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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH TYRONNE WHERRY,

APPELLANT.

APPELLATE CASE NO. 2022-000453

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHESTER

4 2021-GS-12-364 and 449

5 State of South Carolina

6 Vs.

7 Kenneth Tyrone Wherry

8

9 Chester, South Carolina

10 April 4-7, 2022

11 Before the Honorable Paul Burch

12 APPEARANCES

13 For the State: Candice Lively

14 For the Defendant: Kay Boulware, William Frick

15

16 Reported by: DCRP-Michael C. Watkins

17 Official Court Reporter

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VOIR DIRE

1 THE COURT: All right. I have some additional
2 questions for you. At this time the Court is calling for
3 trial the case of the State of South Carolina versus Kenneth
4 Tyrone Wherry, I hope I'm pronouncing that correctly,
5 W-h-e-r-r-y. I'll come back to my questions, but at this
6 time I'm going to defer to the Solicitor to annunciate the
7 charges to you that you will be asked to reach a verdict on.

8 MS. LIVELY: Thank you, Your Honor. This is the case
9 of State versus Kenneth Tyrone Wherry, as Your Honor has
10 already stated, 2021-GS-12-364, it's a true billed
11 indictment for murder. Also 2021-GS-12-449, a true billed
12 indictment for possession or display of a firearm during the
13 commission of a violent crime of murder.

14 THE COURT: Thank you, Solicitor. At this time defense
15 counsel will have Mr. Wherry stand and face the jury and
16 I'll ask about relationships.

17 (Defense counsel and the defendant stand.)

18 THE COURT: Thank you, sir, you may be seated. All
19 right. To these bills of indictment the defendant has
20 entered pleas of not guilty and we will go forward seating a
21 jury as soon as I complete these questions. But first of
22 all, do I have anybody on the panel who is related by blood
23 or by marriage, or has any business, social, religious, or
24 fraternal relationship with Mr. Wherry? If so we need you
25 to stand at this time and don't make any comment. All

VOIR DIRE

1 right. I need your name, please.

2 THE JUROR: Miquavis Caldwell.

3 THE COURT: Mr. Caldwell. And your name, please?

4 THE JUROR: (Inaudible.)

5 THE COURT: All right. I'm going to ask y'all to come
6 up. Counsel may approach.

7 (At this time individual voir dire was held with the
8 Judge and the attorneys.)

9 (End of individual voir dire.)

10 THE COURT: Let's just stay right here, I don't want to
11 be running back and forth. It's going to be the same
12 question as concerning the potential witnesses. If you are
13 related by blood or by marriage or have any business,
14 social, religious, fraternal relationship with any of these
15 individuals we're going to need you to come up and talk with
16 us. If any of these individuals are present in court, which
17 most likely they're not, but if they are I'll ask them to
18 stand. Tawana Scott. Rikki Burch, and that's no kin to me.
19 Wade Young. Telly Crockett. Al Crawford. Michelle Huey.
20 Brandon Connor. Justice -- excuse me, Justin Moss. David
21 Moore. Keith Lewis. C. A. Plyler. Randy St. Clair.
22 Johnny Roddey. Jennifer Miller Hunton? H-u-n-t-o-n?

23 MS. LIVELY: Yes, sir.

24 THE COURT: Steven Curtis. Catherine Leisy. Carmen
25 Tucker. Dr. Kelly Rose. Terry Tinker. Jennifer Minors.

VOIR DIRE

1 Mary Elizabeth Muckenfuss. Lavondia Wherry. Tonya Estes.
2 Toni Spiotta. Stephen Peterson. Clarence Wilks. If so
3 would you stand at this time. If you would come up, please.

4 (At this time individual voir dire was held with the
5 Judge and attorneys.)

6 (End of individual voir dire.)

7 THE COURT: Anyone else? Come on up.

8 (At this time individual voir dire was held with the
9 Judge and attorneys.)

10 (End of individual voir dire.)

11 THE COURT: Has anybody developed an opinion or have
12 any personal knowledge about this matter? Come on up,
13 please.

14 (At this time individual voir dire was held with the
15 Judge and attorneys.)

16 (End of individual voir dire.)

17 THE COURT: All right. Based on the nature of the
18 charges of murder and possession of a weapon during the
19 commission of a violent crime in this case, is there any
20 reason you feel you could not be a fair and impartial juror?
21 Has anyone heard about this case and the people involved in
22 the case either through the news media, through church,
23 social media, or any other setting whatsoever? Has anyone
24 on this jury venire ever been arrested and had your case
25 prosecuted by the Sixth Circuit Solicitor's Office? At this

VOIR DIRE

1 time I'm going to have all of the attorneys introduce
2 themselves to you. We will begin with the State.

3 MS. LIVELY: Thank you, Your Honor. I'm Candice
4 Lively, I'm the Deputy Solicitor here Chester County. Our
5 elected Solicitor, Mr. Randy Newman, is here, he is for all
6 three counties; Fairfield, Lancaster and Chester. We have
7 Assistant Solicitor Jay Johnson. And also Ms. Kaitlyn
8 Easler, Assistant Solicitor. And Ryan Swancy, who is also
9 an Assistant Solicitor in our office. And Mr. Lewis has
10 already stood up for you, he's our Chief Investigator.
11 Thank you, Judge.

12 THE COURT: Thank you, Ms. Lively.

13 MS. BOULWARE: Hi. My name is Kay Boulware, I practice
14 criminal defense here in Chester. I'll be Mr. Wherry's
15 attorney on this case. You've met Mr. Wherry already. And
16 this is Mr. William Frick, he's also an attorney who will be
17 assisting me in this case.

18 THE COURT: Thank you, Counsel. Anybody presently
19 represented or represented in the past by any of these
20 attorneys? Anybody on the panel been represented in the
21 past or represented presently by the Sixth Circuit Public
22 Defender's Office? Anybody on the panel have any charges
23 pending against them in the Sixth Circuit, which would be
24 Chester, Fairfield and Lancaster counties? Is there anyone
25 who has a bias or ill-will against the solicitor's office

VOIR DIRE

1 and/or Chesterfield (sic) County Sheriff's Office, or SLED,
2 or law enforcement that would prevent him or her from giving
3 the State and the defense a fair trial? Did I say
4 Chesterfield? I'm sorry, Chester County. Y'all live in
5 Chester, I live in the field over there.

6 (At this time individual voir dire was held with the
7 Judge and attorneys.)

8 (End of individual voir dire.)

9 THE COURT: There will be scientific evidence
10 introduced at trial as well as eye witness testimony. In
11 recent years crime scene investigation television shows
12 provide entertainment, however these shows are solely for
13 entertainment and are not real court cases. Would you be
14 able to put your views and opinions you perceived from
15 watching these shows aside and listen objectively to the
16 evidence as it is presented in court? So to respond to
17 that, if you feel like that that would happen you'll need to
18 come up here, you need to come up and talk with us about it.
19 Have any of you or an immediate family member been the
20 victim of a violent crime? Have any of you or immediate
21 family -- yeah. You can just answer from there if you would
22 like. We need your number.

23 THE JUROR: 125.

24 THE COURT: How does that question apply?

25 THE JUROR: My brother-in-law was murdered.

VOIR DIRE

1 THE COURT: Your mother-in-law?

2 THE JUROR: Brother.

3 THE COURT: Brother-in-law. Come on up.

4 (At this time individual voir dire was had with the
5 Judge and attorneys.)

6 (End of individual voir dire.)

7 THE COURT: Yes?

8 THE JUROR: I had a nephew that was murdered.

9 THE COURT: And your number?

10 THE JUROR: Seventy-eight.

11 THE COURT: Come on up.

12 (At this time individual voir dire was had with the
13 Judge and attorneys.)

14 (End of individual voir dire.)

15 THE COURT: Yes, ma'am?

16 THE JUROR: My sister was murdered.

17 THE COURT: And your number?

18 THE JUROR: 182.

19 THE COURT: Come on up?

20 (At this time individual voir dire was had with the
21 Judge and attorneys.)

22 (End of individual voir dire.)

23 THE COURT: Have any of you -- I think I asked this --
24 have any of you on the jury panel or immediate family member
25 been accused of committing a crime? Any member of the jury

VOIR DIRE

1 panel know or work with a family member of Antonio Rowan
2 Thompson? And the next question, did any member of the
3 panel attend the funeral for Antonio Thompson? Thank you.

4 THE JUROR: (Inaudible.)

5 THE COURT: And did you attend the funeral?

6 THE JUROR: No, sir.

7 THE COURT: Would that affect your ability to be a fair
8 and impartial juror?

9 THE JUROR: No.

10 THE COURT: We need your number.

11 THE JUROR: 153.

12 THE COURT: 1-5-3. All right. Do I have any member of
13 the panel who has served on the board or directors or served
14 as a volunteer or worked for any organization advocating
15 victim's rights, or strengthening criminal penalties, or
16 supports law enforcement, such as the South Carolina Victims
17 Assistance Network, Mothers Against Drunk Driving, the South
18 Carolina Law Enforcement Association, or the Fraternal Order
19 of Police, or similar type organizations? Has any member of
20 the panel worked for or served as a volunteer or served on
21 the board of directors or in any other capacity been
22 associated with any organization advocating defendant's or
23 prisoner's rights? Have any of you served on a jury either
24 in magistrate, state or federal court? Yes, sir?

25 THE JUROR: I served on a murder jury 45 years ago.

VOIR DIRE

1 THE COURT: That was here?

2 THE JUROR: York.

3 THE COURT: York County? And your number?

4 THE JUROR: (Inaudible.)

5 THE COURT: Any of y'all ever been a witness in a trial
6 or participated in a court proceeding? Anybody on the panel
7 ever been a witness in a criminal case regardless of whether
8 it went to trial or not? Have any of you or an immediate
9 family member ever served or sought employment in law
10 enforcement in any capacity? It could be sheriff's
11 department, state troopers, constable, military police,
12 border patrol, probation officer, et cetera? Yes. If
13 you'll just stand, give us your number and tell us how that
14 applies.

15 THE JUROR: Sixty-one. My mother worked at the
16 jailhouse (inaudible.)

17 THE COURT: At the jail? Thank you, sir. Your number?

18 THE JUROR: Sixty-three. My husband was a correctional
19 officer for Kershaw Correctional.

20 THE COURT: Kershaw? That's 63. Yes, ma'am?

21 THE JUROR: Seventy-eight. My husband was a police
22 officer.

23 THE COURT: Any of you ever worked or sought employment
24 with a prosecutor's office? That could be anywhere if you
25 lived in another state. Other states are called district

VOIR DIRE

1 attorneys, here they're called solicitors, some states it's
2 state's attorneys. Any of you ever worked or sought
3 employment as a security guard in any field of security?
4 Any of you ever received any law enforcement or legal
5 training? Did any of you have an immediate family member
6 that works for an attorney? Yes?

7 THE JUROR: My sister is an attorney.

8 THE COURT: And your number?

9 THE JUROR: Twenty-three.

10 THE COURT: Where?

11 THE JUROR: Here. April Porter.

12 THE COURT: Yes?

13 THE JUROR: 155. (Inaudible.)

14 THE COURT: Thank you.

15 THE JUROR: 127. (Inaudible.)

16 THE COURT: What's your number?

17 THE JUROR: 127.

18 THE COURT: Do I have any of you that may suffer from
19 any condition or situation that would affect your ability to
20 give full attention and fair consideration if you're seated
21 on the jury? Does anybody on the jury have any
22 philosophical, religious, moral or other belief that would
23 prevent you from sitting and passing judgment in a criminal
24 case? Would any of you give greater or lesser weight to the
25 testimony of a police officer merely because of his or her

VOIR DIRE

1 status as a police officer? I'm going to modify Number 24.
2 If you're seated on the jury you're going to find out that
3 the jury is the finders of the facts in the case, the Judge
4 is the judge of the law, and the end result of any trial is
5 for you, the jury, to find the facts of the case and apply
6 the law as the Court, as the Judge, will give it to you and
7 thus reach a verdict. Under our constitutional principles a
8 defendant is innocent until proven guilty, and in this
9 country proof must be beyond a reasonable doubt, and the
10 essential elements of the offense must be proved beyond that
11 reasonable doubt. Do I have anybody that could not follow
12 those directions given to you by the Court and follow the
13 Judge's charge on the law, or could not sit on a jury and
14 abide by those general principles of constitutional law and
15 criminal procedure? If you feel like you've got a problem
16 with that we need to discuss it. All right. Do not respond
17 to this question except to either raise your hand or stand
18 up. Now, those of you that we've already discussed you're
19 fine, but I'm going to close out by saying, does anybody on
20 this panel know of any reason whatsoever why you cannot be a
21 fair and impartial juror if you're seated on this trial
22 jury? Let us hear from you now by coming forward. We
23 already got you. Thank you. All right. What else?

24 (Break in proceedings.)

25 THE COURT: All right. What's going to happen now, we

VOIR DIRE

1 have to give the clerk's office time to get everything
2 loaded in the computer, we will have potential juror lists
3 from the computer and we will seat a jury. When we get to
4 that point we're going to need you to come forward right
5 here in front of Ms. Carpenter and that microphone, turn and
6 face both tables where they can get a good look at you.

7 (Break in proceedings.)

8 THE COURT: Very graciously both sides agreed that you
9 can just stand.

10 (Break in proceedings.)

11 THE CLERK: 127, Nathaniel W. McDaniel. What say the
12 State?

13 MS. LIVELY: Please excuse the juror from this case.

14 THE CLERK: You may be seated. Number 75, Nancy E.
15 Strom. What say the State?

16 MS. LIVELY: Present the juror.

17 THE CLERK: What say the defense?

18 MS. BOULWARE: Please excuse this juror from this
19 trial.

20 THE CLERK: You may be seated. Sixty-three, Alison L.
21 Gaston. What say the State?

22 MS. LIVELY: Present the juror.

23 THE CLERK: What say the defense?

24 MS. BOULWARE: Please swear this juror.

25 THE CLERK: Ma'am, please come forward. Number 56,

VOIR DIRE

1 Lamoris Dye. What say the State?

2 MS. LIVELY: Present this juror.

3 THE CLERK: What say the defense?

4 MS. BOULWARE: Please swear this juror.

5 THE CLERK: Please come forward, sir. Number 38,

6 Justin G. Cloud. What say the State?

7 MS. LIVELY: Please excuse this juror this case.

8 THE CLERK: Number 65, Adam J. Grackler. What say the
9 State?

10 MS. LIVELY: Present the juror.

11 THE CLERK: What say the defendant?

12 MS. BOULWARE: Please swear this juror.

13 THE CLERK: Please come forward, sir. 105, Emily K.

14 Lee. What say the State?

15 MS. LIVELY: Present the juror.

16 THE CLERK: What say the defendant?

17 MS. BOULWARE: Please swear this juror.

18 THE CLERK: Number 78, Linda Hardin. What say the

19 State?

20 MS. LIVELY: Present the juror.

21 THE CLERK: What say the defense?

22 MS. BOULWARE: Please excuse this juror.

23 THE CLERK: Number 180, Valeria S. Thomas. What say
24 the State?

25 MS. LIVELY: Present the juror.

VOIR DIRE

1 THE CLERK: What say the defense?

2 MS. BOULWARE: Please excuse this juror.

3 THE CLERK: Number 121, Niya C. McClurkin. What say
4 the State?

5 MS. LIVELY: Present the juror.

6 THE CLERK: What say the defense?

7 MS. BOULWARE: Please swear the juror.

8 THE CLERK: Number 36, Justin A. Clark. What say the
9 State?

10 MS. LIVELY: Present the juror.

11 THE CLERK: What say the defense?

12 MS. BOULWARE: Please swear the juror.

13 THE CLERK: Please come forward. Number 167, Taylor N
14 Smith. What say the State?

15 MS. LIVELY: Present the juror.

16 THE CLERK: What say the defense?

17 MS. BOULWARE: Please swear the juror.

18 THE CLERK: Number 137, Georgia A. Moore. What say the
19 State?

20 MS. LIVELY: Please excuse this juror from this case.

21 THE CLERK: Number 59, Rembert A. Ellisor. What say
22 the State?

23 MS. LIVELY: Present this juror.

24 THE CLERK: What say the defense?

25 MS. BOULWARE: Please excuse the juror.

VOIR DIRE

1 THE CLERK: Number 117, Stacey H. Marshall. What say
2 the State?

3 MS. LIVELY: Present the juror.

4 THE CLERK: What say the defense?

5 MS. BOULWARE: Please seat the juror.

6 THE CLERK: Number 44, Barbreanna L. Cunningham. What
7 say the State?

8 MS. LIVELY: Present the juror.

9 THE CLERK: What say the defense?

10 MS. BOULWARE: Please excuse this juror.

11 THE CLERK: Number 23, Leslie B. Boyd. What say the
12 State?

13 MS. LIVELY: Present the juror.

14 THE CLERK: What say the defense?

15 MS. BOULWARE: Please excuse this juror.

16 THE CLERK: Number 100, Jerry L. Keenan. What say the
17 State?

18 MS. LIVELY: Present the juror.

19 THE CLERK: What say the defense?

20 MS. BOULWARE: Please swear this juror.

21 THE CLERK: Number 155, Elizabeth Roof. What say the
22 State?

23 MS. LIVELY: Present the juror.

24 THE CLERK: What say the defense?

25 MS. BOULWARE: Please excuse this juror.

VOIR DIRE

1 THE CLERK: Number 57, Teresa Edwards. What say the
2 State?

3 MS. LIVELY: Present the juror.

4 THE CLERK: What say the defense?

5 MS. BOULWARE: Please excuse this juror.

6 THE CLERK: Number 151, Shannon M. Robinson. What say
7 the State?

8 MS. LIVELY: Present the juror.

9 THE CLERK: What say the defense?

10 MS. BOULWARE: Please swear this juror.

11 THE CLERK: Number 81, Adrian T. Hayes. What say the
12 State?

13 MS. LIVELY: Please excuse the juror from this case.

14 THE CLERK: Number 94, Melissa B. Jacobs. What say the
15 State?

16 MS. LIVELY: Present the juror.

17 THE CLERK: What say the defense?

18 MS. BOULWARE: Please swear the juror.

19 THE CLERK: Number 158, Kenneth D. Rosa Rosa. What say
20 the State?

21 MS. LIVELY: Present the juror.

22 THE CLERK: What say the defense?

23 MS. BOULWARE: Please excuse this juror.

24 THE CLERK: Number 62, Leslie R. Ford. What say the
25 State?

VOIR DIRE

1 MS. LIVELY: Present the juror.

2 THE CLERK: What say the defense?

3 MS. BOULWARE: Please swear the juror.

4 THE CLERK: That's the first 12.

5 THE COURT: All right. We will seat two alternates,
6 strikes are one and two for the first alternate.

7 THE CLERK: Number 61, William B. Fairfax. What say
8 the State?

9 MS. LIVELY: Present the juror.

10 THE CLERK: What say the defense?

11 MS. BOULWARE: Please excuse this juror.

12 THE CLERK: Number 89, Shanthenia V. Holmes. What say
13 the State?

14 MS. LIVELY: Present the juror.

15 THE CLERK: What say the defense?

16 MS. BOULWARE: Please swear the juror.

17 THE CLERK: Number 140, Timothy S. Nunnery. What say
18 the State?

19 MS. LIVELY: Present the juror.

20 THE CLERK: What say the defense?

21 MS. BOULWARE: Please excuse this juror.

22 THE CLERK: Number 87, Lee A. Hilton. What say the
23 State?

24 MS. LIVELY: Present the juror.

25 THE CLERK: What say the defense?

1 MS. BOULWARE: Please excuse this juror.

2 THE CLERK: Are they striking for cause, Your Honor?

3 THE COURT: No, they get two per alternate.

4 THE CLERK: Number 122, Emily McCorkle. What say the
5 State?

6 MS. LIVELY: Present the juror.

7 THE CLERK: What say the defense?

8 MS. BOULWARE: No strike for cause.

9 THE CLERK: You may be seated. Number 53, Jamie M.
10 Drakeford.

11 THE COURT: Now we can draw three if you want to.

12 THE CLERK: Oh, I apologize, I thought -- ma'am, please
13 come forward, Ms. Emily McCorkle.

14 THE COURT: All right. Any matters concerning jury
15 selection?

16 MS. LIVELY: Not from the State, Your Honor.

17 MS. BOULWARE: Not from the defense.

18 THE COURT: All right. Then let me speak to counsel
19 over here.

20 (A bench conference was held with the Judge and
21 Attorneys.)

22 (The remaining panel was excused.)

23 THE COURT: All right, ladies and gentlemen, let me
24 have your attention so I can give you some brief preliminary
25 instructions. This is what we call general sessions court,

1 we try criminal cases that are on the docket. In this
2 particular case the defendant has entered a plea of not
3 guilty, therefore the burden of proof is on the State of
4 South Carolina to prove the guilt of the defendant beyond a
5 reasonable doubt. In every criminal case in the United
6 States, ladies and gentlemen, the defendant is presumed
7 innocent of all charges until the State proves to the jury
8 guilt beyond a reasonable doubt. At the end of the case
9 when you are charged with your deliberations, to begin your
10 deliberations, your verdict, whatever it is, will have to be
11 a unanimous verdict that all 12 deliberating jurors will
12 have to be in agreement on. After my opening remarks to you
13 will come the -- what we call the opening statements by
14 counsel. They are not mandatory. There have been a few
15 cases in my career where the attorneys have elected not to
16 make an opening statement, but that would be a fairly rare
17 case for that to happen. The opening statement is to allow
18 both sides to outline their respective positions in the case
19 to you. Now, I'll tell you right off the bat in these
20 opening remarks to you that what the attorneys say is not
21 evidence. Now, they may quote the evidence and in the
22 opening statements they may refer to what they think the
23 evidence may be presented, but evidence comes from the
24 witness stand. And that brings you into after the opening
25 statements to the presentation of evidence, which means the

1 evidentiary portion of the trial where you will hear the
2 testimony from the stand along with any exhibits that would
3 be introduced into the evidence. Evidence may take several
4 different forms. It may be sworn testimony, it could be
5 documents, it could be photographs, it could be physical
6 type items. Whatever the evidence is it is crucial that you
7 listen and observe the evidence, because as I mentioned to
8 you previously this morning, you will be the finders of the
9 facts of this case. The Judge is the judge of the law, or
10 the Court is the judge of the law, and as I told you to
11 reach a verdict, which is the end result of any case, how do
12 you do that? You find the facts, you apply the law that the
13 Court gives you to those facts and thus reach a verdict.
14 Now, after the evidentiary portion of the trial is complete
15 both sides will be given an opportunity to make closing
16 arguments to you. These closing arguments will once again
17 outline the case to you, and they will try to persuade you
18 to see the evidence exactly as their particular side sees
19 it. After the closing argument portion will come the
20 Judge's charge of the law, and only after that charge of the
21 law will you be asked to deliberate. With that said, please
22 do not deliberate this case until that time comes. Please
23 do not, and I instruct you at this time, do not discuss this
24 case amongst yourselves until that time comes. During
25 breaks, evening recesses, do not even go home and discuss

1 this case with your family members. I want you to avoid any
2 local press coverage. Notice I said local, we don't have a
3 problem with you watching the national news. Okay? But
4 just avoid all press coverage in this area, and that could
5 include television, radio, social media, as well as the
6 newspaper. Do not allow anybody to approach you in any form
7 or fashion and discuss this case with you. That may mean
8 different forms of communications, it could be direct
9 communication or it could be indirect. You could have a
10 third party try to approach, that would be highly improper.
11 Should that happen you are to immediately notify law
12 enforcement of such contact. Do not discuss with anyone
13 this case. All right. That's all of the phases of the
14 trial we will go through. Please, especially after lunch
15 this can happen, I had it happen two weeks ago, after lunch
16 sometimes testimony, sometimes the evidence takes a while to
17 present, again, we've had jurors to fall asleep. We don't
18 need that, that causes a huge problem. Please do not doze
19 off on me. If you feel like that you're going to doze off
20 immediately let me know, or court staff know, so that we can
21 take a coffee break. Okay? Now, we're going to try to take
22 a break every hour or so, bathroom breaks, coffee breaks or
23 whatever, we'll try to do that. We're going to try to keep
24 business hours. Several years ago we used to go way into
25 the night sometimes and court staff has got family they've

1 got to look after, y'all have possible family you've to look
2 after so we don't go late anymore unless it's absolutely
3 necessary. We try to not go any later than 5:00 or 5:30 at
4 the latest. And there's a reason why we don't convene court
5 normally until 9:30 or 10:00, that's to give everybody an
6 opportunity to take care of their family, take care of any
7 children you may have at school, but it gives the attorneys
8 a little time in the morning to handle other business. You
9 may have an attorney that has 90 clients and they need to
10 take care of certain businesses early in the morning, so
11 that's why we delayed court somewhat in the morning and
12 prepared other businesses, but there's a reason for that.
13 Plus, in South Carolina compared to other counties -- those
14 of you that are familiar with the State of Georgia, South
15 Carolina counties are way larger than most counties in
16 Georgia. In my particular county in Chesterfield it takes
17 almost an hour to cross that county. In other words, we've
18 got a section up on the North Carolina line and you go all
19 of the way to Society Hill, you're talking about almost
20 80 miles. Chester County is not a small county, so that's
21 the reason we give travel time to folks. All right. Now, I
22 know it's getting close to lunchtime. What's the wish of
23 Counsel, to go forward with opening statements or you want
24 to break now?

25 MS. BOULWARE: May we approach, Judge?

1 THE COURT: Yes, ma'am.

2 (A bench conference was held between the Judge and
3 Lawyers.)

4 THE COURT: One other thing I didn't mention to you.
5 Since I told you the Judge is the judge of the law and
6 you're the finders of facts, quite often there's going to be
7 evidentiary or procedural issues that I have to decide as a
8 matter of law, I may have to send you out to the jury room.
9 I call it playing musical chairs a lot of times because
10 you're in and out, in and out, but that can happen, so
11 please bear with us. The reason for that is I have to
12 handle those matters. Now, I do not get into fact-finding,
13 South Carolina judges just do not do that. Okay? That's
14 solely your responsibility. With that said, it's almost
15 12:30, we're going to send you on to lunch, we need you back
16 promptly in the jury room no later than 2:00 and we'll pick
17 up the trial at that time. Y'all know more about Chester
18 County than I do, there's a lot of restaurants over on the
19 bypass, I'm not sure about downtown, I know the Summit is
20 not down there anymore, I do know that. So y'all enjoy
21 lunch whether you go home or you go out to eat, we will see
22 you at 2:00. The jury is released for lunch. Everybody
23 else remain seated.

24 (The jury left the courtroom.)

25 THE COURT: Anything before we break?

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1 MS. LIVELY: Your Honor, did you want to hear those
2 matters now?

3 THE COURT: We can.

4 MS. LIVELY: Okay. A couple of things. I know that
5 the defense has a couple of motions. One of the things that
6 I was thinking about while I was sitting here was the issue
7 of third party guilt, I had not brought this up. Obviously
8 this case is complicated because we have, you know, this
9 defendant, as well as two other individuals, that were in
10 the vehicle at the time whenever the victim was shot and
11 killed. And, Your Honor, so in regards to third party guilt
12 my understanding of the law is that in order for them to
13 state that the Lavondia Wherry was the one who actually, or
14 Mary Muckenfuss, actually shot and killed the defendant --
15 or the victim would be at the exclusion of the defendant and
16 the evidence that's going to be presented as him being the
17 one who actually shot the victim in this particular case.
18 So, again, the concern that the State has is how far the
19 defense can get into that issue. And I know that there's
20 one of those really -- you kind of have to wait and see how
21 some of it comes out during the trial, however I wanted to
22 go ahead and put that on the record, because our third party
23 guilt law -- case law does state that it has to be at the
24 exclusion of the defendant. And it's actually -- that he is
25 not actually the one who could have committed the crime.

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1 MS. BOULWARE: Your Honor, Mr. Wherry's defense is
2 simply that he wasn't there. We don't intend at the moment
3 to -- depending on how the witnesses testify, to put the gun
4 in anybody's hand. I think as far as the case law, Mr.
5 Wherry would have to have some specific knowledge of what
6 happened at the scene in order for there to be -- even to
7 bring that up, and Mr. Wherry's defense and his claim he's
8 maintained he was never at that scene, so I don't see any
9 need at this time -- I mean, if somebody gets up there and
10 says that, that's something different and we can revisit it.
11 But at this time I don't intend to try to elicit any
12 testimony that actually puts this gun in any other person's
13 hand simply because that's not something we claim to know.
14 We don't have any evidence of that at this time.

15 THE COURT: Solves that problem.

16 MS. LIVELY: Yes, sir. And that's why I wanted to put
17 it on the record, and I hesitated to do that, but I wanted
18 to make that clear. And also, Your Honor, we've agreed that
19 the witnesses are to be sequestered. We also -- our lead
20 investigator in case is Telly Crockett, he is already in the
21 courtroom, so he's the only one -- we will make sure that we
22 coordinate with the defense in that regard. And I believe
23 that they are not challenging the Miranda of the defendant,
24 Mr. Wherry, on the day after the murder as well as the
25 subsequent interview, so those statements, Your Honor, we

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1 believe they're agreeing to that they would come in. So
2 that was the only things that I was specifically wanting to
3 put on the record that we've stipulated to or agreed to.

4 MS. BOULWARE: That's correct, Judge. And a couple of
5 the things in my motion in limine could probably wait until
6 they are ripe to address, such as the video interviews for
7 Ms. Muckenfuss. And Mr. Wherry has not decided yet if he
8 wants to testify, and at that time I would just ask the
9 State to reveal any convictions that they would plan to use
10 against him. As far as everything else, sequestered is
11 taken care of. I believe the Solicitor is going to let me
12 know which photos she was going to try to introduce into
13 evidence and whether or not we wanted to make an argument on
14 those or not.

15 MS. LIVELY: Your Honor, I've sent her the autopsy
16 ones, I think there were like four or five, and then the
17 other ones I can actually go through just the ones I know
18 that she would likely have an objection to, like whenever
19 the victim's body was found in the woods. I'll show those
20 to her and then if we need to address those that day before
21 the pathologist actually -- or, no, actually before we get
22 into some of the SLED crime scene we can proffer it then, or
23 if it won't be that many we might be able to agree on it and
24 let Your Honor know after lunch.

25 MS. BOULWARE: That's fine, Judge.

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1 MS. LIVELY: And one thing I forgot about, and don't
2 hold this against me, our investigator, Keith Lewis, we
3 would like to have him in the courtroom since he's our
4 investigator with the solicitor's office.

5 THE COURT: Any problem with that?

6 MS. BOULWARE: No objection, Judge.

7 MS. LIVELY: And that was it.

8 (Break in proceedings.)

9 THE COURT: All right. Be back at 2:00. I will close
10 it out for this morning. Now that you've got a good look at
11 the triers of fact over there, if there's any wiggle room of
12 possibly negotiating a resolution now would be a good time
13 to do it since everybody has got a look at who is going to
14 be deciding the facts.

15 (A lunch break was taken.)

16 THE COURT: All right. Have we got everybody? Ready
17 for the jury?

18 MS. LIVELY: Yes, Your Honor, the State is ready. Your
19 Honor, the State has certain pictures that we intend to
20 introduce at the appropriate time. We have autopsy photos,
21 we have also photos that were taken by SLED whenever the
22 body was actually located in the woods. And what I can do
23 is -- the defense has a motion in that regard, I'm going to
24 pull out the ones that I know she has concerns with. This
25 is the autopsy, I will hand this to Mike to mark that one.

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1 And then the next set that we'll have Your Honor look at are
2 the ones when the body was actually located by law
3 enforcement and SLED went in and documented the body, where
4 it was found, and how it was found. So, Your Honor, if we
5 want, I'm going to let him do that first. I'll go ahead and
6 hand up to you, State's Exhibit Number 18.

7 (Break in proceedings.)

8 MS. LIVELY: All right. Your Honor, he's completed the
9 marking of these other items so I'll let the defense go
10 forward on the autopsy photos.

11 MS. BOULWARE: Your Honor, that particular photo is
12 almost a duplicate of another photo showing the way -- the
13 other autopsy photos. I think the only difference is it's
14 blown-up a little bit. I think that's cumulative on top of
15 the other wound photo, I don't think it adds any additional
16 information to what the jury will get from looking at that
17 photo. And under 403 I think it's prejudicial. I would
18 just ask that you would suppress that particular photo from
19 the group of autopsy photos.

20 (Break in proceedings.)

21 MS. LIVELY: Your Honor, if I may approach I'll bring
22 you the remaining autopsy photos. I believe the only one
23 that they are raising an issue with is 25, which is the
24 picture of the wound to the face; is that correct?

25 THE COURT: Eighteen.

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1 MS. LIVELY: I'm sorry, I apologize, 18 is the one they
2 object to. Twenty-five is the one that deals with the
3 wound --

4 (Break in proceedings.)

5 THE COURT: All right. You know, the question is
6 coming.

7 MS. LIVELY: Yes, sir.

8 THE COURT: This -- I think you do.

9 MS. LIVELY: Yes, sir.

10 THE COURT: Is this photograph necessary for the
11 forensic pathologist to explain whatever reason their
12 findings.

13 MS. LIVELY: Yes, sir. In the actual -- and I didn't
14 even know it until I talked to her last week. The way that
15 it's actually described in her report is the stellate entry
16 wound, which is different than what -- she said that's why
17 there was no stippling, there was no soot. She said the
18 stellate showed that it had to have been a high velocity
19 close shot into the face of the victim, and the stellate is
20 actually the star shape. So what I did was I kind of pulled
21 it back from the face so you could see location-wise where
22 it is, and then the close-up you can see the actual injury
23 and how it tore the skin so badly. That's how -- that's why
24 I put both of those in there.

25 THE COURT: With that said --

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1 MS. LIVELY: Yes, sir.

2 THE COURT: -- understanding what you just told me --

3 MS. LIVELY: Yes, sir.

4 THE COURT: -- why do we need this one, which is
5 State's 25?

6 MS. LIVELY: Because it just had it -- it is actually
7 back to see where it was better on his head. She talks
8 about the midline and how far down it is, and the one you're
9 holing up, Your Honor, it has her hand and you can't really
10 see where it is from the measurement from the head, that's
11 the reason why. I was just trying to get a better angle out
12 of it so she can describe it.

13 THE COURT: As long as you need it for the medical
14 examiner to explain her finding -- or, I'm sorry, the
15 forensic pathologist, I'll allow it in. But, you know,
16 after the Collins case, which was my case -- you've got to
17 be real careful with it, and that's why I always delve into
18 the forensic pathologist's reasoning to need a photograph
19 like this.

20 MS. LIVELY: Yes, sir. And the State doesn't want
21 anything that's going to raise any issue either. There's no
22 question that he was obviously shot, so here is what the
23 State will do, those are the ones that we would like to put
24 in. When she comes here on Wednesday I'm going to ask her
25 again -- because I went through pictures with her through

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1 her testimony when I was preparing her, and she actually
2 told me to pull that one out and then the other one out as
3 well and she kind of explained things to me. If I don't
4 need to do that and she can testify then I will withdraw one
5 of those and ask her which one is better. But if she can
6 continue to explain to me, and then I can either proffer it
7 again, Your Honor, if you want to, then I would say, yes,
8 she does need that in order to explain the entry wound and
9 why it looks the way it does and how far it was from the top
10 of his head to up here.

11 THE COURT: All right. If you decide that you've got
12 to go with both of them you surely need to get that
13 developed on the record that she needs it, otherwise I
14 guarantee you there's going to be a lot of argument.

15 MS. LIVELY: Absolutely, Your Honor, and if I don't
16 need it I will not ask to put it in.

17 THE COURT: All right.

18 MS. LIVELY: The other thing, Your Honor, is going to
19 be when they found -- when law enforcement found the body,
20 the body was actually drug into the woods, it was after
21 midnight and crime scene from SLED was the one that actually
22 documented how the body was found. There were lots of these
23 photographs. So I want the Court to know I actually pulled
24 out and limited probably no less than 20 of these photos
25 from every angle of the body down to the ones that I felt

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1 were the most relevant in this particular matter. So I'm
2 going to show Your Honor -- and I've already pulled one out,
3 it was 19, it was accidentally added to the group, I must
4 have hit print twice, so I'm taking 19 out of the mix. So
5 the others, Your Honor, are going to be 20, 21, 22, 23, and
6 24, and I'm going to hand these up to --

7 (Break in proceedings.)

8 MS. BOULWARE: And, Your Honor, on those photos, I
9 think as far as showing where he was dragged into the woods,
10 I think one photo is enough to show that it was, and
11 different angles of that I'm not sure what that's going to
12 show. I would just submit that that's cumulative. The
13 bloody T-shirt I think is just too prejudicial. There is a
14 bloody tank top that I did not object to that the State is
15 getting in. And the one where -- I want to say this is 23
16 but I'm not positive, I've already forgot the numbers, where
17 it's like a half picture of his body, again, maybe the
18 Solicitor will tell you what the significance of that is,
19 but I think that's also cumulative. I don't think we need
20 15 different angles of -- and I'm exaggerating, of course,
21 but I don't think we need all of those different angles of
22 where the body was dragged to show that that's what happened
23 to the body.

24 THE COURT: Twenty is out, I agree with you on that
25 one. I assume that you've got the way that body was found

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1 and that somebody pulled those clothing off of the face?

2 MS. LIVELY: Correct, Your Honor. It was collected as
3 a part of the evidence but also to see if they could
4 identify or could see what this person looked like and what
5 happened to him. Because when you walk up on the body,
6 which is what the original pictures show, it shows how
7 whoever drug him into the woods, the clothing was pulled up
8 because of the way he was drug in, and that's what we're
9 trying to show. And part of the other pictures that we have
10 that have already been marked that she's agreed to let come
11 in are the ones that show how far the body was drug into the
12 woods, it was almost 50 feet, that it was in the dark, there
13 were briars everywhere, there are drag marks from where the
14 body -- that's where the picture of where we can see kind of
15 where -- the top of his hands and where he was drug in. All
16 of that is very relevant, because they didn't just throw him
17 out of the truck, they have made an effort to pull him into
18 the woods to hide the body, and then his face and everything
19 was covered. That's the point.

20 MS. BOULWARE: Judge, but --

21 THE COURT: Go ahead.

22 MS. BOULWARE: -- oh. Judge, I was just going to renew
23 my objection by saying, again, I don't know how it adds any
24 new information to the victim the jury is going to already
25 have without letting that come in. Again, cumulative and

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1 prejudicial under 403.

2 THE COURT: All right. I am going to overrule your
3 objection on 22, 23 and 24, then the one with the bloody
4 clothes I agree with you, that's out. And then this one,
5 21, I think is the one you were talking about.

6 MS. BOULWARE: Yes, sir.

7 THE COURT: I find that too prejudicial. Okay.

8 MS. BOULWARE: That's it, Judge, thank you.

9 MS. LIVELY: If I may retrieve the ones, Your Honor,
10 that you are going to allow in. Twenty and 21 are not in,
11 and I pulled 19.

12 THE COURT: All right. That brings up a sore spot with
13 me. According to how this trial goes in the event there is
14 an appeal, I want those photographs protected to the nth
15 degree. Because there were allegations in that Collins case
16 that somehow or another the appellate court had some
17 photographs that were switched out from the real trial and
18 there's been a lot of discussion about that. But the
19 assistant solicitor -- the deputy solicitor that tried it
20 swears that there was some photographs somehow switched out.
21 So while I don't want to ever think that that could happen
22 again, if that's true, but the appellate court has been
23 notified that there are allegations that somewhere between
24 the Dillon courthouse and Columbia that some pictures got
25 switched, so be on guard, both sides. Ready for the jury?

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1 MS. LIVELY: Yes, sir.

2 MS. BOULWARE: Yes, sir.

3 THE COURT: Bring them in.

4 (The jury returned to the courtroom.)

5 THE COURT: All right. The State has the burden of
6 proof in this case so therefore they can open first.

7 MS. LIVELY: Thank you, Your Honor. Good morning,
8 ladies and gentlemen. You are here on a case that involves
9 the most heinous crime that we have in our country: Murder.
10 Taking the life intentionally of another human being. And
11 there's a reason why that is the most heinous crime, it's a
12 final crime. There may be things worse to be a victim, but
13 to never be able to see your family or family to see you
14 again, that's why it's such an important case for the family
15 of Antonio Thompson, and that's the reason why the State
16 wants to make sure that you, each and every one of you, know
17 how important this is. And also that we, the State, the
18 investigator, everyone who worked on this case, worked on
19 this case because it's important to everyone. Both sides,
20 whether it's the defense or the State, has to do their job
21 in order for us to get here in front of all of you for you
22 to get this case and make your decision. And I will tell
23 you that when you hear from the witnesses that are coming
24 before you, each and every one of them, they might not be
25 able to give you every piece to what happened, not all of

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1 them saw everything, but please remember, every single
2 person that comes up into that witness stand is someone that
3 each of you will look at, listen to, decide whether or not
4 they're credible, whether or not what they're telling you
5 rises to the level of you believing what they say and that
6 it makes sense and puts the entire case together. That is
7 what you're going to do. That's why everything you hear
8 today and over the next couple of days is going to be
9 important. So let me just tell you a little bit about what
10 you're going to hear. Unfortunately when we have cases that
11 involve situations like drugs, and it involves situations
12 where people maybe haven't made great choices in their life,
13 someone might get caught in the middle of it. Antonio
14 Thompson was that person. Antonio Thompson is from the
15 Greenville area but he has family here in Chester County, so
16 in February of 2021 he visited this area. When he came to
17 visit this particular area he actually had a room at the
18 Executive Inn, and you'll see evidence from that. You'll
19 hear from someone who works there, they'll document that he
20 was there. And at some point his vehicle became disabled on
21 I-77. He ended up getting a ride. You're going to hear
22 from the trooper who's going to tell you that he documented
23 that it was Antonio Thompson, his vehicle that was on the
24 side of the road. All of this is going to lead up to the
25 point at the Executive Inn where Mr. Thompson unfortunately

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1 met up with the wrong person and it cost him his life.
2 Kenneth Wherry was that person. You're going to hear how
3 Mr. Wherry was using crack all weekend long. You'll hear
4 how Lavondia Wherry, his cousin, his first cousin, she
5 drives a Toyota Tacoma, she's going to tell you: I was
6 using crack all weekend long. You're going to hear from
7 Mary Elizabeth Muckenfuss, she's going to tell you, guess
8 what? I was using crack all weekend long. So why is that
9 so important? I'm going to tell you why. People who use
10 drugs make bad decisions, the fact that they're using drugs
11 is a bad decision. Okay. But something that you're going
12 to hear when you hear the statements of individuals who
13 actually were involved in this particular case, you're going
14 to hear from one of those people, and I'm not going to tell
15 you who yet because I want you to listen and you're going to
16 know it when you hear it, that person is going to tell you:
17 People who use crack, you can't believe a thing they say,
18 not a thing. They're going to do anything and everything to
19 keep getting high. Anything to keep getting high. I'm
20 going to tell you, that anything includes murder. That's
21 what happened. February 27, 2021, when Antonio Thompson got
22 into the truck in the front passenger side with Von Wherry
23 driving, with the defendant, Kenneth Wherry, behind the
24 driver's seat, and with Mary Muckenfuss behind the
25 passenger's seat, Antonio Thompson was shot once, and that's

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1 all it took. His body was drug into the woods and left to
2 never be found, but for one of these witnesses got a
3 conscience and you're going to hear from her. Listen to the
4 details, ladies and gentlemen, be smart about your own
5 common sense and what you're going to hear. It's going to
6 tie together. Now, some of it may be here and there because
7 we have people who unfortunately were using crack all
8 weekend. However, when you hear from other witnesses who
9 saw these individuals, who saw them together, who can
10 document that these people were together, who can document
11 what happened to the vehicle, what happened to the body, it
12 will be very clear to all of you the person who shot and
13 killed Antonio Thompson on February 27, 2021, was no one
14 other than Kenneth Wherry. Thank you.

15 THE COURT: Counsel?

16 MS. BOULWARE: Thank you, Judge. Good afternoon. I
17 introduced you to myself before and I'll do it again, I'm
18 Kay Boulware, I'm Ken Wherry's attorney. And I am so happy
19 you guys are willing to be here and listen closely and pay
20 attention, because I'm going to ask you to do that a lot and
21 through the whole thing. The Judge is going to talk to you
22 about what reasonable doubt is. I'm going to tell you a
23 little brief definition that in my head is kind of the
24 easiest way to remember it, it's that there's no other
25 reasonable explanation other than Ken Wherry murdered Mr.

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1 Thompson. But what I submit to you, there is more than one
2 other reasonable explanation, and I think through the course
3 of the trial and these witnesses you will realize that. Law
4 enforcement decided, gosh, not very long at all after they
5 found Mr. Thompson's body, talked to a couple of folks:
6 Let's arrest Ken Wherry for murder, let's charge him with
7 murder. Okay. We'll stop there because we're done. We
8 have our person. There will be folks they didn't talk to,
9 and you'll hear about those folks, folks they just got
10 around to talking to even though they've had a year to do
11 it. But I would just ask you -- I'm going to keep it short
12 so we can go ahead and get this started, but I would ask you
13 to pay close attention to these folks. You folks are the
14 sole judges of a witness' credibility. You can decide if
15 you believe them, if you don't believe them, part of what
16 they say, all of what they say, none of what they say, but I
17 would ask that you keep that in mind when you're hearing
18 these folks. And also keep in mind, again, what I'm telling
19 you now, and we'll talk again at the end of this whole
20 thing, keep in mind not what necessarily got done, which you
21 will hear about, but what didn't get done and what wasn't
22 investigated, folks they didn't talk to. They might have
23 shed a lot more light on this thing than just deciding
24 Kenneth Wherry is the one who murdered Mr. Thompson, let's
25 let it go, done, file that warrant, lock up Mr. Wherry. And

TWANA SCOTT - DIRECT

1 I thank you for your service and we'll be talking again
2 probably in a couple of days. Thank you.

3 MS. LIVELY: Yes. Thank you, Your Honor. The State
4 would call Tawana Scott to the stand.

5 The witness, TWANA SCOTT, was first duly sworn and
6 Testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LIVELY:

9 Q Officer Scott, please pull that microphone toward you
10 so we can make sure we all hear you. State your name for
11 the record, please.

12 A Tawana Scott.

13 Q Where are you currently employed?

14 A Chester County Sheriff's Office.

15 Q How long have you worked at the sheriff's office?

16 A Since 2011.

17 Q And in what capacity do you work there?

18 A I'm a deputy working as a SRO right now.

19 Q Okay. And as a SRO, that's a school resource officer?

20 A Yes, ma'am.

21 Q And how long have you been a school resource officer?

22 A Since 2015.

23 Q Is it normal for you to be called in to a murder
24 investigation?

25 A No, ma'am.

TWANA SCOTT - DIRECT

1 Q Is this the first time something like this has actually
2 happened to you then?

3 A Being called in off-duty for a murder? Yes, ma'am.

4 Q Okay. Now, if you would, please, Deputy Scott, tell
5 the jury what happened on February the 27th, 2021, that got
6 you involved in this particular case.

7 A I go to Ember Church, a friend of mine attends Ember
8 Church as well, Hazel Dove, she called me and told me her
9 daughter needed to speak to me because she witnessed a
10 murder.

11 Q And how close are you to Ms. Dove?

12 A We're real close. We've been attending the same church
13 for a few years.

14 Q And when she called you, if you don't -- do you recall
15 what day of the week it was that you received that phone
16 call?

17 A It was a Saturday.

18 Q A Saturday. Do you work on Saturdays?

19 A No, ma'am.

20 Q On that particular Saturday when you received that
21 call, was this an unusual situation?

22 A Absolutely.

23 Q What did you do?

24 A I was bathing my grandkids so I told her I would have
25 to call her right back. I called my supervisor and

TWANA SCOTT - DIRECT

1 explained to him what she had said and asked permission to
2 actually go talk to her daughter, and he said if I felt
3 comfortable that was fine.

4 Q Okay. At that point in time did you know what to
5 believe or what was going on?

6 A No, ma'am.

7 Q All right. And do you know her daughter?

8 A I've heard of her daughter.

9 Q Okay.

10 A I don't know her personally.

11 Q Whenever you -- you said you were bathing your
12 grandkids.

13 A Yes.

14 Q Do you recall about what time that was?

15 A 8:00.

16 Q 8:00 p.m. or a.m.?

17 A P.m.

18 Q So it was Saturday, 8:00 p.m.

19 A Yeah. I was getting the boys ready for bed.

20 Q Okay. So you were getting ready to put them to bed,
21 you called your supervisor to kind of say what was going on,
22 he said if you felt comfortable just go ahead and meet with
23 her.

24 A Yes, ma'am.

25 Q Is that right? Okay. So where did you go?

TWANA SCOTT - DIRECT

1 A Ms. Dove told me to come to the townhouse. I went and
2 picked her up there and then she said her daughter was on
3 Hardin Straight Road, she didn't know the numerics at the
4 time so she said she knew the house because she had been
5 there before.

6 Q All right. So at that point were you just following
7 instructions --

8 A Yes. Ms. Dove was in my vehicle and she was giving me
9 directions as we went.

10 Q Were you wearing any kind of recording device or body
11 worn camera at that point?

12 A No, ma'am, I was not.

13 Q Were you in your official vehicle at that point?

14 A No, ma'am. I was in my personal vehicle.

15 Q Were you completely unprepared for this situation?

16 A Yes, ma'am, I was.

17 Q So whenever you picked up Ms. Dove then, was she able
18 to take you to the location she mentioned to you?

19 A She did.

20 Q All right. And do you remember approximately where
21 that was, or exactly the house number?

22 A It was on Hardin Straight Road, [REDACTED] Hardin Straight
23 Road.

24 Q All right. And are you familiar with that particular
25 home?

TWANA SCOTT - DIRECT

1 A I'm sorry, it was [REDACTED] Hardin Straight Road. And, no,
2 ma'am, I'm not familiar with that home.

3 Q All right. So you were not familiar then with the
4 person who lived there?

5 A The homeowner was not there, her son was there.

6 Q Okay. Well, then I'll just ask you, please tell the
7 jury when you got there what happened next.

8 A When I arrived there the son of the homeowner came out,
9 Mr. Clarence Wilks, he came out and he told me that she was
10 in the house, and he went inside the house and brought her
11 out to the carport and that's where we talked the whole
12 time, in the carport.

13 Q And prior to -- so who did he bring out? I'm sorry.

14 A Mary Muckenfuss, or Elizabeth Muckenfuss.

15 Q And when he brought her out, once again, did you
16 recognize her, or know who she was?

17 A I did.

18 Q And so at that point in time, did you have a
19 conversation with Ms. Muckenfuss?

20 A At that time I advised her that I was going to
21 mirandize -- read her her rights, and my supervisor was on
22 the phone, Captain Peeples. So I read her her rights and
23 she agreed to speak with me.

24 Q Okay. And was that a precaution that you did not
25 knowing what she was going to tell you?

TWANA SCOTT - DIRECT

1 A Absolutely, yes.

2 Q All right. So Ms. Scott, was she able to provide you
3 some information that gave you concern?

4 A Yes, she did.

5 Q And as a result of what Ms. Muckenfuss told you, what
6 did you do?

7 A I called -- well, my supervisor was on the phone, so I
8 advised him that I thought we needed an investigator to come
9 out and speak with her further to follow-up with whatever
10 she was saying.

11 Q All right. Could she give you the name of any
12 individuals that were involved at that point?

13 A She couldn't give me full names, only a nickname.

14 Q All right. Fair enough. So about how long do you
15 think you were out there with Ms. Muckenfuss at that time?

16 A Probably a hour, maybe a little more.

17 Q And who actually showed up from investigations to take
18 over at that point?

19 A Investigator Burch as well as Sergeant Telly Crockett.

20 Q Whenever both investigators showed up at that
21 particular location, what did you do after that?

22 A I took her mom to -- back to Townhouse Apartments and I
23 went home.

24 Q Well, let me back up for just a minute. Whenever you
25 first came across Ms. Muckenfuss when she came out, what was

TWANA SCOTT - DIRECT

1 her -- how was she acting? What was her demeanor?

2 A She was visibly upset, she was crying. She was just --
3 she was in a rocking chair, she was just balled up.

4 Q And was she like that the entire time that you talked
5 to her?

6 A Yes, ma'am, she was.

7 Q So after you dropped off Ms. Dove back at her
8 apartment, did you go back to Hardin Straight, or was that
9 all you did?

10 A That's all I did. I went home.

11 Q You went home?

12 A Yes, ma'am.

13 Q Did you have anything else to do with this particular
14 investigation after making that initial contact?

15 A No, ma'am.

16 Q Okay.

17 MS. LIVELY: Thank you. Answer any questions the
18 defense may have.

19 CROSS EXAMINATION

20 BY MS. BOULWARE:

21 Q Deputy Scott?

22 A Yes.

23 Q Okay. So you were just the initial contact for -- with
24 Ms. Muckenfuss?

25 A Her mother called me.

TWANA SCOTT - CROSS

1 Q With her mother, and then with Ms. Muckenfuss?

2 A Yes.

3 Q Okay. And you called investigators to come out and
4 talk to her further, you did not do any actual --

5 A I didn't call the investigators, my supervisor called.

6 Q Supervisor, sorry about that. But you didn't do any
7 actual investigating on this case yourself, did you?

8 A No.

9 MS. BOULWARE: Thank you. That's all, Judge.

10 THE COURT: Anything further?

11 MS. LIVELY: Not from the State, Your Honor. Thank
12 you, you're excused from your subpoena. Thank you.

13 Clarence Wilks.

14 The witness, CLARENCE WILKS, was first duly sworn and

15 Testified as follows:

16 DIRECT EXAMINATION

17 BY MS. LIVELY:

18 Q Mr. Wilks, thank you. If you don't mind while you're
19 seated there, could you just pull that down?

20 A Uh-huh.

21 Q And also pull the microphone toward you so we can be
22 sure to hear you. Thank you, sir.

23 A Uh-huh.

24 Q State your name again for the record.

25 A My name is Clarence Edward Wilks.

CLARENCE WILKS - DIRECT

- 1 Q And how do you spell your last name?
- 2 A W-i-l-k-s.
- 3 Q Mr. Wilks, do you live in Chester County?
- 4 A Yes, ma'am, I do.
- 5 Q And where do you live?
- 6 A [REDACTED] Hardin Straight Road.
- 7 Q And is that your home, or do you live with relatives?
- 8 A Well, my mom's home, but, yeah.
- 9 Q All right. And how long have you lived there, Mr.
- 10 Wilks.
- 11 A Like 45 years.
- 12 Q And Mr. Wilks, is that in Chester County?
- 13 A Yes, ma'am, it is.
- 14 Q So Mr. Wilks, tell the jury, do you know a girl by the
- 15 name of Mary Elizabeth Muckenfuss?
- 16 A I do. I do.
- 17 Q Do you know a Kenneth Wherry?
- 18 A I don't.
- 19 Q Do you know a Lavondia Wherry?
- 20 A I don't.
- 21 Q How about Antonio Thompson?
- 22 A I don't, no, ma'am.
- 23 Q All right. So let me back up for just a minute then.
- 24 Tell the jury, on February 27th of 2021, did you have an
- 25 opportunity to actually run into Ms. Mary Elizabeth

CLARENCE WILKS - DIRECT

1 Muckenfuss?

2 A I did.

3 Q All right. If you'll please just tell this jury how
4 you came into contact with Ms. Muckenfuss that day.

5 A Okay. I had paid my neighbor to take me to the grocery
6 store, which is IGA. So we went to IGA, I did my shopping.
7 I was going to go by my uncle's house and he lives on Cedar
8 Street. So the easiest way to do that is go down Lancaster
9 Street, take a left down Cemetery -- I mean, a right on
10 Cemetery Street, and then go through by the funeral home
11 there so you can avoid a lot of the traffic, so I instructed
12 my ride to go that way so I could go by my uncle's house.
13 As we were going by the little yellow house in front of
14 Kings -- I can't remember the guy's name, but anyway,
15 Elizabeth called out to me. Well, at first I didn't know
16 who he was, it was like: Clarence. So I was like:
17 Somebody called me. So when I looked around it was
18 Elizabeth. So she came up to the door and she was like: I
19 need a friend, I need somebody to talk to. And I told
20 her --

21 MS. BOULWARE: Object, Your Honor, it's hearsay.

22 A Excuse me, ma'am?

23 MS. LIVELY: The Judge is going to -- the Judge is
24 going to ask you to -- hold on a second. Your Honor, she's
25 actually a codefendant in this case, and also it's just to

CLARENCE WILKS - DIRECT

1 establish how she ended up at his house, which is where
2 Ms. -- Deputy Scott already testified that she went to.

3 THE COURT: I'm going to overrule the objection. Go
4 ahead.

5 A Continue.

6 Q You can go ahead and answer the question. Whenever you
7 ran into Ms. Muckenfuss and she came up to your vehicle,
8 which you just stated, tell the jury what happened next.

9 A She was crying, I mean really crying, and I asked her
10 what was wrong, and she was like: I need a friend, I need a
11 friend to talk to. I was like: Well, Elizabeth, I'm headed
12 home, I just came from the grocery store. I told her, I
13 said: Look, I've got to go. And she told me, she say: You
14 promised me if I ever needed you that you would be there for
15 me as a friend, because I've known her for awhile. I never
16 seen Elizabeth cry like this just continuously, so I told
17 her, I said: Get in. And instead of going by my uncle's
18 house I went straight home. She was --

19 Q So let me ask you this, when you got to your house --

20 A Yes, ma'am.

21 Q -- who stayed at your house at that point?

22 A Just me. My mom is in an assisted living home, so just
23 me.

24 Q Thank you. So it was just you. What about the friend
25 who had given you a ride, where did he go?

CLARENCE WILKS - DIRECT

1 A Oh, he went home. It was a neighbor, I had paid him
2 just to take me to the store.

3 Q Okay. So who again was at the house with you? Was it
4 just Ms. Muckenfuss?

5 A Just Elizabeth and I.

6 Q Okay. So tell the jury how she was and what happened
7 at that point.

8 A Well, I had never seen Elizabeth just cry like that.
9 She's strong so she never really just continuously cried.
10 And I was like: Elizabeth, what's wrong? And she just
11 continuously cried. And then I told her: You better call
12 your mama. So that's when I gave her my phone and told her
13 to call her mama. Because I knew I had never seen her cry
14 like that so I knew something had to be wrong.

15 Q Okay. And Mr. Wilks -- and you've already -- you said
16 that you had asked her kind of what was wrong. Did she ever
17 specifically tell you what had happened?

18 A No, ma'am. No, ma'am. That's when I handed her the
19 phone.

20 Q Okay. Thank you. So you handed her the phone. And at
21 that point did you see her on the phone with someone?

22 A No. Well, I handed her the phone, she was on my car
23 porch. And I went back in the house, you know, I gave her
24 some privacy.

25 Q Sure. All right. After that telephone conversation

CLARENCE WILKS - DIRECT

1 happened, tell the jury what happened next.

2 A Okay. About 20 minutes later I went out to check on
3 her, because I let her have my phone, and I told her did she
4 use the phone -- I asked her did she use the phone and she
5 called her mom, so her mom -- about 20 minutes later her mom
6 pulled up, and you know, we spoke and all. They went over
7 and started talking, I went back in the house. And a few
8 minutes after that -- well, when I say a few minutes, maybe
9 about 15 minutes later Ms. Tawana, she pulled up. So I came
10 out, greeted her, asked her did she need anything to drink,
11 she said: No, thank you. And then I asked them: Well, are
12 you going to start talking about whatever? She said: Yeah.
13 I went right back in the house, I did not want to hear it.

14 Q So you said you didn't want to hear it. So you heard
15 nothing about what was going on that -- Ms. Muckenfuss never
16 told you exactly why she was crying.

17 A No, ma'am, she didn't.

18 Q Now, after Deputy Scott -- did you know Deputy Scott
19 was with the Chester County Sheriff's Office at that point?

20 A What, Tawana?

21 Q Yes.

22 A Well, yeah, I've known her for you a long time so I
23 knew she was affiliated with them.

24 Q Okay. I just wanted to make that connection. So Mr.
25 Wilks, after you saw Deputy Scott there with Mary Muckenfuss

CLARENCE WILKS - DIRECT

1 and her mother, did any other people show up after that
2 point?

3 A Well, after I went back in the house I stayed there
4 probably another 20 or 30 minutes and I came back out, asked
5 them did they want anything, and two more officers showed
6 up. I'm not sure of their names, but two more showed up.

7 Q And when those two additional officers showed up tell
8 the jury what happened next, if you recall.

9 A Well, I came out and asked them did they need anything
10 and went back in the house, and they sat out and talked on
11 the car porch for another probably 20 or 30 minutes, and
12 then that's when they left.

13 Q After that point, did you see or talk to Mary Elizabeth
14 Muckenfuss again?

15 A No, ma'am, I didn't.

16 Q And have you talked to her again since that date up
17 through today?

18 A No, ma'am, I haven't.

19 Q At some point did you ever find out what happened?

20 A Yes, ma'am, when I read the paper that Friday. Because
21 we get a subscription and --

22 Q All right. Don't tell me what was in the paper. But
23 after you read the paper, is that when you realized what
24 happened?

25 A Yes, ma'am.

CLARENCE WILKS - CROSS/REDIRECT

1 Q Tall right.

2 MS. LIVELY: Mr. Wilks, thank you so much. Answer any
3 questions the defense may have.

4 CROSS EXAMINATION

5 BY MS. BOULWARE:

6 Q Good afternoon, Mr. Wilks.

7 A Good afternoon.

8 Q I just have one quick question for you. You're here
9 today because investigators from the sheriff's office asked
10 to speak with you; is that correct?

11 A Yes, ma'am.

12 Q When did they do that?

13 A Okay. Now, what do you mean, when did they ask to
14 speak to me or --

15 Q When did they interview you.

16 A About a week ago.

17 Q Okay.

18 MS. BOULWARE: Thank you very much.

19 REDIRECT EXAMINATION

20 BY MS. LIVELY:

21 Q Is anything you told them a week ago different from
22 what happened on February 27th of 2021?

23 A No, ma'am.

24 MS. LIVELY: Thank you. That's all I have.

25 THE COURT: You may step down. Thank you.

RIKKI BURCH - DIRECT

1 MS. LIVELY: And may he be excused from his subpoena?

2 THE COURT: Any objection?

3 MS. BOULWARE: No objection.

4 THE COURT: Thank you, sir.

5 MS. LIVELY: Detective Rikki Burch.

6 The witness, RIKKI BURCH, was first duly sworn and

7 Testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LIVELY:

10 Q Detective Burch, where do you currently work?

11 A Chester County Sheriff's Office.

12 Q And how long have you worked at the sheriff's office?

13 A Since 2014.

14 Q And in what capacity are you -- have you been at the
15 sheriff's office? What different jobs have you had?

16 A I started out as a jailer working at the detention
17 center, then I worked as a deputy on the road, and now I'm a
18 detective with the Chester County Sheriff's Office.

19 Q When did you become a detective?

20 A 2000 and -- I'm not quite sure.

21 Q Was it within the last couple of years, three years?

22 A I've been back there for four years.

23 Q Four years. All right. Are you in -- is there
24 specific types of investigations that you do that are
25 different from other investigators like violent crimes,

RIKKI BURCH - DIRECT

1 property crimes, or does everybody pretty much do whatever
2 they get assigned to?

3 A No, ma'am. I work crimes against people dealing with
4 children, rape and murders.

5 Q All right. And whenever you work these types of cases,
6 are you usually not the only investigator on a scene? Do
7 other investigators also assist?

8 A Yes, ma'am.

9 Q Who is your direct supervisor?

10 A Sergeant Telly Crockett.

11 Q And does he have a supervisor who actually takes -- who
12 watches over the entire investigative unit?

13 A Yes, ma'am, it's Lieutenant Wade Young.

14 Q So Detective Burch, the weekend of February the 27th of
15 2021, did you receive information that required an
16 investigator to respond to a matter in Chester County?

17 A Yes, ma'am.

18 Q And please tell the jury what it was that you were
19 responding to.

20 A I received a phone call from Sergeant Crockett in
21 reference to meeting the school resource officer, Twana
22 Scott, at a residence on Hardin Straight Road, which is in
23 the county of Chester, in reference to a female who states
24 that she had witnessed a murder.

25 Q So at that point in time -- let me just step back for a

RIKKI BURCH - DIRECT

1 minute. Had there been any calls before then into 911 to
2 report such a crime?

3 A No, ma'am.

4 Q So at that particular moment when you received that
5 information, what did you think?

6 A I thought she was crazy.

7 Q Okay. And so -- but as an investigator what did you?

8 A We still had to investigate.

9 Q Okay. All right. But at that point you had no
10 information anything had happened.

11 A No, ma'am.

12 Q All right. So, Detective Burch, whenever you responded
13 to Hardin Straight Road, who all was there?

14 A When I arrived the school resource officer, Twana
15 Scott, was on scene, also Mary Muckenfuss, along with her
16 mother, and then a gentleman by the name of Clarence.

17 Q Did you know any of those individuals other than Deputy
18 Scott?

19 A No, ma'am.

20 Q When you arrived there, was it just you or were you
21 with another investigator?

22 A I arrived first shortly, and shortly after I arrived
23 Sergeant Crockett arrived on scene.

24 Q Whenever the two of you were there, what was the first
25 thing you did regarding trying to find out what was going

RIKKI BURCH - DIRECT

1 on?

2 A I spoke to the school resource officer, Ms. Scott, who
3 had done spoke with Ms. Mary Muckenfuss.

4 Q Did she tell you whether or not she had Mirandized Ms.
5 Muckenfuss out of an abundance of caution?

6 A Yes, ma'am, she said she did.

7 Q Okay. At that point in time, did she have any type of
8 body-worn camera or recording device of that interview?

9 A No, ma'am.

10 Q As a result of that, what did you and Investigator
11 Crockett do?

12 A We decided at that point we needed to transport Ms.
13 Muckenfuss to the Chester County Sheriff's Office in order
14 to put her in the interview room where it is audio and video
15 recorded.

16 Q Before you did that, tell the jury what the demeanor
17 was for Ms. Muckenfuss whenever you got there.

18 A Ms. Muckenfuss was crying hysterically, she was scared,
19 just appeared very distraught.

20 Q And were you wearing any body-worn camera or any type
21 of device that recorded that initial meeting?

22 A No, ma'am.

23 Q Do you know whether Investigator Crockett did?

24 A I'm not sure.

25 Q So after that initial meeting and you said that you

RIKKI BURCH - DIRECT

1 thought that y'all should take her to the Law Enforcement
2 Center, is that what you did?

3 A Yes, ma'am.

4 Q All right. And once you took her to the Law
5 Enforcement Center, what was the first thing that you did
6 prior to actually taking her statement?

7 A We placed her into the interview room. We spoke to Ms.
8 Muckenfuss to let her know that it was video and audio
9 recorded, and we also read her Miranda rights to her.

10 Q And when you read her Miranda rights to her, did she
11 appear to understand what it was that you were telling her
12 that was about to happen?

13 A Yes, ma'am.

14 Q Did you actually have her document on the Miranda form
15 that she was waiving her rights to speak to law enforcement
16 at that time?

17 A Yes, ma'am.

18 Q All right. And in doing so, was it also witnessed by
19 you and Sergeant Crockett?

20 A Yes, ma'am, it was.

21 Q Do you recall about what time of the evening it was at
22 that point whenever you actually took her statement?

23 A I don't recall the exact time. I do know it was around
24 10:00 when we got the initial call.

25 Q All right. And so whenever you would have filled out

RIKKI BURCH - DIRECT

1 the Miranda form, would that have been documented on the
2 form?

3 A Yes, ma'am. On the form it does have a date and time
4 of Miranda.

5 Q Okay. And I'm going to show you State's Exhibit Number
6 32. I'm going to show you what's marked as State's Exhibit
7 Number 32.

8 MS. LIVELY: It's my understanding, Your Honor, we are
9 entering this into evidence without objection.

10 MS. BOULWARE: That is correct, Your Honor.

11 THE COURT: In without objection.

12 (State's 32 was received.)

13 MS. LIVELY: Thank you, Your Honor.

14 Q You can refer to that document, please, Detective
15 Burch. What time was it that you actually interviewed Ms.
16 Muckenfuss officially for the first time?

17 A At 10:43 p.m.

18 Q And what date was that?

19 A On February the 27th, 2021.

20 Q All right. So Detective Burch, whenever you began to
21 interview Ms. Muckenfuss, how was she acting about what had
22 happened to her that day?

23 A She was still very upset, crying, appeared real scared
24 about what happened.

25 Q Okay. And just tell the jury how she began to tell you

RIKKI BURCH - DIRECT

1 what she had actually experienced that particular day.

2 A Ms. Muckenfuss stated that she was at a crack house.

3 She was going to the Executive Inn in Chester County. She

4 asked Ms. Lavondia Wherry and Mr. Kenneth Wherry to give her

5 a ride to the Executive Inn. They did, in fact, take her to

6 the Executive Inn. At the time the room was not ready so

7 she called Ms. Lavondia back to pick her up to go get

8 another hit of crack. When Ms. Vonda picked her up she

9 stated that there was another gentleman that was sitting in

10 the front passenger seat, at this time she did not know who

11 this gentleman was. She was supposed -- excuse me, Ms.

12 Vonda was going to take Mary to Pickney Road. When they

13 left out of the Executive Inn they turned the wrong way,

14 Mary said she became upset wanting to know why they was

15 going that way. Lavondia stated that they was going to drop

16 the gentleman's vehicle off because it had broke down.

17 Q I'm going to stop you right there, okay, just so we can

18 make sure the jury is following you. So, Detective Burch,

19 you said that Mary Muckenfuss told you that she was wanting

20 to go get a ride to the Executive Inn.

21 A Yes, ma'am.

22 Q She had been in a crack house, is that what she said?

23 A Yes, ma'am.

24 Q And is this where she made contact with Lavondia Wherry

25 and Kenneth Wherry?

RIKKI BURCH - DIRECT

1 A Yes, ma'am.

2 Q So whenever they were at -- when she was at the
3 Executive Inn you mentioned that she said that at some point
4 another person ended up being in the vehicle; is that right?

5 A Yes, ma'am.

6 Q Whose vehicle was it?

7 A It was Ms. Lavondia Wherry's vehicle, it was a truck.

8 Q Who was driving the vehicle?

9 A Ms. Lavondia Wherry.

10 Q Was she able to give you details about who was seated
11 where in the vehicle?

12 A Yes, ma'am, she did. Lavondia was driving the vehicle,
13 the subject that she didn't know who he was was in the
14 passenger seat, Mary Muckenfuss was sitting behind him, and
15 Kenneth Wherry was sitting behind Lavondia in the back seat
16 beside Mary.

17 Q And so at that point you had mentioned that Mary
18 Muckenfuss got upset because she was wanting to go to
19 Pickney Street?

20 A Yes, ma'am.

21 Q And why was it that she said she wanted to go to
22 Pickney Street?

23 A She was meeting with somebody to get some more crack.

24 Q But instead of going to Pickney Street, which way did
25 Lavondia Wherry turn?

RIKKI BURCH - DIRECT

1 A She turned right going towards Saluda Road.

2 Q When that happened at that point did she tell you --
3 you mentioned she said she got angry; is that right?

4 A Yes, ma'am.

5 Q So where did she tell you they went next?

6 A She said they stopped at Lavondia Wherry's house on
7 Enix Road. Lavondia got out of the vehicle while the other
8 three stayed inside the vehicle, which was the unknown male,
9 Mary Muckenfuss and Kenneth Wherry, they both sat inside the
10 vehicle while Ms. Wherry was getting whatever out of the
11 house. She did not know what she was getting at that time.

12 Q Okay. So at some point did she tell you that Lavondia
13 came back to the truck?

14 A Yes, ma'am, she did.

15 Q Whenever Lavondia came back to the truck, what did she
16 tell you happened next?

17 A Mary stated that they left out of Enix Road, they made
18 a left going towards Rock Hill and Saluda Road. She said
19 Kenneth Wherry looked at her and told her to get down in the
20 floorboard. At this time as she was getting down in the
21 floorboard she seen Kenneth Wherry pull a gun out of his
22 pocket. She stated as they was turning right onto Cedar
23 Hurst Road she heard a loud boom. At that point she could
24 smell gun smoke. She stated after they turned on Cedar
25 Hurst Road the vehicle came to a stop. She said Lavondia

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1 Wherry and Kenneth Wherry got out of the vehicle and went to
2 the passenger side where our victim was sitting, went
3 through his pockets, got some belongings out, said they got
4 back in the vehicle. Mary said that she did see Kenneth
5 Wherry with the victim's wallet. At this point they kept
6 traveling down Cedar Hurst Road. They turned onto a
7 different road. Mary said she wasn't sure the name of the
8 road, she just remembers it was a dirt road.

9 Q I'm going to stop you right there. Okay?

10 A Yes, ma'am.

11 Q You're fine. Whenever she said that Lavondia and
12 Kenneth Wherry got out and went to the side of the vehicle
13 where the victim was seated, did she ever get out of the
14 vehicle? Did Mary ever get out of the vehicle?

15 A No, ma'am.

16 Q Not at that point.

17 A No, ma'am.

18 Q So whenever Lavondia and Kenneth got back into the
19 truck, at that point did she say anything about what was
20 going on with the victim after she said they went through
21 his pockets?

22 A Yeah. She said she went through the pockets. She said
23 that Ms. Lavondia did sit the passenger seat back so the
24 blood was actually dripping into the back seat where Mary
25 Muckenfuss was sitting, so she scooted over. She said at

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1 that -- she knew he was dead at that point.

2 Q So you said that they had taken a right onto Cedar
3 Hurst. And then where did they -- you said something about
4 a wooded road. Tell the jury what she told you.

5 A She stated that after they traveled down Cedar Hurst
6 they made a left onto a dirt road. They got on the dirt
7 road, came to a stop, all three exited the vehicle; Mary
8 Muckenfuss, Lavondia Wherry and Kenneth Wherry exited out of
9 the vehicle. Lavondia and Kenneth then drug the victim into
10 the woods and left him in the woods.

11 Q And what did Mary Muckenfuss state she did while this
12 was going on?

13 A She stated that she looked, like trying to make sure
14 like no one was coming, trying to be a lookout.

15 Q Okay. At that point what did she tell you that they
16 did next?

17 A They then got in the vehicle and they traveled to
18 Danny's Store, which is on Pickney Road, and Mary got rid of
19 the victim's cell phone, she dropped it in a drain. They
20 left from Danny's Store and went to a carwash and they
21 cleaned the car out at the carwash.

22 Q Was she able to give you a specific location of what
23 car wash they went to?

24 A Yes, ma'am. It was the one on Columbia Road.

25 Q And is that in the city of Chester?

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1 A Yes, ma'am.

2 Q So after they -- did she tell you what happened while
3 they were there cleaning out the truck?

4 A She stated that she ended up putting the quarters in
5 the machine. Lavondia made her take her pants off because
6 her pants did have blood on them, and that they used a
7 washer to clean the inside of the truck out.

8 Q After the truck was cleaned out, where did she go next?

9 A They went back to the Executive Inn.

10 Q When they -- now, let me just back up for a minute.
11 Did Ms. Muckenfuss tell you whether it was daytime or
12 nighttime when all this was happening?

13 A This was daytime.

14 Q It was daytime.

15 A Yes, ma'am.

16 Q All right. So whenever -- after the vehicle was
17 cleaned out you said they went back to the Executive Inn.
18 What did she tell you happened there?

19 A Mary stated that there was a bag that contained some
20 items from our victim that she took and threw in a trash can
21 upstairs at the Executive Inn.

22 Q Did she tell you what she did after that?

23 A At that point she said that she stayed in the motel
24 room. Her friend ended up going to Wal-Mart, and then at
25 that point is when we decided to stop the interview and try

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1 to confirm her story.

2 Q So at that point, did you have any information coming
3 in about the possibility of a murder or crime had been
4 committed?

5 A No, ma'am. We still hadn't got any calls.

6 Q Was the only information that you had what Mary
7 Muckenfuss was telling you that night?

8 A Yes, ma'am.

9 Q So you said that you stopped the interview. What did
10 you and Sergeant Crockett do next?

11 A We placed Mary Muckenfuss in the vehicle and decided to
12 get her to take us the route that they went. The first
13 place she took us was to Danny's Food Mart where she got rid
14 of the phone. We --

15 Q And if you'll hold on for just a moment, I'm sorry to
16 keep interrupting you, but I'm going to --

17 MS. LIVELY: Your Honor, at this time I wanted to use
18 the map that we've actually got to assist the jury and the
19 witness.

20 (Break in proceedings.)

21 MS. LIVELY: Your Honor, the State moves State's
22 Exhibit 33 into evidence at this time it's my understanding
23 without objection.

24 MS. BOULWARE: Without objection.

25 THE COURT: In without objection.

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1 (State's 33 was received.)

2 MS. LIVELY: And, Your Honor, if it please the Court?

3 If the witness could step down for assistance with, you

4 know, showing the jury.

5 THE COURT: Sure.

6 MS. LIVELY: Thank you.

7 Q If you'll step down. All right. So you said that you

8 went to Danny's Food Mart. If you'll point out to the jury

9 where it was that she took you.

10 A It's going to be right here for Danny's Food Mart.

11 Q And whenever you got to Danny's Food Mart, was it just

12 you and Sergeant Crockett and Mary Muckenfuss at that point?

13 A At that point I do believe so.

14 Q And if you will just, please, so that the jury can kind

15 of follow along with where we're talking about, there are

16 two other locations that are highlighted on here. If you'll

17 just point out to the jury what those location are.

18 A This location is going to be the carwash on Columbia

19 Road, that's where they washed the vehicle out at. And this

20 is going to be the Executive Inn where they went to after

21 they washed the vehicle out.

22 Q Okay. So when you got to Danny's Food Mart, at that

23 location what was it that Mary Muckenfuss told you was

24 discarded at that particular place?

25 A It's going to be the victim's cell phone.

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1 Q The victim's cell phone. All right. So whenever she
2 told you this, who actually in your group of investigators
3 went to see whether or not that was true?

4 A At that point all of us was searching the parking lot.
5 We did look in the drain and located -- Sergeant Crockett
6 located the cell phone.

7 Q All right. So I'm going to show you what's been marked
8 as State's 1, 2, 3, 4, and 5. I'm going to show you 1
9 through 5. Just flip through those and tell me if you
10 recognize what's in those photos.

11 A Yes, ma'am. This is going to be the victim's cell
12 phone.

13 Q Okay. Thank you, ma'am. All right. So whenever you
14 get there -- and I see where the grate on the drain has
15 actually been pulled off; is that right?

16 A Yes, ma'am.

17 Q Okay. And that's in State's Exhibit 1. When that
18 grate was removed, what did you find?

19 A We found the victim's cell phone.

20 Q All right. What did you think at that moment?

21 A Oh my God, she's telling the truth, we've got a body.

22 Q But you -- at that point in time you're still not sure
23 about the body.

24 A No, ma'am.

25 Q However, was the phone retrieved?

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1 A Yes, ma'am, it was.

2 Q Okay. And when that phone was retrieved at that point
3 you're thinking where do we go next.

4 A Yes, ma'am.

5 Q Where do you go next?

6 A At that point we ride by Lavondia Wherry's house on
7 Enix Road. Lavondia's vehicle was not in the yard so we did
8 not stop. We left out of Lavondia's yard, made a left back
9 onto Saluda, we went the same route that Ms. Mary stated
10 that they went when -- that Lavondia and Kenneth went.

11 (Break in proceedings.)

12 MS. LIVELY: Your Honor, the State would move State's
13 Exhibit 34 into evidence at this time.

14 MS. BOULWARE: No objection.

15 THE COURT: In without objection.

16 (State's 34 was received.)

17 MS. LIVELY: And, Your Honor, also State's Exhibits 1
18 through 5 that Detective Burch identified regarding the
19 phone, that we would move those into evidence at this time
20 as well.

21 MS. BOULWARE: No objection.

22 THE COURT: In without objection.

23 (State's 1-5 were received.)

24 Q Okay. So you said that after the phone was located
25 then you go to Lavondia Wherry's house. Please point to the

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1 jury where that location is.

2 A That would be right here at [REDACTED] Enix Road.

3 Q All right. So when you got to Enix Road if you'll just
4 repeat again, was anybody there that you could see at that
5 point?

6 A No, ma'am, there wasn't.

7 Q So where did the three of you go after that point?

8 A We left out of Enix Road, we made a left onto Saluda
9 Road headed towards Cedar Hurst, we made a right on Cedar
10 Hurst.

11 Q And if you don't mind, I'm sorry, I don't mean to
12 interrupt you, if you will actually show the jury where
13 you're going. You can stand here and make sure that you're
14 not blocking.

15 A So we come off of Enix Road to Saluda, we make a left
16 going towards Cedar Hurst Road. And then I believe -- make
17 a left toward Cedar Hurst, we make a right on Cedar Hurst,
18 which is right here. We're traveling down Cedar Hurst.
19 When we turn Mary Muckenfuss states: This is where we
20 stopped and they got out of the vehicle to go through the
21 victim's pockets. We continued traveling onto Cedar Hurst.
22 As we're traveling Mary Muckenfuss tells us to make a left
23 onto -- it's a dirt road right here, which we identified as
24 Woods Road.

25 Q When you -- and which way did you turn there on Woods

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1 Road off of Cedar Hurst?

2 A We made a left.

3 Q All right. And tell the jury where you were seated in
4 the vehicle and where Mary and where Sergeant Crockett was.

5 A Sergeant Crockett was driving the vehicle, Mary
6 Muckenfuss was sitting in the passenger seat, and I was
7 sitting behind Sergeant Crockett.

8 Q So when you turned left onto Woods Road, tell the jury
9 what happened after that.

10 A As soon as we turned on Woods Road Mary says: Oh my
11 God, we're here. We traveled Woods Road, I'm in the back
12 seat trying to look out the window to see if I could
13 identify anything.

14 Q Was it dark on that road?

15 A Yes, ma'am, at that time it was dark.

16 Q Were there any street lights or house lights or
17 anything around?

18 A No, ma'am.

19 Q All right. Okay.

20 A So we traveled on Woods Road. Mary Muckenfuss says:
21 Y'all have gone too far, she tells us to turn around. So as
22 we turn around I'm actually hanging out the window with my
23 flashlight and we're traveling back down Woods Road towards
24 Cedar Hurst, and as we're traveling I see something white in
25 the woods. I tell Sergeant Crockett to stop, I believe I

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1 found the body. Once I stepped out of the vehicle I could
2 see the outline of the body and the white shirt.

3 Q And is the location that is actually put on this
4 particular map as to Woods Road site, does that represent
5 where the body was located?

6 A Yes, ma'am, it does.

7 Q Okay. How far was -- approximately was the body from
8 the road?

9 A I would say approximately 50 feet.

10 Q Okay. At anytime when you got there, did you actually
11 walk towards the body?

12 A No, ma'am, I did not. I stayed at the edge of the wood
13 line.

14 Q Okay. What did you and Sergeant Crockett do whenever
15 you realized a body was in the woods?

16 A At that point everyone was notified; the Sheriff,
17 Captain Crawford, and also SLED crime scene was notified.

18 Q And who actually secured the scene?

19 A Sergeant Crockett.

20 Q So whenever you secure a scene, what does that mean?

21 A That means we put yellow tape and no one goes inside
22 that scene until SLED crime scene arrives on scene to
23 process it.

24 Q So SLED crime scene is the one that would actually
25 process it, not you or Sergeant Crockett, correct?

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1 A SLED crime scene will process it.

2 Q All right. You can have a seat. After you secured
3 that crime scene, where did you, Sergeant Crockett, and Mary
4 Muckenfuss go?

5 A We went back to Enix Road to Lavondia Wherry's
6 residence.

7 Q Okay. Why did you go there?

8 A In an attempt to locate Lavondia Wherry, and also
9 locate the truck that was involved in this murder.

10 Q When you got to Enix Road, was anybody else there at
11 the house?

12 A Yes. We knocked on the door and Lavondia's son was
13 actually at the residence.

14 Q Okay. And at that point in time after -- did you
15 actually talk to the son or did someone -- one of the
16 investigators talk to him?

17 A Captain Crawford talked to the son.

18 Q Okay. And as a result of that conversation what
19 happened?

20 A Captain Crawford asked for permission to look into --
21 well, the son stated that the truck was in the garage when
22 Captain Crawford asked, so he asked for permission to look
23 in the garage and the son gave permission for Captain
24 Crawford to go in the garage, and he unlocked the garage for
25 us to look in there.

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1 Q Okay. Let me just back up for one minute and show you
2 State's 14, 15, 16 and 17. This is State's 14 through 17?

3 MS. LIVELY: We would move to enter these it's my
4 understanding without objection.

5 MS. BOULWARE: No objection.

6 THE COURT: In without objection.

7 (State's 14-17 were received.)

8 MS. LIVELY: Thank you, Your Honor.

9 Q Let me show you these four photos that are in evidence
10 without objection. Is that the location where you ended up
11 on that night where the body of Antonio Thompson was found?

12 A Yes, ma'am, it is.

13 Q So Detective Burch, at this point you had interviewed
14 Ms. Muckenfuss, it was about 10:43 p.m. that night. About
15 what time was it at this point where you're out there and
16 the body is located?

17 A I believe it was around 1:00 in the morning.

18 Q All right. So after that point when the body was
19 found, SLED crime scene was called out, you already
20 testified you went to Enix Road and the son of Lavondia
21 Wherry was there and gave you consent to look in the garage;
22 is that right?

23 A Yes, ma'am.

24 Q Okay. And when that happened tell the jury what took
25 place.

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1 A So we started looking into the garage, we did find Ms.
2 Lavondia Wherry's truck. While looking through the truck we
3 noticed that there was some blood still left inside the
4 truck. At that time Captain Crawford stated that he had a
5 gun, and we backed out at that point and got a search
6 warrant for the residence and the garage.

7 Q So was anything seized or taken at that point?

8 A No, ma'am.

9 Q All right. But a gun was located and you stated that
10 some blood was seen in the truck.

11 A Yes, ma'am.

12 Q All right. So was a search warrant actually obtained
13 so that a proper search could be done for the house and the
14 vehicle in the garage?

15 A Yes, ma'am, it was.

16 Q Did you conduct that search warrant?

17 A No, ma'am, I did not.

18 Q All right. So after that information came out and you
19 and Sergeant Crockett were still there, what did you do
20 next?

21 A We called for SLED crime scene to come to the residence
22 after they cleared up Woods Road to process that scene. At
23 that point myself and Sergeant Crockett went to the
24 Executive Inn to see if we could locate the bag of items
25 that was thrown in the trash by Mary Muckenfuss.

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1 Q Okay. So at that point you found the phone that she
2 told you where to find --

3 A Yes, ma'am.

4 Q -- at Danny's Food Mart, and then you found the body of
5 Antonio Thompson; is that correct?

6 A Yes, ma'am.

7 Q When you found the body of Antonio Thompson just for
8 purposes of jurisdiction, was that in the county of Chester?

9 A Yes, ma'am, it was.

10 Q Okay. So at that point you stated after y'all left
11 Enix Road you did decide to go to the Executive Inn,
12 correct?

13 A Yes, ma'am.

14 Q When you got to the Executive Inn, tell the jury who it
15 was that actually went and looked for this bag.

16 A I was the person that looked for the bag. When we
17 pulled up to the Executive Inn I noticed there was a trash
18 can upstairs where Mary Muckenfuss stated the trash can was
19 located. I went upstairs, I opened the top, that's when I
20 seen a clear bag sitting on top of the trash can. I
21 collected photos, and then I collected the bag from the
22 trash can.

23 Q And once again, who told you where to find this bag?

24 A Mary Muckenfuss.

25 Q I'm going to show you State's Exhibits 6 through 13 and

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1 ask if you recognize these photographs?

2 A Yes, ma'am.

3 (Break in proceedings.)

4 A Yes, ma'am. This is the plastic bag that was located
5 in the trash can along with Mr. Antonio's belongings.

6 MS. LIVELY: Your Honor, the State would move State's
7 Exhibits 6 through 13 into evidence at this time.

8 MS. BOULWARE: No objection.

9 THE COURT: In without objection.

10 (State's 6-13 were received.)

11 Q Detective Burch, whenever you located the bag, where
12 was it in the trash can?

13 A It was laying on top of the trash can.

14 Q Was it obvious to you that that's what you were looking
15 for?

16 A Yes, ma'am.

17 Q All right. So were you the one that pulled it out?

18 A Yes, ma'am, I was.

19 Q And when you pulled out that bag out of the trash
20 can -- if I can just retrieve those from you.

21 A Yes, ma'am.

22 Q So you got the trash can here and there's -- is it a
23 clear bag that you actually saw that was in the trash can?

24 A Yes, ma'am.

25 Q All right. So when you pulled out that particular bag,

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1 what did you do with what you found?

2 A I took it downstairs, and I took the items out of the
3 bag and placed them on top of Sergeant Crockett's truck so I
4 could get pictures of the items that was inside the bag.

5 Q All right. Up until that moment, Detective Burch, did
6 any of you have the name of the individual who was shot and
7 body left in the woods off of Woods Road?

8 A No, ma'am. It wasn't until we found his wallet.

9 Q And when you found the wallet, was it inside of this
10 bag?

11 A Yes, ma'am, it was.

12 Q And what other items did you find, do you recall?

13 A We also found some credit cards, and I remember there
14 was some paperwork that also had Antonio's name on it.

15 Q Okay. And once again, that's what these photos are
16 that we're showing to the jury, correct?

17 A Yes, ma'am.

18 Q Okay. So at that time was it called in that this was
19 the individual believed to be the victim that was in the
20 woods?

21 A Yes, ma'am.

22 Q So after you were able to actually secure those items,
23 what did you do with that at that point?

24 A At that point we placed it in an evidence bag.

25 Q All right. And where did you go after that?

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1 A We went back to the sheriff's office to talk to Mary
2 Muckenfuss again.

3 Q And why did you do that?

4 A Just to clarify everything that was told and tie up
5 some loose ends.

6 Q And during the first interview, was this -- were you
7 just at that point trying to figure out if a crime had ever
8 even been committed?

9 A Yes, ma'am.

10 Q So were there some details that you wanted to clear up
11 with Ms. Muckenfuss?

12 A Yes, ma'am.

13 Q And were you able to do so?

14 A Yes, ma'am.

15 Q In that second interview, do you recall about what time
16 it was whenever you interviewed Ms. Muckenfuss?

17 A No, ma'am.

18 Q Okay. But it would be actually documented on your
19 Miranda form; is that correct?

20 A Yes, ma'am.

21 Q Let me show you what is marked as State's Exhibit 35
22 and just ask if you recognize that document?

23 A Yes, ma'am.

24 Q Okay. And is that a standard form used that you
25 actually used earlier with Ms. Muckenfuss regarding her

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1 rights?

2 A Yes, ma'am, it is.

3 MS. LIVELY: Your Honor, the State would move State's
4 Exhibit Number 35 into evidence at this time.

5 MS. BOULWARE: No objection.

6 THE COURT: In without objection.

7 (State's 35 was received.)

8 MS. LIVELY: Thank you, Your Honor.

9 Q What was the time of that second interview with Ms.
10 Mary Muckenfuss on that date?

11 A 7:13 a.m.

12 Q 7:13 a.m. So the first one was at 10:40 something --

13 A Yes, ma'am.

14 Q -- the night before on the 27th. What is the date of
15 that particular interview?

16 A February the 28th, 2021.

17 Q February 28th of 2021. And were the same people who
18 witnessed the first interview the ones who were in this
19 particular interview?

20 A No, ma'am. It was myself and Agent Boussard with SLED.

21 Q So Agent Boussard from SLED had joined the
22 investigation at that point?

23 A Yes, ma'am.

24 Q Was this particular interview audio and video recorded?

25 A Yes, ma'am, it was.

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1 Q And was this one significantly longer than the first?

2 A I can't recall.

3 Q That's fine. In regards to the particular interview
4 with Ms. Muckenfuss, did she actually provide you a full
5 statement at that time?

6 A Yes, ma'am, she did.

7 Q Okay. Were there any additional evidence that she
8 provided to you that was specific to the victim, Mr. Antonio
9 Thompson?

10 A Other than the fact that she had met him and knew who
11 he was from previous --

12 Q But as for his name and who he was in that fashion,
13 like exactly what his name was, did she ever know that?

14 A No, ma'am, she did not know his name.

15 Q All right. Now, whenever you finished with that
16 particular interview, what was the status of the
17 investigation at that point?

18 A It was still an ongoing investigation but we was trying
19 to find Lavondia Wherry and Kenneth Wherry in order to
20 interview them.

21 Q All right. At some point during that day did you
22 actually have an opportunity to interview or make contact
23 with Lavondia Wherry?

24 A Yes, ma'am. She came into the sheriff's office that
25 afternoon.

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1 Q And when she came into the sheriff's office that
2 afternoon, who were the ones who actually ended up having a
3 conversation with Ms. Lavondia Wherry?

4 A Myself and Agent Boussard again.

5 Q All right. And was Ms. Wherry given her Miranda
6 warnings as well?

7 A Ms. Vonda? Yes, ma'am, she was.

8 Q Okay. I apologize --

9 A I thought you said Mary.

10 Q Okay. Sorry. Ms. Lavondia Wherry, was she provided a
11 waiver of rights as well?

12 A Yes, ma'am, she was.

13 Q Did she actually waive her rights and agree to speak
14 with you at that time?

15 A Yes, ma'am, she did.

16 Q I'm going to show you what has been marked as State's
17 Exhibit 36, and ask you if that's the standard waiver of
18 rights form that you used for Ms. Wherry?

19 A Yes, ma'am, it is.

20 Q All right. And did she sign an agreement to speak with
21 you at that time?

22 A Yes, ma'am, she did.

23 Q Okay.

24 MS. LIVELY: Your Honor, we would move State's Exhibit
25 Number 36 into evidence at this time.

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1 MS. BOULWARE: No objection.

2 THE COURT: In without objection.

3 MS. LIVELY: Thank you.

4 (State's 36 was received.)

5 Q Please tell the jury what time of the day and what day
6 it was that you interviewed Ms. Lavondia Wherry?

7 A It was February 28th, 2021, at 3:06 p.m.

8 Q And whenever she signed her waiver of rights -- if I
9 may retrieve that from you?

10 A Yes, ma'am.

11 Q When she signed her waiver of rights once again this
12 was audio and video recorded, correct?

13 A Yes, ma'am.

14 Q And did she talk to you about what had taken place over
15 the last 24 hours between herself, Ms. Muckenfuss, and
16 Mr. Wherry?

17 A Yes, ma'am.

18 Q When she first talked to you, did she disclose
19 everything to you that Ms. Muckenfuss had disclosed?

20 A No, ma'am.

21 Q Okay. Well, tell the jury how that interview began.

22 A For approximately the first 20 minutes of that
23 interview Ms. Lavondia was stating that she was at a crack
24 house, and she was with Kenneth Wherry and she was with Mary
25 Muckenfuss, and there was some other people's names that she

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1 said. She kept saying she was just back and forth from the
2 crack house, never actually told us anything about the
3 incident. She did state that she let someone borrow her
4 truck for money, and when they brought it back that it was
5 wet and that's why it was parked in the garage. A lot of
6 back and forth, crack house here, there, and several
7 different people that she said was there.

8 Q At what point in time, if ever, did she change her
9 story?

10 A Yes, ma'am. I believe when it was Agent Boussard
11 stated some of the facts that we had, knowing that she was
12 there, that a crime had been committed in her truck, and
13 that she was there when the crime had been committed, Ms.
14 Vonda Wherry broke down, started crying, and then that's
15 when she told us the story about what happened that day with
16 the incident.

17 Q And in what she told you, was it consistent with what
18 Mary Muckenfuss had already told you?

19 A Yes, ma'am.

20 Q And Ms. Muckenfuss had been with you since 10:40
21 something the night before; is that right?

22 A Yes, ma'am.

23 Q Okay. And then Ms. Lavondia came in that next day and
24 gave you a statement at 3:06 p.m., correct?

25 A Yes, ma'am.

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1 Q All right. At any point in time did Ms. Lavondia
2 Wherry tell you that she knew who the victim was?

3 A No, she did not. She stated she didn't know who he
4 was, she was just giving him a ride.

5 Q All right. And did she tell you whenever they went to
6 her house why they went to her house on Enix Road?

7 A To get jumper cables.

8 Q All right. At any point in time did she tell you
9 during that interview anything about the gun?

10 A I don't recall.

11 Q Okay. All right. Did she, though, tell you who
12 actually shot Antonio Thompson?

13 A Yes, ma'am. She said Kenneth Wherry shot Antonio, she
14 kept saying he didn't mean to, it was a accident.

15 Q Now, Detective Burch, after this interview with
16 Lavondia Wherry, what were you asking for in regards to
17 Kenneth Wherry?

18 A We was asking her where we could find Mr. Kenneth
19 Wherry, if she knew where he was at or had any way to get in
20 contact with him.

21 Q And was she able to provide you any information?

22 A No, ma'am, she was not.

23 Q At that point had you heard anything from law
24 enforcement as to any follow-up regarding where Mr. Wherry
25 could be on that particular day?

RIKKI BURCH - DIRECT

1 A No, ma'am.

2 Q At some point that afternoon, did you make contact with
3 Kenneth Wherry?

4 A Yes, ma'am.

5 Q Okay. Tell the jury about that.

6 A I believe it was Captain Crawford brought Kenneth
7 Wherry in. We did conduct an interview with Kenneth Wherry.
8 Kenneth just kept stating that he wasn't there when the
9 crime occurred, he didn't know anything about what happened,
10 that he was at the crack house all day.

11 Q I'm going to show you State's Exhibit Number 30 so I
12 can have you document this.

13 (Break in proceedings.)

14 Q I'm going to show you State's Exhibit Number 30.

15 MS. LIVELY: Your Honor, the State would move to enter
16 30 it's my understanding without objection.

17 MS. BOULWARE: No objection.

18 THE COURT: In without objection.

19 (State's 30 was received.)

20 Q Please tell the jury the date and the time that is
21 documented on that form when Kenneth Wherry actually came to
22 the Law Enforcement Center, or was brought to the Law
23 Enforcement Center.

24 A It was February the 28th, 2021, at 4:34 p.m.

25 Q All right. So at 7:13 that morning y'all had

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1 interviewed Mary Muckenfuss for the second time, correct?

2 A Yes, ma'am.

3 Q Lavondia came in around 3:06 p.m., correct?

4 A Yes, ma'am.

5 Q And then this is showing Mr. Wherry coming in at 4:34
6 p.m., correct?

7 A Yes, ma'am.

8 Q Okay. I'm going to show you State's Exhibit Number 31.

9 (Break in proceedings.)

10 Q I'm going to show you State's Exhibit Number 31.

11 MS. LIVELY: The State would move to enter it, Your
12 Honor, without objection is my understanding.

13 MS. BOULWARE: No objection.

14 THE COURT: In without objection.

15 MS. LIVELY: Thank you.

16 (State's 31 was received.)

17 Q Once again your interviews that you do at the Law
18 Enforcement Center are audio and video recorded, correct?

19 A Yes, ma'am, they are.

20 Q All right. In this particular interview is the
21 defendant, Kenneth Wherry; is that right?

22 A Yes, ma'am.

23 Q And once again, who was it that was present for that
24 interview with Mr. Wherry?

25 A It was myself and Agent Boussard.

RIKKI BURCH - DIRECT

1 Q Boussard with SLED.

2 A Yes, ma'am.

3 Q All right. So is that the reporting of the interview
4 with Mr. Wherry on February 28th, 2021?

5 A Yes, ma'am, it is.

6 Q During that interview you said that Mr. Wherry did not
7 provide -- he just said he was at the crack house the whole
8 time; is that correct?

9 A Yes, ma'am.

10 Q Okay. During that interview did y'all question Mr.
11 Wherry about possibly getting any other type of evidence
12 from him?

13 A Yes, ma'am. We did ask him for consent to get buccal
14 swabs.

15 Q Okay. And explain to the jury what a buccal swab is.

16 A A buccal swab is where you swab the inside of the mouth
17 for DNA.

18 Q And why did you do that?

19 A To connect Mr. Wherry to the vehicle or the gun in this
20 case.

21 Q All right. And at that point in time what did Mr.
22 Wherry tell you about his DNA being in the truck?

23 A Mr. Wherry stated that he would agree to us getting
24 buccal swabs, that his DNA was in the truck because he is in
25 the truck all of the time.

RIKKI BURCH - DIRECT

1 Q Okay. Were you aware of Mr. Wherry's familial
2 relationship with Lavondia Wherry?

3 A Yes, ma'am, they were cousins.

4 Q Cousins? And had they -- were they the type that would
5 spend time together and use crack together in the past?

6 A Yes, ma'am.

7 Q So did you actually collect those cheek swabs from Mr.
8 Wherry on that particular day?

9 A Yes, ma'am.

10 Q When you collected those swabs, what are -- what do you
11 do with them?

12 A They're placed in evidence and then they're sent to
13 SLED to be processed.

14 Q Okay. Are you aware whether or not Mr. Wherry was --
15 any kind of a follow-up interview was done with him?

16 A I'm not sure.

17 Q Okay. One was not done with you; is that right?

18 A That's right.

19 Q Other than the one that was done on February 28th of
20 2021.

21 A That's correct.

22 Q Detective Burch, just for clarification, I think you
23 may have already stated this, but the bag that had the
24 victim, Mr. Antonio Thompson's, personal items in them, did
25 you collect those and actually place them into evidence?

RIKKI BURCH - DIRECT

1 A Yes, ma'am, I did.

2 Q Okay. How about the phone that was found in the drain,
3 was that actually collected and placed into evidence as
4 well?

5 A Yes, ma'am, it was.

6 Q All right. And whenever those items were placed into
7 evidence, do they go into an area where only one person has
8 access to go in and out to remove it, have any contact with
9 it and to label it in order to keep it safe?

10 A Yes, ma'am, it is. It's locked in a locker.

11 Q And that would -- and who is y'all's evidence custodian
12 there at the sheriff's office?

13 A Jessica Huey.

14 Q Michelle Huey?

15 A Yes.

16 MS. LIVELY: Court's indulgence, Your Honor.

17 (Break in proceedings.)

18 MS. LIVELY: Your Honor, I'm going to -- not the
19 pictures of the bag and the trash can because I've shown
20 that, but if I could maybe get permission to publish the
21 Woods Road pictures as well as the pictures of the phone.
22 Thank you. That's all of the questions I have, Detective
23 Burch. If you will please answer any questions that the
24 defense may have for you.

25 THE WITNESS: Yes, ma'am.

RIKKI BURCH - CROSS

1 CROSS EXAMINATION

2 BY MS. BOULWARE:

3 Q Good afternoon, Detective Burch.

4 A Good afternoon.

5 Q Couple of quick questions. So you talked with Mary
6 Muckenfuss both times she gave an interview; is that
7 correct?

8 A Yes, ma'am.

9 Q Around the time of this murder.

10 A Yes, ma'am.

11 Q Okay. When she was talking about Von -- I believe you
12 mentioned she said Von made her take her pants off?

13 A Yes, ma'am.

14 Q Were those pants ever located?

15 A No, ma'am.

16 Q Okay. She also mentioned that Von took her friend to
17 Wal-Mart, I believe?

18 A I don't remember her stating. She said that she was --
19 in one of her interviews she said that she was supposed to
20 go to Wal-Mart but they never went to Wal-Mart.

21 Q Okay. Did she mention a friend with her?

22 A Yes.

23 Q Another friend? Do you know who that was?

24 A I can't recall his name right now.

25 Q Okay. So Mary Muckenfuss also described, I believe,

RIKKI BURCH - CROSS

1 getting down -- supposedly when Ken says get down she gets
2 down.

3 A Yes, ma'am.

4 Q Did she happen to tell you how long she stayed down
5 or --

6 A No, ma'am, she did not.

7 Q Okay. But she was able to take you directly to where
8 the body was?

9 A Yes, ma'am.

10 Q Okay. When you all went to the garage of Ms. Wherry,
11 Von Wherry --

12 A Yes, ma'am.

13 Q -- you found the truck, noticed some blood, saw a gun.
14 You guys didn't take anything, you called SLED?

15 A Yes, ma'am.

16 Q How long did it take SLED to get there, do you recall?

17 A No, ma'am, I don't recall.

18 Q Was anybody there waiting on SLED?

19 A Yes, ma'am.

20 Q Who was there?

21 A I don't recall who stayed at the house the entire time,
22 but I do know the house would not have been left without
23 somebody watching it until SLED got there.

24 Q So when you interviewed Von she's giving some story for
25 the first 20 minutes you said that didn't quite make sense,

RIKKI BURCH - CROSS

1 you figured she wasn't telling the truth, or just thought
2 she wasn't telling you what really happened.

3 A Yes, ma'am.

4 Q Did she mention someone by the name of Steve Peterson?

5 A I believe she did.

6 Q Okay. Did you all try to get up with Steve Peterson?

7 A Yes, we did. I didn't myself, but yes.

8 Q Okay. Were you ever able to talk with him?

9 A I have no clue.

10 Q Okay. You yourself weren't.

11 A I wasn't.

12 Q And then Ken gave consent for a buccal swab, which was
13 to swab his cheek for DNA.

14 A Yes, ma'am.

15 Q Or to submit for DNA.

16 A Yes, ma'am.

17 Q Did he fight giving you consent on that?

18 A No, ma'am.

19 Q Gave it to you right away?

20 A Yes, ma'am.

21 Q Did not say: I'm not going to do that, I want a search
22 warrant, or anything like that.

23 A No, ma'am.

24 Q Absolutely just said yes.

25 A Yes, ma'am.

RIKKI BURCH - CROSS

1 Q Okay.

2 MS. BOULWARE: Beg the Court's indulgence.

3 (Break in proceedings.)

4 MS. BOULWARE: No further questions, Judge.

5 MS. LIVELY: Your Honor, may we approach?

6 (A bench conference was held with the Judge and

7 Attorneys.)

8 THE COURT: All right. We're going to take that break

9 I mentioned to you, we've been going over -- a little over a
10 hour. Let's try to take ten minutes and come back and
11 continue.

12 (The jury left the courtroom.)

13 (A break was taken.)

14 (The jury returned to the courtroom.)

15 THE COURT: All right.

16 MS. LIVELY: Yes, sir, Your Honor. May it please the
17 Court? The State would call David Moore to the stand.

18 The witness, DAVID MOORE, was first duly sworn and

19 Testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LIVELY:

22 Q Please state your full name and what your occupation
23 is.

24 A My name is David Moore, I'm an investigator with the
25 Chester County Sheriff's Office.

DAVID MOORE - DIRECT

1 Q And how long have you been an investigator with the
2 Chester County Sheriff's Office?

3 A Since April of 2020.

4 Q 2020. Okay. And in your particular area of
5 investigations what do you typically get assigned to do?

6 A Typically my daily duties deal with working crime
7 scene, processing crime scenes and dealing with forensics.

8 Q Okay. I'm going to get you to pull the microphone up
9 just a little bit so we can hear you a little bit better.

10 A Okay.

11 Q All right. So you process crime scenes, and what was
12 the last thing you said?

13 A Forensics.

14 Q Forensics. Okay. And have you been trained in any
15 particular area of forensics?

16 A General overall crime scene, digital forensics, or cell
17 phones.

18 Q And what is the cell phone device used at the sheriff's
19 office?

20 A What we use at the sheriff's office is Cellebrite.

21 Q Now, Investigator Moore, did you actually have an
22 opportunity to get called out on a case involving the
23 defendant, Kenneth Wherry, in February of 2021?

24 A Yes, I did.

25 Q All right. Tell the jury what you did in your response

DAVID MOORE - DIRECT

1 to that particular case.

2 A So on the morning of the 28th of February I was called
3 to respond to [REDACTED] Enix Road here in Chester. SLED Crime
4 Scene Unit was already on scene and I was asked to provide
5 them with any assistance they needed.

6 Q Okay. So whenever you got to [REDACTED] Enix Road, were you
7 familiar with who actually lived there?

8 A I was briefed when I got on scene, but prior to that,
9 no, I wasn't.

10 Q Did you know why you were responding to that particular
11 scene?

12 A Yes.

13 Q Why?

14 A I was told that our investigators got information
15 throughout the night that led them on a murder investigation
16 and a suspect vehicle, and I think one of the suspects was
17 believed to have lived there.

18 Q All right. So when you got to Enix Road you said that
19 you were called to assist SLED Crime Scene. Is that a
20 pretty standard procedure with the Chester County Sheriff's
21 Office?

22 A So SLED is called in as an assisting agency typically.
23 At the time, because I was fairly new to forensics, I would
24 be called out with them just to assist them with anything
25 they needed.

DAVID MOORE - DIRECT

1 Q Okay. What did you actually assist them with?

2 A For that particular case mostly I just made myself
3 available. I did escort a vehicle that was impounded back
4 to our impound lot, so basically control of that vehicle.

5 Q Did you observe SLED actually do crime scene photos and
6 processing of the vehicle?

7 A Yes.

8 Q All right. And which vehicle was that?

9 A It was a Toyota pickup truck.

10 Q And was that the Toyota pickup truck that was located
11 at [REDACTED] Enix Road?

12 A That is correct.

13 Q So whenever the truck was -- you said it went to
14 impound at some point?

15 A Yes.

16 Q And where is that?

17 A It is located right next to our facility at 2740 Dawson
18 Drive.

19 Q All right. And that's at the sheriff's office,
20 correct?

21 A Yes.

22 Q So, Detective Moore, whenever the vehicle was taken to
23 the impound lot, did you also stand by as needed for
24 processing of that vehicle?

25 A Yes.

DAVID MOORE - DIRECT

1 Q And were you the one that took photos, or was it the
2 SLED Crime Scene Unit that took photos of the vehicle?

3 A Should have been SLED that took pictures of that
4 vehicle.

5 Q Well, did you take pictures of the vehicle?

6 A I don't recall on that one.

7 Q All right. And then how about actually going into the
8 vehicle and taking any kind of DNA, potential DNA swabs or
9 anything like that, would that have been you or would that
10 have been SLED?

11 A That would have been SLED.

12 Q Were you present for when that happened?

13 A Yes.

14 Q Okay. Were there any other items within the vehicle
15 that were located that were given to you?

16 A There were two cell phones that were located in the
17 center console that I took possession of.

18 Q All right. And did you document that you took those
19 cell phones yourself?

20 A Yes.

21 Q And whenever you see something like cell phones or any
22 other kind of evidence, where do you take it?

23 A Once they're sealed in one of our envelopes and the
24 chain of custody form is done, they're taken to our evidence
25 lockers there at the sheriff's office.

DAVID MOORE - DIRECT

1 Q And do you have an evidence custodian who actually
2 handles the safekeeping of all of these items?

3 A Yes.

4 Q And was that done with these two cell phones?

5 A Yes.

6 Q So Investigator Moore, were you aware that an
7 additional cell phone had been located earlier that evening?

8 A I can't recall if I was made aware of it.

9 Q Okay. Did you become aware of an additional cell
10 phone?

11 A Yes.

12 Q All right. I'm going to show you State's Exhibit 4,
13 it's already in evidence. And you can actually tell me what
14 type of cell phone that was and if you recognize it now.

15 A It's a Motorola. I'm not sure of the model, but it's
16 a Motorola smart phone.

17 Q All right. Did you at some point in time have an
18 opportunity to have access to this particular phone as well?

19 A Yes.

20 Q All right.

21 A Well, the data extraction on the phone.

22 Q That was going to be my next question. Whenever you
23 had that phone, did you also do an extraction on that
24 particular phone?

25 A We did not, but I did do the analysis on the

DAVID MOORE - DIRECT

1 extraction.

2 Q Okay. And whenever you looked at the extraction for
3 the Motorola -- do you know who the Motorola phone
4 belonged to?

5 A When we got it back from, I believe, York County, we
6 took it up there, it was identified as belonging to the
7 victim.

8 Q All right. Antonio Thompson?

9 A Yes.

10 Q Okay. And was there anything of evidentiary value that
11 you were able to follow-up on in this particular phone?

12 A Nothing that I can discern was pertinent to the case.

13 Q Okay. And did you actually download all of the
14 information from that particular phone as well as the other
15 two that you got out of the center console from the truck
16 that was seized in this investigation?

17 A Phones from the truck, yes. The one sent to York
18 County I did not do the physical download, a technician up
19 there did.

20 Q Did you receive anything back as the person who
21 actually reviews the extraction that was of any evidentiary
22 value from those phones?

23 A Yes. I received Cellebrite reports from the phones.

24 Q All right. I'm going to show you -- do you actually --
25 let me back up. In regards to the information that come off

DAVID MOORE - DIRECT

1 of these phones, do you actually put them into a file on
2 either a zip drive or on a disc or something like that?

3 A Typically because of file sizes they're either going to
4 be put on a thumb drive or an external hard drive.

5 Q Okay. Did you actually put this information on a thumb
6 drive from the extractions of those phones?

7 A For the one that I extracted, yes, ma'am, I did.

8 Q Okay. All right. And were all of the phones actually
9 extracted, the ones that were actually put into evidence?

10 A Yes.

11 Q All right. I'm going to show you State's Exhibit
12 Number 37, and if you could just look at this. This is the
13 zip drive. This particular -- I know you can't see it, but
14 in regards to an extraction, was everything saved onto a
15 thumb drive and provided to the solicitor's office?

16 A As far as I know it was, yes, ma'am.

17 Q All right. Well, were you in charge of the phone
18 extractions after they were done?

19 A I was in charge of the phone I physically extracted,
20 the other ones were entered into evidence when they were
21 retrieved from York County.

22 Q Okay. And did you get those Cellebrite reports at that
23 time?

24 A Yes.

25 Q Okay. So all of the extractions and the information on

DAVID MOORE - DIRECT

1 that flash drive, correct?

2 A Yes.

3 Q Okay.

4 MS. LIVELY: Your Honor, we would move State's Exhibit
5 Number 37 into evidence at this time.

6 MS. BOULWARE: No objection.

7 MS. LIVELY: Thank you.

8 THE COURT: In without objection.

9 (State's 37 was received.)

10 Q After reviewing the Cellebrite extractions, after
11 looking at the one phone you dumped yourself, was there
12 anything for the day of February 27th, 2021, that was of
13 evidentiary value that linked this defendant with any of the
14 other individuals that were listed in this case such as Mary
15 Muckenfuss or Lavondia Wherry?

16 A No, there wasn't.

17 Q There was nothing?

18 A Nothing.

19 Q As a matter of fact on one of the phones what were the
20 dates that you were looking for?

21 A On the phone that I extracted myself the last date of
22 use was the 21st.

23 Q Okay. All right. So the phones in this particular
24 case were of no value.

25 A No.

DAVID MOORE - DIRECT

1 Q All right. Now, Detective Moore, were you able to go
2 to the autopsy for this particular victim, Mr. Antonio
3 Thompson?

4 A Yes.

5 Q Tell the jury when the autopsy actually was performed.

6 A The autopsy would have been performed, I believe, on
7 March 1st in Newberry.

8 Q Newberry? And whenever you went to the autopsy, who
9 all was present?

10 A I was there. You had the forensic pathologist team,
11 Dr. Rose and her team. Jennifer Minors from the coroner's
12 office was there.

13 Q Okay. So were you there to observe for the Chester
14 County Sheriff's Office?

15 A Yes.

16 Q Now, Detective Moore, once the autopsy was performed,
17 were you provided any kind of evidence that you were in
18 charge of actually placing into the safekeeping of the
19 Chester County Sheriff's Evidence Room?

20 A Yes, I was.

21 Q Please tell the jury what it was that you were given to
22 safe keep.

23 A So I was given samples of blood from the victim from
24 various locations, also as well as ocular fluid, and a
25 projectile, a fired bullet.

DAVID MOORE - DIRECT

1 Q When the body was actually taken to the Newberry
2 Pathology, were there any other personal items that were
3 actually with the body?

4 A His clothing.

5 Q His clothing. Okay. And after -- in regards to the
6 clothing, was that also items that you were provided?

7 A Yes.

8 Q So everything that was collected from the body as well
9 as the blood and you said -- and other fluids, that all went
10 back with you, correct?

11 A Yes, it did.

12 Q Did you place all of those items into the evidence room
13 securely with the evidence custodian?

14 A They were. The clothing was put in our air dryer to
15 dry first so they would not mildew.

16 Q And what did you do with the vile of the victim's
17 blood?

18 A All of that was submitted into evidence with
19 appropriate paperwork to be sent to the SLED Crime Lab.

20 Q Okay. And at the time of the actual autopsy, were
21 there any photographs that were taken?

22 A Yes.

23 Q Tell us about that.

24 A So pretty standard with an autopsy and the forensic
25 pathologist team, they're going to take pictures. We

DAVID MOORE - DIRECT

1 typically take pictures, too, just to kind of have for our
2 investigative purposes.

3 Q Okay. And were you able to actually take any pictures
4 that were provided in this case?

5 A So I did take pictures.

6 Q Okay. And where are those pictures?

7 A We had a computer malfunction and crash, and the
8 pictures that I took were lost.

9 Q All right. Were there any additional pictures taken at
10 the autopsy by another individual?

11 A Yes. One of Dr. Rose's staff would have taken pictures
12 of everything they did as well.

13 Q Okay. So any of those autopsy photos would be through
14 the pathology office at this point.

15 A That's correct.

16 Q And did you provide me with information about that
17 particular incident taking place regarding photographs?

18 A Yes.

19 Q After the autopsy, Detective Moore, was there anything
20 else that you did as a part of the investigation in this
21 particular case?

22 A As far as dealing with the phones, that was the big
23 thing.

24 Q Okay. So mainly the phones, which you've already
25 testified to.

DAVID MOORE - CROSS

1 A Yes.

2 Q Okay. All right. And State's Exhibit 37 is in
3 evidence at this time.

4 MS. LIVELY: Your Honor, no further questions for this
5 particular witness.

6 CROSS EXAMINATION

7 BY MS. BOULWARE:

8 Q Is it Investigator Moore?

9 A Yes, that's right.

10 Q Just a couple of quick questions, Investigator Moore.
11 When you submit blood samples, things like that, to SLED, or
12 the vile of blood that you were speaking of, do you ask them
13 what to test on any of that?

14 A So when you put in your request they give you a list of
15 stuff to request. Typically with stuff from an autopsy you
16 would request a coroner's panel, which is going to be tox,
17 and then DNA. Tox and DNA.

18 Q Okay. Do you yourself make that request?

19 A Yes.

20 Q Okay. On the photos for the autopsy you said there was
21 a computer malfunction on the photos you took?

22 A On the pictures I took, yes, ma'am.

23 Q Are these only saved on a computer?

24 A They were backed up to the computer after they were
25 removed from my camera.

DAVID MOORE - CROSS

1 Q Okay. Do you have any hard copies of that?

2 A I can't recall if I had them or not. I knew they were
3 backed up to the computer.

4 Q All right. So we have photos on a computer, a
5 malfunction and no hard copies made.

6 A Yes.

7 Q Okay.

8 MS. BOULWARE: Beg the courts indulgence.

9 (Break in proceedings.)

10 MS. BOULWARE: No further questions.

11 MS. LIVELY: Nothing further of this witness, Your
12 Honor.

13 THE COURT: Thank you, sir, you can step down.

14 MS. LIVELY: Michelle Huey.

15 The witness, MICHELLE HUEY, was first duly sworn and
16 Testified as follows:

17 DIRECT EXAMINATION

18 BY MS. LIVELY:

19 Q Ms. Huey, please tell the jury where you are currently
20 employed.

21 A Chester County Sheriff's Office.

22 Q And what do you do at the sheriff's office?

23 A I am the evidence custodian.

24 Q How long have you been the evidence custodian?

25 A About a year and a half.

MICHELLE HUEY - DIRECT

1 Q And tell the jury what the importance of having an
2 evidence custodian is in dealing with items collected from
3 particular investigations.

4 A It's important because it keeps all of the evidence in
5 a secured vault. Nobody has access to it. There is one
6 extra key, but nobody can get to it, it's a act of Congress.
7 I have the only master key and it's around my neck, so it is
8 very secured.

9 Q All right. Whenever you get a particular item from
10 either an investigator or whoever is turning it in, do you
11 document what that item is with a particular case number?

12 A I do.

13 Q And do you also document who is actually releasing the
14 item to you?

15 A I do.

16 Q All right. Do you have forms that you use in order to
17 do that?

18 A I do, it's called the Chain of Evidence.

19 Q All right. And did you do that for this particular
20 case, which was, I believe, law enforcement case number
21 2210003, was it 47?

22 A Four-seven, uh-huh.

23 Q So you did do that?

24 A I did.

25 Q So, Ms. Huey, when you made those records and

MICHELLE HUEY - DIRECT

1 documented what it was that had been turned in to you, do
2 you actually have a full list of those items?

3 A I do.

4 Q Do you know how many items were actually collected in
5 this particular case? And if you don't that's fine.

6 A I don't off the top of my head. I could count them but
7 I do not.

8 Q All right. And whenever you actually put them into a
9 particular box, how do you decide what goes where?

10 A There's a couple of different things whenever I pick
11 items up from SLED that's like blood it has got to be
12 refrigerated, so it's got to be in the refrigerator. This
13 package right here just for instance, you see the yellow
14 tape is sealed by SLED, I cannot open that. There's one box
15 down there that's opened, but every package in it is
16 individually sealed. Either it's sealed by SLED or either
17 by one of our investigators and is taped with evidence tape
18 and initialed and signed by whoever sealed it.

19 Q Okay.

20 A All that I do is put it in the box.

21 Q And I'm looking at the different bar codes that are on
22 the particular box. Tell the jury what the purpose of those
23 bar codes are.

24 A There's actually two reasonings for those bar codes.
25 As for inventory, we can scan and see what everything is

MICHELLE HUEY - DIRECT

1 that we have in evidence. But mainly for specific cases,
2 like if Candice was to call and say: Do you have the cell
3 phone? I do. And it is item number -- one of them, we have
4 four -- is 66050. And you can clearly identify which cell
5 phone that is and where it's located at.

6 Q Who is in charge of taking items from the evidence room
7 once it is submitted to you for testing at SLED?

8 A I am.

9 Q You are?

10 A Yes, ma'am.

11 Q And whenever you drop those items off at SLED, do they
12 have a mechanism as well checking those items in to be sure
13 what -- who gets it and where it goes?

14 A Yes, they do.

15 Q At anytime during that process do you open these items
16 or touch them or tamper with them or alter them in any
17 fashion at all?

18 A No.

19 Q All right. So everything that was actually submitted
20 in this particular case ending in 347 would be documented in
21 your chain of custody record; is that correct?

22 A That is correct.

23 Q All right. So the items that you -- have you gotten
24 everything back from SLED at this point for this particular
25 case?

MICHELLE HUEY - DIRECT

1 A I think the only thing I don't have are the digital
2 photos from the crime scene.

3 Q Okay. So if those had been mailed into the lead
4 investigator, then that would be something that you would
5 have no knowledge of; is that correct?

6 A That's correct.

7 Q All right. But every other item that was submitted
8 through investigations would have gone under that case
9 number and through your evidence room.

10 A Yes.

11 Q And the ones that actually went to SLED you've
12 explained actually has the SLED tape on it, correct?

13 A Yes. Those are items that SLED actually collected
14 themselves.

15 Q Okay. So is the only thing that we don't have here
16 today the actual vile of fluids and blood that was collected
17 at the autopsy from the victim?

18 A Yes.

19 Q Okay.

20 MS. LIVELY: One moment, Your Honor.

21 (Break in proceedings.)

22 Q We've already actually had some testimony regarding the
23 phone, one of the phones that was collected in the drain.

24 Do you have that actually on your report?

25 A I do.

1 Q Okay. Could you tell me which box that would be in?

2 A It's going to be in that box right there that's opened,

3 and it is going to be -- it should be Item Number 66048.

4 That's it.

5 Q All right. All right. So you -- were there other

6 phones that were actually submitted? We've already had

7 Investigator Moore come and testify just a minute ago.

8 A Yeah, there should be one more in there. It should be

9 four all together.

10 Q I'm going to show you item 66050 as well.

11 A Okay.

12 Q So were these submitted to you by -- in regards to the

13 drainpipe cell phone, correct?

14 A Correct.

15 Q And then the Toyota Tacoma?

16 A That's right.

17 MS. LIVELY: Your Honor, the State would move State's

18 Exhibits 38 and 39 into evidence at this time.

19 MS. BOULWARE: No objection.

20 THE COURT: In without objection.

21 (State's 38 and 39 were received.)

22 MS. LIVELY: And, Your Honor, I believe that's going to

23 be all of the questions for this witness in regards to these

24 specific items, however we would ask the ability to recall

25 this witness if there's any question regarding chain of

TONI SPIOTTA - DIRECT

1 custody at a later time when we get into some of the SLED
2 evidence.

3 MS. BOULWARE: No objection, Judge.

4 THE COURT: All right.

5 MS. LIVELY: Do you have any questions of this witness?

6 MS. BOULWARE: I don't, Judge.

7 MS. LIVELY: Your Honor, may I approach?

8 (A bench conference was held with the Judge and the
9 Attorneys.)

10 THE COURT: We're going to stop here, otherwise we
11 could be here for quite some time with the next lineup of
12 witnesses. So you will be back here at 10:00 in the morning
13 ready to go. You report to the jury room promptly at 10:00.
14 Remember, don't let anybody approach you in any form or
15 fashion. Don't discuss the case even with your family. All
16 right? Everybody else will remain seated in the courtroom
17 while the jury departs for the evening. Y'all have a good
18 and safe night.

19 (The jury left the courtroom.)

20 THE COURT: All right. We'll fire back up in the
21 morning.

22 (Court recessed for the evening and resumed on
23 Tuesday, April 5, 2022, at 10:00 a.m.)

24 THE COURT: I am informed all of the jury is here so we
25 will get started. Solicitor, are you ready for the next

TONI SPIOTTA - DIRECT

1 witness?

2 MS. LIVELY: Yes, sir, Your Honor, we are.

3 THE COURT: Ready for the jury.

4 (The jury returned to the courtroom.)

5 THE COURT: All right. Good morning, everybody,
6 everyone looks all bright-eyed and bushy-tailed. We're
7 ready to go. Solicitor, you may call your next witness.

8 MS. LIVELY: Yes. Thank you, Your Honor. The State
9 calls Toni Spiotta to the stand. She's in the side room.
10 The witness, TONI SPIOTTA, was first duly sworn and
11 Testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q Hi, Ms. Spiotta.

15 A Good morning.

16 Q If you don't mind, if you'll just remove that so we can
17 be sure to hear everything you're saying.

18 A Yes, ma'am.

19 Q Ms. Spiotta, where do you work?

20 A I work at the Executive Inn located here in Chester.

21 Q Okay. And were you subpoenaed to be here today?

22 A Yes, ma'am, I was.

23 Q When you work at the Executive Inn, what are your
24 duties there?

25 A I am the office manager, so I kind of take care of

TONI SPIOTTA - DIRECT

1 everything that goes on in the office.

2 Q Okay. When someone registers as a guest in the office,
3 are you made aware of that?

4 A Yes, ma'am, I am.

5 Q Are you -- who is the person that keeps the records of
6 people who are registered?

7 A I am.

8 Q All right. And how long have you been doing that job?

9 A Come July it'll be six years.

10 Q Six years.

11 A Yes, ma'am.

12 Q All right. Ms. Spiotta, are there times because of you
13 being there -- are you there -- how often do you work during
14 the week? Let me just ask a simple question. How often do
15 you work?

16 A Here lately it's been about 80 or 85 hours a week.

17 Q Okay.

18 A Yes, ma'am.

19 Q All right. And by working in a hotel such as the
20 Executive Inn, do you see some guests who become like
21 regular guests?

22 A Yes, ma'am.

23 Q In this -- are you very familiar with what this case is
24 about that you're here on today?

25 A Pretty much, yes, ma'am.

TONI SPIOTTA - DIRECT

1 Q All right. Do you know any of the individuals involved
2 in this particular case?

3 A I don't know them personally, but I know that they have
4 been registered at the hotel several times.

5 Q All right. I'm going to back up then so we can make
6 sure that you tell the jury who those people are. Do you
7 know an individual by the name of Antonio Thompson?

8 A Yes, ma'am.

9 Q Okay. And how do you know Mr. Antonio Thompson?

10 A He has been a registered guest at the establishment
11 several times.

12 Q Okay. Was he a registered guest on February 27th,
13 2021?

14 A Yes, ma'am.

15 Q Okay. Did you bring documents from your hotel that
16 actually shows that he was a registered guest?

17 A Yes, ma'am.

18 Q All right. And I'm going to ask you about that in a
19 minute. Do you know an individual by the name of Kenneth
20 Wherry?

21 A Yes, ma'am.

22 Q Okay. And how do you know Kenneth Wherry?

23 A He has also been a registered guest at the hotel
24 several times.

25 Q All right. Do you know if he was a registered guest on

TONI SPIOTTA - DIRECT

1 February 27th, 2021?

2 A To my knowledge and where I looked he was not a
3 registered guest.

4 Q Okay. Then how about Mary Elizabeth Muckenfuss?

5 A Yes, ma'am.

6 Q Okay. How do you know Ms. Muckenfuss?

7 A She has also been at the hotel several times, and
8 through other activities she has gotten banned from the
9 property but that didn't stop her from coming.

10 Q All right. So on February 27th, 2021, were you
11 actually working on that particular day?

12 A No, ma'am, I was not working that particular day.

13 Q Okay. However, do you have the records from that
14 particular day showing registered guests?

15 A Yes, ma'am, I do.

16 Q All right. I'm going to show you what's already been
17 marked, and you have your own copies --

18 A Yes, ma'am.

19 Q -- State's Exhibit 40. Okay? And what's marked as
20 State's Exhibit 41 on the back. I'm going to let you look
21 at those two documents.

22 A Yes, ma'am.

23 Q What is State's Exhibit 40?

24 A State's Exhibit 40 is the actual registration card
25 where when the guests comes in it's called a folio, we have

TONI SPIOTTA - DIRECT

1 them fill out the folio with their information; name,
2 address, phone number and a signature.

3 Q Do you have those original folios with you?

4 A Yes, ma'am.

5 Q Is the copies and the State's Exhibit 40 an accurate
6 representation or an exact copy of those originals?

7 A They are exact copies.

8 MS. LIVELY: Your Honor, the State would move State's
9 40 into evidence at this time.

10 MS. BOULWARE: No objection.

11 THE COURT: In without objection.

12 (State's 40 was received.)

13 Q All right. And if I can retrieve --

14 A Oh, yes, ma'am.

15 Q You can hold on to your originals. There's another
16 individual actually listed on a registration that is a part
17 of our State's Exhibit 40. What's the name of that person?

18 A The second person?

19 Q Uh-huh.

20 A Steven Peterson.

21 Q And so would he have been a registered guest on that
22 date as well?

23 A Yes, ma'am, he was.

24 Q All right. Please tell the jury what room Mr. Antonio
25 Thompson was registered in for that day.

TONI SPIOTTA - DIRECT

- 1 A Mr. Antonio Thompson was registered into room 108.
- 2 Q Is that on the first floor?
- 3 A First floor, yes, ma'am.
- 4 Q And how many days did he -- or evenings, or however you
- 5 say it, did he actually pay for?
- 6 A He paid for two nights.
- 7 Q How about Mr. Peterson, what room was he registered in?
- 8 A He was registered to room 219.
- 9 Q Okay. And do you know how many days he paid for?
- 10 A He paid for one.
- 11 Q All right. Now, after this registration card or the
- 12 folio cards are filled out, do you have another type of
- 13 document that's used to list individuals who were registered
- 14 for the hotel?
- 15 A The second picture that you gave me, the Exhibit 41,
- 16 that is called our daily sheet. So once the guest comes in
- 17 and they fill out the folio, then we transfer everything to
- 18 our daily sheet, which shows the room number, the guest's
- 19 name, the amount they pay for the room, how many nights they
- 20 pay, and the folio number.
- 21 Q Okay. And so does State's Exhibit Number 41 represent
- 22 the list of registered guests and that transfer which you
- 23 keep in the normal course of business?
- 24 A Yes, ma'am.
- 25 Q And was that for the February 27th, 2021, date?

TONI SPIOTTA - DIRECT

1 A Yes, ma'am.

2 MS. LIVELY: Your Honor, the State would move State's
3 Exhibit Number 41 into evidence at this time.

4 MS. BOULWARE: No objection.

5 THE COURT: In without objection.

6 (State's 41 was received.)

7 Q So this particular document actually -- and I see that
8 there's some highlight on it.

9 A Yes, ma'am.

10 Q Were you aware of the reason why you were being asked
11 for this information regarding Mr. Antonio Thompson?

12 A Yes, ma'am.

13 Q Who was it that actually highlighted his particular
14 name on this document?

15 A I did.

16 Q All right. Please just tell the jury what it is that
17 we're seeing in this particular document regarding his name.

18 A On the 41?

19 Q On Exhibit, yeah, 41, which would be your Executive Inn
20 daily receipt.

21 A Antonio Thompson went into 108, the amount that he
22 paid, and the fact that he paid for two nights, and he paid
23 it in cash.

24 Q Is there anything in this documentation that would have
25 shown what time he actually registered on February 27th,

TONI SPIOTTA - DIRECT

1 2021?

2 A Not on here. But I can tell you by looking at this and
3 working with the girls for so long I know whose handwriting
4 is whose. So Mr. Antonio Thompson, he checked in anywhere
5 between midnight and 8:00 a.m., because that is the third
6 shift workers. Okay. Peterson, Steven, checked in after
7 8:00 a.m., because that's the first shift.

8 Q Okay. And who was working first shift on
9 February 27th?

10 A Tonya Estes.

11 Q Okay. So Antonio Thompson would have been midnight --
12 12:01 into February 27th, 2021 at 8:00 a.m.

13 A 8:00 a.m., yes, ma'am.

14 Q And who is it that would have worked that third shift?

15 A Tonya Thompson.

16 Q Tonya Thompson. Okay. And Ms. Thompson is no longer
17 employed there?

18 A No. She only works on Friday and Saturday nights.

19 Q Thank you. Okay. All right. And you've already
20 stated that you were not actually present at the time when
21 all of this was taking place; is that correct?

22 A No, ma'am, I was not.

23 Q Okay. And after that particular date, have you had any
24 contact with anyone regarding Mr. Antonio Thompson, Kenneth
25 Wherry, or Mary Muckenfuss?

TONI SPIOTTA - DIRECT

1 A I had a detective come and ask if there was any way I
2 could find out this information, and I did give it to him.

3 Q All right. And do you recall which detective that was?

4 A I do, it was Detective Telly Crockett.

5 Q Okay. And when was that?

6 A I don't remember the exact date, it was probably a few
7 weeks ago.

8 Q All right. Okay. And you provided him with this
9 information that we're bringing out to the jury today.

10 A Yes, ma'am, I did.

11 Q Okay. Did you ever talk to any other detectives or
12 investigators involved in this particular case closer in
13 time to whenever it happened back in 2021?

14 A I did not personally. The girls called me and told me,
15 you know, that there were some there, and I told them just
16 to not let them -- you know, not let anyone other than the
17 detectives go into that room just in case they needed
18 anything.

19 Q And whose room was that?

20 A That was Mr. Antonio Thompson's room, 108.

21 Q 108.

22 A Yes.

23 Q Okay. Thank you. All right. And those are your
24 originals, I'm going to let you keep those.

25 MS. LIVELY: Thank you so much. Answer any questions

TONI SPIOTTA - CROSS

1 the defense may have for you.

2 CROSS EXAMINATION

3 BY MS. BOULWARE:

4 Q Good morning, Ms. Spiotta.

5 A Good morning.

6 Q How are you?

7 A I'm good, how are you?

8 Q I'm doing fine. I'm going to show you State's Exhibit
9 40, which you've already seen, and just ask you a couple of
10 questions about that. Under the street under Mr. Thompson's
11 name and Mr. Peterson's name, is that generally a
12 residential residence for them?

13 A Yes, ma'am, it is.

14 Q Okay. Somewhere where they could get mail or where you
15 could go find them?

16 A I mean, they have to use the address that is on their
17 ID, so whether, you know, it's current I have no idea.

18 Q Okay. And you just led me into my next question. What
19 would be a reason that there would be no ID number? Would
20 they not need to show anything, or is that --

21 A No, they have to show ID. They have to show ID. They
22 cannot rent a room without a ID.

23 Q Okay. Do you generally know a reason why an ID -- or
24 license number or ID number might be blank?

25 A Because we make copies of their ID. So all I need for

TONI SPIOTTA - CROSS

1 them to do is put their name and address, signature and
2 phone number on the folio.

3 Q Okay. So you don't need to put it on this form right
4 here?

5 A No, ma'am.

6 Q Did anyone ever ask for copies of ID's from these folks
7 from you?

8 A To be honest with you, the copies of the ID's I usually
9 keep for about a year, because I can't keep all of this
10 paperwork for an extended period of time. The folios and
11 the registers I do keep longer just in case something comes
12 up. You never know.

13 Q I understand. Okay.

14 MS. BOULWARE: Beg the Court's indulgence.

15 (Break in proceedings.)

16 MS. BOULWARE: No further questions.

17 MS. LIVELY: Nothing further, Your Honor. May she be
18 excused from her subpoena? Okay. You are excused. You can
19 keep your originals. I'm going to retrieve the evidence,
20 Your Honor. The State is ready it call its next witness,
21 Your Honor. Tonya Estes.

22 The witness, TONYA ESTES, was first duly sworn and

23 Testified as follows:

24 DIRECT EXAMINATION

25 BY MS. LIVELY:

TONYA ESTES - DIRECT

- 1 Q Ms. Estes, where are you currently employed?
- 2 A Right now?
- 3 Q Yes.
- 4 A At Rhinos.
- 5 Q At Rhinos? And how long have you been working at
- 6 Rhinos?
- 7 A For about five months.
- 8 Q And where did you work before you worked at Rhinos?
- 9 A Executive Inn.
- 10 Q And how long did you work at the Executive Inn?
- 11 A For about a year and a half.
- 12 Q And do you know Ms. Tonya Spiotta?
- 13 A Yes.
- 14 Q What was her position there when you were there?
- 15 A The manager.
- 16 Q And what was your position when you worked there?
- 17 A Front desk clerk.
- 18 Q And as front desk clerk, did you have the opportunity
- 19 to get to know some of the repeat people that would stay in
- 20 that particular hotel?
- 21 A Yes, ma'am.
- 22 Q All right. Well, let me back up for a second before
- 23 going into that. Are you a Chester resident?
- 24 A Yes, ma'am.
- 25 Q How long have you lived in Chester County?

TONYA ESTES - DIRECT

1 A All my life.

2 Q All right. Whenever you went to go work at the
3 Executive Inn, would you see people who were local that
4 stayed in that particular hotel?

5 A Yes, ma'am.

6 Q Do you know the defendant, Mr. Kenneth Wherry?

7 A Yes, ma'am.

8 Q And had he ever been a guest at the Executive Inn?

9 A Yes, ma'am.

10 Q How about Mary Elizabeth Muckenfuss, do you know her?

11 A Yes, ma'am.

12 Q Had she ever been a guest at the Executive Inn?

13 A Multiple times.

14 Q All right. Was she a welcomed guest at the hotel?

15 A No, she wasn't.

16 Q Tell the jury why.

17 A Because we found drugs, drug activity, prostitution.

18 We done had her removed, banned, and she still kept coming
19 back.

20 Q Okay. All right. So was she a nuisance for your
21 hotel?

22 A Yes.

23 Q Now, how about Mr. Antonio Thompson, the individual who
24 was shot in this particular case, did you know Mr. Antonio
25 Thompson?

TONYA ESTES - DIRECT

1 A Yes, ma'am.

2 Q Okay. And tell the jury, how did you know Mr.

3 Thompson?

4 A Just being a guest at the Executive Inn multiple times.

5 Q Okay. So would you recognize him on sight?

6 A Yes.

7 Q How about Kenneth Wherry, would you recognize him on
8 sight?

9 A Yes.

10 Q And obviously you've already mentioned Ms. Muckenfuss.

11 A Correct.

12 Q All right. Did you happen to ever know a Lavondia
13 Wherry?

14 A No, ma'am.

15 Q Fair enough. Now, Ms. Estes, on the morning of
16 February 27th, 2021, were you working?

17 A Yes, ma'am.

18 Q All right. Tell the jury what you normally do -- well,
19 what shift do you work?

20 A I work first, but I usually go in early. When I drop
21 my husband off at work I would go on in and talk to third
22 shift and see what happened the night before.

23 Q All right. Did you do that on that morning?

24 A Yes, ma'am.

25 Q So on February 27th, that morning, what time would you

TONYA ESTES - DIRECT

1 have arrived at the Executive Inn?

2 A It was around between 5:00 and 7:00 a.m.

3 Q Okay. And who was the third shift employee that you
4 relieved that particular morning?

5 A Ms. Tammy Thompson.

6 Q So that morning while you were there, did you have an
7 opportunity to talk to her about all of the guests that were
8 staying there?

9 A Yes, ma'am.

10 Q When did you become aware that Mr. Antonio Thompson was
11 actually a registered guest?

12 A Actually when I was going in I seen Antonio Thompson,
13 Kenneth Wherry, and Elizabeth Muckenfuss going in room 108.

14 Q Okay. And what brought your attention to those three
15 individuals?

16 A Elizabeth Muckenfuss.

17 Q Why?

18 A Because she's not supposed to be there and she was
19 being loud.

20 Q Okay. All right. So she wasn't supposed to be there
21 and she was being loud. So did that raise some -- raise
22 your antennas?

23 A Yes, ma'am.

24 Q So what were you -- did you have a plan on what you
25 were going to do regarding that issue?

TONYA ESTES - DIRECT

1 A Yes. I was going in the office, and I went to go put
2 my stuff in the laundry room, and when I come back out they
3 was leaving, because she knew that I was about to call the
4 police and have her removed.

5 Q Okay. You believed that. You don't know really
6 what she --

7 A Right. But I'm pretty sure that's what it was.

8 Q Okay. All right. So when you went to the actual -- I
9 guess the front office -- or did you say laundry room? I
10 don't want to put words in your mouth.

11 A It is side by side.

12 Q All right. Thank you. So you go in there, and then
13 you're getting ready to make a phone call, and specifically
14 tell the jury who you see leaving together.

15 A Elizabeth Muckenfuss, Kenneth Wherry, and Antonio
16 Thompson.

17 Q Okay. So you see the three of them leaving together.
18 Did they all get into one vehicle?

19 A Yes.

20 Q All right. And where did that -- you probably don't
21 know where the vehicle went, but did it leave the Executive
22 Inn?

23 A Yes, it did.

24 Q Okay. So at this point in time -- and again, tell the
25 jury approximately the time that it would have been whenever

TONYA ESTES - DIRECT

1 you saw all of this happening.

2 A Around between 5:00 a.m. and 7:00 a.m.

3 Q Okay. All right. Were you looking at your watch at
4 that point?

5 A No, ma'am.

6 Q Okay. Do you remember whether or not it was daylight,
7 or getting to be daylight?

8 A I think it was getting daylight.

9 Q It was getting daylight? Okay. This is February, so
10 early in the morning it was getting to be daylight. So are
11 you sure that these are the three individuals you saw that
12 morning?

13 A Yes, ma'am.

14 Q Okay. Are there any type of cameras at that time at
15 the Executive Inn that document people coming and going?

16 A No, ma'am.

17 Q All right. Okay. Have you seen the registration card
18 and the list of individuals who came the night during third
19 shift?

20 A Yes, ma'am.

21 Q And whose name was on it that you recognized after you
22 provided this information to law enforcement?

23 A Antonio Thompson in room 108.

24 Q In room 108. All right. Was Kenneth Wherry a guest on
25 that night?

TONYA ESTES - DIRECT

1 A No, he was not.

2 Q Were there any other individuals that had anything to
3 do with Mary Muckenfuss also registered that day?

4 A Yes, ma'am.

5 Q Who was that?

6 A Steve Peterson.

7 Q Did you know Mr. Steve Peterson?

8 A Yeah, through Elizabeth. We had to put them out
9 multiple times also.

10 Q All right. And was he on that list? And I'll just
11 help you out just a little bit, what's already in evidence
12 as State's 40 and 41. Would you confirm, were these
13 individuals the ones -- and tell me the name on the actual
14 registration cards, the two individuals that were registered
15 when you were there that morning?

16 A Antonio Thompson and Steven Peterson.

17 Q All right. What room was Mr. Steven Peterson?

18 A 219.

19 Q And then on the -- on 41, which is the long list, are
20 those two individuals also listed?

21 A Yes, ma'am.

22 Q Okay. Now, Ms. Estes, did anything else happen that
23 day involving these same individuals where you had to make a
24 call to law enforcement?

25 A Yes, ma'am.

TONYA ESTES - DIRECT

1 Q All right. Please tell the jury what happened later
2 that day on February 27th, 2021.

3 A I was doing inspections and I went to room 219 and
4 found Elizabeth Muckenfuss --

5 Q All right.

6 A -- and she knew she wasn't supposed to be there.

7 Q So you go to room 219 to do inspections. Why are you
8 doing inspections?

9 A We do inspections everyday.

10 Q Okay. And when you do this inspection, was she in
11 there with anybody else?

12 A Yes.

13 Q Who?

14 A Steven Peterson.

15 Q All right. At that time whenever you realized she was
16 on the property, what did you do?

17 A Called law enforcement.

18 Q Okay. And did law enforcement respond?

19 A Yes, ma'am.

20 Q What happened when law enforcement responded?

21 A They made her leave.

22 Q They made her leave? Okay. Was there any problems or
23 any issues with her leaving at that point?

24 A Nothing but her running her mouth.

25 Q Okay. All right. And at that point did you have any

TONYA ESTES - DIRECT

1 other conversations with her or see where she went after she
2 was told to leave?

3 A She just walked towards the Arby's parking lot.

4 Q Did you see her with anyone else other than when you
5 saw her with Steven Peterson at that time?

6 A No, ma'am.

7 Q Okay. So whenever you saw her, was she with Kenneth
8 Wherry?

9 A Not that time, no.

10 Q That was just that morning, correct?

11 A Uh-huh.

12 Q How about Antonio Thompson? Had you seen him since you
13 saw him that morning?

14 A No, ma'am.

15 Q Do you remember about what time it was whenever you had
16 to call law enforcement because Ms. Muckenfuss was on the
17 property?

18 A It was later that evening, I can't give you an exact
19 time.

20 Q Okay. Would that information be probably documented
21 through law enforcement?

22 A Yes, ma'am.

23 Q Okay. Do you remember talking to a couple of officers
24 that day?

25 A Uh-huh.

TONYA ESTES - DIRECT

1 Q Is that a yes?

2 A Yes, ma'am.

3 Q Okay. And after that particular conversation with law
4 enforcement and dealing with Ms. Muckenfuss that day, have
5 you seen her or dealt with her since then?

6 A No, ma'am.

7 Q Did you have any other contact with law enforcement
8 regarding a Mr. Antonio Thompson or Mary Muckenfuss after
9 that particular day?

10 A We had to call law enforcement about somebody being in
11 the room cutting the light on, but when they came out there
12 there was nobody in the room.

13 Q Okay. Please tell us what room that was.

14 A Room 108.

15 Q So did law enforcement respond to that?

16 A Yes.

17 Q What did y'all do with room 108? Is that the room that
18 Mr. Antonio Thompson was registered in?

19 A Correct. They didn't go in the room or anything. Like
20 two days later a detective came and they finally went in.

21 Q Okay. And were you with them when they went into that
22 room?

23 A I just opened the door, I never went in with them.

24 Q Do you know whether or not anyone else had come or gone
25 out of that room since February 27th of 2021?

TONYA ESTES - DIRECT

1 A All but the light being on, no, ma'am.

2 Q Okay. All right. Were y'all allowed to rent that room
3 out?

4 A No, ma'am.

5 Q Okay. And why is that?

6 A Because our manager told us to not do nothing until we
7 was notified by y'all.

8 Q By --

9 A Law enforcement.

10 Q After that particular time, Ms. Estes, did you actually
11 have the opportunity to talk to law enforcement about what
12 you knew happened that day on February 27th, 2021?

13 A Not 'til the other day.

14 Q The other day. Okay. Tell the jury about that.

15 A I was notified to come talk to a detective and I told
16 him what I knew.

17 Q Okay. And did you actually provide a written
18 statement?

19 A I did.

20 Q I'm just going to show this to you, not for you to read
21 it out but just to tell the jury when it was that you
22 actually provided a written statement to law enforcement.
23 The date -- it should be up at the top.

24 A It was on March the 1st, 2022.

25 Q At anytime did someone reach out to you before then to

TONYA ESTES - DIRECT

1 provide statements?

2 A No, ma'am.

3 Q Had you ever called law enforcement to say: Hey, I
4 knew that guy who got shot, or anything like that?

5 A No, ma'am.

6 Q Okay. Did you want to be here today?

7 A No.

8 Q Did I have to subpoena you to get you to come here?

9 A Yes, ma'am.

10 Q Whenever you went in and talked to law enforcement on
11 that date, did you voluntarily go in on March 1st?

12 A Yeah.

13 Q All right. And was your -- was it audio and video
14 recorded?

15 A Yes, ma'am.

16 Q Okay. And you agreed to do that; is that right?

17 A Correct.

18 Q Okay. Now, Ms. Estes, other than that, have you had
19 any other contact with law enforcement or involvement in
20 this particular investigation?

21 A No, ma'am.

22 Q All right.

23 MS. LIVELY: Thank you so much. Answer any questions
24 the defense may have.

25 CROSS EXAMINATION

TONYA ESTES - CROSS

1 BY MR. FRICK:

2 Q Thank you, Ms. Estes. How are you doing?

3 A Fine. How are you?

4 Q Good. Just to follow-up on a couple of things. You
5 said you would get to work between 5:00 and 7:00 in the
6 morning?

7 A Correct.

8 Q And on this particular day you obviously weren't
9 looking at your clock, but it was your normal time?

10 A Right.

11 Q Okay. And when you get there you just kind of have
12 conversations with folks about what had happened the night
13 before?

14 A Correct.

15 Q Okay. And you said you had -- you saw Mary Muckenfuss
16 there.

17 A Yes, I did.

18 Q Okay. And she wasn't supposed to be there so you were
19 going to get her off the property, right?

20 A Correct.

21 Q But she left before you got a chance to do that.

22 A Correct.

23 Q And she left with --

24 A Kenneth Wherry and Antonio Thompson.

25 Q Was there any other person with them or just those two?

TONYA ESTES - CROSS

- 1 A It was just those three.
- 2 Q Just those three together left?
- 3 A Yes.
- 4 Q And then, of course, you weren't -- how long did you
- 5 work that day?
- 6 A I think I worked 12 hours that day, I'm not actually
- 7 sure. I used to work doubles. I can't remember exactly
- 8 what I worked that day.
- 9 Q Got you. And so you were there until what, probably
- 10 about 7:00 that night then?
- 11 A Right.
- 12 Q And then you see Muckenfuss that night.
- 13 A Uh-huh.
- 14 Q And then the call the cops to get her --
- 15 A Remove her, correct.
- 16 Q Okay. And she was in Steve Peterson's room, right?
- 17 A Correct.
- 18 Q And, of course, they escorted her off the property,
- 19 or --
- 20 A They just told her to leave and she left.
- 21 Q Okay. You said she left on foot?
- 22 A Yes.
- 23 Q Heading towards the --
- 24 A Arby's parking lot.
- 25 Q Okay. And you did -- you called law enforcement on

TONYA ESTES - CROSS

- 1 that, correct?
- 2 A Correct.
- 3 Q And they came out, right?
- 4 A Right.
- 5 Q Okay. Do you know if they made a report on that?
- 6 A I guess they did. They asked me for my ID and stuff.
- 7 Q But that was that day, February 27th?
- 8 A Yeah.
- 9 Q Of '21, right?
- 10 A Yes.
- 11 Q Okay. All right. And I believe you said -- when was
- 12 this call about this light in the room made?
- 13 A I think it was actually done on the 28th.
- 14 Q 28th? Okay.
- 15 A If I'm not mistaken.
- 16 Q Got you. Got you. It wasn't that same day.
- 17 A Correct.
- 18 Q Okay. And called law enforcement and there was nobody
- 19 in the room?
- 20 A No.
- 21 Q Do you know if there was anything in the room or
- 22 just --
- 23 A Well, when we finally went in the room there was
- 24 nothing done to the room at all but one towel removed.
- 25 Q Okay. All right. That was about the 28th of February,

TONYA ESTES - CROSS

1 right?

2 A Correct.

3 Q And then law enforcement came back to talk to you back
4 on the 1st of March of this year, right?

5 A Right.

6 Q And in the meantime nobody had any conversation about
7 anything to do with this case, correct?

8 A No, sir.

9 Q Until investigators talked to you back on March 1st of
10 this year no one had come talked to you --

11 A No, sir.

12 Q -- about Mr. Thompson. All right. You saw Ms.
13 Muckenfuss come back that night. Did you see any other
14 people that had left come back?

15 A No, sir.

16 Q Did you ever see Mr. Wherry come back?

17 A No, sir.

18 MR. FRICK: Beg the Court's indulgence one second.

19 THE COURT: Yes, sir.

20 (Break in proceedings.)

21 Q I think you said when Ms. Muckenfuss left there wasn't
22 a whole lot of trouble except her mouth.

23 A Right.

24 Q Was she leaving with anybody or did she leave by
25 herself?

TONYA ESTES - CROSS

1 A She actually left walking across the parking lot to
2 Arby's by herself.

3 Q By herself? Okay. All right.

4 MR. FRICK: Thank you. That's all of the questions I
5 have.

6 MS. LIVELY: Your Honor, no further questions from the
7 State. May she be excused from her subpoena?

8 MR. FRICK: No objection.

9 THE COURT: Thank you. You can step down.

10 MS. LIVELY: Deputy Brandon Connor.

11 The witness, BRANDON CONNOR, was first duly sworn and
12 Testified as follows:

13 DIRECT EXAMINATION

14 BY MS. LIVELY:

15 Q Deputy Connor, where are you currently employed?

16 A Chester County Sheriff's Office.

17 Q And in what capacity are you employed there?

18 A Patrol division.

19 Q All right. And as patrol, what are your general duties
20 at the sheriff's office?

21 A To answer calls, enforce traffic laws, just be in the
22 community.

23 Q All right. So general response to the community either
24 be through requests or something?

25 A Yes, ma'am.

BRANDON CONNOR - DIRECT

1 Q Would it be normal for you to have to go out on a
2 potential complaint on a trespass?

3 A Yes, ma'am.

4 Q How long have you been with the Chester County
5 Sheriff's Office?

6 A About a year and a half.

7 Q A year and a half? All right. So Deputy Connor, did
8 you have an opportunity then within the last year to respond
9 to the Executive Inn for a call as a potential trespass?

10 A Yes, ma'am.

11 Q And whenever you respond to any type of a call, is an
12 incident report generated from the sheriff's office?

13 A Normally, yes, ma'am.

14 Q Okay. I'm going to show you an incident report just to
15 assist you in your recollection of your response that
16 particular day. Okay? I'll just hand that to you in case
17 you need to refresh your memory. So Deputy Connor, do you
18 recall then on February 27th, 2021, responding to what I
19 asked you before, the trespass complaint from the Executive
20 Inn?

21 A Yes, ma'am.

22 Q Okay. Do you recall who it was that actually put that
23 call in to the sheriff's office with that complaint?

24 A That was -- the complainant was Ms. Tonya Estes.

25 Q Okay. And have you ever talked to Ms. Estes before?

BRANDON CONNOR - DIRECT

1 A We've been out there a few times, yes, ma'am.

2 Q All right. So you are familiar with Ms. Estes and you
3 go there. Were you escorted or did you go with another
4 officer?

5 A At that time I had not been to the police academy so I
6 was riding FTO with another officer, yes, ma'am.

7 Q Okay. What's FTO?

8 A Field Training Officer. I was being trained in the
9 field.

10 Q Okay. So you had the pleasure of going to the
11 Executive Inn and meeting with Ms. Estes that day.

12 A Yes, ma'am.

13 Q All right. Now, the question I have for you and for
14 this -- and for this -- to explain to this jury, is what
15 time was it exactly that you responded along with the
16 officer to the Executive Inn on the 27th?

17 A Around 1:44 p.m.

18 Q P.m. Okay. So it was in the middle of the afternoon.

19 A Yes, ma'am.

20 Q Obviously was it daylight?

21 A Yes, ma'am.

22 Q Okay. Was your response to this particular call
23 documented in any way other than in that incident report?

24 A Our body worn cameras were operating at the time and it
25 was recorded.

BRANDON CONNOR - DIRECT

1 Q Okay. It was recorded.

2 A Yes, ma'am.

3 Q And have you had the opportunity to review that
4 recording of whenever you responded along with the officer
5 assisting you?

6 A Yes, ma'am.

7 Q Okay. Did you provide a copy of that body worn camera
8 to the State so that we can actually present it as evidence
9 in this case?

10 A Yes, ma'am.

11 Q And have you had the chance to review that particular
12 body worn camera again?

13 A Yes, ma'am.

14 Q Okay. I'm going to show you State's Exhibit Number 42.
15 Were you able to watch the body worn camera that is actually
16 on that particular flash drive?

17 A Yes, ma'am.

18 Q All right. And after you watched that particular
19 camera, does it show you on that -- in that response to the
20 trespass call?

21 A Doesn't show me but you can hear my voice.

22 Q I'm sorry. Does it show what is actually videoed off
23 of your body worn camera?

24 A Yes, ma'am.

25 Q Okay. Which would be you wearing the camera recording

BRANDON CONNOR - DIRECT

1 what you're seeing.

2 A And it shows everything that I saw and everything, yes,
3 ma'am.

4 Q Okay. Thank you. And it would have been from the time
5 February 27th at 1:44 p.m.?

6 A Yes, ma'am.

7 Q All right. And who is actually reflected in that video
8 do you recall?

9 A Ms. Tonya Estes. We met with her before we were
10 escorted up to the room where she claimed that there was a
11 trespasser on the property.

12 Q Okay. While you were there, Deputy Connor, were you
13 able to determine through dispatch whether or not there was
14 actually a trespass order in place against Ms. Mary
15 Muckenfuss?

16 A There was not. We did -- I did call dispatch and
17 dispatch said that there was not one on file. Ms. Estes
18 said that they had requested one and they had her as a
19 no-trespass on their records but not on ours.

20 Q Okay. So at that time because of that situation, what
21 did you and your -- the officer that was with you decide to
22 do.

23 A We escorted Ms. Muckenfuss off of the property and then
24 put her on trespass notice from that day forward.

25 Q Okay. Did you happen -- was she in a room or was she

BRANDON CONNOR - DIRECT

1 out where you could actually see her?

2 A No. She was in a room with another gentleman.

3 Q Did you know who that individual was?

4 A I did not at the time, no, ma'am.

5 Q Okay. So after all of this took place, did you at
6 anytime have to actually detain Ms. Muckenfuss, arrest her
7 or anything of that nature?

8 A No, ma'am.

9 Q So was -- you stated that she was told to leave, is
10 that what I heard you say?

11 A Yes, ma'am.

12 Q So did you actually watch her leave the property?

13 A Yes. We watched her walk off of the property into the
14 Arby's parking lot where she called for a ride.

15 Q Okay. And at that point in time, was that the end of
16 your call, or was there anything additional that you did in
17 regards to Ms. Muckenfuss that day?

18 A I know that we spoke with her once after that but I
19 don't recall what it was about.

20 Q Okay. Was it -- but was it documented in any kind of a
21 way or in an incident report?

22 A Yes, on this incident report right here. We had to
23 document it because we then placed her on trespass notice.

24 Q Okay. So that is the official time whenever she was
25 placed on trespass notice.

BRANDON CONNOR - CROSS/REDIRECT

1 A Yes, ma'am.

2 Q Okay. So if she showed back up on the property at the
3 Executive Inn after that trespass notice, would you have
4 arrested her?

5 A She would have been arrested, yes, ma'am.

6 Q Okay. After that particular event, had you had any
7 other -- from what you've stated on the stand, have you had
8 any other contact with Ms. Mary Muckenfuss regarding any
9 problems at the Executive Inn?

10 A No, ma'am.

11 Q All right.

12 MS. LIVELY: Your Honor, the State would move State's
13 Exhibit Number 42 into evidence.

14 MR. FRICK: No objection.

15 THE COURT: In without objection.

16 (State's 42 was received.)

17 MS. LIVELY: Your Honor, at this time I would ask to
18 publish this to the jury.

19 (The video was played for the jury.)

20 MS. LIVELY: I have no further questions for this
21 witness, Your Honor.

22 MR. FRICK: Just quickly, Your Honor.

23 CROSS EXAMINATION

24 BY MR. FRICK:

25 Q You have reviewed the video before you got up here

BRANDON CONNOR - CROSS/REDIRECT

1 today, correct?

2 A Yes, sir.

3 Q The female that was in the room, that was Mary

4 Muckenfuss?

5 A Yes.

6 Q Okay. And I believe you testified that y'all responded

7 about a quarter until 2:00 that afternoon?

8 A Approximately.

9 Q And y'all were there about 15 minutes or so?

10 A Fifteen or 20 minutes, yes, sir.

11 Q Other than her fussing about being on trespass notice,

12 did she talk about anything else?

13 A Not to us.

14 MR. FRICK: Beg the Court's indulgence one second.

15 (Break in proceedings.)

16 MR. FRICK: Thank you, sir, that's all of the questions

17 I have.

18 MS. LIVELY: Just one follow-up, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. LIVELY:

21 Q Deputy Connor, at some point your -- the officer with

22 you asked her, it was on your body worn camera, if she's

23 scared, she looked scared. Did she ever tell you Ms.

24 Muckenfuss why she was scared?

25 A She didn't tell me anything. She might have told the

BRANDON CONNOR - CROSS/REDIRECT

1 other officers after I walked away or got on the radio or
2 something, but she never told me anything.

3 MS. LIVELY: All right. Thank you.

4 MR. FRICK: Nothing further.

5 THE COURT: Thank you, sir, you may step down.

6 MS. LIVELY: Your Honor, may we approach for a moment?

7 (A bench conference was held with the Judge and the
8 Attorneys.)

9 THE COURT: All right. We're going to take a brief
10 recess, let's try to hold it to 15 minutes. The jury may
11 step back.

12 (The jury left the courtroom.)

13 THE COURT: All right. We will be down for about 15
14 minutes.

15 (A break was taken.)

16 (The jury returned to the courtroom.)

17 THE COURT: You may proceed.

18 MS. LIVELY: Yes, sir, Your Honor, thank you. The
19 State would call Lavondia Wherry to the stand.

20 The witness, LAVONDIA WHERRY, was first duly sworn and
21 Testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LIVELY:

24 Q Ms. Wherry, please spell your first and last name for
25 the jury.

LAVONDIA WHERRY - DIRECT

- 1 A L-a-v-o-n-d-i-a, W-h-e-r-r-y.
- 2 Q And how old are you, Ms. Wherry?
- 3 A Fifty.
- 4 Q And do you live in Chester County?
- 5 A I do.
- 6 Q And how long have you lived in Chester County?
- 7 A When I got out of the service.
- 8 Q Okay. And what armed services were you in?
- 9 A Army.
- 10 Q Army? How long were you in the Army?
- 11 A Three years.
- 12 Q Were you ever deployed?
- 13 A I was.
- 14 Q Where did you get deployed to?
- 15 A Panama and Saudi Arabia.
- 16 Q And did you voluntarily leave the armed forces, or
- 17 what's the status --
- 18 A Yeah.
- 19 Q All right. Have you had any type of benefits from the
- 20 armed forces?
- 21 A Yes.
- 22 Q What are those?
- 23 A From PTSD, anxiety, and depression.
- 24 Q And as a matter of fact, do you have a special tag on
- 25 the back of your vehicle?

LAVONDIA WHERRY - DIRECT

- 1 A I do.
- 2 Q And what does it say?
- 3 A Disabled Veteran.
- 4 Q Now, Ms. Wherry, other than being in the armed forces,
- 5 have you worked anywhere?
- 6 A Yeah.
- 7 Q What do you do, or what have you done?
- 8 A Warehouse basically.
- 9 Q And do you currently have any source of income?
- 10 A Just my disability.
- 11 Q Your disability?
- 12 A And I day-trade during the day.
- 13 Q All right. Now, Ms. Wherry, are you related to the
- 14 defendant --
- 15 A I am.
- 16 Q -- Kenneth Wherry? All right. If you will please tell
- 17 the jury how close of a relationship that you have.
- 18 A I love him.
- 19 Q You love him?
- 20 A That's my cousin, I love him. I love him.
- 21 Q What degree of cousins are you?
- 22 A First cousins.
- 23 Q First cousins? All right. Have y'all been close your
- 24 whole life?
- 25 A Yeah, grew up together.

LAVONDIA WHERRY - DIRECT

1 Q Now, Ms. Wherry, do you have any type of -- you
2 mentioned your PTSD, do you have any other types of like
3 issues mentally or any addictions that you --

4 A Yeah, drugs. Yeah, drug addiction, alcohol. I was
5 clean for 14 and a half years -- well, a little over 14 and
6 a half years and I relapsed during Covid.

7 Q You relapsed during Covid?

8 A Yeah.

9 Q When you relapsed, please tell the jury what happened.
10 When you say relapsed, what kind of relapse did you have?

11 A I started drinking first, then I started smoking
12 reefer, then I started snorting powder, then I started
13 smoking crack.

14 Q And when you started to do all of these different types
15 of substances, how did that affect you in your home life
16 with your -- do you have children?

17 A Two.

18 Q You have two children. How old are they?

19 A My son is 27, my daughter is 25. Both of them college
20 graduates.

21 Q So how did it affect your relationships with them?

22 A They love me. Regardless of what they love me. It
23 affected my relationship -- they knew about my drug
24 addiction, you know, because I struggled with it with them
25 coming up. But my relationship with my granddaughter,

LAVONDIA WHERRY - DIRECT

- 1 that's what hurt the most, you know.
- 2 Q Where do you live, Ms. Wherry?
- 3 A Enix Road.
- 4 Q Enix Road?
- 5 A Yes.
- 6 Q And how long have you lived there?
- 7 A Since 2011, yeah.
- 8 Q And do you own that property?
- 9 A Yeah.
- 10 Q You do? Okay.
- 11 A Uh-huh.
- 12 Q Does anybody else live there with you?
- 13 A My son.
- 14 Q Your son? How old is he again?
- 15 A Twenty-seven.
- 16 Q Twenty-seven. All right. And whenever you -- does
- 17 your son have any children? Or who is it that has --
- 18 A My daughter.
- 19 Q Your daughter?
- 20 A Yes.
- 21 Q Did she live in Chester County?
- 22 A No.
- 23 Q All right. How old is your granddaughter?
- 24 A Five.
- 25 Q So let me take you back to the reason why we're here

LAVONDIA WHERRY - DIRECT

1 today. Let me just ask you this first, are you represented
2 by an attorney?

3 A I am.

4 Q Who is your attorney?

5 A Montrio Belton.

6 Q And why do you have an attorney?

7 A I was appointed one.

8 Q You were appointed one?

9 A Uh-huh.

10 Q Why did you have to get an attorney appointed to you,
11 Ms. Wherry? What happened? Were you arrested?

12 A Yes, because I was arrested.

13 Q Okay. What were you charged with?

14 A Accessory after the fact of murder.

15 Q Of murder.

16 A Uh-huh.

17 Q Okay. And the murder, who was the victim in that case?

18 A Antonio Thompson.

19 Q So you understand that's why you're here today,
20 correct?

21 A Yes.

22 Q Now, Ms. Wherry, has the State, my office or myself,
23 promised you anything at all in regards to your testimony
24 here today?

25 A No, ma'am.

LAVONDIA WHERRY - DIRECT

1 Q So you still have that charge pending against you.

2 A Yes, I do.

3 Q And are you subject to potentially getting 15 years for
4 that offense?

5 A Yes.

6 Q Now, Ms. Wherry, let's talk about what happened that
7 weekend of February 27th of 2021. Okay? All right. That
8 particular weekend, were you hanging out with the defendant,
9 your cousin?

10 A Yes.

11 Q So tell the jury about that. What was going on that
12 weekend.

13 A Basically Liz had hooked up with this guy, he wanted me
14 to take him to the hotel and I took him.

15 Q Let me just stop you there, because we've been -- let
16 me clarify. Liz, is that Mary Muckenfuss?

17 A Yeah, Mary, yeah. I'm sorry, Mary.

18 Q That's fine. Let me go back then so we can make sure
19 that when you're talking about people we know who you're
20 talking about. Okay? Tell the jury how you know Mary
21 Elizabeth Muckenfuss.

22 A Just from being out there those three months I was out
23 there, that's all.

24 Q What three months? Because the jury doesn't know what
25 you mean.

LAVONDIA WHERRY - DIRECT

1 A I just met her when I was out there getting high.

2 Q Okay. Fair enough. So when you were back using you
3 came into contact with Mary Elizabeth Muckenfuss.

4 A Right.

5 Q What do you -- how -- what do you call her?

6 A I call her Liz.

7 Q Liz. All right. So just so the jury knows when you
8 say Liz you're talking about Mary Muckenfuss.

9 A Right.

10 Q All right. Fair enough. Okay. So I'm going to go
11 back and ask you again, on that weekend of February 27th,
12 2021, tell the jury what you were doing and who you were
13 with. Just start from the beginning that morning.

14 A I don't exactly remember where I was, but I got a call
15 to, you know, go and pick her up and bring her to the hotel,
16 bring her to the hotel and Ken was with me. So we picked
17 her up and took her to the hotel.

18 Q All right. And you're talking about Liz.

19 A Liz, uh-huh.

20 Q Who was driving?

21 A I was.

22 Q And what kind of vehicle do you drive?

23 A Toyota Tacoma.

24 Q Was that the vehicle you were driving that day?

25 A Yes.

LAVONDIA WHERRY - DIRECT

1 Q All right. So Ken was with you in that vehicle; is
2 that right?

3 A Yes.

4 Q All right. Now, Lavondia, after you get Liz, where do
5 y'all go?

6 A We go to the hotel. I taking her to the hotel.

7 Q When you say the hotel, tell the jury what hotel that
8 is.

9 A Oh gosh, the one right beside the Arby's.

10 Q Is that the Executive Inn?

11 A Yeah, the Executive Inn.

12 Q Okay. Now, do you know whether or not -- did Ms.
13 Muckenfuss --

14 A No, I'm sorry. We went to pick her up, that's right,
15 we went to pick her up. I apologize. Yeah, we went to pick
16 her up. Because she was banned from the hotel and the guy
17 didn't know it.

18 Q Okay.

19 A Yeah.

20 Q Okay. If I stop you sometimes it's just to get
21 details.

22 A Yeah.

23 Q Okay? All right. So you went to the Executive Inn --

24 A Uh-huh.

25 Q -- to pick up Liz because she had been banned from the

LAVONDIA WHERRY - DIRECT

1 hotel.

2 A Yeah.

3 Q All right. So who was with you when you went to the
4 hotel?

5 A Ken.

6 Q Ken was with you.

7 A Uh-huh.

8 Q All right. So when you got there, do you remember who
9 you saw that ended up riding with you in the truck?

10 A Yeah. Liz came to the truck and Antonio was standing
11 on the corner, and he walked to the truck. He was -- you
12 know, at first he just stood out there, and I looked over
13 there at him, I just looked over there at him. And I said I
14 know his face from somewhere. But then he walked to the
15 truck and he looked in the truck and he said: I know you.
16 I said: I remember your face but I don't know it, I don't
17 know you like that. He said: I remember you from back in
18 the day. And I said: Yeah, that's where it's from. And he
19 said: Will you give me a ride down Number 9? He said: My
20 car broke down. He said: I'll give you \$30. And I said:
21 Yeah, I will.

22 Q Okay. All right. So was that the first time you made
23 any contact with Mr. Antonio Thompson that day?

24 A Yes.

25 Q Do you remember if it was morning, midafternoon, or

LAVONDIA WHERRY - DIRECT

- 1 what time it was? If you don't, that's fine.
- 2 A No. I don't remember the exact time.
- 3 Q Okay. So whenever you made contact with Mr. Thompson,
- 4 Antonio, did y'all stay there at the hotel or did you leave
- 5 at that point?
- 6 A We left.
- 7 Q You left?
- 8 A Uh-huh.
- 9 Q Tell the jury where -- okay. Once again, you've got a
- 10 Toyota Tacoma. How many seats are in that vehicle?
- 11 A It's five passenger. You've got two in the front and
- 12 like a long one in the back.
- 13 Q Okay. Is it four door?
- 14 A Four door, yeah.
- 15 Q All right. So you were driving. Where was Antonio
- 16 sitting?
- 17 A On the passenger side.
- 18 Q Okay. So he was up front with you?
- 19 A Right.
- 20 Q And where was your cousin, Kenneth, sitting?
- 21 A Behind me.
- 22 Q All right. And then where was Liz sitting?
- 23 A Behind Antonio.
- 24 Q About how big is your cousin, Kenneth Wherry?
- 25 A He's a big boy.

LAVONDIA WHERRY - DIRECT

1 Q He's is big boy? About how tall?

2 A About six-three.

3 Q Six-three? Okay. So do you know why he sat in the
4 back seat?

5 A Because I told him, I said: Ken, I said: Let him sit
6 up front so he can show me where the car at.

7 Q Okay.

8 A So he can show me, you know, let me know where his car
9 at, because I didn't know. All he told me was in Richburg.
10 I didn't know exactly -- which I'm familiar with Richburg
11 but I didn't know exactly where he was wanting me to go in
12 Richburg, where his car had broke down.

13 Q So does Ken normally sit in the back seat?

14 A No. He was in the front and he got out.

15 Q All right. Okay. So he did what you said. And
16 whenever he got in the back seat behind you, did you have to
17 move your seat at all?

18 A Yeah. When we started riding, yeah.

19 Q Okay. All right. So you're riding. Where do you go
20 first?

21 A I stopped at my house to get the cables, because I told
22 him, I said: I've got to stop by the house and get the
23 cables to boost your car. And he said: Okay.

24 Q So those are jumper cables?

25 A Yeah, jumper cables.

LAVONDIA WHERRY - DIRECT

1 Q Okay. So you go to your house and --

2 A And I just went to my other car, popped the trunk,
3 got -- because I got the key on my truck key to my car, too,
4 opened the trunk, got the cables out, throwed them on the
5 back of the truck and we took back off.

6 Q All right. So when you stopped by your house, did you
7 talk to anyone else or do anything other than getting the
8 jumper cables?

9 A No.

10 Q So when you got back in the vehicle, was it still the
11 four of you everybody still seated in the same place?

12 A Yes.

13 Q All right. So tell the jury what you did next.

14 A We started -- because where -- the way -- my children
15 went to Lewisville, and the way I used to take them to
16 school I cut down Cedarhurst, we went down through there,
17 went down Cedarhurst. And we -- I think we crossed the
18 track -- yeah, we crossed the track. And Ken had told me to
19 pull my seat up, and I pulled my seat up. And me and
20 Antonio was talking and he pulled out the gun and he said:

21 G --

22 Q Let me stop you there. Where was the gun?

23 A Up under my seat.

24 Q Whose gun was it?

25 A Mine.

LAVONDIA WHERRY - DIRECT

- 1 Q What kind of gun?
- 2 A .357.
- 3 Q Was it loaded?
- 4 A Yes.
- 5 Q Are you legally able to carry a gun?
- 6 A No.
- 7 Q So -- but that gun was yours.
- 8 A Yeah.
- 9 Q So it was under the seat, you pull your seat up, and
- 10 then how did you know Ken had your gun?
- 11 A Because he called, me he said: G. And I looked up in
- 12 my mirror, and he said (gesturing) and I said: Okay. And
- 13 he went like (gesturing) towards Antonio, and I told him:
- 14 No.
- 15 Q Okay. I'm going to explain what you just did. Okay?
- 16 A Okay.
- 17 Q So you're stating -- you're actually doing body
- 18 movements at this point, right? You're showing me body
- 19 movements, you're saying when you responded to Mr. Wherry,
- 20 your cousin, right?
- 21 A No. When he showed me the gun -- he said: G, and he
- 22 showed me he gun, and I said: Okay. And then that's what
- 23 he did.
- 24 Q That's what he did.
- 25 A Yeah.

LAVONDIA WHERRY - DIRECT

1 Q So tell me -- because I understand what you're saying,
2 we just want it for the record.

3 A Okay.

4 Q When you're doing your head and you're leaning it
5 you're leaning it which way?

6 A Towards Antonio -- that's what Ken told me, he went
7 (gesturing.)

8 Q And he leaned his head towards Antonio.

9 A Yeah.

10 Q Is that how you understood that motion?

11 A Yeah.

12 Q All right. And what did you do when you saw him show
13 you the gun and then do his head?

14 A I said: No. Because it wasn't -- it wasn't even
15 necessary.

16 Q Okay. Do you -- had you talked to Ken about anything
17 that was -- in regards to your possibly robbing the victim
18 or hurting him or anything like that?

19 A No.

20 Q All right. So tell the jury what happens next.

21 A We kept going down -- we kept going down the road, and
22 I heard Ken and Mary in the back whispering.

23 Q Okay.

24 A I heard them whispering. And all of the sudden, you
25 know, I say about 20 seconds later he said: All right, man,

LAVONDIA WHERRY - DIRECT

1 give it up.

2 Q Who said that?

3 A Ken. And I stopped the truck. I stopped, you know,
4 putting on the brakes, stopping the truck. And I told him,
5 I said -- you know, I said: No, G, you don't have to do
6 that. I said: No. And it looked like he was pulling his
7 hand back, and so when I seen him look like he was pulling
8 his hand back I turned back around and started back driving
9 -- you know, I took my foot off of the gas, and once I took
10 my foot off the gas I heard boom. And so I looked up at my
11 windshield thinking it was -- you know, he might have hit my
12 windshield, and I looked over at Mr. Thompson and I said the
13 G-D word like three times. Because he --

14 Q What did you see?

15 A I see he had shot him in the neck.

16 Q Was he bleeding?

17 A Yes. And I told him -- I started -- I said: Y'all
18 give me something to wrap around his head. And I tried --
19 when I started taking him to the hospital, Ken -- we got
20 right there in front of CVS at the light, and he said: G,
21 where are you going? I said: Ken, we've got to get him to
22 the hospital. He said: No, G, this is murder, this is
23 murder. And he like grabbed my seat, and I'm already
24 nervous and scared: No, G, turn the car around, turn the
25 car around. And so I turned the car around.

LAVONDIA WHERRY - DIRECT

1 Q Okay. Where did you go next?

2 A He told me, he said: Go back down Uncle James Road.

3 That's where my uncle used to live at, and he said: Go that

4 way. It was on a dirt road. And he said -- I stopped -- he

5 told me -- I was going down the dirt road, and he said: G,

6 where are you going? He said: Stop. Stop. And I stopped

7 the truck, and he got out and got him out of the car.

8 Q Let me ask you this: Did you at any time help him

9 get --

10 A Yeah.

11 Q You did. You helped Kenneth.

12 A Yeah, I did.

13 Q And was Mr. Thompson a large individual as well?

14 A No. He wasn't that big, to me he wasn't.

15 Q Okay. Was he as big as Ken?

16 A No.

17 Q All right. At that point in time, did you know whether

18 or not he was still breathing or alive? Could you tell?

19 A He was dead. He was dead.

20 Q And whenever Ken had to take him out of the vehicle,

21 was there Anything done to his pocket, his body or anything?

22 A Yeah, ken took his wallet. He took his wallet.

23 Q Ken took his wallet?

24 A Yeah.

25 Q Did you see anything else that was taken?

LAVONDIA WHERRY - DIRECT

1 A No. I didn't see nothing else that was taken, just his
2 wallet. But I know he had put his keys down with my -- I
3 forgot what -- my little console area is where he could hold
4 the keys, and his cell phone was there.

5 Q And who was that?

6 A That was Antonio's stuff.

7 Q That was Antonio's stuff.

8 A Yeah.

9 Q So Antonio had left his keys --

10 A Yeah.

11 Q -- and cell phone like in the little console area.

12 A Yeah. His keys, yeah.

13 Q Now, tell the jury about what you and Ken did with
14 Antonio at that point.

15 A He got him out -- he got him out of the truck, and at
16 first he asked Liz, he said: Come help me, and she said:
17 No. And he like: G, come on help me. G, come on help me.
18 And all I knew is he had a gun. I didn't know -- I was
19 scared and I knew he had a gun, so I got out of the truck.

20 Q So did you help him with the body?

21 A Yeah, I did.

22 Q Tell the jury how y'all took him into the woods.

23 A It was -- Ken had -- he had drug him a little bit, and
24 then he told me to come and help him, and we dragged him
25 about from here maybe to the end of that.

LAVONDIA WHERRY - DIRECT

1 Q Where the deputy is sitting?

2 A No. Probably to the end of that right there.

3 Q Okay. Okay. So maybe what --

4 A Yeah. Right up in there, right where you're at.

5 Q Okay. All right. So whenever y'all were dragging him,
6 were you dragging him by his feet, his hands, or how were
7 y'all dragging him?

8 A By his pants leg. I think it was his pants leg, or
9 feet, yeah. It was down in that area. I'm not sure exactly
10 where I had him grabbed at.

11 Q And so once he was drug in the woods, was there like --
12 was it difficult to get him into the area where y'all left
13 him? Was there a lot of brush?

14 A Yeah. It was a little brush over in that area.

15 Q Were there any houses or lights in that particular
16 area?

17 A No.

18 Q And so after he was actually drug into the woods, tell
19 the jury what y'all did after that.

20 A We got back in there -- in the car. Mary got in the
21 back -- got in the back with Ken, and Ken got back behind
22 me. He told me to go to the car wash.

23 Q Tell the jury what the inside of your truck looked
24 like.

25 A It was blood on that side, and it was blood on my

LAVONDIA WHERRY - DIRECT

1 clothes from where I had tried to stop his bleeding. And I
2 just -- when he told me to turn around I just put the, you
3 know, just dropped the -- I don't know whether it was a
4 jacket or a shirt, what it was, I just put it -- just
5 dropped it on my lap, because had I to make a left turn.

6 Q So where was the first place that you went after
7 Antonio had been shot?

8 A Ken told us to go to the car wash.

9 Q To the car wash?

10 A Uh-huh.

11 Q So what car wash did you actually go to?

12 A On Columbia Street.

13 Q On Columbia street? All right. And whenever you got
14 there -- well, before you got there, what were the three of
15 y'all talking about?

16 A Nothing really. I don't remember nothing.

17 Q And at that point was Ken saying anything about what
18 had happened that you remember?

19 A All I know is when it happened and I looked in the
20 mirror I seen him -- tears coming down his eyes.

21 Q So you go to the car wash. When you get to the car
22 wash tell the jury what y'all did.

23 A Ken got everything out of the car and he started
24 washing in it, and he just washed everything, yeah.

25 Q Where was the gun at that point?

LAVONDIA WHERRY - DIRECT

1 A I don't know. I have no idea.

2 Q Well -- so when you said he washed everything --

3 A He just took the -- he took everything and put it in

4 the trash, put a lot of stuff in the trash out there, and he

5 just took the whole -- just started washing the car, washing

6 the inside of the truck.

7 Q Okay. So inside of the truck.

8 A Uh-huh.

9 Q And did you help him with any of that?

10 A No.

11 Q All right. What about Liz, what was she doing?

12 A I don't even remember what Liz was doing, I don't.

13 Q All right. Were any -- did any of y'all take off your

14 clothes while y'all were at the car wash or remove any of

15 the bloody clothes that you remember?

16 A Yeah. Because they put some of them -- I know it was a

17 lot of paper, some kind of paper or stuff that they put down

18 in the trash can. I don't remember what all it was, I don't

19 remember.

20 Q Okay. That's fine. And whenever you -- so how long

21 were y'all at the car wash do you think?

22 A Probably about ten or 15 minutes.

23 Q Okay. So after you -- the truck is washed out, where

24 do y'all go from there?

25 A Ken said: Go and get some dope.

LAVONDIA WHERRY - DIRECT

1 Q Go and get some dope? Well, let me ask you this, what
2 happened to the phone and the keys, Antonio's phone and
3 keys, that were in your truck? Do you know? Do you
4 remember?

5 A I remember -- I took them to the -- I took -- they said
6 we had to get rid of the phone. I know -- I think Liz had
7 the phone, Ken had his wallet, and he said: You've got to
8 find a store so we could get rid of the stuff. I don't know
9 the name of the store. I don't know the name of the store,
10 but I know it when I see it, and it's a drain in front of
11 there. So they dumped his phone there and --

12 Q Were you driving?

13 A Yeah.

14 Q Okay.

15 A And Ken had his wallet, and he said -- there was \$240
16 in there. He gave -- he said: I'm going to give you 100,
17 Liz. He said: G, I'm going to give you 100, and I'm going
18 to keep 40. And I told him I didn't want it.

19 Q I'm going to show you State's Exhibit 1, and I know
20 it's a little hard it see, and State's Exhibit 2, and just
21 ask you -- you said that y'all put the phone in a drain.
22 I'm just going to show this to you. Does State's Exhibit 1
23 look about right?

24 A Uh-huh.

25 Q Is that a yes?

LAVONDIA WHERRY - DIRECT

1 A Yes.

2 Q Did you ever try to go into his phone or do anything
3 with his phone?

4 A No.

5 Q Okay. All right. So did you even know what type of
6 phone it was?

7 A No.

8 Q Had you ever called him or did you have his number?

9 A No.

10 Q And I believe you testified earlier that you recognized
11 his face but really you hadn't seen him --

12 A Yeah. It was years since I had seen him, yeah.

13 Q -- in years. Okay. All right. So you ended up
14 getting -- or Kenneth actually ended up getting about \$240
15 worth off of the victim, Mr. Thompson. Okay. So did Ken
16 tell you why he used the gun that day? Do you know whether
17 or not Ken -- you're saying no.

18 A No, I don't.

19 Q Just because we have to make a record.

20 A I'm sorry.

21 Q It's okay. It's okay. Did Liz have anything to do
22 with the shooting? From you looking at her, watching her,
23 did you see anything that indicated she had anything to do
24 with it?

25 A All I know, like I said, when me and Antonio was

LAVONDIA WHERRY - DIRECT

1 talking they was back there whispering. Now, what they were
2 talking about I have no idea.

3 Q Okay. All right.

4 A And it wasn't 20 seconds later is when he pulled the
5 gun, so I don't know.

6 Q Fair enough. Thank you. Here is the other thing I
7 wanted to ask you, at that point in time you said that you
8 kind of -- during Covid you had gone back to using drugs and
9 crack. About how much money would you spend on crack in a
10 day? Just give me an estimate.

11 A Probably \$500 or \$600.

12 Q How long would one hit of crack last you? How long
13 would the high last?

14 A I don't even know. I gave away more crack probably
15 than I smoked.

16 Q Does the high last for a long period of time? Just
17 whenever you take a hit how long -- how often do you have to
18 keep re-upping or getting more drugs is what I'm asking?

19 A With me it wasn't a lot. But when people were around
20 and I was just the type if I was getting high y'all could
21 get high, too, you know. That's just -- I mean --

22 Q Did you give drugs to your cousin, Ken?

23 A Yes.

24 Q You did? Did you ever give him money for drugs?

25 A Yes.

LAVONDIA WHERRY - DIRECT

1 Q On that particular day, did you give him any money for
2 drugs?

3 A No, not that day.

4 Q Why not?

5 A Because if -- I don't remember if I was just on my way
6 home or what we were doing, but we just hadn't -- no. I
7 just hadn't gave him no money.

8 Q Do you know whether he had any money?

9 A Well, he had the money that, you know, he got out the
10 wallet. Oh, before all of this happened?

11 Q Before that.

12 A Oh, I don't know. I don't know.

13 Q You don't know.

14 A No. I don't know if he had any money in his pocket.

15 Q Did you have access to money?

16 A Yes.

17 Q How much money did you have in your bank accounts or
18 have accessible to you at that point?

19 A Probably between \$40,000 and \$60,000.

20 Q Did you need that \$240 from Antonio Thompson?

21 A No, I didn't need that.

22 Q After the phone was dumped in that drain that I showed
23 you in State's Exhibit Number 1, where was the next place
24 that y'all went?

25 A To get dope.

LAVONDIA WHERRY - DIRECT

- 1 Q To get dope?
- 2 A Yeah.
- 3 Q Okay. At what point did you actually -- did you ever
- 4 take Liz back to the hotel?
- 5 A No. I didn't take her back to the hotel.
- 6 Q Where did you take her back to?
- 7 A Off of Number 9. On Number 9.
- 8 Q And when you -- was that a person's house?
- 9 A Yes.
- 10 Q It was? Whose house was it?
- 11 A Donald Grier's.
- 12 Q Donald Grier's? All right. So do you know where she
- 13 ended up after that point?
- 14 A No, I don't. No, I don't.
- 15 Q Now, Ms. Wherry, who ended up with, if you know, Mr.
- 16 Thompson's wallet and other items? Do you know?
- 17 A I have no idea. The only thing I know is when Ken got
- 18 the money out and he tried to give me some and he gave her
- 19 some and he kept some I have no idea. I never saw that
- 20 wallet again, I don't know.
- 21 Q After you dropped off Liz at Mr. Grier's house, did you
- 22 and Ken talk about what had happened?
- 23 A Yeah.
- 24 Q All right. Tell the jury about that.
- 25 A Basically he told me that we couldn't put ourself

LAVONDIA WHERRY - DIRECT

1 nowhere near the vehicle, and that -- and I was like: Well,
2 what do I need to say, that I gave it to the boys or
3 something? And, you know, he was like: Whatever it is we
4 can't put ourself near that vehicle. He said: Because if
5 we'll stick together they'll believe us, because, see, she
6 don't do nothing but smoke dope.

7 Q And when he says she, who did you think he was
8 referring to?

9 A Mary.

10 Q Mary? Liz?

11 A Yeah.

12 Q Okay. All right. So he was telling you to say you
13 gave the vehicle to some boys. Explain what that means to
14 the jury.

15 A Just to the boys to, you know, when you rent out your
16 car to them.

17 Q So someone whose into the drugs, they understand that?

18 A Yes.

19 Q Can you explain what that means --

20 A Yeah. To a drug dealer, I'm sorry.

21 Q Just so we're clear just let me ask the question first,
22 then you can explain. Ken was telling you to say y'all were
23 not in that vehicle when this happened, am I understanding
24 you? Correct me if I'm wrong.

25 A Yes.

LAVONDIA WHERRY - DIRECT

1 Q And to say that the boys, like some drug dealers had
2 used your truck and that's what happened; is that right? Is
3 that a yes?

4 A Yes. I'm sorry.

5 Q I wanted to be sure. And so was that what you were
6 going to -- that was going to be your story.

7 A Yes.

8 Q So did y'all end up going and smoking anymore crack
9 that day?

10 A Yeah. We went to my house and Ken finished doing the
11 truck, and I went in there and I just -- when I went in my
12 house I just cried. I took a shower and I went back out,
13 and we went over to this guy's house off Harris Street and I
14 bought some dope. Yeah.

15 Q You bought some dope.

16 A And I had like a pint of liquor in the car.

17 Q Well, let me back you up for just a minute. When you
18 were at your house, did you leave in the truck again or did
19 you leave the truck at the house?

20 A I left it at the house.

21 Q You left it at the house. All right. What about the
22 gun? What did you do with the gun?

23 A I took it out of the car -- I mean, I took it out the
24 truck. I was going to leave it in the truck, and I said: I
25 ain't leaving this in the truck. Because I wasn't trying to

LAVONDIA WHERRY - DIRECT

1 hide nothing, I just took it out and just left it in the
2 garage.

3 Q Okay. So you picked it up yourself?

4 A Yeah, I did.

5 Q And so whenever -- where did you leave the truck then?

6 A In my garage.

7 Q In your garage? Was the inside of the truck still wet?

8 A Yes.

9 Q Where did you put the gun?

10 A Right beside it -- there's so much stuff in my garage,
11 but it was right beside it on some -- like on a little
12 basket, I believe, over in that area.

13 Q All right. Did you do anything with the gun, wipe it
14 down or --

15 A No, I didn't.

16 Q Okay. And -- but you did touch it.

17 A Yes, I did.

18 Q And were you wearing any kind of gloves or anything?

19 A No, I wasn't.

20 Q Okay. Whenever you left with Kenneth, what vehicle did
21 y'all take?

22 A The Avalon.

23 Q And is that your vehicle as well?

24 A Yes.

25 Q And so was it just the two of you at that point?

LAVONDIA WHERRY - DIRECT

1 A No.

2 Q Who else was with you?

3 A A friend of mine who went with us, too.

4 Q He did?

5 A Yeah.

6 Q Okay. And was he involved in any of this at all?

7 A No. When Ken was washing the truck, him and this other

8 girl, he got her to drop him off at my house.

9 Q Okay. All right. So you went back to you said Harris

10 Street I think you said?

11 A Yeah, it's over by Harris Street. I can't think of the

12 name of the street, but it's over in that area.

13 Q All right. And when you went back over there that's

14 when you said that y'all smoked some more dope?

15 A Yeah.

16 Q How long were you there, Von? Do you remember?

17 A I slept there.

18 Q You slept there?

19 A Yeah, I slept there.

20 Q And at any point after you slept there, did you see Liz

21 or Mary Muckenfuss again?

22 A No.

23 Q So the next day would have been February 28th of 2021,

24 correct?

25 A Uh-huh.

LAVONDIA WHERRY - DIRECT

1 Q All right. Tell the jury what happened on that
2 particular day.

3 A Ken came in the room, he woke me up and he said: G,
4 get up, get up, and he said: Mama called me. He said:
5 Mama said Albert called her and said we got to turn
6 ourselves in.

7 Q All right. And what did you think at that point?

8 A Nothing. I called Albert. I mean, it took me a
9 minute. I called Albert. And that's when he kept saying:
10 G, we can't put ourself near that truck. We can't put
11 ourself near that truck.

12 Q Who's saying that?

13 A Ken was.

14 Q Ken was saying that?

15 A Yeah.

16 Q When you say Albert, who are you talking about Albert?

17 A Crawford, the detective.

18 Q Where does Albert Crawford work?

19 A At the sheriff's department, I think. Yeah, sheriff's
20 department.

21 Q The sheriff's office? And is he your family member as
22 well?

23 A Yes, he is.

24 Q All right. How close of a family member is he to you?

25 A I really don't know, all I know is we family.

LAVONDIA WHERRY - DIRECT

1 Q Okay. After getting -- after Kenneth told you that
2 your mom, or that his mom was calling and that y'all had to
3 turn yourselves in, he told you to keep saying we can't put
4 ourselves in that vehicle.

5 A Right.

6 Q All right. So what did you do? Did you turn yourself
7 in?

8 A I did.

9 Q All right. And we've already seen the -- do you
10 remember signing Miranda forms agreeing to talk to law
11 enforcement that day?

12 A I don't remember, but if I -- I know my signature.

13 Q Okay. I'm going to show you what's already in evidence
14 as State's Exhibit Number 36. Is that your signature, Ms.
15 Wherry?

16 A It is.

17 Q It is? And did you waive your rights and agree to talk
18 to law enforcement on that day?

19 A Yeah, I did.

20 Q You did? Tell the jury what's the first thing that you
21 told them that had happened that particular weekend. What
22 was your first story that you told them?

23 A What Ken had told me to say, that I had rented the car
24 out and the guys had gave me like, what, \$300 to rent the
25 car out or whatever.

LAVONDIA WHERRY - DIRECT

1 Q Okay. So that would have been drug dealers?

2 A Yeah, drug dealers.

3 Q And so after you told law enforcement that you had
4 rented out your truck --

5 A Uh-huh.

6 Q -- at what point did your story change?

7 A When conviction came on me.

8 Q Explain what you mean by when conviction came on you.

9 A When God showed up I couldn't lie. When God showed up
10 I couldn't, I couldn't lie. I couldn't tell no lie. That
11 dude just asked me for a ride and I couldn't lie, and
12 conviction came on me. And I don't know if you've ever been
13 convicted by God, but when he convict you you're convicted,
14 and when he convicted me I had to tell the truth.

15 Q Are you okay or do you need a break, Ms. Wherry?

16 (Break in proceedings.)

17 THE COURT: Let's take about five minutes.

18 MS. LIVELY: Okay.

19 THE COURT: The jury will step back. Court will stand
20 at ease.

21 (The jury left the courtroom.)

22 (A break was taken.)

23 (The jury returned to the courtroom.)

24 THE COURT: All right.

25 MS. LIVELY: Thank you, Your Honor.

LAVONDIA WHERRY - DIRECT

1 CONTINUED DIRECT EXAMINATION

2 BY MS. LIVELY:

3 Q Ms. Wherry, I just have a few more questions for you.

4 Okay? Since you -- when you were arrested, did you actually
5 get out on bond?

6 A Yes.

7 Q You did? Okay. And at any point in time after that
8 happened and you had given your statement to the police,
9 have you talked to anyone other than your attorney about
10 what happened that weekend?

11 A My daughter.

12 Q Your daughter? All right. Have you had any contact
13 with Mary Elizabeth Muckenfuss?

14 A No.

15 Q Have you talked to the defendant, Kenneth Wherry?

16 A No.

17 Q So is the last time that you talked to your cousin,
18 Kenneth, whenever he told you to keep your story straight?

19 A Yes.

20 Q So is this second half of your statement that you gave
21 to law enforcement that day, was that what really happened
22 with Antonio Thompson?

23 A Yes.

24 Q It was? Is what you're telling this jury here today
25 what happened?

LAVONDIA WHERRY - CROSS

1 A Yes.

2 MS. LIVELY: Thank you, Ms. Wherry. Please answer any
3 questions that the defense has. Okay?

4 CROSS EXAMINATION

5 BY MS. BOULWARE:

6 Q Good morning, Ms. Wherry.

7 A Good morning.

8 Q All of that is pretty much a lot of new details I've
9 heard compared to your last statement.

10 A Uh-huh.

11 Q Well, let's start with this, what's your relationship
12 with Mary Muckenfuss other than knowing her for three
13 months?

14 A I haven't known her -- it wasn't that long. I just met
15 her when I relapsed. I met her when I relapsed.

16 Q Okay. What did y'all do together?

17 A We was in houses together when they was getting high
18 at, that's it. It was certain places that wherever you get
19 high at, the houses that you get high at, that's where I
20 would see her at sometimes.

21 Q Okay. Were you ever mean to Mary Muckenfuss, like mean
22 or rude to her?

23 A No.

24 Q Cuss at her?

25 A No.

LAVONDIA WHERRY - CROSS

1 Q Just --

2 A We might have had -- no. No. No.

3 Q There's some testimony earlier that kind of alluded to
4 prostitution and Mary Muckenfuss going hand in hand. Do you
5 know anything about that?

6 A No.

7 Q Okay.

8 A No. Whatever she had going on -- establishment she had
9 going on it was already together.

10 Q Okay. But you never heard about that happening but it
11 could have.

12 A No. I mean, when you would go over to Donald's house
13 she would be back in the room with a man, so --

14 Q Do you know if she was getting paid for that?

15 A I don't know.

16 MS. LIVELY: Objection, Your Honor. She's asking her
17 to speculate -- on hearsay.

18 A I don't know. I don't know what she did when she was
19 back in the room with them.

20 THE COURT: All right.

21 MS. LIVELY: Okay.

22 Q I'm going to kind of jump around in time a little
23 bit --

24 A Uh-huh.

25 Q -- because I'm trying to maybe get ahold of what you

LAVONDIA WHERRY - CROSS

1 were saying versus what you said before.

2 A Uh-huh.

3 Q Did you ever tell Antonio Thompson -- and I'm going to
4 quote, I'm going to say what's been said -- did you ever
5 tell Antonio Thompson when there was a gun held to him:
6 You're going to give me your money mother fucker?

7 A No. No.

8 Q During that incident, did Mary Muckenfuss beg you not
9 to kill her?

10 A No.

11 Q Have you ever threatened to kill her before?

12 A No.

13 Q Have you ever robbed anybody --

14 A No.

15 Q -- because of money?

16 A I didn't need to.

17 Q Why are you getting paid \$30 to drive somebody --

18 A He just asked me -- he needed me -- he told me his car
19 was broke. My car has broke down. I've always had -- I
20 haven't always had money so I know that, too. My car been
21 broke down before and needed help.

22 Q Okay. But you were going to take his \$30 for that.

23 A Of course.

24 Q All right. Fair enough.

25 A Uh-huh.

LAVONDIA WHERRY - CROSS

1 Q So where is that crack house? Y'all went to a crack
2 house, had a drug addiction, y'all hang out at the crack
3 house. Where is that crack house?

4 A Which one are you talking about? There's a lot of
5 them.

6 Q Okay. What's the closest one to Executive Inn?

7 A I don't know what's the closest one to Executive Inn,
8 that's in the city like, I don't know.

9 Q All right. That's fine. So you testified earlier
10 that -- and this is where the timelines between everybody's
11 timeline kind of gets mixed up a little bit. So this
12 started out with you and Ken going to pick -- or pick Liz up
13 from the hotel because she was banned from the hotel?

14 A Right.

15 Q Okay. Did she know she was banned from the hotel?

16 A I don't know.

17 Q How did you know?

18 A Because the guy that was up -- that she was in the room
19 with, he called me and told me.

20 Q About what time was that?

21 A I don't know. I don't remember. I don't remember what
22 time it was, I don't remember.

23 Q Okay. So you also testified that the gun that was used
24 on Mr. Thompson, that's your gun.

25 A Uh-huh.

LAVONDIA WHERRY - CROSS

- 1 Q It was under your driver's seat.
- 2 A Uh-huh.
- 3 Q And that's where Ken supposedly got it from.
- 4 A Yeah, because that's where it was.
- 5 Q Was it ever in his pocket that you know of?
- 6 A No, not that I know of.
- 7 Q How big is that gun?
- 8 A It's a .357.
- 9 Q It's a pretty big gun, isn't it?
- 10 A Yeah.
- 11 Q Would it fit in a pocket easily? Okay. So there's
- 12 also testimony earlier that Mary Muckenfuss said you were
- 13 supposed to take her over to Pickney Street to go buy some
- 14 drugs, and she told you you're going the wrong way when you
- 15 headed out to your house. Does that sound familiar? You
- 16 weren't taking Mary Muckenfuss to Pickney Street? Okay.
- 17 THE COURT: Wait a minute. We've got to get an answer.
- 18 He can't --
- 19 A Oh, I'm sorry. We went off of Pickney Street.
- 20 Q Is that where y'all were going?
- 21 A No. No. You talking about after the -- what time
- 22 frame are you talking about?
- 23 Q Before the shooting happened.
- 24 A Before the shooting happened.
- 25 Q Yes, ma'am.

LAVONDIA WHERRY - CROSS

1 A No. He told me to pick her up and I went to pick her
2 up. She wanted me to take her and I told her I wasn't
3 taking her out there.

4 Q Okay. You were going to your house to go get jumper
5 cables; is that right?

6 A Yes. When it was -- yes.

7 Q Did she look at you and say: You're going the wrong
8 way? Or fuss with you or argue with you about going to your
9 house?

10 A No. When they talk -- are you meaning when Antonio was
11 in the car?

12 Q Right.

13 A Yes. When he was in the car we cut -- there's a couple
14 of ways you go could go to my house. Number 9 was the
15 quickest way, then I turned up by the school, and then I
16 would get on 72 to go home, and that's the way I went. So I
17 guess she wanted me to go all of the way around, which
18 didn't make any sense to come out where the old IGA used to
19 be at, right there -- the first red light as you come into
20 town.

21 Q Okay.

22 A Yeah. But I just come down through Number 9 and cut
23 through the school and got on 72 that way.

24 Q Okay.

25 A If that's what she was saying I was going the wrong

LAVONDIA WHERRY - CROSS

1 way. Because that's where I live and that's where my house
2 is, I had to go and get the cables from there.

3 Q Was she aware of what you were going to get from your
4 house?

5 A I don't know.

6 MS. LIVELY: Objection, Your Honor, she's asking her to
7 speculate.

8 A I don't know what she --

9 Q Did you tell her what you were going --

10 A No, I told him. She didn't want no ride to go for no
11 car, he did. So I was talking to him, I wasn't talking to
12 her.

13 Q Okay. So you never told her why y'all were going --

14 A No.

15 Q Okay. So when -- you and Ken and Muckenfuss, y'all
16 were together at the car wash?

17 A Uh-huh.

18 Q Okay. And this is after. I know I told you I was
19 jumping around with time a little bit but I know (inaudible
20 -- someone was coughing.)

21 A Uh-huh.

22 Q You weren't helping to wash the car?

23 A No.

24 Q Was Mary Muckenfuss helping to wash the car?

25 A I don't remember.

LAVONDIA WHERRY - CROSS

1 Q Okay. Was Kenny washing the car?

2 A Yeah. He had the sprayer, yes.

3 Q Okay. All right. Then I believe you said after that
4 Ken said: Let's go get some dope. Who were y'all going to
5 get dope from?

6 A Who?

7 Q Who. Yeah. I mean, did he say let's go to a person's
8 house or a person, or --

9 A No. He just -- he didn't say exactly who to go -- the
10 way he said it, he said: I need a hit after this. That's
11 how he quoted it.

12 Q Okay. And then we're going to go back in time again to
13 the incident of the shooting. And Ken -- and I think this
14 is what this is, Ken had a wallet is what you're saying, had
15 Mr. Thompson's wallet.

16 A Uh-huh.

17 Q And he divvied up the money, or split it up.

18 A No. He was trying to give it to me and I told him I
19 didn't want it.

20 Q Okay. Did Mary Muckenfuss take her \$100?

21 A Yes, she did.

22 Q Okay. What did she do with it?

23 A I don't know.

24 Q All right. She didn't give it back.

25 A No. She didn't give it back in the car. I mean, in

LAVONDIA WHERRY - CROSS

1 the truck.

2 Q Okay. And who had the victim's phone again?

3 A I don't know whether Mary had it, I don't know.

4 Q Okay.

5 A I don't know.

6 Q Did you ever touch it?

7 A No.

8 Q Okay. Did Ken ask you for any money that day?

9 A No. But I've loaned him money.

10 Q Okay. But he didn't ask you for any that day.

11 A No, not that day.

12 Q Okay. But you spent about \$500 to \$600 a day on crack
13 you said. Okay. \$30 would come in handy for that. And
14 you're also saying that Liz and Ken were in your back seat
15 whispering to each other right before Mr. Thompson got shot,
16 don't know what about, though.

17 A No. Because me and him, we were talking. Me and him
18 were talking.

19 Q Okay. So you wouldn't have heard any of that. Did
20 you -- and I think I know the answer to this but I'm going
21 to ask you, did you ever instruct Mary Muckenfuss to take
22 Antonio Thompson's personal items and throw them in the
23 trash at the motel?

24 A No.

25 Q Okay.

LAVONDIA WHERRY - CROSS

1 A See, I didn't even know she had his personal items.

2 Q Okay. You and Ken went to -- I'm not recalling where
3 you said, but it's whenever Muckenfuss went out of the
4 picture. Where did she go? Or where -- did you drop her
5 off somewhere?

6 A After we got the dope we dropped her off, went to my
7 house and he started to wash the car again, finish cleaning
8 up the car, Ken did. After we dropped her off I haven't
9 seen her no more.

10 Q Okay. Where did you drop her off?

11 A At Donald's house on Number 9.

12 Q Donald Grier's.

13 A Yeah. I dropped her off right there.

14 Q Okay. Do you recall telling investigators you dropped
15 her off at the motel?

16 A No.

17 Q Okay.

18 A At first I did. Earlier I had dropped her off, because
19 the guy had paid me to bring her -- to take them.

20 Q I mean after.

21 A Oh after, no. No. No. After all of this happened I
22 never did go back to the hotel.

23 Q Okay. And do you recall telling investigators that you
24 dropped Ken off at somebody name J. D.'s house?

25 A No.

LAVONDIA WHERRY - CROSS

1 Q Okay.

2 A No.

3 Q Okay. Now, I'm going to go back to the gun for a
4 second. So Ken got the gun from under the seat, Mr.

5 Thompson gets shot. What happens to the gun in between that
6 time and then when you took it in your house?

7 A All I know it was back there with Ken the whole time.

8 Q Okay. Where did you get it from?

9 A He -- when I took the car in the garage he said -- he
10 had the gun, I said: Give it to me, and he reached it to me
11 and I just put it over there. I left it in the garage.

12 Q Okay. So you're saying you got it from Ken.

13 A Uh-huh.

14 Q He had it the whole time.

15 A Uh-huh.

16 Q All right. So when you get in an interview the first
17 time and you tell him a story, that ain't true.

18 A Right.

19 Q But you went and turned yourself in.

20 A Right.

21 Q Okay. What -- I mean, why did you decide to tell the
22 truth all of the sudden?

23 A Because conviction. God.

24 Q Okay.

25 A I don't know if you ever heard of the Holy Ghost. God.

LAVONDIA WHERRY - REDIRECT

1 Conviction.

2 Q Did he show up when you heard what happened?

3 A No, conviction. Because he asked me for a ride. Ken

4 had no right to pull that gun out. He asked me for a ride.

5 Ken was a passenger just like he was. He asked me for a

6 ride.

7 Q Okay. All right.

8 MS. BOULWARE: Beg the Court's indulgence.

9 (Break in proceedings.)

10 Q You're out on bond right now for your charge, aren't
11 you, Ms. Wherry?

12 A Uh-huh, I am.

13 Q Did you pay any money for that bond?

14 A No, I didn't.

15 Q You got a PR bond?

16 A Yes.

17 Q That's what it's called, a PR bond?

18 A Uh-huh.

19 Q Personal recognizance.

20 A Yes.

21 Q Okay. Boy, that's nice.

22 MS. BOULWARE: No further questions.

23 MS. LIVELY: Just a couple of follow-up, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. LIVELY:

LAVONDIA WHERRY - REDIRECT

1 Q I didn't ask you about the bond earlier but I am
2 curious, was a condition of your bond that you had to
3 actually go into drug rehab and successfully complete it?

4 A Yes.

5 Q And did you enter that drug rehab like you were told?

6 A I did.

7 Q Did you successfully complete it?

8 A I did.

9 Q And are you clean here today?

10 A Yes. And I'm glad y'all sent me, I am. I thank God
11 y'all sent me, I really do. I thank the courts that y'all
12 sent me.

13 MS. LIVELY: Thank you. No further questions.

14 THE COURT: Anything further?

15 MS. BOULWARE: No, Judge.

16 THE COURT: Thank you, you may step down. Be careful
17 with that step. Good time to stop for lunch? All right.
18 It is 12:23 and we can stop for lunch. Okay. Let's just
19 plan on starting back up at 2:00. The jury will be released
20 for lunch. Everybody else remain seated while the jury
21 leaves for lunch.

22 (The jury left the courtroom.)

23 (A lunch break was taken.)

24 THE COURT: Counsel, y'all can approach.

25 (A bench conference was held with the Judge and

C. A. PLYLER - DIRECT

1 Attorneys.)

2 (The jury returned to the courtroom.)

3 THE COURT: Just for your information, we've got a
4 couple of monitors going on about this severe weather that
5 is possibly working its way in, so if we get some kind of
6 warning or whatever we will certainly take measures to try
7 to protect everybody. All right. Solicitor?

8 MS. LIVELY: Yes, sir, Your Honor, thank you. The
9 State would call Trooper Plyler to the stand.

10 The witness, C. A. PLYLER, was first duly sworn and
11 Testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q Okay. Trooper Plyler, obviously you work with the
15 South Carolina Highway Patrol; is that correct?

16 A Correct, yes, ma'am.

17 Q How long have you been with them?

18 A I've been with the Highway Patrol a little over three
19 years now.

20 Q So you were with the Highway Patrol back in
21 February the 27th of 2021 then, correct?

22 A Correct, yes, ma'am.

23 Q All right. Did you have an opportunity when you were
24 on patrol to come across a vehicle that was left on the side
25 of the road off of I-77?

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1 A Yes, ma'am.

2 Q Okay. And actually, Investigator Keith Lewis got in
3 contact with you about that; isn't that correct?

4 A Correct, yes, ma'am.

5 Q So in following up regarding a possible -- or an actual
6 abandoned vehicle, were you able to pull the records to
7 determine who that vehicle belonged to and what your
8 investigation of that matter was for that particular day?

9 A Yes, ma'am.

10 Q If you could just tell the jury what you remember off
11 the top of your head, and then I'll actually show you some
12 documents, is that okay?

13 A Yes, ma'am.

14 Q Tell the jury.

15 A I guess on the day -- I can't remember the date.

16 Q Here, let me make it easier on you.

17 A Yeah.

18 Q I'm going to show you State's Exhibit Number 43.

19 A Thank you, ma'am.

20 Q And in those particular documents, Trooper Plyler, are
21 those standards forms that you actually generate whenever
22 you are on patrol and you happen to come across an abandoned
23 vehicle?

24 A Yes, ma'am. This is our MCT mobile CAD form, yes,
25 ma'am.

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1 Q Okay. Let me do this.

2 MS. LIVELY: Is there any objection to State's 43
3 coming into evidence at this time?

4 MS. BOULWARE: Sure. No objection.

5 MS. LIVELY: States 43, Your Honor.

6 THE COURT: In without objection.

7 (State's 43 was received.)

8 MS. LIVELY: Thank you, Your Honor.

9 Q Here you go, Trooper Plyler. Since it's in evidence
10 you can actually directly read off of those documents. Tell
11 the jury what it is those documents show for that particular
12 day.

13 A Okay. So it shows on February the 27th at 5:17 a.m. --
14 I believe it's a.m. -- yes, ma'am, I arrived on I-77 at the
15 61 and a half southbound, located a vehicle that appeared to
16 be abandoned. At that time I had actually got out with the
17 vehicle and I tagged it. We place an orange tag on the
18 vehicle. You have a certain amount of time to remove that
19 vehicle from the side of the road or we have to tow it for
20 safety issues. As I was clearing the scene I actually saw
21 three individuals walking towards the vehicle, therefore
22 being on the side of the interstate I pulled over. That's
23 when we went on -- they confirmed it was their vehicle. I
24 said: Okay. Well, being there's an issue with it I'll
25 drive you to the QuikTrip and get off the interstate and

C. A. PLYLER - DIRECT

1 make sure -- y'all can make arrangements to come back to get
2 the vehicle and make sure everything is okay.

3 Q Okay. Let me ask you this for just a second. You said
4 the QuikTrip. Tell the jury where exactly you are in
5 regards to Chester County and coming into the city of
6 Chester.

7 A Got you. On I-77 just south of SC 9, the Richburg
8 area.

9 Q All right. And so about how far off of Highway 9 was
10 the vehicle in regards to miles, do you know?

11 A It was at 61 and a half, roughly in the area of four
12 miles, that's a general estimate.

13 Q So you actually offered to take these individuals --
14 you said there were three --

15 A Yes, ma'am.

16 Q -- to the QuikTrip?

17 A Yes, ma'am.

18 Q Had you at that point identified who any of those
19 people were?

20 A Yes. I identified one subject is who the car actually
21 registered to, Antonio Thompson. The others two I didn't
22 get their information, I just put (inaudible.)

23 Q All right. And so do you have the breakdown of your
24 timeline from whenever you actually were tagging the vehicle
25 up until the last contact you had with those three

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1 individuals?

2 A Yes, ma'am, I do.

3 Q Okay. Please tell the jury the last contact you had
4 with those individuals, which included the Antonio Thompson
5 you're talking about.

6 A Yes, ma'am. At 5:24 a.m. on February 27th, I advised
7 dispatch that all of the subjects from the abandoned vehicle
8 on that interstate, I had dropped all of them off at the QT
9 and I was clearing the scene.

10 Q Okay. And did you have any other contact with Antonio
11 Thompson or those other two individuals after that point?

12 A No, ma'am.

13 Q All right. And was that all of the work you did in
14 regards to that particular abandoned vehicle?

15 A Yes, ma'am.

16 Q And did you have anymore contact with that vehicle or
17 those people after that point?

18 A No, ma'am.

19 Q Okay. I'll retrieve that from you.

20 MS. LIVELY: Thank you so much, Trooper Plyler. Answer
21 any questions that the defense may have.

22 CROSS EXAMINATION

23 BY MS. BOULWARE:

24 Q Just one quick question, I just want to reiterate what
25 the solicitor asked you. So you did identify Antonio

C. A. PLYLER - CROSS

1 Thompson but not the other two folks with him.

2 A Correct.

3 Q Were they white male, black male --

4 A I actually documented it on the public contact warning,
5 I believe it was Bravo Fox and Bravo Mike if I remember
6 correctly.

7 Q So that's --

8 A I'm sorry. Black female and black male.

9 Q Got you. But, again, you just didn't get their names.

10 A Correct.

11 MS. BOULWARE: Okay. Thank you. No further questions.

12 MS. LIVELY: No further questions, Your Honor. May he
13 be excused?

14 THE COURT: Any objection?

15 MS. BOULWARE: No objection.

16 THE COURT: Thank you, sir, you may be excused.

17 MS. LIVELY: Mary Elizabeth Muckenfuss.

18 The witness, MARY ELIZABETH MUCKENFUSS, was first duly
19 Sworn and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LIVELY:

22 Q All right. Mary, if you can just pull that microphone
23 to you so we can make sure we hear you.

24 A Okay.

25 Q All right. Mary, spell your last name for me.

MARY ELIZABETH MUCKENFUSS - DIRECT

1 A M-u-c-k-e-n-f-u-s-s.

2 Q And please tell the jury where you are currently
3 staying.

4 A I currently stay in the Fairfield County Detention
5 Center.

6 Q And why is that?

7 A I was released to go to rehab. I stayed clean for five
8 and a half months and I relapsed, when I relapsed they
9 picked me up and put me back in jail.

10 Q Okay. And let me back up for just a minute. Do you
11 prefer to be called Mary or Liz? We've heard you --

12 A Elizabeth.

13 Q Elizabeth. Okay. All right. Elizabeth, what were you
14 arrested for that got you into -- that got you in trouble in
15 the first place? What's the charge that you actually have
16 against you?

17 A Murder, accessory after the fact.

18 Q Accessory after the fact to murder. And so when you
19 said that you were arrested and then you got released, was
20 that whenever you went to rehab?

21 A Yes.

22 Q All right. Okay. So whenever you relapsed and you've
23 been locked up, it's for that same charge; is that right?

24 A Yes.

25 Q Okay. And how long have you actually been locked up

MARY ELIZABETH MUCKENFUSS - DIRECT

1 again since you relapsed?

2 A Somewhere around seven months, I believe.

3 Q So are you clean now?

4 A Yes, ma'am.

5 Q So Elizabeth, let's go back to before the weekend of
6 February 27th. What was going on in your life at that
7 point?

8 A I was an addict. I just ran the streets all the time
9 smoking.

10 Q What kind of drugs were you using?

11 A Just crack cocaine.

12 Q Crack cocaine? And how would you get money for that
13 crack cocaine?

14 A I had a lot of people that looked out for me, and I
15 would sometimes help people get what they were looking for.
16 Sometimes I would sleep with people for it.

17 Q And how much money would it take for you to be able to
18 get crack cocaine? What on average were you spending?

19 A A few hundred dollars a day.

20 Q Did you ever spend any time at the Executive Inn before
21 February of 2021?

22 A I did, off and on.

23 Q All right. And were you welcomed there by the
24 management?

25 A Not technically, but -- I didn't have a trespassing

MARY ELIZABETH MUCKENFUSS - DIRECT

1 technically put on me until the day of the accident.

2 Q All right. So let's go back to that day then so we can
3 talk about that. February 27, 2021, tell the jury what you
4 were doing on that day. The first thing in the morning
5 start out with what was going on.

6 A There was a man that wanted to hang out with me, he had
7 a large sum of money. He called the bank to prove to me
8 that he had a large sum of money.

9 Q Do you know this man's name?

10 A Mr. Peterson.

11 Q Mr. Peterson. Would that be Steven Peterson?

12 A Yeah.

13 Q All right. And was he a registered guest at that
14 hotel?

15 A Yes.

16 Q At the Executive Inn.

17 A Yes.

18 Q Is that where you were?

19 A That's where we went to, yes.

20 Q Where you went to. All right. So while you were there
21 with Steven Peterson, what happened next?

22 A The room wasn't ready yet, so I called Lavondia Wherry
23 to give me a ride to the other part of town to pick up some
24 drugs, and I figured that the room would be ready by the
25 time I got back.

MARY ELIZABETH MUCKENFUSS - DIRECT

1 Q All right. So whenever you called Lavondia Wherry,
2 tell the jury how you knew Lavondia at that time.

3 A I met her in a crack house. We just smoked together.
4 I called her for rides occasionally.

5 Q All right. Did you know her cousin, Kenneth Wherry?

6 A Yes.

7 Q How did you know Kenneth Wherry?

8 A I met him through per se the same, in a trap house.

9 Q So was it all related to you using drugs?

10 A Yes.

11 Q So you called Lavondia Wherry and -- for a ride, and
12 did she respond to that?

13 A Yes. She pulled around the corner extremely fast,
14 faster than I thought she would have, because I thought she
15 had done went on. Because it was about five or ten minutes
16 before I called her, probably about five minutes, and when I
17 called her she was there in no time.

18 Q All right. So when she got there -- was this at the
19 Executive Inn?

20 A Yeah.

21 Q So when she got there was anybody else with her?

22 A Yes.

23 Q Who was with her?

24 A Kenneth Wherry was in the back seat, and the victim,
25 Antonio, was in the front seat. At the time I didn't know

MARY ELIZABETH MUCKENFUSS - DIRECT

1 his name.

2 Q All right. So what did you do whenever Lavondia got
3 there?

4 A I told her that somebody was waiting on me, you know, I
5 told her what street I needed to go to. And then when we
6 come to a stoplight --

7 Q Okay. Well, hold on just a minute because you're
8 moving a little fast. So you told her where you wanted to
9 go to. So did you -- did she agree or tell us --

10 A Yeah.

11 Q Okay. What did you do? Did you get in the truck?

12 A Yeah. She seemed agitated with me, and she said
13 something around: I didn't ask you to be in here. And I
14 was like: Well, neither did I really. Because I was just
15 pretty frustrated with trying to make everybody happy.

16 Q So were you in her truck at that point?

17 A Yeah.

18 Q Tell the jury where everybody was seated in the truck.

19 A Von was driving, Kenneth was beside me behind Von in
20 the back driver's seat, I was in the passenger back seat,
21 and the victim was in the front passenger seat.

22 Q When you say the victim, had you ever -- at that point
23 did you know who Mr. Antonio Thompson was?

24 A I did not. I recognized his voice, I had not got a
25 look at his face yet.

MARY ELIZABETH MUCKENFUSS - DIRECT

1 Q Tell the jury where Von took you after y'all left the
2 Executive Inn.

3 A Well, like I said, I told her where I needed to go, and
4 when we got to the stoplight she took a right and I was
5 going left, and I told her she was going the wrong way.

6 Q All right. And when you said that what happened?

7 A She turned the music up and ignored me.

8 Q Okay. And so how far did y'all go before she either
9 stopped or turned or -- what happened next?

10 A It wasn't long up Rock Hill Road before she kept
11 looking at me in the rear view, and she turned the music
12 back down and she said that we were going to jump his car
13 off and I would be okay and it wasn't going to take that
14 long. But I was still upset because I had somewhere I
15 needed to be.

16 Q Okay. So you had somewhere you had to be and she's
17 telling you that she's going to help this guy out; is that
18 right?

19 A Yes.

20 Q All right. Was -- since you were in the back seat with
21 Kenneth, what was your conversation with the defendant at
22 that point?

23 A We didn't have a conversation really. When we stopped
24 at Von's house and I kept trying to -- I briefly got a
25 chance to have a conversation with Antonio. I was like: I

MARY ELIZABETH MUCKENFUSS - DIRECT

1 recognize your voice, and I looked at him and I seen his
2 face, and I said: Oh, yeah, I know you. And he said: I
3 know you, too. What happened to you? You lost a lot of
4 weight. I told him that's because I started smoking crack.
5 And he said: That's why I don't like to come back to
6 Chester, because every time I come here it's like God
7 telling me to stay away from here.

8 Q And after you had this conversation with him, at some
9 point did Von return to the truck?

10 A She did.

11 Q All right. And whenever -- was she the only one that
12 got out of the truck at her house?

13 A Yes.

14 Q Did you know that was her house?

15 A I did.

16 Q Had you been there before?

17 A Yes.

18 Q All right. So when she gets back into the truck, tell
19 the jury what happened next.

20 A Well, when she got back in the truck then we were like
21 on our way to Richburg, and when we turned onto Cedarhurst
22 we had barely turned and then Ken told me to get down. He
23 didn't really say it, it was more like (indicating) and so
24 that's what I done. Without a thought about it I got on the
25 floorboard and I covered my head up.

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1 Q All right. So let me just stop you there. Was it
2 daytime at that point?

3 A Yes, ma'am.

4 Q It was. Okay. And the vehicle that you were in with
5 Von, Antonio, and then Ken in the back seat, were you seated
6 pretty close to Mr. Wherry?

7 A Yeah, I was. I was in the passenger -- well, yeah.

8 Q So you were in the passenger side and he was behind the
9 driver's side.

10 A Yes.

11 Q Okay. So when he kind of motioned to you to get down,
12 kind of worded those words to you, what is it you see him do
13 at that point?

14 A I saw him kind of like coming out of his jacket, but I
15 didn't like take time to look, I was getting in the
16 floorboard.

17 Q Okay. So when you said he was kind of taking something
18 out of his jacket, tell the jury what you've said in your
19 statement in regards to what you saw.

20 A I just saw him coming out of his jacket with -- you
21 know, it looked to me like he had a gun in his hand when I
22 was getting in the floorboard.

23 Q Were you -- at what point were you convinced, if ever,
24 that he had a gun in his hand?

25 A When he told me to get down.

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1 Q Okay. And then what was the next thing that happened?

2 A He said: Give me the money, bro. And before he could
3 get a word out of his mouth I heard a gunshot.

4 Q And when the gunshot went off, what do you remember
5 next?

6 A I stayed in the floorboard. I kind of looked up a
7 little bit and I saw gun smoke everywhere in the truck. And
8 I saw Ken and Von get out of the truck and go like they were
9 fumbling, you know, in his pockets, I believe. And I stayed
10 in the floorboard.

11 Q And do you know at that point what condition Antonio
12 Thompson was in?

13 A I don't.

14 Q All right. And did you see anything other than smoke
15 coming from where the gun was shot?

16 A No.

17 Q Did anything get on you from the shooting of Mr.
18 Antonio Thompson while you were sitting in the back seat?

19 A Yes. When I got back up in the seat I made a mistake
20 of looking over and I saw him kind of choking on his own
21 blood. It was a mistake that I looked over. And I was
22 sitting next to Ken a lot closer-like. Von had leaned his
23 seat back a little bit, the victim's seat, and the blood
24 started piling up next to me and the blood got on my pants.
25 I was trying to scoot over and I told Ken that I was sorry

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1 for being so close up on him but the blood was getting on
2 me.

3 Q After -- you said that they -- that Von -- or let me
4 just ask you. You said that Von and Ken got out of the
5 truck so I'm assuming, did Von stop the truck after the
6 shooting?

7 A Yes.

8 Q All right. So where were you in regards to the road
9 that y'all were on? Were you still on Cedarhurst or where
10 were you?

11 A Yes.

12 Q So once they got out and then got back in, where was
13 the next place that you went?

14 A We went back toward town, and we turned around in the
15 driveway that I was originally at the morning before I went
16 to the motel.

17 Q Okay. And was the body still in the car at that point?

18 A Yes.

19 Q Okay. So at what point did -- so did y'all leave that
20 particular area?

21 A We did. We just turned around, and she was asking him
22 where she -- where he wanted her to go from there.

23 Q Okay. And what did Kenneth Wherry tell her?

24 A He mentioned something about a dirt road.

25 Q Do you remember where that dirt road was?

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1 A It was off Cedarhurst.

2 Q Is that where Von took the truck?

3 A Yes.

4 Q All right. Tell the jury what happened when you went
5 down that dirt road.

6 A When we went down the dirt road, Von opened the
7 passenger door and pushed him out, and then they got out and
8 drug the body into the woods a little bit, and I stayed on
9 the road.

10 Q And while you stayed on the road, were there any lights
11 or any houses around that area?

12 A No, ma'am.

13 Q Okay. At that point was it still daytime?

14 A Yes, ma'am.

15 Q And how long were Von and the defendant, Kenneth, in
16 the woods with the body?

17 A Not very long at all.

18 Q So whenever they got back from Mr. Thompson being taken
19 into the woods, where did y'all go next?

20 A And then we went back to town and we went to Dawson
21 Drive.

22 Q When you went to Dawson Drive, why did you go to Dawson
23 Drive?

24 A We went to Dawson Drive to see the drug man that I
25 originally was leaving to see.

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1 Q All right. And did any of y'all talk about what had
2 just happened to Mr. Thompson?

3 A No. She asked me if it was my first time and I told
4 her I didn't want to talk about it.

5 Q And did Kenneth say anything to you?

6 A No.

7 Q So after y'all went to this drug house that you were
8 talking about, where did y'all go next?

9 A Then we went to Danny's Store parking lot.

10 Q Why did you go there?

11 A Von asked Ken where the guy's phone was, and Ken pulled
12 the phone out of his pocket, and they told me to put it in
13 the drain, so that's what I done. I got out and put it in
14 the drain.

15 Q Okay. I'm going to show you a couple of pictures that
16 are already in evidence. I'm showing you what's in evidence
17 as State's 1, 2, 3 and 4, and just ask you if any of this
18 looks familiar -- if you'll flip through those -- as to
19 being where you remember placing Mr. Thompson's phone after
20 he had been killed?

21 A I put the phone in a drain that looked like that.

22 Q Okay. And the reason why I'm asking you this,
23 Elizabeth, is didn't you take law enforcement to this exact
24 location on that evening, or into the next morning, and this
25 is where they found the phone, right?

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1 A That same evening, yes.

2 Q Okay. All right. So the phone and law enforcement at
3 that drain. Do you remember that being where you left the
4 phone?

5 A Yes.

6 Q Okay. Do you remember the name of the actual business
7 where this was that you put it into the drain?

8 A Danny's Store.

9 Q Danny's Store. Okay. And I'm just going to show you
10 real quick here, this is State's Exhibit Number 33 that's
11 already in evidence. Okay. I'm going to show this to you
12 and then I'll -- if I need you to I might get you to step
13 out. Do you see where it's highlighted on this particular
14 map? I'm going to give you a hint.

15 A Yeah, I see it.

16 Q Talk into the microphone.

17 A Yes, I see it.

18 Q So what road is that off of, Danny's Food Mart?

19 A It's off of Pickney Road.

20 Q Off of Pickney Road. Okay. So after y'all leave
21 Danny's Food Mart off of Pickney Road, which is right here,
22 and you dump the phone, right?

23 A Uh-huh.

24 Q Where do you go from there?

25 A After we left there we went to the -- we went down

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1 Columbia Road to the car wash.

2 Q All right. So then you go to the car wash. Why do
3 y'all go to the car wash, Elizabeth?

4 A We went to the car wash, because we all got out and I
5 took my pants off because I had blood on them and put them
6 in the trunk of the car while they were spraying the chunks
7 of blood out of the truck.

8 Q Okay. All right. So y'all went to the car wash. And
9 once again, this was still daytime?

10 A Yes.

11 Q So while y'all were at the car wash, did you do
12 anything other than remove your pants?

13 A No.

14 Q Did you help take anything out of the car?

15 A No. I did put the quarters into the thing, but that
16 was it.

17 Q All right. So about how long of an amount of time had
18 passed at that point from --

19 A Hours.

20 Q Since the shooting?

21 A Yeah, it seemed like hours.

22 Q Okay. So you're at the car wash on Columbia Street and
23 y'all were washing everything out. Did Kenneth or Von say
24 anything to you at that point about what had happened?

25 A No.

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1 Q Did you say anything to them about what had happened?

2 A I repeatedly through the day kept asking if I was all
3 right.

4 Q You were asking if you yourself was all right?

5 A Yes. I kept saying: I'm all right, right? Because I
6 was afraid.

7 Q Do you know who had a gun at that point?

8 A I don't.

9 Q Okay. So after y'all leave the car wash, okay -- and
10 I'm just going to show you real quick, it's still the same
11 exhibit, show you the car wash here. All right? Where do
12 you go from there, do you remember?

13 A Yeah. We went back to the Executive.

14 Q The Executive Inn. So that's pretty close.

15 A Yeah.

16 Q All right. So you go back to the Executive Inn, and
17 it's still just the three of y'all; is that correct?

18 A Yes, ma'am.

19 Q All right. So you're back at the Executive Inn. What
20 happens when you get back to the Executive Inn?

21 A We go up to the room, and Von and Mr. Peterson left me
22 alone with Ken in the room.

23 Q All right. So is this the same Mr. Peterson that you
24 had originally met at the hotel earlier that morning?

25 A Yes. Well, I was with him prior to going to the motel.

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1 Q Okay. But that's when you were originally talking
2 about when you called Von that morning.

3 A Yes.

4 Q All right. So you're there. Mr. Peterson and Von, you
5 stated, left you and Ken in the room together.

6 A Yes.

7 Q What room -- do you remember what room number that was?

8 A I don't remember the number.

9 Q Was it on the first or the second floor?

10 A It was on the second floor.

11 Q All right. So while you were there with Ken, do you
12 remember him having anything in his hands?

13 A Yes.

14 Q What did he have?

15 A He had a black bag in his hands.

16 Q Okay. And do you know what was in that black bag?

17 A I do not.

18 Q What happened to that bag?

19 A He kept twisting it, and it was kind of scary to me a
20 little bit, so I volunteered to throw it away for him. I
21 said: Do you want me to throw that away? And he said:
22 Yes. And I took the opportunity of him going to the
23 restroom and me throwing away the bag to leave the room and
24 go to someone else's room that I know that lives there on
25 the other side of the motel to ask them for some pants and

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1 some cigarettes, and I cried. And I asked what would you do
2 if something happened to somebody and they didn't deserve it
3 but you could ruin your life in the middle of it? And I
4 just cried. And he said to me: Elizabeth, no one will do
5 something for you for your life but you. He said: I hate
6 to cut you off but I've got somebody coming to go pick me
7 up. It broke my heart that he was leaving, because had he
8 not left I probably never would have went back to the room,
9 but since he was leaving -- I called Von. I was not going
10 to go back to that room until I knew Mr. Peterson was safe,
11 so I asked her where she was and she said she was back at
12 the room. So I went back to the room, and all four of us
13 sat there until Von and Ken said they were leaving. And
14 once again I asked if I was all right and then they left.

15 Q So I'm going to back you up just a minute. When you
16 were up there with Ken Wherry in the room, just the two of
17 y'all, you said that there was a bag that he was twisting
18 around, correct?

19 A Yeah.

20 Q Where did you put that bag?

21 A In the trash can outside of my room.

22 Q All right. Was that on the second floor?

23 A Yes.

24 Q Did you ever look into that bag?

25 A I did not.

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1 Q Okay. Did you later find out what was in that bag?

2 A I think I overheard that the wallet was in there.

3 Q Okay. But at the time whenever you put the bag into
4 the trash can you were not aware of what was in there.

5 A No, ma'am.

6 Q All right. So when you were also in the room with Mr.
7 Wherry and it was just the two of y'all, did you see him
8 take anything out of his pockets?

9 A No. But I did see gloves that he was sitting next to.

10 Q Okay. And what was it about the blood sitting next to
11 him that drew your attention to it?

12 A It scared me. Just, you know, all of what just
13 happened and then to look on the dresser and to see black
14 gloves that had just been taken off, I thought to myself
15 that those were murder gloves. That's what went through my
16 head.

17 Q Were you afraid then?

18 A Yes.

19 Q Are you afraid now?

20 A Yes.

21 Q So, Mary, after you said that Von came back with Mr.
22 Peterson, what ended up happening to you after that point
23 when Von and Kenneth left?

24 A After they left I didn't care about the drugs, I didn't
25 care about the money, I sat on the floor and I cried. And I

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1 asked Google to tell me Bible versus for the day, and it
2 said: Do what is right in the sight of the Lord. And
3 before I could get the thought through my head of how long
4 do I have to wait, because I knew I had to do the right
5 thing, before I could get that thought through my head the
6 police knocked on the door.

7 Q Okay. All right. Was that whenever law enforcement
8 showed up regarding an alleged trespass order?

9 A Yes, ma'am.

10 Q Okay. And we've already had law enforcement come and
11 testify about that earlier, Elizabeth, so just briefly tell
12 us, when law enforcement did knock on the door, who were you
13 with?

14 A I was with Mr. Peterson.

15 Q All right. And you've already testified that you had
16 already thrown that bag into the trash can on that floor,
17 correct?

18 A Yes, ma'am.

19 Q All right. What did you do whenever law enforcement
20 got there and y'all had the conversation about this trespass
21 order?

22 A I was -- they could probably see that I was clearly
23 distraught, I was crying. And they asked me why I was
24 crying and why I was nervous, and I was like -- I said I was
25 tired of him cheating on me, and I did that because I was

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1 not ready to come forward. I just wasn't ready. I knew I
2 was going to but I couldn't do it right that second.

3 Q So when law enforcement told you you had to leave --

4 A Yeah.

5 Q -- where did you go?

6 A Well, I was going to call someone else to come and pick
7 me up, but before I could do that Mr. Peterson had already
8 called Von back, and she was in the parking lot before I
9 could snap my fingers.

10 Q Okay. So what did you do next?

11 A So then me and Mr. Peterson got in the car and went
12 back to where we left them that morning before we went to
13 the motel.

14 Q Okay. And where was that location? What road were you
15 on?

16 A It's on Lancaster Highway.

17 Q And did you stay there long, or what did you do?

18 A Yeah. I got out of the truck by myself.

19 Q And where did you go from there?

20 A I went inside the house.

21 Q Okay. How long did you stay there?

22 A I'm not sure, I think it was about a hour.

23 Q And then what did you do?

24 A I left there. And my plan was to go to everybody's
25 house that I knew and tell them that it might be awhile

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1 before I seen them again, because I didn't know what was
2 going to happen, because I didn't think it would just be as
3 easy as me going in there and telling what happened and then
4 just coming right back out, but I knew I had to do it. And
5 I wanted to fall at my mama's feet and tell her I was sorry
6 that I didn't do something about my life before it came to
7 this.

8 Q So when did you actually get the chance to talk to
9 someone about what had happened?

10 A Well, by the time I got to the second house I was
11 scared and paranoid that they were going to come for me
12 because I was a loose end, and they kind of know that I
13 like -- I talk too much when it comes to standing up for
14 people.

15 Q When you say they, you need to tell us who you're
16 talking about, Elizabeth, if you don't mind.

17 A Von and Ken. I was scared that they were going to, you
18 know, do something to me.

19 Q Okay. So where did you go?

20 A So this guy that I know, Clarence, pulled into the
21 driveway where I was and I asked him if I could come to his
22 house, and I went to his house out in the country.

23 Q And when you were at Clarence's house, did you contact
24 anyone?

25 A Yeah. I face-timed my mama, and I told her what

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1 happened. And I told her to call the police that used to go
2 to our church and tell her to come and pick me up, that I
3 had something I needed to tell them.

4 Q And that police officer that you're referring to that
5 went to your church, did she show up?

6 A Yes. Her and my mother showed up together.

7 Q When she showed up, did you tell her why you need to
8 speak to the police?

9 A Yes.

10 Q And what did you tell her?

11 A I told her that somebody just got killed in front of
12 me.

13 Q And when you revealed that information to her,
14 Elizabeth, what did she do?

15 A She called the investigators.

16 Q When the investigators arrived at Mr. Clarence's house,
17 did they take you somewhere?

18 A They took me to the jailhouse.

19 Q Okay. And when you were at the jailhouse, did they
20 take you into a room for you to give a statement?

21 A Yes.

22 Q At the time whenever you were taken into that room, did
23 they read you your rights?

24 A Yes.

25 Q And what did you do? Did you waive them or --

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1 A I did. I told them I didn't care about that because I
2 was just there to tell the truth. I wanted to help them
3 because I needed them to help me.

4 Q So when you told them what had happened, were you
5 willing at that point to help them find these things that
6 would prove what you were telling was true?

7 A Yes.

8 Q So about how long were you there talking to law
9 enforcement, giving them information of what had happened
10 before y'all actually leave to go and find these items, do
11 you know?

12 A It wasn't a real long time. It was just long enough
13 for me to basically tell them what had taken place.

14 Q And Elizabeth, were you able to tell them and lead them
15 to where the phone would be found?

16 A Yes.

17 Q Were you able to tell them and lead them to where the
18 body of Antonio Thompson would be found?

19 A Yes.

20 Q And did you tell them so they could find the bag of
21 Mr. Thompson's items?

22 A Yes, I told them where it was. I told them that I
23 threw it away. I told them I didn't know what was in it but
24 I didn't want to leave anything out. I wanted to make sure
25 that I told them the truth.

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1 Q After all of that took place, Elizabeth, did you
2 stay -- were you -- did you stay there at the law
3 enforcement center and provide another statement to law
4 enforcement regarding everything that had happened?

5 A Yes.

6 Q Now, Elizabeth, have you had several conversations with
7 law enforcement, as well as with the solicitor's office and
8 Investigator Keith Lewis, regarding what happened to you and
9 to Antonio Thompson that day?

10 A Yes.

11 Q And have you always told exactly the same thing each
12 time?

13 A Yes, ma'am.

14 Q Have there been times when you have added certain
15 details to your statement?

16 A No, ma'am.

17 Q No? How about the last time whenever we talked to you
18 regarding this particular case? Do you recall that?

19 A Oh, yeah. I may have -- when I got the DNA results
20 back -- I forgot about that -- I went -- when I got the DNA
21 results back for the stuff that they sent off and it said
22 that me and Mr. Wherry were exempt from the DNA that was
23 found there, that's when I immediately recalled seeing the
24 gloves that he was sitting next to in the room.

25 Q Now, did anyone bring that up to you before we turned

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1 on the camera for you to give a statement that day?

2 A No.

3 Q So when we brought you in before you were supposed to
4 come and testify -- did you know you were going to have to
5 testify here today?

6 A I knew there was a possibility, yes.

7 Q Okay. And as a result of you testifying, have we
8 promised to dismiss your charges or give you any kind of
9 deal?

10 A No, ma'am.

11 Q And you understood that, right?

12 A Yes, ma'am.

13 Q So you're still looking at the possibility of a 15 year
14 sentence for accessory after the fact; isn't that correct?

15 A I understand that.

16 Q So if you are here today -- or you are here today to
17 testify to everything you're supposed to testify about what
18 happened, correct?

19 A Yes, ma'am.

20 Q All right. So when we talked to you that day and you
21 brought up the fact of the DNA, had anyone asked you
22 anything about whether or not --

23 A No, ma'am.

24 Q -- there were gloves, or that it was wiped down, or
25 anything like that?

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1 A No.

2 Q Did you remember that on your own?

3 A I did.

4 Q Okay. Do you have any idea since you were in that
5 vehicle with those -- you were one of the four individuals
6 in that vehicle, do you have any idea why Mr. Thompson was
7 killed that day?

8 A I straddle my brain about it everyday and I still don't
9 understand it.

10 MS. LIVELY: Elizabeth, thank you. Answer any
11 questions that the defense has for you. Okay?

12 CROSS EXAMINATION

13 BY MS. BOULWARE:

14 Q Ms. Muckenfuss, how are you doing this afternoon?

15 A As well as can be expected.

16 Q All right. I think we all are. Okay. So I'm not
17 going to go in as quite a linear wave of my questioning as
18 the Solicitor did because I've got three interviews with you
19 with three different stories and we're just going to compare
20 and contrast. Okay? All right. So when you first went to
21 the sheriff's office I believe you spoke with -- well, this
22 might be your second interview -- you were with Detective
23 Burch and an investigator from SLED. Do you recall that?

24 A Yes.

25 Q Okay. That would have been possibly the 29th. I've

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1 got -- my DVD is marked the 28th, but I think the dates are
2 a little wonky with the DVD. Do you recall telling them
3 that Von is intense and mean to me?

4 A She -- I could have stated that she has been intense
5 and mean to me, yes.

6 Q Mean to me all of the time. Do you recall saying that?

7 A Yeah. She was mean to me all of the time, pretty much
8 most of the time.

9 Q Okay. What would she say to you?

10 A Just attitude, you know. She didn't like my attitude.

11 Q Was there anything wrong with either one of your
12 attitudes?

13 A I mean, probably both of us.

14 Q Okay. Hung around a lot and didn't get along?

15 A Well, that's how it works out there sometimes.

16 Q Okay. Fair enough. Do you recall saying in that same
17 interview talking about Von getting some plastic bags to do
18 something with --

19 A Yes.

20 Q -- when Mr. Thompson was shot?

21 A Yes.

22 Q Did she tell you what those were for?

23 A No.

24 Q But you saw her getting those.

25 A No. She told me to get plastic bags.

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1 Q She told you to get plastic bags. Okay. Did she tell
2 you why?

3 A No.

4 Q Do you recall making the statement after she shot him?

5 A Excuse me?

6 Q After she shot him?

7 A I don't know who shot him, I was in the floorboard.

8 Q You don't recall making that statement, though?

9 A No.

10 Q All right. All right. Now we're going to go to the
11 interview where -- this one, I believe, is when you possibly
12 first went there. I believe you were talking with
13 Investigators Telly and Burch; is that right? Telly
14 Crockett, does that sound correct? Okay. So you had
15 described some incident with Von -- I believe it's Von, I
16 need clarification on that -- before you all left to go to
17 the motel that morning. You described some incident with
18 Von or somebody having a gun and waving it around, kind of
19 bossing you around with it. Do you remember that?

20 A She didn't boss me around. The guy that I was having
21 relations with that was at the house was there and he did
22 not want me to leave with them, so Von came back in the
23 house with a gun and she said if she wants to leave she's
24 going to leave.

25 Q Oh, okay. So she was waving it at them.

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1 A Yeah.

2 Q All right. I think you also mentioned in that same
3 interview you had heard some stories about Von and been told
4 to stay in your place with this woman.

5 A Yes.

6 Q What stories were those?

7 A Just I was told --

8 MS. LIVELY: Your Honor, I'm just going to object to
9 hearsay.

10 Q Did you say that, though?

11 A Yeah.

12 Q Okay. Did you do that? Did you stay in your place
13 with her?

14 A Yes.

15 Q Scared of her.

16 A Intimidated.

17 Q Okay. And then we're kind of jumping around again a
18 little bit, we're trying to get -- but I think you'll agree
19 with me that the first interview that you gave you were kind
20 of all over the place and they couldn't quite -- didn't
21 understand what you were saying. Is that fair to say?

22 A I was distraught.

23 Q Okay. But probably weren't telling a coherent story
24 to --

25 A Probably was.

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1 Q -- (inaudible) what you were talking about.

2 A I'm pretty sure it was accurate.

3 Q I didn't say accurate, I said coherent.

4 A What's the definition of coherent?

5 Q The definition of coherent is telling a story so
6 someone can understand.

7 A Oh. I'm pretty sure they understood me.

8 Q Do you recall mentioning more than one gun?

9 A I recall mentioning that Von had guns all of the time.

10 Q But that there was more than one gun at that incident.

11 A I'm not sure.

12 Q Okay. And I believe in an interview you gave last week
13 I think it was, you talked with them again last week, you
14 said Ken shot before --

15 (At this time the weather system warning went off on
16 Cell phones in the courtroom.)

17 (Break in proceedings.)

18 THE COURT: There's a tornado warning so everybody --
19 exceptional circumstance -- does anybody have any objection
20 if we stop testimony?

21 MS. LIVELY: No, sir.

22 THE COURT: All right. Madam Clerk, is there a safe
23 area down in the basement? Okay. I'm going to let the
24 bailiff's staff find a secure area for the jury to go to.
25 Jury, follow the sheriff's office out to a safe area in the

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1 basement.

2 (The jury left the courtroom.)

3 THE COURT: Sheriff's office, I'll turn the defendant
4 over to you, and the rest of us probably need to get to a
5 lower floor.

6 (A recess was taken.)

7 (The jury returned to the courtroom.)

8 THE COURT: I think that's the first time I had to
9 recess court for a tornado warning. All right.

10 MS. BOULWARE: Thank you, Your Honor.

11 BY MS. BOULWARE:

12 Q All right. Let's see if we can figure out where we
13 were here. Okay. I'm going to go back to your interview,
14 March 30th, where you're talking about when the victim got
15 shot, you say: Ken shot before he could say anything, there
16 was no conversation. Do you recall back in your interview
17 with Investigator Crockett and Investigator Burch saying the
18 victim died from talking too much?

19 A No.

20 Q Okay. All right. And I think we just talked about
21 this but I can't recall so I'm going to ask it one more
22 time. Do you recall mentioning more than one gun?

23 A I may have stated that I think that they both have
24 guns.

25 Q Okay. And we're going to back up now on the way when

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1 they pick you up from the motel, and you think you're going
2 to the laundry mat on Pickney Street; is that correct?

3 A Yes.

4 Q Okay. And -- but Von ends up going the other way; is
5 that right?

6 A Yes.

7 Q All right. Were y'all arguing about anything?

8 A No.

9 Q Okay. You weren't arguing about making money and
10 getting out of the city, or just talking about it, or
11 anything like that?

12 A Yeah. It wasn't an argument, I knew when to stay in my
13 place.

14 Q Okay. All right. And then you testified she turned
15 the radio up and ignored you at that point.

16 A Yes.

17 Q Okay. Do you recall stating during that same interview
18 that Von hates you but gives you crack and money?

19 A Yes.

20 Q Okay. What does hate mean? Why does she hate you?

21 A I don't know. She just -- she just didn't like me very
22 much, but I think we kind of needed each other.

23 Q Okay. All right. Now we're going to get back to what
24 was said during the interview with Investigator Crockett and
25 Burch, back to what was said during the shooting. All

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1 right. We've got two different versions of this. Do you
2 recall Von looking at the victim and saying: You're going
3 to give me my money, mother fucker, right.

4 A That was before we even got to her house, long before,
5 you know. It was prior to the shooting.

6 Q Okay. Von said that.

7 A Yes.

8 Q Who did she say that to?

9 A She was talking to the victim.

10 Q The victim. All right. What money was that?

11 A I don't know.

12 Q Okay. Did you -- do you recall telling them that
13 that's her sometimes, she robs people?

14 A Yeah.

15 Q Did you have direct knowledge of her robbing people?

16 A No.

17 Q Never saw her rob anybody?

18 A No. It's just from what people told me.

19 MS. LIVELY: Your Honor, I'm just going to object to
20 that as being hearsay and ask that it be stricken from the
21 record?

22 THE COURT: Yeah, that would be hearsay.

23 MS. BOULWARE: Well, Your Honor, I was just asking her
24 if she had direct knowledge, she just added that, and I
25 don't mind that part being stricken from the record.

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1 THE COURT: All right. It's stricken from the record,
2 the jury will disregard that portion.

3 MS. LIVELY: Thank you, Your Honor.

4 Q Okay. Back to the same interview with Investigators
5 Crockett and Burch. Sort of -- I think this is towards the
6 end of the interview, again, I kind of got them out of order
7 so we can sort of figure out what's in order here. Now,
8 there is testimony earlier and I believe you had said in
9 your interview last week that you were scared of Ken.

10 A Yeah.

11 Q You have to speak up.

12 A Yes.

13 Q Okay. Do you recall telling them you weren't scared of
14 Ken, that he never threatened you?

15 A He never threatened me.

16 Q Okay. That you thought Ken appeared to be shook up.
17 Okay. But you weren't scared in any way of him.

18 A Yes. I was scared of both of them.

19 Q Okay. That's a little different but that's fine. And
20 you also reiterated that because there might be more than
21 one gun in the truck you don't know if Ken pulled the
22 trigger.

23 A I was in the floorboard.

24 Q Okay. So you're saying you don't know.

25 A Right.

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1 Q Okay. All right. Now, let's talk about the murder
2 gloves for a second. So gloves, really new information
3 here. These were just brought up last week.

4 A Yes.

5 Q Okay. After your lawyer told you about a DNA report.

6 A I got a letter in the mail.

7 Q You got a letter in the mail. Okay. And all of the
8 sudden there's gloves involved that nobody has ever brought
9 up before. Yes?

10 A I don't think I brought them up before, I'm not sure
11 but I don't think I did.

12 Q Okay. I don't think you did either. You forgot about
13 them is what you said.

14 A Well, I was in a state of shock to be honest. I wasn't
15 paying direct attention to every little thing.

16 Q Okay. Well, let's see what you said about the gloves
17 in the interview last week. First of all it's oh, I didn't
18 remember that until I got the DNA report, correct?

19 A Yes. I recollected it as soon as I read the DNA
20 reports, I immediately had like I guess you would call a
21 flashback.

22 Q Okay. Well, then you said the gloves were in Ken's
23 jacket pocket.

24 A No, I did not say that.

25 Q Okay. You didn't say that. Don't recall saying that.

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1 A I said they were sitting beside him on the dresser.

2 Q Okay. But earlier in the interview you don't recall
3 saying that gloves are in Ken's jacket pocket. Last week.

4 A No.

5 Q All right. And that you saw Ken pull a gun out of his
6 pocket.

7 A Yes. When he told me to get in the floorboard I recall
8 him pulling his arm out of his jacket like he had a gun in
9 it, but, like I said, I didn't take time to look.

10 Q So jacket meaning a pocket in his jacket?

11 A Yeah, like a pullover.

12 Q Okay. Like a hoodie type thing?

13 A Uh-huh.

14 Q And then you said that you saw Ken take these black
15 gloves off, black gloves, at the motel.

16 A No. I saw them sitting on the dresser like they had
17 just been taken off.

18 Q Okay. Got another one there. So you did say halfway
19 through the interview that you're in the room when Ken took
20 off the gloves. Yes? All right. And at the end of the
21 interview you say: Oh wait, you know what? No. I never
22 actually saw him with the gloves and I didn't see him take
23 them off, I just saw them on the dresser.

24 A Sitting next to him.

25 Q Okay. So you never ever actually saw gloves on Ken's

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1 hands.

2 A No.

3 Q But all of the sudden this must be the explanation.

4 Yes?

5 A What explanation?

6 Q The gloves for no DNA.

7 A Yes.

8 Q Okay. Pretty convenient. All right. So then you
9 demonstrated how you got up and turned around and Ken told
10 you to get down.

11 A Yes.

12 Q Okay. And I'm trying to figure out a way to describe
13 this. So a Toyota Tacoma, the back seat area, not really
14 that big, right?

15 A Right.

16 Q Okay. And Ken is a big guy. Did you demonstrate
17 actually standing up and turning around and ducking? Do you
18 recall doing that?

19 A Yeah. They asked me to demonstrate getting in the
20 floorboard and I did the best I could.

21 Q Okay. Stood straight up, turned around --

22 A I mean, you can't actually stand up in a vehicle.

23 Q Right. Okay. All right. So then after saying that
24 Von is the one that said the man needed to give him money,
25 you said that Ken said: Give me your money, Bruh.

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1 A Yeah.

2 Q Okay. So one of the other said it. And then Ken shot
3 him before he could get a word out of his mouth.

4 A Yes.

5 Q Does that make sense to you?

6 A Like I stated, it doesn't make sense to me until this
7 day.

8 Q Uh-huh. Okay. They need money from him but they're
9 just going to shoot him before he even gets a chance to hand
10 it to them, huh.

11 A I'm only here to tell the truth.

12 Q Okay. Sounds good. So when y'all were going back over
13 to Dawson Drive afterwards, they're getting drugs; is that
14 right?

15 A Yes.

16 Q Okay. Who were you getting drugs from?

17 A A man named Rodney Owens.

18 Q Okay. Did you ever mention Rodney Owens to any
19 investigator before last week?

20 A I did not.

21 Q Why is that?

22 A Nobody ever asked me his name, and I'm quite sure it's
23 irrelevant for his name to be brought up. But when I was
24 asked I was not going to lie.

25 Q Well, we'll let the jury decide how relevant it is.

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1 MS. LIVELY: Your Honor, I'm just going to object to
2 her testifying --

3 THE COURT: You're going to have to be careful
4 editorializing.

5 MS. LIVELY: Thank you, Your Honor.

6 MS. BOULWARE: Thank you, Judge. I will, no problem.

7 Q Okay. So I've got a few questions for you now and
8 we're about to wrap it up. Were you and Ken whispering in
9 the back seat before you say Ken shot Mr. Thompson?

10 A No.

11 Q Were you helping Von, or was Von helping to spray the
12 car out at the car wash?

13 A I did not help spray the car out, Von did it.

14 Q Von did it? Okay. And did Ken give you any money out
15 of that wallet?

16 A No.

17 Q No money at all?

18 A No.

19 Q Not a little bit?

20 A No.

21 Q Okay. All right. So let's go back to the hotel real
22 quick, and let's talk about when you're back with Steve
23 Peterson after the shooting after the car wash, all of that
24 good stuff. Then they called law enforcement on you for a
25 trespass notice, or they say you're on trespass notice,

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1 you're saying: No, I'm not. Y'all get in an argument about
2 that. You're scared to death, right? You just witnessed
3 this horrible thing, correct?

4 A Yes.

5 Q There is your way out, why didn't you take it?

6 A I was still trying to -- I don't know the word. I just
7 wasn't ready. There was a lot to take in.

8 Q Okay. So weren't ready yet, however you were away from
9 Von again, right?

10 A Yes.

11 Q Why did you get back in the car with them?

12 A I had no choice. Once he had done called -- already
13 called her back I didn't want to make things seem suspicious
14 on my part for them to come have a reason to come for me.

15 Q Okay. When -- now Steve Peterson called Von then; is
16 that correct?

17 A Yes.

18 Q And where did you meet them?

19 A I was sitting in the Arby's parking lot.

20 Q Okay. Did you walk over to the Arby's parking lot
21 alone?

22 A Yes. I walked back to the police car, I asked her for
23 her card, she said she didn't have one, by that time Steve
24 was headed toward me.

25 Q All right.

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1 MS. BOULWARE: Beg the Court's indulgence one moment.

2 (Break in proceedings.)

3 MS. BOULWARE: No further questions, Judge.

4 THE COURT: Solicitor.

5 MS. LIVELY: Just a couple of follow-up questions.

6 REDIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q And I know you talked about this quite a bit and it's
9 been awhile, Elizabeth, but I'm just a little bit confused
10 if you don't mind. Do you remember in those statements when
11 asked about the gun actually saying you saw the gun come out
12 and Ken had the gun?

13 A Yes. I -- it happened so fast, you know. But when he
14 told me to get down I'm pretty sure I saw him, you know,
15 coming out of his jacket and he was holding a gun.

16 Q Okay. Well, you understand this is very important, you
17 need to be clear, so I want to make sure that we know, what
18 did he tell you to do before the -- before you heard a
19 gunshot?

20 A He just looked at me and he like mouthed the words get
21 down, like --

22 Q All right. And when he mouthed the words get down,
23 were you still -- this is a pretty close area in the truck,
24 correct?

25 A Yes.

MARY ELIZABETH MUCKENFUSS - REDIRECT

1 Q So when you're getting down, what do you see him doing
2 with his hand or hands?

3 A I don't want to get it confused with what my mind, you
4 know, it -- because in my head it's like this because of the
5 fact that I seen him coming out of his jacket like that. So
6 in my head I'm thinking that he's just like this
7 (indicating.)

8 Q Okay. I don't care where it ends up. I understand you
9 said that you went and got down like you did.

10 A Yes.

11 Q I want to know what you saw --

12 A I just saw him coming out of his jacket with his hand,
13 looked like he had a gun in it, I was in the floorboard with
14 my head covered up.

15 Q All right. Now, do you remember also in your statement
16 when you were talking about the actual gun going off, before
17 that happened did you ever say it was weird that Ken was
18 sitting in the back seat with you?

19 A Yes. It didn't register to me until later that when
20 they left he was in the front seat, and he was typically
21 always in the front seat, it didn't register to me that it
22 was strange that he was in the back seat until after I had a
23 lot of, you know, time to think about everything.

24 Q Okay. And just to be clear, when Antonio Thompson, the
25 victim, was shot, he was sitting in front of you in the

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1 passenger seat, right?

2 A Yes.

3 Q All right. And who was driving again?

4 A Von Wherry.

5 Q All right. And who was sitting behind Von?

6 A Kenneth.

7 Q And you were sitting behind Mr. Thompson.

8 A Yes.

9 Q Can you without a doubt point to the person who was
10 sitting behind Von Wherry who is here in this courtroom
11 today?

12 A Yes.

13 Q All right. Would you please point him out to the jury?

14 A (Witness stands up and points to the defendant.)

15 Q You can have a seat.

16 MS. LIVELY: Will you please make a note that she is
17 actually identifying the defendant, Mr. Kenneth Wherry?

18 Q And also in regards to when this took place you said
19 that -- you said that there were guns, that you weren't sure
20 whose guns that they were; is that right?

21 A Yes.

22 Q Did you look at and see Mr. Thompson after the gun -- a
23 gun went off?

24 A Yes.

25 Q All right. Any question in your mind that he was shot

1 with a gun?

2 A No.

3 MS. BOULWARE: Your Honor, this is redirect, we're
4 going into all new territory here and I object to that.

5 THE COURT: All right.

6 MS. LIVELY: I was following up on the guns, Your
7 Honor, and that was going to be my last question.

8 MS. BOULWARE: Of course, you got into it a little bit.
9 All right.

10 MS. LIVELY: Yes, sir. That's all I have, thank you.

11 THE COURT: Anything further?

12 MS. BOULWARE: Nothing further, Judge.

13 THE COURT: Thank you, you may step down, just watch
14 your step.

15 MS. LIVELY: May we approach, Your Honor?

16 A bench conference was held with the Judge and
17 Attorneys.)

18 THE COURT: The roads are going to get worse and the
19 chance of somebody hydroplaning, so we could go forward but
20 under the circumstances to keep everybody safe we'll stop
21 now. It looks like it may get a little more tedious with
22 the weather by 5:00 just looking at the future radar, so
23 we're going to stop. Remember my instructions. Don't
24 discuss the case with anyone, don't allow anybody to
25 approach you in any form or fashion. Also don't do any

1 independent research concerning this case. That would be
2 improper, because under the law you have to decide the case
3 on the evidence that's presented in court. With that said
4 we'll fire back up -- does 10:00 suit everybody?

5 MS. LIVELY: That's fine, we'll be ready to go.

6 THE COURT: We've got some commuters in the crowd. So
7 let's get started at 10:00 in the morning, y'all have a good
8 evening. Everybody else remain seated in the courtroom
9 while the jury departs.

10 (The jury left the courtroom.)

11 THE COURT: All right. See you in the morning at
12 10:00.

13 (Court recessed for the evening and resumed at
14 10:00 a.m. on Wednesday, April 6, 2022.)

15 (The jury returned to the courtroom.)

16 THE COURT: All of the jurors are accounted for. Good
17 morning. Thank you for your patience this morning. We're a
18 little bit late getting started, but part of the problem was
19 a train at the main road blocked this morning and people
20 were having to go all of the way around on the bypass.
21 Anyway, we're ready to go. Solicitor?

22 MS. LIVELY: Thank you, Your Honor. The State would
23 call Catherine Leisy to the stand.

24 The witness, CATHERINE LEISY, was first duly sworn and
25 Testified as follows:

CATHERINE LEISY - DIRECT

1 DIRECT EXAMINATION

2 BY MS. LIVELY:

3 Q Ms. Leisy, where do you currently work?

4 A I work for the South Carolina Law Enforcement Division,
5 more commonly referred to as SLED.

6 Q And what division do you work in?

7 A I'm a forensic scientist assigned to the DNA casework
8 unit.

9 Q And how long have you been in that particular unit?

10 A Sixteen years.

11 Q And in that particular unit you would receive samples
12 for testing for DNA profiles and things like that?

13 A Correct. My responsibilities include processing
14 forensic cases to develop DNA profiles from items of
15 evidence for comparison to DNA profiles for known
16 individuals. I generate reports based on the results and
17 conclusions drawn and testify to those reports as necessary.
18 I also assist in the training of lesser experienced analysts
19 and training of solicitors throughout the state. I also
20 have some quality control duties within the laboratory.

21 Q Ms. Leisy, in your 16 years of being in that particular
22 division for DNA analysis, have you ever been qualified as
23 an expert in that field?

24 A I have.

25 Q And about how many times?

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1 A I would say on more than 50 occasions.

2 Q On more than 50 occasions? So being qualified as an
3 expert, would that mean you would have testified in a
4 courtroom regarding your findings?

5 A That's correct. And I've testified throughout South
6 Carolina as well as jurisdictions in California,
7 Massachusetts, New Jersey, Florida, the District of
8 Columbia, United States Federal Court in Florence, South
9 Carolina, and a military court martial in Fort Jackson.

10 MS. LIVELY: Okay. Thank you. Your Honor, at this
11 time we would offer Catherine Leisy as an expert in the
12 field of DNA analysis. It's my understanding that the
13 defense is going to stipulate to her qualification.

14 MS. BOULWARE: That's correct, Judge, no objection.

15 THE COURT: So qualified. Thank you.

16 MS. LIVELY: Thank you, Your Honor.

17 Q Now, Ms. Leisy, whenever you get assigned a case, is
18 there a specific lab number that identifies what case you're
19 going to be working on in order to document everything that
20 you actually reviewed?

21 A That's correct. Every case that comes into SLED is
22 assigned a unique SLED lab number. That lab number travels
23 with every item of evidence that's submitted for that case.
24 It allows us to track those items of evidence, maintain
25 chain of custody for anything that's entered, and report

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1 appropriately our results.

2 Q And Ms. Leisy, in this particular case that you've been
3 called to court on involving the shooting death of an
4 Antonio Thompson, was there a SLED lab number identified,
5 L2103417 for this particular case?

6 A That's correct.

7 Q And there was also a related case that was -- that
8 actually kind of overlapped with it, L2104262; is that
9 correct?

10 A Yes, ma'am.

11 Q All right. And in regards to that, are we still
12 talking about the same individuals and same DNA profiles
13 that were used for both of those lab numbers?

14 A We are. And it's not unusual potentially for evidence
15 from a case to be submitted under one SLED lab number than
16 if standards or additional items are submitted at a later
17 time they may be given a different SLED lab number. Those
18 two lab numbers are then crossed referenced so we can keep
19 track of which of those items belong to the same submitting
20 agency case.

21 Q All right. And was the submitting agency case Chester
22 County Sheriff's Office?

23 A Yes, it was.

24 Q All right. And did you have any concerns regarding the
25 reliability of the information and the evidence that was

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1 submitted to you for testing in this particular case?

2 A I did not.

3 Q Were the items that were submitted to you processed as
4 required through SLED's protocol and going first to an
5 individual who would identify the particular items that were
6 submitted, and then actually submit them to your division
7 for testing?

8 A That's correct. The items did follow proper protocol
9 and chain throughout the process.

10 Q Thank you so much, Ms. Leisy. I'm going to get right
11 into this particular case and just get you to talk about
12 some of the items that were actually submitted. Whenever
13 you received some of these items, you've actually got them
14 identified by actual item numbers, like items of evidence,
15 for instance 1.1, who actually places those numbers into the
16 system and then you follow them throughout the testing in
17 the case?

18 A So the item itself that was submitted as SLED Item 1
19 was identified as a Smith and Wesson .357 Magnum revolver.
20 That item was first processed by a latent prints examiner at
21 SLED. Our typical procedure, if there are both touch DNA
22 and latent prints requests on an item, is that the latent
23 prints examiner will take swabs for us in an attempt to
24 collect any DNA that may be present in the item. So as
25 those swabs were taken by that examiner they were what we

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1 refer to as sub-itemized. So if the gun is Item 1, the
2 first swab that was taken, which was the swab from the
3 trigger, was identified as SLED Item 1.1. So then that 1.1
4 travels with that item and with the reporting throughout the
5 process.

6 Q And thank you for explaining that, because there are
7 different subitems off of the gun that was submitted to you;
8 isn't that correct?

9 A That's correct. There were a total of four sets of
10 swabs taken.

11 Q Okay. So I'm going to show you first just for
12 reference the latent prints identification of these
13 particular items. I don't know if you have this particular
14 document with you or not.

15 A I do not.

16 Q Okay. I was just going to show it to you so it
17 documents what you just said. So there's Item 1.1, 1.2, 1.3
18 and 1.4 from the gun, correct?

19 A That's correct.

20 Q All right. So 1.1 was swabbed from what area of the
21 weapon?

22 A 1.1 was identified as swabs from the trigger of the
23 Smith and Wesson .357.

24 Q Okay. And was that 1.1 provided to you for further
25 testing?

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1 A Yes, it was.

2 Q Okay. And so let's talk about 1.1 first, and then you
3 can keep that document up there with you so we can
4 cross-reference the information. So swabs from the trigger
5 of Item 1.1 -- well, let me back up for just a minute. In
6 order for you to have DNA profiles that you're going to look
7 at as a reference after your testing to make comparisons,
8 where did you get the actual profiles for the individuals
9 that were developed in this case?

10 A The what we refer to as known standards were submitted
11 under L21-04262. So when we say known standard we are
12 referring to a sample taken from someone's person that we
13 used to develop a profile for them. We can then compare
14 their DNA profile to a profile that's been developed from an
15 item of evidence to try to determine if they could have
16 potentially contributed the DNA that's on the evidence. And
17 what we typically receive as known standards are either
18 blood samples or what are called buccal swabs. And buccal
19 swabs are just -- they look like Q-tips, they're sterile
20 cotton swabs rubbed against the inside of the cheek to
21 collect cells that contain the DNA that we need to develop a
22 profile.

23 Q Thank you. And I should have asked you that
24 originally. So in the comparison standards that were
25 provided to you, I'm just going to ask you on the first page

CATHERINE LEISY - DIRECT

1 of your actual DNA analysis report, what type of standard
2 did you receive from the victim, Antonio Thompson, in this
3 case?

4 A From Antonio Thompson we actually received both a blood
5 standard and a set of buccal swabs. The only one that I ran
6 was the blood standard, and I was able to develop a DNA
7 profile that was suitable for comparison from that item.

8 Q And once you're able to get that suitable profile to
9 use for your comparisons you're going to make, there was no
10 need for you to go into the buccal swab received from the
11 victim; is that right?

12 A Correct. It's not unusual for us to receive both
13 buccal swabs and blood standards when we have deceased
14 individuals. As long as the one that we choose provides a
15 profile there's no reason to go back and do that second one.

16 Q Okay. So you didn't skip a step.

17 A Correct. I developed the profile that I needed, there
18 was no reason to be redundant.

19 Q Okay. Thank you. Now, as for the -- you've got it
20 listed on your particular report, suspects: Kenneth Wherry.
21 Possible suspects: Lavondia Wherry. And then you've got
22 witness: Mary Muckenfuss. How did you -- what did you use
23 for DNA profiles for these particular individuals?

24 A For each of those three individuals I received a set of
25 buccal swabs, and I was able to develop DNA profiles from

CATHERINE LEISY - DIRECT

1 all of those items that were suitable for comparison from
2 the evidence in this case.

3 Q Okay. Does it matter to you how each person is
4 identified on the form as to whether or not they're suspect,
5 victim, witness, or anything like that?

6 A I typically know. It doesn't necessarily affect our
7 comparisons or our interpretations. It can affect how we
8 identify an item, but in terms of the comparison it doesn't
9 make a difference to how we run the items.

10 Q Okay. And you can explain that later in some of your
11 findings, is that fair to say?

12 A Yes.

13 Q All right. So let's go to then -- now we go -- you've
14 got a blood standard that was provided by Mr. Antonio
15 Thompson that you got a profile on him. You were also able
16 to get one on all of the other three individuals involved in
17 this particular case, is that fair?

18 A Yes, it is.

19 Q All right. So let's go back to where we started. Item
20 Number 1.1, swabs from the trigger of that item you've
21 identified as being the Smith and Wesson .357 Magnum
22 revolver, and the swabs are actually taken from that
23 trigger. Will you tell this jury what your results were and
24 what those results mean within a reasonable degree of
25 scientific certainty based upon your expertise as a DNA

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1 analyst?

2 A From the swabs from the trigger of the gun I was able
3 to develop a profile that was suitable for comparison. Once
4 we have a profile that we can compare with, we perform
5 comparisons between each known individual that we have a
6 standard for, and we use a type of calculation called a
7 likelihood ratio. And a likelihood ratio is a comparison
8 between two possible explanations for an event, and the
9 value that's generated provides support for which of those
10 possible explanations is more likely. So in a case such as
11 Item 1.1, I first have to determine how many people I have
12 in this profile. And it was determined that the DNA profile
13 is a mixture originating from three individuals. So the
14 next step would be to determine what our possible
15 explanations are for this mixture. So the first comparison
16 that I did was with Antonio Thompson's profile. So my first
17 possible explanation for this mixture is that it is Antonio
18 Thompson and two unidentified, unrelated individuals
19 contributing. Because, remember, it's being determined that
20 it's mixture of three people, so my explanation has to have
21 a total of three people in it. So that first possible
22 explanation is Antonio Thompson and two unidentified,
23 unrelated individuals contributing. The second possible
24 explanation is that it is three unidentified, unrelated
25 individuals contributing, meaning that Antonio Thompson

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1 would not be a contributor. So when we run this likelihood
2 ratio it provides us with a number that provides support for
3 which of those two possible explanations is more likely to
4 give us this profile. In running this calculation it was
5 determined that the DNA profile is approximately 200
6 septillion times more likely if Antonio Thompson and two
7 unidentified, unrelated individuals contributed than if
8 three unidentified, unrelated individuals contributed. So
9 that is what we would consider very strong support for the
10 explanation that it is Antonio Thompson and two
11 unidentified, unrelated individuals contributing.

12 Q And that was for the trigger of the Smith and Wesson,
13 correct?

14 A That's correct.

15 Q All right. So -- and once again, it was his blood DNA
16 that was where the profile came from, correct?

17 A I don't know about bodily fluid. There was no
18 presumptive or serological test looking for bodily fluid
19 from this item. And, again, what we're saying is that this
20 profile is approximately 200 septillion times more likely to
21 be developed if it is Antonio Thompson and two unidentified,
22 unrelated individuals than if it's three unidentified,
23 unrelated individuals.

24 Q Okay. All right. So we've got -- Antonio Thompson's
25 DNA is identified on the trigger, and then we don't know who

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1 the other two individuals are.

2 A Well, other --

3 Q Or not able to be identified from the information that
4 you have.

5 A Well, again, when we say unidentified, unrelated,
6 again, because it's a mixture of three people we have to
7 have a total of three people in each of our possible
8 explanations. So this was just a comparison for Antonio
9 Thompson. It doesn't tell us anything about the other two
10 people that have contributed, that number specifically is to
11 Thompson's comparison.

12 Q I understand, I'm sorry, thank you for explaining that.
13 Because it can be kind of confusing with -- these are the
14 standards that y'all have been using since 2018 in how you
15 actually come up with these likelihoods; is that correct?

16 A Correct. This is a system that we moved to within the
17 last few years.

18 Q All right. Thank you. Now -- so that is the most
19 likely scenario that you have given an opinion on regarding
20 the trigger; is that right?

21 A Again, it's very strong support that it's Antonio
22 Thompson and two unidentified, unrelated individuals
23 contributing.

24 Q Was there any other significant findings in regards to
25 that particular Item 1.1 that you made conclusions on for

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1 that particular item?

2 A There were also comparisons made with the other
3 standards that were submitted, and for those individuals the
4 next comparison was with Lavondia Wherry's DNA profile. And
5 it was determined that an uninformative statistical result
6 was obtained, meaning that no conclusion can be made
7 regarding Lavondia Wherry as a possible contributor to this
8 mixture. And when we say uninformative, what we mean is
9 that there's essentially equal support for both possible
10 explanations: One, that it's Lavondia Wherry and two
11 unidentified, unrelated individuals. The second possibility
12 that it's three unidentified, unrelated individuals. So
13 essentially it's just not providing us with anything
14 informative as to whether or not Lavondia Wherry
15 contributed. I also did comparisons with Kenneth Wherry and
16 Mary Muckenfuss' standards and determined that both of those
17 individuals were excluded as contributors to the mixture
18 under these propositions.

19 Q Under 1.1.

20 A Correct.

21 Q Okay. So tell the jury what the next item that you
22 actually tested that was submitted to you from the gun.

23 A The next item was SLED item 1.2, which were swabs taken
24 from the texture area of the grip of the .357 Magnum
25 revolver.

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1 Q Okay. And were you able to -- were the results showing
2 any type of a DNA profile that was suitable for comparison
3 from that swab?

4 A I was able to develop a profile suitable for comparison
5 and determined that that profile was a mixture originating
6 from two individuals.

7 Q Right. And within a reasonable degree of scientific
8 certainty, can you tell this jury what those conclusions
9 were regarding the -- regarding what you found in that DNA
10 profile.

11 A Again, I performed comparisons using each of the known
12 individuals to this mixture, the first with Antonio
13 Thompson's profile. And I determined that the DNA profile
14 is approximately 540 septillion times more likely if Antonio
15 Thompson and an unidentified, unrelated individual
16 contributed than if two unidentified, unrelated individuals
17 contributed. And, again, that's very strong support for
18 that possible explanation. In the comparison with Lavondia
19 Wherry, the DNA profile is approximately two times more
20 likely if Lavondia Wherry and an unidentified, unrelated
21 individual contributed to the mixture than if two
22 unidentified, unrelated individuals contributed. And the
23 likely ratio value two is what we would consider weak
24 support for that possible explanation. With the comparison
25 to Mary Muckenfuss, it was determined that the DNA profile

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1 is approximately 19 times more likely if two unidentified,
2 unrelated individuals contributed than if Mary Muckenfuss
3 and an unidentified, unrelated individual contributed. And
4 that's what we would consider moderate support for the
5 explanation that it is actually two unidentified individuals
6 and not Mary Muckenfuss contributing to this profile.

7 Q Okay.

8 A And in the comparison with Kenneth Wherry it was
9 determined that he was excluded as a contributor to the
10 mixture.

11 Q All right. So that was for each of the individuals
12 that you have protocols for that you're testing and
13 comparing, correct?

14 A That's correct.

15 Q So that would be for the grip of the .357 Magnum
16 revolver under 1.2, correct?

17 A Correct.

18 Q Okay. Then the next item that you actually tested
19 would be 1.3. What is 1.3?

20 A SLED Item 1.3 was identified as swabs from the head
21 stamps of five cartridges from the .357 Magnum, as well as
22 one cartridge casing from that weapon.

23 Q And within a reasonable degree of scientific certainty,
24 can you tell this jury whether you were able to come up with
25 a partial -- a DNA profile that you could actually use for

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1 comparison in this particular item?

2 A A partial DNA profile was developed from this item but
3 it did not meet the standards set forth in our protocols for
4 interpretation, so there was no comparison performed between
5 that partial profile and any of the known individuals in
6 this case.

7 Q And those were from the cartridge casings, the bullets,
8 that were actually removed from the .357 Magnum; is that
9 correct?

10 A Correct. The submission information indicated that it
11 was five unfired rounds that were still in the weapon, as
12 well as one cartridge case that was still in the weapon.

13 Q A spent casing.

14 A Correct.

15 Q Okay. Thank you. Now, you go into the next item,
16 which is 1.4. This appears to be swabs from the grip, the
17 cylinder, and the end of the barrel near the front sight,
18 and the frame near the cylinder release button.

19 A That's correct.

20 Q Is that correct?

21 A Uh-huh.

22 Q Okay. In regards to those particular -- those swabs,
23 tell the jury what you were able to come up with if there
24 was a DNA profile that was suitable for comparison in that
25 particular item.

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1 A So for this particular item the first step in testing
2 was a preliminary serological test. That's just a very
3 simple test that looks for the possible presence of blood on
4 an item. I did obtain a positive result for that
5 serological test indicating that blood may have been present
6 on this particular set of swabs. I was able to develop a
7 DNA profile suitable for comparison and determined that it
8 was a single source profile, meaning it's DNA from one
9 individual. Based on just a visual comparison I determined
10 that I only needed to run a likelihood ratio value for
11 Antonio Thompson and determined that the DNA profile is
12 approximately 1.2 octillion times more likely if Antonio
13 Thompson contributed the profile than if an unidentified,
14 unrelated individual contributed. So the other three
15 individuals would be excluded as possible contributors to
16 this profile.

17 Q So this specific item within a reasonable degree of
18 scientific certainty did have a positive result for blood
19 being present.

20 A It did. Again, the presumptive test was positive
21 indicating the possible presence of blood.

22 Q All right. And so based on that information you looked
23 at the profile that is actually who ends up being the victim
24 in our case, Mr. Antonio Thompson, his DNA profile for
25 comparison, correct?

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1 A Correct. That was the only likelihood ratio value I
2 calculated because of the visual comparison and the
3 consistency between his profile and the evidentiary profile.

4 Q Okay. And so you are able to conclude in your report
5 that that profile is 1.2 octillion times more likely if he
6 contributed to it than any other unidentified, unrelated
7 individual; is that correct?

8 A That's correct.

9 Q All right. So this -- the blood that was actually
10 presumptively found on these items on the gun -- I know
11 we're not going to say would match so I'm not going to say
12 that, I promise, what I'm going to say is that you were able
13 to determine that ratio would have been the best probability
14 of it being Antonio Thompson's blood on that gun.

15 A It's not necessarily a measure of how likely is it that
16 it is his blood, it's we're measuring how likely it is we
17 would see this DNA profile if this individual contributed to
18 the profile than if someone else did. We don't necessarily
19 link it back to a specific bodily fluid, it's to the DNA
20 profile that was developed from the swab.

21 Q Okay. And I appreciate you explaining that because it
22 gets a little confusing whenever -- there's a statement that
23 there's a presumptive testing for blood, and then there's
24 findings later on as to your comparison so that makes sense,
25 so thank you for explaining that to me and to the jury. So

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1 other than the cylinder grip and the end of the barrel near
2 the front sight, were there any other tests run in regards
3 to the weapon that was provided to SLED under those item
4 numbers?

5 A Those were the only tests that I ran. Again, I
6 perceived four sets of swabs from that item passed on by
7 other latent prints examiner.

8 Q Okay. Thank you. Did you test any additional items
9 based upon a request from the agency or the investigative
10 agency and the items that were sent to you?

11 A We did. We also tested a pair of blue jeans that were
12 identified as belonging to Antonio Thompson. The request
13 was for testing of the pockets essentially to try and see if
14 we could determine if maybe someone had put their hands in
15 his pockets, if there was any type of foreign DNA that may
16 be present there. The blue jeans were actually processed by
17 another analyst. She determined that it was reasonable to
18 run the same serological test that I ran on the previous set
19 of swabs, so she ran that serological test on the pants and
20 did obtain a positive result indicating, again, the possible
21 presence of blood on that item. She determined in her
22 examination that the left pocket was so saturated with what
23 appeared to be blood that it wasn't really appropriate then
24 to test it for a foreign source of DNA because we would
25 expect the source of the possible blood to basically

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1 overwhelm anybody else who may have left a small amount of
2 DNA there. So she only swabbed a scraping that was taken
3 from the front right pocket of the jeans of Antonio Thompson
4 and then passed that on to me for DNA testing.

5 Q Okay. Thank you, Ms. Leisy. And after that happened
6 and you received the item from serology for testing, could
7 you tell this jury within a reasonable degree of scientific
8 certainty what your findings were?

9 A I should probably point out, we don't usually use the
10 term reasonable degree of scientific certainty anymore in
11 this particular type of calculation in reporting, but a DNA
12 profile suitable for comparison was developed from this
13 item, it was determined that the mixture originated from
14 three individuals. So this item was a little bit different
15 than the gun, because it was taken -- based on the
16 information we had it was taken from the person of Antonio
17 Thompson, and that's in a visual comparison there was
18 consistency between his profile and the profile developed
19 from this item of evidence. So based on our protocols that
20 allows me to assume him as one of the contributors, so
21 that's taken into consideration when we do comparisons with
22 the other individuals. Essentially, because he was wearing
23 it, we would expect to find his DNA there. So in doing
24 comparisons with this particular item with Mary Muckenfuss
25 it was determined that the DNA profile is approximately 16

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1 times more likely if Antonio Thompson and two unidentified
2 unrelated individuals contributed to the mixture than if
3 Antonio Thompson, Mary Muckenfuss, and an unidentified,
4 unrelated individual contributed. So that's providing
5 moderate support for the explanation that it is Antonio
6 Thompson and two unidentified individuals contributing. And
7 the comparison to Lavondia Wherry, it was determined that
8 the DNA profile is approximately 33 times more likely if
9 Antonio Thompson and two unidentified, unrelated individuals
10 contributed than if Lavondia Wherry, Antonio Thompson, and
11 an unidentified, unrelated individual contributed. So that,
12 again, is providing moderate support that it is Antonio
13 Thompson and two unidentified, unrelated individuals
14 contributing. And in the comparison with Kenneth Wherry, an
15 uninformative statistical result was obtained, so no
16 conclusion can remain regarding Kenneth Wherry as a possible
17 contributor to this mixture.

18 Q Were those the only items then that you actually were
19 requested to test that were sent from this particular case?

20 A Yes, they were.

21 Q And let me ask you just a few questions in regards to
22 the different types of DNA that can be left behind. Anyone
23 who watches television is going to hear things like touch
24 DNA, DNA from semen, bodily fluids and blood. Is there a
25 difference in regards to the type of sample you get based on

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1 the type of DNA -- I don't know if I'm even asking it
2 right -- if based upon the type of item that you get to
3 test?

4 A It can be a determining factor in how much DNA is
5 present. So I should probably first explain a little more
6 what touch DNA means. So touch DNA is DNA that is
7 transferred through physical contact, so we're really just
8 looking for skin cells. So if you run your hand along an
9 item, if you hold an item in your hands you would expect
10 there to be some level of transfer of skin cells to that
11 particular item. There are a lot of different factors that
12 help determine whether or not it's going to be enough DNA
13 for us to develop a profile, but typically with touch DNA we
14 see a lower concentration of DNA than we do from a bodily
15 fluid. So a blood sample is typically a better source of
16 DNA for us than a touch sample. Profiles will develop the
17 same whether you're using bodily fluids or touch, it's
18 really just a matter of how easily it's deposited and how
19 much is there when it's collected.

20 Q That makes perfect sense, then. So the touch DNA
21 because it's skin cells, you don't know how much of it may
22 be left behind, whether it will be enough for you to
23 actually get a profile.

24 A Correct. And there are quite a few factors that go
25 into determining that, anything from how often you've

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1 touched an item, how tightly you held it, how recently had
2 you washed your hands, and some individuals just shed cells
3 much more readily than others. So one person might leave
4 their touch DNA much more significantly than someone else.
5 It really just varies person to person.

6 Q Okay. And there's no way for you to know that or test
7 for that; is that correct?

8 A That's correct. All we can test for is what's present
9 on the item when it's submitted to the laboratory.

10 Q Okay. And if someone were -- does the way someone is
11 either sweating or they may be, you know, highly -- some
12 people sweat more than others, could that have something so
13 do with touch DNA and how much is left behind?

14 A It could. Sweat could help produce more transfer
15 because you are introducing a liquid, a fluid, that could
16 increase the amount of cells that would be transferred
17 through touch DNA.

18 Q And how about the type of clothing that a person could
19 be wearing, could that have -- like either gloves or some
20 other type of items that are obstructing the shedding of the
21 skin cells, could that affect touch DNA?

22 A It could. Any physical barrier such as a pair of
23 gloves, any material that is in between the skin and the
24 item preventing direct contact would certainly potentially
25 limit the amount of transfer that could happen.

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1 Q When you have multiple people holding a particular
2 item, could that cause the -- because touch DNA, it could be
3 different levels if you have multiple people holding the
4 same item, could that cause a problem with the mixture to
5 where there wouldn't be enough for you to be able to get a
6 profile to compare?

7 A Well, the more contributors that we have to a mixture
8 the more complicated it becomes to interpret it. So we can
9 reach a point where we can actually have so many
10 contributors to a mixture that we don't interpret because it
11 becomes too complex. You know, as more people touch it one
12 person might touch it once, they could actually leave more
13 DNA than someone who touches it five or ten times. Again,
14 there's so many factors that go into it, and we can't tell
15 in what order people have touched an item. I can't tell you
16 who touched it last. All I can tell you is this is the DNA
17 profile that's been developed and these are our comparisons
18 and conclusions when we do our calculations.

19 Q And thank you, that was a question I was going to ask
20 you. Can you tell who had it first, and then another person
21 may be overlapped by grabbing an item or something of that
22 nature? There's no way for you to be able to tell timing of
23 when the DNA was left behind, correct?

24 A Correct. We can't tell you who held it first, who held
25 it last, just that their DNA has somehow been deposited on

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1 that item potentially.

2 Q And are there some items that touch DNA may stick to
3 better than others?

4 A Some materials are better sources for touch. A solid
5 smooth surface may be better than -- sometimes we get bricks
6 or rocks that have been submitted, it's not a good surface
7 to collect cells, or it's a harder surface for us to remove
8 the cells from. So it can depend on what it is that you're
9 touching and what you need to test.

10 MS. LIVELY: Court's indulgence.

11 (Break in proceedings.)

12 Q Can you tell -- can you provide an opinion on how long
13 DNA may stay on a particular item, whether -- I'll just ask
14 it that way and then I'll have another follow-up.

15 A It depends on the item, how much DNA has been
16 deposited. It depends on what conditions the item is stored
17 under. But under, you know, ideal conditions DNA can be
18 found on an item up to decades later depending on what the
19 item is and how it's been stored and tested.

20 Q Okay. Does the weather and conditions outside have
21 anything to do with (inaudible, someone was coughing)
22 especially with touch DNA?

23 A Well, outside conditions can affect sort of the quality
24 of the DNA. So exposure to heat, to light, to humidity, to
25 bacteria and enzymes that are present just environmentally,

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1 that acts to degrade or breakdown DNA, and as DNA breaks
2 down it becomes more difficult for us to develop profiles.
3 In terms of depositing touch DNA, colder weather may affect
4 it more because you're not sweating. You may be more likely
5 to have on gloves or other layers so it might prevent that
6 physical contact, so there are a lot of different
7 environmental factors that can play into it.

8 MS. LIVELY: Thank you so much, Ms. Leisy. Please
9 answer any questions that the defense may have for you.

10 CROSS EXAMINATION

11 BY MS. BOULWARE:

12 Q Good morning, Ms. Leisy.

13 A Good morning.

14 Q A couple of really quick questions for you just to
15 follow up on some of the explanations. So when you use the
16 term excluded, what exactly does excluded mean other than
17 the obvious?

18 A It is. When we're saying that someone is excluded
19 we're saying we are confident that they are not a
20 contributor to the particular profile that we've developed.

21 Q Thank you.

22 MS. BOULWARE: Beg the Court's indulgence one moment.

23 (Break in proceedings.)

24 Q Ms. Leisy, I'm going to hand you what's called a SLED
25 forensic lab testing search. Are you familiar with this

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1 form at all?

2 A Yes, ma'am.

3 Q Okay. Can you tell me how many items were submitted to
4 SLED for possible testing?

5 A The total number I couldn't tell you. I know that
6 overall there were probably at least two dozen items that
7 ended up with DNA requests either having been submitted
8 directly from the agency or as the result of swabs collected
9 at SLED.

10 Q Okay. If you look at the last page, page six of six on
11 the very last page and a little bit toward the top, total
12 items 70, is that on your copy?

13 A Yes, it is.

14 Q Okay. Is it fair to say that this contains 70 items
15 that were, I guess I don't know if you would use the term
16 submitted that were swabbed for possible testing? Swabbed
17 or --

18 A I don't know that all of the items included in this
19 list had DNA requests. Some appear to be items that were
20 submitted for other departments within the agency. But this
21 document indicates it was approximately 70 items in total
22 that were submitted to SLED.

23 Q Okay. Can you tell if all were tested?

24 A Based on the custody search, no.

25 Q Okay. It appears that they weren't all tested; is that

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1 correct?

2 A Based on what I received and the request that I
3 received not all of the items that were initially submitted
4 were tested by me or the DNA department.

5 Q Okay. Do you determine what gets tested, or how does
6 that get determined?

7 A That varies case to case. In this particular instance,
8 again, there were probably a total of a couple of dozen at
9 least items that had DNA requests, and I received specific
10 requests from Deputy Solicitor Lively about which items I
11 was to test for this case.

12 Q Okay. But you don't just go through and decide other
13 than what's requested other things to test.

14 A We don't just randomly pick. We try to get in more
15 information from the Solicitor or from the submitting agency
16 to have them determine what they would want us to start
17 with.

18 MS. BOULWARE: Okay. All right. Beg the Court's
19 indulgence one moment.

20 (Break in proceedings.)

21 MS. BOULWARE: No further questions.

22 MS. LIVELY: Nothing further from the State, Your
23 Honor. May she be excused from her subpoena?

24 MS. BOULWARE: No objection.

25 THE COURT: Thank you. Be careful with that step.

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1 MS. LIVELY: State would call Michelle Huey to the
2 stand. We'll recall her, Your Honor, regarding the
3 evidence.

4 The witness, MICHELLE HUEY, remained under oath and
5 Testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q Ms. Huey, you've already been sworn and you've been
9 actually sequestered during the past couple of days, so I'm
10 just going to go ahead and jump in and ask you some
11 questions. Okay?

12 A Okay.

13 Q And once again, you're the evidence custodian at the
14 Chester County Sheriff's Office, correct?

15 A Correct.

16 Q And the items that you brought in the other day were
17 items that had actually been collected as evidence for this
18 particular case involving State versus Kenneth Wherry; is
19 that right?

20 A Correct.

21 Q So the items that you brought in the other day, did you
22 bring them back to court this morning at my request?

23 A I did.

24 Q And in regards to the items that you brought in here
25 today, were they still intact, in your possession, no one

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1 could have gotten to them and altered them in any way,
2 correct?

3 A Correct.

4 Q All right. What I'm going to have you do, if you
5 would, please, we're going to have additional SLED witnesses
6 today, we're going to have you identify these items that
7 have been in your possession and we're going to mark them
8 for evidence. Okay?

9 A Okay.

10 Q The first thing I'm going to show you is a packing that
11 talks about passenger door prints, and other items that were
12 collected. That one was already marked as State's 105.

13 A Okay.

14 Q And do you recall that?

15 A Yes.

16 Q All right. Has it been in your possession this entire
17 time?

18 A Yes. Since I picked it up from SLED, that's correct.

19 MS. LIVELY: Your Honor, the State moves 105 into
20 evidence at this time.

21 MR. FRICK: No objection.

22 THE COURT: In without objection.

23 (State's 105 was received.)

24 Q Okay. And there was also testimony earlier regarding
25 items that were retrieved from the Executive Inn, I'm just

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1 going to have you document that. And is that the package of
2 those items that reflected the pictures that are already in
3 evidence in regards to these particular items --

4 A That's correct.

5 Q -- do you recall that? Okay. And have you altered
6 them or done anything with those items since they've been in
7 your possession?

8 A Nuh-uh.

9 Q No?

10 A I have not.

11 MS. LIVELY: And we'll have this marked. Your Honor,
12 the State would move State's 106 into evidence at this time.

13 MR. FRICK: No objection.

14 THE COURT: In without objection.

15 (State's 106 was received.)

16 Q All right. Then I've got -- I'm just going to have
17 this marked at this point, ballistics on the -- from the
18 bullet fragment, if you'll just identify that.

19 A Uh-huh.

20 Q And that has been in your possession since the autopsy;
21 is that correct?

22 A That's correct. It went to SLED and then it came to
23 me.

24 Q All right.

25 MS. LIVELY: We'll have this marked State's 107. All

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1 right. The State moves State's 107 into evidence at this
2 time.

3 MR. FRICK: No objection.

4 THE COURT: In without objection.

5 (State's 107 was received.)

6 Q Let me show you 108 through 112. They appear to be
7 clothing items that were taken by SLED, and ask you if these
8 items have also been in your possession and control since
9 being collected at the crime scene.

10 A That's correct.

11 MS. LIVELY: Your Honor, the State would move State's
12 Exhibits 108 through 112 into evidence at this time. And I
13 could wait until SLED CSI, it's up to you.

14 MR. FRICK: No objection.

15 MS. LIVELY: No objection.

16 THE COURT: In without objection.

17 (State's 108-112 were received.)

18 Q All right. And Ms. Huey, I'm going to show you these
19 two items as well and have them marked. I'll show them to
20 you. It's going to be State's 113 and 114. The State's
21 113, which is the cell phone from the Toyota Avalon, and
22 then a Cool Pad, 114. Do you recognize those?

23 A I do.

24 Q And have they been in your possession since collected
25 by Chester County Sheriff's Office?

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1 A They were, other than the dump. They were signed out,
2 yeah, to do the dump.

3 Q Thank you.

4 A You're welcome.

5 MS. LIVELY: The State would move 113 and 114 into
6 evidence at this time.

7 MR. FRICK: No objection.

8 MS. LIVELY: Thank you.

9 THE COURT: In without objection.

10 (State's 113-114 were received.)

11 Q And then, Ms. Huey, if I could have you -- do you have
12 a way to open this box for me?

13 A I don't, but normally this stuff goes off pretty
14 easily.

15 (Break in proceedings.)

16 A And this has been sealed by SLED, so this is the first
17 time it's been opened since I received it from SLED.

18 Q Thank you, Ms. Huey.

19 (Break in proceedings.)

20 Q And this particular box, have you documented all of
21 items that are actually present in here?

22 A I have.

23 Q Okay. And in regards to items 42 through 45, would you
24 please tell us what items 42 through 45 are in this box?

25 A SLED gives the release form, what it is, a custody

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1 search, it explains everything that's in the box. Just
2 like, for instance, on the front of this it says item -- Box
3 Number B, and then items numbers, which indicates B, number
4 42 is the coat or jacket, it's one blue in color Nike
5 hoodie, it's going to be a size extra large from on top the
6 victim. Item 43 is a gray in color HHP tank top, size extra
7 large from on top the victim. Forty-four is a blue/red in
8 color Reebok hoodie, size 2XL from on top the victim. Item
9 45 is one white in color Puma shirt, size extra large from
10 on top the victim.

11 Q If I could, Ms. Huey, have you actually removed Items
12 42 through 45? I'm going to reach up there and hand those
13 to you.

14 A That's the Puma sweatshirt.

15 Q Hold on just a second. So the Puma sweatshirt, Item
16 45, correct?

17 A Yes, Item 45.

18 Q All right.

19 MS. LIVELY: That's State's Exhibit 115 right now for
20 ID purposes unless you don't object to it coming in.

21 MR. FRICK: No objection.

22 MS. LIVELY: Okay. All right. Your Honor, State moves
23 115 into evidence at this time.

24 THE COURT: In without with objection.

25 (State's 115 was received.)

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1 MS. LIVELY: Thank you.

2 A And this is Item Number 42, this is a Nike extra large
3 sweatshirt.

4 Q Okay. Pull that one, please.

5 MS. LIVELY: State's 116.

6 MR. FRICK: No objection.

7 THE COURT: In without objection.

8 (State's 116 was received.)

9 MS. LIVELY: Thank you, Your Honor.

10 A This is Item Number 43, the HHP size extra large from
11 on top the victim.

12 Q All right.

13 MS. LIVELY: That's item with the gray tank top HP Item
14 43, which will be State's 117. Without objection?

15 MR. FRICK: No objection.

16 THE COURT: In without objection.

17 (State's 117 was received.)

18 MS. LIVELY: Thank you.

19 A And Item Number 44, the Navy sweatshirt Reebok size 2
20 XL.

21 Q All right.

22 MS. LIVELY: State's 118 we move into evidence at this
23 time.

24 MR. FRICK: No objection.

25 THE COURT: In without objection.

MICHELLE HUEY - CROSS

1 (State's 118 was received.)

2 Q And the other items that are in here -- at this point I
3 believe that's all of the items that the State is requesting
4 at this time. I'm going to keep this with you, Ms. Huey.

5 A Okay.

6 MS. LIVELY: No further questions for this witness,
7 Your Honor.

8 MR. FRICK: Just briefly.

9 CROSS EXAMINATION

10 BY MR. FRICK:

11 Q Ms. Huey, do you do any testing or examination of these
12 items?

13 A No. No, sir.

14 Q You're the evidence custodian. You literally just log
15 it in and keep up with this, correct?

16 A Yes. And I do take them to SLED to be tested as well.

17 Q Okay. Do you do any of the requesting of testing?

18 A No, I do not, unless I am specifically told to.

19 Q Right. But you don't look at something and go: Oh,
20 those shoes, we need to look at those for --

21 A No, I do not.

22 MR. FRICK: Thank you. That's all of the questions I
23 have.

24 MS. LIVELY: No further questions for this witness,
25 Your Honor.

CARMEN TUCKER - DIRECT

1 THE COURT: Thank you, you may step down.

2 MS. LIVELY: Your Honor, the State would call SLED
3 agent Carmen J. Tucker to the stand.

4 The witness, CARMEN TUCKER, was first duly sworn and
5 Testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LIVELY:

8 Q Good morning, Ms. Tucker. How are you?

9 A Good morning.

10 Q You are currently employed with the South Carolina Law
11 Enforcement Division; is that correct?

12 A That's correct.

13 Q And in what capacity?

14 A I'm a Forensic Scientist in the Toxicology Department.

15 Q And in your job there as -- in the Forensic Toxicology
16 Department, what is the type of analysis that you performed
17 in that particular division?

18 A We analyze biological samples and nonbiological samples
19 for the presence or absence of drugs and poison substances.

20 Q Okay. How long have you been in that particular
21 division?

22 A In toxicology?

23 Q Yes.

24 A I have been in toxicology for -- since 2010. So what
25 is that, 12 years?

CARMEN TUCKER - DIRECT

1 Q Twelve years?

2 A Yeah. And before that I was in the Drug Analysis
3 Department for four years.

4 Q Okay. So in your -- in this particular division, have
5 you ever been qualified as an expert witness in the field of
6 toxicology?

7 A I have.

8 Q About how many times?

9 A I'm going to say roughly 15, around there.

10 Q And have you had all of the required training and
11 educational background in order to actually give opinions in
12 regards to your findings in the toxicology department?

13 A I have.

14 Q You have. And what type of an educational background
15 do you have to have? What kind of degree?

16 A Well, I have a Chemistry Degree, Bachelor's and a
17 Master's. Then I also have additional training through
18 SLED. We also do continuing education training both at
19 location and online. And I'm board certified through the
20 America Board of Forensic Toxicologists.

21 MS. LIVELY: Your Honor, the State would offer Ms.
22 Carmen Tucker as an expert in toxicology.

23 MR. FRICK: No objection.

24 THE COURT: So qualified.

25 MS. LIVELY: Thank you, Your Honor.

CARMEN TUCKER - DIRECT

1 Q Now, Ms. Tucker, please explain to the jury whenever
2 you receive items from an investigative agency involving a
3 decedent such as in this particular case, what do you
4 actually do in order to run testing on a particular sample?

5 A Well, we receive the samples in our department. In
6 this case, a homicide, the first thing we do is check for
7 alcohol, we do alcohol testing. Then we do a drug screen,
8 which is basically just screens for classes of compounds or
9 specific compounds that are typically abused or typically
10 used in communities. And then once we see whatever is
11 positive from those screens, that's -- we go on to confirm
12 that and get a quantitative value for it.

13 Q All right. And did you do that in this particular case
14 involving the decedent/victim Antonio Rovon Thompson?

15 A I did.

16 Q All right. So what did you actually receive to test on
17 this particular individual?

18 A On this individual we received blood, aortic blood.
19 And let me see -- and we also got ocular fluid as well.

20 Q All right. Tell the jury what your conclusions were in
21 regards to ethanol alcohol being in Mr. Thompson's system.

22 A Okay. So the alcohol is tested both in the blood and
23 in the ocular fluid in a death case, and in this case it was
24 negative on both.

25 Q All right. So no alcohol from your testing is your

CARMEN TUCKER - DIRECT

1 results, correct?

2 A That's correct.

3 Q All right. So what was the next items that you would
4 have tested for?

5 A Blood. We would go on and do a blood screen on the
6 blood as well in addition to the alcohol testing. And the
7 blood is what travels through the brain, that's why we only
8 test for the most part in this type of case the blood
9 instead of the ocular, so that we can see what's happening
10 in the brain. And in this case on the second page of the
11 report, basically anything in that screen panel that is
12 negative, that screens negative, we would list that there as
13 negative, and if anything is positive we go on to confirm
14 that with a different type of testing.

15 Q Okay. All right. Did you have -- in your first
16 groupings of different types of drugs that are in this
17 particular screen, did you have any that were positive as a
18 result of testing that blood?

19 A Yes, cannabinoids.

20 Q And what's just the street name basically?

21 A It's marijuana.

22 Q All right. What is the -- did you test to see whether
23 or not he actually had any kind of cocaine in his system?

24 A Yes, that's part of the panel.

25 Q It is part of the panel? All right. And that's what I

CARMEN TUCKER - DIRECT

1 was going to ask you, in regards to the panel, does it
2 actually list something -- a type a drug by the name of
3 crack cocaine?

4 A Crack cocaine would also fall under cocaine, either
5 under cocaine or cocaine metabolites.

6 Q Okay. And that --

7 A That screened negative.

8 Q In regards to cocaine metabolite, was there any finding
9 of cocaine metabolite in his blood?

10 A No.

11 Q Any other -- how about fentanyl?

12 A No.

13 Q No? And you go through quite a few different -- your
14 panel that you're actually using here has quite a few
15 different drugs that are tested for; isn't that correct?

16 A That's correct.

17 Q All right. Methamphetamine?

18 A Yes, it's also tested as well.

19 Q And what was your result?

20 A Negative.

21 Q Negative. So for everything other than marijuana he
22 tested negative.

23 A Everything that we screened for in the panel, yes.

24 Q Okay. All right. So if there's something -- for
25 instance, you mentioned this earlier and I'm just curious

CARMEN TUCKER - DIRECT

1 for purposes of this particular case, if we thought that he
2 had been poisoned in some kind of way we would need to tell
3 you specifically that.

4 A Yeah. For specific poisonings, and also things like
5 synthetic cannabinoids or bath salts, things like that, we
6 would need to know upfront because we don't actually do that
7 testing in-house.

8 Q Okay. All right. So to be clear, what you actually
9 have on here is what you -- is standard for you and protocol
10 for SLED to test for whenever you receive blood from a
11 homicide.

12 A That's correct.

13 Q All right. Okay. And in regards to the marijuana
14 finding, was there anything of significance for you in
15 regards to that?

16 A Well, as it states in the report, we found
17 tetrahydrocannabinol, which is the active ingredient --
18 psychoactive ingredient of marijuana. We also found 11
19 hydroxy tetrahydrocannabinol, which is the immediate
20 metabolite of the parent. What that means is your body is
21 basically breaking the drug down and changing it so that it
22 can excrete it, that is also active in the system
23 psycho-actively. And then it continues to breakdown to 11
24 carboxy tetrahydrocannabinol, which is an inactive, not
25 psychoactive byproduct of the metabolism that the body goes

CARMEN TUCKER - CROSS

1 through.

2 Q Can that change over a period of time depending on how
3 long the -- a body has possibly been sitting prior to being
4 found or located by officers?

5 A It can. In death cases it's hard to distinguish
6 what -- the amount that you see that we quantitate from the
7 blood we received when the blood was taken from the body,
8 because in a death case it will redistribute. This type of
9 drug will redistribute. What happens is
10 tetrahydrocannabinol will absorb into the fat tissues, and
11 it happens in living people over time, and it can leach out,
12 so that is why sometimes you can see the inactive metabolite
13 for longer periods of time even in a single smoke. But in a
14 death case it will redistribute in the body as postmortem
15 redistribution. And so often times with a death case and
16 knowing the amount of time that the body has laid there,
17 this value may not be accurate to what it was at the time of
18 death.

19 Q But the overall conclusion is no other drug in the
20 system except for marijuana.

21 A That's correct.

22 Q And if you could, just pull that microphone to you, I
23 think sometimes my court reporter is having trouble hearing
24 you. You've answered all of my questions, thank you so
25 much, Ms. Tucker. Answer any questions the defense may have

CARMEN TUCKER - CROSS

1 for you.

2 CROSS EXAMINATION

3 BY MR. FRICK:

4 Q Ms. Tucker, is it fair to say he recently smoked some
5 weed?

6 A At some point, yes.

7 MR. FRICK: Thank you. That's all of the questions I
8 have.

9 MS. LIVELY: That's all, Your Honor. May she be
10 excused from her subpoena?

11 MR. FRICK: No objection.

12 THE COURT: Thank you.

13 MS. LIVELY: May we approach?

14 THE COURT: Does anybody on the jury need a brief
15 recess?

16 (A bench conference was held with the Judge and
17 Attorneys.)

18 THE COURT: Okay. We'll stand at ease for about ten or
19 12 minutes.

20 (The jury left the courtroom.)

21 (A break was taken.)

22 (The jury returned to the courtroom.)

23 THE COURT: Okay. Solicitor?

24 MS. LIVELY: Thank you, Your Honor. The State would
25 call Jennifer Hunton to the stand.

JENNIFER HUNTON - DIRECT

1 The witness, JENNIFER HUNTON, was first duly sworn and
2 Testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LIVELY:

5 Q Ms. Hunton, where are you currently employed?

6 A The South Carolina Law Enforcement Division, also known
7 as SLED.

8 Q And what are your responsibilities at SLED?

9 A I'm a Special Agent assigned to the Crime Scene Unit.

10 Q And how long have you been in that particular position?

11 A Seven years.

12 Q And before that where did you work?

13 A I worked for a company called Ron Smith and Associates.
14 They were a government contractor out of like the Washington
15 D.C. area. I was a latent print technician for them
16 processing IED related evidence for fingerprints.

17 Q So the seven years that you've been at SLED, have you
18 actually been like the supervisor over crime scene when you
19 are out to a particular scene, or are you kind of the lead,
20 or does that just depend on who's on call? How does that
21 work?

22 A We run in teams of two people, and we switch back and
23 forth on who's going to be the lead investigator for the
24 crime scene portion of the case.

25 Q And how does that work whenever you're called in by a

JENNIFER HUNTON - DIRECT

1 particular agency? Do you -- are you assisting or do you go
2 in and act as the lead in the investigation?

3 A We're assisting.

4 Q Assisting? Okay. So once you come onto a scene, tell
5 the jury like in a particular case like what we're dealing
6 with here with a homicide, tell the jury what you would do
7 whenever you arrive on a scene. What's the first thing you
8 do and then some of the follow-up stuff that you would
9 actually do.

10 A Typically when we're requested an agency will go
11 through our dispatch known as our SLED operations desk, they
12 make a request for whatever crime scene that they have,
13 typically it's from local police departments that might not
14 have crime scene units themselves to process the scene, and
15 our dispatch will contact the on-call crime scene team.
16 They contact us, and then we make contact with whoever their
17 point of contact for the agency requesting us, we call them
18 by phone just to get some information prior to responding to
19 the scene.

20 Q Okay. And would you respond across the State of South
21 Carolina?

22 A Yes. We respond to all counties in South Carolina.

23 Q Did you have an opportunity to be contacted by the
24 Chester County Sheriff's Office in February, specifically I
25 think it was February 28th by that time, 2021 regarding a

JENNIFER HUNTON - DIRECT

1 homicide investigation?

2 A Yes.

3 Q All right. Tell the jury what information you were
4 given ahead of time before you actually arrived on scene to
5 start your investigation.

6 A When I made contact with Chester County they advised me
7 that one of their school resource officers received a phone
8 call from a female stating that she had witnessed a murder,
9 and that she took them to an area where his phone had
10 reportedly been dumped and an area to where his body was.

11 Q All right. And were you given the exact location of
12 where law enforcement was at that point, and the body that
13 had been dumped?

14 A Yes. They provided us Woods Road. It was a wooded
15 area off of Woods Road.

16 Q And did you -- what time did you arrive at that
17 particular location?

18 THE WITNESS: Your Honor, may I refer to my report?

19 Q Yes. You can refer to your report, that's fine.

20 A Okay. We arrived at 2:42 a.m.

21 Q And whenever you arrived, tell the jury what the --
22 what it looked like whenever you actually got there.

23 A So the way that we came in onto that road, there was a
24 stop sign and a street sign that labeled Woods Road. Upon
25 getting on that road we saw Chester County deputies, and

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1 they also had yellow crime scene tape marked off on a
2 portion of the road.

3 Q Okay. And did anyone give you information as to the
4 location of the body at that point?

5 A They led us to where it was.

6 Q Okay. And were you -- who's in charge of taking
7 photographs at that point?

8 A If I'm the lead investigator on the case, so it's my
9 partner that I'm working with.

10 Q And who were you working with that day?

11 A Harold Owens.

12 Q And was Harold in charge of then the photography that
13 was going on? Who also collects particular items at the
14 scene?

15 A We work as a team, so anything done is done in the
16 presence of me but we're both doing it.

17 Q You're both witnessing whatever items were actually
18 being observed, documented and collected.

19 A Yes.

20 Q All right. So at that time, did Mr. Owens actually
21 take several photographs that you were in the presence of
22 while you were -- you started your investigation that
23 evening?

24 A Yes.

25 Q And those photographs, were they provided on a disk and

JENNIFER HUNTON - DIRECT

1 actually submitted to the Chester County Sheriff's Office as
2 well as to my office once you finished your crime scene
3 investigation?

4 A Yes.

5 Q And you provided those -- and in those disks it has
6 pictures as well as your report; is that correct?

7 A Correct.

8 Q All right. So -- and let me just ask you a quick
9 question just to alleviate any possible confusion. At the
10 time whenever you did this investigation you were actually
11 still Jennifer Miller; is that correct?

12 A That's correct.

13 Q All right. So some of the information on this report
14 has your maiden name on there; is that right?

15 A Yes.

16 Q All right. I just wanted to make sure in case there
17 was any question. Okay. So, Agent Hunton, whenever you got
18 there and they actually, they being the Chester County
19 Sheriff's Office, took you to where the body was, what's the
20 first thing that you did to determine, you know, the
21 condition, location, and where the body was found?

22 A We always do an initial walk-thru just to see what
23 we're looking at and dealing with. Typically the first
24 thing that we start with after that's established is taking
25 photographs.

JENNIFER HUNTON - DIRECT

1 Q And how do you actually -- were there a lot of lights
2 or houses in the area that illuminated where you were in
3 order for you to take those photographs?

4 A No, it was a wooded area. The road that like ran
5 through it was just like a gravel road.

6 Q I'm going to show you some pictures.

7 (Break in proceedings.)

8 Q Okay. I'm going to show you what's already in
9 evidence, it's going to be State's 14, 15, 16 and 17. All
10 right. I'm going to hand those to you. And 14, 15, 16, and
11 17, what are those initial four pictures showing?

12 A This is showing the gravel road and the wooded area off
13 of Woods Road, and the yellow crime scene tape that was put
14 up by the Chester County Sheriff's Office.

15 Q Okay. So those four pictures, that's the initial --
16 the crime scene is actually pulled up to when you were told
17 to assist, that would have been the first things that you
18 saw.

19 A Yes.

20 Q All right. Okay. Now, as you begin to enter the
21 actual location where they took you to the body, I'm going
22 to hand you what's been marked State's Exhibit, I believe
23 it's 44 through 55. Here you go. I'm going to hand these
24 to you. I'll put these up in just a minute but I'm going to
25 ask you, 44 through 55, do you recall what those pictures

JENNIFER HUNTON - DIRECT

1 reflect, and whether or not those were pictures that were
2 collected as a part of your crime scene investigation?

3 A Yes. This is -- these are photos of that wooded area
4 leading up to where the body was located.

5 Q Okay.

6 A And pictures of the body specifically.

7 MS. LIVELY: Your Honor, the State would move 44
8 through 55 into evidence at this time.

9 MS. BOULWARE: No objection.

10 THE COURT: In without objection.

11 (State's 44-55 were received.)

12 Q Okay. Can you see that okay, Agent Hunton?

13 A Yes.

14 Q All right. If you can't let me know and I can ask the
15 Court to allow you to step down.

16 A Okay.

17 Q Okay. So what we're looking at here is going to be
18 State's Exhibit 55, which is in evidence at this time. Tell
19 the jury what this is a picture of and what it's leading to
20 anything.

21 A So this is a picture of the wooded area. There is
22 heavy brush there that's off of Woods Road. The way that we
23 came in down that road, this is the road in front of me,
24 this would be to the right.

25 Q All right. And I'm going to show you -- I don't know

JENNIFER HUNTON - DIRECT

1 if this will help any, but State's Exhibit 34 is already in
2 evidence, I'll just put this up here, too. I don't know if
3 that will help you any. Okay. The Woods Road area here on
4 State's Number 34 is actually identified -- I think they're
5 your GPS coordinates that you provided to our office.

6 A Okay.

7 Q So in regards to this road, if you're facing towards --
8 this is number -- this is the railroad tracks here, this
9 line right through here is the railroad tracks. If you're
10 facing the railroad tracks, which way would you be going?
11 Would you be going towards the railroad tracks in order to
12 find the body?

13 A So the yellow dot is the GPS?

14 Q Yes. The GPS where the body was located.

15 A We would have came in this way and this would have been
16 on the right.

17 Q It would have been on the right.

18 A Yeah.

19 Q All right. That's why I wanted you to look at it.
20 Thank you. Okay. So it would have been on the right. And
21 how far in did the GPS in your measurements state that the
22 body was from the road.

23 A Approximately 49 feet, 2 inches from the roadway.

24 Q Okay. So at this point, I don't know if you can see,
25 I'm going to try to -- at that point are you able to see

JENNIFER HUNTON - DIRECT

1 what is in the brush?

2 A Just barely.

3 Q Okay. That's fine. We'll go to the next picture. So
4 this is State's Exhibit Number 54. This is kind of the same
5 angle; is that correct?

6 A Yes.

7 Q All right. If you're having trouble seeing I can --

8 A It's just the glare.

9 Q I know. I know. Sorry. Is that better?

10 A Yeah, that's good.

11 Q Okay. So that's States Number 54. So let's
12 continue -- are you going down any particular path or
13 anything at that point that you recall?

14 A No. It's just pretty heavily wooded, a lot of brush.

15 Q All right. I'm going to show you now, this is State's
16 53. Okay? And I know it's a little difficult to see, but
17 what are we looking at at this point? And I'm going to show
18 you the smaller photos so you can see it.

19 A Okay.

20 Q Up at the top in the middle. And if you can't see it
21 I'll go to the next one.

22 A That's going to be the victim.

23 Q Okay. And once again this is a very dark area,
24 correct?

25 A Yes.

JENNIFER HUNTON - DIRECT

1 Q And when you're taking pictures as a crime scene
2 investigator and you're going up to a particular area where
3 either a victim or a piece of evidence or something is, what
4 are you trained to do in regards to as you get closer to
5 that particular item or person?

6 A As in like our photographs or --

7 Q Yeah, your photographs. Are you --

8 A We also use like lighting tools, too, but we want it to
9 portray, you know, how it was that we found it that night.
10 But, yeah, different angles. We kind of get like 360 shots
11 of everything, so --

12 Q Okay. All right. So in regards to you walking up
13 toward where the body is, are you taking photographs and
14 documenting it as you're going up to it?

15 A Yes.

16 Q All right. Now I'm going to show you -- this is
17 State's Exhibit 52. All right. Now, are you able to
18 clearly see the subject of what you're going to?

19 A Yes. That's the victim. And technically we're doing
20 like overall photographs, you know, showing the whole
21 surrounding area where he's located, midrange photographs.
22 So we're getting in a little bit closer so you can see kind
23 of what's around his body in close-up pictures that you'll
24 get to.

25 Q Okay. And this is State's Exhibit Number 51. So at

JENNIFER HUNTON - DIRECT

1 this point you're basically right up on the body of Mr.
2 Antonio Thompson, correct?

3 A Yes.

4 Q And that was documented as well. Now, in State's
5 Exhibit 24, what are we seeing here in this picture?

6 A That's his body. I can't tell from here which side
7 we're on of him, but --

8 Q Okay. Let me ask you this, and it may be obvious but
9 I'm going to ask anyway, in regards to where his body and
10 how it's laying you had mentioned there was brush in the
11 area. Was it difficult to get angles of the body and to get
12 pictures of the body based on the brush that was in there?

13 A Yeah, a little bit. We have to kind of break branches
14 and try and move around if they are there in our way.

15 Q Okay. When you walk into a scene, are you also trying
16 to identify a possible pathway that the body took or that
17 someone took the body whenever you're taking photographs?

18 A Yes. Just with that being such a wooded area it's
19 difficult to tell just with the brush and everything.

20 Q All right. In this particular pictures, which is
21 State's Number 23, when you look at this particular light
22 here, is this going back towards the road?

23 A Yes.

24 Q Okay. All right. So this would be the hands of Mr.
25 Thompson, is that correct --

JENNIFER HUNTON - DIRECT

1 A Correct.

2 Q -- the victim? All right. Okay. So from this picture
3 up to the light of where the road is and the actual, I
4 guess, other law enforcement officers, was this the direct
5 line for the body up to the road?

6 A Yes.

7 Q Okay. And is that what you actually documented as
8 being almost 50 feet from the road?

9 A Correct.

10 Q All right. I just wanted to be sure. And then this
11 next photo, which is State's Exhibit 50, what is it that
12 State's Exhibit 50 is supposed to be showing? What's the
13 point of this particular instrument?

14 A That's my partner collecting GPS coordinates from where
15 the body is located.

16 Q Okay. So that would be the way that the break was
17 actually made as to how far in the body was found.

18 A So GPS coordinates were taken of where the body was
19 located --

20 Q Okay.

21 A -- and then, you haven't got to it yet, but there was a
22 portion on the road that had suspected blood in the roadway.
23 So the measurement from the blood to where the victim was
24 located was taken using a measuring device that has a laser
25 that we typically measure to reference points, but because

JENNIFER HUNTON - DIRECT

1 of the wooded area we didn't have any reference points, so
2 that's why we had to do GPS.

3 Q Okay. That makes perfect sense. Okay. So the GPS
4 coordinates that were used is how you determined along with
5 the blood on the road that he was about 50 feet off the
6 road.

7 A Yes.

8 Q Okay. Thank you. As you start to actually collect the
9 evidence from the scene, do you document items that are
10 taken and actually placed into protective, I guess, either
11 bags or however it is that you're going to store it?

12 A Yes.

13 Q All right. And was this one of the items? This is
14 State's Exhibit 49. Where did you get this item?

15 A It was covering like his face.

16 Q Okay.

17 A He had some clothing items that were over top of his
18 face.

19 Q I'm going to go back. I think you can actually see it
20 there under your partner's hand here, this right here; is
21 that correct?

22 A Yes.

23 Q It's hard to see. So that was covering his face?

24 A Yes. The pictures that you're showing were picking up
25 each item of clothing that was on top of his face

JENNIFER HUNTON - DIRECT

1 individually.

2 Q All right. And I think that's another -- that is
3 showing how he was found and some of the items that were
4 covering his face, is that fair?

5 A Yes.

6 Q Okay. This is State's Exhibit Number 48. Once again,
7 is this -- your testimony is the same in regards to this
8 particular item?

9 A Yes.

10 Q All right. State's Exhibit Number 47. A Nike shirt?

11 A Yes.

12 Q And this was collected off of the victim as well?

13 A Correct.

14 Q And then I notice in this particular picture, 46, tell
15 the jury where this information, or these items were
16 actually taken from.

17 A We worked hand in hand with the coroner's office
18 because they deal specifically with the body, so at this
19 point we're working hand in hand with them. And the
20 coroner's office is pulling items from the victim's pocket
21 and just placed them there so we can photograph what was
22 coming out of his pocket.

23 Q So you're documenting as the coroner is actually taking
24 items that presumptively could be from the victim.

25 A Yes.

JENNIFER HUNTON - DIRECT

1 Q All right. So that's State's Exhibit 46. And then
2 this is State's Exhibit 45. Once again, is this continuing
3 that -- those items that the coroner is actually removing
4 from pockets or the areas of the victim?

5 A Yes.

6 Q All right. Once that was done, were there -- was there
7 anything else that documented time issues related to what
8 this victim may have been doing earlier on that particular
9 day? Do you recall that?

10 A I believe there was a receipt, yeah, taken from one of
11 his pockets.

12 Q Okay. So in this particular receipt the date on this
13 was -- so you were there on February 28th of 2021, correct?

14 A Correct.

15 Q Very early in the morning; is that right?

16 A Yes.

17 Q Okay. And then this particular item taken off of -- or
18 this was taken from the victim, correct?

19 A Correct.

20 Q All right. And the date on that particular item is
21 what?

22 A February 27th.

23 Q So after you collected these items from the particular
24 scene, do you also document -- you also document with
25 markers different things that you want to identify and

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1 collect for evidence.

2 A Yes.

3 Q All right. And did you do that in this particular case
4 as well?

5 A Yes.

6 Q And I noticed in your actual crime scene report that
7 there were a multitude of beer cans and bottles and things
8 that were actually documented for this particular case,
9 correct?

10 A Correct.

11 Q All right. Why did you do that?

12 A Well, when we respond to such a wooded area that's kind
13 of what we were seeing initially. They -- just based on my
14 experience they didn't look like they were out there a super
15 long time, they weren't like submerged in like the mud or in
16 the grass and just getting dirty. So when we're coming in
17 blindly to an investigation we're just trying to identify
18 things that could potentially have any evidentiary value, so
19 we marked those items and collected them.

20 Q Okay. And you actually collected -- this is the
21 country and out in the middle of the woods, do you run into
22 that often, especially in South Carolina, where there may be
23 tons of beer cans randomly thrown in the woods?

24 A Yes.

25 Q But did you have any information from law enforcement

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1 at that point in time that would have led you to believe
2 that they were of any evidentiary value specific to this
3 case? I understand why you did it, but I'm saying in
4 regards to this specific case.

5 A No.

6 Q Because there were several of those, would you agree?

7 A Yes.

8 Q Okay. And for each one of those beer cans, did you
9 place markers next to them?

10 A Correct.

11 Q Okay. And if you could, refer to your actual report
12 and tell us how many markers for the unknown beer cans that
13 you actually identified.

14 A Six.

15 Q What about the Natural Light?

16 A There's -- they are a combination of Bud Light and
17 Natural Light beer cans. Marker 4 was the suspected blood
18 in the roadway.

19 Q Got it. Okay. So that's the marker -- that's why it
20 added up to seven.

21 A Yes, seven markers total. Number 4 was the blood in
22 the roadway, and the rest were a combination of either Bud
23 Light or Natural Light beer cans.

24 Q Okay. Then after you collected the items and made the
25 markers as to where you found particular beer cans as well

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1 as the blood, did you receive any information from law
2 enforcement that there was possibly a second crime scene
3 that they needed you to respond to?

4 A Yes.

5 Q All right. And tell the jury how that came to your
6 attention.

7 A While we were on scene I believe I was approached by
8 Sheriff Dorsey, and he stated that investigators had located
9 a vehicle of interest that was located at a residence inside
10 a garage that appeared to have suspected blood on the
11 inside. And they had also located a firearm in the garage
12 as well.

13 Q All right. So at that point in time, were you getting
14 ready to leave this particular scene and go to that second
15 crime scene?

16 A Yes.

17 Q All right. And before you left, the items that were
18 actually collected from the victim, I'm going to show you
19 what's already been identified and entered into evidence at
20 this point. And I'm going to give you some gloves, too.

21 (Break in proceedings.)

22 Q And Agent Hunton, whenever you get items that are
23 collected from the crime scene, do you seal it with SLED
24 tape and identify what these items are?

25 A Yes.

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1 Q And did you do that in this particular case?

2 A Yes.

3 Q All right. So we have right now several -- well, these
4 items that were actually collected from the victim, Mr.
5 Antonio Thompson, I'll show you State's Exhibit 115. And if
6 you would, do you remember actually collecting this
7 particular item?

8 A Yes. This was one of the -- this was the white t-shirt
9 that was collected from on top of the victim.

10 Q Okay. And at that time you were Jennifer Miller,
11 correct?

12 A Yes. So my initials are J-I-M on there.

13 Q Got it. All right. So we can go ahead and -- Ms.
14 Hunton, would you please remove the item from the bag? And
15 you can stand up if you need to. You're fine. All right.
16 Once again, this particular item, this was removed from the
17 victim, Mr. Thompson?

18 A Yes.

19 Q Okay. And you've identified this and it's actually
20 State's Exhibit Number 115. All right. And what was the
21 size of this particular item?

22 A Extra large.

23 Q Extra large. Okay. And this particular item here,
24 which is State's 118, what is this particular item?

25 A This is a Reebok size 2XL sweatshirt that was also

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1 collected from on top of the victim.

2 Q Okay. And when you collect these items, Agent Hunton,
3 do you do anything with them except take them in the exact
4 condition that they're found in off of the victim?

5 A I don't do anything else to them, no.

6 Q Okay. All right. So the way that you find this
7 particular item is the way that it was found when Mr.
8 Thompson's body was located, correct?

9 A Correct.

10 Q All right. This is State's 116 once again.

11 A This is a blue Nike sweatshirt that was a size extra
12 large also collected from on top of the victim.

13 Q And these items were some of the photos that we just
14 saw that have been submitted into evidence; is that correct?

15 A Correct.

16 Q And was this clothing the clothing that was around the
17 top of his body and his head area?

18 A Yes.

19 Q And when you removed the clothing items from his head
20 area what did you see?

21 A They had suspected blood on them.

22 Q And what was the condition of Mr. Thompson's face
23 whenever you removed these items?

24 A He had a wound to the left side of his cheek area on
25 his face.

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1 Q All right. When you say a wound, I mean, how severe of
2 a wound from your -- visually from what you saw?

3 A It looked like a gunshot wound.

4 Q I'm showing you State's 117. And this will be the last
5 clothing item at this time. Do you recall this item and
6 where it was found?

7 A Yes. That was also one of the tank tops that was over
8 his face.

9 Q That was covering his face. Do you recall if y'all
10 actually collected any of these other items off of his body,
11 or would that have been done at the autopsy? Do you recall?

12 A If it -- those are what we collected they have my
13 initials and everything on them, so I'm not sure about
14 those.

15 Q Okay. And that's fine. So -- and that's how you would
16 have packaged them if they came from you would be with the
17 yellow tape (inaudible) correct?

18 A Yes.

19 Q Okay. All right. So you get the information that
20 there's a second crime scene, correct?

21 A Correct.

22 Q And what did you do as a result of getting that
23 information after you collected and documented all of this
24 information?

25 A We responded to that location.

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1 Q Okay. And do you remember what the actual address of
2 that location was?

3 A 952 Enix Road.

4 Q And whenever you got there who was there? Do you
5 remember who you responded to?

6 A Chester County Sheriff's Office investigators.

7 Q All right. And whenever you responded to them, do you
8 remember who you actually met with to determine what it was
9 that you were supposed to be doing at this particular
10 location?

11 A I don't recall who exactly I talked to.

12 Q That's fine. All right. I'm going to show you -- I'm
13 sorry, it times out, I apologize. There it goes. All
14 right. Okay. All right. So you're now looking at State's
15 Exhibit Number 56. This is the location [REDACTED] Enix Road?

16 A Yes.

17 Q All right. And whenever you went there you had already
18 testified that you heard that there was a truck that had
19 been located with suspected blood in it as well as a gun; is
20 that right?

21 A Correct.

22 Q Okay. So in this particular one, State's 56, is this a
23 picture of the house and the garage as you come up on that
24 particular residence?

25 A Yes.

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1 Q All right. And if it's another visual of the rest of
2 the house on that particular lot.

3 A Yes.

4 Q That is State's Exhibit 57. And whenever you go to a
5 particular location, do you document everything all of the
6 way around the house as well as going into the home?

7 A Yes. Those are part of our overall photographs.

8 Q All right. And at that point in time a search
9 warrant had already been actually gotten and approved by a
10 magistrate and that's why you were able to go into this
11 home?

12 A Yes.

13 Q All right. Okay. So this particular State's Exhibit
14 58, was this around the side and the back of the house? Do
15 you recall?

16 A Yes.

17 Q Okay. And then where was the actual truck that was of
18 interest in this particular case?

19 A It was in the garage.

20 Q Okay. And I'm showing you State's Exhibit Number 59
21 here. Is that somewhat that you can see of the garage at
22 that point -- I mean, the truck at that point?

23 A Yes. So the opening of the garage that's closest to
24 you in the photo, the truck would have been in the next
25 opening.

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1 Q Okay. So is that a better representation of that
2 particular truck?

3 A Yes.

4 Q Did you notice the type of tag that was on that truck?
5 And this was State's Exhibit 60. Can you see that?

6 A Yes. This is the Toyota Tacoma truck, it was a
7 Disabled Veteran tag.

8 Q And did you know whose residence that was that you were
9 at at that point?

10 A No.

11 Q Okay. And this is State's Exhibit Number 61. And
12 State's Exhibit Number 62, is this the same vehicle showing
13 where it was parked; is that correct?

14 A Yes.

15 Q All right. So once you actually have confirmed this is
16 where you're supposed to be, what are you doing to document
17 where you go next to continue your investigation?

18 A We're documenting with our photographs.

19 Q Okay. And in this particular photograph, is this the
20 same truck?

21 A Yes.

22 Q It is? And is this a closer view into the back of the
23 truck?

24 A Yes.

25 Q All right. Now, in this particular -- in the back of

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1 the truck, this is State's Exhibit Number 63, what items do
2 you see in the back of this truck?

3 A There are some beer cans, some shoes. There was a teal
4 plastic cup. I can't tell from here --

5 Q What about this?

6 A I can't tell from here --

7 THE COURT: Would you like to step down?

8 MS. LIVELY: You can step down if you need to, that's
9 fine, as long as the court reporter can hear. Let me know
10 whether or not you're having trouble hearing her. I'll take
11 this. Okay. Here we go. All right.

12 Q What is this that we're seeing here? Then this is
13 State's Exhibit Number 64. What are we seeing in this
14 particular photo?

15 A This is a picture of the front driver and front
16 passenger sides.

17 Q I'm going to get you to get back here so you're not
18 blocking them. Can you still see it okay?

19 A Yes.

20 Q Okay. All right. So you're documenting the inside of
21 the truck as you're seeing it at that time, correct?

22 A Correct.

23 Q All right. So this is State's Exhibit 64. All right.
24 Now, what are we seeing in this particular Exhibit Number
25 66? And I know it's kind of hard and it's kind of dark.

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1 Just tell us what we're seeing here.

2 A This is the picture, I believe, next to the truck in
3 the garage and of a shop vac.

4 Q And a shop vac. All right. And here is where it's
5 going to be -- you might have to look at my computer screen.
6 And in this particular area we're pointing to the bottom
7 right corner. Can you tell what that is?

8 A I believe it's a volleyball net set.

9 Q All right. And do you recall where the gun that was
10 collected in this particular case, where it was located?

11 A I believe right behind it.

12 Q Right behind it. Okay. So here in this particular
13 picture, which is State's 67, and I know it's dark, I
14 apologize, right here in this particular area if I show you
15 the printout, are you able to see what that is?

16 A You can partially see the gun.

17 Q All right. So over in this area is the partial visual
18 of the gun; is that correct?

19 A Yes.

20 Q And did you take a closer close-up photo of that?

21 A Yes.

22 Q And here I'm going to show you State's Exhibit Number
23 68. And is this here the gun that was collected from the
24 garage?

25 A Yes.

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1 Q All right. Now, after you find the weapon, do you back
2 out and actually -- okay. So you can see it clearly on top
3 of what's again -- is this the volleyball?

4 A Yes.

5 Q And this is back to 68. Okay. State's 68. All right.
6 So did you collect it at that time or were you still taking
7 photographs?

8 A We take as close photographs as we can get before we
9 pick it up.

10 Q Before you do anything with it? Okay. So in this
11 particular picture, what are you identifying in this
12 particular picture?

13 A That's just to give you some relation of where the gun
14 was found.

15 Q Okay. You're pointing to the right close to where the
16 top seat cushion is. And this is State's Exhibit 70?

17 A Yes.

18 Q Okay. Now, at this point in State's Exhibit Number 71,
19 have you collected the weapon for the purposes of submitting
20 it as evidence?

21 A Yes.

22 Q All right. And what are you trying to show in this
23 particular picture?

24 A Trying to show an overall picture of the gun. I think
25 we moved in closer also to get like what type of gun it is

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1 and what caliber, and also to show what appears to be
2 suspected blood.

3 Q Okay. So the one I showed you before was 71. In this
4 particular picture, which is State's Exhibit 72, you
5 mentioned suspected blood. What is reflected in this
6 particular picture?

7 A The spot on top of the cylinder is a revolver that has
8 suspected blood (inaudible.)

9 Q Okay. All right. And that's 72. And then you said
10 you also take identifying pictures as to the type of weapon.
11 I'm showing you State's Exhibit Number 73. Is this where
12 you identify the type of weapon?

13 A Yes.

14 Q Okay. And it is what type of weapon?

15 A A Smith and Wesson .357 Magnum revolver.

16 Q All right. This is State's Exhibit Number 74, which is
17 in evidence. Tell the jury why you took this, or had this
18 particular picture taken.

19 A So we're showing what's in the gun at the time. There
20 are six -- this one holds six cartridges, one of them is
21 spent, meaning it had been fired.

22 Q Okay. And you actually document that through your
23 pictures, correct?

24 A Yes.

25 Q All right. So that was State's Number 74. I'm going

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1 to show you the next item, which is State's Number 75. At
2 this point, do you actually manipulate and remove the
3 bullets in order to show what condition they are in?

4 A Yes.

5 Q All right. So you did this in State's Exhibit 75.

6 Tell the jury what you found after removing those bullets.

7 A This one was the fired one that we referred to as fired
8 bullets and cartridge cases, and these ones that are not
9 fired we refer to them as cartridges. So this is the one
10 that had been fired --

11 Q So based on the -- what you took from this particular
12 Smith and Wesson is the .357 Magnum; is that correct?

13 A Correct.

14 Q All right. Only one shot had been fired.

15 A Yes.

16 Q Okay. And I believe this is State's Exhibit Number 76.
17 Is this just a closer-up visual of that one spent shell
18 casing?

19 A Yes.

20 Q Once again, earlier you mentioned documenting any
21 suspected blood. This is State's Exhibit 77. What are you
22 documenting in this particular picture?

23 A There's suspected blood right here on this cylinder.

24 Q The other side of the cylinder at this point?

25 A I'm not sure, the cylinder is turned so --

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1 Q It might have been the same? All right. Understood,
2 thank you. Now this next picture, which is State's Exhibit
3 78, what area of the gun are we looking at at this point?

4 A Of the end where the bullet comes out, that was near
5 the front sight.

6 Q Near the front sight. And what are you documenting in
7 this particular picture?

8 A Suspected blood right in this area.

9 Q All right. Thank you. And that's State's 78. And in
10 this particular picture, what is it that you're documenting
11 for in this particular picture?

12 A Serial number.

13 Q Serial number? Okay. So it can be identified; is that
14 correct?

15 A Yes.

16 Q All right. And is that standard for you to do that?

17 A Yes.

18 Q Now, moving away from that -- I think if you want to
19 have a seat I think these will be a little bit easier to
20 see. Thank you. After you've actually done your initial
21 overview of what's actually in the garage, do you then go
22 into the home located at [REDACTED] Enix Road?

23 A Yes.

24 Q All right. So is this the front door to the house?

25 A Correct.

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1 Q All right. This is State's Exhibit Number 80. All
2 right. And then what is this a visual of in this particular
3 picture?

4 A That's as soon as you enter through the front door.

5 Q Okay. So you enter through the front door. This is
6 State's Number 81, correct? Do you have any idea at this
7 point what you're looking for other than just potential
8 evidence of a crime?

9 A Yeah. Just what Chester County was specifically
10 looking for was like any blood, anything that might be
11 indicative of what we were investigating that night.

12 Q Okay. All right. No problem. So at this point you're
13 just documenting what you're seeing as you're entering the
14 house; is that correct?

15 A Yes.

16 Q All right. So this is State's Exhibit Number 83. And
17 you're still in the home, correct?

18 A Correct.

19 Q State's Exhibit Number 84. So are you finding anything
20 of concern or interest at this point?

21 A No. We're just taking our overall photographs.

22 Q Okay. All right. And what was the condition of the
23 inside of this home? Was it clean? Neat?

24 A It was neat.

25 Q It was neat? All right. I'm showing you, now, this is

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1 State's Exhibit Number 85. Are you documenting that
2 possible children live here, stay here, or what is this that
3 you're doing?

4 A We just get all aspects of the rooms, so we're just
5 taking pictures of everything.

6 Q All right. Now, into -- you're in one of the rooms.
7 What are you documenting in this particular picture, which
8 is ate's Exhibit Number 86?

9 A The closet.

10 Q The closet? Okay. And do you know at that point if
11 there's anything of evidentiary value in that closet?

12 A At the top there were two empty gun cases and a box of,
13 I believe, .357 ammunition that was full.

14 Q Okay. So in this particular State's Exhibit 87 is
15 where you can see the Smith and Wesson box reflected in that
16 particular picture, correct?

17 A I can't see it from here, but --

18 Q Oh, I'm sorry. Okay. Right there?

19 A Yes.

20 Q Okay. And then once you actually identify that box is
21 in there, do you remove it for further pictures?

22 A Yes.

23 Q All right. And is that what State's Exhibit 88 is
24 showing?

25 A Yes.

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1 Q All right. Now, after you've actually taken all of
2 these photos, where is the -- does the truck stay on that
3 scene or does it actually get removed by law enforcement to
4 another location for processing?

5 A It gets towed to the Chester County Sheriff's Office
6 like impound area for further processing.

7 Q All right. And so whenever you actually get to that
8 particular site, do you then start processing the vehicle?

9 A Yes. We always begin with photographs.

10 Q And take more photographs, correct?

11 A Yes.

12 Q So in this particular picture -- actually let me see if
13 I can do this. Okay. So now we're daytime. About what
14 time is it whenever you end up going to the impound lot and
15 start taking photos of the vehicle?

16 A 8:24 a.m.

17 Q 8:24 a.m. So you've been out there basically all
18 night.

19 A Yes.

20 Q Okay. In this particular picture all of the doors
21 appeared to be open. What is it that you're documenting in
22 this particular photo?

23 A We're documenting the interior of the vehicle. From
24 where this is taken this is behind the front driver's seat.

25 Q Okay. And this is State's Exhibit 100. All right. So

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1 you're documenting -- and also what does this show in
2 regards to the size of the actual vehicle and the close
3 relationship to the particular seats? Does it help show
4 that particular issue as well?

5 A Yes.

6 Q Okay. All right. So, again, what are we seeing that
7 you're documenting in this particular picture, which is
8 State's Exhibit Number 101? And if you need to step down I
9 guess you can, I'm not sure if you can see it.

10 A This is a shot from the -- behind the front passenger
11 seat that's directed towards the floorboard.

12 Q Okay. And do you know why you actually took that
13 particular photograph -- or had that particular photograph
14 taken?

15 A When we're searching through a vehicle and documenting
16 it, when we lifted that floor mat there appeared to be
17 suspected blood on it.

18 Q Okay. All right. So at that point you documented that
19 particular item, correct?

20 A Yes.

21 Q All right. And is this a close-up of that
22 particular -- of the blood that you suspected on the bottom
23 of this floor mat?

24 A Yes.

25 Q All right. And that would be State's Exhibit 102. And

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1 once again the same documentation on 103. Did you document
2 blood being in any other location other than under the floor
3 mat on these photographs in the back area of the vehicle?

4 A Yes.

5 Q Where was it and -- where was that additional blood
6 found?

7 A So there was from the window control on the rear
8 passenger side of the vehicle. From the front passenger
9 dash glove box area. From in between the front passenger
10 seat and floorboard. Towards the rear passenger seat. So
11 like that's the rear passenger seat, and like that metal
12 slide, so like when you adjust your seat to move up or
13 backwards, that where the rails meet where the metal slide
14 is there was some on there. From the interior windshield.
15 The interior ceiling of the vehicle. The interior front
16 passenger door panel. The front passenger running board.
17 The rear passenger floor mat, which is what we had just
18 looked at. The rear drivers seat. Rear passenger seat.
19 The rear passenger side of the truck near the exhaust pipe.
20 And from the exterior rear passenger side door.

21 Q And when you document each and every one of those areas
22 where blood is located, do you swab those areas?

23 A Yes.

24 Q Okay.

25 A And there was also in the bed of the truck the part

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1 where the wheel well comes up, and on that teal plastic cup
2 that's in the bed of the truck.

3 Q Okay. Where we had seen the jumper cables earlier.

4 A Yes.

5 Q All right. So that's several swabs that you're taking
6 of suspected blood, isn't it?

7 A Correct.

8 Q Correct? All right. Now I'm going to show you, in
9 fact, that first picture that I had. What was the
10 significance of the floorboard on the passenger side of the
11 vehicle, the front floorboard? And I believe it might be in
12 your report, it might help you figure that out while also
13 looking at the picture.

14 A That's on the front passenger floorboard?

15 Q Yes, ma'am?

16 A Can I see a closer picture?

17 Q I'm going to hand you what's been marked State's 91,
18 92, and then a very close-up is 93. So they're in sequence.

19 A Oh, there appears to be a suspected bullet fragment.

20 Q Okay. And was that actually collected by you?

21 A Well, we collected a fragment from the front driver's
22 side floorboard.

23 Q And that's the reason why I was asking you that
24 particular question, because you took that -- or Mr. Owens,
25 who is your partner, took that picture of an item found on

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1 the passenger side floorboard and took a close-up of it. So
2 in this particular one it's kind of hard to see. This is
3 actually State's -- oh, you're holding that. The follow-up
4 picture, I think, is in this particular picture, as you blow
5 it up you can see that there's an item right here in your
6 second photo, and I was just wondering in that particular
7 photograph if that was actually ever collected.

8 A I just have from the front driver's side.

9 Q Okay.

10 A Unless they got mislabeled. I'm not sure.

11 Q Okay. And that's the reason why I'm asking, because I
12 was wondering in that particular picture that was provided
13 from you guys from SLED, correct?

14 A Yes.

15 Q All right. And in that particular picture it does
16 continue to get closer and closer up to an item of -- that
17 appears to have --

18 A It's hard to tell what it -- it's -- I mean, it's
19 copper in color so I can't completely tell what it is from
20 this photo.

21 Q Okay. All right. Then the remaining areas of the
22 vehicle that you actually documented, we're talking about
23 the front of the truck, different areas where blood was
24 located, you've already mentioned the front passenger door,
25 and a blood spot was taken -- or a swab was taken -- this is

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1 the back passenger door; is that correct? This is State's
2 Exhibit 97?

3 A That looks like the rear driver's door.

4 Q The rear driver's side door.

5 A Yeah.

6 Q Okay. Rear passenger behind the driver's side,
7 correct?

8 A Yes.

9 Q Okay. And a closer-up of that, correct?

10 A Yes.

11 Q And then another visual, which would be State's Exhibit
12 Number 99. So Agent Hunton, in regards to all of this
13 information that has been collected and documented by you
14 for SLED, or by SLED for this particular case, I mean, there
15 were hundreds of photos taken, correct?

16 A Correct.

17 Q And not only that swab -- I was looking at your report,
18 each time you take a swab it's two for each area that you
19 are actually documenting, is that fair to say?

20 A Yes.

21 Q All right. So out of your pages of your information
22 we've got the Natural Light, the Bud Light cans, and we've
23 got the swabs from door handle, interior door handle, gear
24 shift, driver's door, exterior front door. We've got it
25 just from this particular information dozens of swabs that

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1 were taken, correct?

2 A Yes.

3 Q And do you do that out of an abundance of caution to
4 try to collect any and all information that you can in a
5 particular case?

6 A Yes.

7 Q And the last thing that I'm going to show you and then
8 I'm going to, probably with many blessings, stop at this
9 point. I'm just going to show you the diagram that you did
10 for this particular case showing where the body was found
11 and the measurements that was done. Is that an accurate
12 reflection of the diagram that you provided in your actual
13 crime scene report?

14 A Yes, it's just not in color.

15 Q It's not in color, exactly. Okay. And just for
16 purposes of documentation and the measurements on here I'm
17 going to have it marked, if we could, and move --

18 MS. LIVELY: -- is it 119? State's Exhibit 119 into
19 evidence.

20 MS. BOULWARE: Without objection, Your Honor.

21 THE COURT: In without objection.

22 (State's 119 was received.)

23 MS. LIVELY: Thank you.

24 Q And do you have any control as to what actually gets
25 tested by SLED or what is determined to be of evidentiary

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1 value for any follow-up forensics at that point?

2 A The only time is when we do a crime scene review before
3 we leave the scene, whoever is the lead investigator on the
4 case, we ask them where they want specific items sent to be
5 tested, so I submit them for that. Other than that I don't
6 have any say. The investigators are the ones gathering more
7 information, they're interviewing people, so they might have
8 knowledge of something I don't, so they're always open to
9 submit more requests or anything on an item. But once it
10 leaves me I don't have a say.

11 MS. LIVELY: Okay. Thank you so much, Agent Hunton.
12 Answer any questions that the defense may have.

13 (Break in proceedings.)

14 CROSS EXAMINATION

15 BY MS. BOULWARE:

16 Q All right. Agent Hunton, I'm just -- there's a lot of
17 pictures so I'll just go through a little bit and kind of
18 clarify some things. So I'm going to pull out, I believe,
19 State's Exhibits 51 and 52.

20 (Break in proceedings.)

21 Q Okay. I'm going to show you a picture that's already
22 in evidence, State's Exhibit 22. And that may not show
23 exactly what I'm asking, but were you able to see any
24 footprints around the body at all?

25 A No.

JENNIFER HUNTON - CROSS

1 Q In any of the photos you documented, do you recall
2 seeing footprints?

3 A I don't recall. But even before we got there there's
4 people walking back there to lead us to the body and stuff,
5 too, so --

6 Q Okay. So there's a lot of people on the scene, it
7 could have been anybody's footprints?

8 A Yes.

9 Q Okay. All right. So you mentioned that you all
10 swabbed for blood along with taking pictures; is that
11 correct?

12 A Yes.

13 Q Okay. And the Solicitor went through the list of
14 several things that were swabbed, I think I've jotted them
15 all down, but a lot of it was in the vehicle; is that
16 correct?

17 A Yes.

18 Q In just about every part of the vehicle; windshield --

19 A Yeah, various locations within the vehicle. I say
20 suspected because I'm not the one actually doing the tests
21 on it, that's the laboratory that does that to confirm it is
22 blood, so that why I'm referring to it as suspected.

23 Q Okay. I understand. I'm going to show you right now
24 what I've got as Defense Exhibit 5, and I don't believe this
25 was entered through the State so I will show you that. And

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1 do you recognize what that is?

2 A This is the rear.

3 Q So rear driver's side, rear passenger, or a passenger.

4 A Behind the front driver's seat.

5 Q Okay. Does it look like there might be suspected blood
6 in that picture as well?

7 A I can't tell from this picture.

8 Q Okay. Why would that picture have been taken otherwise
9 do you think?

10 A We take photos of all areas of the vehicle, so --

11 Q Okay. Do you know if that was swabbed at all?

12 A I have two swabs of suspected blood from the rear
13 driver's seat.

14 Q Okay. All right. And -- okay. And I will try to
15 clarify something.

16 MS. BOULWARE: Beg the Court's indulgence just one
17 second.

18 (Break in proceedings.)

19 Q I believe you have it.

20 A Oh, sorry, stuff is everywhere.

21 Q No, that's not your fault at all. So you mentioned
22 that this was the -- these were the front passenger side.

23 A Yeah, that's what it looks like.

24 Q Okay. I show you some other pictures here. Okay. Now
25 I'm showing you Defense's Exhibits 7, 8 and 6. And tell me

JENNIFER HUNTON - CROSS

1 if you can identify -- well, let's see, they're kind of in
2 order going closer up as you go.

3 MS. LIVELY: Hey, are you putting those in? Because I
4 was going to say without objection.

5 MS. BOULWARE: I haven't --

6 MS. LIVELY: Okay. That's fine.

7 A This is the front driver's floorboard like to the -- if
8 you're sitting in the vehicle to the left of the driver's
9 seat.

10 Q Let's look at Exhibit Number 8.

11 A That's a closer-up photo of a suspected bullet
12 fragment.

13 Q Okay. And the last one?

14 A It's just a general shot of the driver's side.

15 Q So that's a suspected bullet fragment is why that
16 picture was taken on the front driver's side?

17 A Yes.

18 Q Okay.

19 MS. BOULWARE: Defense would move Exhibits 6, 7, 8 --
20 5, 6, 7 and 8 into evidence, Judge.

21 MS. LIVELY: Without objection, Your Honor.

22 THE COURT: In without objection.

23 (Defense 5-8 were received.)

24 Q And I promise we're almost done and you can go eat
25 lunch.

JENNIFER HUNTON - CROSS

1 A Okay.

2 Q So you did tell the Solicitor basically just to
3 reiterate that the lead investigator of the case, meaning
4 the person who was the local police department who is the
5 lead investigator, they are the ones who submit the items
6 that you collect to be tested, or --

7 A No. Anything we collect on scene you'll see in like my
8 report, my submission documents that I submit them. We do a
9 crime scene review at the end of the case to see where they
10 want those items submitted to to be tested.

11 Q Okay.

12 A If that's the part that you're referring to.

13 Q I think it is.

14 A Okay.

15 Q But you yourself don't do the testing or your
16 department.

17 A No.

18 Q Okay. Okay. I think we've covered everything I needed
19 to.

20 MS. BOULWARE: Beg the Court's indulgence.

21 (Break in proceedings.)

22 MS. BOULWARE: I don't have any further questions,
23 Judge.

24 THE COURT: Solicitor?

25 MS. LIVELY: Just one follow-up.

JENNIFER HUNTON - REDIRECT

1 REDIRECT EXAMINATION

2 BY MS. LIVELY:

3 Q I'm going to show you your report, page three, just
4 because this is one of the questions that was asked
5 regarding who makes the request even if a request was made.
6 I'm just going to show you this, page three, four, and five
7 of your report, the column to the right states what at the
8 top?

9 A The agency case number, lab number.

10 Q What does this say right here?

11 A Oh, analysis requested.

12 Q Analysis requested. Okay. So for three pages, is
13 there analysis that was requested by the Chester County
14 Sheriff's Office on Items 1 through 50?

15 A Yeah. They're all assigned some type of request.

16 Q Okay.

17 A Also -- yeah. These are the items I submitted.
18 Sometimes -- I don't know if was done in this case, if
19 Chester County collects anything else and they further
20 submit that, those would show up under different
21 submissions, but those are the ones.

22 Q I understand. But these are in your report that are
23 showing it was requested, correct?

24 A Yes.

25 Q Okay. That's all I want to know is what you know.

JENNIFER HUNTON - RECROSS

1 A Yes.

2 Q Okay.

3 MS. LIVELY: Thank you. No further questions.

4 MS. BOULWARE: Briefly, Judge.

5 THE COURT: Yes.

6 RECROSS EXAMINATION

7 BY MS. BOULWARE:

8 Q That's not saying anything was submitted for ballistics
9 testing, DNA, any sort of forensics, though, that you know
10 of. You just collect that evidence.

11 A So we collect the evidence, we log it into that system,
12 and based on like our review with Chester County we put the
13 requests in, so I'm doing that.

14 Q Okay.

15 A Based on the information that they gave me.

16 Q Based on what Chester County says.

17 A Yes.

18 Q Okay.

19 MS. BOULWARE: Thank you.

20 THE COURT: Is that it?

21 MS. LIVELY: Yes.

22 THE COURT: May this witness be excused?

23 MS. LIVELY: Yes. May she be excused from her
24 subpoena?

25 MS. BOULWARE: No objection.

1 THE COURT: You may step down. All right, ladies and
2 gentlemen of the jury, we will recess for lunch until 2:30.
3 See you back in the courthouse at 2:30. Everybody else
4 remain seated while the jury departs. Remember, don't
5 discuss the case.

6 (The jury left the courtroom.)

7 THE COURT: All right. 2:30.

8 (A lunch break was taken.)

9 MS. LIVELY: So, Your Honor, State's 18, there were two
10 options, and you said for me to basically pick which one
11 that would help her the best, so 18 is going to be it. This
12 is the one that's showing the direct shot -- a copy in here.
13 Then I had -- I took that one out, State's 28 shows where
14 one of the slivers had come out -- that was one of the shell
15 had split, so what I did was because that was so close up,
16 this is not, obviously, as gruesome, so you can see where
17 that was on his head. I'm going to have this one marked,
18 Your Honor, and I am going to ask that this one come in as
19 well as this one to show the location of where that piece of
20 the bullet came out.

21 MS. BOULWARE: Your Honor, I have the same argument
22 with these two as I have with the other. I think -- I mean,
23 I don't know what the close-up is -- why that's necessary.

24 MS. LIVELY: And -- let me mark this one and I'll
25 explain. And, Your Honor, if I may approach I can show you

1 what my position -- all of the other ones you already said
2 were okay. Your Honor, if I may approach. What this is --
3 and if I need to proffer it I will. She provided me with
4 this document, which is State's 121, to show kind of the way
5 the bullet went into the defendant. Then on the other side
6 this shows where the actual fragment came out, which is 120,
7 so you can see it in relationship to his face. Because here
8 it's close up, I wanted you to see how large it was based on
9 the -- this is Number 28 -- how the sizing of it to show
10 where that piece of metal came out. But that actually shows
11 placement. You can't really tell from the context of this
12 picture when you get that close up where it is from his
13 jawline, his head, his nose. So that's important because
14 she's going to talk about the path of the bullet, and it
15 kind of coincides with the diagrams.

16 THE COURT: Which one is it do you object to?

17 MS. BOULWARE: The close-up.

18 THE COURT: All right. If she needs it for her
19 testimony and expert opinion --

20 MS. LIVELY: Yes, sir.

21 THE COURT: -- I'll allow it in.

22 MS. LIVELY: Yes, sir.

23 THE COURT: If she doesn't then you take a big risk.

24 MS. LIVELY: Right. And that's why I took out the more
25 gruesome photo because I agree 100 percent. This one is

1 based on the diagram that we just put in. I'll ask her
2 again, because I asked her before I came out here that
3 that's what she needs, and then I'll definitely put on the
4 record, I'll make sure she explains all of that --

5 THE COURT: It will be subject to objection.

6 MS. LIVELY: Yes, sir.

7 THE COURT: It will be subject to the objection
8 (inaudible.)

9 MS. LIVELY: Yes, sir. Everything else they do not
10 object to, and then this one, of course, we've already
11 talked about and I took the extra one out.

12 THE COURT: All right.

13 MS. BOULWARE: What's the one that --

14 THE COURT: 28 is the close-up -- I'm sorry -- yeah,
15 28.

16 MS. LIVELY: That's right.

17 THE COURT: And 120 is the more distant one.

18 MS. BOULWARE: 28 is the close-up?

19 MS. LIVELY: 28 is the close-up that I had asked
20 originally to put in --

21 MS. BOULWARE: Okay.

22 MS. LIVELY: -- because it goes in --

23 MS. BOULWARE: That's why it's marked.

24 MS. LIVELY: -- that's why it is marked. Really quick,
25 Judge, she's out there, she's ready to go, I'll be ready to

1 bring the jury in.

2 THE COURT: Yeah, bring her on in.

3 (Break in proceedings.)

4 MS. LIVELY: We have removed our request for Number 28
5 to come in, that would be the close-up. We're going to
6 instead use the one that is further back, which is 120.
7 Okay? All right.

8 THE COURT: Fair enough then.

9 MS. LIVELY: So I will introduce them as necessary.
10 I'll pull out the ones that were marked that we agreed to
11 take back. Do you want them, or what do you want to do?

12 THE COURT: Yeah. Please put them in the record in
13 case --

14 MS. LIVELY: Oh, yes, sir, absolutely. I was going to
15 say I wasn't going even bring that up but that's perfectly
16 fine. Okay. Do you want to do it as a Court Exhibit?

17 (Break in proceedings.)

18 (The jury returned to the courtroom.)

19 THE COURT: All right. Ladies and gentlemen, thank you
20 again for your patience. We were able to do some matters of
21 law to save some time so we don't have to interrupt later in
22 the trial, so I thank counsel for working together. Next
23 witness.

24 MS. LIVELY: Yes, Your Honor. The State would call
25 Dr. Kelly Rose to the stand.

KELLY ROSE, M.D. - DIRECT

1 The witness, KELLY ROSE, M.D., was first duly sworn
2 And testified as follows:

3 THE COURT: Good afternoon, Doctor.

4 DIRECT EXAMINATION

5 BY MS. LIVELY:

6 Q Good afternoon, Dr. Rose. Please tell the jury where
7 you currently work.

8 A I work at Newberry Pathology in Newberry, South
9 Carolina.

10 Q And how long have you worked in that location?

11 A Since November of 2018.

12 Q And you're a doctor in what field?

13 A I'm a pathologist, which is a regular doctor, a M.D.,
14 and my specialty is forensics.

15 Q When you say forensics, explain to the jury what that
16 means.

17 A So forensics is a branch of pathology where you
18 determine cause and manner of death, and I like to think of
19 it as unexpected deaths, or lots of the times they're
20 criminal cases. So if someone is reasonably not expecting
21 to be shot and then they are, then that would be a forensic
22 case where you examine it, or if they're very young and no
23 one knows why they died, that's also a forensic case.

24 Q All right. And Dr. Rose, how long have you actually
25 been a forensic pathologist?

KELLY ROSE, M.D. - DIRECT

1 A I got my -- I did my residency at -- I finished it up
2 at Emory, and then I did a fellowship there through Emory at
3 the Fulton County Medical Examiner's Office, and that was in
4 2009/2010. And I've done forensic autopsies since then off
5 and on. I've done other types of pathology, too.

6 Q So, Dr. Rose, have you been qualified as an expert in
7 forensic pathology in the past?

8 A Yes, I have.

9 Q And have you testified as an expert in homicide cases
10 in the past?

11 A Yes, I have.

12 Q All right. And were you actually called in to do an
13 autopsy for a case involving a gunshot victim by the name of
14 Antonio Thompson?

15 A I was.

16 Q Okay. So whenever you get calls from a local law
17 enforcement agency or the coroner here in South Carolina,
18 would you take a case where you would actually do the full
19 autopsy knowing that it could possibly end up being in
20 court?

21 A Yes. Now that Covid is going to calm down I'm seeing
22 more and more that most of the cases that I say yes to can
23 end up in court. So, yes, you go into forensics knowing
24 you're going to be in court a lot.

25 Q So, Dr. Rose, have you -- how often have you actually

KELLY ROSE, M.D. - DIRECT

1 testified in court as a qualified expert in forensic
2 pathology?

3 A Around 30, plus or minus five. Someone said: No, I
4 think you've done it more like 50 times, but I think it's
5 more like 30. But I've done around 3,500 autopsies.

6 Q Thank you. That was going to be my next question.

7 MS. LIVELY: So, Your Honor, at this time the State
8 would offer Dr. Kelly Rose as an expert in the field of
9 Forensic Pathology.

10 MS. BOULWARE: No objection.

11 THE COURT: So qualified.

12 MS. LIVELY: All right. Thank you so much.

13 Q Now, Dr. Rose, I asked you just really quick about
14 having been called in by the coroner of Chester County
15 regarding a gunshot homicide of an Antonio Thompson. Did
16 you pull your file regarding that particular case?

17 A I did.

18 Q All right. And would you please tell the jury, how do
19 you identify the case in order for you to document the one
20 that you were -- you're getting prepared to actually
21 perform.

22 A Okay. So the body will come to us from the coroner, so
23 they will transport in a body bag. In this case the body
24 bag was sealed. It had an identification sticker on it, and
25 then I will look at that identification sticker and make

KELLY ROSE, M.D. - DIRECT

1 sure the names match up, I make sure everything matches up,
2 and then I look at the seal number and I write it down, and
3 that can also be compared with what the coroner put.

4 Q All right. And so whenever you received the
5 information for the case involving Mr. Antonio Thompson,
6 what was the autopsy number that was used to identify this
7 particular matter?

8 A And then once we receive those bodies then we will
9 assign them an autopsy number, like one of our autopsy
10 numbers. And his was FA21126.

11 Q And when you're conducting the actual autopsy, do you
12 use that number, along with measurement items and
13 identification items, in order to keep all of this in a very
14 clean record?

15 A Yes. Everything, every photo, every document that
16 would correspond with his autopsy will have that number
17 assigned to it. It's kind of like a medical record number
18 at the doctor's office.

19 Q Thank you for explaining that, because when you see the
20 number on there I wanted the jury to understand what that --
21 what the meaning of that was. And so when you're taking
22 measurements, is that what would be actually shown on the
23 pictures?

24 A Yes.

25 Q Okay. Now, whenever you received Mr. Thompson's body,

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1 please tell the jury the first things that you do -- first
2 steps you do in an autopsy to document what it is that
3 you're actually seeing.

4 A So the first thing we do is we photograph the body bag.
5 So we'll photograph how the body was received, what color
6 the bag was and those other identifiers that I was just
7 talking about. After that is done we will unzip the bag and
8 we will photograph the body as is, with -- full. If they
9 have lots of clothes, if they have lots of medical equipment
10 on we'll just take pictures as they come from each side
11 usually. Then depending on what those initial findings are
12 and what I initially see, that dictates a little bit what
13 happens next. So if I see an obvious gunshot wound I will
14 say: Y'all don't clean up this area, leave that be for
15 awhile, and then get him undressed and get him cleaned up
16 elsewhere. And then that helps us then look for any other
17 types of injuries or any signs of a natural disease.

18 Q What is the actual date of this autopsy?

19 A It was March 1st, 2021.

20 Q And were you aware at that point, or did you have some
21 information for the law enforcement agency as to some of the
22 background of what happened, or what they believed happened,
23 at that point?

24 A Uh-huh, I did. I was told that he was shot in the
25 vehicle and that a handgun was found at the vehicle, but

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1 that he was found outside the vehicle in a wooded area.

2 Q And is all of that information helpful for you in
3 trying to -- when you look at the body in order to make some
4 conclusions?

5 A Yes, very much so.

6 Q All right. So starting with your actual autopsy report
7 I'm going to refer to, Dr. Rose, in your diagnosis you --
8 what was your first and most obvious finding in regards to
9 the cause of death for this individual?

10 A The most obvious finding on him was he had a very large
11 gunshot wound to his face/cheek area, and after looking at
12 him from head to toe I did not see any other entrance
13 gunshots wounds. I saw this one, and then I saw a little
14 exit wound back here, so --

15 Q And whenever you do a full review of the body, are you
16 looking for possible external evidence of injury?

17 A Yes, and any kind of natural disease. Because even if
18 it's a case where someone has been shot, their natural
19 disease can help explain their death. So I don't ever, you
20 know, ignore that part either.

21 Q Okay. So just to go ahead and get this on the record,
22 what, within a reasonable degree of medical certainty, was
23 the cause of his death?

24 A His cause of death I determined was a gunshot of the
25 head.

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1 Q All right. And the legal term for what the manner of
2 death would be was what?

3 A Homicide.

4 Q All right. Let's go back then and talk about the
5 actual individual himself. Do you document things like age,
6 weight, race, and all of those things for the report?

7 A I do.

8 Q All right. Please tell the jury what you documented
9 regarding this particular victim.

10 A That he was a 41 year old black male.

11 Q And how tall and how much did he weigh? How tall was
12 he and how much did he weigh?

13 A He was, I believe, 74-inches -- let me just get there.
14 Yeah, 74 inches, and he was approximately 250 found. He was
15 a tall, muscular, solid person.

16 Q All right. And once again you've already stated that
17 you reviewed the body and did not find any other external
18 evidence of injury, correct?

19 A Correct.

20 Q And what about just like normal disease or other things
21 that could have affected his health, was any of that
22 relevant for you, or did you find anything of relevance?

23 A Not on the external examination. I found some things
24 on the internal examination, but they were not acutely
25 lethal. There was some evidence of some natural disease.

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1 Q Okay. All right. So let's get straight to the actual
2 wound that you talked about that you said was the cause of
3 death for Mr. Antonio Thompson. I'm going to show you
4 State's 18, 120, 121. These are numbered here, hold on a
5 second, let me do this right. Some of these were
6 numbered -- so I'm going to show you 18, 26, 27, 29, 120,
7 121 and 122. I'm just going to let you hold these before
8 you start telling me. First of all, do you recognize these
9 particular pictures, and can you identify each one of them
10 in order to use them to assist in your testimony?

11 A Yes, I do recognize all of them.

12 Q Okay. Let me hold them for just a minute.

13 MS. LIVELY: And I'll just go ahead for the record,
14 Your Honor, State's Exhibits 18, 26, 27, and 29 for the
15 first group we would ask to come into evidence at this time.

16 MS. BOULWARE: No objection.

17 THE COURT: In without objection.

18 (State's 18, 26, 27 and 29 were received.)

19 MS. LIVELY: Thank you.

20 Q I'll hand these to you, Dr. Rose.

21 MS. LIVELY: And then the final group, 120, 121 and
22 122.

23 MS. BOULWARE: No objection.

24 THE COURT: In without objection.

25 (State's 120-122 were received.)

KELLY ROSE, M.D. - DIRECT

1 MS. LIVELY: Thank you.

2 Q I'm going to let you hold all of those. Now, Dr. Rose,
3 have you had the opportunity to conduct autopsies of
4 individuals who have been killed inside of a vehicle?

5 A I have. A surprising number of individuals are shot in
6 vehicles.

7 Q And when you do those -- when you conduct those types
8 of autopsies, tell the jury the types of wounds that you
9 typically see.

10 A In my experience I see wounds to the back of the head.
11 I see wounds straight to the face. I have also seen wounds
12 from someone who is in a car being shot from outside and
13 they go right here onto your side, you know, around your
14 hips. And a surprising number have gunshot wounds to their
15 buttocks.

16 Q Okay. And whenever you are -- when you're looking at
17 the particular wound, especially like a wound in this
18 particular case, can you also tell whether or not some of
19 them was at close range whenever a weapon was used and a
20 person was shot?

21 A If it's a contact wound that's usually easy to
22 identify. Close range can be very easy to identify. If the
23 wound hasn't been tampered with or if the person hadn't had
24 like environmental exposure, because you'll be able to see
25 soot then. If they have a lot of clothes on that will also

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1 make it harder to see soot.

2 Q Did you see any soot or what also is referenced --
3 sometimes referenced as stippling on the victim, Mr. Antonio
4 Thompson, in this case?

5 A I did not. Stippling is gunshot residue that it is not
6 fully -- has not fully like caught flame, and it's not
7 totally spent, so it will hit your face, or wherever you
8 are, and leave a little abrasion, that's what stippling is.
9 And soot is the gunshot residue that has fully combusted and
10 is just like ash that you see other places. But I did not
11 see any stippling.

12 Q Thank you. And then in regards to the wound itself,
13 I'm just going to ask you to explain, you detail as being a
14 gaping stellate entrance on left lower cheek. Please
15 explain what gaping stellate entrance means.

16 A So gunshot entrance wounds can have a variety of
17 appearances. The classic gunshot wound to say your back is
18 a round hole pretty much. If you have a gun with high
19 powered ammunition and if you shoot someone, especially in
20 the head where you have a lot of bones right under the
21 surface, you can get these gaping stellate wound. And
22 stellate just means star. So the edges of the wound,
23 instead of looking like a nice round hole, look kind of like
24 a starfish, and they can be very large depending on where
25 the entrance was. So in this case the entrance was here on

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1 his cheek, and it was -- after it went through the cheek you
2 have bones right there, you start with your teeth, your jaw,
3 your upper jaw, and you have a mouth here that opens, which
4 other places like an arm doesn't have. So all that combined
5 with the high power round causes the gas to go in under --
6 the bullet goes in and it's followed by all of this pressure
7 from how fast it's traveling, and it kind of rips open the
8 wound. And he had a large split down here from the wound,
9 and then other ones all around, so it was gaping open. So
10 whenever I went over to it and I was able to kind of put it
11 back together with my hands, I saw, okay, here is where it
12 went in and here are all of this skin splits is what we call
13 them around the wound. So that's what I meant by gaping.

14 Q And do you have a photo of -- all of them are in
15 evidence at this point -- do you have a photo that actually
16 could show to the jury that explained what you're referring
17 to in that regard?

18 A I do.

19 Q Okay. All right. And while this is connecting, if
20 you'll just -- do you mind stepping down just a minute,
21 please? If you don't mind, Dr. Rose, what is the State's
22 exhibit number on the back of that one, please?

23 A 18.

24 Q Okay. All right. There we go. So once again when you
25 were talking the FA21126, this is how you identified this is

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1 Antonio Thompson, correct?

2 A Correct.

3 Q So in the picture that you're holding, and you can
4 actually also point to that as needed, explain to the jury
5 what you were telling me -- or telling the jury in regards
6 to the stellate injury that Mr. Thompson suffered.

7 A Okay. So when I -- before -- here I'm kind of putting
8 the wound back together a bit, but before I did that it was
9 gaping open, so then I put it back together. And here you
10 can see where it actually goes in this hole, and it was of
11 such force that it just split his cheek that way, that way,
12 and this way, that way, and then even more splits up here.
13 And it kind of looks like a star fish. Star, stellate,
14 that's what stellate means.

15 Q And whenever I had asked you about whether or not a
16 .357 Magnum is a weapon that could cause that kind of
17 injury, please explain to the jury how you classified a .357
18 Magnum to me, to them. Yes, you can go sit back up there.
19 Thank you so much.

20 A I can stand right here. So a .357 Magnum is really a
21 interesting round, because it's very similar to a .38, and a
22 .38 does not do nearly as much damage as a .357. So a .357
23 has extra gunpowder added to it, that's the Magnum part of
24 it, and they are notorious in a gunshot wound to the head.
25 Because you'll do an x-ray or you'll see it and you're like,

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1 that's a high velocity rifle shot, it looks like there's
2 that much damage. But it's not, it's a .357. You almost
3 have to exclude a .357 in those cases. So to give you an
4 example, most a .38, a .38 Special round travels at anywhere
5 from 670 to 940 feet per second. A .357 travels anywhere
6 from around 1200 to 1450 feet per second. That's a huge
7 difference when we're talking about energy. And the speed
8 of sound is only around 1100 feet per second, so it
9 travels -- it's faster than sound. Most handguns are not
10 faster than sound. So when you have that velocity, what
11 that translates in to really with gunshot wounds is energy,
12 and energy is how much damage it can do. So when I heard
13 that it was a .357 and I saw the wound I was like, oh, that
14 makes sense. Everything kind of came together with
15 appearance, the x-ray, when I heard what it was.

16 Q And let me get to the x-ray. Here is one shot of the
17 actual x-ray. And just let me ask you real quickly, too,
18 knowing what you were told in regards to it being a .357
19 Magnum, was the actual injury to Mr. Thompson what you would
20 consider catastrophic regards to the wound and the damage?

21 A I would -- it would most definitely be catastrophic.
22 It was in his cheek, not his head. However, when you have
23 that energy transfer out of a .357 it has to go somewhere
24 once it gets in. So it goes upward, it goes downward. It
25 blew the front of his jaw off this way. It bruised his

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1 brain. So I'm -- that's likely caused a brain stem
2 concussion, and those are usually pretty much lights out.

3 Q Now, in regards to the radiological image that we're
4 seeing here and the -- where the entry wound is, is this
5 what you're referring to in regards to the shattering of the
6 bones?

7 A You can see some the of shattering, and if there --
8 there's another x-ray that shows the lateral view of the
9 skull, and you can see more there.

10 Q On this one. Now, all of these flex and pieces, not
11 the teeth, but the flex and everything that are in the
12 actual cheek. Now, is this on the opposite side or are we
13 actually seeing through the entire cycle?

14 A So no, they're throughout, so it fragmented throughout.
15 There's all of those little really shiny, dark fragments are
16 bullet that has exploded. And usually rifles do that,
17 handguns don't do that. It might separate from their jacket
18 but they don't do stuff like that, unless they're .357. So
19 much so that on my boards there's a picture of a gentleman
20 who was shot by a .357 and x-rayed, and they asked: What is
21 this? Because they wanted to make sure you knew it was a
22 .357 and not a rifle. So they fragment.

23 Q And did you document once you actually went into the
24 cavity of the head and you actually did your part in the
25 forensic examination, did you retrieve what you could in

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1 regards to the fragments?

2 A I did. And sometimes they're so tiny you can't get
3 them out of certain areas in the head, but we got what we
4 could.

5 Q Okay. And as a matter of fact in doing so, did you
6 save some of those items of fragments and include it in
7 evidence State's Exhibit Number 107? And I know that's kind
8 of hard to see, Dr. Rose, but if you'll just -- are you
9 identifying that this came from your autopsy of Mr.
10 Thompson?

11 A Yes. When we collect bullets or fragments we do it in
12 the autopsy with law enforcement usually there 99 percent of
13 the time, and they were there in this case. And then we'll
14 seal it and I'll initial it, then I'll transfer it to them
15 and they will sign for it so it can't be tampered with.

16 Q And you had already mentioned that some of the
17 fragments are so small that -- from what's left that it's
18 very hard to even either find or to see once it has been
19 retrieved; is that correct?

20 A Yes.

21 Q Now, Dr. Rose, in regards to the actual bullet I'm
22 going to go back for just a second. Since we're talking
23 about fragments I'm going to refer to the State's exhibit on
24 the other side of Mr. Thompson's skull if you can look.
25 What State's exhibit is that, please?

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1 A That is 120.

2 Q 120. Why did you document this particular item and
3 injury to Mr. Thompson?

4 A So what we found there behind the ear if you can see --

5 Q That's fine.

6 A -- is an exit wound, but it's not a full exit wound
7 because the bullet fragmented, so it's an exit wound of the
8 one of the fragments. And that's always helpful to document
9 because that helps you with direction of the bullet so --
10 because I can measure that right. I can measure it from top
11 of head to that, and I can measure from top of head to the
12 entrance, and that helps you tremendously with direction.
13 That's why I photo that.

14 Q And in that particular -- the little small -- the slit,
15 is that indicative of it just being the piece like you
16 mentioned of fragment of the actual bullet?

17 A Uh-huh. Exit wounds can be small and slit like, but
18 that was real small and slit like. So that is consistent
19 with just a part of the bullet leaving him.

20 Q Okay. Thank you, Dr. Rose. Okay. Now, Dr. Rose, you
21 mentioned that it's helpful to you because you can actually
22 measure the difference between where the entrance wound is
23 on the victim in comparison to whatever you have evidence of
24 as exit --

25 A Correct.

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1 Q -- correct? What did you actually document in your
2 autopsy regarding the measurements of those two places?

3 A So after doing the measurements it was apparent that
4 the gunshot went obviously left to right back here, it went
5 from here to back here, so that's backwards, and this went
6 just a tiny bit upward, a tiny bit.

7 Q All right. And you've actually put that into your
8 final report; is that correct?

9 A Correct.

10 Q All right. Now, Dr. Rose, whenever you've done prior
11 forensic autopsies of gunshot wounds within a vehicle, is it
12 unusual, as we have stated before, that we would see such a
13 high velocity injury such as the one that Mr. Thompson saw
14 at close range?

15 A No. It's consistent with the high velocity type
16 injury.

17 Q All right. And I've shown you also a couple of photos
18 that are already in evidence. One of them is State's
19 Exhibit 99, which will be -- like I said, it's already in
20 evidence. So it's the actual vehicle, and I'm going to hand
21 that to you, you don't have a copy of it, that Mr. Thompson
22 was shot in. Do you recall me telling you what type of
23 vehicle that was?

24 A I do.

25 Q Okay. And I'm going to show you these two photos.

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1 (Break in proceedings.)

2 Q Now, is this a diagram that you prepared on your own
3 when you were doing the actual measurements of the entry
4 wound and the little exit fragment wound?

5 A Yes.

6 Q Okay. Now, looking at the photographs that I handed
7 you regarding the vehicle, were you -- did I also provide
8 you with information that showed where each person was
9 seated in the truck at the time of the shooting based on the
10 evidence that's been presented?

11 A Yes, you did.

12 Q All right. Do you still have that diagram?

13 A I do. Let me just fish it out. Okay.

14 Q If you don't I have an extra. You do have it. Okay.
15 All right. So I'm going to then -- I'm just holding this
16 up. Do you have a copy? This is just for demonstration
17 purposes. We've got the driver of the vehicle, a woman by
18 the name of Lavondia Wherry. Antonio is seated in the front
19 passenger seat, correct?

20 A Correct.

21 Q And that is our victim in this case. Okay?

22 A Correct.

23 Q And then the defendant, Mr. Kenneth Wherry, is seated
24 behind the driver.

25 A Okay.

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1 Q In this scenario I'm going to ask you within a
2 reasonable degree of medical certainty if the scenario I
3 gave you is that Antonio Thompson, seated in this front
4 passenger seat, was somehow distracted to look over his left
5 shoulder back at Kenneth Wherry who would be diagonal from
6 him, and Mr. Wherry was pointing a gun at this individual.
7 How consistent would it be that that was why the trajectory
8 of that shot came from Kenneth Wherry in the back seat into
9 the cheek of Mr. Thompson?

10 A I would say based on my experience that is very
11 consistent. In fact, it kind of helps explain the wound.

12 Q Okay. Explain what you mean by that helps explain the
13 wound.

14 A When I've seen people shot from the back it's usually
15 square on in the back, you know. If I see someone shot
16 straight on then it is right here. So often times these --
17 when these guys re the shooters the person is looking,
18 again, right into the face. If the person is behind them
19 they get it right to the back of the head. And then -- so
20 this wound being here having all of that, I was like huh.
21 But it makes perfect sense if you think about maybe they say
22 something and he turns and then he catches the bullet.

23 Q And then the trajectory that you've shown, you actually
24 stated it in your final report that the track is left to
25 right --

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1 A Uh-huh.

2 Q -- backward.

3 A Uh-huh.

4 Q -- okay. And then it was upward.

5 A Slightly upward, yes.

6 Q Slightly upward. All right. So if, for instance, in
7 your opinion if I was the driver and I point the gun at my
8 victim just straight on and the person wasn't looking at me
9 and was just there, would you expect it to go upward and
10 backward?

11 A I would expect it to enter up higher if you -- that's
12 what I would expect, and I would expect to go pretty much
13 straight across.

14 Q So is it your expert opinion that it's more consistent
15 that this shot would have come from the person in the back
16 seat diagonal from the victim with him turning to look at
17 the shooter.

18 A Yes, that's very consistent.

19 Q All right. And I'll go ahead and ask you, there was
20 another individual seated behind Mr. Thompson, her name is
21 Mary Muckenfuss, and her name is Elizabeth on this
22 particular document, would you expect any of the way that
23 the trajectory and the wound to Mr. Antonio Thompson that
24 you saw and documented to have been done by the person
25 seated right behind him?

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1 A No, not in this vehicle. Especially because there is
2 no damage to the head rest or the upper back of that seat.

3 Q All right. And so you're looking at this particular
4 vehicle and that would not be consistent?

5 A No.

6 Q Now, in all fairness, Dr. Rose, there are quite a few
7 different scenarios that could happen in a small environment
8 when you've got four individuals in a vehicle, is that fair
9 to say?

10 A That's very fair to say.

11 Q All right. And in asking you these questions in
12 regards to trajectory and the facts that have been presented
13 to you that have been actually shown in this particular
14 case, do you still feel comfortable in saying that the
15 trajectory that you found within a reasonable degree of
16 medical certainty is most consistent with the scenario that
17 the victim turned his head, looked back --

18 A I am. Can I say it's the only possibility? No. But
19 if this was a test, and it was a really important test to
20 me, I would definitely say that he was shot from the person
21 behind him and to the left and turned, and he was turned
22 while he was shot.

23 Q Okay.

24 MS. LIVELY: Thank you, Dr. Rose. And at this point in
25 time I'm going to shut this down. Answer any questions that

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1 the defense may have.

2 CROSS EXAMINATION

3 BY MS. BOULWARE:

4 Q Good afternoon, Dr. Rose.

5 A Good afternoon.

6 Q So do you have a copy of your autopsy up there with
7 you?

8 A Yes.

9 Q Okay. Great. All right. And going back to the --
10 where the Solicitor was asking you about the basic
11 information you had about the victim such as name, race,
12 sex, date of birth, what does it say for date of death?

13 A It says -- oh, that was supposed to be his date of
14 birth, I believe. Oh, no, no. Yeah. Date of death is
15 02/28/2021.

16 Q Okay. Where do you receive that information?

17 A I get that from the coroners.

18 Q And it's been testified earlier that this murder
19 happened on 2/27.

20 A It's really confusing in forensics sometimes, because
21 what we are told is date of death is actually when they were
22 found and pronounced perhaps. Or what -- when they're brain
23 dead sometimes they'll call them dead, and then I have to
24 explain how someone could be having post mortem organ
25 donation when, you know, the timing gets really screwed up,

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1 and how could you autopsy somebody before they were
2 technically even dead? And I'm like that's not exactly
3 right. So date of death only God knows probably
4 100 percent, so often it's date they were pronounced dead.

5 Q But Dr. Rose, you don't know that for sure in this
6 case, right?

7 A I don't know.

8 Q You're just speculating, aren't you?

9 A I'm just explaining what I see.

10 Q Okay. All right. And then getting back to when you
11 and the Solicitor were discussing where in the car someone
12 was shot. You don't know that this actually happened in a
13 car, though. I mean, you can't say that, you weren't there.

14 A Correct.

15 Q Okay. And you can't say who was sitting where.

16 A No, I cannot.

17 Q Okay. And you can say it's consistent with the
18 scenario that the Solicitor presented to you, but you can't
19 say that is absolutely what happened.

20 A No, I cannot.

21 Q Okay.

22 MS. BOULWARE: Beg the Court's indulgence one moment
23 please.

24 (Break in proceedings.)

25 MS. BOULWARE: No further questions, Judge.

1 MS. LIVELY: Your Honor, that's all that the State has
2 for this witness. Thank you, Dr. Rose. I'm going to grab
3 the evidence back from you. May she be excused from her
4 subpoena, Judge?

5 THE COURT: Any objection?

6 MS. BOULWARE: I have no objection.

7 THE COURT: Thank you, Dr. Rose.

8 THE WITNESS: Thank you. Thank y'all.

9 MS. LIVELY: Your Honor, at this time the State wants
10 to publish the defendant's statement given to law
11 enforcement, which is already in evidence. So if we -- it
12 lasts for about 30 minutes and so I'm going to go ahead and
13 get it set up. I need to retrieve it. If everybody is okay
14 we can just wait while I do that, unless you want to take a
15 break.

16 THE COURT: Anybody need a quick break? That's fine.

17 (Break in proceedings.)

18 MS. LIVELY: Your Honor, will you just ask whether or
19 not that's in a good place or if I need to move the
20 television for the jurors.

21 THE COURT: Everybody in the jury comfortable with that
22 placement? Can everybody see? You can't?

23 MS. LIVELY: He can't? See, I can pull it out, that's
24 why I was asking.

25 THE COURT: If y'all want to move your chair down that

1 will be fine, too.

2 (Break in proceedings.)

3 (The video interview of the defendant was played.)

4 MS. LIVELY: Your Honor, at this time the State rests
5 its case.

6 THE COURT: Ladies and gentlemen of the jury, it will
7 take a few minutes, if y'all will step back and relax, I've
8 got to take up matters of law.

9 (The jury left the courtroom.)

10 THE COURT: All right.

11 MS. BOULWARE: Your Honor, at this time I would ask for
12 a directed verdict. The State had -- the most evidence they
13 actually have against Mr. Wherry is two witnesses who are
14 inconsistent with each other who are also charged in this
15 case who are trying to place Mr. Wherry in the car with the
16 gun in his hand. There is no other direct evidence, or
17 circumstantial for that matter, that puts him in the truck.
18 And in the light most favorable to the State I think that is
19 not strong enough evidence for the case to go to the jury.

20 THE COURT: Okay.

21 MS. LIVELY: Yes, sir, Your Honor. The State would
22 show first of all that there is more than substantial
23 circumstantial evidence to overcome a directed evidence in
24 this case. The credibility of witnesses is left up to the
25 jury. I believe that Lavondia Wherry was extremely credible

1 in her testimony, as well as Ms. Muckenfuss, who obviously
2 is still fearful. Even in some of the inconsistencies that
3 were in there, the one consistent thing was that the
4 defendant was there, that he was one that shot, and also we
5 have -- we do have evidence through Muckenfuss as to the
6 victim's phone and his actual body being located. So, Your
7 Honor, I believe that there is more than enough evidence to
8 go to the jury at this point on the charge of murder and
9 possession of a weapon during the commission of a violent
10 crime. Thank you.

11 THE COURT: Thank you, Counsel. Well, based on the
12 evidence before the Court I'll have to deny the motion for a
13 directed verdict.

14 MS. BOULWARE: Your Honor, I would also renew any
15 objections at this time.

16 THE COURT: So noted. I guess the question I need to
17 ask, is your client going to testify, and what's your
18 pleasure about me speaking with him.

19 MS. BOULWARE: Your Honor, at this time we have decided
20 he will not take the stand and testify.

21 THE COURT: Mr. Wherry, if I can have your undivided
22 attention, I'm going to talk with you about your Fifth
23 Amendment rights. Under the United States Constitution you
24 have a right to testify at your own defense, but you also
25 have a constitutional right to elect not to testify. If you

1 were to testify you would be subjected to cross examination
2 just like any other witness, and you could be cross examined
3 and impeached just like any other witness if you were to
4 take the stand. Any decision that you reach as to
5 testifying or not testifying has to be your decision freely,
6 voluntarily and intelligently made by you. But once again,
7 if you do not testify I will explain to the jury that you
8 have a constitutional right not to testify and it cannot
9 mitigate against you in any form or fashion. It can't even
10 be discussed in the jury room. Other the other hand, you do
11 have a right to testify if you so desire. Do you understand
12 what I have just gone over with you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed this with your counsel?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're satisfied with their explanation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And is it your decision not to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That is freely, voluntarily and
21 intelligently made by you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Let's takes a brief recess.

1 Will there be any other defense?

2 MS. BOULWARE: Your Honor, I'm going to discuss this
3 with cocounsel and Mr. Wherry. I have a statement I may
4 want to put in through Sergeant Telly Crockett who is the
5 lead investigator. The State did not call him so I may need
6 to call him for my own case to get the statement in, but I'm
7 going to discuss whether we do that.

8 THE COURT: Very good. Let's take about 15 minutes.

9 MS. BOULWARE: Thank you, Judge.

10 (A recess was taken.)

11 THE COURT: All right. We've got everybody.

12 MS. BOULWARE: Your Honor, we've discussed it, we don't
13 have any further witnesses.

14 THE COURT: Okay.

15 MS. BOULWARE: So we rest.

16 THE COURT: Are y'all ready to argue and charge?

17 MS. LIVELY: Oh, we're skipping closing?

18 THE COURT: I'm not.

19 MS. LIVELY: No, sir.

20 THE COURT: All right. 10:00?

21 MS. LIVELY: Yes, sir.

22 THE COURT: We need to bring the jury back.

23 (Break in proceedings.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, the evidentiary portion is over, so the next phase

1 will be closing arguments and then the Judge's charge of the
2 law, and we don't want to start that now or we'll be here
3 way into the evening and we've got plenty of time in the
4 morning. So we should be able to get the arguments done and
5 the charge done and get it to you sometime around lunchtime
6 if not a little bit before. There's always a little bit of
7 variance you've got to allow. Don't eat too much for
8 breakfast in the morning because Ms. Sue is going to round
9 some lunch up for you. Okay? So that way you can continue
10 to work right through. Y'all have a good evening, we're
11 going to recess for the night. Remember, don't discuss the
12 case with anyone, don't allow anybody to contact you in any
13 way. Okay? Y'all have a good evening. Everybody else
14 remain in the courtroom while the jury departs.

15 (The jury left the courtroom.)

16 (Court recessed for the day and resumed on Thursday,
17 April 7, 2022, at 10:00 a.m.)

18 (The jury returned to the courtroom.)

19 THE COURT: Good morning. We're ready to get started
20 in closing argument.

21 MS. BOULWARE: At this time, Your Honor, the defense
22 rests.

23 THE COURT: All right.

24 MS. BOULWARE: I will also renew any motions that I
25 made and any objections.

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1 THE COURT: All right. And I stand by my previous
2 rulings. And that brings us to closing arguments.

3 MS. LIVELY: Yes, sir. If you'll give me just a minute
4 I'll get set up here, Judge.

5 (Break in proceedings.)

6 MS. LIVELY: Can everybody see? Okay.

7 (Break in proceedings.)

8 MS. LIVELY: All right. While that's connecting,
9 ladies and gentlemen, I'm just going to go ahead and get
10 started, because I know we've all been sitting here, it's
11 been intense days, intense testimony, and I want to make
12 sure that whenever I talk about this case that y'all
13 understand how important it was -- here we go -- how
14 important it was for each of you to hear every single thing
15 that came out from that witness stand right there in order
16 for you to make your final decision this week. Because the
17 thing you have to understand is whenever these types of
18 matters happen, especially whenever an innocent life is
19 taken, that there are so many pieces of it that we have to
20 put together, the State, in order to prove our case beyond a
21 reasonable doubt. Now, that's not going to be beyond every
22 doubt. The reason why beyond every doubt would mean that,
23 okay, we can prove everything 100 percent. Well, that's
24 great, but we don't have a crystal ball. What we have to do
25 is put the puzzle together for each and every one of you.

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1 Each and every one of you has a say and a vote in this
2 particular case, and I'm encouraging each and every one of
3 you to watch as I give you every piece to this puzzle, which
4 is going to make it clear that Kenneth Wherry is guilty of
5 murder. Every single one of you sitting here right now
6 whenever I came up to you first thing what I told you was
7 this story, the unfortunate truth, will be very clear to you
8 by the end of this case. And I wrote -- I always write
9 something down before I start a case, because I want to make
10 sure that I can tie it back in and bring it to all of you.
11 Because you have to use your common sense, I mentioned that
12 to you, too, and one of the things that I said, and this is
13 going to be the thing that's going to continue to come
14 through your mind: Crack people. We can't avoid the fact
15 that people who are involved in this, except for our
16 unfortunate victim, were all excessively using crack that
17 weekend very clearly, no one is denying that. Even the
18 defendant's statement: I was using crack. So let's talk
19 about that. What I said, and I told you it may not make
20 sense to you then, but now it's going to make perfect sense
21 to you: You can't listen to a crackhead. We going to do
22 anything you tell us to get more. A crack person will do
23 anything to cover their ass, including murder. They will do
24 anything to get high again, including robbing an innocent
25 man whose car broke down and he made the awful decision to

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1 flag down a vehicle with Kenneth Wherry, a crackhead.
2 Someone who would take a person's life, and we end up
3 finding out, for a few hundred dollars. So let's talk about
4 that. So in putting together this case, the first thing I
5 want you to remember is that -- the first thing I want you
6 to remember -- first of all, if this didn't happen this week
7 would obviously be kind of crazy --

8 (Break in proceedings.)

9 MS. LIVELY: There it goes. Everything here in our
10 courthouse is a little old and slow, so I apologize for
11 that. All right. So State's witnesses. I'm not going to
12 go through every single one of them, but what I did is I
13 wanted you to understand everybody that was involved in this
14 case. Now, first all we would not -- we being the State and
15 the investigators in this particular matter, would not have
16 known a crime had been committed but for the wonderful Mary
17 Muckenfuss coming forward. I say that sarcastically,
18 because I'm sure every single one of you whenever you
19 watched her on the stand probably had a level of dislike for
20 this person. Probably sat there just saying: I cannot even
21 believe this is the life she's chosen for herself. Well,
22 you know what? We're not here for you to judge her choices
23 and her decisions, but what you can do and what we're asking
24 you to do is think about this: She's a crackhead, she
25 prostitutes herself out, but on that day what does she

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1 decide to do? She is beside herself, cannot live with it,
2 and she actually does the right thing. She calls her mom,
3 says: I witnessed a murder. And the next thing we know
4 everything, you all have the rest of the story. So she's
5 able to get a ride with Clarence Wilks. You remember Mr.
6 Wilks, he was one of the first people that testified, a
7 little older gentleman, he said: I've never seen Mary like
8 this, she was just crying uncontrollably. I didn't want to
9 know what it was she knew, I didn't even ask. So he takes
10 her back to his house, and then at that point is when
11 everything starts to kind of come out. She's crying. She
12 ends up getting Twana Scott, which is the school resource
13 officer, the family knows her, they get there, and what does
14 Tawana Scott learn: Oh gosh, I'm not an investigator. I
15 need to call investigations, she's talking about a murder.
16 So everybody then starts getting into place. Now, this is
17 just kind of the overview of what ends up happening. You
18 have Toni Spiotta, who's also the office manager. Tonya
19 Estes, who was working there first shift that day when
20 Antonio Thompson, we confirmed, was an actual guest at the
21 Executive Inn. Okay? Now, so it ends up being these two
22 individuals are charged, Mary Elizabeth Muckenfuss and
23 Lavondia Wherry, as accessories after the fact. And
24 remember, they haven't been promised anything, they're still
25 looking at significant prison time. They had to get on that

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1 stand, testify to what they had already told law enforcement
2 while being subjected to cross examination, and hope that
3 because they got on that stand and did the right thing that
4 it's going to help their case, but no promises have been
5 made to that effect. All right. So here we go. State's
6 witnesses. I've already talked about Clarence Wilks, Deputy
7 Scott. Let's talk about Toni Spiotta. Why did we bring her
8 in here? Well, it's because she had the records, the
9 documents that Antonio Thompson was actually a registered
10 guest. That's important because it puts him there at the
11 Executive Inn on that day, the last day he's seen alive.
12 Okay? So we know that he actually signs in a little after
13 midnight on 2/27/2021, and we also have a Steven Peterson
14 that's staying there. Who is this guy Steven Peterson?
15 What does he matter? Because every little person who has
16 any contact with these individuals we want to show how they
17 were all connected. He is on that registration, he was
18 there that night, because if you remember later on that day
19 who ends up in Steven Peterson's room? Mary Muckenfuss.
20 And that's another time we were able to document where she
21 was, because a trespass order got issued against her, and
22 you saw the body-worn camera. So remember, these are the
23 pieces that we put together when on the surface. You're
24 like, who cares? That doesn't seem to matter. But when you
25 put it all together you see how it makes common perfect

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1 sense. Okay. So then we go into Tonya. Says she knows
2 Kenneth Wherry. She's seen him before. They've been there
3 at the Executive Inn. This is a local place for people to
4 go who unfortunately are usually up to no good. Mary
5 Muckenfuss and Antonio Thompson. She was working there that
6 morning, Tonya was, and she said: I always get there
7 between 5:00 and 7:00 because I am taking over for the third
8 shift person. So she documents she's there between 5:00 and
9 7:00. Now, Trooper Plyler. This is one of the things that
10 just happens to randomly come into our lap that documents
11 that, oh my gosh, we now know that he was still alive around
12 this time, because why? You saw Trooper Plyler, he's just
13 like: Hey, I tagged a car, that's my job. There was an
14 abandoned vehicle on the road. What are the chances of
15 that? So he actually tagged the vehicle at 5:17, and then
16 while he's sitting there he sees people walking up to him.
17 You know it's dark, he's like: What the heck? They come up
18 to him and he realizes: Oh, these are the people who were
19 in this vehicle. Who is one of those people? Antonio
20 Thompson. He then tells you, and you've got his paperwork,
21 it is in evidence, he tells you he then takes them to the QT
22 over there in Richburg and he drops them off. And his
23 paperwork confirms the last time he has contact with any of
24 them, with Antonio Thompson, who we identified as being the
25 owner of the vehicle, was 5:42 a.m. there at the QT in

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1 Richburg. We don't know who he's with, but we know that's
2 why Antonio Thompson is. Then we have actually Tonya Estes
3 saying: Okay. While I was at the hotel between 5:00 and
4 7:00 is when I actually saw them. So we can kind of deduce
5 how that timeline unfolded. Then we have Deputy Connor
6 later on that day at 1:44 p.m. that actually says he shows
7 up at the hotel because of a trespass call. So kind of see
8 how the time now, we're squishing it down as to when Antonio
9 Thompson was murdered. So we know at this point we're
10 looking at a tighter time frame. All right. So then here
11 are actual documented times. And this is the reason why I
12 put this on here, this is not stuff that's made up and say:
13 Oh, I probably called the police, it was around 8:00 or
14 probably do this, probably do that. These are things that
15 are actually documented and the evidence supports it. We
16 know Antonio Thompson registered right after 12:01 a.m. with
17 the third shift. 5:17, Antonio Thompson is still alive.
18 5:42, we know he's still alive because what I said earlier.
19 Tonya Estes says she sees them together. Antonio Thompson,
20 Mary Muckenfuss and Kenneth Wherry go into room 108. And
21 let me tell you something, Tonya Estes is an interesting
22 person, because she hates Mary Muckenfuss so much that I
23 promise you from -- and you saw this on the stand, that if
24 Mary Muckenfuss was on her property she was calling the
25 police and she was getting her off. That's the reason why

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1 when she saw Mary Muckenfuss and she could get up here and
2 tell you: I saw her and I knew she wasn't supposed to be
3 there, she's paying attention to who she is, where she's
4 going and who she's with. So sometimes being nosey,
5 sometimes being -- disliking somebody that you don't want to
6 be on the property and doing your job ends up being a really
7 huge piece of evidence. Because what this does is it puts
8 Kenneth Wherry with Mary Muckenfuss, Antonio Thompson,
9 together that morning whenever he in his statement says: I
10 wasn't in the truck with them. Nope, not me. I was at the
11 crack house getting high. No, you weren't. We know because
12 Tonya Estes, who doesn't have a dog in this fight, saw you
13 at the same time, the last time we can document Antonio
14 Thompson was alive right there. So then you know how
15 everything else unfolded. There was a call to Deputy Scott,
16 it was documented through law enforcement. Investigations
17 was called in because someone was saying they witnessed a
18 murder. No one has called and said someone is missing. No
19 one has called and said: I found a body in the woods. We
20 don't have hunters and kids coming up accidentally on a
21 body. Who knows if this body would have ever been found in
22 the woods in the dark? So estimated time of death. This is
23 what I came up with, you can come up with your own. But
24 clearly from what we have is that the last time he's seen
25 alive was at the Executive Inn up through 7:00 a.m., and

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1 then we know at 1:44 p.m. Muckenfuss is seen at the
2 Executive Inn, and then at that point in time we know that
3 Antonio Thompson is already dead. Because she then is
4 documented with law enforcement and ends up leaving, and
5 that's whenever she calls and says that she's witnessed a
6 murder. All right? And also think about it, she -- what
7 they had to do in order to get all of this other stuff done
8 for the time they left the Executive Inn; dumping the phone,
9 washing out the truck, pulling the body out of the car, all
10 of that stuff between 7:00 and possibly 1:00. That's a lot
11 going on. That's a lot going on. But it was absolutely
12 doable and that's exactly what happened. All right. So
13 Lavondia Wherry. Disabled veteran. She says she's got
14 about \$40,000 in the bank. She's got money, she doesn't
15 have to rob anybody. Then during Covid she says she fell
16 back into her drug use. She even told you: I did crack
17 with Kenneth and Mary. Now, the weekend of February 27th,
18 she tells you -- now, here is the thing the Judge is going
19 to tell you, direct evidence of a crime is evidence that
20 comes from that witness stand right there. So what do you
21 do when you hear that evidence? You as jurors weigh the
22 credibility of the people who were telling you what
23 happened, but that is direct evidence. It's not we have to
24 put two and two together, that evidence from that stand is
25 what you listen to when you're making your decision. So,

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1 she confirms that while she's at the Executive Inn to get
2 Mary, because remember, she said Mary had told her to come
3 pick her up, Antonio flags her down and asks her for help:
4 Hey, can you give me a jump? My car is broke down, offered
5 30 bucks. She says okay. She's driving, Kenneth is sitting
6 behind her, Mary besides Kenneth in the back, and Antonio is
7 in the front. Before they leave, I'm going to keep
8 hammering this -- remember, Tonya, she's being nosey, she
9 hates Mary, she's paying attention, she sees them walking
10 together, she confirms all three of them, those three people
11 are together that morning. Okay? She's not charged with a
12 crime, she has no reason to be here. She doesn't want to be
13 here. We had to drag her in through a subpoena. All right.
14 So the testimony at trial. I was getting high that weekend
15 with Kenneth. They're cousins, they're family, all right?
16 So they're getting high together. Went to get Liz/Mary from
17 the hotel, she's staying with, remember, this Steven
18 Peterson guy. Antonio, she said she didn't know his name at
19 that time, he asked her to jump her off, she agreed. Then
20 they go to her house to get the jumper cables. And
21 remember, and you're going to see a picture in just a little
22 bit, there's confirmation of that. When you look in the
23 back of her truck there's jumper cables. She's the only one
24 that got out of the truck, got jumper cables, and then when
25 she had pulled up to give -- pull her seat up to give more

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1 room for Kenneth who's sitting in the back, and she told
2 you, he's a big old boy, six-three, her gun was under the
3 seat. He got that gun. And she tells you right in the
4 middle of that he had no right to get that gun. He didn't
5 have to pull it. And then whenever asked by the defense:
6 Well, you know, why are you telling this? I mean,
7 basically -- the bottom line is this, the defense is going
8 to have you believe everybody here is just trying to save
9 their own butt. Well, you know what? Maybe. But you know
10 what? Their stories of what happened that day at that
11 point -- remember, they get separated. They're not going to
12 know what Mary is saying, Mary is not going to know what Von
13 is saying, they're not going to know what Kenneth is saying.
14 They all tell you the same thing. Antonio was sitting in
15 the front seat, he was shot, his body was drug through the
16 woods, and that's it. Now, so her conviction from God told
17 her to be honest and to give it up. But before she did
18 that, here is what I want you to remember, she admitted on
19 that stand that at first her and Kenneth came up with a
20 story, how they were going to try to put them not in the
21 truck where Antonio was when he was shot and killed.
22 Remember? He said: Hey, say you loaned out your truck to
23 some drug dealers, some crackheads, and then whenever it
24 came back we don't know what happened or what they did. So
25 that's the first story she told law enforcement. But when

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1 they confronted her with what Mary had already told them
2 then she knew, then she knew she had to come off it. All
3 right. So here is where I was showing you, there's jumper
4 cables. Why is that important? Because it shows what she
5 said when she went to her house, when she had Antonio, who
6 was still alive, that's what she was going to do, she was
7 going to get her vehicle so that she could jump his vehicle
8 off. All right. So here is where everybody was seated in
9 the Toyota. Lavondia -- you heard this 100 times, I know,
10 but here is why it's so important, location of where
11 everybody was, extremely important. So Lavondia is driving,
12 Kenneth had the gun, pointed it at Antonio diagonally from
13 his position in the back of the truck. You heard the
14 pathologist say that is the most consistent actual
15 trajectory based on where everybody was seated. Okay? It
16 resulted in that wound from left to right traveling
17 backward, okay, so that would have been back, and upward.
18 So that would be him turning to see someone saying: Hey,
19 give it up, and then shot here, the fragment comes out back
20 here, and all of that damage through his face. It wasn't a
21 straight-on shot through and through. It wasn't from behind
22 where Mary Muckenfuss was sitting. It was from a man who
23 diagonally pointed it at him and says: Hey, give it up, he
24 turns, and that's the last thing he does, and that shot was
25 devastating. Then they travel to the woods. Lavondia and

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1 Ken have to drag it out. Ken has to ask Lavondia to help
2 him drag the body out of the vehicle, because Antonio is
3 6 feet-1 inch and 250 pounds. And I hate to use the term
4 dead weight, but you have to understand, if you've got
5 someone that heavy not helping you in any kind of way that
6 you have to drag 50 feet into the woods you're going to need
7 help. Even this defendant needed help. So here is the
8 motive. We don't have to prove motive. What I have to
9 prove beyond a reasonable doubt is that this defendant,
10 without any type of justification, shot and killed Antonio
11 Thompson. It wasn't self-defense, it wasn't an accident, he
12 murdered him for money. And remember from his own words in
13 the statement that I played yesterday: When you getting
14 high you do anything to continue that high, and that's what
15 he did. That's all they left on him, took the \$300 and
16 left. So getting their stories straight. Kenneth says:
17 You tell them we were at the crack house, Von -- called her
18 G -- not in the truck when it happened. Say you loaned out
19 the truck to drug dealers. Von admitted: Yeah, he told me
20 to stick to that story. That was the first story she told
21 the police. And then, as I stated, she tells you: I told
22 the police that. Then the statement I played for
23 Mr. Wherry, the defendant, yesterday: I was at the crack
24 house smoking crack. While I was at the crack house Von
25 loaned out her truck for money. They brought her truck

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1 back. I wasn't there when dude was shot. I didn't have a
2 gun. So they were making a story to tell police. So
3 Muckenfuss. Here is the thing. Like her, hate her, believe
4 that she's in it to just save her butt, whatever it may be.
5 Let me tell you something, but for her none of us probably
6 would be here today, and the family of Antonio Thompson
7 would still say their son, their brother, their uncle is
8 missing. But no. Everything came together to bring this
9 case before all of you so this family has justice. And
10 Muckenfuss, for whatever reason, because she feared to save
11 her own butt probably because she's terrified I'm sure, I
12 mean, that's the reason why she did it. So look at that.
13 His body was in the woods. Here is where he was found.
14 What are the chances? I mean, even SLED was like: Yeah, we
15 had to find it. It was dark, there's no houses around,
16 nothing. Kenneth actually told Von, according to what Von
17 said: Hey, let's go on that road back in the woods, gravel
18 dirt road, we'll put him out there. And that's where they
19 went. Drug him. Didn't just dump him off the road, drug
20 him into the brush and left him there alone. So she brought
21 the attention to the crime. She told -- and this is up to
22 you to decide, but I'm going to tell you she told the truth.
23 How do we know she told the truth? Because why? We found
24 what? The victim's phone in the drain. First place we
25 know. Oh gosh -- and remember what Detective Burch said,

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1 she was like: Oh gosh, we're going to have a body. Because
2 at that point she knows the next step and that is: We've
3 got to go and find this body. So she goes to Enix Road at
4 first because they think, well maybe, you know, we need to
5 see if we can get our hands on Von, because we want to find
6 whoever these people are that's involved, she's not there.
7 So then they're already on the area -- or in the area to go
8 to Woods Road off of Cedarhurst, and sure enough, she's
9 looking out the window and she sees the white shirt of the
10 victim in the woods. Then she says she sat there while they
11 went out, found the body, and the next place they go is to
12 Von's house. Von's truck is finally back at the house.
13 They call SLED crime scene, this is when everything really
14 starts to amp up. They then, Investigator Crockett and
15 Burch, go to the hotel where Mary says: I put a bag of
16 stuff in a trash can. And did she? We found the bag of
17 stuff. And guess what? Once again she was telling the
18 truth. They found Antonio's wallet, his ID, his credit
19 cards, his receipts, the last bit of evidence to show
20 exactly who the person was that was murdered that day. So
21 what makes sense? Then she talks about how Kenneth was
22 wearing gloves. She referred to them as murder gloves, and
23 we'll talk about that in a minute. And she even said, and
24 this was so telling, at some point Antonio asked, said:
25 Wait a minute, I recognize you, you've lost weight. She's

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1 like: Yeah, I've been using crack, crack diet. So she ends
2 up saying: Yeah, I know. And I keep looking at my phone
3 because I'm timing myself, I don't want y'all to think I'm
4 pulling anything up, because I've been told I talk too much
5 so I apologize. So I'm just trying to make sure that I get
6 to the point with all of you, because I want to make sure I
7 don't miss anything. Okay? This was very important. She
8 said, Antonio: I don't like coming to Chester, it's like
9 God telling me to stay away from here. And that is just so
10 sad, because within minutes he would be dead. And it was
11 not his fault, he did nothing wrong. So the supporting
12 evidence that we have is that morning knowing they were all
13 together, they being the defendant, Von, and Antonio. She
14 knew where the phone was dumped. She knew the body was left
15 in the woods. Knew and confirmed there was one gunshot to
16 the head. Okay? So only one shot, it only needed to be
17 one. And when they found the gun at Von's house that she
18 said she removed from her truck and put it in the garage, it
19 had the one spent casing and all of the rest of the bullets
20 were unfired. So everything is just coming together,
21 everything makes sense, everything that she has told law
22 enforcement is true. So they get all of the personal items,
23 and then she also remembers that Kenneth had gloves and saw
24 them after the murder in the hotel room at the Executive
25 Inn. So, Antonio Thompson's phone recovered, you've got the

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1 pictures of that. His body is recovered and how it's
2 located. And I know it's hard to look at these pictures,
3 but you have to understand, 50 feet of dragging is really --
4 I mean, even the pathologist said he was a muscular, healthy
5 guy, he was drug into those woods and left there. Then we
6 have the pictures from everything that was found in that
7 trash can. Once again, another piece of the puzzle. So
8 autopsy photo. Undisputed injuries. And here is the thing,
9 I'm not going to go into a lot of that because here is the
10 reason why, the most important thing that you need to
11 remember, no one is contesting the fact that it was a
12 catastrophic gunshot wound to this man that killed him, no
13 one is questioning that. But what we do need to be able to
14 show is her expert opinion, we know that cause of death was
15 that shot to the head. The type of injury she said was
16 consistent with a .357 Magnum, all right, in an enclosed
17 location inside of a vehicle. She's done 3500 autopsies,
18 she can tell you and did tell you how these types of wounds
19 are so catastrophic in a small space, and a Tacoma is a
20 small space. And in that regard she told you, and this is
21 so important, the most probable and consistent scenario from
22 the evidence in this case shows he was turning his head that
23 led to the angle where it ended up going up and back, and we
24 saw that fragment that came out of his neck because that's a
25 weird wound. So when you look at it -- but, of course, you

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1 know, and she shows you through her written diagrams kind of
2 where the wound is, and then she said it was strange because
3 of how it -- the angle. So once again if the driver,
4 someone sitting in the driver's seat, had just done like
5 this, that would not have gone backward and upward. The
6 evidence is consistent and most probable and that's what
7 she's told you, and that means Kenneth Wherry shot him while
8 he was seated in the backseat. Then we confirm the gun that
9 was used. Why? Because the gun has what on it? The
10 victim's blood. There was a spot here on the cylinder,
11 there's spots here on the front of the gun, and you can see
12 that in the pictures. Then the scenario, which I just
13 talked to you about. You have pictures from the vehicle,
14 you see how closely people are, so that's another reason why
15 it was a close in range shot. Some people have these huge
16 SUV's now so I can understand that would be far away, but
17 no, this particular situation it was very close. So SLED
18 DNA is very -- here is the reason why I asked the Judge at
19 the beginning when he's talking to the jury, you know, how
20 many of y'all can listen to CSI and understand that, you
21 know, when you're watching television you have this ah-ha
22 moment: Oh, it's great, we've solved a case from 30 years
23 ago because the person's DNA is found. While that's
24 fantastic and it probably does happen quite a few times, but
25 remember what Catherine Leisy also told you, there's more of

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1 a concentration of DNA in things like blood and bodily
2 fluids, but touch DNA is kind of out there. You don't
3 really know. It could depend on the person, it can depend
4 on the weather, it can depend on if they wash their hands.
5 If someone else touches it after they touch it and hold it
6 you don't know. So we have all of these different profiles.
7 And understand, this is circumstantial evidence, DNA is.
8 It's not direct evidence like what you hear from the stand.
9 So the samples are confusing. I tried to get her to kind of
10 dumb it down for me, so I'm not even going to try to be an
11 expert and tell you here, but I will tell you this, whenever
12 it came back and it said as for the trigger, you know, they
13 were able to confirm Antonio Thompson. Well good, we knew
14 that that was his blood on the gun. We wanted to be able to
15 confirm that, we wanted to be able to confirm the murder
16 weapon. Clearly that's what Von said, that's what -- was
17 the gun that was used, so that's what we have. So then we
18 started going through, okay, well, let's see if we can find
19 Kenneth's DNA on the gun since he's the one that shot.
20 Well, you know what? He was excluded. So it was like:
21 Gosh, how could that be? You know, maybe -- but it's touch
22 DNA. We know touch DNA, there could be reasons why that
23 happens or not happens. So you do all of this testing, but
24 you continue to investigate and figure out what's going on.
25 You know, would there be a reason why the DNA wouldn't be

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1 there, and she testified to that. What affects it. Cold
2 weather. It was February. Sweating. Possibly wearing
3 gloves. Washing of hands. Each person excretes
4 differently. And here is the thing, remember? Von's DNA
5 was actually identified in a sample from the textured grip
6 of the gun. But she did admit to picking the gun up from
7 the truck after the shooting and putting it into her garage
8 whenever she parked the truck and left it there. So her
9 touch DNA was found, and even then she said it's not enough
10 DNA to establish specifically that she was in the sample but
11 she couldn't be excluded, and that's because of touch DNA
12 being such a hard and such a minute thing you never know if
13 you're going to get it or not. But when you do an
14 investigation and when you're doing things for a murder case
15 you are going to do everything you can and send everything
16 off to be tested if you think there's going to be some value
17 to that evidence. Okay? Now, not all of these things -- we
18 would have been here for three months if we sent off every
19 swab. There were dozens of them. But we have to follow the
20 evidence and the facts to figure out what to do. Okay? So
21 that's what the SLED CSI did. And I've already apologized
22 to some of the other people in the courtroom, when we put
23 SLED CSI up there they have -- they take hundreds of photos.
24 They took pictures of things that I'm like: Why did they
25 even take that picture? They collected everything in the

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1 woods. I'm like: Hey, this is Chester County, people are
2 out there drinking beer, fishing, doing whatever, there's
3 going to be cans out there. We didn't have -- did the cans
4 and all of that stuff have anything to do with this murder?
5 No. That's why we don't send everything off. If I did we
6 literally would have SLED crime scene on the stand for days
7 telling you nothing of value. That's why you heard what was
8 of value in this case. You know he was 50 feet off the
9 road. So here is where I'm going to start to wrap this up,
10 and I'm just going to make sure -- yeah. Here is where I'm
11 going to wrap it up. Let's think about what the defense is
12 going to tell you and what you're going to have to believe
13 in order for you to say he wasn't there. They can't have it
14 both ways. At some point the statement -- and you heard the
15 statement yesterday, he was like: Well, I was in the truck
16 but I wasn't there whenever it happened. Okay. Well, we
17 have Tonya Estes that says that he was there when Antonio
18 was there, but he says he wasn't in the truck with Antonio.
19 So why -- and then he ends up giving the buccal swab. They
20 said: Hey, can we swab you? He's being very cooperative:
21 Yeah, sure, why not? It's because I'm in that truck all of
22 the time. Not a problem. So he gives a buccal swab. Why
23 is he so confident? Because at that point when he's
24 interviewed around 4:00 on the 28th, he had gotten that call
25 from his mama saying: Al is looking for you and Von. What

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1 y'all did? What y'all did? And according to what Von said
2 is he came up to her and said: You know what to stick to,
3 you know what to say, you tell them the truck was loaned out
4 to drug dealers. So they're interviewed separately, she
5 goes in and gets interviewed first, he goes in. He's
6 thinking she's sticking to the story so he sticks to his
7 story, but she got conviction and she realized this is the
8 time I have got to do the right thing, so unfortunately for
9 him blood was not thicker than water that day. You would
10 have to ignore everything that Tonya Estes told you about
11 seeing them together. You would have to ignore everything
12 that Von told you. You would have to ignore the fact that
13 Mary Muckenfuss led everybody to the body, to the evidence
14 that was found connecting them to the body. To believe his
15 story you would have to ignore every piece of direct
16 evidence that you've heard on that stand, or you can use
17 your common sense, put it together and know without a doubt
18 he's guilty. His own words: You can't trust a crackhead,
19 they'll do anything to get high. She must have loaned out
20 her truck to a drug dealer. She ran out of money. I stayed
21 at the crack house with my cousin and smoked crack when she
22 loaned out the vehicle. You know, my DNA is in that truck.
23 People who do crack will say anything, you can't believe
24 them. I was never in the truck with them.

25 (Part of the defendant's video interview was played.)

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1 MS. LIVELY: She must have loaned out the truck to a
2 drug dealer or something. That was their story.

3 (Part of the defendant's video interview was played.)

4 MS. LIVELY: That's all he did was smoke crack with
5 that \$100 he killed Antonio Thompson for so he could
6 continue to do whatever it took to stay high. Ladies and
7 gentlemen, I know there's a lot of information but it's
8 important. Every detail is important. Everything that you
9 heard from that witness stand was important, and I trust
10 that you're going to all go back there, look at the
11 evidence, talk about the people that you saw and heard on
12 that stand, weigh that evidence, weigh their credibility,
13 that's fine. You know, I told you ahead of time, you know,
14 these people are using crack, I get it, but here is the
15 thing, it doesn't change the fact that the only likely
16 reasonable explanation is the one that we have given you,
17 and that is that Kenneth Wherry killed Antonio Thompson with
18 that gun. And here is all you have to do, the Judge is
19 going to tell you, malice aforethought. Did he have hatred
20 or ill-will or hostility towards this person? No. But the
21 intentional doing of a wrongful act without just cause or
22 excuse with the intent to inflict injury. He was robbing
23 him. It wasn't somebody that slept with his wife, it wasn't
24 somebody that beat up his kid, it wasn't somebody who he was
25 mad at from the bar. Cold blooded. Remember that word

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1 conviction? Boy, that was powerful whenever Von was on the
2 stand, she said: I got conviction. I am asking you for
3 conviction, and convict that man for what he did to that
4 innocent person who needed a ride. He had the gun, and he
5 murdered him with no reason other than to keep getting high.
6 Thank you.

7 (Break in proceedings.)

8 MS. BOULWARE: Good morning. It has been a long week
9 for everyone, I know, a long week for the Solicitor, me, you
10 all, but it has also been a long week for Kenneth Wherry.
11 You know, I'm glad the Solicitor ended on something that she
12 did, every detail counts. Every detail does count, but I
13 think I told you at the beginning of this trial, we don't
14 have every detail. Clarence Wilks, the first witness in the
15 trial, he wasn't interviewed until last week. Imagine that.
16 Don't you think the State would have started with Mr. Wilks?
17 Why didn't they? They didn't know Mr. Wilks. They didn't
18 talk to anybody, didn't find out about him until last week,
19 so they rush over, go get a statement from him and get him
20 here to court. Mr. Wilks got up there and told what he
21 knew, which was fine, really didn't add a whole lot to the
22 case, though. I mean, he saw Mary Muckenfuss and got her in
23 touch with SRO Scott. Okay. Let's see whose next. Toni
24 Spiotta. And the Solicitor has kind of been through these
25 folks with you, so remember, she's the office manager at

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1 Executive Inn. She verified a few things. She verified
2 that Antonio Thompson and Steven Peterson each had a room on
3 February 27th of 2021. The front desk employees had
4 reported receipts for each guest. You have this, you can
5 take a look at it. The receipts include a place for the
6 address, a place for your driver's license number. I asked
7 Ms. Spiotta: Hey, why don't we have the driver's license
8 number on here since this is something that's highlighted,
9 something that seems like y'all would want? Oh, yeah, we
10 keep a hard copy of that, we absolutely do. We take that.
11 We make sure we have ID's for folks. How long did they keep
12 it, though? A year or so. About a year. There's another
13 person who didn't get talked to until a couple of weeks
14 before the trial, or a few weeks, however she put it. We
15 possibly could have gotten more information about Steven
16 Peterson, who seems to show up a whole lot in this case but
17 he sure didn't show up on that witness stand. Would a
18 current address or any information be helpful in locating
19 Steven Peterson a year ago? Might have. We don't know.
20 Don't know. Wasn't important then, wasn't important enough.
21 We will never know. We're at the end of the trial now, all
22 evidence in, no Steven Peterson. Tonya Estes. She worked
23 at the motel at the time of the shooting, doesn't work there
24 now I think is what she said. Testified that Mary
25 Muckenfuss, also known as Liz, was a nuisance, associated

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1 with drugs, drug activity, and prostitution. I don't think
2 anybody has disputed that here, the State has told you that,
3 I've told you that, she told you that, so they don't like
4 her on their property. She did see Kenneth Wherry, Liz, and
5 Antonio Thompson leave Executive Inn in the morning
6 presumably with Lavondia Wherry, because I'm assuming that's
7 the car, or the truck she got in. I don't know if anybody
8 asked Tonya Estes that, nobody asked her here. Not any kind
9 of statement. This is what is really important here.

10 Remember Mary Muckenfuss up there telling you about how she
11 gets back in the room with Ken and there was the whole thing
12 about the gloves and all of this? Tonya Estes knows when
13 Mary Muckenfuss is at her hotel, she told you that,
14 solicitor told you that. She said she never saw Kenneth
15 Wherry with Mary Muckenfuss again after that morning. But
16 she did see Mary Muckenfuss later at 1:41 p.m., which is on
17 the incident report that I believe -- I think Brandon Connor
18 wrote that but I think he had another officer with him. But
19 she contacted law enforcement, because if she wasn't on
20 trespass notice already she durn sure was going to put her
21 on right then. Who was she with? Steven Peterson. Got
22 Steven Peterson again. He answers the door, he's there.
23 When he finds out she's getting kicked out he's like:
24 You've got to go, because I bought this room and if you
25 can't be here that's your problem, not mine. When did law

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1 enforcement contact Tonya Estes for this information?
2 March 1st, 2022. That's a month ago, folks. They have had
3 this case for a year. No one else, Tonya Estes says, no one
4 else reached out before that time. They have information
5 these folks are at the Executive Inn. Why not go talk to
6 folks at the Executive Inn? Who saw who when? That's not
7 important, don't worry about that. Ms. Estes did testify
8 that there weren't any cameras at the Executive Inn at that
9 time. But what if there was? What if they needed some
10 footage to confirm some of this? Oh, wait, you know what?
11 We've already decided what story we want to believe, we
12 don't need to confirm any of this. Brandon Connor. He's
13 the deputy who responded to the call from Tonya Estes about
14 Mary Muckenfuss, 1:41 p.m. to a complaint about her being
15 there on February 27, 2021. Brandon Connor testified that
16 Muckenfuss was acting scared and that she said she went
17 through something, wouldn't tell him what, or didn't offer
18 to tell him what, he didn't ask because that's not what he
19 was there for. Don't blame him for that. Now, the body cam
20 video shows that this was briefly the case, she said that.
21 Steven Peterson answers the door, we just talked about that.
22 Now, when it comes up about her getting kicked out, oh, we
23 forget about being scared. We're going to argue with Tonya
24 Estes and the officers about whether she's on trespass
25 notice, not on trespass notice. Oh, I'm smoking in a

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1 non-smoking room, (makes a blabbering sound). I mean, she's
2 scared, she consults Google for some Bible versus. However,
3 despite consulting the church of Google she never took that
4 opportunity to seek help from law enforcement: I wasn't
5 ready. When were you going to be ready? Oh, I guess that
6 afternoon. Okay. Whatever. Body cam video was not
7 obtained until law enforcement spoke with Tonya Estes on
8 March 1st, 2022, a year later. Let's talk about Steven
9 Peterson for a second, as much as we can. We don't have
10 him. He's the missing link. She was getting a ride, she
11 being Mary Muckenfuss, getting a ride to the Executive Inn
12 to be with him because he showed her his bank account and he
13 had enough money. Her testimony is she sleeps with people
14 for money. Steven Peterson was with all three co-defendants
15 at some point on February 27, 2021. Law enforcement has had
16 this information for a year, a year. Have not located him,
17 have not interviewed him, didn't try before. Probably tried
18 within the last couple of weeks when they're rounding up all
19 of these other witnesses you saw, nowhere to be found. What
20 does he know? I mean, was he involved? You know what? We
21 don't know that. We don't have any lead investigator
22 testimony. The State didn't put their lead investigator on
23 the stand for him to either say that to the Solicitor or for
24 me to even ask him about it. So we'll never know, we won't
25 know what Steven Peterson had to do with anything, if

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1 anything. We just don't know. Details, folks, the
2 Solicitor told you that, details. Now, let's talk about one
3 of my favorite subjects, which is Lavondia Wherry and Mary
4 Muckenfuss. Boy, what a hot mess these two are. They were
5 hot messes then, they were hot messes now. I kind of like
6 to call it the tail of two crack addicts. Everybody has
7 told you that's what they are so let's go with that. Let's
8 talk about Liz's relationship with Von for a minute. So
9 here is what Mary Muckenfuss testified to. She said Von is
10 intense and mean to her, and mean to her all of the time.
11 Von denied that. Von hates her but gives her money for
12 crack. Okay. I don't know why you're giving people money
13 you hate, but all right, whatever. Mary Muckenfuss
14 testified that Von waved a gun at others to let them know
15 Liz can go wherever she pleases. I don't know why Von has
16 to tell people this, but Von can because she's got the gun
17 she was waving with at them. Was it that .357? I don't
18 know. So I ask Mary Muckenfuss, okay: So what's the deal
19 with Von and the guns? Oh, Von has guns all of the time.
20 She testified she couldn't legally have one but she
21 apparently has more than one. Okay. Muckenfuss was told to
22 stay in her place with this woman. You know, I don't know
23 what her place was supposed to be relative to Von, but
24 that's pretty controlling. Testified that Von told the
25 victim, and I won't actually say the words this time:

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1 You're going to give me my money -- or you're going to give
2 me my MF'r, right, to the victim. Now, there's some -- I
3 don't know, there's some question about when Von said this
4 to the victim. Was it when she was agreeing to go get
5 jumper cables? I don't know. We're talking about, you
6 know, victim and Von getting along great, going to get
7 jumper cables, this, that and the other, but that's what
8 Mary Muckenfuss said Von told him. Now, she further -- Mary
9 Muckenfuss further mentions the possibility of more than one
10 gun the day of the shooting. Okay? Testified Ken never
11 threatened her. Von is mean to her, though, don't forget
12 that. She also said she doesn't know who pulled the
13 trigger, she's in the floorboard, I think, I guess. She
14 previously said she doesn't know -- sorry folks, that's
15 supposed to be doesn't -- doesn't know if Ken pulled the
16 trigger and doesn't think he had a gun. Testified that
17 after the shooting Von asked Muckenfuss: Is this your first
18 time? Then testified he pulled a gun from his pocket or
19 jacket. There's a picture of that Smith and Wesson .357
20 Magnum that y'all can look at. You know what you can't do?
21 Hold the actual gun. It's not in evidence. It's a big gun,
22 folks. Then she says he pulls the gun from his pocket,
23 jacket, that went back and forth, I'm not sure, you know.
24 But if we had that gun we could tell how big it is, and if
25 we could -- but the State didn't want to put that in there,

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1 so okay. She testified that she and Ken were exempt on the
2 DNA report, except she is included as a contributor.
3 Testified that Von was helping at the car wash to wash out
4 the car. We'll get to that in a second. Von's testimony.
5 She was never mean to Mary Muckenfuss. Denied telling the
6 victim: You're going to give me my money, MF'r, right?
7 Denied ever robbing anybody. Testified that Ken grabbed the
8 gun from under the seat. All right. Let's talk about that
9 for a second. Look at Kenneth Wherry, y'all see him, he
10 ain't the smallest dude in the world. That's a small cab to
11 be in to be bending over and getting stuff from under a
12 seat, so it either came from the pocket, under the seat, I
13 don't know. You know, everybody is telling different
14 stories here. And then testified that Ken is washing the
15 truck alone. All right. That's -- that was really
16 interesting to me, that nobody can seem to figure out who
17 was doing what at the car wash. Okay. Von then testifies
18 that Mary Muckenfuss and Ken were whispering together in the
19 back seat. Mary Muckenfuss denies this, of course she does.
20 But, I mean, Von would have you think that Mary Muckenfuss
21 and Ken planned this because she's talking and laughing with
22 the victim, even though she's telling you: You're going to
23 give me my money MF'r, right. Y'all, I don't know what to
24 believe either. Von then testifies, this is one of my
25 favorite parts, that Ken gave \$100 to Mary Muckenfuss from

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1 the victim's wallet. Mary Muckenfuss says Ken must have
2 used that money for drugs. Now, I asked Von about this \$30
3 she's supposedly getting paid to go jump this guy's car off
4 or whatever, the victim, and she first says: I don't need
5 \$100, I wouldn't have gotten that money. But then when I
6 asked her about the \$30, she was doing something Christian
7 by going and helping this guy with this car that was broken
8 down. Well, then why are you going to take \$30? Because I
9 was going to get my \$30. Okay. I don't know if y'all
10 remember Rodney Owens, it's hard to remember, he barely
11 comes up in this case, but he's a very, very important link
12 in this case. Mary Muckenfuss says he's their dope dealer,
13 one of them, I guess. They went to him right after the
14 shooting. He could have verified if all three of them were
15 together right after the shooting. He's brought up by Mary
16 Muckenfuss early on in the investigation. I don't think
17 they had a name but they knew she went to somebody. Law
18 enforcement never asked his name early on in the
19 investigation, the person who could confirm that they were
20 all three together. They found out his name March 30th,
21 2022. That was last week, folks, we're in trial this week.
22 A little late for that, don't you think? What does he know?
23 Can he verify if they were all together at that point in
24 time? We don't have any testimony from the lead
25 investigator once again to either ask or answer that so

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1 we'll never know. Let's talk about the gun again for a
2 second. A .357 Smith and Wesson, that's a nice gun, it's
3 expensive. It's a large gun per Lavondia Wherry. Would not
4 fit in a pocket, she said that. She said: I can't fit it
5 under my driver's seat in the truck. Okay. I'm going to
6 have to get some water for this one.

7 (Break in the proceedings.)

8 MS. BOULWARE: Excuse me, I'm sorry about that. Let's
9 talk about these so-called murder gloves. Okay? The gloves
10 that were never mentioned in any codefendant or witness
11 interviews until Mary Muckenfuss' final interview on
12 March 30th, 2022, last week again, we're in trial this week,
13 and even that information is inconsistent. Let's see what
14 she said. First of all she's only prompted to remember
15 after she learned of DNA -- of a DNA report exempting, in
16 her words, Ken and herself in the last few weeks is when she
17 learned this. But her DNA is indicated that it might be on
18 the victim's pants pockets, you know, the victim that she
19 didn't touch. And don't forget, she denies that, denies the
20 pants part. First she says: I saw Ken with gloves on.
21 Then goes: Well, I saw Ken take the gloves off at the
22 motel. Now, I'm going to take you back to Tonya Estes
23 saying she never saw Ken Wherry and Mary Muckenfuss together
24 again that day after the morning when they all left with
25 Antonio Thompson. Finally she clarifies to us that she

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1 never actually saw Ken with gloves on and never actually saw
2 Ken take the gloves off. She only saw a pair of gloves on a
3 table in one of the motel rooms. But you know what? They
4 looked like they had to be the murder gloves. Really?
5 Lavondia Wherry has never testified that she saw Ken wearing
6 gloves then or now. Where are these gloves? No search
7 warrant was ever obtained for any property of Kenneth
8 Wherry, and I'm going to talk about that for a second.
9 There's a search warrant, that's how we got the stuff out of
10 Von's house. We got her truck, we got pictures of her house
11 and all of plants and stuff like that, because they had a
12 search warrant to get in. Well, I mean, Von has already
13 said she was there. Now, I understand getting all of this
14 evidence because they need all of this evidence. But, you
15 know, I mean, wouldn't you want to go try to find something
16 linking Kenneth Wherry to this besides Mary Muckenfuss and
17 Von Wherry saying he was there? Because that's all we have
18 here today, and y'all have seen that they ain't telling the
19 same story. You know, the State can tell you what they want
20 to, they're not telling the same story. Why is there no
21 search warrant for Ken's? I don't know. We don't have any
22 testimony from the lead investigator so we'll never know.
23 Here is a question I would like y'all to consider regarding
24 these gloves: Why go through the trouble to wear gloves
25 when you're not at all careful to leave any other evidence?

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1 Why not also get rid of the gun? Throw it in a pond. Oh,
2 clean it off at least, it's got blood all over it, and it
3 was just laid there. Get rid of clothes, your clothes,
4 whose ever, burn them, I don't know, do something. You
5 thought it through enough to put on gloves, you know, let's
6 follow through with that. Even get rid of the truck, claim
7 it's stolen, I don't know. If you're going to be the
8 mastermind of such a plan of murder that we're going to put
9 on gloves beforehand to be sure, because we thought about
10 this DNA thing, why would we not do the rest of this, or
11 something, anything, any of it? And then that goes to why
12 would you do this in front of other people, especially Mary
13 Muckenfuss? You know, if Ken was going to do this, maybe
14 Von, Von is his family, Von probably won't tell anybody, and
15 we'll get to that in a minute, too. But Mary Muckenfuss?
16 They didn't trust her, she didn't trust them. I'm sorry,
17 but if you're going to believe the gloves thing, you've got
18 to believe the rest of this was well planned out, and I
19 believe y'all can tell that it was not at all planned out.
20 Let's talk about -- a little bit more about the law
21 enforcement delayed or lack of follow-up, which I've already
22 told you about a little bit. I told you at the beginning of
23 the trial I would be telling you about it, and here it is.
24 This investigation basically was halted for a year when
25 Investigator Burch, who you saw, I believe, on the first day

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1 of testimony, declared: Oh my God, she's telling the truth,
2 about Muckenfuss. Why did she say that? Oh, because they
3 found a phone and a body. Everything she's saying must be
4 gold from here on out, let's not check any of it out. So we
5 spent a long day yesterday with SLED and forensics and their
6 assistance, so we can go through that a little bit. Agent
7 Jennifer Hunton, she's SLED CSI. She's the one who took the
8 photos, got the swabs, things like that, and her partner.
9 She was there for the whole thing she says. She testified
10 that Chester County was specifically looking for blood.
11 Okay. She took crime scene and truck photos and dozens of
12 swabs for blood from any and all information. She did a
13 thorough job, folks, and I believe y'all saw that yesterday
14 when she testified. There's a lot of stuff she did. And
15 here is just a few of the swabs she took from the truck
16 alone to assist Chester County's investigation. Window of
17 the right passenger seat. Interior of the windshield.
18 Ceiling. Front passenger running board. Rear driver's seat
19 and passenger seat door handles. They think that's blood
20 splatter on there, folks, that's why they took that picture.
21 She also documented a couple of other things. What the
22 Solicitor put into evidence were photos of bullet fragments
23 on the passenger side. Guess what? There was also bullet
24 fragment on the driver's side, which I had to enter into
25 evidence. And you guys will have all of this stuff to look

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1 at in just a little bit. Were any of these items tested or
2 analyzed? No. Why? Oh, but wait, we don't have the lead
3 investigator's testimony so we don't have anybody to ask
4 about that, we'll never know. Especially if you think about
5 the fact that there was a mention of possibly more than one
6 gun. I don't know that these little fragments, as little as
7 they are, as big as they are, if you can match those to the
8 gun: That's not my job, I don't do that. That's why SLED
9 has all of these experts and scientists and things down
10 there. Wouldn't you ask? So out of all of this, what was
11 actually tested? Catherine Leisy, the DNA analyst,
12 testified that of all the -- all of the swabs -- dozens,
13 remember the word dozens -- of all of the swabs gathered
14 only analyzed blood DNA, et cetera, for the following: Gun
15 trigger. Gun grip. Fired cartridges, and one casing from
16 the gun. Swabs from the grip cylinder and the barrel of the
17 gun. Scrapings from Antonio Thompson's blue jeans pocket.
18 The upshot of this, most of this stuff, or at least of the
19 stuff on here, is Ken is excluded. But the second takeaway
20 from this is that Mary Muckenfuss and Lavondia Wherry are
21 not excluded, particularly on the jeans pocket of the
22 victim, which both of them told y'all: I ain't never take
23 any money, I didn't do that. How many items are on the SLED
24 forensics lab custody search sheet? I think I asked Ms.
25 Leisy this question, 70. Seventy items were determined to

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1 have possible evidentiary value. Okay. Got a lot of stuff
2 there. Did SLED determine which items would have ultimate
3 evidentiary value for each case? No. That would be law
4 enforcement for the Chester County Sheriff's Office, for
5 example, the lead investigator on the case. But no, again,
6 no lead investigator testimony to explain why nothing else
7 was tested or analyzed. There could be an excellent reason
8 for that. You know what? We don't know what that reason
9 is. There could be no reason at all. He wasn't up there.
10 We will never know. Autopsy report. Dr. Rose, the
11 pathologist. She testified that the victim died of a
12 gunshot wound to the head. This is what she knows for sure,
13 she's a pathologist, she knows what kills people and what to
14 look for. Solicitor attempted to beef up this testimony by
15 giving her that scenario of who was sitting where in Von's
16 truck. Keep in mind, though, as I -- when I did a cross
17 examination of Dr. Rose, keep in mind that she cannot say
18 who was actually in the truck or when they were in there.
19 She can't even say if the victim is in the truck, let alone
20 any of defendants, particularly Ken. She doesn't know
21 anything about that scene. She had a body in front of her.
22 She might have had a little information from the beginning
23 about kind of what happened, but that's not her job to know
24 all of that. She can only speculate as to what actually
25 happened. She can only testify with reasonable certainty

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1 about the trajectory of the bullet and a possible angle.

2 All right. Ken's video statement. I like the clips the

3 Solicitor played because, well, some of that was left out.

4 Okay. The investigators do not want to believe him.

5 Absolutely. Ken laughs and says: No crack head has a gun,

6 implying they would sell it for crack. They wouldn't keep a

7 gun, that's money. Here is a question I would like you to

8 consider, so why does Von have a gun, or all of those guns,

9 or whatever? Von told you, she didn't need any money, she

10 has a big bank account with disability benefits. She ain't

11 got to sell guns on the street. But you know what? The

12 investigators are perfectly fine with co-defendant's

13 statements with many details that changed, not only in the

14 same early interviews but even on this witness stand. And

15 keep in mind, investigators spoke with Von and Muckenfuss

16 before ever talking to Ken. When what Ken tells them

17 doesn't fit the narrative they've constructed, the story

18 they've already got going on, because she's telling the

19 truth, y'all, Muckenfuss, they shut down the interview with

20 Ken. They get up and walk out, despite the fact that Ken is

21 pleading with them to listen to him and is ready to talk,

22 and they do no further investigation for a year. We

23 already -- she's telling the truth. Takeaways. Is Ken even

24 there? The only evidence you have of Ken's presence at that

25 scene are the inconsistent and ever changing statements of

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1 his two co-defendants, Lavondia Wherry and Mary Muckenfuss.
2 Sure, you have some folks who saw them all together earlier
3 in the day, but you also have those same folks saying they
4 didn't see them -- never saw them together again. In fact,
5 we saw Mary Muckenfuss with this Steven Peterson guy that
6 nobody seems to know where he is or what he's got to
7 contribute to the whole thing. Now, Lavondia Wherry, Mary
8 Muckenfuss, both of whom are also charged with a crime in
9 this case. No forensic evidence linking Ken to the murder.
10 Now, y'all do watch TV CSI, or if you do you know that's
11 usually a huge deal, that's going to close the case right
12 there. We've got the forensic evidence, that's it. We
13 ain't got none. Now, I just showed you that picture of the
14 back driver's seat, the driver's side seat, which you'll
15 have in evidence, you can take it back to the room and look
16 at it all you want to. SLED photographed possible blood
17 splatter on the driver's back side of the seat where Ken was
18 supposedly sitting. The blood was never tested. Why?
19 Well, that could be the victim's blood, it probably is. Why
20 not? Well, you know, it would be hard for investigators to
21 explain if there might be a blood splatter where Ken was
22 said to be sitting in the truck, so let's don't do that.
23 Remember, Ken, he's a big dude, a large individual sitting
24 in the small size truck cab backseat allegedly. DNA
25 results. Excluded. Who is included in the DNA report as

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1 having contributed? Well, we had a -- from the victim, we
2 had Lavondia Wherry, the codefendant, Mary Muckenfuss, the
3 codefendant. Two unidentified, unrelated individuals. Huh,
4 interesting. Footprints at the scene? I don't know. But
5 if there were it's hard to see. Solicitor wants you to pay
6 attention to the jumper cables in these pictures, but I ask
7 you to pay attention to the fact there's a pair of boots in
8 the back of this truck, which with got retrieved. They're
9 Von's boots. We know she was there, she told us that. Why
10 not get something of Ken's? Go look for something with mud
11 on it, go to his mama's house, I don't know. He may not
12 have lived anywhere permanent, but you know who his people
13 are. No search warrant obtained for any of Ken's items.
14 Ballistics. The bullet fragments found at the scene. No
15 testing of these to possibly rule out any other gun. Like I
16 said, I don't know if that was even possible. I think y'all
17 have the bullet fragment here you can look at, some of you
18 may know more about that than I do. We didn't even want to
19 find out. Lavondia Wherry and Mary Muckenfuss. Here is a
20 question I would like y'all to consider, because this is the
21 big question, why would they even put Ken in this? Why
22 would they get up there and lie about this? I don't know.
23 Ken was with them earlier that day. Ken appears to have no
24 money, no car, is getting rides, so basically he's useless
25 to another crackhead. In fact, he's probably a drain on his

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1 buddies. I mean, he's this dude who rides around with you
2 and he's smoking crack. You've heard testimony that he
3 sometimes asked Von for money to buy crack. Again, Mary
4 Muckenfuss. Von hates her but gives her money and drugs.
5 The only time a gun is ever put in Ken's hand, which is
6 Von's gun by the way, was by Von and Muckenfuss when they
7 realized they needed him to be the shooter. Hey, Von also
8 received a personal recognizance bond from the State in
9 return for her cooperation, or future cooperation. She's
10 been out of jail for about a year now. I asked Von: Were
11 you going to have to pay any money to get out of jail?
12 Otherwise, you heard the testimony, Von has guns everywhere.
13 Von is protective of Liz, because we know that because she
14 waves guns at others to tell them Muckenfuss can go anywhere
15 she wants. Gives her rides to motels to go meet men to
16 sleep with them for money. Kind of what I gathered from
17 that was Von and Liz appear to have kind of a codependent
18 relationship. I don't know what it is one is getting from
19 the other, I kind of know what, but you know why I don't
20 know and why you don't know? This wasn't investigated.
21 They didn't look into what Von and Mary Muckenfuss had to do
22 with each other than, oh, they just happened to be riding
23 around together smoking crack. Okay. Why? Why wasn't it?
24 I would like to have known the answer to that question, I
25 bet y'all would, too. Oh, wait, the lead investigator

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1 wasn't called by the State so we couldn't ask him, so --
2 okay. Reasonable doubt. We're getting to the end, folks, I
3 promise. The Judge is going to tell you a lot more about
4 that and he's going to tell you the law on it. I'm going to
5 kind of tell you my version of it a little bit or how this
6 fits into that. Folks, their lack of investigation leaves
7 plenty of room for reasonable doubt here. The State has got
8 to prove its case. There's no forensic evidence for Ken.
9 Only five items tested. If we really wanted to nail Kenneth
10 Wherry, how come we didn't go follow through with all of
11 this stuff? So the only evidence we have again, two
12 witnesses who each are co-defendants in this case, which you
13 get to judge their credibility. The Judge will tell you
14 about that, too, credibility being like I told you at the
15 beginning, is whether you believe all of what they're
16 saying, some what they're saying, or none of what they're
17 saying. That's entirely up to you all. Inconsistent
18 witness statements, which contradict each other and point to
19 each other a little bit, but mostly Ken to help extricate
20 themselves. More reasonable doubt here. Delayed
21 investigation and missed opportunities on the part of law
22 enforcement by not following up with obvious leads and
23 statement inconsistencies, such as locating Steven Peterson.
24 We've had a year to do that, still hadn't done it, but we
25 could have done that at anytime. Asking Mary Muckenfuss the

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1 name of the dope dealer who could possible testify as to if
2 they were all seen together immediately after the murder.
3 Not obtaining a search warrant for Ken's residence or any
4 belongings for possible analysis. Not following up with
5 Mr. Wilks until a week before the trial. Not following up
6 with Toni Spiotta until a few weeks before the trial. Not
7 following up with Tonya Estes until a few weeks before the
8 trial. This one, I think, is great that we didn't do this.
9 I don't know why we would not do this, asking for cameras or
10 surveillance video from or around Columbia -- the Columbia
11 street car wash to confirm who was there, because everybody
12 seems to have a different story about what was going on at
13 the car wash. You've got an auto parts store across the
14 street, you've got the car wash itself, I think there's a
15 couple of other buildings around there, nobody had cameras?
16 Maybe they didn't, I don't know, you don't know either.
17 Conducting a new interview with new and important
18 information for Mary Muckenfuss just last week that could no
19 longer be verified. Oh, he had gloves on. It's a year
20 later. She didn't mention that the first time: Oh, I
21 forgot. But you know what reminded her? Got that DNA
22 report. And what is reasonable doubt? My kind of shortened
23 definition is it's no other reasonable explanation other
24 than what the State is alleging that Kenneth Wherry shot and
25 killed Antonio Thompson. Well, there's plenty of other

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1 possible explanations, but law enforcement chose not to go
2 down those roads. Why? Oh yeah, it doesn't fit the
3 narrative that they chose to believe in the first 24 hours
4 on this case, and they get to close their case, they got a
5 guy in lockup for murder. Good deal. Oh my God, she's
6 telling the truth. Not long after they found that body
7 was -- or before, I believe, is when they found the phone
8 did Investigator Burch say. However, the State didn't call
9 the lead investigator to the stand to explain any kind of
10 reasoning behind that. Folks, the bottom line in this whole
11 case is that law enforcement cheated you all, and cheated
12 Kenneth Wherry and the victim's family out of a full
13 investigation and evidence on a murder case, which is one of
14 the most serious charges you can level at somebody. Why?
15 Other than being able to quickly close their own file we'll
16 never know. And finally we got to the end, and with all of
17 that into consideration I would ask you folks to find
18 Kenneth Wherry not guilty. I think there's plenty of
19 reasonable doubt here to get to that conclusion. Again, I
20 thank you for your service and I thank you for sitting here
21 through these four days. It's been a long week for
22 everybody and you've got a job ahead of you as well, but
23 thank you very much, and good luck the rest of the week.

24 MS. LIVELY: Brief reply, Your Honor? They didn't
25 think they were going to get caught, that's why they didn't

CLOSING ARGUMENTS

1 throw the gun into the pond or lake. And here's the thing,
2 whenever we read out the witness list for the State,
3 Investigator Crockett has been sitting here all week. You
4 heard from Investigator Ricky Burch. If you want to blame
5 someone for not calling the lead investigator who was there
6 for everything Ricky Burch who was on the stand and was able
7 to testify and be questioned by the defense, cross examined
8 by them about every single step and what happened, sure,
9 blame it on me. Don't blame it on the detective. Because
10 remember whenever I told you it was CSI, didn't want to keep
11 going over and over and over stuff that I knew was already
12 going to come out, I don't want to be duplicative. I'm not
13 cheating anybody of anything. You heard everything you
14 needed to hear when it came to what the investigators did
15 because Ricky Burch was on that stand. I could put up Telly
16 Crockett, sure, you could hear every single thing that Ricky
17 Burch just told you. And, oh, I'm sure this is going to
18 surprise you, ladies and gentlemen, crackheads don't like to
19 be talked to and asked whether or not they're drug dealers
20 providing drugs to people. They don't want to talk to the
21 police. They don't. And here is another thing, until we
22 walk into a courtroom and bring a case in front of each and
23 every person who is going to make a decision in a case, that
24 case is not over until you say it's over. I tell law
25 enforcement we are going to tie up whatever loose ends, if

CLOSING ARGUMENTS

1 there are people that haven't been talked to you're going to
2 talk to them. That's why we have an investigator in our
3 office. If there's things that we need to follow-up on
4 because we're going to give you every single thing you need
5 to make the right decision, and that's what was done in this
6 case. So yeah, we were talking to people even up until last
7 week. Why? Because you need to know everything that we
8 find out. Yes. Tonya Estes was not talked to until a few
9 weeks ago. But guess what? Does it change the fact she was
10 there and what she saw? And guess what else we were able to
11 document? Exactly what we documented, and that was she
12 called that day, Mary Muckenfuss was there, it all fits,
13 ladies and gentlemen. The bottom line is this: Yes, there
14 is always more that could be done, absolutely. But does it
15 add anything to what is already there plain and simple from
16 that stand to tell you what happened on that day, what makes
17 sense and who was there? You have every single piece. And
18 whenever the defense wants to come to you and they want to
19 attack on things like, well, why wasn't the lead
20 investigator called? Why weren't all of these other things
21 done? You can ask that in every single case. But each and
22 every one of you has every piece of information you need to
23 make a decision, and that decision is that he is guilty of
24 murder. And you're going to have all of these items. Oh,
25 and look at this, this is a pair of gloves. No, it's not

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1 murder gloves. But the reason I'm going to show this to you
2 right now, which is in evidence, this was actually Antonio
3 Thompson's gloves. So is it so crazy that somebody would be
4 wearing gloves in February in the winter? No. But also
5 remember, that's not even necessarily why evidence may or
6 may not be present because we have the experts tell you.
7 The bottom line, ladies and gentlemen, is what I told you in
8 the beginning, and this is the last thing I'm going to say,
9 we had to rely on crackheads and testimony to even find a
10 body in this case, and whether you like it or not when
11 you're a crackhead sometimes your memory is not good, so
12 yeah, there may be some inconsistencies. But guess what?
13 It's the only overall story that makes sense and gets us to
14 the end. He is guilty, ladies and gentlemen. Thank you.

15 THE COURT: Okay. The next phase of the case is
16 charging the law. Is everybody okay? All right. Madam
17 Forelady and ladies and gentlemen of the jury, it's been my
18 duty as the trial judge to charge you the law in the case.
19 I want to thank Counsel for their presentation in
20 representing their respective interests in the case. I
21 charge you at this time, it is your duty as jurors to accept
22 and apply the law as the Court will state it to you. As
23 jurors it is your exclusive duty to decide all of the issues
24 of fact in this case, and for that purpose to determine the
25 affect, the value, and the weight of the evidence. Both the

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1 State and the defendant have a right to expect that you will
2 conscientiously consider and evaluate the evidence, and
3 apply the law in the case thereto, to the end that both the
4 State of South Carolina and the defendant will receive and
5 obtain a fair and impartial trial in this case. And when I
6 use the word defendant I'm referring to Mr. Kenneth Tyrone
7 Wherry. The State of South Carolina by the bills of
8 indictment has charged the defendant with the offenses of
9 murder and possession or display of a firearm during the
10 commission of a violent crime. To these charges and to the
11 indictments the defendant has entered pleas of not guilty.
12 A plea of not guilty by a defendant places the burden of
13 proof on the State to prove by evidence the guilt of the
14 defendant beyond a reasonable doubt before you, the jury,
15 can find a defendant guilty. What is a reasonable doubt?
16 As I said, the government, the State, has the burden of
17 proving the defendant guilty beyond a reasonable doubt.
18 Some of you may have served as jurors in civil cases where
19 you were told that it is only necessary to prove that a fact
20 is more likely true than not true. In criminal cases the
21 government's proof must be more powerful than that, it must
22 be beyond a reasonable doubt. Proof beyond a reasonable
23 doubt is proof that leaves you firmly convinced of the
24 defendant's guilt. There are very few things in this world
25 that we know with absolute certainty. In criminal cases the

JURY CHARGE

1 law does not require proof that overcomes every possible
2 doubt. If based on your consideration of the evidence you
3 are firmly convinced that the defendant is guilty of the
4 crime charged, you must find him guilty. If on the other
5 hand you think there is a real possibility that he is not
6 guilty, you must give him the benefit of the doubt and find
7 him not guilty. A defendant in any criminal case is
8 presumed in law innocent of the charges in an indictment.
9 It is a cardinal fundamental rule of the law of evidence
10 that a defendant, irrespective of the enormity of the charge
11 against him, will always be presumed innocent of the crime
12 for which he is indicted unless and until the guilt of the
13 defendant has been proved by evidence that satisfies you,
14 the jury, of his guilt beyond a reasonable doubt. The
15 presumption of innocence is not a mere legal theory, it's
16 not just a legal phrase, the presumption of innocence is a
17 substantial right to which ever accused is entitled. Our
18 supreme court has declared that presumption of innocence is
19 like a robe of righteousness placed about the shoulders of
20 the defendant, and it remains with him and assigns him to
21 that class of innocent until that presumptive robe of
22 righteousness has been stripped of his person by evidence
23 satisfying you, the jury, of the guilt of the defendant
24 beyond a reasonable doubt. The arraignment and appearance
25 in this court -- the defendant is presumed innocent, and

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1 that innocence -- presumptive innocence continues with the
2 defendant throughout every stage of the trial, and it
3 continues with the defendant after you retire to the jury
4 room to deliberate your verdict. The presumption of
5 innocence continues in the existence to the benefit of a
6 defendant until you, the jury, reach the conclusion that the
7 State has proved the guilt of the defendant beyond a
8 reasonable doubt. The State is not required to prove the
9 guilt of the defendant beyond all doubt, or beyond every
10 doubt but, beyond a reasonable doubt. Now, I charge you
11 that the defendant is entitled to every reasonable doubt
12 arising in the whole case. If upon any issue of fact
13 essential to conviction and verdict of guilty you have a
14 reasonable doubt as to how that issue should be resolved, it
15 would be your duty to resolve that reasonable doubt in favor
16 of the defendant. A defendant is not required to prove his
17 innocence, but the State is required in law to prove every
18 essential element of the offense charged against the
19 defendant by evidence that satisfies you, the jury, of the
20 guilt of the defendant beyond a reasonable doubt before you
21 can convict the defendant and find him guilty. If then upon
22 the whole case you have a reasonable doubt as to the guilt
23 or the innocence of the defendant, he is entitled to that
24 reasonable doubt, and would be entitled to an acquittal and
25 a verdict of not guilty. But on the other hand, if upon the

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1 whole case you find that the State has proved by evidence
2 that satisfies you, the jury, of the guilt of the defendant
3 beyond a reasonable doubt, then in such circumstance it
4 would equally be your duty to convict the defendant and find
5 him guilty. I instruct you that the indictments in this
6 case, which you will have a little later on, are not
7 evidence, and they cannot be considered by the jury as
8 evidence in the case. An indictment is simply the formal
9 written instruments which contain the charges against a
10 defendant, and it serves as a formal document by which the
11 case is processed into the court. Now, during a trial each
12 of us, you and I, have certain duties to perform. As the
13 trial judge it is my responsibility to preside over the
14 trial of this case, and I also have the duty to rule upon or
15 pass upon the admissibility of the evidence offered during
16 the progress of the trial. You are to consider only the
17 competent evidence before you, and you are to disregard and
18 disabuse from your mind any testimony ordered stricken from
19 the record in this case during the progress of the trial, if
20 there be any, and you are to consider only the evidence
21 which has been presented from this witness stand together
22 with any exhibits that have been admitted into the record of
23 this case, and any stipulations of counsel made into the
24 record, if there be any. Now, I have an additional duty to
25 charge you the applicable law of the case. As the Presiding

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1 Judge I'm the sole Judge of the law of this case, and it is
2 your duty to accept and apply the law as I now say it to
3 you. If you have a preconceived idea as to what the law is
4 or what the law ought to be in this case and it should not
5 agree with what I tell you the law is, you are obligated
6 under your oath to abandon that preconception on your part,
7 because you are sworn to accept the law as I precisely state
8 it to you. Now, in every case tried in this court before a
9 jury, the jury becomes the sole and exclusive judge of the
10 facts of the case. You, the jury, are the judge of the
11 facts in the case, and the Court is the judge of the law in
12 the case. The Constitution of this State has declared that
13 a trial judge shall not intimate, state, comment upon or
14 make any statement to the trial jury about the facts in the
15 case. Since you are the sole judge of the facts in the case
16 you are not to infer from anything that I've said during the
17 province of this trial or in the ruling upon the
18 admissibility of evidence or otherwise, or anything that I
19 say during the course of this charge to you that I have an
20 opinion about the facts in the case. The law does not
21 permit me to have an opinion about the facts in the case,
22 that is a matter solely for you, the jury, to determine. As
23 jurors it is your duty to determine, as I stated to you, the
24 affect, the value, and the weight of the evidence presented
25 during the course of this trial. Necessarily then you must

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1 assess the credibility of the witnesses who have testified
2 in this case. Credibility is simply a legalistic term,
3 which means believability. I charge you that in determining
4 the question of the credibility or believability of the
5 witnesses, you may believe one witness as against several
6 witnesses, or several witnesses against one witness. You
7 may believe a part of the testimony of a witness and reject
8 the remaining part of the testimony of that same witness.
9 You may believe the testimony of a witness in its entirety
10 or reject the testimony of a witness in its entirety. You
11 may consider whether any witness has exhibited any interest,
12 any bias, or any prejudice in the case. You may consider
13 the demeanor of the witness and the appearance of the
14 witness from the witness stand. You may consider the
15 opportunity for knowledge concerning those things about
16 which a witness testified. But in doing so, in exercising
17 your mental processes, the law simply states or requires
18 that you exercise your good judgment, your common sense,
19 your sense of logic and reason, and your experiences in
20 life, you then apply those attributes of ability to the
21 evidence, and determine the weight of the evidence to the
22 state of facts as determined by you, you take and apply the
23 law as I state it to you, and thus arrive at a verdict in
24 the case. Now, in this particular case we had expert
25 testimony. In considering the opinion of an expert witness

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1 that has been admitted in this case you should consider the
2 factual evidence first. An expert may base his or her
3 opinion upon the factual evidence presented at trial.
4 Alternatively the expert may base the opinion upon facts and
5 data not in the evidence. You may consider the expert
6 opinion if you find that that testimony is based upon facts
7 that are reasonably relied upon by experts in that
8 particular field. You may consider, or you must consider
9 expert testimony in the same manner as you do any other
10 testimony, and give it such weight as you may believe it to
11 be entitled when considered with all of the other evidence
12 in the case. Such testimony is given for the purpose of
13 helping you, the jury, understand the evidence and not for
14 the purpose of controlling your judgment. The value of it
15 does not depend upon the skill and the knowledge professed
16 by the expert, but rather upon the skill and knowledge he or
17 she actually possesses. It is for you to judge whether he
18 or she possesses such knowledge. In this regard you may
19 consider his training, experience, ability to communicate
20 his or her ideas, the logic of their opinion, the factual
21 support of their opinion and all other factors as you would
22 judge and weigh the testimony of other witnesses. The value
23 and the affect of expert testimony is a matter solely to be
24 estimated by you, the jury. No mere opinion can be accepted
25 as in and of itself truthful or reliable, but must be

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1 weighed by you and convince your judgments beyond a
2 reasonable doubt and with the same force and effect as any
3 other fact proved in this case before you can rely upon it
4 as a basis of conviction. You have heard the testimony of
5 witnesses who have special knowledge, skill, experience,
6 training or education in a particular field, and who have
7 given their opinion as an expert into matters to which they
8 are skilled. In determining the weight to be given such
9 opinion should consider the qualifications and credibility
10 of the expert and the reasons given for their opinion. You
11 are not bound by such opinion. Give it the weight, if any,
12 to which you deem it entitled. Let me speak with you about
13 circumstantial and direct evidence. There are two types of
14 evidence which are generally presented during a trial:
15 Direct evidence and circumstantial evidence. Direct
16 evidence directly proves the existence of a fact and does
17 not require deduction. Circumstantial evidence is proof of
18 a chain of facts and circumstances indicating the existence
19 of a fact. Crimes may be proven by circumstantial evidence.
20 The law makes no distinction between the weight or value to
21 be given to either direct or circumstantial evidence.
22 However, to the extent the State relies on circumstantial
23 evidence, all of the circumstances must be consistent with
24 each other, and when taken together point conclusively to
25 the guilt of the accused beyond a reasonable doubt. If

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1 these circumstances merely portray the defendant's behavior
2 as suspicious, the proof has failed. The State has the
3 burden of proving the defendant guilty beyond a reasonable
4 doubt. The burden rests with the State regardless of
5 whether the State relies on direct evidence, circumstantial
6 evidence, or some combination of the two. I instruct you
7 now and emphasize to you that the election of a defendant in
8 the trial of a criminal case of not testifying on his own
9 behalf is not a factor to be considered by you in any way in
10 your deliberation and in your consideration on the question
11 of the guilt or the innocence of an accused. It must not be
12 considered by you in any manner whatsoever against the
13 defendant or mitigate against him in any respect whatsoever.
14 A defendant has a constitutional right to remain silent, and
15 the assertion of such constitutional right cannot be and
16 must not be considered by you in your deliberations. Under
17 your oath you are to reach no inference and draw no
18 conclusion whatsoever from the fact that a defendant in a
19 case did not himself testify. All right. I'll speak with
20 you about the indictments. I'll charge you from Section
21 16-3-10 of the Code of Laws of the State of South Carolina
22 which states murder is a killing of any person with malice
23 aforethought either expressed or implied. I point out to
24 you that inferred also means the same thing as implied. All
25 right. As I said, murder is the unlawful killing of any

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1 person with malice aforethought, either express or implied.
2 Hence, in order to convict one of murder the State must
3 not -- must not only prove the killing of a deceased by the
4 defendant, but that it was done with malice aforethought.
5 Such proof must be beyond a reasonable doubt. Malice
6 aforethought is an essential element in the crime of murder.
7 Now, what is malice? Malice is defined in the law of
8 homicide as a term of art. Malice does not necessarily mean
9 an actual intent to kill, it is a technical term importing
10 wickedness and excluding just cause or legal excuse. It is
11 something which springs from wickedness, from depravity,
12 from a depraved spirit, from a heart devoid of social duty
13 and fatally bent on mischief. The words express or inferred
14 malice do not mean different kinds of malice, but merely the
15 manner in which the only kind of malice known to the law may
16 be shown to exist, that is to say either by direct evidence
17 or by inference. Malice may be expressed as where previous
18 threats of vengeance or lying in wait or other circumstances
19 so direct -- show directly that an intent to kill was
20 entertained. Malice may be inferred where, though no
21 expressed intent to kill is proved by direct evidence, it
22 may be inferred from the facts and circumstances which are
23 proved. Malice may be inferred from the willful,
24 deliberate, and intentional doing of an unlawful act without
25 just cause or legal excuse. In other words, in its general

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1 significance, malice means the doing of a wrongful act
2 intentionally without justification or legal excuse. But
3 even if facts proved are sufficient to raise an inference of
4 malice, this inference -- (inaudible. Someone is coughing
5 in the audience) -- evidentiary fact would be taken into
6 consideration by you, the jury, along with all of the other
7 evidence in the case that you may give it such weight as you
8 determine it should receive as to whether or not malice has
9 been proved beyond a reasonable doubt. Ladies and
10 gentlemen, that there must be malice aforethought, while the
11 law does not require that malice shall exist for any
12 particular length of time before the commission of the act,
13 it must be aforethought. There must be a combination of the
14 previous evil intent and the act producing the fatal result.
15 The State is not required to prove a motive for homicide.
16 I'm now going to charge you from 16-23-490 of our Code of
17 Laws in the State of South Carolina. That section makes it
18 illegal to possess a firearm, or visibly display what
19 appeared to be a firearm during the commission of a crime.
20 Section 16-1-60 provides a violent crime includes the
21 offense of murder. For you to find the defendant guilty of
22 this separate statutory offense of possessing a firearm
23 during a violent crime, you must first find the defendant
24 guilty of the violent crime. If you find the defendant
25 guilty of murder then you must determine whether the State

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1 has proved beyond a reasonable doubt that the defendant was
2 in possession of the firearm, or visibly displayed what
3 appeared to be a firearm during the commission of the
4 murder. As used in Section 16-23-490 of the South Carolina
5 Code a firearm was defined as any machine gun, automatic
6 rifle, revolver, pistol, or any weapon which will or is
7 designed to or may be readily converted to expel a
8 projectile. Let me speak to you about the hand of one is
9 the hand of all. If a crime is committed by two or more
10 persons who are acting together in the commission of that
11 offense, the act of one is the act of all. This is true if
12 there are two people or more than two involved in the act.
13 Two or more than two people can be guilty of killing another
14 when only one of the persons fired the shot and committed
15 the act that caused death. If two or more people are
16 together, acting together, assisting each other in the
17 commission of an offense, the law says that under these
18 circumstances the act of one is the act of all. The hand of
19 one is the hand of all. I charge you that voluntary
20 drunkenness or intoxication induced by alcohol, drugs, or
21 some other like substance is no excuse for or a defense to
22 the commission of a crime, regardless or whether the
23 requisite intent be general or specific where it has not
24 produced permanent insanity. I charge you that if one
25 voluntarily consumes alcohol, drugs, or other like

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1 substances and becomes intoxicated of whatever degree, and
2 if while in that condition commits an act which would be a
3 crime if it had been committed by a sober person, the fact
4 of intoxication would not relieve the intoxicated person of
5 responsibility if the intoxicated person was not permanently
6 insane at the time. Ladies and gentlemen of the jury, you
7 are not partisans or advocates for the State of South
8 Carolina or for the defendant. You do not serve as jurors
9 to reward friends or punish enemies, obviously such a
10 perverted system of justice would be intolerable in our
11 society. You have been selected by both the State and
12 defendant as fair and impartial jurors. It is your duty
13 then by your joint deliberations to determine the facts in
14 this case, giving to the defendant the benefit of every
15 reasonable doubt of each and every issue, then to the facts
16 which you determine you then take and apply the law, which
17 has been given to you by this Court, and thus arrive at a
18 verdict. When you have accomplished these responsibilities
19 you will have satisfied your oath as jurors and you will
20 have discharged your duty to this Court. I'm going to speak
21 to you now about the forms of the verdict in this case. If
22 the State on these indictments has failed to prove the guilt
23 of the defendant beyond a reasonable doubt, your verdict
24 would be two words: Not guilty. If the State has proved
25 the guilt of the defendant beyond a reasonable doubt, your

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1 verdict will be one word: Guilty. The verdicts that you
2 render in the case must be the verdict of each and every
3 juror, and it must be a unanimous verdict. All 12
4 deliberating jurors must agree on the verdict which you
5 authorize Madam Forelady to write for the jury. Madam
6 Forelady, ladies and gentlemen of the jury, on these
7 indictments, on the back side in the left bottom corner you
8 see -- you will see the word verdict. Madam Forelady, when
9 the jury has reached verdicts it will be your duty to
10 write-in the verdict that is reached and sign your name and
11 date it, knock on the door and let the Court know that you
12 have reached a verdict. Once again, I will remind you on
13 the possession of a firearm during the commission of a
14 violent crime, you do not find a guilty verdict on that
15 unless you first find guilty on the lead charge of murder.
16 All right. Before I send you back I need to talk with you
17 just a little bit, and Madam Forelady, this applies to
18 deliberations. If you go back, once we send the indictments
19 back to you along with the exhibits, and right off the bat
20 you have a juror who refuses to deliberate, for example
21 saying: I'm not deliberating this case period, something to
22 that effect, you will immediately notify the bailiff who
23 will come in and let me know, and I will take the measures.
24 That's why we have alternate jurors. That very seldom
25 happens but it has happened. Once you begin your

1 deliberations if you need to take a break and somebody needs
2 to step outside for -- to take a smoke or a restroom break,
3 please cease your deliberations until you have all 12 back.
4 Okay? And I believe lunch may be here? Madam Clerk has
5 graciously arranged lunch for you so you can go ahead and
6 step back for that. I need the security and bailiff staff
7 to make sure we have an appropriate room for the alternate
8 jurors. As y'all probably realized, you know, the reason
9 for alternate jurors is to step in and serve if somebody
10 becomes ill or incapacitated you'll available. So the
11 bailiff staff will take care of that. All right. Don't
12 begin your deliberations until Madam Clerk and the court
13 reporter step back with all of these exhibits. I've got to
14 get the attorneys to check off on all of these, and once
15 they step back and hand you these verdict forms, along with
16 the exhibits, you may begin your deliberations at that time.
17 All right. If you all will step back, and I need the two
18 alternates in another room.

19 (The jury left the courtroom.)

20 THE COURT: The jury is clear. Anything on the record
21 from the State?

22 MS. LIVELY: Not from the State, Your Honor.

23 THE COURT: From the defense?

24 MS. BOULWARE: No, Your Honor.

25 THE COURT: All right. I want to take the time to

1 thank y'all so much for your professionalism. It always
2 makes my job so much easier when I've got excellent
3 attorneys in the case, and I appreciate both of you looking
4 after the interests of your respective clients, but also
5 being able to work together and get this case presented.
6 You all presented an orderly case and completed as far as
7 everything that we had to do from opening statements until
8 this point professionally could be done. This case in a lot
9 of other places could have gone on for a week and a half or
10 more, so y'all did a good job in getting it together, and I
11 sincerely thank you for that.

12 MS. LIVELY: Thank you, Your Honor.

13 MS. BOULWARE: Thank you.

14 THE COURT: I need y'all to check off on these exhibits
15 and send them back.

16 (Break in proceedings.)

17 (The exhibits and verdict form were sent to the jury

18 And they began deliberations.)

19 THE COURT: The jury has sent a letter requesting to
20 hear the testimony of Mary Muckenfuss and Lavondia Wherry.
21 All right. Let's bring the jury in.

22 (The jury returned to the courtroom.)

23 THE COURT: Ladies and gentlemen, we have that
24 testimony cued up.

25 (A portion of the testimony of Lavondia Wherry was

JURY VERDICT

1 Played.)

2 (A portion of the testimony of Mary Muckenfuss was

3 Played.)

4 THE COURT: All right. Y'all can resume your
5 deliberations.

6 (The jury left the courtroom and resumed
7 Deliberations.)

8 (The alternate jurors were dismissed.)

9 THE COURT: All right. Anything for the record from
10 the State?

11 MS. LIVELY: Not from the State.

12 THE COURT: The jury said they've reached a verdict.
13 Have we got everybody? All right. While they're coming in
14 I will remind everybody, please control your emotions. If
15 you feel like whatever the verdict may be if you can't
16 control your emotions you need to step outside. Okay? We
17 don't want any disturbance.

18 (The jury returned to the courtroom.)

19 THE COURT: Madam Forelady, has the jury reached a
20 verdict?

21 THE JUROR: Yes, sir.

22 THE COURT: If you will hand it up to Madam Clerk.

23 (The document was handed to the clerk. The clerk then
24 Handed the document to the Judge.)

25 THE COURT: All right. Signed and dated. Madam Clerk,

SENTENCING HEARING

1 you may publish the verdict.

2 THE CLERK: Your Honor, this is case 2021-GS-12-364,
3 the State versus Kenneth Tyrone Wherry. We, the jury, find
4 the defendant, guilty. Case of 2021-GS-12-449, State versus
5 Kenneth Tyrone Wherry, the verdict is guilty. If this is
6 your verdict so say you all by the raising of your right
7 hand. All of the jurors raised their right hand.

8 THE COURT: All right. Anything further for the jury
9 from the State or the defense?

10 MS. LIVELY: Not from the State, Your Honor.

11 MS. BOULWARE: Not from the defense.

12 (The jury was excused.)

13 THE COURT: All right. All of the jurors have cleared.
14 Usually you'll have one or two that want to stay. It has
15 been a long week for them. All right. We'll move on to
16 sentencing. I need the sheriff to please cuff the
17 defendant.

18 MS. BOULWARE: Your Honor, I would like to make a
19 motion for a new trial.

20 THE COURT: Okay.

21 MS. BOULWARE: Okay. I would like to make a motion for
22 a new trial and ask Your Honor to set aside the verdict.
23 Again, it's basically the same as a directed verdict
24 argument. I believe we have witnesses who had inconsistent
25 testimony and in my opinion were not very credible from the

SENTENCING HEARING

1 stand and we would just ask for a new trial.

2 THE COURT: What saith the State?

3 MS. LIVELY: Your Honor, I believe that the jury's
4 verdict truly does speak the truth in this particular case.
5 There was direct evidence and compelling evidence to support
6 their verdict.

7 THE COURT: I'm going to have to deny that motion and
8 let the jury verdict stand.

9 MS. BOULWARE: Thank you, Your Honor.

10 MS. LIVELY: Your Honor, I have the sentence sheets
11 here, I'm signing them. If I may approach. This is the
12 sheet for both charges. And I know that Ms. Thompson, which
13 is Antonio Thompson's mother, is here and does wish to make
14 a statement at the appropriate time. At this time, Your
15 Honor, I believe the Court would like for me to read out his
16 prior record, or how would you like to proceed?

17 THE COURT: I need you to sign this. It will be left
18 up to him if he wants to sign it.

19 MS. BOULWARE: Yes, sir.

20 MR. FRICK: Judge, we as a practice just don't do that.

21 THE COURT: Oh, okay. I fully understand. All right.
22 Solicitor?

23 MS. LIVELY: Yes, sir, Your Honor. The prior record
24 for this defendant, it goes back to 1994 but I'm just going
25 to get to the more recent stuff. He actually has a -- we've

SENTENCING HEARING

1 got breach of trust with fraudulent intent from 2003. 2004,
2 false information, public disorderly conduct, receiving
3 stolen goods, failure to stop for a blue light, grand
4 larceny. He had a probation violation in 2005. 2007, grand
5 larceny greater than \$5,000. 2007, there was some type of a
6 fugitive matter in the State of North Carolina. We were
7 never able to get any conviction on that so I should have
8 actually marked that off, I apologize. 2009, grand larceny
9 greater than 5,000, he actually had four years active on
10 that sentence. In 2011 he actually picked up a federal
11 charge for a felon in possession of a firearm. And then in
12 2015 U.S. Probation Supervised Release revoked him for
13 unlawful transport of firearms and he got 14 months for
14 that. He also had a 2018 breach of trust. And then he had
15 a 2019 federal probation violation again, 12 months active
16 on that particular sentence.

17 THE COURT: Thank you. All right. Let me hear from
18 the defense, then we'll come back to the victim's family.

19 MS. BOULWARE: Thank you, Judge. Mr. Wherry is 48
20 years old. He's been in the jail since February 28th, I
21 believe, of 2021. Your Honor, he still maintains his
22 innocence on this. You heard all of the facts and I just --
23 I just don't think that's in his character, and I think Mr.
24 Frick would agree. Mr. Frick has known him longer than I
25 have, he's been over here in Chester a little while longer.

SENTENCING HEARING

1 We would just ask that you would show any mercy you can. 30
2 years at the minimum is going to be his life sentence anyway
3 since he's 48 years old, and it's a day for day, Judge. We
4 would just ask you to show any mercy you feel it in your
5 heart to show for Mr. Wherry.

6 MR. FRICK: And Judge, I just want to speak on behalf
7 Mr. Wherry. As Ms. Boulware says, I've known Kenny for
8 awhile now, probably the better part of the last decade.
9 I've represented him on some of those charges the Solicitor
10 spoke about. I've never known him to have any violence.
11 This is clearly somebody who has a drug problem, and most of
12 that record is indicative of someone who has a drug problem
13 to support that. I would echo what Ms. Boulware says. I
14 just -- when I heard this charge had happened and Ken had
15 been charged with the murder, I was kind of taken back and
16 have not found that to be his character, so I would echo
17 what she said and ask for whatever mercy you can show.

18 THE COURT: Mr. Wherry, I'll be glad to hear from you.
19 Understand, you don't have to make any statement, but the
20 Court would hear from you.

21 THE DEFENDANT: Well, Your Honor, just like what my
22 lawyer said, I'm innocent. I just hope that you would be as
23 lenient as possible.

24 THE COURT: Thank you.

25 MS. BOULWARE: Judge, his sister would like to address

SENTENCING HEARING

1 the Court.

2 SPEAKER: Hello. My name is (inaudible), I'm Kenneth
3 Wherry's sister. I would just ask you to grant him mercy on
4 his behalf. He's had a drug problem ever since I've been
5 here. Your Honor -- (inaudible as the speaker is crying) --
6 I just ask you to grant him mercy.

7 THE COURT: Thank you for coming in. Anyone else?

8 MS. BOULWARE: He had other family here but I don't
9 think they could take it.

10 THE COURT: I'll be glad to hear from the victim's
11 family.

12 MS. LIVELY: Ms. Thompson? Your Honor, the victim's
13 specialist is going to speak on behalf of -- Ms. Thompson is
14 in the red and she's been here for every single thing for
15 her son, and so I'm just going to let Ms. Kate Jackson take
16 care of that.

17 THE COURT: Ms. Jackson?

18 VICTIM'S ADVOCATE JACKSON: Judge Burch, I'm the mother
19 of Antonio Thompson. I would like for Mr. Wherry to be
20 punished for killing my son. Antonio was a gentle giant, my
21 gentle giant. He didn't deserve to die that way by Mr.
22 Wherry. We had our disagreements, he wasn't perfect. I
23 thank all of the witnesses. And the way I see it is Antonio
24 just wanted some help for his car. As one witness stated,
25 it was strange he got in the back instead of the front. I

SENTENCING HEARING

1 feel he's a threat to the community. Thank you, everyone.

2 THE COURT: Thank you, Ms. Jackson. Ms. Thompson, I
3 appreciate you being here. Anyone else?

4 MS. LIVELY: That's going to be all from the victim's
5 family, Your Honor. Thank you.

6 THE COURT: Mr. Wherry, are you 47 or 48?

7 THE DEFENDANT: I will be 48 the 16th of this month.

8 THE COURT: All right. Needles to say his prior record
9 is minimal. What gives me the most problem about sentencing
10 are these gun charges. You seem to have been hanging around
11 guns for quite some time, even the federals got involved in
12 that. But on the other hand, like Mr. Frick and Ms.
13 Boulware talked about, no what I would call serious violent
14 offenses. Seems like much of it seems to be property
15 crimes. After hearing all of the testimony and evidence I
16 am of the opinion you certainly didn't go into this on your
17 own. Common sense tells me that there was a lot more to
18 that than what we've heard. There was a lot of planning
19 that went on. Any way you look at it no matter what I do
20 here you're going to be incarcerated for a long time, and
21 that's a lot of time to think about the judgment you used,
22 which was obviously included by this drug use. Somehow
23 80 percent of the time high-end drug use with property
24 crimes from getting money to obtain drugs to whether it's a
25 violent offense where someone is seriously hurt or killed,

SENTENCING HEARING

1 like I said, I'm convinced 80 percent of what we have to
2 deal with in this court ties back to the culture we have
3 now, these high-powered illicit drugs and prescription
4 drugs. All right. I won't hold your suspense any longer.
5 The sentence of the Court on the murder charge is 45 years.
6 On the gun charge the sentence is five years concurrent.
7 Mr. Wherry --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- you've got ten days if you so desire to
10 let your counsel know if you wish to file a notice of
11 appeal. Otherwise if you don't file it within ten days it's
12 a forfeiture of your appeal. I hope even though your future
13 looks dismal now that you will find some things to do to
14 improve your life somehow to make yourself a better person.
15 Good luck.

16 THE DEFENDANT: Thank you, sir.

17 MS. LIVELY: Thank you, Your Honor.

18 MS. BOULWARE: Thank you, Judge.

19 (End of trial proceedings.)

20

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had (as
6 recorded by DCRP and transcribed by me) and evidence
7 introduced in the trial of the captioned case
8 relative in the Court of General Sessions for
9 Chester County, South Carolina, on the 4th-7th days
10 of April, 2022.

11 I further certify that I am not of kin,
12 counsel, nor interest to any party hereto.

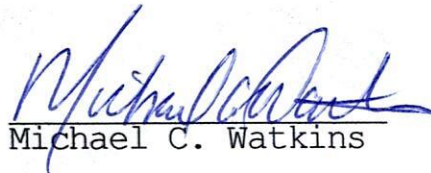
13

14

July 10, 2022

15

16



17

Michael C. Watkins

18

Court Reporter

19

20

21

22

23

24

25

446

WITNESSES

T. Crockett (CCSD)

M. Dean

ARREST WARRANT NUMBER/DOA

2021A1210100217 (DOA- 02/28/2021)

ACTION OF GRAND JURY

TRUE BILL

Lesley S. White
Foreperson of Grand Jury
Date: 5/25/2021

VERDICT

Guilty

Emily Lee
Foreperson of Petit Jury
Date: 4/7/22

2021-GS-12-364

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

MAY TERM 2021

THE STATE

vs.

Kenneth Tyrone Wherry

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

CLERK OF COURT
CHESTER CO S.C.

2021 MAY 26 PM 3:17

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

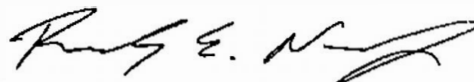
INDICTMENT

At a Court of General Sessions, convened on May 25, 2021, the Grand Jurors of Chester County present upon their oath:

MURDER

That Kenneth Tyronne Wherry did in Chester County on or about February 27, 2021, feloniously, willfully and with malice aforethought kill and murder Antonio Rowvan Thompson by means of shooting him and that the said victim did die as a proximate result thereof, in violation of the common law of South Carolina and §16-3-10, *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

✓ 448

WITNESSES

T. S. Crockett (CCSD)

✓ M. Dean

ARREST WARRANT NUMBER/DOA

2021A1210100228 (DOA-03/03/2021)

ACTION OF GRAND JURY

TRUE BILL

Lesley Smith
Foreperson of Grand Jury
Date: 6/29/2021

VERDICT

Guilty

Emily Lee
Foreperson of Petit Jury
Date: 4-7-22

DOCKET NO. 2021-GS-12-449

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

JUNE TERM 2021

THE STATE

vs.

Kenneth Tyrone Wherry

Indictment for

Possession or Display of Firearm or
Knife During Commission of a Violent
Crime

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

CLERK OF COURT
CHESTER CO S.C.

2021 JUN 29 PM 4:48

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTER)

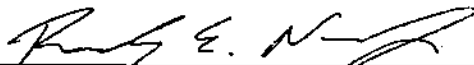
INDICTMENT

At a Court of General Sessions, convened on June 29, 2021, the Grand Jurors of Chester County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
 VIOLENT CRIME**

That Kenneth Tyronne Wherry did in Chester County on or about February 27, 2021, possess or visibly display a firearm or knife, to wit: handgun during his/her commission of a violent crime, to wit: murder of Antonio Rowvan Thompson, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

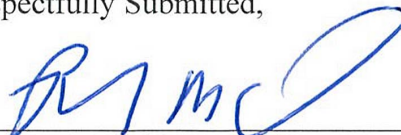
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 Randy E. Newman, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Jan 12 2023

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of January, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jan 12 2023

SC Court of Appeals

Appeal from Chester County

Honorable Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

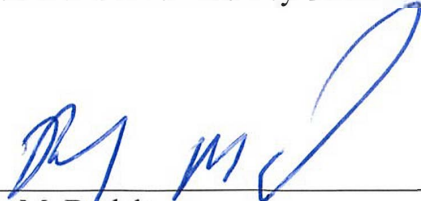
KENNETH TYRONNE WHERRY,

APPELLANT.

APPELLATE CASE NO. 2022-000453

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary email address listed within the Attorney Information System (AIS), this 12th day of January, 2023.


Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

From: [Warren, Kaylynn](#)
To: [SC - BROWN MELODY](#)
Cc: [Angela Brown](#); [Dudek, Robert](#)
Subject: 2022-000453 The State v. Kenneth Tyrone Wherry
Date: Thursday, January 12, 2023 1:11:00 PM
Attachments: [2022-000453 The State v. Kenneth Tyrone Wherry Anders Brief of Appellant and COS.pdf](#)
[2022-000453 The State v. Kenneth Tyrone Wherry Record on Appeal.pdf](#)

Good Afternoon,

Attached for service in the above-referenced case are the Anders Brief of Appellant and Record on Appeal which will be filed today, January 12, 2023, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren

Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330