a
24 misunderstanding about the Defendant needing to be
25 at work on Monday, September 2nd, based on your

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | observations, your experiences with him, would it
2 | still be unusual that he didn't respond to any of
3 | those text messages?

4 | MR. SWERLING: Leading. I object.

5 | THE COURT: Rephrase.

6 | Q. Whether or not -- based on your
7 | experiences with the Defendant can you tell us
8 | whether or not it would still be unusual for him to
9 | not respond to those text messages?

10 | MR. SWERLING: I object to the leading
11 | nature of it.

12 | MS. MCMENAMIN: Whether or not, it
13 | leaves it open for him to answer, Your Honor.

14 | MR. SWERLING: That doesn't make it not
15 | leading.

16 | THE COURT: Can you rephrase the
17 | question and let him answer it?

18 | MS. MCMENAMIN: I will try, Your Honor.

19 | THE COURT: Thank you.

20 | Q. Was it usual or unusual for him to not
21 | respond to communications from you?

22 | A. Unusual.

23 | Q. Okay. And did he respond to any -- do
24 | you recall whether or not he responded to any of
25 | your communications?

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. He did not.

2 Q. Can you tell us whether or not finance
3 is associated with your sales department?

4 A. Yes.

5 Q. How so?

6 A. You sell something, you finance it
7 directly.

8 Q. Do you recall who in your company did
9 the majority of the financing for Camping World?

10 A. Vincent and Chad.

11 Q. And questions were mentioned about
12 salary. Do you recall what his base salary was in
13 2019?

14 A. I believe it was --

15 MR. SWERLING: Your Honor, I didn't ask
16 any questions about that. I asked him whether or
17 not his bonus and commission got cut.

18 THE COURT: I don't know that it's
19 relevant to go into what he was making to this
20 case. Where are you going with this?

21 MS. MCMENAMIN: Your Honor, they asked
22 numerous questions about whether or not he had pay
23 cuts that would make him so disgruntled. They were
24 headed in that direction. So whether or not there
25 were pay cuts --

STEVEN SMITH - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 THE COURT: All right. Let me see the
2 lawyers for a second.

3 (WHEREUPON, there was a bench
4 conference)

5 THE CLERK: All right. Continue on.

6 MS. MCMENAMIN: Yes, Your Honor.

7 Q. Questions were asked on
8 cross-examination regarding the Defendant investing
9 in a company. A clothing company; was that right?

10 A. Yes, ma'am.

11 Q. Do you recall telling law enforcement
12 that the Defendant mentioned this company had
13 connections to Los Angeles, California?

14 A. I believe so.

15 Q. Do you recall whether or not the
16 Defendant ever mentioned this company having
17 connections to London?

18 A. No, ma'am.

19 MS. MCMENAMIN: Nothing further, Your
20 Honor.

21 THE COURT: Thank you. Any redirect?

22 MR. SWERLING: No, Your Honor.

23 THE COURT: Okay. Mr. Foreman -- well,
24 first of all, may I excuse this witness?

25 MS. MAYES: Yes, Your Honor.

1 THE COURT: Thank you. All right. Mr.
2 Foreman, I'm going to give y'all a break. I'm
3 sorry that went a little -- it's two hours, I need
4 y'all to stretch your legs. I can tell you we did
5 order you lunch. I think lunch is going to be here
6 at 12:45. So let's take a 15 minute break. We'll
7 come back, get some work done and then have lunch,
8 okay? Remember, no discussing the case amongst
9 yourselves or with anyone else. Thank you.

10 (WHEREUPON, the jury exits the
11 courtroom at 11:26 a.m.)

12 THE COURT: We're going to be in recess
13 for 15 minutes. I don't know if y'all noticed, but
14 they were ready to go. There was like several of
15 them signaled to me that they were ready to go.
16 And you can't just send one, you've to send them
17 all.

18 (WHEREUPON, there was a short break)

19 THE COURT: All right. Let's bring
20 them in.

21 The other thing, Mr. Swerling, Ms.
22 Wilson and Ms. Barbier, before they bring the jury
23 in. I am going to tell you, no comments from that
24 table from your client. I've heard them up here.
25 No mouthing words that that's not true because I've

1 | heard it all the way up here. I do not want to
2 | hear that again. So if y'all would make sure and
3 | I'm addressing him myself. I'm telling you, I do
4 | not want to hear it again, Mr. Shivers, okay?

5 | MR. SHIVERS: I hear you loud and
6 | clear, yes, ma'am.

7 | MS. BARBIER: And we'll reiterate that,
8 | Your Honor.

9 | THE COURT: Thank you.

10 | MR. SWERLING: Thank you, Judge.

11 | (The jury enters the courtroom at 11:50
12 | a.m.)

13 | THE COURT: Mr. Foreman, is the jury
14 | ready?

15 | THE FOREPERSON: We're ready.

16 | THE COURT: Okay. You can call your
17 | next witness.

18 | MS. MAYES: Your Honor, may it please
19 | the Court. The State calls Deputy Joshua Hale.

20 | THE COURT: Yes, ma'am.

21 | JOSHUA HALE,
22 | being first duly sworn, testified as follows:

23 | THE CLERK: If you'll have a seat over
24 | there, please. If you'll state your name and spell
25 | your last for the record.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

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

2 DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Good morning. Deputy Hale, tell us a
5 little bit about yourself. Tell us how you began a
6 career in law enforcement.

7 A. Yes, ma'am. I started my career in
8 2018 with the Lexington County Sheriff's
9 Department. I worked there for approximately two
10 years -- a year and a half, two years on the road
11 as a deputy. From there, I transitioned into a
12 full-time position with South Carolina Army
13 National Guard as a recruiter. And I'm still
14 certified as a law enforcement officer in South
15 Carolina within Lexington County just not with the
16 sheriff's department.

17 Q. All right. And can you tell us whether
18 or not you were employed with the Lexington County
19 Sheriff's Department back in September of 2019?

20 A. Yes, ma'am, I was.

21 Q. Now, I want to take you specifically to
22 the date of September, 3rd 2019. That date here.

23 A. Yes, ma'am.

24 Q. Being a Tuesday?

25 A. Yes.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. How, if at all, Deputy Hale, did you
2 become involved in a welfare check for a residence
3 located at 216 Carriage Hill Court?

4 A. Yes, ma'am. On that day, I was
5 assigned to West Region which covers the total of
6 Red Bank area, Gilbert, West Lexington, all the way
7 to Batesburg. I received a welfare check, call for
8 service, at this address, 216 Carriage Hill Court
9 in reference to a Vincent Shivers who had not been
10 at work Monday and Tuesday that week. 3rd was a
11 Tuesday, so that was the second day that he was not
12 at work.

13 Many calls had been attempted to locate
14 this individual as well as a girlfriend of his that
15 lived with him at that residence. No answers were
16 completed there.

17 Q. All right. I'm going to show you now
18 what is State's 163 in evidence. Do you recognize
19 that photograph?

20 A. I do.

21 Q. What is that location?

22 A. That is the front entrance area of the
23 residence from the street view.

24 Q. Now, Deputy Hale, what time did you
25 first receive that request for the welfare check?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. I received the call from dispatch at
2 approximately 11:09 in the morning on that Tuesday.

3 Q. And I'm going to need to ask you just
4 to explain a little bit further. When we use a
5 term like a welfare check, as a law enforcement
6 officer, what does that term -- what do you
7 understand that term to mean?

8 A. So this is a call for service that we
9 get that's outside of the typical realm of
10 enforcing the law or investigating a criminal
11 investigation. This is mainly to check on the
12 welfare of somebody who may not have been in
13 contact or in touch with a loved one. No member of
14 a family or friend and sometimes they're concerned
15 about the safety of that individual and they want
16 us to go and check upon that residence and make
17 sure they're okay for safety concerns.

18 Q. Can you tell us whether or not that's a
19 routine action of law enforcement?

20 A. Yes, ma'am, it is.

21 Q. And prior to this particular date on
22 September 3rd, had you conducted welfare checks
23 yourself in the past?

24 A. Yes, ma'am.

25 Q. So what was the first step that you

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | took regarding this welfare check? Who did you
2 | speak with?

3 | A. The first step that I took on the way
4 | to the house, I made contact through the phone with
5 | the complainant which was Steve Smith, he was a
6 | manager at Camping World where Vincent Shivers was
7 | employed as well. So I made contact with him to
8 | get some information he may not been able to relay
9 | to dispatch and get a little bit more of his
10 | concern of why we're doing a welfare check and why
11 | he decided to call law enforcement. So I made
12 | contact with him. He sounded very concerned over
13 | the phone. He stated that --

14 | Q. All right. I'm going to have to stop
15 | you because you won't be able to say what anybody
16 | else said to you. But let me ask you this, would
17 | Steve -- did you have a phone number for Steve?

18 | A. I did.

19 | Q. Okay. Did you understand that to be
20 | Steve Smith from Camping World?

21 | A. I did.

22 | Q. Do you have with you, Deputy Hale, your
23 | report?

24 | A. I do.

25 | Q. What time did you initiate that welfare

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | check and speak with Steve Smith at Camping World?

2 | A. I initiated the call at 11:09 when I
3 | received my MDT which is my computer inside of my
4 | patrol vehicle. And I arrived on the scene at the
5 | house at approximately 11:31.

6 | Q. All right. So I'm going to stop you
7 | right there. You said you initiated this contact
8 | at what time?

9 | A. I arrived on the scene at 11:31,
10 | approximately.

11 | Q. 11:31 on the scene. And what time do
12 | you believe you spoke with Mr. Smith?

13 | A. It would have been after 11:09 after
14 | the dispatch. So between 11:09 and maybe
15 | approximately 11:20, prior to arriving on the
16 | scene.

17 | Q. All right. Now, without saying what
18 | anyone said to you, can you tell me whether or not
19 | you spoke with Mr. Smith personally?

20 | A. I did.

21 | Q. Can you tell us whether or not his
22 | demeanor was one of concern?

23 | A. It was very concerning sounding.

24 | Q. Now, what did you do next?

25 | A. I arrived on the scene of the property

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 to attempt to make contact with the homeowners of
2 that property.

3 Q. All right. We're looking here at that
4 location being 16 -- State's Exhibit 163 being that
5 home. Take us through your initial steps there as
6 you respond.

7 A. Initially, I walked down the driveway
8 to the front door. On the way to the front door, I
9 noticed a blue Sedan -- four door Sedan parked in
10 the driveway. There's a little dip in the driveway
11 and there's like a retaining brick wall there, so
12 it's somewhat hard to see from the street view.
13 That's what I noticed walking down the driveway.

14 I went to the front door -- went to the
15 front door and knocked several times. Announced
16 Lexington County Sheriff's Department. Rang the
17 doorbell several times and I waited several moments
18 at the front door for an answer. The only thing
19 that I could hear was a dog barking and the sounds
20 of it being loose inside the house near to that
21 front door.

22 Q. All right. And can you show us the
23 location that you're referring to?

24 A. The front door is right in this area.

25 Q. All right. And you commenced to walk

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 the property?

2 A. The front of the property.

3 Q. I'm going to also show you what is
4 State's 164. Do you recognize what's depicted in
5 that photograph?

6 A. I do.

7 Q. What is it?

8 A. It's a vehicle that was parked in that
9 driveway in that same location.

10 Q. Now, how long would you estimate you
11 were at that front door knocking or ringing that
12 doorbell?

13 A. It was approximately ten minutes on the
14 initial attempt.

15 Q. Did you get any response at all at the
16 door?

17 A. I did not.

18 Q. What if anything could you hear inside?

19 A. I could hear a dog barking. Sounded
20 like it was loose. I could hear the paws running
21 around the front area. I could not see through --
22 through that area because there was some type of
23 obstruction like some kind of cover on the windows,
24 so I couldn't visibly see in there. I could just
25 hear that dog being in there.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. What did you do next?

2 A. From there, I went back to that vehicle
3 and I requested a records check on that license
4 plate. And dispatched advised that it came back to
5 Ms. Roselynn Cedeno who I had information also
6 lived there.

7 Q. What happened next?

8 A. From there, I returned to the front
9 door. Made another attempt to knock and ring the
10 doorbell and then I went back to my patrol car.

11 Q. Did you ever get any response at the
12 door?

13 A. I did not.

14 Q. Did you ever take any action to
15 determine whether maybe the mail had been recently
16 checked?

17 A. I did.

18 Q. What if anything did you do?

19 A. So I went back to my patrol vehicle as
20 well. Scrolled through social media. Attempted to
21 find Mr. Shivers on social media, see if there was
22 a post related to where he may have been. If there
23 were family members that were tagged. Friends,
24 family, things like that on social media and that
25 was inconclusive as well. I made a phone call back

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 to Mr. Steve Smith and confirmed what vehicle he
2 typically would drive to get kind of indications
3 and he advised that is was a Ford F-150.

4 Q. Did you see any signs of the Ford F-150
5 at the location?

6 A. Not at that front location.

7 Q. All right. What if anything occurred
8 when you checked the mailbox?

9 A. It appeared that mail was in the
10 mailbox.

11 Q. And what if anything did you learn in
12 that regard?

13 A. I saw a package that was consistent
14 with someone ordering something that was delivered
15 maybe by FedEx, UPS, something of that nature. I
16 looked at the package on front of the envelope, it
17 had a Roselynn Cedenno name addressed on it and it
18 had the address which was 216 Carriage Hill Court
19 and it also had a phone number as well.

20 Q. All right. Did you at this point also
21 have the name of the girlfriend who you believed
22 should be home at that residence?

23 A. Yes, ma'am, I had that information
24 prior to arriving on scene.

25 Q. And, ultimately, when you received that

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 package, can you tell us whether or not you made
2 any calls to that number for Roselynn Cedeno?

3 A. Yes, ma'am, I made multiple attempts on
4 that phone call.

5 Q. Okay. I'm going to show you a
6 document. I'm going to show you what is marked as
7 State's 17.

8 MS. MAYES: This being stipulation by
9 Verizon, Your Honor.

10 Q. Have you had a chance to review this
11 document previously?

12 A. Yes, ma'am.

13 Q. Can you tell us whether or not you see
14 any phone calls that were placed by you to Roselynn
15 Cedeno's phone number, that being the phone number
16 which ends in 3431?

17 A. I do.

18 Q. How many approximate calls did you make
19 on that morning?

20 A. Approximately four.

21 MS. MAYES: And this would be 17 for
22 evidence, Your Honor.

23 MS. WILSON: No objection.

24 THE COURT: Okay. And that's Verizon;
25 right?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Yes, Your Honor.

2 (WHEREUPON, State's Exhibit Number 17
3 was entered)

4 Q. What times are depicted there for the
5 phone calls that you're making to Roselynn Cedeno
6 outside the home on Tuesday, September 3rd?

7 A. Yes, ma'am. The first one is Tuesday
8 the 3rd at 15:38, which would have been 11:38 Zulu
9 time. And then the second one was listed as 15:39,
10 15:48 and 15:49.

11 Q. So those all between 11:30 and 11:00 --
12 what was the last call?

13 A. 11:49.

14 Q. So all between 11:30 and 11:49?

15 A. That's correct.

16 Q. Did you ever get any response to the
17 phone calls?

18 A. I did not.

19 Q. What did you do next?

20 A. From there I went back to the front
21 door of the residence and I tried to make contact
22 again. Made my way to the side of the garage.
23 Looked into the garage, I did not see anything
24 compelling. Knocked on the garage door. Then
25 announced myself again as a law enforcement officer

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 and had no response.

2 Q. Can you tell us whether or not you were
3 wearing a body camera?

4 A. I was.

5 MS. MAYES: Beg the Court's indulgence.

6 Q. I am going to show you what is State's
7 29 and ask you whether or not you recognize this
8 item?

9 A. I do.

10 Q. How so?

11 A. By my signature.

12 Q. And can you tell us whether or not this
13 is a fair and accurate representation of what
14 occurred on your body cam while you were there at
15 the scene there at 216 Carriage Hill Court?

16 A. Yes, ma'am.

17 MS. MAYES: State's 29 for evidence,
18 Your Honor.

19 THE COURT: All right. Let me ask you,
20 Ms. Mayes, is that Court's Exhibit under 15?

21 MS. MAYES: It is not, Your Honor.

22 THE COURT: It's not?

23 MS. MAYES: This is a new exhibit
24 subject to agreements of the parties.

25 THE COURT: Okay. Thank you. Any

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 objection?

2 MS. WILSON: No, Your Honor.

3 THE COURT: Okay. It's admitted then.

4 (WHEREUPON, State's Exhibit Number 29
5 was entered)

6 Q. Deputy Hale, you mentioned that as you
7 were on the perimeter you got no response at the
8 front door?

9 A. That's correct.

10 Q. Where if anywhere did you go next?

11 A. I exited to the backyard of the
12 residence to see if there was anybody that could be
13 located back there.

14 Q. I'm going to show you what are State's
15 5 -- 3, 4 and 5 and ask you whether or not you
16 recognize these photographs?

17 A. I do.

18 Q. Can you tell us whether or not these
19 are a fair and accurate representation of that
20 residence?

21 A. It is.

22 MS. MAYES: State's 3, 4 and 5 for
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 MS. WILSON: No, Your Honor.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: It's admitted.

2 (WHEREUPON, State's Exhibit Numbers 3,
3 4 and 5 were entered)

4 Q. All right. Looking at State's 3, I
5 want you to tell us what we're observing here.

6 A. That would be the back of the
7 residence.

8 Q. And then also State's 4.

9 A. That would be the back of the residence
10 as well, behind the driveway.

11 Q. All right. Now we see a fence here to
12 the right. Can you tell us whether or not that
13 fence is also present on the opposite side of the
14 house?

15 A. It is.

16 Q. Which would be over to the far right?

17 A. Correct.

18 Q. What did you do next?

19 A. From there I went through the fence.
20 Looked in the back yard. Walked through the
21 backyard. Kinda scanned to see if there was any
22 reasonable place in the backyard that the homeowner
23 could be as well as Mr. Shivers and the Roselynn
24 Cedeno. There was no contact made back there as
25 well.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Now, did you see anything of the
2 ordinary back there -- out of the ordinary back
3 there?

4 A. Not in the yard.

5 Q. Had you seen any signs of forced entry
6 or anything along of that nature along that area?

7 A. I did not.

8 Q. What did you do next?

9 A. From there, I went underneath the deck
10 where there was a patio. And there was a door that
11 was located there. I observed a room, some sort
12 like a bedroom. It did not have bed in there
13 though. There was a light that was on inside that
14 room, so I attempted to make contact with somebody
15 through that room. I saw a light and also saw dogs
16 that were loose in the room as well and I knocked
17 on the door and announced myself as a sheriff's
18 department deputy as well and there was no contact.

19 Q. All right. Now, can you tell us
20 looking at State's 29 being your body camera, can
21 you tell us whether at this point you are utilizing
22 your body camera?

23 A. I am.

24 Q. You activated it at this point?

25 A. I did.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

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

3 THE COURT: It's granted.

4 Q. And, Deputy Hale, as we go through
5 this, I'm going to ask you to tell us what is
6 occurring at each point along the way.

7 A. Yes, ma'am.

8 Q. And you indicate that your body cam is
9 activated at the front of the house or the back of
10 the house?

11 A. This is at the back of the house. So
12 this is the room that I located. I observed the
13 dogs initially. Upon my first initial reaction, I
14 observed the dogs as well as a what appeared to be
15 a food and water bowl on the floor that appeared to
16 be empty. I observed a crate that was in the room
17 as well. So indicated that those dogs may have
18 normally been crated.

19 I also observed in the middle of the
20 carpet it appeared to be discolored, consistent
21 with possibly that the dogs urinating in that room.
22 So that indicated to me that these dogs may have
23 been unattended for a while.

24 I also observed a cell phone on this
25 vanity. There's a lot of make-up type products on

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | this vanity and I observed a cell phone and that
2 | was the most unusual to me.

3 | Q. And you indicated that there was at
4 | least one light on in this room?

5 | A. Yes, as well as that lamp on the vanity
6 | as well. Which was a little bit more of a personal
7 | lamp than I would think somebody would use. So
8 | that was part of my cues and clues as well.

9 | Q. Did this -- can you tell us whether or
10 | not this indicated to you that someone should be at
11 | home?

12 | A. It did. So at this point I'm knocking
13 | and announcing myself as well. And I decided to
14 | call my supervisor at the time which was Master
15 | Deputy Dustin Pollard.

16 | Q. Are you advising your supervisor of
17 | what you are observing?

18 | A. I am. I advised him of my contact over
19 | the phone on the way to the residence. I advised
20 | him what I did at the front of the residence and
21 | kind of the duration to kind of give an idea of
22 | what I've already done. Which was approximately
23 | close to 30 minutes at the front of the house prior
24 | to going to the back.

25 | I observed that neither of these

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 subjects had been contacted through phone, through
2 knocking on the door, ringing the doorbells, to the
3 back of the residence. I was also letting him know
4 that there was a light on in that room, the dogs
5 were loose, the bowls, the crate and there's a cell
6 phone on the vanity. And then we just maintained
7 contact on the phone as I was continuing.

8 Q. Okay. Now, you indicated that it is
9 going to be 11:31 that you arrived there at that
10 scene and began the actual welfare check?

11 A. Correct.

12 Q. What time does your body cam depict
13 right now?

14 A. 11:57.

15 Q. Okay. And, again, we're seeing it as
16 15:57, can you explain the time differential there?

17 A. Correct. So on the Axon, this time is
18 on Zulu time, so that's a Universal Time that Axon
19 police services often used. So this is often
20 referred to as UTC as well. So Universal Time is
21 broken up into time difference, depending on where
22 you live. So we're on the East Coast, so South
23 Carolina between March and November is generally
24 falls under daylight savings time or EDT. So that
25 would be an offset of four hours to the minus. So

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 15:57, four hours prior to that is 11:57.

2 Q. Now, in this particular footage we see
3 this structure here. What is that structure?

4 A. That is a gate that I entered and
5 walked through.

6 Q. And when you enter that gate, can you
7 tell us whether or not it was closed?

8 A. It was closed.

9 Q. And you opened it?

10 A. I did.

11 Q. Now, this is the room that you
12 previously mentioned. Did you announce yourself?

13 A. I did.

14 Q. Okay. At this point, we can't hear
15 audio. Does the body cam allow you to activate and
16 then deactivate the sound?

17 A. It does.

18 Q. Any response to you announcing
19 yourself?

20 A. There was no response.

21 Q. What are you doing now?

22 A. So I'm still on the phone with my
23 Supervisor, Dustin Pollard, advising him that
24 there's still no response and that I needed to
25 check further and I was going to make my way up to

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | that second floor where that deck was at. Had no
2 | contact made -- been made at that base floor level.

3 | Q. That's where you mentioned you had also
4 | seen it looked like what was the pet food bowl full
5 | or empty?

6 | A. I appeared empty. There was two
7 | separate bowls. One appeared that it may have been
8 | for water just due to how clean it was and it
9 | appeared completely dry. The other bowl had what
10 | appeared to be scraps of leftover food on the rim,
11 | but it was not freshly filled.

12 | Q. What are you doing now?

13 | A. So I walked down the stairs and the
14 | first thing I saw through that window were a pair of
15 | feet that were sticking straight up, toes to the
16 | sky inside that room. The rest of what appeared to
17 | be a body at the time was covered in some kind of
18 | linen -- some kind of sheets, bedding, pillows
19 | around. So at this time, I'm on the phone with my
20 | supervisor and I said, hey, you know, this is what
21 | I'm observing.

22 | Q. You inform Master Deputy Dustin Pollard
23 | of what you see at this point?

24 | A. Yes. And I observed what appeared to
25 | be a lifeless person.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Now, given that you see someone and as
2 you described appears to be lifeless. What action
3 did you determine was necessary at this point,
4 Deputy Hale?

5 A. I determined that immediate aid needed
6 to be rendered that person. I wasn't sure if they
7 were dead or not. I didn't notice any respiratory
8 movements under the sheets. I knocked on the
9 window, announced myself as well, and there was
10 absolutely no movement. So it was crucial at that
11 time that I check on that person to provide aid or
12 see what aid needed to be brought to that person.

13 Q. And how did you go about entering that
14 room?

15 A. That door to the bedroom was unlocked,
16 so I opened it. So at this point, I'm advising my
17 supervisor that -- of what I've seen and that I
18 needed him to respond urgent, which means lights
19 and sirens as well as get medical EMS en route as
20 well on the way to that house.

21 So I also observed a fairly large size
22 dog that was running around in that room as well.
23 So at this point, I'm making sure that it's safe
24 for me to enter with that dog being there.

25 Q. What are you doing now?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. Here I'm checking for signs of life,
2 priority of life by audibly shouting, sheriff's
3 department, get up! Get up! Get up! And also
4 physically tapping as well to see if there was any
5 response or any movement and there was none.

6 Q. Now, what is happening right here
7 regarding your location or positioning in proximity
8 to the victim?

9 A. The way that the linen and blankets
10 were spread out, that was one of the first things
11 coming through the door. That linen was right
12 there on the floor. There was no way that I could
13 really step around it. And I was concerned for the
14 body, I wasn't really thinking of the blanket at
15 that time as long as I wasn't stepping on the
16 person. So that would be my left boot that is
17 stepping directly on that that linen.

18 Q. And what is located in this area?

19 A. My right boot.

20 Q. Can you tell us, Deputy Hale, we saw
21 you enter, did you put gloves on?

22 A. Not at the time.

23 Q. Why not?

24 A. I wasn't thinking about gloves at the
25 time, I was just thinking about getting this person

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 immediate help.

2 Q. And are you a crime scene technician?

3 A. I'm not.

4 Q. You were there for what purpose?

5 A. To check for the signs of welfare of
6 people. So I had no response. At this point, I
7 lifted the sheet just enough to determine if this
8 was a male or a female and what kind of condition
9 this may have been in. If I could possibly render
10 some kind of aid before EMS arrived.

11 Q. When you lifted the sheet, what if any
12 determination were you able to make?

13 A. I determined that it would have been a
14 female based on the chest area from what I could
15 see.

16 Q. When you lifted the sheet, what if
17 anything could you tell us about the condition of
18 the victim?

19 A. I could tell that the skin tone of the
20 legs and the feet were extremely pale. And
21 underneath the blanket they're -- I saw multiple
22 colors, grayishes of green, darker colors that may
23 have been consistent with dried up blood. Blue,
24 different variations of that nature.

25 Q. What if anything else are you observing

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | around the area at this time?

2 | A. At this time, to my right on the floor
3 | I observed several empty shell casings which
4 | appeared to be from a pistol caliber of some sort.

5 | Q. You saw more than one shell casing?

6 | A. I did.

7 | Q. Can you tell us whether or not these
8 | were spent shell casings?

9 | A. They were, just the brass pieces.

10 | Q. And what are we looking right here in
11 | front of the doorway?

12 | A. That would be the blanket linen that is
13 | spread out that I came across as soon as I opened
14 | the doorway.

15 | So at this time, the position my
16 | microphone was for my radio was positioned above by
17 | body camera, so that's why the hand is there. I
18 | was trying to relay over the radio what was going
19 | on. My master deputy was already running license
20 | tags to me. In that particular spot, my radio was
21 | beeping which meant it wasn't getting good signal
22 | at that location, so I decided to call my sergeant
23 | that was on shift as well which was Caleb Black.

24 | Q. And you step out for a moment. What
25 | are you doing now?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. I'm on the phone. It's trying to
2 connect to my Sergeant, Caleb Black and also update
3 him on information that I was going to need to go
4 through the residence and ensure the safety of
5 anybody else who may have been in a similar
6 condition.

7 Q. All right. Now, you had indicated that
8 the original subject of your welfare check was who?

9 A. It was Vincent Shivers as well as
10 Roselynn Cedenno.

11 Q. And you have identified the body as
12 that of a female?

13 A. I did.

14 Q. What if any concerns did you have for
15 the original subject of the welfare check being
16 Vincent Shivers?

17 A. I had very high concern. I established
18 that was a female likely to be the person who lived
19 in that home with Mr. Vincent and I still had this
20 subject of the welfare check to be missing. So I
21 had no idea where, if anywhere in the house he may
22 have been located. If this was an abduction, it
23 this was a robbery, I had no idea what condition he
24 would have been in or where he was located. So I
25 needed to continue pursuing that to find him.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. And what is meant by the term
2 protective sweep?

3 A. A protective sweep is something that we
4 do to preserve evidence. We look for other people
5 who may be in need of immediate care and also to
6 prevent any possible escape of suspects that may be
7 in the area. So we have to still preserve and
8 protect what we found on the scene in that area.
9 So at that time we are looking for people. So I
10 had to go through systematically and check for
11 where any potential place or person can be. Either
12 hiding or be hurt at in the home.

13 Q. Can you tell us whether or not you had
14 concerns a suspect may be inside?

15 A. I did.

16 Q. And we see now on the clock it is 12:01
17 -- 12:01 p.m. What if anything is your
18 understanding of whether you had backup coming?

19 A. I did know that I had backup coming
20 based on my phone call with Dustin Pollard, my
21 supervisor, as well as this phone call with Sergeant
22 Caleb Black, they had EMS on the way to us. They
23 wouldn't have arrived until that scene was deemed
24 safe and secure for them to enter and conduct their
25 jobs as well.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. So you had EMS was on the way as well?

2 A. Correct.

3 Q. Is it your understanding that your
4 backup was coming, lights and sirens?

5 A. Yes.

6 Q. What happened next?

7 A. From there, I was on the phone with my
8 sergeant. Advised him briefly of what was going on
9 and that I was going to reenter the residence,
10 attempt to get that dog outside safely, so that it
11 wasn't a harm to myself or to that scene at the
12 time and then do that what we just talked about,
13 the protective sweep. Make sure the residence is
14 safe for myself, for other people who may have been
15 in there so that help could be rendered.

16 Q. Is your weapon drawn at this point?

17 A. At this point going through the
18 residence it is going through that door.

19 Q. Is it also -- is the channel clear so
20 that your coworkers, your fellow officers can hear
21 you?

22 A. At this time, dispatch did not hold the
23 channel at the time, but they knew that officers
24 were responding to that scene.

25 Q. Can you tell us whether or not Caleb

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Black, your sergeant, was listening?

2 A. He was. And he was also en route, on
3 the way.

4 Q. As well as your Master Deputy Dustin
5 Pollard?

6 A. Correct. So at this point, I noticed
7 that the dog was barking and he was in between
8 showing some signs of protectiveness and aggression
9 and back and forth, so I wanted to make sure that
10 he could get out safely so that I could properly go
11 through the residence as well.

12 Noticed that the light to this room was
13 on. So right here is my first indication that
14 there were some type of weapons present in the home
15 by this weapon in the corner of the closet here.

16 Q. You have just walked through what area
17 there in the master bedroom?

18 A. That would have been the bathroom area.

19 Q. Okay. And from there you were look
20 into what area across the way?

21 A. Into the closet. That would have been
22 the master closet.

23 Q. Could you see firearms present?

24 A. I could. So at this time, I noticed
25 another room with a light on.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Walking through this room, I initially
2 observed the shredding of what appeared to be maybe
3 a mattress foam topper of some sort, so I then
4 began to look at the other elements of the room to
5 see if anything had been disturbed. Such as the
6 structures, the frames of the bedding, the walls,
7 things of that nature. Nothing appeared to be
8 damaged other than that foam.

9 Q. The styrofoam we see here?

10 A. Correct.

11 Q. Let me ask you this, the white dog that
12 we saw earlier in the master bedroom, can you tell
13 us whether or not that dog also would have had
14 access to this second room?

15 A. He would have because that door was
16 open.

17 Q. Did you see any indication of that room
18 being rummaged, such as drawers pulled opened or
19 anything of that nature?

20 A. I did not. Walking into that room,
21 there's a dresser on this side of my body camera.
22 I noticed several items on top of that dresser that
23 -- where up -- in an upright condition, they had
24 not toppled over. The drawers were shut.
25 Everything appeared to be neat except for this

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | styrofoam.

2 | Q. Was that the dresser you spoke of
3 | previously?

4 | A. It is.

5 | Q. Are all drawers in tact?

6 | A. Correct.

7 | Q. And items where they should be?

8 | A. Correct.

9 | Q. Now, are you an animal owner?

10 | A. I am.

11 | Q. Are you familiar with the type of
12 | damage that an animal can do?

13 | A. Yes, ma'am. That's what that foam
14 | indicated to me was indication of animal activity
15 | that was left out in that room as well.

16 | Q. Is it necessary to check closets?

17 | A. It is. Because that's where a person
18 | could be --

19 | Q. Is this an additional spare bedroom?

20 | A. It is. So this would be the kitchen
21 | area. One of the things that stuck out to me in
22 | this area was that a broom dust handle was
23 | positioned in the middle of the kitchen which was
24 | unusual to me. That was just off of first glance.
25 | I was looking for people who may have needed aid.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 So I wasn't really paying attention to the surface
2 of the floor, just what was standing in plain view
3 right there.

4 Q. Now, throughout this time, are you
5 seizing any items?

6 A. I am not.

7 Q. Are you searching any items?

8 A. I am not. I'm only looking for places
9 where a person could be at.

10 Q. Are these additional pets that you
11 observed earlier?

12 A. Yes, from the outside of that basement
13 door.

14 Q. That door right there, what are you
15 doing?

16 A. I am checking to see if it is locked,
17 which it was locked and I attempted to open it as
18 well.

19 Q. And can you tell us whether or not that
20 door would be consistent with a garage door?

21 A. It would be.

22 Q. Was it also dead bolted?

23 A. It was.

24 Q. That downstairs area that we were
25 looking at there, can you tell us whether or not

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 the animals could get upstairs?

2 A. They could go up these stairs, but they
3 would not have had access to the rest of the house
4 upstairs due to this door being shut.

5 Q. Okay.

6 A. So at this time, the channel had been
7 open which meant that radio traffic was more freely
8 allowed to come in allowing first responders and
9 EMS and the fire department to arrive on scene as
10 well.

11 Q. Now, what did you do just before
12 accessing this door?

13 A. I utilized the gloves that I had in my
14 back pocket.

15 Q. All right. This door being the front
16 door, can you tell us whether or not it was locked?

17 A. It was locked.

18 Q. Was it dead bolted?

19 A. It was.

20 Q. Who unsecured that lock?

21 A. I did.

22 Q. For what purpose?

23 A. To allow EMS and fire fighters to
24 arrive on scene. Unlocking the door it also didn't
25 appear that any damage to the frame had been done

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 as well and it was dead bolted.

2 Q. Throughout your work here at the scene
3 and outside the premises and inside the scene, did
4 you ever see any signs of forced entry?

5 A. I did not. So next to arrive on scene
6 would have been the fire fighters and EMTs. I'm
7 advising them at this point where the victim was
8 located in the residence and that we needed to
9 restrict that area as much as possible. So we
10 didn't need everybody to go in that back room, only
11 what was necessary to do what they needed to do,
12 confirm and have the coroner as well be notified.

13 Q. I'm going to show you some photographs
14 and ask you whether or not you recognize them.
15 We're going to start with State's 30, 31, 32 and
16 33. Ask you whether or not you recognize those
17 photographs and whether or not they're a fair and
18 accurate representation of the scene?

19 A. I do recognize them and they appear to
20 be fair and accurate of what I observed.

21 Q. Also 37 and 35?

22 A. These would be fair and accurate as
23 well.

24 Q. I'm going to show you what is 38 and
25 40. Ask you whether or not those diagrams appear

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 to be a fair and accurate representation of the
2 scene?

3 A. They do.

4 MS. WILSON: No objection.

5 MS. MAYES: Your Honor, this would be
6 37, 35, 30, 31, 32, and 33 for evidence.

7 THE COURT: No objection; right?

8 MS. WILSON: No objection.

9 THE COURT: They're admitted.

10 MS. MAYES: And then 38 and 40 are the
11 scene diagrams.

12 THE COURT: Have they looked at 38 and
13 40?

14 MS. MAYES: Earlier, yes, Your Honor,
15 and I don't believe there's no objection.

16 THE COURT: No objection?

17 MS. WILSON: No objection.

18 THE COURT: All right. Then they're
19 all admitted.

20 (WHEREUPON, State's Exhibit Number 30,
21 31, 32, 33, 35, 37, 38 and 40 were entered)

22 Q. I'm going to start here with 38 being
23 the interior of the home. Can you tell us where it
24 is that you first observed the victim outside of
25 the patio glass door?

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 A. I first observed the victim through
2 this window door area of the master bedroom.

3 Q. And then looking here at 40. If you
4 could tell us approximately where along that
5 diagram of the master bedroom you observed the body
6 of Roselynn Cedeno?

7 A. The initial window would have been in
8 this area and then the door that I entered would
9 have been in that corner.

10 Q. And where was she?

11 A. She was right on the other side of the
12 door in this area here.

13 Q. Looking here at 30 we see that's a
14 still shot from your body cam.

15 Looking here at 33, do you see the
16 blanket area where you stepped?

17 A. I do.

18 Q. And then looking here at 37, this being
19 a crime scene photograph. Deputy Hale, what are we
20 looking at here in the entirety of this photograph?

21 A. This was where the victim was found on
22 the other side of the door where I entered and
23 initially conducted my search for any person in
24 need of any aid as well.

25 Q. Now, right here we see a crate. Was

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 the only dog you saw up here the white dog?

2 A. It was.

3 Q. And can you tell us whether you did
4 anything to disturb the evidence at the scene other
5 than the actions that we observed on your body worn
6 camera?

7 A. I did not.

8 Q. Again, as you're stepping here were you
9 wearing boot covers?

10 A. I was not.

11 Q. 113 and 114, can you tell us whether
12 those are a fair and accurate representation of the
13 scene?

14 A. It is.

15 Q. And then I'm going to show you what's
16 116 and ask you whether or not you recognize that
17 photograph?

18 A. I do recognize it.

19 MS. MAYES: This would be 113, 114 and
20 116 for evidence, Your Honor.

21 THE COURT: Any objection?

22 MS. WILSON: No objection.

23 THE COURT: Okay.

24 (WHEREUPON, State's Exhibit Numbers
25 113, 114 and 116 were entered)

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Now, as you're here at the scene, did
2 you ever see signs of any another individual?

3 A. I did not.

4 Q. You had indicated that you knew that
5 Vincent Shivers had a truck?

6 A. I did.

7 Q. Did you ever see any signs of that
8 truck outside the residence?

9 A. I did not.

10 Q. And once you have done your protective
11 sweep, what was the next step in this
12 investigation?

13 A. This was to secure the scene. Ensure
14 that EMS and fire fighters did their protocol. The
15 coroner was involved and then ultimately this was
16 turned over to our major crimes division as well.

17 Q. All right. Did you have detectives,
18 sergeants, lieutenants with major crimes unit
19 arriving there at the scene?

20 A. I did. So after EMS and fire, my
21 Master Deputy Dustin Pollard arrived next. He
22 briefly walked to that room to make sure everything
23 was going according to how EMS was supposed to do
24 their job and not contaminate the area as well.
25 And from there, we went outside of the front door,

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 | shut the house down. We maintained a crime scene
2 | log and taped off the outside of the residence as
3 | well until major crimes and the coroner could
4 | arrive on scene.

5 | Q. And based upon your observations, did
6 | the scene become secure at that point?

7 | A. It was.

8 | Q. And did it remain secure in the custody
9 | of law enforcement until the time you left the
10 | scene that day?

11 | A. It did.

12 | Q. Now, I know you mentioned that your
13 | major crimes unit responded, can you tell us
14 | whether or not the crime scene investigators also
15 | responded?

16 | A. They did.

17 | Q. And you've shown us that area regarding
18 | the blanket shown here in 33. I realize that
19 | photograph is dark. But I'm now going to show you
20 | what is 113 and 114.

21 | But first, 31. Is your boot visible in
22 | that photograph?

23 | A. It is. It is here at the bottom left.

24 | Q. Okay. 113?

25 | A. Yes. In this area.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 Q. Can you tell us whether or not that
2 blanket appears consistent with the blanket you
3 recall stepping on?

4 A. It is.

5 Q. And 114, can you tell us what is
6 depicted in marker D is also consistent with the
7 general area in which you stepped?

8 A. It is.

9 Q. And now I'm going to show you what is
10 116 and ask you what we're looking at here?

11 A. That is a picture of my boot which was
12 a size 11 Danner make at the time.

13 Q. Is that the boot you wore at the crime
14 scene on this particular day?

15 A. It was.

16 Q. Did you provide that boot to be
17 photographed by members of your crime scene
18 investigation team?

19 A. I did.

20 Q. What efforts were underway at this
21 point, Deputy Hale, to locate the other subject of
22 this welfare check being Vincent Shivers?

23 A. So at this time, the residence was
24 secure, so time was of the essence. So I needed to
25 --

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 MS. WILSON: Objection. Does he have
2 knowledge of this?

3 MS. MAYES: I can lay a foundation.

4 THE COURT: Thank you.

5 Q. Were you present there at the scene as
6 an effort was being made to enter information about
7 the Defendant for the purposes of a bolo?

8 A. I was.

9 Q. Bolo meaning what?

10 A. Be On the Look Out.

11 Q. Okay. Did law enforcement in your
12 presence issue a bolo for the Defendant Vincent
13 Shivers?

14 A. They did.

15 Q. And was there also a known description
16 of his vehicle at this point?

17 A. There was.

18 Q. Other than what you have described to
19 us today, did you ever see any signs of -- any
20 signs of rummaging through that residence?

21 A. I did not.

22 Q. I'm going to show you what is 34. I
23 believe this is already in evidence. Is that also
24 that make-up room?

25 A. Yes.

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: I don't have 34 in
2 evidence.

3 Q. Okay. 35. 35, is that the make-up
4 room?

5 A. Yes.

6 Q. And that was located on what floor?

7 A. At the base level floor at the back of
8 the residence.

9 Q. Okay. Did anything within this room,
10 Deputy Hale, give you an indication as to whether
11 the dogs had been fed recently or whether some time
12 had passed?

13 A. The bowls appeared to be empty,
14 appeared that the dogs were left unattended for an
15 extended amount of time.

16 Q. Can you show us what you're referring
17 to there?

18 A. These bowls here.

19 Q. And where in the photograph did you see
20 the iPhone?

21 A. I saw the iPhone on the left side of
22 that vanity.

23 MS. MAYES: Nothing further for Deputy
24 Hale at this time.

25 THE COURT: All right. Well, let me

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 ask you, Ms. Mayes, because I didn't see 31 and 32
2 shown and I don't know what those were. I just --
3 had we admitted them, but I don't have a
4 description of them.

5 MS. MAYES: Those are still shots from
6 the body cam.

7 THE COURT: Thank you.

8 MS. MAYES: And 34 is not in evidence,
9 Your Honor.

10 THE COURT: Right. Thank you. All
11 right. It's 12:43, do y'all want to break for --
12 and come back and do cross? Mr. Foreman, this
13 might be a good time for us to break for y'all to
14 have lunch. We'll come back in exactly one hour.

15 Lunch just arrived, so you'll get it
16 warm. Just remember, no talking about this case
17 amongst yourself or with anyone else. Okay. I am
18 going to go ahead and excuse you.

19 (WHEREUPON, the jury exits the
20 courtroom at 12:44 p.m.)

21 THE COURT: Deputy Hale, you are still
22 under oath.

23 MR. HALE: Yes, ma'am.

24 THE COURT: And I can't let you talk to
25 anybody because you're right in the middle of your

JOSHUA HALE - DIRECT EXAMINATION BY MS. MAYES

1 cross-examination. So I'm going to ask you -- I'm
2 going to let you go to lunch, you cannot talk to
3 anyone from the State, the sheriff's department or
4 the Defense about this case at all.

5 MR. HALE: Understood.

6 THE COURT: Okay. Thank you.

7 MS. MAYES: And, Your Honor, I believe
8 he has belongings at the solicitor's office, if he
9 can retrieve those before lunch.

10 THE COURT: He can. Just don't talk to
11 anybody about this case.

12 MR. HALE: Yes, ma'am.

13 THE COURT: Thank you. And also, let
14 me just make sure. I saw some officer sitting here
15 in a green shirt, that's not one of our witnesses,
16 is it?

17 MS. MAYES: That is Justin Ashley with
18 the solicitor's office.

19 THE COURT: Oh! Just didn't know.
20 Just trying to make sure everybody is sequestered.

21 All right. We will be back at 2:00.

22 (Lunch break)

23 THE COURT: All right. Are you ready
24 to bring the jury in?

25 MS. MAYES: The State's ready, Your

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 Honor.

2 THE COURT: The Defense?

3 MS. WILSON: Yes, Your Honor.

4 THE COURT: All right. Let's bring
5 them in.

6 (WHEREUPON, the jury enters the
7 courtroom at 2:05 p.m.)

8 THE COURT: All right. Mr. Foreman, is
9 the jury ready?

10 THE FOREPERSON: We are ready.

11 THE COURT: Okay. I hope everyone
12 enjoyed lunch.

13 THE FOREPERSON: Yes, very good.

14 THE COURT: Good. All right. Deputy
15 Hale, I'm going to remind you that you are still
16 under oath.

17 MR. HALE: Yes, Your Honor.

18 THE COURT: And, Ms. Wilson?

19 CROSS-EXAMINATION

20 BY MS. WILSON:

21 Q. Good afternoon, Deputy Hale.

22 A. Good afternoon.

23 Q. You were dispatched to 216 Carriage
24 Hill Court for a welfare check; correct?

25 A. Correct.

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 Q. How many welfare checks have you
2 conducted or had you conducted at that time?

3 A. A number, I couldn't specify, but it's
4 been multiple throughout the year.

5 Q. Approximately?

6 A. At least maybe ten.

7 Q. Okay. Have you ever conducted a
8 welfare check before where you've found a dead
9 body?

10 A. I have not.

11 Q. You have not. Okay. I'm going to
12 replay the video with you and walk through it with
13 you as well.

14 Okay. So to get to this area you
15 walked through, you had said the side fence, the
16 right side fence; is that correct?

17 A. Correct.

18 Q. And when you walked through that fence,
19 you touched the handle to get in to the backyard?

20 A. I don't recall if there was a handle,
21 but I did have to place my hands on that fence to
22 open it.

23 Q. On the gate of the fence?

24 A. Correct.

25 Q. Okay. And that was the fence that we

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 just saw; correct?

2 A. Yes, ma'am.

3 Q. And you had testified earlier that you
4 had been at the house for approximately 30 minutes
5 prior to turning your body camera on; is that
6 correct?

7 A. It was a very -- a similar amount of
8 time approximate, yes, ma'am.

9 Q. Okay. And that little gate was opened
10 when you arrived; correct?

11 A. Correct.

12 Q. Okay. So this is when you see Ms.
13 Ceden0, although you don't know it's her at the
14 time?

15 A. Correct.

16 Q. So there you're knocking on the glass,
17 touching the glass; correct?

18 A. Correct.

19 Q. And there again you're touching the
20 glass?

21 A. Correct.

22 Q. And there you're touching the doorknob
23 to get in?

24 A. Yes.

25 Q. So at this point -- let me pause this

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 for a second. Okay. Well, actually -- so now
2 you're tapping on the floor you had said to try to
3 see if there were any signs of life?

4 A. I was tapping on what appeared to be
5 the body at that time. Made contact, physical
6 contact touch with the body.

7 Q. Okay. So you actually had touched the
8 body through the blankets?

9 A. Yes, ma'am.

10 Q. And here you're touching the blankets
11 again?

12 A. Correct.

13 Q. Okay. So at this point you had
14 determined that it's a crime scene, you see the
15 cartridges, the body?

16 A. Yes.

17 Q. And isn't it true that you have a duty
18 to preserve and protect that scene?

19 A. That's correct.

20 Q. So you want to ensure that no evidence
21 is tampered with or destroyed?

22 A. To the best of our ability.

23 Q. Okay. So let's continue here. So now
24 you're taking some time to make a few phone calls;
25 right, to get EMS there?

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 A. That's correct. To hand over the
2 camera area that's where my microphone's at for my
3 radio and the transmission was not getting out at
4 the time.

5 Q. And then you go back out the door
6 touching the knobs again?

7 A. Correct.

8 Q. So at this point while you're outside
9 you could take time to put on boot covers?

10 A. It would not have been a reasonable
11 amount of time. It was just enough time to make
12 contact with my supervisors and insure that they
13 had deputies that could meet me on scene as well as
14 first responders, such as EMS and fire.

15 Q. Are the boot covers on your person?

16 A. They're not. I don't recall even
17 having a set at that time in my vehicle as well.

18 Q. Okay. So in regards to the boot
19 covers, when you had walked inside you had stepped
20 on that blanket; correct?

21 A. Correct.

22 Q. Let me show you. Okay. This is
23 State's Exhibit 114. What is that a picture of?

24 A. That is a picture of the linen that I
25 observed that I walked on around the area trying to

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 | cover the body.

2 | Q. And this marker here D is where your
3 | boot was where you stepped down; correct?

4 | A. That's the area that I walked on, yes.

5 | Q. Would there have been room I guess to
6 | the left of that to step without stepping on the
7 | blanket?

8 | A. There was not at the time due to the
9 | presence of the dog being in that room as well.
10 | And the position of the body in relation to the
11 | door, checking that physical contact, it wasn't
12 | very feasible at the time.

13 | Q. You don't think that you could have
14 | stepped over here and missed the blanket?

15 | A. No, ma'am.

16 | Q. Okay. All right. So let's continue on
17 | here. So you're entering again touching the
18 | doorknob with no gloves on; correct?

19 | A. Correct.

20 | Q. So, again, touching the door?

21 | A. Correct. Because I noticed that the
22 | dog went outside.

23 | Q. Okay. And as you go through and do the
24 | protective sweep you have to touch additional
25 | doors?

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 A. Correct.

2 Q. And as you walk through the house, you
3 notice a lot of the lights are on; correct? I
4 mean, we can see them in this video?

5 A. That's correct.

6 Q. There you touch another door?

7 A. Correct.

8 Q. And we can see that light's on?

9 A. Yes.

10 Q. There's lights in these rooms that are
11 on?

12 A. Correct.

13 Q. You touch another doorknob there.
14 Kitchen lights are on. Touched another doorknob
15 there; correct?

16 A. Correct.

17 Q. Dining room light is on; correct?

18 A. Correct.

19 Q. Touch another doorknob to go downstairs
20 to the basement; correct?

21 A. Correct.

22 Q. This hallway light is on?

23 A. Correct.

24 Q. Another hallway light is on; correct?

25 A. Correct.

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 Q. Touched another door to go into the
2 closet?

3 A. Correct.

4 Q. This was the door to the garage;
5 correct?

6 A. I believe it to be.

7 Q. And that door was locked?

8 A. Correct.

9 Q. Dead bolted locked?

10 A. Correct.

11 Q. That downstairs light is on?

12 A. Correct.

13 Q. And you touched that doorknob again?

14 A. Correct.

15 Q. So at this point you put the gloves on;
16 correct?

17 A. Correct.

18 Q. You were able to put them on pretty
19 easily?

20 A. Correct.

21 Q. You said they were in your back pocket?

22 A. Correct.

23 Q. And you put those gloves on to open the
24 front door which was also dead bolted locked;
25 right?

JOSHUA HALE - CROSS-EXAMINATION BY MS. WILSON

1 A. Correct.

2 Q. So basically, your testimony today is
3 that you entered through the unlocked bedroom door,
4 without the gloves on touching the knob and touched
5 the glass on that door; correct?

6 A. Correct. The main priority was to
7 check the safety of that individual inside.

8 Q. And then you stepped on the blanket
9 covering Ms. Ceden0 and left the boot print there
10 and also touched her and the blanket when you
11 picked it up without gloves on; is that correct?

12 A. Correct.

13 Q. Then you went back outside touching the
14 doorknob of that unlocked bedroom door again, both
15 on the inside and the outside of that doorknob;
16 correct?

17 A. Correct.

18 Q. And to your knowledge, this was the
19 only unlocked door in the house?

20 A. Correct.

21 Q. The front door was locked and dead
22 bolted?

23 A. It was locked.

24 Q. The front door wasn't dead bolted?

25 A. From the inside, yes.

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 Q. From the inside. Well, most doors I --

2 A. Well, when I checked from the inside, I
3 confirmed it was dead bolted as well.

4 Q. Okay. And the garage door was locked
5 and dead bolted from the inside of the house?

6 A. Correct.

7 Q. And then you came back and touched
8 various other doorknobs while you were clearing the
9 house?

10 A. Correct, it was necessary.

11 Q. Okay. And then finally you put the
12 gloves on when EMS came?

13 A. Yes, once the scene was safe.

14 MS. WILSON: Beg the Court's
15 indulgence. Thank you. No further questions.

16 MR. HALE: Thank you.

17 THE COURT: Any redirect?

18 MS. MAYES: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. To follow-up a little bit on that.
22 Deputy Hale, regarding your contact with the home,
23 I'm going to show you what is 204. I believe this
24 is in the portion of the video that Defense counsel
25 just reviewed with you.

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am.

2 Q. Do you recognize that?

3 A. I do.

4 MS. MAYES: It would be 204 for
5 evidence, Your Honor.

6 MS. WILSON: No objection.

7 THE COURT: No objection. It's
8 admitted.

9 (WHEREUPON, State's Exhibit Number 204
10 was entered)

11 Q. As you're on the exterior of this
12 location, what is happening there with that
13 doorknob?

14 A. I touched the doorknob and felt
15 resistance consistent with that door being locked.

16 Q. Now, at this point in time when you're
17 still in the downstairs area, did you have any
18 indication that this was a crime scene?

19 A. Not while I was downstairs, no, ma'am.

20 Q. And then once you arrive upstairs and
21 you see the victim?

22 A. Not right off the bat.

23 Q. Okay. So here as you're checking this
24 doorknob, did you have any idea that it was a crime
25 scene?

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 A. I did not.

2 Q. All right. Looking here at 30, what
3 were your immediate thoughts as you saw what you
4 saw through that glass window?

5 A. I immediately thought that that person
6 needed immediate care and aid.

7 Q. Are you a trained first responder?

8 A. I am.

9 Q. Does that include the ability to give
10 CPR or life saving measures if you needed to do so?

11 A. Yes, ma'am.

12 Q. Looking here at 33. That blanket on
13 the floor, was that of any concern to you when you
14 entered that room?

15 A. No, ma'am.

16 Q. What was your primary concern?

17 A. The person who appeared to be
18 underneath it.

19 Q. As you're walking through that
20 residence with gun drawn and you're yelling out,
21 come out with your hands up, who were you speaking
22 to?

23 A. Any potential suspect in the residence.

24 Q. Can you tell us whether or not you had
25 reason to believe there may still be a suspect

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 | inside?

2 | A. I did.

3 | Q. And having accounted for a female
4 | subject, who else were you concerned may still be
5 | inside and possibly injured?

6 | A. The subject of the welfare check,
7 | Vincent Shivers.

8 | Q. And what if any concerns did you have
9 | in that regard?

10 | A. I was concerned that he could have
11 | possible been abducted. Could have been a victim of
12 | a burglary or some kind of major crime as well and
13 | that he could have been hurt --

14 | MS. WILSON: Objection. This is
15 | outside the scope of cross.

16 | MS. MAYES: I think it's in direct
17 | response, Your Honor.

18 | MS. WILSON: And he's speculating.

19 | Q. Let me ask you this --

20 | THE COURT: Yeah, I'll let you rephrase
21 | it, but I think it's in the scope of cross.

22 | Q. Had you yet located Vincent Shivers?

23 | A. I did not.

24 | Q. And as you're lifting up this blanket,
25 | did you yet know the condition of the victim? Had

JOSHUA HALE - REDIRECT EXAMINATION BY MS. MAYES

1 | you one hundred percent confirmed that she was
2 | deceased?

3 | A. Not a hundred percent, no.

4 | Q. Okay. And throughout the time that
5 | you're inside that residence, Deputy Hale, did you
6 | ever pull your weapon down until it was secured?

7 | A. I did not.

8 | Q. Did you ever -- can you tell us whether
9 | or not you ever considered pulling your weapon down
10 | so that you could put on gloves or boot covers?

11 | A. No, ma'am, I did not.

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

14 | THE COURT: Anything else?

15 | MS. WILSON: No, Your Honor.

16 | THE COURT: Okay. Can I excuse Deputy
17 | Hale?

18 | MS. MAYES: Yes, Your Honor, he may be
19 | excused.

20 | THE COURT: Thank you, Deputy.

21 | MS. MAYES: The State calls Captain
22 | Jesse Laintz.

23 | JESSE LAINTZ,
24 | being first duly sworn, was examined and testified
25 | as follows:

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 THE CLERK: If you'll have a seat over
2 there, please. State your name spelling your last,
3 please.

4 MR. LAINTZ: Jesse Laintz, L-A-I-N-T-Z.

5 DIRECT EXAMINATION

6 BY MS. MAYES:

7 Q. Good afternoon, Captain.

8 A. Hello.

9 Q. Tell us a little bit about yourself.
10 Where you are employed and in what capacity?

11 A. I am with the Lexington County
12 Sheriff's Department and I'm the captain over
13 investigations special operations.

14 Q. Can you tell us whether or not that
15 includes the major crimes division?

16 A. It includes major crimes which includes
17 anything from runaways, domestic violence,
18 robberies, all the way up to murder.

19 Q. All right. How long have you been a
20 law enforcement officer?

21 A. Sixteen years.

22 Q. Okay. And how much of that time has
23 been with the Lexington County Sheriff's
24 Department?

25 A. All of it has been with them.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Q. Can you tell us whether or not you were
2 involved with the major crimes division back in
3 September of 2019?

4 A. Yes, I was.

5 Q. Captain Laintz, take us through what
6 you recall as you arrive there at the crime scene
7 being the residence at 216 Carriage Hill Court.

8 A. All right. When we -- we were
9 originally notified of the incident at 216 Carriage
10 Hill Court. When we first arrived, you see the
11 house right there. There was one car on the
12 left-hand side where the garage was at and there
13 were fences on both sides and at that point we were
14 getting briefed on the situation that we had so far
15 at this point.

16 MS. MAYES: Beg the Court's indulgence.

17 Q. Now, when you arrived, can you tell us
18 whether or not the identity of the female victim
19 inside was being accomplished?

20 A. It was in the process at that time.
21 When I arrived we were actually just gotten the
22 search warrant and CSI was just starting to work
23 the scene. Coroner's office hadn't been in yet.
24 But as things are quickly evolving, as they were
25 evolving, we are getting ideas who the person could

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 be and it eventually evolved into identifying the
2 victim.

3 Q. All right. And when you say evolving
4 to identifying the victim, can you tell us whether
5 or not during the course of that day the Lexington
6 County Sheriff's Department was able to identify
7 Roselynn Cedenno as the victim?

8 A. Yes.

9 Q. Now, who else, Captain Laintz, did the
10 Lexington County Sheriff's Department have
11 information was a residence of that location?

12 A. Vincent Shivers, the Defendant.

13 Q. Was a resident of that location?

14 A. Correct.

15 Q. And what if any information did the
16 sheriff's department have about where Vincent
17 Shivers was on September 3, 2019 following the
18 discovery of Ms. Cedenno's body there at the crime
19 scene?

20 A. So at that point and time we did not
21 know where the Defendant was. We knew he wasn't at
22 the house because our initial responding deputy
23 have actually cleared the house. Did what we call
24 a protective sweep and walked through the entire
25 house, he was not there. We had information from

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Camping World that he hadn't been at work for two
2 days, so we had no clue where he was at that point
3 and time.

4 Q. Can you tell us whether or not as the
5 supervising officer there at the scene, you had
6 concerns regarding his safety?

7 A. We absolutely had concerns for his
8 safety. We had no clue where he was, but we knew
9 we had one victim inside the house, we didn't know
10 if we had another victim somewhere else as well.

11 Q. And what if anything did the sheriff's
12 department do to try and locate Vincent Shivers or
13 determine the status of his condition?

14 A. So one of the things that we did was
15 put him on NCIC as a missing person. So NCIC is a
16 national computer base where if the individual is
17 ran by law enforcement or his tag is ran by law
18 enforcement because we put the vehicle tag in as
19 well, we're notified that the person is being ran
20 by law enforcement, so we can reach out to that law
21 enforcement agency to let them know that the person
22 is missing.

23 Q. All right. And did you have
24 information as well regarding his vehicle?

25 A. We did. We had information from his

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 vehicle from the South Carolina Department of Motor
2 Vehicles.

3 Q. All right.

4 MS. MAYES: And I believe pursuant to
5 stipulation, Your Honor, this would be Department
6 of Motor Vehicle information regarding the vehicle.
7 That's State's 182. As well as the driver's
8 license information and address being State's 183.

9 So looking here at 182 in evidence.

10 A. Okay. So right here, you see the name,
11 the address. And then up here is the vehicle
12 information. Up here is the vehicle information.
13 2017 Ford F-150. There should be another page, I
14 believe, that will have the tag number on it.

15 Q. And is that all of that information
16 that was available and known to law enforcement at
17 the time?

18 A. Yes. We contact our dispatch and
19 dispatch will provide that information by running
20 South Carolina DMV.

21 Q. Okay. Take a look at page 2.

22 A. So there's a title information. There
23 is the tag right there. So that tag is put into
24 NCIC, so if it's ran by law enforcement we're
25 notified that this could be a missing person's

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 vehicle.

2 Q. All right. Now, in addition to putting
3 his name, personal information and the vehicle into
4 NCIC, we're going to look here at State's 183, did
5 you also have a photograph of Vincent Shivers?

6 A. We did. That's the photograph that we
7 had that was used by the South Carolina Department
8 of Motor Vehicles is the picture on your driver's
9 license.

10 Q. What if anything did the sheriff's
11 department do with this information being his name,
12 his photograph and his vehicle type, make, tag
13 number, to try and locate him?

14 A. So also with this we put out an initial
15 bolo. Bolo is, Be On the Look Out to all
16 surrounding law enforcement agencies. And then the
17 next day we actually put out a news release using
18 that photo, vehicle information to all local media,
19 so if the civilians, if you all happen to see him
20 you could call and let us know as well.

21 Q. All right. And did that include his
22 photograph?

23 A. It did.

24 Q. And can you tell us whether or not that
25 was in the form of a press release?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. It was.

2 Q. And what day was the press release
3 issued with his vehicle information and his
4 photograph and name?

5 A. September 4th, I'm going to refer to my
6 notes to make sure I'm right. Yes, it was
7 September 4th.

8 Q. So by September 4th, had law
9 enforcement there at the sheriff's department been
10 able to locate Vincent Shivers?

11 A. We had not.

12 Q. What efforts were you undertaking in
13 order to get information about his physical
14 condition, his whereabouts?

15 A. Some other efforts that we were doing
16 besides the bolo, besides the media release, is we
17 also dig exigent circumstances to get on his cell
18 phone to try and see where he could possibly be.
19 Right now if his cell phone was on or his last
20 known location, we do the exigent request through
21 Verizon for that and then we ended up following
22 that up with a search warrant.

23 Q. All right. Let me ask you a little bit
24 about that. After that request, were you able
25 to -- this is a yes or no question, were you able

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 to get a location for him?

2 A. No.

3 Q. Okay. And then following that request,
4 what if any efforts were made to pursue other
5 options, such as credit cards or anything of that
6 nature?

7 A. So we were able to through talking to a
8 multitude of people, we were able to figure out
9 that he lived at another location for a period of
10 time and if the credit card was used at that
11 location and we were trying to get some credit card
12 information so we could try running the credit
13 cards to see if they were used anywhere else.

14 Q. Ultimately, can you tell us whether or
15 not American Express records were recovered
16 pursuant to a search warrant?

17 A. Yes, they were.

18 Q. And did that include American Express
19 records in the name of Vincent Shivers?

20 A. It did.

21 Q. Now, as of September 5th, had the
22 sheriff's department yet located Vincent Shivers?

23 A. On September 5th we had not.

24 Q. Okay. And the information that you
25 mentioned, the NCIC and the Be On the Look Out for,

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 is that local? What scale is that on?

2 A. So the bolo is local. That is just our
3 dispatch telling highway patrol and all local
4 agencies. The NCIC is national. That goes
5 throughout the entire country.

6 Q. What if anything did you learn in your
7 role in this investigation about the whereabouts of
8 Vincent Shivers on or about September 5th of 2019?

9 A. So towards the evening of the September
10 5th, we were actually notified that the Defendant
11 was crossed into Canada what we were told was the
12 Rainbow Bridge. That he actually crossed in Canada
13 and his information was ran at the Canadian Border.

14 Q. All right. I'm going to show you some
15 documents and ask you whether or not you recognize
16 them. This would be State's 154. Pursuant to the
17 Canada Border Services Agency. You can just say
18 yes or no as to whether you recognize them?

19 A. Yes, ma'am.

20 Q. And also I'm going to show you State's
21 199, being the screen shot, and ask you whether or
22 not you recognize that?

23 A. Yes, ma'am.

24 Q. Are these fair and accurate
25 representations of the records that you received

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 including a videotape?

2 A. Yes, ma'am.

3 MR. SWERLING: We stipulate to that.

4 No objection.

5 THE COURT: Okay. Then they're
6 admitted.

7 MS. MAYES: And also 52, Your Honor,
8 being a videotape.

9 THE COURT: Number 152 or 52?

10 MS. MAYES: 52.

11 THE COURT: Thank you.

12 (WHEREUPON, State's Exhibit Numbers 199
13 and 52 were entered)

14 Q. So, on September 5th, what if anything
15 did the sheriff's department learn about his
16 physical location?

17 A. On the 5th we learned of his physical
18 location being at the Canadian Border. That was
19 the date that we learned it, but it actually
20 happened before that.

21 Q. And that being the date that law
22 enforcement obtained this information?

23 A. Correct.

24 Q. What did you do next?

25 A. After that, we actually have one of our

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 TFOs, a Task Force Officer that works with the
2 United States Marshals, he was involved with this,
3 and we started communication with Canadian
4 authorities. First at the Canadian Border so we
5 could verify whether or not it was Vincent Shivers
6 that went through.

7 Q. Okay. So I want to ask you a little
8 bit more about that. Now, September 5th, until
9 that information came through regarding the
10 Canadian Border, had you had any confirmed
11 information as to his whereabouts?

12 A. We had not. Nothing.

13 Q. Now, ultimately, did you obtain a copy
14 of the videotape in this case?

15 A. We did. We got a videotape of him at
16 the Rainbow Bridge at the border crossing.

17 Q. And why if at all pursuant to this
18 investigation did you need to view the videotape or
19 receive any information in that regard?

20 A. So it was very important to us because
21 at that point in time we're still working this as
22 missing person and we didn't know what his safety
23 was. We didn't know if he was being held against
24 his will. We were able to watch this video and in
25 that video we were able to see that he was by

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | himself and his mannerisms were nothing threatening
2 | at all.

3 | Q. Did you see any signs of duress?

4 | A. No signs of duress.

5 | Q. Any signs of a second person in the
6 | vehicle?

7 | A. No signs of a second person in the
8 | vehicle.

9 | Q. I'm going to show you what is 52, I
10 | believe already in evidence subject to stipulation,
11 | but I'm going to ask you if you recognize your
12 | initials on this?

13 | A. Yes, that's my initials in red.

14 | Q. Can you tell us whether or not this is
15 | a fair and accurate reflection of the Canadian
16 | Border crossing video that you received in this
17 | case?

18 | A. It is.

19 | MS. MAYES: Permission to publish, Your
20 | Honor?

21 | THE COURT: Yes, ma'am.

22 | Q. Now, you mentioned before a Ford F-150.
23 | Can you tell us whether or not you were able to
24 | recognize a vehicle consistent with that?

25 | A. So what he is driving appears to be a

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Ford F-150. I've seen plenty of Ford F-150s and it
2 appears to be a Ford F-150, you get a side shot of
3 it. It does match the vehicle of a Ford F-150.

4 Q. Is a passport required to cross the
5 border?

6 A. It is.

7 Q. Can you tell us whether or not a
8 passport is visible in the video?

9 A. You see a passport that's handed back
10 and forth between the border personnel and then the
11 Defendant.

12 Q. Does the subject appear to be engaging
13 freely?

14 A. Appears to be engaging and appears to
15 be joyful.

16 MR. SWERLING: Do what? Move to strike
17 that. I don't know how he could make that
18 conclusion.

19 THE COURT: I'll hear from you, Ms.
20 Mayes.

21 Q. Were you able to observe demeanor here?

22 A. I was able to observe demeanor here,
23 yes, ma'am.

24 MR. SWERLING: And I can't -- he cannot
25 tell from that picture there what his demeanor is.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 That's all I'm objecting to.

2 THE COURT: He wants it struck. I'll
3 hear from you, Ms. Mayes.

4 MS. MAYES: Yes, Your Honor.

5 Q. Is the subject smiling?

6 A. The subject is smiling, yes.

7 MS. MAYES: I believe that's a fair and
8 accurate description --

9 MR. SWERLING: Well, he's smiling. The
10 jury can see that.

11 THE COURT: I agree.

12 MR. SWERLING: That's not what I'm
13 objecting to. I'm objecting to his interpretation
14 of his demeanor.

15 THE COURT: Of his demeanor. I'm going
16 to strike the joyful, Bethany. And I'll tell the
17 jury, I just struck that from the record, so you
18 can't consider it at all. You can determine for
19 yourself. You'll get to watch the video.

20 Q. I'm going to show you what is 199.

21 THE COURT: And that's what number, I'm
22 sorry, Ms. Mayes?

23 MS. MAYES: 199, Your Honor.

24 THE COURT: 199.

25 Q. What is the document that is handed

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 over by the subject?

2 A. That is what appeared to be a United
3 States passport.

4 Q. And then we're going to take a look at
5 154 and 155, specifically 155. You're familiar
6 with military time?

7 A. Yes.

8 Q. Can you tell us whether or not this
9 document, being the traveler history, pursuant to
10 the Canada Border Services Agency reflects the time
11 in which the border was crossed by Mr. Shivers?

12 A. Yes. So here is the date, 9/3/2019 and
13 there's the time. So military time 1300 is 1:00.
14 1 in the afternoon, 1 p.m. So that is 1:14 and 37
15 seconds and that's p.m.

16 Q. Okay. So the time that the border is
17 crossed is going to be 1 p.m.?

18 A. Yes, ma'am, 1:14 p.m.

19 Q. 1:14 p.m. and that's Eastern Standard
20 Time?

21 A. It is. The ET next to it.

22 Q. That part of Canada is still on Eastern
23 Standard Time as well as this part of the United
24 States?

25 A. Yes, it's the same as what we are here

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 in Lexington.

2 Q. Okay. And the reference as to the
3 location of that crossing, is it also depicted in
4 that document?

5 A. So you'll see up here where it says
6 work location and that's the Rainbow Bridge
7 traffic.

8 Q. Now, with this information, Captain
9 Laintz, that you said you learned that he was
10 alone?

11 A. Yes, ma'am.

12 Q. And obtained other information?

13 A. Yes, ma'am.

14 Q. Visible to you upon reviewing these
15 items. What if any efforts did the sheriff's
16 department take regarding this investigation?

17 A. So at this point in time, instead of
18 being strongly towards a missing persons
19 investigation, it turned more into a criminal
20 investigation.

21 Q. And can you tell us whether or not
22 Vincent Shivers was a suspect at this point?

23 A. At that point in time he was a suspect.

24 Q. Now, in addition to what you've
25 indicated were efforts to locate him as a missing

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | persons, did you inform other agencies that he may
2 | also be wanted in connection with this crime?

3 | A. So at this point in time we started
4 | working with Canadian authorities to notify them
5 | that he could be -- he is up in Canada.

6 | Q. Okay. Can you tell us when you learned
7 | of the arrest of Vincent Shivers by Canadian
8 | officials?

9 | A. I'll have to refer to my notes. It was
10 | on the evening of September 5th. It was after 5
11 | o'clock. I'm not sure how far after 5 o'clock. I
12 | don't have the exact time, I apologize.

13 | Q. And just to clarify, was he arrested in
14 | Canada on a murder warrant or was it subject to
15 | some other type of --

16 | A. No, he was arrested under -- the
17 | Canadians charged him, and I hope I say this right,
18 | I could be wrong, a violation of Immigration and
19 | Refugees Act, something along those lines.

20 | Q. All right. And that is also going to
21 | be on September 5th?

22 | A. Yes, ma'am.

23 | Q. And pursuant to the investigation, were
24 | you able to determine the location he was when he
25 | was arrested?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. So when he was arrested, he was
2 actually at an airport in Toronto.

3 Q. I'll show you a document and ask you
4 whether or not you recognize it.

5 MS. MAYES: This would also be subject
6 to a stipulation, Your Honor, being American
7 Express and this is State's 206?

8 Q. So this is State's 206, I'm going to
9 ask you whether or not you recognize this document?

10 A. Yes, ma'am.

11 Q. All right. And you indicated that
12 American Express records were obtained in this
13 case?

14 A. Yes, ma'am.

15 Q. Were you able to determine --

16 MS. MAYES: And that is in evidence,
17 Your Honor, pursuant to a stipulation.

18 Q. Were you able to determine when any
19 type of airline ticket was purchased in this case?

20 A. So according to this, an Air Canada
21 ticket was bought on 9/4 at -- and this is a little
22 confusing, it's at 3:34 p.m. And why I say it's
23 confusing is the time is different on here.

24 Q. All right. I'm going to ask you to
25 explain that in a moment. So on September 4th is a

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | airline purchase -- airline ticket purchase?

2 | A. Yes, ma'am, Air Canada.

3 | Q. And you said the time of that purchase
4 | on September 4th, once you are able to do the
5 | conversion, is what time?

6 | A. 3:34 p.m.

7 | Q. Okay. Now, in addition to learning
8 | that the airline ticket had been purchased on the
9 | 4th, he is detained at the airport on the 5th, were
10 | you able to determine pursuant to the investigation
11 | where that ticket was headed to?

12 | A. It was headed to London.

13 | Q. With all of this information available
14 | to you, what if any actions did the Lexington
15 | County Sheriff's Department take regarding this
16 | investigation?

17 | A. So this along with a lot of the other
18 | information that we obtained from the crime scene
19 | throughout, we actually got an arrest warrant for
20 | him.

21 | Q. When was the arrest warrant obtained
22 | for Vincent Shivers?

23 | A. The day of the 5th.

24 | Q. And can you tell us whether or not --
25 | or what charge that arrest warrant was for?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. It was for murder.

2 Q. During the course of the investigation,
3 were there any other American Express records that
4 were examined regarding any local purchases during
5 the course of this timeframe that's going to run
6 through September 2nd through September 5th of
7 2019?

8 A. There was. There was another purchase
9 that locally at a Circle K.

10 Q. Okay. I'll show you a document also
11 that's subject to stipulation being an American
12 Express record. This being State's 200. And I
13 believe pursuant to stipulation there was also this
14 other document I want to ask you about I neglected
15 to, State's 153.

16 A. Yes, ma'am.

17 MS. MAYES: And pursuant to stipulation
18 and without objection, Your Honor, this item would
19 also be for evidence.

20 THE COURT: All right. It's admitted.
21 Is that right --

22 MR. SWERLING: That's correct, Your
23 Honor.

24 THE COURT: Okay.

25 (WHEREUPON, State's Exhibit Number 153

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1 was entered)

2 Q. Does this also confirm the ultimate
3 destination of that airline ticket that was
4 purchased?

5 A. It does.

6 Q. And what was that destination?

7 A. I would have to look at it again. Yes,
8 to London.

9 Q. Now, you mentioned Circle K and that
10 there had been a purchase at Circle K once you were
11 able to examine the American Express records?

12 A. There was.

13 MS. MAYES: Without objection, Your
14 Honor, this is State's 200 pursuant to stipulation.

15 THE COURT: Okay. It's admitted.

16 (WHEREUPON, State's Exhibit Number 200
17 was entered)

18 MR. SWERLING: Judge, can we approach
19 one minute just to --

20 THE COURT: You sure can.

21 (WHEREUPON, there was a bench
22 conference)

23 THE COURT: All right. Mr. Foreman and
24 ladies and gentlemen of the jury, seems like the
25 lawyers have been throwing around the word,

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1 stipulation. Let me kind of briefly tell you what
2 that is. That is an agreement between the parties.
3 And they agree that the exhibit that they are
4 showing you is true and a fact and you are to treat
5 it as a true fact. Okay.

6 I'll give y'all later instruction
7 during the law as to stipulations. I just thought
8 it might be helpful since the lawyers have worked
9 hard to stipulate on some of this evidence. It
10 would be nice to let y'all know what it is. Okay.
11 Thank you.

12 Q. Now, regarding the stipulation
13 regarding the American Express record, take a look
14 here at the date. What date is shown here?

15 A. The date is 9/2/2019.

16 Q. All right. And, again, these are the
17 records of Vincent Shivers?

18 A. They are.

19 Q. Pursuant to American Express?

20 A. Yes.

21 Q. Now, was the time differential a
22 little -- need to be explained here regarding this
23 record in comparison to what we know is Eastern
24 Standard Time?

25 A. Yes. If you can scoot over just a

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | little bit so you can see the time up there and
2 | I'll show it. So right there it says 5:04 a.m.
3 | Mountain Central Time. But to make things more
4 | confusing, this is from Arizona who doesn't observe
5 | Daylight Savings Time, so it's actually plus three.
6 | So normally Mountain Time would be plus two, but
7 | since they don't observe Daylight Savings Time,
8 | it's plus three. So that is actually 8:04 in the
9 | morning.

10 | Q. And, Captain, once it was learned by
11 | the sheriff's department that there had been a
12 | purchase at this location, are you able to also see
13 | the type of location or merchant involved?

14 | A. So it's right there. It's the Shell
15 | Gas Station at 7435 St. Andrews Road which is at
16 | the intersection of Lake Murray Boulevard and St.
17 | Andrews Road in Irmo.

18 | Q. Okay. Once you're able to make that
19 | determination, what if any efforts did law
20 | enforcement take to try and verify that purchase
21 | and who was making the purchase?

22 | A. We went to the location and reviewed
23 | surveillance footage.

24 | Q. You had an opportunity to review that?
25 | I am going to show you what is State's 44?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am.

2 Q. You recognize your initials on this?

3 A. Yes, ma'am, I do.

4 Q. Was this a true and accurate
5 representation of the Circle K video?

6 A. Yes, ma'am, it is.

7 Q. Can you tell us whether the Circle K
8 video is in Eastern Standard Time?

9 A. It is. That is our local time. The
10 time is actually right on this.

11 Q. It's going to reflect the right time?

12 A. Yes.

13 THE COURT: And that was stipulated to?

14 MS. MAYES: Yes, Your Honor.

15 THE COURT: Thank you.

16 (WHEREUPON, State's Exhibit Number 44
17 was entered)

18 Q. Now, regarding this Circle K video, can
19 you tell us whether or not the Shell Station at
20 that address has another name?

21 A. It's the Circle K.

22 Q. At any point in this video, do you
23 observe what appears to be a Ford F-150?

24 A. Yes. So what you see, this is Lake
25 Murray Boulevard. So if you're coming from the dam

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | into Irmo, this is Lake Murray and there's a left
2 | turn. So you see right where my pointers at, a
3 | black pickup truck, believed to be a Ford F-150,
4 | comes down and takes a left into the Circle K and
5 | stops right here at pump 8 and fills up.

6 | Q. And the time on this video?

7 | A. So you'll see the time down here at the
8 | bottom. So it says 8:04 right there. And as you
9 | see the time is right there.

10 | Q. Does all of this appear to match up
11 | with the time on the American Express record that
12 | you're familiar with?

13 | A. It did. Because it was a swipe at the
14 | pump and pulls in and fills almost the exact same
15 | time.

16 | Q. Now, is there another angle that will
17 | show the direction the vehicle goes when it
18 | departs?

19 | A. So the Circle K is at a corner lot. So
20 | the one view that you just saw was Lake Murray
21 | Boulevard, you're coming from the dam, the other
22 | one is St. Andrews Road which is right there. So
23 | you can come out here and make a left on to St.
24 | Andrews Road going to I-26. Or if take a right you
25 | would go back to the dam. So this -- it's a corner

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1 lot and this is the opposite corner.

2 And you'll see the car coming from
3 here, go out and it goes all the way across the
4 lane of traffic and appears to get in the far lane.

5 Q. I'm going to show you some photographs
6 and ask you whether or not you recognize them. We
7 have State's 205, 45, 46.

8 A. Yes, ma'am, that's what we just
9 watched.

10 Q. Okay. And 48?

11 A. Yes.

12 Q. 49 and 47, if you're familiar with
13 these aerial photographs?

14 A. Yes, ma'am, that's Lexington County.
15 That's where I work.

16 Q. Can you tell us whether or not these
17 photographs depict the location of Circle K within
18 this portion of Lexington County?

19 A. It does.

20 Q. Can you tell us whether State's 49 also
21 depicts the location of that Circle K in proximity
22 to 216 Carriage Hill Court?

23 A. It does.

24 Q. As well as to Camping World?

25 A. Yes, ma'am.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: All for evidence, Your
2 Honor.

3 THE COURT: Okay. All that's without
4 -- it's stimulated?

5 MR. SWERLING: We stipulate.

6 (WHEREUPON, State's Exhibit Numbers 45,
7 46, 47, 48, 49 and 205 were entered)

8 Q. I'm going to start here by looking at
9 46. What direction is that vehicle headed?

10 A. So that vehicle right there is taking a
11 right on to St. Andrews Road going towards the town
12 of Irmo and does get in the far lane.

13 Q. I'm going to show you what is 47 and
14 ask you what we're looking at here in terms of the
15 proximity of Circle K.

16 A. This will solve things a little bit.
17 So right here is where you're coming from the dam
18 in Lexington. You're going up right here and
19 here's St. Andrews Road, so here's where the
20 traffic -- I'm sorry, the railroad tracks are that
21 always close and get you stuck. So this is the
22 road he's coming down on. Turns a left in the
23 video, goes in here to number 8, comes out here.
24 And it looks like he gets in the far lane to take
25 him left which would take him that way.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. You observed the direction
2 in which this vehicle entered the Circle K parking
3 lot?

4 A. Yes.

5 Q. Can you tell us whether or not that is
6 consistent -- what area that is coming from?

7 A. So it's coming from the dam which is
8 also coming from his residence.

9 Q. I'm going to show you State's 49 and
10 ask you whether you can explain further?

11 A. So right here's the dam, okay. Here is
12 Carriage Hill Court. So this is North Lake Drive.
13 So right up about where this pointer would be at
14 would be where 6 and 378 meet. And you take a left
15 by KFC, for all you Lexingtonies, you come down
16 here and then Carriage Hill Plantation is right
17 here on the left-hand side. If you keep on going
18 on North Lake Drive, you go across the dam and then
19 right here it turns into Lake Murray Boulevard.
20 Lake Murray Boulevard up to Circle K. And then if
21 you take a left or go across St. Andrews Road and
22 go back to Lake Murray Boulevard, you go out here
23 and you actually go right to I-26.

24 Q. Can you tell us whether the departure
25 to the right would be consistent with carrying one

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 to I-26?

2 A. Departing to the right would take
3 somebody on this road and going to the far left
4 lane and making a left would take someone back on
5 Lake Murray Boulevard to I-26.

6 Q. Now, did you have any other indications
7 through credit card records that Vincent Shivers
8 remained in Lexington County beyond this purchase
9 at 8:04 a.m. on September 2nd?

10 A. There were no other local purchases on
11 the credit cards at that time.

12 Q. And according to your testimony it's
13 the following day that he is depicted crossing the
14 border at 1:14 p.m.?

15 A. Yes.

16 Q. Now, in addition to the credit card
17 records, can you tell us whether or not the
18 Lexington County Sheriff's Department obtained
19 search warrants for Verizon records?

20 A. We obtained a search warrant for both
21 the Defendant and the victim's cell phone records.

22 Q. Were you able to get a return in that
23 regard?

24 A. We were.

25 Q. Were you able to determine what the

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | last communications were between the victim and the
2 | Defendant?

3 | A. We were.

4 | Q. I'm going to show you some documents
5 | and ask you whether or not you recognize them.

6 | MS. MAYES: These would be Verizon also
7 | subject to stipulation, Your Honor.

8 | THE COURT: Okay.

9 | MR. SWERLING: No objection.

10 | THE COURT: Okay. Thank you.

11 | (WHEREUPON, State's Exhibit Numbers 24
12 | and 25 were entered)

13 | Q. You mentioned that the search warrants
14 | covered not just the Defendant's records, but also
15 | the records of the victim?

16 | A. Yes, ma'am.

17 | Q. Can you tell us whether or not you
18 | recognize 24 and 25?

19 | A. I do by the phone numbers that are
20 | listed.

21 | Q. Okay. Did you observe any
22 | communications between the parties?

23 | A. Yes, ma'am.

24 | Q. And what was the last known date of
25 | communications between Vincent Shivers and Roselynn

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Cedenno?

2 A. So it was on 9/1/2019 and on here it
3 says more time things we have to adjust for. 2100,
4 so that is UTC time, so it's actually going to be
5 minus 4, so it was 5:22 p.m.

6 Q. All right. I'm going to stop you right
7 there. What numbers are depicted on that
8 communication?

9 A. First is 864-978-2627.

10 Q. And whose number was that pursuant to
11 the investigation?

12 A. The Defendant's.

13 Q. And what was the other number regarding
14 that communication?

15 A. The other number is 803-522-3431.

16 Q. What type of communication is this?

17 A. It's a text message.

18 Q. Can you tell us whether the same
19 content of that text message is present in both
20 Roselynn's phone records as well as the records of
21 the Defendant, Vincent Shivers?

22 A. They are. It's just numbers and the
23 two are communicating together one gets it and one
24 sends it.

25 Q. I'll put this up here. State's 25.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 All right. Again that date?

2 A. The date is right here. It is
3 9/1/2019.

4 Q. September 1st, 2019?

5 A. Yes, ma'am.

6 Q. And that message is from whom to whom?

7 A. The Defendant to Ms. Roselynn.

8 Q. And what is the content of that
9 message?

10 A. So it literally says, on my way.

11 Q. And what is the time of that message
12 once you do the necessary conversion for Verizon
13 records?

14 A. It is 5:22 in the evening, p.m.

15 Q. All right. Captain Laintz, you
16 indicated that the crime scene you were present
17 there at the crime scene?

18 A. Yes, ma'am.

19 Q. On September 3rd?

20 A. Yes, ma'am.

21 Q. Can you tell us what if any efforts law
22 enforcement took to trace any contacts of the
23 victim Roselyn Shivers?

24 A. So at this point in time we're looking
25 for both. We're trying anything that we possibly

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | can to look both for the Defendant and Ms. Roselynn
2 | if there was any contact. And on her phone there
3 | were missed phone calls that were left. So, you
4 | know, if you pick up your phone and haven't
5 | answered for a while, has a butch of messages on
6 | the front, there were some messages on the front
7 | talking about missed communications.

8 | Q. All right. I'm going to show you 103
9 | just for identification only at this time. Are you
10 | familiar with that?

11 | A. Yes, ma'am.

12 | Q. Who within the department took on the
13 | responsibility of tracing her contacts?

14 | A. So that night, the numbers that we
15 | didn't know they didn't have a name next to them, I
16 | actually called them to try to figure out who it
17 | could have been.

18 | Q. All right. Can you tell us whether or
19 | not you were able to detect family members?

20 | A. Yes.

21 | Q. Can you tell us whether or not you were
22 | able to detect Camping World employees?

23 | A. Yes.

24 | Q. Other than that, was there any other
25 | unknown number?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. I'm going to refer to my notes real
2 quick to remember which one of these four numbers.
3 So we already said Camping World. We already said
4 family members. There was one that when I called
5 it was a mailbox that was full and it wasn't set up
6 yet. I ended up calling that back and we ended up
7 figuring out through other investigating means it
8 was actually animal control calling her.

9 Q. All right. And when you say animal
10 control was calling, were there some pets there at
11 the scene?

12 A. There were.

13 Q. Okay. And do you know whether or not
14 any of the pets had a microchip?

15 A. So one of the pets that was removed,
16 they scanned the microchip at animal control and it
17 came back to that phone number, so animal control
18 called that phone number. So this was after we had
19 been on scene for a little while before we had
20 gotten that phone. Animals had been removed,
21 microchip was scanned by animal control and they
22 called and it was a missed number obviously.

23 Q. And other than that, Captain Laintz,
24 were there any other unknown or unaccounted for
25 phone numbers?

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 A. No. We had Camping World, Camping
2 World employees, animal control and then family
3 members.

4 Q. Okay. You mentioned again at the scene
5 multiple people present. Can you tell us about
6 whether or not a crime scene log was started?

7 A. A crime scene log was started and it
8 was actually started by the initial responding
9 deputy.

10 Q. Can you tell us whether or not other
11 security measures were taken there at the scene?

12 A. So in most crime scenes, crime scene
13 tape goes all the way around and then we actually
14 assigned a person to be in charge of the crime
15 scene. And what that means is that person is
16 watching for people that -- we actually check in
17 with them so we can sign a crime scene log and
18 there's somebody at that crime scene until we no
19 longer need it and close it out. So there is
20 always a law enforcement officer there at the crime
21 scene. In most cases I know on this case it was,
22 there was crime scene tape all the way around the
23 house.

24 Q. Okay. Let me show you a photograph and
25 ask you whether or not you recognize it? This

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | would be State's 201.

2 | A. Yes, ma'am. That is the house with the
3 | crime scene tape.

4 | MS. MAYES: Your Honor, for evidence, I
5 | believe without objection.

6 | THE COURT: No objection. It's
7 | admitted.

8 | (WHEREUPON, State's Exhibit Number 201
9 | was entered)

10 | Q. Is this the type of crime scene tape
11 | that you were referring to?

12 | A. So there's the crime scene tape right
13 | there. It's that yellow tape that's put up.

14 | Q. All right. Now, in addition to this,
15 | can you tell us whether or not you had officers
16 | present outside that location?

17 | A. So the entire time the crime scene was
18 | open, there was always an officer outside. There
19 | was either officers inside working, if they were
20 | not working, the door was closed and the key was
21 | given to the officer that sits outside.

22 | Q. Earlier today, Captain Laintz, we saw a
23 | body camera footage of a deputy entering the home.
24 | Following that, can you tell us whether or not a
25 | search warrant was obtained by the Lexington County

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 | Sheriff's Department for that residence?

2 | A. A search warrant was obtained for that
3 | residence.

4 | Q. And how is that different if at all
5 | than when a deputy initially entered?

6 | A. So when a deputy initially comes to the
7 | scene, they're uncertain what's going on. They
8 | don't know and there's certain things that allow us
9 | to go in without a search warrant and actually
10 | search and one of those is a protective sweep
11 | looking for the safety of others. And when a
12 | protective sweep is done they go through and
13 | they're looking for human beings. That is all they
14 | are looking for is human beings.

15 | They come back out and what a search
16 | warrant is that we show probable cause to a
17 | magistrate who allows us now to go and search that
18 | residence and actually search instead of just
19 | looking for persons, we're allowed to search per
20 | the items that are listed.

21 | Q. And pursuant to a search warrant, does
22 | that allow crime scene investigators into the home?

23 | A. It does. It allows law enforcement and
24 | crime scene investigators who usually go in first
25 | for us.

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 Q. Can you tell us whether or not your
2 department had crime scene investigators enter that
3 home pursuant to the search warrant?

4 A. We did.

5 Q. Can you tell us whether that search
6 warrant was obtained the same day that Roselynn's
7 body was found?

8 A. It was. It was obtained on the 3rd.

9 Q. Now, were they able to complete that
10 search on the 3rd?

11 A. They were not.

12 Q. And how long, if at all, did that
13 search warrant remain open under the custody of the
14 Lexington County Sheriff's Department?

15 A. So we had an officer there the entire
16 time until September 8th. So we had somebody there
17 the entire time and it remained open until
18 September 8th.

19 Q. And to the best of your knowledge,
20 Captain Laintz, as far as practicable, did the
21 crime scene remain in tact?

22 A. It did to the best of my knowledge.

23 Q. Were there ever any reports of anyone
24 going beyond the crime scene tape?

25 A. If they did, they signed in through the

JESSE LAINTZ - DIRECT EXAMINATION BY MS. MAYES

1 log. And it was law enforcement or a related
2 entity.

3 Q. Okay. And can you tell us which agency
4 maintained a key to that residence from the date of
5 September 3rd through September 8th?

6 A. The Lexington County Sheriff's
7 Department, we did.

8 Q. Were any other civilians allowed inside
9 other than the coroner's office and EMS?

10 A. Besides those, no.

11 MS. MAYES: Beg the Court's indulgence.

12 THE COURT: Take your time.

13 Q. You mentioned that Vincent Shivers was
14 arrested in Canada?

15 A. He was.

16 Q. Ultimately, can you tell us what
17 measures the Lexington County Sheriff's Department
18 took to retrieve that vehicle, the Ford F-150 that
19 you described?

20 A. With ongoing communication between us,
21 the sheriff's department, legal counsel and things
22 like that, it was determined that we had to go --
23 we wanted to get the vehicle as evidence and we
24 sent officers up to Canada to actually retrieve
25 that vehicle.

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 Q. And is it currently in the possession
2 of the Lexington County Sheriff's Department?

3 A. It has been since it came back from
4 Canada.

5 MS. MAYES: Thank you nothing further,
6 Captain Laintz.

7 THE COURT: Thank you. Mr. Swerling?

8 MR. SWERLING: Can you bear with me one
9 moment, please?

10 THE COURT: You take your time.

11 CROSS-EXAMINATION

12 BY MR. SWERLING:

13 Q. Captain Laintz, this thing, the bolo
14 you said was local; right?

15 A. Yes, sir.

16 Q. But the entry into NCIC it goes
17 national?

18 A. Yes, sir.

19 Q. Okay. And the situation developed
20 where you -- there was a joint undertaking between
21 Lexington County and also the US Marshal Service,
22 as well as the Toronto Police to process this
23 entire case from the moment that he crossed the
24 Rainbow Bridge, I've not been there, but that's the
25 Rainbow Bridge; is that correct?

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 A. There was constant communication
2 between those three entities, yes, sir.

3 Q. Basically, a collaborative effort?

4 A. Yes, sir.

5 Q. Okay. And that was -- everything that
6 was going on up in Canada between the Lexington
7 County Sheriff's Department and the Canadian
8 Police, Canadian Border Police, as well as the
9 Toronto Police and the US Marshal Service was all
10 be initiated at your direction?

11 A. Yes, I was involved with a lot of those
12 decision makings.

13 Q. When I say "yours," I'm talking about
14 Lexington County?

15 A. Along with the solicitor's office and
16 involved agencies here, yes.

17 Q. So you guy's were the ones initiating
18 it and they were the ones carrying it out up there?

19 A. Yes, it kinda worked both ways. That's
20 their territory, they know how it works, they know
21 how to work in their laws and all that, so I
22 wouldn't say it was us telling them, I think it was
23 us communicating with each other, getting game
24 plans together and working the problem out.

25 Q. And basically a joint effort?

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 A. Absolutely.

2 Q. Okay. I wasn't suggesting... Let me
3 just verify a couple things. Where did the key
4 come from that y'all came in possession of?

5 A. I don't know the answer to that. I can
6 make an assumption, but --

7 Q. No, I don't want you to make an
8 assumption.

9 A. I do not know where it came from.

10 Q. Because I was surprised to hear that.
11 You do not know where the sheriff's department got
12 possession of the key?

13 A. So we only had access to one location
14 there that would have anything to do with that key,
15 so it probably came from within the residence.

16 Q. You just don't know?

17 A. I don't know for a fact, no.

18 Q. Okay. The -- on September 1, 2019,
19 you -- there was an exhibit up there, I'm not going
20 to go look for it right now, but there's an exhibit
21 up there of a text from Mr. Shivers to Roselynn?

22 A. Yes, sir.

23 Q. The person he lived with, a long term
24 relationship with; is that correct?

25 A. Yes, sir.

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 Q. And it was at 5:22 I believe you said
2 after you make the necessary computations?

3 A. Yes, sir.

4 Q. Okay. And 5:22 would be kind of
5 consistent with the time that Mr. Shivers got off
6 work?

7 A. That's correct.

8 Q. As far as information that the
9 sheriff's department has; is that correct?

10 A. Yes, sir.

11 Q. All right. And what he was notifying
12 his girlfriend, fiancé that he was on his way?

13 A. Correct.

14 Q. That's -- so that would -- kind of just
15 a regular old message that I'm coming home, like
16 anybody -- any wife or husband would send to their
17 spouse after they got off work?

18 A. Yes.

19 Q. Nothing unusual about that?

20 A. No.

21 Q. The video at the Shell oil station,
22 just want to make sure I understand. The American
23 Express charge was at 8:04 on the morning of
24 September 2nd, 8:04 a.m.?

25 A. Yes, sir.

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 Q. Okay. And from that point on that was
2 the -- there was no other communication or charges
3 for the next couple of days; is that correct?

4 A. I can't say for the next couple days
5 because I know there were additional charges that
6 followed, but I don't know how many days that was
7 after.

8 Q. But this was the last contact in the
9 Columbia or Lexington or South Carolina area?

10 A. That is correct.

11 Q. Okay. And the last known communication
12 then was this particular text that you're referring
13 to that the State introduced into evidence at 5:22
14 on September 1st?

15 A. No. The last known communication we
16 have between the two parties, the Defendant and Ms.
17 Roselynn, that's the last communication that we
18 know of.

19 Q. I'm sorry, that's what I meant.

20 A. Yes.

21 Q. Yeah. Okay. All right. And you're
22 aware of the fact that since you were -- sounds
23 like you were heading up the investigation, that
24 the Mr. Wier did a check on the home on the evening
25 of the 1st; right? The 1st -- the 2nd? I'm sorry,

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 I keep forgetting. For some reason or another I
2 keep forgetting Labor Day was on the 2nd that year.

3 A. I know that Camping World employees had
4 been to the residence beforehand. The exact date,
5 I would have to refer back to somebody else's
6 report to get that. But that does sound right.

7 Q. Well, if you don't have that
8 information with you right now that's all right.
9 What I was trying to -- do you know if Mr. Wier
10 went by there on that evening that he said and has
11 testified that there were no lights on in the
12 house?

13 A. I --

14 Q. Does that sound right?

15 A. That sounds right, yes.

16 Q. But when y'all went out there to --
17 when the house was being searched on the 3rd, it
18 appears that there's all sorts of lights on. I
19 mean, that's not a picture of the lights, but the
20 tape that we've seen of the scene investigation
21 indicates there were lights on all over the place,
22 different rooms?

23 A. Okay.

24 Q. Is that right? Have you seen that
25 tape?

JESSE LAINTZ - CROSS-EXAMINATION BY MR. SWERLING

1 A. I have seen that tape. It's -- I don't
2 know if I remember seeing lights on. I remember
3 seeing lights. It sounds like they already watched
4 it as well. I mean, I remember seeing lights where
5 you could see good enough. I don't know about if
6 there were actual lights were on. There was a lot
7 of windows.

8 MR. SWERLING: Okay. Well, the jury
9 can be able to determine that from the video.

10 A. Absolutely.

11 MR. SWERLING: Okay. All right.
12 Excuse me one minute. That's all I have.

13 THE COURT: Any redirect?

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

16 THE COURT: Okay. May I excuse the
17 Captain?

18 MS. MAYES: Yes, Your Honor. May we
19 approach?

20 THE COURT: You may.

21 (WHEREUPON, there was a bench
22 conference)

23 THE COURT: Mr. Foreman, I've got
24 something I need to take up with the lawyers, so
25 I'm going to give y'all a break, let you stretch.

1 It's probably going to be about 20 minutes, okay?

2 THE FOREPERSON: Okay.

3 THE COURT: Remember, no talking about
4 this case to anyone else or amongst yourselves.
5 Thank you.

6 (WHEREUPON, the jury exits the
7 courtroom at 3:21 p.m.)

8 THE COURT: All right. Ms. Barbier,
9 you have a motion, let me hear it.

10 MS. BARBIER: I do, Your Honor. At
11 this time, I would remove the Defense's motion to
12 suppress the statement -- the statements allegedly
13 made by Mr. Shivers during and after his arrest in
14 Canada. The witness that just testified, Captain
15 Laintz, clearly stated that it was a joint
16 undertaking as Mr. Shivers was arrested as a result
17 of a joint undertaking by the authorities here in
18 the United States, the Lexington County Sheriff's
19 Department, the solicitor's office, the US Marshals
20 Service, the Canadian Border Service and the
21 Toronto Police Department.

22 And that goes exactly to the issue that
23 Your Honor looked at yesterday which was, was this
24 a joint venture. That's what case law indicates is
25 the standard. It's not the standard to determine

1 | whether or not there was a clear direct instruction
2 | to make -- take a statement from the Defendant.
3 | It's whether or not the investigation was
4 | undertaken by joint law enforcement and it clearly
5 | was here, Your Honor.

6 | When that happened, Mr. Shivers's
7 | Miranda Rights attached and he should have been
8 | given Miranda prior to any -- while he was -- when
9 | he was put in custody and prior to any statements
10 | being elicited or the functional equivalent of them
11 | interrogation occurring.

12 | So that's -- we'll leave it at that,
13 | Your Honor, you heard an abundance of testimony
14 | about that yesterday and argument --

15 | THE COURT: Well, let me ask you
16 | something. Because -- and I was listening to his
17 | testimony too and I'm just curious because I even
18 | wrote it down. They didn't even take out the
19 | warrant until after he was -- an arrest warrant for
20 | him until after he was picked up at the airport is
21 | what I thought he testified to --

22 | MS. MCMENAMIN: That is correct, Your
23 | Honor. That's what's been testified to.

24 | THE COURT: That's what I thought I
25 | heard him say. So I was trying to put it all in

1 context just thinking about it. Because he says,
2 they put out all the normal stuff that they do.
3 Because this just didn't happen in this case, we
4 have people who run all the time. And they go to
5 different countries and NCIC puts everybody on
6 alert that they're looking for somebody, for
7 whether they're a missing person or they're wanted.

8 I'm not real sure I understand what
9 Canada -- I don't know because of the NCIC, Canada
10 spotted him going cross the border. I don't
11 understand what their warrant was all about.

12 MS. BARBIER: Your Honor, the only
13 reason that Canada arrested him and created the
14 warrant that they did is because they were
15 cooperating with the United States authorities
16 because he was wanted as a suspect in a murder
17 investigation in the United States. The fastest
18 way that they had to get him back to the United
19 States, when they pulled up his record they
20 realized there was something he didn't disclose
21 that he should have apparently upon entering into
22 -- at Canada and they had a reason to issue a
23 warrant to help the United States to bring him back
24 here.

25 That's why it was done. Otherwise,

1 Canada would not have taken the time or the effort
2 or the resources into arresting him on that warrant
3 if he weren't wanted in the United States. I mean,
4 I'm sure plenty of people cross that border every
5 day with a record.

6 THE COURT: Yeah, but I am telling you,
7 he testified the arrest warrant wasn't even issued
8 till 09/05, he crossed over into Canada on 9/3; is
9 that right?

10 MS. MCMENAMIN: Yes, Your Honor.

11 THE COURT: 09/03 at 1:14 he crosses
12 the border.

13 MS. BARBIER: Your Honor, I'm reading
14 from the case supplemental report of the Lexington
15 County Sheriff's Department. It says on the
16 morning of 9/4/2019, I went to Lexington County
17 Sheriff's Department bond court and presented the
18 facts of this case to Judge Buck. He issued
19 warrant 2019A321020, blah, blah, charging Vincent
20 with PWID marijuana. I turned the warrant in to
21 LCSD warrant division and Vincent was then entered
22 into NCIC as wanted with nationwide extradition by
23 FTF Investigator Dykes. So they issued a warrant
24 for his arrest on 9/4/2019. That's why -- that was
25 the basis --

1 THE COURT: Did they find marijuana at
2 the home or something?

3 MS. MAYES: Yes, Your Honor.

4 MS. BARBIER: And, Your Honor, also and
5 I'd like to make these Court's Exhibits. Also in
6 the affidavit of Sergeant Nick Burt which is filled
7 out in February of 2020, he expressly says in his
8 affidavit, Vincent was located by a collaborative
9 effort between the US Marshal Service and the
10 Toronto Police Fugitive Squad on 9/5/2019. He
11 would not have been a fugitive unless this warrant
12 weren't out for his arrest.

13 So when he was located in Canada and
14 arrested, there was a current pending warrant in
15 the State of South Carolina for his arrest. That
16 was the basis for which they wanted to bring him
17 back here. And then they later got the murder
18 weapon.

19 THE COURT: Well, this is the first
20 I've every even heard of the marijuana warrant.

21 MS. BARBIER: Well, Your Honor, it
22 wasn't mentioned yesterday and I'm not sure why.
23 But Mr. Swerling just reminded me of it and I will
24 make these Court's Exhibits if the Court allows.
25 This is page 55 of the K supplemental report and

1 then the affidavit of Sergeant Nick Burt.

2 THE COURT: Let's mark them. I want to
3 look at them.

4 (WHEREUPON, Court's Exhibit Numbers 4
5 and 5 were marked and entered)

6 MS. MCMENAMIN: May I be heard, Your
7 Honor?

8 THE COURT: Yes.

9 MS. MCMENAMIN: My response is in two
10 -- I'm sorry, I did not mean to interrupt.

11 THE COURT: I'd just like a straight
12 answer.

13 MS. MCMENAMIN: Yes, Your Honor. The
14 reason the marijuana warrant never came up is
15 because as all the Canadians stated it wasn't part
16 of the basis for the warrant for the Canadian
17 Immigration Refugee Act, I think I'm getting that
18 correctly, Your Honor, for the Canadian warrant.
19 They talked about the murder allegations and that
20 forthcoming warrant is being the substance for him
21 being a danger in Canada.

22 THE COURT: What is the basis for the
23 Canadian warrant? I want to make sure I got this
24 --

25 MS. MCMENAMIN: The allegations that he

1 had murdered his girlfriend, Your Honor.

2 THE COURT: And where did that come
3 from?

4 MS. MCMENAMIN: That came from the US
5 Marshals, Your Honor. It's in Frigon's notes.

6 THE COURT: When he was listed as
7 missing and he was told to go get found, they
8 wanted him found.

9 MS. MCMENAMIN: Yes, Your Honor.

10 THE COURT: When he was put into NCIC?

11 MS. MCMENAMIN: Yes, Your Honor.

12 THE COURT: And when was the marijuana
13 warrant issued?

14 MR. SWERLING: 4th.

15 MS. BARBIER: The 4th. Your Honor, he
16 wouldn't have been a fugitive but for that
17 marijuana warrant, he wouldn't be a fugitive.

18 MS. MCMENAMIN: Your Honor, if I may?
19 He's still in NCIC, Your Honor. He's still
20 crossing borders in areas where his name and
21 information can be run. We still ascertain, Your
22 Honor, that this is not a joint venture. It's
23 specifically not a joint venture to obtain
24 statements from the Defendant. As Your Honor
25 expressed yesterday, just because somebody is

1 | working together to a certain degree does not mean
2 | that this is a joint venture. Nonetheless, Your
3 | Honor, it's irrelevant. That is the second part of
4 | my response.

5 | When we look to the *Abu-Ali* case, it
6 | comes down to custodial interrogation. Whether it
7 | was a joint effort or not, we look at custodial
8 | interrogation to see whether or not Miranda
9 | attached. We keep hearing that Miranda attaches at
10 | the time he's arrested and that is completely
11 | incorrect. That is not when Miranda attaches. You
12 | must be arrested, so in custody and you must be
13 | being interrogated either by expressly or by a
14 | functional equivalent thereof. And there was no
15 | evidence yesterday, Your Honor, or that has come
16 | out today to show that he was expressly
17 | interrogated whatsoever or to any of the actions by
18 | the Canadian law enforcement officials would be
19 | actions that they should have reasonably known or
20 | likely to elicit incriminating response from the
21 | Defendant. That's the language we get from
22 | *Abu-Ali*, the case that was decided by Defense,
23 | that's the language from *Miranda*, *Hart*, *Innis*,
24 | *Howard*, Your Honor, *Von Dohlen*. When we look to
25 | these cases, it's --

1 THE COURT: But none of those cases
2 have to do with anything outside of the United
3 States; am I right?

4 MS. MCMENAMIN: *Abu-Ali* does, Your
5 Honor.

6 THE COURT: I know, but the other one,
7 the *Innis* case, the *Hart* case, all those cases deal
8 with someone within the United States and us
9 dealing with Miranda.

10 MS. MAYES: Right, Your Honor.

11 THE COURT: And a conversation that's
12 overheard by two cops and he voluntarily blurts out
13 an answer. And the court says, don't have to have
14 Miranda for that even if you're in custody. I got
15 it.

16 MS. MCMENAMIN: Yes, Your Honor.

17 THE COURT: What I want to know is
18 between a foreign national and a US citizen who is
19 sitting in custody and he's not in the United
20 States and Miranda is not Miranda as we know it
21 here in the United States.

22 MS. MAYES: Yes, Your Honor.

23 THE COURT: Because there is case law
24 and I know what she's talking about. Is it the
25 *Karok* case or --

1 MS. BARBIER: Yes, it's the case of
2 *State versus Washington*, Your Honor.

3 THE COURT: *State versus Washington* and
4 the one *Karok* -- it's almost like karaoke is what
5 it reminds me of when I look at it. But anyway, I
6 read that case also. And that's different when
7 someone is sitting outside the United States and
8 that's why all this joint venture stuff is coming
9 into play.

10 MS. MCMENAMIN: Yes, Your Honor.

11 THE COURT: And you say not a joint
12 venture. Well, what about him being in custody?

13 MS. MCMENAMIN: He's in custody on the
14 Canadian warrant, Your Honor. And, yes, he is in
15 custody and he's being held and we do eventually
16 have him extradited.

17 THE COURT: Yeah, but the statements he
18 made is while he was in custody, not under Miranda,
19 sitting in Canada.

20 MS. MCMENAMIN: Yes, Your Honor.

21 THE COURT: That you want to bring into
22 this case here in the United States.

23 MS. MCMENAMIN: Yes, Your Honor.

24 Because --

25 THE COURT: That's what I want to hear.

1 MS. MCMENAMIN: I apologize.

2 THE COURT: Because is what I want to
3 hear.

4 MS. MCMENAMIN: Because Miranda would
5 not have applied even if he was in the United
6 States. So they are treated to the same standard
7 -- if it is a joint venture, they are treated to
8 the same standards that we have here. And the
9 standard we have here from the cases that I
10 mentioned is that Miranda does not attach until
11 you're both in custody and being interrogated and
12 there was no evidence that he's interrogated.

13 THE COURT: And he's not interrogated?

14 MS. MCMENAMIN: Yes.

15 THE COURT: Gotcha. And I think that
16 what I ruled yesterday.

17 MS. MCMENAMIN: Yes, Your Honor.

18 THE COURT: I did not feel that -- in
19 fact, I felt he was not answering -- I forgot what
20 I said. I wrote it down. It wasn't that he was
21 responsive or responding to any questions
22 whatsoever.

23 MS. MCMENAMIN: Spontaneous.

24 THE COURT: He just kind of volunteered
25 the answer. So what is the -- what difference does

1 | it make if he's got a PWID warrant on it, Ms.
2 | Barbier?

3 | MS. BARBIER: Well, first of all, Your
4 | Honor, yesterday you expressly ruled that it was
5 | not a joint venture. And I understand you ruled it
6 | on those facts. But today, their own witness
7 | disagrees with their characterization of whether it
8 | was a joint venture. He's expressly said that it
9 | was a collaborative effort and a joint effort of
10 | all these law enforcement agencies.

11 | THE COURT: Well, what if it is a joint
12 | venture? He's in custody.

13 | MS. BARBIER: He's in custody. And,
14 | Your Honor, there was testimony by Detective Frigon
15 | that he heard conversations, but he couldn't quite
16 | make out what they were because he wasn't close
17 | enough. He was the only one that, you know, was
18 | forthcoming with the fact that there was
19 | conversations between Mr. Shivers and some of the
20 | officers that were walking him down the terminal.

21 | I agree with you that the testimony of
22 | Detective Dean was that it was silence. You know,
23 | there were silence while he was being handcuffed
24 | and silence as they walked 20 minutes down the
25 | terminal and silence when he handcuffed him and

1 | that he just came out, blurted out, that he was
2 | going to eat one because of what he'd done.

3 | I mean, I think that --

4 | THE COURT: You don't think somebody
5 | can give -- be in joint custody and they can't give
6 | a voluntary statement?

7 | MS. BARBIER: I think it's absolutely
8 | possible, Your Honor. But I think that in reality,
9 | what happens when people are arrested in situation
10 | that's being described here, the very first
11 | objective of these officers is to get this guy to
12 | confess. That's what happens.

13 | MS. MCMENAMIN: Your Honor, may I
14 | clarify? There's some misinformation. I just want
15 | to make sure that it's clear for the record.
16 | Frigon never testified that he heard conversations
17 | between the Defendant and anyone. He testified
18 | that he and Dean were having a conversation amongst
19 | themselves when the Defendant first elicited that
20 | spontaneous, voluntary initial statement about
21 | where the vehicle was parked. Just before we go
22 | any further, that's simply not --

23 | THE COURT: But I think he also did
24 | testify that he didn't know what -- if they even
25 | had a conversation, he was far enough away from

1 | them that he couldn't hear it and couldn't tell us
2 | what it was. But, you know, regardless, if it was
3 | a joint venture or not, I understand what this
4 | officer just testified to. I still find it almost
5 | impossible the arrest warrant wasn't issued until
6 | 9/5 for his arrest. I don't know what else other
7 | than them assisting in getting him back to the
8 | United States and picking him up at the airport
9 | that they did. I don't think that absolutely makes
10 | it a joint venture, but let's say that it does. I
11 | don't know what the difference is.

12 | I do not see that these officers
13 | elicited any statement from him. I don't see where
14 | it was an interrogation. He didn't answer any
15 | questions of the officer. In fact, he just
16 | overheard two officers talking and blurted out,
17 | this is where my car is parked. And further, if
18 | you go in it, I have two loaded guns and
19 | ammunition. I believe that is basically what the
20 | State is trying to get in. I find that a voluntary
21 | statement and I'm going to let it in.

22 | However, that statement might get
23 | limited by the motion that we still have about the
24 | guns. Because neither one of these guns that were
25 | found in the car were a murder weapon. And so when

1 I weigh the two and think about them and I'll hear
2 arguments on it, I'm going to decide whether it's
3 prejudicial that part of the statement. They say
4 the ammunition is the same make, manufacturer of
5 the bullet casings that were found at the murder
6 scene. Y'all tell me if I'm reading this wrong.
7 I've read these motions and I will hear those when
8 it gets time. When we go through the guns. But
9 right now I'm ruling that those statements are
10 voluntary and they're coming in.

11 MS. BARBIER: Thank you, Your Honor. I
12 didn't want to belabor, I just wanted to make a
13 record.

14 THE COURT: No. No. And I think we've
15 made a record.

16 MS. BARBIER: Okay.

17 THE COURT: Now, Ms. Mayes, when we get
18 to the part about the guns, you're going to give us
19 fair notice on that so we can have a hearing on
20 that?

21 MS. MAYES: Yes. Those two guns from
22 the vehicle, Your Honor, would have been seized by
23 Detective Nick Burt. That's probably going to be
24 tomorrow the way we were looking or right now.
25 There's going to be plenty of evidence this

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | afternoon about some ammunition found at the scene.
2 | And so tomorrow would be matching -- potentially
3 | evidence of matching ammunition.

4 | THE COURT: Okay. That will be good.
5 | We're taking a 15 minute break and we'll be back.

6 | (WHEREUPON, there was a short break)

7 | (The jury enters the courtroom at 4:15
8 | p.m.)

9 | THE COURT: All right. Mr. Foreman, is
10 | the jury ready?

11 | THE FOREPERSON: We're ready.

12 | THE COURT: Okay. Let's call your next
13 | witness.

14 | MS. MAYES: The State calls Detective
15 | Tom Smith.

16 | THOMAS SMITH,
17 | being first duly sworn, was examined and testified
18 | as follows:

19 | THE CLERK: If you'll have a seat and
20 | state your name, please, for the record.

21 | MR. SMITH: Thomas Alvin Smith,
22 | S-M-I-T-H.

23 | DIRECT EXAMINATION

24 | BY MS. MAYES:

25 | Q. Good morning. Can you tell us a little

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 bit about yourself, where are you employed?

2 A. I am currently employed with the
3 Lexington County Sheriff's Department within the
4 crime scene unit.

5 Q. All right. And how long have you been
6 with the Lexington County Sheriff's Department?

7 A. I was with the Lexington County
8 Sheriff's Department for right at six years. I
9 gained employment with them in December of 2013.
10 In December of 2019, I left to go to the academy
11 where I was an instructor for about a year and a
12 half and I am back with the Lexington County
13 Sheriff's Department now.

14 Q. All right. You said the academy, what
15 do you mean by that?

16 A. The South Carolina Law Enforcement
17 Academy.

18 Q. All right. And altogether, how much
19 experience do you have in CSI work, Detective
20 Smith?

21 A. So I actually started by CSI work in my
22 law enforcement with the military. I spent six and
23 a half years with the US Army Criminal
24 Investigations Division Command where I conducted
25 felony investigations not only State sites, but

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | throughout the world on everything from money
2 | laundering, computer crimes, sex crimes, death
3 | investigations, homicides, fraud, and the likes.
4 | After six and a half years that's when I got out
5 | and then got into doing law enforcement. The whole
6 | six and a half years we did our own crime scene
7 | investigations and then with Lexington County I've
8 | done four years prior to going to the Criminal
9 | Justice Academy and now with me being back at
10 | Lexington County I'm again doing crime scenes.

11 | Q. All right. Can you tell us whether or
12 | not this work includes the use of what's known as
13 | forensic tools?

14 | A. Yes, it does.

15 | Q. Such as latent print dusting, DNA
16 | swabs, things of that nature?

17 | A. Yes, ma'am.

18 | Q. Now, tell us how you became involved in
19 | the investigation concerning this location being
20 | 201 Carriage Hill Court?

21 | A. So on this day, I was the day call
22 | crime scene investigator. We have to pull a week
23 | call out at a time. I simply received a phone call
24 | saying that there was a death investigation at this
25 | residence and that I need to respond. So myself

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 and CSI Investigator Cody Wyatt responded to the
2 scene.

3 Q. All right. And tell us what your first
4 action was upon arrival?

5 A. So upon arrival, I do the first thing.
6 I talk to whoever is holding the scene to find out
7 exactly what I am there for, what's going on and a
8 description of what took place prior to me
9 arriving. And then I talk to the investigators.
10 Investigators tell me what they know so far. They
11 will explain to me what they've been able to figure
12 out and the time period upon notification of the
13 incident as well as my -- and before I arrived.

14 This case, I actually had an
15 opportunity, it was the first for me, we were
16 actually able to watch the responding officer
17 because the responding officer at the time was not
18 on scene.

19 Q. And let me ask you this, are you
20 referring to Deputy Hale?

21 A. Yes, I am referring to Deputy Hale.

22 Q. Okay. And what was your time of
23 arrival there at the scene?

24 A. So I arrived right around 13:30 hours.

25 Q. And this would be the same day,

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 obviously that the body had been found?

2 A. Yes.

3 Q. You mentioned observing a body camera
4 footage, was that of Deputy Joshua Hale?

5 A. Yes, it was.

6 Q. And that was for what purpose?

7 A. Deputy Hale had been released, so he's
8 not there on scene, so we were able to watch the
9 video camera to see exactly what his actions were.
10 What doors he went to. What doors were locked.
11 What doors were unlocked and the condition of the
12 scene when he made the initial entry. What it was
13 he touched. What he manipulated. And we were able
14 to get a good idea of the layout of the house
15 through his body camera and we were able to start
16 coming up on a game plan on how we were going to
17 process the residence.

18 MS. MAYES: All right. Beg the Court's
19 indulgence.

20 THE COURT: Take your time.

21 Q. You mentioned checking doors. I'm
22 going to ask you specifically about that. Did you
23 have an opportunity to determine from the exterior
24 of the perimeter whether there had been any signs
25 of forced entry to this location?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. So we -- when we were first notified --
2 or when I was first briefed, we were concerned of
3 persons coming and going. So that's one of the
4 first things I had checked out was the possible
5 entrance to the residence. All the doors on the
6 front side of the house as well -- I apologize.
7 All the windows on the front side of the residence
8 were intact. They were shut. They were locked
9 from the inside. Same thing on the back side.

10 All the doors on the exterior of the
11 residence, they were -- all the doors on the
12 exterior of the residence, upon my arrival minus
13 the front door in the -- yeah, minus the front door
14 were all shut and locked. We were able to see on
15 Deputy Hale's body camera that the rear door at the
16 time was open. But there was no sign of forced
17 entry to any of the doors. The door frames, the
18 door jams, the locks themselves were all in working
19 order.

20 Q. All right. I'm going to show you what
21 is in evidence already. This is State's 40 and 38
22 being two diagrams. Are you familiar with these
23 diagrams?

24 A. Yes, ma'am. Those are diagrams I
25 drafted.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. These are actually your diagrams. Now,
2 as we look here at these photographs, Detective
3 Smith, I want to kinda walk through them with you.
4 Can you tell us whether or not you determined that
5 the front door had been locked?

6 A. The front door we were actually able to
7 watch that and see Deputy Hale unlock it for the
8 EMS and fire to come into the residence, so we knew
9 that was locked at the time of the incident or at
10 the time that Deputy Hale had made entry into the
11 residence.

12 Q. Looking here at State's 38 being the
13 diagram, can you show us where on this diagram that
14 door would be?

15 A. Yeah. The front -- the front door
16 would be located right here in between the formal
17 study and the formal dining room.

18 Q. Now, moving on. What other doors were
19 of interest to you?

20 A. So the doors that were of interest,
21 obviously, the front door here. This door right
22 here is the door that leads out on to the porch.
23 There's a set of french doors right here centered
24 on that wall to the living room. And there's an
25 exterior door right here off the kitchen and there

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | was a door here leading down to the walk out
2 | basement.

3 | Q. All right.

4 | MS. MAYES: I believe 3 is already in
5 | evidence, Your Honor.

6 | Q. Let me show you this particular
7 | diagram. Now, talking about doors inside the
8 | residence. Were you able to determine that the --
9 | whether or not the doors to the garage had been
10 | locked?

11 | A. The doors to the garage was locked as
12 | well as the interior door that transitions from the
13 | garage into the actual house itself. We were able
14 | to watch Deputy Hale manipulate that lock, he
15 | actually winds up unlocking it and then locking it
16 | back.

17 | Q. Now, what about windows? To what
18 | extent did you observe windows?

19 | A. So we walk the exterior of the house
20 | and check all the windows. The windows along the
21 | back here do not open at all. The windows --
22 | this -- the windows down here were shut and locked.
23 | There's a -- I can't remember if there's a door or
24 | sliding glass door that's there. No, it was a
25 | door. All that was secure and all that was locked

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 as well as the front of the house.

2 Q. All right. I'm going to show you what
3 is State's 108 and 107 and ask you whether or not
4 you recognize these?

5 A. Yes, ma'am.

6 Q. Can you tell us whether this area of
7 the home was also inspected?

8 A. Yes, it was.

9 MS. MAYES: 107 and 108.

10 Q. First I want to start here with
11 exterior.

12 THE COURT: We moving those in?

13 MS. MAYES: Yes, Your Honor. This is
14 108 and 107 I believe without objection.

15 THE COURT: No objection. They're in.

16 (WHEREUPON, State's Exhibit Numbers 107
17 and 108 were entered)

18 Q. 108, looking here. Can you tell us
19 whether or not the exterior area around this
20 particular window was observed?

21 A. We made sure -- on both sides of the
22 front door were double windows. Due to the nature
23 of what I responded to, I take great care and
24 interest in that area to see whether or not it had
25 been disturbed. It's a planting area with pine

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 straw and everything down, so we were looking for
2 that being disturbed, moved, kicked up in areas and
3 we did not observe anything -- anything disheveled.
4 We also checked to make sure all the screens were
5 in place. There was no cutting of the screens and
6 damaged to them.

7 Q. Did you inspect every window of this
8 residence?

9 A. Yes, ma'am.

10 Q. Was every window -- can you tell us
11 whether or not every window had an intact screen?

12 A. Every window on the front side had an
13 intact screen. On the rear, I'm not sure about
14 screenage, but I do know that they were shut and
15 locked.

16 Q. Was every window locked?

17 A. Yes.

18 Q. Looking here at 107 in evidence. I'm
19 going to ask you what if anything we're looking at
20 here?

21 A. So this window actually got my interest
22 because all of the windows had some sort of window
23 curtain on it. We spent a good bit of time making
24 sure that no one gained entrance through this
25 window. Once we got to the window and we started

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1 looking around, we observed that there was just
2 common dust on the windowsill and that there was no
3 damage, there was no footprints -- or footwear
4 impressions, there was nothing disturbed up
5 underneath the window, so -- and it was also
6 locked, so with a cardboard box and all there,
7 we --

8 Q. Were there any signs of forced entry?

9 A. There was no signs of entry through the
10 window.

11 Q. All right. Now, specifically, did you
12 see boxes throughout the residence?

13 A. Yes. It appears though they had just
14 recently moved into residence.

15 Q. Let me show you what is State's 4
16 already in evidence. Now we're looking at the
17 backside of the house. This particular location
18 hear, would be what?

19 A. That is a screened in porch off the
20 kitchen.

21 Q. And can you tell us whether or not you
22 inspected the interior door here between that
23 screen porch and the kitchen entrance?

24 A. Yes. And, again, the door wasn't
25 damaged. The lock was in working order. The door

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1 | jam and door frame itself was intact.

2 | Q. Okay. Can you tell us whether or not
3 | that kitchen door to the breakfast nook area was
4 | locked?

5 | A. Yes, it was.

6 | Q. Were all doors locked to this residence
7 | based upon your inspection other than what we see
8 | in 37 being the balcony door?

9 | A. I want to go back just a minute because
10 | I want to clarify something for my testimony. I
11 | thought when you asked me the first question as far
12 | as that door being open or shut that we were
13 | talking about the door that transitioned from the
14 | kitchen on to the screen porch. So the door
15 | transitioning, that door was shut and locked with
16 | no damage. The other door, there's a screen door
17 | that leads on to the back porch, that was actually
18 | opened and not locked. So I just want to make sure
19 | that's clarified.

20 | Q. Okay. I want to show you a photograph.
21 | So does 3 help you explain that further?

22 | A. Yes, it does. So there is -- right
23 | here is the formal door. It's an exterior door for
24 | a house. That was shut and locked. Just off to
25 | the side in this general area right here is an

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1 actual screen door that leads from the screened in
2 porch on to the back --

3 Q. So a porch door?

4 A. A porch door.

5 Q. Okay. And the porch door was open?

6 A. Yes, ma'am.

7 Q. Okay. Now looking here at 37. I want
8 to talk about this. What was the first room that
9 you processed pursuant to your crime scene
10 investigation?

11 A. Actually, the first one that we
12 processed was the foyer of the entrance way into
13 the house. Trying to rule out, trying to determine
14 if anyone had made entry into the house. We
15 processed that. Touch DNA latent prints. We
16 actually used latent prints on the floor trying to
17 develop footwear impressions off the floor. Once
18 we made it into there, the next room that we went
19 to that I let everyone into is the master bedroom
20 on the backside of the house.

21 Q. All right. And is that what we're
22 looking at here?

23 A. Yes. This is a picture of the master
24 bedroom taken from just inside the doorway.

25 Q. All right. Now, other than this door

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1 to the upstairs balcony being unlocked, were any
2 other doors -- exterior doors to that home
3 unlocked?

4 A. Okay. I just want to make sure. So
5 understand that Deputy Hale locked that backdoor
6 when he left out the house. All right. To secure
7 it. Leaving the front door open. So when I
8 processed the house, the front door was pulled shut
9 or the front door was open or unlocked for us, that
10 rear door had been locked to secure the back of the
11 house and make sure no one had access or could gain
12 entry into the house.

13 Q. Okay. And so given that, were any
14 other doors unlocked at this residence other than
15 the one you just described that Hale unlocked at
16 the front door for EMS?

17 A. No, everything was locked and secured.

18 Q. Okay. Now, given this patio door here,
19 is this on the first floor or second floor?

20 A. That is on the first floor. Well, I
21 considered it a first floor and then a walk out
22 basement. So --

23 Q. Do you have to walk up steps outside to
24 get to that door?

25 A. Yes. From the backyard, yes, there's

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1 steps leading up to that door.

2 Q. With that said, can you tell us whether
3 or not there was evidence of any type of pet in
4 this room?

5 A. We knew from watching Deputy Hale's
6 video that there was a dog in the room and
7 everything. When we went in there, there was an
8 animal crate. It looked like there was remnants of
9 animal toys. Once we started processing further,
10 we could see where there were some animal activity
11 had been chewing and tearing up stuff. As well as
12 we heard barking from the walkout basement where
13 there were two small dogs and there was a -- I
14 don't know if it was a parakeet or cockatiel.
15 There was a large bird that was in the residence as
16 well.

17 Q. All right. And I'm going to ask you
18 whether or not at this location being State's 37
19 you were able to observe any shell casings?

20 A. Yeah. Once we got our initial
21 photographs and as we worked our way over there,
22 there were multiple expended cartridge casings that
23 were on the floor. As you're looking this way out
24 that door on the right-hand side of the decedent.

25 Q. I'm going to show you some photographs,

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1 Detective Smith, and ask you whether or not you
2 recognize them?

3 A. Yes, ma'am.

4 Q. Starting with 58, 59, 60, 61, 62, 63,
5 64, 65, 66, 67 and 68?

6 A. Yes, ma'am. These are all photographs
7 that I took while I was inside the residence
8 processing it.

9 Q. Are these a fair and accurate
10 representation of the scene as you found it?

11 A. Yes, ma'am.

12 Q. You mentioned in this room various
13 projectiles. Do you have notes from your crime
14 scene investigation?

15 A. I do.

16 Q. And, in fact, did you prepare a report?

17 A. I did.

18 Q. Do you have a copy of that report with
19 you today?

20 A. I do.

21 Q. How many shell casings did you find in
22 that bedroom?

23 A. I found seven expended cartridge
24 casings.

25 Q. Can you tell us whether or not there

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1 | was any indication as to the make or manufacturer
2 | of this ammunition?

3 | A. Yes. All cartridge casings have what's
4 | called a headstamp on them. The headstamp
5 | identifies both the manufacturer as well as the
6 | caliber that's on it. All of these had HPR .45
7 | auto stamped in them. Which is indicative of HPR
8 | being the manufacturer .45 auto or .45 ACP is the
9 | caliber of the bullet.

10 | Q. All right. We're going to start here
11 | with State's 58. If you could please walk us
12 | through this photograph and tell us what you have
13 | photographed?

14 | A. All right. So what I have photographed
15 | here you'll notice the first marker is number one.
16 | That's actually our decedent. You'll see 2, 3, 4,
17 | 5, 6, 7, 8 are all of expended cartridge casings
18 | that are in this area and then on the side of the
19 | dresser.

20 | Q. All right. And just to clarify,
21 | expended cartridge casings, are those bullets that
22 | have been fired?

23 | A. Yeah, it's a cartridge that has been
24 | fired through a gun. The bullet is no longer
25 | there, the powder is no longer there.

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1 Q. Going to take a look at 59. Again, if
2 you could depict what we are seeing in terms of
3 those expended cartridge casings.

4 A. This is just another picture from
5 another angle trying to get all of them and where
6 they lay inside the house when we arrived.

7 Q. So 2, 3, 4, 5, 6, 7 and 8 --

8 A. Correct.

9 Q. -- do those account for all seven of
10 the cartridge casings you observed?

11 A. Yes.

12 Q. And, again, you indicated all of them
13 bear the headstamp HPR .45 auto?

14 A. Correct.

15 Q. Did they all appear to have the same
16 type of outer shell metal?

17 A. Yes.

18 Q. Can you tell us whether or not that was
19 consistent with brass?

20 A. Yes. All of them had a brass color --
21 well, actually, all of them are just made of brass.
22 There's no color to it. They're brass cartridge
23 casings.

24 Q. All right. And here is State's 60
25 depicts -- we're going to go in order. This would

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1 be what marker?

2 A. Item 2.

3 Q. 61?

4 A. Item 3.

5 Q. 62?

6 A. Item 4. Item 5.

7 Q. And that's 63. Next 64?

8 A. 6.

9 Q. 65?

10 A. 7.

11 Q. 66?

12 A. 8.

13 Q. Now, in addition to photographing these
14 items, can you tell us whether or not they were
15 collected as evidence in this case?

16 A. They were all collected.

17 Q. And for what purpose is that?

18 A. So we collect expended cartridges for a
19 couple different reasons on scenes. Possible DNA
20 off of them. But the biggest thing is being able
21 to put that cartridge into the gun that we find in
22 reference to this investigation. So the whole idea
23 is to be able to prove that those cartridges came
24 out of a specific firearm.

25 Q. Okay. I'm going to show you what is

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1 State's 1, ask you to go ahead and unseal that
2 item.

3 THE COURT: While he's doing that, Ms.
4 Mayes, 58 through 68, was that stipulated to?

5 MS. MAYES: There was no objection to
6 those photographs, Your Honor.

7 THE COURT: Okay.

8 MS. MAYES: I apologize. And then we
9 also are going to have 67 and 68 to publish, Your
10 Honor, also with no objection.

11 THE COURT: Okay. Thank you.

12 (WHEREUPON, State's Exhibit Number 58
13 through 68 were entered)

14 A. Did you say you wanted me to open
15 these, ma'am?

16 Q. Yes, please. Do you recognize what is
17 in that package?

18 A. Yeah. All of -- so each plastic bag
19 contains the brown envelope that I originally
20 packaged the cartridge case in as well as the
21 expended cartridge case itself.

22 Q. Do you account for all seven
23 projectiles -- I'm sorry, casings?

24 A. Yes, they're all accounted for.

25 Q. And can you look at these seven casings

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1 and tell us whether or not they also bear the
2 headstamp that you had informed us of?

3 A. Yes, all of them are HPR.

4 MS. MAYES: Your Honor, this would be
5 State's 1 for evidence containing seven expended
6 cartridge casings.

7 THE COURT: Any objection?

8 MR. SWERLING: None other than what has
9 previously argued before the Court. May I
10 approach?

11 THE COURT: Yeah. I don't think we
12 argued anything.

13 (WHEREUPON, there was a bench
14 conference)

15 THE COURT: Noted for the record
16 subject to a previous objection.

17 MS. MAYES: And all bearing State's
18 Exhibit 1, Your Honor.

19 THE COURT: Okay. It's admitted.

20 (WHEREUPON, State's Exhibit Number 1
21 was entered)

22 Q. Looking here, Detective, where is that
23 headstamp?

24 A. So the headstamp goes around. In the
25 center there you'll see a center piece, that's

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1 | called a primer. You see it has a little indention
2 | in it. Around that primer all that brass is what's
3 | called the headstamp.

4 | Q. Now, knowing that you have seven
5 | expended cartridge casings, what if anything does
6 | that indicate to you regarding how many bullets may
7 | have been fired and how many projectiles may be
8 | present at that crime scene?

9 | A. So with seven expended cartridge
10 | casings on scene, I'm looking for at least seven.
11 | There's been incidents where people have picked up
12 | brass while trying to clean up a little bit, stuff
13 | like that, so if I have seven then I know I have at
14 | least seven that I'm looking for and that's why we
15 | do so many different searches and all is to make
16 | sure that we find all of them that we can.

17 | Q. Knowing that there would be
18 | projectiles, can you tell us what if any effort you
19 | made to potentially locate projectiles? And I'm
20 | going to put down State's 58 at this point.

21 | A. So we initially didn't do anything to
22 | locate the projectiles. Understand our
23 | responsibilities is to -- in a organized method,
24 | locate -- locate, identify, preserve and collect
25 | the evidence. So knowing that we're going to have

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1 to remove the bedding off the deceased, knowing
2 that we're going to have to move around the
3 deceased, the first action we did actually was to
4 collect the projectiles from around there so that's
5 not on the floor and everything. They don't get
6 kicked, they don't get stepped on, they don't get
7 moved out of the way to some place else.

8 Once we did that, then we started to
9 remove the bedding off the deceased. That is where
10 we started identifying projectiles.

11 Q. All right. I'm going to show you what
12 is State's 68 and 67 and ask you whether or not you
13 recognize these? As well as 207 and 72. All
14 right. 67, 68, 207 and 69.

15 A. Yes, I recognize them.

16 Q. Okay. Are these also a fair and
17 accurate representation of the evidence you
18 recovered from the crime scene on this date?

19 A. Yes, ma'am.

20 Q. On your first day in the home being
21 September 3rd, how many projectiles did you recover
22 on that day?

23 A. On the first day, I believe we
24 recovered six projectiles.

25 Q. All right. Now, did you have any

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1 | indication as to whether all of the -- all of the
2 | shots were fired in one vicinity?

3 | A. You can look at where the cartridge
4 | cases land to an extent and have an idea of where
5 | the individual might be standing. It's not a
6 | science, it's not the most accurate thing in the
7 | world, I'll be honest with you. But it kind of
8 | gives you an idea of the proximity, but it's not a
9 | science.

10 | Q. All were found in that general area?

11 | THE COURT: Let me ask you, Ms. Mayes,
12 | 67, 68 I already have into evidence. But 69 and
13 | 207 have those been moved in? Are those
14 | stipulation or without objection?

15 | MS. MAYES: Which one?

16 | THE COURT: 69 and 207.

17 | MS. MAYES: 69 has been identified, but
18 | not yet published. I don't believe there's an
19 | objection, but I'm going to check.

20 | THE COURT: Okay. Will you check on
21 | 207?

22 | MS. MAYES: I believe there's no
23 | objection, Your Honor, to 69, 207, 67 and 68.

24 | THE COURT: Is that right? Okay.
25 | They're admitted.

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1 (WHEREUPON, State's Exhibit Numbers 67,
2 68, 69 and 207 were entered)

3 Q. Now, on that first day that you were at
4 the scene, how many cartridge casings, you said
5 seven, how many projectiles from those cartridge
6 casings were you able to recover on that first day?

7 A. On that first day we were able to
8 recover six.

9 Q. Okay. And where were those projectiles
10 located throughout that area?

11 A. So the first one that we found actually
12 was in the dresser drawer. There was a projectile
13 defect to the face of the dresser and that
14 projectile had gone in and it was just sitting
15 there on the -- in the closet -- or not in the
16 closet, I apologize, inside the drawer.
17 Photographed it and collected it.

18 Once we removed the bedding off the
19 deceased, we found two of the projectiles laying on
20 the carpet floor just underneath the deceased. And
21 then we found three more -- no, we found two more
22 projectiles in her clothing. She was wearing a
23 white -- I don't know what the top is called, it's
24 a stretchy Spandex type top with a built in
25 brazier.

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1 Q. Camisole?

2 A. Okay. She was wearing a camisole. We
3 found those two projectiles between the camisole
4 and the decedent's back. And then when we were
5 searching the decedent for more injuries and
6 everything, we actually had another one that was
7 just inside the surface that we removed there on
8 scene.

9 Q. All right. So I'm going to make a note
10 as we go through these six projectiles. One was in
11 the dresser? I believe you said two were
12 underneath the victim? I think you said two were
13 in the clothing?

14 A. Correct.

15 Q. And then the last one was located
16 where?

17 A. Just inside the wound channel. It
18 appeared to have come out of the decedent, but the
19 clothing and all that she was wearing kept it from
20 fully coming out so it was just sitting inside of
21 the wound channel.

22 Q. Would that be the skin surface?

23 A. Yes, ma'am.

24 Q. And who removed that projectile?

25 A. I did.

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1 THE COURT: All right. Mr. Swerling, I
2 see you standing.

3 MR. SWERLING: Judge, if I can clarify
4 something. The photograph we have no additional
5 objections to any of those. But we would like to
6 preserve our original objection. I don't know if
7 that's actually necessary, but just for the record.

8 THE COURT: Right. For the record what
9 we had talked about previously on an in camera
10 hearing that objection is preserved for the record.
11 So noted throughout the trial.

12 Q. All right. So my writings followed to
13 here, but you indicated the first projectile is
14 going to be from the dresser?

15 A. Correct.

16 Q. What does placard 15 indicate?

17 A. Placard 15 is just that projectile
18 sitting inside the drawer.

19 Q. All right. And looking here at 207.
20 Can you tell us whether or not -- what we're seeing
21 in this photograph?

22 A. So this is a copper jacketed hollow
23 point projectile. You'll see the copper here and
24 then there's a lead projectile that's hollow point
25 underneath it.

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1 Q. Now, we're seeing 68. It is noted here
2 that there are two that were located underneath the
3 victim?

4 A. Correct. One here, again, we're
5 dealing with a copper jacket lead hollow point.
6 Then the other one was here. Both of those being
7 copper jacketed hollow points.

8 Q. And then you indicated that there were
9 two in the clothing which were separate and apart
10 from the one that was actually on the skin's
11 surface?

12 A. Correct.

13 Q. And the one on the skin's surface you
14 recovered yourself?

15 A. Yes.

16 Q. What are we looking at here in State's
17 67?

18 A. So these are the two projectiles that
19 we found inside of her shirt. You can actually see
20 where the shirt itself actually held the bullet up
21 against the skin causing indentions and all to the
22 skin.

23 Q. Now, the victim is on the floor when
24 she's found. What if anything is significant about
25 locating those items in the clothing?

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1 A. So there's an affect called -- called
2 rebound. When an individual is up against a hard
3 surface a round comes through, the subject matter
4 hits and then bounds back up near and/or into the
5 wound track itself. These here could either be
6 rebound or just the -- a .45 is a slow moving
7 bullet. It only fires about 950 feet per second.
8 It could have just lost all of it's momentum and
9 that top was just tight enough and just elastic
10 enough to allow the bullet to penetrate out and
11 then be pulled back against the skin and it not go
12 through the clothing.

13 Q. Could the floor also serve as a
14 barrier?

15 A. Correct.

16 Q. Now, after you recovered on the first
17 day the six projectiles and the seven casings, what
18 else did you do on that first day?

19 A. We started processing the rest of the
20 house. We started looking in his -- in the closet
21 in the master bedroom.

22 Q. You had mentioned previously in your
23 testimony the foyer area. I'm going to show you
24 what is State's 105 and 106. Are these fair and
25 accurate representation of that area?

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1 A. Yes.

2 MS. MAYES: Your Honor, this would be
3 105 and 106 without objection.

4 THE COURT: It's admitted.

5 (WHEREUPON, State's Exhibit Numbers 105
6 and 106 were entered)

7 Q. What type of work did you do here at
8 the front door being State's 105?

9 A. So this is exterior of the front door.
10 When we got there, we first started getting
11 concerned about some nooks and stuff here on the
12 door as well as there's another gauge mark. Upon
13 looking at it, it looked as though that that had
14 been recently replaced and there were scratch marks
15 actually were from the previous doorhandle.

16 On that doorhandle as well as the thumb
17 latch, we took DNA's -- we attempted those -- slow
18 down -- we swabbed it for touch DNA to see if we
19 could put anybody else on the scene and also
20 processed it for latent prints.

21 Q. All right.

22 A. Not only did we do that for the doorway
23 on the exterior because a lot of people walk
24 through the door and then they'll hold that edge.
25 We also processed the entire edge of that door with

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1 latent print powder in order to and -- in order to
2 make attempts to develop latent prints.

3 Q. And what if anything did you do along
4 the foyer?

5 A. So upon entering the foyer --

6 Q. Looking here at 106?

7 A. Upon entering the foyer in the -- on
8 the floor inside the foyer, we used magnetic dust
9 powder on the floors themselves. Magnetic dust
10 powder on the floor when you're dealing with
11 footwear impressions, if there's dirt, oil, water
12 and all, it can actually leave an impression, so we
13 dust that in order to identify any footwear that
14 was coming and going from the residence.

15 Q. All right. Now, going back quickly to
16 105 being that front door, you indicated that there
17 were -- that it was processed?

18 A. Yes.

19 Q. Did you attempt to get latent prints?

20 A. We attempted and we didn't locate any.

21 Q. Okay. And did you take what would be
22 touch DNA swabs from this door area?

23 A. I did.

24 Q. I'll show you 168 and ask you whether
25 or not you recognize this item?

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1 A. I might recognize the swabs inside, but
2 this is not my packaging.

3 Q. And then you also mentioned gel lifts?

4 A. Correct. When we processed the floor
5 with our latent print powder, there was two
6 footwear impressions that were on the floor just
7 inside. I had the opportunity to photograph those
8 and then we used gel lift. Which is just a fancy
9 way of collecting a print to collect that for
10 evidence for later comparison. Yes, this I
11 recognize.

12 Q. All right. Were those the DNA swabs
13 that you collected from that front door area?

14 A. Correct.

15 Q. All right. And can you tell us whether
16 or not you also recognize the gel lifts there?

17 A. Yes, this is my packaging.

18 Q. I believe these are represented by
19 State's 167, State's 166 stickers?

20 A. Yes, this is my packaging.

21 Q. All right. Are these consistent with
22 the items collected there?

23 A. Correct.

24 MS. MAYES: For evidence, Your Honor.

25 THE COURT: Any objection? They're

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1 admitted.

2 MR. SWERLING: No objection.

3 (WHEREUPON, State's Exhibit Numbers 166
4 and 167 were entered)

5 Q. You mentioned using dusting powder on
6 the floor as well?

7 A. Yes.

8 Q. And that is dust for what purpose?

9 A. In order to try and find footwear
10 impressions that are visible on the floor.

11 Q. All right. And there along the foyer,
12 did you see any indication of footwear?

13 A. Yes. Once we were able to develop two
14 footwear impressions. One was a lot better
15 detailed than the other, but there were two.

16 Q. All right. I'm going to show you what
17 is 112, 111, 110, 93 and 210 and ask you whether
18 all of these items are consistent with what -- and
19 fair and accurate representation of what you saw at
20 the scene?

21 A. Yes.

22 Q. Do they also depict the dusting that
23 you just described in the foyer area?

24 A. Yes, ma'am.

25 Q. All right. You're going to have to

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1 show us what we're looking at here.

2 THE COURT: Are those going to be moved
3 -- are you moving those in?

4 MS. MAYES: Yes, Your Honor, this is
5 110, 111 and 112.

6 THE COURT: Any objection?

7 MR. SWERLING: No objection.

8 THE COURT: Okay.

9 MS. MAYES: Followed by 93 and 210.

10 THE COURT: I gotcha.

11 (WHEREUPON, State's Exhibit Numbers 93,
12 110, 111, 112 and 210 were entered)

13 Q. So starting here first in the foyer
14 area. We see 110, we see 112, we see 111, who is
15 doing the scaling and the dusting for these items?

16 A. That would be me.

17 Q. All right. Can you show us where at
18 all in this photograph you were able to visualize
19 some type of footwear impression?

20 A. Of course. Right here is the outline
21 of the footwear impression. You'll see that
22 there's a pattern here. There are distinct ridges
23 coming across it. And the same thing here, we have
24 ridge here. There's a little bit of cross pattern
25 here and another ridge there.

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1 Q. Now, you mentioned also doing what's
2 called a footwear gel lift and that's 166 and 167.
3 Are these gel lifts of those same prints that you
4 -- or footwear impressions you just described?

5 A. Yes, ma'am.

6 Q. Now, following that work, did you go on
7 to any additional bedrooms?

8 A. So -- and understand this is literally
9 the first thing we did. Once we got done -- got --
10 removed the deceased out with the coroner's
11 assistance and everything like that, we started
12 processing the rest of the house. We made entry
13 into a second bedroom that's on the front side of
14 the house. In there, she asked earlier about dogs
15 and everything. There was a foam mattress that was
16 all torn up and we were processing that for other
17 items.

18 Q. And in that room, did you see any type
19 of footwear that was of interest to you having just
20 taken this impression?

21 A. So inside there there was a pair of
22 like a light tan white shoe. I looked at it -- one
23 of the things --

24 Q. I'll show you 93 and ask you to
25 describe what we're looking at.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. Yeah, these are just shoes up
2 underneath the window. Right here they were just
3 laying -- as we found them.

4 Q. Now, in this room, you described this
5 as a spare bedroom. Was there any male clothing --
6 or was there any male clothing in this room?

7 A. No, it was all female clothing in the
8 closet, in the dresser drawer and female personal
9 items inside of the dressers -- or not dresser,
10 nightstand.

11 Q. All right. And you mentioned earlier
12 that there appeared to be some type of foam damage.
13 Where is that depicted in this photograph?

14 A. Well -- so if you'll notice there's all
15 this foam right here is chewed off. This larger
16 piece was originally on top of these shoes. We
17 didn't see them until we moved that piece of foam
18 and got some of that debris out of the way. Then
19 we found the shoes up underneath that.

20 Q. All right. And were you aware that
21 there was an animal who had access to that room
22 during this time period prior to --

23 A. Yes. There was a larger, if I'm not
24 mistaken, it was a white dog or something like
25 that.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. Did this appear to be consistent with
2 animal activity?

3 A. Yes, very much.

4 Q. I'm going to show you now what is 210
5 and ask you whether or not you seized this item?

6 A. Yeah. 210, just due to the weave
7 pattern and these horizontal lines coming across
8 the footwear, I seized those for later comparison.

9 Q. All right. And what if anything
10 prompted you to take them?

11 A. Just they looked consistent with the
12 footwear impressions that we had -- that I had seen
13 in the foyer.

14 Q. Can you show us how so in this
15 photograph?

16 A. Yeah. We have the horizontal lines
17 coming from across the sole and it's not a good
18 picture for it, but there's also a crisscross
19 pattern, same crisscross pattern we saw on the
20 floor.

21 Q. All right. Now, I'm going to show you
22 your 112 again.

23 A. Crisscross pattern and the lines coming
24 across the footwear impression.

25 Q. All right. And those were the shoes

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 found in the female room? Sandals?

2 A. Correct.

3 Q. Now, going back to the master bedroom
4 what type of clothing did you observe in the master
5 bedroom?

6 A. All the clothing in the master bedroom
7 was male in nature. Polo shirts, all the
8 underwear, all the socks, everything in the closet
9 as well as the dresser was all male in nature.

10 Q. I'm going to show you 82 and 83 and ask
11 if you whether or not you recognize these
12 photographs?

13 A. I do.

14 Q. Are they from the scene?

15 A. Yes, they are, ma'am.

16 MS. MAYES: I believe there's no
17 objection, Your Honor.

18 THE COURT: Any objection?

19 MR. SWERLING: No, nothing additional.

20 THE COURT: Okay. Then it's admitted.

21 (WHEREUPON, State's Exhibit Numbers 82
22 and 83 were entered)

23 Q. Looking here at 82, did you have a
24 chance to inspect the drawers?

25 A. We actually searched all the drawers in

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 both bedrooms and this is a sample of what we saw
2 in the drawers. Just, again, it's just all male
3 clothing.

4 Q. And then in 83, did you -- can you tell
5 us whether or not there was any evidence of that
6 room being freshly or recently used?

7 A. We do know that there are -- we did
8 observe there was shaving cream, razor out. This
9 is the master bathroom. Everything in there was
10 male products. All the medication and all that was
11 in the room, everything pointed to a male and a
12 male only being inside that bathroom.

13 MS. MAYES: And 87, I believe there's
14 no objection.

15 Q. Did you also go into the master bath
16 area?

17 A. Yes.

18 Q. And here in this photograph we are
19 looking at that master bath area and we see that
20 there are items in the sink. Did you photograph
21 those as well?

22 A. I did. I believe it turned out to be a
23 pair of boxer shorts and like lounge pants, like a
24 light pair of shorts or something that you'd wear
25 around the house.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. And I'm going to show you what is 87 in
2 evidence --

3 MS. MAYES: -- for evidence, Your
4 Honor.

5 THE COURT: And no further objection?

6 MR. SWERLING: No.

7 THE COURT: It's admitted.

8 (WHEREUPON, State's Exhibit Number 87
9 was entered)

10 MS. MAYES: Beg the Court's indulgence.

11 Q. Was this clothing collected as well.

12 A. It was. And per my notes, it's a plaid
13 pajama pants and black shorts?

14 Q. All right. And does it note the size?

15 A. I don't have any connotation of the
16 size in my notes.

17 Q. Okay. I'm going to move away real
18 quick and look at 58 which is already in evidence.
19 This item here, what type of item is that?

20 A. It's a polo shirt.

21 Q. Was it collected as evidence?

22 A. Yes, it was.

23 Q. I'll show you what is premarked as
24 State's 14 and ask you whether or not recognize
25 that as the item that was collected?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. Okay. So this is the plaid pajama
2 pants and black shorts from the area.

3 Q. And then this particular item that we
4 just took a look at, can you tell us whether it was
5 collected? I'm going to show you what is premarked
6 at State's 13.

7 A. Yeah, this is the polo that I
8 collected.

9 MS. MAYES: For evidence, Your Honor,
10 being 13 and 14.

11 THE COURT: Without further objection.

12 (WHEREUPON, State's Exhibit Number 13
13 and 14 were entered)

14 Q. I'm going to ask you to open these
15 items beginning with the -- beginning with the
16 black shirt. Sorry.

17 A. Okay, ma'am.

18 Q. Can you tell us whether or not that
19 shirt depicted here in State's 58 has any type of
20 insignia or logo?

21 A. It does. It has embroidered on it
22 Camping World over the left breast.

23 Q. All right. And can you tell us whether
24 or not it has a size?

25 A. 3XL.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. If you could then open the next item
2 being State's 14. Is this how you found it, inside
3 out?

4 A. Correct.

5 Q. Size 3XL?

6 A. Correct.

7 Q. The items that we're looking at now,
8 can you tell us whether or not they were depicted
9 in State's 87?

10 A. Correct. They're the items taken from
11 the sink in the master bath.

12 Q. Can you describe those items and what
13 size is indicated?

14 A. Sure. This is a pair of Starter black
15 athletic shorts size 3XL. This is a pair of
16 flannel lounge pants or pajama pants, size 3XL.

17 Q. All right. Now, did you find any
18 personal items of Vincent Shivers in that master
19 bedroom?

20 A. Yes.

21 Q. Can you tell us what type of items were
22 specific to him just in general?

23 A. Medications -- you talking about the
24 whole or just the master bathroom?

25 Q. Right. Well, starting here with this

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | photograph. Do you know whether or not his name
2 | was depicted on any medications present?

3 | A. Yes. All the medication that was
4 | present in that room that is prescribed, had his
5 | name on it.

6 | Q. And I'm also going to ask you whether
7 | there were any items of value throughout the house
8 | that appeared undisturbed?

9 | A. Yes. There was a litany of firearms
10 | and ammo. Large screen televisions, laptop
11 | computer, checkbooks, jewelry and other like items
12 | that were found throughout the house undisturbed in
13 | plain sight.

14 | Q. Did you see any evidence of rummaging
15 | through that master bedroom?

16 | A. No, there did not appear to be any sign
17 | of rummaging or moving of items.

18 | MS. MAYES: Your Honor, we're going to
19 | go ahead and give Defense a chance to review
20 | numerous photographs.

21 | THE COURT: Okay. Just let me know if
22 | there's any further objection.

23 | Q. Let me ask you while they are looking
24 | at some photographs. Let me ask you this, were you
25 | able to fully complete that search on the first day

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | being the 3rd?

2 | A. No, the house was too large, there was
3 | too much stuff for us to get through in that house.
4 | We decided to hold that house and continue to
5 | process it later.

6 | Q. All right. And did that -- can you
7 | tell us whether or not you returned the next day on
8 | the 4th?

9 | A. The next day we returned and began the
10 | process and exhausted ourselves on it and left the
11 | scene?

12 | Q. And can you tell us whether or not you
13 | continued to maintain that crime scene even after
14 | the 4th?

15 | A. Yeah. So we had the search warrant
16 | open, so what -- what wound out happening is
17 | deputies had to sit on that house and rotate it
18 | out. They would park their car up front and use
19 | that as a security post to make sure no one crossed
20 | the barrier tape. We had that across the front.
21 | We made sure that the two gates on the back side of
22 | the house were pulled shut. And we also secured
23 | and locked every door and -- made sure every door
24 | and window was locked upon our exit. And then the
25 | keys were maintained by the deputy sitting on the

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 house so that no one had ready access to the house.

2 Upon our return each and every single
3 -- upon our return each time, we would go over all
4 the doors, locks and windows to make sure they had
5 not been tampered with and had not been
6 manipulated, broken or the like.

7 Q. All right. And what was the final day
8 that you arrived there at the location?

9 A. I believe it was the morning of the
10 8th.

11 Q. Okay. And throughout that time was
12 there ever any indication that the scene had been
13 tampered with?

14 A. No, there was no indication of that.

15 Q. Had law enforcement maintained the key?

16 A. Yes, they did.

17 Q. Do you know if the keys were recovered
18 during that initial day on the 3rd?

19 A. Yes.

20 Q. And did you ever see any signs that the
21 scene had been tampered with in any way?

22 A. No.

23 Q. Between the 3rd and the 8th. All
24 right. And we're going to talk about the closet
25 real quick --

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: And, Your Honor, I realize
2 that scheduling may be an issue, so, whenever.

3 Q. Looking here at State's 76, 75, 85, 88,
4 89, 90, 91 and 92, can you tell us whether or not
5 those fairly and accurately depict items that you
6 recovered from the master bedroom closet?

7 A. Yes.

8 Q. Okay.

9 MS. MAYES: And, Your Honor, I believe
10 these are all without objection.

11 MR. SWERLING: Without objection.

12 THE COURT: Okay. It's so noted and
13 admitted.

14 (WHEREUPON, State's Exhibit Numbers 75,
15 76, 85, 88, 89, 90, 91 and 92 were entered)

16 Q. I want to start hear looking at 85.
17 Can you tell us whether or not there were suitcases
18 present there in the master bedroom?

19 A. Yes, there was both these two suitcases
20 and I think there was a third suitcase that had a
21 bunch of ammo and stuff inside of it.

22 Q. All right. So there was multiple
23 suitcases?

24 A. Correct.

25 Q. I'm going to show you what is 76 and

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 ask you whether there were -- I'm sorry, that is 75
2 and ask you whether there were any items of value?

3 A. Correct. That's just a full checkbook
4 that was sitting there inside of a tray that was
5 sitting on top of the dresser.

6 Q. In the master bedroom?

7 A. In the master bedroom.

8 Q. Now, I'm going to show you what is
9 State's 76, ask you whether there were any items of
10 value?

11 A. The computer sitting there.

12 MR. SWERLING: Judge, can we approach
13 one second?

14 THE COURT: You can.

15 (WHEREUPON, there was a bench
16 conference)

17 THE COURT: Mr. Foreman, we're going to
18 take a quick ten minute break. Stretch your legs.
19 Remember, no talking about this case. I'm going to
20 try to get through the -- just to give y'all
21 scheduling, I know it's getting late. But I'm
22 going to try to get through at least the direct of
23 this witness. I'm going to talk to the Defense and
24 see if they want to do their cross in the morning
25 or they want to do it this afternoon. So you might

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 want to talk with the jurors to see if y'all are
2 willing to do that and I'll talk to you when you
3 come back in. Go stretch your legs right quick.

4 (WHEREUPON, the jury exits the
5 courtroom at 5:21 p.m.)

6 THE COURT: I'll be back in just a
7 minute myself.

8 (WHEREUPON, there was a short break)

9 THE COURT: Okay. Do you think,
10 Suzanne, finish up?

11 MS. MAYES: I mentioned to Mr.
12 Swerling, Your Honor, it's probably about thirty
13 more minutes. He and I think have reached
14 agreements regarding some of the additional
15 photographs. The State is not offering photographs
16 and firearms, but will offer testimony that there
17 were other firearms of different calibers located
18 in that area. And --

19 THE COURT: So no firearms -- that's a
20 good decision. Thank y'all.

21 MS. MAYES: No photographs of the
22 additional firearms. There are some that have
23 already been agreed to, but of the individual
24 firearms.

25 THE COURT: Of the ones that were found

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | in the house?

2 | MS. MAYES: Yes.

3 | THE COURT: Like in the closet or
4 | whatever it was?

5 | MR. SWERLING: Those are the ones we're
6 | just now putting in. Four photographs, I believe.

7 | THE COURT: Okay good.

8 | MS. MAYES: And then, Your Honor, we
9 | have two photographs that were taken on the 8th.
10 | Those are going to be 65 and 209.

11 | THE COURT: And those are -- well, 65
12 | is already in.

13 | MS. MAYES. Okay. I'm sorry, 72. 72,
14 | Your Honor, and 209.

15 | THE COURT: 209.

16 | MS. MAYES: Those are photographs that
17 | were taking on September 8th. And beyond that,
18 | Your Honor, I think every other photograph has been
19 | agreed upon at this point. We also have items of
20 | physical evidence that corresponds with the
21 | photographs. I don't know of any objections to
22 | those.

23 | THE COURT: All right. Well, let me
24 | ask you right quick just to save some time. Can
25 | you just tell me what photographs you're going to

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1 put in right quick that y'all agreed to without any
2 additional objection from the Defense. So I can
3 just go ahead and check them and I'm going to rule
4 that they're in evidence.

5 MR. SWERLING: 97.

6 THE COURT: 97.

7 MR. SWERLING: 96.

8 THE COURT: All right. 97.

9 MS. MAYES: 96.

10 THE COURT: Gotcha.

11 MS. MAYES: 95.

12 THE COURT: Okay.

13 MS. MAYES: 215, 214, 74.

14 THE COURT: Okay.

15 MS. MAYES: 101, 100, 99, 98, 102 and
16 103.

17 THE COURT: All right. 103 I've
18 already got in.

19 MS. MAYES: There is a 115 and then 39
20 is a crime scene diagram.

21 THE COURT: 39. Okay. Are there any
22 that are -- need to be ruled upon?

23 MS. MAYES: I am offering 209 and 72.

24 THE COURT: That's the one that was
25 taken on 9/8.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MR. SWERLING: This one 209, Your
2 Honor, they've made it black and white at our
3 request.

4 THE COURT: Are you agreeing to that?

5 MR. SWERLING: Well, no additional
6 objection.

7 THE COURT: No additional. 209, okay.

8 MR. SWERLING: And then 72.

9 MS. MAYES: Your Honor, regarding items
10 of physical evidence, 170 is the white undershirt.
11 11 are the two magazines containing HPR .45
12 ammunition.

13 THE COURT: Okay.

14 MS. MAYES: 192 is a box of ammo marked
15 HPR .45 caliber. Next is 12 which are -- that's a
16 cartridge case from the top of the dresser.

17 THE COURT: Okay.

18 MS. MAYES: 169 is an iPhone and 1 --
19 I'm sorry, 6 is a Springfield Armory box for a .45
20 caliber firearm.

21 THE COURT: Okay.

22 MS. MAYES: And 2 are projectiles.
23 Seven projectiles in 2. And 180 -- 1-8-0 is an
24 item of clothing from the master bedroom being a
25 blue onesie.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MR. SWERLING: What is it?

2 MS. MAYES: A blue onesie.

3 Okay. Now, all of those are admitted
4 into evidence without further objection from what
5 we have had on our in camera hearing about the
6 officer going into the scene do to the Fourth
7 Amendment.

8 But I'm confused on 72. Now, 72, is
9 that without further objection?

10 MR. SWERLING: Nothing additional.
11 This was just not -- I didn't realize we had --
12 that's fine. We're good on that.

13 THE COURT: There was one that I asked
14 to be black and white.

15 MR. SWERLING: One of them was and
16 that's been done.

17 THE COURT: Okay.

18 MR. SWERLING: So 72 is not -- no
19 additional objection.

20 THE COURT: Okay. That's sounds good.
21 Good work.

22 (WHEREUPON, State's Exhibit Numbers 2,
23 6, 11, 12, 39, 72, 74, 95, 96, 97, 98, 99, 100,
24 101, 102, 103, 115, 169, 170, 180, 192, 209, 214
25 and 215 were entered)

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: All right. Can I bring the
2 jury in then?

3 MS. MAYES: Yes, Your Honor.

4 THE COURT: We're going to finish this
5 up, they're probably not going to be real happy.
6 But, Mr. Swerling, let me ask you, do you mind
7 doing your cross in the morning? I always hate
8 splitting up a witness like this. I mean, I really
9 do.

10 MR. SWERLING: I want to stay
11 (laughter).

12 THE COURT: Okay. Just want to make
13 sure. Let's bring the jury in. I just didn't
14 realize that this witness would be that long.

15 (WHEREUPON, the jury enters the
16 courtroom at 5:46 p.m.)

17 THE COURT: All right. Mr. Foreman, is
18 the jury ready?

19 THE FOREPERSON: We are ready.

20 THE COURT: Okay. I'm going to tell
21 you what we're going to do is finish the direct on
22 this witness and then tomorrow the Defense will
23 have their time at cross, okay?

24 MR. FOREMAN: All right.

25 THE COURT: It's probably take

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | somewhere about twenty or thirty minutes to finish
2 | up this witness and then I'll let you go. Thank
3 | you.

4 | CONTINUED DIRECT EXAMINATION

5 | BY MS. MAYES:

6 | Q. All right. I believe we are going to
7 | try to move along here a little more quickly,
8 | Detective Smith. Looking here at this particular
9 | photograph, can you tell us whether there were
10 | additional items of value?

11 | A. Yes, the laptop computer.

12 | Q. All right. Now, I'm going to show you
13 | what is State's 74 in evidence without objection
14 | and ask you what if anything is significant about
15 | this photograph?

16 | A. So this is a -- that tray that was on
17 | top of the dresser in the master bedroom. This is
18 | a cartridge that was just sitting on top of it. We
19 | photographed it and collected it as evidence.

20 | Q. All right. What if anything was
21 | significant about this particular round?

22 | A. The particular round was, again, an HPR
23 | .45 auto. You can see in this picture that HPR .45
24 | auto is a copper jacketed hollow point?

25 | Q. Okay. I'm going to show you what is

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 State's 12 already unsealed and in evidence. Can
2 you confirm that that is also the HPR .45 caliber
3 auto?

4 A. It is.

5 Q. And so that's an unfired round?

6 A. Correct.

7 Q. Located on top of the dresser?

8 A. Correct.

9 Q. All right. Now, did you discover any
10 other type of ammunition in the master bedroom area
11 consistent with the HPR .45 caliber rounds?

12 A. We found a box of HPR .45 ACP inside of
13 a piece of black luggage, a partial box.

14 Q. I'm going to show you what is 90 in
15 evidence. What are we looking at there?

16 A. That's the box of HPR manufactured
17 ammo.

18 Q. And I'm going to show you what is
19 State's 192 in evidence. What are we looking at
20 there?

21 A. This is just the box that I found
22 inside and I collected it. Yeah, a partial box.

23 Q. All right. And what type of ammunition
24 is this particular HPR box for?

25 A. HPR .45 ACP.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. Is that consistent with the seven
2 expended cartridges?

3 A. It is.

4 Q. What other evidence of .45 caliber
5 ammunition did you find in that master bedroom that
6 was consistent with the spent cartridge casing
7 being HPR .45 auto?

8 A. So there was two magazines for a
9 Springfield XD45 that was on the built-in bookcase
10 in the back of the closet. Might be initially for
11 clothing, but built-in's on the backside on the end
12 of the closet.

13 Q. All right. I'm going to show you what
14 is 92 in evidence and ask you if you recognize
15 where item 44 was recovered?

16 A. 44 being -- oh, the magazines?

17 Q. And State's 91 in evidence.

18 A. There we go. Here on the shelf.

19 Q. Okay. And did you seize those
20 particular magazines which are shown here in 91
21 labeled 44?

22 A. Yes, I did.

23 Q. All right. And why did you seize those
24 magazines?

25 A. Because they contained ammo consistent

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 with what we found inside the residence as well as
2 the box of ammo that was inside the residence.

3 Q. All right. Now, can you tell us
4 whether inside those two magazines and, again, this
5 is State's 11, whether it contains -- whether they
6 both are loaded and contain ammunition?

7 A. Yes. Give me a second to confirm
8 something. Yes, they both contain at least the
9 first round HPR .45 auto. They're .45 caliber guns
10 and they're both loaded to 12 rounds -- or 12
11 cartridges rather.

12 Q. All right. Were they -- was every item
13 of ammunition consistent with the HPR .45 auto?

14 A. Yes.

15 Q. Does it depict a logo or insignia as to
16 the maker or manufacturer of those magazines?

17 A. On the bottom what's called the four
18 plate of the magazine is actually stamped
19 Springfield Armory .45 ACP 13 rounds.

20 Q. Springfield Armory.

21 A. And you can tell that this is for a
22 Springfield XD specifically because of the stamp
23 that's on the front of the magazine here. It's
24 something that Springfield does for their XD
25 models.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. So this would be ammunition
2 that goes with a Springfield XD .45 caliber
3 firearm?

4 A. Well, the magazine would go through any
5 .45 -- or the bullets will go through any .45. The
6 magazines are specific to the Springfield XD.

7 Q. Now, did you find any other evidence in
8 that master bedroom consistent with some type of
9 Springfield Armory XD .45 caliber firearm?

10 A. Correct. On the shelves we were also
11 able to locate and identify a box for a Springfield
12 XD .45.

13 Q. I'm going to show you what is State's
14 88 in evidence and marked with 31. What are we
15 looking at here?

16 A. That's the box that I mentioned just a
17 second ago. That's Springfield Armory's box. When
18 we located it and found it, it was empty.

19 Q. Looking here at 89. What if any
20 insignia is on the exterior of that box to indicate
21 what type of weapon goes with it?

22 A. You have XDS which is their marker for
23 an XD .45 ACP and you actually have the serial
24 number for the weapon over there on the far side.

25 Q. I'll show you what is State's Exhibit

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 6. Do you recognize this item?

2 A. I do.

3 Q. When you found that particular
4 Springfield Armory box in the master bedroom was
5 there any sign of the weapon that goes with it?

6 A. No, there was not.

7 Q. And it was closed when you found it as
8 depicted in that photograph?

9 A. Closed and the latches were secure.

10 Q. The two magazines that you mentioned,
11 do they also go with this weapon?

12 A. Correct.

13 Q. Would there be a place for those
14 magazines in this gun box?

15 A. Yeah, that would fit here. One running
16 this way and the other one running opposite or head
17 to toe to each other.

18 Q. So you found ammunition and you found
19 magazines and you found the box?

20 A. Correct.

21 Q. Did you ever recover that weapon, the
22 Springfield Armory XD .45 in that house?

23 A. No, it was not in the house.

24 Q. Now, you mentioned previously that you
25 had accounted for six projectiles and you laid out

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 for us where those projectiles were recovered along
2 the way. Ultimately, did you have an opportunity
3 to recover the seventh projectile.

4 A. Yes. When we returned to the house on
5 the 8th, we at that point started removing carpet
6 from the master bedroom and up underneath the
7 carpet we were able to locate the seventh
8 projectile.

9 Q. All right. We're looking there at
10 State's 209. When you look at this photograph,
11 what if anything is -- did you observe about a
12 blood trail or the area of bloodletting?

13 A. So the only blood that we were able to
14 locate inside the residence was this immediate area
15 here directly underneath where the deceased was
16 located.

17 Q. And what if anything does that indicate
18 to you about where the crime occurred?

19 A. That it took place in that general
20 area, in that immediate area.

21 Q. Within this location?

22 A. Correct.

23 Q. And did you ultimately recover a
24 seventh projectile once the carpet was lifted here
25 in State's 209?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. Correct. We -- about right in here.

2 Q. I'm going to show you now what is
3 State's 72 with marker 65. And that was on
4 September 8th?

5 A. Correct.

6 Q. And at this point you located the
7 seventh projectile?

8 A. Correct.

9 Q. I'm going to ask you to take a look at
10 these and whether or not you recognize them. You
11 indicated that was under the carpet, did that
12 carpet have padding?

13 A. Yes, it did.

14 Q. Where was it in location to the carpet
15 padding?

16 A. It actually had pushed the carpet
17 padding up and over the top of it. Kind of hidden,
18 kind of camouflaged.

19 Q. It was underneath the padding?

20 A. Correct. And, yes, I recognize these
21 minus the plastic over them.

22 Q. Can you tell us whether all of these
23 were properly sealed for submission to the State
24 Law Enforcement Division?

25 A. Correct.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. You previously identified seven
2 cartridge casings, can you tell us whether or not
3 those were sealed for submission to the State Law
4 Enforcement Division?

5 A. Yes, they were.

6 Q. Were they sealed by you?

7 A. Yes.

8 Q. Were they tampered with in any way
9 after being sealed?

10 A. No, not to -- I sealed them. I turned
11 them over to the evidence depository in a sealed
12 constate, so I'm not -- that's the end of my chain
13 as far as their condition.

14 Q. All right. And if they had been
15 tampered with in any way would the seal indicate
16 that?

17 A. Yes.

18 Q. And to your knowledge does it remain
19 sealed until it is submitted to the State Law
20 Enforcement Division?

21 A. Yes, ma'am.

22 Q. Now, there has previously been
23 testimony in this case regarding State's 113. I'm
24 going to ask you whether or not you're familiar
25 with what is depicted in this photograph?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. That is some of the bedding that
2 covered the deceased. And then the bottom left
3 right here is a shoe wear impression.

4 Q. All right. And I'm going to show you
5 State's 115 which is now in evidence and ask you
6 were you present when that photograph was taken?

7 A. I was.

8 Q. And what was the purpose of that
9 photograph?

10 A. What we were trying to do is take what
11 is known as comparison quality photographs. So
12 with the intent of being able to match that to a
13 specific footwear if we're able to eventually
14 locate it.

15 Q. Now, what if anything did you do after
16 observing this particular footwear impression?

17 A. After observing this footwear
18 impression and also after having viewed Deputy
19 Hale's body camera, I actually had him respond back
20 to the scene. I took his shoes and I photographed
21 them with a scale for later comparison.

22 Q. All right. I'm going to take a look
23 now at 116 already in evidence. Why did you ask
24 for that to be done after you photographed what is
25 depicted here in 115?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. So it appeared to be a lug sole
2 footwear impression. With it being a lug sole and
3 also having viewed Deputy Hales's body camera, it
4 appeared as though he might have been stepping in
5 that area to get around the decedent on the floor.
6 So that was the first -- first footwear impression
7 that we could think of and we were trying to
8 eliminate that with the photographs.

9 Q. And you work multiple crime scenes?

10 A. I have.

11 Q. Involving first responders?

12 A. I have.

13 Q. What is meant by a lug boot?

14 A. A lug boot is basically just a boot.
15 Instead of having your core shoes have nice low
16 tread wear on them, your running shoes will have
17 more tread wear towards the back and more lugs
18 towards the front. First responders, law
19 enforcement, EMS, fire wear a true lug. In other
20 words, there's multiple points of contact. The
21 idea of that is to be able to step through the
22 water on to the surface and move the water out of
23 the way for the shoe to make contact. Also on wet
24 mud and dirt to get a good deep traction.

25 Q. And what if anything did you recognize

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | this photograph to depict?

2 | A. It appeared to me to be lug impressions
3 | and all on the blanket.

4 | Q. Now, we're looking at 39. I believe
5 | this particular diagram was prepared by who?

6 | A. This I drew -- this I drafted.

7 | Q. Okay. I'm going to try and get a
8 | little closer on it. What are the color coded --
9 | what are the color coded numbers here?

10 | A. So the red depicts the expended
11 | cartridge casings that I collected on scene. The
12 | blue represents the projectiles that I -- no, it's
13 | green, I apologize. The green denotes the location
14 | of the projectiles I collected. The black is that
15 | one cartridge that I collected off the dresser.

16 | Q. All right. With all of that in mind
17 | and having recovered all of the seven cartridge
18 | casings and the seven projectiles, take us through
19 | this what we're looking at and what was located
20 | where in proximity to the body of Roselynn Cedeno.

21 | A. Okay. So number 2 right here was an
22 | expended cartridge casing. 3, expended cartridge
23 | casing. 4, expended cartridge casing. 5, expended
24 | cartridge casing. 8, expended cartridge casing.
25 | 7, expended cartridge casing. 14 up here is the

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 full cartridge. And then when we start going back
2 and we start looking at projectiles. We have 15
3 here inside the dresser drawer. 1.1 and 1.2 are
4 the ones that were found laying beside the
5 deceased. Am I doing that right? I can hardly see
6 it. I apologize.

7 Q. You can step down.

8 MS. MAYES: Your Honor, does he have
9 permission to step down?

10 THE COURT: Yes, if you could.

11 A. All right. So 11 and 12 were beside
12 the decedent. I apologize, my 11 and 12 look like
13 1.1. and 1.2. 1.1, 1.2 and 1.3 was either found
14 on the decedent or in the decedent.

15 Q. All right. And the cartridge casings,
16 is there any particular direction that they go once
17 the gun is fired?

18 A. That's a yes and no type of question.
19 Most firearms I know eject to the right because
20 that's just where the ejection port is is to the
21 right. Right and to the rear is what we mostly
22 see. That said, especially in a house where
23 there's stuff it can bounce off of and people
24 walking through it and stuff like that, they'll
25 wind up where they wind up.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Now, I am going to show you
2 a different area of the home this being the
3 kitchen. Did you have an opportunity to process
4 that area?

5 A. I did.

6 Q. I'm going to start here with 96 being
7 the kitchen table. Did you see any evidence of a
8 disturbance around that area?

9 A. We did. We found broken glass between
10 the table here and the wall. As well as what
11 appeared to be the table cloth or curtain that was
12 on the floor and a white fitted sheet if I'm not
13 mistaken.

14 Q. All right. And looking here at 95,
15 what if anything -- was this exactly how it was the
16 crime scene was found by you?

17 A. Yes, it's exactly how we found it. It
18 appeared as if someone had gotten out the dustpan
19 and broom to start cleaning it up and just didn't
20 clean it.

21 Q. Okay. So you were able to witness that
22 dustpan in that exact location?

23 A. Correct.

24 Q. Now, looking at 215. What if anything
25 is depicted in this photograph?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. So that's a white t-shirt that was
2 sitting on the -- inside the kitchen right there
3 where the breakfast nook was. Was a -- like a
4 counter top for like had a little computer set up
5 and all so you can have a chair and everything
6 there. This was a white t-shirt that we had
7 located there that had a reddish brown stain on it.

8 Q. And because it had the reddish brown
9 stain, did you collect it as evidence?

10 A. Yes, we did.

11 Q. We're going to take a look here at 170
12 in evidence.

13 A. Okay.

14 Q. What's the size on that item?

15 A. 3X.

16 Q. 3X?

17 A. Correct.

18 Q. And can you tell us whether or not that
19 item was also collected and sealed by you?

20 A. Yes, it was.

21 Q. For potential submission to what lab?

22 A. SLED.

23 Q. Now, were there any other articles of
24 clothing that you also collected because of any
25 type of staining?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. There was a blue onesie that had a
2 reddish brown stain on it that we took out of the
3 master bedroom.

4 Q. I'm going to show you what is 17. I'm
5 sorry, 214 depicting placard 17. You indicated
6 that that was found in what area of the home?

7 A. That was in the master bedroom.

8 Q. Was it in the same closet area where we
9 previously saw State's 92?

10 A. Correct.

11 Q. That had the ammunition?

12 A. Correct.

13 Q. And the gun box?

14 A. Correct.

15 Q. And here 214, where if at all did you
16 observe a stain?

17 A. On the sleeve. I believe it was on the
18 sleeve of it. I don't remember the location of it.

19 Q. Do you want to step down?

20 A. Yes, I can. Oh, right here at the
21 bottom of the sleeve.

22 Q. All right. And was that item also
23 sealed by you?

24 A. It was.

25 Q. For potential submission to the State

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Law Enforcement Division?

2 A. Correct.

3 Q. As it was hanging in the closet, can
4 you tell us whether or not it was in an area in
5 proximity to the firearm box?

6 A. So that was located -- basically as you
7 enter into the closet on the left-hand side. The
8 magazines and all the ammo and all was on the far
9 side of the -- or at the end of the closet. So
10 probably five, six feet away from each other.

11 Q. All right. So looking at 214 and then
12 92, to reach the area here at the back of the
13 closet as depicted in 92, would one have to walk
14 past that item, the blue furry, in 214?

15 A. Yes.

16 Q. And now I'm going to show you 180 also
17 in evidence being the same item and ask you whether
18 or not it was sealed by you.

19 A. Yes, that's my original package and
20 original seals.

21 Q. Okay. To your knowledge, also
22 submitted to the State Law Enforcement Division?

23 A. Correct.

24 Q. Now, what other room did you process?

25 A. There was a third bedroom we just

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | photographed and there was nothing of evidentiary
2 | value. Then we went downstairs into the walk out
3 | basement and processed that area.

4 | Q. All right. So talking about the walk
5 | out basement, I'm going to show you this photograph
6 | which is in evidence. This is State's 4 and also
7 | State's 3 in evidence. That area that is depicted
8 | along the balcony, can you tell us what measures if
9 | any you took to potentially process that area?

10 | A. Are you talking about the ground floor,
11 | ma'am?

12 | Q. Yes.

13 | A. Okay. So the ground floor on the
14 | exterior doors to the living room as well as the
15 | windows used oblique lighting which is nothing more
16 | than a high powered flashlight at an angle between
17 | five and fifteen degrees looking for latent prints
18 | or noses or ears, anyone that was trying to peak
19 | through the house or try to listen what's going on
20 | in there. We were looking for that. We were also
21 | looking for latent prints, if someone trying to
22 | look through windows. We processed the doorknobs
23 | and the edge of the doors with latent print, had
24 | negative results.

25 | Then we went back to the door for the

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 master bedroom. There, again, we used oblique
2 lighting in all on the windows in order to try to
3 locate latent prints. Met with negative results
4 there. Then we processed it with the doorknob as
5 well as the edge of the door with latent print
6 powder and, again, negative results.

7 Q. All right. And you're familiar with
8 the area that Deputy Hale first entered this
9 residence?

10 A. Yes, ma'am.

11 Q. Would that be consistent with this area
12 here?

13 A. Correct.

14 Q. Did you also attempt to process that
15 point of entry?

16 A. Yes, we did. Oblique lighting and all
17 again on the glass. Latent print powder on the
18 doorknob and the edge of the door.

19 Q. And looking here at 209 being the
20 outside area of that door. Were you able to obtain
21 any latent prints?

22 A. No, ma'am.

23 Q. Or anything of forensic value?

24 A. No, ma'am.

25 Q. And looking here at 3, showing the

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 upper balcony area, were you able to develop any
2 type of latent prints?

3 A. No, ma'am.

4 Q. Or items of forensic value from those
5 areas?

6 A. No, ma'am.

7 Q. Had you observed any evidence of forced
8 entry would you have made additional efforts?

9 A. Yes, I would have photographed it. If
10 there were tool marks, I would have casted that. I
11 would have taken photographs -- comparison quality
12 photographs just like we did the footwear
13 impression, we would have photographed that as
14 well.

15 Q. All right. Any signs of tool marks,
16 pry marks or anything of that nature along the
17 front or back of the house?

18 A. No, ma'am.

19 Q. Or the windows?

20 A. No, ma'am.

21 Q. Now, there is a room here?

22 A. Yes, ma'am.

23 Q. What if anything did you do in that
24 room?

25 A. We went through there, we found some

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | electronic devices. There was a cellular
2 | telephone, there was an iPad, a lot of make-up and
3 | some jewelry.

4 | Q. And I believe that room is also
5 | depicted in 204. Is that the room behind the door?

6 | A. Correct.

7 | Q. What if anything did you note regarding
8 | whether the -- what if anything did you note
9 | regarding the pet food?

10 | A. They were about out of food. There
11 | wasn't much there. The water was low. I'm trying
12 | to remember if I saw defecation on the floor or
13 | not. I don't remember either way.

14 | Q. Were you aware that animals had been
15 | down there when Deputy Hale arrived?

16 | A. Yes. Actually that's one of the first
17 | things I did is we actually had animal control come
18 | and remove them so that we didn't have to worry
19 | about them destroying any evidence or making more
20 | of a mess to the room that was already done.

21 | Q. All right. So looking here at 97 in
22 | evidence, what is this item?

23 | A. That's a cellular telephone.

24 | Q. 98?

25 | A. That's an Apple iPad.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. Can you tell us whether or not these
2 items were collected as evidence?

3 A. They were.

4 Q. What if anything did you note about the
5 iPad shown here in 99 as you handle that item?

6 A. So both of these items -- I'll talk
7 about the iPad first. When we collect them, one of
8 the first things we want to do is try and put them
9 into airplane mode. There's actually software out
10 there and other things that people can go in and
11 wipe all their information and all from these
12 devices before we're able to do a forensic
13 examination on them.

14 So the first thing we always do is we
15 hit the screen or hit the power button and
16 everything to see whether or not there's a charge
17 on the device, whether or not it's on or off. We
18 also attempt to see whether or not there is -- it's
19 passcode protected or whether or not it's open so
20 we can put it into airplane mode.

21 Q. All right. Did it appear that there
22 had been multiple notifications there?

23 A. Yeah. There was an app that had gone
24 off a couple times while we were down there. That
25 just runs in the background, just photographed they

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | were there and present.

2 | Q. You also mentioned the iPhone. I'm
3 | going to show you State's 169 and ask you whether
4 | or not you recognize that item?

5 | A. Yes, ma'am.

6 | Q. Is that the iPhone device that we just
7 | saw there?

8 | A. Yes, ma'am.

9 | Q. I believe depicted in State's 98. Was
10 | that item collected?

11 | A. Yes, ma'am.

12 | Q. Was it properly sealed by you?

13 | A. Yes, ma'am.

14 | Q. Once you sealed it, did anyone else
15 | have access to it prior to your sealing the tape?

16 | A. No, ma'am, it was in my sole custody.

17 | Q. Okay. And it was sealed for the
18 | purpose of being submitted for what type of
19 | analysis?

20 | A. Just for forensics.

21 | Q. Now, I'm going to show you what is 103
22 | in evidence. Did you have an opportunity to handle
23 | that item?

24 | A. Yes.

25 | Q. When you picked it up what occurred?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. Again, just like you did with the
2 iPhone, we hit it with our finger to see whether or
3 not it's on to see whether or not we can put it in
4 airplane mode. Is it locked or unlocked. How much
5 battery life is on it. So we did that and we
6 screen shot or we took a photograph of the screen
7 as it was displayed.

8 Q. All right. And then I'm going to also
9 discuss 101 briefly. Was there an additional
10 electronic item taken from that location?

11 A. Yes, it was an iPad that was located in
12 the third bedroom.

13 Q. Were all of these items properly
14 sealed?

15 A. Yes.

16 Q. Now, looking at 103. When you picked
17 up that phone with the pink cover, did it indicate
18 whether or not there were any missed messages?

19 A. There was missed messages as well as
20 missed phone calls on it.

21 Q. All right. We're going to start here
22 at the bottom. What if anything is indicated by
23 that item?

24 A. It says missed call from grandma on the
25 4th of 2019.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. Okay. And does it indicate whether
2 there are messages to be opened?

3 A. Yes.

4 Q. From whom?

5 A. Tommy.

6 Q. Any other additional missed calls?

7 A. Two missed calls from Tommy.

8 Q. All right. Any other missed call?

9 A. A missed call from an 803-772-17 -- I'm
10 going to guess 91.

11 Q. All right. Any other indications of
12 text messages awaiting?

13 A. Maybe a Smith character.

14 Q. Would that be Steve Smith?

15 A. Yes. Yes.

16 Q. Any other indications of missed calls?

17 A. A missed call from an 803 -- I'm going
18 to need glasses.

19 Q. Let me ask you this, did the phone
20 continue to ring as you were there?

21 A. I don't remember it ringing. I do
22 remember seeing the missed messages and missed
23 calls on the phone.

24 Q. And you're there on the -- what day did
25 you collect this iPhone?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. That would have been on the 4th -- no
2 that would have been on the first day, so that
3 would have been the 3rd.

4 Q. All right. So the iPhone is collected
5 on 9/3. And the indications are that there are
6 missed calls and text messages dating back to
7 yesterday?

8 A. Correct.

9 Q. Including one at 10:20?

10 A. Yes.

11 Q. A text from Tommy?

12 A. Yes.

13 MS. MAYES: Beg the Court's indulgence.

14 Q. And, again, can you tell us whether the
15 indication is that all of these calls are missed?

16 A. Yes. There appears to be completely
17 missed and unresponded to calls and text messages.

18 Q. Text messages would be awaiting?

19 A. Correct.

20 Q. Now, you were there for the collection
21 of the body of Roselynn Cedeno?

22 A. Correct.

23 Q. What if any notations did you make
24 about how she was dressed?

25 A. She was wearing a black pair of pants,

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 a white -- and, I'm sorry, I forgot the name of the
2 top you said.

3 Q. Camisole?

4 A. Top and another shirt over that. And I
5 don't -- without my pictures, I don't have any
6 recollection of what that shirt was.

7 Q. All right. I'm going to make a
8 notation of that as we go. Do you have your report
9 with you?

10 A. I do.

11 Q. Do you have any notations as to whether
12 or not it appears to be sleepwear?

13 A. It appeared to me as -- not sleepwear,
14 but not going outwear either like what you would
15 wear around the house, like lounge clothes.

16 Q. That's -- did you make that notation in
17 your report?

18 A. (No response)

19 Q. I'm going to refer you to the first
20 page of your report.

21 A. Wearing black pants, a black shirt and
22 white undershirt. So I think a larger black
23 t-shirt over that -- over the white.

24 Q. Black pants?

25 A. Correct.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. What's the next item?

2 A. That white chimasol (verbatim).

3 Q. And what else?

4 A. Black pants, black shirt and that.

5 Q. And did you note whether or not she had
6 any socks on?

7 A. No, we did not observe any socks on
8 her.

9 MS. MAYES: Beg the Court's indulgence.

10 THE COURT: Take your time.

11 MS. MAYES: Your Honor, may we
12 approach?

13 THE COURT: You may.

14 (WHEREUPON, there was a bench
15 conference)

16 THE COURT: All right. Mr. Foreman,
17 we're at a good stopping point and, number one, let
18 me thank y'all for staying late because I'm hoping
19 this will keep us from working on a Saturday. But
20 I think we're at a good stopping point. Hopefully
21 y'all have missed all the traffic in Lexington.
22 But I'm going to let you go for the evening. Make
23 sure, again, no talking about the case, any
24 research or read any articles or watch the news
25 about this case. Okay. With that said, Mr.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Foreman, we're going to start at 9:30. We'll see
2 you at 9:15 in the morning and thank y'all so much.

3 THE FOREPERSON: Can I ask a quick
4 question about -- you just mentioned Saturday. I
5 don't think anybody was expecting Saturday.

6 THE COURT: And I don't want them to
7 expect it. But we're going to try and wrap this
8 up, okay?

9 THE FOREPERSON: Okay.

10 THE COURT: All right. Y'all have a
11 good evening.

12 THE FOREPERSON: Thank you.

13 (WHEREUPON, the jury exits the
14 courtroom at 6:27 p.m.)

15 THE COURT: All right. Detective
16 Smith, you are under oath. You are in the middle
17 of testimony. You are not, by order of the court,
18 to speak to anyone from the State or the Defense or
19 anyone about this case whatsoever.

20 MR. SMITH: Okay.

21 THE COURT: I usually don't let
22 witnesses go in the middle of a direct and a cross
23 until we're finished with you. But it's getting
24 late in the evening, please don't talk to anyone
25 about this case.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MR. SMITH: Too easy, ma'am. Too easy.

2 THE COURT: Thank you.

3 MR. SMITH. Appreciate it.

4 THE COURT: Thank you. We'll see you
5 in the morning. We'll start at 9:30.

6 Is there anything from the State? I
7 didn't let her close out. If there's anything else
8 I'll let her ask in the morning and then let Mr.
9 Swerling do his cross. I hope y'all have a good
10 evening. I am so sorry it's so late.

11 (WHEREUPON, court was adjourned at 6:29
12 p.m.)

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THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 **(MARCH 24, 2022)**

2 THE COURT: Anything from the State
3 before we start?

4 MS. MAYES: Yes, Your Honor. We need
5 our witness.

6 THE COURT: We'll put him back on the
7 bench just like we left everything yesterday. Do
8 you have a few more questions, Ms. Mayes?

9 MS. MAYES: We do, Your Honor.

10 THE COURT: Okay.

11 MR. SWERLING: Judge, before you bring
12 the jury in, can I get a minute, please?

13 THE COURT: Yeah.

14 (Off the record)

15 MS. MAYES: Judge, we had the witness
16 on the stand yesterday and while he was on the
17 stand, Mr. Swerling and I reached an agreement and
18 so the witness is not aware of that agreement. And
19 just to prevent any issues, I do think we need an
20 instruction to the witness regarding the agreement
21 on the firearms.

22 And that was that the State will elicit
23 testimony that there were multiple firearms in
24 plain view in the master bedroom closet of
25 different calibers, but without going into details

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 as to what those weapons were.

2 THE COURT: Okay. All right.

3 Detective Smith, do you understand that?

4 MR. SMITH: Yes, ma'am.

5 THE COURT: We're going to limit the
6 testimony to just a general description of the
7 guns. Is that -- I don't even know --

8 MR. SMITH: Just guns?

9 THE COURT: Just guns.

10 MS. MAYES: Several guns in plain view,
11 Your Honor, and we're going to leave it at that.
12 Different calibers other than a .45 caliber. And
13 that's offered because of the value of the guns and
14 the issues at hand.

15 THE COURT: Right. You understand --
16 they're only introducing these guns for the value
17 to show like it wasn't a robbery, I assume is what
18 she's getting at.

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: So just a general
21 description.

22 MR. SMITH: Yes, ma'am.

23 THE COURT: Just guns. Okay. Do you
24 need a little bit more time?

25 MR. SWERLING: Just five minutes,

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Judge.

2 THE COURT: Okay. And I'm going to
3 tell you, Detective Smith, you didn't talk to
4 anybody yesterday about this case; right?

5 MR. SMITH: Correct, ma'am, nor this
6 morning.

7 THE COURT: Okay. And I'm going to try
8 to leave this just like we left it yesterday.
9 You're still under oath.

10 MR. SMITH: Okay.

11 THE COURT: Okay.

12 MS. BARBIER: Your Honor, may we
13 approach for a moment?

14 (WHEREUPON, there was a bench
15 conference)

16 THE COURT: All right. Mr. Swerling,
17 Ms. Barbier just brought to my attention that your
18 client believes that he sold me a car in the year
19 2017, a Honda.

20 MR. SHIVERS: No, ma'am, just a car in
21 general. Your voice is unique. I've never been to
22 court, so your voice is specific and --

23 THE COURT: It is specific. Matter of
24 fact I've got a sister who talks just like me and
25 it scares me. Because when I hear her, I hear

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | myself. She's got the same exact voice.

2 | MR. SHIVERS: So I'm certain I've heard
3 | that voice in my finance office and it would have
4 | been -- we sell used cars, so it could have been
5 | any kind of car you bought.

6 | THE COURT: Well, I can tell you the
7 | last car --

8 | MR. SHIVERS: If it's not Honda Cars of
9 | Aiken, it's not you.

10 | THE COURT: Well, for the record, I
11 | drive a 2018 Cadillac XT5 that I bought in
12 | Edgefield. Before that I bought a Kia in 2013 that
13 | my niece drives who lives with me. And before
14 | that, I think I owned probably five or six Mercedes
15 | Benz. Those are the only cars I have ever driven
16 | or bought on my own.

17 | Now, if you want to go back a little
18 | bit before that. In 1987, I had a Nissan Sentra
19 | and before that in 1976, I drove a 1968 Volkswagen
20 | Beetle. I can tell you all the cars. So it wasn't
21 | me.

22 | MR. SHIVERS: I knew I hadn't been in
23 | court and your voice is very unique.

24 | THE COURT: My voice is unique.

25 | MR. SHIVERS: Thank you for your time.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: Okay. I just want to make
2 sure there's not --

3 MS. BARBIER: Your Honor, I think it's
4 clear that you did not purchase a car from Honda
5 Cars of Aiken which is where Mr. Shivers worked.
6 So I think you've now satisfied him that it is not
7 an issue and that there is no conflict whatsoever
8 in your presiding over this trial. Previously, Mr.
9 Shivers had also been under the impression that Ms.
10 Mayes had stated that Ms. Wilson had conflict and
11 we have corrected that. Because Ms. Mayes does not
12 ever believe that Ms. Wilson had a conflict. And I
13 believe there's been a record made of that in a
14 previous hearing. Just want to make sure that the
15 record is clear that everyone, you know, who's
16 present in the courtroom today has explored
17 potential conflicts and that there are no conflicts
18 to be had that anybody is aware of.

19 THE COURT: All right. Do you agree
20 with that, Ms. Mayes?

21 MS. MAYES: I do, Your Honor. And I
22 believe there was also an inquiry in the past
23 whether I also had a conflict and I certainly don't
24 know of any conflict that I would have either.

25 THE COURT: Okay. And the Court

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | doesn't know of any conflict that I might have.

2 | I've never bought a car in Aiken. I think I would
3 | remember if I did.

4 | MR. SHIVERS: Just made sense to ask.

5 | THE COURT: Okay. That's fine. I know
6 | my voice is distinct. Okay. Other than that, are
7 | we ready to pick up and go?

8 | MS. MAYES: Yes, Your Honor. I'm going
9 | to run out real quick and be back in one moment.

10 | THE COURT: Sure. Are we ready?

11 | MS. MAYES: Yes.

12 | THE COURT: All right. Let's bring the
13 | jury in. I've already instructed the witness that
14 | the gun testimony is limited.

15 | (WHEREUPON, the jury enters the
16 | courtroom at 9:45 a.m.)

17 | THE COURT: Mr. Foreman, is the jury
18 | ready?

19 | THE FOREPERSON: We are.

20 | THE COURT: Anybody have any problems
21 | last night as far as any communication about this
22 | case? Reading, watching anything about this case?
23 | Okay. Then we're ready to go forward. I'm going
24 | to remind Detective Smith that he is still under
25 | oath. Ms. Mayes?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Yes, Your Honor.

2 CONTINUED DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Now, Detective Smith, as you were going
5 through the home, I believe we see here State's 90
6 already in evidence. I'm going to show you two
7 additional photographs and ask you whether or not
8 you recognize them, 78 and 80?

9 A. Yes, ma'am.

10 Q. Can you tell us whether or not these
11 photographs represent the placement and condition
12 of the suitcase in which State's 90 was recovered?

13 A. Yes. Photograph 80 is the first one
14 and then 78 is the second one.

15 Q. Okay. Are these a fair and accurate
16 representation of the original condition of what is
17 depicted in State's 90?

18 A. They are.

19 MS. MAYES: This would be 78 and 80 for
20 evidence, Your Honor.

21 THE COURT: Any additional objections?

22 MR. SWERLING: No, Your Honor.

23 THE COURT: Okay. They are admitted.

24 (WHEREUPON, State's Exhibit Numbers 78
25 and 80 were entered)

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Looking here at 80. Tell
2 us what area of the home you recovered or
3 photographed these two suitcases.

4 A. That's in the master bedroom at the far
5 end of the bedroom. As you can see, there's
6 built-ins and everything at the end of the -- along
7 that wall.

8 Q. And to clarify, this would be what part
9 of the master bedroom?

10 A. The walk-in closet.

11 Q. Okay. And then did you have an
12 opportunity to look inside of the suitcases?

13 A. Yes. From there we laid it down and
14 started checking the pockets.

15 Q. And this is going to be State's 90?

16 A. Yes.

17 Q. That's already in evidence. And then
18 State's 78?

19 A. So when we started searching the bag,
20 we felt the box inside. I pulled the bag out about
21 half -- or the box out about halfway from the
22 zipper compartment in order to photograph where it
23 was found or in which zipper compartment it was
24 found. Then we brought the ammo box all the way
25 out and photographed it on top of the suitcase.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Were these suitcases, did
2 they appear to be working suitcases?

3 A. Yeah. All the zippers and all appeared
4 to be in good condition.

5 Q. Now, also in that master bedroom where
6 this ammunition was found, can you tell us whether
7 or not there were additional firearms in plain
8 view?

9 A. Yes, there was multiple firearms of
10 various calibers.

11 Q. All right. And those were calibers
12 other than a .45 caliber?

13 A. Correct. The only -- the only
14 weapon -- or the only -- the only weapon that we
15 could account for that fired .45 was the missing
16 Springfield.

17 Q. All right. And that is in reference to
18 this Springfield box already in evidence?

19 A. Yes, ma'am.

20 Q. For the .45 caliber? And can you tell
21 us whether or not the firearms you saw in plain
22 view had monetary value?

23 A. Yes.

24 Q. All right. Can you tell us whether or
25 not this residence at 216 Carriage Hill Court is

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 within the jurisdiction of Lexington County?

2 A. It is.

3 Q. I'm going to show you another
4 photograph which is State's 79 and also 86 and ask
5 you whether or not you recognize these?

6 A. Yes, I do.

7 Q. Can you tell us whether those are a
8 fair and accurate representation of evidence you
9 observed there at the scene?

10 A. It is.

11 Q. All right. Now, yesterday I believe
12 you talked about this particular item. This is
13 State's 170. State's 170 was the white undershirt?

14 A. Yes, ma'am.

15 Q. Where area of the home was that white
16 undershirt recovered in?

17 A. In the kitchen/breakfast nook. It was
18 on a marble counter top.

19 Q. All right. And this is the same white
20 shirt you showed us yesterday?

21 A. It is.

22 Q. And what size was that?

23 A. A 3XL.

24 Q. And you recovered that for what reason?

25 A. There was a reddish brown stain on it.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: And I believe that 79 and
2 86 are without objection, Your Honor.

3 THE COURT: Mr. Swerling?

4 MR. SWERLING: I'm good with it.

5 THE COURT: Without additional
6 objection. Gotcha.

7 MR. SWERLING: Yes.

8 (WHEREUPON, State's Exhibit Numbers 79
9 and 86 were entered)

10 Q. Do you see the area in this photograph
11 being State's 86 where that white shirt that you
12 have before you at the moment where it was
13 recovered?

14 A. It was right here on the countertop
15 bundled up.

16 Q. Okay. And you recovered it for what
17 reason?

18 A. There was a reddish brown stain on it.
19 So we collected it all to send it to SLED. When we
20 say reddish brown stain, what we're referring to is
21 a possibility that it might be blood, but we can't
22 definitively say that in the --

23 MR. SWERLING: I'm sorry, I can't hear
24 him.

25 MR. SMITH: I apologize.

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: And could you start over
2 because Mr. Swerling couldn't hear you.

3 MR. SMITH: I apologize.

4 A. So we saw the reddish brown stain that
5 was on it, we don't have the ability to confirm
6 definitively that is blood in the field, so we'll
7 collect items like that and send it off to SLED
8 where they're able to use their equipment to
9 definitively say whether or not it's blood.

10 Q. All right. And can you tell us whether
11 or not there was anything else within proximity of
12 this shirt that could produce some type of a cut?

13 A. There was the broken glass that I spoke
14 of yesterday that was on the floor. It looked like
15 there was a cake stand, like a glass cake stand
16 that has a top and all on it that was at one point
17 on the table and all of that had been knocked off
18 and was sitting between the table and that wall
19 right there.

20 Q. All right. What else in that area is
21 consistent with cleaning up broken glass if
22 anything?

23 A. We found a standing dustpan and broom
24 that was just in the middle of that breakfast nook.

25 Q. All right. And if you can show us

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | where that is in the photograph and also in
2 | relation to the white undershirt?

3 | A. So we have the dustpan here. The
4 | broken glass was along this wall. The cake stand
5 | portion that wasn't broken was here and then here's
6 | our white undershirt.

7 | Q. All right. And now, finally, I'm going
8 | to show you State's 79 also in evidence without
9 | objection. You spoke previously of the master
10 | bedroom, did you find any female items within the
11 | master bedroom?

12 | A. No, we did not. I didn't find any
13 | female items in the master bedroom.

14 | Q. Including female hygiene products or
15 | anything of that nature?

16 | A. No. All the -- it appeared as though
17 | all the female hygiene products and all was in a
18 | hallway bathroom. So we have the master bathroom
19 | and then down a very short hallway we have this
20 | bedroom here. The second bedroom. In between the
21 | two there was a bathroom. All the female hygiene
22 | products and everything was in that bathroom.

23 | Q. All right. And when we're looking at
24 | this particular photograph State's 79, what type of
25 | clothing items did you observe in this bedroom?

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 A. It was all female clothing in the
2 dresser that you have there as well as inside the
3 closets.

4 Q. All right. And looking there at that
5 photograph, can you tell us the condition of the
6 dresser and the items on the dresser?

7 A. The dresser, the items were all
8 standing upright. They seemed to be purposely
9 placed where they were. When we opened up the
10 drawers and everything to look inside them, the
11 clothes were still folded. There was no clothes on
12 the floor in front of the dresser. It did not
13 appear to be rummaged.

14 Q. All right. And, finally, I'm going to
15 ask you about the evidence retrieved from that
16 final room and that was the -- make-up items in
17 that room. I believed you referred to that as what
18 area of the home?

19 A. A walk out basement.

20 Q. And in that particular area, what
21 electronic devices did you see or observe?

22 A. There was an iPad and a Apple cellular
23 phone.

24 Q. All right. And you mentioned the
25 cellular phone already that it was retrieved. Can

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 | you tell us whether that iPhone was properly sealed
2 | by yourself as it was retrieved as evidence?

3 | A. Yes, it was.

4 | Q. And for what purpose was that?

5 | A. For a cell phone exploitation of it. I
6 | don't know that we -- I don't know where it was
7 | sent off to, but we have so many different
8 | locations that we can send phones to to have it
9 | exploited. So it was seized, packaged and turned
10 | into the evidence room.

11 | Q. You're referencing a cell phone
12 | extraction?

13 | A. Yes.

14 | Q. And in this particular case, does that
15 | include what is State's -- shown in State's 97?

16 | A. Yes.

17 | Q. As well as both of the items shown in
18 | State's 98?

19 | A. Correct.

20 | Q. Now, was there anything to indicate
21 | active or recent use of those devices?

22 | A. Just that there were missed called and
23 | notifications that had not been cleared or checked
24 | on.

25 | Q. And was that iPad being charged in any

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 way?

2 A. Yeah. There was a connection to that
3 into a wall outlet to allow it to charge.

4 Q. I'm going to show you what is State's
5 71 and ask you whether or not you recognize this
6 item?

7 A. This is my packaging for the iPad.

8 Q. And was it sealed by you?

9 A. Yes.

10 Q. And did it remained sealed until it was
11 placed into your secure evidence locker?

12 MR. SWERLING: Judge, I don't mean to
13 interrupt, but didn't we go through this particular
14 portion yesterday?

15 MS. MAYES: The iPad has not been
16 offered as evidence.

17 THE COURT: The iPad has not, I just
18 checked it. Most of it we had, but the iPad has
19 not been introduced into evidence.

20 MS. MAYES: And we do offer it at this
21 time, Your Honor. State's 71.

22 MR. SWERLING: No objection.

23 THE COURT: Okay. It's admitted.

24 (WHEREUPON, State's Exhibit Number 71
25 was entered)

THOMAS SMITH - DIRECT EXAMINATION BY MS. MAYES

1 Q. And this particular item, can you tell
2 us if it remained sealed up until the time it was
3 placed into your secure evidence locker?

4 A. Yes. Once I sealed it, it was turned
5 into the evidence -- the evidence depository until
6 sealed in good condition.

7 Q. All right. All of the items that have
8 been discussed in this courtroom yesterday and this
9 morning, every piece of physical evidence, can you
10 tell us who sealed those items?

11 A. I personally sealed them.

12 Q. And when you seal them how do you go
13 about making sure that the seal is secure and
14 cannot be tampered with?

15 A. So we use what's referred to as
16 evidence tape. It's this reddish tape here. This
17 tape is designed to break very easily. It's called
18 tamper identification instead of tamper proof --
19 tamper identification tape to see whether or not
20 it's been broken. We also along this seal you'll
21 see my initials as well as the date in which that
22 seal was applied to the packaging.

23 So I can look at this and I can easily
24 identify my case number, the location that it was
25 taken and what the item is inside. I can identify

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | this is my handwriting personal as well as these
2 | are my initials and the date in which the item was
3 | sealed.

4 | Q. And was every packet properly sealed?

5 | A. Yes.

6 | Q. And where did you place them?

7 | A. I placed them in temp storage within
8 | our crime scene lab until I could get everything
9 | sealed and then it was submitted to the evidence
10 | depository.

11 | Q. And can you tell us whether or not that
12 | is a secure location within the Lexington County
13 | Sheriff's Department?

14 | A. Yes, it is.

15 | Q. Thank you.

16 | MS. MAYES: Nothing further from
17 | Detective Smith at this time.

18 | THE COURT: Mr. Swerling?

19 | CROSS-EXAMINATION

20 | BY MR. SWERLING:

21 | Q. Good morning.

22 | A. Good morning, sir.

23 | Q. How are you?

24 | A. Doing well, sir. Yourself?

25 | Q. Good. Good. Before I forget which is

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 possible, you had mentioned there was no other .45
2 in the house?

3 A. No. No. No. The question was whether
4 or not there was anything in the bedroom or the
5 closet. There was a box that was recovered on the
6 8th for a Kimber .45, so I'm not saying -- the
7 question was in that bedroom was there anything
8 else. Yes, there was a box for a Kimber .45 which
9 was located inside the study on that last day that
10 we were in the house.

11 Q. So there were -- you had evidence of
12 two .45s in the house?

13 A. Right. Yeah, but like I said, the
14 question was in the master bedroom.

15 Q. Okay. I just wanted to clarify maybe I
16 just didn't understand.

17 A. No, we're good.

18 Q. Okay. Very good. All right. So
19 you -- not to jump back and forth a little bit
20 between these notes that I have --

21 A. Of course.

22 Q. -- but you led the search and -- of the
23 house and residence and the surrounding property;
24 correct?

25 A. Yes, sir.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. And you had a couple of other people
2 from your unit assisting you?

3 A. I had Cody -- Cody Weyandt with me who
4 was in training. And I had for a little bit, I
5 believe on the first day Patrick Ward assisted as
6 well.

7 Q. But you were there the entire time
8 conducting the CSI search?

9 A. Yes, sir.

10 Q. Okay. There were -- it's a fairly
11 large house?

12 A. Yes. Yes, it was.

13 Q. And we -- I mean, as far as I can count
14 there was a lower office -- there was an office in
15 the house?

16 A. The walk out basement is what we refer
17 to it.

18 Q. There was a garage. There was a master
19 bedroom, the living room, two bedrooms as well as a
20 study?

21 A. Yes, sir. And a formal dining room.

22 Q. Okay. Pardon?

23 A. And a formal dining room.

24 Q. And a formal dining room. There was a
25 foyer, the kitchen and I think I said the master

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | bedroom. There was a porch going into or from
2 | master bedroom out to the porch.

3 | A. There was a doorway leading between
4 | there, yes, between there.

5 | Q. Right. And then there was a screened
6 | porch?

7 | A. Yes, on the other side.

8 | Q. Which came from -- came out of the
9 | kitchen?

10 | A. Yes, sir.

11 | Q. I was curious yesterday it was the
12 | first time I had heard that the screen porch door
13 | you determined was opened -- had been opened?

14 | A. Yes, it appears -- I mean, I can double
15 | check my notes, but I'm fairly confident the screen
16 | porch door was open.

17 | Q. Okay. I'm not questioning that. You
18 | did say yesterday it was an open door. I wanted to
19 | ask you some questions about it, not right now. As
20 | I understand it there were two open doors that when
21 | you got to the house you were aware of or became
22 | aware of. One was the master bedroom doors onto
23 | the porch and then there was a screen door porch
24 | which eventually led into the kitchen?

25 | A. Now, just for clarification, when I was

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | talking doors, I was talking physical doors from
2 | the outside to the inside of the residence. The
3 | screen porch door just due to the nature and
4 | everything of that, I wasn't significantly
5 | concerned about. When I say doors were open and
6 | all that I knew about, I knew that Officer Hale had
7 | made entry through that back door and I knew that
8 | he had physically opened the front door. So that's
9 | where -- when I talk doors, I'm really talking
10 | about external doors to the residence.

11 | Q. That's a good point right now. Can you
12 | go over which doors were external to the residence?

13 | A. Okay. So external doors, the front
14 | door, obviously. On the back of the house there
15 | was actually three of them. The one to the master
16 | bedroom. There were a set of french doors between
17 | the porch and the living room. And then there was
18 | the door off the kitchen or off the breakfast nook
19 | that led to that screen porch door. And down
20 | below, there was a door leading into the walk out
21 | basement. And then there is the garage door and
22 | right beside -- on to the side of the garage door
23 | was a walk through door as well.

24 | Q. So see if I was keeping track, is that
25 | seven exterior doors?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Seven with the rollup car doors, yes.

2 Q. So that's seven potential access places
3 to the residence?

4 A. Correct.

5 Q. All right. And we know that the master
6 bedroom doors were the ones clearly were open
7 because that's where Mr. Hale entered the
8 residence; is that correct?

9 A. Correct.

10 Q. Okay. And we know the front -- I mean,
11 the porch door was open too? It was open, that's
12 all I'm suggesting.

13 A. You're talking about the screen door?

14 Q. Screen door? It was unlocked?

15 A. Yes, it was definitely unlocked. Yes.

16 Q. All right. So when you got there, you
17 already knew that Mr. Hale had gone through the
18 master bedroom doors into the residence?

19 A. Correct.

20 Q. And he was not wearing gloves at that
21 time?

22 A. Correct.

23 Q. And you knew that he -- after doing his
24 protective sweep, I believe some -- another
25 investigator came to the residence and walked

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 through there with him, Detective Black was it?

2 A. I'm not aware of Detective Black coming
3 in and out of that door. I was under the
4 impression he had used the front door.

5 Q. Okay. So I wanted to figure out at
6 what point did the front door become involved.
7 Because it appears that from your testimony and
8 from the investigative report that at some point
9 Mr. Hale closed the back door and then opened the
10 front door?

11 A. Correct.

12 Q. Okay. And there were emergency medical
13 people came in the front door?

14 A. Correct.

15 Q. All right. And went upstairs to the --
16 or went to the bedroom?

17 A. Correct.

18 Q. And there was at least one other
19 detective, I may be wrong, it may not be Black, but
20 if it was another, he would have been the one
21 coming in the front door, is that what you're
22 saying?

23 A. What I understand from the report that
24 I received is that once EMS and fire had made entry
25 and all that, that the rear door was shut and

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | locked to prevent anyone from coming and going from
2 | there. And that all access from that point was
3 | through the front door which he had unlocked to
4 | allow fire and EMS in.

5 | Q. Now, it appears from your testimony and
6 | from your investigative report that there was a
7 | considerable amount of time spent doing a forensic
8 | analysis on the area of the front door that led
9 | into the foyer?

10 | A. Yes.

11 | Q. Okay. You did some swabs on the door
12 | handle and the -- one is the door handle, what is
13 | the other one you swabbed? I can't remember what
14 | you called it.

15 | A. The thumb latch.

16 | Q. Thumb latch. So you did a swab off
17 | each one of those at the front door?

18 | A. Yes.

19 | Q. And the swab was for the purpose of
20 | seeing whether or not you could get any touch DNA?

21 | A. Yes, that would have been the purpose.

22 | Q. Okay. And can you explain to the jury
23 | what touch DNA is?

24 | A. So as I understand it, touch DNA, an
25 | individual loses skin cells. I think the last time

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 I read it was like 30,000 skin cells a day. And as
2 well as the body secretes oils and everything like
3 that through the hands and all. Touch DNA is
4 nothing more than us using a sterile cotton swab
5 and sterile water to try and collect any epithelial
6 cells and/or oils off of the surface.

7 It's kind of done in a blind manner
8 because we can't -- we don't know definitively
9 where a person might have touched an object, but
10 what we do is we try to find what
11 (inaudible/someone coughed) that individuals are
12 most likely to touch a surface.

13 Q. And I found it, it was Caleb Black was
14 the individual that I was referring to.

15 A. Okay. I did not -- I have no idea
16 about -- you'll have to interview him as far as
17 what he did in there. I'm not one hundred percent
18 certain, sir.

19 Q. That's fine. That's fine. I'm just
20 checking on some of these names.

21 Now, there was also -- you took some
22 swabs and -- took a swab from the thumb latch and
23 from the door handle of the front door. And then
24 those -- how do you go ahead and take those swabs?

25 A. Okay. So when we swab that, it's

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | actually a very simple process. As I spoke
2 | earlier, we just take sterile cotton swabs with a
3 | six inch wooden handle. We get that wet using
4 | sterile water. It actually comes in a blue ampule,
5 | you break off the top, then you soak the cotton
6 | swab. And then all we're doing is just running
7 | that onto the service. As we roll it, trying to
8 | pick up as much possible touch DNA material that
9 | might be on that surface. Rub it back and forth.
10 | We then place that into a clean envelope, a coin
11 | envelope specifically. We allow that to dry 10 to
12 | 15 minutes. We pull it out, break the sticks off a
13 | little bit and we seal that up and then we take
14 | that and put it into another bag and seal that up.
15 | The reason we double seal that is to try and
16 | prevent cross contamination.

17 | Q. So --

18 | A. The --

19 | Q. Go ahead, I'm sorry.

20 | A. The important thing is to make sure you
21 | don't blow on the swabs and all to help them a dry.

22 | Q. So today science is advanced to the
23 | point that if we touch something there's a chance
24 | that there could be DNA left on that spot?

25 | A. Yes, sir, there is a chance.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. Another mechanism you use is black
2 powder?

3 A. Yes, sir.

4 Q. To determine fingerprints -- to see if
5 there are any fingerprints?

6 A. Yes, sir.

7 Q. And I read there was another -- there's
8 a light -- well, what's the light called that you
9 use?

10 A. It's not a light it's actually just a
11 light method calling oblique lighting. All we're
12 doing is taking a flashlight with a large candle
13 watt or large lumens and we're holding it
14 approximately 5 to 15 degrees and looking along the
15 surface to see if there's any prints that are -- or
16 ridge detail that's visible with the naked eye.

17 Q. Okay. And then there's another -- was
18 it the blue -- I can't remember, it's a solution
19 that you put in to determine whether or not there's
20 any blood anywhere?

21 A. BlueStar, yes.

22 Q. BlueStar. I thought that's what it
23 was. Yeah. So that's one of your other forensic
24 tools?

25 A. Yes, sir.

1 Q. Okay. What other forensic tools do you
2 use to go ahead and process the scene?

4 Q. Which we've seen. That's what you're
5 referring to?

6 A. Yes. And when we deal with digital
7 photography, we're going to deal with two different
8 types. Our standard photographs where we're just
9 documenting the scene, because whenever we enter
10 into the room, we'll photograph that room
11 significantly from -- we try to get it from eight
12 different points so you can see everything in the
13 room from different angles. We also use --
14 whenever we take and collect evidence, we put down
15 the yellow placards, you've seen those in the
16 photographs and everything with the different
17 numbers and all on them. So we will take those,
18 each of those require three separate photographs or
19 at least three separate photographs because we're
20 going to take one from a distance. Take one from
21 medium range, we just walk it in. And then the
22 last photograph we're trying to take a photograph
23 where the only thing that's in that photograph is
24 the item of evidence.

25 | A third technique and probably the most

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1 | cumbersome and longest one to take is when we're
2 | doing comparison photographs where we have some
3 | sort of footwear impression, a latent print or
4 | something on a system, we'll put it on the tripod,
5 | we'll take our comparison photographs which
6 | actually winds up being a set of six separate
7 | photographs. Because we'll take it in color and
8 | we'll do what's practical, add lights, subtract
9 | lighting and everything and then we'll switch over
10 | to black and white and we'll do the exact same set
11 | of photographs again.

12 | Q. So at the front door it seems most of
13 | the effort as far as the forensic tools were on the
14 | front door?

15 | A. The majority of the forensic tools that
16 | we used were on the front door and on the master
17 | bedroom door. Just simply because we found the
18 | master bedroom door already unlocked and believe it
19 | or not, the majority of burglaries and stuff like
20 | that take place through the front door, so that's
21 | what we were focusing on.

22 | Q. Right. But you knew the front door was
23 | locked?

24 | A. Correct.

25 | Q. As far as the report that was made to

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1 | you by Mr. Hale, that it was locked?

2 | A. Correct.

3 | Q. And so you used most of those forensic
4 | tools on the front door and came up with nothing;
5 | correct?

6 | A. Correct.

7 | Q. What I'm curious about is that at some
8 | point --

9 | A. Well, I take --

10 | Q. Go ahead.

11 | A. I don't know what came of that. I know
12 | we didn't have any latent prints. I know that we
13 | did get footwear impressions. I don't know about
14 | the DNA.

15 | Q. Okay. And you showed I think there was
16 | some photographs of the footwear impressions
17 | yesterday?

18 | A. Correct.

19 | Q. But you did not get any prints off of
20 | the front door?

21 | A. No, we did not.

22 | Q. And you're saying you don't follow
23 | through with finding out whether or not there's any
24 | DNA on the front door? That's not -- it doesn't go
25 | that far as far as your job?

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1 A. Well, right. Right. I mean, I'm going
2 to collect those swabs and all that would go to
3 SLED for them to make that determination.

4 Q. So you would expect -- I guess the
5 question I have is you would expect that since Mr.
6 Hale and the emergency medical people, he opened
7 the door and the emergency medical people came in
8 through the front door, you would expect that there
9 would be something from those people on the front
10 door? Either Mr. Hale or the emergency medical
11 service people?

12 A. Well --

13 Q. Why wouldn't it be?

14 A. So let's talk about latent prints for a
15 minute. There are body conditions that are --
16 there are certain things that an individual might
17 have within their conditions -- well, first off,
18 let's talk about what makes up ridge detail; all
19 right.

20 Q. Make up --

21 A. Ridge detail or latent prints.

22 Q. Fingerprints.

23 A. Fingerprints. All right. Understand
24 that a fingerprint is nothing more than 80 percent
25 water. It's amino acids and lipids. Okay. It's

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1 | basically sweat that secreted through the pores in
2 | your ridge detail. If an individual has recently
3 | washed their hands or if an individual has recently
4 | worn gloves and stuff like that, it can actually
5 | dry that up to the point that you can touch an item
6 | and not leave prints.

7 | So also, we also run into an issue with
8 | it being mostly water depending on how long it's
9 | been since an individual purchased -- touched a
10 | surface especially in South Carolina with the
11 | temperatures that we have. There's a good
12 | possibility that that print could actually
13 | evaporate off the surface.

14 | Touch DNA is really weird because it
15 | can stay there for a long period of time or it
16 | cannot be there for -- or it can go away in a short
17 | period of time. That's why we're not able to age
18 | how long it's been since someone's touched
19 | something. You can't age that. So there's --

20 | Q. People have found touch DNA years
21 | later; correct?

22 | A. Correct. So there is -- we've also
23 | seen studies where people have touched stuff and
24 | they swabbed immediately after and not found stuff,
25 | DNA. Or you have to have -- and I'm not a DNA

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1 | expert, I'm not claiming to be a DNA expert. But
2 | in the studies and all that I've read, an
3 | individual can touch something and not leave DNA
4 | and they swabbed it right after.

5 | And when I say that they've swabbed it
6 | and not found, they have found a sample, but it's
7 | not concentrated enough for them to be able to
8 | identify that sample. Does that sound --

9 | Q. Yeah. And, look, I watch CSI on TV
10 | and --

11 | A. And I stayed at a Holiday Inn,
12 | so (laughter).

13 | Q. So I guess not being sophisticated and
14 | trained in that -- in the discipline you are, I'm
15 | curious as to how -- and if you would accept for a
16 | moment that no DNA, no fingerprints, nothing of
17 | evidentiary value was taken off of the door, the
18 | some -- or the handle based it -- you processed it,
19 | but there was no results that resulted in any
20 | evidentiary material?

21 | A. Uh-huh.

22 | Q. Okay. Will you just take that for a
23 | moment. And -- but that's the door that people
24 | were going through?

25 | A. Uh-huh.

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1 Q. And that's the door that people were
2 handling?

3 A. Well, Hale when he opened the door, he
4 opened it from the inside not the outside and he
5 was also wearing gloves when he touched that --

6 Q. I don't believe he was wearing
7 gloves at that time. I could be wrong, but I don't
8 believe he was.

9 A. I'm fairly confident he donned his
10 black gloves prior to opening that front door.

11 Q. He may have, but the jury would have to
12 remember it because I'm sitting here writing so --

13 A. Okay. So had he donned gloves and all,
14 that is a good possibility for nothing to be there
15 on the doorknobs. Usually our EMS and our fire and
16 everything when they respond to these, they make
17 cautious efforts not to touch anything. So -- and
18 he opened the door fully for them. So them not
19 having latent prints or DNA there does not surprise
20 me.

21 Q. Unless they were not wearing gloves and
22 did touch those surfaces; correct?

23 A. Correct.

24 Q. And one of the things that I know y'all
25 do is -- just from my experience not from TV, but

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1 | if you know someone touched something, you can --
2 | you try to exclude that person when you're doing a
3 | crime scene evaluation; correct?

4 | A. Right. Had I gotten latent prints and
5 | everything like that, we would have run it through
6 | AFIS, the Automated Forensic Identification System,
7 | and we would have tried to find who they matched.
8 | If we don't get something through AFIS, what we'll
9 | do is we'll actually go through our crime scene log
10 | and all of those first responders to include Deputy
11 | Hale and Deputy Black would have been fingerprinted
12 | at that time and we would have done what's referred
13 | to as a one-to-one comparison on those prints.

14 | Q. And that would be for the purpose of
15 | excluding one of them as being the contributor; is
16 | that right?

17 | A. Correct.

18 | Q. So that you would narrow in on a
19 | suspect who is not a known person to you?

20 | A. Correct. Or not in AFIS already.

21 | Q. Or not in AFIS. And AFIS is the data
22 | bank?

23 | A. Yes. It's the Automated Forensic
24 | Identification System. It's a nationwide network
25 | of fingerprints.

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1 Q. All right. So let me ask -- so going
2 from the front door to the master bedroom doors
3 which we know were open and which we know Mr. Hale
4 went through without gloves, it does not appear
5 from the investigative report that you use all your
6 forensic tools to determine whether or not there
7 was anything of evidentiary value on that doorknob
8 or on that door jam or the wood?

9 A. So when I got back there with it being
10 off of the -- off that master bedroom and having
11 found it unlocked. I made the conscious decision
12 not to search for DNA. All other systems, all
13 other methods I attempted except for using black
14 powder because I can't make a lift of using black
15 powder off of carpet. It's just going to make
16 black powder on carpet.

17 The conscious decision for not
18 selecting DNA. Our lab, if there are three or more
19 commingled DNA sources, in other words, if I have
20 four of y'all come up and touch that marble piece
21 right there and I swab it, if there's more than
22 three, they can't sort them out. They can't say,
23 okay, it's these four individuals. They're going
24 to say the samples are too small, too diluted. We
25 can't determine to get samples from there.

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1 Because of that, the cautious decision
2 was made to use latent powder. Our lab is not able
3 to -- is not able -- so in order to do both swabs
4 and latent print, you have to use DNA free powder.
5 Knowing that at least three people have touched
6 that, the conscious decision was made to use -- to
7 just go to straight regular powder and attempt to
8 get latent prints off the doorknob at the edge of
9 the door using that instead of trying for DNA.

10 Q. What three people?

11 A. I'm sorry?

12 Q. What three people did you come up with
13 that had touched that doorknob?

14 A. So we figured that there was two
15 individuals that go in and out of that door, so
16 that's two right there. We know Deputy Hale had
17 already touched it, so that's three. So we made
18 the conscious decision to use powder instead of
19 trying for DNA because of the issues that DNA has
20 with getting that out of there. And we didn't want
21 to try swabbing and then destroy a latent print.
22 So it was the best choice of the two that I had.

23 Q. But I'm a little confused about that.
24 Because we know that someone went in that door at
25 least Mr. Hale?

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1 A. That's what I'm saying.

2 Q. We know he went in the door?

3 A. That's what I'm saying.

4 Q. Who were the other two?

5 A. I'm not saying -- okay. That door is
6 at the house where two people live. All right.
7 Two people have access to go in and out that door.
8 Since there's two people that have access to it,
9 there's two possible donors there already. We know
10 that Hale has already touched -- or Deputy Hale has
11 already touched that doorknob with his bare hands,
12 so that's a third person right there that's already
13 touched the doorknob.

14 Knowing that three people have already
15 had access to or potential to touching that
16 doorknob, we made the conscious effort -- or the
17 cautious decision to go back and use latent print
18 instead of DNA.

19 Q. Okay. I mean, there was no harm in
20 trying, was there, to take a swab?

21 A. Well, what if I take a swab and it
22 destroys my latent print? So I'm in a catch 21. I
23 already know the science behind DNA, so I made the
24 conscious effort to go straight powder.

25 Q. Well if -- let me ask you this. If one

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1 of the people you're talking about, Mr. Shivers or
2 Roselynn Cedeno or Mr. Hale, if their prints, DNA
3 showed up on that doorknob or the wood on the door
4 had shown up, you could eliminate them as a suspect
5 if there was a fourth person who left DNA there?

6 In other words, if you've found -- and
7 I've seen reports where more than one person --
8 more than two or three if there's DNA. I mean, in
9 fact, SLED talks about multiple contributors to DNA
10 and then they select who has the strongest DNA?

11 A. Okay. So the last time I spoke to
12 SLED, DNA was approximately a year and a half ago.
13 What they've done in that year and a half, I'm not
14 aware of. At the time that my case took place, at
15 that point, three or more contributors they were
16 not able to break it out. Now, has that changed?
17 Very, very likely because I know there's huge
18 advancements in DNA, but at the time I was going
19 off of the science of what I had received from DNA
20 -- the labs themselves in corresponding with them.

21 Q. But you don't know whether or not there
22 were three sets of possible DNA on that doorknob
23 because you never tested it?

24 A. Correct. I made the decision knowing
25 that there's a potential for three or more to go

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1 with latent prints.

2 Q. And the most obvious place that an
3 intruder would have gone in that house would have
4 been through that door; isn't that true? Because
5 that's the door that was open.

6 A. Yes.

7 Q. If everything else was locked according
8 to you and your crime scene folks, the most obvious
9 place that an intruder could have gone in that
10 house was through that door?

11 A. Correct.

12 Q. And it seems like you would have wanted
13 to exhaust all possibilities to determine whether
14 or not it was Mr. Hale had left anything of
15 evidentiary value, Mr. Shivers had left anything of
16 evidentiary value or Ms. Cedenno had left anything
17 of evidentiary value or that there was a fourth
18 person which could be determined that had left
19 anything of evidentiary value. Because that would
20 have been the point of entry based upon everybody
21 else's testimony in the case.

22 A. Yes, sir.

23 Q. So there could have been and we don't
24 know, we'll never know whether or not an intruder,
25 a third party intruder, someone who entered that

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1 | house for nefarious purposes had left their print
2 | or DNA on that doorknob or that door jamb or the
3 | wood on that door, we'll never know that?

4 | A. Well, we know that they didn't leave
5 | latent prints.

6 | Q. Because you took the prints?

7 | A. Right.

8 | Q. By the way, were Mr. Hales prints even
9 | found?

10 | A. No, they were not.

11 | Q. See, that's what drives me crazy. We
12 | know he touched the doorknob?

13 | A. We do.

14 | Q. Okay. So why aren't his prints there?

15 | A. Again, an individual could be
16 | nonsecreting, an individual could not have enough
17 | contact with it. There's -- I don't know all the
18 | science behind it. All right. I'm an examiner, an
19 | AFIS qualified individual, I do not do biology, no.
20 | So there are people --

21 | Q. I don't either. I think I failed.

22 | A. So there are people that don't secrete.
23 | Like I said, if an individual washes their hands a
24 | lot, they actually will secrete less and leave less
25 | prints. Brick masons, oh, my gosh. Brick masons

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1 will not leave a print because they just rub it off
2 with the concrete in the brick all the time in the
3 mortar, so there's various possibilities for there
4 not to be any. Environmental as well.

5 Q. Did you ever talk to Detective -- Mr.
6 Hale about that as to why he would not have -- I
7 mean, we know we saw him on the screen turn the
8 doorknob?

9 A. Uh-huh.

10 Q. And enter. In fact, he put his hand on
11 the glass as well. So did you ever talk to him
12 about what possibilities could have existed that
13 his prints would not be on the doorknob or the wood
14 part of the door or the glass?

15 A. I did not.

16 Q. And did you test the glass or any of
17 the wood frame on the door for DNA as to a possible
18 intruder?

19 A. I did not.

20 Q. Okay. And we're counting on CSI to go
21 ahead and make those determinations for us, aren't
22 we?

23 A. Yes, sir.

24 Q. In looking out -- I mean, you have
25 almost a 30 page report in the discovery material.

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1 | Seems like there's a 27 or 30 pages of very
2 | detailed about how many inches from one place to
3 | the other. And obviously you did an excellent job
4 | in recording everything. It's somewhere around 25
5 | to 30 pages.

6 | But what we do is the most obvious
7 | place where a suspect not involved in this case at
8 | this point would have entered would have been at
9 | that door and would have maybe put their hands on
10 | that glass or that wood and we did not follow-up
11 | with all the forensic tools available?

12 | A. No, we followed-up with the forensic
13 | tools that we thought at that time had the best
14 | ability of getting a result.

15 | Q. That left open the possibility that
16 | someone had gone through that door and left some
17 | DNA because nobody ever tried DNA or had left some
18 | prints somewhere around the door frame or the glass
19 | and that person could have been identified if they
20 | had -- if their DNA had been in CODIS or their
21 | prints had be in AFIS?

22 | A. Well, again, I did test the door, the
23 | door frame and the windows for latent prints, there
24 | were none there. Did I do DNA? No. Because with
25 | my training and my knowledge at the time, like you

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1 | said, it could be have been run through CODIS, but
2 | CODIS is actually a very small data base.
3 | Individuals only get put into CODIS for major
4 | crimes, homicides, sexual assaults, stuff along
5 | those things. Burglars very often are not put into
6 | CODIS just due to the nature of the crime.

7 | AFIS on the other hand, if you've ever
8 | been fingerprinted for a job you're in AFIS. If
9 | you've ever been arrested you're in AFIS. If
10 | you've ever joined the military you're in AFIS.
11 | Much larger data base. All right. Knowing DNA --
12 | the DNA issues are not limitations at the time in
13 | 2019. Knowing their limitations of three or more.
14 | Knowing the size of the pole that I had to pull
15 | from upon testing, I made the decision to use
16 | latent prints.

17 | Q. But --

18 | A. And also, again, if I use DNA, then I
19 | could destroy any latent prints that are there. If
20 | I do latent prints, SLED can't -- I can't swab it
21 | and SLED come back later and test for DNA because
22 | they're not set up for it. SLED is an either or
23 | lab or in 2019 was an either or lab. So I went
24 | with what I thought was going to be the best
25 | outcome. Unfortunately, it was negative results.

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1 Q. And had you gone the other way, we
2 might have had a suspect with whose DNA was not by
3 any of the people that you're aware of that touched
4 that doorknob or that glass; correct?

5 A. Again, I had one chance. I used what
6 my knowledge and training was to get the best
7 results at that time.

8 Q. And I understand what your testimony
9 is. But what I'm saying is, had you done that,
10 there's a chance that a third party, a suspect
11 might have been identified through DNA?

12 A. There's always a possibility, yes, sir.

13 Q. Let me -- if all the doors in the
14 residence were locked as has been testified to
15 except that door and except the screen door, there
16 was only one access to the property; isn't that
17 true?

18 A. What do you mean access to the
19 property?

20 Q. Well, there was a fence around the
21 property?

22 A. Correct.

23 Q. There's like a six foot wood fence,
24 something like that?

25 A. I remember a wooden privacy fence, yes.

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1 Q. And Mr. Hale I assume he told you went
2 through the gate in that fence?

3 A. Yes, there was two gates. He had made
4 entrance through the one on the right-hand side of
5 the residence as you're looking from the street.

6 Q. Now, in reading your report, you
7 correct me if I'm wrong because I certainly don't
8 want to mislead, but it does not appear that that
9 whatever it was, whatever kind of lock it was or
10 key -- I mean, a handle, I'm sorry that's what I
11 meant, a thumb, that was ever processed by CSI?

12 A. No.

13 Q. Okay. Well, the only way that someone
14 could have gotten in that house or in that property
15 would have been through that fence and would have
16 had to open that door; you agree with that?

17 A. Yes.

18 Q. Okay. And that wasn't processed?

19 A. No, it wasn't.

20 Q. And should -- don't you agree that
21 should have been processed? It's the only place
22 that someone could have had access to the house?

23 A. Yes, sir. And I'll be honest with you,
24 right now I don't even remember there being a
25 handle on the gate. So --

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1 Q. You're not saying there wasn't?

2 A. No, I'm not saying there wasn't. I
3 just don't remember one.

4 Q. Because you're -- well, usually if you
5 have a gate around your property, you would have --
6 I mean, usually if you have a fence around your
7 property there would be a gate?

8 A. No. No. I'm not saying there wasn't a
9 gate. I don't remember like a latch system to gain
10 entrance.

11 Q. Mr. Hale testified that he came through
12 that gate?

13 A. Okay.

14 Q. Okay. So, again, the -- knowing that
15 that is the only source that someone could have
16 come through the property and gone to the house and
17 then gone upstairs, up to where the -- I guess I
18 call it upstairs, gone up to where the master
19 bedroom was and the door into the master bedroom
20 would have had to come through that gate?

21 A. Yes, sir.

22 Q. And that was not processed at all?

23 A. No, sir.

24 Q. Not the wood around it?

25 A. No, sir.

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1 Q. Not a handle if there was a handle
2 there?

3 A. No, sir.

4 Q. And that certainly could have led to a
5 suspect in the case, an intruder, who might have
6 entered the property and might have actually killed
7 Ms. Cedenno; correct?

8 A. Yes, sir.

9 Q. But we'll never know that?

10 A. No, sir.

11 Q. Can't go back now?

12 A. No.

13 Q. Four years later. So let me ask you --
14 let me go through some of these rooms with you.
15 The master bathroom with a bath. Do you
16 remember -- did you make a notice of whether or not
17 there was a light on there?

18 A. No. When I went -- when I processed
19 I'm fairly confident that the light to that room
20 was off and I had to turn it on in order to take my
21 photographs and then I turned it back off in order
22 to use the BlueStar.

23 Q. Okay. To be honest with you, I don't
24 see that in the investigative report. That 30 page
25 or whatever it is investigative report where you

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1 | made a comment about that, so I'm just bringing
2 | that out. I'm kind of looking for an answer
3 | myself. So -- and there's a bath in there as well.
4 | Light on or light off?

5 | A. I'm sorry. I thought --

6 | Q. The master bedroom and then there's a
7 | bath in the master bedroom?

8 | A. Yes, the off suite. Yes, sir.

9 | Q. So was the light on or off in the
10 | master bath -- in the master bathroom -- master
11 | bedroom bath?

12 | A. The bathroom I'm fairly confident that
13 | was off. But the closet, because it's an off
14 | suite, you walk in and the bathroom is on one side
15 | and the master closet is on the other side of the
16 | walk-in closet. I'm fairly confident that the
17 | light to the master bathroom was off, but the light
18 | to the closet was on.

19 | Q. Okay. The light in the closet was off
20 | you said?

21 | A. On.

22 | Q. On. Okay. But none of that is written
23 | down?

24 | A. No, I don't believe it is -- well, hold
25 | on let me check my notes.

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1 Q. I've read through it several times and
2 I don't see that. I just wanted you to know.

3 A. Okay. Yeah. My recollection is in
4 that state. But, again, I don't have it written
5 down, so, again, neither one of us are a hundred
6 percent sure.

7 Q. Okay. And that's three -- let's see
8 almost three years go?

9 A. Correct.

10 Q. Okay. And one of the cardinal rules of
11 law enforcement or the legal community is if it's
12 not written, it didn't happen?

13 A. Yes, okay.

14 Q. Isn't that right? You've got to write
15 it down. Now, there were two bedrooms in the house
16 with baths; correct?

17 A. No.

18 Q. Okay. I thought there were. Two
19 bedrooms plus a study?

20 A. So there is --

21 Q. Two other bedrooms?

22 A. There's three bedrooms, an off suite
23 bathroom and two hallway bathrooms. There's only
24 one bedroom that has a bathroom attached to it.

25 Q. Okay. But there are two other

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1 | bedrooms?

2 | A. Two other bedrooms, yes, sir.

3 | Q. Okay. And did you write down or do you
4 | recall whether the light was on -- any lights were
5 | on in those bedrooms?

6 | A. I know definitively the bedroom on the
7 | other side of the house that the lights were off
8 | when I got to it.

9 | Q. Okay. What about the other one?

10 | A. I don't recall.

11 | Q. What about the master bedroom, was the
12 | light on or off in the master bedroom or did you
13 | make a note of it?

14 | A. I didn't note that.

15 | Q. Pardon?

16 | A. I don't think I noted that.

17 | Q. You don't think you noted that?

18 | A. Correct.

19 | Q. Okay. The living room, was there a
20 | light on or off that you noted in the living room?

21 | A. No, I did not note that.

22 | Q. What about the study?

23 | A. I definitively remember the condition
24 | of that light, but I didn't write it down.

25 | Q. What about the dining room?

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1 A. I definitively remember that one, but I
2 don't have it written down.

3 Q. When you say you definitively remember,
4 I guess I'll go one step further, what do you
5 definitively remember on or off?

6 A. That they were off.

7 Q. Off. Okay. Now, when you look at the
8 video it appears that there are lights on as people
9 are going through?

10 A. Right. What you have is -- at this
11 time the sun's coming on the backside of the house.
12 You have large windows across the back of the
13 living room and there's actually a light above or a
14 window above that as well as that's letting in a
15 lot of light, but that's where that light was
16 coming from.

17 Q. Okay. So there was lighting?

18 A. Yes, there was light, it's just not
19 lights on.

20 Q. What about the kitchen? Do you
21 remember a light being on in the kitchen?

22 A. I believe all of that was ambient
23 light. That light coming through the windows.

24 Q. What about the -- I ask you about the
25 -- what about the laundry room, the breakfast area?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Laundry room was off, I definitively
2 remember that. I don't remember the light coming
3 off of the -- dining area, but there's a lot of
4 windows and all. There was ample light coming in.

5 Q. You call that ambient light?

6 A. Ambient light, yes, not direct light or
7 overhead light.

8 Q. What about the walk out basement? Were
9 they on or off?

10 A. Those lights -- when I got there they
11 were on.

12 Q. On?

13 A. On. But that was also -- when I got
14 down there and all, animal control was in the
15 process of seizing two dogs, so I can't tell you
16 whether or not they turned them on or if they
17 turned them off -- what the conditions were when
18 they got there.

19 Q. Isn't that important to find that out?
20 That would have been important to find it out?

21 A. I --

22 Q. Especially if you had known -- were you
23 aware of the fact that someone drove by the night
24 before and said there were no lights on? And now
25 you see lights on in the house?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. No, I was not aware of that.

2 Q. And what about the garage?

3 A. Those were definitively off.

4 Q. Definitively off?

5 A. Correct.

6 Q. But, again, we agree none of that is
7 written down it's all from memory?

8 A. Correct.

9 Q. Okay. And, again, I don't want to
10 misrepresent anything, it's not anywhere in your
11 report?

12 A. No.

13 Q. Now, yesterday when you were testifying
14 I believe you said that you checked every door in
15 the house? Internal doors and exterior doors?

16 A. Internal doors, no. I did not say
17 internal doors.

18 Q. Okay. I'm trying to get a
19 clarification, I'm sorry.

20 A. No. We processed the external doors.

21 Q. Okay. And did you process them with
22 DNA swabs?

23 A. No. Again, we went back and we relied
24 on latent prints.

25 Q. Okay. And so none of the doors other

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | than the front door were subjected to swabs to go
2 | ahead and take DNA?

3 | A. Correct.

4 | Q. Okay. So the only -- if I'm correct,
5 | the only two swabs that were ever submitted -- the
6 | only two swabs that I recall right now are the two
7 | swabs from the front door?

8 | A. Correct.

9 | Q. So you have a whole house with multiple
10 | doors, windows, furniture, countertops,
11 | nightstands, dressers, chairs, beds, none of that
12 | -- none of that was subjected to DNA -- touch DNA?

13 | A. Correct.

14 | Q. Okay. And you had testified
15 | yesterday -- or you're testifying today that you
16 | did do latent print, what, black powder?

17 | A. Yes.

18 | Q. And throughout the house?

19 | A. No. Again, not throughout the house.

20 | Again, exterior --

21 | Q. Just the exterior doors?

22 | A. Exterior of the house, yes sir.

23 | Q. Yesterday when you were testifying and
24 | I could have heard it wrong, and I apologize if I
25 | did, but I thought you said that you looked through

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | each of the closets and each of the drawers, like a
2 | dresser or nightstand or in the kitchen and
3 | subjected those to examination -- forensic
4 | examination?

5 | A. No, I didn't say that --

6 | Q. Okay. I said I may be wrong.

7 | A. I searched them to see what the drawers
8 | contained as far as what type of clothing and the
9 | condition of the clothing and all was inside of the
10 | drawers.

11 | Q. Okay. So what you did is you looked
12 | for what was inside the drawers, you looked for
13 | what was inside the closets, what's inside the
14 | nightstand, the dresser, drawers in the kitchen and
15 | I'm not going to go through every possible
16 | throughout the house, but none of those were
17 | subjected to any forensic examination?

18 | A. Correct. What we were looking for is
19 | when we opened them to see whether or not they were
20 | rummaged through, had they been rummaged through,
21 | we would have gone back and done DNA or latent
22 | prints on them to determine -- to try and get
23 | someone. But they were not rummaged through.
24 | There was nothing in the house that appeared to be
25 | pilfered. So those -- those steps were not done.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Had we found them in a different state then, yes,
2 we would have done that.

3 Q. That question was asked yesterday. Was
4 anything appeared to be rummaged through, but you
5 really don't know whether there was or not.
6 Whether or not somebody took clothes out, looked at
7 the clothes, that would be rummaging through. I
8 mean, you found a shirt on the floor, a polo shirt?

9 A. Correct.

10 Q. You found some other garments of
11 clothing in the -- one of the bathrooms and you
12 found some other garments of clothing downstairs I
13 think in the walk out garage. So it doesn't -- the
14 house was not totally -- the scene was not totally
15 set. So it's hard to say whether or not things
16 were rummaged through or not without checking?

17 A. Well, you are correct, but I've yet to
18 find a burglar though that has folded the clothes
19 back and put them back in the drawers in a nice
20 manner.

21 Q. Do what now?

22 A. I've yet to meet a burglar that folds
23 the clothes up when they're done and put them back
24 in the drawer for them.

25 Q. Well, that probably would be unusual.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 But in looking at all the drawers, they don't all
2 seem to be neatly packed back up?

3 A. The majority of them, yes, sir.

4 Q. All right. Do you have that written
5 down? Because I didn't see it.

6 A. No, I have photographs.

7 Q. I don't see it. Okay. The closets,
8 they were -- as you said, there were other weapons
9 in the house. The -- I know you took some
10 photographs of it, but none of that in the closets
11 were subjected to any of your forensic testing;
12 correct?

13 A. No, sir. Now, understand, they were
14 seized. All right. For purposes of sending to
15 SLED and all, what took place as far as what
16 happens after I seize them, doesn't -- it's not
17 on -- I'm not the one that makes that call. We
18 also don't want to interdict SLED with a bunch of
19 requests for firearms examinations on weapons that
20 are not of the same caliber as the shell casings
21 and bullets that we recover from inside the
22 residence.

23 Q. Well, yeah, I'm not talking about just
24 weapons, I'm talking about other items that may
25 yield some evidentiary value.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. So, again, my job is to identify,
2 preserve, collect and submit. The determination of
3 what goes to SLED and everything like that is not
4 on me.

5 Q. Okay. But your job is to go ahead and
6 collect it?

7 A. Yes, sir.

8 Q. And then it's sent off. If you don't
9 collect it there's nothing to send off?

10 A. Correct.

11 Q. That reminds me, you mentioned
12 something about there was a Springfield .45 box?

13 A. Yes, sir.

14 Q. And you mentioned something about no
15 other .45. But there was that Kimber .45 box in
16 the area too in the house?

17 A. Again, we discussed that earlier. I
18 told you that the question I was specifically asked
19 was, was there anything in the master bedroom or
20 that master bedroom closet. To that answer, no,
21 there's nothing. In the -- in the study, inside of
22 a box was an empty Kimber box that did not have a
23 firearm inside of it.

24 Q. But you -- my point is this, that
25 Kimber box contained at one time even though it was

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 not in there at that time a .45 automatic?

2 A. Correct.

3 Q. That would have been able to shoot the
4 same cartridges that you found throughout the area?

5 A. Right. And that's why I collected the
6 box.

7 Q. All right. And the .45 is not an
8 uncommon shell?

9 A. No, it's not.

10 Q. Many .45's. I think I counted on one
11 of the SLED reports it's like 26 possibilities that
12 could have fired an HP -- was it an HP45?

13 A. HPR .45 auto.

14 Q. There's about 26 weapons that could
15 have fired that?

16 A. I'm not --

17 Q. You're not a ballistics man and I don't
18 want to put you on the spot. Okay.

19 Now, you didn't do just one search. If
20 I counted correctly, each room was examined three
21 times?

22 A. Yes, sir, that would have been
23 accurate.

24 Q. The first day on the third, the next
25 day on the 4th and then the 8th day, several days

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 | later. And it was good reading at night, it put me
2 | to sleep because we're talking now, that does not
3 | mean it's an insult to you, but we're talking about
4 | how many inches between the door jam and the floor,
5 | I mean, it's kinda detailed to your credit?

6 | A. Yes, sir.

7 | Q. But I don't think that I saw any --
8 | well, I saw three different separate examinations,
9 | that's what I saw. And the only thing that ever
10 | yielded anything more was on the third day, the
11 | eighth day when you found the projectiles as a
12 | result of the autopsy report coming back; correct?

13 | A. Well, I don't -- I thought we found
14 | some stuff on day two?

15 | Q. You may have.

16 | A. That was seized for evidence.

17 | Q. It's a very detailed report.

18 | A. Correct. Yeah. On day two when we
19 | went back in their we collected more ammunition.
20 | Magazines for firearms. A various make, model and
21 | types. An iPad. Some shoes. That's actually when
22 | we found the box for the Kimber .45 SP. So there
23 | was quite a bit that took place that second day.

24 | Q. Okay. But all of that was there the
25 | first day too?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. It was there the first day, we just
2 didn't get to it.

3 Q. You just didn't get to it. And then
4 you came back the next day?

5 A. Yes, sir.

6 Q. And then on the eight day it was three
7 days in between the second search and then the
8 third search?

9 A. Well, there was the two search
10 interior. On day three, there was an article
11 search that was conducted around the house by the
12 K-9 units looking for possible items that had been
13 taken from the house. One of the things to include
14 the firearm for that Kimber -- I'm sorry, the
15 Kimber and the Springfield. And then there was a
16 day that nothing took place and then I returned the
17 following day to finish up.

18 Q. Okay. So the -- there were no -- from
19 the first day to the second and eighth day, there
20 were no additional forensic -- there was no more
21 additional forensic testing done? For example, DNA
22 or fingerprints?

23 A. Hold on just a second because I got to
24 find out what day I used BlueStar.

25 Q. BlueStar was in the bathroom?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Yes, sir.

2 Q. Yeah. I think that might have been --
3 it wasn't the first day?

4 A. Right. I think that was later on, yes,
5 sir.

6 Q. The BlueStar is a solution that you put
7 in a sink which is what you did in that case to
8 determine whether or not there's blood there?

9 A. Right.

10 Q. And there was none, it was negative?

11 A. So we tested the sinks in the master
12 bedroom as well as the shower in the master
13 bedroom.

14 Q. And there was -- BlueStar didn't yield
15 any blood?

16 A. Correct.

17 Q. Okay. But other than that, the
18 BlueStar, there were no additional forensic testing
19 done on any portion of the house? We've already
20 been through it and I don't want to go back over
21 them.

22 A. No, just searching to make sure that we
23 didn't miss anything as far as physical pieces of
24 evidence.

25 Q. We know that Hale stepped on the carpet

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 and also stepped on the blanket and you were able
2 to make sure that that was his footprint?

3 A. I -- so --

4 Q. And I guess I was a little confused
5 about it, but is that correct?

6 A. We were -- so the footprint that's on
7 the blanket, no one is going to ever be able to
8 come back and say this is definitively of this
9 boot. There's not enough individual
10 characteristics. All right. Looking at it and
11 looking at his boot, there did appear to be a lot
12 of class characteristics. In other words, where
13 the lugs are, their approximate size, and
14 approximate because we're dealing with fabric that
15 stretches and everything. So there was a lot there
16 as far as class characteristics, but you'll never
17 be able to say definitively that's his shoe because
18 of individual characteristics.

19 Q. Which means that a suspect could have
20 been wearing that shoe and stepped on that blanket
21 and we don't know who that is?

22 A. Correct. But we made every effort to
23 document and to -- to -- for the purpose. But,
24 again, you'll never make a class characteristic or
25 individual characteristics out of that shoe print.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. I assume that's why it's important to
2 go ahead and follow-up with any other forensic
3 possibilities that you have? I mean, you have a
4 shoe print, you have a door open that is the only
5 place that somebody could have gained access in to
6 the interior of the house. Of course that being
7 that the door was locked and you have a gate which
8 is the only place that someone could have gained
9 access to get into the yard to go ahead and get
10 into the house. So -- and now you have a shoe
11 print?

12 A. Right. That is impossible to identify
13 an individual by.

14 Q. I thought y'all could lift those things
15 and determine the exact size and width and the
16 measurements of the details? Maybe I'm from the
17 old school, I thought I remembered something like
18 that.

19 A. It depends on the material which it's
20 in. Due to the nature -- this is like one of those
21 velvet blankets that you get like at a hotel room
22 or something like that. Matter of fact, I got one
23 on my bed. But just due to it being compressed
24 down and understand it's the blanket on top of the
25 blanket on top of carpet, it's not going to leave

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 individual characteristics for you to be able to
2 pinpoint direct whose shoe it is, let alone
3 identify it back to a specific shoe. It's --
4 you'll never be able to do it off of that material.

5 Q. Okay. And a police officer -- an
6 experienced police officer would know not to go
7 ahead and step on something like that?

8 A. Well, correct, but then we run into the
9 issue of the officer -- because they are taught to
10 hug the walls because of possible evidence that's
11 out in the main floors. In order for him to get in
12 and do his job, he had to step on the blanket or
13 step in the middle of the floor in the middle of
14 the doorway where I could possibly hit or move
15 evidence.

16 Q. Would the logical thing to do would be
17 to walk around the body?

18 A. I don't know how far the door would
19 open --

20 Q. Well, you could tell there's a space
21 between the body and the left side of the room and
22 right side of the room.

23 A. Yeah. His decision and everything like
24 that, I can't attest to because I am not the one
25 that made that call that day on scene.

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 Q. I'm not suggesting it's your fault.
2 But he also should have been wearing gloves when he
3 went in that house; yes?

4 A. Well, under exigent circumstances he
5 was going in to make sure that no one else in that
6 house is hurt. He wants to make sure that there's
7 not someone else in there that cause additional
8 harm. No, officers don't have time. All right.
9 They have to make a decision and they have to act
10 on it. What we're left with are the best scenario.
11 So, no, I don't fault him for putting on gloves. I
12 don't think he had time to put on gloves. I don't
13 think he should have put on gloves. I think it
14 would have been a waste of time.

15 Q. Okay. Well, apparently he did too.
16 But what we do want to know is, we want to be able
17 to identify subjects and that is paramount; isn't
18 it?

19 A. Yes, sir.

20 Q. I noted in your report that you said
21 there were no physical injuries or to the
22 fingernails or the hands or fingers on Ms. Ceden
23 which I suggest you were trying to say there was no
24 evidence of defensive wounds?

25 A. Correct. Like the fingernails weren't

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 bent back. I didn't see any injuries to the back
2 of her hands and stuff along those lines that would
3 be defensive and or offensive in nature.

4 Q. And you put that in your report because
5 that's important too, whether or not the victim in
6 that case has defensive wounds trying to fight off
7 a person; correct?

8 A. Correct.

9 Q. And doesn't appear that happened here
10 based on your observations?

11 A. Correct.

12 MR. SWERLING: I'm getting ready to
13 line up, Your Honor.

14 THE COURT: Take your time.

15 Q. I hate to plead ignorance but what's an
16 en suite?

17 A. En suite.

18 Q. What is an en suite? I don't have one.
19 I don't think I do.

20 A. It is a bathroom that is directly
21 attached to the master bedroom.

22 Q. Oh, I do have one of those. I had no
23 idea what that was. I should have looked it up.

24 The BlueStar search in the sink was
25 done on the eighth?

THOMAS SMITH - CROSS-EXAMINATION BY MR. SWERLING

1 A. Okay.

2 Q. Just want to clarify that for your
3 benefit.

4 A. I knew it wasn't the first day.

5 Q. Yeah. No, it was on the eighth.

6 MR. SWERLING: If the Court would
7 indulge me one moment?

8 THE COURT: Sure.

9 Q. You would agree I think that in South
10 Carolina and nationwide, a .45 caliber shell casing
11 similar to the ones we found at the house are very
12 common?

13 A. Oh, yes, sir.

14 Q. And for someone to have those kinds of
15 shell casings or projectiles in South Carolina or
16 throughout the country would not be unusual for
17 someone to have that caliber and that type of
18 shell; is that correct?

19 A. No, sir.

20 Q. No, sir, what?

21 A. No, it would not be uncommon.

22 Q. It would not. All right. Thank you.
23 Appreciate it.

24 THE COURT: Thank you, Mr. Swerling.
25 Ms. Mayes, any redirect?

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Based on the questions that Mr.
5 Swerling posed. Would you consider the recovery,
6 the potential recovery of DNA, a chance event?

7 A. I wouldn't say it's a chance event
8 depending on the surface that you're dealing with
9 or often that surface is touched.

10 Q. And what about the potential recovery
11 of latent print, is that a chance event?

12 A. Yes. Again, depending on the surface,
13 depending on the temperature, the climate,
14 there's -- there's a study out by USACIL that says
15 trace evidence and latent prints falls within trace
16 evidence. We lose 80 percent of trace evidence
17 within the first two hours of a crime. From the
18 time that they got on scene until I got there was
19 well over two hours, so we're looking at those type
20 of statistics. And USACIL is the US Army Criminal
21 Investigative lab out of Forest Park, Georgia.

22 Q. All right. Now, I know you were asked
23 specifically about lights, exterior lights. I'm
24 going to take a look here at what is currently
25 Court's Exhibit 2 and I want to ask you to take a

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 look at that.

2 A. Okay.

3 Q. And based upon your memory of the scene
4 were the garage light on?

5 A. No. The exterior -- no.

6 Q. Okay. I'm going to show you what is
7 State's 93 already in evidence. Out of all the
8 rooms in that home that would face street view,
9 which if any rooms in that home that would be
10 visible from the street would have had a light on?

11 A. The second bedroom.

12 Q. All right. And can you tell us whether
13 or not there are curtains in that room?

14 A. There are.

15 Q. Now, regarding the entry into the
16 residence by Deputy Hale, I think it's understood
17 based on your cross-examination that when he
18 initially entered he did not have gloves on?

19 A. Correct.

20 Q. And I believe you described to Mr.
21 Swerling that you had to make a choice?

22 A. Yes, ma'am.

23 Q. Can you tell us what you mean by that?

24 A. So I had to -- like SLED will only do
25 an either or. All right. So I have to choose

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 | between a very limited data base and touch DNA that
2 | might be commingled to the point that SLED can't
3 | give you a result or a much larger base in latent
4 | prints on the same surface. Just due to the
5 | circumstances and what I knew at the time of the
6 | scene, I went with latent prints.

7 | Q. All right. I'm going to show you what
8 | is State's 201 in evidence.

9 | A. Okay.

10 | Q. Do you see any visible signs of
11 | lighting in this photograph?

12 | A. No, ma'am.

13 | Q. From street view?

14 | A. No, ma'am.

15 | Q. If you had potentially utilized DNA
16 | powder at that exterior door to the patio, how if
17 | at all may that have affected your ability to
18 | potentially recover a latent fingerprint?

19 | A. It would have destroyed it.

20 | Q. Have you been able to successfully
21 | recover latent prints from doorways?

22 | A. I have.

23 | Q. Can you tell us whether or not that
24 | would have been important to you to recover a
25 | latent fingerprint?

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 A. Absolutely.

2 Q. I'm going to ask you to take a look at
3 these photographs here being State's 216 and 217.
4 Are you familiar with the body cam footage of
5 Deputy Hale?

6 A. Yes, I've watched it.

7 Q. You've observed that yourself?

8 A. Yes, ma'am.

9 Q. At this point, what's depicted in 216
10 and 217, do you recognize that area of the home?

11 A. That's the front door to the residence.

12 Q. Does this appear to be a fair and
13 accurate depiction of what is shown in the body cam
14 footage of Deputy Hale?

15 A. It does.

16 MS. MAYES: Without objection, Your
17 Honor.

18 THE COURT: Okay. They're admitted.

19 (WHEREUPON, State's Exhibit Numbers 216
20 and 217 were entered)

21 Q. State's 216 realize the lighting is
22 poor. Looking there at 216. And 217. 217 in
23 conjunction with 216. Can you tell us whether or
24 not Deputy Hale was wearing gloves by the time he
25 reached the front entrance of the home?

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 A. Yes. You can see this is him reaching
2 for the doorknob right there. That's his black
3 gloves that he had dawned prior to opening the
4 door.

5 Q. All right. And understanding that he
6 was wearing gloves at this stage, what type of
7 forensic tool did you use for the front door?

8 A. We used a combination of DNA and latent
9 prints.

10 Q. Okay. And the DNA was collected
11 directly from where -- the potential DNA swabs?

12 A. From the front -- from the outside
13 front door at the thumb latch and the handle.

14 Q. All right. So you did attempt DNA
15 swabs at that location?

16 A. Yes.

17 Q. Was there another area at that location
18 that you could attempt latent prints?

19 A. We used it on all exterior -- we used
20 either latent prints in conjunction with oblique
21 lighting on all exterior doors.

22 Q. All right. Now, looking at 218 and
23 219, I'm going to show you these and ask you
24 whether or not you also recognize these
25 photographs?

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 A. I do.

2 Q. Can you tell us whether they are a fair
3 and accurate depiction of the crime scene as you
4 recall it?

5 A. They are.

6 Q. In its condition?

7 A. Yes, ma'am.

8 Q. All right. So Mr. Swerling was asking
9 you about potentially three people coming in out of
10 that balcony door, being the balcony door to the
11 master bedroom?

12 A. Yes, ma'am.

13 Q. All right. And, specifically, as to
14 that balcony door you mentioned three people, who
15 were you referring to?

16 A. We knew that two people lived there --

17 Q. And just to be specific you're
18 referring to the victim, Roselynn Cedeno?

19 A. Yes.

20 Q. And who is the other person known to
21 have resided there?

22 A. Stivers (verbatim).

23 Q. The Defendant in this case?

24 A. Yes.

25 Q. And who was the third person you

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 | mentioned that you knew had potentially left DNA by
2 | entry at that location?

3 | A. Deputy Hale.

4 | Q. And did you have any indication as to
5 | that particular balcony door whether there was a
6 | pet in close vicinity?

7 | A. Yes.

8 | Q. At the master bedroom?

9 | A. Yes.

10 | Q. How so?

11 | A. I had watched Deputy Hale's body cam
12 | footage and you could see a medium size dog in the
13 | video.

14 | Q. Okay. And do you recall the door that
15 | that pet exited out in the video?

16 | A. I don't recall.

17 | Q. Okay. Do you recall any indication of
18 | pets on the premises?

19 | MS. MAYES: I'm going to offer 219 as
20 | evidence, Your Honor.

21 | THE COURT: Mr. Swerling, any
22 | additional objections?

23 | MR. SWERLING: No additional, Your
24 | Honor.

25 | THE COURT: Okay. That's 219 and

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 | what's the other one, Ms. Mayes?

2 | MS. MAYES: 218.

3 | THE COURT: 218. Thank you.

4 | (WHEREUPON, State's Exhibit Numbers 218
5 | and 219 were entered)

6 | Q. And looking here at 219, did you see
7 | any evidence of pets in the home using the exterior
8 | portion of that residence?

9 | A. Yeah. At that back door there were two
10 | small dogs down in the walk out basement.

11 | Q. All right. And also going to take a
12 | look at number 3. Does that also depict the
13 | balcony area?

14 | A. It does.

15 | Q. Do you recognize that location?

16 | A. That's the door to the master bedroom.

17 | Q. Is that also the door in which there
18 | was a pet crate?

19 | A. Yes, in the master bedroom. Opposite
20 | that door there was a metal wire pet crate.

21 | Q. Okay. And did you see any indications
22 | of that pet being loose?

23 | A. There was -- internal or external,
24 | ma'am?

25 | Q. Internal?

THOMAS SMITH - REDIRECT EXAMINATION BY MS. MAYES

1 A. Yeah, the dog was visibly out inside
2 the bedroom on Deputy Hale's body camera.

3 Q. And any indications of pet toys to the
4 exterior?

5 A. There was pet toys to the exterior.
6 There was also on the porch there was actual fecal
7 matter and there was fecal matter in the yard as
8 well.

9 Q. All right. And in that regard when you
10 say the porch, are you referring to the bottom area
11 of the porch or the top area of the porch?

12 A. The top.

13 Q. Okay. What if anything does that
14 indicate to you?

15 A. Just that the dogs had roamed outside.
16 They had to be let in and out of the house and that
17 they had roamed outside to do their business.

18 Q. Okay. And then looking here at 218,
19 was there any indication as to whether parties in
20 the home used cigarettes?

21 A. There was a smoking -- like they smoked
22 outside. The inside didn't smell of cigarette
23 smoke.

24 Q. All right. And, finally, I know that
25 Mr. Swerling was asking you about this door here to

1 the screen porch. Was that door open or closed?

2 A. I'll be honest with you, I don't
3 recall.

4 Q. Okay. If that door was open, can you
5 tell us whether or not the interior door to the
6 home was checked?

7 A. Yes, the interior door was checked. It
8 was locked and secured.

9 MS. MAYES: Thank you. Nothing
10 further.

11 THE COURT: Okay. Can I let the
12 Detective down? Excused?

13 MS. MAYES: Yes, Your Honor. We do ask
14 that he be excused.

15 THE COURT: You're excused. Thank you.

16 MR. SMITH: Am I subject to recall
17 or am I --

18 THE COURT: No, they're excusing you.

19 MR. SMITH: Yes. Thank you, ma'am.

20 THE COURT: Mr. Foreman, I'm going to
21 give y'all a break. Stretch your legs right quick.
22 Y'all have been at it almost two hours. So
23 remember, just no talking about the case just yet,
24 but you can go to the jury room.

25 (WHEREUPON, the jury exits the

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 courtroom at 11:18 a.m.)

2 THE COURT: Okay. Let's take like a 15
3 minute break.

4 MS. MAYES: Sounds good. Thank you,
5 Judge.

6 (WHEREUPON, there was a short break)

7 THE COURT: Okay. I'd like to go till
8 1:00 if I can.

9 MS. MAYES: We should be good, Your
10 Honor.

11 THE COURT: You think we can get
12 through a couple of witnesses?

13 MS. MAYES: We can, Your Honor.

14 THE COURT: Okay. Y'all ready to bring
15 the jury in?

16 MS. MAYES: We are, Your Honor.

17 THE COURT: Okay. Let's bring them in.
18 Who are we calling next?

19 MS. MAYES: Chain of custody, Your
20 Honor, regarding the cell phone. This is Brian
21 Hudak from SLED.

22 THE COURT: Okay.

23 (WHEREUPON, the jury enters the
24 courtroom at 11:40 a.m.)

25 THE COURT: You can call your next

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 witness.

2 MS. MAYES: The State calls Agent Brian
3 Hudak.

4 BRIAN HUDAK,
5 being first duly sworn, was examined and testified
6 as follows:

7 THE CLERK: If you'll have a seat over
8 there. State your name and spell your last,
9 please, for the record.

10 MR. HUDAK: Brian Hudak, H-U-D-A-K.

11 DIRECT EXAMINATION

12 BY MS. MAYES:

13 Q. All right. Good morning. Tell us a
14 little bit about yourself. Where are you employed?

15 A. Currently employed at the South
16 Carolina Law Enforcement Division, what's known as
17 SLED.

18 Q. And what division within the State Law
19 Enforcement Division do you work?

20 A. Computer crimes.

21 Q. And how long have you been an agent
22 with the South Carolina Computer Crimes Division
23 there at the state crime lab?

24 A. Since October of 2015.

25 Q. All right. Can you tell us, Agent, how

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 items are received there at the computer crimes
2 center at SLED for analysis?

3 A. Normally items are brought in by any
4 other state or local agency. And as we receive the
5 items, one of our evidence custodians which I am
6 one of will intake it. We'll take photographs of
7 the item and log it into our evidence management
8 software. And after that's done we get a signature
9 from the individual who dropped off the items. And
10 then we take it and secure it in our evidence vault
11 and log the location that it's in the vault.

12 Q. All right. And, Agent, I'm going to
13 take you back to Thursday, September 12th of 2019
14 and ask you whether any evidence was submitted to
15 the computer crimes division by the Lexington
16 County Sheriff's Department?

17 A. Yes, there was.

18 Q. And who was that item of -- who were
19 those items of evidence submitted to?

20 A. They were submitted to me.

21 Q. All right. And do you have paperwork
22 with you in that regard?

23 A. Yes, I do.

24 Q. I'm going to show you what is State's
25 169 being an Apple iPhone. And ask you whether or

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 | not you received a similar item and how you went
2 | about potentially documenting that item?

3 | A. Yes, this appears to be -- so receiving
4 | it, it was delivered to us in a sealed bag. I
5 | opened the bag, photographed the item, removed the
6 | SIM card from the item and then documented the type
7 | of item it was. That it was an Apple iPhone
8 | including the IMEI number.

9 | Q. All right. And when we talk about IMEI
10 | number is that similar to a serial number?

11 | A. That's right. It stands for
12 | International Mobile Equipment Identifier. Each
13 | mobile device like a cell phone or a tablet has a
14 | unique number. And we use that on Apple devices
15 | because modern day iPhones, they don't actually put
16 | the serial number on the phone, so we use that as a
17 | unique identifier.

18 | Q. All right. And, Agent, can you read
19 | into the record slowly enough for the court
20 | reporter to capture it, the serial number or IMEI
21 | number for that Apple iPhone that was submitted?

22 | A. Sure. It was 354847093780852.

23 | Q. All right. And could you read the
24 | first three numbers again, please?

25 | A. 354.

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Now, did you also make any
2 notations as to the color or type of casing
3 affiliated with that item that was submitted for
4 analysis?

5 A. Yes, I stated it came with a pink and
6 clear case.

7 Q. And you said that that item arrived to
8 you sealed?

9 A. Yes, ma'am.

10 Q. And once it arrive to you sealed, what
11 action did you take?

12 A. I opened the bag so -- because part of
13 our procedure is to document, get photographs of
14 any items that we receive. So I photographed the
15 item and then I removed the SIM card and logged it
16 into our evidence system.

17 Q. All right. Now, did you also receive
18 two iPads?

19 A. Yes, ma'am.

20 Q. I'm going to show you what is State's
21 71 and ask you whether or not you're familiar with
22 this item?

23 A. May I open it?

24 Q. Yes.

25 THE COURT: Do we have some scissors?

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: We do, Your Honor.

2 THE COURT: I knew we did somewhere.

3 MR. HUDAK: I apologize.

4 THE COURT: No, you're fine.

5 A. Yes.

6 Q. All right. And can you tell us whether
7 or not you recorded the serial number for this
8 Apple iPad?

9 A. I did.

10 Q. And what was that serial number?

11 A. DMPV998YJ28N.

12 Q. All right. And can you tell us whether
13 or not that Apple iPad was also submitted to
14 computer crimes for analysis?

15 A. It was.

16 Q. All right. And now finally, was there
17 a third iPad also submitted for analysis?

18 A. Yes, ma'am.

19 Q. And did you record that serial number?

20 A. Yes, I did.

21 Q. Did that item also arrive to you
22 sealed?

23 A. Yes.

24 Q. What was the serial number of that?

25 A. DMRJF1HQDKPH.

BRIAN HUDAK - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Who is the agent there at
2 the computer crimes division that unsealed each of
3 these items after they arrived to your lab?

4 A. I did.

5 Q. And for what purpose?

6 A. To document through photographs and
7 also serial numbers or unique identifying numbers.

8 Q. And other than that photo documentation
9 and notations regarding the serial number, did you
10 alter the content of these items in any way?

11 A. No, ma'am. They arrived off and I did
12 not power them on.

13 Q. And where were they placed after your
14 documentation?

15 A. They were placed in computer crimes a
16 secure evidence vault.

17 Q. And can you tell us whether or not you
18 have a forensic analyst there at the state crime
19 lab?

20 A. Yes.

21 Q. For the purpose of electronic devices?

22 A. Yes, we do.

23 Q. And which forensic analyst were these
24 items submitted to for analysis?

25 A. They were -- Diego Nova did the

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 analysis.

2 Q. And is -- was Agent Diego -- Diego Nova
3 also affiliated with the State Law Enforcement
4 Division?

5 A. Yes, he was.

6 Q. There at the SLED computer crimes
7 division?

8 A. Yes, ma'am.

9 MS. MAYES: Thank you. Nothing
10 further.

11 THE COURT: Any questions, Mr.
12 Swerling?

13 MS. BARBIER: No questions. Thank you,
14 Your Honor.

15 THE COURT: Okay. Can I excuse Agent
16 Hudak?

17 MS. MAYES: No objection from the
18 State, Your Honor.

19 THE COURT: Agent Hudak, thank you.
20 You may be excused.

21 MS. MCMENAMIN: Our next witness, Your
22 Honor will be Diego Nova.

23 DIEGO NOVA,
24 being first duly sworn, was examined and testified
25 as follows:

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 THE CLERK: If you'll have a seat over
2 there, please. State your name and spell your last
3 for the record.

4 MR. NOVA: Diego Nova. Last name
5 spelled N-O-V-A.

6 DIRECT EXAMINATION

7 BY MS. MCMENAMIN:

8 Q. Good morning.

9 A. Good morning.

10 Q. Can you tell us where you are currently
11 employed?

12 A. I'm currently employed for a company
13 out of Orlanda, Florida called Garret Discovery.

14 Q. And can you tell us where you were
15 employed prior to that?

16 A. Prior to that I worked for another
17 digital forensic company called Invista Forensics
18 out of Dallas, Texas. And previous to that I
19 worked for SLED. I worked for SLED for a little
20 bit over nine years.

21 Q. So were you an agent with SLED?

22 A. I was a special agent with SLED. When
23 I retired I was senior special agent.

24 Q. And would you prefer that I refer to
25 you as Agent Nova today for testimony?

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. That's fine.

2 Q. Agent Nova, can you tell us a little
3 bit about your time at SLED? What is it that you
4 did there?

5 A. Okay. I started at SLED in 2010. My
6 first -- after the police academy I was in the
7 fugitive apprehension unit. I did that for about
8 five years. Basically, surveillance and
9 apprehending violent suspects and also helping out
10 with missing people and Amber Alerts. And then I
11 worked as a field investigator for the low country
12 region for about a year and a half doing
13 investigations. And my final assignment was in the
14 computer crimes unit here in Columbia, South
15 Carolina.

16 Q. Thank you, Agent Nova. Would you mind
17 pulling the microphone towards you just a little.
18 I can hear you, but I want to make sure everyone in
19 the courtroom can hear you.

20 A. I can hear me too.

21 Q. Good. Now we can all hear. Agent
22 Nova, you said that you were working in SLED. Did
23 I hear you were doing analysis of computerized
24 devices; is that correct?

25 A. Correct. When I started with SLED in

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 the fugitive apprehension unit, we have what's
2 called a Cellebrite machine and we used -- in order
3 to extract information from cell phones when we
4 would apprehend our suspects in order to establish
5 these. I also used our Cellebrite machine and
6 extraction reports when I was an investigator.
7 And, of course, when I worked at the computer
8 crimes unit, most of what I did was cell phone and
9 computer and mobile devices -- device extractions
10 and then do an analysis of what the extraction
11 report produced.

12 Q. So does that mean you've been doing
13 cell phone extractions with Cellebrite for over ten
14 years now?

15 A. Over ten years in law enforcement and
16 also in the private sector.

17 Q. You're in the private sector now;
18 right? At Florida Garrett Discovery?

19 A. Garrett Discovery company. They just
20 hired me on. I have to move to Florida next month.

21 Q. Got it. Thank you. And there you're
22 going to be -- what will be your position there be?

23 A. I'll be the senior digital forensic
24 examiner.

25 Q. And forensic examiner, does that just

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 mean what you've explained that you do cell phone
2 extractions?

3 A. I left out the word digital. Digital
4 forensic examiner. So what that means is
5 extractions and imaging. When I say imaging is the
6 same as getting information from a digital device,
7 computer, cell phone, iPad, GPS devices. That's
8 what an extraction or imaging is. I will be doing
9 mostly cell phone extractions and then analyzing
10 the data on that extraction or analyzing extraction
11 reports done by another examiner. I will also be
12 doing -- and something I left out that I used to do
13 with SLED as an investigator in the fugitive
14 apprehension unit is CDR examination. CDR
15 analysis. CDR is a -- it's a cell phone record
16 basically -- Call Detail Record, CDR.

17 Q. Let's break that down a little bit,
18 Agent Nova, so we're all on the same page. Are you
19 saying that data retrieved from a cell phone and a
20 cell phone extraction is different from data we
21 receive from call records from a provider like
22 Verizon?

23 A. Correct. So an extraction report, it's
24 what's in the phone. All right. It's what's in
25 and outgoing calls in your phone. A CDR is a call

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 detail record is what we get from it T-Mobile,
2 AT&T, Verizon and Sprint which is the four big
3 companies.

4 So you can delete information from your
5 phone. For example, you can delete calls, texts,
6 so forth, but you can't delete what's in the
7 Verizon records. So they're similar, but they can
8 be different.

9 Q. And by saying you can't delete, do you
10 mean the user?

11 A. Correct. The user is unable to delete
12 what's in the call detail records produced by the
13 provider.

14 Q. Would deleting information from a phone
15 be a part of your job in collecting data or
16 analyzing data?

17 A. No, not at all. You treat a cell phone
18 like any other piece of evidence like a crime
19 scene, you don't to alter it at all.

20 Q. Okay. And so have you ever extracted
21 information from an iPhone?

22 A. I have done many iPhones.

23 Q. Or an iPad?

24 A. iPad as well.

25 Q. How many cell phone extractions using

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Cellebrite in particular have you done?

2 A. I never counted, but I've been doing it
3 for over 12 years now, I would say over a 1,000.

4 Q. And Cellebrite, what is that exactly?

5 A. Cellebrite is a machine and it's two
6 versions. You have Cellebrite and Cellebrite for a
7 PC. But the one that we -- that I was using when I
8 worked for SLED was called the Cellebrite UFED
9 Touch 2. So basically it's a machine that connects
10 to a cell phone, a mobile device and gets all the
11 information out of it and then we use that
12 information that's not been filed, but we use
13 information to produce an extraction report. It
14 should mirror what's in the phone. We're also able
15 to recover items that have been deleted.

16 Q. And through -- it sounds like you've
17 been using Cellebrite for ten years; is that
18 correct?

19 A. Over ten years.

20 Q. And in your ten plus years of
21 experience using this technology Cellebrite to
22 extract information from things such as cell
23 phones, do you find the technology to be reliable?

24 A. I do find the technology to be
25 reliable.

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Is the Cellebrite program in particular
2 accepted among experts in the field of forensic
3 examinations?

4 A. I would say the gold standard for
5 digital forensics in terms of extracting
6 information -- information from a cell phone.

7 Q. And do you know of any other agencies
8 outside of SLED and the private sectors you've
9 worked for that also use this program?

10 A. I know the FBI uses it. I know the
11 Secret Service uses it and all throughout the State
12 of South Carolina uses Cellebrite.

13 Q. And when you were working at SLED,
14 specifically, was there any steps taken to help
15 ensure the accuracy of the extractions or the
16 successfulness of these extractions?

17 A. We do. We take steps like, for
18 example, the first thing we do with a cell phone
19 extraction, we know we're going to extract
20 information from the phone is we disconnect it from
21 the network. That way when we get the phone after
22 it's in our custody, nobody can remote wipe the
23 phone for example or you can't receive anymore
24 texts or calls, in or outgoing.

25 Q. And once you are done with a Cellebrite

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | extraction, is there some sort of report that might
2 | be generated?

3 | A. Yes, there is a report generated from
4 | the extraction itself. There's several formats
5 | that we can produce that report. One is an HTML
6 | report so that you can open the report with a web
7 | browser for example. One is a PDF. It's the same
8 | thing. Or you can have it in a PDF format or we
9 | can do it in what's called a UFDR file which that's
10 | for more advanced users because you can look at
11 | more data that way and specifically the data bases.

12 | Q. And at SLED, was there peer review done
13 | when someone would complete a cell phone
14 | extraction?

15 | A. Correct. My reports were peer reviewed
16 | by another agent in the computer crimes unit and
17 | after his peer -- his or her peer then our
18 | lieutenant would peer review it as well and then he
19 | would sign off on the final report.

20 | Q. In addition to your decades worth of
21 | experience doing phone extractions, Agent Nova,
22 | have you done any training?

23 | A. I've done extensive amount of training
24 | both online and in person.

25 | Q. Did you attend any courses with the

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 National Computer Forensics Institute?

2 A. I have. I completed at least five
3 course with the NCFI located in Hoover, Alabama and
4 is hosted by the Secret Service.

5 Q. Okay. And do you recall if any of the
6 trainings you did with NCFI, did I get that right?

7 A. NCFI, yes, ma'am.

8 Q. In Hoover, Alabama?

9 A. Yes.

10 Q. If any of those trainings were -- how
11 many hours you did with those trainings?

12 A. The longest one was a five week course.
13 It was called an MDE, Mobile Device Examiner, and I
14 did another week with the advanced mobile device
15 examiner. It's a very extensive course and just to
16 let you know how -- how Cellebrite is important in
17 that class. After graduating from that course, I
18 was assigned my own Cellebrite. So most of the
19 course involved was Cellebrite extractions?

20 Q. Do you recall -- was this the four or
21 five week course?

22 A. Correct. As the MDE, the mobile device
23 examiner, yes.

24 Q. Would that come out to 152 hours of
25 training?

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Correct. That doesn't include the
2 workshops and the after class. But, yes, classroom
3 time is at least 152 hours.

4 Q. And these included trainings
5 particularly in Cellebrite?

6 A. Correct. Most of the extractions were
7 done with Cellebrite. Obviously, we talk about
8 other forensic tools, but the main focus was on
9 Cellebrite.

10 Q. And have you used other forensic tools?

11 A. I have. They are several others called
12 -- there's one called BlackBag, there's one called
13 Magnet, one called XRY.

14 Q. And which of those is your preference?

15 A. I always go to Cellebrite first.

16 Q. And the principles that you learned in
17 these trainings including the training with the
18 NCFI, are these principles supported in the field
19 of forensic examinations?

20 A. Absolutely. They're called best
21 practices and they're used throughout the nation.

22 Q. Now, when you were employed with SLED,
23 you were employed there in 2019?

24 A. Yes, I was.

25 Q. In 2019, were you asked to conduct a

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | phone extraction for this case?

2 | A. I reviewed my notes and, yes, I was.

3 | Q. Were you asked to extract any other --
4 | or extract data from any other items?

5 | A. For this particular case it was one
6 | cell phone, two iPads.

7 | MS. MCMENAMIN: Permission to approach
8 | the witness, Your Honor?

9 | THE COURT: Sure.

10 | Q. Okay. Agent Nova, looking at -- let me
11 | grab some gloves. If you wouldn't mind putting on
12 | some gloves, Agent Nova.

13 | A. Not at all.

14 | Q. Okay. So we're going to look at some
15 | items that are already in evidence. There's one
16 | sitting right here in front of you that I may be
17 | able to determine --

18 | A. Okay.

19 | Q. -- the item number. Do you see a red
20 | sticker on here? It may be on the outside of the
21 | packaging.

22 | A. Yes.

23 | Q. Yes, okay. So State's Exhibit 71, do
24 | you recognize that, Agent Nova?

25 | A. I do. I recognize the iPad. I

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 recognize the SLED label.

2 Q. Okay.

3 A. I also recognize the green sticker
4 means that it was processed.

5 Q. Okay. Green sticker is processed. You
6 remember this iPad. Did you conduct an extraction
7 on it?

8 A. I did. Let me just double check -- the
9 340. Yes, this is item number 2 from 719340.

10 Q. So this number right here tells you
11 that this is the iPad that matches up with your
12 paperwork?

13 A. Correct.

14 Q. Okay. Now, looking at the next item
15 which is State's Exhibit 169.

16 A. Uh-huh.

17 Q. Do you recognize this item and/or its
18 case?

19 A. I do. I looked at the pictures and
20 this is the iPhone that I examined in part of this
21 case.

22 Q. Okay. So there's a sticker on not only
23 this phone, but the --

24 A. The charging cord?

25 Q. -- the charging cord? Okay.

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. But that charging cord belongs to the
2 iPad.

3 Q. Okay. But this is the iPhone that you
4 extracted?

5 A. Correct.

6 Q. Was that a successful data extraction,
7 Agent Nova?

8 A. It was.

9 Q. What sorts of data were you able to
10 pull from this phone?

11 A. We were able to pull call logs. The
12 main thing is call logs, text messages otherwise
13 called SMS, short message service, and MMS,
14 muti-media service which are the pictures within a
15 text, for example. Amongst contacts, like pretty
16 much whatever the phone had in it that you could
17 see from the phone on display you could see on the
18 extraction report.

19 Q. And, Detective Nova, have you
20 previously been qualified as an expert in the field
21 of cell phone extractions and forensic computer
22 analysis?

23 A. I have. Exactly two years ago right
24 here in Lexington County.

25 Q. So in 2020 you were qualified as an

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 expert in general sessions court?

2 A. I was.

3 Q. And would your scientific, technical
4 and specialized knowledge of forensic examinations
5 and cell phone extractions assist the jury today in
6 understanding the testimony that you would provide?

7 A. It will.

8 MS. MCMENAMIN: Your Honor, at this
9 time the State offers Diego Nova as an expert in
10 cell phone extractions and forensic computer
11 analysis.

12 MS. BARBIER: No objection, Your Honor.

13 THE COURT: Okay. Let me just address
14 the jury just for a second.

15 Normally, a person can't give opinion
16 testimony. They usually testify to what they
17 either saw, heard, smell, something they did.
18 However, there is an exception when someone is
19 qualified because of their education or experience.
20 They are permitted to give their opinion in certain
21 areas if the Court qualifies them that way. I am
22 going to qualify Dr. -- or Agent Hudak --

23 MS. MCMENAMIN: Nova.

24 THE COURT: -- Nova. I am looking at
25 the wrong one. As a cell phone extraction and

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 forensic computer analysis.

2 MS. MCMENAMIN: Yes, Your Honor.

3 THE COURT: And he's going to give an
4 opinion testimony in that area. That does not mean
5 you must accept the opinion, but it is evidence for
6 you to use in any way you see fit. Okay. Go
7 ahead.

8 MS. MCMENAMIN: Thank you, Your Honor.
9 Permission to approach the witness?

10 THE COURT: Sure.

11 MS. MCMENAMIN: We beg the Court's
12 indulgence, Your Honor.

13 THE COURT: Take your time.

14 MS. MCMENAMIN: Now, permission to
15 approach, Your Honor?

16 THE COURT: Yes.

17 Q. Agent Nova, I'm now showing you what is
18 marked as State's Exhibit 119 for identification
19 purposes only. What is this?

20 A. That is a CD containing the extraction
21 report for the iPhone.

22 Q. So the data you got from the phone?

23 A. Correct. In a format that's easy to
24 understand, read and make copies of.

25 Q. What particular format is this?

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. HTML.

2 Q. And so is that the one with like the
3 links, the easy one?

4 A. Correct. As if you were looking at a
5 web page.

6 Q. Okay. And then -- sorry about that
7 sticky note. Right here, State's Exhibit 126, what
8 is that?

9 A. That -- this is usually the first page
10 in the HTML report which contains the basic
11 information about the phone. It has the serial
12 number --

13 Q. Without going into specifics just yet.
14 So the basic identifying information for the phone?

15 A. Correct.

16 MS. MCMENAMIN: State offers 126 into
17 evidence.

18 THE COURT: Any objection?

19 MS. BARBIER: No objection, Your Honor.

20 (WHEREUPON, State's Exhibit Number 126
21 was entered)

22 Q. What identifying information do you
23 have in this device information?

24 A. It's got the serial number, it's got
25 the amount of memory that the phone has. Also and

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | most important it has the Apple ID associated with
2 | this iPhone. The Apple ID is what allows you to
3 | have an iTunes account, for example.

4 | Q. And State's Exhibit 120, do we see any
5 | information in there regarding user accounts and
6 | Apple ID?

7 | A. Correct. These user accounts you can
8 | find these under, basically, your contact list on
9 | the phone.

10 | Q. And this is from the phone extraction?

11 | A. Correct.

12 | MS. MCMENAMIN: State's Exhibit 120 for
13 | evidence.

14 | THE COURT: Any objection?

15 | MS. BARBIER: No objection, Your Honor.

16 | THE COURT: It's admitted.

17 | (WHEREUPON, State's Exhibit Number 120
18 | was entered)

19 | Q. Now, State's Exhibit 121, what is this?

20 | A. This is something that came from Apple
21 | itself which has the information in regards to the
22 | user ID associated with this account.

23 | Q. Okay. And the apple ID in particular?

24 | A. Correct.

25 | MS. MCMENAMIN: State's 121 for

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1 evidence.

2 MS. BARBIER: No objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit Number 121
5 was entered)

6 Q. And who does this Apple ID belong to
7 according to this document?

8 A. According to this document, first name
9 is Roselynn last name is Cedenogato. And the e-mail
10 associated with this account is
11 cedenogato@yahoo.com

12 Q. So you were able to -- does this allow
13 you to associate this phone with a particular
14 person?

15 A. It does. Because it's got the name and
16 also a few other items you can associate that
17 e-mail with that person.

18 Q. Now, in State's 124, what do we see
19 here?

20 A. This looks to be a receipt. It's a
21 picture of a receipt with -- sorry. It's a picture
22 of a receipt taken and it appears to be for
23 Roselynn Cedenogato.

24 MS. MCMENAMIN: State's 124 for
25 evidence.

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1 MS. BARBIER: No objection.

2 THE COURT: It's admitted.

3 (WHEREUPON, State's Exhibit Number 124
4 was entered)

5 MS. MCMENAMIN: Permission to publish?

6 THE COURT: You may. I don't have 119
7 in. We didn't move that in?

8 MS. MCMENAMIN: 119, that would be --
9 that is the DVD, Your Honor. It was only offered
10 for identification purposes.

11 THE COURT: I gotcha. Okay.

12 Q. So, Agent Nova, this is the device
13 information you were talking about?

14 A. Correct.

15 Q. What do we see down here?

16 A. That is the Apple ID and it has
17 Cedenogato@yahoo.com.

18 Q. Okay. And then we see here -- so that
19 was 126. Now, State's 121, do we see corresponding
20 information?

21 A. Correct. You have Roselynn Cedenogato and
22 the same Apple ID that was identified as the phone,
23 cedenogato@yahoo.com.

24 Q. Okay. So this is what associates this
25 phone with Roselynn Cedenogato?

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1 A. It associates that user ID with
2 Roselynn Cedenno.

3 Q. Understood. Now, again, in State's
4 124, do we see the name Roselynn Cedenno again?

5 A. Correct. And, again, that's a picture
6 that was inside the phone, a receipt with her name
7 on it.

8 Q. Okay. And, Agent Nova, you received
9 these items after they were retrieved in an
10 investigation for this case?

11 A. Correct.

12 Q. Now, in State's Exhibit 97, we see an
13 iPhone with a pink and color case; correct?

14 A. Yes.

15 Q. Is this the same iPhone -- appear to be
16 the same iPhone?

17 A. They're similar.

18 Q. And you also did analysis on some
19 iPads? Does this appear similar?

20 A. Could be. It is very similar to the
21 ones that I received.

22 MS. MCMENAMIN: Okay. And that was
23 State's Exhibit 98 of the iPad and 97 of the phone.

24 Q. So, Agent Nova, you said you're able to
25 extract a lot of various information from items

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1 | like cell phones; correct?

2 | A. Right.

3 | Q. Were you able to extract phone call
4 | logs from this iPhone?

5 | A. I was.

6 | Q. What about text messages?

7 | A. SMS, otherwise known as text messages,
8 | yes, correct, I was able to detect those.

9 | Q. And was this iPhone like the others at
10 | SLED peer reviewed?

11 | A. Yes.

12 | Q. Okay. So the extraction is peer
13 | reviewed?

14 | A. Correct.

15 | Q. In addition to that, what if any other
16 | methods did you use to verify the accuracy of this
17 | data?

18 | A. Once again, I refer to best practices.
19 | What I would normally do is look at the phone
20 | itself and see what's on the phone. Look at the
21 | text messages on the phone and compare those to
22 | what's on the extraction report. Sometimes you
23 | don't get everything, most times you get
24 | everything. But I still like to look at -- I don't
25 | have to look at everything, but I have to make sure

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1 | that the extraction matches what's on the phone,
2 | so.

3 | Q. And were you able to review any other
4 | documents to cross compare and verify accuracy in
5 | this case?

6 | A. I was. The call detail records which
7 | is kind of a good way to verify what you have in
8 | the phone. If you go to -- again, if you get the
9 | call detail records from Verizon, you compare that
10 | to the call log on the phone and if they both match
11 | up then you know you have a good extraction.

12 | Q. And do call detail records sometimes
13 | contain information such as messages and the
14 | contents of them?

15 | A. They do. The call detail records can
16 | have it. If you request them properly you can.
17 | You can't get call messages content.

18 | Q. And did you have that to review in this
19 | case?

20 | A. I did.

21 | Q. And what about call logs?

22 | A. We have call logs from both the call
23 | detail records and the phone itself.

24 | Q. And so you were able to review records
25 | -- CDR records in this case?

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1 A. Yes.

2 Q. And cross compare them with what you
3 extracted from this phone?

4 A. I was.

5 Q. And did they seem to -- how did they
6 compare?

7 A. They compared almost perfectly except
8 for a few items that were missing on the phone that
9 I was able to see in the call detail records and
10 there's a reason for that.

11 Q. Okay. And we'll get to that as we go
12 through the information.

13 A. Sure.

14 Q. Agent Nova, I'm showing you State's
15 Exhibit 125, do you recognize this?

16 A. I recognize this as SMS, short message
17 service, otherwise known as texts.

18 Q. And is this from the iPhone?

19 A. That is from the iPhone.

20 Q. What about State's Exhibit 123?

21 A. Yes. These appear to be call logs from
22 the iPhone.

23 Q. Okay. And now State's Exhibit 73?

24 A. Yes. This is a picture I took of the
25 phone, the screen itself when you open up to your

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1 | text messages on iPhone or Android, I like to take
2 | a picture of that screen and then again, correlate
3 | that with the extraction report to see if they
4 | match up.

5 | Q. And what can you tell us in this case?

6 | A. In this case there are four unread
7 | messages and in the same order that the extraction
8 | report was in and then you have the rest of the
9 | calls at the same date -- on the -- I'm sorry --
10 | that they're on the call detail records.

11 | Q. And based on your expert opinion, does
12 | that help verify the accuracy of this phone
13 | extraction?

14 | A. It does.

15 | MS. MCMENAMIN: The State offers
16 | State's Exhibit 73, 123 and 125.

17 | THE COURT: Any objection?

18 | MS. BARBIER: Those were the documents
19 | we've already reviewed?

20 | MS. MCMENAMIN: Yes. Let me make sure
21 | that this one is also -- these are for sure.

22 | MS. BARBIER: No objection, Your Honor.

23 | THE COURT: There admitted.

24 | (WHEREUPON, State's Exhibit Numbers 73,
25 | 123 and 125 were entered)

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

3 THE COURT: Yes, ma'am.

4 Q. Agent Nova, what is State's Exhibit 73?

5 A. That is a picture that I took of the
6 phone. I navigated to the text messages screen and
7 I took a picture of it.

8 Q. Okay. And just to confirm, the CDR
9 records that you were reviewing and cross
10 referencing with this extraction did go back to a
11 phone number of 803-522-3431?

12 A. It did.

13 Q. Okay. Now, Agent Nova, since we have
14 these messages here, I'd like to go through the
15 text message log with you now.

16 A. Okay.

17 Q. So this is State's 125, going to the
18 last page of this document which has messages 14
19 through 12. You see that there is a message 14
20 from a number ending in 2627. Can you tell us if
21 this number is associated with a name in this
22 phone?

23 A. It is. It's associated with the name
24 of Vincent.

25 Q. And this shows this was an incoming

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1 message?

2 A. Correct.

3 Q. On what day and what time?

4 A. On the 1st of September at 5:22 and 20
5 seconds.

6 Q. And if I need to zoom in at all,
7 please, let me know.

8 A. I'm good.

9 Q. Okay. And is there any other
10 information outside of when this was sent?

11 A. It also says when it was read. It was
12 open and read which was on the same date, looks to
13 be about a minute after it was sent.

14 Q. Okay. 5:23:29 p.m.?

15 A. Right. And then it's got the message
16 content which it said, on my way.

17 Q. Okay. So just to confirm on 9/1, there
18 is a message from a contact saved as Vincent to
19 this phone that says on my way at 5:22 p.m.?

20 A. It was sent at 5:22 p.m. It was read
21 at 5:23 p.m. And when I say "read," it means
22 opened.

23 Q. Okay. And it says, on my way?

24 A. Right.

25 Q. The next message that we see, does that

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1 have a contact associated with it?

2 A. It was a text message sent to someone
3 named Tommy associated with that number ending in
4 1931.

5 Q. Okay. So this is sent someone and
6 that's on 9/1/2019 at 5:36 p.m. says what about the
7 hurricane?

8 A. Yes.

9 Q. And then the next message we see is
10 also with a Tommy, what is the direction of this
11 message?

12 A. That was an incoming text.

13 Q. So to the phone?

14 A. Yes.

15 Q. On 9/1 at 5:37 p.m.?

16 A. Uh-huh.

17 Q. Reading -- the response is Cat 5
18 currently?

19 A. Yes.

20 Q. Was this message read or unread?

21 A. It was read.

22 Q. On 9/1/2019 at 5:37 p.m.?

23 A. Correct.

24 Q. Going to the next page of State's 125
25 working forward, we now see messages 9 through 11?

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1 A. Yes.

2 Q. Starting with 11, that would be in
3 chronological order; correct?

4 A. Yes.

5 Q. We see a message sent; is that correct?

6 A. That's an outgoing text, yes.

7 Q. Okay. And who is that going to?

8 A. It's going to Tommy again.

9 Q. All right at 9/1/2019 at 5:37 p.m.?

10 A. Yes.

11 Q. And this message says, if you need to
12 evacuate come to Columbia, you can have my bedroom?

13 A. Yes.

14 Q. Do we see a response?

15 A. The next one up we do see a response
16 from Tommy at 5:38 and it was read at -- almost
17 immediately.

18 Q. So received at 5:38 and read at 5:38?

19 A. Sent at --

20 Q. Sent at 5:38 and read at 5:38?

21 A. Actually you're correct. Received at
22 5:38 and then read at 5:38.

23 Q. Thank you. And it says, I'm staying
24 behind, I'll relay the info over to everyone?

25 A. Right.

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1 Q. Then we see from the phone to Tommy,
2 just a minute or so later, last time you didn't
3 have power for nine days?

4 A. Right.

5 Q. On to the next page. Messages 6
6 through 8 starting with 8. This is a sent
7 message --

8 A. Right.

9 Q. -- to Tommy on -- at 5:41 p.m. just a
10 few minutes later, get plenty of pizza and Taco
11 Bell \$50 and fill every glass and cup in the house
12 with water?

13 A. Right.

14 Q. The next message is again sent to Tommy
15 at 5:42. The user says, chainsaws, gas cans, fire
16 extinguishers?

17 A. Yes.

18 Q. And then we see a response from Tommy?

19 A. Right.

20 Q. This is at what time?

21 A. That's received at 6:23 and read --

22 Q. Is this -- I apologize. So this was
23 received at what time?

24 A. 6:23 and open or read at 6:41.

25 Q. And he says, I don't have \$50 for food

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1 | spent it all on gas and water?

2 | A. Right.

3 | Q. And that last message on that page at
4 | 6:23 was read?

5 | A. It was.

6 | Q. At 6:41?

7 | A. Correct.

8 | Q. Going to the next page. We have a
9 | message number 5?

10 | A. Yes.

11 | Q. Can you give us the details of this
12 | message?

13 | A. This one was sent to a contact
14 | associated with the name -- a contact associated
15 | with the name iPad Air and it's something that has
16 | to do with -- it was at 6:42 it was sent and we
17 | looked up that web page and it refers to some kind
18 | of online game.

19 | Q. Does it say Merge Dragons here?

20 | A. Yes.

21 | Q. And that's a game?

22 | A. Yes.

23 | Q. Now, I believe on this next page we see
24 | number 5 again?

25 | A. Right.

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1 Q. Does this just not have the same
2 complete content of the text of the message?

3 A. Right. But it's the same -- it's sent
4 to that iPad Air.

5 Q. Okay. And so this is her sending a
6 message at 6:42. When is the next communication
7 via text message that we see here?

8 A. That I believe is the last outgoing
9 text. That's the last user generated activity from
10 that phone.

11 Q. The last user generated activity --

12 A. From that phone.

13 Q. And is that based on your expert
14 analysis?

15 A. After that sent message, there's no
16 more outgoing activity from the phone according to
17 the extraction report.

18 Q. So the next message that we see is on
19 9/2 at 10:20:21, who is that message from?

20 A. It looks -- before I -- I want to
21 clarify something. We did call it last user
22 activity and I'm pretty sure that it is, but
23 because of other user generated activity could also
24 be a call.

25 Q. Okay.

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1 A. But that appears to be the last one.

2 Q. And we'll go over the call records to
3 verify.

4 A. Okay.

5 Q. Agent Nova, we see a message on
6 9/2/2019 at 10:20 a.m. from Tommy and that says,
7 call grandma?

8 A. Right. It says call GMA. GMA is
9 common, you know, text for grandma. In text
10 language if you will.

11 Q. Do we see any response or is this
12 message read?

13 A. It was not read.

14 Q. Do you recall in reviewing the
15 extraction if there's any response to follow?

16 A. I reviewed it on both the phone and the
17 extraction report, I did not find a reply.

18 Q. Now, we have the last three messages,
19 messages 1 through 3. We see a message to her --

20 A. Yes.

21 Q. To the phone on 9/3/2019 at 10:24 a.m.
22 that reads, Roselynn this is Steve Smith from
23 Camping World. Now, is the number ending in 2995
24 saved in this phone as anything?

25 A. It is not.

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1 Q. But in the message we have someone
2 identifying themselves as Steve Smith?

3 A. Correct.

4 Q. Okay. And then the next message is at
5 12:34 p.m. on 9/3 from a user saved at Coo-Coo Boy,
6 number ending in 1172. Does this message
7 reference, I was going to go your way tomorrow, but
8 now I might have to change plans. We might get
9 just rain maybe four feet of storm surge. We have
10 the two babies with us, that's what worries me and
11 then ILY?

12 A. Right. That's a -- it was another
13 unread text.

14 Q. So that's unread?

15 A. Yes.

16 Q. The one from Steve Smith is unread?

17 A. The one from Steve Smith is unread as
18 well.

19 Q. The one at 12:34 from Coo-Coo Boy is
20 unread?

21 A. Unread.

22 Q. And then this next message that we see
23 from a Ryan --

24 A. Yes.

25 Q. -- phone number ending in 8851 at 12:45

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1 p.m., that's also unread?

2 A. Also unread.

3 Q. Asking the user, text me back if you
4 can?

5 A. Yes.

6 Q. And do you know what ILY is an
7 abbreviation for?

8 A. I believe it's, I love you. And,
9 again, text language.

10 Q. So after that last text sent at 6:42 on
11 9/1/19, do we see her reading any messages?

12 A. No messages were open.

13 Q. Do we see the user sending any
14 messages?

15 A. No outgoing texts.

16 Q. And reviewing this text message log and
17 then looking at State's 73 that you took a photo
18 of, that cross referenced well?

19 A. That cross referenced almost exactly.
20 Since you don't want to make changes to the phone
21 when it's in your possession, that's the reason I
22 didn't open the messages to see the whole message
23 content. But it corresponds with the name and at
24 least the beginning of the message.

25 Q. And looking at this phone and for

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1 | people who are not iPhone users, what do these
2 | little blue dots next to the names and messages
3 | mean?

4 | A. Right. Blue dot means it's an unread
5 | message.

6 | Q. Thank you. I have just a few more
7 | questions about the text messages, Agent Nova.

8 | A. All right.

9 | Q. In analysis of phone extractions, are
10 | you able -- ever able to determine patterns in
11 | communication?

12 | A. Yes. By pattern we're talking about
13 | user activity, how they're -- who they normally
14 | text to going back and forth, how often they
15 | replied, so that's a pattern for that particular
16 | user in terms of communications back and forth with
17 | calls and also texting.

18 | Q. Looking at the text communications in
19 | this phone, were you able to detect any patterns in
20 | regards to the user's responses?

21 | A. Yes. This user opens every -- had
22 | opened every text sent except for those last four
23 | that were unread.

24 | Q. So up until the last message that I
25 | believe was from Tommy on 9/1 just before that 6:42

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1 one that was sent?

2 A. Correct.

3 Q. Is that the last read message?

4 A. Correct.

5 Q. So no read messages on 9/2?

6 A. No read messages on 9/2.

7 Q. What about 9/3?

8 A. No read messages on 9/3.

9 Q. And up to then she had read every
10 message?

11 A. Every message was read or opened up
12 until then.

13 Q. And in her messages, can you see if she
14 communicates with certain people more often than
15 others?

16 A. Correct. I was able to see a lot of
17 communication with Tommy, Coo-Coo Boy, I believe
18 Ryan was one of the contacts, but normally --
19 grandma. Normally about five or six people she
20 communicated with frequently.

21 Q. What about the contact saved as
22 Vincent?

23 A. Not that many that I saw except for
24 that one text, I'm on my way. I can't remember any
25 others.

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1 Q. Now, I'd like to look at the call logs
2 with you Agent Nova.

3 A. Sure.

4 Q. Call logs that we see are State's
5 Exhibit 123.

6 A. Yes.

7 Q. On the very last page of these logs to
8 go in chronological order we see call 16 through
9 19?

10 A. Yes.

11 Q. What date do these call logs begin?

12 A. They appear to be the first -- well,
13 the 29th of August through the 2nd of September.

14 Q. And so that's August 29, 2019 we see a
15 call incoming from the contact grandma at
16 2:23 p.m.?

17 A. Correct.

18 Q. Was that call answered?

19 A. It was.

20 Q. We see a incoming call at 1:41 on 8/30
21 from a Vincent, was that call answered?

22 A. It was.

23 Q. On 9/1 at 11:27 a.m. we see an incoming
24 call from a Vincent, was that answered?

25 A. That was answered.

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1 Q. Now, on 9/2 we see an incoming call
2 from grandma, was that call answered?

3 A. That call was not answered.

4 Q. What about the next call on 9/2 from
5 Coo-Coo Boy?

6 A. Not answered.

7 Q. That's at 10:30?

8 A. Yes.

9 Q. What about the next call from Tommy at
10 11:04 a.m.?

11 A. Not answered.

12 Q. What about the next one from Tommy at
13 11:19 a.m.?

14 A. Not answered.

15 Q. What about the next call from a 1791 at
16 10:20 a.m.?

17 A. Not answered.

18 Q. And then a call from a 2995 which I
19 believe in the text messages identify themselves as
20 Steve Smith?

21 A. Correct.

22 Q. Is that answered?

23 A. Not answered.

24 Q. Call from a number ending in 0717?

25 A. Not answered.

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1 Q. The 2995 number again and now this
2 is -- these calls on this page are on 9/3?

3 A. Right.

4 Q. And is that answered?

5 A. Not answered.

6 Q. Then we see call 8, 7, 6 and on to the
7 next page 5?

8 A. Right.

9 Q. Do we see any identifying information
10 for this caller?

11 A. No.

12 Q. Okay. And these are all incoming
13 calls?

14 A. Yes.

15 Q. From 11:38 a.m. on 9/3; 11:39, 11:48
16 and 11:49 a.m.?

17 A. Yes.

18 Q. So no caller information, but are any
19 of those four calls answered?

20 A. No.

21 Q. Now looking at 9/3 at 1:15 p.m. we have
22 a 5863 number, is that answered?

23 A. That was not answered.

24 Q. A call again from 5863?

25 A. Not answered.

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1 Q. A call from Coo-Coo Boy at 9:49 p.m. on
2 9/3?

3 A. Not answered.

4 Q. And then a call from 7408 at 10:51 p.m.
5 on 9/3?

6 A. Not answered.

7 Q. Agent Nova, based on your analysis of
8 this cell phone extraction, can you tell us if
9 after the date of 9/1/2019, did the user respond to
10 any further calls?

11 A. No in or outgoing calls.

12 Q. No in or outgoing calls?

13 A. Well, let me rephrase that. Did not
14 answer any incoming calls and did not make any
15 outgoing calls.

16 Q. Thank you for the clarification. And
17 that's on 9/2 and 9/3?

18 A. Correct.

19 Q. Now, I do have a few questions about
20 some of these numbers, Agent Nova, if you'll bear
21 with me as I flip back. Looking at call number 12
22 from this number 803-772-1791?

23 A. Yes.

24 Q. On 9/3?

25 A. Yes.

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1 Q. When you were reviewing the extraction,
2 did you see where there were any other
3 communications incoming or outgoing with this
4 number?

5 A. No. I did a sort of a control find
6 function and that number appears only once.

7 Q. In the extraction -- and that number
8 was not saved as any sort of contact?

9 A. Correct.

10 Q. Now, we have the 2995 number that
11 identifies themselves as Steve Smith, before this
12 date, had the user received any messages or phone
13 calls from this number?

14 A. I didn't find any for that number.

15 Q. Had they reached out to this number in
16 any way?

17 A. No, never -- well, not according to the
18 extraction report.

19 Q. And then according to the extraction,
20 we're looking at call number 10 from and
21 803-979-0717?

22 A. Yes.

23 Q. Outside of this incoming call on 9/3,
24 were there any other communications?

25 A. No. Can you scoot up a little, I just

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1 want to check something?

2 Q. Yes.

3 A. Yes, that's correct. That was only one
4 time.

5 Q. And the incoming number -- or the
6 incoming call that we see four of that has no
7 caller information, when you cross referenced with
8 the caller detail records, the records from Verizon
9 wireless for the 3431 number, were you able to find
10 a phone number that matched up with this number of
11 calls and times?

12 A. I was.

13 Q. Okay. And had that number ever
14 communicated with this user before?

15 A. I did not see them in the CDRs.

16 Q. And is that the same for this 5863
17 number as all the others?

18 A. Correct. That 5863 appeared twice and
19 only twice according to the extraction report.

20 Q. And not saved as a contact?

21 A. Not saved as a contact.

22 Q. What about this 912-856-7408, no
23 contact?

24 A. No contact.

25 Q. Only communication?

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1 A. Only communication.

2 Q. We were speaking earlier about the text
3 messages and developing patterns for users and
4 their phones. Were you able to develop any
5 patterns for the calls this user would make or
6 receive?

7 A. Pretty much the same people that this
8 user texts with are also the same people that the
9 user communicated with in the call logs.

10 Q. And looking at the logs, Agent Nova,
11 was she responding to or sending any text on 9/2 or
12 9/3?

13 A. No.

14 Q. Was she responding to or sending any
15 texts -- you said not on 9/2 and not on 9/3?

16 A. Not on 9/2 and not on 9/3.

17 Q. Now, Agent Nova, in a cellular
18 extraction you said you used a sort of Control F
19 function earlier to look for different numbers?

20 A. Right.

21 Q. Does that process work the same to look
22 for certain content or words in messages?

23 A. Yes.

24 Q. In your review of this cell phone
25 extraction, did you see any messages either

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | incoming or outgoing regarding drugs?

2 | A. I didn't see any. I'd like to point
3 | out that I have worked many narcotics cases while
4 | in computer crimes unit and I'm very familiar with
5 | the lingo used with cell phones associated with
6 | people selling or buying drugs.

7 | Q. And you didn't see any content such as
8 | that in this extraction?

9 | A. I didn't see any.

10 | Q. What about marijuana in particular?

11 | A. I did a search for marijuana and I
12 | didn't find anything.

13 | Q. When analyzing the data, can you also
14 | look at calendars?

15 | A. Yes.

16 | Q. Did you see any events in the calendar
17 | for this user?

18 | A. I believe just holidays, but nothing
19 | user generated.

20 | Q. And did you see in your analysis of the
21 | data, can you look at web searches?

22 | A. I can.

23 | Q. What about apps that they have on their
24 | phone?

25 | A. Yes.

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Did you see anything web based or app
2 based regarding adult dating sites?

3 A. I did not.

4 Q. Now, Agent Nova, we touched on this
5 earlier, but I'd like to circle back.

6 A. Sure.

7 Q. Deleted items --

8 A. Yes.

9 Q. -- can Cellebrite when you're pulling
10 data from a phone detect if data has been deleted?

11 A. It can and in most cases if you do
12 what's called a full physical extraction, which is
13 what we did in this case. They call it a Method 1
14 which is recommended.

15 Q. That's the recommended method that you
16 used?

17 A. Correct. That recommended method we'll
18 find data that has been deleted now. I'd like to
19 point out when you delete something from your
20 device, whatever you deleted is still likely still
21 in your device. What it does is it deletes it from
22 the directory so you don't have access to it. But
23 Cellebrite, it does get that information that had
24 been deleted by the user.

25 Q. And were you able to retrieve deleted

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 data in this extraction?

2 A. I recall seeing data that was deleted.

3 Q. Now, was any of this deleted data in
4 regards to, you said MMS messages or texts with
5 videos or photos?

6 A. I'd have to look at the extraction
7 report. What I do remember there were websites
8 that were deleted. I don't recall if I saw any
9 deleted texts or MMSs.

10 Q. That did not stand out to you in your
11 analysis of this?

12 A. Correct.

13 MS. MCMENAMIN: Beg the Court's
14 indulgence.

15 THE COURT: Take your time.

16 Q. Agent Nova, I'd like to direct your
17 attention back to the messages. I forgot to ask
18 you a question about one of these.

19 What is the last read message on 9/1?

20 A. I believe item 10.

21 Q. Who is that from and on what date and
22 time?

23 A. It came from Tommy. The number ending
24 in 1931. It was received at 9/1 at 5:38 p.m. and
25 was read at 5:38 almost immediately.

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. That was on 9/1/19?

2 A. Correct.

3 Q. What time?

4 A. 5:38.

5 Q. P.m.?

6 A. P.m.

7 Q. I'm staying behind I'll rely the info
8 over to everyone, is that what it says?

9 A. Right. That's the last read SMS.

10 Q. Agent Nova, on that page, that was the
11 last read message from Tommy. On this page, what
12 is the last read message from Tommy?

13 A. On that page it's Tommy again, item
14 number 6 at 9/1/2019. It was received at 6:23 p.m.
15 and opened or read at 6:41 p.m. And it says, I
16 don't have \$50 for food, spent it all on gas and
17 water.

18 Q. Thank you, Agent Nova. Do you recall
19 looking on the apps on this users phone if they had
20 any health related apps.

21 A. Yes. There's a health app that
22 measures how many steps you take distance, for
23 example. It's an app that runs in the background.
24 You can turn it off if you go to the setting, but
25 for the most part that app is always running on

DIEGO NOVA - DIRECT EXAMINATION BY MS. MCMENAMIN

1 your phone.

2 Q. Is that special to the Apple phones?

3 A. It is. Android has a version, but the
4 health app is what it's called and that one is what
5 Apple uses to measure distance and steps.

6 Q. And you reviewed that data?

7 A. I did.

8 Q. I'm now handing you State's Exhibit 122
9 for identification. What is this?

10 A. This is the information that was
11 extracted from the health app.

12 Q. Is this regarding steps and distance?

13 A. It is.

14 Q. On 9/1?

15 A. Right.

16 MS. MCMENAMIN: State's Exhibit 122 for
17 evidence, Your Honor, I believe without objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit Number 122
20 was entered)

21 MS. MCMENAMIN: Permission to publish?

22 THE COURT: Go ahead.

23 Q. Agent Nova, on 9/1/2019, do we see any
24 steps or distance recorded?

25 A. Yes. It recorded eight steps.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 Q. And do you see any steps or distance
2 recorded on 9/2/2019?

3 A. None.

4 Q. Were there any steps or distance
5 recorded before the date of 9/1?

6 A. Yes.

7 Q. And then on 9/3/2019, do we see some
8 steps?

9 A. Yes, we see some steps on the 3rd.

10 Q. Is that at 10:28 p.m. on 9/3?

11 A. Yes, 10:28 p.m.

12 Q. But no steps earlier in that day on
13 9/3?

14 A. No steps earlier that day.

15 Q. And no steps whatsoever on 9/2?

16 A. No.

17 Q. So the last steps -- no steps on 9/2?

18 A. No, no steps on 9/2.

19 Q. And I have just three questions left
20 for you, Agent Nova.

21 A. Okay.

22 Q. In reviewing the call logs and text
23 messages, were there any communications to or from
24 Vincent to this user on 9/2?

25 A. On 9/2, no.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Were there any communications to or
2 from Vincent on 9/3?

3 A. None.

4 Q. And were there any communications to or
5 from Vincent after 9/1?

6 A. No.

7 Q. Thank you, Agent Nova.

8 MS. MCMENAMIN: I have nothing further
9 from this witness.

10 THE COURT: Thank you. Ms. Barbier?

11 MS. BARBIER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. BARBIER:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Agent Nova?

17 A. Yes.

18 Q. So people still refer to you as an
19 agent?

20 A. Sure. People like calling me that for
21 some reason, so it's fine.

22 Q. I'm Debbie Barbier, I'm working with
23 Mr. Swerling to represent Mr. Shivers.

24 A. Okay.

25 Q. So you worked at SLED for 20 years; is

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | that right?

2 | A. No, nine and a half years.

3 | Q. Nine and a half. Okay. And during
4 | that time period you were familiar with the SLED
5 | laboratory; correct?

6 | A. Yes. There's two labs. There's the
7 | laboratory for crime scene and the laboratory for
8 | computers which is where I worked.

9 | Q. Okay. So they're separate; is that
10 | right?

11 | A. Yes.

12 | Q. Okay. And is it true that both the
13 | computer crimes laboratory and the crime scene
14 | investigatory laboratory have a tremendous backlog?

15 | A. I wouldn't call it tremendous. As far
16 | as workload, we were pretty balanced. At least in
17 | the, you know, the computer lab section. We had
18 | enough people that we didn't have a backlog. We
19 | were pretty on top of things.

20 | Q. What was the average -- while you were
21 | there, what was the average turnaround time to
22 | perform forensics on computer items?

23 | A. I did the majority of the cell phones
24 | and my turnaround time was within a week.

25 | Q. Okay. Are you familiar with the

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | turnaround time for the crime scene investigation
2 | for the lab?

3 | A. No.

4 | Q. Okay. So let me ask you this. You
5 | testified about the software used in this
6 | extraction and by the name of Cellebrite; is that
7 | right?

8 | A. It's a machine. It's called
9 | Cellebrite. And there's an application that works
10 | like the Cellebrite which is called UFED for PC.

11 | Q. And it is widely used if I understand
12 | correctly by a lot of law enforcement agencies; is
13 | that right?

14 | A. Correct.

15 | Q. And I think it's generally considered
16 | reliable; is that your --

17 | A. Yes.

18 | Q. But it's not infallible, would you
19 | agree with that?

20 | A. I would agree with that.

21 | Q. It does have some limitations, doesn't
22 | it?

23 | A. Sometimes.

24 | Q. Okay. And -- so even more accurate
25 | than cell phone extraction and cell phone data

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | would be GPS monitoring; is that right?

2 | A. Are you talking about GPS monitoring?
3 | Are you talking about like an ankle bracelet?

4 | Q. Well, GPS that is contained in your
5 | phone and GPS that's contained in your car and GPS
6 | -- lots of devices?

7 | A. So a GPS uses satellite information to
8 | give you the latitude and longitude. I think
9 | that's what you're referring to; correct?

10 | Q. Correct.

11 | A. And the cell phones use something
12 | similar to GPS information. For example, when you
13 | take a picture, it's going to stamp where the
14 | latitude and longitude of where the phone was when
15 | that picture was taken. It's not accurate to from
16 | what I've worked, it's not accurate to like the
17 | exact meter, but it's within that range.

18 | Q. Okay. Did you extract the GPS
19 | information from Ms. Cedenos phone?

20 | A. It would be part of the extraction
21 | report; however, the only places you would find
22 | latitude and longitude information is within the
23 | MMS. It's called excess data and that data is
24 | associated with a picture. It has the type of
25 | lens, it has everything. Well, not everything.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 It's got a lot of the information related to the
2 device that took that picture and where the device
3 was when the picture was taken.

4 Q. So I reviewed your extraction report
5 and I didn't see a GPS part of that report. Did I
6 miss something?

7 A. You would have to click on the picture
8 and get more information from that picture.

9 Q. Okay. Now, you indicated on direct
10 examination that you reviewed patterns of her --
11 the activity on the cell phone on the iPad; is that
12 correct?

13 A. Correct.

14 Q. So what over -- over what time period
15 were you reviewing those patterns?

16 A. I reviewed the month of -- and this is
17 what stood out to me because I reviewed the month
18 of August and September just so I could see if this
19 phone was in use. So I could have the usage and
20 what I noticed was the month of August, whoever the
21 user was of this phone, was consistent in
22 answering, replying and opening text.

23 Q. But you didn't review a year's worth of
24 data; correct?

25 A. No, I wouldn't have time. Unless --

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 and according to what was -- if you don't mind if I
2 can refer to the request?

3 Q. Sure.

4 A. It was requested an examination to help
5 establish a timeline and other recent information
6 that -- sorry, but this handwriting -- that is
7 stored in the device. The officer is currently --
8 I'm sorry. The suspect was in Canada. So it
9 didn't make sense to review a year's worth, they
10 just wanted recent activity.

11 Q. Correct. You interpreted that to mean
12 the last 30 days; correct?

13 A. Correct.

14 Q. Okay. And that's certainly reasonable.
15 But you're not here to tell this jury that you
16 looked at year's worth of data and that Ms. Cedeno
17 at all times answered all text within a certain
18 amount of time?

19 A. No. I only reviewed the recent
20 activity which I took to mean the last couple of
21 weeks. But I reviewed about a month's worth.

22 Q. Okay. And you would agree with me that
23 people sometimes have varying levels of activity
24 with their cell phones and their iPads depending on
25 what's going on in their life; right?

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. Absolutely, yes.

2 Q. Right. So sometimes there might be
3 weeks when I'm on my phone all the time; right?

4 A. Right. Yes.

5 Q. And there might be other weeks where
6 I'm, you know, I'm turning it off at a certain
7 hour; correct?

8 A. Correct. You just want to tune out,
9 get off the grid, if you will.

10 Q. And I notice with Ms. Cedenos that one
11 of the last text messages that her son sent her was
12 that he -- looked like he was -- is asking for
13 money. He said I spent my last \$50 on gas --

14 A. I don't think he specifically --
15 according to the context it was more like, hey,
16 mom, I'm running out of money type of thing.

17 Q. Right. Do you have children?

18 A. I have a daughter.

19 Q. Because I have children. And sometimes
20 I get those text messages too.

21 A. Oh, my Cash app is out of control
22 because of that one daughter.

23 Q. And I got to say, I noticed she didn't
24 respond to that. Sometimes I get those texts and I
25 don't respond to that either. Sometimes.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. Yes.

2 Q. So sometimes we respond to a text right
3 away; right?

4 A. Correct.

5 Q. And then sometimes we sit on it for a
6 while; right?

7 A. Yes. Yes.

8 Q. So if you would agree with me, it's not
9 an exact science as to whether or not someone is
10 just because they receive a text or have a missed
11 call, it doesn't mean --

12 A. No, everybody's different.

13 Q. -- something's awry; correct?

14 A. Right.

15 Q. Okay. So there's also something that
16 can be done on your phone and your iPad these day
17 where you can turn off notifications. Have you
18 ever heard of that?

19 A. Yes.

20 Q. Okay. Did you determine whether or not
21 Ms. Cedenno had done that?

22 A. So I know that -- I don't know if I
23 should say this because I saw this in another
24 picture that hasn't been shown yet.

25 Q. Okay. Well -- yeah, let's not talk

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | about things that aren't in evidence.

2 | A. Okay.

3 | Q. But --

4 | A. But I do know that notifications were
5 | not turned -- that --

6 | Q. Notifications were not turned off on
7 | the days that we're looking at?

8 | A. Right.

9 | Q. Is that right?

10 | A. Right.

11 | Q. Okay. So let me ask you this. With
12 | your Cellebrite extraction device, is it able to
13 | extract all of the data from a phone?

14 | A. I would -- my opinion, everything
15 | that's on the phone that you can see on your phone,
16 | from my experience it can extract especially on
17 | iPhones it can extract what you can see on the
18 | phone. What I mean by what you can see on the
19 | phone, if you open up your text and your pictures
20 | and all that, it's my experience that the
21 | Cellebrite, a successful extraction will get
22 | everything out.

23 | Q. Okay. But you would agree with me that
24 | on people's cell phones and a lot of people's
25 | iPads, they generally have a wide variety of apps;

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 correct?

2 A. Yes.

3 Q. And some of those apps require
4 passwords; right?

5 A. Some of those do, yes.

6 Q. And some of those apps require two
7 factor authentications to get into them; correct?

8 A. Correct.

9 Q. And is Cellebrite able to extract all
10 of the data from those apps?

11 A. Not all.

12 Q. Okay. And so you're familiar with some
13 of the apps like FaceBook; right?

14 A. Yes.

15 Q. And you're familiar with Instagram;
16 right?

17 A. Yes.

18 Q. And you're familiar with WhatsApp;
19 right?

20 A. Yes.

21 Q. And some of those apps you can
22 communicate with others on; right?

23 A. Right.

24 Q. And so it's possible that there were
25 communications that Ms. Ceden0 was having on her

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | phone or iPad that were not extracted by
2 | Cellebrite; correct?

3 | A. Cellebrite has the ability to extract
4 | messages using Messenger, Snapchat, Instagram. So
5 | she would have -- if she would have had those apps
6 | and she would have communicated using those apps,
7 | they would have been part of this extraction
8 | report.

9 | Q. Okay. I didn't see any of those. Are
10 | you saying that the phone and the iPad did not
11 | contain those apps?

12 | A. I don't remember seeing those apps.

13 | Q. So are there apps that Cellebrite
14 | cannot extract from?

15 | A. Yes, there are some that you can't
16 | extract from.

17 | Q. And did you determine whether or not
18 | there were apps on Ms. Cedeno's phone that
19 | she could -- that could not be extracted?

20 | A. I wasn't able to locate those.

21 | Q. Okay. Did you do a search for those?

22 | A. I did.

23 | Q. Okay. And --

24 | A. Well, let me put it to you like this.
25 | On the extraction report the way it's broken down

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | it will say there's a section that has all the apps
2 | -- all the communication type of apps. I don't
3 | recall if I saw that right now. I'd have to look
4 | at extraction report.

5 | Q. So the only extraction that I saw was
6 | from Safari.

7 | A. That's the --

8 | Q. That's a search engine; isn't it?

9 | A. It's a website -- not a website, it's a
10 | web browser.

11 | Q. Web browser; correct?

12 | A. Right.

13 | Q. And so are you saying that that's the
14 | only web browser that she had on her phone and on
15 | her iPad?

16 | A. I don't recall. What I do know is that
17 | Safari is the default Apple browsing app.

18 | Q. Right. And sometimes people primarily
19 | use those; correct?

20 | A. Correct.

21 | Q. But they can also use other ones;
22 | right?

23 | A. Yes. Like me, for example, I prefer
24 | using Chrome as my web browser.

25 | Q. Right.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. So I have both Safari because Safari
2 comes with the phone and I had to download Chrome
3 to use that one.

4 Q. Now, I noticed that Ms. Ceden0 was also
5 a gamer. Is that what you concluded from looking
6 at some of her text messages?

7 A. It referenced like a game on a website
8 that talks about some game.

9 Q. In fact, one of the very last message
10 that she sent was to a gamer; correct?

11 A. Somebody under the name of Air Pad who
12 might be --

13 Q. A 213 area code; correct?

14 A. Right. Who might be addressed in that
15 website that refers to a game.

16 Q. Now, were you able to identify who this
17 person she was communicating with right before the
18 last message she sent was?

19 A. What's the name under?

20 Q. Oh, it says, iPad Air?

21 A. iPad Air, correct. No, I wasn't able
22 to identify that person.

23 Q. What efforts were undertaken to find
24 that person?

25 A. I believe -- because I didn't do it. I

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | didn't do the actual looking up to see who's what,
2 | so the investigating officer would have done those
3 | efforts.

4 | Q. Do you know what efforts were
5 | undertook?

6 | A. When I was in SLED, I would use my
7 | analyst to try to look up information.

8 | Q. And if we'd not been provided with any
9 | information about this user that she was gaming
10 | with --

11 | A. I haven't.

12 | Q. -- would you say you weren't able to
13 | find it?

14 | A. I didn't even try to look for that
15 | person. All I did was do the extraction and
16 | produce a report.

17 | Q. So this website Merge Dragons, are
18 | familiar with it?

19 | A. I went there once and that was -- in
20 | fact, two years out of curiosity to find out what
21 | it is. It seemed to be like some kind of gaming or
22 | game or online game or something.

23 | Q. Right. And I don't know much about
24 | gaming, but from I understand, people connect with
25 | other people online. People that could be

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | strangers and play mystical games with them; right?

2 | A. Correct. I myself, I'm kind of a
3 | gamer, so, yes, you can play with anybody around
4 | the world. Connect and have an online session.

5 | Q. And you don't know much about those
6 | people that you're connecting with, do you?

7 | A. No. You just know their screen name.

8 | Q. Right. So did you go on to this
9 | website mergedragons.com using her phone to
10 | determine who she was gaming with and who she was
11 | communicating with on this website?

12 | A. No, I didn't do that. And I didn't go
13 | on her phone. I can't make changes to the phone.
14 | Again, disconnected from the Network, what I'm
15 | pretty sure what I did is I got on my computer and
16 | just went there and to see what it was all about.

17 | Q. Okay. And there are actually two
18 | entries that she last sent a message to this gamer?

19 | A. Right.

20 | Q. At 6:42 on the 1st of September;
21 | correct?

22 | A. Right. Right.

23 | Q. And they appear to be the same one.
24 | You think she sent the same message twice?

25 | A. It's quite possible, yes.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 Q. Okay.

2 A. And likely to be a cut and paste
3 because that's a lot of typing.

4 Q. Right. So you're not aware of what if
5 any information was gathered about her gaming
6 activity with strangers?

7 A. No.

8 Q. Now, in your experience with gaming, do
9 the people you're gaming with have the ability to
10 communicate with you?

11 A. Yes.

12 Q. Okay. So you could tell someone that
13 you're gaming with where you live?

14 A. You could.

15 Q. And you could tell somebody that you're
16 gaming with what you're doing?

17 A. You could tell them whatever you want
18 to tell them.

19 Q. You could tell them whenever your
20 boyfriend was going out-of-town?

21 A. Whatever you want to tell them.

22 Q. Okay. So you said that there was --
23 the Prosecutor asked you whether or not there was
24 any information on this phone that had anything to
25 do with dating apps; right?

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. Right.

2 Q. And you didn't see that from your
3 examination; correct?

4 A. I didn't see any, for example, Plenty
5 of Fish is one, Tinder. Again, given the amount of
6 investigations I've done, if it's something
7 specific to that case, I would do a search of
8 those, but I didn't see anything like that in the
9 extraction report.

10 Q. But you did when you were looking at
11 her activity on Safari, you did see that she
12 was searching --

13 MS. MCMENAMIN: Objection, Your Honor.
14 Permission to approach, Your Honor?

15 THE COURT: Sure.

16 (WHEREUPON, there was a bench
17 conference)

18 THE COURT: All right. Mr. Foreman,
19 I'm going to go ahead and send y'all to lunch. It
20 is 1:07 and I've got to take something up with the
21 lawyers and I know it's late, so I'm going to let
22 y'all go to lunch. If you will be back in the jury
23 room at 2:15. Remember, no talking about this case
24 amongst yourself or with anybody else or any
25 research on it. Okay. Thank you. I hope y'all

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARBIER

1 have a good lunch. I'll let y'all go out today and
2 stretch your legs.

3 (WHEREUPON, the jury exits the
4 courtroom at 1:08 p.m.)

5 THE COURT: Agent Nova, I'm going to
6 let you go to lunch, but I can't let you talk to
7 anybody about this case. I'm sorry we're cutting
8 you off in the middle.

9 MR. NOVA: Can I leave my stuff here?

10 THE COURT: Absolutely. All right.
11 Just before I let him go, this was my understanding
12 a full grab so to speak of everything that was on
13 the telephone. And I'll be glad to hear what you
14 want to go into, Ms. Barbier. I just want to put
15 it on the record.

16 MS. BARBIER: Your Honor, you know, I
17 had a good faith basis obviously to ask the
18 question. The documents provided in discovery were
19 the extraction from the cell phone related to the
20 search activity on Safari of Ms. Ceden0. Because
21 the Prosecution brought up that she hadn't been on
22 dating sites, that she hadn't been on -- there was
23 something else they asked that I believe made me
24 think this was relevant to my cross-examination.
25 And so that is why I intended to ask the witness

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | about this other search activity.

2 | And perhaps I can -- my memory can be
3 | refreshed, but I know that she asked about dating
4 | websites and I know that she asked about something
5 | else -- or drug related. And so that is -- that
6 | was my thought process, Your Honor. I can hand up
7 | the phone extraction --

8 | THE COURT: The other activities are
9 | sexual in nature? All right. Let me hear from
10 | you.

11 | MS. MCMENAMIN: Yes, Your Honor.
12 | Character evidence as we know is generally not
13 | admissible for the purposes of action and
14 | conformity therewith which is part of what is being
15 | asserted here and it needs to be a pertinent trait
16 | of character. Her sexual interest are not
17 | pertinent to today's case. However, if the
18 | connection is trying to say this is because she's
19 | meeting up with some gamer or some person from one
20 | of these pornographic sites where all you're doing
21 | is viewing, you're not connecting with people then
22 | that is just outside the realm of what's admissible
23 | to prove third party guilt. When we --

24 | THE COURT: Well, I don't think that he
25 | said it was just viewing. He said that you can

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | talk to these people on these games --

2 | MS. MCMENAMIN: The games, Your Honor,
3 | he was talking about the Merge Dragon game not
4 | about the pornographic sites.

5 | THE COURT: Well he hadn't talked about
6 | anything about the pornographic sites yet. But on
7 | the gaming, it was your testimony that they --

8 | MR. NOVA: You can. I don't play the
9 | game that she -- I've never played that game. I
10 | just know in online gaming you can communicate.

11 | THE COURT: You can communicate.

12 | MS. MCMENAMIN: And I'm talking about
13 | the pornographic sites. With the games, I don't
14 | have an objection to that, Your Honor. But as far
15 | as using the pornographic sites to say that this is
16 | a third party is not -- Your Honor, it should not
17 | be allowed. These pornographic or entertainment
18 | searches are from a month prior. It's not a means
19 | where she can reach out to people as far as the
20 | pornographic sites.

21 | Further, Your Honor, evidence which can
22 | have no other affect into casting their suspicion
23 | upon another or to raise a conjectural inference as
24 | to the commission of the crime by another is not
25 | admissible. I'm citing *State v Gregory*, Your

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 Honor, 198 S.C. 98. That's the original case
2 talking -- appear to me to be the original case
3 addressing third party guilt.

4 This would raise a mere suspicion that
5 also tarnishes unfairly the character of this
6 victim who has no way to defend herself whatsoever.
7 It's substantially more prejudicial than probative.
8 They've already gotten into whether or not she
9 could be communicating with people online to then
10 go into that she's looking at porn is simply
11 irrelevant.

12 THE COURT: Well, that's my next
13 question.

14 MS. MCMENAMIN: Yes, Your Honor.

15 THE COURT: All right. Let me ask you,
16 are you telling me that on these porn sites you
17 can't connect and talk to people? I just want to
18 know if that's another point of communication.

19 MS. MCMENAMIN: I have no knowledge,
20 Your Honor. No personal knowledge. But that would
21 be my --

22 THE COURT: Well, could you ask our
23 expert right quick?

24 MS. MCMENAMIN: Agent Nova, do you
25 know?

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 MR. NOVA: If you can communicate with
2 other people on porn sites?

3 MS. MCMENAMIN: Or the particular ones
4 that are being referenced in this case?

5 MR. NOVA: Can you --

6 MS. MCMENAMIN: And it's a search, Your
7 Honor. It's a search for these things.

8 MR. NOVA: Yeah, I don't recall looking
9 at web history to see if she actually -- if this
10 user actually went to those websites. However, I
11 would -- from what I've seen on porn sites from
12 other people's computer --

13 THE COURT: (Laughter) And it's so
14 noted for the record.

15 MR. NOVA: Yes. They're mostly just to
16 view stuff not to communicate.

17 THE COURT: But can you communicate?

18 MR. NOVA: You can communicate -- you
19 have certain porn sites that offer webcam sessions,
20 for example, with somebody else. So you can.

21 MS. MCMENAMIN: Would we be able --
22 Your Honor, I mean, I don't --

23 MS. BARBIER: What was the purpose of
24 her asking about dating sites? If she was
25 attempting to show that she was not engaging in a

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 relationship with anybody else then I think she's
2 made it fair game.

3 MS. MCMENAMIN: Your Honor, I disagree.
4 My question was much more vague. This is going
5 into specifics and when it only raises this mere
6 suspicion, it's not admissible going towards third
7 party guilt. And, again, Your Honor, it is very
8 remote. It is substantially more prejudicial than
9 probative.

10 THE COURT: It's not that remote, it's
11 the month before. So remote doesn't do it for me.

12 MS. MCMENAMIN: Then, Your Honor, can
13 we limit to the extent of this?

14 THE COURT: Let me see what I can find
15 and I'll give y'all an opportunity to argue it when
16 we come back from lunch. Let's be back here at
17 2:15. We'll be ready to go at 2:30.

18 MS. BARBIER: Just so you know, Your
19 Honor, to think on this over lunch. I was only
20 going to ask whether or not he found searches that
21 related to sadomasochist activity and that's it.

22 THE COURT: Well, then I'm going to
23 leave y'all to talk about it. I'll do a little
24 work on it myself. 2:15.

25 (WHEREUPON, there was a lunch break)

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 THE COURT: Question, can you look at
2 web searches? Yes.

3 What about apps they have on their
4 phone? Yes.

5 Did you see anything web based or app
6 based regarding adult dating sites? I did not.

7 And then it goes down and talk about
8 deleting stuff. I'll be glad to hear from you.

9 MS. BARBIER: So, Your Honor, in the
10 phone extraction provided by the State, on -- and
11 this is just an example. But this is the closest
12 in time example that I can find to the time of
13 death. There are extractions specifically
14 extraction number 133 from her phone.
15 AdultFriendFinder, the world's largest adult
16 personal through adult dating, swingers, sex adult
17 photos, amateur member videos and adult chat.
18 That's a dating -- I mean, I guess if you want to
19 call it then it's a form of dating; right?

20 Again, number 134, another hit on that
21 same -- it looks like the same site, but it's an
22 adult dating, you know, video adult personals, et
23 cetera. The witness just was inaccurate in his
24 response. I mean -- so I'm entitled to
25 cross-examine him on that.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 MS. MAYES: We agree with that, Your
2 Honor. We're talking about 8/3, I believe you can
3 site for the record exactly what time that is, but
4 I believe we've got that at about 9:42 p.m.

5 MS. BARBIER: You're correct. And then
6 she goes on the same day to search pornography
7 sites. I think that's fair game. Because as the
8 witness said, some of the pornography sites you can
9 contact people on. You can put your bio on. And,
10 you know, I just don't think, you know, this is
11 outside the scope of direct at all.

12 MS. MAYES: I think it's proper, Your
13 Honor, because there was a question regarding that.
14 And on 8/3 there was an indication of a site with
15 adult content. And then also the
16 AdultFriendFinder, we do see that and that's going
17 to be approximately 9:42 p.m. on August 3rd. We
18 just want to make sure that it doesn't go beyond
19 that into specific searches. I think there was
20 some kind of reference to --

21 THE COURT: I think some of them were
22 pretty vulgar. I saw them. I know the point
23 you're making and I think the door was opened.

24 MS. MAYES: Right. And we also agree,
25 Your Honor, that based on the witness's response

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | with that being present on August 3rd that that
2 | would be an appropriate thing to bring out. So
3 | AdultFriendFinder, we have no objection to that.
4 | We have no objection to the fact that there was
5 | also on that same date and I don't have the
6 | specific time, but I think it's going to be in the
7 | general timeframe between 9:45 and 10:30 a visit to
8 | a site with adult content. With that said, Your
9 | Honor, we just want to make sure there aren't any
10 | specifics mentioned here.

11 | MS. BARBIER: Your Honor, I don't have
12 | any intention of using vulgarities in front of the
13 | jury. I don't think that's a good look. But I do
14 | think that it's fair game to say there were
15 | explicit sexual violence searches done and that's
16 | 127 on 8/3, she searched for -- I'm sorry, that's a
17 | movie. Hold on. Well, it's a porn movie. You
18 | know, explicit sexual violence, sadomasochism. I
19 | intend to use terms like that.

20 | THE COURT: Well, I don't think we're
21 | going to go into movies though that she's
22 | watched --

23 | MS. BARBIER: No. No. No. I just
24 | mean, categories.

25 | THE COURT: I'm not going to allow

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | that.

2 | MS. MAYES: And, Your Honor, in that
3 | regard, again, we're talking about the device.
4 | Nobody can testify who the user was. So we know
5 | that on this same date several hours before this,
6 | she does get a text from the Defendant who says, on
7 | my way. And then we know that these sites are
8 | accessed via a device. That's all that he can
9 | potentially testify to. But we don't contest that
10 | those sites present, one being AdultFriendFinder in
11 | that timeframe on the night of August 3rd and then
12 | also a site that contains pornography, adult
13 | content, however you want to put it. Also within
14 | that same timeframe it's just any specifics
15 | regarding that we would object to, Your Honor. I
16 | think it would go beyond the scope --

17 | THE COURT: Can y'all talk and figure
18 | out how you want to say that. I mean, I'm going to
19 | tell you, she phrased it as an adult dating site.
20 | You know, that leaves a mind opened to all sorts of
21 | things. That's why I think she opened the door for
22 | you.

23 | MS. BARBIER: Right.

24 | THE COURT: I do. I'm just wondering
25 | are you wanting to go down each and every one of

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | these?

2 | MS. BARBIER: No, I don't think there's
3 | any problem with saying that there was a visit to
4 | AdultFriendFinder which apparently is world's
5 | largest online adult personals for adult dating.
6 | Swingers, sexy adult photos, amateur member videos
7 | and adult chat. That's not vulgarity.

8 | THE COURT: No.

9 | MS. BARBIER: And I think it's fair
10 | game to say and there was a visit to some sites
11 | with explicit sexual violence content; right? And
12 | there were some numerous sites to pornography.

13 | MS. MAYES: We agree with the
14 | pornography, Your Honor. We also agree that
15 | AdultFriendFinder would be a site for adult dating.
16 | It's the sexual violence, I think that is a
17 | reference to something that may have been accessed
18 | along the way. We don't know for sure that that
19 | was even actually observed. That doesn't look like
20 | it was a specific search, it just looks like it
21 | appears as something that was clicked on along the
22 | way, could have even been an ad for example. We
23 | don't know if that particular video or ad or
24 | whatever it may have been was actually accessed for
25 | viewing.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARBIER

1 MS. BARBIER: Well, Your Honor, there
2 are other visits to other sites that have very
3 explicit titles that involve violence and force
4 that I'd prefer not to say. So I think adult -- I
5 mean, explicit sexual violent content is pretty
6 tame.

7 THE COURT: From what I read, I think
8 so too. I think you opened the door. I think it's
9 fair game and I appreciate y'all working together
10 to tone it down a little bit for -- from what I
11 read. So I'm going to allow it. Y'all just need
12 to give me about five minutes because I never did
13 get to check in with my office. So I'll be back
14 and then we'll bring the jury in. And, Ms.
15 Barbier, you are just going to limit it to the
16 things that you just put on the record; right?

17 MS. BARBIER: I am, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, there was a short break)

20 THE COURT: Okay. Are we ready? Can I
21 call the jury in?

22 MS. BARBIER: Ready to proceed, Your
23 Honor.

24 THE COURT: Okay. Can I get the
25 witness --

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 MS. MCMENAMIN: He's right outside,
2 Your Honor.

3 THE COURT: Agent Nova, I'm going to
4 remind you that you are still under oath. And you
5 haven't talked to anybody, have you, about this
6 case?

7 MR. NOVA: I had a steak at Fatz Cafe
8 down the street.

9 THE COURT: Good. I hope you had a
10 good lunch.

11 MR. NOVA: It was. Thank you.

12 THE COURT: Good. All right. Jury's
13 coming in and we'll pick up right where we left
14 off.

15 (WHEREUPON, the jury enters the
16 courtroom at 2:44 p.m.)

17 THE COURT: All right. Mr. Foreman, is
18 the jury ready?

19 THE FOREPERSON: We are.

20 THE COURT: Okay. Go ahead, Ms.
21 Barbier?

22 MS. BARBIER: Thank you, Your Honor.

23 CONTINUED CROSS-EXAMINATION

24 BY MS. BARBIER:

25 Q. So, Agent Nova, before we broke for

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | lunch, I was asking you about your response to the
2 | Prosecutor's question to you regarding whether or
3 | not during your extraction of this -- of Ms.
4 | Cedenos's cell phone, you encountered any
5 | information related to adult dating sites; do you
6 | recall that?

7 | A. I recall that question, yes.

8 | Q. And you indicated in your response that
9 | you did not uncover any information related to
10 | adult dating sites; is that correct?

11 | A. That is correct. I would like to point
12 | something out, however. And I have to refer back
13 | to the sheet where the requesting agency -- what
14 | they were asking for. And as I said previously,
15 | they were wanting information about timeline
16 | information, not dating sites, not drugs, anything.
17 | If they would have indicated that on there, I would
18 | have looked specifically for that.

19 | However, every time I did an extraction
20 | report, it was my common practice to open all the
21 | links to make sure that it would open up and also
22 | scroll down to ensure -- because sometimes you
23 | would do an extraction report on HTML format, on
24 | any kind of format and they just wouldn't work. So
25 | you'd have to redo the extraction.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 I was able to come up on certain things
2 only because I have to make sure that these things
3 worked. I wasn't specifically looking for
4 something that was asked of me unless it was on the
5 report. But I did see a few things -- what I will
6 tell you is I didn't see any dating website links
7 or anything like that. However, I did -- I
8 normally would scroll down and it wasn't that big
9 of an extraction, I was able to scroll down and see
10 anything that popped up.

11 Q. Right. So I understand that you have
12 done thousands of cell phone extractions over your
13 career; correct?

14 A. Correct. Over a thousand.

15 Q. And I've been doing this for 28 years
16 and I can't remember things that happened in cases
17 years ago as well, so I understand.

18 A. Right.

19 Q. But I want to show you some documents
20 to maybe refresh your recollection.

21 A. Sure.

22 Q. Regarding whether or not there were --
23 there were entries, I guess you call them. They're
24 numbered --

25 A. I would have to say documents fine, but

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARBIER

1 | it would be better to get it from the extraction
2 | report itself.

3 | Q. This is the extraction report.

4 | A. Okay.

5 | Q. I'll just show it to you and you tell
6 | me whether or not.

7 | MS. BARBIER: May I approach the
8 | witness, Your Honor?

9 | THE COURT: You may.

10 | Q. Okay. I'm looking at specifically
11 | entry number 133 and I don't want you to read it,
12 | but I just want to know that refreshes your memory
13 | as to whether or not there was adult dating sites?

14 | A. I would be more comfortable if I were
15 | to see the extraction report because, no
16 | disrespect, but this can be printed off of
17 | anything. I have to see the report, the disk.

18 | THE COURT: I think he wants to see the
19 | full report.

20 | A. Yeah, I mean, I don't doubt you. I'm
21 | not saying that; however --

22 | THE COURT: Hold on, Agent Nova.

23 | MS. BARBIER: Your Honor, I think it's
24 | thousands of pages or hundreds. And so --

25 | MR. NOVA: We can make it simple. Just

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 show me that and I'll do a Control F and I'll find
2 it in the report.

3 MS. BARBIER: Okay.

4 MS. MAYES: Beg the Court's indulgence.

5 THE COURT: Sure.

6 MR. NOVA: I'm not trying to be --

7 THE COURT: No, you can't talk like
8 that. They ask the questions and you give the
9 answers.

10 MR. NOVA: I gotcha.

11 Q. This is from the State. Okay. And
12 this has been identified as State's Exhibit 226 for
13 ID purposes only.

14 A. Sure.

15 Q. Okay. And if you'd look at citation or
16 entry number 133 and I don't want you to read it
17 because we're not going to talk explicitly in front
18 of the jury, but I'd like you to tell me whether
19 that refreshes your memory as to whether there was
20 adult dating sites found in the extraction?

21 A. I don't recall seeing this
22 specifically, but it's likely that this website was
23 on that cell phone.

24 Q. Okay. Well --

25 A. Can I see it again? Sorry.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 Q. Sure. And I will say the title to the
2 entry is AdultFriendFinder.com?

3 A. Correct.

4 Q. The world's largest online adult
5 personals for adult dating?

6 A. Yes.

7 Q. Swingers, sexy adult photos, amateur
8 member videos and adult chat. Do you see that?

9 A. I see that. And now in looking at the
10 date because I did look at web searches for August.
11 I would say that this was -- that was on that cell
12 phone.

13 Q. Correct. And there were also entries
14 that dealt with pornography; correct?

15 A. I do recall seeing that, yes.

16 Q. Okay. And there were also entries that
17 dealt with let's say sexually violent and explicit
18 content?

19 A. That I don't recall.

20 Q. You don't?

21 A. No.

22 Q. Okay. I'd like you to look at --
23 again, just to refresh your memory?

24 A. Yes.

25 Q. Okay. Entry number 127.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. Yes, I do remember that.

2 Q. Okay. So that would be dealing with
3 sexually explicit and violent content; correct?

4 A. I don't know about violent, but
5 definitely sexual.

6 Q. It says violence; right?

7 A. It says the website and that's all I
8 can read.

9 Q. That's what we can go by?

10 A. Yeah.

11 Q. So it's a fact that you just didn't
12 remember -- when you answered the Prosecutor's
13 question about whether or not that existed on Ms.
14 Cedenos phone, you didn't recall those specific
15 entries; correct?

16 A. I would say that as far as web page
17 searches, I did sort of like when you look at
18 something to make sure that it's working as opposed
19 to looking at specific items of interest. And when
20 you see these websites it's one after the other,
21 after the other, after the other.

22 Q. There were quite a few of them, weren't
23 there?

24 A. Yes, there were.

25 Q. Okay.

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. So, again, I wasn't scrolling to
2 identify something in general. I was just
3 scrolling to make sure that it works so when the
4 investigator got the disk, they can do the
5 individual searches one by one.

6 Q. I understand. But when the Prosecutor
7 specifically asked you while you're sitting there
8 on the witness stand under oath to tell this jury
9 what happened here, you were asked about whether
10 there was adult dating site information on there --

11 A. I didn't recall of any adult --

12 Q. And at the time you didn't recall it;
13 right?

14 A. No.

15 Q. So that was a mistake; right?

16 A. Well, again, I have to limit the scope
17 of what I'm looking for by what is being asked of
18 me on the request.

19 Q. Okay. I also asked you about
20 Cellebrite and whether or not it was capable of
21 extracting the information from the apps found on
22 these electronic devices of Ms. Cedeno's that you
23 searched; correct?

24 A. Correct.

25 Q. Okay. And you indicated that if there

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | was content from the apps that it would be in your
2 | extraction report; correct?

3 | A. It should be. Not always. It should
4 | be because some of the stuff is encrypted.

5 | Q. Okay. But would it surprise you if I
6 | told you that on Ms. Cedeno's phone your extraction
7 | report says that there are 441 apps on her phone?

8 | A. Probably.

9 | Q. Okay. And the content from those apps
10 | is not in the extraction report; correct?

11 | A. I don't recall seeing any content from
12 | chatting apps.

13 | Q. Right. So if Instagram were on her
14 | phone, the Instant Messaging would not be on the
15 | extraction report, would it?

16 | A. It depends.

17 | Q. And you are a trained law enforcement
18 | officer; correct?

19 | A. Correct.

20 | Q. And so law enforcement has many
21 | mechanisms by which they can get information from
22 | different companies; correct?

23 | A. Correct.

24 | Q. And you have the option of sending
25 | subpoenas to Instagram and FaceBook; correct?

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. Right. You have legal process to get
2 information from cell phone companies, texting
3 Google, Apple, and so on and so forth.

4 Q. WhatsApp; correct?

5 A. WhatsApp, yes.

6 Q. Okay. And those are very popular ways
7 to communicate with people; right?

8 A. It is.

9 Q. Okay. And sometimes you need a court
10 order to get that information, don't you?

11 A. Yes, court order or search warrant.
12 It's a legal process.

13 Q. And so are you aware of whether that
14 was done in this case?

15 A. I do not.

16 Q. Okay. But that information was not
17 uncovered in your extraction from Ms. Cedeno's cell
18 phone or either of her iPads, was it?

19 A. No, I didn't do neither a preservation
20 letter nor a search warrant or a court order to get
21 more information. My job was to make sure that the
22 extraction report and it was as accurate as it can
23 be.

24 Q. Okay. It was accurate, but it's
25 limited in what it got from the phone; correct?

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 A. If you would of had the extraction
2 report as well as court orders or search warrants
3 to the apps then obviously you would have had a
4 more -- a lot more information.

5 Q. Right. The State -- that would be part
6 of their investigation; correct?

7 A. Correct.

8 Q. If it was done; right?

9 A. If they would of -- yes.

10 Q. And would it surprise you if I told you
11 that iPad number 2 had 412 apps on it based on your
12 extraction report?

13 A. If it says that then it did. I mean,
14 it's as accurate as it can be.

15 Q. And iPad number 3 had 134 apps on it?

16 A. Okay.

17 Q. From your report?

18 A. If it's on the report then, yes.

19 Q. And when I asked you about it before
20 lunch, I asked you whether or not the content from
21 those apps was extracted onto your report and you
22 said that -- I believe you said, you correct me if
23 I'm wrong, that if there were those apps on the
24 phone that that would have been extracted; right?

25 A. If I said that that's incorrect. Most

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 of the times that information would have been
2 extracted. From my experience, it would pull the
3 -- what the app is and under that app it would
4 normally on iPhones, Android is a little different,
5 it would have the text messages content on there.
6 E-mails for example, it wouldn't have the content
7 of the e-mail itself with most extractions, we just
8 have the title of the e-mail. So, again, each
9 extraction for each app is different.

10 Q. And so you're not telling this jury
11 that if there's not FaceBook messaging and
12 Instagram messaging on your extraction report that
13 it doesn't exist?

14 A. Correct.

15 Q. Okay. It could very well exist and
16 there could be other messaging apps on the phone
17 that were not extracted; correct?

18 A. Correct.

19 Q. Okay. Just wanted to make sure we were
20 clear on that.

21 A. Sure.

22 Q. Now, there were some exhibits that were
23 entered into evidence by the State and there were
24 some numbers on these exhibits. Do you recall
25 the -- I'm looking at State's Exhibit 123 and

DIEGO NOVA - CROSS-EXAMINATION BY MS. BARABIER

1 | there's incoming calls with no identification?

2 | A. Right. Right, I remember those.

3 | Q. Okay. And did you or anybody you know
4 | take any efforts -- make any efforts to determine
5 | the identity of those individuals calling Ms.
6 | Cedenno?

7 | A. I didn't make any efforts.

8 | Q. Do you know of anybody that did?

9 | A. I believe the investigator -- whoever
10 | investigated this case did. Are you talking about
11 | the incoming calls with no numbers under them?

12 | Q. Yes.

13 | A. Okay. I can get into that, but I
14 | didn't make an effort in finding out who those
15 | calls were from.

16 | Q. And those calls are on or about this
17 | time the State contends that Ms. Cedenno was not --

18 | A. On the 2nd or the 3rd?

19 | Q. -- had been --

20 | A. On the 2nd or 3rd?

21 | Q. On the 2nd and the 3rd --

22 | A. Yes.

23 | Q. That that would be somewhere in or
24 | around the time of death; correct?

25 | A. Correct.

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And so you don't know of anybody who
2 has gone to the efforts of trying to find out who
3 those individuals were, do you?

4 A. I believe somebody has.

5 Q. Do you know their name?

6 A. Do I know their names?

7 Q. Yeah.

8 A. No, I don't know their names.

9 Q. Okay. Now, you also testified on
10 direct examination that you examined the
11 information and these extraction reports and did
12 not find any evidence that she was communicating
13 with drug dealers; right?

14 A. Correct.

15 Q. Okay. Now, you don't have -- do you
16 have a data base of numbers that are associated
17 with people that sell drugs?

18 A. No, I don't.

19 Q. Okay. So I'm just trying to determine
20 how you made that conclusion not having information
21 about specific drug dealers or specific people that
22 may have been selling drugs?

23 A. No, I don't.

24 Q. You don't know, do you?

25 A. I don't know. The only way that I

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | could -- obviously, I can't listen to past
2 | conversations on the phone. All I could go by is
3 | the text message context. And in those contexts I
4 | didn't find anything eluding to drug selling or
5 | buying.

6 | Q. Okay. But, for example, the numbers
7 | that are unidentified on some of those exhibits,
8 | you don't know whether that person was a drug
9 | dealer, do you?

10 | A. No, I didn't do any number searches or
11 | anything like that.

12 | Q. Okay. I just wanted the jury to have
13 | the correct impression about that.

14 | A. Sure.

15 | Q. Okay. So --

16 | MS. BARBIER: Beg the Court's
17 | indulgence for one moment. I don't have any other
18 | questions. Thank you.

19 | THE COURT: Thank you. Any redirect?

20 | MS. MCMENAMIN: Yes, Your Honor.

21 | REDIRECT EXAMINATION

22 | BY MCMENAMIN:

23 | Q. Agent Nova, you were asked if an adult
24 | content site was visited according to the data on
25 | this phone that you did the extraction of?

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. Can you tell us, based on your
3 experience and training, are there ads which may
4 appear on these sites?

5 A. Most of those sites have popup ads,
6 yes.

7 Q. And may that sometimes lead to cookies
8 for other sites?

9 A. Yes.

10 Q. Can you explain what cookies are?

11 A. A cookie is something, it's -- let's
12 call it a software or a kind of a little mini
13 website that whatever website you go to gets your
14 information. The best example is, you know when
15 you go on Ebay -- not Ebay, Amazon and you buy
16 something, you put it on your cart, that's a
17 cookie. So you're allowing Amazon to put your
18 information in your cart so that when you checkout
19 it has your information.

20 A lot of times when you -- if you don't
21 accept cookies, I know most of you, I hope have had
22 that issue, if you don't accept the cookie, your
23 interaction with that website is not going to be
24 optimal if I can say.

25 Q. And as for AdultFriendFinder, you were

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 asked about that one specifically?

2 A. Yes.

3 Q. And showing for identification State's
4 Exhibit 226. Looking at 226, please tell me, if
5 you can, the length of time for that site?

6 A. It was on the 3rd of August, 2019, so
7 about a month before the incident.

8 Q. And looking at their use, I guess would
9 be the appropriate term of the site, how long was
10 that?

11 A. That instance -- it doesn't tell you
12 how long, it just tells you when you logged on.

13 Q. Okay. One moment, Agent Nova. If I'm
14 looking at it it might help me ask you about it.

15 So right here, is this one showing that
16 one second -- or let me look at 9:54:44 and we see
17 9:54:43 and 9:54:43, does that show we're going
18 from this to this to this?

19 A. Yes.

20 Q. So from 135 to 134, we see a time of
21 9:54:43 and 9:54:43?

22 A. Right.

23 Q. So --

24 A. Looks like the best way to describe it,
25 whoever used this phone to get on that site, just

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | pretty much clicked on the main page and then just
2 | started clicking on the hyperlinks or the pictures
3 | within that site.

4 | Q. And then the third one here is at
5 | 9:54:44, so a second later; is that right?

6 | A. Yes.

7 | Q. Okay. So very little time on that.
8 | Based on -- is that your opinion very little time
9 | spent with this?

10 | A. Very little time, got on the main page
11 | and started just clicking on different things.

12 | Q. And could that be consistent with an ad
13 | or a popup or something like that? Or just
14 | scrolling through?

15 | A. It could be either because it doesn't
16 | give me enough information to know if it was just
17 | an ad or a popup or a -- I would need more info.
18 | If it got to where I really needed to know, I would
19 | cut and paste that into somebody else's computer.

20 | Q. And the activity that you were looking
21 | at earlier on cross-examination all that appeared
22 | to be on the August 3, 2019 date?

23 | A. Correct.

24 | Q. Okay. Agent Nova, looking at this
25 | calendar for August of 2019, can you tell me what

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 | day of the week August 3rd is on?

2 | A. August 3rd is a Saturday.

3 | Q. Saturday. And State's 225 for
4 | identification and State's Exhibit 81. What do we
5 | see here?

6 | A. This is a short message --

7 | Q. This is from the phone extraction that
8 | you conducted?

9 | A. Okay. At 6:03 p.m. on the 3rd of
10 | August, somebody by the name of Vincent on her
11 | phone, last four ending in 267 says, on my way.

12 | Q. On August 3rd, on my way. Okay. Then
13 | here another part of your extraction, what are we
14 | looking at here?

15 | A. A cookie accepted from this cell phone
16 | to that website --

17 | Q. Okay. On what day?

18 | A. -- and/or vice versa. On the 3rd of
19 | August at 9:43.

20 | Q. So after the text?

21 | A. Right. And can I say who it's from?

22 | Q. Yes, you can say the website that it's
23 | for.

24 | A. PornHub.

25 | Q. Okay. But we see a message, on my way

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 and then at 9:43 p.m. we see this internet use?

2 A. Correct.

3 Q. Okay.

4 A. So about two and a half hours later.

5 Q. Gotcha. And then State's 225, what do
6 we see here?

7 A. Another text messages from Vincent at
8 5:15 on the 4th of August, on my way.

9 Q. And, Agent Nova, we've talked about
10 user and that you can't necessarily say that a
11 specific person is using a phone at a specific
12 time; is that right?

13 A. Correct. If you notice that the whole
14 time I've been testifying, I try not to refer to he
15 or she or a name, a pronoun.

16 Q. So, Agent Nova, would it be fair to say
17 you don't know who all was using the device when
18 these sites were accessed?

19 A. It's impossible to tell unless you're
20 videoing that person while they're making that
21 transaction.

22 Q. But you see access at 9:45 p.m. on a
23 Saturday night?

24 A. Yes.

25 Q. After receiving a message from Vincent,

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 a male name saying, on my way?

2 A. Correct.

3 Q. And you don't know if one or two people
4 together are looking at this site? Late at night?

5 A. There's no way to tell.

6 Q. And there were some questions about
7 apps she may or may not have had on her phone. Do
8 you recall if she had Instagram?

9 A. I don't recall.

10 Q. Do you recall if she had FaceBook?

11 A. I don't recall.

12 Q. Would apps like this and their usage
13 produce a lot of data or a little bit of data?

14 A. It just depends on the phone, the
15 firmware, there's so much to that -- that takes
16 into affect for these extractions. Normally -- so
17 it -- I'm sure --

18 Q. That's fair enough, Agent Nova.

19 A. Okay. All right.

20 Q. And then Defense also asked about both
21 the iPhone and the iPads in this case?

22 A. Right.

23 Q. You did extractions on all three
24 devices?

25 A. Yes.

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. And based on your extractions of
2 these devices and the data retrieved and based on
3 what you were asked to do and the submission of
4 this phone to SLED --

5 A. Right.

6 Q. -- did you find anything of evidentiary
7 value --

8 MS. BARBIER: Objection. That's a
9 conclusion that he can't draw.

10 THE COURT: I agree. Unless you want
11 to tell me something else I'll be glad to listen to
12 you.

13 MS. MCMENAMIN: I'll move forward, Your
14 Honor.

15 THE COURT: For him to find what
16 evidentiary value is in this case, I don't believe
17 that's a proper question. You need to rephrase it.

18 MS. MCMENAMIN: I'll move forward, Your
19 Honor. Thank you.

20 Q. Agent Nova, you reviewed the data from
21 the iPads?

22 A. I did. I did extract reports on all
23 three devices, yes.

24 Q. And you said earlier you were paying
25 particular attention to recent time?

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Right.

2 Q. Did you see any sort of -- did you see
3 any content that would help establish a timeline as
4 you were asked to do?

5 A. On the iPhone and not on the iPads.

6 Q. Okay. So no information on the
7 iPads to establish a timeline for this case?

8 MS. BARBIER: Objection, Your Honor. I
9 think that's the jury's province. I don't think
10 this is an appropriate question for the witness.

11 THE COURT: Let me see the lawyers.

12 (WHEREUPON, there was a bench
13 conference)

14 THE COURT: Okay. Go ahead.

15 MS. MCMENAMIN: Yes, Your Honor.

16 Q. Agent Nova, when you were on
17 cross-examination and reviewing the documents, did
18 there appear to be searches from 9:30 p.m. to
19 10:30 p.m.?

20 A. Are you talking about these?

21 Q. Not those specific ones, just not those
22 isolated. Overall what you were observing, was
23 that over a range of time?

24 A. I'd have to see it again.

25 Q. Okay. With the adult sites?

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes. For me to be precise on the times
2 -- if you say they are, there's no reason to doubt
3 then that's fine.

4 Q. And we can't limit the view to only one
5 person?

6 A. Nobody knows who was on the phone at
7 that time.

8 Q. There was also some questioning, Agent
9 Nova, about the message with Tommy that I just want
10 to clarify.

11 A. Okay.

12 Q. That last message. The one about the
13 money?

14 A. The \$50 one?

15 Q. Yes.

16 A. Yes.

17 Q. Looking at this message on 9/1/2019,
18 this is message number 6?

19 A. Yes.

20 Q. Was this message simply not responded
21 to or was it not read?

22 A. It was read.

23 Q. It was read?

24 A. It was opened.

25 Q. Okay. And then there's no response?

DIEGO NOVA - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Not that I can recall.

2 Q. Okay. And the last user generated
3 activity was that this message at 6:42?

4 A. Correct.

5 Q. For a game about dragons?

6 A. Yes.

7 Q. Okay. And there were comments on
8 cross-examination, Agent Nova, that people use
9 their phones differently?

10 A. Yes.

11 Q. Did you find that accurate?

12 A. Yes.

13 Q. But based on your experience and
14 training, is this sort of what we see here that
15 there's no usage after 9/1, a little over 24 hours?
16 Is no use of a phone completely --

17 MS. BARBIER: Objection, Your Honor.
18 Leading.

19 MS. MCMENAMIN: I'm posing a
20 hypothetical question -- or trying to pose a
21 hypothetical question, Your Honor.

22 THE COURT: Go ahead. I'm going to let
23 her do it.

24 Q. Would a person not using their phone
25 for over 24 hours, would you find that usual or

DIEGO NOVA - RECROSS EXAMINATION BY MS. BARBIER

1 unusual based on your experience with cell phone
2 extractions and analyzing the data?

3 A. I would say this, for somebody who
4 consistently uses their phone like what I saw for
5 the usage in the month of August, for example;
6 however, there's so many extenuating circumstances
7 where there might be an occasion where suddenly the
8 phone wasn't in use. And that's just something I
9 can't -- nobody can explain why somebody who uses
10 their phone consistently suddenly doesn't use their
11 phone for two days.

12 Q. But was this out of the pattern?

13 A. I would say that it was out of the
14 pattern.

15 Q. Okay.

16 A. For the month that I looked at.

17 Q. And earlier there were questions about
18 the -- Agent Nova, were any communications to or
19 from this phone made on September 2nd or September
20 3rd?

21 A. No outgoing texts or calls and no
22 incoming answer or reply to texts.

23 Q. Thank you.

24 MS. MCMENAMIN: Nothing further for
25 this witness, Your Honor.

DIEGO NOVA - RECROSS EXAMINATION BY MS. BARBIER

1 THE COURT: Thank you. Ms. Barbier?

2 MS. BARBIER: Just briefly, Your Honor.

3 RECROSS EXAMINATION

4 BY MS. BARBIER:

5 Q. Agent Nova, this was a password
6 protected phone; correct?

7 A. Correct.

8 Q. So are you aware of who had the
9 password to this phone?

10 A. Okay. Somebody -- it was on one of
11 the -- maybe on this thing. I'm sorry. I believe
12 the investigating agent gave me a suggested
13 password. And I didn't -- there's another -- and
14 it's in my notes, there's another piece of
15 equipment we use to uncover passwords for iPhones.
16 I punched in that suggested password and that was
17 the password where the iPhone was able to --

18 Q. Yes, sir. I didn't communicate
19 clearly. Other than law enforcement and trying to
20 get into the phone through the extraction process,
21 for the extraction process, do you know what other
22 individuals had the password to this phone?

23 A. I don't know.

24 Q. Okay. Now, on redirect, the State
25 asked you whether or not one of the entries on this

DIEGO NOVA - RECROSS EXAMINATION BY MS. BARBIER

1 extraction related to a pornography site?

2 A. Yes.

3 Q. Could have been a one second visit;
4 correct?

5 A. It could have been.

6 Q. Okay. And you said it could have been.
7 And you said that you don't know whether that means
8 the site was visited and then certain things within
9 the site were clicked on; correct?

10 A. Correct.

11 Q. Okay. And there's also -- I believe
12 she asked you about entry 123; is that right? Do
13 you recall?

14 A. I don't have it.

15 Q. I'm going to show you my copy.

16 A. Okay. Good. I see it.

17 Q. You see that?

18 A. Yes.

19 Q. Okay. Can you tell this jury -- and
20 I'm just ask you innocuously. Okay. Is entry 123
21 related to porn?

22 A. Not from what I can see. I wouldn't --
23 given my experience --

24 Q. I think that's the one she asked you
25 about?

DIEGO NOVA - RECROSS EXAMINATION BY MS. BARBIER

1 A. No, not 123, it was something else.

2 Q. Okay. If you look at the bottom of
3 that it says, Pornhub?

4 A. Okay. I see. Yes.

5 Q. So that's related to porn; correct?

6 A. Right.

7 Q. And entry 124 is also related to porn;
8 correct?

9 A. Yes.

10 Q. And entry 125 is related to porn; isn't
11 it?

12 A. Yes.

13 Q. And entry 126 is related to porn?

14 A. Yes.

15 Q. Entry 127 is related to porn?

16 A. Yes.

17 Q. And so on and we could keep going?

18 A. Right.

19 Q. I will spare the jury that.

20 A. Okay.

21 Q. But suffice it to say, we could go
22 through entry 143 and they would all be related to
23 porn, wouldn't they?

24 A. To that same website it seems.

25 Q. And you performed an extraction that's

1 | hundreds and hundreds of pages; correct?

2 | A. Yes.

3 | Q. And there were also numerous other
4 | citations and entries and searches related to
5 | pornography and sexually violent behavior; correct?

6 | A. I would say so. I don't know about the
7 | violent part. You would have to actually go in
8 | that link and see what it's about.

9 | MS. BARBIER: I don't have anything
10 | else. Thank you.

11 | MS. MAYES: And, Your Honor, we have a
12 | matter of law regarding the next witness.

13 | THE COURT: Okay. May I excuse this
14 | witness?

15 | MS. MCMENAMIN: Yes, Your Honor.

16 | THE COURT: Agent Nova, thank you.

17 | MR. NOVA: Y'all have a good one.

18 | THE COURT: All right. Ladies and
19 | gentlemen, I need to take up a matter with the
20 | lawyers. So I'm going to -- no talking about the
21 | case. No research. Stretch your legs. I'll send
22 | you back to your jury room just for a few minutes.

23 | (WHEREUPON, the jury exits the
24 | courtroom at 3:26 p.m.)

25 | THE COURT: Okay. What we got?

1 MS. MAYES: Yes, Your Honor. The next
2 witnesses are the witnesses from Toronto Police
3 Services. So as we've been dealing with over the
4 last two hours, some line of questioning that
5 potentially opens the door. The State was very
6 cautious when CSI Officer Tom Smith was up there, I
7 did not elicit any information regarding the box to
8 that Kimber .45 that was at the residence. That
9 was elicited only on cross-examination and
10 extensively. There were multiple questions about
11 it.

12 We're now dealing with a situation
13 where the jury knows that there was a box for a
14 Kimber .45. There was questioning as to whether
15 there was any -- whether the State pursued
16 examination of guns of matching caliber, whether we
17 pursued recovery of those weapons, and in the
18 current situation, it appears as if there's just a
19 bunch of empty gun boxes in that house. As if
20 somebody came in and burglarized the house and took
21 the guns and that that's all consistent.

22 In reality, there is only one missing
23 gun. And the only missing gun is the Springfield
24 .45. Now, the State's firearm examiner from the
25 State Law Enforcement Division is going to testify

1 | that the Springfield .45 which is the missing gun
2 | where that gun box was located is consistent with
3 | the murder weapon. And they know that because the
4 | ballistics tools that they use and the data base
5 | tells them the possible weapons. And so that's how
6 | they know that that particular Springfield .45 XD
7 | which is missing is potentially the murder weapon.

8 | Your Honor, as for the Kimber .45, that
9 | is the gun that there was originally a motion by
10 | the Defense to suppress any reference to. They
11 | elicited it. The Kimber .45 is not just a missing
12 | gun, that gun was found in his vehicle exactly
13 | where he said it would be found. And that is part
14 | and partial of the statement that he made
15 | voluntarily to the Canadian officer. I've got the
16 | Kimber .45 and the other gun was identified as a
17 | Springfield XT, it's a 9mm so it's not a .45 --

18 | THE COURT: Let me ask you, is that
19 | Kimber gun, is that the one that the .45, is that
20 | the loaded gun with the ammunition in it?

21 | MS. MAYES: It is, Your Honor, with the
22 | matching ammunition as was set forth in the State's
23 | memorandum. It's also a gun, Your Honor, that was
24 | submitted to the State Law Enforcement Division for
25 | analysis and was excluded as the murder weapon, so

1 | there can be no confusion about that.

2 | But the State's position is that we now
3 | must follow-up on that. The jury has heard that
4 | there was a gun box for a Kimber .45. And there
5 | was also questioning as to what efforts were made
6 | to match potential weapons and we're now in a
7 | situation we have to respond to that. That weapon
8 | was seized. It was analyzed. It was excluded.
9 | But, again, there's only one gun box in that home
10 | that has a gun that's unaccounted for which is
11 | certainly relevant to the issue as to whether or
12 | not there was a burglary. And as I stated, it's
13 | also got the matching ammunition in it. There were
14 | five rounds in it that were the HP .45 auto.

15 | So it's certainly relevant to the
16 | State's case. I know Your Honor has proposed the
17 | *Logan* charge. The *Logan* charge requires that the
18 | State form a connection between the pieces of
19 | circumstantial evidence. That's part of our
20 | requirement. And these are all certainly material
21 | pieces of our circumstantial evidence chain. So
22 | for that reason, Your Honor, we're getting ready to
23 | call these witnesses. We also believe it's
24 | important that the information about the Kimber
25 | being in the vehicle can be corroborated. The

1 statement given to the officer was that it would be
2 in a briefcase. It was. We don't intend to offer
3 the physical weapons, but there will be testimony
4 about it. There is also a photograph of that
5 briefcase.

6 And, certainly, Your Honor, we just
7 need to address that now since we know that
8 evidence is coming and we certainly believe that
9 the door was opened and we're now in at a situation
10 where we have to respond and show that the State
11 followed proper avenues to explore evidence
12 obtained.

13 MR. SWERLING: Well, Judge, the
14 examination took place during the crime scene
15 analysis or the investigator who was doing the
16 crime scene. There were .45 caliber shell casings
17 all over the place and there were boxes of .45
18 caliber. There -- no question the Springfield was
19 the one that's missing.

20 THE COURT: I remember that. That's
21 the one in the plastic box -- case; right? Because
22 he stood up and showed the two magazines that were
23 in it.

24 MR. SWERLING: Right. The Springfield
25 and the Springfield magazines.

1 THE COURT: Right.

2 MR. SWERLING: But the -- I didn't
3 pursue any line of questioning about the Kimber
4 that should open the door as to whether or not it
5 was found in Canada. All I brought out was the
6 fact -- and I think the court reporter would have
7 to find this and it might be take a while --

8 THE COURT: I think you said there was
9 26 guns that would fit the -- that would hold or
10 shoot a .45 caliber, if I remember correctly.

11 MR. SWERLING: Right. We know the
12 Kimber was not the weapon. We know.

13 THE COURT: Right.

14 MR. SWERLING: So nothing's changed at
15 this point. It's still not relevant. It's still a
16 403 issue. And the only purpose when I asked that
17 was he had made a statement as I recall that there
18 were no other .45s in the -- no other .45s in the
19 house. But there was a .45 box for a .45 weapon.
20 That's all that was brought out. That there was a
21 box there for a .45 weapon. There's nothing else
22 that was mentioned.

23 THE COURT: Y'all give us about ten
24 minutes.

25 MR. SWERLING: Is the State suggesting

1 | that I cannot ask -- when he makes a statement
2 | about there is not a .45 in the house that I can't
3 | make a comment that there was a box of -- for a
4 | Kimber .45? That's absurd that the State is taking
5 | that position.

6 | MS. MAYES: There were two different
7 | questions about it specifically about the Kimber.
8 | But what he indicated is that the box for the
9 | Kimber was found, that the Springfield was in the
10 | master bedroom, the other box was in the study, but
11 | we certainly don't want to paint the picture now
12 | that there's a bunch of empty boxes if somebody's
13 | coming in and taking the weapons. There is only
14 | one missing weapon.

15 | MR. SWERLING: I didn't suggest that.

16 | MS. MAYES: And aside from all that,
17 | Your Honor, the State's position maintain -- we
18 | maintain our position that we've got to tie the
19 | pieces of circumstantial evidence together. That's
20 | our requirement under the law and they must be
21 | consistent with each other.

22 | THE COURT: And you're talking about
23 | what's found in Canada?

24 | MS. MAYES: What's found in Canada is
25 | the Kimber from that box in the study. I was

1 careful, I did not ask about the Kimber and that's
2 why he didn't mention it. I didn't want to even
3 approach that subject because of this motion.

4 MR. SWERLING: But I had to ask about
5 the Kimber because there were .45 boxes of shells
6 all over the place. So that had to be asked that
7 there was another .45.

8 THE COURT: We're going to find it
9 right quick. Okay. You know, I understand, Ms.
10 Mayes, I am like all for if that gun is the gun
11 that was from the house that's a Kimber and the
12 ammunition, I'm thinking it comes in. I don't know
13 that we got to put in all these guns, but I'm just
14 -- I think you've been right and reasonable about
15 what was in the house.

16 But I -- it's hard for me to say if
17 that's the Kimber that was in the house with the
18 empty box and the ammunition in it and that's what
19 you're telling me; right?

20 MS. MAYES: Yes, Your Honor. And that
21 can be verified through the serial number. There
22 was a serial number on the box that was recovered
23 and this Kimber was recovered as well. So we're --
24 everybody agrees that it is the same gun. We just
25 feel like now that piece of the puzzle has to be

1 laid out for the jury.

2 And aside from everything that was
3 testified to from the CSI prospective, as set forth
4 in your memorandum, we certainly believe it's
5 relevant on completely separate grounds because of
6 the matching ammunition and because it is part and
7 parcel of the statement that was made to the
8 officers that he had two guns, be careful and I was
9 going to eat one in Niagara falls. The statement
10 is out of context without that remaining portion.
11 It's also corroborated by the fact that he tells
12 them it would be in a briefcase and it was.

13 MR. SWERLING: Maybe I'm just getting a
14 little old and senile. I don't see the connection
15 at all between what I asked and the fact that they
16 found the Kimber. I wasn't suggesting that the
17 Kimber was the weapon that was used or --

18 THE COURT: And I don't think that you
19 did. I'm going to find it. I don't remember that
20 testimony.

21 MR. SWERLING: None at all. I don't
22 think you'd find it. That was not the purpose of
23 me even asking the question. The purpose was and
24 he had said there was not a .45 in the house. And
25 there was a .45 in the house, but it was -- there's

1 a box for the .45. That's all I brought out. I
2 didn't say it was missing or that someone used it.

3 THE COURT: Is there something on
4 there, do you see it, Bethanie?

5 MS. CREPPON: Well, I can't be on the
6 record and look at the same time.

7 THE COURT: She can't look for it until
8 we're quiet because she's typing.

9 (WHEREUPON, the court reporter is
10 looking for the information, so off the record)

11 MR. SWERLING: I never suggested
12 anything about testing any other firearm. It just
13 wasn't said.

14 THE COURT: Okay. Well, why don't
15 y'all come up here and read through it and see.

16 MR. SWERLING: That's fine. I know
17 it's not there. You can go ahead.

18 THE COURT: And the State can come up
19 and look and go through it with the court reporter
20 and see if it's there.

21 MS. MAYES: Well, Your Honor, I'll say
22 this, regardless of whatever other questioning may
23 have been elicited, we feel like there is now
24 certainly testimony before this jury about the
25 Kimber box with the missing gun being a .45. And

1 | so now the question's posed that there are two
2 | missing .45s. Well, we know what happened to the
3 | other .45. We know where it was found and it was
4 | tested. And for all of those reasons, Your Honor,
5 | we certainly find it relevant and probative at this
6 | stage.

7 | We don't think it's prejudicial to the
8 | Defendant at all because we can establish it was
9 | not the murder weapon, but it was tested. And it's
10 | also relevant to the statement that we're going to
11 | hear from the Canadian officer. And part of that
12 | statement in its full context includes that gun.
13 | So for all of those reasons as set forth in our
14 | previous memorandum, we find it relative and
15 | probative.

16 | MR. SWERLING: Judge, I'll stipulate it
17 | was tested. I mean, there's no reason not to.
18 | It's not the weapon.

19 | THE COURT: Well, you know, Mr.
20 | Swerling, I'm going to tell you, I've been going
21 | back and forth, I think you know this case right
22 | now appears to be all circumstantial. There is two
23 | empty boxes. I think she's trying to connect all
24 | of her points. It's not the murder weapon. She's
25 | conceding to that. I don't see any reason not to

1 let it in.

2 MR. SWERLING: Well, I'll stipulate it
3 was tested if that's their concern and not the
4 weapon. I mean, I don't have any problem with
5 that. Here's the problem. They introduce all of
6 those boxes of .45s and all of the .45 shells that
7 they found there, but they don't expect us to try
8 and explain that there wasn't just one .45 weapon,
9 there were two. I'll stipulate that both the other
10 .45 was tested and not the weapon either. I mean,
11 I don't see how that --

12 THE COURT: All right. Are you
13 stipulating? Because, I mean, the statement is in.
14 I've already ruled it was not a joint venture. I
15 thought his statement was voluntary. It's
16 admissible. We'll let the jury decide that.

17 Are you going to stipulate that the one
18 gun, the .45 Kimber with the ammunition. That's
19 the one that was loaded with the ammunition was
20 found in the car in Canada.

21 MR. SWERLING: No, I was going to
22 stipulate that it was tested. They do have the gun
23 and they tested it and it wasn't -- so that
24 eliminates that issue about whether or not -- as I
25 understood --

1 THE COURT: Well, they had the gun
2 because they searched the car and there it was.

3 MR. SWERLING: And I don't intend to
4 comment on it.

5 THE COURT: Yeah. You know, I'm going
6 to let -- I just don't see any need to put in -- I
7 know where you're going, Ms. Mayes. And then I
8 don't know that there's any need to -- we've
9 already mentioned I'm letting the statement in.
10 She's not bringing any guns into the courtroom.
11 But she's going to mention the statement and the
12 gun that they found which happens to be the other
13 .45. I think there's still one gun missing.

14 MS. MAYES: Correct, Your Honor,
15 there's only one gun missing. There would also be
16 testimony later from Cody Weyandt, he did check the
17 ammunition, there were five rounds of the HPR .45
18 auto brass within the Kimber.

19 MR. SWERLING: I never said that gun
20 wasn't missing or was missing. What I said was
21 that there was a box for a gun there to explain the
22 other .45 shells that are all over the place they
23 were talking about.

24 But if I stipulate that it was tested
25 then that should take any prejudice out of it

1 putting it in. If it was tested and they can tell
2 the jury it was tested and it was not the weapon --

3 THE COURT: I think she intends to tell
4 them it's not the weapon.

5 MR. SWERLING: Right. But they're
6 going to put it in from the Canadian search or a
7 search as a result of --

8 THE COURT: It's coming through the
9 statements of what they found in the car when he
10 was arrested is what they're doing.

11 MR. SWERLING: That's fine, Your Honor.
12 Whatever you decide, I mean, I respect whatever
13 decision. I mean, I just don't see the connection
14 between asking about it and not intending to go any
15 further with it and the fact that it was tested
16 requires that it come into evidence.

17 THE COURT: But it's only the statement
18 coming into evidence. A statement is evidence.
19 But they're not bringing in the -- literally the
20 gun and tagging it and saying, hey, this is what we
21 found in the car.

22 MR. SWERLING: Well, that's what
23 they're going to do.

24 THE COURT: No, they're not.

25 MR. SWERLING: They're going to say

1 | they found it in the car.

2 | THE COURT: Right. They're going to
3 | say the found it in the car, but what I'm telling
4 | you is they're not physically bringing the gun into
5 | the courtroom.

6 | MR. SWERLING: No, I understand.

7 | THE COURT: I'm going to allow it.
8 | Now, let me put one other thing on the record too
9 | because we had a side bar earlier. When we had
10 | Agent Nova testifying and the testimony came out, I
11 | think, on redirect about the porn sites. Now
12 | these -- this wasn't introduced to impugn the
13 | victim's character by no means. What it was was a
14 | challenge to his analysis of the phone records.

15 | And then on redirect when you say it
16 | only happened for one second that was pointed out.
17 | The Defense wanted to question about the many pages
18 | that they had that showed differently. And I
19 | allowed that. Certainly not anything towards the
20 | victim, but towards the analysis that Agent Nova
21 | testified to. So I wanted to put that on the
22 | record. Did I state that correct, Ms. Barbier?

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

25 | MS. MCMENAMIN: Understood Your Honor.

1 THE COURT: Okay. Thank you. All
2 right. Everybody know where we're going? Anything
3 else from the State?

4 MS. MAYES: Just to clarify, Your
5 Honor. The next witness will be Jesse Dean and the
6 statement as I understand it would be the same
7 statement proffered during *Jackson vs. Denno* in
8 full?

9 THE COURT: Yes.

10 MS. MAYES: Okay. We just wanted a
11 clarification.

12 THE COURT: And I will note the Defense
13 objection to that. We had a hearing on it.

14 MS. BARBIER: That's correct, Your
15 Honor. And I do intend to cross-examine him on the
16 credibility of his testimony and the circumstances
17 surrounding the fact that the statement was made.

18 THE COURT: Absolutely. And, again,
19 I'm going to tell you. All I'm ruling on is the
20 admissibility. It is up to the jury to determine
21 whether they want to believe this statement or not
22 and believe whether it was voluntary. I just find
23 that it was admissible. So I think I laid that out
24 in the record pretty clear, not once, but maybe
25 three times now.

1 MS. MAYES: And, Your Honor, regarding
2 scheduling. We were talking while you were out, I
3 know I indicated yesterday I thought we would rest
4 today. Obviously, that's not going to happen. We
5 were talking with Defense counsel at break and so
6 just whenever you're ready. I mean, I think we're
7 open to any of the possibilities that may be out
8 there, but it does look unlikely that we may finish
9 tomorrow. The entire trial is what I'm thinking.

10 THE COURT: Well, how are y'all feeling
11 about tomorrow finishing?

12 MS. MAYES: The State will definitely
13 finish tomorrow. We're willing to stay and work
14 late. We're willing to do whatever it takes. I
15 know we were talking at break and so we just want
16 to be realistic.

17 THE COURT: Well, you know I kept the
18 jury here last night till like 6:30, I don't
19 particularly care to do that to them again.

20 MR. SWERLING: Judge, are you asking
21 whether or not we can finish the whole trial
22 tomorrow afternoon?

23 MS. MAYES: We think it's unlikely.

24 MR. SWERLING: Yeah. Just so you know,
25 that's what we were talking about.

1 MS. MAYES: The State will finish its
2 case tomorrow, but the trial in its entirety --

3 THE COURT: You know, I mean, it is
4 what it is. We will finish this trial. We just
5 don't know when. So I'm probably going to go till
6 5:00. I mean, I've got clerks here, I've got a
7 jury, they've got personal lives. I kept them last
8 night late.

9 MR. SWERLING: It cost me a tire.

10 THE COURT: And it cost Mr. Swerling a
11 tire, so I've heard. I hate that for you, Mr.
12 Swerling.

13 MR. SWERLING: Judge, Greg has had
14 three of them blown.

15 (Off the record)

16 THE COURT: All right. Well, let's --
17 now, let me ask you, Ms. Mayes, before I bring them
18 in. Do you think we can finish this witness by
19 5:00?

20 MS. MAYES: Absolutely, Judge. We
21 actually would have another just depending on how
22 we go.

23 THE COURT: You think we can get
24 through two?

25 MS. MAYES: It's possible.

1 THE COURT: Okay. And then let me ask
2 you, do you think -- and I'm not holding you to any
3 timeline by no means. I want you to try your case
4 like you see fit. But do you think the State would
5 rest in the morning or in the afternoon tomorrow?

6 MS. MAYES: So I have been unable to
7 really gauge it the way that I should have.

8 THE COURT: It's the clock that's
9 messing us up.

10 MS. MAYES: And today ran a lot longer
11 I think than we realized. So I don't think it's
12 going to be in the morning. I would say it's more
13 of a midday at earliest. Midday earliest I would
14 say.

15 THE COURT: Okay. And do you know how
16 long it would take you to present a case if you do?
17 I'm not asking you -- you don't have to by no
18 means. I'm just trying to thinking should I go
19 into it Friday or just wait until Monday.

20 MR. SWERLING: To finish Monday? I
21 think finishing Monday, we certainly would do that.
22 Tomorrow I think it depends on a couple of things.

23 THE COURT: Because I need to tell the
24 jury something. You know, I can tell they're
25 already concerned about Saturday. And if I send

1 | them back there to make a consensus, I've already
2 | done this once before, they're going to tell me,
3 | no, we don't want to work on Saturday. And then
4 | I've got a bunch of stuff I would have to do to
5 | change my schedule because we've got a jury coming
6 | in Monday for another case. I'd have to get some
7 | wheels turning to make it all happen.

8 | MR. SWERLING: Well, the reason I can't
9 | tell you is because there's a couple of factors
10 | there that I'm not aware of.

11 | THE COURT: Right. We'll talk about it
12 | tomorrow maybe we'll know where we are.

13 | MR. SWERLING: You're going to have to
14 | talk to the Defendant about his right to testify.

15 | THE COURT: That's right.

16 | MR. SWERLING: And that could make a
17 | difference.

18 | THE COURT: Right. It usually does.
19 | Serious stuff. Okay. Let's bring the jury in.

20 | MR. SWERLING: Judge, I need to put on
21 | the record, I don't know if I said it, but we did
22 | file -- we filed a motion on that issue. And I'd
23 | just like to add 403 as an issue to exclude as
24 | well.

25 | THE COURT: You did at 403. I've got