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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from State Grand Jury

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL JUAN SMITH,

APPELLANT

APPELLATE CASE NO. 2023-001893

RECORD ON APPEAL

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 4 (MP4 CD OF VICON CAMERA FOOTAGE)]**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEE	)	2020-GS-47-20
	)	
	)	
	)	
	)	
THE STATE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL J. SMITH,	)	
	)	
DEFENDANT.	)	
_____	)	

December 4-6, 2023
Bishopville, South Carolina

B E F O R E:

THE HONORABLE FERRELL COTHRAN, JUDGE.

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Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Lee County.

P R O C E E D I N G S

(Roll call was taken of the entire panel for initial qualifications.)

THE COURT: Ladies and gentlemen, my name is Ferrell Cothran. I've been assigned by Chief Justice to hold court this week in Lee County. I need to ask you a series of questions to determine whether you're qualified to serve. It's important that you answer these questions truthfully because if you're not qualified to serve and you get selected on a jury and we find out later that you weren't qualified, we have to try the whole case over again.

Is there any member of the jury panel who is not a citizen of United States of America? If so, please, stand.

(There was no response.)

THE COURT: Any member of the jury panel not a resident of Lee County? If so, please, stand.

Yes, sir.

PROSPECTIVE JUROR: I stay in Sumter County now.

THE COURT: What's your number?

PROSPECTIVE JUROR: 93.

THE COURT: And you're a resident of Sumter?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thank you. You're free to go.

Is there any member of the jury panel unable to read, write, speak or understand the English language? If so,

1 please, stand.

2 (There was no response.)

3 THE COURT: Any member of the jury panel have less than
4 a sixth grade education or its equivalent? If so, please,
5 stand.

6 (There was no response.)

7 THE COURT: Any member of the jury panel have a mental
8 or physical infirmity that would prevent you from serving on
9 jury duty this week? If you have a medical condition that
10 would keep you from sitting in these chairs for an hour,
11 hour and a half at the time and listening to testimony, then
12 I need to know about that now.

13 (There was no response.)

14 THE COURT: Any member of the jury panel ever convicted
15 or pled guilty in any state or federal court for any crime
16 that you could receive more than one year and your civil
17 rights have not been restored by amnesty or pardon? If so,
18 please, stand.

19 (There was no response.)

20 THE COURT: Any member of the jury panel a clerk or a
21 deputy clerk of court, a constable, a sheriff or other
22 commissioned law enforcement officer, a probate judge, a
23 commissioner, a magistrate or any other county officer or
24 anyone employed within the walls of any courthouse? If that
25 applies to you, please, stand.

1 Yes, ma'am.

2 PROSPECTIVE JUROR: I am a class three police officer.

3 THE COURT: Do you have the power of arrest?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: What's your number?

6 PROSPECTIVE JUROR: 247.

7 THE COURT: Then you're excused.

8 Any member of the jury panel serve on jury duty in
9 General Sessions or Common Pleas any time during this
10 calendar year? If so, please, stand.

11 Yes, sir.

12 PROSPECTIVE JUROR: I served last Friday.

13 THE COURT: Were you in magistrate court? Were you in
14 this room?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Okay. Then that doesn't disqualify you.
17 This is just General Sessions or Common Pleas.

18 PROSPECTIVE JUROR: Thank you.

19 THE COURT: Yes, ma'am.

20 PROSPECTIVE JUROR: Same thing.

21 THE COURT: That doesn't disqualify you.

22 Anybody serve on the Grand Jury in the last two
23 calendar years? If so, please, stand.

24 (There was no response.)

25 THE COURT: Those are all the qualifying questions.

1 The next questions are exemptions. I may can excuse you
2 outright or I can transfer you to another term of court.

3 Is there any member of the jury panel who is 65 years
4 of age or older and would like to be excused? We would love
5 to have you, but once you reach 65, you shouldn't have
6 somebody tell you what time you got to get up in the
7 morning.

8 Yes, ma'am, what was your number?

9 PROSPECTIVE JUROR: 60.

10 THE COURT: Ms. Dennis?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And you'd like to be excused?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you, ma'am, you're excused.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: I'm 68.

17 THE COURT: What's your juror number?

18 PROSPECTIVE JUROR: 38.

19 THE COURT: Okay. You're excused. Thank you, ma'am.

20 Yes, sir?

21 PROSPECTIVE JUROR: 72.

22 THE COURT: What's your juror number?

23 PROSPECTIVE JUROR: 52.

24 THE COURT: And you'd like to be excused?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Thank you, sir. You're excused.

2 PROSPECTIVE JUROR: 65.

3 THE COURT: Mr. Hopkins, you'd like to be excused?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: You're excused.

6 Yes, sir.

7 PROSPECTIVE JUROR: [Indiscernible].

8 THE COURT: Any member of the jury panel served on jury
9 duty in General Sessions or Common Pleas during the last
10 three calendar years? You're only required to serve once
11 every three years, so if you'd like to be excused, I can
12 excuse you if you've done this in the last three years.

13 (There was no response.)

14 THE COURT: Anybody served on the Grand Jury for the
15 last five calendar years, you're allowed to be excused?

16 (There was no response.)

17 THE COURT: Any member of the jury panel have the care
18 and custody of a child or children under the age of seven,
19 you do not work outside of the home, you stay home and take
20 care of that child or children, you're allowed to be
21 excused?

22 Yes, ma'am.

23 PROSPECTIVE JUROR: I have six-year-old that I take
24 back and forth to school and then I have a one-year-old.

25 THE COURT: What's your number?

1 PROSPECTIVE JUROR: 157.

2 THE COURT: You're excused.

3 Any member of the jury panel take care of an elderly
4 person or severely disabled person, you do not work outside
5 of the home, you stay at home and take care of that person
6 and would like to be excused?

7 PROSPECTIVE JUROR: Yes, I take care of my granddaddy.
8 He's 75 years old and he have kidney disease.

9 THE COURT: You stay at home and take care of him?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: What's your juror number?

12 PROSPECTIVE JUROR: 189.

13 THE COURT: You're excused, ma'am. Thank you.

14 Is there any member of the jury panel who is involved
15 in the school system, either as a student or a teacher, and
16 would like to be transferred to a summer term when school is
17 not in session?

18 You work in a school system and you want to be
19 transferred to summer?

20 PROSPECTIVE JUROR: [Indiscernible].

21 THE COURT: Okay. Any member of the jury panel
22 employed with the Department of Corrections and would like
23 to exercise your exemption? If so, please, stand.

24 (There was no response.)

25 THE COURT: This next question I'm going to ask you, it

1 depends on how many of you stand up as to whether I can help
2 you or not.

3 Any member of the jury panel who we could not have
4 picked the worst week of your life to bring you in here? I
5 can transfer you to another week.

6 Yes, sir.

7 PROSPECTIVE JUROR: I'm Juror 107, I'm going through a
8 situation with my mom. She's in rehab in Columbia.

9 THE COURT: I can transfer you to a January term.

10 PROSPECTIVE JUROR: That will be fine.

11 THE COURT: Anybody else?

12 THE CLERK: That was 137.

13 THE COURT: Okay.

14 Anybody else?

15 (There was no response.)

16 THE COURT: I don't hear anything from anybody else, I
17 find you qualified.

18 Mr. Solicitor, are you ready to call the first case?

19 MR. GIESE: Your Honor, yes, sir, the State of South
20 Carolina calls State vs. Michael Juan Smith, a/k/a, Flame,
21 for three counts: One count of conspiracy, one count of
22 assault and battery by a mob first degree, death results,
23 and one count of prisoner carrying and concealing a weapon.

24 THE COURT: Anybody got any voir dire?

25 (There was no response.)

1 THE COURT: Okay. Ladies and gentlemen, if you'll give
2 me your attention, we're about to get into the trial of
3 State vs. Mike J. Smith.

4 Any there any member of the jury panel connected by
5 blood or marriage, close personal friends, socially related
6 to Mr. Smith? If so, please, stand.

7 (There was no response.)

8 THE COURT: Anybody connected by blood or marriage,
9 close personal friends or socially related to Cornelius
10 McClary? If so, please, stand.

11 (There was no response.)

12 THE COURT: I'm going to read out a list of potential
13 witnesses, and I need to know whether you're connected by
14 blood or marriage, close personal friends, socially related
15 to any of these potential witnesses. If you are, just stand
16 up.

17 Kristopher Butler, Andre Rogers, Marquetta Scott,
18 Raishayna McCleave, Lieutenant Emilie Locklear, Lieutenant
19 Lakeisha Howe, Sergeant Colonda Robinson, Captain Marquita
20 McCullough, Clive Lopez, Lucretia Mack, Jamal Clavon, Edward
21 Settles, Jale Brown, Deborah Stewart, Aaron Joyner, Edward
22 Tisdale, John Douglas, Janice Ross, Jamie Shaw, Cody Wilson,
23 Amanda Watts, Rayford Miller, Kevin Blake, John
24 Hollingsworth, Chris Voll, William Burley, Kenneth Gregg,
25 Thomas Clark, Randy Ward, Jeremy Smith, James Tallon, Annie

1 McCullough, Courtney Adams, David Dove.

2 Anybody connected by blood or marriage or close person
3 friends with any of those potential witnesses? I need to
4 know whether you know or anyone connected with Eddie
5 Gaskins, Joshua Jenkins, Michael Milledge, Lamont River,
6 Courtney Scott, Raymond Scott.

7 MS. ZMROCZEK: And McClary.

8 THE COURT: I've already asked that.

9 The attorneys involved in this case representing the
10 State are Barney Giese, Stephen Lunsford, Margaret Scott,
11 John Conrad, Knox McMahon. Representing the Defendant is
12 Aimee Zmroczek.

13 Anybody connected by blood or marriage, close personal
14 friends, socially related or been represented by any of
15 these attorneys? If so, please stand.

16 (There was no response.)

17 THE COURT: This Defendant is charged with the crimes
18 of conspiracy, assault and battery by mob, first degree,
19 resulting in death and prisoner carrying a concealed weapon.
20 This allegedly occurred on April 15th, 2018.

21 Any member of the jury panel know anything about this
22 case at all?

23 (There was no response.)

24 THE COURT: Anybody formed or expressed an opinion
25 about any of the issues involved in this case? If so,

1 please stand.

2 (There was no response.)

3 THE COURT: Any member of the jury panel aware of any
4 bias or prejudice against anyone accused of a crime or any
5 bias or prejudice against the prosecution or law enforcement
6 in general? If so, please, stand.

7 (There was no response.)

8 THE COURT: Any member of the jury panel or a member of
9 your immediate family employed with the Department of
10 Corrections in any capacity? If so, please, stand.

11 Yes, ma'am, what was your number again?

12 PROSPECTIVE JUROR: 146.

13 THE COURT: 126?

14 PROSPECTIVE JUROR: 146.

15 THE COURT: And who is employed at the Department of
16 Corrections?

17 PROSPECTIVE JUROR: My husband is retired from there
18 and he transports a guy to and from work part time Monday
19 through Friday.

20 THE COURT: And what -- where did he work when he was
21 working?

22 PROSPECTIVE JUROR: Palmer Prison as a corrections
23 officer.

24 THE COURT: And He was at Palmer the whole time?

25 PROSPECTIVE JUROR: He was in Columbia for so many

1 years and then transferred to Palmer for so many years.

2 THE COURT: Did he ever work in Lee County?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you, ma'am. Well, let me ask you
5 this. The fact that your husband was employed with the
6 Department of Corrections, does that affect your ability in
7 this case to be fair and impartial?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: Okay. Thank you.

10 Yes, sir.

11 PROSPECTIVE JUROR: Juror 147.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: My wife is a business administrator
14 at Kershaw Department of Corrections, 17 years.

15 THE COURT: You were?

16 PROSPECTIVE JUROR: No, my wife.

17 THE COURT: Okay. Is she currently employed there?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in this case?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Okay. Thank you.

23 Yes, sir.

24 PROSPECTIVE JUROR: Andrew Cole, Juror 47, my father
25 worked for Wateree, he served in transportation, 47.

1 THE COURT: Would that affect your ability to be fair
2 and impartial in this case?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you, sir.

5 Any member of the jury panel or any member of your
6 immediate family been employed at the Department of
7 Corrections?

8 (There was no response.)

9 THE COURT: Any member of the jury panel or a member of
10 your immediate family ever been prosecuted by the Third
11 Circuit Solicitor's Office or the South Carolina Attorney
12 General's Office? If so, please, stand.

13 (There was no response.)

14 THE COURT: Any member of the jury panel been a victim
15 of a violent crime? If so, please, stand.

16 (There was no response.)

17 THE COURT: Any member of the jury panel served on
18 state grand jury that heard this case? If so, please stand.

19 (There was no response.)

20 THE COURT: Any member of the jury due to religious or
21 moral reasons unable to sit in judgment of your fellow man?
22 If so, please, stand.

23 (There was no response.)

24 THE COURT: Any member of the jury panel know of any
25 reason whatsoever they can't give the State of South

1 Carolina and this Defendant a fair and impartial trial? If
2 so, please, stand.

3 (There was no response.)

4 THE COURT: Any further questions from the State?

5 MR. GIESE: No, Your Honor.

6 THE COURT: From the Defense?

7 MS. ZMROCZEK: Nothing further.

8 THE COURT: All right. Madam clerk, if you'll give me
9 a jury, five and five.

10 Juror 110, Eric Holmes, can I see you down here up
11 front, sir?

12 (WHEREUPON, a sidebar was held.)

13 THE COURT: Mr. Holmes, on your criminal record,
14 there's a domestic violence second degree; is that right?

15 PROSPECTIVE JUROR: No, sir, that's not Eric Holmes.

16 THE COURT: Okay. This says Eric William Holmes.

17 PROSPECTIVE JUROR: No.

18 THE COURT: What's your date of birth?

19 PROSPECTIVE JUROR: March 25th, 1979.

20 THE COURT: That's not you?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. Thank you.

23 Anything else?

24 (WHEREUPON, there was a bench conference.)

25 THE CLERK: When I call your name, if you will gather

1 your belongings up and come to the front here, like front
2 and center and face back.

3 Kenneth Holland. Just come over here.

4 (Kenneth Holland, a white male, comes forward.)

5 THE CLERK: Just turn around.

6 MS. ZMROCZEK: What was the juror number?

7 THE CLERK: 108.

8 MR. GIESE: Present the juror.

9 MS. ZMROCZEK: Please seat the juror.

10 THE CLERK: Celenzy Solomon, Juror Number 202.

11 (Celenzy Solomon, a black female, comes forward.)

12 MR. GIESE: Please excuse the juror.

13 THE CLERK: Have a seat back in the audience.

14 Juror Number 68, Keisha Epps.

15 (Keisha Epps, a black female, comes forward.)

16 MR. GIESE: Present the juror.

17 MS. ZMROCZEK: Please excuse the juror from this trial.

18 THE CLERK: You can have a seat back in the audience.

19 Juror Number 147, Gregory Logan.

20 (Gregory Logan, a white male, comes forward.)

21 MR. GIESE: Present the juror.

22 MS. ZMROCZEK: Please excuse the juror from this trial.

23 THE CLERK: You can have a seat back in the audience.

24 Juror Number 201, Luther Smith.

25 (Luther Smith, a white male, comes forward.)

1 MR. GIESE: Present the juror.

2 MS. ZMROCZEK: Please seat the juror.

3 THE CLERK: Juror Number 220, Keshawn Tony.

4 (Keshawn Tony, a black male, comes forward.)

5 MR. GIESE: Excuse the juror, please.

6 THE CLERK: Juror Number 5, Ella Anderson.

7 (Ella Anderson, a black female, comes forward.)

8 MR. GIESE: Present the juror.

9 MS. ZMROCZEK: Please seat the juror.

10 THE CLERK: Juror Number 18, Mykell Benjamin.

11 (Mykell Benjamin, a black male comes forward.)

12 MR. GIESE: Excuse the juror, please.

13 THE CLERK: Juror Number 124, Latoya Joe.

14 (Latoya Joe, a black female, comes forward.)

15 MR. GIESE: Present the juror.

16 MS. ZMROCZEK: Please excuse the juror from this trial.

17 THE CLERK: Juror Number 7, Pamela Atkinson.

18 (Pamela Atkinson, a black female, comes forward.)

19 MR. GIESE: Present the juror.

20 MS. ZMROCZEK: Seat the juror.

21 THE CLERK: Juror Number 206, Jane Stokes.

22 (Jane Stokes, a white female, comes forward.)

23 MR. GIESE: 206?

24 THE CLERK: 206, yes, sir.

25 MR. GIESE: Present the juror.

1 MS. ZMROCZEK: Seat the juror.

2 THE CLERK: Juror Number 72, Katrina Fleming.

3 (Katrina Fleming, a black female, comes forward.)

4 MR. GIESE: Present the juror.

5 MS. ZMROCZEK: Present the juror.

6 THE CLERK: Juror Number 98, Rebecca Hayden.

7 (Rebecca Hayden, a white female, comes forward.)

8 MR. GIESE: Present the juror.

9 MS. ZMROCZEK: Seat the juror.

10 THE CLERK: Number 39, Raven Carraway.

11 (Raven Carraway, a black female, comes forward.)

12 MR. GIESE: Thirty-nine?

13 THE CLERK: Thirty-nine.

14 MR. GIESE: Present the juror.

15 MS. ZMROCZEK: Seat the juror.

16 THE CLERK: Juror Number 135, Devi Kandoria.

17 (Devi Kandoria, an Asian female, comes forward.)

18 MR. GIESE: Present the juror.

19 MS. ZMROCZEK: Seat the juror.

20 THE CLERK: Juror Number 122, Harmon Jenkins, Jr.

21 (Harmon Jenkins, Jr., a black male, comes forward.)

22 MR. GIESE: Present the juror.

23 MS. ZMROCZEK: Seat the juror.

24 THE CLERK: Have a seat in the jury box, please.

25 145, Laura Legrant.

1 (Laura Legrant, a black female, comes forward.)

2 MR. GIESE: Present the juror.

3 THE CLERK: Hold on just a minute.

4 MS. ZMROCZEK: Please seat the juror.

5 THE CLERK: Okay. If you'll have a seat in the jury
6 box.

7 Number 47, Andrew Cole.

8 (Andrew Cole, a white male, comes forward.)

9 MR. GIESE: Present the juror.

10 MS. ZMROCZEK: Please excuse the juror from this trial.

11 THE CLERK: Euleeta Wilson, Number 238.

12 (Euleeta Wilson, a black female, comes forward.)

13 MR. GIESE: Present the juror.

14 MS. ZMROCZEK: Please seat the juror.

15 Juror Number 152, Shermanita Mathis.

16 (Shermanita Mathis, a black female, comes forward.)

17 MR. GIESE: Please excuse this juror.

18 THE CLERK: Okay. You can have a seat back in the
19 audience, please.

20 Juror Number 197, Sharedia Simon.

21 (Sharedia Simon, a black female, comes forward.)

22 MR. GIESE: Present the juror.

23 MS. ZMROCZEK: Please seat the juror.

24 THE CLERK: Okay. So those are the 12. We're going to
25 go to our alternates.

1 THE COURT: We'll seat three alternates.

2 THE CLERK: Number 22, Carmelita Blyther.

3 (Carmelita Blyther, a black female, comes forward.)

4 MR. GIESE: Please excuse this juror.

5 THE CLERK: Number 155, Robert McCathern.

6 (Robert McCathern, a white male, comes forward.)

7 MR. GIESE: Present the juror.

8 MS. ZMROCZEK: Please seat the juror.

9 THE CLERK: Number 217, Vernika Thomas.

10 (Vernika Thomas, a black female, comes forward.)

11 MR. GIESE: Present the juror.

12 MS. ZMROCZEK: Please seat the juror.

13 THE CLERK: You can have a seat.

14 Number 48, Cameron Contreraz.

15 (Camera Contreraz, a white male, comes forward.)

16 MR. GIESE: Present the juror.

17 MS. ZMROCZEK: Seat the juror.

18 THE CLERK: Okay.

19 THE COURT: Are there any matters of law pertaining to
20 the selection of the jury from the State?

21 MR. GIESE: No, Your Honor.

22 THE COURT: On behalf of the Defense?

23 MS. ZMROCZEK: Not regarding Batson, Your Honor.

24 There's an issue that we'll put on later.

25 THE COURT: Okay.

1 MS. ZMROCZEK: Thank you.

2 THE COURT: All right. Solicitor, what do you want to
3 do with the panel?

4 MR. GIESE: Your Honor, we have some things we could do
5 for the afternoon. If you'll release them until in the
6 morning.

7 THE COURT: No, I'm talking about the pool?

8 MR. GIESE: They're fine to go.

9 THE COURT: For the week?

10 MR. GIESE: Yes, sir.

11 THE COURT: Okay. Ladies and gentlemen not selected on
12 this jury, you're free to go. The clerk is going to say
13 something to you.

14 THE CLERK: So we do have work excuses in the back as
15 you exit out. If you need a work excuse, make sure you get
16 one of those at the back door on your way out.

17 THE COURT: Thank you.

18 (WHEREUPON, the unselected members of the jury left the
19 courtroom.)

20 (WHEREUPON, there was a bench conference.)

21 THE COURT: Ladies and gentlemen who were selected to
22 serve on this jury, I need to ask y'all one question that I
23 probably should have asked y'all at the beginning. The
24 series of questions I went through with y'all to determine
25 whether you were qualified to serve, were your responses to

1 those questions truthful?

2 (The jurors indicated the affirmative.)

3 THE COURT: So everybody told me the truth; is that
4 correct?

5 THE JURORS: Yes, sir.

6 THE COURT: I have some matters of law that I need to
7 take up outside of your presence and I'm not really sure how
8 long, it may take the rest of the day. So instead of
9 keeping you locked up in the jury room, I'm just going to
10 simply send you home and ask you to come back at 9:30 in the
11 morning.

12 Now, you can't -- everything you know about this case
13 you need to learn in this courtroom, so I don't want you to
14 go home and do any research. I don't want you to Google
15 anybody. I don't want you to do anything coming this case,
16 okay? And I need y'all back at 9:30 in the morning.

17 If you have an emergency tonight, some problem that's
18 going to keep you from being back, it has to be an
19 emergency, you need to either call the clerk's office, call
20 9-1-1, the sheriff's office, somebody to let us know you
21 have an emergency and you won't be here or you'll be late or
22 what the circumstances are because I can't get started until
23 all of you get here. And if you don't call, we don't hear
24 from you, you don't show up, I'm going to send the sheriff
25 to look for you because I can't get started until all of you

1 show back up.

2 So I'll see y'all at 9:30 in the morning. Don't
3 discuss this case with anybody. Don't discuss it among
4 yourselves. And I'll give you further instructions when you
5 get here in the morning. When you come back in the morning,
6 you'll go straight to the jury room. You won't come back in
7 here. If you'll report to the jury room at 9:30 in the
8 morning. They'll show you where that is. Short of an
9 emergency, I'll see you all back at 9:30 in the morning.
10 Thank you.

11 (WHEREUPON, the jury left the courtroom at 11:53 a.m.)

12 THE COURT: Okay. Do y'all want to take a lunch break,
13 what do y'all want to do?

14 MR. GIESE: Lunch would be great.

15 MS. ZMROCZEK: Your Honor, if I can just put that one
16 thing on the record and we can do the rest later.

17 THE COURT: Okay.

18 MS. ZMROCZEK: So, Your Honor, the only thing I wanted
19 to make sure we put on the record, I know that just for the
20 timing purposes, we approached at the bench and I made the
21 motion and you denied it and I understand that, based on the
22 legislature, but I wanted to go ahead and put that on the
23 motion -- I mean, on the record, Your Honor.

24 We would object to the fact that Defense only gets five
25 strikes in a case that involves the death of a human where

1 my client is facing a mandatory minimum of 30 years. I
2 understand that this statute under which he is charged --
3 well, this specific one is the old lynching charge, so they
4 got rid of the lynch and they updated this charge, but they
5 added new elements so it's not the same as the lynching
6 charge.

7 Your Honor, I think that the legislature might have
8 overlooked when they were creating these new cases, they
9 might have overlooked the importance of the number of
10 strikes per defendant in a case this serious. And so,
11 certainly, we understand the Court's ruling, but we want to
12 preserve that issue that five strikes for a defense for
13 someone who is facing this serious amount of time we believe
14 is improper.

15 So thank you, Your Honor.

16 THE COURT: Okay. Statute 14-7-1110 -- 110, is set by
17 at the legislature. That's the statute that determines how
18 many strikes each side gets. I'm simply following that
19 statute. These crimes are not listed under that statute to
20 get ten strikes per defense. It list a number of crimes,
21 but these crimes aren't listed under it. All others are
22 five and five, so I followed the law. Your objection is
23 noted on the record.

24 MS. ZMROCZEK: Thank you.

25 THE COURT: And, also, that you only exercised four of

1 your five potential strikes.

2 MS. ZMROCZEK: I thought I had five.

3 THE COURT: Well, I may have missed one. I had four.

4 MS. ZMROCZEK: I have five.

5 THE COURT: Okay.

6 All right. Anything else before we break for lunch?

7 MR. GIESE: Nothing from the State.

8 MS. ZMROCZEK: No.

9 THE COURT: What time do you want to come back? It's
10 twelve o'clock.

11 MS. ZMROCZEK: Your Honor, I think all the pretrial
12 matters that we have won't take us into the evening, so
13 whatever normal lunchtime, I have no -- so whenever, I don't
14 eat.

15 THE COURT: Do you want to come back at 1:00 or 1:30?

16 MR. GIESE: How about 1:30?

17 MS. ZMROCZEK: 1:30.

18 THE COURT: 1:30. Okay. I'll probably be back before
19 that. If you have any issues, you can come get me. I'll
20 see you at 1:30.

21 MR. GIESE: Thank you.

22 MS. ZMROCZEK: Thank you.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: Okay. Are we ready to go?

25 MS. ZMROCZEK: I any so. So Judge, we have been able

1 to do some communicating about some of the issues. I think
2 we've worked some of them out. So the things that I think
3 we need to address, just, first, basically, I would move to
4 sequester all the witnesses under Rule 615.

5 THE COURT: Okay. Any reply?

6 MR. GIESE: No problem.

7 THE COURT: Okay.

8 MS. ZMROCZEK: And then the State -- so, Your Honor, we
9 had talked about stand your ground versus self-defense, et
10 cetera and trial strategy wise, case law wise and just in
11 general. I've spoken with my client. Obviously, we're
12 still going to raise self-defense, but we're not going to do
13 it under the guise of a stand your ground motion. That was
14 where we were going today before we got here, but I think
15 that we're going to just shift our plan so we don't have to
16 have that extra hearing, but there is --

17 So the State filed a motion on Friday probably in
18 response to me saying that I wanted a stand your ground/
19 self-defense, and they filed a motion to preclude me from
20 presenting any evidence of what they call jury
21 nullification. And so I think, Your Honor, this all stems
22 from -- I asked about -- two or three weeks ago, I asked for
23 a copy of the report -- so SCDC hired an expert. The
24 Department of Corrections hired an expert, who in March of
25 2018 generated a 318-page report and then a 48 -- a 318-page

1 report on the failures and challenges at SCDC and how to fix
2 those, what needs to be done, et cetera, et cetera. And
3 then 48 of those pages specifically dealt with the
4 institution at Lee Correctional Center.

5 Your Honor, that was never provided to me by the State.
6 They say that they don't have it. You and I both know that
7 Kyle V. Whitley says [indiscernible] clearly hired by -- it
8 was generated by someone that SCDC hired. Now, I happen to
9 have a copy of that report because I, also, was involved in
10 the civil aspect of it, so I have copy of it, right. Now,
11 mine says confidential. Ms. Scott told me she doesn't have
12 a copy.

13 I intend to go into some of the issues that were
14 brought up in that report because it goes specifically and
15 directly to the fear and the state of mind of my client
16 while he was at the center. And so I haven't turned over
17 that report because I'm under an order that says I can't.
18 If the Court wants me to turn it over to them, I don't know
19 why I have to give them their report --

20 MS. SCOTT: We have a copy now.

21 MS. ZMROCZEK: Oh, you have a copy, okay.

22 But I do intend to address some of the issues that are
23 in there, so I think that that -- maybe I'm wrong -- I think
24 that was the basis of them filing that motion was to try to
25 keep me from talking about the problems, the failures at

1 SCDC. I may be speculating, but, Your Honor, I just want
2 the Court to know that I fully intend to go into some of the
3 things that were relevant to this case that were in that
4 report.

5 THE COURT: Okay. Do y'all want to respond?

6 MR. CONRAD: Your Honor, and this is John Conrad with
7 the State, I never read that report directly, so its
8 relevance -- I'm not going to address that particular
9 report's relevance directly. I do have the motion that we
10 filed last week. I don't know if the Court has a copy.

11 THE COURT: I do.

12 MR. CONRAD: I am prepared to address this motion more
13 in general terms of general evidence. Essentially, what
14 this motion boils down to is, Your Honor, the State seeks to
15 preclude the Defense from introducing any evidence or making
16 any arguments to the jury of any issues that aren't directly
17 related to the Defense purported self-defense claim.

18 What I mean by that, well, it's very clear about what
19 is meant by self-defense and there's four elements. I'm not
20 going to review them here, it's in the motion. But the key
21 factor, the State believes is for one to avail themselves of
22 self-defense law in the State of South Carolina, the threat
23 and the danger has to be imminent or they have to have been
24 under a reasonable belief that that threat or danger was
25 imminent. And the State would submit a fair viewing of the

1 video in this case would lead any reasonable person to
2 believe the Defendant was not under any direct threat or
3 fear from the victim in this case.

4 And what the State is seeking to preclude is the
5 Defense, essentially, putting SCDC on trial for the overall
6 arguably poor conditions at Lee Correctional on April 15th,
7 2018. And I think any evidence that is designed to talk
8 about the general feeling of fear towards the general
9 population is just simply irrelevant in this case because
10 it's not directly related to an immediate threat to the
11 Defendant from the victim in this case.

12 Obviously, the Defense certainly has the right to
13 present evidence and to argue to this jury if they meet the,
14 admittedly, low bar for self-defense, but what they can
15 argue and what they can present to the jury in regards to
16 that has to be directly related to the threat the Defendant
17 felt.

18 So the State is seeking to preclude the Defense from
19 really confusing this jury with other issues as to the
20 overall poor conditions of SCDC during this riot. And what
21 the State is arguing is that the Defense, you know,
22 obviously, in this courtroom per the State constitution, the
23 Court is responsible for giving the jurors the law. The
24 jurors decide the facts, the Court decides the law.
25 Evidence that's not directly related to whatever particular

1 threat from Cornelius McClary to Michael Smith is simply
2 irrelevant under the rules.

3 Now, I do have a number of cases from the federal side
4 that do address this. I have some copies for the Court and
5 the Defense. The first one is a case called -- these are
6 not cited in the motion, Your Honor. The first one is
7 called United States vs. Fetter. And this one is 768 F.3d
8 735.

9 THE COURT: Okay.

10 MR. CONRAD: In that case, it's a federal prison case
11 in Illinois, in which an inmate murdered his fellow inmate,
12 roommate in the prison there. He sought to introduce
13 evidence -- excuse me, get a jury charge of self-defense.
14 And the 7th Circuit in this case decided as a matter of law
15 that the defense was not permitted to do that. There was no
16 -- that charge was not proper because whatever evidence of
17 the threat that was introduced in that trial was -- it was
18 not an imminent threat of physical harm from the victim to
19 the defense.

20 And while the facts are pretty interesting and fairly
21 gruesome in this case, the key part of this case was that
22 the Court ruled that because there was no substantial
23 evidence of any imminent threat, the defense was not
24 permitted to introduce self-defense or get a jury charge of
25 self-defense in that case.

1 Now, federal self-defense law is not exactly the same
2 as South Carolina defense law, but they both very clearly
3 have an element of that imminent threat. That's why I think
4 this case is relevant, even though it's not controlling
5 because it is a 7th Circuit.

6 The next case is United States vs. Tokash, which is 282
7 F.3d 962. And, again, this is a 7th Circuit case. And, in
8 fact, seems to be from the same prison in Southern Illinois,
9 which I believe was for many years a super max prison in the
10 federal system in Southern Illinois. And Tokash is another
11 self-defense, federal self-defense case out of that same
12 prison.

13 And, again, the defense in that case sought to,
14 essentially, put the Federal Bureau of Prisons on trial and
15 to address all these things that were -- wrongs that were
16 going on in the system. And the court ruled as a matter of
17 law that that evidence simply wasn't relevant.

18 And what the court was unwilling to do, and I'm going
19 to quote from 968, I believe, the jury should be subjected
20 to this potpourri, potpourri being this smorgasbord of
21 evidence that [indiscernible] was poor and there was a poor
22 security environment. Even though a critical element of
23 proper self-defense was conceivably absent, it would
24 undoubtedly convert every trial on current state or the
25 federal penile system, which is what the State is seeking to

1 prevent in this trial.

2 Whatever extent the Defendant may have as far as his
3 grievances against SCDC, this is just not the proper forum
4 to address those grievances, Your Honor. And there are
5 other forums where that can be done. Again, this case
6 focuses on imminence of the threat and found as a matter of
7 law there was no imminent threat to that particular
8 defendant in his self-defense case.

9 And looking at Page 969, it goes on to talk about the
10 imminence of the threat as a requirement, which, again, is
11 another requirement under state law.

12 Finally, Your Honor, another case that's not cited is
13 United States vs. Charles Haynes, and this is 142 F.3d 1089.
14 And this is another affirmative defense case -- it's not
15 self-defense, it's, actually, necessity, but under federal
16 law necessity really requires same element of imminency of a
17 threat and that's why the State is handing this case up
18 because there's a good discussion of, you know, what's an
19 imminent threat and what's not.

20 And Charles V. Haynes -- I'll read a couple of
21 sections, Your Honor. All right, so looking at page 1090, I
22 believe this is, towards the bottom, Haynes was not faced --
23 Haynes being the defendant, was not faced with an imminent
24 use of force by Flores-Pedroso, who was the victim in that
25 case -- and, again, these were both inmates in federal

1 prison in Southern Illinois. There was a threat of action
2 later that afternoon where Flores-Pedroso had made
3 unfulfilled threats before and, anyway, later and imminent
4 are opposites.

5 So, again, the State would assert any evidence of any
6 threat, generalized threat or threat without any specifics
7 are simply are irrelevant to this jury. And the South
8 Carolina Rules of Evidence would necessarily preclude that.

9 And I'll wrap up, Your Honor. Just referencing the
10 South Carolina Rules of Evidence, irrelevant evidence is
11 inadmissible under Rule 402. And, you know, I think we're
12 all aware of what the definition of relevant evidence is.
13 However, even if certain evidence might still be relevant,
14 if its probative value is substantially outweighed under the
15 danger of unfair prejudice, confusion, risk of misleading
16 the jury under Rule 403, it may be excluded.

17 And, Your Honor, any generalized evidence -- I haven't
18 read this report, but my understanding is it's simply a
19 general report of the overall security conditions. And as
20 far as I know, this Defendant isn't even mentioned -- or the
21 victim aren't even mentioned in this particular report. So
22 I don't see how it could contain any information that would
23 address the critical element of self-defense in this case,
24 which is the imminency of any treat between the victim and
25 the Defendant. And that's why the State is seeking to

1 exclude that kind of evidence and any other evidence the
2 Defendant may seek to introduce towards that end.

3 Obviously, the Defendant is free to introduce evidence
4 of self-defense, but it's got to meet those four elements of
5 self-defense, which include the imminency of a threat.
6 Obviously, that would be fact by fact witness determination
7 as we go forward with the trial.

8 THE COURT: Okay.

9 MS. ZMROCZEK: Your Honor, I'm going to be real clear
10 so that -- it's probably going to come out in my opening, I
11 absolutely intend to address the failures that led to this
12 incident that day because that forms -- in part, it goes to
13 the state of mind of my client, who is in a prison where
14 guards are bringing in drugs, where guards are bringing in
15 weapons, where guards are having sex with certain inmates,
16 where they have refused, refused -- according to the report
17 refused to repair the doors. So in this situation, the
18 policy prescribes that if there's an incident, immediately,
19 everybody goes into lockdown, lock your doors. Couldn't do
20 that because the doors weren't working.

21 Your Honor, that goes to his fear because he knows
22 those doors aren't locking, those doors are protecting him,
23 SCDC is not protecting him. They knew about it. They knew
24 these doors didn't lock. Three days before this, they had a
25 previous incident. Your Honor, all of that is relevant and

1 a constitutionally available defense of self-defense.

2 Absolutely, he gets to explain why he felt the way that he
3 did and that comes in a lot from the failures of SCDC.

4 The low number of guards, the refusal to fix the locks,
5 the fact that they let inmates walk around with cell phones,
6 weapons and drugs and did nothing about it, all of those
7 things lead to the fear of when the guards absolutely lose
8 control of what happens and there we are, people are getting
9 killed. So I absolutely intend to go into each and every
10 part of that because it goes to develop and establish what
11 he would think. It's not just imminent fear. It's what a
12 reasonable person in their situation.

13 And so he's in a place that he can't leave and they
14 aren't locking the doors. Not only are they not locking the
15 doors, the locks don't work. He's going to testify that the
16 night before this that people are outside sharpening their
17 weapons. He can hear that. All of that goes to his state
18 of mind for his defense. It's absolutely relevant and it's
19 all documented in their reports. The COs talk about it.
20 The warden talks about it and this expert that they, SCDC,
21 hired talks about it. That is absolutely the crux of my
22 defense.

23 And the case law, you know, is clear. Obviously, it's
24 way to premature to talk about jury charges. We can get to
25 those later, but, certainly, we intend to assert not only

1 self-defense, but defense of others, defense of habitat,
2 necessity. There are going to be a lot of things that come
3 out because of that evidence and because of those failures.

4 And in addition to just the regular case law of
5 self-defense, Your Honor, obviously, the U.S. Constitution
6 allows us to present a defense, but South Carolina
7 constitution article one section nine says we are allowed to
8 develop a full presentation of defense. And that's exactly
9 what we intend to do here, Your Honor, and it's certainly
10 all relevant.

11 Now, we're not going to talk about things in that
12 report that deal with other correction institutions. We're
13 not going to talk about -- unless he was there, we're not
14 going to talk about any of those things, but to just try to
15 say well, when we watched the video, this is what we think.
16 That's a fine closing argument, Your Honor, but he is
17 constitutionally allowed and certainly intends on presenting
18 full and fair defense in this case. And it will go
19 specifically to those issues mentioned not only by the
20 people that they interviewed, but, specifically, by the
21 person they hired to review this stuff.

22 THE COURT: Okay. Does the State want to respond?

23 MR. CONRAD: Your Honor, the only thing I would respond
24 to, Your Honor, is all the evidence she just talked about,
25 none of it, all the other defenses she just potentially

1 talked about, necessity and the defense of habitation, so on
2 and so forth, all of those have are immediate, the threat
3 was immediate.

4 Certainly, the Defense would be permitted to discuss
5 anything that's in reasonably -- time-wise any potential
6 issues between the Defendant and the victim prior to this as
7 to any prior altercations they might have had incident,
8 presumably, they're not too remote. You know, to simply
9 talk about this generalized fear is just not particularized
10 and not immediate enough under South Carolina law. It's
11 just going to confuse the jury. It's just going to --
12 essentially, at the end of the day, confuse the jury into
13 the issues of whether there was an immediate threat from the
14 victim in this case to the Defendant.

15 THE COURT: Okay. You're talking about the stuff
16 that's in this report that I haven't seen.

17 MS. ZMROCZEK: Right.

18 THE COURT: So is it your intention to introduce this
19 report or portions of it?

20 MS. ZMROCZEK: Absolutely not, no. I'm not putting in
21 a huge report. I intend to ask the people who know about it
22 and who have spoken about it. I absolutely intend to ask
23 those -- to ask them questions -- and, again, it depends on
24 what they testify to, but if -- obviously, I think we're
25 kind of arguing in a way that we always do with motions in

1 limine, but I think as the Court watches the trial as it
2 progresses, it's not just, again, immediate fear, it's not,
3 like, immediate fear, that's not the case law. And I would
4 liken this to -- I would liken this to a battered woman
5 case, not that he's a battered woman, but when you're
6 looking at situations like this, you have to look at the
7 totality of the circumstances.

8 In this case in particular, the failures of the guards
9 -- or SCDC. The failures of the guards to lock the doors,
10 which they couldn't because the locks were broken and SCDC
11 didn't fix that, that all contributes to Mr. Smith's mind
12 when at ten o'clock -- on April 15th at ten o'clock when he
13 is in his dorm where he belongs and since 7:15 that night,
14 they have been on lockdown and people are coming in and --
15 well, they were supposed to be coming in to help these
16 people, but they weren't because they couldn't find them or
17 they were having trouble getting people to work or whatnot,
18 but for three hours, he had to endure a lot of -- what he'll
19 testify to you is the things that he heard, the things that
20 he saw that all led up to that fear at the exact moment that
21 he and Mr. McClary had interaction.

22 And so, you know, I absolutely think that that is
23 relevant and necessary to develop his defense as this trial
24 proceeds.

25 THE COURT: Okay. So, of course, I have not heard the

1 evidence, nor have I seen this report and it depends on the
2 facts. You know, I don't know what brought about this
3 altercation. I was under the impression it wasn't a
4 situation where the victim was posing any kind of immediate
5 threat to your client. The victim was just out and was
6 attacked by a number of people.

7 And so I'm not sure of the situation of the prison and
8 not being able to staff, locks not working, that may be a
9 defense to the possession of a weapon, but every inmate or
10 the majority of those inmates felt like they were not being
11 properly protected, they had to arm themselves in some way,
12 but I'm not really sure that that's a self-defense argument
13 as far as this assault and battery charge by a mob. I don't
14 know because I haven't seen any of the evidence in this
15 case. It may or may not be relevant for those issues. We
16 can't try the whole prison system and the failures in the
17 prison system unless the facts appointment toward that. I'm
18 not going to let you just try the prison system.

19 MS. ZMROCZEK: Of course.

20 THE COURT: You've got to have some nexus or some
21 relevancy or how some failure by the department has brought
22 on his state of mind and his threat or, at least, whether he
23 was actually in imminent danger or whether he perceived he
24 was in imminent danger, but there's got to be some danger
25 he's in before he can take somebody else's life.

1 Having said that, we'll have to have an evidentiary
2 hearing. I'm not sure you should bring it out in your
3 opening statement until I hear the evidence. If I need to
4 read this report, then I need to do that.

5 MS. ZMROCZEK: Your Honor, I think that you'll -- which
6 one do you have, the 48-page one?

7 Well, they may have a different report than I have,
8 Your Honor. If maybe the State would -- if they'll send it
9 to you and to me just so that we have it. But, again, I
10 don't intend to introduce any report --

11 THE COURT: So -- I didn't mean to cut you off, the
12 State nor you are going to try to introduce this report?

13 MR. GIESE: We're not, no, sir.

14 THE COURT: So as far as the report coming into
15 evidence before the jury, that's not going to happen.

16 MS. ZMROCZEK: Right.

17 THE COURT: You just want --

18 MS. ZMROCZEK: But the information that was -- well --
19 and again, I haven't read that actual report, but I guess it
20 will just depend. But I guess -- I'll back it out of my
21 opening just so, you know.

22 THE COURT: Okay.

23 MS. ZMROCZEK: Just so the Court is aware of that
24 issue. And then kind of in a similar -- well, not really,
25 but -- so they -- we talked about this which is why we

1 picked three alternates. When we got the discovery in this
2 case eventually, it listed 16 CIs, confidential informants,
3 people that didn't want to give their name or didn't give
4 their name, I don't know what.

5 Last week Mr. Conrad -- or maybe two weeks ago, Mr.
6 Conrad informed me by letter that they were intending to
7 call CI number five, at which time, they provided his entire
8 file. Most importantly, they gave me his name and his
9 unredacted statement. There are 15 other interviews that I
10 am in possession of right now that I do not know the names
11 of these people and their statements are all redacted and
12 the State says well, we're not going to call any of those
13 people. I understand that, but the unredacted portions of
14 the statement and I don't even know the redacted portions of
15 the statement, but the unredacted portions of some of those
16 statements are potential witnesses that I would put up
17 because of talking about the reasonableness of the fear and
18 those kind of things to support that case.

19 The problem is, all I have are CI numbers right now and
20 some redacted reports. So I'm asking that the State provide
21 me the names today and the unredacted reports just so that I
22 can make a determination because I still have to contact
23 these people, see if they're willing to testify. And that's
24 why I have an investigator because while I'm working, he
25 will, also, be working and we, you know, need to go talk to

1 them and interview them. It's not the first time I've asked
2 for it, but they've obviously denied my request and say I
3 need to ask the Court, so that's what I'm doing now.

4 MR. CONRAD: Your Honor, I apologize. Your Honor, as
5 the Court is aware, this case became a state grand jury
6 investigation. The investigation started before that, but
7 it become a State grand jury investigation in 2020, I
8 believe, and a number of individuals testified, including
9 CIs at the State grand jury. And we -- if the Court
10 recalls, we have a protective order in this case that
11 protects the CIs, particularly, the ones who are fellow
12 inmates, quite frankly, protects their identities because
13 some of them are and some of them aren't, but they all have
14 expressed a great amount of fear about testifying in this
15 case. I think understandably because of the violent inmates
16 that they could potentially see as they continue in SCDC,
17 the gangs involved and so on and so forth.

18 Per the protective order, because there was one that we
19 intended to call this week, we turned that name over, I
20 think we sent that out the Friday before Thanksgiving, if my
21 memory serves. And Ms. Zmroczek and I discussed some of
22 these other CIs last week. And in my opinion, you know,
23 because with don't intend to call these individuals in our
24 case in chief, the only way she would be entitled to any of
25 the redacted information, she's read their statements,

1 redacted statements and redacted transcripts, would be if
2 there were potentially Brady information and that would
3 entitle her to that information. Last week, she only gave
4 me one individual and I went and read that transcript
5 immediately. In my opinion, there was no Brady information
6 in that CI's testimony to the state grand jury.

7 Now, I think probably a fair way to resolve this in my
8 opinion over defense counsel with the Court is yeah, there's
9 16 others and if the Defense wants to identify which ones
10 she thinks contain Brady material, we'd be happy to provide
11 the Court with unredacted copies of the transcripts for
12 review in camera for the Court to make a determination
13 whether it sees Brady information and whether the redacted
14 identities of these CIs should be turned over to the
15 Defense.

16 Because the State is not intending to call them, I
17 don't think there's any other right where she's entitled to
18 them under discovery under than the potentially, which the
19 State would argue none of them do, but at this point,
20 potentially, they have Brady information.

21 THE COURT: Okay. Do you want to respond to that?

22 MS. ZMROCZEK: Well, yeah, I still believe I'm entitled
23 to the names of potential witnesses in this case. I mean, I
24 understand the State doesn't intend to call them.

25 THE COURT: Under what rule are you entitled to

1 potential witnesses if it's not Brady?

2 MS. ZMROCZEK: Because, again, I'll go back to the
3 previous constitutional argument, my client has a right to
4 present a full and fair defense. So there are 15 other
5 inmates out there who talk about specifics -- and not all of
6 them, and I do have the numbers written down, but the
7 statements that are given by quite a few of those people
8 talk about their fears, et cetera. And, again, that's
9 evidence to help support his claim and his defense.

10 And I think that -- I mean, with Brady, I'm not even
11 making a Brady argument. I'm making an argument that he has
12 a right to present evidence to help support his case.
13 Again, I don't even know if these people are going to
14 testify. I don't know if they'd be willing to, but the
15 things that they say relate to multiple defenses that Mr.
16 Smith has and I think that if more than one person is
17 expressing those same feelings about what they were feeling
18 about that day and, specifically, that incident that are
19 mirroring exactly what Mr. Smith is feeling, I think he's
20 absolutely entitled to that.

21 THE COURT: I mean, you can subpoena anybody you want
22 to.

23 MS. ZMROCZEK: I can. I just don't have their names.

24 THE COURT: Well, I understand, but they got -- because
25 of the nature of this case, they have witnesses that they

1 need to protect and that happens in many cases. And if --
2 you know, they can choose what witnesses they want to call
3 just as you can, but the only information they have to give
4 you that I'm aware of under the law is anything that's Brady
5 material or anything that tends to show your client's
6 innocence.

7 MS. ZMROCZEK: But that's what they have done by giving
8 me these redacted transcripts that, also, go to exactly his
9 point about his feelings -- obviously, we're going to be
10 arguing about imminent threats and threats the entire case.
11 If other people are feeling this, because of what they said,
12 then I think I'm entitled to have those people's names to
13 talk to them.

14 THE COURT: Well --

15 MS. ZMROCZEK: And I mean, if --

16 THE COURT: It's probably -- you can get a list of
17 everybody that's in the Department of Corrections have that
18 same feeling. I mean, I don't know if --

19 MS. ZMROCZEK: But they gave me specific information.

20 THE COURT: I understand. And so I don't think you're
21 entitled to those unless it's Brady material. So if you
22 list any of those 15 or 16 you have that you think has got
23 Brady material in it, I'll be glad to review it to make a
24 determination whether I think there's any Brady material in
25 it.

1 MS. ZMROCZEK: Okay.

2 THE COURT: And if I think there is, then I'll order
3 them to give it to you.

4 MS. ZMROCZEK: I can do that. I think we'll probably
5 finish up a little early today, so that will give me some
6 time to do that, which is, also, the other reason I wanted
7 to wait until tomorrow.

8 THE COURT: And the fact that they just have general
9 fear, I don't know if that gets you there. I think that
10 would be in every prison and every jail in the country.

11 MS. ZMROCZEK: I know what you're looking for and I'll
12 be very specific with my request, Your Honor.

13 So then -- and I believe that they over lunch provided
14 -- I haven't looked yet because I was meeting with my
15 client. It's my understanding that they e-mailed me some of
16 the other material that I had been looking for, so I think
17 that's a nonissue now. I just need to review it.

18 THE COURT: Okay.

19 MS. ZMROCZEK: And I think, Your Honor -- just
20 depending on how the trial goes and what pictures come in, I
21 may be making a motion for a jury view. I just -- I may or
22 I may not. It just depends on -- with all the videos coming
23 in, I may not need to, but I just -- you know, I know the
24 courts don't like it when I surprise them at the last
25 minute.

1 THE COURT: So you want me to send the jury to Lee
2 County Corrections?

3 MS. ZMROCZEK: I may, Your Honor. It just depends on
4 the videos that come in.

5 THE COURT: That would be a huge step.

6 MS. ZMROCZEK: I know. I know. I understand now that
7 we've talked about the videos, so they may -- once the
8 videos -- if they all come in, Your Honor, that may negate
9 my need, so I think we'll been able to work that out.

10 THE COURT: Yeah, I'm not even sure I can pull that
11 off.

12 MS. ZMROCZEK: I think that concludes my motion.

13 THE COURT: Okay. I'm sure during the trial you may
14 have other issues.

15 MS. ZMROCZEK: I may.

16 THE COURT: Is there anything from the State?

17 MR. GIESE: No, Your Honor.

18 MS. ZMROCZEK: Oh, and I guess just for the record
19 purposes, so the State showed me some boards, so there's
20 some -- they showed me some pictures. There's some things I
21 don't have objection to coming in. There's other things,
22 like, some of them I may find duplicative, but we're trying
23 to do more that we can ahead of time. And we're going to
24 stipulate to the chain of the videos to help cut down on
25 that.

1 If I'm not mistaken, I'm sure they will correct me, so
2 the videos themselves when they were retrieved from SCDC,
3 they were in a program which I can't remember the name, but,
4 anyway, I can't open -- like, normal people can't open them.
5 So what they did is they downloaded all those videos and
6 translated them into MP4 format so that anybody can view
7 them. So it's my understanding that they're going to put
8 all of the original videos in and then, also, the MP4s, not
9 to be duplicative, but just if the jury wants to see a
10 video, they can use the MP4 versus downloading the entire
11 security system from SCDC to make that video play.

12 Did I say that correctly?

13 MR. GIESE: That's correct.

14 THE COURT: So --

15 MR. GIESE: I know -- I don't totally understand all of
16 this, but, apparently, something called Viconet, so we're
17 going to enter that, plus we're going to enter the MP4.

18 MS. ZMROCZEK: But they're the exact -- it's my
19 understanding they're the exact same videos.

20 THE COURT: Will they be on the format and will the
21 jury have it in evidence to actually view them in the jury
22 room?

23 MR. GIESE: Yes, sir, they wouldn't be able to do the
24 Viconet, we're going to play that in here. But they will be
25 able to do the MP4 on just a simple computer, a CD.

1 THE COURT: On a computer. Do we have a computer they
2 can take in the jury room? There's nowhere else I've ever
3 been that has one to take in the jury room.

4 MS. ZMROCZEK: Usually, the Solicitor's Office where I
5 have tried cases have a clean computer, but I think we're
6 days away from that.

7 THE COURT: I'm just trying to anticipate. So we have
8 a clean computer somewhere that if they want to view it, we
9 do not have to bring them back out and play; is that right?

10 MR. CONRAD: The attorney general's office has a clean
11 one.

12 THE COURT: Okay.

13 MS. ZMROCZEK: And I think we worked out the gang
14 stuff. They'll have to put somebody up. We're just not
15 going to waste time arguing about that. As long as they go
16 through the proper presentation of it.

17 THE COURT: Okay. So do I need to read that report
18 overnight? Is that going to be an issue?

19 MR. GIESE: I'm sorry, Your Honor?

20 THE COURT: This report.

21 MR. GIESE: Yeah.

22 THE COURT: Do I need to read it overnight? Do I need
23 to rule on it some time in this trial?

24 MR. GIESE: Yes, I think so. I've got it right here.

25 THE COURT: Is your report the same?

1 MS. SCOTT: Judge, I think this was made and turned
2 over, I believe, in the civil actions under protective
3 orders.

4 MS. ZMROCZEK: Okay. That's the same one I have.

5 MS. SCOTT: And, again, we'll hand it up for Your Honor
6 to review. Upon looking at it, I don't see any mention of
7 the Defendant's name.

8 MS. ZMROCZEK: Yeah, I have this one.

9 MS. SCOTT: Again, we'd argue it wasn't relevant, it
10 doesn't go to fear on that particular night.

11 THE COURT: Okay.

12 MR. LUNSFORD: Your Honor, Stephen Lunsford for the
13 State, this report was turned over mainly to civil counsel
14 under protective order for all the rationale civil suits
15 that were taking place. How this report made it into the
16 hands of the Defense counsel is beyond me.

17 MS. ZMROCZEK: I represented one of them.

18 MR. LUNSFORD: You represented one of them.

19 So with that being -- she is bound by that civil
20 protective order.

21 MS. ZMROCZEK: To not produce the report.

22 MR. LUNSFORD: To not produce it now. I don't know if
23 that's something we can even talk about at trial because
24 she's protective order.

25 MS. ZMROCZEK: To not produce the report, certainly.

1 MR. LUNSFORD: It's, also, a different case and it's
2 not relevant to anything we're talking about here today.
3 The protective order is for that case. The protective order
4 is very clear, and I don't have them with me, Judge, but I
5 can provide one, that says it's not to be released to any
6 inmate, any other individual not involved in the case, so
7 forth and so on. So to now bring this report up and attempt
8 to use it to have a discussion with the jury, whether it's
9 in opening or whatever, I believe is improper.

10 MS. ZMROCZEK: That's certainly not what I intended to
11 do.

12 THE COURT: Okay.

13 MS. ZMROCZEK: I think once you read it, you'll see
14 that I may have certain lines of questioning, depending on
15 what -- and, again, this is all depending on what the
16 testimony is going to be.

17 THE COURT: Okay. I just wouldn't go there in your
18 opening.

19 MS. ZMROCZEK: Certainly. No, no I'm not going to.

20 THE COURT: Okay. All right. Is there anything else?

21 MS. ZMROCZEK: Oh, yes. So we talked about it prior.
22 I guess we need to figure out a way -- so Mr. Smith's case
23 is unique because like three days before this happened or
24 maybe a week before this happened, this case was argued in
25 the Court of Appeals. Obviously, the opinion had not come

1 out yet. It went to the Supreme Court. The Supreme Court
2 did overturn his conviction, all the convictions that he had
3 for the reason that he was in there.

4 And so looking at it from a Lyle standpoint, nobody
5 knows the answer and I don't know that there is a right
6 answer, but, obviously, he was there because at the time, it
7 was a conviction, but he is not convicted of those charges.
8 The underlying nature of his charges absolutely have no
9 relevance to anything in this case, especially since they
10 were overturned. We have to figure out, I don't know how to
11 address that. I'm certainly open for discussion. It's the
12 most unique situation that I've been in, Your Honor, but we
13 have to address that.

14 MR. GIESE: Obviously, Your Honor, we would not go into
15 the underlying conviction that's been overturned, but I'm
16 not sure how you do it except to say exactly what the truth
17 is, which is that he was an inmate at the time. If Your
18 Honor wants to do some kind of instruction after that at
19 some point to say his case was overturned, but the facts are
20 he was an inmate and in the Department of Corrections,
21 legally in there.

22 THE COURT: Can I propose just to leave it at that. If
23 it's a scenario situation that may arise, if he were to take
24 the stand, I don't think you can cross-examine him on that
25 conviction.

1 MR. GIESE: Correct, I would not.

2 THE COURT: If it's been overturned, you can't -- in
3 fact, you were convicted of X, Y and Z and that's why you
4 were there. I don't think you would be able to go there
5 based on that trial being overturned. But the fact that he
6 was an inmate, I mean, I don't know how we're going to get
7 around that he was an inmate in the Department of
8 Corrections when this occurred.

9 MR. GIESE: And that's the fact.

10 THE COURT: And that's not a scenario we're dealing
11 with why he was an inmate and what he did to get him there.

12 MS. ZMROCZEK: Well, I think the fact that his case was
13 overturned -- that it's still pending -- so, certainly, you
14 know, when we talk about character evidence, people just
15 view people that have criminal convictions, I mean, that's
16 why we're so protective and that's we argue that because we
17 don't want that to affect the jury, oh, he's just a common
18 criminal, you know, he was in SCDC, blah, blah, blah. He
19 was in SCDC, you know, I just -- I mean, I anticipate he
20 will testify, Your Honor, but not until whenever they're
21 finished. And I'll continue to try to think on it.
22 Obviously, I'm not going to talk about it in opening and I
23 don't think that they will.

24 THE COURT: I understand, but if he testifies, they
25 can't use this crime against him, but on the other hand, you

1 can't claim he was innocent.

2 MS. ZMROCZEK: Oh, no, no, no, right right, right.

3 THE COURT: So you can't have your cake and eat it,
4 too. He was an inmate. If he takes the stand, they can't
5 cross-examine him on that conviction because, technically,
6 he has not been convicted at this point. And that will be
7 determined at a later time by another court, whether the
8 State was able to prove the guilt beyond a reasonable doubt.

9 MS. ZMROCZEK: I think there's a jury charge, you know,
10 about -- that talks about what you can use criminal
11 convictions for anyway and so maybe we can finesse
12 something. When the time comes for jury charges, we can
13 look at that.

14 THE COURT: It will only come into play if he takes the
15 stand, right?

16 MS. ZMROCZEK: Correct.

17 THE COURT: And if he takes the stand, we can deal with
18 what the State intends to cross-examine him on and whether
19 they can go there or not and how we deal with that. Because
20 it is a unique situation in that line. If it's not been
21 overturned, they can clearly cross-examine him on anything
22 that the rules allow on his prior convictions. And I don't
23 know whether he has other convictions that would qualify to
24 impeach him only versus the one that he was --

25 MS. ZMROCZEK: Interestingly, I think we're at the

1 ten-year mark, so I think we're going to have to --

2 THE COURT: Y'all know that, I don't know, so.

3 MS. ZMROCZEK: Right.

4 THE COURT: But that's only if he takes the stand,
5 those are the issues. And I will advise him and you,
6 certainly, at that point in the trial will determine whether
7 he's going to testify or not. But if he does, they're going
8 to be limited as to how they're going to cross on that.

9 MS. ZMROCZEK: Okay.

10 THE COURT: Anything else? I mean -- I didn't mean to
11 cut you all off.

12 MR. GIESE: No, you didn't. I just wanted to make sure
13 I'm square on this. I can call him an inmate at the time.
14 It's the truth.

15 MS. ZMROCZEK: I mean, yeah --

16 THE COURT: He wasn't there as guard or a Bible
17 teacher, he was an inmate, you know. He was there as an
18 inmate.

19 MS. ZMROCZEK: Yeah.

20 THE COURT: He wasn't trespassing.

21 MS. ZMROCZEK: He definitely was not. Your Honor, I
22 think I've been able to talk with the many lawyers over here
23 and I just ask, you know, because we don't want to keep
24 jurors and things like that. You saw the large witness
25 list. I would just ask if maybe the night before if they

1 have an idea of who they're going to call, so I'm not
2 scrambling around and guessing. I think we can work that
3 out. Mr. Giese and I have tried a lot of cases together.

4 THE COURT: I've got seasoned lawyers on both sides.
5 I'm sure y'all can work that out and deal with it.

6 MR. GIESE: One thing. We were talking previously
7 about the mention of gangs. I'm not sure what your position
8 is on that.

9 MS. ZMROCZEK: Right, so I think, like I told the
10 Court, I think -- obviously, it is what it is. I do think
11 that as long as they put the person up there to testify
12 about that and I can cross-examine them about gangs and
13 prisons and things like that, it's silly to try to keep it
14 out, Your Honor, because eventually one of us is going to
15 open the door, probably me. I've talked with my client
16 about that just for the purposes of trial strategy and he is
17 in agreement and understands why we're doing that the way
18 we're going it. I think they intend to put somebody up from
19 the prison --

20 MR. GIESE: Department of Corrections.

21 MS. ZMROCZEK: From the Department of Corrections that
22 has some sort of --

23 MR. GIESE: Expertise in that area.

24 MS. ZMROCZEK: Right, and if they can get me just
25 whatever information they have.

1 MR. GIESE: I have a name. That's okay. That's fine.

2 MS. ZMROCZEK: I just think that's -- to try to find it
3 otherwise would just waste all our time and be silly. I'm
4 not going to do that.

5 MR. GIESE: That's all we have on this side.

6 MS. ZMROCZEK: I think that's all we have. I needed a
7 limb time because, like I said, I just got some things today
8 that I need to get reviewed. And I'll make sure to get that
9 list to Mr. Conrad and then to the Court, as well so we can
10 determine -- even if it's in the morning, it still gives us
11 time.

12 THE COURT: Okay. All right. So what time in the
13 morning, 9:30? Do y'all have some other issues?

14 MR. GIESE: I think that's it.

15 MS. ZMROCZEK: I think --

16 MR. GIESE: I think we're ready for openings.

17 THE COURT: I did tell the jury 9:30, didn't I?

18 MS. ZMROCZEK: Yes.

19 MR. GIESE: Yes.

20 MS. ZMROCZEK: Obviously, we'll be here a little bit
21 early. We have -- yeah, these two got all the technology
22 working. We moved this here, Your Honor, so that -- it was
23 blocking, obviously, the witness and the jury, but we, also,
24 want the Court to be able to see, so I think this is an
25 appropriate remedy for all of us.

1 THE COURT: Okay. All right. I'll see you -- I'll be
2 here early in the morning because I usually have lawyers
3 overnight thinking about things they didn't tell me.

4 MR. GIESE: I'm sure we will. I'm sure she will.

5 THE COURT: Okay. I'll see y'all in the morning.
6 Thank you.

7 MS. ZMROCZEK: Thank you, Judge.

8 (WHEREUPON, Court was adjourned for the day to
9 reconvene on Tuesday, December 5, 2023.)

10 TUESDAY, DECEMBER 5, 2023

11 THE COURT: Do you need more time?

12 MR. GIESE: Yes.

13 THE COURT: So we're ready for the jury?

14 MS. ZMROCZEK: Yes. And, Your Honor, sometimes if I
15 look sideways, I can't see you with this TV. Also, just
16 because of the ridiculous number of texts I got with screen
17 shots from the media, can we make sure that we really
18 inquire if they've seen anything on the news?

19 THE COURT: The jury?

20 MS. ZMROCZEK: Yes, sir.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Thank you. There was just an extensive
23 amount of coverage, obviously. And then just maybe keep
24 reiterating don't read the media because they were taking
25 about his case being overturned and, you know, blah, blah,

1 blah.

2 THE COURT: Okay.

3 MS. SCOTT: And, Judge, just for the record, I spoke to
4 Aimee yesterday, Jamie Shaw is the lead investigator on the
5 case. I know she asked for sequestration, but we're asking
6 that she be able to stay.

7 MS. ZMROCZEK: Certainly, we understand that, Your
8 Honor.

9 THE COURT: Okay.

10 MS. ZMROCZEK: We've no objection.

11 THE COURT: Are we ready for the jury?

12 MR. GIESE: The State is ready.

13 (WHEREUPON, the jury enters the courtroom.)

14 THE COURT: Okay. Madam clerk, you may swear the jury.

15 THE CLERK: Okay. You can each raise your right hand.

16 (WHEREUPON, the jury was sworn.)

17 THE CLERK: Ladies and gentlemen, before we begin the
18 actual trial of the case of State vs. Michael J. Smith, I
19 instructed you last night that everything you knew about
20 this case you need to learn in this courtroom. I assume
21 none of you have read anything or seen any news coverage or
22 anything overnight. If you have, let me know.

23 (There was no response.)

24 THE COURT: Okay. And, basically, I'm just going to
25 explain to you what your role is and what your job is and

1 how this trial will run forward.

2 Mr. Smith has been indicted of certain crimes in this
3 case, and I'll explain to you the elements of those crimes
4 in the indictment later at the end of this case, but the
5 indictment in this case is not evidence. It's simply a
6 formal document that gets this case in the courtroom for you
7 to consider.

8 Your job is to determine what the facts are in this
9 case. My job is to rule upon the law and what evidence
10 you're allowed to hear in this case. I am not allowed to
11 have an opinion about the facts, so if I say anything or do
12 anything in this trial, don't think I have an opinion about
13 the facts. You're to disregard that because you and only
14 you can term what the facts are in this case.

15 You have to make that determination based on the
16 evidence that's presented to you. That evidence is going to
17 come to you, basically, in three forms. First of all, it
18 may be sworn testimony of witnesses. The witnesses will
19 come before you under oath and testify about the facts and
20 things they have observed. The other way you may receive
21 evidence is through documents and photographs that the
22 attorneys under our rules are allowed to submit. And then
23 the third way that you may receive evidence in this case is
24 through stipulations. Sometimes in a trial, there's certain
25 facts that are agreed to, that both sides stipulate to that

1 these are a fact. Many times that doesn't happen, but those
2 are, basically, the three ways you'll receive the evidence
3 in this case.

4 And it's very important that you pay close attention
5 because if you get it wrong, it's very hard to correct that.
6 If I make a mistake, at some other time and some other
7 place, it will be reviewed. If you make a mistake, it's
8 very hard to correct. It's important that you pay close
9 attention.

10 I will try to take a break every hour or
11 hour-and-a-half. And I try not to break in the middle of a
12 witness' testimony, but sometimes that testimony is so long
13 that I need to take a break. Having said that, if any of
14 you need a break, if you're uncomfortable for any reason,
15 just simply raise your hand because it is important that you
16 pay attention and if you're uncomfortable, you can't pay
17 attention. So if you need a break, raise your hand and I
18 will stop the testimony. We will go to the jury room, take
19 that break and come back and continue the case.

20 I try to stop somewhere for lunch around 12:00, 12:30
21 or 1:00. I mean, it depends on how the case closes at
22 trial. I'll try to get you out of here by 5:00 or 5:30 each
23 day. Sometimes that may change and I'll try to give you
24 notice, but most of the time for your schedule, that's how
25 we will run this court.

1 Now, in a few minutes, the attorneys are going to get
2 up and make opening statements to you. Those statements are
3 not evidence. They're simply going to explain to you what
4 they think the evidence is going to show in this trial or
5 what the evidence may not show in this trial. Then after
6 both of them make their opening statement, we'll begin the
7 testimony in this case and proceed with the trial.

8 At the end of the case, the attorneys will get up and
9 make a closing argument to you, and they will argue to you
10 as to what they think the evidence showed or what the
11 evidence did not show. Again, that is not evidence. That
12 is simply their argument to you as to what they think the
13 evidence shows.

14 The State has the burden of proof in this case beyond a
15 reasonable doubt and I will explain that to you in detail
16 when I charge you on the law. The defense doesn't have to
17 prove anything in this case. It's -- the burden is upon the
18 State of South Carolina and I will explain that to you in
19 detail.

20 I need you to keep an open mind, to pay close
21 attention. And I'm going to tell you, you can't discuss
22 this case with anybody else. When you go home at night,
23 your family may want to know what you're doing and if your
24 family is anything like my family and you tell them, they're
25 going to have an opinion about what you should do and they

1 have not been here, and it's important that you decide this
2 based on what you see in this courtroom.

3 You can't even talk about this case among yourselves.
4 And I know some of you may say well, that doesn't make
5 sense. After you've heard one witness's testimony and we
6 take a break, why can't we go back in the jury room and
7 discuss what we think that witness said. The reason we
8 don't want you to do that because I don't want you to start
9 forming any opinions and expressing those opinions to each
10 other until you've heard the entire case, until you've heard
11 all the evidence in this case as well as the law that I'm
12 going to charge you. Then and only then will it be proper
13 for you to discuss it among yourselves.

14 If you discuss it among yourselves on day one if you
15 have some theory about what happened in this case and you
16 express that to your fellow jurors, then you'll want to
17 defend that opinion you had in the beginning. You know, I
18 made a guess earlier in the case and at the end, I have to
19 back up what I thought about it. It's important you don't
20 share your opinion with each other until you've heard
21 everything. Then and only then will it be proper for you to
22 discuss it. Doing it that way, the system works, so that's
23 -- everything I tell you to do is has a reason.

24 It's important to the State of South Carolina and this
25 Defendant that they receive a fair trial by an impartial

1 jury panel who is going to take their job seriously and
2 listen to the facts and reach a verdict in this case.

3 So if you'll pay close attention, the attorneys are
4 going to make opening statements and we'll get started.

5 Mr. Solicitor.

6 MR. GIESE: May it please the Court, Your Honor.

7 OPENING STATEMENT:

8 MR. GIESE: On April 15th, 2018, at Lee Correctional
9 Institute, there was a riot. This riot was probably the
10 most horrendous riot in State history. Seven inmates were
11 housed there and killed.

12 We're here today because of one of those inmates that's
13 dead. His name is Cornelius McClary. Because of these
14 seven that have died, the State did an investigation and
15 they indicted certain people. Now, all seven of the deaths
16 occurred within three hours of each other. They occurred in
17 different dorms, but all within three hours. That type of
18 timeframe with that many dead.

19 Now, as His Honor has already told you, the burden is
20 upon the State to prove the elements of the indictments and
21 there are three indictments in this case. The first is for
22 conspiracy, and that claims Stephen Green, also known as
23 Tank, Michael Juan Smith, also known as Flame, the
24 Defendant, and Andre Boone, Michael Williams, Jerell
25 Jackson, Keon Daunte Moore, Rico Hickman, Mike Smalls, Teron

1 Hikeen Jackson, Shawn Bisnauth, Torey Blackwell,
2 [indiscernible], Anthony Archie and David Dozier all
3 combined together to form a conspiracy.

4 The second indictment is for assault and battery by mob
5 first degree where death results. And it reads that Michael
6 Juan Smith, also known as Flame, on or about April 15th,
7 2018 at Lee Correctional Institution located in Lee County,
8 South Carolina, did assemble with other persons in a mob as
9 defined by South Carolina code 16-3-210(a), such mob did
10 inflict the act of violence upon the body of Cornelius
11 McClary and Cornelius McClary's death resulted from such act
12 of violence.

13 The third, he's charged with prisoner carrying or
14 concealing a weapon, that Michael Juan Smith, Flame, on or
15 about April 15th, 2018, at Lee Correctional Institution
16 located in Lee County, South Carolina and while an inmate of
17 a State correctional facility did have in his possession and
18 carry on his person and conceal about and/or conceal an
19 object, homemade or otherwise that could be used to inflict
20 personal injury upon a person.

21 Those are the three charges that the State of South
22 Carolina has to prove to you.

23 Now, exactly what do we have to prove, the elements?
24 Conspiracy is pretty simple. It's two or more people that
25 combine together to commit an unlawful act, and that's it.

1 So if two or more people decide we're going to commit a
2 crime and they may do that, it's conspiracy. That's the
3 first count. That's what we have to prove.

4 The second count, which is the assault and battery by
5 mob first degree, death results is just what it sounds like.
6 It really is. It's a mob, which is two or more people, just
7 like conspiracy, that get together and as that mob, they go
8 to assault and batter someone. So as a mob or part of a
9 mob, they go and assault and batter someone and that that
10 assault and battery causes the death, in this case, of Mr.
11 McClary.

12 Now, His Honor is going to define to you mob, but
13 suffice it to say it's what it sounds like. It's a group of
14 people. They decide to do something, assault and batter
15 somebody and they do it and the person dies because of it.
16 That's what we have here.

17 The third count is pretty simple, also, or simpler,
18 assault -- it's possession of a weapon by an inmate to be
19 concealed or not concealed. In this case, the State submits
20 it's not concealed. I'll tell you why in a minute.

21 However, if an inmate has a homemade knife, a homemade axe,
22 a homemade hammer, anything that can hurt somebody in the
23 Department of Corrections, in that case, he's guilty of that
24 offense. He's possessing a weapon inside the Department of
25 Corrections. And we see why. You know, you'll see whether

1 he has a weapon or not.

2 Now, as I said, it's up to the State of South Carolina
3 to prove these indictments. And how are we going to do
4 that? We're going to put people up on the stand. They're
5 going to tell you what they saw, tell you what they did on
6 April 15th, 2018.

7 It's interesting what they're going to tell you, the
8 State submits, is that this incident, this riot started in
9 F-3. Now, F-3 is on the west side of Lee Institute.
10 There's three dorms there, one, three and five. It starts
11 in F-3 when an inmate named Rivera stabs and robs another
12 inmate whose last name is Milligan. Milligan's friends, the
13 State submits, the gang of Bloods get mad. They kill
14 Rivera, stab him to death. Then they go and find one other
15 Gangster Disciple and kill him, murdered him, stab him,
16 stomps him. Well, that's all in F-3 around seven o'clock.

17 F-5 finds out about what happened in F-3. Now, you're
18 probably wondering how do they find out. The State submits
19 through cell phones, illegal cell phones. Some of the
20 inmates in F-3 were putting it up on social media. It's on
21 social media that they find out what happened in F-3. Well,
22 the F-5 gangs are mad because two of their members have been
23 killed, so the Gangster Disciples, the State submits, and
24 the Crips in F-5 decide to take it out on the Bloods in F-5
25 because there are Bloods in F-5. And sure enough, they

1 march out all the Bloods out of the dorm, stab three Blood
2 members to death right there, right outside the dorm on a
3 breezeway.

4 So what do we have? We have something that starts in
5 three, it goes to five. What's left? F-1. F-1. F-1 finds
6 out, we believe through social media, what had happened in
7 F-3. The Bloods in F-1, who had three people killed in F-5,
8 they're angry, they're angry. They bind together. They
9 made a truce with the Gangster Disciples because the
10 Gangster Disciples, there were too many of them to fight,
11 but there weren't too many Crips. So the Bloods try to
12 attack the Crips in F-1 because they're part of who killed
13 the people in F-5. They bind together. They try to kick in
14 a door or a cell door where the Crips are hiding. They
15 jammed it, locked it. So you see a group of them trying to
16 kick the door in.

17 At some point, Mr. McClary is on the other end of the
18 dorm. They discover Mr. McClary. The mob, who is trying to
19 kick the door in then go and attack Mr. McClary. Mr.
20 McClary was stabbed 97 times, 97 stab wounds caused his
21 death.

22 As I said, the State is going to present evidence, but
23 we're, also, going to present a videotape in this case.
24 It's a videotape of what happened in F-1. It's graphic, but
25 it's something we have to show. So the State will put that

1 on. You'll see it on the monitors at some point. The State
2 then can identify by name and sight -- we have certain
3 witnesses that can identify that man as being one of the
4 members of that mob. And not only one of the members, but
5 we submit one of the leaders. He stabs him, he chases him.
6 He chases an unarmed man down the stairs. As Mr. McClary is
7 falling down the stairs, you'll see it, bleeding after being
8 stabbed multiple times, he chases him. He chases him, stabs
9 him again, stabs him again, hits him, hits him, and I
10 believe stabs him a third time. And you'll see it.

11 Mr. McClary, he stumbled off, other people stab him,
12 also, down there. He stumbles off, about 15 yards,
13 collapses and bleeds to death, bleeds to death from his 97
14 wounds.

15 The State asks that you please pay close attention to
16 that tape. Look and see what that man did. Follow him.
17 Follow what he does because he's in that first group trying
18 to kick that door in. He runs from there to the other end
19 to get to stab Mr. McClary. He chases him down the stairs.
20 He stabs him on the ground down there. And, also, notice
21 when he's stabbing Mr. McClary, take a look and see if you
22 see a knife or shank in Mr. McClary's hands. The State
23 submits he's unarmed when he stabs him.

24 The State submits by the time he stabs him, McClary
25 might have died anyway, we don't know. We know for a fact

1 he was involved in that mob. The State asks, please watch
2 that tape closely. Follow him.

3 Now, two last things before I sit down. One is,
4 obviously, these are inmates, the victims are inmates, but
5 they had a right to live. Just because they're an inmate
6 doesn't mean this can happen to them. The law protects the
7 inmate just like it protects anyone one of us out in the
8 world. The law of the -- out on the street is the law,
9 also, in the prison. There's no two different laws. Mr.
10 McClary had a right to live. He had a right to live.

11 Second and finally, His Honor told you that at the end
12 of the trial, he's going to give you the law as you see all
13 the facts. And one of the things he's going to say is that
14 the State of South Carolina has the burden of proving these
15 elements. I've said that, at least, twice. We do. We have
16 that. And in this case, the State of South Carolina gladly,
17 gladly accepts that burden because the State submits when
18 this case is over and you've seen that tape and you've heard
19 the testimony, there's going to be no doubt in your minds
20 that that man, Flame, was part of that mob that destroyed
21 Mr. McClary and he's guilty of all three of these offenses.
22 Thank you.

23 MS. ZMROCZEK: May it please the Court?

24 THE COURT: Yes, ma'am.

25 OPENING STATEMENT:

1 MS. ZMROCZEK: Lee County Correctional opened killing
2 season on Michael and his friends, killing season. Mr.
3 Giese and I agree on one thing that he said in that opening
4 and that is the law protects the inmate, the law protects
5 the inmate. What didn't protect the inmate, the corrupt
6 officers at Lee County who brought in cell phones, drugs,
7 allowed weapons to be carved, who created an environment
8 where no inmate where safe, especially Mr. Smith.

9 Good morning, ladies and gentlemen, it's going to be a
10 long week, but I am thankful and I know that Michael is
11 thankful for your service because this is an important case.
12 As the Judge said, it's an important case. Because it's
13 important for the citizens of Lee County to say just because
14 you're in a prison doesn't mean you don't matter. Everyone
15 has a right to live, everyone. Any death of any human is
16 tragic. But ladies and gentlemen, you're going to see
17 through the evidence the State puts up and the rest of the
18 evidence that we put up what actually was going on in that
19 prison and how we ended up in this location.

20 Now, I say we, the Defense. We're going to show you
21 the rest of the story. I'm dating myself here, Paul Harvey.
22 My dad used to make me listen to it every morning, the rest
23 of the story. And that's, ladies and gentlemen, what we're
24 going to do.

25 The Judge told you, we don't have any burdens in this

1 case. I can sit there and not ask any questions and not
2 challenge any of the evidence and the State would still have
3 the burden, but ladies and gentlemen, the State is going to
4 have an additional burden when you get this case at the end
5 of this trial because they're going to have to disprove,
6 disprove beyond a reasonable doubt that when Michael Smith
7 in a span of 30 seconds was about to lose his life, acted in
8 self-defense, which he is entitled to and, sadly, which he
9 had to do because it was killing season.

10 The evidence that you'll see will show that it did
11 start in F-3 because some gang member, not a Blood, stole
12 items from another gang member. That's what set this off.
13 Now, it's not that simple, unfortunately, ladies and
14 gentlemen, because what you'll hear is that days before
15 there was another confrontation. You're going to hear
16 inmates begging, begging for help, begging for protection
17 from the State of South Carolina. That was not provided.

18 Weapons? Yes, there were weapons, hatchets, shanks,
19 all fashioned to hurt other inmates. And what's most
20 egregious, ladies and gentlemen, what's most offensive when
21 you watch these videos is that you'll see correction
22 officers just be-bopping around opening doors, not trying to
23 protect anyone. They didn't put the facility on lockdown at
24 7:15 when this happened, they just let everybody do what
25 they wanted because that's what they did. They did not care

1 about the inmates.

2 You'll see Officer Lopez in and out of the dorms with
3 the key at F-1 because that was his post. One CO for 200
4 and some odd inmates. And as to what caused the death,
5 you'll hear from the pathologist and you'll see what caused
6 the death, the State, Mr. Lopez, CO Lopez goes into the dorm
7 after this group has to defend themselves from Mr. McClary
8 and his buddies and he does nothing. He lets that man lay
9 on the ground and just bleed out because the State of South
10 Carolina doesn't care. It was killing season.

11 There's going to be a lot of videos, a lot of groups, a
12 lot of names. We picked you because we know that you would
13 individually analyze the evidence. And ladies and
14 gentlemen, what you're going to see on that video in F-1
15 dorm, F-3 happens -- it goes on the speaker. It's on the
16 radio. Everybody in the prison knows what's happening.
17 They want to blame cell phones. Well, then blame the people
18 who were bringing the cell phones in, corrections officers.
19 They want to blame the cell phones and say oh, that's how
20 they knew. No, ladies and gentlemen, they knew because COs
21 and the people that run that facility are on the phones and
22 they're telling people.

23 And what Michael Smith knows in his dorm in F-1 at 7:15
24 is that a fight has broken out in F-3 and it is out of
25 control. And these Crips and these Gangster Disciples are

1 taking down the Bloods. It's been their plan. It's been
2 happening periodically up until April 15th when it comes to
3 a head, and they execute their plan and they execute the
4 Bloods. F-3 happens. It's a bloody nightmare. And they
5 send word, the Crips and the GBs and they say we're taking
6 them, we're getting them down. And they spill over into
7 F-5.

8 And you'll see this, ladies and gentlemen, people,
9 Michael's friends are being brutally murdered while the COs
10 watch. And then they are tossed on the ground like pieces
11 of trash where they lay. And if that's not bad enough,
12 ladies and gentlemen, they start sending pictures and
13 threats. And they tell them, Michael and his friends, we're
14 coming for you. We're coming for you. It gets so bad at
15 F-5, ladies and gentlemen, that these inmates start climbing
16 the fence with rolled up razor wire to get out to save
17 themselves. Some of them make it and many of them don't.

18 Meanwhile, back in F-1 while all of this is going on,
19 the inmates are scared and this fear is building. And
20 there's no worse fear than to know that people are coming
21 for you and that they're allowed to do it.

22 You'll see on the videos, ladies and gentlemen, there's
23 dorms. And they're separated and they have windows, you can
24 see outside. You can see what's happening. What you'll
25 see, ladies and gentlemen, is from 7:15 to 8:15 to 9:15, you

1 can almost feel the tension that's building in F-1. But you
2 don't see any mobs or riots because they are just sitting in
3 place trying to not die.

4 And then you'll see at 21:36 to 21:47, okay, so 9:36 to
5 9:47, what you will see is a mob of these Crips and Gangster
6 Disciples who have already killed and ragged and warned that
7 they're coming for you and they bust in that dorm. And that
8 dorm is where most of Mike's friends are, so they're able to
9 literally -- you'll see on the video, they say go, just go,
10 just get out. And who's pushing them out? You'll see.
11 You'll see who's pushing them out. And they're scared.
12 They're running to the windows and they're seeing after
13 that -- after that initial break in, then they're running to
14 the windows and they're seeing their friends trying to
15 escape this slaughter. And they go back in their dorm
16 because they don't know what to do.

17 And then 22:01, 22:00, ten o'clock, ten o'clock, the
18 Crips are like, okay, we're making our move. And Cornelius
19 McClary, who you will hear has a history at a previous
20 facility called Perry, where he was found with two weapons
21 because that's what he carries. And guess who else was in
22 Perry and who knew him? Mr. Smith. Mr. Smith knew about
23 McClary and his tendencies because he had already been
24 housed with him.

25 In fact, on October 3rdish of 2018, the prisons in

1 their great wisdom decided to send a whole bunch of
2 documented people to Lee County, even though the warden was
3 like, please, stop, we don't have control, we cannot handle
4 this, they send them. And on that very same bus on October
5 3rd, you will hear Michael Smith is on that same bus with
6 Cornelius McClary, and then they get put in the same dorm.

7 Now, all of this is in Michael's mind, but what's
8 worse, ladies and gentlemen, is what you'll see at ten
9 o'clock on the video, a young man, friends with Michael who
10 is being escorted down the stairs and is holding his neck
11 because McClary slashed him in the throat, slashed him so
12 much that the blood gets on Michael and he is in panic mode.
13 And they -- a friend carries Michael's friend down the
14 stairs and gets him out to the dorm where SCDC just lets him
15 sit and bleed out.

16 And Michael says this has to stop. We're all going to
17 die. And so they start and they get McClary out and they
18 push him down the stairs. That is correct because they're
19 like get out, stop, stop killing us. And you'll see Michael
20 (indicating) a couple of times pushing away.

21 And then when Michael realizes that that threat has
22 been neutralized, ladies and gentlemen, what you'll see on
23 the video is that he says all right, everybody, he's down,
24 not dead, he's down. He can't hurt us any more, get back.
25 You'll see it. There's no audio, but you'll see it, get

1 back. And they sit and they wait for someone to save them
2 or someone to protect them.

3 Ladies and gentlemen, that help doesn't come because
4 even though we're now three hours, three hours into this, do
5 you think there's a SWAT team? Do you think there's anybody
6 in there to get control? Spoiler alert, the answer is no.
7 They let Inmate McClary, who has been neutralized, not
8 killed, they, they let him die and bleed out on that floor
9 with the CO just be-bopping around with his keys not doing a
10 thing about it. SCDC caused the death of that man, SCDC
11 caused these issues.

12 The Judge is going to talk to you about self-defense
13 and how the State has to disprove, disprove, beyond a
14 reasonable doubt that Michael was not in fear and that he
15 didn't use enough force to just protect himself. And ladies
16 and gentlemen, they will fail because when the law is
17 applied appropriately, which it will be by you, and, Judge
18 Cothran tells you at end of this case, and you take that law
19 and you look at these awful facts that you're going to have
20 to see -- and it's not pretty, ladies and gentlemen.
21 There's going to be some awful pictures that no human being
22 should have to see, much less endure. Michael Smith endured
23 it and he survived no thanks to the State.

24 And ladies and gentlemen, I will come up here at the
25 end of this case and ask you to do what is legally correct

1 and legally justified and that is to find Michael Smith not
2 guilty of all of these charges because SCDC instituted a
3 killing season and he did not want to die. Thank you.

4 THE COURT: You may call your first witness.

5 MR. GIESE: The State calls Associate Warden Tisdale.
6 He's in the back.

7 EDWARD TISDALE,

8 after being duly sworn, testified as follows:

9 THE CLERK: If you'll have a seat in the witness box
10 and state your name for the court reporter, please.

11 THE WITNESS: Full name is Edward Tisdale.

12 DIRECT EXAMINATION

13 BY MR. GIESE:

14 Q All right. Warden Tisdale now?

15 A Associate Warden, yes, sir.

16 Q Where are you employed?

17 A The South Carolina Department of Corrections, Lee
18 Corrections.

19 Q Are you at Lee still?

20 A Yes, sir.

21 Q How long have you been with the Department of
22 Corrections

23 A Since 2012.

24 Q Prior to that, did you have any experience in law
25 enforcement?

1 A Yes, I started in '90, Williamsburg County, Clarendon
2 County, Marshall Service, then came to SCDC as an
3 investigator in 2012.

4 Q So when did you start -- you said Williamsburg first?

5 A Yes.

6 Q When did you start there?

7 A Ninety.

8 Q And then you moved to?

9 A Clarendon.

10 Q Were you with the sheriff's department at both?

11 A Both, yes, sir.

12 Q When did you move to Clarendon?

13 A 2005.

14 Q And you stayed there until you went to the Department
15 of Corrections?

16 A Yes, sir.

17 Q So you've, basically, been in law enforcement since?

18 A Ninety.

19 Q Ninety. Now, you said that you were still at Lee
20 Corrections; is that right?

21 A Yes, sir.

22 Q And you were at Lee Corrections April 15th, 2018?

23 A Yes, sir.

24 Q What was your position there then?

25 A Associate warden of operations.

1 Q And tell the jury what that is and what that does, what
2 you're supposed to do?

3 A Associate warden of operations runs the day-to-day
4 operations of the prison itself. On the scale to set up,
5 you have a warden, which is, ultimately, over everything at
6 the prison, then you have two associate wardens, one of them
7 handles programs and specialties, such as your medicals or
8 your recreation, horticulture, stuff such as that. Your
9 associate warden over operations handles any of your
10 security aspects and, again, the day-to-day moving and
11 operation of the facility.

12 Q Now, as of April 15th, 2018, did you work that day?

13 A No, sir, it was a Sunday.

14 Q And what was your first contact with this case?

15 A Received a phone call from the prison a little after
16 7:00 p.m. There was an incident inside of F-3 unit and
17 inmates were refusing to go in.

18 Q Go in?

19 A Go into their assigned cells after being told to do so.
20 At seven o'clock at night, it was past time for the inmates
21 to be locked down.

22 Q So past seven o'clock on that wing or that side of your
23 prison, seven o'clock, they're supposed to all be in their
24 cells?

25 A Yes, sir, they should have already been in a cell.

1 Q And when they're put in a cell, is that for the night?

2 A Yes, sir.

3 Q So at seven o'clock, every inmate in Lee should have
4 been in their cell?

5 A Should have already been in a cell and being prepared
6 to be counted.

7 Q And if someone wasn't in their cell, like you say in
8 F-3, that would be some type of violation; is that right?

9 A Yes, sir.

10 Q It's, also, a security issue?

11 A Yes, sir.

12 Q All right. So you get a call, something is happening
13 at F-3, what do you do?

14 A I asked to speak to the duty warden, the duty warden at
15 the time was Annie Mae McCollough. I got on the phone with
16 Captain McCullough at the time. She told me there was an
17 inmate that had been stabbed in F-3. They were looking to
18 get him out to get him to medical and the inmates were, in
19 fact, refusing to go in and she was trying to find one of
20 our officers.

21 MS. ZMROCZEK: Your Honor, I'm going to object to
22 hearsay. He's relaying what somebody else told him or what
23 they said.

24 MR. GIESE: Presence sense impression or res gestae, as
25 I used to call it.

1 THE COURT: I understand. Okay. I'll allow that in
2 limited. You can't go into any conversations yet.

3 BY MR. GIESE:

4 Q All right. So because of the information that you
5 heard, what did you do?

6 A Sent a group text to administration and I started
7 responding to the prison.

8 Q You said responding, where were you living at the time?

9 A Same place as I do now, Williamsburg County.

10 Q How far a drive is that?

11 A 47 miles from front door to front door.

12 Q So you immediately got in your car and went?

13 A No, sir, immediately was out of the question right at
14 that particular time. April 15th, 2018, that time of the
15 night was a storm like I had not seen in a while, cross
16 winds, heavy rain, not being able to see off of my porch.
17 Took a little while as far as the rapid response to get to
18 where I was going.

19 Q Approximately how long did it take you?

20 A About an hour and 35, hour and 40 minutes maybe.

21 Q So you got there around 8:30?

22 A Yes, sir.

23 Q Tell the jury what you did or what you saw when you got
24 there.

25 A I entered the front door -- let me give you a little

1 run down. You come through a security area in the front
2 known as the shake down area. If you came to visit, that's
3 the first encounter you're going to have with anybody at
4 Lee. Went through there. No, they did not stop me to shake
5 me down because of the emergency that was going on. I went
6 directly into the building.

7 Once I got into the building, I went to the control
8 room. There were already some supervisors on scene that
9 lived a lot closer than I did. We started assessing to see
10 exactly what we had in the dorm, make sure all officers were
11 accounted for. At this time, they were. Earlier in the
12 night, they were not. Once all of the officers were
13 accounted for, we got an update of where the inmate was
14 inside of my F-3 unit, in the B side of the F-3 unit.

15 Warden Joyner arrived shortly after I did. He traveled
16 about the same distance, different county, same distance and
17 we moved from the central control room upstairs to the
18 warden's area, which, also, doubles as a command post in any
19 situation that you have going on.

20 Myself, one other association warden, Kenneth Sharp,
21 regional director, Joseph Steins, and Warden Joyner went
22 upstairs to pull the camera system up to see exactly what we
23 were dealing with. When I say what we were dealing with,
24 were the inmates just standing outside of their cells, were
25 they tearing up the place, you know, what exactly was going

1 on before we put a team together to go down to remove the
2 injured inmate?

3 Q Let me stop you there. So you've got cameras inside
4 the command room or in the warden's office?

5 A Yes, sir.

6 Q That you can see what's going on in these different
7 dorms?

8 A Yes, sir.

9 Q And they have cameras in the dorms then is what you're
10 saying?

11 A Yes, sir, cameras are in all dorms, I believe.

12 Q And can they move them around, go from camera to camera
13 on this screen that you're looking at?

14 A Yes, sir, you can pick and choose what camera you want
15 to look at, yes, sir.

16 Q So y'all did that?

17 A Correct.

18 Q And tell the jury what you did after that.

19 A Again, we got upstairs and I was getting the camera up
20 and operable, pulled up my F-3 unit, saw we did have an
21 inmate that was lying in a pool of blood, indicated we
22 needed to get a group together, get this inmate out.

23 At that particular time, other inmates in the F-3 unit
24 were not actively fighting. Common prison terminology is
25 posting up. Basically, what that means is a group will get

1 together in this corner, a group will get together in that
2 corner of the same likeness. And we noticed inmates who
3 were posting or getting into their individual groups. And
4 we received a call in the warden's area from Columbia and we
5 were asked what do you have going on in your F-5 unit.

6 Q How would they know? How would somebody in Columbia
7 know what's going in F-5? Do they have cameras there, too?

8 A Cameras in every dorm we have in Lee.

9 Q Right, but does it go to somewhere in Columbia?

10 A Yes, sir.

11 Q So someone in Columbia says what's going on in F-5?

12 A Yes, sir.

13 Q What do you do?

14 A Had to take my camera to switch it over to see what --
15 I really thought Columbia was confused with our F-3 and F-5
16 unit. And as we were changing cameras -- we're only talking
17 about the click of a mouse, I'm figuring out which camera
18 they're talking about, Officer or Sergeant Timothy Shep (ph)
19 screamed across the radio they're breaching the fence in
20 F-5, they're breaching the fence in F-5.

21 Q Do you view that on the tape, or on the video, do you
22 see that?

23 A No, sir, I had not got to the video part. When he came
24 across the radio and said they are breaching the fence at
25 F-5, myself and one of the associate wardens immediately

1 left the control room. The warden had command. And we
2 prepared to repel inmates who were going across the fence.
3 What was going through my mind if they're breaching the
4 fence, they're getting ready to be all over Lee County.

5 Q You thought maybe it was the outside fence?

6 A That's the only fence that was in my mind at that
7 particular time.

8 Q Now, let me stop you. Did you at some point ask about
9 the correctional officers that might still be in one, three
10 and five? Did you check to see if they were still all
11 right?

12 A Yes, sir, I'm going to back up to whenever we came in
13 -- and as I said, once we knew that all of our officers --

14 Q I apologize.

15 A That's no problem, that's no problem. Once we knew the
16 location of all of the officers and they were safe, then we
17 proceeded upstairs to get a group together that time of
18 night to go move the inmate.

19 Q At some point, did you leave that command officer?

20 A Yes, sir, shortly after the screaming that they are
21 breaching the fence, they are breaching the fence, I
22 retrieved a shotgun from the control room and went to the
23 rooftop. There's a designated area on the top of Lee
24 Correctional Institution that has -- have designated areas
25 for me to stand, not just me, for an officer to stand if you

1 have to repel a problem in the yard.

2 MR. GIESE: Your Honor, can he step down? I have a map
3 I'd like for him to see.

4 THE COURT: Yes, just make sure you keep your voice up
5 for the court reporter.

6 THE WITNESS: Yes, sir.

7 MS. ZMROCZEK: And, Your Honor, may I relocate to see?

8 THE COURT: Yes, ma'am.

9 MS. ZMROCZEK: Thank you. Your Honor, I have no
10 objection to this evidence coming.

11 THE COURT: Are you offering this as evidence?

12 MR. GIESE: Yes, sir, State's Exhibit No. 1.

13 THE COURT: State's Exhibit No. 1 admitted.

14 (WHEREUPON, State's Exhibit No. 1 was admitted into
15 evidence.)

16 BY MR. GIESE:

17 Q If you would, explain what this is a picture of.

18 A Satellite image area view of Lee Correctional
19 Institution here in Lee County right outside of Bishopville.

20 Q And you recognize this photo?

21 A Yes, sir, I've looked at it numerous times. Not this
22 one, but I'm very well familiar with it.

23 Q All right. Now, you testified earlier that something
24 had happened. The first you heard something happened in
25 F-3, you had an inmate down. Show us where that is. Just

1 describe --

2 A I will. F-3 is the unit here. They're not marked on
3 here by the roof line at all. Again, medical on the west
4 side of the campus -- Lee is broken down into east yard and
5 west yard. And just so we don't get confused, on my east
6 yard, I've got F-2, I've got F-4, I've got F-6. This
7 building is an administrative building and a medical
8 department. This is an educational, classification,
9 gymnasium. This is a cat walk and I don't know if it's
10 going to show out -- this goes into the cafeteria and prison
11 industry on both sides. This is a parking lot. And in this
12 order, F-5, F-3, F-1 restrictive housing unit on the west
13 yard.

14 Q What's restrictive housing unit?

15 A Jail inside of the prison. If you violate anything
16 inside a prison and it warrants it, then you can get locked
17 up for 60, 40 days.

18 Q So you testified that you got a shotgun?

19 A Yes, sir.

20 Q Where did you go with that shotgun?

21 A On this roof line, again, there's designated spots to
22 repel whatever we may or may not have going on. I ended up
23 all the way down here -- correction, I ended up here.

24 Q Now --

25 A That's on top of the gym, also.

1 Q Now, you testified earlier about rain storms. Is it
2 still raining at this point?

3 A Yes, sir, just not as bad. The rain is still sideways
4 and we still have a lot of wind. We, being myself and
5 Sergeant Edmond Settles, and there were two other officers
6 on this rooftop that I know they belong to SCDC or they
7 wouldn't have been up there, but I couldn't call their names
8 right now if I had to.

9 Q When you got up top there, what did you do?

10 A I ordered Settles to deploy chemical munition rounds to
11 this gate area where there was a group of inmates stabbing
12 another group of inmates, actively stabbing another group of
13 inmates. He had a chemical munition launcher, some people
14 call it a gas gun, but a chemical projectile can be fired
15 from a shoulder mount as well.

16 He fired from this point, should have been no problem
17 with it hitting here, OC gas dispersing the crowd, take him
18 out, whatever you're doing. I watched that round leave out
19 and curve and land here due to wind effect and rain.

20 Q Did it actually go off there?

21 A It went off, yes, sir.

22 Q But no effect on F-5?

23 A None at all, it didn't even get close. It went toward
24 F-5 and went back and landed in front of F-3. Decided to
25 move -- and what you cannot see on this, if you go up and

1 down a ladder. This is the top of the gym. This is a
2 different dimension. You're up and down, so you're coming
3 off of the ladder onto another wall to get around here.

4 Myself and Settles, who was on the tactical team was
5 going to have to redeploy so we could get to this gate and
6 fire again. There's inmates coming across this gate.
7 There's inmates calling me by name, my institution. I'm
8 calling some of them by name. They're telling us they're
9 hurt. They need to get to medical. I made a decision to
10 allow them to start walking from F-5. They've already cross
11 the fenced. They're -- keep in mind, they've already gone
12 across three rolls of Concertina wire. They're cut bad.
13 And they're scared enough that they would rather face the
14 Concertina wire than [indiscernible].

15 I allow them under cover to start walking toward this
16 point, which is a secured area where my major was waiting to
17 take them one at a time to medical. We got a redeployment
18 at that time across the radio from the command center that
19 F-1 had just erupted, quote, unquote, to get down to F-1 and
20 deploy munitions, to deploy munitions in F-1.

21 Q When you say deploy munitions into F-1, is that the gas
22 thing again?

23 A That would be the 37 millimeter launchers we had at the
24 time, go down there and shoot the gas into the unit, take
25 them out, and put it back on breather.

1 Q Did you still have one, another canister?

2 A We had a bag full. We had a bag full of munitions, but
3 we only had one 37 millimeter launcher, which means Edward
4 Settles had to take off running from here and traverse up
5 and down these ladders to get to where he was going, back
6 down the stairs and back out and then figure out a way to
7 get to F-1. And I've got 20 or 30 inmates on the yard that
8 are still armed. That was not feasible and it couldn't
9 happen.

10 Q And so you've got inmates streaming over toward the
11 command or towards your main building?

12 A Yes.

13 Q They're injured. Were you taking those to the hospital
14 or to medical or what?

15 A At that particular point, my job was to get them here
16 without doing any further damage to themselves. And my main
17 group of officers was at this fence carrying them into our
18 medical division. From my point of view, inmates started
19 going toward my F-1 building beating on the outside of the
20 windows, you know, whatever it happens to be.

21 Q Were these part of the injured ones or just anybody?

22 A Everybody that came across that fence was injured.

23 Q So they go over to F-1, some of them go over to F-1?

24 A Some went towards the F-1 building.

25 Q You watched them do that?

1 A I did.

2 Q Once you watched them go over there, what did you do?

3 A Continued concentrating on what I had that couldn't
4 walk in this yard and coordinating with inmates on the
5 ground to get them picked up and down here because these
6 individuals were bleeding out.

7 Q So helping those coming through or coming across and
8 seeing those people go to F-1, did you have any other
9 contact with F-1 at the time?

10 A I had a sergeant who was still in F-1 indicating that
11 he was okay at the time --

12 MS. ZMROCZEK: Objection, Your Honor, hearsay.

13 MR. GIESE: We'll withdraw that.

14 THE COURT: Okay.

15 BY MR. GIESE:

16 Q So you still had a correctional officer -- did you
17 through your investigation discover whether or not you had a
18 correctional officer still in one?

19 A Yes, sir, Sergeant Clive Lopez was still in F-1
20 performing his duties.

21 Q All right. Have a seat. Thank you.

22 (Witness returns to witness stand.)

23 Q Now, when do you come down off the cat walk? When do
24 you come down off the cat walk?

25 A The first time when the yard was clear of the inmates

1 from F-5.

2 Q And that's -- do you ever go to F-1 yourself?

3 A Yes, sir. Later that night, I personally went down to
4 F-1.

5 Q Okay. What time was that?

6 A I do not -- I don't know, sir.

7 Q And would you describe the scene of all that's going on
8 that night as chaotic?

9 A It was extremely chaotic, the logistics were a
10 nightmare. Anytime an inmate leaves out of Lee Correctional
11 Institution on an ambulance, it's required to have two
12 officers with that particular inmate. It was change of
13 shift. I just said earlier, 22 people went out. That's 44
14 officers and that's not counting what was still injured and
15 had to go somewhere. Passed by the parking lot and looked
16 and there's not that many vans to follow it and we're not
17 driving personally operated vehicles behind the ambulance.
18 We had to get vans from other institutions to respond to Lee
19 to bring help. I contacted the sheriff's department to
20 actually cover the mass casualty van that EMS had because I
21 was out of officers to have Sheriff Simmons officers,
22 actually, cover these inmates as we were transporting some
23 of them to Toumey.

24 Again, chaotic is not even the word to describe it. It
25 went completely crazy. And keep in mind that once in

1 medical where you're normally at for help, inmates are now
2 wanting to fight each other and kick at each other inside of
3 medical, inmates that have been injured or whatever.

4 Q Were y'all able to keep them separated?

5 A The best we could.

6 Q Now, still raining?

7 A Yes, sir.

8 Q And you said at some point you went to F-1 and went
9 through it. Again, you testified earlier that when you
10 first got the call was around seven o'clock, all inmates at
11 that point should have been on lockdown?

12 A They should have been in cells.

13 Q Do you know whether the inmates in two, four and six
14 were locked down that night?

15 A With the exception of F-6. F-6 is a character based
16 unit and they would have stayed out longer than any other
17 unit. The other units should have been locked down.

18 Q And that's kind of a perk?

19 A Yes, sir.

20 Q But everybody else would be in?

21 A Correct.

22 Q And, in fact, through your investigation, were you able
23 to discover whether the inmates in one, three and five, were
24 they locked down?

25 A No, sir, they were not.

1 Q And that, in fact, would have been a violation?

2 A It would have been.

3 Q Now, you talked about Captain McCullough, Annie
4 McCullough?

5 A Yes, sir.

6 Q Did you ever hear her call for further lockdown?

7 A No, sir, I did not.

8 Q But she would have been the one to do that; is that
9 correct?

10 A Yes, sir.

11 Q And you say -- same facts if you want to make an
12 announcement, if you make an announcement from the warden's
13 office or wherever the microphone is, does it go
14 prison-wide?

15 A Yes, sir, it's a public address system just like you
16 have in a school or a sporting event. It's on the yard and
17 in the dorms.

18 Q So if someone were to call over the intercom, it would
19 be verbal or audible?

20 A Yes, sir.

21 Q Now, one last question, Lee Correction, is that in Lee
22 County?

23 A Yes, sir, about two-and-a-half miles out of
24 Bishopville.

25 MR. GIESE: That's all I have, Your Honor.

1 MS. ZMROCZEK: May it please the Court?

2 THE COURT: Yes, ma'am.

3 MS. ZMROCZEK: Thank you.

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 Q Good morning. Is it Associate Warden?

7 A Yes, ma'am.

8 Q Associate Warden, your job as an associate warden is to
9 protect your coworkers and protect the inmates, right?

10 A Correct.

11 Q How are you trained to do that?

12 A Through the South Carolina Criminal -- I almost said
13 criminal justice because that's where I was, SCDC training
14 academy actually teaches proper procedures and policies
15 inside the prison.

16 Q Okay. And I want to talk about those policies and
17 procedures.

18 A Yes.

19 Q I think you said first South Carolina Criminal Justice
20 Department, which is on Broad River Road, right?

21 A Yes, ma'am.

22 Q Or academy. But they, also, do -- and those are for
23 just training of all law enforcement in South Carolina,
24 correct?

25 A Yes, ma'am.

1 Q But they have a very particularized training for prison
2 workers, right?

3 A Yes, ma'am, SCDC, actually, has its own academy.

4 Q SCDC has its own academy. And where is that held?

5 A Same place, Broad River.

6 Q On Broad River. And why would you send -- why are
7 people sent to that academy?

8 A To become certified as an officer or if you're working
9 in the Department of Corrections itself, if you do not
10 become a certified officer, it's to teach you what to expect
11 inside the prison system and what you will be dealing with
12 inside the prison system.

13 Q Because what we expect inside the prison system is for
14 the prison authorities to have control, correct?

15 A You would expect that.

16 Q You would expect that, right? You would demand that of
17 your employees, right?

18 A Yes, ma'am.

19 Q To do their job and to follow how they have been
20 trained to protect the inmates, correct?

21 A Correct.

22 Q And I want to talk about some of those policies, all
23 right. You have policies in place when an incident occurs
24 anytime, right?

25 A Yes, ma'am.

1 Q So I want to talk about April 15th. You receive a
2 call. At what time did you receive that call?

3 A A little after 7:00 p.m.

4 Q Okay. Let me ask you this just for a second. When you
5 went to the academy, did they train you to write reports?

6 A Yes, ma'am.

7 Q Okay. Did they train you to document what happens so
8 that later on if there's an issue, someone like me or anyone
9 from SLED or anyone can come back and look at those reports
10 and then find out where the failures were so that doesn't
11 happen again, right?

12 A Yes, ma'am.

13 Q Did you do a report in this case?

14 A Yes, I did.

15 Q You did?

16 A I did.

17 Q A handwritten report?

18 A Yes, ma'am.

19 MS. ZMROCZEK: Your Honor, I think we have a matter of
20 law.

21 THE COURT: Okay. Is it -- is it something we can do
22 at the bench or is it something I need to dismiss the jury?

23 MS. ZMROCZEK: I think we can approach.

24 (WHEREUPON, a bench conference was held in the presence
25 of the jury, but outside the hearing of the jury.)

1 THE COURT: Ladies and gentlemen, I need you to go to
2 your jury room for a few minutes. Don't discuss the case
3 yet. I'll get you back out in just a few minutes.

4 (WHEREUPON, the jury left the courtroom at 10:55 a.m.)

5 MR. GIESE: I think it's all right, but we'll give her
6 a chance to look at it.

7 THE COURT: We'll be in recess. It's a good time to
8 stop anyway. We'll be in recess about ten minutes.

9 (WHEREUPON, a short break was taken.)

10 MS. ZMROCZEK: Apparently, it's in the 49,000 pages of
11 discovery. The State doesn't have it either. If we could
12 inquire.

13 MR. GIESE: What exactly he's talking about --

14 MS. ZMROCZEK: They have an interview statement, but I
15 asked if he did a report.

16 THE WITNESS: You asked if I did a written statement,
17 ma'am. I did, I did it that night sitting in Warden
18 Joyner's office on a yellow piece of regular notebook paper
19 and then I transposed it over to a formal form within two
20 days after that. I've showed this copy to more than one
21 individual since 2018.

22 MS. ZMROCZEK: Do you still have access to it?

23 THE WITNESS: Yes, ma'am. Now, do I have access today?
24 No, I would have to go back to Williamsburg County and get
25 it out of my file, but I've got access to it.

1 THE COURT: So the State doesn't have it?

2 MR. GIESE: That's the first I've heard of that. We've
3 got 48,000 pages of discovery and that seemed to be one of
4 them. A lot of times, police services -- they're police
5 services from 2018. I would assume they put it into a
6 police services report.

7 THE COURT: Okay. So how do you propose us deal with
8 it?

9 MS. ZMROCZEK: So this may be unconventional, but, I
10 mean, if he can either get it today and get somebody to get
11 it and then we can suspend his testimony and then recall
12 him. I don't want to just hold up everybody while we're
13 looking for this report. I'm trying to keep it moving, but
14 I would, obviously, like the opportunity to cross examine
15 him properly on it.

16 THE COURT: Okay. So what if we continue
17 cross-examination on any other issue you have and then you
18 get the report tomorrow and if it's something in the report
19 that would change or add to your cross-examination, we would
20 be calling to let you finish that.

21 MS. ZMROCZEK: Okay.

22 THE COURT: If there's nothing in the report that you
23 want to deal with and we haven't already covered, we can
24 move on. Does that work?

25 MS. ZMROCZEK: Yes.

1 MR. GIESE: Works for the State, Your Honor.

2 THE COURT: Are we ready to bring the jury back in?

3 MR. GIESE: Yes, sir.

4 THE COURT: They're ready. We're ready.

5 (WHEREUPON, the jury entered the courtroom at 11:20
6 a.m.)

7 THE COURT: Okay.

8 MS. ZMROCZEK: Thank you.

9 BY MS. ZMROCZEK:

10 Q Okay. I asked you if you had executed or completed a
11 report, right?

12 A Yes, ma'am.

13 Q And because that's what they train you to do to
14 document everything so we can review it later on, correct?

15 A Correct.

16 Q So tell us where that report is or what you did to
17 document what happened that day?

18 A At 2:00 a.m. that night, I was sitting in the warden's
19 office. I wrote down the facts on a -- I call it a legal
20 pad, large legal pad, took that legal pad and transposed it
21 over to a formal document. It could have been two, maybe
22 three days later. This was given to, basically, anybody who
23 asked for it. The deputy director of operations got a copy
24 of it. The investigator that was one of the many
25 investigators that came by was given a copy of the report.

1 Q And that was an investigator with police services?

2 A Yes, ma'am. I've talked to the investigator from
3 police services and I want to say it was Investigator Horne,
4 I believe.

5 Q Okay. So on October 15th of 2018, you actually met
6 with Agent Cody Wilson; is that correct?

7 A What day was that?

8 Q Give or take October 15th of 2018? Do you recall
9 meeting -- let me ask it this way. Do you recall sitting
10 down and getting kind of a formal interview -- not kind of,
11 a formal interview with Cody Wilson with the police
12 services?

13 A Yes, ma'am. I've sat down with Agent Wilson more than
14 one time. I'm going to go with yes on the dates.

15 Q I'm certainly not trying to trick you.

16 A I understand. Yes, we talked a lot after this
17 incident.

18 Q Okay. Did you give him a copy of that report?

19 A I do not remember giving a copy to Wilson. I'm pretty
20 sure it was Horne that got the copy of the report while we
21 were still in my office.

22 Q Okay. So I kind of got off track. I want to go back
23 for a moment to talking about the procedures, okay. And
24 we'll come back to the report later because I do want to ask
25 you some questions about that. But you talked about the

1 importance of making sure everybody is trained and doing
2 their jobs, correct?

3 A Yes, ma'am.

4 Q And what -- how many inmates are housed at Lee County
5 Correctional Institute -- or let me rephrase that. How many
6 inmates are capable of being housed at Lee County?

7 A 1800 and some change.

8 Q 1800, give or take?

9 A Yes, ma'am. At that particular time, it's dropped
10 drastically since then.

11 Q What time?

12 A We're going on 2018?

13 Q Yes.

14 A It's dropped drastically since then.

15 Q Lee Correctional is part of many institutions in the
16 State of South Carolina, right?

17 A Yes, ma'am.

18 Q And how are those broken down? Are they divided by
19 levels?

20 A They are for the most part, custody level.

21 Q I'm sorry, custody level?

22 A Yes.

23 Q So what level was Lee County?

24 A Two to three.

25 Q Two to three?

1 A Yes, ma'am.

2 Q All right. And so what they do is they analyze -- they
3 do different assessments to determine -- when someone either
4 pleads guilty or is convicted and then they go to Kirkland
5 on Broad River, every inmate goes there, right?

6 A Correct.

7 Q And then what they do is after 30, 45 days after
8 they've been evaluated medically and their charges looked at
9 any other issues and then somebody up in Kirkland R&E
10 decides --

11 MR. GIESE: Your Honor, I don't mind leading questions,
12 but she's testifying right now. Just let him tell what
13 happens.

14 MS. ZMROCZEK: It's cross-examination, Your Honor.

15 THE COURT: I understand, but you need to form your
16 cross-examination in the form of a question.

17 MS. ZMROCZEK: Sure.

18 BY MS. ZMROCZEK:

19 Q How do inmates get classified?

20 A Once they go through the receiving and evaluation
21 process, mentally, physically and due to what crime they
22 actually committed, whether it violent or nonviolent or
23 repeat offender, then they're shipped out to the different
24 level institutions across the state.

25 Q Do they stay at those locations the entirety of their

1 sentence?

2 A No, ma'am, inmates are moved daily across the State of
3 South Carolina.

4 Q And why is that?

5 A Different reasons.

6 Q Are y'all provided reasons why they are moved?

7 A Sometimes, I'm provided reasons. Normally, I just get
8 a transportation list that says inmate one, two, three, four
9 and five, have him packed up and ready in the morning, he's
10 going to so and so. A lot of them we already know. They've
11 been doing 60 years for murder. They're nearing the end of
12 it. They haven't had been a problem, haven't had a charge.
13 Now, they're getting ready to go to a less secure
14 institution.

15 Q Okay. And then so -- you said sometimes, you just get
16 an e-mail and they say pack up A, B, C, D. How do you get
17 notified that you were receiving new inmates?

18 A Today or in 2018?

19 Q 2018?

20 A 2018, I got a call to go to McCormick prison. And
21 myself and Warden Joyner went with some other individuals,
22 met and they told me I was getting 256 of the worst that
23 they had. And that expression you just did is the same one
24 that I did.

25 Q So in March of 2018, you get told that you're getting

1 256 problems?

2 A It was actually November of '17.

3 Q Oh, November of '17?

4 A November of '17, they sent me 256 of the most
5 problematic inmates I've ever ran across.

6 Q And they said here you go?

7 A Yes, ma'am

8 Q And what did you say back?

9 A Yes, sir, I'll take them. What could I say? I was the
10 deputy director of operations.

11 Q And now, you have to place them in all these different
12 dorms, right, assign them rooms?

13 A Ma'am?

14 Q You have to assign them rooms?

15 A Classification does, yes, ma'am.

16 Q And how do you do that?

17 A I don't.

18 Q That was a terrible question, let me rephrase that.

19 Okay. We'll scratch that and start over. So you are
20 getting 256 new inmates, right?

21 A Yes, ma'am.

22 Q And you said problem children -- well, I said problem
23 children. You said they were the worst of the worst, right?

24 A Yes, ma'am, I'm saying the most problematic I had ever
25 seen.

1 Q You're saying the most problematic you had ever seen.
2 What made them problematic?

3 A They had just finished tearing the McCormick prison up.
4 They had been rioting for a couple days. They had been on
5 lockdown. They had destroyed everything. It was a mess.
6 McCormick in the minds of the deputy director of operations
7 at the time said Lee has a place where we can move in the
8 addiction treatment unit that will do a world of good.
9 Let's move it to Turbeville. That will make a completely
10 empty dorm and send 256 of these individuals to Lee. That
11 was, again, in November. We had our first murder out of
12 that crowd in December.

13 Q And so how many -- so what would that have put your
14 count? In April of 2018, do you know -- were you at maximum
15 capacity? I'm not asking for the exact number, how close
16 were you to maximum capacity at that time?

17 A We would have been close to max. I know some beds had
18 been taken out of service, so that would have dropped the
19 1800 down some. The yard would have been close to max, how
20 about that?

21 Q Okay. And when you say the yard, I know that that's
22 talk, but what do you define the yard?

23 A The point up above that admin building where I showed
24 you a while ago? Or do you want me to come down and show
25 you?

1 Q If you want to come down, you can.

2 A Yeah, I'm just appointed one building and then
3 everything else is included.

4 Q So when you say the yard, you're meaning the facility?

5 A Yes, ma'am, I mean the facility. The restrictive unit
6 that I said earlier, the jail inside the jail, each one of
7 these dorms are at full capacity. This one was empty.
8 After November the 1st, 256 inmates and the capacity was 260
9 something. I had a couple of beds out of service and
10 couldn't put anybody in them. They went to Lieber.

11 Q And how many employees do you need to staff properly
12 your facility?

13 A April 15th, I was understaffed, but it was -- I do not
14 have the numbers in front of me.

15 Q Okay. Let me ask it this way. The training that you
16 received, how many -- do they do, like, you are required or
17 it is recommended or the best practice is to have one CO per
18 how many inmates? Is that how it's decided or how is it --

19 A Not exactly, no, ma'am. I have what is -- I'm trying
20 to think what the proper name for it is, but it is a form
21 indicating how many officers I'm required to have in each
22 dorm at any given time there.

23 Q So how many officers are you supposed to have -- and
24 when you say dorm, are we talking yard and then dorm would
25 be each of these building?

1 MR. GIESE: Your Honor, I object to relevancy. If she
2 wants to talk about that day, that's fine.

3 BY MS. ZMROCZEK:

4 Q I want to talk about that day. Let me clarify, April
5 15, 2018, how many officers should have been in dorm F-1,
6 which was at full capacity?

7 A Five.

8 Q Five?

9 A Yes, ma'am.

10 Q How many did you have?

11 A Two.

12 Q Who were they?

13 A Sergeant Clive Lopez and Officer, I'm going to say
14 James, and I know I'm sitting on the witness stand, but that
15 doesn't sound right in my head. But there were two
16 officers.

17 Q And those two officers were to work together?

18 A Correct.

19 Q And what are the officers duties? Like, what are their
20 responsibilities?

21 A Inmate movement. This is the weekend, so they would be
22 responsible for any inmate movement, making sure any
23 visitation that would have been taking place, he would go
24 and physically take the inmate out of his cell, allow him to
25 go to visitation with his family member, come back. Dealing

1 with counts. Count is the main thing.

2 Q Okay. So for us to -- I mean, I assume we know what
3 count is, but tell us what is count?

4 A Physically count each one of you to know that you're
5 here if you were assigned to that prison.

6 Q Is that something that you're required or you require
7 your officers to do to make sure that they are counting the
8 inmates?

9 A Yes, ma'am.

10 Q And how is that done? Do they just walk around and
11 willy-nilly or how is count set up?

12 A By policy, they go to their cell and I go in and ask to
13 see your ID and compare it with your face and compare it
14 with a list in my hand and I go one. I look at ID, look at
15 your face, compare it to a list in my hand and go two by
16 policy.

17 Q And then do they record that somehow?

18 A Yes, ma'am, it's called their daily log, daily count
19 record.

20 Q And on April 15th of 2018 in dorm F-1, when was count
21 done?

22 A I have no idea.

23 Q Okay. You talked about inmate movement and you then
24 talked about count. On direct, you were taking about the
25 inmates weren't locked down?

1 A Correct.

2 Q Okay. Tell us, what is lockdown? What does that mean?

3 If you say you're to go to lockdown, what does that mean?

4 A Lockdown is a term that gets used too much in prison.

5 A true lockdown is whenever you're locked down and nothing

6 is moving. It's a disciplinary reason. A count lockdown,

7 you go into your cell -- you and I are assigned to a cell.

8 Both of us go to that cell, we get behind that door. We do

9 not move until the count is actually cleared. Whether the

10 door physically is locked or the door is shut, you're not in

11 and out or about until the count is clear.

12 Q Is there an announcement that says hey, it's time for

13 count, everybody go to their room or is it done at a certain
14 time?

15 A Yes, ma'am.

16 Q There's an announcement?

17 A Yes, ma'am. And it's at a certain time.

18 Q Oh, and it's at a certain time. On April 15th, 2018,

19 when was count?

20 A I do not know.

21 Q You talked about the inmates weren't in their room for

22 lockdown. You get a notice at around -- and, again, I'm not

23 trying to tie you down, around a little after 7:00 p.m.,

24 correct?

25 A I got a call, yes, ma'am.

1 Q And at 7:00 p.m. when you hear that an inmate is
2 seriously injured in F-3, what is the procedure in place --
3 at SCDC at Lee County on April 15th, 2018, what is the
4 procedure in place when you get that call at 7:15 that is
5 supposed to happen?

6 A The procedure that was in place is to make sure that
7 the rest of the inmates are locked down and get that injured
8 inmate out of the Sally port where he was at, if at all
9 possible.

10 Q So if there's an inmate who has been injured or a fight
11 that we heard about in F-3, the officers are to put the
12 inmates in their rooms and lock the doors, correct?

13 A They should.

14 Q They should. In F-1 B side dorm on April 15th, 2015,
15 how many of those locks actually worked?

16 A I have no idea, ma'am. I didn't realize any of them
17 didn't.

18 Q You had no -- is it your testimony that you had no idea
19 that you had any locks that were broken?

20 A In F-1B?

21 Q in F-1B.

22 A That's my testimony.

23 Q Did you have any knowledge of any locks broken
24 throughout the facility?

25 A Yes, ma'am, I did.

1 Q Tell us about that.

2 A No locks worked in the F-5 unit.

3 Q Okay. No lock works in F-5?

4 A No, ma'am.

5 Q What about F-3?

6 A Again, to my knowledge, locks worked in F-3.

7 Q Locks worked in F-3?

8 A Yes, ma'am.

9 Q So going back to the policies, y'all had a policy in
10 place, number OP22.02, title institutional lockdown, and the
11 issue date was May 27, 2016. Are you familiar with that
12 policy?

13 A Somewhat, yes, ma'am.

14 Q Who develops those policies? Is that what you develop
15 or --

16 A No, ma'am, it's Columbia based.

17 Q So you follow those policies as they're given to you?

18 A Yes, ma'am.

19 Q And the policy for lockdowns involve -- it's in place
20 to protect the security and safety of the public,
21 institution, staff and inmates?

22 A Yes, ma'am

23 Q And it gives a very specific procedure of things
24 they're supposed to do, correct?

25 A Yes, ma'am.

1 Q And it outlines the -- so it says institutional
2 lockdowns can be ordered by the warden, the deputy director
3 of operations, the agency director or any of these people.
4 Who instituted a lockdown -- and not the lockdown that we're
5 talking about here, I'm talking about the lockdown that's in
6 that policies and procedures, who instituted that on April
7 15th, 2018?

8 A After the incident kicked off, that would be Captain
9 Annie McCullough.

10 Q At what time should have that been instituted?

11 A As soon as it was deemed an emergency.

12 Q So shortly after -- I mean, if an emergency is to call
13 you, that would declare an emergency, right?

14 A Correct.

15 Q So sometime after 7:15, these inmates should have all
16 been locked in their rooms with the doors that had locks?

17 A Yes, ma'am.

18 Q Per your policy. So what if they don't? So what if
19 the inmates don't want to go to their rooms? What
20 procedures do you have to enforce your own policies?

21 A Then I call for reinforcements from Columbia to come
22 help put them in their cells.

23 Q When was that done?

24 A I don't have the time. I know the rapid response team
25 was notified.

1 Q Okay. Rapid response team?

2 A That's our help.

3 Q So rapid response team, what is a rapid response team?

4 A It is a group of officers who are specially trained to
5 go into a situation to put inmates back where they're
6 supposed to be, to take control of the situation that normal
7 officers cannot handle.

8 Q So do you hit a button to put out a bat signal, have a
9 way to let people know to come and help us put the inmates
10 down in their rooms?

11 A You have a button and a bat signal, but that doesn't
12 mean anybody actually responds all the time, but, yes,
13 ma'am.

14 Q How long did it take for the rapid response team to
15 assemble and assist you on April 15th of 2015?

16 A I don't have a time in front of me, ma'am, but it was
17 way too long.

18 Q Because this incident, I believe, started sometime
19 after 7:00 and the issue that we are here for today in F-1
20 was not until several, at least, close to three hours later,
21 almost three hours later, correct?

22 A I'll take your word for it.

23 Q You talked about when you arrived at the facility.
24 About what -- do you recall what time that was?

25 A After 8:00.

1 Q After 8:00?

2 A It would have to have been.

3 Q Okay.

4 A Closer to 9:00, maybe. It's normally a 47-minute drive
5 and I fought rain and storm.

6 Q So when you got there, you testified as to -- describe
7 what you saw when you got there?

8 A I went to the control room. What did I see where,
9 ma'am?

10 Q And the control booth is kind of central so it can get
11 everywhere, right?

12 A As soon as you come in the front door.

13 Q Okay.

14 A You're at the control booth. I had a regional director
15 in there and I had another associate warden, Kenneth Sharp
16 was in there. I went inside to get an update as to what we
17 had. Because at this time, we've got inmates that was going
18 up -- had one in medical. I was getting some updates and
19 Warden Joyner showed up shortly after I did and had us to go
20 upstairs.

21 Q Are there cameras?

22 A There are.

23 Q I mean, not cameras, are there video screens so you can
24 see the cameras that are in the facility?

25 A There are.

1 Q Okay.

2 A Everybody has access -- both rooms have access to the
3 cameras. The warden's area has a larger camera screen for
4 viewing purposes. I mean, one is monitoring, one is
5 viewing, this type of things.

6 Q So when you got there somewhere between 8:00 and 9:00,
7 did you look at the cameras?

8 A Yes, upstairs in the warden area, I did look at the
9 cameras.

10 Q Did you look at the cameras at F-3?

11 A I did.

12 Q What did you see?

13 A I saw one body laying in blood.

14 Q One body laying in blood?

15 A Yes, ma'am.

16 Q At some point, did you lose camera visual contact with
17 F-3?

18 A During the time that I was looking at it?

19 Q Yes.

20 A I lost visual with everything. I took off when they
21 were screaming they were breaching my fence.

22 Q Okay. So after F-3, you get word that there are
23 problems in F-5, correct?

24 A Yes, ma'am.

25 Q Did you look at the cameras on F-5?

1 A No, ma'am. Again, as I was pulling those cameras up is
2 whenever sergeant at the time, Sergeant Timothy Shepard
3 screamed across the radio they're breaching the F-5 fence.

4 Q And I think you said that there were several inmates
5 trying to get out of F-5?

6 A Yes, ma'am.

7 Q And you said -- and I want to make sure I don't
8 misquote you, that they were cut and scared?

9 A Yes, ma'am.

10 Q Scared for their life?

11 A Yes, ma'am.

12 Q Because they were being attacked and they weren't being
13 protected?

14 A Correct.

15 Q They had to climb a fence with razor wire to try to
16 avoid this attack?

17 A Yes, ma'am.

18 Q They had friends laying on the ground dead like a piece
19 of trash, right? There were, at least, two --

20 MR. GIESE: Your Honor, I object to --

21 THE WITNESS: I'm not going to phrase it like that.

22 Q There were two inmates that were dead on the ground
23 outside of F-5 trying to get out, correct?

24 A I had multiple inmates being stabbed in F-5, I didn't
25 know who was dead and who wasn't, yes, ma'am.

1 Q The inmates were able to communicate via these illegal
2 cell phones, right?

3 A I've got to make an assumption on that.

4 Q Were cell phones a problem in your facility?

5 A Ma'am?

6 Q Were cell phones a problem in your facility?

7 A They were and still are.

8 Q They still are?

9 A Yes, ma'am.

10 Q On April 15th, 2018, how were those cell phones getting
11 into the prison?

12 A Either corrupt officers bringing them in the front or
13 people on the outside throwing them over the fence onto the
14 rec yards.

15 Q Your officers? Your officers?

16 A They weren't doing no running, my officers don't run.
17 They would be bringing them in the front gate.

18 Q Okay. Your employees?

19 A Yes, ma'am.

20 Q You were aware that -- maybe -- were you aware of any
21 communications that inmates were sending out to other
22 inmates in the facility on April 15th, 2018 during this
23 time?

24 A Not during this time, no, ma'am.

25 Q You weren't aware at this time, you learned later?

1 A Yes, ma'am.

2 Q Okay. You said it was extremely chaotic?

3 A Extremely.

4 Q And you met with Agent Cody Wilson, I know you said
5 several times. Do you remember one time he actually
6 documented a report on that or do you know?

7 A I don't know.

8 Q Okay. So do you remember talking to him about the
9 procedures that you where trying to do to regain control of
10 this area, correct?

11 A We discussed what -- Monday morning quarterback some of
12 it, but, also, went over the policies we could not enforce,
13 yes, ma'am.

14 Q And you had these launchers and I know the weather was
15 a problem, but you were trying to do what you could to stop
16 this madness, right?

17 A At that point, I thought I was.

18 Q Okay. You said some of the inmates that were on the
19 yard were calling your name saying they were injured?

20 A Yes, ma'am.

21 Q Describe to me what that was like. I mean, was it just
22 like hey, Tisdale, or how was that relayed to you?

23 A You did pretty good there. I told them to go to the
24 ground or they would be shot.

25 Q Okay.

1 A Whenever I told them that, it was hey, Doug, we're
2 injured. Some of us is bleeding out. I could see them, at
3 which time, I started telling the inmates that was on the
4 yard laying prone, they were complying with what was told,
5 two at a time got up. If one needed help walking, they
6 walked to the fence to meet up with Major Ray.

7 Q I want to go back to this interview you had with Agent
8 Cody Wilson on October 15th, 2018. Do you remember
9 discussing with him the staff shortage crisis?

10 A I don't remember, but I probably did.

11 Q Did you tell him to who you sent your concerns about
12 the locks not working in F-5?

13 A Everybody all the way up to the deputy director of
14 operations knew the locks did not work in the F-5 unit.

15 Q And they all knew that, right?

16 A The deputy director of operations themselves was the
17 one that told me when I came -- I originally started as an
18 investigator, not as an associate warden. In 2012, the
19 deputy director of operations, who was the warden at the
20 time, is the one who told me those doors could be fouled by
21 a piece of chewing full wrapper. Now, he is the deputy
22 director of operations, so it didn't make sense for me to
23 explain to him something he already told to me.

24 Q You are aware that gangs are prevalent in prison,
25 correct?

1 A Yes, ma'am.

2 Q Did you have a procedure to identify the different
3 gangs?

4 A There was a procedure in place, but it was outdated and
5 inefficient.

6 Q And unenforceable?

7 A Yeah, and maybe some of that was just opinion, but it
8 is what it is.

9 Q Okay. You saw Officer Lopez in the F-1 dorm on the
10 evening of April 15th of 2018?

11 A Yes, ma'am.

12 Q You knew that inmates were bleeding out on the floor of
13 your facility?

14 A Yes, ma'am.

15 Q When did you instruct Agent Lopez to get McClary, who
16 is bleeding out, and take him to medical?

17 A I was not watching that part, ma'am. I didn't instruct
18 Lopez to do anything. I was not in command.

19 Q Who was in command?

20 A Oh, God, it changed about half a dozen times that
21 night, ma'am.

22 Q It changed half a dozen times that night?

23 A Yes, ma'am. And maybe it was that time or earlier,
24 Colonel Murray with a division of security.

25 Q So if you weren't in command, then you couldn't tell

1 anybody what to do?

2 A Oh, I could tell you what to do, whether you listened,
3 that's a whole different story. But I was physically moving
4 back and forth throughout the facility, myself and Associate
5 Warden Sharp making sure that things were moving, just like
6 I said, logistic-wise trying to figure out how we can get
7 all these inmates out of the facility that we've already
8 got, how we're going to get a perimeter done and who's going
9 to actually go down and lock the doors on the east side
10 since they're not involved in anything whatsoever. We've
11 got a meal to get ready for tomorrow, different little
12 things such as that, we were actually doing. So command was
13 taking care of the incident.

14 Q Okay. As an associate warden, do you review the daily
15 log notes or are you aware of problems within your facility?

16 A (No response.)

17 Q The purpose for the log books is what?

18 A Log down whatever takes place in or around your area.
19 The log books is assigned to a particular area.

20 Q Are those reviewed by any supervisors or wardens?

21 A They're reviewed by the supervisor, shift supervisor
22 and the matrix, yes, ma'am.

23 Q And if that logbook says inmates have weapons --

24 MR. GIESE: I object.

25 THE COURT: Okay.

1 MR. GIESE: A, it's hypothetical, B, I don't know what
2 the -- I mean, is she talking about that day? Is she
3 talking about any day?

4 MS. ZMROCZEK: Let me be --

5 MR. GIESE: If it's any day, I'm not sure what the
6 relevance is. If she's talking about that day, then I think
7 it's relevant.

8 MS. ZMROCZEK: Let me be real clear.

9 THE COURT: Okay. You need to ask about a particular
10 date.

11 BY MS. ZMROCZEK:

12 Q On April 12th of 2018, so three days before this, were
13 you aware that inmates were walking around with weapons?

14 A Yes, ma'am, but I didn't need a logbook for it.

15 Q I'm sorry?

16 A Yes, ma'am.

17 Q What did you do on April 12th of 2018 to stop that from
18 happening?

19 A There was nothing I could do to stop it from happening,
20 ma'am.

21 Q You couldn't lock down the facility?

22 A Not to take their weapons away.

23 Q You couldn't take their weapons away?

24 A No, I could not.

25 Q On April 15th, 2018, were you aware that inmates had

1 weapons?

2 A Yes, ma'am.

3 Q And you're saying that you couldn't do anything about
4 it?

5 A I'm saying it was impossible to take all the weapons
6 away from them, yes, ma'am.

7 Q Why is it impossible?

8 A Because I can take five today, they'll make three
9 tomorrow.

10 Q Okay. What are they using to make the weapons?

11 A Metal, pieces of wood, paper soaked in water rolled up
12 tight, let it dry and it becomes a shank. Something as
13 simple as a soda that they get from the canteen, put it in a
14 pillowcase, two of those coming at you about 60 miles an
15 hour in the face is a real good weapon.

16 Q There's policies in place if you're found with a weapon
17 on April 15th, 2018, what is supposed to happen to you?

18 A The person with the weapon is supposed to be charged
19 and carried to lockdown.

20 Q Was that done on April 15th, 2018?

21 A April 15th, 2018 --

22 Q I'm sorry, go ahead. Well, April 15th, we're in the
23 middle of this?

24 A A Yeah, I understand. A bunch of folks were locked
25 up on April 15, 2018.

1 Q Right. On April 12th, 2018, were you -- did you lock
2 down anybody for having a weapon?

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

4 Q Okay.

5 MS. ZMROCZEK: Your Honor, at this point, I think I'm
6 finished with this cross-examination for now, but it's my
7 understanding that we may receive a report and recall.

8 THE COURT: That's correct.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: Mr. Solicitor, do you have any questions?

11 MR. GIESE: Just a couple, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. GIESE:

14 Q You were asked about the cell phones and contraband and
15 whatever that your -- she alleged the correctional officers
16 brought in, but you, also, mentioned drones?

17 A Throw overs.

18 Q Throw overs?

19 A Yes.

20 Q Explain to the jury what a throw over is.

21 A The fence around the prison are 20-foot tall in 2018,
22 that was any prison in South Carolina, topped with razor
23 wire. Figured that would be enough to keep anybody from
24 crawling up, crawling over to escape. Individuals on the
25 outside were actually getting paid to take a package, such

1 as illegal cell phone or tobacco or marijuana, tape it up
2 into -- they call them bombs or footballs.

3 The first one we found was a nerf football split in
4 half. Just throwing them right across the fence at
5 nighttime. Daytime when inmates come out for rec or to move
6 from point A to point B in the institution for whatever
7 reason reach down and pick it up. They were known as throw
8 overs statewide.

9 Q And when you said they would go pick it up, would
10 trustees do that? I mean, who did that?

11 A Anybody during movement. It could be as simple as me
12 coming out early in the morning to go work in the kitchen.
13 I pick a package up. Somebody already knows who that
14 package belongs to. It's not like I found it. I say one or
15 two words, somebody tells me where the package is supposed
16 to go. I might get a little cut out of it, but nobody -- I
17 might pick it up for you, but I didn't take your property.

18 Q Now, you, also, talked about training that you had had
19 over the years and all correctional officers get. If you
20 are a correctional officer and you're in a crisis situation
21 with some violence or what you fear or what you believe
22 could be violence towards you, are you taught to stand down
23 or are you taught to go fight?

24 A They don't have to teach that, that's a fight or flight
25 syndrome and you're going to self-preserve.

1 Q So you choose one of the two?

2 A Yes, sir.

3 Q And either one is okay?

4 A Yes, sir.

5 Q And you're trained that way?

6 A Yes, sir. Yes, sir. And I want to make sure I
7 understood the question, are you asking me if a correctional
8 officer is there and there's an incident going on, what
9 should that correctional officer do at that particular
10 point?

11 Q What are they trained to do, yes, sir.

12 A They're trained to do what they can to assist the
13 inmate, but if it's a --

14 Q What if it's an overwhelming situation?

15 A If it's overwhelming, it makes no sense.

16 Q And would a bunch of armed inmates be overwhelming?

17 A Yes, sir, because all we have is a can of pepper spray.

18 Q Now, if you could, just briefly talk about lockdown --
19 well, let me stop you. Let me stop you there. Put it
20 another way. She talked to you about the rapid response
21 team, correct?

22 A Yes, sir.

23 Q And that had to come from Columbia?

24 A It comes from the region.

25 Q Okay. But did it come in, like, a van or do they just

1 come individually?

2 A It used to be, but now, most individuals drive straight
3 to the prison, but if you still have to wait for everybody
4 to get there and form up.

5 Q In fact, once they get there and form up, getting back
6 to this situation, they would have had how many dorms to go
7 into?

8 A Before it was all said and done, all of them, but the
9 west yard would have been three dorms right off.

10 Q Right off the bat?

11 A Correct.

12 Q Now, when they do that, can they go into all three
13 dorms at once or just go into one, say F-5, secure it, F-3,
14 secure that, F-1, secure that?

15 A With the numbers that they've got, they would take one
16 dorm at a time.

17 Q One dorm at a time. And how long would it take to
18 clear a dorm like that?

19 A It depends on what problems you run into. I mean, it
20 can take anywhere from 30 minutes to an hour. It all
21 depends on what resistance and what you run into.

22 Q So even when the rapid response team got there, they
23 wouldn't have necessarily gotten into F-1 immediately
24 because there was nothing going on in F-1, correct?

25 A When the -- no, sir.

1 Q They would have gone into three or five, correct?

2 A Three, five, one.

3 Q In pretty much that order? Because, again, at the
4 point these guys are getting there and they get enough rapid
5 response people there, you know for a fact something has
6 happened in F-3, right?

7 A Correct.

8 Q You know for a fact something happened in five?

9 A Correct.

10 Q But F-1 was three hours after the initial incident
11 correct, approximately?

12 A Sure.

13 MR. GIESE: That's all I have. Thank you.

14 MS. ZMROCZEK: Just one, Your Honor.

15 RECROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q The crisis situation was inmates killing inmates,
18 correct?

19 A Saying it again, ma'am.

20 Q The crisis situation was inmates hurting other inmates?

21 A Yes.

22 MS. ZMROCZEK: Thank you.

23 THE COURT: Okay. Do you have a short witness you can
24 get up or is it a good time to take lunch?

25 MR. GIESE: I think it would be a good time to take

1 lunch, Your Honor. The next witness could take a while.

2 THE COURT: Ladies and gentlemen, we're going to take a
3 lunch break. I need you to be back at 1:30. I remind you,
4 don't discuss the case or do any research, don't allow
5 anyone to discuss it with you. And if you have an emergency
6 over lunch, you need to call us. I need all of you back.
7 So if some problem comes up and you can't come in, please
8 let us know. And if not, I'll see you at 1:30. Thank you.

9 (WHEREUPON, the jury left the courtroom at 12:01 p.m.)

10 THE COURT: You may be subject to recall, so you can't
11 talk about your testimony after you retrieve that report.

12 THE WITNESS: Yes, sir. I know exactly where it's at,
13 all I got to go is get it. I'm just glad you didn't say run
14 get it and come straight back. That's a good round trip.

15 MR. GIESE: Your Honor, we instructed everybody not to
16 talk about it.

17 THE COURT: Okay. Anything else before lunch?

18 MS. ZMROCZEK: I just didn't hear what time you said to
19 come back.

20 THE COURT: 1:30 is what time I told the jury to come
21 back. You should be back before then. We can try to start
22 back at 1:30.

23 (WHEREUPON, the jury left the courtroom at 12:02 p.m.)

24 (WHEREUPON, a lunch break was taken.)

25 MS. ZMROCZEK: We were able to get a copy of the

1 report. There are three things I'd like to question the
2 witness on. Maybe we can put him up so I can ask those
3 three.

4 THE COURT: That may be easier.

5 Solicitor, do you have an objection?

6 MR. GIESE: No, Your Honor, that's fine.

7 THE COURT: All right. So are we ready for the jury?

8 MR. GIESE: The State is ready.

9 MS. ZMROCZEK: The defense is ready.

10 (WHEREUPON, the jury entered the courtroom at 1:34
11 p.m.)

12 THE COURT: Mr. Tisdale, I'll call you to the stand and
13 remind you you're still under oath.

14 THE WITNESS: Yes, sir.

15 CONTINUED RECROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q Officer Tisdale, so you were able to provide us with
18 your report, correct?

19 A Correct.

20 Q And it was a four-page report that you generated
21 relatively close in time after the incident?

22 A Yes, ma'am, I generated the report the night of and I
23 composed it over into that form three days later.

24 Q So everything was still fresh in your mind and you put
25 down in there what you thought was important information,

1 correct?

2 A Yes, ma'am.

3 Q And included in that was when the last inmate was
4 secured from the west yard and you were directed to report
5 to the warden's area, information was coming in that an
6 officer in F-1 -- so in F-1 was being held hostage; is that
7 correct?

8 A Correct.

9 Q And at that time that members of SLED -- SLED, SWAT and
10 police services were being sent to F-1 to rescue Officer
11 Lopez; is that correct?

12 A Correct.

13 Q And then all the while, y'all were trying to come up
14 with a plan to get the injured inmates off the recreation
15 field behind F-1?

16 A Right.

17 Q Okay. I'll bring this to you. If you can just point
18 to it. Where is the recreation area that you're talking
19 about behind F-1?

20 A Right here.

21 Q So where my finger is?

22 A Yes, sir.

23 Q So from that area at F-1, could inmates who were in F-1
24 see that rec yard from their windows?

25 A It's possible. It's possible.

1 MS. ZMROCZEK: Thank you.

2 Nothing further, Your Honor.

3 THE COURT: Anything from the State?

4 MR. GIESE: Just a moment.

5 (Pause.)

6 REDIRECT EXAMINATION

7 BY MR. GIESE:

8 Q You testified earlier about -- when I asked you earlier
9 and whether Captain McCollough had advised the prison to
10 have all the inmates go to their cells. Do you remember
11 that?

12 A Yes, sir, I do.

13 Q And she actually -- in your report, I believe you said
14 she did?

15 A Correct.

16 MR. GIESE: That's all.

17 MS. ZMROCZEK: Nothing further.

18 THE COURT: Okay. You can step down.

19 THE WITNESS: Am I still sequestered?

20 THE COURT: No.

21 MR. GIESE: No.

22 THE WITNESS: Thank you. Thank you, Judge.

23 MS. ZMROCZEK: He can be released.

24 MR. LUNSFORD: The State calls John Douglas.

25 THE COURT: Okay.

1 JOHN DOUGLAS,

2 after being duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat, state your name for
4 the court reporter.

5 THE WITNESS: My name is John Douglas.

6 DIRECT EXAMINATION

7 BY MR. LUNSFORD:

8 Q Good afternoon, Mr. Douglas. How are you?

9 A Pretty good.

10 Q Where do you work?

11 A I work for the Department of Corrections, South
12 Carolina.

13 Q What do you do there?

14 A I run the camera shop.

15 Q Tell me generally what you do as running the camera
16 shop?

17 A Camera shop, we install and maintain all the cameras
18 and recorders at the different institutions in South
19 Carolina.

20 Q All right. Let's back up a few steps here, tell the
21 jury about yourself and how you became an employee at SCDC.

22 A I've been with SCDC for 15 years. I started in the IT
23 group. I originally, you know, moved to South Carolina 30
24 years ago. And I worked at -- for a temporary job at the
25 Savannah River Site. And I've been in IT for the majority

1 of my career. And so just, you know, they had openings and
2 I went to the IT group is what brought me to the Department
3 of Corrections.

4 Q Okay.

5 A And then --

6 Q I'm sorry. I didn't mean to cut you off.

7 A After I was there for, I guess it was some time around
8 2015, 2016, I came to the camera shop, you know, as one of
9 the first people to program cameras and equipment, recorders
10 and things like that.

11 Q All right. Part of your job is to maintain the data
12 and the footage that is generated through all the cameras
13 generated in SCDC?

14 A We maintain the recorders that does hold the footage
15 that is recorded.

16 Q Are you familiar with the placements of cameras around
17 SCDC institutions? Is that a part of your job as well?

18 A Yes, sir.

19 Q Are there cameras at every institution?

20 A Pretty much, I think every institution, all level twos
21 and level threes. At the level one institutions, it's
22 limited, but I believe they all do have cameras.

23 Q Are you familiar with the camera situation at Lee
24 Correctional Institution in F-1 in 2018, the date of this
25 incident?

1 A Yes.

2 Q I'm going to show you what's been -- I'm not sure it's
3 been marked as a State's Exhibit.

4 (WHEREUPON, State's Exhibit No. 2 was marked for
5 identification.)

6 BY MR. LUNSFORD:

7 Q I'm going to show you what's been marked as State's
8 Exhibit 2?

9 MS. ZMROCZEK: Your Honor, obviously, I don't object.
10 I just want to put that on the record before he showed it to
11 the jury.

12 THE COURT: So State's Exhibit 2 is in without
13 objection.

14 (WHEREUPON, State's Exhibit No. 2 was admitted into
15 evidence.)

16 BY MR. LUNSFORD:

17 Q Mr. Douglas, if you don't mind standing down. Tell me
18 what we're looking at here.

19 A This looks like the first floor floor plan on one of
20 the dorms.

21 Q All right. Is this -- are you able to tell
22 specifically which dorm this is?

23 A This is Lee and I want to say that's L-1. This is
24 pretty much the actual six dorms that are on there, five of
25 the dorms on the yard. This is the layout.

1 Q Okay. All the dorms are the same?

2 A Except for the F-5 dorm, which is across our dorm,
3 which is different there.

4 Q Is this an accurate rendition of the F-1?

5 A That's correct.

6 Q Based on this layout, will you be able to tell where
7 the cameras are placed?

8 A Yes.

9 Q Could you please point out to the jury where the
10 cameras are placed, as well as if you're aware what
11 direction they're facing?

12 A Pretty much in 2018, the layout is pretty much on the
13 same side. This is the Sally port area where you come into
14 the dorm, I'm trying to see which way is the front, I guess
15 through this way. And there's a camera here looking at the
16 -- I think that's the B side, but it's looking at this door
17 from the entryway and there's a camera on this side looking
18 back this way at the entry way. There's a camera over here
19 that's looking at the front door.

20 On the dorms themselves inside the entryway, there's a
21 camera in this general location on the wall and it's looking
22 down this side way and vice versa, the camera on this side
23 is looking down this side of the dorm. There is, also, a
24 camera that's raised up on this back wall looking at the
25 front door so you can see who's coming in the dorm.

1 Q Okay.

2 A And then there's a PTZ, which is a pan zoom camera,
3 that's mounted in the center and there's one located in
4 these two locations. And it's the same on both sides.

5 Q Okay.

6 A There's, also, a camera, I believe, on the outside
7 looking at the front.

8 Q Okay. All right. Anything else?

9 A And on the rec yard in the back part -- the rec yard is
10 here, there's a camera here looking at the door and there's
11 a camera here.

12 Q Thank you. You can have a seat.

13 (The witness resumes the witness stand.)

14 Q On the issue of cameras, in your experience, do cameras
15 work all the time? I mean, it's a mechanical device, do
16 they fail from time to time?

17 A They do fail from time to time.

18 Q Are there other reasons why cameras at SCDC may not
19 work?

20 A Sometimes, it's vandalism.

21 Q Explain that, please?

22 A Where somebody will smear something on the top of the
23 camera or somebody will take something and throw at the
24 camera to dislodge it or break it.

25 Q When you say someone, do you mean inmate or an

1 employee?

2 A Typically, when something is done like that, it's an
3 inmate. We've seen at times where somebody has pulled a
4 wire, you know, stuff like that. And then, typically, the
5 couple times I seen that that did involve an employee
6 because it was somewhere an inmate shouldn't go. The only
7 other type of vandalism I've seen would be if an inmate is
8 in an area he's not supposed to be in, that he gained access
9 as a maintenance worker or something and something may get
10 pulled out or disconnected that way as well.

11 Q Would be it be fair to say they're not 100 percent
12 working all the time?

13 A That's a true statement.

14 Q All right. Talk to me about the system that SCDC uses
15 to record security camera footage. What is that call?

16 A Currently -- well, at that time --

17 Q I'm talking about in 2018?

18 A We used a Vicon product called Viconet. It's a VMS,
19 which is video management system. It's allows the cameras
20 to be connected to a central brain or nucleus as it's
21 called. It, basically, controls the brain where everything
22 gets talking to it, keeps track of what's being recorded to
23 which recorder. And the type of recorders that we used are
24 called NVRs, or network video recorders. As long as they're
25 on the network, they can be located anywhere and they would

1 be recording the camera footage straight to it. They
2 record, basically, 24/7. The target at the time we were
3 aiming at was 30 days, so that would be 24/7 for 30 days.
4 Depending on the number of cameras, that time can possibly
5 go longer.

6 There's been times if somebody went and installed an
7 additional camera that had different resolution in the
8 camera, that time may drop slightly below that. If that
9 happens, we go back and make sure we get the 30 days again.

10 Q Notwithstanding what you just mentioned, is there any
11 kind of safety features that are in place? Is Viconet an
12 easy system to work?

13 A It's kind of complicated, in a sense. It's not
14 something you just grab a home security system and make it
15 work. There's different safety measures put in place as it
16 creates their recordings so that you can't mess with the
17 data or do anything like that. It actually -- at Lee at
18 that time, the recorders that were located there had 24
19 separate hard drives. They were two terabytes each. It had
20 two banks of 12. And, basically, what it does is it writes
21 the data to each hard drive and works itself around, so it
22 can't just be easily pulled off or manipulated.

23 And that's how -- it was a Vicon Security, that's their
24 -- the thing that talked to that no -- our footage can't be
25 manipulated easily. At the time, you couldn't -- if you had

1 something that failed, you had a challenge to be able to
2 even restore data that potentially was there.

3 Q Were you asked to download the archive data from April
4 15th, 2015 from Lee?

5 A Yes.

6 Q In the process of archiving that data -- well, explain
7 to me what the process is for you archiving the data, how
8 does that work?

9 A Well, the data itself, we'll just use a 30-day window.
10 Since the drivers are recording 24/7, as they're full, the
11 older data gets overwritten by the newer data as it records
12 it. To create an archive, you have to go in through the
13 software and you have to specifically say I want this time
14 period and this camera or these cameras, you could do
15 multiple, and you would create what they call an archive.
16 Then that would be backed up to your hard drive or a
17 secondary hard drive.

18 Q While you're archiving this data, what are you looking
19 at?

20 A You don't see anything. We would go in -- like, in the
21 past, if somebody asked me about a specific event because,
22 let's say, our main job is not to go through all the footage
23 created in our archives. They would give me a timeframe or
24 if it was something smaller, they would give me an event.
25 In this case, we were told by police services at the time

1 that we want this timeframe.

2 Q Okay. And you downloaded or archived -- I don't know
3 the proper term, but downloaded or archived that data; is
4 that correct?

5 A That's correct. And the way Vicon does it, if you see
6 an archive, it actually has archive and it has the date and
7 the time. And then you're able to add, I think it's 12
8 character if you want to give it more of an identifying
9 name, which we did.

10 Q And in the process of archiving that data, are you
11 familiar with the file names associated with it?

12 A Yes.

13 Q While you're downloading or archiving this data, from
14 time to time, you have to watch the video footage to make
15 sure you had it in the right spot?

16 A You have to go in and set up the time and you would be
17 able to verify, okay, did this start at the correct time or
18 did it stop at the correct time.

19 Q In preparation for this trial or any other time, did
20 you watch the footage from the Lee riot?

21 A Yes.

22 MR. LUNSFORD: And, Your Honor, it's actually hooked
23 into the computer. If we unhook it, it may cause some
24 issues. If it's all right, I would have the witness step
25 down and identify this hard drives we created.

1 (WHEREUPON, State's Exhibit No. 3 was marked for
2 identification.)

3 BY MR. LUNSFORD:

4 Q Just so we're clear, what I marked as State's Exhibit 3
5 is the Viconet hard drive that you downloaded the data to;
6 is that correct?

7 A That's correct.

8 Q Now, you just said Viconet is not an easy system to
9 work with, correct?

10 A That's correct.

11 Q Is there a process that you use to make the data more
12 manageable for lawyers, for anyone else that may need to
13 view it?

14 A Due to, I'll say, conversions from -- or upgrades from
15 like Windows 7 to Windows 10, there were some different
16 issues that came up. One of the options that you have in
17 Vicon is you can archive as a -- you can export an MP4 file
18 or jpeg file, which, virtually, anybody's computer can play.

19 (WHEREUPON, State's Exhibit No. 4 was marked for
20 identification.)

21 BY MR. LUNSFORD:

22 Q Okay. I'm going to show you what's been marked as
23 State's 4. Do you recognize this?

24 A Yes.

25 Q How do you recognize that?

1 A I've seen it before. I don't know if this is the one
2 --

3 Q You created that?

4 A I believe do. I don't know who wrote the name on it,
5 but that could have been -- but that's, typically, what we
6 would create to do it. This one says it's MP4. You can
7 play that with just about any software that would play.

8 Q So this is MP4, just different type of format?

9 A Yes.

10 Q Is it the same footage?

11 A It is the same footage.

12 MR. LUNSFORD: Your Honor, at this time, we'd like to
13 move State's 3 and 4 into evidence?

14 THE COURT: What says the Defense?

15 MS. ZMROCZEK: We have no objection.

16 THE COURT: All right. In without objection.

17 (WHEREUPON, State's Exhibit Nos. 3 and 4 were admitted
18 into evidence.)

19 MR. LUNSFORD: Your Honor, beg the Court's indulgence.

20 (Pause.)

21 BY MR. LUNSFORD:

22 Q Mr. Douglas, real briefly, when you were viewing the
23 video, you were told to view two different timeframes; is
24 that correct? You were given a start time and a complete
25 time; is that correct?

1 A That's correct.

2 MR. LUNSFORD: All right. Your Honor, at this time,
3 we'd like to play that video?

4 THE COURT: How did you want -- are we going to put the
5 monitors back up for the jury?

6 MR. LUNSFORD: Yes, Your Honor, we can put the monitors
7 back up and we can play it right off the MP4 or the Viconet.
8 Can you see it?

9 THE COURT: If you can slide it back a little bit. You
10 need to turn it where the witness can see it?

11 MR. LUNSFORD: Can you see it?

12 THE COURT: Yeah, I can see it now.

13 Can y'all see it on here?

14 THE JUROR: Barely. I don't have my glasses.

15 THE COURT: Do you have your glasses in the jury room?

16 THE JUROR: No, sir, in the car.

17 THE COURT: Okay. If you can't see it -- if it gets
18 closer, can you see it?

19 THE JUROR: Yes, sir.

20 THE COURT: If not, let us know.

21 THE JUROR: Thank you.

22 MR. LUNSFORD: Beg the Court's indulgence.

23 THE COURT: Okay. I can't read that either.

24 (Pause.)

25 MR. LUNSFORD: Do I need to adjust the monitor? Can

1 everyone see?

2 Your Honor, it's kind of dark video. Some of that
3 video is kind of dark.

4 MR. LUNSFORD: Your Honor, can we publish it?

5 THE COURT: Certainly.

6 MR. LUNSFORD: All right. Thank you, Your Honor.

7 (WHEREUPON, the video was published for the jury.)

8 BY MR. LUNSFORD:

9 Q All right. Mr. Douglas, is that the video you watched?

10 A Yes, sir.

11 MR. LUNSFORD: That's all we have, Your Honor. Thank
12 you.

13 MS. ZMROCZEK: I don't need the video, so if you want
14 to turn the lights on, you can.

15 THE COURT: Do you want the lights back on?

16 MS. ZMROCZEK: If you want, I won't use the video at
17 this time.

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q Good afternoon.

21 A How are you doing?

22 Q You are very soft-spoken, and I'm getting old, so if
23 you don't mind speaking up. There you go. Perfect. So you
24 identified in -- in State's 2, you identified this is kind
25 of the general layout of every dorm except for F-5, correct?

1 A That is correct.

2 Q So the cameras -- we just viewed camera -- a very small
3 snippet of a camera from the F-1 dorm, right?

4 A That's correct.

5 Q And how many sides are -- if we can go ahead and take
6 that out. How many sides are in the -- how many sides are
7 in a dorm? For F-1, how many sides are there to that dorm?

8 A Two sides.

9 Q A and a B?

10 A That's correct.

11 Q And so how we know what camera we are looking at, it
12 has the information including date, time and the location on
13 the video itself, correct?

14 A It has it on the title of the archive, correct.

15 Q And then when you convert it to MP4, it's on there, as
16 well?

17 A That's correct.

18 Q And you were asked to get videos for April -- what days
19 were you asked to get videos for?

20 A It was for April 15th.

21 Q Were you ever asked to provide any video for April
22 12th?

23 A Not that I recall.

24 Q Okay. So on April -- so you provided video from the
25 dorms of April 15th of 2018, correct?

1 A That's correct.

2 Q What time -- tell the jury what time period you
3 provided?

4 A I don't recall the exact time, but at the time, you
5 know, we would have been told by police services everything
6 we need, you know, from this time some hours before to so
7 many hours past.

8 Q Okay. So if the videos that you provided all start at
9 1900, which would be around 7:00 p.m., would that comport
10 with the -- about the time that all of this started?

11 A Correct.

12 Q And so you provided video from April 15th, 2018 from
13 7:00 p.m. until well on into April 16th, maybe 3:00, 4:00,
14 5:00 in the morning, correct?

15 A I believe so.

16 Q And you provided them for F-1?

17 A Correct.

18 Q A and B?

19 A Correct.

20 Q F-3?

21 A Correct.

22 Q A and B?

23 A Correct.

24 Q And let's talk about that. Was there a problem with
25 your F-3 videos?

1 A During the incident in the F-3 dorm, there was a window
2 that was knocked out.

3 Q A what, I'm sorry?

4 A There was a window that was knocked out and an inmate
5 or multiple inmates took cups of water and threw it on the
6 network equipment and the recorder and saturated them both.

7 Q So we don't have any video from -- we don't have any
8 video preserved from April 15th, 2018 in F-3, correct?

9 A That is incorrect. We do have some, but I don't
10 remember the exact times, but, you know, the date of it.

11 Q Certainly.

12 A It goes to a point and then when the equipment shorts
13 out or fails.

14 Q Right. So you have some after that?

15 A It should be before that time.

16 Q And what about F-5?

17 A F-5, everything is fine.

18 Q You have provided that, as well, correct?

19 A Correct.

20 Q In addition to those cameras, there's some -- you
21 pointed out that there were some cameras that captured the
22 outside areas of the facility, as well, correct?

23 A Correct.

24 Q And when you -- were you asked to -- do y'all have any,
25 like, facial recognition software, anything like that that

1 you use in your facility?

2 A We did not at that time, no.

3 Q At that time?

4 A No.

5 Q And the hard drives that you put in, like you said, the
6 hard drive is from the SCDC kind of program, but everything
7 that is claimed or changed -- not changed, converted into an
8 MP4 format is the same thing?

9 A It's easy accessible, yes.

10 MS. ZMROCZEK: Those are all the questions I have for
11 now, Your Honor. I would ask that this witness remain under
12 subpoena.

13 THE COURT: Okay. Anything further from the State?

14 MR. LUNSFORD: Briefly.

15 REDIRECT EXAMINATION

16 BY MR. LUNSFORD:

17 Q Mr. Douglas, contained on this hard drive, as well as
18 the MP4 disc, notwithstanding the video we just watched,
19 there are multiple camera views that are on that hard drive;
20 is that correct?

21 A That is correct.

22 Q So it shows different -- the cameras you went through
23 with the exception of a few didn't get downloaded for
24 whatever reason; is that accurate?

25 A That's correct.

1 Q There's multiple angles of what we just watched of this
2 event?

3 A Correct.

4 MR. LUNSFORD: Your Honor, I'd like to publish this to
5 the jury?

6 THE COURT: Okay.

7 (WHEREUPON, the video was played for the jury.)

8 BY MR. LUNSFORD:

9 Q Mr. Douglas, are you able to tell from here, if you
10 need to step down, can you tell us which angle this is,
11 which camera it's coming from?

12 A That's actually one of the PTZ cameras on the end of
13 the dorm.

14 Q So there's pan tilt zoom cameras that are up on the
15 ceiling, is that what you're talking about?

16 A That's correct.

17 Q Okay. Are you able to see the actual name of the
18 camera?

19 A I can see Lee F-1, and that's about all.

20 Q If you want to step down and identify it. I hate to
21 bring you up and down.

22 MR. LUNSFORD: Your Honor, is it okay for him to come
23 down and identify the cameras?

24 THE COURT: Yes, sir.

25 THE WITNESS: This is the F-1. This is B right, that

1 means it's on the B side of the dorm, the right. When you
2 walk in the dorms, on the right side. And PTZ, that would
3 correspond to this view. You walk in here so that's in the
4 middle of it, the end.

5 Q All right. Do you mind hanging out? I'm going to have
6 you identify some others.

7 A Okay.

8 Q All right. Mr. Douglas, I'm going to ask you once
9 again which camera this is and if you could tell me which
10 view it is

11 A This one is mounted on the wall above the door when you
12 walk in. And it's looking toward the rear of the dorm that
13 it's -- excuse me, looking to the front of the dorm. It's
14 the yard camera, yard door. It's emergency, the fire door
15 to go out to the front of the dorm in the yard. It's Lee
16 F-1, B side as well.

17 Q All right.

18 A This is the yard door, the rec door. The rec door
19 would be on the back of the dorm where the rec yard was.

20 Q Okay. All right. Mr. Douglas, could you tell me which
21 camera this is?

22 A Yeah, that would be walking in the entry in between the
23 A side and B side. That's the camera we normally call it --
24 it's probably, F-1, it's either entry A side or A side
25 entry, but that's the one that's walking into the normal

1 front door of the dorm.

2 Q All right. Is there more than one camera in that area?

3 A There's four cameras in that area. You can see the
4 other one across from that on the top by the A. That's
5 looking at the B side. It's like a criss-cross. It's
6 because, you know, they're locking up, they can get damaged.
7 We have them looking at each other. There's one on the
8 front and the back that's looking at each that catches the
9 front door and the yard door of the entryway or the rec door
10 of the entryway.

11 Q Is that the camera you're talking about, the opposite
12 view right there?

13 A That's correct. And the camera that you'd be looking
14 at right above the B would be the first camera in the last
15 view.

16 Q All right.

17 MR. LUNSFORD: That's all, Your Honor. Thank you.

18 RECROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q With all -- these are all of the cameras for the F-1 B
21 dorm?

22 A That is correct.

23 Q Okay. Unfortunately, even with all the cameras that
24 you have in there, there are still some blind spots, right?

25 A Right.

1 Q I'm sorry?

2 A Yes, that's correct.

3 Q And what's a blind spot?

4 A A blind spot where there's no camera coverage.

5 Q So if something is occurring off the camera, we're not
6 going to be able to see it regardless of which angle we look
7 at?

8 A That's typically correct, yes.

9 MS. ZMROCZEK: No further questions, Your Honor.

10 THE COURT: Okay. Anything else?

11 MR. LUNSFORD: No, Your Honor.

12 THE COURT: You can step down.

13 MS. ZMROCZEK: I just ask that he remain under subpoena
14 in case.

15 THE COURT: You still may be called later.

16 What about sequestration?

17 MS. ZMROCZEK: We don't have an issue with this
18 witness.

19 THE COURT: If you want to stay in the courtroom, you
20 can. You don't have to.

21 THE WITNESS: Okay. I'll be back in the room.

22 THE COURT: Okay.

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay.

25 MS. SCOTT: Thank you, Your Honor. The State calls

1 Annie McCollough.

2 ANNIE MCCULLOUGH,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please have a seat and state your name and
5 adjust your mic if needed.

6 THE WITNESS: Annie McCullough.

7 DIRECT EXAMINATION

8 BY MS. SCOTT:

9 Q Captain McCullough; is that correct?

10 A Yes, ma'am.

11 Q Captain McCullough, where do you work?

12 A Lee Corrections.

13 Q For the Department of Corrections?

14 A Yes, ma'am.

15 Q How long have you been there?

16 A A total of going on 24 years.

17 Q Twenty-four years. And that is at Lee Corrections?

18 A At Lee Corrections.

19 Q So tell me a little bit about your background. How did
20 you start off there at Lee?

21 A I started out as an officer and worked my way up
22 through the ranks.

23 Q So when did you become a captain?

24 A In 2016.

25 Q So you've been a captain for roughly seven years?

1 A Yes, yes, ma'am.

2 Q What are your duties as a captain?

3 A My duty as a captain is to assist with the associate
4 wardens, the majors, the other captains and officers on the
5 yard to make sure that work gets done that sometimes they
6 need help with or don't need help with, make sure the
7 inmates, staff and population, make sure they're safe at all
8 times.

9 Q So are you kind of in charge of the general
10 correctional officers that are assigned to each dorm?

11 A Yes, ma'am.

12 Q So in State's Exhibit 1, do you recognize this?

13 A Yes, ma'am.

14 Q Is that an overview of Lee Corrections?

15 A Yes, ma'am, it is.

16 Q Okay. So can you tell me how many -- we have dorms
17 here, where is the west yard? Is it going to be here or
18 here?

19 A It's on this side, on the right side.

20 Q Tell me, what dorms comprise the west yard?

21 A F-1, F-2, F-3.

22 Q What about F-5?

23 A And F-5.

24 Q F-1, F-3, and F-5?

25 A Yes.

1 Q So you were in charge of, I guess, monitoring all of
2 those dorms; is that right?

3 A Yes, ma'am.

4 Q What about F-2, F-4 and F-6, as well?

5 A As well, yes, ma'am.

6 Q So you've been there for 23, 24 years?

7 A Yes, ma'am.

8 Q Do you have a lot of interactions with these inmates?

9 A I have.

10 Q So you get to know them pretty well by face?

11 A Yes, ma'am.

12 Q And what about by name, do you know these inmates by
13 name?

14 A Most of them by name. Some of them, they called by
15 nickname so you have to be around them a lot when other
16 individuals talk to them. You can learn their nicknames.

17 Q So they'll go by nickname, first name, last name?

18 A Yes.

19 Q As a captain, generally, do you see conflicts at Lee
20 through the yard?

21 A Yes, ma'am, I do.

22 Q Are there certain groups that have conflicts?

23 A Yes, ma'am, it's different groups that have conflicts.

24 Q Any gang issues at Lee?

25 A Have been, yes, ma'am, still is.

1 Q Still is. So there's gang activity at Lee Corrections?

2 A It is.

3 Q On April 15th of 2018, what we're here for today, you
4 were a captain back then; is that correct?

5 A Yes, ma'am, I was.

6 Q Specifically, on that day, were you working?

7 A I was.

8 Q Okay. And were you an on-call duty warden; is that
9 right?

10 A Yes, ma'am, I was.

11 Q Tell me about that. How is that different from a
12 captain?

13 A The on-call duty warden is you're taking responsibility
14 of AW, major, every position there is to make sure that
15 everything runs smooth and everybody is safe while you're
16 there. If anything is out of the ordinary, you are to
17 report it or, like, we had to do, call assistance or
18 anything if anything goes on within that time. And you
19 start on Friday, like, that whole week, really, but you're
20 there, basically, by yourself, like, Saturday and Sunday,
21 but during the week, we have everybody there in case we need
22 any help.

23 Q On April 15th, 2018, do you remember that day?

24 A I do.

25 Q Probably pretty well?

1 A Yes, ma'am.

2 Q Do you know what day of the week, was it?

3 A Sunday.

4 Q Sunday, so you were on the on-call duty warden?

5 A Yes, ma'am.

6 Q What time did you get to work that day?

7 A Between 6:00 and seven o'clock. I usually get there
8 early. We supposed to go there at 8:00, but I always go
9 early.

10 Q In the morning or at nighttime?

11 A Morning.

12 Q Okay. How was the day leading up to what we're here
13 for today?

14 A That day was going very well. I was on the yard, on
15 the east yard, like, F-2, F-4 and six and went to the
16 kitchen, then went down on the west yard, talking to
17 different individuals on the yard and making sure their day
18 was going well and the meal was being fed on time.

19 Q Captain McCollough, there's been some discussions -- I
20 want to bring you back to this board again, State's Exhibit
21 1. Particularly, for F-5, if you wouldn't mind, just bring
22 it over to you, could you point out to the jury where F-5
23 is? If you wouldn't mind standing up?

24 A Let's see, F-5.

25 Q On the end, okay. Now, is F-5 different from the other

1 dorms?

2 A Yes, ma'am, it is very different from the other dorms.

3 Q Okay. Can you explain how it's difficult from F-1,
4 two, three, four?

5 A Those are run by the keys. We operate with keys to
6 lock the door. In F-5, you have the manual inside the booth
7 that lock the doors. And a lot of times, some of the
8 individuals, the guys can jam their doors where you think
9 it's locked, but it's not locked.

10 Q All right. So F-5 has a different set of locks than
11 the rest of the institution?

12 A Yes.

13 Q So were the locks -- were they working in F-1 in April
14 of 2018?

15 A Yes, ma'am.

16 Q What about in F-3, were they working in F-3?

17 A Yes, ma'am.

18 Q So F-5, though, would it be kind of like an air lock
19 not controlled by a key, but by something else?

20 A Yes, ma'am.

21 Q So were they working, but they were being jammed by
22 inmates?

23 A They was being jammed.

24 Q But they were working?

25 A Yes, ma'am.

1 Q But the inmates made them jam?

2 A Jam them with a broom, bottle, different objects in the
3 door.

4 Q Okay.

5 A Sometimes the light on the computer state that the room
6 is locked, but it's not.

7 Q Okay. All right. Well, let's go back to the riot. So
8 about what time were you made aware of the first issue?

9 A It was between 6:30 and 7:00 because I was just getting
10 ready to leave for the day.

11 Q So you were about to get off work?

12 A Yes, ma'am, I was at the front gate getting ready to
13 scan my card.

14 Q So when you heard about what happened, what did you do?

15 A Scanned my card back in and went to the control room
16 and looked on the camera, noticed a situation was going on
17 in the yard and called an immediate lockdown for the
18 institution. We start notifying different individuals. We
19 said that it was getting out of hand.

20 And the officers on the yard, we was telling them to
21 get off the wing, make sure we secured and lockdown what we
22 could, lock the guys in and get off the wing. We had help
23 at that time, but we was in the process of locking down the
24 whole institution. Sometime an individual might say can I
25 go to the water fountain or something and they left out

1 because of the water fountain and you think everybody's in.

2 Q So you were about to get off work, but you stayed to
3 assist?

4 A Yes, ma'am.

5 Q So you mentioned the word institutional lockdown.
6 Please explain what that is.

7 A That's every individual at the institution, they're
8 supposed to be behind their doors. When we call
9 institutional lockdown, everybody reports behind they're
10 door.

11 Q So their cell doors?

12 A Yes, their cell doors. And in that process after
13 everybody is locked down, we are in the process of doing a
14 role call count to make sure everybody is accounted for.

15 Q And a roll call count is done every day; is that right?

16 A Yes, ma'am.

17 Q Was it done that night or attempted to?

18 A Yes, ma'am.

19 Q Institutional lockdown, you gave the command?

20 A Yes, ma'am.

21 Q And that's as the acting warden or the --

22 A Acting duty warden, yes, ma'am.

23 Q How did you give the institutional lockdown?

24 A By radio and, also, by mics. We have the mics in every
25 unit so we can announce it over the mic. We, also, do it

1 over the radio. Any count at the institution or any
2 lockdown at the institution, we do it the same way every
3 day.

4 Q So the officers got on the radio; is that right?

5 A Yes, ma'am.

6 Q Then the speakers, are they in every single dorm?

7 A Yes, ma'am, every dorm.

8 Q So all the inmates within F-1, F-3 and F-5 were told by
9 you to get in their cells?

10 A Yes, ma'am.

11 Q And did that happen?

12 A No.

13 Q Were there some that --

14 A Some that wasn't in, but most was in.

15 Q Okay. All right. And how many times did you give the
16 call to do the lockdown?

17 A We was given several calls saying lockdown,
18 institutional lockdown because we noticed -- I could see in
19 F-3 some of them weren't in the room yet. I got on the mic,
20 telling everybody to report to their dorms for institutional
21 lockdown.

22 Q So throughout the night, you would give that call?

23 A Yes, ma'am.

24 Q Now, you mentioned watching the videos, tell us a
25 little bit about that. Were you watching the video

1 surveillance live that night?

2 A Yes, ma'am.

3 Q How were you able to watch it? Where were you?

4 A In the control room.

5 Q What dorm, specifically, were you watching that night?

6 A F-3 and F-5.

7 Q Tell me about -- did you stay in there the whole time
8 or did you leave the control room to go help others?

9 A I stayed there until management comes, anybody else
10 higher ranking than me take control. Being the on-call duty
11 warden, you have to stay in place until somebody else takes
12 command.

13 Q But you notified multiple other people to come assist?

14 A Yes, ma'am.

15 Q And they did show up; is that right?

16 A Yes, ma'am, everybody showed up.

17 Q All right. So as we said, you viewed this video, have
18 you had the opportunity to look at the video surveillance
19 from that night?

20 A Yes, ma'am.

21 Q Okay. Multiple times?

22 A Yes, ma'am.

23 Q Okay. All right. Let me -- I want to get you to view
24 this video for me. I'm going to do -- State's Exhibit 3,
25 that's going to be the video surveillance that's been

1 entered into evidence. Ms. McCullough, I know you just
2 testified that you have viewed the F-1 video; is that
3 correct?

4 A Yes, ma'am.

5 MS. SCOTT: Your Honor, I'd like to publish portions of
6 that video for the jury at this point.

7 THE COURT: This is Exhibit 3?

8 MS. SCOTT: Yes, Your Honor.

9 THE COURT: Okay.

10 BY MS. SCOTT:

11 Q Ms. McCullough, I'm going to put on Lee F-1 entry A
12 side at timeframe 10:05 p.m. the night of April 15th? Can
13 you see this video?

14 A Yes, I can.

15 Q Okay. If you can just watch this video.

16 (Video was published for the jury.)

17 Q Did you just happen to see someone walk by that you
18 previously identified?

19 A Yes, ma'am.

20 Q Okay. And who is that that you just observed walking
21 by in the video?

22 A That's with the jacket on, Mr. Smith.

23 Q Okay. Can you please describe his outfit, what he's
24 wearing in this video?

25 A He has the jacket with the orange writing on the back.

1 Q Okay.

2 If you can back up just to show possibly -- right
3 there.

4 Q And again, just for the record, are you identifying
5 this man in the tan outfit?

6 A Yes, ma'am.

7 Q And, again, who is that?

8 A Mr. Smith.

9 Q Mr. Smith. Okay. Mr. Smith. Do you know his first
10 name?

11 A No, ma'am. A lot of times I call individuals by last
12 names.

13 Q But you knew him from prison?

14 A Going on the yard, talking to the different guys while
15 I'm on the yard, cafeteria.

16 Q Got you.

17 MS. SCOTT: Beg the Court's indulgence.

18 (Pause.)

19 BY MS. SCOTT:

20 Q Captain McCollough, I don't know if you can see the
21 defense table, but do you happen to see Mr. Smith in the
22 courtroom? I can move this TV.

23 A Yes, ma'am.

24 Q Okay.

25 MS. SCOTT: Let the record reflect that Captain

1 McCollough has identified the Defendant in court.

2 THE COURT: Okay.

3 BY MS. SCOTT:

4 Q So Captain McCollough, again, you met with different
5 law enforcement to identify this particular man, Mr. Smith,
6 in this video; is that correct?

7 A Yes, ma'am, that's correct.

8 Q And in the course of meeting with law enforcement
9 multiple times and you identify certain individuals, did
10 you, also, observe the stabbing of Cornelius McClary in the
11 video?

12 A Yes, ma'am, I did.

13 MS. SCOTT: I would like to go to F-1 B entry door
14 around 10:01 p.m.

15 Q Captain McCollough, can you see the screen?

16 (Video was published for the jury.)

17 MS. SCOTT: If you could pause it, please.

18 Q Captain McCollough, do you see the person you
19 previously identified as Mr. Smith in this video?

20 A You have to turn it around towards me.

21 Q Is that a better view?

22 A Yes, ma'am.

23 Q All right.

24 A With the jacket on by the door -- not the door, but
25 behind that desk.

1 Q Okay.

2 MS. SCOTT: If you could play it for just a few more
3 seconds.

4 (Video was continued to be played for the jury.)

5 MS. SCOTT: Pause.

6 BY MS. SCOTT:

7 Q Okay. Did you just observe that, as well? Do you
8 still see Mr. Smith?

9 A Yes, ma'am, behind the individual with the white shirt
10 on.

11 Q I'm sorry, repeat that?

12 A Behind the individual with the white shirt.

13 Q Right here?

14 A Yes, ma'am.

15 Q I want to, also, show you --

16 (WHEREUPON, State's Exhibit Nos. 5 through 12 were
17 marked for identification.)

18 BY MS. SCOTT:

19 Q Captain McCullough, I'm going to hand up to you what's
20 been marked as State's Exhibit 5 through 12 for
21 identification purposes. If you could take a moment and
22 look through those and tell me if you recognize any of those
23 photos?

24 A Yes, ma'am, I do.

25 Q How do you recognize these photos?

1 A knowing the individual by being at Lee.

2 Q And, again, the individual you're saying is Mr. Smith?

3 A Yes, ma'am.

4 Q All right. And all of these photos, 5 through 12, do
5 you see what you've identified as Mr. Smith?

6 A Yes, ma'am.

7 MS. SCOTT: Your Honor, at this time, the State would
8 introduce Exhibits 5 through 12 into evidence?

9 MS. ZMROCZEK: Without objection.

10 THE COURT: Okay. Without objection, they're in, 5
11 through 12.

12 (WHEREUPON, State's Exhibit Nos. 5 through 12 were
13 admitted into evidence.)

14 MS. SCOTT: Your Honor, beg the Court's indulgence, I'm
15 trying to figure out how to work this machine.

16 THE COURT: Okay.

17 MS. SCOTT: There we go. Your Honor, permission to
18 publish these to the jury.

19 THE COURT: Okay.

20 THE WITNESS: Let me figure out how to do this.

21 THE COURT: You may have to take them out of that
22 folder if you can.

23 BY MS. SCOTT:

24 Q All right. This is -- I'm going to show you -- this is
25 going to be State's Exhibit No. 6. Captain McCollough, if

1 you could, could you identify where Mr. Smith is in this
2 photo?

3 A He is behind the door almost by the X, like, where
4 you're going out the door, behind that desk.

5 Q And what is he doing in this photo?

6 MS. ZMROCZEK: Objection, Your Honor. I think the
7 picture speaks for itself, best evidence.

8 THE COURT: Well --

9 MS. SCOTT: Your Honor, it's based on her observations
10 of the photos.

11 THE COURT: Well, it may be helpful if she gets up and
12 comes down and points out who she's talking about.

13 MS. SCOTT: Yes, Your Honor.

14 Q Captain McCollough, if you wouldn't mind standing down.
15 If you could just stand right there. If you could, just
16 point to -- Captain McCollough, if you could just point to
17 where you just previously identified as Mr. Smith.

18 A (Witness complies.)

19 Q Okay. And this is going to be State's No. 5. And
20 again, can you point to where the Defendant is in this
21 photo?

22 A (Witness complies.)

23 Q Okay. And then State's Exhibit No. 12, can you point
24 to where the Defendant is?

25 A (Witness complies).

1 Q And what is this a photo of?

2 A It's a photo of a sharp object. I don't know what it
3 is.

4 Q A photo of a sharp object?

5 A Object.

6 Q In the Defendant's hand?

7 A Yes, ma'am.

8 Q Okay. And then just one more. Again, if you one more
9 time can just point to where the Defendant is in this
10 picture?

11 A (Witness complies.)

12 Q Captain, you may step down.

13 MS. SCOTT: Beg the Court's indulgence.

14 (Pause.)

15 MS. SCOTT: All right. Thank you, Captain McCollough,
16 I believe that's all I have. Please answer any questions
17 that the defense may have for you.

18 THE COURT: Ms. Zmroczek, do you need the video?

19 MS. ZMROCZEK: I do.

20 THE COURT: Okay.

21 MS. ZMROCZEK: I'll go ahead and do it out of order,
22 that way, we don't have to worry about getting the lights
23 back on.

24 MS. SCOTT: I'll get it unplugged.

25 CROSS-EXAMINATION

1 BY MS. ZMROCZEK:

2 Q Good afternoon.

3 A Good afternoon.

4 Q So I'm going to kind of do this out of order since the
5 lights are down, but I will have a couple of questions to
6 ask you about your role at Lee; is that okay?

7 A That's fine.

8 Q All right.

9 MS. ZMROCZEK: If we can go to F-1 B, left camera one
10 at 21:35.

11 Your Honor, I think in order to make it smoother
12 because I wasn't able to open these, they provided me the
13 MP4s because I couldn't open the other ones, if we may have
14 some time to just switch out the evidence, it might be a
15 good time for a little bit of a break. I mean, just very
16 briefly.

17 THE COURT: I mean, do you need a break? Anybody need
18 a break, you can go to the jury room.

19 THE JUROR: Yes.

20 THE COURT: Okay. Y'all go to the jury room and take
21 an afternoon break. I'll get you back out. Don't discuss
22 the case.

23 (WHEREUPON, the jury left the courtroom at 2:42 p.m.)

24 THE COURT: Ready?

25 (WHEREUPON, the jury entered the courtroom at 2:59

1 p.m.)

2 THE COURT: Okay.

3 MS. ZMROCZEK: Thank you, Your Honor. May it please
4 the Court?

5 BY MS. ZMROCZEK:

6 Q Is it captain?

7 A Yes.

8 Q Captain McCollough, correct?

9 A Yes.

10 Q So you were working -- what time did you come on for
11 your shift?

12 A I usually try to get there between 6:30, seven o'clock.

13 Q A.m. or p.m.?

14 A A.m.

15 Q 6:30 a.m. And in addition to doing your normal duties,
16 you were, also, the warden weapon on call?

17 A Yes, ma'am.

18 Q Okay. Who replaced you as the warden on -- your shift
19 ended at approximately seven o'clock that evening?

20 A Should have been, but.

21 Q Well, obviously, it should have been?

22 A Yes, ma'am.

23 Q Without the should have been, had you just clocked out
24 or left at 7:00 p.m., give or take, who would have taken
25 over your duties as assistant?

1 A It would have been a lieutenant, but when something
2 going on, I would turn around and come back.

3 Q Oh, absolutely.

4 A Yes.

5 Q Who was the lieutenant that would have been taking
6 over, do you know?

7 A I think Lieutenant Petit and, also, Lieutenant
8 McCullough was there on shift, as well.

9 Q A different -- not you?

10 A Yes, ma'am.

11 Q Okay. So we have two McCulloughs?

12 A Yes, ma'am.

13 Q And they're both -- you're both female, correct?

14 A Yes, ma'am.

15 Q So when you came -- so when the shift -- so you have
16 shift change?

17 A Yes, ma'am.

18 Q And that's when -- you're going home and the other
19 people are coming in, correct?

20 A Yes, ma'am.

21 Q And they overlap a little bit, obviously, right?

22 A Yes, ma'am. Now, they're not relieved until everybody
23 is accounted for, everybody is secure behind the doors.
24 Nobody leaves from the day shift until the night shift is
25 properly called.

1 Q Okay. So who was working F-1 dorm on the evening
2 shift? Would that be Officer Lopez?

3 A Yes, ma'am.

4 Q And so -- but you get a call, like you said, a little
5 after 7:00 that there was a big issue in F-3?

6 A Yes, ma'am.

7 Q And at what time did you call for an institutional
8 lockdown?

9 A As soon as I clocked back in, it took probably two
10 minutes, and went in the control room and noticed something
11 was going on the screen down there, called total lockdown.

12 Q Okay. So what were -- as the -- as the supervisor that
13 day, what -- when you call for an institutional lockdown,
14 what does that then tell the CO, for example, CO Lopez who
15 was working at F-1?

16 A Yes, ma'am.

17 Q What was his responsibility as soon as you call an
18 institutional lockdown?

19 A To make sure that every inmate gets behind the door,
20 secure that door and do a proper count to make sure
21 everybody is there.

22 Q I want to show you F -- I hit play. Okay. So I'm
23 going to hit pause here and if you need to come down to read
24 it, but -- so the cameras identify the times, correct?

25 A Yes, ma'am.

1 Q And does that say 1952 -- or 42?

2 A Yes, 42.

3 Q Lee F-1 B entry?

4 A Yes, ma'am.

5 Q And then dorm?

6 A Yes.

7 Q That is how -- the main way that people get in and out
8 of the door, correct?

9 A It is.

10 Q So at that time, 1942, you have already called for the
11 institutional lockdown, correct?

12 A Yes, ma'am.

13 (Video is continued to be played.)

14 Q Okay. Can you describe the door?

15 A It's open.

16 Q Is that a part of the institutional lockdown
17 requirements that that door be open?

18 A No, ma'am, all doors should be secure.

19 Q And I don't know if you saw it. I'll keep playing.

20 (Video is continued to be played.)

21 Q Can you see this person here?

22 A Yes, ma'am.

23 Q Who is -- tell the jury who that is?

24 A That is Officer Lopez.

25 Q That is Officer Lopez?

1 A Yes, ma'am.

2 Q Okay. Who is that person?

3 A Mr. Lopez.

4 Q That's Officer Lopez.

5 Q Okay. I want you to look at the door. Can you see it?

6 A Yes, ma'am.

7 Q Is it being propped? Does the doors stay open or do
8 they shut automatically?

9 A Shut automatically unless something is propping the
10 door.

11 Q So something is propping the door up. As the stand-in
12 warden, is this something that you would find acceptable
13 when you have called for an institutional lockdown?

14 A Not acceptable, ma'am.

15 Q Okay. So, again, I think this was one of the -- so
16 that door that is propped open, is that the same door that
17 we were just looking at on the other video, the B door that
18 you would come in and out?

19 A I have to look at the sign of the door. The desk is
20 turned the opposite way, it would be on the opposite side.

21 Q So this is F-1 B entry door, so that means it's facing
22 the entry door, correct?

23 A Yes.

24 Q Okay. And so do you think 1920 -- or 1918, 7:18 p.m.,
25 do you understand that you called for the institutional

1 lockdown before or after that, perhaps?

2 A No, ma'am, whenever the incident started, I called a
3 total lockdown.

4 Q Okay.

5 A I couldn't observe anything that was going on in F-1,
6 so I don't know if the individual was out, but we notified
7 everybody to lockdown the institution.

8 Q Okay. And so this, again, would be F-1 B entry door,
9 so the same camera we were just looking at, right?

10 A Yes, ma'am.

11 Q And now it's 2037, correct?

12 A Correct.

13 Q Okay. Would you consider this what you would expect to
14 see when you call an institutional lockdown?

15 A No, ma'am.

16 Q Let me go back one. Okay. So now we're still looking
17 at the same entry door at 2135, correct?

18 A Correct.

19 Q Now, we are well into the situation at this point,
20 correct?

21 A Correct.

22 Q So we would expect that these inmates would have been
23 not only in their cells, but locked in their cells, correct?

24 A Correct.

25 Q And so is there like a master button that locks all the

1 doors or does the officer have to go and --

2 A The officer has to go in one and three manually unlock
3 it, manually lock it.

4 Q Okay. Technology, bear with me. So this little box
5 that we see that's on the camera, what is that -- what is
6 this area here?

7 A That's the officer's station.

8 Q Did it have phones or anything?

9 A Phones, the logbook, any kind of paperwork the guys
10 need, requested staff.

11 Q Okay. And the phone goes directly to where? If I pick
12 up -- if I were to pick up that phone, where would it go?

13 A To Lee control.

14 Q To Lee control?

15 A Yes, ma'am. If you picking it up not saying anything,
16 just take it off the hook or whatever, it go to Lee control.
17 If you pick it up, you can dial anywhere in the institution.

18 Q Okay.

19 A That phone does not call out. It just calls inside the
20 prison.

21 Q Just within the prison, okay.

22 (Video is continued to be played.)

23 Q Again, we're still looking at that same camera and it's
24 2159, correct?

25 A Correct.

1 Q So can you see the arrow where I'm pointing?

2 A Yes, ma'am.

3 Q So is that an inmate or is that an officer?

4 A That's an inmate.

5 Q That's an inmate. And what does he have in his hand?

6 A The phone.

7 Q So you said that when you pick up that phone, it goes
8 to central?

9 A Not unless he dials into another area.

10 Q Okay, but if he just picked it up?

11 A Just pick it up and sit it down or whatever.

12 Q Or pick it up and just hold it to your head?

13 A It will go to Lee control. Evidentially, he's talking
14 on it.

15 Q So were you in Lee control at this time?

16 A Yes, ma'am.

17 Q Do you know who that inmate is?

18 A No, ma'am.

19 Q Were you speaking to any inmates?

20 A No, ma'am. Through the loud speaker, like, if I see
21 something happening in three or four, I would be like no,
22 don't bother that individual, leave him alone or go to your
23 cell, but not individual speaking to him.

24 (Video is continued to be played.)

25 Q Okay. Now, we're at 2200, ten o'clock, correct?

1 A (No response.)

2 (Video is continued to be played.)

3 BY MS. ZMROCZEK:

4 Q I'm pointing. I can't use my fingers. I'm focusing on
5 this area right here, okay?

6 A Yes, ma'am.

7 Q Were you asked to identify that inmate, either of those
8 inmates? And there are different views.

9 A Yeah, I can't say.

10 Q We'll keep going, but that is 2200.48, correct?

11 A The time?

12 Q On the camera, yes, ma'am.

13 A Yes.

14 Q Okay. Let me go back, back to where we just left.

15 (Video is continued to be played.)

16 Q Again, I'm pointing to now this inmate. Again, they're
17 just picking up the phone and putting it down. That would
18 mean they would either be on the phone or listening or
19 talking to somebody in central?

20 A Within the institution, yes, ma'am.

21 Q Now we're at 2208. Can you identify that officer that
22 walks right in at 2208 to B pod?

23 A Yes, ma'am, it's Officer Lopez.

24 Q Officer Lopez. And the video that we've seen
25 repeatedly already where Mr. McClary is coming down the

1 stairs, that happens at 2201, correct, give or take? But it
2 happened before this?

3 A Yes.

4 Q Okay. So at this point, at 2208 and 23 seconds, Inmate
5 McClary is on the ground in this pod, correct?

6 A Like I said, I couldn't --

7 Q Okay, we'll get there.

8 (Video is continued to be played.)

9 Q This is one of the other cameras that looks towards the
10 dorm, correct? This is at the yard dorm?

11 A Okay.

12 Q It's identified here, right? Do you recognize this as
13 being F-1 B dorm?

14 A Yes.

15 Q So this area back here, where does this door go to?

16 A That should be the rec door.

17 Q So that goes to outside or to get to outside?

18 A Yes.

19 (Video is continued to be played.)

20 Q Okay. And this is that same view. And, again, 2003,
21 this is after you've already called for the institutional
22 lockdown, correct?

23 A Yes, ma'am.

24 Q Okay. I want to go to --

25 (Video is continued to be played.)

1 Q Okay. So, again, 1947, that's the same back door that
2 we were looking at that goes to the rec?

3 A Yes.

4 Q Okay. So you're still in the institutional lockdown
5 and it's 2135. Again, this is inside of F-1 B dorm.

6 Focusing on the bottom by the rec door, were you asked to
7 identify any of these inmates who entered into F-1 wielding
8 knives and raising their uniforms?

9 A No, ma'am.

10 Q Were you asked to identify them?

11 A No, ma'am.

12 Q I'm sorry, you have to speak up because everybody has
13 to hear you. Do you recognize this inmate right here? This
14 one right here that's pulling people off, do you recognize
15 that inmate?

16 A Yes, ma'am.

17 Q Who is that?

18 A Mr. Smith.

19 Q Mr. Smith pulling people off of people, correct?
20 Whatever the video shows is what it shows?

21 MS. SCOTT: Objection, Your Honor, that's what she's
22 saying he's doing.

23 MS. ZMROCZEK: That's right. I withdraw that.

24 (Video is continued to be played.)

25 BY MS. ZMROCZEK:

1 Q I'm just speeding it up because I want to ask you the
2 next question. Again, we were looking at the camera from
3 the angle where they came down the stairs, correct?

4 A Correct.

5 Q And now we're looking back up. 2200 would be 10:00
6 p.m.?

7 A Correct.

8 Q I'm learning military time. Okay. Do you recognize
9 this inmate right here?

10 A No.

11 Q You don't know who this is?

12 A No.

13 Q Okay. That's fine. Do you recognize this inmate?

14 A Yes, ma'am.

15 Q Who is that?

16 A That's Mr. Smith.

17 Q So this phone right here, if it goes off the hook, does
18 it do anything?

19 A That phone, you have to put a code or a number in there
20 and you can call your family on the outside. It's for the
21 guys.

22 Q To make outside calls?

23 A Right.

24 Q Like a pay phone?

25 A Yeah, to their family.

1 Q Okay. Do you recognize this inmate?

2 A No, ma'am.

3 Q Okay. 2208, right, so if we look back to the other
4 video, that would be the time that Officer Lopez is in the
5 facility, correct, like, actually, in that dorm?

6 A The dorm.

7 Q Okay. Okay. Same dorm, correct, just a different
8 camera angle? Okay. Same camera. It's just now 2200.
9 10:00 p.m. I'm going to call your attention here. Do you
10 see that? Right here. Do you need to come down or can you
11 see it? Were you ever asked to identify this inmate right
12 here?

13 A Let me come down.

14 Q Okay.

15 A I can't really see it.

16 Q I'll hit play. Can you tell who that is?

17 A No, if I could see a better view of him.

18 Q Sure. Okay. I went too far. See if we can get him
19 coming down the stairs for you.

20 A The one that's stabbed or the one that's toting him?

21 Q Either, can you identify either of them?

22 A The one that's toting is Mr. Smith.

23 Q The one that's what?

24 A That toting him is Mr. Smith.

25 Q Okay.

1 A I don't know the one that's stabbed.

2 Q Do you know what other papers are down there, what
3 other items are, also, kept in the officer boxes?

4 A The law books should be there, any paperwork they need
5 or request the staff. All of that stuff should be in that
6 room in the box.

7 Q And, again, this officer?

8 A Lopez, Mr. Lopez.

9 Q Okay. Now I want to take you -- so this is F-1 entry
10 yard door, correct?

11 A Correct, that's it.

12 Q Okay. Can you see these inmates here? I'm not asking
13 you to identify them, but those are inmates, correct?

14 A Yes, ma'am.

15 Q The door or the window they're looking out, what are
16 they seeing when they -- I'm not asking you what they're
17 seeing, but what area are they seeing?

18 A They're only seeing the individual on the yard because
19 we had a different team member was out there at the time.
20 They're looking out there to observe what's going on.

21 Q So they -- from that dorm, they can see what's
22 happening?

23 A They can't see what happened in --

24 Q Inside?

25 A -- F-3 or F-5 outside of dorm B because nobody is out,

1 but they can see who is out there as far as staff member.

2 Q And then, also, when the inmates climbed the fence and
3 came over

4 A They can't, they can't see that.

5 (Video is continued to be played.)

6 BY MS. ZMROCZEK:

7 Q Okay. While this is playing, let me ask you. I see --
8 you already know what's coming, but I see inmates wearing
9 different clothes, different uniforms, what is the
10 requirement while they are in the dorms? What are they
11 allowed or required to wear?

12 A They can have on their uniform and their jacket. Most
13 of the time, the unit is cold, but some of the guys coming
14 from different institutions, some of the jackets are brown,
15 some of the jacket was light brown.

16 Q Okay.

17 A So they're in the process of changing everybody. Now,
18 everybody's uniform jacket is orange.

19 Q You answered my question for me. We're seeing people
20 with different uniforms, it's not that they identify as
21 different --

22 A No.

23 Q It's just they all came from different facilities

24 A Yeah, and they came with the jacket they came there
25 with, but Ms. McPhearson make sure everybody gets the same

1 color jacket, same color uniform.

2 Q And go ahead and identify -- well, now, we get back
3 there. This is at 2003. Who is that here?

4 A Officer Lopez.

5 Q Officer Lopez. Are you able to see his keys in his
6 hand?

7 A I can't see it.

8 Q That's fine. Actually, let me go to the next one.
9 Okay. So is it your testimony they can't see inmates in
10 that dorm or are those are staff people?

11 A No, the cameras that they have pulled up in the control
12 room, they probably can, but it wasn't on F-1 when I was in
13 there.

14 Q Okay.

15 A But the people that run the control room can adjust the
16 cameras where you can see all the different units. But with
17 so much going on, I guess they adjust it when all the
18 different team members got here.

19 Q Okay.

20 A We don't mess with the cameras because the control room
21 officer and the major and everybody really deal with that
22 part.

23 Q And they control it?

24 A Yes.

25 Q Okay. Go to the same camera angle, just a little bit

1 later. Now, we're at 2155. Okay. 2200. Do you recognize
2 those as being the same inmates that we just identified on
3 the stairs?

4 A Who is that coming out.

5 Q We're at 2201?

6 A The individual that -- which one?

7 Q The one that's laying down on the ground.

8 A The individual behind that young guy, he was not one of
9 the guys.

10 Q Okay. And you don't know the young guy?

11 A No, ma'am.

12 Q Okay. And we're at 2204 still in the entry yard door,
13 who is that inmate?

14 A Play it again.

15 Q I can back it up a little bit for you. So 220457?

16 A That's Mr. Smith.

17 Q That's Mr. Smith. That's this person right here,
18 right?

19 A Yes, ma'am.

20 Q Okay. Okay. I think those are all the videos I have
21 to ask you about right now. I do want to ask you a couple
22 more things. Did you know Twin?

23 A I did.

24 Q Okay. Tell the jury who Twin was.

25 A Twin was an individual on the yard that got -- came to

1 the prison and he came from Broad River, I'm thinking, and
2 he was high ranking.

3 Q He was what?

4 A He was a high ranking Blood.

5 Q A high ranking Blood. Did you ever have any
6 conversations with Officer Anderson where you and she -- you
7 would relate to her that you would rely on Twin to maybe
8 help keep the inmates calmed down?

9 A No, ma'am, I do all my calming down myself. I don't
10 need anybody's help with that.

11 Q Okay. And I want to ask you this, when the first
12 incident happened, inmates had cell phones in F-3, we know
13 this, right?

14 A Right.

15 Q Some of them called 9-1-1 directly from F-3; isn't that
16 correct?

17 A No, ma'am.

18 Q They did not?

19 A An officer went in the office and called, but they
20 couldn't call from the wing, no, ma'am.

21 Q They couldn't call from a cell phone?

22 A That I couldn't say, but I'm not aware of that.

23 Q Okay. Let me ask you this, did a dispatch officer ever
24 call back to the institution?

25 A He probably called back to the institution. I wasn't

1 aware of that, as well. We were in there trying to get
2 everybody in for assistance.

3 Q Okay. And when you were watching -- I want to go back
4 to F-3 for a moment. When you were -- we're talking 7:15,
5 when you were watching that happen, when you were talking on
6 the intercom trying to talk to them, does that go out to
7 everybody or just F-3?

8 A Everybody.

9 Q That goes out to everybody?

10 A Everybody.

11 Q So everybody in the facility could hear you?

12 A Loudly speaker in every unit. Even you could hear it
13 on the yard, lock up. And we do it across the radio for
14 some people that's hard of hearing to make sure they get
15 [indiscernible].

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

17 THE WITNESS: I got one thing to say, I don't know what
18 accumulate between Mr. Smith or any other individual there,
19 but that was one tragic day, and our job was to try to keep
20 the violence down. And Mr. Smith and the guys that got
21 killed also have family, so I know how the family felt just,
22 as well as the other side because after I retire and when I
23 took over the gang unit to prevent another incident like
24 this from coming together again, so we work with the Bloods,
25 the Crips, the Folk Nation, the Gs, any incident that's

1 going on down on the yard, we go down to try to resolve to
2 keep killing and stuff from going on in the yard. That's
3 one of the positive things we have going from the incident
4 because all of these -- and Smith will tell you, I call all
5 of these my kids, like him family. You're in there to
6 rehabilitate yourself to do good and everybody should try to
7 get along as one. We got to try to stop this killing and
8 violence one way or another, we got to.

9 Q Yes, ma'am. And one way to do that is to make sure
10 that corrections officers aren't bringing in cell phones?

11 A Yes, ma'am, I agree.

12 Q And drugs?

13 A I agree.

14 Q And another way to do that is to make sure that the COs
15 are doing what they're supposed to, correct?

16 A I agree.

17 Q Now, I want to talk to you a little bit -- since you
18 brought it up, I want to talk to you about it. So you
19 mentioned gangs, Bloods, Crips, Gangster Disciples, they're
20 different types of gangs, right?

21 A Yes, ma'am.

22 Q And that is common in prison environment?

23 A And on the street now, everywhere.

24 Q Certainly. It's common everywhere, right?

25 A Right.

1 Q And you said now you're able to work with them?

2 A And we have problems going on. I don't know what
3 occurred with Smith and them on the yard, but the group that
4 I have now that's working, if we have a field or something
5 going on, I get all of my guys together, different gang
6 members and we go down there to try to resolve it and
7 everybody get along.

8 MS. ZMROCZEK: I believe those are all the questions I
9 have. Thank you.

10 MS. SCOTT: A couple of questions, Your Honor.

11 THE COURT: Yes, ma'am.

12 REDIRECT EXAMINATION

13 BY MS. SCOTT:

14 Q Just a couple of things I want to talk to you about.
15 One of them, I want to put the video up. Just going back to
16 what the defense was just saying and I agree you and her
17 that the killing has to stop, correct?

18 A Yes.

19 Q And she said COs about bringing in cell phones, that is
20 one way, correct?

21 A Yes.

22 Q And the COs, yes, there are some problems, but would
23 you, also, agree that the actions of the inmates themselves?

24 A Cause a lot of problems, yeah, that's what we got to
25 resolve, little simple stuff goes to a limit, which we can

1 bring down.

2 Q Right.

3 A It's crazy, over small stuff.

4 Q In the videos, you don't see the CO Lopez doing any of
5 that?

6 A No, ma'am.

7 Q Again, I want to bring up State's Exhibit -- I keep
8 forgetting the number, 3. There's one thing I wanted to
9 clarify. You just testified to a man coming down the stairs
10 and someone holding onto him. I believe you testified
11 that's Mr. Smith; is that correct?

12 A Yeah.

13 Q If I show you a different angle, would you be able to
14 look at that and see if that really is Mr. Smith?

15 A Okay.

16 Q We're going to rewatch this person coming down the
17 stairs that you previously had a quick glance at and said it
18 was Mr. Smith, okay? Now, resuming in on this picture here,
19 if you need to step down and look at it, you can. Are you
20 sure that --

21 A No, no, ma'am, I was looking at -- what's the picture
22 ahead of that. I thought -- there was two guys coming down
23 and --

24 Q Yes, ma'am, that's what we were -- is that who you just
25 previously thought was Mr. Smith?

1 A Yeah, I'm sorry, that wasn't correct.

2 Q Okay. I just wanted to clarify that for the record.

3 MS. SCOTT: That's all the questions I have. Thank
4 you, Captain.

5 MS. ZMROCZEK: Nothing further.

6 THE COURT: I'm sorry, I couldn't hear you.

7 MS. ZMROCZEK: I'm sorry, I said nothing further.

8 THE COURT: Okay. You can step down. Thank you,
9 ma'am.

10 MS. SCOTT: Your Honor, we would ask that she be
11 excused from her subpoena.

12 MS. ZMROCZEK: We have no objection to her being
13 released.

14 THE COURT: Okay. Everybody, okay? Do you have a
15 witness we can get up and down in an hour? Or we can start.

16 MR. LUNSFORD: Cody Wilson.

17 THE COURT: Okay.

18 MR. LUNSFORD: Cody Wilson.

19 CODY WILSON,

20 After being duly sworn, testified as follows:

21 THE CLERK: Thank you. If you'll have a seat and state
22 your full name for the court reporter.

23 THE WITNESS: Yes, ma'am, my name is Cody Wilson.

24 DIRECT EXAMINATION

25 BY MR. LUNSFORD:

1 Q It's Assistant Chief Wilson, correct?

2 A Yes.

3 Q All right. Do me a favor, introduce yourself to the
4 jury, kind of tell them about your history, where you work,
5 law enforcement?

6 A Sure. Again, my name is Cody Wilson. I'm the
7 assistance chief over the public corruption unit with the
8 inspector general's office with the South Carolina
9 Department of Corrections. I've been in that current
10 capacity for approximately a year. It's the equivalent of
11 the special agent in charge of the unit. I've been with
12 Department of Corrections for approximately six-and-a-half
13 years. Prior to promotion, I was in the past special agent
14 before that and six years prior as a deputy sheriff in
15 Kershaw County.

16 Q What's your educational background?

17 A I have a high school education, a graduate of South
18 Carolina Criminal Justice Academy and I will be finished
19 with my bachelor's degree in criminal justice in about eight
20 or nine classes.

21 Q All right. Do you have any specialized training?

22 A Sure. I've been to advanced interrogation classes,
23 interview classes, also, a multitude of other detective
24 classes.

25 Q All right. So I'm going to take you back to April

1 15th, 2018. Do you remember that night?

2 A Yes, sir.

3 Q Tell me how did your night begin?

4 A Okay. So it was a Sunday night, from what I remember.
5 I was not the on-call special agent for our office at the
6 time, but I had been made aware from my supervisor at that
7 time that there was a large scale and active ongoing
8 disturbance at Lee Correctional Institution. Information
9 was flowing out from staff and the on-call agent on the
10 scene that there was a large scale disturbance, possibly
11 large scale assaults. And there was, also, some word that
12 came out that maybe attempted escapes or escapes from the
13 institution, as well.

14 Q Is it fair to say no one really knew what was going on
15 at that point?

16 A Yes, sir, that's correct.

17 Q So you received this text -- do you remember what the
18 weather was like that night?

19 A Yes, sir, it was pretty heavy thunderstorm, from what I
20 remember, heavy rains.

21 Q And you responded to that call, that text, I'm sure?

22 A I did.

23 Q Do you know about what time you received that text?

24 A I would say it was somewhere between 8:30 and 9:30ish,
25 somewhere in that timeframe.

1 Q I don't want you to say where you live, but how far
2 does it take you to get from where you were to Lee
3 Correctional Institution?

4 A Probably an hour, give or take.

5 Q Okay.

6 A I can usually be there in less than 40 minutes, but due
7 to the weather, it was a little bit longer.

8 Q Tough drive that night?

9 A Yes, sir.

10 Q When you arrived on the scene, what did you observe?

11 A When I arrived on scene, obviously, there was a large
12 law enforcement and SCDC security presence at the
13 institution, DOC security teams, such as the special
14 response teams, as well, as the South Carolina Law
15 Enforcement Division, their SWAT team had arrived. I
16 entered the front of the institution --

17 Q Let me stop you there. When you say SCDC response
18 team, are you familiar with the term RRT?

19 A Yes.

20 Q What does that mean?

21 A From my understanding, rapid response team.

22 Q That's an SCDC team?

23 A It is.

24 Q They were there that night?

25 A Yes.

1 Q Do you know how RRT works, are you familiar with that?
2 What their response system is?

3 A Sure. If there's a disturbance of some sort, escape,
4 anything of large magnitude that the normal staff in an
5 institution cannot handle, it's my understanding that
6 they're contacted through -- they would be dispatched
7 through our emergency action center.

8 Q All right. Do these individuals in RRT, do they have
9 cars with blue lights in them?

10 A It is my understanding at the time that they would meet
11 in a certain location and some of them would carpool to
12 wherever the incident was taking place.

13 Q Sure. So not what you would think as SLED SWAT, right,
14 when you would imagine blue lights and big truck, correct

15 A Right.

16 Q When we talk about RRT, that's really not what we
17 envision, these are individuals in POVs, personal vehicles
18 mustering somewhere to go; is that correct?

19 A Sure. I think maybe supervisions of those units may
20 have response vehicles, but certainly not the whole teams.

21 Q Okay. All right. Thank you. Once you got there, what
22 was your primary focus?

23 A Once I got there, I entered the front of the
24 institution to see how I was needed or how I should be
25 utilized. I was redirected to the outer perimeter area with

1 one of our agents from our office, as well, as I want to
2 say, the Lee County Sheriff's Office and maybe some other
3 local law enforcement, as well.

4 Q And you say the outer perimeter of the area, I'm going
5 to show you what is marked as State's 1. Does Lee
6 Correctional -- the fence line around Lee Correctional, does
7 it have a single or double fence line?

8 A I want to say it's a double fence line. You'll have an
9 inner fence here and outer fence right here.

10 Q When you responded that night, do you recall where you
11 were posted at?

12 A So this is the front of the institution here, I would
13 have been to my left on the outer side of where it's being
14 described as the west chart.

15 Q So this upper area here?

16 A Yes.

17 Q Are you familiar with Lee, these three dorms up here?

18 A I am.

19 Q What are those?

20 A Those are the F-1 dorm, the F-3 dorm and F-5 dorm.

21 Q And which dorm looks different from the rest?

22 A F-5 looks different from the rest. F-5 is going to be
23 on the far left here with the black roof.

24 Q All right. So you were up near the F-1 dorm; is that
25 correct?

1 A Yes.

2 Q Okay. When you were up there by the upper part of the
3 yard, you know, by the west part of the yard, outside the
4 fence line, correct?

5 A Correct.

6 Q What was your job when you were there?

7 A The main focus at that time was to prevent any inmates
8 completing an attempted escape over the fence. It was
9 general safety of the inmates that were there, the staff
10 that was there and, also, there was a responsibility to the
11 citizenry of Lee County that no inmates -- if they had
12 previously said, no further inmates would escape.

13 Q Is it a true statement that no one really knew?

14 A That's correct.

15 Q Were you at any point told that inmates could
16 potentially --

17 MS. ZMROCZEK: Objection, Your Honor.

18 BY MR. LUNSFORD:

19 Q All right. Based on your understanding when you got to
20 Lee, what were you told about the situation?

21 A It was a very volatile situation. Weren't sure how
22 many inmates have been assaulted, if any inmates had
23 successfully escaped or, if any, staff had been seriously
24 injured, as well.

25 Q Okay. Thank you. While you were stationed in that

1 area, did you observe any officers, correction officers
2 near?

3 A I did.

4 Q Who was that?

5 A That would have been Officer Lopez.

6 Q Officer Lopez. What did you observe with Officer
7 Lopez?

8 A I observed him exit, at least, once, probably an
9 additional one or two more times the rear entrance of the
10 dorm onto what I believe can be described as the recreation
11 yard there at the prison, as well as there were inmates that
12 were coming in and out.

13 Q All right. Did you at any point try to make contact
14 with him?

15 A I did.

16 Q How did that go?

17 A We tried several times up until having to use the PA.
18 I remember using the PA system from -- I can't remember the
19 deputy sheriff, but he's with the Lee County Sheriff's
20 Office. I said Kenneth, can I use your PA so we can make
21 contact with him. At that point, we did not know if he was
22 potentially being held hostage or what the situation was
23 with him, if he had been injured. And we were having a very
24 difficult time making contact with him.

25 Q And you mentioned the Lee County Sheriff's Office. Do

1 you know the number of law enforcement agencies that
2 responded that night?

3 A Roughly four, maybe, between our office, SLED, Lee
4 County Sheriff's Office, possibly could have been
5 Bishopville. There is a good working relationship with the
6 Department of Natural Resources in this county, so there
7 could have been some of their agency, as well.

8 Q All right. At some point, did you -- and I'm once
9 again going to show you State's 1. At some point, did you
10 make entry into the fence line of the facility?

11 A Yes, I did.

12 Q Where did you do that?

13 A If we're looking front to back, this is the front of
14 the institution, entered here at the back of the
15 institution, there's a rather large gate back there that has
16 to be unsecured, but yes, I did make entrance to that part
17 of the institution.

18 Q Were you by yourself or anybody with you?

19 A No, sir, I was not. We actually had -- I'm not sure of
20 his title, but some regional director from SCDC had the keys
21 to this area. He let us in. When I say us, it would have
22 been the Lee County Coroner's Office and the crime scene
23 unit with the South Carolina Law Enforcement Division.

24 Q All right. Where did you all go from there?

25 A Once we were able to gain entry somehow, I believe our

1 vehicles were able to get to a point here at the west yard,
2 the exact path we took to get there.

3 Q Can you point to the jury where the west -- when you
4 say the west yard, what are you talking about?

5 A This black roof building along with these two
6 buildings, that is the west yard.

7 Q Do you know about where you parked your vehicles?

8 A I want to say there is a fence here, so maybe somewhere
9 in this area. I'm not exactly sure.

10 Q Inside the fence line?

11 A Yes.

12 Q Okay. Once you got inside the fence line with I
13 believe you said SLED crime scene and the coroner's office,
14 what was your role then?

15 A My role at that point was to act as a liaison from our
16 office to the coroner's office, SLED, and anyone within the
17 SCDC operational or security room. It was still pretty
18 active at that point.

19 Q And once you got into the fence line, can you describe
20 what the scene looked like?

21 A Sure. So the west yard, it had rained heavily that
22 evening, there was a lot of rain, there was a lot of mud.
23 There was trash there. There was, also, in front of the
24 outer fence of one of the dorms, there was deceased
25 individuals, inmates. You could visibly tell they had been

1 involved in some sort of large scale serious assault. There
2 was a fair amount of blood, mud, so forth. And there was, I
3 want to say either towels or sheets or clothes were hanging
4 from the fence line entering some of the dorms. It was a
5 very chaotic crime scene.

6 Q At some point, did -- were you made aware of what
7 events were going on in the individual dorms?

8 A Well, we were informed that things were taking place in
9 each of the dorms, F-1, F-3 and F-5. I don't remember the
10 particular order of those at this time, but we were informed
11 that either outside of the dorm incidents had taken place or
12 inside the dorm, incidents had taken place.

13 Q At any point, did you guys make entry into F-1?

14 A I do not recall entering.

15 Q With SLED crime scene, were they processing the scene
16 while you were there?

17 A They were.

18 Q And were you there with them as they processed?

19 A I was there for some, but there was, also -- again, the
20 coroner's office was there assisting them with any needs, as
21 well, as any kind of questions from any of my command staff
22 members on scene, I could have been pulled away from them.
23 As well, as any questions of operations or security
24 personnel had, as well. I wasn't there second by second.

25 Q Let me ask it this way. Do you get a text message at

1 some point telling you that you're now --

2 MS. ZMROCZEK: Objection, Your Honor.

3 MR. LUNSFORD: I'll rephrase it.

4 THE COURT: Okay. Rephrase it.

5 BY MR. LUNSFORD:

6 Q At 2:00 a.m., are you made --

7 MR. LUNSFORD: Beg the court's indulgence for a second.

8 Q Who's the special agent assigned to this case

9 A Who's the special agent assigned?

10 Q Who was the special agent assigned to this case?

11 A Initially, it was me.

12 Q How did you find out?

13 A I found out through my supervisor letting me know via
14 text message.

15 Q About what time was that?

16 A It would have been between two and three o'clock that
17 morning.

18 Q All right. So once you were concluded with that
19 night -- did you do anything else that night while you were
20 there?

21 A There may have been some brief meetings with command
22 staff, as well, as operational heads that were there, but
23 everybody -- it was an extremely overwhelming scene, so the
24 focus of that night had been to restore some form of law and
25 order there. The initial investigation aspect shortly

1 thereafter was not so much that night.

2 Q How many cases like this in 2018, 2018, prior, had you
3 work like this?

4 A None.

5 Q This was your first case like this?

6 A Like this, yes. I had responded to homicides
7 previously as a deputy sheriff. I had never prior to this
8 investigated a homicide.

9 Q All right. Who else was working on this case with you?

10 A It was -- there were multiple agencies, special agents
11 from our office throughout the time period. Initially, the
12 on-call special agent that was there that night, who I think
13 we all anticipated to get the case, his specialty was about
14 30 years homicide investigations.

15 Q And who was that?

16 A It was Special Agent Mark Cruz [ph].

17 Q All right. But it wasn't provided to Mark Cruz, it was
18 provided to you?

19 A Correct.

20 Q So as you went forward with your investigation, how did
21 that go? How did you begin your investigation?

22 A We began the investigation initially by trying to
23 cultivate any witnesses we could, whether it be employee
24 witnesses and/or inmate witnesses, especially inmates that
25 had went out for injuries, you know, obviously, if they

1 lived. We felt like any information they had would be
2 vital.

3 Q Okay. As part of your investigation are interviews
4 conducted?

5 A Yes.

6 Q How many interviews do you think you conducted?

7 A To give a rough estimate, over 100.

8 Q When you sit down with an SCDC officer that's been
9 involved in something, do they generally have -- are there
10 reports involved?

11 A It depends what institution and what officer you're
12 sitting there with.

13 Q Okay. Do you reinterview them? Do you sit down and
14 conduct another interview with the officer?

15 A Yes, we'll conduct as many as needed.

16 Q When you were trying to collect evidence from Lee
17 Correctional, describe to me how that process was working
18 for you?

19 A It was without a doubt the most difficult and strenuous
20 case to collect evidence on at that point in my career at
21 that time. I have not encountered anything as difficult
22 since then.

23 Q At any point, did you interview the AW, Tisdale?

24 A Yes, I did.

25 Q Did he provide you a report?

1 A To my knowledge, I don't recall receiving a report from
2 him.

3 Q Do you know who Agent Horne is?

4 A Yes, sir, I do.

5 Q All right. Do you know if Agent Tisdale provided Agent
6 Horne a report?

7 A It's possible, but I don't know.

8 Q Did you and Agent Horne ever work together on this
9 investigation?

10 A We did.

11 Q Okay. So at some point, the case becomes -- or what
12 you're telling me -- at what point did the case become a
13 state grand jury case?

14 A So there had been preliminary discussions about the
15 case being a state grand jury case and just to probably the
16 summer following the incident in April. That didn't -- did
17 not gain traction at that time for whatever reasons. And
18 then, ultimately, probably 2019ish, sometime is when it
19 became a state grand jury investigation.

20 Q Did another agency take over from there?

21 A They did.

22 Q Who was that?

23 A The South Carolina Law Enforcement Division, SLED.

24 Q Okay. And once SLED took over, what role did you play
25 at that point?

1 A More of a liaison. If there was any assistance they
2 needed to provide any documentation, assisting with
3 coordinating any inmate interviews through transports if
4 those needed to be done and so forth.

5 MR. LUNSFORD: Beg the Court's indulgence.

6 (Pause.)

7 MR. LUNSFORD: No further questions.

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q Is it agent Wilson?

11 A Assistant Chief Wilson.

12 Q Assistant Chief Wilson.

13 A It's okay.

14 Q Sorry. So before you joined the -- is it the police
15 services?

16 A It was prior police services. Over the past couple of
17 years, we went through a rebrand of sorts and we're now, the
18 inspector general's office.

19 Q Okay.

20 A But at that time, yes, we were.

21 Q So inspector general's office?

22 A Yes, ma'am.

23 Q And prior to that, what was your title?

24 A Prior to working with the IG's office?

25 Q Yes.

1 A Prior to that, I was deputy sheriff.

2 Q Deputy sheriff where?

3 A Kershaw County.

4 Q So this job that you had in -- on April 15th of 2018
5 was similar to your job as an investigator in Kershaw in
6 that you investigated cases, right?

7 A At the sheriff's office, I investigated very low level
8 cases. I was a deputy sheriff at that time. I responded to
9 calls, answered calls for service. My investigation work at
10 that time as far as homicides was extremely limited.

11 Q Okay. So what kind of training did you have before you
12 started on April -- before -- on April 15th, 2018, did you
13 have any training about what to do for an investigation or
14 how to investigate?

15 A With regard to what kind of investigation?

16 Q A criminal investigation?

17 A Other than basic stuff at the Criminal Justice Academy.

18 Q Okay.

19 A No advanced training in criminal investigations at that
20 time.

21 Q But you did the basic law enforcement training at the
22 Criminal Justice Academy?

23 A I did.

24 Q In fact, you go there and you spend, like, a
25 significant period of time, a couple -- quite a few weeks,

1 maybe eight weeks or so?

2 A It would have been 11 or 12 weeks.

3 Q Oh, even more, 11 or 12 weeks. And they train you to
4 be a basic officer, right?

5 A Correct.

6 Q They teach you the very basics on what to do, correct

7 A Correct.

8 Q And they make sure that you do that so that we can make
9 sure that cases are being investigated and presented to
10 juries and we have all the information, right?

11 A Sure.

12 Q So what year did you graduate the Academy?

13 A 2012.

14 Q 2012. So before 2000 -- before this date, before 2018?

15 A Uh-huh.

16 Q And so they taught you in the Academy the very -- one
17 of the very basic lessons and basic classes they teach you
18 is how to write reports, right?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes, ma'am.

22 Q They teach you to make sure that you document?

23 A That's correct.

24 Q They want you to make sure that your reports are
25 thorough?

1 A Correct.

2 Q Accurate?

3 A Uh-huh, yes, ma'am.

4 Q Did you do a report for this case?

5 A Yes, I did an investigative report.

6 Q How many pages was that report?

7 A I would have to see the report, I'm not sure of the
8 exact pages.

9 Q I would like to see it, too.

10 MS. ZMROCZEK: Your Honor, I'll move on. I'll come
11 back to that issue.

12 BY MS. ZMROCZEK:

13 Q That report, who did you give that report to?

14 A Who did I give the report to?

15 Q Uh-huh.

16 A Well, once our investigative reports are approved, they
17 can be routed to numerous individuals.

18 Q Okay. So let me ask it this way, so when you meet with
19 a witness or a suspect or anyone and you type out a report
20 for that, right -- or what kind of report did you do for
21 this case? Did you say on this date and you listed all the
22 things you did and all of those things?

23 A I conducted an investigative report.

24 Q Okay. I'll come back to that later. I'll move on for
25 now. What time did you get there?

1 A It would have been -- I was notified about 8:30,
2 9:30ish. It took me approximately an hour to get there, so
3 sometime after ten o'clock.

4 Q Okay. So you didn't even get there until after ten
5 o'clock?

6 A Yes, ma'am, that's correct.

7 Q And at that point, it was still chaotic?

8 A Yes.

9 Q Overwhelming?

10 A Yes, ma'am.

11 Q Inmates were terrified?

12 A I'm sure they would be, yes.

13 MR. LUNSFORD: Object. Your Honor, she's -- she's
14 testifying, Your Honor.

15 THE COURT: She asked him a question, he answered.

16 Q You started talking about an escape. There was no
17 inmates that escaped, correct?

18 A That's correct.

19 Q You don't have any documentation that anyone was trying
20 to escape the facility, do you?

21 A At the conclusion of this investigation, no.

22 Q Okay. But what you did have an understanding of is
23 that inmates were trying to -- certain inmates were trying
24 to escape the dorm that they were trapped in, correct?

25 A At that time, we did not.

1 Q At the time, you didn't know, but now you do, right?

2 A That's correct.

3 Q So if an inmate is escaping the facility, like Shaw
4 Shank style, what authority do you have to stop that?

5 A An inmate escaping the facility?

6 Q Yes.

7 A Would you -- are you asking if they jumped over the
8 fence?

9 Q Let me put it this way, you get called and you're told
10 that inmates are escaping climbing over the wire fence, what
11 authority do you have to stop that?

12 A Have up to deadly force.

13 Q Up to deadly weapon force?

14 A Yes.

15 Q So meaning you could stop -- do whatever it took to
16 stop them from doing that, right?

17 A Yes, ma'am.

18 Q You, also, collected some evidence in this case,
19 correct?

20 A Yes, ma'am.

21 Q What evidence is that?

22 A It was numerous, numerous items.

23 Q Log books?

24 A Sure, yes, ma'am.

25 Q In fact, it was 13 log books that you collected from

1 the facility, right?

2 A I'm not sure of the exact number.

3 Q You would have filled out a form and signed it and
4 everything? Kept a chain of custody?

5 A Right.

6 MS. ZMROCZEK: Your Honor, I don't have any more at
7 this time, I do think we have another issue that we need to
8 address.

9 Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 MS. ZMROCZEK: Your Honor, I need to check something
13 real quick. Beg the Court's indulgence.

14 THE COURT: Okay.

15 (Pause.)

16 MS. ZMROCZEK: You have one more question.

17 THE COURT: I have a juror that needs a break.

18 MS. ZMROCZEK: No, no, let's take a break. I need to
19 read it anyway.

20 THE COURT: Assuming, you're not calling another
21 witness today, right?

22 MS. SCOTT: No, Your Honor.

23 THE COURT: You need one right now. I can give it to
24 you. Everybody can stand up, anybody else need to leave?

25 (A juror left the courtroom.)

1 (Pause.)

2 MS. ZMROCZEK: Your Honor, at this point, I need to get
3 a copy of the report. I think I can just recall him. I
4 don't have any further questions at this time.

5 MR. GIESE: We're good with that.

6 THE COURT: Okay. Do you have any further questions
7 for this witness?

8 MR. LUNSFORD: No, Your Honor.

9 THE COURT: So I assume you don't have one we can get
10 up and down in 30 minutes?

11 MR. GIESE: No, sir.

12 THE COURT: It would be a good time to break for the
13 day?

14 MR. GIESE: Absolutely.

15 THE COURT: All right. Ladies and gentlemen, we're
16 going to stop for the day. I'll remind you don't discuss
17 the case. Don't do any independent research. I need you
18 back at 9:30 in the morning. If you have an emergency,
19 please, call us. Don't watch any news either.

20 (WHEREUPON, the jury left the courtroom at 4:29 p.m.)

21 THE COURT: Any other matters we need to address?

22 MR. GIESE: No, Your Honor.

23 MS. ZMROCZEK: And, Your Honor, this is why I try to
24 find out who the witnesses are so that I don't do this, so,
25 you know, hopefully, tomorrow, we can communicate and know

1 exactly --

2 THE COURT: Well, we've been through four witnesses, we
3 have 30 more to go. Do you think we're going to finish it
4 this week?

5 MR. GIESE: Oh, yes, sir. A lot of those witnesses are
6 chain witnesses.

7 THE COURT: All right. I'll see y'all in the morning.
8 Thank you.

9 MS. SCOTT: Thank you, Your Honor.

10 (WHEREUPON, court was adjourned to be reconvened on
11 Wednesday, December 6, 2023.)

12 WEDNESDAY, DECEMBER 6, 2023

13 THE COURT: Okay. We're ready for the jury.

14 MR. GIESE: The State is ready, Your Honor.

15 MS. ZMROCZEK: The defense is ready.

16 THE COURT: You can bring in the jury.

17 (WHEREUPON, the jury entered the courtroom at 9:44
18 a.m.)

19 THE COURT: Okay.

20 MS. ZMROCZEK: Your Honor, we'll recall Agent Wilson.

21 THE COURT: Okay.

22 MR. ZMROCZEK: He's right outside the door. I just
23 need to open up the door and get him.

24 CODY WILSON,

25 after being duly sworn, testified as follows:

1 THE COURT: You're still under oath.

2 DIRECT EXAMINATION

3 BY MS. ZMROCZEK:

4 Q Good morning, Agent Wilson. I have just a few more
5 questions to ask you after being able to review your report.
6 In your report, you put all of the people that you were able
7 to interview, right?

8 A Yes, ma'am.

9 Q And one of the things that you want to do -- and I'm
10 just going to turn the mic over. One of the things that you
11 want to do when you're trying to figure out what happened in
12 a case is to interview as many people as possible, right?

13 A Yes, ma'am.

14 Q And in this case, I went through all of the names of
15 the list of people you interviewed, some COs, some
16 correctional officers?

17 A Correct, yes, ma'am.

18 Q Some inmates?

19 A Yes, ma'am.

20 Q Some inmates that were injured?

21 A Yes, ma'am.

22 Q You never interviewed Mr. Michael Smith, did you?

23 A I don't recall if I interviewed him or not. I would
24 have to see the investigative report.

25 Q Okay. Right. So if it's not in the investigative

1 report, then you wouldn't have interviewed him?

2 A No, ma'am, I wouldn't think so.

3 Q And you had an opportunity, we talked about that
4 yesterday a little bit, to collect some of the evidence,
5 right?

6 A Yes, ma'am.

7 Q Who makes that determination on what evidence to
8 collect?

9 A With regard to the scene in itself?

10 Q Yes, sir.

11 A Generally, it will be the agency assigned to the case.
12 There may be some direction from command staff, as well.
13 It's a case-by-case basis.

14 Q Is there a reason that you didn't collect or preserve
15 Mr. McClary's clothes?

16 A I don't recollect Mr. McClary's clothes. Maybe you can
17 --

18 Q Do you know who Mr. McClary is?

19 A I'm familiar with him, yes, ma'am.

20 Q But you don't --

21 A I don't recall why they weren't, no, ma'am.

22 Q The thing about when we collect clothes and things is
23 we can test for DNA, right?

24 A True, yes, ma'am.

25 Q And it can just help provide a full picture of what

1 we're looking at; is that correct?

2 A That's correct.

3 Q Okay. And it's safe to say this was a big undertaking
4 and you were working as a team, right? So you weren't the
5 only ones making decisions and determinations in this case?

6 A No, ma'am, that's fair.

7 Q But you were, also, able to collect a bunch of inmate
8 cell phones?

9 A I did not personally collect cell phones, but I know
10 that there were a large amount of cell phones that were
11 collected.

12 Q And I think even in your report, you identify that
13 there were videos and pictures and images from what had
14 happened inside the facility on those phones; is that
15 correct?

16 A On the phones that were collected?

17 Q Yes, sir.

18 A That's possible, yes, ma'am.

19 MS. ZMROCZEK: Thank you. I have no further questions.

20 MR. LUNSFORD: Briefly, Your Honor.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. LUNSFORD:

24 Q When you were on scene that night, were you in charge
25 of collecting evidence?

1 A No, sir, I wasn't in charge of collecting evidence.

2 Q Who was in charge of collecting evidence?

3 A I deferred that to the crime scene unit with SLED.

4 Q With SLED?

5 A Yes, sir.

6 Q So any evidence that was collected that night, just to
7 be clear, we took no photographs, that was all SLED's job?

8 A Yes, sir.

9 MR. LUNSFORD: No further questions.

10 THE COURT: Okay. You may step down.

11 MS. SCOTT: State will call William Burley.

12 THE COURT: Okay.

13 WILLIAM BURLEY,

14 after being duly sworn, testified as follows:

15 THE CLERK: Please state your full name for the court
16 reporter.

17 THE WITNESS: William Franklin Burley, III.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MS. SCOTT:

21 Q Good morning.

22 A Good morning.

23 Q What is your position at SCDC?

24 A I am a shift supervision at Broad River Correctional
25 Institution at the moment.

1 Q How long have you been with the Department of
2 Corrections?

3 A In total, almost ten years.

4 Q Kind of take us through your employment with SCDC?

5 A I was first employed with SCDC after I left the police
6 department. I worked at Kirk Shaw Institution, then I left,
7 took about an eight-and-a-half year break, and then was
8 contacted about coming back to the agency. And I came back
9 out to Lee Correctional in 2017. And then I left Lee to go
10 to Broad River in, like, late 2021 and I've been there ever
11 since.

12 Q And what is your title right now?

13 A Right now, I'm a shift lieutenant on the E-1 shift.

14 Q Were you previously in the contraband unit?

15 A At Lee, I was in the contraband unit.

16 Q What years were you in contraband?

17 A I want to say around 2019, late 2018 into 2019, right
18 before I became the lieutenant over lockup.

19 MS. ZMROCZEK: Your Honor, I'm so sorry. I'm having a
20 little trouble hearing him.

21 THE COURT: Okay. Can you move that mic a little bit.

22 THE WITNESS: Is that better?

23 MS. ZMROCZEK: Wow, so much better. Thank you.

24 BY MS. SCOTT:

25 Q The contraband team, is that part of another program or

1 part of SCDC, STG?

2 A They're separate, but tend to work with each other. At
3 the time at Lee when I was moved into contraband by the
4 command staff, there were only three of us that were in
5 there. Lieutenant Clark, he was primarily STG, Sergeant
6 Settles and then myself as sergeant. It was kind of a weird
7 thing and it was transitional, but at the time, we pretty
8 much just worked as a team trying to get as much done as
9 possible, you know, on both the contraband and working with
10 STG stuff.

11 Q Tell the jury what STG is.

12 A Security threat group, it's, basically, the term we use
13 for any type of gang or group in SCDC that can be organized
14 and possibly a threat.

15 Q And you had workings within SCDC with that group; is
16 that correct?

17 A Yes, ma'am.

18 Q So you said you've worked at Lee Corrections; is that
19 right?

20 A Yes, ma'am.

21 Q Is that in Lee County?

22 A Yes, ma'am.

23 Q When did you start working at Lee?

24 A 2017, I came back. I think I graduated around
25 September. And then I think I first started on the yard

1 about a month after I came back from the Academy.

2 Q Okay.

3 A So they primarily brought me and Clark and Greggs there
4 to work the yard unit. The three of us ran the yard Monday
5 through Friday.

6 Q So you were the yard sergeant?

7 A Yes, ma'am.

8 Q Okay.

9 A And I was primarily on the west yard.

10 Q So April 15th, 2018, what we're here for today, were
11 you a yard sergeant at Lee at that time?

12 A Yes, ma'am.

13 Q Tell us what a yard sergeant does.

14 A Our job is primarily to facility the movement schedule
15 of the institution. That's the schedule that's put out by
16 the command staff and what they expect everything to be done
17 Monday through Friday at the institution, all your
18 movements, chow, medical movement, education, basically,
19 like inmates going from the dorm to where they need to go.
20 Our job was to make sure that that schedule stayed on track
21 as much as possible and that way everything in the
22 institution runs like it's supposed to.

23 Q So as your time as a yard sergeant, did you get to know
24 these inmates pretty well?

25 A I was familiar with a lot of them. I mean, you talk to

1 them going in and out of the dorm for chow every day. I was
2 always -- I always tried to be cordial and respectful, you
3 know, tell them good morning, tell me them good afternoon.
4 You know, some of them say it back, some of them look at you
5 like you're crazy, but I always try to be as nice and
6 respectful as possible. Every once in a while, you might
7 have somebody that come up to you that has an issue.

8 As a sergeant, as a supervisor, I had really good
9 command staff that had trained me, you know, before at
10 Kershaw. And then, also, when I got to Lee, I had really
11 good command staff that put me in a position where I knew
12 how to resolve a lot of stuff, you know, like, commissary.
13 I knew who to go to, classification issues.

14 I remember one time the AC went out and I think the
15 sergeant was on vacation and there was nobody out there that
16 knew how to do a work order. I just got with maintenance,
17 did a work order and got the AC fixed. You know, typical
18 issues like that.

19 Then you have, like, your trouble makers. These are
20 guys that when they come out on the yard, they don't want to
21 go back in the dorm. They might want to run around, not
22 listen, not be in compliance. You get to know those guys a
23 little bit faster because you're dealing with them and
24 they're just hard-headed.

25 Q I want to kind of hit on that a minute. You mentioned

1 the trouble makers. At your time at Lee as the yard
2 sergeant, your experience with the gang activity there, was
3 that a big thing at Lee in 2018?

4 A Yes, ma'am, it was.

5 Q Okay.

6 A When I first got there, you know, it had been a minute
7 since I dealt with a lot of that. Like I said, I had been
8 gone almost eight years from the agency. And when I first
9 got there, you know, we sat down, had a conversation with
10 the wardens and, you know, their first thing was, like, lock
11 the doors. Get the control room back on the yard and that
12 was our first goal. We started locking the unit doors. I
13 can't say anything for who was running it, but we started
14 locking the doors like we're supposed to.

15 Basically, facility controlled movement on the yard,
16 it's actually pretty simple. If they're going to chow,
17 unlock the cafeteria door, unlock the unit door, you only
18 have two places to go, either go to chow or go back to the
19 unit.

20 Q Right.

21 A There were a lot of guys that were gang members and
22 stuff like that trying to bounce between dorms, trying to go
23 see friends and trying to see other people. You know, we
24 had a lot of issues where we had to talk with officers about
25 keeping the side boards clear because they had so many

1 people in the Sally port and it would make it difficult for
2 us to do movement. Because we're fighting guys that were
3 trying to go, not to go where they're supposed to, they're
4 trying to do down the yard or somewhere else.

5 Q So on April 15th of 2018, we're talking about gangs and
6 you were in the contraband unit, does that go hand in hand a
7 lot of times?

8 A Yes, ma'am.

9 Q Tell me, what would be considered contraband in SCDC, a
10 couple of things?

11 A Pretty much anything that's unauthorized, anything
12 that's been modified, like, if it's something that's issued
13 from the State, but it's been modified, it becomes
14 contraband. Of course, contraband cell phones, weapons, it
15 provides weapons or weapons they may have smuggled in.

16 Q So you mentioned weapons?

17 A Yes, ma'am

18 Q What kind of weapons were the inmates having within the
19 department?

20 A Most of the time, it's an improvised weapon or a shank.
21 There can be hatchets. I've seen swords, hatchets, shields,
22 you know, what we call ice picks, which is, basically, just
23 a poking weapon. You have actual knives. We've retrieved
24 street knives before, like, pocketknives and stuff like
25 that. Even body armor, we've found body armor in the

1 inmate's room and stuff like that.

2 Q I want to show you what has been marked as State's
3 Exhibit 1. If you wouldn't mind coming down, I want to see
4 if you can explain to the jury a couple parts of this. Have
5 you ever seen this before, State's Exhibit 1?

6 A Yes, ma'am, that's an aerial view of Lee Correctional
7 Institution.

8 Q Okay. I'm just going to ask you to speak loudly since
9 we don't have a microphone.

10 A Okay.

11 Q So if you could, show us the west yard, point to where
12 the west yard is.

13 A So the parking lot here, this is your north side --
14 yeah north, south, east, west, so this is your west yard
15 right here.

16 Q Okay. Point to where F-1 would be.

17 A This is the F-1 unit right here.

18 Q So right here?

19 A Yes, ma'am.

20 Q And next to F-1 would be?

21 A F-3

22 Q And then next to F-3 would be

23 A F-5.

24 Q If you could point to where the windows are on F-1 from
25 the doors, the Sally port doors?

1 A The Sally port is, actually, at the end of this
2 walkway, the doors are the middle right here.

3 Q Okay.

4 A And then you, also, have the exit doors and the
5 windows.

6 Q So are you familiar with the windows here and the
7 doors?

8 A Yes, ma'am.

9 Q From your experience of being at Lee Corrections, if
10 you look out these windows here, can you see F-3 and F-5
11 from that vantage point?

12 A No.

13 Q So you wouldn't be able to see anything going on in
14 three and five; is that right?

15 A No, basically, because of the way the walls are
16 constructed, that's your sight line on the unit. So the
17 angle from the wall, you can pretty much see this in front
18 of the unit. I mean, you can see out down here, not
19 directed to the right or left.

20 Q All right. You can have a seat. Thank you.

21 (Witness returns to the witness stand.)

22 Q All right. Lieutenant, I want to talk to you about
23 April 15th. So is that the date that you remember, of 2018?

24 A Yeah.

25 Q Okay. Were you working that day at Lee?

1 A No, ma'am, I was actually at the house.

2 Q You were at the house. So had you worked previously?

3 A That week before that, yes, ma'am.

4 Q So tell me about how you got involved with the riot.

5 A I found out about it, and when I found out what was
6 going on, I can't remember whether I had been, actually, put
7 back on RRT yet. I think I filled out my application, but I
8 wasn't back on RRT yet. But when I found out what was going
9 on and was contacted, I call the institution and, you know,
10 asked them if they needed me to come in.

11 When I talked to my supervisor, they told me to just
12 wait and come in early, earlier than I normally would
13 because the people who had been there pretty much dealing
14 with it overnight, knew there were going to be some tired
15 people so they wanted some fresh people to come in. I think
16 I got there around 5:30, 5:00, 5:30, got through the front
17 gate around 5:30, six o'clock. Then I reported to -- I
18 think the first person I reported to was the major.

19 Q So you, essentially, came there to help secure the
20 facility after everything had happened; is that right?

21 A Well, by the time I got there, I think the yard was
22 pretty well locked down. I think all the units were locked
23 down. The first thing they sent me to do is I went to go
24 help [indiscernible]. There was a [indiscernible].

25 Once I got done with that, I came back up front and

1 asked what to do next. Basically, it was just go help here,
2 go help there, go help here. The last thing I remember
3 doing was going down with the major. I think A.W. Tisdale
4 was there. We had RRT and people from the agency search
5 team. We went down to F-5 Tuesday morning, like, real late.
6 I want to say after midnight was the last person. And when
7 we got a handle on it, that was pretty much when I went
8 home.

9 Q Were you asked to look at surveillance footage in this
10 case after that day that you reported to work?

11 A Yes, ma'am.

12 Q And were you just asked to identify certain people
13 since you knew them well?

14 A Well, that part actually took place in 2020.

15 Q Okay.

16 A That was after I had already been in contraband and
17 they sent myself, Sergeant Clark -- well, he's A.W. now, but
18 Lieutenant Greggs and a couple other people, we went up to
19 the AG building in Columbia, and we, basically, sat there
20 for most of the part of the day and just watched video after
21 video and, you know, they asked us do you know this person,
22 can you identify them?

23 And just as a team, we all watched video after video
24 and, you know, narrowed down and started watching movements
25 of people to where we could actually identify people. And

1 then trying to get good face shots of them on the camera as
2 they were moving in and out of unit.

3 Q So, I guess, would you track someone back until you got
4 a better clear shot --

5 A Yeah.

6 Q I want to show you some video that you reviewed. It's
7 going to be State's Exhibit 3.

8 MS. SCOTT: Beg the Court's indulgence while we get
9 this set up.

10 BY MS. SCOTT:

11 Q This is going to be at 10:04:56 F-1B entry door. If
12 you could look at the screen for me. Did you recognize the
13 person that juts walked across that screen?

14 A Yes, ma'am.

15 THE BAILIFF: The monitors are not on.

16 Q If you could just say that one more time, please.

17 A Yes, ma'am, that was Inmate Smith.

18 Q And do you know his first name?

19 A Michael.

20 Q But you just know him as Smith?

21 A Yeah, I normally called people by their last names.
22 It's easier to remember, you know, when you have 1200
23 inmates.

24 Q Did he have a nickname that you knew of?

25 A Flame.

1 Q Flame. Was he in any sort of gang to your knowledge?

2 A Bloods.

3 Q Bloods, okay. I want to now show you something you've
4 already reviewed at 10:01 p.m. that night on F-1, April
5 15th. Can you see this screen, Lieutenant?

6 A Yes, ma'am.

7 Q Okay. If you could just watch that.

8 All right. Do you know who just came down the stairs?

9 A Yes, ma'am, after watching the footage with the team
10 that day, that was Inmate McClary.

11 Q Okay. What color is on his shirt right here?

12 A Red.

13 Q Red. Okay.

14 MS. SCOTT: If you could keep playing.

15 (Video was continued to be played.)

16 MS. SCOTT: All right. Pause.

17 Q What did you just observe?

18 A Multiple inmates attacking --

19 MS. ZMROCZEK: Your Honor, I think that -- allowing him
20 -- I would object to allowing him to describe what he
21 observed. I think the evidence is the best evidence rule
22 and I think that the jury should be able to decide what they
23 see. I don't think it's relevant to -- if he's identifying
24 inmates, that's different, but if he's describing what's
25 going on, I would argue that's by the best evidence rule.

1 MS. SCOTT: Judge, I'll rephrase.

2 BY MS. SCOTT:

3 Q Did you just see someone you recognize in this video

4 A Yes. Later once identified, it was Inmate Smith.

5 Q If you wouldn't mind stepping down, could you point to
6 him on the screen for the jury so we can be sure we're
7 identifying the exact person that you identify as Mr. Smith?

8 A That's him right here.

9 Q Okay. All right. You can have a seat. I'm going to
10 play the video.

11 (Witness returns to the witness stand.)

12 (Video was continued to be played.)

13 Q We're just going to keep playing. All right. We're
14 going to play it one more time. Okay.

15 MS. SCOTT: And pause it.

16 Q Again, who did you recognize in that video after you
17 viewed it?

18 A That was Inmate Smith.

19 Q And how long have you known him?

20 A I mean, my first encounter with him was when I was at
21 Lee. I didn't really know him that well.

22 Q Okay.

23 A You know, passing here and there, dealing with issues
24 in the dorm and stuff like that.

25 Q I'm going to show you a couple photos, State's Exhibit

1 12, do you recognize this picture?

2 A Yes, ma'am.

3 Q And what is that a picture of?

4 A This was a snapshot that we took after watching
5 different angle -- camera angles while we were trying to
6 identify. This was one of the first good snapshots we had
7 that allowed us to see who it was and that's when we
8 identified him as Inmate Smith.

9 Q Do you recognize the person next to him?

10 A Not off the top of my head, I don't.

11 Q But you do recognize the person on the left as being
12 who?

13 A Michael Smith.

14 Q And what's in his hand?

15 A That right there appears to be an improvised weapon or
16 a shank.

17 Q Okay. An improvised weapon or a shank. And, again,
18 how do they make these shanks in prison?

19 A Pretty much whatever piece of metal they can get their
20 hands on, they use -- I've seen guys use rods out of, like,
21 the buggies from the commissary. They use pieces of, like,
22 actuaries for the door, train covers to make hatchets, vent
23 covers, they break apart to make hatchets, like, electrical
24 socket boxes. They'll pretty much make it out of anything
25 they can get their hands on.

1 Q Lieutenant, I'm almost finished with my questions, but
2 as a yard sergeant back in 2018 at Lee, to your knowledge,
3 did the locks work in F-1?

4 A Yes, ma'am.

5 Q And if inmates were refusing to go into their cells and
6 they were armed, did that occur sometimes around that time
7 period in Lee?

8 A Yeah, we had a couple of times where there were some
9 issues, guys going up, fights in the dorm, whatnot.

10 MS. ZMROCZEK: Your Honor, I need to object to be clear
11 if we're talking about April 15th, 2018.

12 THE COURT: Okay.

13 MS. SCOTT: Well, I guess he would --

14 THE COURT: Ask him that specific question if he knows.

15 BY MS. SCOTT:

16 Q Do you know on April 15th of 2018 if inmates were
17 refusing to be locked in their cells?

18 A I wasn't there at that time, no.

19 MS. SCOTT: Beg the Court's indulgence.

20 (Pause.)

21 Q One more question just for clarification. State's
22 Exhibit 12 where you identified the Defendant, what was the
23 process you used again to identify him in this picture?

24 A So pretty much all the identifications that we made as
25 a team when we went there, we sat down, it was in a

1 conference room, they had, like, a big projector screen
2 where they could do the videos. And we sat there and
3 watched pretty much every video we had of the incident in
4 every dorm. We had a face sheet array printed out where
5 they assigned every face a number.

6 We, also, had computers set up for access to our
7 network where we could pull up face sheets. And the
8 investigators or the prosecutors or solicitors, you know,
9 they would say hey, can y'all identify this inmate.
10 Sometimes we would be able to identify the person right off
11 the bat if we were real familiar with them. If not, we
12 would track movement through several different videos to try
13 to find that particular individual on one of the better
14 camera angles. Like the one that you showed me, that's a
15 camera angle from one of the cameras inside the hallway of
16 the Sally port.

17 Q Right.

18 A So as they're coming out of the Lee door, there's a
19 camera that faces right there and a lot of our good face
20 shots were coming from that camera where they would go in
21 and out.

22 Q So just to clarify, you would look at this footage,
23 backtrack that individual to a camera angle such as this in
24 State's Exhibit 12?

25 A Yes, ma'am.

1 MS. SCOTT: Thank you. Please answer any questions the
2 defense has.

3 MS. ZMROCZEK: Beg the Court's indulgence. I just need
4 to get a few things marked.

5 (WHEREUPON, Defendant's Exhibit Nos. 1 through 7 were
6 marked for identification only.)

7 MS. SCOTT: Judge, I think we have a matter of law we
8 need to take up just a brief couple of minutes.

9 THE COURT: Okay. Ladies and gentlemen, I need you to
10 go to your jury room for a few minutes. Don't discuss the
11 case.

12 (WHEREUPON, the jury left the courtroom at 10:17 a.m.)

13 THE COURT: Okay.

14 MS. ZMROCZEK: So, Your Honor, I intend to introduce
15 Defendant's Exhibits 1 through 7. I'll hand them up to the
16 Court just so you can see what we're talking about.

17 THE COURT: Okay. So what's the State's objection?

18 MS. SCOTT: Judge, a couple of things. One, I don't
19 think the foundation would be properly laid with this
20 witness for some of those photos. Now, there are two that
21 has his signature on there for identification purposes. I
22 don't think we would have much of an issue with those coming
23 in if that's what we're talking about right now, but it's my
24 understanding those other pictures are pictures from dorms
25 F-3 and F-5.

1 Right now, we're discussing F-1. That's what we're
2 here about, so we would object to those for relevancy. We
3 don't think those pictures would be relevant to this
4 testimony that we're getting from this witness at this
5 point. I don't think it's relevant to this trial at all.
6 The pictures that was taken of the crime scene that were
7 taken of F-3 and F-5 and we're discussing the crime scene in
8 F-1 [indiscernible].

9 THE COURT: So Exhibits 6 and 7, you do not have an
10 objection to?

11 MS. SCOTT: Yes, that's correct, Your Honor. That's
12 F-1.

13 THE COURT: Then Exhibits 1, 2, 3, 4 and 5, which,
14 basically, show trash and debris --

15 MS. ZMROCZEK: And contraband.

16 THE COURT: -- and are outside somewhere. You're
17 objecting to these on the ground of relevancy?

18 MS. SCOTT: Yes, Your Honor. To my understanding,
19 those are photos that are taken outside of F-3 and F-5, more
20 specifically, F-5, and we don't think it's relevant to the
21 testimony today regarding F-1 and the stabbing that occurred
22 inside F-1.

23 THE COURT: Okay. Do you want to respond to that?

24 MS. ZMROCZEK: I do, Your Honor. The first thing they
25 put this witness up for and he talked about at the beginning

1 of his testimony was contraband and weapons and shanks and
2 all kinds of things. And, Your Honor, this absolutely goes
3 to our defense of necessity to show the kinds and the number
4 of weapons that were there that evening. Those were taken
5 by their officers. And if he didn't take the pictures,
6 that's fine. I can lay the foundation with him to identify
7 that those are the types of weapons that were found, the
8 types of contraband, the type of items that were in that
9 facility that evening on April 15th, 2018.

10 THE COURT: So how do you establish the foundation
11 through this witness?

12 MS. ZMROCZEK: I can just ask if he can identify the
13 items and then I can move them in through the witness that
14 took the pictures if we need to that. But my intent to ask
15 him for ID purposes are those the nature and the types of
16 contraband and weapons that he was just describing. She
17 asked him how were they making weapons. I think it's
18 absolutely relevant.

19 THE COURT: All right. I'll let you ask him outside
20 the presence of the jury and see what happens.

21 MS. ZMROCZEK: Thank you. I won't proffer this until
22 later.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Officer, right?

1 A Lieutenant.

2 Q Sorry, Lieutenant Burrell --

3 A Burley.

4 Q Burley. I'm going to show you what's been marked for
5 ID as Defendant's 1 through 5 and ask you to look at those
6 pictures?

7 A Okay.

8 Q Do you recognize those pictures as being pictures taken
9 from the facility

10 A I mean, they appear to be. Only one I could be sure
11 about would be the one, number five.

12 Q So you're sure that number five was taken there?

13 A Yeah, that's in the breezeway in front of F-5.

14 Q It's in the breezeway of what?

15 A In front of F-5

16 Q In front of F-5. And do you recognize and identify the
17 types of contraband that were being used as weapons in that
18 picture?

19 A Yes, ma'am, they're improvised weapons, like I stated
20 before.

21 MS. ZMROCZEK: And that would be the questions that I
22 would ask regarding that.

23 THE COURT: So does the State want to be heard?

24 MS. SCOTT: Can I just look at the picture?

25 (Pause.)

1 MS. SCOTT: And, Judge, we would just argue that the
2 foundation still is not properly laid. There's no date on
3 that for the witness to be able to testify when those were
4 taken. That could be some time after the riot.

5 But then, also, argue as relevancy. These are pictures
6 from F-3 and F-5. We're here today for F-1. This all goes
7 to I think what she's trying to say is the defense state of
8 mind for the necessity of self-defense, but this is not an
9 imminent threat. Pictures of shanks that he would not see
10 at that time has nothing to do with what his mindset would
11 have been in this case to go to the self-defense or
12 necessity or whatever defense they might be arguing. We
13 don't think these pictures would be relevant for F-3 and F-5
14 for those to come in.

15 MS. ZMROCZEK: And, Your Honor, in response, it's not
16 just the necessity for self-defense, Your Honor, but there's
17 is a specific charge, he is charged with possession of a
18 weapon. And the necessity defense, I would argue applies to
19 that, as well for these. For them to argue that there are
20 no dates on here, Your Honor, they turned them over to me.
21 They know what dates these were taken.

22 If he can only identify 5, then I will only move in 5
23 through him and then when they bring the crime scene -- or
24 if I have to bring the crime scene to put the rest in
25 because they can't seem to remember what date they were

1 taken, I can do that with another witness, that's fine. But
2 I do -- if he can identify 5 and it was from that evening,
3 then I would move 5 in through him.

4 THE COURT: Okay. Do you want to respond to that?

5 MS. SCOTT: Just, Judge, again, possession of a weapon,
6 he's not charged with possession of a shank in F-5. He's
7 charged with possessing a shank in F-1. I don't think that
8 5 is relevant. It's, again, a picture that is taken from a
9 different dorm where the Defendant was not present, the
10 victim was not present. This was nothing that the Defendant
11 could even perceive at that time.

12 THE COURT: I understand, but my recollection of your
13 direct examination, you asked him about weapons in general
14 in the prison system.

15 MS. SCOTT: Yes, Your Honor.

16 THE COURT: I, at least, think it's relevant as far as
17 No. 5 is concerned that you asked him they do make weapons
18 and the details of things they can find to make weapons. So
19 I, at least, No. 5 is relevant and he has established some
20 foundation for 5, not a foundation with anything else. So
21 I'll allow him to ask questions simply and you certainly can
22 redirect and be clear that that did not come from F-1, but
23 I, at least, I think it's relevant.

24 MS. SCOTT: Thank you, Your Honor.

25 MS. ZMROCZEK: I'm just going to take them back. Thank

1 you.

2 THE COURT: All right. Anything else before I bring
3 the jury in? While we have them out, does anybody need a
4 break?

5 MS. SCOTT: I'd like to take one.

6 THE COURT: All right. We'll take five minutes.

7 MS. ZMROCZEK: And, Your Honor, I have some video so
8 that will allow me to set it up while we're out on break.

9 THE COURT: You can't talk about your testimony.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: Okay. Ready for the jury?

12 MS. ZMROCZEK: Yes. Thank you.

13 THE COURT: If they're ready, we're ready.

14 (WHEREUPON, the jury entered the courtroom at 10:37
15 a.m.)

16 BY MS. ZMROCZEK:

17 Q Lieutenant Burley, I want to first show you some video
18 so we can get the screens down. So you were shown this
19 video -- when were you shown the videos to start identifying
20 people? I wasn't clear. I thought you said 2020.

21 A Like for identification purposes, for just the
22 identification?

23 Q Yes, sir.

24 A It was in 2020, they had called us up there and, I
25 guess, they had time to compile the video and everything

1 together to show it to us.

2 Q So sometime in 2020?

3 A Yes.

4 Q And I'm going to ask, can you see this video okay?

5 A Yeah.

6 Q I'm just going to show you a couple portions and then
7 I'll ask you some questions.

8 (Video was played.)

9 Q And as that's playing, do you recognize this dorm as
10 F-1, correct, B side?

11 A Yeah, on the cameras, yeah.

12 Q Right. But, I mean, without the camera stamp, would
13 you have recognized it? I mean, you've been in there every
14 day for a number of years, correct?

15 A From a camera angle, understand that all the dorms over
16 there except for F-5 look exactly the same pretty much, but,
17 yeah, that appears to be F-1.

18 Q Okay.

19 (Video is continued to be played.)

20 Q I want you to draw your attention here and I want to
21 ask you about that. Obviously, there are multiple cameras
22 in F-1, correct?

23 A Yes, ma'am.

24 Q And you're trying to identify people that have weapons,
25 yes?

1 A Yes.

2 Q I'm sorry, you have to say yes for the court reporter
3 to take it down.

4 A Yes, ma'am.

5 Q And you are trying to identify people that are injured

6 A Yes, ma'am.

7 Q Were you ever asked to identify an injury of this
8 inmate from F-1 or who that person was?

9 A At this moment, I wouldn't be sure without going back
10 to look at the documentation from that day.

11 Q So if there are none -- when you say documentation, I
12 want to show you what I believe I can move into evidence as
13 6 and 7 without objection.

14 MS. SCOTT: Without objection, Your Honor.

15 THE COURT: Okay.

16 (WHEREUPON, Defendant's Exhibit Nos. 6 and 7 were
17 admitted into evidence.)

18 BY MS. ZMROCZEK:

19 Q So when you say without documentation, are these the
20 documentation things --

21 A Yes, these are camera still shots that they took,
22 mostly, group shots like this where we had multiple inmates
23 that we identified. That was a culmination of where we
24 individually identified each person and then back tracked
25 the movements to that particular moment. And that way, we

1 could put several inmates on the same snapshot.

2 Q That took quite some time, right?

3 A Yes, ma'am.

4 Q But you were able to identify different groups and
5 different people not only through video, but you were able
6 to capture snapshots of them, as well, correct?

7 A Yes, ma'am.

8 Q And so if there -- and there were upwards of 15 or so
9 individual screen shots that in addition to the videos.
10 These are just a small portion of the people that you
11 identified, correct?

12 A Yes, ma'am.

13 Q So if there is no snapshot from any angle of an inmate
14 in F-1 being carried down the stairs and laid down outside
15 of the yard door, if those aren't in what you were provided,
16 then you weren't asked to do it, correct?

17 A No, our primary job that day was identify the people
18 that they were asking us to identify that maybe they had not
19 been able to identify just by facial recognition alone.

20 Q Okay. Perfect. And I want -- if you'll step down,
21 make sure to keep your voice up. Okay, so can you identify
22 again F-1 dorm?

23 A This one.

24 Q This one is F-1?

25 A Yes, ma'am.

1 Q And you were asked what you could see out of this yard
2 door, correct?

3 A Yes, ma'am.

4 Q So you personally looked out of that yard door,
5 correct?

6 A Multiple times. When it's a hundred degrees outside,
7 you go inside for a minute in the air conditioning while
8 they're in the yard.

9 Q So you're able to still view the yard, but nothing else
10 -- and so what you could see from here is the administration
11 and to see if there are other -- what can you see, can you
12 see people, can you see movement?

13 A These will be from that door following the lines of
14 these walls, right, so that's your sight line. This is the
15 G building. This is the cafeteria. And then from over this
16 way, you can probably see the edge of the administrative
17 building on the front at some point.

18 Q So when you come into work every day, where do you --
19 do you utilize the general parking area here?

20 A Yeah.

21 Q You do?

22 A When I worked at Lee, yes.

23 Q So when you worked at Lee. You said you're at Broad
24 River now?

25 A Yes, ma'am.

1 Q So when you worked at Lee, you would park here, go
2 through what we call a control?

3 A That's the front gate.

4 Q Then show us your path of where you would go to work?

5 A Well, when I was working on the yard, I would come up
6 the breezeway, up the lobby and there's a series of hallways
7 you end up coming out back here in this corner. That's the
8 entrance to medical and the entrance to the hallway going to
9 the back.

10 Q So this is the entrance to medical?

11 A Uh-huh.

12 Q So if people were being taken to medical, you could see
13 that from the dorm?

14 A The only time you would be able to see it is probably
15 from this moment. You see someone come across this way
16 maybe.

17 Q Okay. And then keep going. After you walk through
18 medical, where do you go?

19 A There's a sidewalk that comes up this breezeway, then I
20 would go through the west yard gate.

21 Q So in order for you to get there, in order for people
22 to see if you were coming, not that they were looking for
23 you, but let's say if they were trying to find you, if they
24 were looking there and you were coming on your shift to
25 work, they might be able to see you, correct?

1 A Maybe [indiscernible].

2 Q Okay. All right. Perfect. Thank you. You may have a
3 seat. I have some more questions for you.

4 (Witness returns to the witness stand.)

5 Q What time did you get there that evening to the
6 facility?

7 A I didn't get there until Tuesday -- not Tuesday, Monday
8 morning.

9 Q So after midnight?

10 A Yeah, I was there around 5:30, six o'clock in the
11 morning. I got in the parking lot. I came in, I stayed
12 almost 24 hours and didn't go home until Tuesday morning
13 early.

14 Q So you missed all of the chaos that was happening prior
15 to then, right? By the time you got there, was it still
16 very chaotic?

17 A I mean, yes, it was still chaotic, but as far as the
18 inmates being secured, RRT and everybody else had already
19 been there, the dorms for primarily secured. Like I said,
20 when I first showed up, my job was I was sent to go help --

21 Q Sorry, you're trailing off a little bit.

22 A I said the first thing I did when I got there was sent
23 to go on the yard.

24 Q What documentation did you make of any problems locking
25 down inmates in F-1 B side? What documentation do you have

1 of that?

2 A On that day?

3 Q Yes, sir.

4 A None.

5 Q Okay. I want to show you what's been marked for ID as
6 Defendant's 5. Ask if you recognize that picture?

7 A That's the picture you showed me earlier.

8 Q You recognize that as being taken from that evening?

9 A I don't know what time it was taken. The only reason I
10 recognized it is because I'm familiar with that particular
11 scene as when I got there that morning, pretty much
12 everything was still there because the crime scene was still
13 taking pictures.

14 Q And, specifically, are those the types -- you were
15 discussing contraband and how inmates make weapons.
16 Specifically, are those the types of weapons that you were
17 talking about that had been fashioned?

18 A Yeah, these improvised weapons, yes, ma'am.

19 MS. ZMROCZEK: Your Honor, at this time, we would move
20 Defendant's 5 in?

21 THE COURT: Okay.

22 MS. SCOTT: Your Honor, it's without objection.

23 THE COURT: Okay. It's in without objection.

24 (WHEREUPON, Defendant's Exhibit No. 5 was admitted into
25 evidence.)

1 BY MS. ZMROCZEK:

2 Q Now, are you aware of any specific weapons being
3 removed from any specific inmate in F-1 dorm?

4 A At what time?

5 Q I'm sorry?

6 A Are we talking about the date of the incident?

7 Q Yes, we'll start with the date of the incident.

8 A I wouldn't know because I wasn't sitting down there to
9 recover weapons that day. I was sent to the yard to do the
10 things I was asked to do.

11 Q So the week before that, were you at work that week?

12 A Yes, ma'am.

13 Q Are you aware of any weapons at that time?

14 A Off the top of my head, no. I would have to go back
15 and look at documentation.

16 Q So you talked about on direct how you had been away and
17 then come back at some point, right?

18 A Yes, ma'am.

19 Q And I'm just talking overall, not specific that day,
20 but came back to Lee, right?

21 A You're talking about when I left working at Kershaw and
22 came back to Lee later?

23 Q Yes, sir.

24 A Yes, ma'am.

25 Q And when you came back, the associate warden trained

1 you on specific -- on specific things to look for in your, I
2 guess, new job as kind of the contraband team?

3 A Well, no, it wasn't contraband. When I came back, I
4 was the yard sergeant. The contraband didn't happen until
5 after the event.

6 Q And you said you were aware of the different gangs that
7 you had in that -- inside of Lee Correctional prior to April
8 15th?

9 A At that time, I had working knowledge of multiple
10 people, being able to recognize a lot of the symbology and
11 tattoos that people had being able to recognize them as gang
12 members, yes, ma'am.

13 Q There's different ways you can do that, like you said,
14 different symbols and things like that, right?

15 A Yes, ma'am.

16 Q And you have actually identified several different
17 groups that were in Lee at the time, correct?

18 A Yes, ma'am.

19 Q And that is common in prison culture; is that correct?

20 A Unfortunately, yes.

21 Q And, obviously, you don't know every single person's
22 name, but if you had the time and were provided very
23 specific screen shots on different people, you could likely
24 identify a lot of those inmates?

25 A Like I said, it took us all day and we had the tools

1 available to do it.

2 Q And you were, also -- you testified in front of the
3 State grand jury, correct?

4 A Yes, ma'am, I did.

5 Q And you were asked about -- you were asked about some
6 of the problems with contraband coming into the facility?

7 A Yes, ma'am.

8 Q And, unfortunately, you had to acknowledge that there
9 were COs that assisted in some of that activity?

10 A Yes, ma'am.

11 Q And you, also, said that there were things being thrown
12 over the yard?

13 A Yeah, before this, there was, but they put up nets
14 later on.

15 Q They put up what?

16 A They put up nets later on trying to help the
17 throw-overs. But when I worked at contraband, we did have
18 throw-overs, people trying to throw stuff over the fence.

19 Q Help me understand. Is it literally like I imagine,
20 somebody has a package and they're standing somewhere close
21 to the fence and tossing it over?

22 A Yeah, back then, yes, ma'am, before they put the nets
23 out.

24 Q So the cameras that were in the facility, were they,
25 also, able to catch the outside of the area?

1 A Yeah, we had a really good -- especially when I got in
2 contraband, we had a really good working relationship with
3 the Lee County Sheriff's Department. They would respond
4 immediately. We caught a lot of guys outside the prison
5 trying to throw stuff over.

6 Q So really throwing over the fence and catching a lot of
7 people became an easy way to identify the contraband coming
8 in. The harder is when it was being smuggled in; is that
9 correct?

10 A I would say that's accurate.

11 Q Okay.

12 MS. ZMROCZEK: Beg the Court's indulgence.

13 (Pause.)

14 MS. ZMROCZEK: Thank you. Those are all the questions
15 that I have.

16 MS. SCOTT: No further questions, Your Honor.

17 THE COURT: You can step down.

18 MS. ZMROCZEK: He may be released from the subpoena.

19 THE COURT: You can stay or you can leave. It's up the
20 you.

21 THE WITNESS: Okay. Thank you.

22 MS. ZMROCZEK: Your Honor, if we may approach briefly.

23 (WHEREUPON, there was a bench conference in the
24 presence of the jury, but outside the hearing of the jury.)

25 MR. GIESE: State calls Agent Jamie Shaw.

1 JAMIE SHAW,

2 after being duly sworn, testified as follows:

3 THE CLERK: Please state your name for the court
4 reporter.

5 THE WITNESS: Jamie Shaw.

6 DIRECT EXAMINATION

7 BY MR. GIESE:

8 Q Agent Shaw, where are you employed?

9 A The South Carolina Law Enforcement Division, also known
10 as SLED.

11 Q What is your position there?

12 A I'm a narcotics agent in the narcotics unit and I'm,
13 also, a task force officer with the FBI.

14 Q Now, pursuant to your -- well, let's talk about your
15 background first. What did you do -- where did you go to
16 high school, where did you go to college, how did you get
17 into SLED?

18 A I graduated from Spring Valley High School in Columbia.
19 I then went to Lander University where I graduated with a
20 Bachelor's Degree.

21 Q And how did you get into law enforcement?

22 A I became an admin assistant for a major at SLED. I
23 then put in for an agent position and I was accepted as an
24 agent in the narcotics unit. I then went to the Academy,
25 graduated and was put into a unit.

1 Q Which major did you intern for?

2 A Major Roger Reynolds.

3 Q I was just curious. So what year was that that you
4 actually got involved with SLED?

5 A So I became an admin assistant in October of 2014. I
6 was hired as an agent in July of 2015 and I graduated the
7 Academy November of 2015.

8 Q And since that point, you've been working as a
9 narcotics officer pretty much?

10 A Yes, sir.

11 Q And, also, what was the FBI task force thing?

12 A Sorry, so the FBI gets help from local law enforcement
13 to help, basically, network and work cases. So what they do
14 is they have task force officers. Those officers go through
15 an FBI employment backgrounds, so I passed the FBI
16 employment background. I received top secret clearance
17 through them in order to get through their computer systems
18 and their case file systems. I was then deputized by the US
19 Marshall. I work with them in assisting the violent crime
20 task force that deals with armed robberies, motorcycle
21 gangs, gangs, narcotics, those type of crimes.

22 Q Tell the jury how you got involved in this case.

23 A I received a phone call from my major, Frank O'Neal,
24 that said that someone had contacted Chief Keel and
25 requested I be put on this case.

1 Q Did you become the, I guess, chief investigating
2 officer of it?

3 A I did, yep.

4 Q And what year was that?

5 A It was right before Covid. I believe it was the fall
6 of 2019. I had assisted with the FBI prior to that. We
7 conducted four interviews, myself and Jason Green, with the
8 FBI. At that time, I believe SCDC was not sure if they were
9 going to go through the State grand jury process -- the
10 State process or if they were interested in a federal
11 process through the [indiscernible]. A lot of people
12 [indiscernible]. It's the same process, but for violent
13 gangs.

14 Q And at that point, you started to investigate it,
15 correct?

16 A Yes, sir.

17 Q Tell the jury what you did. I mean, what do you do?
18 They say here, you investigate this case. Tell them what
19 you do.

20 A So when I was first assigned to the case in the fall of
21 2019, I met with another case agent that was placed on it.
22 It was Lieutenant Jeremy Smith. He was currently a
23 lieutenant for the Midlands investigative region. That
24 region does investigate -- assist local law enforcement with
25 investigating with investigating homicides, robberies, those

1 types of investigations.

2 So the first thing we did was try to gather any
3 evidence and work with Agent Cody Wilson to get all evidence
4 that they had already documented, interviews, videos,
5 anything we could to, basically, learn about the incident
6 and what they had already done so we could make a plan going
7 forward.

8 Q When you talk about Cody Wilson, that was the
9 investigator from the Department of Corrections that
10 testified yesterday and today a little bit?

11 A Yes, sir.

12 Q So you met with him and you said you got his file.
13 Explain to the jury what the file consisted of to the best
14 of your recollection.

15 A So it kind of came in pieces. The first thing I
16 remember receiving was a disc with some video from F-1. I
17 believe there was some video from other dorms during the
18 incident, but F-1 was the main. We then received
19 recordings, audio, video recordings of interviews that had
20 been done, as well as, I believe, copies of some written
21 statements. And I believe he was at the process of
22 finishing an investigative report, which would document what
23 all he had done. We were, also, attempting to retrieve all
24 the video that we could. Just, basically, an entire case
25 file transfer.

1 Q And you said that you got the case file transferred.
2 Now, in a situation like that, do you see what they've done
3 and see -- look at the tapes, the interviews, that type
4 thing or do you just start over?

5 A I personally would -- I wanted to review what all had
6 been done so that if there was redundant things that
7 possibly had been covered completely, we didn't -- I
8 wouldn't say waste time, but this was such a large scale
9 incident with three main points, we really wanted to try to
10 focus and get work done. It had already been about a
11 year-and-a-half at that point. We really wanted to get the
12 ball rolling and really make some progress in this case.
13 That's what we were doing, we were reviewing and trying to
14 find a really, really good starting point, which because of
15 the video and the ability to, basically, follow people, we
16 chose F-1.

17 Q And you would say you chose F-1 because the video was
18 the best?

19 A We had a lot of video, the Sally port angles were very
20 good when people would exit the A side or B side in that
21 hallway. The lighting would change and it would become very
22 bright and we were able to see people's faces. I,
23 basically, began tracking individuals that I believed were
24 involved in the stabbing of Mr. McClary.

25 Q When you say tracking, did you identify them first and

1 then track them? What did you do exactly?

2 A At first, I watched the incident in whole just to get
3 an understanding of what happened. I would view those I
4 thought had directly stabbed Mr. McClary or assaulted Mr.
5 McClary. I would then back it to where I could see the
6 first time Mr. McClary comes -- I believe it's the PTZ
7 angle. When you walk in the dorm, the camera is located on
8 the right side of the unit. It would face across where the
9 incident occurred. I would pick somebody upstairs, try to
10 follow them downstairs, then watch for them to exit into the
11 Sally port. I would mark their shoes, if they had pants,
12 jacket, what color the jackets were, any identifying markers
13 that I could for that one specific person and then match the
14 interior cameras showing them enter the Sally port, pick
15 them up in the Sally port and try to identify their face
16 from there.

17 Q And when you or someone would identify the face in
18 Sally port, and that's the picture where they just come
19 right out of the door?

20 A It's a small hallway, which it is what it is.

21 Q And that's a camera that looks right at it, correct?

22 A Yes, sir.

23 Q When you got someone to identify, say, the Defendant in
24 this case, Mr. Smith, tell the jury what you did with it.

25 A If we had a positive identification, we would screen

1 shot the image where they positively identified that person.
2 We would then mark who was identified and who the person was
3 identified by.

4 Q Now, in his case, specifically, did you identify him
5 and then back it up or what did you do?

6 A Yes, once we had someone positively identified, we
7 wanted to see their involvement as a whole so we would
8 continue to track them before, during and after just to see
9 who they were, what they were doing and who they were
10 associating with.

11 Q And you were able to do that with Mr. Smith?

12 A Yes, sir.

13 Q So you took a picture, a still picture from the tape,
14 someone would identify him and then you would back it up, so
15 they would go in reverse, and you tried to stay in contact
16 with him the whole way?

17 A Yes, sir.

18 Q Were you able to do that in this case?

19 A We were.

20 Q So you had a backward tape of everything he did; is
21 that right?

22 A Yes, sir.

23 Q Because you never lost sight of him?

24 A You do lose sight of him, but, like, as we testified
25 earlier, there is a blind spot in F-1, so there is a section

1 of the dorm where you do lose sight of him, but you're able
2 to pick him up when he enters back out of the blind spot.

3 Q How long would you say that blind spot was at that
4 time? Couple seconds? Couple minutes?

5 A Yeah, I would say under ten seconds or around ten
6 second maybe.

7 Q At that point, you see him coming onto a camera that
8 you can see?

9 A Yes, sir. When we first started, he was -- when you
10 enter the dorm, it will be the far right wing up top. We
11 had received information that Crips had barricaded
12 themselves to hide in the two corners, upstairs corners of
13 the dorm. You can see Mr. Smith in the upstairs right
14 corner with a group who we identified as Blood members
15 attempting to, we call it donkey kick. They will turn
16 around so their back is facing the door and, basically, use
17 a kicking motion to kick the door with their foot and force
18 it open.

19 Q Let me stop you, approximately how many Blood gang
20 members were there?

21 A I would say roughly ten.

22 Q They're all in front of this door trying to kick it in?

23 A Yes, sir, some were more active than others, but yes,
24 they were all there.

25 Q Was that before or after Mr. McClary is stabbed?

1 A Before.

2 Q So Mr. Smith on tape with some of his cohorts are up
3 trying to kick a second floor door in where the Crips were?

4 A Yes, sir.

5 Q Where did he go after that

6 A You can see him run -- again, if you're entering into
7 the dorm, there is a walkway on the backside on the second
8 floor. You can see him run to the left corner, that's where
9 our blind spot is. That's where you lose him out of the
10 camera angle. Again, I believe it's about ten seconds. You
11 then pick him up on left wing walkway. Basically, if you
12 were running all the way around.

13 Q Let me stop you. So he's at one corner of F-1B,
14 correct?

15 A Yes, sir.

16 Q The far corner?

17 A Far right corner.

18 Q You can track him running to the other side, the other
19 end of F-1B?

20 A What would be the second floor left corner.

21 Q Okay. Mixed up. So he goes from one to the other.
22 You track him until he gets to the blind spot?

23 A Yes, sir. I can point it out.

24 Q Please do. Come on down. It's State's Exhibit No. 2.
25 That's what you need?

1 A Yes, sir. So if this is the main entrance, I know
2 there's a lot jumbled up, but this is the Sally port area.
3 The B dorm would be located on the right side. So what I'm
4 talking about, there's a stairwell here and this is the
5 second floor upstairs. It's near going downstairs, but
6 they're upstairs and they're trying to kick what would be
7 this cell door in.

8 So there was a group that was right here, I would say
9 approximately ten. Mr. Smith is in that group. He then
10 runs on the second floor around this corner and it's about
11 here that you lose him in that blind spot. You then will
12 pick him up on this camera angle about right here while Mr.
13 McClary is actively being assaulted.

14 Q Is he one of them assaulting Mr. McClary?

15 A He is, upstairs, yes, sir.

16 Q Now, you said that it started -- the donkey kicks were
17 going on here?

18 A Yes, sir.

19 Q And you said it was Blood gang members, correct?

20 A Yes, sir.

21 Q Do you know any of the names of any of the people who
22 were here?

23 A If I were to watch the tape, I could point it out.

24 Q We'll watch it in a second.

25 A Yes, sir.

1 Q But you could identify him?

2 A Yes, sir.

3 Q Okay. You can have a seat.

4 (Witness resumes the witness stand.)

5 Q So he comes back into view stabbing Mr. McClary. Tell
6 us what you saw after that.

7 A So there are upstairs on the left wing, there's
8 actually about three or four individuals between Mr. McClary
9 and Mr. Smith. Mr. Smith, as he gets close to the stairs,
10 actually, egresses through those individuals and begins
11 assaulting Mr. McClary and falls down for -- he does not
12 fall. He tramples down the stairs to what has been shown as
13 a CO booth. That little --

14 Q The rock?

15 A The rock -- that's not the rock, the rock is like
16 benches that you see. The CO booth is that little U. Mr.
17 McClary then goes behind the U and he's assaulted by Mr.
18 Smith and the other individuals.

19 Q Who are the other individuals?

20 A Mike Smalls has been identified in there, Steven Green,
21 who goes by Tank, has been identified, Keon Moore has, also,
22 been identified in that group.

23 Q Through your investigation, could you determine whether
24 or not they were in a gang?

25 A They were in the Blood gang.

1 Q Same gang as Mr. Smith?

2 A Yes, sir.

3 Q And they've been identified, also, stabbing?

4 A They have.

5 Q Now, after he's being stabbed near the CO booth, where
6 does Mr. McClary go?

7 A That back wall where the bag of phones are, that is
8 where Mr. Smith not only stabs him with a shank in his right
9 hand, but then throws a punch with his left hand. I believe
10 it's two punches. Mr. Smith -- I apologize, Mr. Green hits
11 him in the back with a homemade weapon. Mr. McClary
12 attempts to walk up the right side stairs where he's kicked
13 down by Mr. Bisnauth and, also, stabbed by Jerell Jackson
14 over the stairs. He falls back down and then continues to
15 move down the right wall towards where the Gangster
16 Disciples were located. He gets probably two-thirds of the
17 way down and then collapses to the ground.

18 Q You mentioned the Gangster Disciples, that's,
19 obviously, a separate gang from the Bloods, correct?

20 A Yes, sir.

21 Q And the three main gangs in F-1 were what?

22 A It was the Bloods, the Gangster Disciples and the
23 Crips.

24 Q And through your investigation, were you able to
25 determine how many Crips were actually in F-1?

1 A It was approximated that on the B side, there were ten
2 Crips located.

3 Q So they were vastly out numbered by the Bloods?

4 A Yes, sir.

5 Q How about the Gangster Disciples, did they do anything
6 in this?

7 A So through our investigations, we learned tensions were
8 very high between the two groups. There was an accidental
9 assault -- I shouldn't say accidental. There was an assault
10 on an inmate who goes by Smurf. Through our investigation,
11 we found it was misidentification, that he was believed to
12 be somebody else. That, again, rose tensions between
13 groups, but you can observe Blood leaders and Gangster
14 Disciple leaders meet in the middle and kind of talk. And
15 through our investigation, we learned that they were trying
16 to keep peace between the two groups and not let it spread.
17 That's why you see them kind of distance themselves --

18 MS. ZMROCZEK: Your Honor, I would object to her
19 characterizing why they are doing things unless she was part
20 of it. I think that's outside the scope of her testimony.

21 MR. GIESE: She discovered it through her
22 investigation. She can cross-examine her on it.

23 MS. ZMROCZEK: Then I would argue hearsay, Your Honor.

24 MR. GIESE: Cross-examine her on her basis for it.

25 MS. ZMROCZEK: To say what she saw, but to say why

1 people did things, Your Honor, that's hearsay.

2 THE COURT: All right. She can testify what she saw,
3 what she knew.

4 MR. GIESE: Okay. I got it. Thank you.

5 BY MR. GIESE:

6 Q Now, could you step back down again? I apologize. I
7 should have done this before. Look at State's Exhibit No. 2
8 again. Now, you said that you observed Gangster Disciples
9 in a group. Can you show us where that would be on this?

10 A On the first floor, you would enter into the dorm, they
11 were on the bottom right corner.

12 Q And approximately how many Gangster Disciples did you
13 see congregating down there?

14 A I would say approximately 20.

15 Q And did those 20 ever get involved in any of this?

16 A You can see someone that's been identified as a
17 Gangster Disciple leader, he goes by Zilla, Rahim Carter.
18 He approaches the middle with Andre Boone, who goes by Fang,
19 he's identified as a Blood leader, as well as other people
20 who have been identified as Blood leaders. They kind of
21 meet in the middle. I observed them speaking to each other
22 for different periods of time.

23 Q After you saw them speaking to each other -- how far in
24 advance was this of the killing of Mr. McClary, how many
25 minutes?

1 A It was ten, 15, 20 minutes.

2 Q So you see them talking, so the Gangster Disciples and
3 the Bloods -- you said the Gangster Disciples are down here,
4 where are the Bloods?

5 A If you entered into the unit, they're on the bottom
6 left side and they kind of move around more than the
7 Gangster Disciples. The Gangster Disciples kind of stay
8 more together. The Bloods are more fluid on the left side.

9 Q In your investigation, did you discover whether any
10 Crips leaders were in that group?

11 A No, sir, they were not.

12 Q Did the Gangster Disciples and the Bloods come to blows
13 or anything that whole evening?

14 A Beside the -- what we've described as the
15 misidentification of one Gangster Disciple, no.

16 Q And that was earlier?

17 A Yes, sir.

18 Q Early before the meeting?

19 A Before the individuals are seen talking to each other
20 in the middle of the dorm.

21 Q So a Gangster Discipline is here, Bloods here, leaders
22 talking here and never a fight between these two, Bloods and
23 Gangster Disciples, other than that one stab?

24 A Yeah, for the most part, they stay separated from each
25 other.

1 Q And that's through the whole rest of the incident,
2 correct?

3 A Yes, sir.

4 Q Okay. Have a seat.

5 (Witness resumes the witness stand.)

6 Q After you see these leaders meet in the middle, at some
7 point, do you see the Bloods or the Gangster Disciples
8 attack anybody or do anything?

9 A Just Mr. McClary.

10 Q How about when they run upstairs and try and kick the
11 door in?

12 A So they do run up and they try to kick the top right
13 corner door in. You can then see people pointing. People
14 that have been identified -- inmates that have been
15 identified as Blood members pointing to the left side,
16 that's when you see inmates running towards that left
17 corner, including Mr. Smith. And then, again, there's that
18 blind spot.

19 Q Let me stop you, though. So at some point, they run
20 upstairs. Do they run upstairs together to that cell
21 they're trying to donkey kick in?

22 A On the right side?

23 Q Yeah, on the right side. The original donkey kick cell
24 that they try and kick into, do they run as a group or do t
25 hey run individually?

1 A They pretty much stayed in groups. Sometimes it would
2 spread out a little bit, but it was mostly done in groups.

3 Q When they go up the stairs?

4 A Yes, sir.

5 Q They go up as a group?

6 A Yes, sir.

7 Q And then they go up to the door?

8 A Yes, sir.

9 Q And Mr. Smith was in that group?

10 A Yes, sir.

11 Q After Mr. McClary is stabbed and goes and falls, are
12 the Gangster Disciples still on that end?

13 A They're on the bottom corner.

14 Q So they're close to the bottom?

15 A They are.

16 Q And you say he was kicked downstairs by Mr. Bisnauth?

17 A He attempts to go up the right side stairs. He only
18 made it a couple stairs and he was kicked back down.

19 Q Is that the route the Bloods took as a group to try go
20 kick the door in?

21 A On the top right corner, yes, sir.

22 Q Right, but he went that route?

23 A Yes, sir.

24 Q Because that's the quickest route to where that room
25 was?

1 A Yes, sir.

2 Q So he's trying to go up there to that room or trying to
3 go up there and he's kicked back down and stabbed again
4 several times?

5 A Yes, sir.

6 Q Now, the Gangster Disciples, they stay out of
7 everything. Does anybody ever go over and try to talk to
8 Mr. McClary?

9 A They do.

10 Q Several people?

11 A Yes, sir.

12 Q Does it look like he's responding?

13 A You can see him move a little bit. Obviously, there's
14 no audio with this video so we don't know what was said.

15 Q Now, after the stabbing, after Mr. Smith is stabbing
16 Mr. McClary down near the CO booth, do you follow where he
17 goes after that?

18 A Mr. Smith?

19 Q Yes.

20 A Yes.

21 Q And where does he go?

22 A I believe he goes -- I know at some point, he exits
23 into the Sally port, but he followed Mr. McClary to that
24 right side, then comes back in the middle and meets with
25 other Blood members. In particular, I remember him meeting

1 with Mr. Mike Smalls.

2 Q Does he go back up the stairs to where they're donkey
3 kicking the door in to your knowledge?

4 A I'd have to watch the video.

5 Q I'd like to have you take a look at State's Exhibit No.
6 3.

7 If you would, please show -- go to 21:58:59 to
8 21:59:43. Play it.

9 (Video is played.)

10 MR. GIESE: Would you stop it?

11 Q Now, what you just viewed on the tape, you testified
12 earlier about Bloods running up to a cell where Crips were
13 hiding, correct?

14 A Yes, sir.

15 Q Is that what you're talking about?

16 A Yes, sir.

17 Q All right. Now, that was at 21:58:59 to 21:59:43.

18 Now, if you just keep playing it.

19 (Video was continued to be played.)

20 BY MR. GIESE:

21 Q And you testified earlier that Mr. Smith, the
22 Defendant, was in that group?

23 A He is.

24 Q Those are individuals running --

25 Can you stop it? Could you back it up just a second?

1 Stop.

2 Q So there are individuals running from that side and
3 that hall or that -- what you call it?

4 A Just the upstairs walkway.

5 Q Walkway, thank you. That walkway, is that the walkway
6 that leads to the other side?

7 A Yes, sir.

8 Q The other side looks just like this, situated just like
9 this, but on the other side?

10 A Yes, sir.

11 Q You say there were some Crips -- from your
12 investigation, you discovered some Crips were in a cell
13 there, too?

14 A Yes, sir.

15 Q So do you know who these two people are running?

16 A I know one is Mr. Smith.

17 Q Okay.

18 Keep playing.

19 (Video was continued to be played.)

20 MR. GIESE: Stop.

21 Q and those are more Bloods running that way, correct?

22 A Yes, sir.

23 MR. GIESE: All right. Go ahead.

24 (Video was continued to be played.)

25 MR. GIESE: Stop it.

1 Q And again, you testified earlier that the Gangster
2 Disciples were down underneath where that donkey kicking was
3 going, correct?

4 A Yes, sir.

5 Q So that's them right there?

6 A Yes, sir.

7 Q Do you know who these people are?

8 Stop.

9 A The individual in the tan jacket that looks like he has
10 something on underneath, through our investigation, we
11 believed that to be body armor. I know homemade body armor
12 was talked about prior. He goes by 2-5. He's, also, a
13 Blood member. The person that keeps doing this and
14 scratching their head is Andre Boone, also, goes by Fang.
15 Prior to identifying him, we, actually, had called him
16 Scratchy just so we could remember who he was because he
17 consistently scratches his face and his head.

18 Q Now, earlier, you saw that group of Bloods run up the
19 stairs, correct?

20 A Yes, sir.

21 Q Through your investigation, do you know what
22 precipitated them running up there?

23 MS. ZMROCZEK: Objection, Your Honor, hearsay.

24 MR. GIESE: Through your investigation.

25 MR. ZMROCZEK: Your Honor, it's not a tool to get

1 around hearsay. If they wanted to testify -- if they wanted
2 to have someone testify as to what precipitated that, they
3 need to pull those witnesses in here.

4 THE COURT: Well --

5 MR. GIESE: I'll withdraw that.

6 THE COURT: Okay.

7 BY MR. GIESE:

8 Q But you did see all those Bloods running up there all
9 of a sudden, correct?

10 A Yes, sir.

11 Q And did you in your investigation realize that there
12 was a reason why they ran up there?

13 A We spoke --

14 MR. ZMROCZEK: Again, I'm going to object, Your Honor.
15 You can't back door it in.

16 MR. GIESE: I'll withdraw it.

17 THE COURT: Okay.

18 MR. GIESE: Beg the Court's indulgence.

19 (Pause.)

20 (Video is continued to be played.)

21 MR. GIESE: Stop it.

22 Q Now, that's?

23 A Mr. Smith.

24 Q Running toward that other end?

25 A From the top right corner to the left corner.

1 MR. GIESE: And just for the record, it's Lee F-1B
2 right PTZ camera.

3 Go ahead, next one.

4 (Video was continued to be played.)

5 Q And you testified earlier those were other Blood
6 members running that way?

7 A That were located in the top right corner.

8 Q And this is the blind spot?

9 A Yes, sir.

10 Q More Bloods?

11 A I'd have to look at other angles to see where they're
12 coming from.

13 MR. GIESE: Stop the tape.

14 Q And this individual that's got the thing wrapped around
15 his head, were you able to identify who that was?

16 A No, sir, we tried. The best place, again, is the Sally
17 port area. Even though there's another view of him coming
18 down the stairs on the left side, it was hard for us because
19 of the lighting and just the way their faces were to
20 positively identify who it was. We did try, but were never
21 able to, but we were able to see a weapon in the victim's
22 right hands as he's coming down the stairs.

23 Q The guy with the white around his head?

24 A Yes, sir, as he's coming down the stairs being held
25 down, he does have a weapon in his left hand.

1 Q And where exactly should we be looking for Mr. McClary
2 and Mr. Smith, up here?

3 A Yes, sir.

4 MR. GIESE: Go ahead.

5 (Video was continued to be played.)

6 MR. GIESE: Stop.

7 Q So the guy that was wearing the -- the guy that was
8 injured?

9 A Yes, sir.

10 Q He's gone, right? He's already in the Sally port?

11 A Yes, sir.

12 Q Mr. McClary and Mr. Smith are still up here with other,
13 ostensibly, Blood members, correct?

14 A Yes, and I testified ten seconds. It's, obviously,
15 much longer than ten seconds.

16 Q I was just asking.

17 MR. GIESE: Go ahead.

18 (Video is continued to be played.)

19 MR. GIESE: Stop.

20 Q And that's where you start to see them again, correct?

21 A Yes, sir.

22 Q The person in the white the shirt, the tee shirt, is
23 that Mr. McClary?

24 A It is.

25 Q And these are other people doing what to Mr. McClary?

1 A Assaulting and stabbing Mr. McClary.

2 MR. GIESE: Go ahead.

3 (Video is continued to be played.)

4 MR. GIESE: Stop.

5 Q All right. So Mr. McClary comes down the stairs.

6 Other Blood gang members, including Mr. Smith, run down the
7 stairs after him?

8 A Yes, sir. And on another angle, it's the -- I don't
9 know the name of the camera, I apologize. It's on the left
10 side of the dorm. It's facing over that walkway. You can
11 actually see several people in front of Mr. Smith blocking
12 him from Mr. McClary. Mr. Smith then aggresses through
13 those people to get to Mr. McClary.

14 MR. GIESE: Do you have that angle?

15 THE WITNESS: I believe it's the second row, far right
16 camera. Yes. If you were to rewind that to where you first
17 see them coming into the frame.

18 MR. GIESE: If you would, it's F Lee 1B, left PTZ
19 camera one. Back it up, please. Keep going. Stop.
20 Forward, please. Can you slow it down? Back it up.

21 THE WITNESS: So --

22 MR. GIESE: Hold on a second. All right. Stop it
23 right there. Go slow, please. Stop.

24 BY MR. GIESE:

25 Q So what was that a picture of? Was it Mr. McClary

1 getting stabbed in the back?

2 A Yes, sir.

3 Q Okay.

4 A If you pause it there, you can see Mr. Smith in the
5 light tan jacket. He's behind the -- I believe it's three
6 or four individuals that were already actively stabbing Mr.
7 McClary.

8 Q Did you know who those individuals were?

9 A I believe they identified one as Keon Moore and I would
10 have to reference my notes for further identification.

11 Q But, again, Mr. Moore is a Blood gang member?

12 A He is.

13 MR. GIESE: Go ahead, play it, please.

14 (Video is continued to be played.)

15 MR. GIESE: Stop.

16 Q Where is Mr. Smith?

17 A He's trying to egress through those individuals. He
18 then becomes the first person down the stairs behind Mr.
19 McClary.

20 MR. GIESE: Play this angle.

21 (Video is continued to be played.)

22 MR. GIESE: Stop.

23 THE WITNESS: Mr. Smith just stabbed Mr. McClary with a
24 blow in his back.

25 (Video is continued to be played.)

1 THE WITNESS: And as you can see, the hallway is really
2 well lit. If you slow the video down, as Mr. Smith rears
3 his right hand back, you can actually see the weapon in his
4 right hand, which is -- we went later and watched the video
5 of him in the hallway. As he strikes with his striking
6 hand, we believed that blood transferred from the back of
7 Mr. McClary onto his striking hand, which is why on his
8 jacket, right hand, right on his forearm, you can see bright
9 red blood.

10 Q And you saw that in the?

11 A Sally port.

12 Q Sally port?

13 A Yes, sir.

14 MR. GIESE: Before you back it up, could you focus in
15 on that, could you get a closer angle?

16 Q All right. And the individuals in this picture, Mr.
17 McClary?

18 A Yes, sir. Mr. Smith.

19 Q Other gang members?

20 A Yes, sir.

21 Q Can you identify any of them? I know it's a tough
22 picture.

23 A I apologize. I believe I can see Andre Boone. He has
24 his left hand -- he has a white shirt on by the telephones
25 and he has his hand on top of his head.

1 MR. GIESE: Play it.

2 (Video is continued to be played.)

3 Q Again, Mr. Smith?

4 A Yes, sir.

5 Q Who is that?

6 A Mike Smalls.

7 Q That's Mr. Smith again?

8 A In the tan coat.

9 MR. GIESE: Close in on that.

10 Q Yeah, tan coat?

11 A Yes, sir.

12 Q Now, is that the final blow Mr. Smith struck that you
13 know of?

14 A I'd have to continue watching. He does go down the
15 right side of the dorm.

16 MR. GIESE: Can you show him going up the stairs.

17 Yeah, go ahead. Play it, please, back it up, please.

18 (Video is continued to be played.)

19 Q So this is Mr. Smalls, his last assault, correct?

20 A That's Mr. Smith you're pointing to.

21 Q Smith, I apologize, Mr. Smith's final assault. And
22 these are the stairs he tries to go up?

23 A Yes, sir.

24 Q Who is that right there?

25 A The person lower on the stairs is Mr. Bisnauth. The

1 person behind him in the white shirt is Jerrell Jackson.

2 MR. GIESE: Go ahead, slow motion, please.

3 (Video is continued to be played.)

4 MR. GIESE: Stop.

5 Q Now, again, as you testified earlier, these would be
6 Gangster Disciples down here?

7 A Yes, sir.

8 Q And the room that the Crips were in on this side is
9 above that?

10 A It's the upstairs right corner.

11 Q To get that to upstairs right corner?

12 A He would have to go up the stairs, continue down the
13 walkway to the corner.

14 MR. GIESE: Go ahead, play it.

15 (Video is continued to be played.)

16 MR. GIESE: Stop. Stop.

17 Q Again, the Gangster Disciples never attacked Mr.
18 McClary?

19 A No, sir.

20 Q In fact, they don't touch him?

21 A Not until -- they touch him, but more in what seems to
22 be a comforting ways.

23 Q And then that's all?

24 A Yep.

25 Q Now, you testified earlier that the Defendant, Mr.

1 Smith, after all this goes back upstairs, you think?

2 A I would have to continue watching.

3 MR. GIESE: Keep going.

4 (Video is continued to be played.)

5 Q And that was Mr. McClary falling?

6 A Oh, sorry, I was paying attention to Mr. Smith, I
7 apologize.

8 Q That's all right.

9 A So he is going upstairs.

10 Q You see that gentleman donkey kicking the door?

11 A Yes, sir.

12 Q That's the door we're talking about where the Crips
13 were?

14 A Yes, sir.

15 Q In fact, Mr. Smalls goes down there -- Mr. Smith, I
16 apologize?

17 A Yes, sir, he goes back to the upstairs corner.

18 Q Where they're donkey kicking the door in?

19 A Yes, sir.

20 Q As a group?

21 A Yes, sir.

22 Q And at -- the record at 10:03:20 seconds p.m. is when
23 they stop kicking the door; is that right?

24 A Yes, sir. I believe that's Mr. Smith that just came
25 down the left stairwell and is at the bottom of the screen

1 now.

2 Q Down here?

3 A Coming towards the very bottom of the frame.

4 Q down here?

5 A Yes, sir. I like to zoom in. When I was able to watch
6 this, I was able to zoom in the angles that I wanted, but
7 yes, sir.

8 Q And now at some point, Mr. Smith goes out into the
9 Sally port and that's where you identify him, right?

10 A Yes, sir.

11 MR. GIESE: Stop.

12 THE WITNESS: That's Mr. Smith.

13 Q And that's how you identified him originally?

14 A Identified him through, obviously, tracking him, his
15 outfit, just making sure that everything on his outfit was
16 the same. He, also, has very distinguishable chin hair,
17 which we were able to see in the lighting and we, also,
18 asked individuals if they could identify him to confirm his
19 identity.

20 Q And that's where you got his identity and then backed
21 it up?

22 A Yes, sir. And I apologize, on that frame, you can see
23 on his right arm, which was what I would describe as the
24 dominant hand or the hand that we saw that had a homemade
25 weapon in, you can see the blood.

1 Q That you believe to be blood?

2 A It would have transferred to his clothing, I believe,
3 when he was striking Mr. McClary.

4 MS. ZMROCZEK: Your Honor, I would object to the
5 speculation unless they have DNA to say that's Mr. McClary's
6 blood. If they collected that jacket to make sure it wasn't
7 his friend who was slashed in the throat's blood, I would
8 object to her being able to say what that blood is.

9 MR. GIESE: I'll withdraw it.

10 THE COURT: Okay.

11 BY MR. GIESE:

12 Q Does he have a red spot on his sleeve?

13 A He does.

14 Q Was that jacket ever recovered?

15 A It was not.

16 MR. GIESE: Do you mind going to 9:47? I'm not sure
17 what camera that is.

18 BY MR. GIESE:

19 Q Now, we're looking at F-1B yard door 200.202 at 9:47
20 p.m.?

21 A Yes, sir.

22 Q You testified earlier about leaders from the Gangster
23 Disciples and the Bloods getting together, correct?

24 A Yes, sir.

25 Q Is that what you're looking at here?

1 A That's consistent with what I observed.

2 Q Approximately how long did that discussion take, do you
3 know?

4 A They were together for a small amount of time. Someone
5 would leave the group and then come back, but several
6 minutes.

7 Q And it's after this meeting is when the Bloods actually
8 go upstairs to try to kick the Crips door in, correct?

9 A You said that right there is at 9:45?

10 Q 9:47.

11 A So it's approximately ten minutes prior.

12 Q To them going up the stairs?

13 A Yes, sir.

14 Q Did they go up all at once?

15 A Yes, sir.

16 Q And you testified earlier about Mr. Smith and the
17 stabbing that you saw on the tape, correct?

18 A Yes, sir.

19 Q And, also, the punching that you saw on the tape,
20 correct?

21 A He strikes Mr. McClary with his left hand. And prior
22 to that, using the light on the hallway, we could see a
23 weapon in his right hand. But he does strike him, I
24 believe, twice with his left hand.

25 Q Were you able to see whether or not Mr. McClary had a

1 weapon in his hand?

2 A We never observed a weapon in Mr. McClary's hand.

3 Q In fact, you see both hands at some point coming down
4 the stairs, correct?

5 A Yes, sir.

6 Q Before Mr. Smith stabbed him, correct?

7 A Yes, sir.

8 Q On the ground?

9 A Yes, sir, on the bottom floor.

10 Q Now, you had testified earlier about Blood members and
11 this being a Blood gang doing all of this. Can you just
12 give for the record some of the Bloods that were involved
13 with this gang and what they're doing at that point?

14 A Sure. So you have Andre Boone, who is seen in the
15 middle. The individual that goes by 2-5, I believe his last
16 name is Mr. Jackson, he meets with a Gangster Disciple
17 leader, Rahim Carter, who goes by Zilla. You then see Mike
18 Smalls and Steven Green, who are Blood members, trying to --
19 they, also, stab Mr. McClary, as well as the group that were
20 trying to donkey kick. I believe Mr. Smalls does actually
21 deliver donkey kicks to the door. And that's the same group
22 that Mr. Smith is seen with.

23 Q So as a unit, these Blood gang members attempted to
24 break into a cell --

25 MS. ZMROCZEK: Objection, Your Honor. He's

1 characterizing the evidence --

2 MR. GIESE: As a group. I'll rephrase it.

3 BY MR. GIESE:

4 Q As a group, tell this jury what those gang members
5 attempted to do?

6 MR. ZMROCZEK: Objection, Your Honor. I think the
7 evidence -- the best evidence is the video. If she wants to
8 testify to their state of mind, she has to put those
9 witnesses up there.

10 THE COURT: She can testify to what she observed and
11 did.

12 THE WITNESS: I observed those members of the Blood
13 gang to go upstairs to the top right corner, donkey kick and
14 attempted to enter a cell on the top right side were done by
15 those members. They then ran across to the left corner,
16 some upstairs and some continued to move downstairs.
17 There's, obviously, a blind spot where we couldn't see
18 exactly what was going on. The next thing that we do see is
19 on the far left walkway Mr. McClary being assault by Blood
20 gang members.

21 Q I didn't ask you this originally, I apologize. Do you
22 see what appears to be a weapon in the Defendant's hand
23 during this assault?

24 A Yes, sir. Like I said, you can see it really well.
25 When he gets in front of the entryway to the Sally port and

1 as his right hand goes back, you can see a weapon in it, as
2 well as images from the actual hallway itself, you can see a
3 weapon.

4 MR. GIESE: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (Pause.)

7 BY MR. GIESE:

8 Q I want to hand you what's been admitted as State's
9 Exhibit No. 8, a photograph. Could you take a look at that?

10 A Yes, sir.

11 Q You mentioned Mr. Smith had what appeared to be a
12 weapon in one of his hands?

13 A Yes, sir.

14 Q And what hand was that?

15 A The right hand.

16 Q And you can see it on this photograph?

17 A I see a dark object in Mr. Smith's right hand. The
18 hand just before that shot was in that lit hallway area and
19 I observed a weapon.

20 MR. GIESE: That's all I have.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Thank you.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q Agent Shaw, who slashed Ray-Ray's throat?

1 A I don't know who Ray-Ray is.

2 Q You don't know who Ray-Ray is? Did you ask who Ray-Ray
3 was?

4 A Yes, ma'am.

5 Q Who did you ask?

6 A If you're referring to the individual coming down the
7 stairwell, we [indiscernible].

8 Q Okay. Did you ask Michael what happened that night?

9 A No, ma'am.

10 Q Never asked his side of the story?

11 A No, ma'am.

12 Q Didn't ask one question?

13 A No, ma'am.

14 Q Is that not important?

15 A It is important.

16 Q But you didn't ask it?

17 A He never came forward and said he wanted to speak.

18 Q Did you ask him?

19 A No, ma'am.

20 Q Okay. You were able to follow all of these people,
21 right?

22 A Yes, ma'am.

23 Q You were able to follow Mr. Smith, right?

24 A Yes, ma'am.

25 Q In fact, we saw it. You were able to follow Mr. Smith

1 when the threat of McClary was neutralized and he starts
2 pushing people away, like we saw on that video, right?

3 A When he gets back with the other Blood members?

4 Q Yep, and starts pulling Mr. Small's off and preventing
5 other people from going after Mr. McClary; isn't that
6 correct?

7 A I'm not totally disagreeing with you, but I would say
8 that he looked at what I would describe as hyped, but I do
9 -- I would agree with you that he does comfort Mr. Smalls.

10 Q Not only hyped, he is physically pushing people away
11 from McClary once that threat is neutralized?

12 A I mean hyped in the sense of excited.

13 Q But you didn't ask him, you don't know what he was
14 feeling, right?

15 A No, ma'am.

16 Q But you would agree that he, Mr. Smalls, is against the
17 door still alive and he is pushing away people from
18 continuing to assault Mr. McClary; isn't that correct?

19 A Yes.

20 Q Okay. Don't know whose blood is on his uniform because
21 you didn't get the uniform, did you?

22 A No, ma'am.

23 Q Didn't test the blood?

24 A I was not there that night.

25 Q Right. You were relying on other people, right?

1 A I took the case over a year-and-a-half, so I can't
2 testify to what was done prior to that.

3 Q Let me ask you this. Had you been there that night and
4 seen it that night, what evidence would you have collected?

5 A I was not there that night.

6 Q Let me rephrase the question, if you were there that
7 night and were in charge of the investigation, what
8 evidence --

9 MR. GIESE: I object. It's a hypothetical, she wasn't
10 there.

11 THE COURT: I'll sustain the objection. She testified
12 she wasn't there.

13 BY MS. ZMROCZEK:

14 Q That meeting that we saw the little video of -- oh,
15 there it is right there. Mr. Smith in that meeting?

16 A No, ma'am.

17 Q Were you able to follow Mr. McClary's events that
18 evening?

19 A No, ma'am.

20 Q Did you try?

21 A No, ma'am.

22 Q Okay. So you don't have any personal knowledge of him
23 having two weapons in his hand that evening, do you?

24 A No, ma'am. But when I see Mr. McClary on video, he
25 does not have any weapons on his hand.

1 Q Right. At that exact moment, right?

2 A As soon as you see him upstairs, the first image you
3 can get doesn't have --

4 Q Precisely. Before that, did you follow his movements?

5 A I did not.

6 Q So you don't know. You can't testify to that?

7 A Yes, ma'am.

8 Q Okay. I want to talk to you about other parts of your
9 investigation that you did because you, actually, presented
10 this indictment to the grand jury, correct?

11 A Yes, ma'am.

12 Q So you testified under oath as to things that you felt
13 like were important in securing an indictment in this case,
14 right?

15 A Yes, ma'am.

16 Q And it doesn't involve just F-1 dorm, when you make
17 this presentation, you talk about the entire event of not
18 only that evening, but the days leading up that and the
19 months, correct?

20 A Yes, ma'am.

21 Q So you used that information in securing this
22 indictment?

23 A We presented probable cause against each individual for
24 the night of April 15th, 2018.

25 Q Using information that you had prior to that. In fact,

1 you did little slide presentations, didn't you?

2 A Yes, ma'am.

3 Q Okay. I want to talk about those. You identify
4 specifically what happened in F-1 dorm with some slide
5 presentations, correct?

6 A Yes, ma'am.

7 Q Let me stop there for a second. How many corrections
8 officers have you arrested in this case or have been
9 arrested and associated with the events of this case?

10 A I have not arrested any.

11 Q How many have been arrested in general?

12 A I couldn't testify to that, none have been arrested by
13 us.

14 Q Thank you. Mr. Lopez was the officer that we have
15 identified that was in F-1 dorm?

16 A Yes, ma'am.

17 Q And he is in F-1 dorm at 2108, seven minutes after
18 Michael Smith neutralizes the threat, correct?

19 A Yes, ma'am.

20 Q Without telling me his answer, I just want you to --
21 I'm just going to ask you, did you ask why he didn't assist
22 Mr. McClary? The question is did you ask him?

23 A I'm trying to remember what I asked him. I don't have
24 that report in front of me, so I cannot remember if I asked
25 him that question when I did interview him.

1 Q Okay. You identified several inmates that were sent to
2 the hospital, right?

3 A I know that from reports that I received from the case
4 log that was transferred. There was a list of those that
5 had gone to the hospital.

6 Q You, also, testified under oath to that, right?

7 A Right.

8 Q So you relied on it as well?

9 A Right.

10 Q Okay. And then you identified 17 corrupt COs?

11 A Those were individuals that were, through interviews, I
12 believe, done prior to my involvement with the case were
13 suggested as possibly being corrupt.

14 Q Okay. Let me ask the question again. Under oath in
15 front of the grand jury, you testified and presented a slide
16 of 17 corrupt COs?

17 A Yes.

18 MS. ZMROCZEK: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. ZMROCZEK:

21 Q The events begin at 7:15 at Lee Correction?

22 A I would say approximately 7:00, yes, ma'am.

23 Q Approximately 7:00. Approximately two hours and 46
24 minutes before this assault?

25 A Sure, yes, ma'am.

1 Q Okay. It's important when you're doing an
2 investigation to understand the full story and to have the
3 complete facts in order to make determinations, right?

4 A I would agree.

5 MS. ZMROCZEK: No further questions, Your Honor.

6 THE COURT: Anything further from the State?

7 REDIRECT EXAMINATION

8 BY MR. GIESE:

9 Q Ms. Zmroczek was asking you about your grand jury
10 testimony?

11 A Yes, sir.

12 Q Did you have an opportunity on January 15th of that
13 year to testify as to why those Bloods ran up the stairs?

14 A I apologize, I don't remember offhand. I testified
15 several times. I don't want to say under oath exactly what.
16 I apologize.

17 MR. GIESE: That's it.

18 Thank you, Your Honor.

19 MS. ZMROCZEK: Nothing further.

20 THE COURT: Mr. Solicitor, do you have a witness you
21 can call or is it a good time to break for lunch?

22 MR. GIESE: It would be a good time to break, Your
23 Honor.

24 THE COURT: Okay. Ladies and gentlemen, we're going to
25 take our lunch break. I ask you to be back at 1:30. Please

1 don't discuss the case or allow anyone to discuss it with
2 you. Don't do any research. If you have an emergency, call
3 the clerk's office. I'll see you in a little bit.

4 (WHEREUPON, the jury left the courtroom at 11:54 a.m.)

5 THE COURT: All right. Any matters we need to deal
6 with before lunch?

7 MR. ZMROCZEK: I just think we need to put on the
8 record, Your Honor, we had before this witness talked about
9 Agent Wilson, although I did ask him to still remain under
10 subpoena, I may only need to call him if I have to impeach
11 someone. Your Honor, I understand that the best way that
12 officers learn about cases and how to improve is to watch
13 trials. And so the State asks if he could watch and I have
14 no objection to that witness watching.

15 THE COURT: Okay. So he can come in and watch it if he
16 would like to.

17 MR. LUNSFORD: Okay.

18 THE COURT: All right. I'll see y'all at 1:30.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: Are there pictures the Defense is objecting
21 to?

22 MR. GIESE: Yes, sir.

23 MS. ZMROCZEK: Pardon?

24 THE COURT: You objected to the photographs?

25 MS. ZMROCZEK: To these from the pathologist. I mean,

1 there were some I didn't object to and then some that I did.
2 I'm trying to be reasonable. I do not for the record object
3 to -- so there is a big board, Your Honor, that they'll use
4 with this pathologist that I do not object to.

5 THE COURT: Okay.

6 MS. ZMROCZEK: And so I wanted to just advise the Court
7 of that.

8 MR. CONRAD: Your Honor, one other thing we'd like to
9 put on the record real quick is regarding the issue of the
10 CI and identifying information, I feel like we've reached an
11 agreement on this. Ms. Zmroczek had sent a list to us
12 Monday for CIs number two, eight, three, four, six and 16.
13 However, she and I talked a couple hours ago and she kind of
14 clarified or narrowed her request to just CIs who were
15 residing in F-1 during the riot. And I think we've reached
16 an agreement to turn those individuals over. And those were
17 CI numbers seven and number 11. Neither testified at the
18 grand jury, but there's a memorandum of an interview that's
19 been provided and unredacted to the Defense counsel. It had
20 previously been provided in a redacted form, but now she one
21 fully unredacted with the identifying information for those
22 two CIs.

23 THE COURT: Okay.

24 MS. ZMROCZEK: And that is accurate, Your Honor. We
25 appreciate the State accommodating us on that. I think the

1 others would be outside the scope and so I think that this
2 is what we need and we've talked about, so one, we may -- I
3 just got the unredacted, so I need to read it tonight. If
4 we intend to use any of these, I will e-mail everybody to
5 let them know because those were two names that were not on
6 the witness list.

7 THE COURT: Okay. So you'll let us know tomorrow
8 whether these --

9 MS. ZMROCZEK: Oh, I'll let you know tonight.

10 THE COURT: Potential witnesses?

11 MS. ZMROCZEK: Yes.

12 THE COURT: Just for a scheduling issue, is
13 transportation available or is that an issue?

14 MS. ZMROCZEK: I assume, Your Honor, which is why I
15 don't -- I don't know where they are. I do know that one
16 has a lawyer. I know that lawyer -- I know who that lawyer
17 is. I texted him just now and advised him that I needed to
18 speak with him tonight. So I do believe that that CI number
19 -- is it 11?

20 MR. CONRAD: Seven is represented by William Hodge.

21 MS. ZMROCZEK: Seven is represented by Mr. William
22 Hodge. I know he is incarcerated. That's why I'll let --
23 the other one, he doesn't have a lawyer. I don't know what
24 his location is right now, but we'll find out this afternoon
25 and I'll advise this evening. I won't wait until the

1 morning.

2 THE COURT: Well, sometimes it takes a transportation
3 order from me and so if that's the case, and I don't sign it
4 till in the morning, you may not get him here.

5 MS. ZMROCZEK: Right.

6 DEPUTY: Your Honor, I might be able to make an e-mail.

7 MR. GIESE: He kind of runs that show.

8 THE COURT: I'm not used to having that in my
9 courtroom. It's usually more difficult for me to get that.
10 Sometimes he's housed in the upstate somewhere, which is
11 simply -- you know, you're talking two or three hours.

12 MR. GIESE: If you just give us names.

13 MR. ZMROCZEK: And, again, I don't want to
14 unnecessarily transport people. Obviously, I need to digest
15 it, talk to my client. I'll make sure that's done today.

16 DEPUTY: Your Honor, I would ask if there are multiple
17 SCDC individuals --

18 MR. CONRAD: We just need one.

19 THE COURT: All right.

20 (WHEREUPON, there was an off-the-record discussion).

21 THE COURT: So we need to rule on these photographs.

22 MS. SCOTT: Yes, Your Honor, may I hand these up?

23 MS. ZMROCZEK: Let's go ahead and mark them.

24 THE COURT: Mark them for the identification.

25 MS. ZMROCZEK: And, Your Honor, since I -- I have 5, 6

1 and 7 that were in, but since I did show 1 through 4 in
2 camera, I went ahead and put ID on those. I'll keep them
3 here, but we'll make sure before everything goes back to the
4 jury if they don't come in.

5 (WHEREUPON, State's Exhibit Nos. 13 through 20 were
6 marked for identification only.)

7 MS. ZMROCZEK: Your Honor, I have no objections to 15,
8 16, 17, 18 and 19. 13 and 14 are the ones that I would
9 object to.

10 THE COURT: Fifteen, 16, 17, 18, 19?

11 MS. ZMROCZEK: No objection.

12 MS. SCOTT: Your Honor, if I may hand them up.

13 MS. ZMROCZEK: And no objection to 20, which is the
14 board.

15 THE COURT: Okay. Thirteen and 14, tell me what the
16 State's position is, what probative value? I assume you're
17 going to introduce these through the pathologist.

18 MS. SCOTT: That's correct, Your Honor.

19 THE COURT: And so tell me how the probative value
20 outweighs the prejudicial value and [indiscernible]
21 pathologist is going to use to determine cause of death.

22 MS. SCOTT: Yes, Your Honor. We would seek to admit
23 the autopsy photos through the pathologist, specifically,
24 the two you have up there, where the injuries are located on
25 the victim. They are primarily on his back and the back of

1 his head. It would go to -- the defense is arguing
2 self-defense. This is showing, we would argue, that the
3 victim is actively running away from the victim -- or from
4 the Defendant and other people involved in this mob and he
5 is running away which would show the direction of the
6 injuries sustained not coming towards him. We think that
7 would be relevant for the jury to see those photos and hear
8 the testimony from the pathologist regarding those.

9 The ones that we seek to admit that there's an
10 objection to, also, goes to the defensive wounds that he
11 sustained that would against go against the self-defense
12 argument as well.

13 Your Honor, 13 and 14, if you do find that those are
14 somewhat too gruesome, even though under State v. Rosemond,
15 pictures are allowed even if they are gruesome, we would be
16 fine submitting a black and white copy if, Your Honor, finds
17 that more appropriate.

18 THE COURT: Yes, ma'am.

19 MS. ZMROCZEK: Your Honor, so here is my concern, they
20 have testimony -- they presented testimony through Agent
21 Shaw who talked about the maybe two or three impacts that
22 Mr. Smith had made, and then they show several on the video
23 that Mr. Smalls had made. That accounts for, I think, a
24 total of nine. Your Honor, that picture has way more than
25 that. I think -- they can't identify which ones go with

1 which person.

2 But, also, Your Honor, I think if you look here on
3 State's 20, there's a front and a back and Dr. Ross
4 identifies every indention on this as well. So that would
5 be our argument, obviously, under the more prejudicial than
6 probative value. And this is blown up to more than half my
7 size, Your Honor. I think she can adequately explain some
8 of the locations.

9 But, Your Honor, just the sheer number and they've only
10 talked about two people that they identified, you know,
11 making these cuts. And so, obviously, the more prejudicial
12 argument, also, goes there just by the sheer number that
13 there are that we know can't be attributed to Mr. Smith. Or
14 if they could identify all of those with the people that are
15 listed in the indictment, then we'd have less of an
16 argument, you know, to say that all of the people that are
17 charged in this conspiracy contributed to those injuries,
18 then I think, obviously, we would have a different argument,
19 but what the testimony is, is that Mr. Smith had two or
20 three and Mr. Smalls had what we saw on the video, however
21 many he had, but, Your Honor, we think that 20 would
22 adequately cover that. Again, if the Court -- well, that's
23 where we were.

24 MS. SCOTT: And, Your Honor, I did speak to Dr. Ross.
25 My understanding that I believe she'll testify to is that

1 does not represent all of the wounds the victim sustained
2 from this mob. It was so voluminous that she could not put
3 it all on the board. And, actually, it's 101 stab wounds or
4 -- either stab or superficial lacerations the victim
5 sustained in the course of the assault.

6 So we would argue these pictures would show what he
7 sustained that night and he was running -- we would argue is
8 running away and is being attacked from behind as opposed to
9 approaching someone, which normally would be, claiming
10 self-defense.

11 And, Your Honor, again, we would submit that we would
12 be fine with black and white the copies if Your Honor
13 believes that would be more appropriate.

14 THE COURT: Well, these particular copies that are
15 before me aren't -- they're not particularly gruesome. I
16 have seen many far more gruesome than this. I don't see
17 anything in these that would inflame the passions of the
18 jury. You know, I have seen some that when you see them,
19 you can never get them out of your mind and these don't fall
20 under that category. They depict numerous wounds to the
21 victim's back and in the back of the victim's head.

22 Now -- and I understand the defense's argument in that
23 there's been no testimony, at least, her client administered
24 this many wounds. However, he's not charged with murder.
25 He's charged with assault and battery by a mob that causes

1 death. And so based on the facts of this case, there was a
2 mob, there was a number of people inflicting potential
3 wounds on the victim in this case and there's some evidence
4 in the record so far that, at least, the Defendant inflicted
5 some of these wounds.

6 Now, I haven't heard the testimony of the pathologist
7 and whether the pathologist determined whether they can
8 identify particular wounds that actually caused the victim's
9 death, you know, major blood vessels or arteries have been
10 severed. Or sometimes, it's the collection of some many
11 wounds that causes the victim to bleed out. I haven't heard
12 from the pathologist yet.

13 And assuming that if -- y'all know -- at least, the
14 State probably knows what she's going to say. If she's
15 going to look at these pictures and they have no probative
16 value, they are not important in her finding, then, you
17 know, they shouldn't come in, but if she's going to describe
18 things in these two photographs that supports her finding
19 and cause of death, I think the probative value would
20 outweigh the prejudicial value.

21 MS. ZMROCZEK: Your Honor, if that is the testimony,
22 would the Court consider submitting them in black and white?

23 THE COURT: Do you have that capability?

24 MS. SCOTT: Your Honor, I believe we can submit a copy
25 of them, scan it and make a copy of it on our printer.

1 THE COURT: And maybe -- and having said that,
2 sometimes when the pictures are very gruesome and you have a
3 bunch of blood, these pictures have been cleaned up.
4 Sometimes they're black and white, the doctor can't
5 adequately describe what they're seeing because it's in
6 black and white. I guess the safest thing to do is have a
7 black and white set or take the doctor's testimony in
8 summary outside the presence of the jury to determine if the
9 black and white pictures suit the doctor. To the point she
10 can describe her testimony without the color, that's fine.
11 If she takes the position that have black and white to
12 depict my findings.

13 MS. SCOTT: Yes, Your Honor. And we can prepare those
14 and have them both. If she can't identify it accurately, we
15 would ask for the color pictures, which are not gruesome, as
16 Your Honor said, and we'll have that prepared for her
17 testimony.

18 MS. ZMROCZEK: I think that's adequate, thank you.

19 THE COURT: Anything else?

20 MS. SCOTT: That's it, Your Honor.

21 THE COURT: Okay. Ready for the jury?

22 MS. ZMROCZEK: Yes.

23 THE COURT: Bring the jury, please.

24 (WHEREUPON, the jury entered the courtroom at 1:53

25 p.m.)

1 MR. LUNSFORD: The State calls Clive Lopez, Your Honor.

2 THE COURT: Okay.

3 THE CLERK: Can you please place your left hand on the
4 Bible, raise your right hand.

5 CLIVE LOPEZ,

6 after being duly sworn, testified as follows:

7 THE CLERK: Please state your name for the court
8 reporter.

9 THE WITNESS: My name is Clive Lopez, Jr.

10 DIRECT EXAMINATION

11 BY MR. LUNSFORD:

12 Q Mr. Lopez, if you would make sure you speak into that
13 microphone.

14 A Clive Lopez.

15 Q Just give us yes or no answers, no shaking your head up
16 and down or anything like that. We're trying to get answers
17 on the record, okay?

18 A Yes, sir.

19 Q Why don't you introduce yourself to the jury, tell us a
20 little about yourself, how you came to work at SCDC?

21 A I originally started at hospital security and I applied
22 to SCDC around August 2017 and I started around September
23 2017.

24 Q All right. Where are you currently employed?

25 A Lee County Correctional.

1 Q Have you been there the whole time?

2 A Yes, sir.

3 Q Before you went to Lee County Correctional, did you
4 attend the Academy?

5 A Yes, sir.

6 Q And while you were at the Academy, what kind of things
7 did they teach you?

8 A Procedure, those kind of things.

9 Q While you were there, what did they teach you about
10 responding to emergency situations inside the prison?

11 A Like, how to call for assistance, you know, to be
12 controlled at the time when we first respond to whatever
13 unit you're in and so forth.

14 Q What were you supposed to do if the inmates weren't
15 following your instructions? What was the Academy teaching
16 you to do if something like that occurred?

17 A If they weren't following instructions, you would exit
18 off the wing and call for assistance.

19 Q Would you do anything else? What about you mentioned
20 calling for help. I mean, when you're working, what do you
21 have on your person? What do you carry when you work?

22 A We have, you know, handcuffs and spray, O.C. spray.

23 Q Okay. What about keys?

24 A Yeah, we have keys.

25 Q Tell me about the wing keys and the keys that you're

1 carrying around with you?

2 A You have the wing keys for the AB side of the dorm.

3 Q All right. What keys, if any, do you have to open
4 cells?

5 A We have the cell door key, as well.

6 Q You have the cell door key. All right. I'll take you
7 back to April 15th, 2018, all right, the night of the Lee
8 riot. Were you working that evening?

9 A I was coming on second shift.

10 Q Say that again?

11 A I was coming on the second shift.

12 Q All right. And what time was that?

13 A Around 7:00 p.m. that night.

14 Q All right. What takes place when first shift and
15 second shift change over? Is there something particular
16 that happens at that time?

17 A Yeah, you lock down the units.

18 Q Explain what that means.

19 A You know, when you come on for the night, you get
20 together with the first officer and you lock down the unit,
21 you put people in their cells.

22 Q Why would you need to do that? Why would you need two
23 shifts to lock down the institution?

24 A More manpower.

25 MS. ZMROCZEK: I'm sorry, I didn't hear that response.

1 Q You're getting a little close to the microphone, we're
2 getting a little feedback. If you could repeat your answer,
3 please.

4 A You know, the more help to lock down.

5 Q Okay. All right. So walk me through what happened
6 that evening. What time did you say you arrived at work?

7 A I generally got there a little earlier, 6:30, 6:45,
8 somewhere around there.

9 Q Where did you go from there?

10 A Briefing. And, you know, before we even got to the
11 yard, you know, we got a call saying that there was
12 something happening in the F-3 unit.

13 Q Did they describe what was happening?

14 A There was a disturbance, basically.

15 Q Okay. Where did you go from there?

16 A We walked -- me, myself and a few other officers walked
17 to F-3 and we went through the Sally port door.

18 Q Okay. What did you do then?

19 A We looked in. We could see an argument taking place.
20 You know, opened the door and a few other inmates came out
21 at a time.

22 Q When, if any, did you report to F-1?

23 A After we, you know, had taken them to medical, I was
24 told to report to F-1 and replace Officer James.

25 Q So you personally took inmates to medical?

1 A We escorted them to medical, yes.

2 Q These are inmates that had been injured in the other
3 dorm?

4 A Yes, sir.

5 Q And then if I'm correct, then you went and reported to
6 F-1?

7 A That's correct.

8 Q Who did you relieve in F-1?

9 A Officer James.

10 Q Did you and Officer James, like you said with the
11 crossover, attempt to lock the dorm down?

12 A No, sir.

13 Q What, if at any time, did you hear lockdown being
14 called out?

15 A I can't recall when lockdown was called, but I do
16 remember hearing it from the east yard, basically, saying
17 we're looking down F-2 and lock down F-4.

18 Q When a lockdown is called out, how does that happen?

19 A The inmates go through the cell door and then you walk
20 around and close the cell door.

21 Q That's my fault, it's my job to ask questions and that
22 was a poorly asked question. When a lockdown is called,
23 does it come over the PA system? Does it come over the
24 radio? People yelling out the window? How does a lockdown
25 get called out throughout the institution?

1 A It comes over the PA.

2 Q Is it, also, called out over the radio system? Do
3 y'all have radios?

4 A Yes, sir.

5 Q Where you can communicate with each other

6 A Yes, sir.

7 Q Do you recall if at any time a lockdown was called out
8 over the radio?

9 A Yes, sir.

10 Q Once you got into F-1 and you did the changeover, what
11 happened from that point? What time was that about?

12 A Probably a little time after 8:00.

13 Q A little time after eight?

14 MR. LUNSFORD: Your Honor?

15 THE COURT: Yes, sir.

16 MR. LUNSFORD: We're going to be showing what's been
17 marked as Exhibit 3.

18 Q We're looking at Lee F-1 entry door at what appeared to
19 be 9:34 p.m. Can you see that screen, Officer Lopez?

20 A Yes, sir.

21 Q Who is that standing in the officer booth right there?

22 A That's me.

23 Q That's you?

24 A Yeah.

25 Q All right. What was going on in the cell in B side at

1 that time?

2 A It was like little segregated groups, one group one
3 side and the other group on the other side.

4 Q Do you know who those groups were?

5 A The left side was the Bloods

6 Q Do you know the people on the other side?

7 A GD's.

8 Q From your experience with SCDC, are those gangs?

9 A Yes, sir.

10 Q All right. Now, had the lockdown been called at this
11 time?

12 A Yes, sir.

13 Q So Officer Lopez, why are there inmates still sitting
14 out and nobody is locked down?

15 A At that time, they were -- there was no institution
16 control.

17 MS. ZMROCZEK: I'm sorry, say that again.

18 BY MR. LUNSFORD:

19 Q Say that again?

20 A I didn't feel safe trying to lock down anyone at that
21 time.

22 Q Okay. Why not?

23 A There was -- there were inmates walking around with
24 weapons on their side.

25 Q Okay. What had you heard through either the radio --

1 MS. ZMROCZEK: Objection -- I'll let him finish the
2 question, I'm sorry.

3 THE COURT: Yeah, finish the question.

4 BY MR. LUNSFORD:

5 Q What had you heard, if anything, about a lockdown being
6 in place?

7 A Just all inmates report to your cell.

8 Q All right. But, clearly, they were not in their cell,
9 correct?

10 A No, sir.

11 Q Once again, what was the reason for that?

12 A Because there was a disturbance in F-3 and they were
13 out.

14 Q Okay. You were aware of a disturbance taking place?

15 A Yes, yes, sir.

16 (Video was played for the jury.)

17 Q Okay. All right. Where are you heading now? You just
18 walked through a doorway, correct?

19 A Okay.

20 Q Where are you headed to? What's on the other side of
21 that wall?

22 A The Sally port.

23 Q The Sally port. What just happened there?

24 A I was trying to secure the B side and an inmate told me
25 we're not doing that right now.

1 Q Why would you listen to an inmate?

2 A It was only me and I -- I mean, had nothing but a gas
3 canister.

4 Q So were you able to see that right there?

5 Could you back it up a second, please.

6 Q If you know need to step down, you can. Are you having
7 a conversation with that inmate?

8 A Yeah, he's telling me --

9 MS. ZMROCZEK: Objection, Your Honor, as to what the
10 inmate was saying.

11 MR. LUNSFORD: I just asked if he was having a
12 conversation with the inmate, not what the inmate was
13 saying?

14 THE WITNESS: He was talking to me.

15 THE COURT: He can answer that.

16 THE WITNESS: He was talking to me.

17 BY MR. LUNSFORD:

18 Q Say that again.

19 A Yes, we were having --

20 Q Y'all were having a conversation, all right. What were
21 you telling him, do you recall?

22 A I don't recall, but I was just trying to secure the
23 door.

24 Q Okay. All right. Officer Lopez?

25 A Yes.

1 Q At that moment in time?

2 A Yes.

3 Q What was in your mind?

4 A I'm not going to argue with you.

5 Q I'm sorry.

6 A In my mind, I'm saying I'm not going to argue with you.

7 Q You're not going to argue with the inmate

8 A Yeah.

9 Q Why?

10 A I didn't feel safe, you know, disagreeing at the time.

11 Q Right. Why didn't you feel safe?

12 A I mean, I'd seen guys walking around with weapons.

13 Q In that dorm, what is the ratio? How many officers are
14 there that night, that night, if you recall, and I'm not
15 asking for exact numbers here, but if you recall what the
16 ratio was, was it two officers with how many inmates? What
17 was the breakdown?

18 A I mean, between both sides, it's over 200.

19 Q Over two hundred inmates to the best of your
20 recollection?

21 A Yeah.

22 Q And you with a can of pepper spray?

23 A Yes, sir.

24 Q All right. You just pulled your radio off, correct?

25 A I did.

1 Q Who did you call?

2 A Lee control.

3 Q What did you tell them?

4 A Let them know that there was -- they were about to
5 fight.

6 Q Tell me what Lee control is just so everybody is clear.

7 A It's the control room where, you know, all calls on the
8 radio go through.

9 Q Okay. All right. Where are you headed now?

10 A Going to the east side.

11 Q Do you recall whether or not you locked that door?

12 A I locked the inside door.

13 Q All right. What are we looking at here? It's F --
14 it's Lee F-1A entry door, 200.156. Which dorm is that?

15 A That's the A side of the dorm.

16 Q Okay. What are you doing now?

17 A Just walking away.

18 Q Are you making any calls?

19 A I don't remember what -- that was talk on the radio.

20 Q But fairly obviously you have a radio up to your ear?

21 A Yeah, right.

22 MR. LUNSFORD: Stop right there.

23 Q Now, these three inmates that were looking up here by
24 the door --

25 MR. LUNSFORD: Can you back up?

1 MS. ZMROCZEK: Your Honor, I would object to him
2 characterizing what they were doing.

3 THE COURT: What?

4 MS. ZMROCZEK: He said these three inmates who were
5 looking out the door.

6 MR. LUNSFORD: Your Honor, I haven't finished my
7 question yet.

8 THE COURT: I know. Go ahead.

9 BY MR. LUNSFORD:

10 Q All right. Officer Lopez, that door was secure, was it
11 not?

12 A Yes, sir.

13 Q Thank you. All right. We're still looking at the same
14 dorm, correct? Which dorm is this?

15 A F-1A.

16 Q F-1A, all right. Who is that in the officer's station
17 there?

18 A That's me.

19 Q That's you?

20 A Yeah.

21 Q Who -- do you know who you're talking to?

22 A I believe that's Henry Dukes.

23 Q Inmate Henry Dukes?

24 A Yes.

25 Q All right. Do you remember what you two were talking

1 about?

2 MR. ZMROCZEK: Your Honor, again, I would object --

3 THE WITNESS: No.

4 MS. ZMROCZEK: -- if he was going to say what the
5 Inmate Dukes was telling him.

6 MR. LUNSFORD: Your Honor, I'm simply asking if he
7 recalls what he was having a conversation with the inmate
8 about.

9 THE COURT: You can ask him that.

10 MR. LUNSFORD: All right.

11 THE COURT: Is it being offered under the truth of the
12 matter asserted?

13 MR. LUNSFORD: It's not, Your Honor. It's just to
14 prove the two of them were having a conversation.

15 THE WITNESS: I don't.

16 BY MR. LUNSFORD:

17 Q Do you recall having a conversation with him?

18 A Yes.

19 Q Okay. Officer Lopez, do you recall picking up that
20 phone to make a telephone call?

21 A I remember picking up the phone, yes.

22 Q When you pick up that phone, where does it ring to?

23 A Lee control.

24 Q Okay. Do you recall what you said to Lee control?

25 A I guess he asked me if I was okay.

1 Q What did you tell him?

2 A No.

3 Q You told him no?

4 A Yeah.

5 Q I couldn't hear you?

6 A I said no.

7 Q Did they ask you anything else?

8 A Not that I can recall.

9 (Video is continued to be played.)

10 BY MR. LUNSFORD:

11 Q Officer Lopez, do you remember this moment?

12 A Yes.

13 Q What is going through your mind?

14 A At this time, I do recall Henry Dukes was asking me to
15 go to the door because, I guess, people were at the door
16 knocking, banging on the door.

17 Q When you say other people, was it corrections officers?

18 A Inmates.

19 Q Inmates. What are you doing right now?

20 A They were asking for me to open the door, and I
21 refused.

22 Q You refused?

23 A Yeah.

24 Q Okay. Officer Lopez, why are you refusing to open that
25 door?

1 A I didn't know what going on for the B side to come to
2 the A side

3 Q To your knowledge, what was going on on the B side?

4 A They were -- you know, before I left, they were about
5 to clash up.

6 MR. LUNSFORD: Stop.

7 Q Okay. What did you just reach for?

8 A I reached for my gas canister.

9 Q Your gas canister?

10 A Yes.

11 Q All right. Thank you.

12 MR. LUNSFORD: All right. For the record, we're now
13 looking at Lee F-1A wing left at 10:04:44.

14 Pause it right there.

15 Q How did that struggle end?

16 A We both disengaged.

17 Q All right. So how did that fight start? What started
18 all that?

19 A Well, he called me over to the door. He asked me, you
20 know, to listen to him. I was refusing. You know, I think
21 I turned my head a little bit. And, you know, I could see
22 him and it looked like he had gotten instructions --

23 MS. ZMROCZEK: Your Honor, I'm going to object if he's
24 trying to say what other inmates were instructing him to do.

25 MR. LUNSFORD: Your Honor, I'm not asking him what the

1 inmates were telling him to do. I'm just asking him what
2 his impression was of why that fight occurred.

3 THE COURT: You can ask that question.

4 THE WITNESS: That was my impression, that he had
5 gotten the okay.

6 BY MR. LUNSFORD:

7 Q I'm sorry, you have to speak up.

8 A I got the impression that he had gotten the okay to
9 come after me.

10 Q Okay.

11 Stop right there.

12 Q Officer Lopez, once again, when you say there was --
13 you're still on A side wing and it's you and all of these
14 inmates, correct?

15 A Yes, sir.

16 Q You don't have backup anywhere, do you?

17 A No, sir.

18 Q Not that it's readily available, correct?

19 A No.

20 MR. LUNSFORD: Stop right there.

21 Q Officer Lopez, what is your mindset right now? What's
22 going through your head?

23 A Trying to figure out how I'm going to get out of this.

24 Q Okay. What are you worried about?

25 A I don't know what's next, you know.

1 (Video is continued.)

2 MR. LUNSFORD: Stop.

3 Q Officer Lopez, while you're standing in that dorm?

4 A Yes, sir.

5 Q What do you see approaching you?

6 A I see an inmate approaching me with a blade weapon.

7 Q Okay.

8 MR. LUNSFORD: Press play.

9 (Video is continued.)

10 MR. LUNSFORD: Stop.

11 Q Officer Lopez, what just occurred?

12 A I took the keys off my belt and just through them on
13 the ground and tried to spin away from the inmate.

14 Q The inmate with the weapon?

15 A Yes, sir.

16 Q Why would you do that?

17 A I was afraid for my life.

18 MR. LUNSFORD: Now, zoom in on that doorway.

19 Q Officer Lopez?

20 A Yes.

21 Q You've worked in corrections for what, six years?

22 A Yeah.

23 Q You've seen lots of shanks in your time?

24 A Yes, sir.

25 Q All right. Are you able to identify an item that is in

1 that inmate's hand?

2 A Can I --

3 MR. LUNSFORD: Pause it right there.

4 THE WITNESS: Can I step off?

5 Q Yes, you can come down.

6 A Yes.

7 Q What does that appear to you?

8 A It's a shank.

9 Q Thank you.

10 MS. ZMROCZEK: I'm sorry, I couldn't hear the response.

11 MR. LUNSFORD: He said it was a shank.

12 MS. ZMROCZEK: Thank you.

13 BY MR. LUNSFORD:

14 Q And Officer Lopez, what do these inmates have in their
15 position right now other than the shank?

16 A Keys to the wing.

17 Q Okay.

18 MR. LUNSFORD: Stop.

19 Q Do you carry different sets of keys?

20 A Yes, sir.

21 Q To the best of your recollection, what keys had you
22 provided them?

23 A I, actually, provided them the B side keys, I realized
24 later.

25 Q Was that on purpose?

1 A No, sir, I just threw them down.

2 Q Okay.

3 A They picked them up.

4 MR. LUNSFORD: Stop.

5 Q What just happened there?

6 A I've seen the A side keys on the floor and I picked
7 them up and threw it at them.

8 Q You threw it -- did you throw them the correct set of
9 keys?

10 A Yes, sir.

11 Q Okay. Why would you do that?

12 A I assumed that they would get frustrated and come back
13 and try to attack me again.

14 Q Where are you going now?

15 A It's a room to the side, like an ice room.

16 Q An ice room?

17 A Yeah, to get ice.

18 Q Just like an office off to the side?

19 A Yes, sir.

20 Q Is that door locked?

21 A No.

22 Q Okay. What's going on now?

23 A I guess he was frustrated that he couldn't open the
24 door.

25 Q Well, you took the keys and did what with it?

1 A I opened the door.

2 Q All right.

3 MR. LUNSFORD: Stop.

4 Q What are you doing right now? If you need to step down
5 or maybe we can zoom in?

6 A I'm throwing my hands up, say, you know, I don't want
7 to be involved in this.

8 Q Putting your hands up?

9 A Yeah.

10 Q Okay. All right.

11 MR. LUNSFORD: Zoom out a little bit.

12 Q Do you know who are coming through these doors right
13 here? Where are these inmates coming from?

14 A Coming from the B side.

15 Q Are you aware of who they are?

16 A They're gang members.

17 Q Say that again.

18 A They're gang members.

19 Q Okay. How do you know that?

20 A Because of the events that night, I assume anybody
21 that's walking around is a gang member.

22 Q Okay. Officer Lopez, what's going through your mind
23 right now?

24 A It's just, you know, you don't know what's -- you're a
25 little shocked, you know, yeah.

1 Q Do you recall this?

2 A (No response.)

3 Q First off, let me ask you, where are you right now
4 inside the dorm?

5 A In the Sally port.

6 Q Is that the area between the A side and the B side?

7 A Yes, sir.

8 Q Where were you headed?

9 A B side.

10 Q Was that B side door locked?

11 A No, sir.

12 Q Okay. Why not?

13 A They didn't allow me to lock the B side door.

14 Q All right. You just walked into B side, correct?

15 A Yes, sir.

16 Q All right. What is your -- what's going on in your
17 mind? What's your impression of what's going on inside B
18 cell?

19 A I could see an inmate was down on the right-hand side.

20 Q An inmate was down?

21 A Yes, sir.

22 Q Do you know who that inmate was?

23 A McClary.

24 Q Did you know at the time?

25 A No, sir.

1 Q Officer Lopez, let me ask you this, at any time did you
2 go over to Inmate McClary --

3 A No, sir.

4 Q Let me finish my question.

5 A I'm sorry.

6 Q That's all right. I understand. At any time, did you
7 go over to Inmate McClary and render him aid or anything
8 that could attempt to help him in any way?

9 A No, sir.

10 Q Why not?

11 A I was afraid. You know, I was afraid for my life. I
12 didn't know if it was safe.

13 Q Why would you be afraid if it was safe?

14 A Because I assume the people that did it were around me
15 at that time.

16 Q Why would that make you afraid? It's done, an inmate
17 is laying on the ground. What else is going through your
18 mind. Why would you be afraid?

19 A I mean, they're all walking around with weapons.

20 MR. LUNSFORD: Beg the Court's indulgence, Your Honor.

21 (Pause.)

22 MR. LUNSFORD: I apologize, Your Honor.

23 BY MR. LUNSFORD:

24 Q Okay. Officer Lopez, let me back you up in time here.
25 I apologize, I forgot to bring something up. At 10:05 on

1 Lee F-1A wing left, do you remember where you were standing?
2 If you need to come down and look, you're more than welcome
3 to.

4 A There.

5 Q Tell the jury where you were standing.

6 A [Indiscernible] On the second left.

7 Q Who's this right here?

8 A I'm sorry.

9 Q That's fine. All right. That's you in the middle of
10 the, what do we call that?

11 A In the middle of the rock.

12 Q What had just occurred?

13 A I just --

14 Q Is this --

15 A Just fast forward.

16 Q I apologize. I got out of the way.

17 Q Do you recall that?

18 A Yes.

19 Q We just had a discussion, you were in a what -- tell me
20 again what you were doing?

21 A I was engaged with him, you know, discussing at the
22 time.

23 Q All right. You can go ahead and have a seat.

24 (Witness returns to the witness stand.)

25 Q Officer Lopez, are you aware who's on the other side of

1 that door?

2 A Inmates. Not specifically.

3 Q Officer Lopez, are you familiar with anyone in this
4 picture?

5 A That's Michael Smith on the left.

6 Q Say that again?

7 A Michael Smith.

8 Q Do you see him in the courtroom today?

9 A Yeah, he's on the left.

10 Q All right. Officer Lopez, just a few more questions?

11 A Yes, sir.

12 Q Were you in the dorm when Mr. McClary was killed?

13 A No, I had left the B side.

14 Q Okay. So you never observed it?

15 A No, sir.

16 Q After all this, you were interviewed by SCDC police
17 services at the time; is that correct?

18 A Yes, sir.

19 Q Do you recall if you had multiple interviews?

20 A Yes, sir.

21 Q Okay. During those interviews, did you make statements
22 to them?

23 A Yes, sir.

24 Q All right. And you said you had multiple interviews?

25 A Yes, sir.

1 Q Okay. Were any of those interviews inconsistent?

2 A Yes, sir.

3 Q Why?

4 A I think at the time, they had question about the
5 timeline and --

6 MS. ZMROCZEK: Your Honor, I cannot hear a word. I'm
7 so sorry.

8 THE WITNESS: Sorry. At the time, they had questions
9 about the timeline and what they were looking for and it was
10 -- it was an insinuation in the question that I had let
11 people out to participate in the riot. And, you know, I
12 said I never opened the door, but I -- you know, I think
13 that was the inconsistency that later on, you know...

14 Q Officer Lopez, did you open the doors and let some
15 inmates out?

16 A Not to participate in the riot, no.

17 Q Did you open any doors at any time?

18 A The doors -- there were no doors secured when I came on
19 that shift.

20 Q Okay.

21 A Later on that night, you know, I did try to secure
22 doors on the A side and in the process of securing those
23 doors on A side, a couple of inmates came up to me and asked
24 me can I get up here and whatever. I wasn't going to argue
25 with them at the time.

1 Q Okay. What, if at any time, was your mindset about
2 being able to leave either of those wings when this was
3 going on? Did you feel like you could leave?

4 A At the time, there was the -- the front door was
5 locked. It really isn't -- you know, no, it wasn't a place
6 to get away from this.

7 Q You're going to have to speak up.

8 A I didn't feel like there was anywhere I could go to get
9 away from the situation at the time.

10 Q Okay. Do you recall being asked during your interview
11 whether or not you were a hostage?

12 A Yes, sir.

13 Q Okay. What was your answer to that?

14 A (No response.)

15 Q If you recall? Well, let me ask you this, were you a
16 hostage that night?

17 A I didn't feel in control at the time. Like, it was no,
18 you know -- I didn't feel in control.

19 Q Okay. At any point in the evening, were there other
20 law enforcement agencies outside of the institution, do you
21 recall that?

22 A Yes, sir.

23 Q Okay. Do you recall at any point -- strike that.
24 When you went outside and there was law enforcement present
25 out there?

1 A Yes, sir.

2 Q At any time, did someone call to try to get your
3 attention, do you recall?

4 A Yes, sir.

5 Q Did you respond to them?

6 A Yes, sir.

7 Q What did you say?

8 A I can't recall to be honest. I can't recall.

9 Q You can't recall. Okay.

10 MR. LUNSFORD: Your Honor, we have no further questions
11 of this witness. Please answer any questions Ms. Zmroczek
12 may have.

13 THE WITNESS: Yes, sir.

14 CROSS-EXAMINATION

15 BY MS. ZMROCZEK:

16 Q Officer Lopez, do you recall telling Agent Cody Wilson
17 when he asked you directly, did you feel like you were a
18 hostage, what was your response, yes or no?

19 A I don't recall what the answer was.

20 Q Okay. So do you recall on -- you spoke with several
21 law enforcement people, correct?

22 A Yes.

23 Q All right. I want to start with on June 6th, 2018, at
24 10:00 a.m. in the SLED office in Florence, do you recall
25 speaking with South Carolina Department of Corrections

1 Police Services?

2 A Yes, ma'am.

3 Q Do you recall signing your Miranda warnings?

4 A Yes, ma'am.

5 Q Okay. And so that's the date that I'm focused on right
6 now when I ask you those questions, okay. You actually did
7 a written statement, correct?

8 A Yes, ma'am.

9 Q And you stated that you were making assumptions. You
10 said, I assumed to be inmate and gang leadership that they
11 weren't going in their cells at that time. You said I
12 assumed. That's what you wrote, right? Would it help you
13 to see your statement?

14 A That's no problem.

15 MS. ZMROCZEK: For identification purposes only, Your
16 Honor, I'm going to mark this.

17 (WHEREUPON, Defendant's Exhibit No. 8 was marked for
18 identification only.)

19 BY MS. ZMROCZEK:

20 Q Okay. Officer Lopez, so the question I asked you was
21 if you remember writing that you assumed to be inmates and
22 gang leadership that they weren't going to go in their
23 cells. I'm going to hand you what's been marked for ID as
24 Defendant's 8. I know it's a long statement so I'll direct
25 you to where I'm asking the question.

1 A No problem.

2 Q Does that refresh your recollection?

3 A Yes, ma'am.

4 Q Okay. So you made an assumption, right, that they
5 weren't going to go into their cells? That's what you wrote
6 in your handwriting?

7 A Yes, ma'am.

8 Q Do you recall in that same written statement that you
9 were on the phone with -- now, I'm going to B side, you were
10 on the phone number with Rico Hickman, an inmate?

11 A Yes, ma'am.

12 Q And that inmate requested to speak to the warden?

13 A Yes, ma'am.

14 Q And that was after 10:01 p.m.?

15 A Yes, ma'am.

16 Q So you're in B cell?

17 A I was on the A side at the time.

18 Q That happened at A side?

19 A Yeah, I was talking to the warden on A side.

20 Q All right. So you then gave another statement -- this
21 one is actually earlier. This one was September 7th of
22 2018, you once again reported to the SLED Florence office
23 and you were read your Miranda warnings, correct?

24 A Yes, ma'am.

25 Q And you did not give a written statement at that time,

1 but they did take a -- they did a report of interview,
2 right?

3 A Yes, ma'am.

4 Q And that was Agent Cody Wilson from the police
5 services, formerly of the police services?

6 A Yes, ma'am.

7 Q Okay. And do you recall saying you felt -- you told
8 him you felt like he could not -- you could not leave the
9 dorm?

10 A I assume, yes.

11 Q Okay. But do you recall, also, telling Agent Wilson
12 that none of the inmates told you that you could not leave?

13 A Yes, ma'am.

14 Q Okay. Do you recall saying that you did not feel like
15 you were in any danger at that time?

16 A No.

17 Q You don't recall saying that?

18 A I don't recall saying that.

19 Q Okay. That's okay. Do you recall saying you don't
20 remember if you were giving inmates commands to come back
21 inside the dorm?

22 A I don't recall that, no.

23 Q Okay. Do you remember on October 1st of 2018 giving a
24 voluntary written statement again to Agent Wilson?

25 A Yes, ma'am.

1 Q Do you recall in that handwritten statement saying that
2 the inmates in F-1 came up to me, asked if they could be let
3 into rooms I had already secured. I did not want to start a
4 confrontation given what had previously gone on that night,
5 so I opened the door. The inmates did not make any verbal
6 threats?

7 A Yes, ma'am.

8 Q You wrote that on October 1st, 2018?

9 A Yes, ma'am.

10 Q Okay. I want to go back to some of the testimony that
11 we saw on direct. So before 10:00 p.m., we saw the video of
12 you standing outside of B side door having a conversation
13 with some inmates, right?

14 A Yes, ma'am.

15 Q And then we saw those inmates go inside the door?

16 A Yes, ma'am.

17 Q And you were on the outside of the door

18 A Yes, ma'am.

19 Q With the keys?

20 A Yes, ma'am.

21 Q Agent -- Officer -- Lieutenant Lopez, why didn't you
22 shut the door and lock it at that time?

23 A At that time, I was concerned about getting on A side.

24 Q I'm so sorry, I cannot hear you.

25 A I was concerned on getting to A side.

1 Q You were concerned on getting to A side?

2 A Yes, ma'am.

3 Q But you're standing right there. B side hasn't
4 exploded yet. This is before 10:00 p.m. Why didn't you
5 just lock the door?

6 A When I exited the B side, the two -- they were meeting
7 up towards the center. There was a lot of agitation and
8 rowdiness and I assumed -- you know, I was trying to get out
9 of harms way.

10 Q Right. I understand that you're assuming that you need
11 to get out of harms way from the B side inmates, so why not
12 lock the door to keep them in there to not chase you?

13 A You know, once they came to the door and said we're not
14 doing that, I didn't know if I had enough time to lock the
15 door and get on the A side.

16 Q How long does it take to lock a door?

17 A It depends if you're not familiar with the keys. If
18 you pick the wrong key.

19 Q How many keys were on your key chain?

20 A I had the A side, the B side and there are multiple
21 keys on the key chain.

22 Q Okay. Did you have a different key ring for A side and
23 B side?

24 A We do have a different key ring for A side and B side.

25 Q So you had one key ring for B side?

1 A Yes, ma'am.

2 Q So my question is how long would it have taken you --
3 you keep one on one hip, one on the other? How does that
4 work?

5 A Usually, probably just keep it in the same pocket.

6 Q Okay. So, again, how long would it have taken for you
7 to lock that door?

8 A If I was in a normal state, but I was not in a normal
9 state. I had -- it's -- I had the wing keys, the door keys,
10 the fire. I just didn't think I would -- I didn't want to
11 mess up.

12 Q You didn't want to mess up anything?

13 A I didn't want to mess up and be at that door after they
14 told me, you know, they want that door closed.

15 Q Okay. Let me ask you this, Officer Lopez, who's the
16 boss of you? Are the inmates the boss of you?

17 A In that situation, I didn't feel in control of the
18 situation at all.

19 Q Go ahead.

20 A I didn't feel in control of the unit at that time.

21 Q Were you scared?

22 A I was scared, yes.

23 Q Were you in fear for your life?

24 A I didn't know what was going to, you know, happen that
25 night.

1 Q So that -- not knowing what was going to happen put you
2 in fear?

3 A Yes, ma'am.

4 Q And let me ask you this, was it the inmates'
5 responsibility to staff that dorm?

6 A No, ma'am.

7 Q Okay. Did you ever say to anyone in your
8 administration, one officer, 200 inmates, not safe, not
9 going to do it?

10 A No.

11 Q How often had you worked these dorms -- excuse me, let
12 me rephrase that. How often have you worked F-1 dorm A, B
13 by yourself?

14 A I had worked -- I graduated December 15th.

15 Q Of what year?

16 A 2017.

17 Q Okay.

18 A 2018, I came onto night shift around, like, the
19 beginning -- the middle of January.

20 Q Okay.

21 A So January to, you know, February, March about.

22 Q And then April, as we saw?

23 A Right.

24 Q So January, February, March, April, you worked by
25 yourself?

1 A I worked F-1 and F-3 at times, you know, sometimes it
2 would be -- depending on the nights.

3 Q We see on the videos -- we can track your movements,
4 right?

5 A Yes, ma'am.

6 Q We can see you walking freely in between the two dorms?

7 A Yes, ma'am.

8 Q If you'll step down -- and I'm showing you what's been
9 marked, entered as State's 2. Do you recognize that layout?

10 A Yes, ma'am.

11 Q And if you'll come closer. And you are soft-spoken and
12 I am not, so she has to take down everything you're saying
13 and each and every one of these individuals needs to be able
14 to hear what you're saying?

15 A Yeah.

16 Q I know you work with inmates so I know you can get
17 loud, right. So show me where the Sally port is in this
18 picture?

19 A It's right here.

20 Q Okay. So this is the Sally port. So about where my
21 pencil is is where we see you on the cameras, right? What
22 is this way? When you're in Sally port, if you go to the
23 right or you go to the left, what's to the right and what's
24 to the left?

25 A Wing doors.

1 Q Doors?

2 A Wing doors.

3 Q Windows?

4 A Wing doors.

5 Q Wing doors, sorry, wing doors. Where do those wing
6 doors lead?

7 A Onto the main area.

8 Q Okay. Were there inmates out there?

9 A In the Sally port or?

10 Q In the --

11 A Yes.

12 Q Outside in the wing doors?

13 A Right.

14 Q Were there?

15 A (indicating).

16 Q My question is, what is keeping you -- when we see you
17 walking up and down Sally port back and forth, in between A
18 and B, why didn't you just run?

19 A There's nowhere to run to.

20 Q Nowhere to run? What about these yards?

21 A We can't -- we don't -- like, we can't access, like,
22 the front outside right here.

23 Q Let me use this, try to make it a little easier for
24 you.

25 A Okay.

1 Q Here is State's 1. Show us where F-1 is, dorm F-1.

2 A Right there.

3 Q Okay. So now, maybe that's a little more clear. Where
4 is the Sally port on this picture?

5 A This area.

6 Q This area right here, right?

7 A Yes.

8 Q So is it your testimony -- because I'm not
9 understanding, your testimony is you couldn't go this way
10 and you couldn't go this way?

11 A No, the yard has the keys for this door to enter into
12 the back.

13 Q And what about here?

14 A We get access to the side doors right here in the dorm.

15 Q Right. No, no, I'm talking when you're in the Sally
16 port?

17 A No, in the Sally port, we have no access to the
18 outside.

19 Q How do you get to the Sally port when you come to work?
20 Show me.

21 A Go right here.

22 Q So that's how you get in and out, right?

23 A Yes.

24 Q So you could have gotten out?

25 A No, that door is locked.

1 Q You have the keys?

2 A No, I don't.

3 Q So when you're -- this is your testimony, they locked
4 you in a dorm?

5 A Yes, ma'am.

6 Q And your testimony is that there was no way that whole
7 evening you could have ever gotten out?

8 A No, ma'am.

9 Q What time did you get out?

10 A It had to be around 11ish.

11 Q How did you get out?

12 A They came in.

13 Q Okay.

14 A The side.

15 Q Okay. Have a seat.

16 A No problem.

17 Q When you were on the phone -- when did you tell -- who
18 were you speaking with?

19 A Well, at one time, I was on the phone with the warden.

20 Q On the phone with the warden?

21 A Yes, ma'am.

22 Q You were talking to the warden?

23 A Yes, ma'am.

24 Q Did you tell him there is a severely injured inmate in
25 F-1 dorm?

1 A I believe I -- trying to, you know -- I don't remember.
2 Honestly, I don't recall.

3 Q Okay. When you went back into F-1 B side dorm at 10:08
4 p.m., is it your testimony that you were so afraid that you
5 couldn't walk over to Mr. McClary and help him?

6 A I didn't know what the situation was like.

7 Q Let me ask you this.

8 A Yes, ma'am.

9 Q What kind of training did you receive regarding
10 situations in prison? Did you receive specific training to
11 deal with situations in prison?

12 A We had, you know, training to deal with, you know,
13 situations in prison.

14 Q I'm sorry?

15 A Not -- I don't think we're trained to deal with this
16 situation.

17 Q So you just didn't know what to do, right?

18 A No.

19 Q Okay. I want to talk about you came onto relief
20 Officer James from F-1 unit, correct?

21 A Yes, ma'am.

22 Q When did you hear the call for lockdown?

23 A I don't recall when I heard the call from lockdown.

24 Q Okay.

25 A I don't recall when I heard the call from lockdown.

1 Q And you have a radio on you, right?

2 A Yes, ma'am.

3 Q And where does that radio go?

4 A On --

5 Q To whom -- that was a terrible question. With whom can
6 you communicate on that radio?

7 A Lee control, whoever is on the other end.

8 Q So you have the radio and -- is that the same place as
9 that phone?

10 A Yes.

11 Q So we have two ways of communicating with Lee control,
12 right?

13 A Yes, ma'am.

14 Q And you had been working in F-1 dorm previous months,
15 you know, between F-1 and F-3?

16 A Yes, ma'am.

17 Q But you recall in F-1 the overhead loud speaker didn't
18 work until after this incident, correct?

19 A I'm not sure.

20 Q You don't remember?

21 A I don't.

22 Q Okay. We've already discussed how you gave several
23 statements to the officers -- or to the investigators,
24 right?

25 A Yes, ma'am.

1 Q And some of them had inconsistencies?

2 A Yes, ma'am.

3 Q Okay. Do you recall March 22nd of 2018? Did you
4 receive a write up on March 22nd of 2018?

5 A Yes, ma'am.

6 Q Tell the jury about why you were disciplined on March
7 22nd 2018?

8 A I had opened a door.

9 Q You have to speak up.

10 A I opened the door to an inmate's cell and inmates had
11 gone into the room and beaten somebody, another inmate up.

12 Q Okay. So you were charged -- you were written up and
13 given an employee correction action for negligent in
14 carrying out job duties in a security setting?

15 A Yes, ma'am.

16 Q Any inmates using a weapon on March 22nd, 2018 in that
17 dorm that you felt like you had to open that door?

18 A I don't recall.

19 Q Okay. You didn't tell them when you were --

20 A No.

21 Q Okay.

22 MS. ZMROCZEK: Beg the Court's indulgence.

23 (Pause.)

24 BY MS. ZMROCZEK:

25 Q And you have mace is your only, I guess, tool?

1 A Yes, ma'am.

2 Q No guns, obviously. But what we saw is that when
3 Inmate Henry Dukes tried to punch, yeah, you were able to
4 subdue him with a strong arm bar, right?

5 A Yes, ma'am.

6 Q We saw it on video, right?

7 A Yes, ma'am.

8 Q How tall are you?

9 A Six feet.

10 Q How much to you weigh, sorry?

11 A Probably more than I did back then.

12 Q 190s?

13 A 200s, yeah.

14 Q You were able to set him aside before the other two
15 people came along, right?

16 A Yes.

17 Q In F-A dorm, there were no outbursts, right?

18 A A side?

19 Q Yes.

20 A No outbursts.

21 Q No Crips?

22 A (No response.)

23 Q No Crips? No inmates that weren't supposed to be
24 there?

25 A I can't say.

1 Q Okay. Let me ask you this.

2 A Yes.

3 Q The melee that was going on at F-B was not going on in
4 F-A?

5 A Yes, ma'am.

6 Q So F-A was, therefore, a safer place to go to not be
7 attacked, right?

8 A Yes, ma'am.

9 MS. ZMROCZEK: Nothing further, Your Honor.

10 MR. LUNSFORD: Very briefly, Your Honor.

11 THE COURT: Okay.

12 REDIRECT EXAMINATION

13 BY MR. LUNSFORD:

14 Q Mr. Lopez, just to be clear, you can't run to the yard
15 because you're locked in; is that correct?

16 A Yes, sir.

17 Q Okay. So you were locked in with angry armed inmates;
18 is that correct?

19 A Yes, sir.

20 MR. LUNSFORD: Thank you. No further questions.

21 MS. ZMROCZEK: I have one more.

22 RECROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q Not only were you locked in, Mr. Smith was locked in,
25 correct?

1 A Yes, ma'am.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: Okay. You can step down.

4 We're going to take our afternoon break. Don't discuss
5 the case. We'll bring you back out in about 15 minutes.

6 (WHEREUPON, the jury left the courtroom at 3:02 p.m.)

7 THE COURT: Okay. We'll take a 15-minute break. And
8 after y'all take your break, I want to see y'all in chambers
9 in a minute before start back.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: You can bring in the jury now.

12 (WHEREUPON, the jury entered the courtroom at 3:46
13 p.m.)

14 THE COURT: Okay.

15 MS. SCOTT: Thank you, Your Honor. The State calls Dr.
16 Janice Ross.

17 THE COURT: Place your left hand on the Bible, raise
18 your right.

19 JANICE ROSS, M.D.,

20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. SCOTT:

23 Q Dr. Ross, what is your occupation?

24 A I'm a forensic pathologist.

25 Q What is that?

1 A Forensic pathologist is the practice of medicine where
2 I've been through four years of college at the University of
3 South Carolina, four years of medical school and five years
4 of training in the field of pathology. Pathologists
5 identifies and diagnoses diseases, like, cancers and
6 leukemia by using a microscope on tissue and by doing
7 laboratory work. We, also, are trained to do an autopsy to
8 find the cause of death.

9 Furthermore, the forensic pathologist, which means I've
10 been trained in specifically forensics, which means I
11 identify types of injuries, patterns of injuries and doing a
12 forensic autopsy, we're very thorough with collecting fluids
13 for toxicology, drug analysis and find a cause and the
14 manner of death.

15 Q Okay. And Dr. Ross, how long have you been a forensic
16 pathologist?

17 A Forty-seven years.

18 Q Forty-seven years. And, roughly, how many autopsies
19 have you performed?

20 A Over 15,000.

21 Q 15,000. So have you ever testified in general sessions
22 court before?

23 A Yes.

24 Q And, roughly, how many times?

25 A Over 300 times in South Carolina.

1 Q In South Carolina. And have you been qualified as an
2 expert in forensic pathology all of those times?

3 A Yes.

4 MS. ZMROCZEK: Your Honor, we take no objection to
5 qualifying this witness as an expert.

6 THE COURT: Okay. The Court so finds.

7 BY MS. SCOTT:

8 Q All right. Briefly, just to go over a couple of things
9 that you mentioned, Dr. Ross. Can you explain a little bit
10 what an autopsy is?

11 A Yes, an autopsy involves, first of all, getting some
12 information about what happened to the person who died and
13 then we receive the patient in a body bag in the morgue and
14 make sure of the identification. Then we look externally at
15 the patient with the clothing on and then with the clothing
16 off so that we can identify any injuries and types of
17 injuries.

18 Q Okay. And when you perform an autopsy, do you take
19 pictures of what you see on that person?

20 A Yes.

21 Q Okay. And do you then create a diagram of the injuries
22 that you notice?

23 A Yes, I do.

24 Q You did mention cause of death and manner of death. If
25 you could explain to the jury, I guess, essentially, the

1 difference between those. And I know there are certain
2 types of manners of death, if you could tell the jury about
3 that.

4 A Sure, after looking at the external part of the body,
5 we'll do an internal examination and look at each organ to
6 identify any kind of disease or injury. The cause of death
7 is just like it says, what caused the death of the person.
8 Manner of death is how that cause came about, whether it was
9 a natural death, like a heart attack, whether it was a
10 suicide, homicide, accident and sometimes we can't decide,
11 so we have to put undetermined.

12 Q And were you asked to perform an autopsy on the victim
13 in this case, Cornelius McClary?

14 A Yes.

15 Q And what date was that?

16 A We autopsied him on April 18th, 2018.

17 Q And I'm assuming, did you create a report based on your
18 findings?

19 A Yes.

20 Q Did you take pictures of what you observed?

21 A Yes.

22 Q And did you create a diagram outlining all of the
23 injuries that you observed?

24 A Yes.

25 Q And I'm going to go into all these injuries, Dr. Ross,

1 but just on the front end, did you determine what the cause
2 of death was for Mr. McClary?

3 A Yes.

4 Q And what was that?

5 A Hypovolemic shock due to multiple sharp force injuries.

6 Q Hypovolemic shock, what would that be?

7 A In a case where there's injuries such as a person
8 bleeds inside or outside. If there's a lot of blood very
9 quickly, we use the word exsanguination, which means to
10 bleed out, say somebody cut an artery. Hypovolemic shock is
11 more of a slower bleed where the person can, for instance,
12 walk around a while until they become weak -- they lose so
13 much blood that they become weak and they become
14 unconscious.

15 Q So it takes longer to pass away?

16 A Yes, hypovolemic just means a decreased volume of
17 blood.

18 Q And what was the manner of the death that you found for
19 Mr. McClary?

20 A Homicide.

21 Q Okay. Dr. Ross, I'm going to show you what has been
22 marked for identification as State's Exhibit 20?

23 MS. ZMROCZEK: Your Honor, we have no objection to
24 that.

25 THE COURT: Okay.

1 MS. SCOTT: Your Honor, we would admit this into
2 evidence at this time.

3 THE COURT: It's in without objection.

4 (WHEREUPON, State's Exhibit No. 20 was admitted into
5 evidence.)

6 BY MS. SCOTT:

7 Q Dr. Ross, do you recognize this?

8 A Yes.

9 Q What is that?

10 A It's an enlargement of a diagram I made at the time of
11 autopsy showing where different injuries were.

12 Q Dr. Ross, I'm going to ask if you wouldn't mind just
13 stepping down. We're going to go over some of these stab
14 wounds on the body. And I'm just going to go through your
15 report if that's okay.

16 A Certainly.

17 Q So I know that you said there were multiple sharp force
18 injuries; is that correct?

19 A That's correct.

20 Q And, roughly, or to your knowledge, what was the total
21 amount of sharp force injuries?

22 A 101.

23 Q 101. Okay. So I want to start with the head and face.
24 Can you tell us a little bit about the injuries you observed
25 on Cornelius McClary's head?

1 A Yes. First of all, a sharp force includes a sharp
2 instrument, for instance, a knife or a piece of glass or
3 whatever. And he had incised wounds, which are superficial,
4 like a knife going across the skin, or you have a stab
5 wound. The definition of a stab wound is that it goes
6 deeper than it is wide.

7 So on the head, I just generalized altogether there
8 were 23 injuries. You can see the left side of the
9 forehead, the right cheek and multiple injuries, stab wounds
10 and incised wounds on the back of the head. It's, also,
11 bruised -- contusion of the right eyelid.

12 Q Dr. Ross, for specifically the back of his head, were
13 the injuries primarily on the back of the Cornelius
14 McClary's head?

15 A Yes.

16 Q Okay. I want to go to the neck. What did you observe
17 on McClary's neck?

18 A A total of nine injuries, again, incised wounds and
19 stab wounds. A couple on the right neck on the front and
20 most of them on the back of the neck. And one of those went
21 through and caused some bruising around the larynx, the
22 voice box, but did not cut an artery.

23 Q Now, let's go to the chest, what did you observe for
24 the injuries to the chest?

25 A Let's see, ten of the front of the chest and the torso,

1 meaning the heart, front part of the body. And the circles
2 that you see on the left lower chest, which is called costal
3 margin, that's where the back, the bottom of your rib cage
4 is, that was a different pattern from the other wounds.
5 Those were circular and could have been made by something
6 like an ice pick or something round.

7 Q And Dr. Ross, in your expert opinion, would that
8 indicate there was more than one type of weapon used?

9 A Yes.

10 Q All right. I want to go now to McClary's back. How
11 many wounds did you observe on his back?

12 A Thirty-six.

13 Q If you could go over some of those for us, please?

14 A Okay. Most of them were like incised wounds,
15 superficial, very short stab wounds, but one went in the
16 right lung and punctured the lung.

17 Q Okay. And would that wound itself, would that have
18 caused his death?

19 A Eventually, yes.

20 Q So that was one in his back could have caused his
21 death, correct?

22 A Yes.

23 Q Now, I want to go to McClary's arms, the right and left
24 arm, how many injuries did he sustain on his arms and hands?

25 A On the right arm and hand were 18, and on the left were

1 five.

2 Q And I believe at this point, that's all I want to show
3 with this. I have some pictures I'd like to show you, Dr.
4 Ross, as well. You can step back up there if you like.

5 (Witness resumes the witness stand.)

6 BY MR. ATTY3:

7 Q Dr. Ross, I want to show you what's been marked as
8 State's Exhibit 15 through 18. If you wouldn't be mind,
9 would you take a look at these and tell me if you recognize
10 those?

11 A Yes, these are pictures I took at the time of autopsy.

12 Q Okay. And are you able to determine that those
13 pictures come from this particular autopsy by the number on
14 these pictures?

15 A Yes, we always put the number on a short measuring
16 form, such that the number is underneath the head. So if
17 you look at the number, the upper body [indiscernible].

18 Q And these, again, fairly and accurately represent the
19 pictures that you took of that autopsy that day of Cornelius
20 McClary?

21 A Yes.

22 MS. SCOTT: Your Honor, at this time, we would admit
23 into evidence State's 15 through 18?

24 MS. ZMROCZEK: Your Honor, we have no objection.

25 THE COURT: Okay. They're entered without objection.

1 MS. SCOTT: I'm sorry, Your Honor. It's 15 through 19.

2 MS. ZMROCZEK: I had 19 written down, so I was making
3 sure.

4 We have no objection to 15 through 19.

5 THE COURT: Okay.

6 (WHEREUPON, State's Exhibit Nos. 15 through 19 were
7 admitted into evidence.)

8 MS. SCOTT: Permission to publish, Your Honor.

9 THE COURT: Yes.

10 BY MS. SCOTT:

11 Q Dr. Ross, I want to go through a couple of these
12 pictures. We were just talking about the wounds that the
13 victim sustained to his arms and his hands. This right here
14 is going to be State's Exhibit 15. Could you describe this
15 wound to us, please?

16 A Yes, you can see the thumb at the bottom of the
17 picture, so this is the back of the left hand. And there's
18 some injury to the back of that hand where an instrument
19 swiped across it.

20 Q Okay. And this is going to be State's 17, if you could
21 describe this picture, please?

22 A Again, that's on the right hand, the back of the right
23 hand. It's at pretty much the base of the thumb.

24 Q Okay. This is going to be State's 19. If you could
25 describe that, please?

1 A That's the palmar aspect or the inside of the left
2 hand.

3 Q Okay. State's Exhibit 18, if you could describe that?

4 A Again, the back of the left hand showing the injury to
5 the base of the fingers on one side.

6 Q Okay. And, lastly, State's Exhibit 16, what is that a
7 picture of?

8 A That's the forearm of the right hand, right forearm
9 with an incised wound going across the skin.

10 Q And Dr. Ross, you don't need to step down, but these
11 are, essentially, marks on your exhibit -- or the diagram
12 that you created, correct?

13 A Yes.

14 Q We went over this, but there are numerous markings on
15 here that you indicate as stab wounds, correct?

16 A Yes.

17 Q Were you able to mark all 101 injuries that the victim
18 sustained on this diagram?

19 A No, I just gave an idea of where they were, how far
20 down -- like, in the back, they went just from the mid-back
21 up and back of the neck, back of the head.

22 Q So there were so numerous that you couldn't even put
23 them on your diagram; is that correct?

24 A That's correct.

25 Q All right. So going to these pictures that we just

1 reviewed on his arms and his hands, what kind of wounds
2 would you say those are?

3 A We refer to those as defense wounds. If you see a
4 weapon coming at you, it's an automatic response to put your
5 hands up or your arms like this or that.

6 Q So kind of like this as if you were putting your arms
7 up to protect yourself?

8 A Correct.

9 Q And, again, the majority of the wounds that the victim
10 sustained were on his back and defensive wounds like this;
11 is that correct?

12 A Yes.

13 Q And, also, going to your report, Dr. Ross, I'm seeing
14 on here that there were a wound each on the palmar aspects
15 of the hands; is that correct?

16 A Correct.

17 Q Is that your palms?

18 A Yes.

19 Q And would that indicate to you an empty hand?

20 A Yes.

21 Q Okay. How many wounds would you say were fatal wounds
22 or were they all just a combination of all of them together?

23 A Potentially -- well, I didn't explain those circular
24 wounds to the left lower chest went in and lacerated and
25 incised the left lung and one went superficially into the

1 spleen.

2 Q And, again, it wasn't a quick death. It took some
3 time; is that correct?

4 A Yes, yes.

5 Q And in your expert opinion, Dr. Ross, again, the cause
6 of death was what?

7 A Hypovolemic shock.

8 Q And was there an -- I guess, another factor that came
9 into play, a contributory factor?

10 A Yes, when you cut into a lung, it kind of collapses the
11 lung or, at least, part of the lung, so he would have some
12 disability in getting good air supply in.

13 Q And, again, the manner of death was what, Dr. Ross?

14 A Homicide.

15 Q Homicide.

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

17 (Pause.)

18 MS. SCOTT: Please answer any questions the defense may
19 have.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Good afternoon.

23 A Good afternoon.

24 Q What do you call -- how do you give a manner of death
25 when someone is killed in an act of self-defense? How would

1 that be classified?

2 A Self-defense.

3 Q How would you classify the manner of death?

4 A It's still a homicide.

5 Q Still a homicide, right?

6 A Yes.

7 Q And so, in addition to me throwing my pencil -- in
8 addition to photographing and identifying all the items on
9 the body, you, also -- what else do you do -- and you take
10 pictures, what else do you do in your autopsy?

11 A We look at each organ to see if there's any natural
12 disease, like, heart disease, cancer. We, also, draw fluids
13 for the purpose of drug testing.

14 Q For toxicology, right?

15 A Yes.

16 Q And you wait until you get the toxicology back to
17 finalize your autopsy, right?

18 A Pretty much. In this case -- we always qualify it if
19 -- I will put a cause and manner of death down. If
20 toxicology comes back showing a severe problem, then we'd
21 have to amend the report.

22 Q And the toxicology in this case showed that Mr. McClary
23 had THC in his system, correct?

24 A Yes.

25 Q Talked about -- have you -- you've done numerous

1 autopsies, right?

2 A Yes.

3 Q When somebody has a weapon in their hand and they are
4 stabbing someone, is it possible to get cuts on your hand,
5 on the insides of your hand if your hand slips on a knife?

6 A Yeah, if the side of the knife -- if it slips and the
7 side of the knife goes in.

8 Q And when you were determining the manner and the cause
9 and you look at the interval, meaning how long it took, on
10 your official report, you put hours, right?

11 A Yes, because I was going by what the coroner told me,
12 basically, from the time of the incident to the time that he
13 was pronounced dead was hours.

14 Q Let me ask you this, if someone has a collapsed lung --
15 pneumothorax, is that the official?

16 A Yes.

17 Q If someone has a collapsed lung, stick with that, if
18 they get treatment at a hospital, is it possible for them to
19 survive?

20 A Yes.

21 Q And, again, the manner of death would still be
22 classified as homicide if it were done in self-defense?

23 A Correct.

24 MS. ZMROCZEK: Thank you. No further questions.

25 MS. SCOTT: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. SCOTT:

Q Dr. Ross, going to, I guess, saying hours on your report, you said that was what you were told, I guess, from the corner; is that correct?

A Yes, obviously, he had some medical intervention. He had a trach tube in and whatever. And the coroner put on his authorization the time that he was pronounced dead.

Q So from the time that you're pronounced dead doesn't mean that is the time of death. That's just the time that they pronounce death, correct?

A That's what I went by.

Q But is it -- I guess, going to the injuries that he sustained, would he have survived a long period of time with those injuries without, you know, the medical intervention within minutes of this?

A He could have survived for 20, at the most, maybe 30 minutes.

Q So not long then. So it would have been just minutes?

A Correct.

Q And, again, this was 101 stab wounds?

A Yes.

Q Primarily to the back of the head, neck and, I guess, the scalp; is that correct?

A Yes.

1 Q Okay. And multiple defensive wounds, as well?

2 A Yes.

3 MS. SCOTT: No further questions, Your Honor.

4 MS. ZMROCZEK: Nothing further, Your Honor.

5 THE COURT: Thank you, ma'am. You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: Any reason the doctor can't be excused?

8 MS. ZMROCZEK: We have no objection to her being
9 released from her subpoena.

10 THE COURT: Thank you, Doctor. Okay. Is that it for
11 today?

12 MR. GIESE: Yes, sir.

13 THE COURT: Okay. Ladies and gentlemen, you've heard
14 all the evidence you're going to hear today. I remind you,
15 please don't do any research, don't watch any news, don't
16 talk to anybody. I need you -- and don't talk among
17 yourselves. When this case is over, you can talk to anybody
18 you want to when you reach a verdict. You need to follow my
19 instructions. I'll see you back at 9:30 in the morning. If
20 you have an emergency, please call us.

21 (WHEREUPON, the jury left the courtroom at 4:10 p.m.)

22 THE COURT: Okay. One housekeeping matter, the
23 photographs that you just presented, they were in plastic
24 covers. The stickers are on the plastic covers. So if they
25 get stuck in different plastic cover, the record will be, I

1 don't know. The sticker stays on the photograph itself.
2 But many times I've had situations on the record, somebody
3 would put them in different folders. They have no idea what
4 we're talking about.

5 MS. SCOTT: Yes, sir, I'll put them back in the correct
6 folder now and put stickers on them as well.

7 THE COURT: Put them on the actual photos so they can't
8 change that.

9 MS. SCOTT: Yes, sir.

10 THE COURT: That's trying to prevent something from
11 happening.

12 MS. SCOTT: We appreciate that. We will be right on
13 that.

14 THE COURT: Okay. Anything else we need to deal with?

15 MS. SCOTT: No, Your Honor. I believe that's it for
16 the day.

17 THE COURT: See you in the morning.

18 (WHEREUPON, court was adjourned for the day to be
19 reconvened on Thursday, December 7th, 2023.)
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

April 4, 2024

Penny M. Johnson
Penny M. Johnson
Transcriber

State of South Carolina	)	
	)	In the Circuit Court
County of Lee	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	2020-GS-47-20
	)	
versus	)	
	)	
Michael Juan Smith,	)	
	)	
Defendants.	)	
_____	)	

TRANSCRIPT OF HEARING
December 7 and 8, 2023

B E F O R E:

The Honorable R. Ferrell Cothran

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E X H I B I T S

(There were no exhibits marked during these days)

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1 THE COURT: Okay, Mr. Giese it's my understanding
2 the state's going to rest. Is that correct?

3 MR. GIESE: That's correct, Your Honor.

4 THE COURT: Mr. Smith, if you would stand up and
5 raise your right hand, please sir.

6 MS. ZMROCZEK: Your Honor, do you want me to ---
7 Can you see him?

8 MR. SMITH: I can see him.

9 MS. ZMROCZEK: Okay.

10 THE COURT: Do you solemnly swear the testimony
11 you give will be the truth, the whole truth and nothing but
12 the truth so help you God?

13 MR. SMITH: Yes, sir.

14 THE COURT: You can put your hand down. The state
15 has rested their case. Now it comes to the opportunity
16 that you have a right to testify if you want to, but you
17 have a constitutional right to remain silent. So if you
18 choose not to testify I will instruct the jury that they
19 cannot consider that against you in any way. Do you
20 understand that?

21 MR. SMITH: Yes, sir.

22 THE COURT: Now --- and this is your
23 constitutional right. It is your decision your attorney can
24 advise you as to what she thinks that you should or should
25 not do but ultimately that's only advice. So it is your

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1 decision on whether you choose to testify or not. Do you
2 understand that?

3 MR. SMITH: Yes, sir.

4 THE COURT: If you choose to testify in this case,
5 you will be treated like any other witness. You will be
6 subject to cross examination by the state. They may impeach
7 you on prior criminal records. I'm not sure what your
8 record is. I'm sure you and your attorney have gone over
9 that. Do you understand that?

10 MR. SMITH: Yes, sir.

11 THE COURT: Okay. Have you had enough opportunity
12 to discuss with your attorney whether or not you want to
13 testify?

14 MR. SMITH: Yes, sir.

15 THE COURT: Do you need to talk to her anymore?

16 MR. SMITH: No, sir.

17 THE COURT: Do you have anything that you want to
18 ask me concerning your right to remain silent or your right
19 to testify?

20 MR. SMITH: No, sir.

21 THE COURT: Alright, so I will remind you it is
22 your decision. Your attorney is only going to give you
23 whatever advice she thinks is appropriate under the
24 circumstance. Do you understand?

25 MR. SMITH: Yes, sir.

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1 THE COURT: Okay. Thank you, sir. Are we ready for
2 the jury?

3 MS. ZMROCZEK: I believe we are, Your Honor.

4 MR. GIESE: State's ready, Your Honor.

5 (Jury enters courtroom 10:05 a.m.)

6 THE COURT: Ladies and gentlemen we have lost one
7 of the jurors in this case. So I've had the clerk put the
8 names of three alternates in a hat and draw one out to be a
9 juror. Juror number 48 is now juror 238. Okay? Alright,
10 Mr. Solicitor.

11 MR. GIESE: If it please the Court, Your Honor.
12 The state test.

13 THE COURT: Okay.

14 MS. ZMROCZEK: Thank you. Your Honor, may it
15 please the Court.

16 THE COURT: Yes, ma'am.

17 Ms. ZMROCZEK: Defense calls Michael Smith.

18 THE CLERK: Okay, if you'd come around, please
19 sir. Please place your left hand on the Bible and raise
20 your right. Place your left hand on the Bible and raise
21 your right. Do you solemnly swear to tell the truth, the
22 whole truth so help you God?

23 MR. SMITH: Yes, sir.

24 **Mr. Michael Juan Smith - Examination by Ms. Zmroczek:**

25 Q: Michael, will you state your full name for the jury?

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(Mr. Smith - Examination by Ms. Zmroczek)

A: Michael Juan Smith.

Q: I'm just going to turn this down a little bit. How old are you Michael?

A: I'm 31 years old.

Q: You're 31?

A: Yes, ma'am.

Q: Where are you from?

A: Columbia, South Carolina.

Q: Were you born and raised in Columbia?

A: Yes, ma'am.

Q: Where did you go to school?

A: Columbia High.

Q: Where?

A: Columbia High.

Q: Okay. How far did you go in school?

A: 10th grade.

Q: Have you completed your education?

A: No ma'am. I took it a little further, you know, I got my work keys and stuff. I just haven't finished my GED.

Q: Okay. And I want to talk to you about some of the things that you did when you were younger. Just to kind of get those out of the way. Have you made some decisions you're not proud of in the past?

A: Oh, yes ma'am.

The State of South Carolina vs. Michael Juan Smith

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1 Q: Were you convicted of a burglary violent second
2 degree?

3 A: Yes, ma'am.

4 Q: How old were you when you were convicted?

5 A: I want to say 18.

6 Q: And do you have an additional charge of possession of
7 a firearm by a convicted felon?

8 A: Yes, ma'am.

9 Q: Okay. How old were you when you got that charge?

10 A: 19 or 20. I want to say 20.

11 Q: Okay, around 20?

12 A: Around 20.

13 Q: Okay. And did you make any other bad decisions in your
14 life as you were growing up?

15 A: Yes, ma'am.

16 Q: And what was that?

17 A: Burglary, you know, I had burglary.

18 Q: After the burglary and the firearms, did you --- what
19 kind of friends did you have growing up?

20 A: Lots of friends growing up, you know, gangs
21 especially. They're everywhere. I had a lot of friends that
22 were gang members.

23 Q: Is that a decision --- How do you feel about that
24 decision now?

25 A: It's one of the worst mistakes of my life.

The State of South Carolina vs. Michael Juan Smith

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1 Q: In the last 10 years or so, since your last
2 conviction, has anything changed with your mind set
3 regarding your life?

4 A: Yes, ma'am.

5 Q: Tell the jury about that.

6 A: I'm sorry. Just that you know I've made bad mistakes
7 ...

8 MR. ZMROCZEK: Your Honor, may I approach?

9 A: ... I wish I could take back.

10 Q: Alright, Michael, I know this is difficult but we have
11 a lot to talk about. Okay?

12 A: Yes, ma'am.

13 Q: So I want to talk about --- I want to talk about
14 prison. The whole reason we're here today. Okay?

15 A: Yes ma'am.

16 Q: Alright. So when did you first --- Were you in Lee
17 County on April 15th of 2018?

18 A: Yes, ma'am.

19 Q: Okay, did --- you when did you first go to prison that
20 ended you up in Lee County?

21 A: You know, I started off in Kirkland.

22 Q: And what year was that?

23 A: It was --- it was 2015.

24 Q: 2015 and you went to Kirkland?

25 A: Yes ma'am.

The State of South Carolina vs. Michael Juan Smith

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1 Q: Is that a place where everybody goes when they get a
2 conviction?

3 A: Yes ma'am. It's like an evaluation.

4 Q: Okay.

5 A: Like an R&E. I was placed on an R&E part in Kirkland
6 and I remained there two months and then they moved me to
7 Perry.

8 Q: They moved you to where?

9 A: Perry.

10 Q: To Perry. And where is Perry?

11 A: It's upstate.

12 Q: Okay. And how long were you at Perry?

13 A: I would say about two years.

14 Q: Okay. And then after you were at Perry, where did you
15 go?

16 A: Lee County.

17 Q: Okay, so you went to Lee. Do you remember the date
18 that you went?

19 A: I know it was October.

20 Q: Of what year?

21 A: 2017.

22 Q: And when you came from Perry --- when you went from
23 Perry and you went to Lee, how did they take you there?

24 A: Bus.

25 Q: A Bus?

The State of South Carolina vs. Michael Juan Smith

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1 A: Yes ma'am.

2 Q: Was there anybody else on that bus with you?

3 A: Yes, ma'am. McClary was on the bus with me.

4 Q: Mr. McClary was with you on that bus?

5 A: Yes ma'am.

6 Q: And so you knew Mr. McClary?

7 A: Yes, ma'am.

8 Q: Okay, how did you know him?

9 A: Just, you know, we were in the same unit. You know.

10 Q: You were at the same unit in Perry?

11 A: Yes ma'am.

12 Q: Okay.

13 A: The things he used to do. A lot of people knew him.
14 The way he used to do.

15 Q: Alright. And so did you have any personal knowledge of
16 what he used to do?

17 A: Yes ma'am.

18 Q: What in particular did you have knowledge of
19 concerning Mr. McClary?

20 A: You know, he was known for keeping weapons.

21 Q: He was known for keeping weapons?

22 A: Yes, ma'am. And at the time he was in prison way
23 before me so he had everything down pat but a lot of the
24 times he knew where to put it. He knew how to sharpen it
25 and all that.

The State of South Carolina vs. Michael Juan Smith

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1 Q: Did he work at a particular area in Perry?

2 A: Ma'am?

3 Q: Did he work somewhere in Perry that gave him access to
4 these kinds of weapons?

5 A: Yes ma'am, the kitchen.

6 Q: He worked in the kitchen in Perry?

7 A: Yes ma'am.

8 Q: And were there more than just the two of you on that
9 bus?

10 A: No, ma'am there was at least 7 to 8 people.

11 Q: 7 to 8 people on that bus?

12 A: Yes ma'am.

13 Q: Did you know the other ones the other people that were
14 on there?

15 A: Yes ma'am. There were others that came from Perry with
16 us. They made a few quick stops. They grabbed other people
17 from other prisons but I didn't know them.

18 Q: Okay. And I know that you said you were in a gang.
19 Which gang are you in?

20 A: Blood.

21 Q: Okay, did you know --- Did you have any knowledge if
22 Mr. McClary was in a gang?

23 A: Yes ma'am.

24 Q: What gang was he in?

25 A: Crip.

The State of South Carolina vs. Michael Juan Smith

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1 Q: And how did you know that?

2 A: Oh, you know just the guys he hung around and stuff.
3 You know we actually had mutual friends. You know, that's
4 how I knew of him.

5 Q: Okay. What function do gangs play in prison?

6 A: You know, not entirely, a lot of people they get
7 along. It's just that sometimes things don't go everyone's
8 way, you know, but it's not as segregated as what people
9 would think, you know, because we're all constantly around
10 each other. It's really hard to ignore somebody and ignore
11 them especially disliking someone. That's kind of hard
12 especially just spending years around each another. But ...

13 Q: Okay so I want to --- You get to Lee in October,
14 right?

15 A: Yes ma'am.

16 Q: Where are you housed?

17 A: I was housed unit F2. That's placed on east yard.

18 Q: Okay. Did you move a couple of times within that
19 facility?

20 A: I got to F2 and I stayed like two months and then they
21 moved me to F1.

22 Q: Then they moved you to F1?

23 A: Yes, ma'am.

24 Q: What room were you in F1?

25 A: 1213.

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13

1 Q: Was that on the top floor or the bottom floor?

2 A: Bottom floor.

3 Q: It was on the bottom floor?

4 A: Yes, ma'am.

5 Q: I'm going to --- I'm going to ask you to step down.

6 I'm going to go get the easel first. I'm showing you what's
7 already been entered into evidence as defendant's two and
8 I'm going to ask you if you can step down so you can show
9 us where that dorm was, but make sure you keep your voice
10 up, okay?

11 A: Yes, ma'am.

12 Q: Let me ask you this, were you on A side or B side?

13 A: On the A side. No B side.

14 Q: You were on B side?

15 A: Yes ma'am. I want to say it was right here.

16 Q: Okay, so right here?

17 A: Yes ma'am.

18 Q: Okay so what was this area?

19 A: This is the entrance.

20 Q: Is there a door there?

21 A: Yes ma'am.

22 Q: Okay, and then did you have windows in your cell?

23 A: Yes ma'am.

24 Q: And where were they?

25 A: This is my cell.

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14

1 Q: You're going to have to speak up so they can hear.

2 A: Okay. Alright in 1213 you had the guard right here. So
3 we had the window right here. So you can see the yard, the
4 cafeteria and stuff.

5 Q: Okay. Alright and so 1213 was the room that you were
6 put in when you finally got to F1 dorm, correct?

7 A: Yes ma'am.

8 Q: And did you ever change any rooms after that?

9 A: No ma'am.

10 Q: So that was always your room while you were --- So
11 that was always your room while you were in F1 B pod,
12 correct?

13 A: Yes ma'am.

14 Q: Alright. Did you have a job at Lee?

15 A: No ma'am.

16 Q: How do you get jobs when you're in prison?

17 A: A lot of times you have to, you know, earn it because
18 they got a lot of programs. I want to say I needed
19 education. That's how I got my work keys and stuff. A lot
20 of times, you know, they place you in a unit and the unit
21 not being in it just restricted us from a lot of things
22 from normal things from happening so we had to earn our
23 way. Stuff like that because when I had got to Lee County
24 they started programs and stuff and I had to earn in there
25 an they basically make a mistake by placing me in there.

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15

1 Q: Okay. So is that what you were doing while you were
2 there?

3 A: Yes ma'am.

4 Q: Can you describe what a typical day was like in Lee
5 County?

6 A: In 2018?

7 Q: Absolutely, in 2018. Well let's start with 2017.

8 A: Okay.

9 Q: When you got into --- when you first got into F1 B
10 dorm at 1213 in 2017, what was a typical day for you?

11 A: Scary.

12 Q: Why do you say scary?

13 A: Because it was, it was out of control.

14 Q: When you say out of control, what do you mean?

15 A: Stabbings, you know, a lot of stabbings. I didn't even
16 go to the cafeteria because they just didn't care. A lot of
17 people wouldn't go to the cafeteria because anything could
18 happen to you. It was just a lot of stuff.

19 Q: How was it dealing with the corrections officers?

20 A: They didn't care about nothing.

21 Q: I'm sorry?

22 A: They didn't care about nothing.

23 Q: They didn't care. Is that --- Is that how you felt?

24 A: Yes ma'am.

25 Q: Why did you feel that way?

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1 A: I felt it because a lot of the times I witnessed
2 officers just let certain things just play out like that
3 wasn't part of their job.

4 Q: Okay. Did it get --- In 2017, how did you feel about
5 your safety then?

6 A: I felt like all I had was me.

7 Q: Okay. Did you feel like --- Scratch that let me ask
8 that a different way. So we've heard a lot about prison
9 counts. Tell the jury what a prison count was like at
10 Perry.

11 A: Perry did everything right.

12 Q: Okay so how did they do a count at Perry?

13 A: You know, they call for count and you know, like in CO
14 terms you've got two different types of inmates. You've got
15 one --- and you've got one you've got to walk behind.

16 Q: Okay. Was that the same as it was at Lee?

17 A: No ma'am.

18 Q: How did they do count at Lee?

19 A: Honestly, a lot of times we did count.

20 Q: You would --- When you say you when you say we, who
21 was that?

22 A: Inmates.

23 Q: The inmates would do the count?

24 A: Yes ma'am.

25 Q: Okay.

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1 A: Yes ma'am. You know, they would go to a lot of
2 people's door and tell people to stand by their doors or a
3 lot of times and I didn't witnessed it now. I've heard
4 people just counting clear.

5 Q: Okay. Was there contraband in Lee county?

6 A: Yes ma'am. There was more than enough.

7 Q: What kind of contraband?

8 A: Drugs, phones.

9 Q: Okay. And Michael just let me ask you, did you have a
10 phone?

11 A: Yes ma'am.

12 Q: You did?

13 A: Yes ma'am.

14 Q: Okay. Were drugs available to you?

15 A: Yes ma'am.

16 Q: Okay. Did you sometimes use them?

17 A: Yes ma'am.

18 Q: Alright. Where did you get it from?

19 A: Officers.

20 Q: From the officers?

21 A: Or the inmates. Or a lot of times, you know, like out
22 dorms the doors locked. Let's say I wanted drugs from A
23 side and I'm on B side, you know, the officer would be the
24 one to go grab it.

25 Q: Okay.

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1 A: They might disguise it as things like trays or food
2 trays. They just disguise it for the camera so they don't
3 get in trouble.

4 Q: Okay. I want to talk about April 12th of 2018. Okay?

5 A: Yes ma'am.

6 Q: Do you recall any incidents that happened on April
7 12th of 2018?

8 A: Yes ma'am.

9 Q: Tell the jury about that.

10 A: The 12th was like a boiling point for just Lee County.
11 A lot of people came out of place and you know it caused
12 some problems and a lot of people in my dorm just ask the
13 fella to step out and that's how a lot of the stuff came
14 out because they felt like we didn't want them in our unit.
15 There wasn't no beef, in general, get on lock down because
16 of how y'all feel about someone else in here, and you know,
17 they left. The Co was right there. There was approximately
18 like forty people out of place. There weren't supposed to
19 be people in our unit and everybody in the dorm was asking
20 if they could leave. The inmates said that the Cos weren't
21 very happy but they did leave. Then that day, you know,
22 nothing happened but they stirred it up.

23 Q: Did that change the way you felt about being in that
24 dorm?

25 A: Yes ma'am.

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1 Q: How did that change?

2 A: I realized that if something was to happen that I
3 would die. I really didn't have nobody to protect me.

4 Q: Okay, I want to go to April 15th, 2018. Alright?

5 A: Yes ma'am.

6 Q: What did you do --- What time did you get up that day?
7 If you recall.

8 A: To be honest, I really didn't sleep that day.

9 Q: Why is that?

10 A: The tension was so thick and it's hard to sleep like
11 that when you got people next door sharpening knives.
12 You've got people just making noises and stuff like that.
13 So I read, I read most of the night. I would say I got up
14 early, 9:00ish.

15 Q: Did you have a roommate at that time?

16 A: Yes ma'am.

17 Q: He was a friend of mine. He was from Columbia.

18 Q: Okay, so it was somebody you knew?

19 A: Yes ma'am.

20 Q: Okay. So what if anything happened that was different
21 on April 15th that you've had an experience?

22 A: Everything was different. It was a feeling that I wish
23 for nobody.

24 Q: At anytime during that day, did --- were y'all --- did
25 you receive a notification from the acting warden to go to

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20

1 your rooms for lockdown?

2 A: No ma'am.

3 Q: I'm sorry?

4 A: No ma'am. No, no one told us to lockdown.

5 Q: Okay. Who was working the day shift that day?

6 A: I can't remember the officer's name.

7 Q: Was it a male or female?

8 A: I think it was a female if I'm not mistaken.

9 Q: Okay. There was a female working that day. What time
10 did her shift --- What time did she leave? Well let me,
11 before you answer that, how many officers would work F1 A
12 and B side during a shift?

13 A: Okay. It's supposed to be two officers, one for our
14 side and one for B side.

15 Q: One for B and one for A?

16 A: Yes ma'am.

17 Q: Okay and on April 15th when the female officer was
18 there during the daytime, was there another officer or was
19 she by herself?

20 A: No, she was --- I'm going to say she --- No, there was
21 two officers for that shift.

22 Q: Okay.

23 A: You have an officer and you have like a captain over
24 the unit.

25 Q: Okay.

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1 A: I want to say it was Ms. Scott that was there. She
2 worked on the mental health side. A side was for the mental
3 inmates and the side I was on is just for like regular
4 inmates.

5 Q: Okay.

6 A: Inmates with medical issues and things like that.

7 Q: Do you recall her shift ending at anytime or seeing a
8 new CO?

9 A: Yes around about 7:00.

10 Q: Okay, and who was that who was that person who took
11 her place?

12 A: Officer Lopez.

13 Q: Office Lopez. When Officer Lopez came on shift did
14 y'all see any sort of notices that were out of the
15 ordinary?

16 A: No. Lopez came, you and unit that I was in was okay,
17 you know. but people were saying in the yard, you know,
18 word travels so fast, so people were saying there's a riot
19 going on.

20 Q: So you had gotten word that there was something going
21 on?

22 A: Yes ma'am.

23 Q: When did you first get personal knowledge of what was
24 going on?

25 A: I want to say at like eight o'clock.

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1 Q: How did you get that knowledge?

2 A: You know, Lopez mentioned it, you know, people have
3 cell phones.

4 Q: Okay. And so when you say people had cell phones so
5 what, what importance was the cell phone in educating you
6 in educating you on what was going?

7 A: You know, for the people who did have a cell phone,
8 you know, it wanted --- outside how safe it was because I
9 had friends in other places, you know.

10 Q: You had --- I'm sorry?

11 A: I had friends in other dorms and they warned me. They
12 were like be okay, be careful. Just be careful.

13 Q: Okay. Did you see anything? Did you see any pictures
14 around the around --- eight o'clock that evening of events
15 that were going on in the facility? I'm sorry just because
16 of the court reporter, you have to say yes or no.

17 A: Yes ma'am.

18 Q: Okay what Michael did you see on that cell phone?

19 A: I seen some friends dying.

20 Q: I'm sorry?

21 A: My friends.

22 Q: Your friends? You say you had friends die? Michael, I
23 know this difficult but it's important because I need for
24 you to describe what you saw.

25 A: Okay I got you. This is like my first time telling the

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23

1 story. I seen friends. I seen their throats were sliced.

2 Q: Their throats were sliced?

3 A: Yes ma'am.

4 Q: And you saw pictures of this?

5 A: Yeap and slicing their throats and you know, they just
6 laid them on the ground like they was trash.

7 Q: Did that make you mad?

8 A: No.

9 Q: How did it make you feel?

10 A: It's scary.

11 Q: I'm sorry?

12 A: It's scary.

13 Q: It made you feel scared. It was scary?

14 A: Yes ma'am.

15 Q: So you're seeing these pictures. Were you hearing
16 anything?

17 A: These pictures --- these pictures ain't come from
18 friends of mine. These pictures came from people. I just
19 knew I wanted to make it home I had to. You know what its
20 stuff like it's war call. I just knew, I just knew right
21 then and there that whatever happened in other dorms was
22 coming my way.

23 Q: So you get --- you get word around eight o'clock or so
24 and was it just you got word?

25 A: No ma'am I wasn't the only one. I wasn't the first one

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24

1 that got word. You know, it was a group of guys that whose
2 responsible for this, you know, they told their people they
3 would do the same thing to us. They told me they'd do it to
4 me.

5 Q: How did that make you feel?

6 A: Scared, that was scary.

7 Q: What were you afraid of?

8 A: I was afraid of losing my life. When I was afraid I
9 just knew a corrections officer couldn't save my life.

10 Q: Now in this dorm, in F1 B, did you have other friends/
11 gang members in that dorm with you that were also Bloods?

12 A: Yes ma'am.

13 Q: Did you have friends that were not Bloods?

14 A: Yes ma'am.

15 Q: Did you have friends that were in other gangs?

16 A: Yes ma'am.

17 Q: How did that work?

18 A: You know, it's a lot of people are just grown men, you
19 know, nobody, you know?

20 Q: What was what was your impression as the evening is
21 going on April 15th, 2018, what was your impression of what
22 was going on in the dorm?

23 A: You could --- You just knew, like you could feel it
24 that something is off. You could hear --- you could hear a
25 cotton ball drop. And the tension it's just time. That day

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25

1 I don't even think I ate because I was so scared. I didn't
2 even go outside.

3 Q: So let me ask you this. When this was going on, did
4 you --- What were you doing? Were you hiding in your room?
5 What were you doing?

6 A: I just, you know I was just in my dorm, you know and
7 or friends, you know, like make sure everybody is okay, you
8 know, because I get along with everybody, everybody likes
9 me. So I just want to make sure that our dorm doesn't do
10 what the other dorms been doing.

11 Q: You wanted to keep the whole dorm out of that
12 incident?

13 A: Yes ma'am.

14 Q: And were there other --- you said that there were
15 other gang members in that dorm as well?

16 A: Yes ma'am.

17 Q: What gangs were they in?

18 A: You know, Crips and Disciples.

19 Q: Crips and Disciples were also in that gang --- in that
20 dorm?

21 A: Yes ma'am.

22 Q: And did you have any conflicts at that time?

23 A: No ma'am.

24 Q: Okay, Michael, we've seen some video. At some --- at
25 some point were people --- At some point, were there people

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1 in your dorm that weren't housed in your dorm?

2 A: Yes ma'am.

3 Q: And is that something that happens often?

4 A: It happens. It don't supposed to happen due to things
5 like this, you know, because everybody can be dangerous
6 being out of place, you know --- In other words, you know,
7 it's harder for everybody because you know, it's not your
8 home. Those people that were in my unit at the time weren't
9 supposed to be there.

10 Q: Did things change as the evening went on?

11 A: Yes ma'am.

12 Q: And how so?

13 A: It was just a lot of movement.

14 Q: A lot of movement?

15 A: Yes ma'am.

16 Q: By whom? Who was moving? I'm sorry.

17 A: The other gangs.

18 Q: Who?

19 A: The other gangs.

20 Q: The other gangs?

21 A: Yes ma'am.

22 Q: At some point did you face an immediate threat in your
23 dorm?

24 A: Yes ma'am.

25 Q: And about what time was that?

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1 A: It was getting late.

2 Q: Let's use 10 o'clock as a range. Was it before 10
3 o'clock or after 10 o'clock? If you recall.

4 A: Right after ten.

5 Q: Okay.

6 A: But I'm not too sure of the time.

7 Q: And what was it that --- and what was it that changed?
8 You said there are a lot of movement people were coming in
9 or going out or what was happening?

10 A: Yeah, you know, people were moving in.

11 Q: And when those people came in what did they have with
12 them?

13 A: Knives.

14 Q: Can you describe the kind of weapons that you saw?

15 A: I seen some stuff. I seen machete knives.

16 Q: I'm sorry?

17 A: Like butcher knives homemade.

18 Q: At some point did --- Was there an altercation
19 downstairs in F1 B dorm?

20 A: Yes ma'am.

21 Q: Alright and tell me about that or tell the jury about
22 that.

23 A: Well me and my friends, we tried to remove ourselves
24 from the problem so we went to A side.

25 Q: Okay so you tried to go to A side?

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1 A: Yeah.

2 Q: What was happening over in A side?

3 A: Nothing it was peace.

4 Q: It was peaceful?

5 A: Yes ma'am. We just wanted to find peace. We just
6 wanted everybody to be safe.

7 Q: Okay, and then why did you leave A side?

8 A: Because we had friends, you know, that were still over
9 there on B side.

10 Q: Okay.

11 A: We ...

12 Q: So your dorms again, your room, was in this bottom
13 corner, right at 1213, right?

14 A: Yes ma'am.

15 Q: And you identified a door. You said I think that door
16 went to a rec area maybe.

17 A: Yes ma'am.

18 Q: Okay, and who came through that door?

19 A: Gangsters, Disciples, Crips, you know, they friends.
20 It was so chaotic, I couldn't get in my own room.

21 Q: They were so what?

22 A: It was so chaotic in there, I couldn't get in my own
23 room.

24 Q: Okay. Where they — So they were in far enough that you
25 couldn't get back to your room?

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1 A: Yes ma'am.

2 Q: So then what did you do?

3 A: That's when I went to the other side.

4 Q: Okay.

5 A: Basically --- Basically I couldn't, I couldn't get
6 nowhere. And I get to the other side, you know, and didn't
7 have issues. I thought we were next.

8 Q: You thought you were next?

9 A: Yes ma'am. It was like they had a list out.

10 Q: Did you have --- Did you know anyone that was in F5
11 dorm that somehow ended up in F1 dorm?

12 A: Yes some people.

13 Q: And what did they look like when they came to your
14 dorm?

15 A: It was --- they was cut.

16 Q: Were they bleeding?

17 A: Yeah bad.

18 Q: There were bleeding bad?

19 A: Yes ma'am.

20 Q: How did that make you feel?

21 A: At that point, I was already scared before I seen
22 them. But that really scared me.

23 Q: We see on the video that an alter --- it looks like an
24 altercation. Tell me what happened when you came down and
25 were pushing people out. Tell them what you were doing at

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1 that time.

2 A: At this time, a friend of my had his throat sliced.

3 Q: Did you want to fight these people?

4 A: No. No.

5 Q: Did you want to hurt them?

6 A: No ma'am. My intentions weren't to hurt anyone. I
7 don't even, you know, don't even carry weapons.

8 Q: So you were trying to stop everybody from fighting?

9 A: Yes ma'am.

10 Q: Okay.

11 A: I'm a man of peace. But ...

12 Q: After that happened?

13 A: I tried to stop it, you know, I heard some friends of
14 mine yelling.

15 Q: Everybody was yelling?

16 A: Yeah. As you can see, that doorway that everybody was
17 crowded at, you know, we thought our friend was in there.
18 You know, they had their plan. We didn't have --- We didn't
19 plan nothing. That's why that's why we're all over the
20 place. That's why --- you see me to continue to move
21 because we had no plan. Anybody with a plan, you know,
22 would probably be much more on it. You know, set up
23 perimeter checks. We didn't do that, you know.

24 Q: So when you were downstairs, what if anything did you
25 see, hear, or do that made you go upstairs?

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1 A: I heard a friend of mine yell.

2 Q: You --- I'm sorry?

3 A: A friend of mine.

4 Q: Okay.

5 A: He was yelling for help.

6 Q: He was yelling for help?

7 A: Yes ma'am.

8 Q: Without saying what anybody else said, did you hear
9 anything that made you afraid for your friend?

10 A: Yes ma'am.

11 Q: And what was that?

12 A: A threat to kill him. When I came, I tried to stop it
13 you know and he sliced his neck and he said I was next.

14 Q: They said you were next?

15 A: Yes ma'am.

16 Q: Why did you run up --- So downstairs you said there
17 was a mixture of Gangsters, Disciples and Crips. Who was
18 upstairs?

19 A: A mixture.

20 Q: A mixture?

21 A: Yes ma'am.

22 Q: And where were they?

23 A: You know, downstairs a block from my dorm and upstairs
24 they just stayed up there.

25 Q: Upstairs were they in the same end of where your room

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1 was?

2 A: Yes ma'am.

3 Q: Okay. And so if you were scared of them then why did
4 you go to that end?

5 A: To see if my friend was there.

6 Q: And why did you think he was there?

7 A: Because somebody said. They said ...

8 Q: Okay. Where did you think he was?

9 A: In a room.

10 Q: You thought he was locked in a room?

11 A: Yes ma'am.

12 Q: Did you kick the door?

13 A: No ma'am.

14 Q: Okay. What did you do? Did you stay there or did you
15 go to another part of the upstairs area dorm?

16 A: They tricked us into thinking he was in there, you
17 know. You know it moved us so it just left him vulnerable.
18 They tried to cut him off from the other side of the room.

19 Q: So they were in another area?

20 A: Yes ma'am.

21 Q: Is that where your friend was?

22 A: Yes ma'am.

23 Q: Who was your friend?

24 A: We call him Ray Ray.

25 Q: Ray Ray?

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1 A: Yes ma'am. He was 18 at the time.

2 Q: What could you hear with your own ears from Ray Ray?

3 A: Help. Stop. Don't kill me. So ...

4 Q: So what did you do when you heard that?

5 A: I ran. I ran.

6 Q: Okay. When you ran did you find Ray Ray?

7 A: Yeah.

8 Q: What did you see?

9 A: He had blood gushing out his neck.

10 Q: He had blood everywhere? Was he fighting with anyone?

11 A: Ray Ray he's just so little. He's a child.

12 Q: And who did you see with Ray Ray? Which person in
13 particular did you see?

14 A: McClary.

15 Q: You saw McClary?

16 A: Yes ma'am.

17 Q: What went through your mind when you saw Ray Ray
18 bleeding and you saw McClary?

19 A: I just knew, I knew that Ray Ray had --- because he's
20 a new comer. It's his first time in prison. While others
21 try to make ties, he didn't.

22 Q: So let me ask you this when you were downstairs with
23 that group, before you go upstairs, did you have any
24 weapons on you when you were downstairs?

25 A: No ma'am. Like I said, I don't carry knives, you know,

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1 I never stabbed no one.

2 Q: So you went upstairs you saw Ray, describe to me that
3 interaction between or amongst you, Ray, McClary and
4 whoever else was there. What were you doing?

5 A: I was trying to stop it. I was like let's just stop
6 it. I don't want no more bloodshed tonight. I don't want
7 nobody to get hurt. No matter what your dealings or what
8 you're apart of you don't wish bad things on people.

9 Q: So were you just trying to help him?

10 A: Yes ma'am. I was just trying to de-escalate it, you
11 know.

12 Q: Okay. Because of you helping him did that then change
13 --- Were you only concerned for him?

14 A: I wasn't only concerned for Ray Ray, I was concerned
15 for everybody.

16 Q: So were you able to get McClary off of Ray Ray?

17 A: Yeah and it still was kind of late.

18 Q: How many people did it take?

19 A: It took a lot because he carried a big knife. Don't
20 nobody just want to run up on a big knife.

21 Q: Did he, McClary, say anything to you?

22 A: Yeah he told me he was going to kill me.

23 Q: Did he just say I'm going to kill you?

24 A: He told me I was next, you know.

25 Q: That you were next?

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1 A: Yes ma'am. I don't know why. I guess because I tried
2 to keep him from stabbing Ray Ray and that's what made me a
3 target.

4 Q: So you say --- you say try to keep from stabbing him,
5 what was in McClary's hands?

6 A: A knife.

7 Q: A knife. How long was it?

8 A: Eight and a half inches.

9 Q: It was a long knife?

10 A: Yes ma'am.

11 Q: What happened to that knife?

12 A: To be honest, there was so much going on, I know he
13 had it in his hand.

14 Q: Do you know if he ...

15 A: I don't know if he dropped it or you know.

16 Q: So you don't know what happened to it?

17 A: No ma'am.

18 Q: What was your focus at that time?

19 A: Staying alive.

20 Q: Staying alive?

21 A: Yes ma'am.

22 Q: So what did --- so, in your mind, in that instant,
23 what did you do to stay alive?

24 A: I defended myself.

25 Q: How did you defend yourself?

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1 A: I had to borrow a knife. I defended myself and I just
2 wanted to neutralize the person that was threatening me.

3 Q: You just wanted to and I know that that's a word that
4 I use. But what's that word mean to you? Did you want ---
5 What did you want it to do?

6 A: I just wanted more than anything --- to the person
7 that was threatening me to whatever I could do to stop it.

8 Q: You just wanted to stop it?

9 A: Yes ma'am. I just wanted to stop it. That's it.

10 Q: How slowly was this happening?

11 A: Everybody was like in slow motion.

12 Q: Was it fast?

13 A: It was --- I can't say fast or slow but I can say it
14 was a terrible experience.

15 Q: We see a bunch of people running down the stairs after
16 McClary. Are you one of those people?

17 A: Yes ma'am.

18 Q: And some of your friends were one of those people?

19 A: Yes ma'am.

20 Q: Now, had y'all made this plan to do this?

21 A: No ma'am.

22 Q: I'm sorry?

23 A: No ma'am. This wasn't a plan. We didn't have a plot,
24 you know.

25 Q: When you saw McClary fall down, let me just ask it

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1 this way. Why did you pull your friend off of McClary?

2 A: I felt at that point, he was no longer a threat to me.

3 Q: So once he fell down you didn't feel like he was a
4 threat anymore?

5 A: Yes ma'am. He couldn't harm me now.

6 Q: Was he also bleeding?

7 A: Yes ma'am.

8 Q: Why were you angry with him?

9 A: No ma'am. No ma'am.

10 Q: You weren't mad at all?

11 A: No ma'am. I had no hatred in my heart.

12 Q: Then what was the emotions that you had?

13 A: You know, to defend myself. I knew I had the right to
14 defend myself.

15 Q: Where were the officers at this time?

16 A: Nowhere to be found.

17 Q: Nowhere to be found?

18 A: In and out but still nowhere to be found.

19 Q: Michael this incident, when you first learned about it
20 started eight o'clock, approximately, you said you learned
21 about it around eight o'clock, right?

22 A: Yes ma'am.

23 Q: So for two hours what were you doing before it came to
24 your dorm?

25 A: For two hours, I was praying.

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(Mr. Smith - Cross Examination by Mr. Giese)

Q: You were frantic? You said praying, I'm sorry?

A: I was praying ...

Q: Okay.

A: ... you know.

MS. ZMROCZEK: Beg the Court's indulgence.

Q: Michael those are all the questions I have for you.

Please answer all the questions the state has for you.

Okay?

A: Yes ma'am.

MR. GIESE: May it please the Court, Your Honor.

Michael Juan Smith - Cross Examination by Mr. Barney Giese

Q: Mr. Smith.

A: Yes sir.

Q: So before we get too far into it I just like to see if we agree on some things. Okay?

A: Okay.

Q: First, is you're a Blood?

A: Inactive.

Q: Excuse me?

A: Inactive.

Q: I apologize.

A: Inactive, sir.

Q: You're a Blood.

A: Inactive, yes sir. Yes sir.

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1 Q: In fact, you have Blood tattoos on your head, don't
2 you?

3 A: No that's not gang related.

4 Q: Those aren't gang related?

5 A: No sir.

6 Q: What are they?

7 A: Just tattoos, like free tats and stuff.

8 Q: And you're sure of that?

9 A: Positive.

10 Q: Your nickname is Flame?

11 A: Yes sir.

12 Q: You're affiliated with the Bloods in F1?

13 A: They're friends.

14 Q: The Bloods outnumbered the Gangster Disciples and the
15 Crips in F1?

16 A: No sir. No sir.

17 Q: How many Crips were there?

18 A: You know I don't know the exact number. You know, some
19 of them were my friends. A lot of them were my friends.

20 Q: And we can agree that you're armed with a knife.

21 Correct?

22 A: Yeah later on that night.

23 Q: Well, what time? Right when the stabbing took place?

24 A: I don't know the exact time. But I'm a man, I don't
25 carry weapons and stuff like that. Because I mean, I have I

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1 got a lot of friends. It's just that my life was in danger.
2 I was threatened so I felt like I should arm myself.

3 Q: In that time that you say you were threatened was when
4 you were upstairs with Mr. McClary?

5 A: I was --- before that. The threats, you know, the
6 threats were sent out to us because the rioting took place
7 in two other dorms before it came to us.

8 Q: So what time of that evening did you arm yourself? How
9 many minutes before the stabbing took place? Five minutes?
10 10 minutes? Two minutes?

11 A: I don't know but I did arm myself.

12 Q: At what time?

13 A: I don't know the exact time, sir.

14 Q: You testified earlier that someone --- you took the
15 knife --- you borrowed a knife when your friend was getting
16 stabbed. Is that about right?

17 A: Yes, sir. I just --- I just don't know the exact time.
18 That's all.

19 Q: But you didn't have it before then, right?

20 A: No, no sir.

21 Q: No? No knife before he's getting stabbed upstairs,
22 right?

23 A: No I --- It was just that, you know, when my friend
24 was hit, when he was stabbed, you know, I had to borrow a
25 knife. That's the truth.

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1 Q: When your friend got stabbed you borrowed the knife?

2 A: Yes sir.

3 MR. GIESE: Could you go to 9:37 please? While she's
4 gearing that up ...

5 Q: Your friend was stabbed around 9:58. Is that right?

6 A: Honestly no I don't know the exact time and stuff. But
7 ...

8 Q: Let me ask you this, was it right before you stabbed
9 Mr McClary?

10 A: It would be there.

11 MR. GIESE: Right --- Right then, right then,
12 just before then.

13 Q: Your friend was stabbed then you start stabbing Mr.
14 McClary. Is that right?

15 A: I --- When McClary stabbed me. He stabbed my friend,
16 you know, I defended --- I tried to defend more of us, you
17 know. I was threatened.

18 Q: Right but that's that's when you said you testified
19 earlier that's when you borrowed a knife to protect
20 yourself, right?

21 A: It's probably not at that exact moment. You know it
22 was so long ago sir.

23 Q: It was right close to it?

24 A: I don't know exact --- it happened so long ago sir. I
25 just know at that moment I was scared for my life.

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1 Q: Well you seem to have been sure of yourself when you
2 testified earlier and said you got it right when Mr.
3 McClary stabbed your friend. You remember that?

4 A: Yes sir. That wasn't a lie. I just know I was scared.
5 You can watch the video.

6 Q: Well we're going to do that in a minute. Now let me
7 ask you this once you stabbed Mr. McClary, do you drop the
8 weapon?

9 A: Do I drop my knife?

10 Q: After Mr. McClary is on the ground bleeding out, do
11 you get rid of your knife?

12 A: No I kept it on me.

13 Q: And when you say it's a knife it's a weapon correct?

14 A: I didn't use it as a weapon. I used it for protection.

15 Q: But, used correctly, it could kill someone, couldn't
16 it?

17 A: Yes I knew, you know, I knew what a homemade sharp
18 object could do to someone.

19 Q: So you didn't make it, you borrowed it?

20 A: Yes sir.

21 Q: And when --- when this is getting ready to take place,
22 correct me if I'm wrong, you've got the Gangster Disciples
23 down on one end grouping up. Correct?

24 A: Yeah they were everywhere.

25 Q: And you have the Bloods on the other end and you with

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1 the Bloods correct?

2 A: There was a lot of mixture because, you know, when
3 things like this occur you got a lot of friends, you know,
4 from all sides, a lot of people from Columbia.

5 Q: And at some point, two leaders of the Bloods. Mr.
6 Boone and I'm not sure who the other one was, Rico
7 Hitman(sic) maybe, and two Gangster Disciples leaders,
8 Zilla(sic) and Mikey, all come to the middle right, Right
9 there near the rock. Remember that?

10 A: There was so much going on. There were so much that
11 happened and it happened so fast. You know it was just ---
12 basically just dwelling on it. There was so much friends in
13 pain because there's a lot of bloodshed.

14 Q: But at some point, those four individuals, one
15 representing the Gangster Disciples and one representing
16 the Bloods ...

17 MS. ZMROCZEK: Your Honor, I think he's asking ...

18 Q: ... made peace.

19 MS. ZMROCZEK: I think he's asked and answered. He
20 said there was so much going on.

21 Q: They make peace.

22 THE COURT: I'll allow it. Answer the question.

23 MR. GIESE: Thank you.

24 Q: Did they make peace?

25 A: I don't --- Peace?

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1 Q: They weren't going to attack each other.

2 A: Oh people got attacked, you know.

3 Q: You didn't answer my question. Did they make peace and
4 did you know about it?

5 A: No sir.

6 Q: So at that point you think the Gangster Disciples
7 might attack you?

8 A: Yes sir. Yes sir.

9 Q: At some point, does one of the Blood members, ranking
10 members, in F1, make what's called a war cry?

11 A: No, it wasn't, it wasn't a war cry. It was more like,
12 you know, help and the only one, the only one, you know
13 that made that noise was Ray Ray when he got sliced in the
14 neck.

15 Q: So there was no one that got with the Bloods or making
16 a war cry, no plan, nothing didn't make a war cry. That
17 never happened?

18 A: No. Because like I said earlier, we went to A side
19 because we found peace.

20 Q: I'm talking about what takes place when you're back on
21 B side.

22 A: Oh no sir. No sir. Nobody made a war cry, you know,
23 but people wanted us dead.

24 Q: Now, at some point, just prior to your friend getting
25 stabbed allegedly by Mr. McClary ...

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1 A: Yes sir.

2 Q: ... You and other bloods are together on a rock or
3 near the rock. Correct?

4 A: You know, I know I didn't sit still. You know, I was
5 so scared.

6 Q: So you don't remember that? Would watching the tape
7 help you?

8 A: Yes sir.

9 Q: And I'm talking about before anything happens in F1,
10 anyone was hurt, you don't get together with the other
11 blood members together near the rock near the blood end of
12 it?

13 A: You know the image. It's just so long ago.

14 Q: You don't remember?

15 A: But a lot, a lot of me and my friends you know, you
16 know when things like that occur, you know, you want to be
17 around people that, you know, you feel safe and comfortable
18 around.

19 Q: And at some point the decision was made by you and
20 your gang members to attack the Crips. Isn't that right?

21 A: No, sir.

22 Q: Well, at some point did half of you, maybe 20 run up
23 toward Mr. McClary's room on one end and half of you ran to
24 the other end where eleven Crips were barricaded in their
25 room. Did that not happen?

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1 A: Okay the reason ...

2 Q: Did that not happen? Did it happen or not?

3 A: No sir.

4 Q: It did not happen?

5 A: The reason, you know, a lot of boys ran upstairs like
6 that is because we had friends that we were told was in
7 that room. And it wasn't because it was trapped off on the
8 other side of the dorm.

9 Q: But half of you, and you're one of them, ran to one
10 end on the second floor and tried to break in the door.
11 Correct?

12 A: I didn't try to break in the door but we wanted that
13 door open because we thought our friend was in there. We
14 know what those guys would do to us.

15 Q: What they would do to you? You're behind closed doors.
16 You're armed. Correct? Are you armed at that time?

17 A: No sir.

18 Q: Not armed?

19 A: No sir.

20 Q: At some point, it doesn't take long, but at the same
21 time you run up the stairs to go over to the Crips rooms
22 over there, another group of twenty Bloods go the other way
23 and run up the stairs to Mr. McClary's room. Isn't that
24 correct? And that was the plan.

25 A: No sir. We never had a plan. Never sat down, never you

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1 know, said you do this, you do this. We never did any of
2 that.

3 Q: Did half of you run to one end and the other half ...

4 MS. ZMROCZEK: Your Honor I think ...

5 Q: ... run to Mr. McClary's.

6 MR. GIESE: I'm asking him. He hasn't answered
7 it.

8 THE COURT: He hasn't answered it.

9 A: No, sir.

10 Q: So, on the tape, it's just the people running towards
11 where the eleven are trapped.

12 A: As you can see like on the tape, you see we looking
13 for friends. That's all. We just wanted to make sure our
14 people are straight.

15 Q: Right. So I want to draw your attention to the tape.
16 This is at 9:56. Do you want to come on down?

17 A: I can see it from here.

18 Q: Okay, great. And these are Bloods where you are,
19 correct?

20 A: That's a lot of mixture. Some people in there, you
21 know, they're not part of nothing.

22 Q: But you also had a bunch of Bloods down here.

23 MR. GIESE: Could you freeze that? Focus in on it
24 if you can.

25 Q: There are a group of Bloods down here right? So you

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1 got of Bloods.

2 MR. GIESE: Play it. For the record, this is
3 9:56 pm.

4 Q: See, those were all Bloods. You're all getting
5 together down there. Correct? Down here in the corner. And
6 this would be the end of the unit where Mr. McClary lived
7 right? You lived above that. You knew Mr. McClary? You knew
8 where he lived, correct?

9 A: No sir.

10 MR. GIESE: Okay, keep going.

11 Q: So what end are they going to?

12 MR. GIESE: Stop.

13 Q: Which way are they going to?

14 A: They're looking for Ray Ray, that's who we were
15 looking for.

16 Q: So they're going toward Mr. McClary's room, correct?

17 A: I didn't know you know like, like I was saying Lee
18 County, you can go to any room you want to. I didn't know
19 what room McClary stayed in. You know, I didn't even know
20 that McClary was on the end to be honest with you but they
21 were going upstairs.

22 Q: In fact, while they're getting to it, that's the exact
23 same stairs you chased Mr. McClary down aren't they?

24 A: Yes sir.

25 Q: While he was bleeding?

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1 A: Yes sir.

2 Q: And unarmed?

3 A: At the time, I didn't know that he was unarmed. I just
4 know he hit somebody and I just wanted to make sure he
5 didn't do it to me.

6 Q: So where are these guys going? This is at 9:58.58.
7 Where are you going? Are you going to the other end?

8 A: I guess.

9 MR. GIESE: Go ahead play it. So stop.

10 Q: That's one group going to one Crip hang out or cell.
11 This is another group going to another. Correct? And
12 they're all Bloods going there. Correct?

13 A: No it was a mixture.

14 Q: They were your gang members, correct?

15 A: Some are, some aren't.

16 MR. GIESE: Keep going. Go.

17 Q: And these guys are also going to Mr. McClary's side,
18 isn't he?

19 A: The reason --- the reason for the fast moving is
20 because they thought they guys said a friend of ours was in
21 the room trapped off.

22 Q: That end you're saying --- You didn't say anything
23 about Mr. McClary's end where these guys were going.

24 A: No it was like --- it was like an element of surprise.
25 So it just moved us from one unit and they knew we were

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1 going to try to find our friend. That's all that was. And
2 none of those guys, you know, we didn't want to kill nobody
3 or hurt nobody. We just wanted to secure our friend. That's
4 it.

5 Q: So you weren't mad that it happened to your other
6 Blood friends in the other dorms?

7 A: No that scared me. That was terrifying.

8 Q: When everybody was terrified, all the Bloods are
9 terrified.

10 A: I didn't --- No retaliation. None of that was on my
11 mind.

12 Q: Do you want to count how many run up on both sides?
13 Would you trust me if I said there were about 20 that ran
14 toward Mr. McClary's room and about the same number that
15 ran with you to try and kick the door in on the other end
16 of the Crips? Is that about fair?

17 A: A lot of those guys ...

18 Q: Is that fair? Are those fair numbers?

19 A: Sir, a lot of those guys are just a mixture of people
20 because in the dorm I was in a lot of those guys know each
21 other.

22 Q: You still haven't answered my question. Is that a fair
23 representation of the numbers, twenty and about twenty?

24 A: I would guess so. I would guess so.

25 Q: Thank you.

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1 MR. GIESE: Could you go to that, please? You can
2 slow it down.

3 Q: And at some point you're on the total other end of the
4 dorm, correct? And you run all the way over to Mr.
5 McClary's side. Correct?

6 A: We ...

7 Q: Is that correct?

8 A: Yes sir. Yes sir.

9 Q: Thank you. You ran over there because you said Ray Ray
10 was getting stabbed. Correct?

11 A: Yes sir.

12 Q: Or was Ray Ray --- So Ray Ray was already stabbed when
13 you ran over there?

14 A: No when I got over there ...

15 Q: Was when he got stabbed?

16 A: Yeah, he was struggling.

17 Q: You saw it?

18 A: He was struggling.

19 Q: You saw it?

20 A: I was on the way.

21 Q: You were on the way. That's not there.

22 A: Yes sir. I seen him struggling.

23 Q: Would it surprise you if I told you that Ray Ray was
24 already down the stairs by the time you got over there? And
25 in fact Ray Ray was already almost out of this side of the

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1 dorm by the time you got over there?

2 A: That seems right. He threatened me as well.

3 Q: But what's that?

4 MR. GIESE: Stop. Could you go back? Stop.

5 Q: Who is that? Who is that? What's he got in his hand?

6 A: A hatchet? Do you know who that is?

7 A: No sir.

8 Q: He's a Blood. He's a Blood you don't know who it is?

9 A: Honestly I don't.

10 MR. GIESE: Keep rolling.

11 Q: So here he comes down the stairs.

12 MR. GIESE: Okay, go ahead.

13 Q: He's already down. That's him.

14 A: Yes sir.

15 Q: And you still don't see you and Mr. McClary, do we?

16 A: Not over there.

17 MR. GIESE: Keep playing. Stop.

18 Q: He's out the --- He's out on that side of the dorm by
19 the time you and Mr. McClary come down. Correct?

20 A: Yes sir. I was trying to, you know, just save him.

21 Q: To save him?

22 A: Yeah.

23 Q: You're protecting Ray Ray from Mr. McClary?

24 A: He's threatened me.

25 MR. GIESE: Stop.

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1 Q: Alright so 10:01:09 is when you see him appear
2 correct? Where are you?

3 MR. GIESE: Stop.

4 Q: Do you recognize yourself in that picture?

5 A: I can't see.

6 Q: Come on down.

7 A: I can't see myself but I know I'm right there.

8 Q: Okay, you're right there. That's you dressed in the
9 ...

10 A: Tank top.

11 Q: Yeah. Who are these other people?

12 A: You know, they were also threatened, you know, just
13 was trying to.

14 Q: I asked you their names.

15 A: You know they're friends of mine, you know.

16 Q: Okay, yeah what are their names?

17 A: I don't know.

18 Q: You don't know their names?

19 A: It was so long ago. I can't remember anything like
20 that.

21 Q: You don't know their names?

22 A: It was so long ago sir.

23 MR. GIESE: Keep playing. Stop.

24 Q: So Mr. McClary is going down the stairs and you're
25 following him down the stairs right?

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1 A: Yes sir.

2 Q: And you're following him down the stairs because
3 you're doing it in self defense right or defense of someone
4 else? That's why you're following him down the stairs?

5 A: The reason for that is I had to neutralize him the
6 best way I can, you know, and I do know when the evidence
7 and circumstances fits, I got it right, so I feel
8 comfortable in my heart he's no longer a threat to me.
9 That's the way I did it. I own that. Not only that --- not
10 only I did that. When I realized he was on the ground, I
11 stopped.

12 Q: We'll get to that in a minute. Now so he's running
13 away coming down the stairs having been struck what 90
14 times. Is that fair?

15 A: Oh I ...

16 Q: Is that fair to say he got struck 90 times by the time
17 he got down the stairs? You could count the number of
18 strikes on the floor and I believe it would be less than
19 11.

20 A: I don't know the exact amount and, you know, in the
21 midst of it, you know, your mind and stuff you don't be on
22 that. I was scared for my life and I just knew I wanted to
23 make it home.

24 Q: You were scared for your life while a guy that's been
25 stabbed 90 times is going down the stairs unarmed and

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1 you're scared for your life?

2 A: I was scared. I just know I didn't want to die and he
3 threatened to take my life.

4 Q: Again you were scared of a man stabbed 90 times
5 approximately running away from you down the stairs
6 bleeding profusely and you're scared of him?

7 A: I was, you know, it's terrifying, you know, when you
8 go through things like that, you just want to make it out
9 alive. My life. I could have died, you know?

10 MR. GIESE: So play the --- Keep playing the tape.
11 Stop.

12 Q: So someone throws a trash can at the man that has been
13 stabbed 90 times. Who was that?

14 A: Oh I don't know. I don't know.

15 Q: You don't recognize anybody in this other than you and
16 Mr. McClary?

17 A: To be honest, there was so much going on around me
18 that I really was concerned about me making it out alive.

19 Q: Okay, we'll get to that.

20 MR. GIESE: Keep going.

21 Q: There's the trash can thrown.

22 MR. GIESE: Stop.

23 Q: Is that you getting ready to stab Mr. McClary right
24 here?

25 A: I was defending myself. I was making sure he wasn't

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1 ...

2 Q: Doesn't Mr. McClary have his back to you?

3 A: I just wanted to make sure he couldn't harm me.

4 Q: Well, if you wanted to make sure he couldn't harm you,
5 you should have stayed upstairs, right?

6 A: I don't know if I was safe upstairs alone. That's
7 where Ray Ray got stabbed in the neck.

8 Q: Right but you're not alone. You got 20 of your
9 friends, correct?

10 A: Well all of them are not my friends.

11 Q: Well they're all chasing Mr. McClary.

12 A: A lot of those guys I don't know why --- my state of
13 mind, you know, I was afraid.

14 Q: Okay, so your state of mind right now at 10:01:17pm on
15 April 15th 2018, you are telling this jury that at this
16 moment when Mr. McClary has his back to you and you are
17 armed, you are in fear of your life?

18 A: Yes sir. Yes sir. Yes sir. It's scary. That whole day
19 has already been tragic. We all want to be home. I just
20 want to make it out alive and that was my mind set. My mind
21 set was to defend myself. Like I said, I have no hatred in
22 my heart.

23 Q: You didn't --- You didn't like celebrate afterwards
24 did you?

25 A: Celebrate?

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1 Q: You didn't like make a motion to the GDS later on?
2 Like this? Like you scored a touchdown in the football
3 game?

4 A: No I don't ...

5 Q: We'll get to that in a minute.

6 MR. GIESE: Keep going. Please. Stop.

7 Q: You just struck him. And what's the --- what's Mr.
8 McClary doing when he goes like this? What was he trying to
9 do?

10 A: That I don't know. I just know what Mr. McClary did
11 was slice somebody's throat and he threatened me.

12 MR. GIESE: Keep playing.

13 Q: And that's you again, right?

14 MR. GIESE: Stop.

15 Q: Who is that, that just struck him right next to you?
16 Who else is striking him? You don't know?

17 A: No sir.

18 Q: You have no idea?

19 A: No sir.

20 Q: You ever heard of Stephen Green "Tank"?

21 A: No sir.

22 Q: Mr. Small's? No?

23 A: There's a lot of people, you know, we go by like where
24 we're from. You know, a lot of people from Columbia. You
25 know they say the town or from Charleston or they say Chuck

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1 so a lot of those guys I really don't know their names and
2 stuff.

3 MR. GIESE: Keep playing.

4 Q: Was that you again? Stabbing him?

5 MR. GIESE: Back it up.

6 Q: Okay so that's you right there. Correct?

7 A: Yes sir.

8 Q: Go ahead. Is he coming towards you? Is he going away
9 from me?

10 A: It looks like he's going towards my room.

11 Q: Oh so you're protecting your room now?

12 A: No, no, no. No it's my whole state of mind like I said
13 it was self defense, you know. You watch your friend get
14 his throat slashed and somebody threatened you. That's all
15 that was. That's all it was.

16 Q: You testified earlier that you were scared of him. At
17 that moment, you're still scared of him?

18 A: I was fearful for my life, my safety.

19 Q: You're in fear for your life and Mr. McClary had been
20 stabbed, by that time, 98 times? At some point Mr. McClary
21 falls down I guess where the Gangster Disciples were right?

22 A: You know, I wouldn't say just the Gangster Disciples,
23 you know, but they were over there.

24 Q: Well, this group right here testified earlier those
25 were mostly Gangster Disciples, right?

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1 A: Yeah a lot of them. It's a mixture.

2 Q: And this is --- this is Mr. McClary here, right?

3 A: Yes sir.

4 Q: Okay, and do you know who this is that kicks him back
5 down the stairs?

6 A: No sir.

7 Q: He goes back down the stairs.

8 MR. GIESE: Go ahead.

9 Q: He's kicked back down. That's you right here. Right?
10 Right?

11 A: Yes sir.

12 Q: And you don't know who that is? You have no idea?

13 A: No sir.

14 Q: No, of course not.

15 MR. GIESE: Keep going.

16 Q: And that's where he falls. Correct?

17 MR. GIESE: Keep going.

18 Q: Your testimony is, you're trying to keep them away,
19 but you're keeping them away because the Gangster Disciples
20 are down there and you don't want anything to break out
21 with them, correct?

22 A: No sir.

23 Q: Oh, no.

24 A: Like ...

25 Q: But this is where he goes down. Right? You still

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1 scared of him now? And that's where he dies, isn't it?

2 That's where he dies. Right?

3 A: I felt safe at that second.

4 Q: And we've got photos of you actually stabbing him. By
5 the way, what did you do with that jacket you were wearing?

6 A: I don't know.

7 Q: Is that blood on it?

8 A: Yeah.

9 Q: State's exhibit number six and State's exhibit number
10 seven, can you take a look at those? Is that you stabbing
11 him?

12 A: That's me defending my life. I felt threatened. He
13 threatened me.

14 Q: After Mr. McClary goes down, you go back upstairs
15 right? You go back up to exactly where you were before you
16 ran to the other side of the building. Correct?

17 A: It's hard to recall. It was so long ago.

18 MR. GIESE: That's not the right shot. I'm talking
19 about --- backup.

20 Q: So you deny going back up the stairs?

21 A: No I just don't remember. It was so long ago.

22 Q: Where did you go after Mr. McClary falls on the spot
23 he's going to die in, where do you go?

24 A: I don't --- I don't remember. It was so long ago, sir.

25 Q: You remember everything else? You don't remember where

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1 you went?

2 A: Honestly, I don't remember. I knew though after he
3 fell, you know, I felt safe. I felt a little at ease.

4 Q: Okay, so these are the Gangster Disciples getting away
5 from the body. Correct? And y'all are still trying to kick
6 that door in down, aren't you? And that's you right in the
7 middle. Isn't it?

8 A: I didn't do no motions of kicking.

9 Q: You went up with them. Only one person can kick a door
10 at a time, can't they? So that's you again. And then when
11 you can't get in because you're trying to get in because
12 one of your guys was up there, right? That's what you
13 testified earlier to.

14 A: Yes sir. That's ...

15 Q: Okay.

16 MR. GIESE: Keep going. Keep going.

17 MS. ZMROCZEK: Your Honor, I would ask that he be
18 allowed to answer the question.

19 THE COURT: Okay.

20 MR. GIESE: I apologize.

21 Q: This urgency --- Stop --- This urgency that you had to
22 go and kick that door in because one of your friends was up
23 there, all of a sudden, it's not urgent because y'all all
24 leave because you can't get in, right?

25 A: No it's and another thing you know ...

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1 Q: Well, did you --- did you leave your friend in there,
2 or not?

3 A: No, like another thing like I said friends, you know,
4 there was people in there, you know, Columbia as well and I
5 wanted them to be alright. So, you know, I told people I
6 told people like to fall back, you know, like it was over.
7 I didn't want no more blood shed.

8 Q: Alright. I've asked you this before and I've tried to
9 get it queued up but I couldn't quite get it queued up. You
10 testified earlier that you borrowed a knife when you're up
11 there because your friend Ray Ray had gotten stabbed.
12 Correct?

13 A: Yes.

14 Q: That was about 10 o'clock that night?

15 A: You know ...

16 Q: But that's when you got armed right?

17 A: I don't know the exact time but you know see I don't
18 carry a knife. Like I said, that's something I just don't
19 do. I get along with everybody. You know, I'm a good
20 person. I've got a good heart and I've got a lot of
21 friends. You know ...

22 MR. GIESE: Okay, stop.

23 MS. ZMROCZEK: Your Honor, again I would ask that
24 he be allowed to finish his sentences.

25 MR. GIESE: I apologize I wasn't ...

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1 THE COURT: He wasn't stopping the witness. He was
2 stopping the video.

3 MR. GIESE: I apologize. I was stopping the
4 video.

5 Q: Go ahead.

6 A: Yeah but you know, I have a lot of friends and stuff
7 like that. You know, known of this would have happened, you
8 know, if McClary didn't threaten me. He threatened me and I
9 just wanted to defend myself.

10 Q: Alright. I want to draw your attention to 21:37. Okay,
11 and in the terms I call it that would be about 9:37. Okay?
12 That's 23 minutes before Mr. McClary starts getting
13 stabbed. Okay? Is that you armed already? Right there?
14 Right there. Look, right there, in your left hand is that
15 not a shank?

16 A: No sir.

17 Q: Do you want to come down and look?

18 A: I know it's not.

19 Q: So your testimony is that's not a shank? Correct?

20 A: Correct.

21 Q: That's your testimony. You testified earlier too after
22 you, for lack of a better term, chased Mr. McClary down the
23 stairs, pushing people out of the way to get to him,
24 stabbing him in the back, at least once in the back, and
25 Mr. McClary --- you stabbed him a couple more times and

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1 then Mr. McClary then goes off and dies. At this point,
2 you're saying that you weren't proud of what you just did?

3 A: No I wouldn't have said that. If anything --- if
4 anything I'm happy to still be alive, you know.

5 Q: So were you proud or not?

6 A: No sir. No sir.

7 Q: Okay.

8 MR. GIESE: Stop, please.

9 Q: Is that you signaling the people down here like you
10 scored a touchdown in a football game?

11 A: No.

12 Q: That's not you?

13 A: No sir no. From that hand motion, you know, like in
14 prison you know we call this the peace, stop everything.

15 Q: That's peace?

16 A: Yes sir. There wasn't a time I celebrated, you know
17 what I'm saying. Hurting anyone that's just something you
18 can't celebrate. It's just something I wouldn't never be
19 proud of. I got kids at home. I've got to lead by example.
20 I got my life you know, I felt in my heart I could have
21 died.

22 Q: Let me ask you, could you have gone in anyone of the
23 cells in F1 that night and gotten in the cell with some of
24 your friends, shut the cell door and jammed it shut. Could
25 you have done that?

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1 A: Like I wouldn't say --- I don't like --- I'm saying I
2 came from Perry. I wasn't really used to their doors in Lee
3 County but ...

4 Q: But certainly other people were that you knew?

5 A: Yeah, you know, some people were able to jam the doors
6 and stuff.

7 Q: In fact, that's what the Crips did in that one room
8 you're trying to break into. Correct?

9 A: I don't know how they did it.

10 Q: So you say you have no idea how you could jam the
11 door? That's your testimony?

12 A: Yeah. You know, I just wish that. I wish that door had
13 became locked that's about as safe as I could have been. You
14 know, the doors they don't click shut, you know.

15 Q: Well y'all couldn't get in the one the Crips were in,
16 right? Correct?

17 A: I wasn't trying to get in there.

18 Q: Your group was.

19 A: Yeah I mean, you know, I mean, you know, we had
20 friends in there. I had friends in there in that same room.

21 MR. GIESE: Your Honor, can we approach for just a
22 second? I have a matter I want to ...

23 THE COURT: Okay ladies and gentleman, we need to
24 take up a matter of law. I need you to step to your jury
25 room.

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1 (Jury excused from the courtroom 11:38)

2 MS. ZMROCZEK: Do you mean the weapons charge that
3 says that is the wrong inmate? Is that the one you're
4 talking about?

5 MR. GIESE: I don't think it's wrong. It looks
6 like they got the conviction to me.

7 MS. ZMROCZEK: Right. Let me see the report.

8 MR. GIESE: Possession of a weapon. Convicted
9 2017.

10 MS. ZMROCZEK: Let's see --- Let me see the
11 report.

12 THE COURT: Any objects in him going to the
13 restroom?

14 MS. ZMROCZEK: I'm sorry?

15 THE COURT: Any objections in him going to the
16 restroom?

17 MR. GIESE: No, Your Honor.

18 MS. ZMROCZEK: No.

19 MR. GIESE: I'm looking at a conviction.

20 MS. ZMROCZEK: It's not a conviction first of all
21 because it's not a court of law, it's an administrative
22 hearing so it's not a conviction.

23 MR. GIESE: Okay, well he was convicted.

24 MS. ZMROCZEK: He wasn't convicted.

25 MS. SCOTT: Judge it says he was convicted on

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1 January 20th 2017 from the STG detail report that we did
2 hand over to Ms. Zmroczek and it's going to be on page two
3 of that report. Possession of a weapon. It was a major
4 disciplinary hearing before the riot so we would plan to
5 argue that this relevant for this testimony. He's claimed
6 that he is doesn't have weapons, he doesn't have knives,
7 doesn't have any contraband like he is a peaceful person.
8 We think this would be relevant to the testimony.

9 MS. ZMROCZEK: Your Honor, I didn't find any
10 actual report. I just beg the Court's indulgence while I
11 locate it, please. Sorry I have forty-nine thousand pieces
12 of paper. I have it separated out so I just need to find
13 it, Your Honor. It's page 82 of 194 of the disciplinary
14 report hearing. Wait that's 2020, hang on. Yeah, I don't
15 have it. Thank you for the opportunity. But I just think
16 that what you claim as a conviction is not a conviction.
17 But it's like I said a ...

18 MR. GIESE: I'm going to find it.

19 MS. SCOTT: It's going to be page 27.

20 MS. ZMROCZEK: Page 27?

21 MR. GIESE: He had a cell phone in one boot and a
22 shank in the other.

23 MS. ZMROCZEK: The incident report from Perry,
24 that yeah it says what it says so that's, you know, that's
25 fine. We don't take issue with that.

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1 THE COURT: Okay.

2 MS. ZMROCZEK: I don't think they can go into the
3 details but I think, yeah.

4 THE COURT: That's fine. You can ask that in
5 cross.

6 MS. ZMROCZEK: And I don't think he can say
7 convicted because it's not a conviction. I think he can ---
8 he received a disciplinary sanction. But it's not a
9 conviction and conviction is criminal in nature. This is
10 ...

11 MR. GIESE: Excuse me. Administrative conviction.
12 I'll do whatever y'all ask. Whatever y'all instruct me I'll
13 do.

14 THE COURT: That's fine. I guess you can say he
15 received a disciplinary charge brought up for carrying a
16 weapon.

17 MS. ZMROCZEK: Okay I think that that's
18 appropriate.

19 THE COURT: Possession.

20 MR. GIESE: Possession.

21 THE COURT: Anything else before I bring the jury
22 back in?

23 MR. GIESE: No, Your Honor.

24 THE COURT: Just for a time table, do you have any
25 idea how much longer this witness is going to be on the

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1 stand?

2 MR. GIESE: I just have three or four more
3 questions. I'll be quick.

4 THE COURT: Okay.

5 MS. ZMROCZEK: And I'll have a few redirect,
6 that's it.

7 THE COURT: Okay. The jury can come back in.
8 (Jury enters courtroom 11:52)

9 THE COURT: Mr. Giese you may proceed.

10 MR. GIESE: Thank you, Your Honor. I just have
11 a couple of more questions.

12 **Michael Juan Smith - Cross Examination by Mr. Barney Giese**

13 Q: You testified earlier that you borrowed a weapon from
14 someone. Correct?

15 A: Yes sir.

16 Q: And I believe you also testified just because you
17 don't carry weapons, right?

18 A: Yes sir.

19 Q: You don't carry weapons at all?

20 A: This time it's not something I want to do. Sometimes
21 you're forced to have a weapon because, you know, you have
22 people that's incarcerated and they got nothing to lose.
23 Not everybody is as fortunate as I am.

24 Q: But that's not what you testified to earlier, is it?

25 A: You know, weapons, I don't like to carry them I

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1 promise you. Sometimes I had one with me before in my past.

2 Q: That's --- if you'll agree with me, that's not what
3 you said earlier. Correct?

4 A: It's like what I was saying earlier was like you know
5 as far as the gang type of rival stuff. I didn't prepare
6 for it. I wasn't prepared. That's what I can say, you know,
7 with light discretion they did come at me. You know, I just
8 got my response and stuff --- stuff right now, so. But I
9 carried a weapon before. I put it in my shoes. I didn't
10 want to but I didn't prepare for this.

11 Q: Okay, okay. So your testimony now is not what you said
12 before, which was I never carried a weapon. Now you're
13 saying at times you carry a weapon?

14 A: It's it's, you know ...

15 Q: Which is it?

16 A: It's times I carried weapons. It's times I didn't, you
17 know, and I prefer not to, you know. I prefer not to have
18 it and sometimes you're forced to --- forced to carry a
19 weapon.

20 Q: And in fact, you have a disciplinary charge from
21 January 28 of 2017, of possession of a weapon.

22 A: Yes. Yes sir.

23 Q: And that would be before this event occurred in April
24 15th of 2018.

25 A: Yes sir. Yes sir.

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1 Q: So now you're saying yeah, I had a weapon?

2 A: Is that from Perry?

3 Q: You tell me.

4 A: I don't really remember. Yeah, it had to be Perry.

5 Yeah. Like a lot of times. I might have a roommate, you
6 know, he might have a weapon as well. You know, they just
7 get rid of that and the DHO charges them and the Cos
8 they'll charge the whole room for one knife. And that's
9 just how they do it.

10 Q: Wait say that again?

11 A: Like if they find a knife in a cell ...

12 Q: Yeah.

13 A: ... you know, let's say it was not mine, you know,
14 let's say it's my roommate's knife and if he don't own up,
15 everybody gets charged for it. A lot of times --- a lot of
16 times it was mines and, you know, sometimes it wasn't.

17 Q: Well, do you remember where the knife was found in
18 this case?

19 A: No I don't. I don't, honestly. I don't. I just know I
20 had ...

21 Q: But it was in the room. You said it was in the room.

22 MS. ZMROCZEK: Again, Your Honor, I ask that he be
23 able to answer the question.

24 A: You know I had disciplinaries, you know, for things.
25 Cell phone disciplinaries, you know, weapons

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1 disciplinaries, and stuff like that. I didn't hurt nobody
2 and a lot of times, you know, people carry weapons. Like
3 when you go into the penitentiary people coming at you with
4 it because they feel like I'm going to need it. Especially
5 when you're sentenced when you have a long sentence. When
6 you have a long sentence, you know.

7 Q: And what you're saying is it could have been just one
8 that was in your room that you took credit for?

9 A: No, no I'm not I'm not here to make it seem like a
10 burglary. I'm not, no.

11 Q: You've never had one found on you?

12 A: Did I ever have a weapon found on me?

13 Q: Yes.

14 A: No a lot of times the CERT come through the CERT come
15 in and they do a shake down. Nobody sees their stuff.
16 Other people might try to hide it or whatever.

17 Q: But you never had one on you when it was found?

18 A: Not that I remember. I don't think I had it on my side
19 or anything like that.

20 Q: Would it surprise you if I told you they found it in
21 your boot?

22 A: In my boot? No, no that's not surprising. That's not
23 surprising at all. I remember, you know, when people go to
24 sleep they put a lot of things in their shoes and stuff.
25 But you know, like I said, I'm not a violent person. I

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1 don't hate nobody or have hatred, nothing like that. You
2 know, a lot of times --- I can't continue?

3 MR. GIESE: Your Honor, I don't think this is
4 responsive.

5 THE COURT: He asked you a question and you need
6 to answer it and you have the right to explain your answer.
7 But you need to respond to the questions he's asking you.

8 A: Yes sir. They found it in my boot.

9 Q: Just a couple more. It's your testimony that there's
10 no one else in this assault of Mr. McClary that you can
11 identify? Is that what you're saying?

12 A: Yeah. A lot of guys, you know, due to, you know, a lot
13 of things that go on. You wouldn't know nobody's name and
14 stuff like that. A lot of people they call me black you
15 know. But I'm just scared for I don't know what maybe
16 another guy next to me hid but I just know in my mind I was
17 trying to defend my life. You know, self defense, you know.

18 Q: Are you aware that after Mr. McClary went back and
19 fell after being stabbed 100 times, one of your fellow
20 Blood members, if not, a Blood member waited about 20
21 minutes then walked over to his body and shanked him in the
22 neck while he was on the ground? Do you remember that?

23 A: No sir. I don't remember that because I could have
24 stopped it or I would have at least attempted to.

25 Q: So you have no recollection of that?

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1 A: I don't. You know it was so long ago.

2 Q: And no one's ever talked about? Your friend who did
3 stab him never talked about it?

4 A: No if he was a friend, you know, no sir.

5 Q: And I just lastly, I just want to make sure that I'm
6 right about this or that I understood what you said
7 correctly. You said that night the two groups of Bloods
8 went up to different ends. You were going up there because
9 Ray Ray was trapped in the room?

10 A: You know, we were just looking for familiar faces, you
11 know, familiar friends because like I said earlier he's
12 vicious and stuff. We were scared. We just wanted the
13 people that we were around every day safe.

14 Q: When you trying to kick the doors in who exactly were
15 you looking for?

16 A: I know I wasn't kicking but you know, we had friends
17 in the room. You know, people said there was somebody in
18 there. But a lot of times, you know, the type of person I
19 am I might have friends that don't agree with who I'm
20 friends with, you know?

21 Q: So it might not have been Ray Ray is what you're
22 saying?

23 A: It could have been him, you know, it's friends, you
24 know, nobody specific, no specific names at the time but
25 you know we knew people weren't around that normally be

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1 around.

2 Q: You remember what Ray Ray was wearing that night?

3 A: No sir.

4 Q: Would you recognize Ray Ray if you saw him?

5 A: Yeah, through pictures stuff like that.

6 Q: Okay. Good. Remember how we talked about the two
7 groups ran up to both sides of the door? Remember we talked
8 about that?

9 A: Yes sir.

10 Q: And Ray Ray, you went to one side and Ray Ray went up
11 those stairs to the other?

12 A: Not that I know of, you know? It was more so, you
13 know, there was so much going on, so much. It was very
14 chaotic, you can see it.

15 Q: Ray Ray walks up the stairs. Does that look like Ray
16 Ray?

17 A: I'm not sure.

18 MR. GIESE: That.

19 Q: Isn't that what he was wearing when he was pulled back
20 down?

21 MR. GIESE: Go ahead. Please, play it.

22 Q: So 9:59:04 Ray Ray's going upstairs. He's not in a
23 room on the other end.

24 A: Yeah I'm not like, you know, like I was saying, you
25 know, a lot of people, we just had seen a lot of familiar

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1 faces. You know, I can't say specifically that it was Ray
2 Ray. And it was so long ago and everybody wears the same
3 thing a SCDC.

4 Q: Well, but the tape will show if everybody was wearing
5 the same thing. Wouldn't it?

6 A: Yeah.

7 Q: And finally, you said just a minute ago that you know
8 you're not the type of person that stabs people. Right?

9 A: Like ...

10 Q: Is that what you said?

11 A: Yeah. I'm just a self-defense type of person. I don't
12 want nobody --- I just wouldn't let nobody harm me. That's
13 the God's truth.

14 Q: And it's your testimony that when Mr. McClary who's
15 been stabbed 90 times, being chased down the walkway by you
16 and other members of your gang. At some point when you're
17 chasing him down there, you say it's still self defense.
18 It's what you're saying?

19 A: I felt like --- I felt like the person that threatened
20 me, you know, until I felt safe, I felt like he just needed
21 to be, you know ...

22 Q: And you didn't feel safe when he basically falls down
23 the stairs, he's bleeding, he's got his back to you? You
24 don't feel safe then?

25 A: No, because I know at that time, you know when it

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1 comes to self defense, I didn't have nobody so it makes me
2 a target. It makes me uncomfortable. That why I had to do
3 it. I didn't want to kill him. Like I said, I don't kill
4 people. I don't go around harming others. I don't cause
5 harm, I do better things.

6 Q: So after you stabbed him in the back, you still felt
7 like you were in danger. Correct?

8 A: I felt like I was in danger.

9 Q: And after you stabbed him and he stumbles over and
10 then another one of your gang members stabs him again. You
11 hit him in the head. Correct? Twice and stab him one more
12 time. Correct?

13 A: I wouldn't --- I wouldn't put it like that. You know,
14 I felt like I just felt like when he was down, I was okay.
15 I know what he was capable of doing.

16 Q: With 90 stab wounds and you felt like he was capable
17 of hurting you?

18 A: I didn't know ...

19 Q: Unarmed.

20 A: ... at the time I didn't know, you know, at the time
21 of this incident, I didn't know he was stabbed 90 times. I
22 just know I was threatened. I just wanted to protect my
23 life.

24 Q: And he was unarmed on the ground, correct?

25 A: I didn't --- All I knew is he swung a knife. From my

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(Mr. Smith - Redirect Examination by Ms. Zmroczek)

understanding, he had a weapon.

Q: From your understanding he had a weapon. So you didn't see him swing a knife?

A: No I seen the knife. That's why I said from my understanding.

Q: But you're on the other side of the building?

A: He carried a big knife.

MR. GIESE: That's all I have.

MS. ZMROCZEK: Briefly Your Honor.

Michael Juan Smith - Redirect by Ms. Aimee Zmroczek

Q: When you saw Mr. McClary and he said your next what was in his hand?

A: A knife.

Q: I'm sorry?

A: A knife.

Q: A knife. And as far as that weapons administrative conviction in Perry, so did you make a mistake when you were separating Perry and Lee or did you just forget or were you trying to hide it?

A: It was, you know, more so ...

Q: It was just a mistake?

A: Yeah it's normal but I don't want to harm nobody.

Q: Have you ever testified under oath about these facts today or is this the first time?

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1 A: Say that again ma'am.

2 Q: Have you ever testified under oath about what happened
3 on April 15 2018 or is this the first time?

4 A: First time.

5 Q: This if your first time, okay. Has anybody ever asked
6 you about what happened before> Has any law enforcement
7 ever asked you about what happened that day?

8 A: No ma'am.

9 Q: You were asked about --- you were asked about these
10 series of events that we keep playing in slow motion and
11 fast motion and would it surprise you to learn that all of
12 that occurred within less than two minutes?

13 A: Wow it don't.

14 Q: When you were going through this, what was going
15 through your mind?

16 A: Survival. I just wanted to get home. I didn't want
17 nobody to hurt me.

18 Q: Okay. So, Mr. McClary is running down the stairs and
19 he's headed towards where?

20 A: Where my room at.

21 Q: And who else was by your room? Was there any people by
22 your room?

23 A: There's a group of people.

24 Q: A group of people that had come in to that dorm with
25 knives?

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(Mr. Smith - Recross Examination by Mr. Giese)

A: Yeah they had knives out.

Q: And was that the same group of people who had worked with friends of Mr. McClary to murder your friends?

A: Yes ma'am.

Q: What were you feeling?

A: Scared.

Q: Did you know whether or not they were going to give him some of the weapons they were holding?

A: Yes ma'am.

Q: Did you know or did you think?

A: I knew they would. They were armed and I knew they would hurt us and hurt me.

Q: But once he fell to the ground, what did you do to everybody else that continued to try to hurt him?

A: Push them off. Push them away. Like I said, I felt like he couldn't harm me no more.

Q: Let me ask you this Mr. Smith, if the plan was to take out the Crips, why would you wait two hours and wait for a whole group of people armed to do that? Would you do that?

A: No ma'am. We never had a plan.

MS. ZMROCZEK: No further questions, Your Honor.

Mr. Michael Juan Smith - Recross by Mr. Barney Giese

Q: She asked you just a minute ago, that law enforcement never asked for a statement. Is that correct?

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1 A: No ma'am.

2 Q: Excuse me?

3 A: No sir. No sir.

4 Q: They did ask for a statement? They did not?

5 A: Noone ever came to me for no help. Nobody ever
6 questioned me about it.

7 Q: Well, do you remember when you got served your
8 warrants?

9 A: Yes I remember.

10 Q: Do you remember you were served by Agent Shaw?

11 A: Yes I remember. I remember.

12 Q: And it was in the Alvin S. Glenn Detention Center?

13 A: Yes she came in, handed me a piece of paper, told me I
14 was indicted and the charges and walked away.

15 Q: And it was during COVID. Correct?

16 A: I'm not too sure.

17 Q: She had to meet you between glass.

18 A: Oh yeah that's how they work.

19 Q: You don't recall her telling you that if you want to
20 make a statement she's willing to take a statement. If you
21 wanted her to ...

22 MS. ZMROCZEK: Your Honor, I believe we have a
23 matter of law.

24 THE COURT: Ladies and Gentlemen, I need you to go
25 to your jury room.

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1 (Jury exits the courtroom 12:10)

2 THE COURT: Go ahead.

3 MS. ZMROCZEK: Two things Your Honor.

4 THE COURT: Go ahead.

5 MS. ZMROCZEK: The first is there was no Miranda
6 warning ever. There's no indication that she ever said any
7 of these things. But further, she testified on the stand
8 yesterday under oath that she did not ask him what
9 happened. So for him to now say that, Your Honor, I would,
10 because I need to move for a mistrial. In the alternative,
11 I would move that be stricken from the record and give a
12 curative instruction that they are not to consider that.
13 That is not what was testified by their witness under oath
14 yesterday.

15 MR. GIESE: Which is one of the reasons why I
16 wanted to put her up and recall and was objected to. Your
17 Honor, subsequent to her testimony, she came to me, and
18 said that she had actually served the warrants on him, gave
19 him the opportunity and said I will --- and I can have her
20 testify if you would like.

21 MS. ZMROCZEK: That's a discovery violation. They
22 didn't tell me.

23 MR. GIESE: Your client could have told you. So
24 how's that a discovery violation? Your client was there.
25 And she would testify to the effect that yes, she saw him,

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1 she served him the indictments. She then said, I will get
2 you a lawyer for your bond setting if you want, I will get
3 you a lawyer if you want to make a statement and that was
4 the end of it. He didn't want --- he didn't pass. Now I
5 would never have brought this up except that she's he's
6 testified twice, that he never had an opportunity, never
7 had an opportunity to make a statement. And he did have an
8 opportunity to make a statement.

9 MS. ZMROCZEK: That's not what was testified to
10 under oath. And if that had changed, Your Honor, then they
11 should have sent me an updated remembrance or something
12 because that is --- the testimony that she stated. If she
13 made a mistake, Your Honor, than I mean, they could, I
14 guess address that but they can't just all of a sudden say,
15 oh, wait, I remember now I told him all of these things,
16 and never tell me about it until he's on the stand. That's
17 absolutely improper. Because what he just said, she said X,
18 Y and Z. That's not what she testified to under oath.

19 MR. GIESE: I apologize.

20 MS. SCOTT: Judge, it's my understanding that
21 Jamie Shaw will not testify to exactly what Ms. Zmroczek is
22 saying. It's my understanding she testified that he never
23 came to me to provide information. That's different from
24 when she goes to serve an arrest --- that if you want to
25 speak, you could, you know, we're open to speaking that's

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1 different. It's nothing inconsistent with her prior
2 testimony.

3 MS. ZMROCZEK: Your Honor, if you recall, because
4 I recall it explicitly because I was loud when I did it.
5 And I apologized later I said you didn't ask? And she said
6 no. So it wasn't --- wasn't he didn't come forward. I asked
7 that question three times.

8 MS. SCOTT: And we're not saying she did ask.
9 We're saying she did not ask. We're not saying that that's
10 anything inconsistent with what she testified to. She's
11 saying that when she served the warrants if you're willing
12 to talk we're willing to hear what you have to say. That's
13 different from asking.

14 MS. ZMROCZEK: That's absolutely, if you're
15 willing to talk is a question, Your Honor.

16 MS. SCOTT: It's making a statement. It's
17 completely different, Your Honor.

18 MR. GIESE: If you want me to withdraw it, I'll
19 withdraw it.

20 THE COURT: I mean I understand she brought it up
21 on redirect and I believe you had an opportunity for there
22 to be a statement to the police. Normally, as you know
23 it's a slippery ground and he had that constitutional right
24 to remain silent. There's many cases out there --- the next
25 day, you never told the police. You know, many solicitors

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1 have gotten trouble over that. This is a little bit
2 different in that she's at least opened that door to the
3 jury that he never had an opportunity to tell his side of
4 the story. If I had a witness who testified yesterday and
5 she admitted, and I don't recall, exactly, I don't recall
6 her asking that question if he had an opportunity to give a
7 statement. And exactly how it was phrased I don't recall
8 exactly but whether it makes a difference or not. I
9 assumed that he didn't give a statement because if that was
10 a issue we could have a Jackson v Denno. Of course she's
11 making an issue that he wasn't even given any opportunity
12 to give a statement which I assume you're trying to get in
13 at this point. And I guess if you want to pursue this if
14 we're going to go there the safest thing you can do is
15 recall her to the stand and see what she's going to say
16 before I get her to come in front of this jury and then we
17 end up in a mistrial or you can leave it alone.

18 MR. GIESE: I'm going to leave it alone, Your
19 Honor. If that's okay. It's not worth it.

20 MS. ZMROCZEK: Your Honor, I would just ask that
21 it be stripped from the record. And also before I forget,
22 Your Honor, because we were rolling so fast this morning, I
23 forgot to make my motions before I started. And so I need
24 to go back and put that on the record as well. Thank you.

25 THE COURT: You want to do that now?

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1 MS. ZMROCZEK: I'm sorry?

2 THE COURT: Did you just make it or you want to
3 make one?

4 MS. ZMROCZEK: Well, Your Honor, every time that
5 the state rest, I routinely make a motion to dismiss. And,
6 Your Honor, I simply, I think because we were just so
7 concerned about the timing, that I did not do that. But,
8 Your Honor, certainly at this point, we would ask that you
9 just set aside what you've heard from the testimony and go
10 back to that point, to be able to make your rulings. We
11 would argue that the state hasn't met its burden in these
12 three charges with the testimony that has been presented at
13 the close of their case.

14 THE COURT: Okay. Does the State want to respond
15 to that?

16 MR. GIESE: Your Honor, I believe we have. I
17 believe, yes I do want to respond. I believe the state has
18 covered this burden. If you want me to go into detail I
19 will. As the conspiracy charge I think circumstantially you
20 can clearly see them getting together and then running in
21 two different directions after the Crips in both of them.
22 As to the possession of a weapon, I believe, we've made a
23 pretty good case that he had a weapon even prior to his
24 testimony. And then third is to the mob issue. It's clear
25 that the Bloods and I think he testified the Bloods with

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1 some other people got together ran in those two directions.
2 And in one of the directions they tried to kick the door in
3 and the other direction they found Mr. McClary and Mr.
4 McClary got 101 stab wounds. So I think we've gotten to the
5 burden.

6 THE COURT: I think we have sufficient evidence
7 for the record ...

8 MS. ZMROCZEK: Thank you.

9 THE COURT: ... that the jury can make the
10 decision so I'm going to allow them to make it.

11 MS. ZMROCZEK: Thank you.

12 THE COURT: Okay. From a timing stand point and
13 potential lunch. I normally let the jury go to lunch
14 somewhere between 12:00 and 1:15 because most restaurants
15 close by 2:00. So do we want to finish this witness?

16 MR. GIESE: Your Honor, I'm done.

17 THE COURT: Okay. And are you done?

18 MS. ZMROCZEK: Yeah with this witness. I know that
19 we've got a bunch of evidentiary in camera stuff that we
20 would have to go through so maybe give them a long lunch.

21 THE COURT: So let the jury go to lunch and bring
22 them back at 2:30 or so and we can have a chance to go
23 through these evidentiary issues.

24 MS. ZMROCZEK: I think that that's fair.

25 THE COURT: Okay.

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1 MR. GIESE: That's very fair. Thank you.

2 MS. ZMROCZEK: And again, if you'll just strike

3 ...

4 THE COURT: Okay. So do you want me to tell the
5 jury to disregard that?

6 MS. ZMROCZEK: I do.

7 THE COURT: What exactly do you want me to tell
8 the jury to disregard?

9 MS. ZMROCZEK: The last line of questioning
10 regarding what agent Shaw did or did not say when she
11 served the warrants.

12 (Jury enters courtroom 12:20)

13 THE COURT: Ladies and gentlemen, the last
14 question concerning Agent Shaw what she did or did not do.
15 I have sustained that objection and ask that you not to
16 consider that during your deliberation. Agent Shaw
17 testified yesterday and if you can recall, based on her
18 testimony yesterday as to what she did or did not do. Now,
19 we've got a number of legal matters that we need to deal
20 with. Instead of keeping y'all locked up back there, I'm
21 going to send you to an extended lunch hour. I'm going to
22 ask that you be back at 2:30. Hopefully, we will be able to
23 get through these while you go to lunch. Don't discuss the
24 case. Don't do any research. If you have an emergency
25 please call the clerk's office. If not I will see you at

1 2:30.

2 (Jury excused for lunch 12:22)

3 THE COURT: We're going to take some in court
4 testimony is that what the plan is or do we need to take a
5 break and figure that out?

6 MS. ZMROCZEK: Probably need to take a break and
7 figure that out. It will probably run a little smoother.

8 THE COURT: Okay I need a break.

9 MR. GIESE: I need a break. Your Honor, can I ask
10 you one thing? Ms. Zmroczek, we have some witnesses that we
11 had subpoenaed for the trial, that we obviously didn't use,
12 but I told her that I would hang on to them until she
13 doesn't need them. I just need to know if she needs
14 anybody. If she doesn't, Your Honor, I'd like to send
15 anybody else home.

16 MS. ZMROCZEK: Certainly, and I think so I think
17 it'll depend on your rulings. So, Your Honor, the reason
18 that I asked for --- Well, I definitely need Agent Wilson
19 for some impeachment testimony. I will need, depending on
20 what the ruling is, Mr. Lyles, who up until yesterday was
21 previously known as CI number 11, I would need either ---
22 Well, I would need Agent Shaw so I can use her because she
23 did the report and then for the other witness, which would
24 be Mr. Boone I think that she did not do I think it was
25 either ...

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1 MR. GIESE: No it was Jeremy ...

2 MS. ZMROCZEK: Okay, so I think just depending on
3 the court's ruling. So that witness, Your Honor, is the
4 one that intends to assert his Fifth Amendment right but
5 the one specific thing I would like to ask him is, I don't
6 think is a question, it's a statement against his penal
7 interest so I don't think that it falls under that
8 protection and that would be the only question really that
9 that I would have.

10 THE COURT: Does he have an attorney?

11 MS. ZMROCZEK: He does. It's Mr. Hodge.

12 THE COURT: Is his attorney present?

13 MS. ZMROCZEK: I honestly haven't checked my
14 phone. I told him to be here. I advised him that they were
15 bringing his client today. And so I can check my phone.

16 THE COURT: Okay. You need to do that while we
17 take a break and see if his attorney can advise him.

18 MR. GIESE: Mr. Hodge used to work for me and I'd
19 be shocked if he was here.

20 MS. ZMROCZEK: If he's here?

21 MR. GIESE: I'd be shocked if he's here.

22 THE COURT: Okay, I'll take a short break and then
23 maybe when y'all figure this out you can come back to
24 chambers and tell me and we will get started.

25 MR. GIESE: Okay thank you.

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1 MS. ZMROCZEK: Thank you. Yeah.

2 (There was a break in court proceedings)

3 MR. HODGE: Your Honor, my team is with him they
4 were going to bring him up, have the sheriff bring him in
5 just so they're not ...

6 **(Mr. Darius Rashaun Lyles brought into court room)**

7 THE COURT: Obviously there's not a jury present.
8 Mr. Smith's lawyer needs to ask you questions if you could
9 respond to whether you remember them or not. Okay.

10 MR. LYLES: I don't want to talk. I want to part
11 of this.

12 THE COURT: I understand but you've got to at
13 least sit down. I've got to put some things on the record.
14 Okay.

15 MR. LYLES: Okay.

16 MS. ZMROCZEK: Do we need to swear him?

17 THE COURT: Do you want me to or you want to wait
18 until ...

19 MS. ZMROCZEK: You can I mean ...

20 THE COURT: What's your name?

21 MS. ZMROCZEK: It's Darius Rashaun Lyles.

22 THE COURT: Okay. Mr. Lyles, do you swear the
23 testimony you give will be the truth, the whole truth, and
24 nothing but the truth so help you God?

25 MR. LYLES: Yes sir.

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1 THE COURT: Okay.

2 **PROFFER TESTIMONY - Mr. Darius Rashaun Lyles - Examination**

3 **by Ms. Aimee Zmroczek**

4 Q: Mr. Lyles, my name is Aimee Zmroczek. We met briefly
5 earlier. I understand you don't want to be here. I just
6 need to ask you a few questions. Okay? Do you recall giving
7 a statement to Agent Shaw, Special Agent Kevin Blake and
8 John Hollingsworth from the South Carolina Attorney
9 General's office on January 31st of 2020?

10 A: No ma'am.

11 Q: You don't recall? We just have to record it. So I know
12 you don't want to be here but if you can just speak up for
13 me.

14 A: No ma'am.

15 Q: You don't recall?

16 A: No ma'am.

17 Q: Okay. Do you recall that they transported you to the
18 Richland County Sheriff's --- Excuse me to the Richland
19 County courthouse from the detention center and had you
20 look at images, sign your name and identify certain
21 individuals?

22 A: No ma'am.

23 Q: You don't recall that?

24 A: No ma'am.

25 Q: And do you recall in that statement telling Agent Shaw

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1 and the others I've mentioned that you provided some
2 background conditions at Lee correctional that included you
3 staying on the east yard for one week. Do you recall that?

4 A: No ma'am.

5 Q: Do you recall that when you were assigned to a cell on
6 the west, and then you were assigned to a cell on the west
7 yard, do you recall that?

8 A: No ma'am.

9 Q: Do you recall stating that all the doors at Lee
10 Correctional stayed swinging and were never locked?

11 A: No ma'am.

12 Q: Do you recall stating that inmates conducted the count
13 for the correctional officers?

14 A: No ma'am.

15 Q: Do you recall stating that on April 15 2018, that you
16 were located in the A side dorm napped approximately two or
17 3pm until just before 9pm?

18 A: No ma'am.

19 Q: Do you recall stating that you woke and traveled to
20 the B side of the F1 dorm?

21 A: No ma'am.

22 Q: Do you recall stating that you knew a Blood --- you
23 observed a Blood gang member you knew as Ray Ray holding
24 clothing to his neck because he had been stabbed?

25 A: No ma'am.

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1 Q: Do you recall gangs conducting Blood calls?

2 A: No ma'am.

3 Q: Do you recall hearing people yelling on the ---

4 Stating that you heard people yelling on the walk above the
5 cell you were located in.

6 A: No ma'am.

7 Q: Do you recall saying that you observed a machete like
8 shank dropped from the upstairs walkway?

9 A: No ma'am.

10 Q: Do you recall stating that you then saw a bloody
11 individual you knew to be a Crip gang member fall down the
12 left side stairs?

13 A: No ma'am.

14 Q: And do you recall them reading your Miranda warnings
15 during that time or before this interview?

16 A: No ma'am.

17 Q: Okay. Do you recall identifying this individual in
18 your handwriting as Ray Ray saying stabbed in neck?

19 A: No ma'am.

20 MS. ZMROCZEK: Your Honor, those would be the
21 extent of the questions that I would ask Mr. Lyles.

22 THE COURT: Okay. Does the state have anything you
23 want to add?

24 MR. CONRAD: In terms of questions? The only
25 question I would ask is ...

PROFFER TESTIMONY - Mr. Darius Rashaun Lyles - CrossExamination by John Conrad

Q: Sir, do you recall in that same interview that Ms. Zmroczek was referring to, do you recall stating that you heard a ...

MS. ZMROCZEK: I would object to hearsay.

MR. CONRAD: It's proffer.

THE COURT: Okay go ahead.

Q: Do you recall hearing an inmate named Rico who you identify as a Blood leader scream, if you Crips, you got 10 minutes to get out of the building or you die?

A: No sir.

MR. CONRAD: That would be the only direct questions the State makes.

THE COURT: Okay. Ms. Zmroczek, do you have any more questions for this witness?

MS. ZMROCZEK: None at this moment.

THE COURT: Okay and you can go back.

(Mr. Darius Rashaun Lyles exits courtroom 1:01)

MS. ZMROCZEK: Your Honor, so what I would argue, is that (A) Statements that he now says that he denies making directly on things that he observed should be admitted. I would --- I believe that there are a lot of non- relevant and some hearsay that is included in his statement. So, I do think that --- I think we would have to

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1 go through that whole exercise again in front of the jury.
2 And then I believe if he denies saying all of those things,
3 Your Honor, at that point, his statement then, of course,
4 redacted would be admissible.

5 THE COURT: Under what rule do you think it's
6 admissible? 804 is the rule that deals with this and it
7 gives you the definition of unavailable which nothing
8 qualifies for that. What section under (b) does his
9 testimony comes in?

10 MS. ZMROCZEK: I'm writing it all down. I'm sorry
11 Your Honor.

12 THE COURT: Okay.

13 MS. ZMROCZEK: Well, I don't think --- I believe
14 that portions of what he said are not here or are excluded
15 from hearsay because it was a statement given to law
16 enforcement upon which they rely, but it also is a
17 recording recollection. So 803(5) it's ...

18 THE COURT: Wait a minute. It's under 804.

19 MS. ZMROCZEK: Oh, sorry.

20 THE COURT: 803(5).

21 MS. ZMROCZEK: Okay. Well, Your Honor, my argument
22 is this. And I think that this is where we're getting
23 confused. He is not unavailable. He's available.

24 THE COURT: He's unavailable to the definition.
25 Read number three. The definition of unavailable is ...

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1 MS. ZMROCZEK: Okay, yes.

2 THE COURT: If he wouldn't testify but he did
3 testify.

4 MS. ZMROCZEK: Right.

5 THE COURT: Of course, he did testify for lack of
6 memory subject matter to prior statement. He didn't
7 remember anything. Does that come under number three?

8 MS. ZMROCZEK: No.

9 MR. GIESE: The state believes it does, Your
10 Honor.

11 THE COURT: And even if he comes under three, he
12 doesn't fit any of the four categories under B, does it?
13 It's not a sworn statement. He didn't testify. It's not a
14 statement against his interest.

15 MR. GIESE: The State agrees, Your Honor.

16 MS. ZMROCZEK: Right. But Your Honor, under Kyles
17 v. Whitley we have a right to make --- to present the
18 evidence that's available. Just because he's refusing to
19 testify ...

20 THE COURT: He's your witness.

21 MS. ZMROCZEK: Well, he's --- Well, he wasn't my
22 witness, Your Honor. He is clearly a hostile witness that
23 that is ...

24 THE COURT: Assuming he is a hostile witness I'm
25 just asking you under what rule does that testimony come

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1 in? I mean what law can you give me? Because under 804, it
2 doesn't appear any of those fit the scenario. If you could
3 show me how it does.

4 MS. ZMROCZEK: Your honor, I know it's one o'clock
5 now because I have it in my notes but they're in chicken
6 scratch. If I may, if we can come back maybe like at 2:15
7 or I you know ...

8 THE COURT: Okay. What time I mean I'll give you
9 an hour to regroup. I mean, I think the rules pretty --- it
10 is clear none of us had any idea of what he was actually
11 going to say. He started out not saying anything.

12 MS. ZMROCZEK: You're right.

13 THE COURT: He got on the stand and it didn't
14 remember anything. It's not like he remembered parts and
15 didn't remember parts. So he basically testifies to a lack
16 of memory of the subject matter to the entire statement. He
17 fits three exactly.

18 MS. ZMROCZEK: Okay.

19 THE COURT: So he's unavailable. Now you get down
20 to, now he may change his testimony, you can talk to him.
21 But now we get down to okay, so he's unavailable. And these
22 are the four factors that this testimony, that statement
23 comes in. So tell me which one of these four factors is
24 that statement come under? I can't find any. But you may
25 know more about it. I mean, it's not he didn't testify from

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1 it. Clearly, he testified under oath only. But my
2 understanding is it wasn't testimony, he had given a
3 statement to law enforcement. I haven't seen his statement.
4 I don't know it was a sworn statement or what the scenario
5 was. He does not, I don't think it is believable pending
6 death. It's not against his interest. If it was against
7 his interest, he could plead the fifth.

8 MS. ZMROCZEK: Right.

9 THE COURT: So if you want me to go to lunch, I
10 will.

11 MS. ZMROCZEK: Your Honor, if I may just ...

12 THE COURT: I'll go to lunch. Now, assuming that
13 you don't find anything when I get back from lunch. What
14 are we going to do?

15 MS. ZMROCZEK: Then, Your Honor, we will call ---
16 I still may have one more witness after.

17 THE COURT: Okay. Well assuming we're not going to
18 argue charges today no matter what, right? So we come back
19 after lunch, and you can take another witness or two we
20 will go home and start over in the morning.

21 MS. ZMROCZEK: Okay.

22 MR. GIESE: That would be great, Your Honor.

23 THE COURT: And at least y'all can think about
24 potential charges this afternoon. I'm going to get
25 something to eat. I'll see ya'll at 2:15.

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1 MS. ZMROCZEK: Thank you.

2 MR. GIESE: Thank you, Your Honor.

3 (Lunch break 1:08 p.m.)

4 MS. SCOTT: Judge, just for the record as well,
5 the state is withdrawing State's exhibit 13 and 14. There
6 were photos that we tried to introduce I just want to go
7 and put that on the record that we are withdrawing this.

8 MS. ZMROCZEK: We need him. I'm sorry.

9 THE COURT: Those the autopsy photos?

10 MS. SCOTT: Yes, sir.

11 THE COURT: They were just marked as identification.
12 They weren't entered.

13 MS. SCOTT: Correct. Yes, Your Honor. I just want
14 to go ahead and put that in.

15 COURT REPORTER: Judge, can they at least initial
16 the exhibit sheet?

17 THE COURT: Okay. Or either we can leave them in
18 the record for ID purposes since they are on the exhibit
19 sheet. They never went in.

20 MADAM COURT REPORTER: Just initial that, please.

21 MS. SCOTT: Okay.

22 MADAM COURT REPORTER: Thanks. If you will just
23 put beside that you have those.

24 MS. SCOTT: Okay.

25 MADAM COURT REPORTER: That way we know years from

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1 now. Thank you so much.

2 MS. SCOTT: Yes, of course. I want to make sure I
3 got that clear from y'all.

4 THE COURT: Okay are we ready for the jury?

5 MS. ZMROCZEK: Yeah. And I guess at some point, we
6 need to put what we discussed in chambers.

7 THE COURT: Okay we can do now.

8 MS. ZMROCZEK: Okay. So, Your Honor, so obviously,
9 Mr. Smith was provided the name of the person who provided
10 testimony which supported the facts of his case, when we
11 previously before lunch, proffered the testimony of that
12 witness he indicated that he couldn't remember anything and
13 clearly just not willing to participate. And, Your Honor,
14 so we made the argument that we would have liked to have
15 gotten the statements in under Article One section 14,
16 under the right to present a statement page under a right
17 to present a full and fair or a full and complete defense,
18 Your Honor, in this case. And we understand that as as the
19 law stands now, with the hearsay exception, that finding
20 him unavailable and him not qualifying under any of the
21 available hearsay exceptions, what I would have liked to do
22 is then call the agent and lay the foundation that she did
23 take the statement on this day. And that it's a report that
24 she kept in her regular course of business and that it was
25 provided, along with all of the evidence that they use to

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1 build the indictment on this case. And we certainly
2 understand the Court's ruling that as the hearsay exception
3 stand now that that would not be proper testimony. But
4 that we wanted to make sure that we preserved that
5 objection.

6 THE COURT: Okay. The record is so preserved. Are
7 we ready for the jury now?

8 MS. ZMROCZEK: Yes. And actually, before I call
9 agent Shaw, I'm going to call --- I'm going to call Agent
10 Wilson to ask him specific, I'm not going ask him what was
11 said, I'm going to ask him if he interviewed a person known
12 as Ray Ray. If he knew --- I'm not going ask him what he
13 said, I'm just going to ask if he was able to identify
14 someone. So he went to the hospital on April 18th and
15 interviewed Mr. McDuffie, who has who is identified as Ray
16 Ray, Your Honor. He was identified not only by the witness
17 that I was trying to call, but he also identified in the
18 state grand jury testimony of Agent Shaw, so I guess I
19 could --- I could just, actually I'll just get it in
20 through her. I'll just ask her if she was aware of who Ray
21 Ray is now.

22 THE COURT: Okay. Any others? Yes, sir.

23 MR. GIESE: I'm kind of confused. Calling for
24 what purpose?

25 MS. ZMROCZEK: So, the other the other part of

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1 calling that witness was, he was one of many people that
2 identified Ray Ray as the person being stabbed, right? But
3 I'm not going to ask her if that person identified --- I'm
4 going to ask if she -- if she ever presented evidence, so
5 what I'm trying to get in, Your Honor, I'll just say it
6 this way, is that obviously now, Ray Ray has become a part
7 of the defense. When I asked yesterday, you know, if they
8 could identify him, they couldn't. But now today, they've
9 been able to find him on the videos. And, you know, Agent
10 Shaw presented to the grand jury that he had 14 stab wounds
11 to the trachea and chest area and suffered a pneumothorax.
12 And so I think, so that that I was just going to ask her
13 about that.

14 THE COURT: Okay. So from my understanding, the
15 testimony from the state as well as the defense has shown
16 on the video that everybody agrees that Ray Ray was
17 stabbed.

18 MR. GIESE: Correct.

19 MS. ZMROCZEK: Right, right. But I think the
20 number of stab wounds and the locations go to obviously ---
21 he's raised a defense of not only self defense, but defense
22 of others. He said that he was trying to fight with mister
23 --- His testimony was that he was trying to fight with Mr.
24 McClary to in part not only to save himself, but also to
25 save Ray Ray who --- and so I think that there was a lot of

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1 talk about how but he Mr. McClary had 101 stab wounds or
2 upwards of 90 stab wounds. And I think that testimony in a
3 vacuum Your Honor, without identifying the wounds that Ray
4 Ray had ...

5 THE COURT: So you think Agent Shaw's going to be
6 able to identify the wounds that Ray Ray had?

7 MS. ZMROCZEK: Well she testified to at the grand
8 jury.

9 THE COURT: I understand that but hearsay is
10 admissible to the grand jury. I mean normally she could
11 have testified in the pathology report. I'm not sure she
12 is qualified to testify about his wounds and how they got
13 there unless the state agrees.

14 MR. GIESE: Your Honor, we do not agree.

15 MS. ZMROCZEK: Don't agree about how they got
16 there but that there were wounds, not how they got there.
17 Just the numbers of wounds.

18 THE COURT: How is she going to testify about the
19 number of wounds and how they got there? How does she know
20 that?

21 MR. GIESE: Hearsay, Your Honor.

22 THE COURT: Some of the wounds discovered on his
23 neck may have been done by medical personnel putting in
24 trackery. I mean, I don't know.

25 MS. ZMROCZEK: Right.

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1 THE COURT: I'm in the dark. That's something
2 that's normally not admissible through a SLED agent.

3 MS. ZMROCZEK: Okay.

4 THE COURT: It usually takes some medical personal
5 to do that. Unless, you know, the state stipulates to that.

6 MR. GIESE: I'm sorry, but I can't.

7 MS. ZMROCZEK: That would not be admissible the --
8 - I'll make sure not to ask that, Your Honor.

9 THE COURT: Okay. Anything else before I bring the
10 jury in?

11 MR. GIESE: No, Your Honor.

12 MS. ZMROCZEK: Nothing further.

13 THE COURT: Okay.

14 (Jury enters courtroom 2:47 p.m.)

15 THE COURT: Okay. Ms. Zmroczek you can call your
16 next witness.

17 MS. ZMROCZEK: Thank you, Your Honor.
18 Actually after consulting with my client I think at this
19 time the defense rest.

20 THE COURT: Okay. Solicitor, do you have any
21 reply?

22 MR. GIESE: No, Your Honor.

23 THE COURT: Okay. So we're done for the day is
24 what you're telling me?

25 MR. GIESE: Yes sir.

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1 THE COURT: Okay ladies and gentlemen, I guess we
2 are done for the day. You've heard all the testimony you're
3 going to hear in this case. Tomorrow morning, you will hear
4 the closing arguments of the attorneys. I will charge you
5 the law and give you this case to decide. We'll get out
6 early today. You cannot discuss the case yet. You cannot do
7 any research. Don't listen to media or newspapers including
8 any news reports. I will see you back at 9:30 in the
9 morning. If you have an emergency tonight, please call us.
10 If not, I will see you at 9:30 in the morning. Thank you
11 very much.

12 (Jury excused for the day 2:48 p.m.)

13 THE COURT: Okay, anything else?

14 MS. ZMROCZEK: Just for purposes of the record,
15 Your Honor, for trial strategy purposes I want to put on
16 the record at the risk reward benefit of allowing the state
17 to cross examine Agent Shaw I would have done I think would
18 have been more problematic for the case than not so, that
19 is why we made that decision, Your Honor. And at this time
20 I will renew the motions under Rule 19 based on the
21 testimony that's been presented.

22 THE COURT: Okay and I respectfully deny your
23 motion. I think there's sufficient evidence in this record.
24 The jury can reach the verdict. Now as far as charges
25 tomorrow is concerned, do y'all have potential charges that

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1 you want to discuss with me? Can I let SCDC take these
2 prisoners back?

3 MR. GIESE: Yes.

4 MS. ZMROCZEK: Yes.

5 THE COURT: Yes sir. Thank you. I can at least
6 tell you, I'm going to do my standard charge indictments,
7 instruction of innocence, the jury's role, as well as my
8 role I will explain beyond a reasonable doubt, credibility
9 of witnesses, expert witnesses, criminal intent,
10 circumstantial evidence and direct evidence.

11 MS. ZMROCZEK: And you're doing the circumstantial
12 evidence that is --- Sorry, my brain is completely dead ---
13 Logan charge, good Lord, the Logan charge under
14 circumstantial evidence?

15 THE COURT: Yeah. I mean, that's the newest one
16 and they tweak and said ...

17 MS. ZMROCZEK: Yes sir.

18 THE COURT: Then I will charge self defense, the
19 three indicted charges, assault and battery by mob, death
20 results and criminal conspiracy and possession of weapon by
21 inmate. Now, are there any other charges that y'all want?

22 MS. SCOTT: None from the state, Your Honor.

23 THE COURT: I'm sorry?

24 MS. SCOTT: None from the State Your Honor.

25 MS. ZMROCZEK: Your Honor, just to make sure that

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1 I heard you're going to do obviously the charge and arrest,
2 indictment not evidence, multiple charges?

3 THE COURT: No, but I can add multiple charges if
4 you want me to.

5 MS. ZMROCZEK: Okay.

6 THE COURT: I can instruct each one of them. When
7 I give them the verdict from that each one stands separate
8 and that you know they have to all 12 have to agree for him
9 to be guilty on each charge without a reasonable doubt.

10 MS. SCOTT: Judge also, we would ask for hand of
11 one hand of all as well.

12 THE COURT: Okay.

13 MS. ZMROCZEK: Your Honor, I would argue against,
14 he's charged in a conspiracy, and he's charged in an
15 assault by mob. So I think that by adding that additional
16 accomplice liability or hand of one hand of all ...

17 THE COURT: Well I mean, you have a point there,
18 he had his accomplice of mob. It takes all of it to create
19 that statute. If he was charged with murder then the hands
20 of one hands of all may be a little more appropriate. I'm
21 not real sure it would apply to mob scenario. You can think
22 about it over night. I'll think about it too. I don't know
23 if hands of one hands of all applies to mob scenario.
24 Except that you don't have a mob if it was a single assault
25 battery or a single murder and it was a number of people

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1 there but the fact that you were charged with a mob, which
2 means you don't have to prove all levels you just have to
3 prove he was assaulted by mob, which was basically the
4 facts with this case as far as the State's concerned.

5 MS. SCOTT: Yes, Your Honor.

6 THE COURT: I will put a question mark about the
7 hand of one and let me think about it over night and y'all
8 do the same thing and we'll decide that in the morning.

9 MS. SCOTT: Thank you, Your Honor.

10 MS. ZMROCZEK: Prior inconsistent, we would ask,
11 especially with Officer Lopez I mean, not just to identify
12 him, but I mean, I think we argued several times that he
13 made several statements that were inconsistent.

14 THE COURT: Every other time I've charged prior
15 inconsistent statements it's always been statements made by
16 the defendant. I've never charged prior inconsistent
17 statements of a witness.

18 MS. SCOTT: Your Honor, I'm in agreement with you
19 on that. And if I may, also looking at that as well, I do
20 believe that they have only apply to the defendant's
21 statements but we would be against having that jury charge
22 as well.

23 THE COURT: You know usually it's there as far as
24 defendant's concerned but I never charged a witness
25 statements. But I'll look at it and see.

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1 MS. ZMROCZEK: Your Honor, I know that I had the
2 same thing with the prior record of the defendant limited
3 for impeachment purposes only and I know that you asked if
4 I was sure I wanted to charge that. I let everybody know
5 before five o'clock.

6 THE COURT: Okay. And you probably need to email
7 my law clerk if you want it to get to me.

8 MS. ZMROCZEK: I have learned to email your law
9 clerk.

10 THE COURT: I'm not going to probably sit here
11 until 5:00 unless y'all got something serious for me to do.

12 MS. ZMROCZEK: Oh no.

13 MS. SCOTT: Judge, I am back to the prior
14 inconsistent statements in State v. Coulter that discusses
15 because a prior inconsistent statement of witness may be
16 used as substantive evidence when the declarant testifies
17 at trial and is subject to cross examination, it is error
18 to give a jury instruction of eliminating its use to
19 impeachment purposes. So we would argue that that would be
20 an improper charge and that it not be given.

21 THE COURT: Okay.

22 MS. ZMROCZEK: And I believe that --- So under the
23 --- I know that you said you would charge self defense, we
24 would also request the charge of defense of others, as he
25 testified that he was behaving in a certain way because of

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1 his concern for Mr. McDuffie who is Ray Ray. I mean I'm not
2 going to call him Mr. McDuffie to the jury because they
3 don't know that that's Ray Ray but.

4 THE COURT: Okay.

5 MS. ZMROCZEK: And, Your Honor, I don't know, on
6 the self defense charge are they still --- because I don't
7 know if you're going to charge a duty to retreat because
8 technically he lived there so that was his home. So I don't
9 know. This --- I've never had so many interesting issues in
10 one case, Your Honor. So I think we need to probably ...

11 THE COURT: It's an interesting concept that you
12 think that he doesn't have to retreat the whole prison
13 because he lives in the prison?

14 MS. ZMROCZEK: No he lived at room 1213.

15 THE COURT: If he was in that room, he would have
16 to do retreat. If he's out in the hall. I mean, it's just
17 let's assume you live in a hotel, and an incident occurred
18 at the bar or in the hall, I think you've got a duty to
19 retreat unless you're in your room. I mean, if he was in
20 his cell, he may not have to retreat because there's not a
21 whole lot of places to retreat, too. But I'm not sure that
22 he does not have a duty to retreat, if he's out in common
23 area, where this incident allegedly took place. Because he,
24 that he can't claim the whole prison is his home. Just
25 like if I lived in a hotel room at a huge hotel. I can't

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1 claim the hotel as my residence. Can I?

2 MS. ZMROCZEK: Well, but I would argue that you
3 have the ability to rent a room and leave the hotel if you
4 wanted to. Trust me, he would have wanted to, but he
5 couldn't leave and so ...

6 THE COURT: I understand your argument. But I just
7 don't think that's the law and have certain ridiculous
8 results. And his house is the prison and he's out of his
9 cell, at least from the testimony, and he should have been
10 in his cell for the lockdown. If he's out of a place that
11 he did not, at that point, have a legal right to be then I
12 think he had a duty to retreat verses if he had been in his
13 cell, and they had pinned him in his cell, and he certainly
14 could have had a right in his cell to defend himself to
15 whatever degree but I'm not sure, because based on the
16 testimony there were paths that he could have retreated on.
17 So at this point, I'm not charging that unless you can find
18 me some law overnight but I'll be surprised if you do.

19 MS. ZMROCZEK: I will certainly research that,
20 Your Honor.

21 THE COURT: Okay.

22 MS. SCOTT: And Judge we would agree with that.
23 We would say that he was not in his cell, he was not in a
24 place where he had the right to be at that point, lockdown
25 had occurred, he was in a common area, unlike the victim

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1 who most likely was in his cell. So we would say that he
2 would not be able to get that charge as well.

3 MS. ZMROCZEK: And again, I think there are some
4 nuances with Officer Lopez saying that he did --- he said
5 he didn't even bother to try to put them in their cell. And
6 so I think there is some, I think --- I think there's some
7 interesting areas that I probably need to research on that,
8 Your Honor.

9 THE COURT: Well, I'm not sure if it was a Duncan
10 hearing you could argue that he did not have the legal
11 right to be in that all because there was a lockdown and
12 that was a question of fact because whether even though
13 somebody may have called for lockdown on prison PA system,
14 they weren't physically lockdown. But that seems to be only
15 an issue in a Duncan hearing. It is not an issue in self
16 defense. It is not he has a legal right to be. He has a
17 duty to retreat when he can except when he's in his own
18 home. And so if he was in his own cell, I would probably
19 give you that charge because I would think he has a duty to
20 retreat in his own cell but the fact that he's out in the
21 open common and whether he had a legal right to be there or
22 not is really not an element of self defense. It's an
23 element of standing your ground law, you know, but not self
24 defense. I just don't think the facts fit that in this
25 case.

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1 MS. SCOTT: Thank you, Your Honor.

2 MS. ZMROCZEK: I think those are all the ones we
3 have.

4 THE COURT: I'm sorry?

5 MS. ZMROCZEK: I think those are all the ones we
6 have.

7 THE COURT: If you think of something else just
8 let me know. And I'll see y'all at 9:30 in the morning. If
9 you're not going to show up how about call me. Thank you.

10 **(December 8, 2023 - Day 5)**

11 THE COURT: Thank you, you can be seated.

12 MS. SCOTT: Judge, just for the record, we
13 discussed this back in chambers we are going to be moving
14 state's exhibit four was a CD that had the F1 video in mp4
15 format I guess when it was being downloaded it didn't
16 include all the footage that we had agreed upon entering
17 into evidence we now have that on a hard drive that we were
18 just going to switch over to make state's exhibit four. It
19 includes all the evidence of the video surveillance that we
20 had originally thought was on the CD and then the defense
21 is aware of it and I believe is in agreement with it as
22 well.

23 THE COURT: Is that correct?

24 MS. ZMROCZEK: That's correct, Your Honor.

25 THE COURT: Okay.

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1 MS. ZMROCZEK: Because I think the hard drive that
2 the hard drive that has to have a special system to play
3 was that's what was supposed to be on the disk which
4 couldn't fit there's no way it could all fit.

5 MS. SCOTT: Right.

6 MS. ZMROCZEK: That's correct, Your Honor.

7 MS. SCOTT: So if, Your Honor, would like, we can
8 give it a new number --- state's exhibit new number or just
9 keep it as state's exhibit four. Whatever Your Honor would
10 prefer.

11 THE COURT: Melissa, what's going to work best for
12 you?

13 MADAM COURT REPORTER: We do either one. Either
14 one would be fine. I can say Exhibit Four is now the hard
15 drive.

16 MS. SCOTT: Okay.

17 THE COURT: Okay.

18 MS. ZMROCZEK: I think that's probably easier than
19 we don't worry about ...

20 MR. GIESE: Your Honor, you know, one thing we
21 didn't mention we didn't talk about charge wise was the
22 hand of one. Are you charging that?

23 THE COURT: We decide not to charge that yesterday
24 I thought.

25 MR. GIESE: Oh did we? But clearly I can argue

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1 an act of the mob in furtherance of the mob.

2 THE COURT: Sure and that's part of ...

3 MR. GIESE: The mob.

4 THE COURT: ... You know, the mob is more than
5 one. I mean so ...

6 MR. GIESE: Right. That's fine.

7 THE COURT: Everybody participated in the mob.

8 MR. GIESE: Right.

9 MS. ZMROCZEK: And then the only other thing, Your
10 Honor, is if maybe we can take like a five minute break in
11 between so that I can plug in my computer and get
12 everything organized for my ...

13 THE COURT: Okay. If it is going to be five
14 minutes I wasn't going to necessarily send the jury out.

15 MS. ZMROCZEK: I don't think it'll take that long.

16 THE COURT: ... give you a chance to switch over.

17 MS. ZMROCZEK: Yeah, if they can just help me with
18 my computer when it's time.

19 THE COURT: Yeah, sure. Are both sides planning on
20 using video during your close?

21 MR. GIESE: Your Honor I am and in my opening or
22 opening on the facts and the law now.

23 MS. ZMROCZEK: But since I have a screen and ---
24 since I have a screen I don't think I'll need to get up and
25 walk over.

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1 THE COURT: Okay. And I'm just asking ...

2 MR. GIESE: Right.

3 THE COURT: Because if none of y'all are using I
4 was going to take those down.

5 MS. ZMROCZEK: I know because they can't see us.

6 THE COURT: They can't, you know, but if ya'll
7 both going to use it then we just have to leave them up.
8 And you're going to, you know, if you want eye contact
9 you're going to have to move around or whatever you have to
10 do.

11 MS. ZMROCZEK: That's good for me. I can't sit
12 still anyways.

13 MR. GIESE: You know, back in the day, you know,
14 we had a screen played it, you know, all this I don't know.
15 It's almost like it's a ...

16 THE COURT: So are we ready for the jury?

17 MR. GIESE: Just one second, Your Honor. We've got
18 to turn that one.

19 THE COURT: Okay.

20 **(Jurors entered the courtroom)**

21 THE COURT: Okay, Ladies and Gentlemen, I like
22 the fact that all of you made it back. Now, if you will pay
23 close attention, the attorneys are going to give you their
24 closing arguments then I will charge you on the law and
25 give you this case to decide. Solicitor.

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1 MR. GIESE: If it may please the Court, Your
2 Honor. Ladies and gentleman of the jury, this is the time
3 in the trial that they actually call the closing arguments
4 to the jury. Both side will make them. In this case, the
5 State, which is me, will go first and Ms. Zmroczek will
6 have an opportunity and then Ms. Scott is going to have an
7 opportunity to reply. It's not really an argument even
8 though they call them that. You can't ask me questions and
9 I can't ask you questions. But what it is, is this what the
10 lawyers see as the facts as to what happened and a to law
11 and how they apply. And that's what this case is about.
12 Now, you know, I like history. And I wanted to go back ---
13 I wanted to see when we first had a jury. When was the
14 first time we ever had a jury? The first juries we know
15 about were in Greece, ancient Greece. And since that time,
16 there have been juries all through history, Romans,
17 Anglo-Saxons, everyone. And it's all up to you now. You're
18 in a line of succession of jurors who have come in and done
19 the best that they could. And you looked at the facts, you
20 looked at credibility and you looked at the law. You did
21 the best they could. So you are actually at the end, at
22 this point, of great history.

23 Now, his Honor, at some point, is going to talk
24 to you about --- He's going to give you the law. Alright?
25 I've got some of the issues the of the law that I'd like to

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1 talk about before he gives it to you, and show you how the
2 facts apply to the law. Now, the first and before I get
3 into talking about mob. The first thing the Judge is going
4 to tell you is it is upon the state, the state has the
5 burden to prove Mr. Smith guilty beyond a reasonable doubt.
6 Okay, guilty beyond reasonable doubt. Now, reasonable doubt
7 is the definition the judge will give you. But suffice it
8 to say it's exactly what it sounds like. A reasonable
9 doubt, a doubt in which you can give a reason to. Alright?
10 Now you can doubt anything. You can doubt that the suns
11 going to come up tomorrow. But that's not a reasonable
12 doubt. A reasonable doubt is when you go I have a doubt
13 because of this reason. Not some whimsical doubt but you
14 can point to and say that's the reason I had a doubt. It's
15 up to the state to prove their guilty beyond a reasonable
16 doubt. Now, the first charge that the defendant is charged
17 with, is assault and battery by mob, first degree. Any act
18 of violence inflicted by a mob, upon the body of another
19 person, which results in the death of the person. And
20 that's the statute. That is the actual charge itself. Now,
21 it goes further, it explains what a mob is. A mob is a
22 gathering of two or more persons without color or authority
23 of law for the premeditated purpose and with the
24 premeditated intent of committing an act of violence on
25 another person. It's up to the State of South Carolina to

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1 prove that. The state submits, we've done that. We've done
2 that. You watched that tape. How can there be any doubt
3 that there was a mob, they gathered, the mob was two or
4 more people, the State submits it was almost forty, without
5 code or authority of law, for the premeditated purpose,
6 with the premeditated intent of committing an act of
7 violence on another. Now, the premeditated purpose and
8 premeditated intent. Remember, remember back on those
9 tapes, you will have them back there with you, when the
10 Bloods form up in a group and the Gangster Disciples form
11 up in a group and they come in and parlay. Those two sides
12 don't fight. They don't fight because they made peace but
13 the Crips weren't in there. The State submits at that point
14 it left the Bloods, about forty of them, you can see it,
15 left them to attack the Crips, which is exactly what they
16 did. You can see it on the tape. And at some point a war
17 cry goes out and I believe Mr. Smith even said a war cry
18 went out. A war cry went out. Twenty of those Bloods go
19 straight up the stairs to where Mr. McClary is, twenty of
20 the Bloods go and run, including Mr. Smith, to the other
21 end of the door where the Crips are hiding in the cell ---
22 in their cell, jammed locked, shut. That mob had the
23 specific intent to hurt the Crips. They try to kick the
24 door down, they can't do it. On the other end where we
25 can't see, where twenty Bloods went upstairs, Mr. McClary

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1 is out, somehow he's out of his cell. He's a Crip. And Mr.
2 McClary is attacked. And that was the purpose of the mob,
3 was to get a Crip. And they did. They got him a hundred and
4 one times him. One hundred and one. It's almost a number
5 that I don't seem to comprehend that. That's one hundred
6 and one times someone took a shank and hit him. Hit him
7 with it. So anybody that's in that mob, it could be someone
8 without a shank, anybody that was in that mob of Bloods,
9 the State submits is guilty of murder, of the death, excuse
10 me, of the death. Anybody in that mob, whether they struck
11 the blow or not, is guilty of assault and battery by mob
12 first degree. It was a assault and battery and he died as a
13 result, you can see that on the tape.

14 Criminal conspiracy, that's the second charge.
15 The defendant combined with one or more persons for the
16 purpose of committing an unlawful act, or of committing a
17 lawful act by unlawful means. As I told you in my opening,
18 conspiracy is the binding together of two people or more.
19 They get together and they say we're going to commit X and
20 whatever X is is unlawful. If they combine and do an overt
21 act toward that they're guilty of conspiracy. And again, in
22 this case, the State submits, there were forty people in
23 that conspiracy, all those forty Bloods that were down
24 there they were going to commit an unlawful act of
25 attacking the Crips, which they did. That's conspiracy.

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1 Prisoner carrying or concealing a weapon. An
2 inmate of a State correctional facility did have in his
3 possession to carry on his person and or conceal an object,
4 homemade or otherwise, that would be used to inflict
5 personal injury upon another person. So what's that? That's
6 did the inmate have a weapon? Did he have a shank? He did
7 State submits. He admitted to having a shank. He's not
8 supposed to have a shank. He's got one. Now we'll get to
9 his testimony in a minute but you can see plainly on the
10 tape and on these pictures that he's got one clearly. So
11 the State submits he's guilty of that crime.

12 Go ahead. Alright, credibility. Your Honor is
13 going to tell you about credibility. But you know, there's
14 a long --- it's a legal definition that he'll read to you
15 but it is pretty simple. Who do you believe? It's
16 believability. Who do you believe? And to come to that
17 conclusion, the State submits, who do you believe, you've
18 got to look at their demeanor, how they testified and what
19 they said. And is what they said the truth.

20 Now, I want to go into the defendant's testimony
21 just for a minute. You watched him, you saw it. You watched
22 him testify. What happened the state submits, what happened
23 when he got caught in an untruth? What happened then? He
24 tried to change his story and it happened time after time,
25 time after time. One, and I wrote this down, this is a

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1 quote, I don't ever carry weapons, and then he says, that's
2 the truth. His testimony. The State submits can you believe
3 anything that man said after that point. Clearly, wasn't
4 true but we had to ask him. We had to prove --- Had to say
5 wait a minute. I asked him, have you ever had a weapon? He
6 said he never had one and low and behold, he had one. He
7 had one in Perry and when I asked him about that he was,
8 you know, my roommate had a shank and the COs came in and
9 found it and said somebody's got to take the blame for this
10 so he did. Well come to find out that wasn't true either.
11 State submits he told an untruth again, because when we
12 presented him with the facts of that case, which was oh, it
13 wasn't found in his room, it was found in his boot. How do
14 you make that mistake? How do you make that untruth? And
15 the defense wants you to now believe him when he talks
16 about self defense. Can you believe him? I committed the
17 offense because I was scared for my friend Ray Ray, who I
18 thought he had originally testified had gone up and that's
19 who they're trying to kick the door in to find but low and
20 behold we showed him going up the stairs, going up the
21 stairs where Mr. McClary was, twenty of them. Twenty of
22 them. We showed him that. So what is it of his testimony
23 that you can believe? Credibility, believability, what can
24 you believe? I believe he was armed. He said that, right? I
25 believe he stabbed Mr. McClary. He stated he did. I believe

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1 he stabbed Mr. McClary in the back. I believe all that. He
2 admitted all that. States submits, what can you not
3 believe. You cannot believe that he was in fear of serious
4 bodily injury or death of himself or another when he chases
5 Mr. McClary down that walkway. It is, it is a frightening
6 video, State submits. He's chasing him down the walkway
7 with some of his mob members. And what's his testimony
8 about that? I was in fear of my life. Okay. Can you believe
9 that? If you are in fear of your life do you chase the
10 person you're scared of? Do you? State submits, of course
11 not. Once that person leaves, you go the other way. But
12 there was no threat. There was no threat. And it look like
13 a bunch of sharks attacking poor Mr. McClary because they
14 come down chasing Mr. McClary. He has been stabbed, I
15 believe, the State submits, ninety times. He falls down the
16 stairs and as he falls down the stairs he almost, almost
17 falls on the floor. He somehow keeps himself up. The
18 defendant is in such a hurry that he pushes three or four
19 other mob members out of they way to get in front. He gets
20 in front and goes down the stairs. But I'm sorry, he is in
21 fear of his life from Mr. McClary. He then walks over with
22 two others and stabs Mr. McClary in the back. Mr. McClary
23 is turned this way when that man stabs him. And you can see
24 it as plain as day. Some of these pictures you will hae in
25 the back. He's stabbing him in the back. And you can watch

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1 it on the tapes. He's stabbing him in the back. And I asked
2 him were you in fear for your life at that point? Yes, I
3 was. He's in fear of this man? Mr. McClary, unarmed,
4 bleeding about to pass out. State submits that's just not
5 true. Just like his other untruths, that is not true. He
6 wasn't scared of him. In a minute, we're going to talk
7 about self defense. But think of this, when he stabbed Mr.
8 McClary down those stairs and chases him down the walkway,
9 is it self defense or is it retaliation? Retaliation for
10 his friends, Blood gang members that had been killed.
11 Because if it's retaliation that's against the law and
12 state submits it was retaliation by that group of Bloods
13 for what had already happened. And we're sorry that it
14 happened, we're sorry that it happened, but it did and it
15 gave him no right to retaliate and kill Mr. McClary. You
16 look at retaliation versus self defense. Retaliation is a
17 hundred and one stab wounds, chasing him down the stairs,
18 and as he falls, stumbles and falls, they leave him, they
19 leave him. They leave him to die. They accomplished what
20 they wanted to do. They had to retaliate.

21 Go ahead. Now I'm gonna go over the elements of
22 self defense but before I do, there's one other quote that
23 I wrote down Mr. Smith said, I am a man of peace. I am a
24 man of peace. Do you believe he's a man of peace? Watch the
25 tape. Does that look like a man of peace? A man of peace

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1 goes the other way. A man of peace goes the other way. Self
2 defense. It's up to the State to disprove self defense.
3 Let's go over the elements. Okay, Mr. Smith must be without
4 fault in bringing on the difficulty. That's the first
5 element. There are four elements. And if you look, after
6 each one of the elements, it doesn't say or it says and, so
7 for it to be self defense all four of these elements must
8 be met. Must be without fault in bringing on the difficulty
9 and. So what does that mean? Exactly what it says. He has
10 to not be at fault for bringing this controversy on. How
11 can that be? He fails that. They're the ones attacking the
12 Crips. They're the ones who started this. They're the ones
13 that are down there planning and run upstairs twenty and
14 twenty, both sides, so how is he at fault for any of this?
15 Without fault, I'm sorry. How is he without fault? He
16 clearly, State submits, is at fault. He and his mob are at
17 fault in starting this. They could have all gone to their
18 cells. They didn't. They ran up the stairs. They made that
19 choice. And that's why he is at fault in bringing on the
20 difficulty. If he stays downstairs, all forty of them stay
21 downstairs, how does it start? It doesn't. The Crips were
22 hiding. And, two, must have been in an actual imminent
23 danger of losing his life or sustaining serious bodily
24 injury, or he must have actually believed he was in such
25 danger. That's a lot of words. So he either had to been in

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1 actual imminent danger of losing his life or serious bodily
2 injury or he must have actually believed he was in such
3 danger. So, the State admits he hasn't made the first one
4 without fault in bringing on the controversy, but we will
5 go down the rest of them, even though I don't think the
6 State has to we will. Actual imminent danger of losing his
7 life or sustaining serious bodily injury. So it has to be
8 that, in this case, Mr. McClary is armed when he stabs him
9 after he comes down the stairs. That would be actual. If he
10 was armed down there Mr. McClary, that would be actual
11 danger. It's not. Or he must have actually believed he was
12 in such danger. We talked about that already. When Mr.
13 McClary is up against that wall, he stabs him in the back,
14 hits him twice, stabs him again, stabs him again. His
15 testimony, I was in fear my life. He said that for a
16 reason, he had to because he's saying that he actually
17 believed he was in such danger of being hurt badly or
18 killed. That's what he says. But how can that be? Y'all are
19 the finders of the fact. How can that be? And then again,
20 it goes and three, if he did believe he was such danger, he
21 must show that a reasonably prudent person of ordinary
22 courage would have had that same belief. And that's just,
23 again, if you believed it, which the State submits he could
24 not have thought he was in danger when he was stabbing Mr.
25 McClary. But a person, a reasonably prudent person of