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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable G. Thomas Cooper, Circuit Court Judge
Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CRAIG LEE LEGETTE,

APPELLANT

APPELLATE CASE NO. 2024-000565

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1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NOS. : 2021-GS-26-02637,
3 2020-GS-26-02638 &
4 2020-GS-26-02634

5 -----

6 June 29, 2023

7 **BEFORE:** The Honorable G. Thomas Cooper

8 -----

9
10 State of South Carolina,)
11 vs.)
12 Craig L. Legette,)
13 Defendant.)

14 -----

15 APPEARANCES:

16 Assistant Solicitor: Nancy Livesay, Esquire
17 Attorney for the State

18 Eric Fox, Esquire
19 Attorney for the Defendant.

20

21 Julie A. Kevish
22 Official Court Reporter

23

24

25

1 June 29, 2023

2 **P-R-O-C-E-E-D-I-N-G-S**

3 MS. LIVESAY: Your Honor, we've got Craig Legette
4 here. He is here with his attorney, Eric Fox. He is currently
5 indicted for murder. That number ends in 2634. He's also
6 indicted for possession of a stolen hand gun. That number ends
7 in 2637. He's also indicted for possession of a weapon during
8 a violent crime. That's going to be indictment ending in 2638.
9 We have several motions today before the Court on this case.
10 The State has filed some motions and defense counsel has filed
11 some motions. We can probably start with defense counsel's
12 motions first. His motion was filed in April of this year. It
13 is a supplemental discovery motion. This case originally was
14 set for trial in May of this year, correct, Eric?

15 MR. FOX: Yes.

16 MS. LIVESAY: Yes, so it was set for May, and then
17 this motion was filed in April. It looks like defense counsel
18 is asking for recordings of all phone calls made by Craig
19 Legette while detained at J. Reuben Long, the identity of all
20 persons incarcerated with the defendant that have given
21 incriminating statements against the defendant, and any
22 recordings and transcripts of any interviews between the State
23 and any witnesses.

24 THE COURT: Mr. Fox, let me hear from you further in
25 regard to that motion.

1 MR. FOX: Judge, the reason that was done was that
2 the State at some point in some hearing indicated that there
3 may well be -- I don't believe this was the record, it was
4 indicated to me that, in fact, Mr. Legette had been talking at
5 the jail with other inmates, or, you know, I won't say snitches
6 because I don't know what they were, but indicated and that in
7 fact he was also -- and they record the phone calls -- that
8 there may be incriminating material on these phone calls. So I
9 don't have anything formal in discovery other than the
10 solicitor indicating that might be a thing, and that was in the
11 context of what else we're here for which is his competency to
12 stand trial. In other words, the statement to me was something
13 along the lines of, well, he's been talking and we got him on
14 the phone and he knows what he's done, that general type of
15 thing. So I said, well, if that exists, and I know they will
16 in a case like this, the solicitor will generally go and have
17 someone listen and they'll pull his phone calls and listen to
18 see if there is anything and they often will talk to, you know,
19 people, at least cell mates, if not other people in the pod
20 where he is. So I don't know for a fact whether those exist or
21 not, but if they do and the State intends to use them against
22 him at trial, I certainly would like, whether it's a recording
23 or a transcript they prepared or a statement of an interview
24 with, you know, another inmate, so that's what we're asking
25 for.

1 THE COURT: Okay. Alright. Ms. Livesay, we deal
2 with the threshold issue, first of all, do such statement or
3 recordings exist?

4 MS. LIVESAY: Now, let me say this, Judge, as to the
5 number two, he's got three, he's asking for, as to number two,
6 anybody that the defendant has talked to at J. Reuben Long that
7 we've taken a statement from, we don't have any such
8 statements. I'm assuming he's talking, like, a jail snitch.

9 THE COURT: Right.

10 MS. LIVESAY: I don't have anything like that, if I
11 did I would turn it over. If for some reason that does come
12 up, once it comes up, I'll take that statement and I'll hand it
13 over to defense counsel, but I don't have anything like that.

14 THE COURT: Mr. Fox, does that satisfy you as to
15 dealing with that particular request?

16 MR. FOX: It does, at this point, Your Honor P.

17 MS. LIVESAY: Now, as to number three, the recordings
18 and transcripts of any interviews. Now, let me say this, so as
19 to the criminal aspect, collecting statements where they are
20 going to be used in the course of the trial, I don't have a
21 problem with turning those over, I do turn those over. Now, we
22 have taken multiple statements, and the reason we're here today
23 is because he has been evaluated and he has been found to be
24 incompetent. So now we have gone out and retained another
25 forensic psychiatrist to have him evaluated. Now, we have

1 taken statements from individuals for that purpose to hand it
2 over to that psychiatrist in evaluating whether or not he's
3 competent, but those statements are not statements that are
4 going to be used in the course of the trial against Mr.
5 Legette. Those are statements that goes towards her finding
6 whether or not him to be competent.

7 THE COURT: Alright, Mr. Fox, what do you say as to
8 those statements?

9 MR. FOX: Well, the purpose and the purpose of
10 wanting Dr. Maddox to do an evaluation would be to contest the
11 existing evaluation that's already been done by DDSN and DMH,
12 which it was one evaluation, and certainly to, if not, outright
13 prosecute the ultimate goal of being able to prosecute Mr.
14 Legette.

15 THE COURT: Right.

16 MR. FOX: In other words, and there is a Blair
17 Hearing scheduled for the week of August 7th before Judge
18 Murphy, so this would be in anticipation of that hearing to
19 determine whether he is competent or not, so I would say the
20 purpose is to prepare for that hearing and to challenge a
21 finding that he is incompetent, which is where we stand at the
22 moment, and for the ultimate purpose of prosecuting him. So I
23 would say they are relevant and something I should have access
24 to if there are witnesses, and there may, in fact, be relevant
25 for his underlying trial. I don't know who they've gone to

1 interview and I don't know what's in there, so I'm a little bit
2 handicapped in trying to say, you know, what they would be or
3 why they would be relevant, but it pertains to his knowledge,
4 his understanding of the court system, et cetera.

5 THE COURT: Right. So right now he's been found
6 incompetent to stand trial?

7 MR. FOX: And not likely to be restored.

8 THE COURT: And not likely to be restored. And
9 that's DSM and everybody else. So Dr. Maddox is being asked to
10 evaluate that and to render her opinion, maybe the same, maybe
11 different?

12 MR. FOX: Yes, at this stage, I think. We'll get to
13 it, I don't want to speak for Ms. Livesay. One of the other
14 motions in front of you is the State's request for you to order
15 another evaluation.

16 THE COURT: Right.

17 MR. FOX: But as it stands right now they would be
18 consulting with Dr. Maddox, as I understand it.

19 THE COURT: Okay. Okay. So I'm trying to figure
20 out, first of all, if Dr. Maddox does conduct another
21 evaluation and if there is no change in her mind in the opinion
22 that's already been rendered, then unless this information that
23 she receives in rendering the second opinion goes to the issue
24 of guilt or innocence then you would not need that; is that
25 fair to say?

1 MR. FOX: Yes. If she agrees with the current
2 conclusion, yes.

3 THE COURT: Right. And of course, if for some
4 reasons --

5 MR. FOX: Well, I'm sorry, Judge, to interrupt. I
6 don't know and it's not my decision what the State's decision
7 would be of Dr. Maddox, I wouldn't be surprised if they somehow
8 still, you know, attempted to cross-examine both doctors and
9 contest the findings, so that potentially we're still
10 addressing those things in the Blair Hearing, but I would think
11 if Dr. Maddox supports what's already been found that hopefully
12 that would end it.

13 THE COURT: And of course, what I'm struggling with
14 is dealing in the vast foggy area of hypotheticals, we're
15 talking about we don't know what these folks are going to say
16 and we don't know what she's going to say and so we're trying
17 to figure out some way to do this in a fair arena so that
18 you're not blindsided by it and your client's not disadvantaged
19 by it, so I'm trying to figure out whether it's appropriate for
20 me to address these other statements that you all have taken,
21 and you're going to show them to Dr. Maddox; is that fair to
22 say?

23 MS. LIVESAY: I've already sent them to her, yes,
24 sir.

25 THE COURT: Alright, you've sent them to her so she's

1 looking at them now. Whether it's appropriate to go ahead and
2 require disclosure of those now or not or wait until Dr.
3 Maddox's opinion comes down, which if it is changing this then
4 I think the relevance of those statements to your case is
5 decidedly more different -- I mean, different. In other words,
6 then you've got a right to explore so that your experts can go
7 back and all that kind of stuff.

8 MR. FOX: That's right, and Judge, a little bit of
9 context, initially this motion was about any potential
10 statements from people at the jail.

11 THE COURT: Right.

12 MR. FOX: At that time they had not engaged Dr.
13 Maddox. It wasn't an issue, I'm still asking you to allow me
14 access to that now, but this motion was originally filed in the
15 context of material gathered interviews, witnesses from the
16 jail.

17 THE COURT: Right. Okay.

18 MR. FOX: So at the time I filed it I wasn't
19 anticipating this exact situation.

20 THE COURT: Alright. And of course, depending on
21 what those interviews were they may very well be discoverable
22 notwithstanding Dr. Maddox's evaluation, I take it.

23 MS. LIVESAY: I understand, Your Honor. And you tell
24 me if this is what your ruling is and we'll comply with it.
25 Upon her issuing the report, I don't mind once the report is

1 issued handing over the report and everything she reviewed to
2 come up with the report.

3 THE COURT: Right.

4 MS. LIVESAY: And right now I feel like it is, we're
5 in a situation where it's kind of still moving along, so what I
6 wanted to do, and if I need to turn them over before then, I
7 will, but she's in the process now of reviewing all that.
8 She's going to have a report, and then upon turning the report
9 over to Eric, which I will do, if Eric says then, I want to see
10 everything she looked at to come up with this opinion, I don't
11 have a problem with turning that over, but we're still in the
12 process, that's why I haven't turned it over.

13 THE COURT: That's right.

14 MS. LIVESAY: Today's hearing will let me know if
15 we're going to get more information to give her or not. So
16 she's not going to issue a report until I say, hey, this is all
17 I can give you.

18 THE COURT: Okay. Mr. Fox, what about that? The
19 report comes out, whatever it says, good or bad, you get the
20 report and you get everything --

21 MR. FOX: I think that's fair, as long as there's
22 enough time before August 8th, and it sounds like it will be.
23 So we're at the middle of June, so as long as it's not the week
24 before, two weeks before, so that way I would have time, if
25 necessary, to follow up and investigate myself, then I think

1 that's satisfactorily, Your Honor.

2 THE COURT: I think that addresses that, Ms. Livesay.

3 MS. LIVESAY: Okay. Now, let me tell you this,
4 Judge. This other, regarding this motion from the defense
5 counsel, he asks for recordings of all phone calls made by
6 Craig Legette. Now, there are thousands of phone calls made by
7 the defendant from the jail. I don't mind turning those over.
8 Do you want me to just turn them over in portions, download,
9 you know, because it's in the thousands?

10 MR. FOX: What I'm specifically requesting is any
11 that the State purports in which he discusses the facts of the
12 case, anything incriminating. I don't need to know, you know,
13 hey, how you doing.

14 THE COURT: Anything that's discoverable under Rule
15 5.

16 MR. FOX: That's correct, that's right, Judge,
17 anything that's discoverable under Rule 5.

18 MS. LIVESAY: Yes. And the only thing that we have
19 the jail calls for is for, again, just for Judge Maddox -- I
20 mean, I'm sorry, not Judge Maddox, Doctor Maddox.

21 THE COURT: Yes.

22 MS. LIVESAY: So we have given her ten or 15 calls to
23 listen to for her, again, to come up with an opinion regarding
24 his competency.

25 THE COURT: You'll get that with the report.

1 MS. LIVESAY: Yes.

2 MR. FOX: Yes.

3 MS. LIVESAY: But I don't want to give it at this
4 time because, again, we're still trying to collect everything.

5 THE COURT: Okay. I think we've already dealt with
6 that, the report. There were other phone calls that deal with
7 Rule 5 issues, he's entitled to those whenever you can get them
8 to him.

9 MS. LIVESAY: So you don't want all of the calls, you
10 just want the ones that we've given her?

11 MR. FOX: Or any that you intend to rely on that
12 would be discoverable under Rule 5.

13 MS. LIVESAY: I got you, I got you. Now, just for
14 the record, Rule 5 says all we're responsible for turning over
15 as to the defendant's statement is a statement made to an
16 investigative officer which would not include the jail calls,
17 but it appears from this Court's ruling I'll go ahead and turn
18 over anything that we plan on using at the time of trial.

19 THE COURT: And that would help because Rule 5 is, we
20 all know, if that investigator testifies then he gets it, so
21 give it to him before.

22 MS. LIVESAY: I got you, that's fine, Judge. I don't
23 mind.

24 THE COURT: Thank you. I appreciate it. I wish all
25 solicitors and public defenders worked together in the relative

1 harmony, I know these are serious issues and that you all can't
2 be patting each other on the back, and all that sort of stuff,
3 but you really do all manage to work in an area of advocacy for
4 your respective positions without becoming enemies with each
5 other, that's an admirable attitude to try to maintain as long
6 as you can. Thank you.

7 MS. LIVESAY: Now, does that address everything you
8 need?

9 MR. FOX: It does at this time, yes.

10 MS. LIVESAY: So that's going to take care of his
11 motion, so we've got that figured out.

12 THE COURT: Alright.

13 MS. LIVESAY: Now, the State has about three motions.
14 The first one I'd like to go ahead and address is the Motion to
15 Compel from the Department of Disabilities and Special Needs
16 because that young lady is here and she's from out of town, so
17 I'd like to go ahead and get her out. So what happened, Judge,
18 was originally Mr. Legette was interviewed by the Department of
19 Mental Health. That happened June 21st of 2022 with Dr.
20 Godfrey. During that evaluation he would not cooperate. She
21 tried to meet with him several times and he would not
22 cooperate, so she never ultimately rendered an opinion, but
23 that was Department of Mental Health. She never recommended
24 him go to DDSN. Mr. Fox came in January. The trial had been
25 scheduled in May, and Mr. Fox came, I think, January, February

1 and wanted him evaluated by the Department of Disabilities and
2 Special Needs. That evaluation then came back April 3rd of
3 2023, and that evaluation came back, like Mr. Fox said, that he
4 was not competent. There were several things that she looked
5 at to ultimately come up with her opinion which are listed in
6 the report. I wrote Department of Disabilities and Special
7 Needs. I said, look, if you don't mind I need all of this
8 information that was reviewed so I can give it to my expert, as
9 well as be prepared for cross-examination. At that time they
10 replied back and said, no, they would not give me anything that
11 was reviewed to come up ultimately with an opinion. So at that
12 time I asked Judge Culbertson, he told me to go ahead and file
13 the motion, so at that time I filed the motion, I served it on
14 Mr. Fox, and I sent a copy to DDSN. All the motion is asking
15 for is everything that she reviewed so I can give it to my
16 expert to review as well as use it for purposes of
17 cross-examination. I'm basically asking for the same thing
18 from the Public Defender he just asked me for. I put in the
19 motion that I didn't mind signing something just to say, look,
20 clearly the solicitor's office nor Dr. Maddox are going to
21 disseminate this information, give it out, it is only for me
22 and her to review for the Blair Hearing, but I do think we have
23 to have it because it's the ultimate basis of her opinion. I
24 have spoken with this young lady earlier, she said that
25 whatever -- this is the lady from DDSN --

1 THE COURT: How are you, ma'am?

2 DDSN: Good, Your Honor.

3 MS. LIVESAY: Yes, and she said that she is going to
4 comply with whatever the Court says. They are not trying to
5 obstruct in any way, but before they give out any information
6 they are going to need that permission from the Court.

7 THE COURT: Alright. Mr. Fox, do you have a dog in
8 that fight?

9 MR. FOX: I feel like I do.

10 THE COURT: Well, I think you probably do, too.

11 MR. FOX: Yes, because, Judge, my position basically
12 is, and this was the position I took, number one, I obviously
13 don't speak for DDSN. Number two, this material is being used,
14 not in any way to assist or further my client's interest,
15 that's not the State's job, but to, ultimately, at least call
16 into question and attack the evaluation we have for the purpose
17 of prosecuting him for murder. I cannot consent to that. I
18 won't consent to that.

19 THE COURT: I understand that.

20 MR. FOX: I don't disagree that these records have
21 been already considered and are in the hands of at least of the
22 evaluators. I would point out, Judge, some of these things,
23 the interview is already described in the evaluation report;
24 the Court order of competency, that's on file, that's a matter
25 of public record; the defendant's NCIC, well, I get that from

1 the State, they already have that; information from Horry
2 County pertaining to his current charge, that also -- and these
3 are the things listed that the evaluation report referenced and
4 consulted, well, several of those things are already in the
5 State's possession or within their ability to lay their hands
6 on.

7 THE COURT: Right.

8 MR. FOX: In terms of the main thing I think in
9 question is his school records, his individual education plans,
10 his IEP's.

11 THE COURT: Right. Address the Court, which Ms.
12 Livesay mentioned, that you need the underlying information
13 that Dr. Maddox is going to rely upon in rendering her opinion,
14 and especially if it finds that the initial opinion of DSM is
15 incorrect and that she should have the same information that
16 was relied upon by DSM in rendering an opinion that he's
17 incompetent, and it seems to me what's fair for the goose is
18 fair for the gander. Am I oversimplifying that?

19 MR. FOX: No. As I said, my position from the
20 beginning is I can't consent to it.

21 THE COURT: I understand. Okay. Alright. That
22 motion is granted. Whatever it is, you all are going to have
23 to get the nuances of the wording out so that I don't --

24 MR. FOX: Yes.

25 MS. LIVESAY: Yes, sir. And just for the record for

1 this young lady, Mr. Fox is right, some of the information I do
2 have, but the main stuff is she based her opinion, or a lot of
3 the opinion from the report it appears, on these Horry County
4 School records --

5 THE COURT: Right.

6 MS. LIVESAY: -- and I don't have those, and that's
7 kind of, even on page four -- three and four, she lists the
8 information from the school.

9 THE COURT: Right.

10 MS. LIVESAY: So I just want all of it so I can put
11 what she listed in the context.

12 THE COURT: Okay. Somehow I know that, in rendering
13 that report somebody had access to those records and they were
14 in the file somewhere because they relied upon them, so you're
15 entitled to get that, whoever's got it.

16 MS. LIVESAY: Okay. Thank you, Judge.

17 THE COURT: Does that make any sense to you, ma'am?

18 DDSN: Yes, that is clear. We can produce those, no
19 problem.

20 THE COURT: Alright. Thank you very much.

21 MS. LIVESAY: And can I get any of the notes that
22 exist from the interview that they had with the defendant?

23 THE COURT: Right. Okay.

24 DDSN: Yes. We'll make that copy.

25 MR. FOX: Typically I don't get the notes, and so I

1 would like those, as well, they would be useful to me.

2 DDSN: Yes, we can release them to the both of you,
3 no problem.

4 THE COURT: Alright.

5 MS. LIVESAY: I'm sorry, Judge.

6 THE COURT: Is that it?

7 MS. LIVESAY: No, sir.

8 THE COURT: Oh, you've got more?

9 MS. LIVESAY: Yes, sir.

10 THE COURT: Alright. I'm here all week.

11 MS. LIVESAY: Okay. One more thing.

12 THE COURT: Okay.

13 MS. LIVESAY: So like we've just said, I've talked to
14 Dr. Maddox, she's been retained, she is reviewing these items,
15 but she has told me that ethically she needs be able to, or at
16 least make an attempt to interview the defendant, so I am
17 asking for the Court to order an evaluation under Blair for Dr.
18 Maddox to be able to evaluate this defendant. Now, let me say
19 this, I know he did not cooperate with the first person from
20 DMH that was doing it and she was not able to come up with an
21 opinion. I don't know what will come of this, but I have to
22 ask that Dr. Maddox be able to at least try to evaluate him as
23 part of her ultimate opinion on his competency.

24 THE COURT: Mr. Fox, what say you?

25 MR. FOX: Judge, I don't think statutorily there is a

1 mechanism for that. Bear with me just a little bit, I want to
2 go back to how we got here.

3 THE COURT: Okay.

4 MR. FOX: Initially, for the first, I would say close
5 to three years I represented Mr. Legette, we were able to talk
6 and communicating with his family I had some concerns about his
7 competence. His point of contact within his family was his
8 wife. His wife used the phrase "mental," I don't know if she
9 ever said "mentally ill," but she would say, "mental," he's had
10 "mental" problems, and so we went down the path of looking for
11 mental health records, Waccamaw Mental Health and others in the
12 area, and what the response we got back is, don't have
13 anything. Now, they reference in, I think in his latest
14 evaluation there's some, what I think is an internal document,
15 it's called like record of services or something which
16 indicates maybe he was taken to Waccamaw Health at some point.
17 I have not seen that. When we requested records from them it
18 was just, we don't have anything. So I don't exactly what DDSN
19 had in this completed evaluation, but based on that in my own
20 encounters with them we got Judge Culbertson to sign a
21 competency evaluation, and through DMH, and that's the one he
22 went, and I think on -- and I believe it was through video
23 screen. The first time he began the conversation and he
24 started, and that was in April of 2022, and he just sort of
25 shut down, they weren't able to complete it. So they

1 rescheduled it, I spoke to him, you know, look, it's important
2 you need to do this, you need to cooperate, you need to do your
3 best, answer these questions, these people are not for you or
4 against you but we need you to cooperate.

5 THE COURT: Right.

6 MR. FOX: So they rescheduled it in May and it was
7 the same thing, and so they were unable to issue a report.

8 THE COURT: Right.

9 MR. FOX: Around this time, summer of last year, Mr.
10 Legette began to not come out to see me when I would go visit
11 him. I would get word back, he doesn't want to talk to you or
12 he won't be out. So we're at the point where we've got an
13 order for an evaluation but it hadn't been completed. I'm also
14 at the point where I'm not able to communicate with my client.
15 So at that point -- and then he wanted to -- word came to me
16 that he wanted to have me be relieved, so we filed a motion at
17 his request, that was heard by Judge Culbertson in August of
18 last year. It was denied, Judge Culbertson saying you're going
19 to have the same issues with any lawyer, Mr. Fox is familiar
20 with the case, and that's fine. So at that point I began
21 exploring ways to be able to prepare his case for trial, and I
22 had a secretary in my office, Lisa Hughes, who worked for a
23 long time in the local school district, worked with special
24 needs and deaf children and just has a very great bedside
25 manner, and had her reach out to Mr. Legette's family on my

1 behalf, and spoke with his sister, Jessica, his older sister.
2 I don't know why the family didn't contact me before this, but
3 his sister relayed that for his entire life Mr. Legette has
4 been on Social Security Disability from the day he was born,
5 that her recollection was the doctors told her mother there's
6 going to be an issue, we already know this, and in fact, that
7 was the case and his entire school career he was in individual
8 classes or self-contained classes, and so forth. So at that
9 point, that's when we finally, in December and January of this
10 year, finally tracked down and got his school records, and in
11 seeing that then I had Ms. Hughes, and actually, someone who is
12 currently employed with the school interpret these IEP's for
13 me, and it became very obvious that there was an issue going
14 on. So at that point I think he was on a roster proposed for
15 May by that point, but so this was January of this year, I let
16 Ms. Livesay know that I thought that we needed to go through
17 the DDSN route, not mental -- because at this point I really
18 don't have any indication of mental health. She consented,
19 Judge Culbertson signed that, it was sent down to DDSN, they
20 chose to bring in DMH, they did a joint evaluation. I don't
21 know why, I guess they thought there may be some possibility of
22 mental health, so they did that, and they issued their report.
23 So that's been done, that's by statute. At this point there is
24 a Blair Hearing scheduled. My reading of 44-2310 and the
25 statutes accompanying that section is that the next step is for

1 the Court, and this is Judge Murphy, scheduled in front of
2 Judge Murphy, August the 7th, or that week, for the Court to
3 make a determination, we'll have the doctors here, we'll have
4 Dr. Maddox here, and the Court will issue, because it's a legal
5 determination in the end, is Mr. Legette competent, and if he
6 is competent, fine, if he is not competent, is he likely to be
7 restored, and if he is, then of course he could be committed
8 for up to six months, but if he is incompetent and not likely
9 to be restored that's a whole different thing, but there is
10 nothing in that language that gives the State the right to do
11 another evaluation. Alright. And we don't pick the doctors
12 either, they go down to DDSN, it was Dr. Hall and Dr. Mulay, I
13 believe from DMH, we don't have any say over that, that's
14 strictly an internal matter. They are supposed to be neutral,
15 and I believe are, so but it says after the Blair Hearing,
16 depending on what the Court says, six months after that, not
17 within six months, six months after either the Court, defense
18 counsel or the State can request another evaluation, but it
19 specifically says, Judge, and that's in 44-23-450, the last
20 sentence of that is that any petition to do another evaluation,
21 again, this is after the Blair Hearing, specifically says that
22 any petition filed within six months after the initial finding
23 of unfitness shall be dismissed by the Court without a hearing.
24 In other words, we're not just doing this over and over again.
25 There has to be, I would assume, a good faith belief that six

1 months later something has changed. It doesn't say, it just
2 says anybody can do it, the Court, defense counsel, solicitor,
3 but it's very explicit. The defendant has a right if they're
4 within the series of the statute, the defendant can request an
5 independent evaluation, because, again, these are the State's
6 doctors. I mean, these are doctors employed by MUSC and DDSN,
7 they are employed by the State of South Carolina. So it does
8 grant, specifically, the defense the right to request an
9 alternative, an independent examination, but it does not grant
10 that to the State.

11 THE COURT: Right.

12 MR. FOX: It doesn't say they can't, but they are
13 very specific.

14 THE COURT: Right.

15 MR. FOX: Standard statutory interpretation is the
16 legislature includes what they want to include, it doesn't
17 include what they don't want to include.

18 THE COURT: Right.

19 MR. FOX: And it also says when that's done, after
20 that six-month period, that the Court shall do it and that it
21 shall designate two examiners. In other words, the State,
22 number one, can't be done, number two, it's not someone of
23 their choosing.

24 THE COURT: Right. And that's after a finding of
25 unfitness?

1 MR. FOX: That's right.

2 THE COURT: Okay. Alright. Dr. Maddox's request
3 raised the point, Ms. Livesay, to me, is whether Dr. Maddox has
4 been asked to opine as to the validity of the accuracy of DSM's
5 evaluation and -- or is she being asked to conduct her own
6 evaluation to render an opinion based on her own independent
7 findings and not to simply evaluate DSM's findings?

8 MS. LIVESAY: So what happened was originally he was
9 to be evaluated by Department of Mental Health. Dr. Godfrey
10 tried to interview him.

11 THE COURT: I understand.

12 MS. LIVESAY: He would not cooperate.

13 THE COURT: Right.

14 MS. LIVESAY: So at this time I am asking for the
15 evaluation that was originally ordered that never happened and
16 no opinion ever came from. Dr. Godfrey does not feel
17 comfortable going back because she has already issued a report
18 saying I've tried to talk to him, he would not cooperate, so I
19 can come up with no opinion.

20 THE COURT: Right.

21 MS. LIVESAY: So we never got an opinion from the
22 original order, so we are asking now for that to happen. We
23 are saying, look, nobody ever evaluated him originally when we
24 asked for it. Nobody, DDSN did not review the same things that
25 Dr. Godfrey reviewed. So the State's position is we never had

1 that evaluation done, so that is what we are asking for now.
2 She never came from an opinion. She said he wouldn't
3 cooperate. Now, some of the details that Mr. Fox left out was
4 that the very defendant they're telling you isn't incompetent
5 told them that Mr. Legette said I'm not cooperating as to any
6 questions regarding the incident, and so she could not give any
7 kind of opinion without asking them about the incident. When
8 she tried to call back and talk with him again Mr. Legette told
9 them that he was terminating Mr. Fox and he didn't want to talk
10 to anybody until he retained another attorney. So clearly this
11 is somebody that has an understanding to a certain extent of
12 the process. So all we are asking is now to have that
13 evaluation that we never originally got because she was never
14 able to make an opinion due to the defendant's failure to
15 cooperate.

16 THE COURT: Right. If you didn't have an order for
17 an evaluation under what auspices did DSM conduct its
18 evaluation?

19 MR. FOX: There was an order, Judge, so I went back
20 based on -- my lay interpretation of -- I was not present for
21 those attempted evaluations with DMH, the initial with Dr.
22 Godfrey. The description of it reminds me of my own encounters
23 with him. Okay? I now, looking back and seeing the
24 intellectual disability that I know was there, I see that as
25 kind of his coping mechanism, and again, that's a lay -- that's

1 my interpretation. Once his sister was involved and I got her
2 -- his sister did more than just say, hey, check these records,
3 I took her with me to the detention center and she helped me
4 convince Craig that he needed to cooperate, here's why, et
5 cetera, and then he did.

6 THE COURT: Right.

7 MR. FOX: Now, I would take the position -- so that's
8 when I said, hey, this really should be a DDSN. We don't have
9 the defendant's initial evaluation, but it really should be a
10 DDSN, at least they should be brought in. So it may not have
11 been the right move, but I got another order for Judge
12 Culbertson to sign with the consent of the State and in the
13 event DDSN brought in DMH as originally DMH may have done if
14 they would have been able to go forward. They may have said,
15 you know what, we believe that Disabilities and Special Needs
16 needs to be here as well. I don't know, but DMH was, in fact,
17 a part of the evaluation, it was a joint evaluation. They
18 weighed in fully, they joined in the report, although, it was
19 written by the doctor for Disabilities and Special Needs. It
20 specifically says: DMH doctor was here and she fully has
21 reviewed this report and fully concurs in the findings. So I
22 would say that has happened. Right? We have satisfied the
23 first, we went a different way because of new information, so I
24 think, certainly, they can consult with Dr. Maddox, they can
25 present the records that they are given, they can present, you

1 know, the report, but that is distinct from having another
2 evaluation ordered, that's a specific thing that I just don't
3 think the statute allows for.

4 MS. LIVESAY: Can I approach, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. LIVESAY: This is just the two reports. This is
7 the original sources of information that Dr. Godfrey reviewed.

8 THE COURT: Right.

9 MS. LIVESAY: She also asked for stuff from Waccamaw
10 Health, everything she could look at.

11 THE COURT: Right.

12 MS. LIVESAY: He wouldn't cooperate.

13 THE COURT: Right.

14 MS. LIVESAY: This is the sources of information that
15 DDSN looked at.

16 THE COURT: Right.

17 MS. LIVESAY: The only thing that DDSN looked at were
18 the things provided to them by Mr. Fox. They never made any
19 effort like Dr. Godfrey did to step out and collect all of the
20 information, so our concern is the DDSN report just really,
21 honestly, acted as an evaluation for the defense counsel,
22 because the only sources of information they reviewed came from
23 Dr. Fox. The original -- Mr. Fox, I'm sorry. The original DMH
24 report, as you can see, reviewed everything, reports, they went
25 out and asked for SCDC records from when he was incarcerated

1 there, they asked for any mental health records from local
2 hospitals, clearly they looked at everything they could
3 possibly look at.

4 THE COURT: When you say, "they," who are you talking
5 about now?

6 MS. LIVESAY: The Department of Mental Health.

7 THE COURT: Okay.

8 MS. LIVESAY: The original one we asked for looked at
9 everything possible.

10 THE COURT: Right.

11 MS. LIVESAY: DDSN, and you can look at the report
12 and tell, the only thing they reviewed were the things provided
13 by defense counsel.

14 THE COURT: Well, now, when DMH -- Mr. Fox says DMH
15 was involved in the evaluation by DSM and it's a joint report
16 and they have signed off on it themselves, even though it's
17 clearly a DSM report, but the DMH has recorded in the
18 findings -- do you agree with that, or is that a
19 mischaracterization of what happened?

20 MS. LIVESAY: When I spoke with Dr. Mulay from DMH,
21 my understanding was the extent of her participation in the
22 evaluation was being present during the defendant's interview.
23 That was her extent, and that was just in case in the course of
24 the interview anything came up that may affect mental illness,
25 but I do not believe, and the report documents that DDSN did

1 not review everything that DMH was reviewing in their report.
2 DMH, as to that second report by Disability of Special Needs,
3 the extent of their involvement was just being present for the
4 interview of the defendant.

5 THE COURT: Doctor Mulay, I guess is the
6 pronunciation, is the DMH examiner who is listed on the joint
7 evaluation.

8 MS. LIVESAY: That's right.

9 THE COURT: Do we know if Dr. Mulay was involved in
10 reviewing any of the information that was initially made
11 available to DMH when they first requested this stuff?

12 MS. LIVESAY: My understanding when I spoke to Dr.
13 Godfrey who did the original DMH, she was not able to come up
14 with an opinion but reviewed all that, that was all her, and
15 she never had anybody involved from the Department of Special
16 Needs, she didn't think that was necessary, but then when I
17 spoke with Dr. Mulay, she told me that it is a standard
18 practice when they interview somebody from Department of
19 Special Needs to have somebody there from DMH, but she did not
20 convey to me that DMH was involved in any other way other than
21 just being present for the interview, and clearly Department of
22 Special Needs did not review the extent of the information. I
23 mean, all that was reviewed, what was provided by defense
24 counsel, that cannot be considered a full evaluation.

25 MR. FOX: That's typical. They insist that we

1 provide things, we did, and I would note that in the initial
2 interview by Dr. Godfrey at DMH, they did not have school
3 records. So again, they didn't reach a final conclusion, but
4 they did not have the school records, and you know, the sources
5 of information, you know, they say, oh, we got a fax cover
6 sheet from Waccamaw Center for Mental Health indicating no
7 records were located, a fax cover sheet from Columbia area
8 Mental Health, so it's listed as a source of information, but
9 it says, no records available. There's something called the --
10 oh, now I've lost it, Judge -- oh, the Episodes of Care, South
11 Carolina Department of Mental Health, whatever, an Episodes of
12 Care Form, it sounds like a coversheet, a form, and then it's a
13 lot of police records. Those are the things that they had in
14 addition and considered or didn't have and listed.

15 THE COURT: When Dr. Maddox does whatever she's going
16 to do, Ms. Livesay, will she have access to all of this
17 information that Dr. Godfrey had?

18 MS. LIVESAY: We have provided her with everything in
19 addition to what Dr. Godfrey was provided.

20 THE COURT: Right. Okay. Thank you. I'm struggling
21 with the nuances of the statute and whether the DSM evaluation
22 under these circumstances satisfies the requirement of Blair
23 and the statute specifically. I don't want to give short
24 shrift to Dr. Maddox's ethical evaluation, of course, she has
25 her own Code of Ethics that she has to comply with, and

1 certainly, I don't want to make it impossible for her to do her
2 work if she's concerned about an ethical evaluation in
3 rendering the opinion. My concern is whether or not it's
4 possible to address her ethical concerns and in the statutory
5 requirements and protection which comes to Mr. Legette under
6 these circumstances, and that's something in a quandary, quiet
7 frankly, given the overlay of the statute. The short answer is
8 she's going to have all of the information from both sources,
9 the DSM sources and the DMH source. Mr. Legette is aware of
10 what's going on in this case. He chose not to cooperate
11 earlier when the DMH and examiner was trying to evaluate him.
12 He may very well choose to do that again, for all I know. I'm
13 going to direct that he be evaluated by Dr. Maddox, and of
14 course, the finding, her findings in their complete nature are
15 going to be revealed at the end of the day, we'll see whether
16 it makes any difference or not. If he reveals something to Dr.
17 Maddox that causes her to change the opinion of DSM, then that
18 will be laid out in specific detail for Mr. Fox to examine that
19 and have any further expert examine her findings on those
20 narrow points, if necessary, and this may continue to be an
21 evaluation of a battle of experts for some time to come if we
22 continue with this tennis match of serve and volley with these
23 various reports, it may not be necessary. It may well be that
24 Dr. Maddox doesn't find that there's anything wrong with the
25 DSM evaluation to start with. I will grant the motion to allow

1 the examination by Doctor Maddox.

2 MS. LIVESAY: Thank you, Your Honor.

3 MR. FOX: Judge, can I, and this is for clarification
4 making a record --

5 THE COURT: Okay.

6 MR. FOX: -- is there a specific statute that Your
7 Honor is referring to, and I would note, earlier when I
8 referred to that six month, you know, that --

9 THE COURT: Right.

10 MR. FOX: -- after the Blair Hearing --

11 THE COURT: Right.

12 MR. FOX: -- in that context, it says: The Court
13 shall order an examination by two designated examiners.

14 THE COURT: Right.

15 MR. FOX: I see nothing anywhere, I'm not quarreling,
16 but where it's an examination --

17 THE COURT: Right.

18 MR. FOX: You may well have the authority to order
19 another examination, I'm not sure that the State gets to pick
20 the examiner.

21 THE COURT: And I see -- the fact that they've
22 already preselected the examiner in this case, of course --

23 MR. FOX: Yes. So I would ask if there's going to be
24 another one, provide all the records and everything that we
25 would and Dr. Maddox can still be consulted, but I would ask

1 that the State not get to pick their own. I did not pick any
2 of the examiners that have so far weighed in.

3 THE COURT: Right, I understand. And you're right, I
4 didn't rely on the statute, quite frankly, when I made -- I
5 relied on the fact that I'm trying to deal with the possibility
6 that there might be a different evaluation rendered by Dr.
7 Maddox in this particular case, and if so, then the State's
8 entitled, I think, to explore that, and you, likewise, are
9 entitled to explore her opinion fully, like or different, and I
10 think all of that, that's the reason I said what I might be
11 inviting here is just an endless parade of psychiatrists back
12 and forth, and I'm not unaware of that likelihood the way
13 things go with experts in this case, but I think that if they
14 have got an expert, which they have a right to do, to explore
15 the opinion of your expert in this particular case and that
16 expert has said that she has an ethical responsibility to
17 conduct her own examination, I take her word that she's got an
18 ethical responsibility. As I've said, I don't necessarily
19 ascribe to the fact that she as a statutory right to do that,
20 other than my ruling in this particular case that allows her to
21 do it just to try to develop the whole of the issues, for
22 example, if, in fact, the opinion of DSM was rendered on
23 incomplete information and Dr. Maddox raises that, says, well,
24 here's a little bit of information that Ms. Livesay has
25 mentioned that DSM relied upon, DMH had all this information

1 that nobody's looked at and nobody's rendered an opinion in
2 that regard, to the extent that that make's a difference, then
3 I think that that difference needs to be explored and Dr.
4 Maddox is an appropriate person to do that, and so I'll allow
5 that to be done. Of course, the distinction is that Dr.
6 Maddox's word is not the last word, you know, she is addressing
7 the DSM opinion and because she says it's not right doesn't
8 mean it's not right. It's going to be a judge's decision
9 eventually when you all have worn out every psychiatrist in the
10 state who is willing to look at these records and make an
11 opinion about this sort of stuff, and eventually it's going to
12 come down to some judge, it won't be me, I'll be dead and gone,
13 but some judge is going to say, okay, here it is, DSM was right
14 to start with, all this other stuff is just fluff and it
15 doesn't matter or not, but it needs to have all that
16 information before it.

17 MR. FOX: Yes, sir, I understand.

18 MS. LIVESAY: Thank you, Judge.

19 MR. FOX: And to make everyone aware, I probably will
20 be asserting a statutory right we have to an independent
21 evaluation, a third.

22 THE COURT: You got that. I anticipated that.

23 MR. FOX: Yes, sir.

24 MS. LIVESAY: And let me say this, Judge. We did
25 hire Dr. Maddox because she has done work for both the State

1 and defense, and in fact, Mr. Fox just hired and used Dr.
2 Maddox on a defendant that pled this week.

3 THE COURT: She's testified in every death penalty
4 case I've ever tried.

5 MR. FOX: No, I have no question about Dr. Maddox's
6 ethics or her capability at all.

7 THE COURT: That's right.

8 MS. LIVESAY: Thank you, Your Honor.

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1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF HORRY

4 I, Julie A. Kevish, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the Court of General
8 Sessions for Horry County, South Carolina, on the 29th of June,
9 2023.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12 June 29, 2023

13

14

A handwritten signature in cursive script that reads "Julie Kevish". The signature is written in black ink and is positioned above a horizontal line.

15

JULIE A. KEVISH
OFFICIAL COURT REPORTER

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STATE OF SOUTH CAROLINA * GENERAL SESSIONS
 COUNTY OF HORRY * TRANSCRIPT OF RECORD

-----X
 STATE OF SOUTH CAROLINA, *
 State, *
 vs. * Case No. 2021-GS-26-02637
 * 2021-GS-26-02638
 * 2021-GS-26-02634
 CRAIG LEE LEGETTE, *
 Defendant. *
 -----X

April 1-4, 2024

JURY TRIAL

B E F O R E:

The Honorable Donald B. Hocker, Presiding Judge; and a jury.

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

Nancy Livesay, Esq.
 Seth Oskin, Esq.
 Assistant Solicitor for the State

Eric Fox, Esq.
 Clay Pinkerton, Esq.
 Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
 SC Official Court Reporter III

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P R O C E E D I N G S

(Jury general qualifications by Judge Hocker previously held earlier this morning. Jury pool released until Tuesday, April 2, 2024.)

[1:10 p.m.]

THE COURT: We're on the record this afternoon in the case of State of South Carolina versus Craig Lee Legette. It's my understanding that we have a Blair hearing. Defense is the moving party, so I would just turn it over to you guys.

MR. FOX: Thank you, Your Honor. Eric Fox for Mr. -- from the public defender's office for Mr. Legette, and this is my co-counsel, Clay Pinkerton.

THE COURT: Good.

MR. FOX: Judge, briefly -- later, I am going to go into a more detailed timeline, because I do think it's important for the Court to have a broad overview ---

THE COURT: Sure.

MR. FOX: --- of the start of how we got here.

THE COURT: Okay.

MR. FOX: So Mr. Legette was arrested on September the 1st of 2020, charged with murder and possession of a weapon during the commission of a violent crime, also with possession of a stolen pistol.

I was appointed to represent him in, I believe,

1 January the 22nd of 2021, so a few months later, and
2 represented him -- you know, did discovery, did all the
3 things we do, met with Mr. Legette, and investigated the
4 case, etc.

5 In early 2022, so about -- after about a year that I
6 represented him, Mr. Legette -- I continued to have some
7 issues being able to communicate with him. He was kind of
8 withdrawing, not really engaging with me, and I had some
9 hint that he perhaps had mental health issues, coming from
10 family and from him, although...

11 Anyway, in March of 2022, based on those concerns,
12 we got a consent order signed by Judge Culbertson to have
13 Mr. Legette evaluated for competency, and the stated
14 reasons for my concerns, about my ability to communicate
15 and educate him on basic procedural matters. Okay?

16 At that time, in March of 2022, I believe that the
17 issue may be mental health. As part of setting up that
18 evaluation, which was to be done at MUSC in Charleston, we
19 contacted the local mental health -- usually Waccamaw
20 Mental Health is kind of the go-to around here; they're
21 the local community mental health organization. We also
22 reached out to, I believe, Conway and Grand Strand
23 Hospitals, but they had no record. They had no record of
24 service.

25 So the evaluation proceeded but -- and that was

1 with -- in April with Dr. Emily Gottfried of MUSC. That
2 was on April the 13th of 2022, and that was done via Doxy,
3 which is, like, their Zoom, you know, video conferencing
4 mechanism. So Mr. Legette was here at the jail where he's
5 been his entire time -- he's never had bond -- and
6 Dr. Gottfried was at MUSC.

7 According to Dr. Gottfried's report -- and we'll
8 explore some of these things in more detail, Judge -- but
9 Dr. Gottfried -- Mr. Legette started off answering
10 questions, cooperating, but eventually shut down, and she
11 was unable to finish the interview, so it was attempted to
12 be rescheduled. That was in May of 2022 and, again, on
13 June the 13th, 2022. And I'd ask you to keep in mind that
14 June 13th, 2022, date because we're going to talk about
15 that in a different context later.

16 But two more times they attempted to finish that
17 evaluation and were unable to do so because Mr. Legette
18 refused to leave his cell.

19 So on June the 21st of 2022, Dr. Gottfried issued a
20 report saying "I can render no opinion because I never
21 made it all the way through." Right? Mr. Legette stopped
22 answering questions, he won't come out now, and I'm not in
23 a position to render an opinion either way.

24 So that's June of 2022. Around that same time,
25 Mr. Legette through his brother Roger -- and, again, I'll

1 explore these in more detail -- but filed a motion or
2 requested that I filed -- I filed it on his behalf but
3 filed a motion requesting that I be relieved as his
4 attorney. So we did that. We don't routinely file
5 motions just because a client is unhappy with us; however,
6 in certain circumstances -- and, you know, if it's
7 repeated and there's continued to be a problem with the
8 attorney-client relationship, we will do that, and in this
9 case that was done.

10 In August of 2022, Judge Culbertson heard that
11 motion and denied it, basically saying, "I got no reason
12 to think anything is going to be any better with any other
13 attorney. Mr. Fox, you're familiar with the case, you've
14 had it for two years now" -- or a year-and-a-half at that
15 point -- "and we're not doing that. Mr. Legette, you got
16 Fox."

17 For the rest of that fall, Mr. Legette would not
18 meet with me. I would go out to see him on pretty much a
19 monthly basis, and, in October, twice in November, and
20 again in December, he refused to come meet with me.

21 So, at this point, the case is over two years old.
22 I'm kind of beating my head against the wall as to how to
23 adequately, properly defend this man. So I talked in more
24 detail with the lawyers in my office, including Ron
25 Hazzard, who is the Circuit Public Defender. "What do you

1 suggest? What should we do? How can I break this
2 logjam?"

3 Mr. Hazzard suggested looking -- getting his school
4 records and seeing if there's anything there. So that was
5 on one hand.

6 On the other hand, I got one of the administrative
7 assistants in my office, who is just a great people
8 person, great bedside manner, and asked her to reach out
9 to Mr. Legette's family to see if we could enlist their
10 aid in getting Mr. Legette to cooperate with me again.

11 That was -- and through my assistant, we contacted
12 Ms. Jessica Legette, who is Craig's sister, and for the
13 first time, we heard that it may not be a mental health
14 issue but rather an intellectual functioning issue, an
15 intellectual disability.

16 And sure enough, a short time later, we did get
17 school records back. Mr. Legette was educated right here
18 in Horry County, always went to Horry County Schools, and
19 we did get an amount of material, his individual education
20 plans, his IEPs, the accompanying testing that went into
21 that showing that he had very low IQ, very low
22 intellectual functioning, very low reading and math
23 skills, and that there was an issue there.

24 Now, we're into early 2023, realizing that there was
25 an order out there for him to be evaluated that had never

1 been fulfilled; right? Dr. Gottfried couldn't finish.
2 But we still have this order that Judge Culbertson signed
3 saying we've got to have an evaluation.

4 I ran into Ms. Livesay down the hallway in court and
5 said I would like to get another evaluation but I think it
6 needs to be a DDSN evaluation. We have evidence -- we
7 have some records that indicate that this should be
8 Disability and Special Needs. And that was done by
9 consent, and Judge Culbertson signed that order in
10 January.

11 All those records were forwarded in the meantime.
12 Mr. Legette met with myself, and I was able to persuade
13 the jail to allow his sister to accompany me -- Jessica --
14 to go to the jail and meet with Craig and go in the back
15 with me, which is the attorney visit room, and convince
16 him or try to persuade him to cooperate with his attorney.

17 She did that, and the next time I went to see him,
18 we were able to communicate for the first time in quite a
19 while. And that has continued through this day for the
20 last almost year and a half.

21 In March of 2023, Mr. Legette was evaluated,
22 interviewed in a joint evaluation with Dr. Alicia Hall
23 from DDSN and Dr. Abby Mulay from DMH. They did a joint
24 evaluation at their discretion. As Your Honor knows,
25 quite often when there's an intellectual disability, they

1 will quite often -- there's suspicion, well, they will
2 quite often do joint evaluations because those can often
3 be tied up with mental health issues as well.

4 They did a joint evaluation. And their conclusion,
5 based on their interview and all of the other information
6 they had available to them at the time, was that
7 Mr. Legette was not competent due to intellectual
8 disability and that he was not likely to be restored. So
9 that's March of 2023.

10 Subsequent to that, the solicitor's office filed a
11 motion seeking to retain and have their own doctor,
12 Dr. Donna Maddox, interview and evaluate Mr. Legette.
13 That was heard -- that motion was heard by Judge Thomas
14 Cooper in June of last year -- June of 2023, and over my
15 objection, that was granted.

16 So Dr. Maddox was permitted to meet with and
17 interview Mr. Legette, and that was done here in July of
18 2023 here at the detention center. I was able to be
19 present. I sat in and simply observed.

20 And my understanding is that Dr. Maddox's conclusion
21 is that, in fact, Mr. Legette is competent, and,
22 therefore, we can proceed to trial.

23 So that's how we got here today.

24 THE COURT: Okay.

25 MR. FOX: And there are other details I will fill in

1 as we go. So, at this time, we're ready to proceed, and I
2 would call Dr. Alicia Hall as my first witness.

3 THE COURT: All right. Let me just -- Solicitor, do
4 you have anything as far as background or summary?

5 MS. LIVESAY: I think I would, Judge, if you don't
6 mind ---

7 THE COURT: Okay. Go ahead.

8 MS. LIVESAY: --- and I'll try to keep it as quick
9 as I can. I know we're...

10 THE COURT: Sure. You're fine.

11 MS. LIVESAY: I'm trying to be timely.

12 I just want to let the Court know, first of all,
13 that an evaluation was done after the State placed
14 Mr. Legette on the trial roster. At that time, Mr. Fox
15 wanted an evaluation done. I consented to the evaluation
16 because I thought, if you feel like he needs an
17 evaluation, I certainly don't want to move forward -- it
18 could be an PCR issue -- so I consented.

19 At that time, Dr. Gottfried reached out and
20 evaluated Mr. Legette. Now, what Mr. Fox didn't tell you
21 was she could not come to an opinion because Mr. Legette
22 would not discuss the details of the case with her. She
23 explained that, look, I need to discuss the details, what
24 the facts of the case are, and he told her no, at this
25 time, I'm going to end the interview.

1 He was unhappy with Mr. Fox's representation during
2 that time because his bond -- he has not been able to make
3 bond. He has been in jail since the incident.

4 So, during this time, Dr. Gottfried wanted to speak
5 with him once he talked to his lawyer. She emailed two
6 times. Mr. Legette told them, "No, I'm trying to get
7 another lawyer. I am not going to meet with you until I
8 retain new counsel."

9 So, clearly, (A) he will not discuss with her the
10 facts of the case even though he would discuss other
11 things; (B) he knew that he was not going to speak with
12 anybody until he retained different counsel.

13 So we then came before the Court, which was Judge
14 Culbertson, on his motion to have Mr. Fox relieved. Now,
15 we have the transcript from that, and that transcript is
16 from August 11th on 2022. At that time, Mr. Fox told the
17 Court that he didn't have any issues with his competency
18 and that he thought that Mr. Legette had been determined
19 to be competent and this was just something he needed to
20 explore. That's what he was saying at that time. That's
21 what he told the Court, that he didn't have any concerns
22 with competency.

23 The State then tried to put him on the trial roster
24 again because he was incarcerated at the time, he could
25 not make bond. Upon putting him on the trial roster

1 again, Mr. Fox came forward again wanting another
2 evaluation. This time, he wanted the evaluation done by
3 DDSN, which is the Department of Disabilities and Special
4 Needs. That was never recommended by Dr. Gottfried or
5 anyone else.

6 So, at that time, again, I said, "Well, if this is
7 what you want, you know, I certainly want you to have the
8 ability to explore, do whatever you need to do to make
9 sure he gets the defense that he's entitled to."

10 Mr. Fox sent DDSN some select school records, the
11 warrant, and NCIC and maybe one other document. It was
12 not a tenth of what should have been sent. It was a small
13 sample size that was sent. It wasn't anything compared to
14 what Dr. Gottfried had reviewed for her report. And even
15 after her review, she couldn't give an opinion because he
16 wouldn't cooperate.

17 So, at that time, DDSN reviews this small amount of
18 records and came back that he was not -- not only not
19 competent but could not be restored.

20 Now, let me remind the Court, at this time, when
21 this murder was committed, Craig Legette was on probation
22 for another shooting that had had happened the year before
23 in that same apartment complex.

24 So when we received this notice -- and he has
25 already been to prison two prior times in South Carolina

1 Department of Corrections for ABHAN; when this is
2 committed, he's on probation. We receive this report from
3 DDSN where only a small amount of records had been looked
4 into. So, at that point, we became concerned. We
5 listened to jail calls. We talked to his two probation
6 officers. We saw that there was a difference between what
7 was reviewed at DDSN and what was reviewed at the
8 Department of Mental Health. At that time, we deemed it
9 vital to get another evaluation.

10 We brought that in front of Judge Cooper. We
11 explained to Judge Cooper that, "Look, we've got one lady
12 looking at this small portion of records, and we have got
13 another lady looking at a voluminous amount of records.
14 We need somebody that will look at all of it and tell us
15 what her opinion is."

16 At that time, Judge Cooper looked at both
17 evaluations and agreed that they had looked at separate
18 things, that the DDSN one did not look at all the
19 materials reviewed by DMH. So, at that time, he said,
20 "Solicitor, I am going to sign the order and allow for
21 another evaluation."

22 At that time, we obtained Dr. Maddox. She reviewed
23 the first report done by Dr. Gottfried. She reviewed the
24 DDSN report along with numerous jail calls. We sent her
25 all the incidents that he had been involved in previously.

1 We sent her records from the jail showing that he was
2 using the phone; he was, you know, getting the paper;
3 anything we thought that would be helpful for Dr. Maddox.

4 At that time, she reviewed everything. She met with
5 the defendant. Mr. Fox was present during that
6 evaluation. She came back and did a report saying that
7 she believed him to be competent.

8 Since that date, we have forwarded her materials as
9 we gathered them because competency is fluid so -- as they
10 were interviewing him today -- and she has consistently
11 looked at the jail records and listened to the jail phone
12 calls up until today's date.

13 She is of the opinion still today that he is
14 competent. She observed the interview between Ms. Hall
15 and -- I'm sorry -- Dr. Hall and Dr. Mulay this morning.
16 She says she is still of the opinion that he is competent.

17 This evaluation or this hearing is, without a doubt,
18 important, and the reason we got Dr. Maddox was because
19 the finding was just what Eric told you. It is not
20 competent and cannot be restored. This man has already
21 gone to prison twice for ABHAN. He was on probation at
22 the time this murder happened. And the State appreciates
23 that, if the Court finds, indeed, that he is not competent
24 and cannot be restored, that is basically the equivalent
25 of a license to kill. If he goes out and murders somebody

1 else, there will be no consequences, there will be nothing
2 we can do to move forward with any kind of criminal
3 actions.

4 This particular case was caught on video --
5 surveillance video, so the entire murder is on video. At
6 that time, after the murder, he didn't turn himself in for
7 several days. When he turned himself in, he didn't have
8 the gun. He didn't have the phone. He had changed
9 clothes. All things that deem the State to believe that
10 he is competent.

11 We know Mr. Fox is going to put up Dr. Hall and
12 Dr. Mulay, and we'll be ready to respond at the
13 appropriate time.

14 THE COURT: Thank you, Solicitor.

15 MR. FOX: Judge, since we jumped straight to
16 argument, I do need to jump -- I want to address some of
17 those as we go in, some of those comments that were just
18 made, and I promise we won't go on and on. But since we
19 went straight to argument, then I need to address that.
20 I'll try to go as best I can in order.

21 The motion -- my comments to the Court in the August
22 motion to be relieved were based on my understanding of
23 the facts of the time, and this is where the timeline is
24 very important.

25 In August of 2022, I understood that, if there was

1 an issue with Mr. Legette, that it was a mental health
2 issue. This is before, if you'll recall, I had learned
3 and obtained any school records or spoken with family that
4 would talk to me that indicated there was an intellectual
5 disability. This was several months before that. So, at
6 the time, that is true.

7 I have racked my brain as to why I said he had been
8 found competent. The factual record is there had been no
9 determination. There's only been one at that point,
10 Dr. Gottfried's attempt to render an opinion is the only
11 one that was there. I don't know why I said that. I was
12 mistaken. I don't know if I simply confused him with,
13 typically, three or four other clients that I had at any
14 given moment in the pipeline -- in the evaluation
15 pipeline. I don't know. But it's factually untrue, and
16 it was based on what I understood his condition to be at
17 that time.

18 That changed and that's why we asked for a
19 subsequent -- and my statement is of no evidentiary value,
20 I don't think, anyway.

21 Dr. Hall and Dr. Mulay were sent everything that we
22 had, including Dr. Gottfried's report listing all the
23 materials that she considered. And Dr. Gottfried is
24 always very thorough, always lays out in detail what she
25 considered and why, and she did that even though she could

1 not ultimately render an opinion. She still described in
2 detail her interview with Mr. Legette as well as the
3 material that she reviewed.

4 There is nothing -- I don't know where this
5 10 percent figure comes from. There is nothing that
6 Dr. Gottfried had that Dr. Hall and Dr. Mulay did not
7 have. I just don't agree with that.

8 So we are where we are. The comments about having a
9 license to kill, this is a determination to see if due
10 process is going to be followed in trying any defendant
11 regardless of the charge. I guarantee you, if we were
12 here -- if this was a shoplifting charge, there would have
13 been no objection from the State. We wouldn't have this.
14 I understand it's murder, but the evaluation -- the
15 Court's determination is exactly the same. The charge
16 does not matter. The evidence that may or may not be
17 shown at trial does not matter. It's whether this man, as
18 a matter of due process, can be tried and whether he is
19 competent or not competent, and competent, Judge -- and
20 lay out the standard as we start.

21 Bell and many cases in this state have laid out that
22 the person must be able, of course, to assist their
23 attorney, but they must have a factual basis, factual
24 understanding of the process, but a rational
25 understanding. Being able to say "that's a judge, that's

1 a jury" isn't enough. You have to be able to rationally
2 understand those things and the interplay of those things,
3 not to the level of a lawyer, but it is more than a
4 factual understanding. So I just lay that out right at
5 the beginning.

6 I'm ready to proceed if Your Honor is ready and
7 we'll call our first witness.

8 THE COURT: Okay. Call your first witness.

9 MR. FOX: Thank you. Dr. Alicia Hall.

10 THE COURT: Come around, Dr. Hall.

11 DR. ALICIA HALL

12 after having been duly sworn, was examined and
13 testified to as follows:

14 THE CLERK: Please state your name and spell it for
15 the Court.

16 THE WITNESS: Alicia, A-l-i-c-i-a, "V" as in
17 Victory, Hall, H-a-l-l.

18 THE COURT: Do we have a spare copy of the report --
19 Dr. Hall's report and Dr. Maddox's report just so I can
20 have something to kind of go along while they're
21 testifying?

22 MS. LIVESAY: Do you want to present it?

23 MR. FOX: I believe I do, Your Honor.

24 MS. LIVESAY: I've got this one if you need it.

25 THE COURT: And probably what you need to do, too,

1 just to have each report marked as an exhibit for purposes
2 of this hearing.

3 MR. FOX: Yes, sir.

4 MS. LIVESAY: Do you all three reports, Judge? You
5 want Maddox, Gottfried, and Hall?

6 THE COURT: Sure, if you have got a spare copy.

7 What I can do is, whatever is marked as an exhibit,
8 I can use that.

9 MS. LIVESAY: I understand.

10 (Court's Exhibit No. 1, 3/20/22 MUSC Evaluation, was
11 marked for identification and received into the record.)

12 (Court's Exhibit No. 2, Forensic Evaluation by
13 Alicia Hall, M.D., was marked for identification and
14 received into the record.)

15 (Court's Exhibit No. 3, Declaration of Donna Maddox,
16 M.D., was marked for identification and received into the
17 record.)

18 THE COURT: You may proceed.

19 MR. FOX: Thank you.

20 DIRECT EXAMINATION

21 BY MR. FOX:

22 Q Dr. Hall, would you please state your name, if you
23 haven't already, and spell it for the Court, please.

24 A Alicia V. Hall. I spelled it.

25 Q And what is your profession?

1 **A** I'm a licensed clinical psychologist.

2 **Q** Okay. And where are you currently employed?

3 **A** At the Department of Disabilities and Special Needs.

4 **Q** How long have you been employed with DDSN?

5 **A** Since 2010.

6 **Q** You say you're a psychologist. Where -- are you
7 licensed to practice in the State of South Carolina?

8 **A** Yes.

9 **Q** When were you licensed?

10 **A** 2007.

11 **Q** Have you maintained that license consistently since
12 then?

13 **A** Yes.

14 **Q** Continuously?

15 **A** Yes.

16 **Q** Any other license in any other states?

17 **A** No.

18 **Q** Could you please, if you would, give us your
19 educational background.

20 **A** I have a bachelor's degree from Lafayette College, a
21 master's from Indiana State University, and a doctoral
22 degree from the University of South Florida.

23 **Q** And what is that doctoral degree in?

24 **A** Clinical psychology.

25 **Q** Did you have to complete a residency for any of that

1 training?

2 A Yeah, completed an internship in clinical psychology
3 a year prior to -- well, as part of your final year of
4 training.

5 Q Okay. And where did you do that?

6 A At William S. Hall Psychiatric Institute in
7 conjunction with U.S.C. School of Medicine.

8 Q Have you received any other training or education
9 over the years?

10 A Well, we're required, as part of our licensure, to
11 get continuing education credits. So we need to get 24
12 credits within a two-year period to maintain our license,
13 and I have always maintained those credits.

14 THE COURT: Do you need Mr. Fox to move over a
15 little, Ms. Solicitor?

16 MS. LIVESAY: I'm sorry; I can't see her, Judge.

17 MR. FOX: I can move over here.

18 MS. LIVESAY: Thank you, Eric.

19 THE COURT: Here you go. All right.

20 BY MR. FOX:

21 Q Do you have any area of specialization within the
22 field of psychology?

23 A Forensics and neurodevelopmental disorders.

24 Q Can you give us a brief description of what that
25 entails?

1 **A** Well, forensic psychology is the intersection
2 between psychological functioning or psychological issues
3 and the legal system. So I specialize in the criminal
4 aspect of forensic psychology. It's a pretty good size
5 field.

6 And then neurodevelopmental disorders are those
7 disorders that are things like intellectual disability,
8 autism spectrum disorder, learning disabilities, ADHD. So
9 there are things that affect a person's development and
10 their presentation.

11 **Q** And are those specialties that are -- is that a
12 specialty that's recognized -- do you need to get a
13 special license or certification in South Carolina to
14 practice in those areas, or can you?

15 **A** It's not required to have a special license, but it
16 does require specialty training.

17 **Q** Okay. And who decides? Is there a board that
18 oversees that, that you have to apply to?

19 **A** With the training -- well, you can get board
20 certified in forensics. I'm not board certified. But in
21 order to call yourself a practice in forensics, you have
22 to have specialty training.

23 **Q** But that's where you have concentrated your practice
24 throughout your career?

25 **A** Yes.

1 Q Okay. Have you been involved, during the course of
2 your career, in the training or teaching of other
3 individuals, other psychologists?

4 A Yes.

5 Q Could you give us a little description of what you
6 have done?

7 A Yes. I'm on the clinical faculty at the U.S.C.
8 School of Medicine in the Department of Neuropsychiatry
9 and Behavioral Science. I offer lectures for the
10 residents and the medical students at U.S.C. as well as
11 MUSC, to talk about particularly forensics and
12 neurodevelopmental disorders.

13 Q Have you ever written or co-authored any research or
14 scholarly works?

15 A Yes.

16 Q Can you give us a hint of some of the things you
17 have done? We don't have to have the whole list.

18 A Prior to working at DDSN, I did a lot of research in
19 autism spectrum disorders, particularly in genetics
20 looking for the genes that contribute to autism spectrum
21 disorders and their manifestation. So I have written and
22 authored papers in that area.

23 Q Are these peer-reviewed articles?

24 A Yes.

25 Q Have you ever been qualified as an expert in

1 forensic psychology in the courts in the state of South
2 Carolina?

3 A Yes.

4 Q Can you estimate how many times?

5 A 25.

6 Q Okay. In any other courts?

7 A No.

8 Q Okay. And has that been in Family Court? in General
9 Sessions? a combination?

10 A Family Court, General Sessions, and then when I have
11 done Adkins cases.

12 MR. FOX: Your Honor, at this time, I would move to
13 have Ms. Hall qualified -- Dr. Hall qualified as an expert
14 in forensic psychology.

15 THE COURT: Solicitor, do you have any objection?

16 MS. LIVESAY: I have no objection.

17 THE COURT: Dr. Hall is found to be an expert in the
18 area of clinical and forensic psychology. You may
19 proceed.

20 MR. FOX: Thank you, Your Honor.

21 BY MR. FOX:

22 Q Dr. Hall, with regard to the case we're here about
23 today, did you receive an order from General Sessions
24 Court dated January the 9th, 2023, directing DDSN to
25 examine Mr. Legette and render an opinion as to his

1 competency to stand trial?

2 A Yes.

3 Q Okay. And did you subsequently -- who determines --
4 once an order comes in to DDSN, how is it determined who
5 will do that evaluation?

6 A We're a small operation so we have divided the state
7 up into -- well, DDSN has divided the state up into
8 regions. So we have two full-time examiners -- myself and
9 Dr. Davis -- and a part-time examiner, and so we each take
10 a region. So I have the Pee Dee region. So that's how I
11 was assigned this case.

12 Q I understand. So that's an internal DDSN decision?

13 A Yes.

14 Q Okay. The Court doesn't have any say over which
15 doctors do the evaluation?

16 A No.

17 Q And attorneys don't have any say, do we?

18 A No.

19 Q How is it determined in this case -- and you, in
20 fact, did an evaluation and interview with Mr. Legette?

21 A We did.

22 Q And was that -- were you the only doctor present?

23 A No.

24 Q Who else was with you on that interview?

25 A Dr. Mulay of MUSC.

1 Q And how is it decided -- why was that done?

2 A The state statute requires, if there is a presence
3 of intellectual disability and the presence of mental
4 illness, that each agency, DMH and DDSN, must have an
5 examiner present during the evaluation. Neither agency
6 can determine or comment on competency alone.

7 Q Okay. So, in this case, there were two of you.

8 And you subsequently conducted that interview in, I
9 believe, April of 2023?

10 A Yes.

11 Q Okay. Was that -- was Mr. Legette there -- and
12 where was that conducted? Let me start with that. Where
13 was that?

14 A At MUSC.

15 Q In Charleston?

16 A In Charleston.

17 Q Was Mr. Legette physically present or was this via
18 Doxy?

19 A He was physically present at that time.

20 Q Now, were you aware whether there had been any other
21 orders or evaluations in this case prior to the one you
22 were to conduct?

23 A Yes. I was aware that he had been previously
24 attempted to be examined by MUSC.

25 Q Okay. And did you have a copy of Dr. Gottfried's

1 report available to you?

2 A Yes.

3 Q So you were able to review that?

4 A Yes.

5 Q Okay. Did you have any other -- or did you review
6 any other documents or materials in preparation for the
7 interview?

8 A Yes. We received his school records. We received
9 records from the detention center and all the information
10 that came with discovery as well as his National Crime
11 Information report criminal history.

12 Q I'm going to go into it subsequently but did you,
13 after you issued your reports, later, did I provide you
14 with further materials ---

15 A Yes.

16 Q --- regarding Mr. Legette?

17 A Yes.

18 Q Okay. But at the time you had everything that
19 was -- that we sent you?

20 A Yes.

21 Q Okay. Could you describe for the Court the
22 procedure that you typically follow as you do an
23 evaluation. What's the process?

24 A So Dr. Mulay and I met with Mr. Legette where we
25 explained the purpose of our interview with Mr. Legette.

1 We asked -- once we do the notification, we ask questions
2 about the notification to ensure the person that we're
3 interviewing understands why they're there and what we're
4 going to talk about and that it's not a confidential
5 conversation and that we're not there to provide
6 treatment; that we're there to answer the question that
7 the Court has.

8 Once they agree to participate, we then move in to
9 asking them questions. Generally, we start with
10 background information. So, you know, how they're doing,
11 where they went to school. You know, he's currently
12 incarcerated or in the jail. How long has he been there,
13 how is that going. Get work history, medical history,
14 substance use history. Ask questions about growing up,
15 family life, those kinds of things.

16 Then we move to what we call our mental status
17 examination, so to see how he's thinking and feeling at
18 that time, and then we ask questions related to
19 competency.

20 Q And the -- I'm going to take one step back. With
21 the records that you had, you mentioned some school
22 records. What exactly did you have of his school records?

23 A We had three psychological evaluations: One dated
24 May 1989; one in February of 1994; and one in December of
25 1996.

1 We also had an IEP, or an Individual Education Plan,
2 dated in 1999.

3 Q And what did those records show you or tell you?

4 A That Mr. Legette was served in special education and
5 that he was classified as a student -- back at that time I
6 believe they called it educably mentally disabled, which
7 we now call intellectual disability.

8 Q And what were -- let's start with his -- the testing
9 to determine that. What sort of testing would the school
10 district have done in order to make that categorization or
11 make that determination for Mr. Legette?

12 A They test his IQ, so his intellectual functioning,
13 and they also test his adaptive functioning. In order to
14 determine if someone has an intellectual disability, they
15 have to meet three criteria. One is deficits of
16 intellectual functioning. Two is deficits in adaptive
17 functioning. And adaptive functioning are those skills
18 that people need to successfully and independently
19 navigate the world. And then the third prong is that both
20 deficits must be present during the developmental period,
21 so when a person is young.

22 Q Is there a kind of cutoff for that age?

23 A Yeah. We now think about it as being prior to the
24 age of 22.

25 Q Do you know what age Mr. Legette was when these

1 tests were done -- these series of tests?

2 A He was school -- I don't know his exact age, but it
3 was while he was in school, so it's all under the age of
4 18.

5 Q Okay. Does it sound right, the first one was done
6 when he was eight years old, in '91 ---

7 A Yeah.

8 Q --- and then again when he was 11, and then again
9 when he was 13?

10 A 13, yeah.

11 Q Well before 22?

12 A Yes.

13 Q And what did those -- what were those scores? What
14 did that show?

15 A So the scores were -- initially, when he was eight,
16 his scores were in what we call the borderline range. So
17 they were low but not sufficiently low for a diagnosis of
18 intellectual disability. And his adaptive scores were
19 also significantly low.

20 By the time he got to be 11, they tested him again,
21 and his full scale IQ was 53, and his adaptive functioning
22 was continuing to be significantly low.

23 And when they tested him again, the last one he had
24 at 13, his scores continued to be in the low range --
25 excuse me, in the extremely low range in both IQ and

1 adaptive functioning.

2 Q And, in fact, in the last IQ testing when he was 13,
3 if I read it correctly, he had a full scale IQ of 67?

4 A Yes.

5 Q Okay. Did you find any anomalies or anything
6 strange about -- is it normal for those scores to vary
7 somewhat over time?

8 A Lots can go into those scores. It's not unusual for
9 -- to test a kid who is pretty young and then have them --
10 who has intellectual disability and not be so far off from
11 their peers. IQ scores are looked at in relation to --
12 they're only useful if you can look at them in relation to
13 their same age peers. And so with kids with mild ID, we
14 begin to see the gap grow as their same age peers grow and
15 mature and the kids with intellectual disability do not.
16 They kind of grow and mature at a slower pace. And so the
17 distance between the levels of functioning get greater.

18 And so it's not unusual for someone who may not
19 quite meet criteria for intellectual disability at, you
20 know, five, six, seven, eight get tested later on where
21 there's been more distance between their level of
22 functioning then meet criteria. So I wasn't surprised to
23 see that pattern within his scores.

24 Q And did you see that pattern you talk about, the
25 kind of increasing gap between the individual and their

1 peers, did you observe that in Mr. Legette's situation?

2 A Yes.

3 Q And when was it, again, the school district
4 determined that he was what we now call intellectually
5 disabled?

6 A When he was -- I think he was originally -- I can't
7 read with my glasses on, sorry. So he was -- I don't have
8 when he was originally determined, but I know by the time
9 that he was 11 that he was definitely put in special
10 education classes and identified as intellectually
11 disabled.

12 Q Right, right. So, in other words, the school -- by
13 the time he is 11, the school district has determined and
14 is treating him and educating him as if he has an
15 intellectual disability; correct?

16 A Mm-hmm.

17 Q Okay. And then, that, in part, will go into your
18 determination because, again, one of the criteria is that
19 must be diagnosed prior to the age of, say, 22; right?

20 A Yes.

21 Q Now, speaking about -- again about his -- I'm sorry,
22 let me ask you about this: You and I spoke previously
23 about Mr. Legette; did we not?

24 A Yes.

25 Q And, at one point, you discussed -- we talked about

1 intelligence scores and IQ scores and standard deviations
2 from the mean. Do you remember that conversation?

3 A Yes.

4 Q Could you please enlighten the judge, as you were
5 unable to enlighten me, but explain why that's relevant
6 and what that means?

7 A So IQ is on a normative scale. So I brought for
8 Your Honor a norm...

9 Q And I'll show the solicitor if you have an extra
10 copy.

11 A I brought one for her as well.

12 Q Thank you.

13 A So the picture you see is a distribution of IQ
14 scores. We call that a normal curve. So the average IQ
15 falls between the 90 and 110. So that's the highest part
16 of the curve meaning that's where most people are. It's
17 also the widest part of the curve, which means that's a
18 good bit of us are within that range.

19 When we're looking at intellectual -- I should also
20 say that IQ scores -- the average is 100, even though the
21 normal range is considered 90 to 110, and it has a
22 standard deviation of 15.

23 So when we're talking about folks who have
24 intellectual disability, what we're talking about are
25 people whose IQ scores are at least two standard

1 deviations below the mean. So they're more --

2 Q Two times 15?

3 A Right. So they're more than 30 points below the
4 mean. So that starts around 70.

5 So, on your diagram, you'll notice that that red
6 bar, which looks like an upside down -- or a triangle on
7 its side, that looks at the area which we consider folks
8 to have intellectual disability.

9 Now, it goes up to 75 in terms of an IQ score
10 because we recognize that, when you give an IQ score -- if
11 you give an IQ test, there is some built-in error, and we
12 call that standard error of measure.

13 So we take that into account. So when we report
14 scores, we actually report the actual score earned but we
15 also report something called the competence interval,
16 which lets you know that the true IQ is somewhere within
17 this range. Usually the standard error of measure is plus
18 or minus 5. So if a person scores of an IQ of 70, their
19 true range of IQ is somewhere plus or minus -- 70 plus or
20 minus five, meaning 65 is the lowest, 75 is the highest,
21 so we consider that the range.

22 And so you -- so what we're talking about is that's
23 the area where people begin to have deficits or can have
24 deficits that are significant enough to impact their
25 functioning.

1 Q Now, so that's sort of the background. That's the
2 information you had.

3 Now, if you would, tell us about the actual
4 interview you had with Mr. Legette.

5 A So we met with Mr. Legette -- we initially tried to
6 interview him over Doxy in January of 2013 -- excuse me,
7 2023, and he did not want to participate. He said he was
8 under the impression that he was supposed to be seen in
9 person, and because we were trying to see him over the
10 internet, he didn't feel comfortable being interviewed
11 over the internet.

12 And I think that was the first time I actually
13 reached out to you to say, "Hey, your client didn't want
14 to participate. Can you talk to him?" You know, we'll
15 see him in person, that's fine. I'll drive, you know, to
16 MUSC but make sure that he participates when we get there.

17 So we rescheduled to see him in March in person, and
18 so he did appear in person.

19 Q Okay. And let me -- I note in your report, which
20 has been made a Court's exhibit, you -- in addition to
21 getting some of his medical history and mental health
22 history, substance use history, you got his -- what you
23 call his DDSN history?

24 A Yes.

25 Q So was Mr. Legette, from your review of records,

1 ever a consumer or customer of the Department of
2 Disabilities and Special Needs?

3 A Yes, he was a consumer of DDSN. At the time that I
4 saw him, he was not a consumer. He had been a consumer
5 from 1999 to 2005, and his case was closed because he
6 couldn't be located at the time. So DDSN or his
7 caseworker, I guess, couldn't find where he was, so she
8 closed the case.

9 Q And that would have been during the time when he was
10 a teenager?

11 A Yes.

12 Q Before the time you would expect that he would be
13 living on his own and ---

14 A Right.

15 Q --- and making decisions for himself?

16 A Yes.

17 Q What would it take, if you know, back in 1999 or
18 whether today, for someone to be eligible for the services
19 of DDSN? What's the criteria?

20 A Well, the criteria is meeting the diagnosis of --
21 because he was approved under intellectual disability --
22 or, at that time, they were calling it mental retardation.
23 And so they would have had to meet the criteria of mental
24 retardation, which is the same criteria it is for
25 intellectual disability. A person has to have deficits in

1 intellectual functioning, deficits in adaptive
2 functioning, and those deficits have to be present. At
3 that time, it would have been prior to the age of 18.

4 Q So, if you would, give the Court some description or
5 review your interview with Mr. Legette and your
6 observations of his....

7 A Mr. Legette -- we asked him about his charge. He
8 knew that he was charged with murder but he had to be
9 educated quite a bit on his other charges, the possession
10 of a weapon during the commission of a violent crime and
11 also the unlawful possession of a firearm.

12 So he really struggled in terms of retaining the
13 other two charges. Murder was the most salient charge to
14 him. We asked him about who works in the courtroom, what
15 their roles are. Again, we had to educate him on those
16 things.

17 And he would retain information, and then when we
18 would go back to ask him again about that, we'd have to
19 re-educate him again. So there were some things that he
20 could retain, but we spent a lot of time trying to educate
21 him.

22 We also had to stop the interview at one point
23 because Mr. Legette became very upset and started crying,
24 and so we had to process those feelings with him about his
25 mom, and then he was able to get himself back together and

1 we were able to continue the evaluation. But we asked
2 about concepts like plea bargaining. We assessed his
3 ability to use information, to make decisions, how he
4 handles things, how he makes decisions. We used
5 hypotheticals as well as his case in order to determine
6 how much he understands about the court proceedings and
7 his role in the court proceedings.

8 Q Is it fair to say there was sort of a two-part
9 analysis -- when you're talking about court procedures and
10 personnel and plea bargainings and all that, that there's
11 sort of a two-part analysis going on there?

12 A Yes.

13 Q Okay. Could you describe what that is, what you're
14 looking at?

15 A So we're looking at the factual understanding. So
16 can a person define, you know, and tell what people's
17 roles are, what the judge's job is, what his attorney's
18 job is, what the solicitor's job is, the role of the jury,
19 to see if they have a basic understanding of the criminal
20 process and procedure. Do they understand it's an
21 adversarial nature of the procedure?

22 But then we're also asking questions to look at the
23 rationale. How is the person thinking? What is their
24 thinking like? How are they able to use the information
25 or any factual knowledge that they have about the Court

1 procedure?

2 Q And what -- let me ask you this as a general
3 proposition: How do you decide or can you determine if
4 someone, in answering your questions, is giving a genuine
5 effort or if they're trying to, you know, play up any lack
6 of knowledge or any disabilities or anything? How can you
7 tell when they're being straight with you, I guess?

8 A We look for inconsistencies in response. We look
9 for a person who gets, you know, everything incorrect
10 but -- or when I say "inconsistencies," I should say it
11 this way: when we're having a conversation, building
12 rapport with them, they're able to answer all their
13 background questions. They remember everything. They
14 have insight into their functioning, whether it's mental
15 illness or just day-to-day life. But then when you get to
16 competency, they don't know anything, they can't answer
17 any questions, everything is "I don't know," that's a red
18 flag.

19 We look at their approach to answering questions.
20 Are they answering easy stuff incorrectly and things that
21 are more complex correctly? Are they just saying "I don't
22 know" to everything when you ask them a question, but if
23 you can engage them in a conversation where they think
24 that you're not still evaluating but they're giving you
25 correct answers, or sometimes we just have to let a person

1 talk and they will demonstrate for you that they know more
2 than they are letting on.

3 Q During your interview with Mr. Legette, did you have
4 any reason to think he wasn't putting forth a genuine
5 effort or was trying to game the results in any way?

6 A Not that he was trying to game the results, but he
7 was self-protective. And so I did say to him, "We really
8 need you to" -- plus I had read that he was uncooperative,
9 and so it kind of hedged the bet. You know, I explained
10 to him that it was important for him to answer the
11 questions to the best of his ability and that we were
12 really just there to answer the question that the judge
13 had.

14 Q And then after you gave him that information or that
15 statement, did he --

16 A Yeah, I had no concerns that he wasn't putting forth
17 his best effort.

18 Q So you feel like you have a good basis to evaluate
19 from that interview?

20 A Yes.

21 Q Okay. Now, based on your expertise and your
22 interview with Mr. Legette as well as the material that
23 you had available to you at the time that you reviewed,
24 did you have an opinion as to whether he has an
25 intellectual disability?

1 A Yes. We opined that he does meet criteria for
2 intellectual disability.

3 Q Do you have an opinion to a reasonable degree of
4 medical certainty as to whether Mr. Legette is competent
5 to stand trial? In other words, that he can assist and
6 has a factual and a rational understanding of the
7 proceedings against him?

8 A Well, for me, it's clinical certainty because I'm
9 not a medical professional.

10 Q Yes, that's correct.

11 A But, yes, we opined that he was not competent to
12 stand trial.

13 Q Could you explain a little further how you reached
14 that conclusion? What specifically led you to believe
15 that he was not competent?

16 A So it was really his inability to -- like I said,
17 while he could be educated, he could not retain the
18 information about -- he was very good at parroting back
19 what we would say to him, but he never demonstrated an
20 ability to use that information in an independent way that
21 would demonstrate true understanding.

22 So Mr. Legette has a very good way of presenting
23 himself as not more impaired. He actually tries to
24 present himself as functioning better than he actually
25 does.

1 So with his gruff manner, with his -- his style, the
2 way he speaks, he's really putting up what we like to call
3 a cloak of competence, and that's where you really --
4 individuals with lower IQ will like to present themselves
5 as functioning higher than they are so they'll answer
6 questions in a way that make you think they understand
7 when they really don't. They may use words that they
8 really don't understand but they've heard other people
9 use, and they've learned how to use them correctly in
10 context. But if you asked them specifically what those
11 words mean, they're unable to define them for you.

12 And it's a way that they navigate the world in order
13 to, one, protect their own ego but also to move more
14 safely through the world because if people really
15 understood that how vulnerable they were, they would be
16 taken advantage of.

17 Q So you determined that, in your opinion, he was
18 not -- and competency is based on the time that you do --
19 that moment; right? That interview?

20 A It's a present assessment that we're doing, yes.

21 Q And we'll discuss in a minute but that's why you had
22 another interview with him this morning; correct?

23 A Right, because it had been almost a year since we
24 have seen him, yes.

25 Q But did you also back in 2023 render an opinion as

1 to whether Mr. Legette could be or was likely to be
2 restored to competence? Was that a thing that could be
3 done in this case?

4 A We did. We said unlikely to be restored.

5 Q Okay. And why is that?

6 A Well, DMH doesn't have -- or the State of South
7 Carolina does not have a competency restoration program
8 specifically for individuals with intellectual disability.
9 While DMH does a good job of working with individuals with
10 intellectual disability and that's really because the
11 staff that worked at the forensic hospital go above and
12 beyond to try to restore individuals with intellectual
13 disability, they'll participate in group competency
14 classes, they'll follow up with individual sessions about
15 competency, but that's because of that staff.

16 Should that staff leave or move on to other things,
17 there's no guarantee that that program will be as
18 successful as it is with restoring some folks with
19 intellectual disability.

20 Q And unlike a mental illness -- schizophrenia or
21 something of that nature -- medication isn't really the
22 issue with Mr. Legette, is it?

23 A No, there's no medication that's going to address
24 the symptoms of intellectual disability.

25 Q And you, of course, reduced that -- your evaluation

1 -- rendered a report for the court -- a written report?

2 A Yes.

3 Q And that's -- the judge has a copy of that as a
4 court's exhibit; correct?

5 A That's my understanding. I didn't see it, so I
6 can't -- I can't say that's what he has, but yes.

7 Q April 3rd of 2023; correct?

8 A Yes.

9 Q And that's signed by yourself and by --

10 A Yeah, it was signed by me and a couple of others.

11 Q That's correct.

12 So Dr. Mulay was there to observe and weigh in, but,
13 in the end, it's your --

14 A Well, we equally participated in the evaluation, but
15 because the diagnosis of intellectual disability was the
16 lynchpin in terms of his competency, it's more appropriate
17 for DDSN to issue the report than for MUSC to issue the
18 report.

19 Q Okay. Now, that was in April of last year.
20 Subsequently, were you provided by me any additional
21 material relating to Mr. Legette?

22 A Yes.

23 Q Okay. And I'll just kind of go through one by one.
24 Among those were several phone calls between Craig Legette
25 and his brother Roger. Did you receive those?

1 A Yes.

2 Q Did you have an opportunity to listen to those?

3 A Yes.

4 Q Tell us what you -- what you heard in those phone
5 calls, what they were discussing, why it was relevant in
6 your mind, and how you interpreted those.

7 A Well, the phone calls, you know, some were just
8 general chitchat, but there were about, I think, eight or
9 nine phone calls that you could hear Roger instructing
10 Mr. Legette on how he should approach his situation, you
11 know, not participating in the evaluation or participating
12 in court.

13 It appeared that he was trying to instruct him in
14 sovereign citizen course, particularly a Moorish sovereign
15 citizenship tactic, talking about issues of jurisdiction
16 citizenship, and using a different name. Mr. Legette
17 didn't seem to understand that and was asking about it
18 multiple times.

19 There was an issue where Mr. Legette would ask
20 questions or use words like "affidavit" or talk about
21 paperwork, but in none of them did I hear him explain or
22 use -- other than just use the word, explain what he meant
23 by that or why he thought it was important. Again, it
24 appeared he was just parroting information that he had
25 been told.

1 Q Would it be a fair characterization to say that
2 those conversations, where they were talking about legal
3 concepts, that those were primarily driven by Roger
4 Legette?

5 A Yes.

6 Q And you referred to the sovereign citizen Moorish
7 American idea. Where did that idea come from?

8 A It came from Roger. You mean, in general?

9 Q Yeah. I don't think Roger invented the idea --

10 A Yeah, it was -- it came from Roger.

11 Q And is it your -- did you have a copy -- I think you
12 had those documents as well. There's several filings that
13 were sent to the Clerk of Court. Did you have a copy of
14 all those?

15 A I did not see those. I worked on other cases where
16 this has been an issue, so I was familiar.

17 Q And that's where, contained within those
18 conversations is where there was this idea that
19 Mr. Legette -- Craig Legette should refer to himself by
20 another name ---

21 A Yes.

22 Q --- like Noble-El.

23 A Noble-El.

24 Q And that's Noble, common spelling, hyphen, E-l.
25 Noble-El is the idea.

1 And, in fact, at one point, they talk about
2 jurisdiction -- just generally jurisdiction; correct?

3 A Yes.

4 Q And is there then another phone call, did you hear,
5 where Mr. Legette brings in a roommate or a cellmate to
6 come in and have his brother Roger tell him what that word
7 was? Do you recall that?

8 A Yes. They had been speaking of jurisdiction, and I
9 don't know what happened, but the roommate was available,
10 and Mr. Legette asked his brother to explain that thing to
11 him. Roger didn't know what he was talking about. He was
12 like, "That word we were talking about, that word,"
13 because Mr. Legette didn't recall the word that they had
14 been speaking of.

15 Q And you're referring to a previous conversation?

16 A Well, I think it's actually the same conversation
17 but maybe like eight minutes later that Mr. Legette wasn't
18 able to recall the word and wanted his brother to explain
19 it to the roommate. Roger just said -- talked to him
20 about jurisdiction and citizenship.

21 Q Do you recall, in one of those -- and I know they
22 kind of run together, but do you recall in one of those
23 conversations Roger tells Craig Legette, "Don't
24 participate in anything"?

25 A Yes.

1 Q In fact, one of those times was June the 13th of
2 2022; does that sound right?

3 A Yes.

4 Q And this is -- coincides with when Craig Legette was
5 requesting that the Court relieve me as his counsel and
6 appoint someone else?

7 A Yes.

8 Q It also coincides with the period of time where
9 Mr. Legette was refusing to meet with me for jail
10 interviews?

11 A Well, I don't know all that. All I know is what's
12 in the paperwork, yeah.

13 Q Now, let's move on to some others. So you were able
14 to hear all of those calls.

15 They also provided you with some disciplinary
16 records from the detention center. Did you have a chance
17 to review those?

18 A Yes.

19 Q And just give us a summary of what those showed you.

20 A I guess there's a process in the detention center
21 for people to be disciplined, and so you're able to either
22 agree that you committed the act, or say you didn't commit
23 the act and they have the person -- which I don't know if
24 that was -- who filled out the paperwork. It's not clear
25 who filled out the paperwork in terms of the entering --

1 saying that they are guilty or not guilty of that. But
2 Mr. Legette has had some disciplinary infractions in the
3 jail where he went through that process.

4 Q And does it not -- it's just kind of a form?

5 A A form.

6 Q Right. On such-and-such a date, you were in a fight
7 or you didn't listen ---

8 A Right.

9 Q --- to the instructions or something like that.
10 And it had a place on there that indicates, you
11 know, do you understand your options -- I'm not sure they
12 used the word "rights," but did they have a place there to
13 indicate that or to indicate that you understood that?

14 A Yes, but, again, I don't know how the information
15 was communicated to Mr. Legette. It just -- it's just
16 indicated that he understood. But, again, I don't know if
17 he filled that out or if it was verbal. I'm not sure.

18 Q Gotcha. And then, also, there are some voluminous
19 canteen records?

20 A Yes.

21 Q Okay. Do you know what you're supposed to make from
22 that?

23 A No.

24 Q Basically showing -- tell me if I -- if you share my
25 characterization, that he ordered an awful lot of snacks

1 and different things available through the detention
2 center canteen?

3 A Yeah, that's what it shows, that he just...

4 Q And they would deduct that from money he has
5 available on his account that family had likely put there.
6 Okay.

7 And then what about -- and it also indicated that he
8 had ordered -- or asked to be brought to him, delivered to
9 him, however, newspapers and books. Do you know anything
10 about that?

11 A Yeah. I -- that is part of that cloak of
12 competence. Folks with intellectual disability can learn
13 to read, and so it is something to do, so asking for those
14 things are -- newspapers are written at -- the highest is
15 a 6th grade level, so it's not surprising to me that he
16 could read the newspaper or that would be accessible to
17 him. And then asking for books, people will carry books,
18 have books in their home that are way above their
19 understanding, but again, it's about presenting yourself
20 as not being as impaired as you actually are.

21 Q Do you have any idea whether he read the newspapers
22 or read the books?

23 A None.

24 Q You have no idea if he passed them along to anyone
25 else?

1 A None.

2 Q You have also been provided with transcripts of the
3 motion to relieve counsel that I think we talked about
4 already.

5 A Yes.

6 Q Court transcripts as well as a guilty plea from
7 December the 4th of 2019 ---

8 A Yes.

9 Q --- when he pled guilty, I believe, to engaging in a
10 dual. But you have had a chance to since review those
11 transcripts?

12 A Yes.

13 Q Okay. Was there anything in those transcripts that
14 changed your opinion that Mr. Legette is incompetent?

15 A No.

16 Q Okay. In the guilty plea transcript, does the judge
17 go through a plea colloquy with him?

18 A With the group. It was a group.

19 Q It was a group qualification?

20 A Group qualification, yes.

21 Q Was there anything in there you saw that Mr. Legette
22 said or was asked and responded to that made you
23 reconsider your determination that he's incompetent?

24 A No.

25 Q I'll ask the same question with regard to the phone

1 calls that you reviewed. Anything in those phone calls
2 that made you change your opinion?

3 A No.

4 Q Did you have an opportunity to meet with Mr. Legette
5 today?

6 A I did.

7 Q Okay. Who was present for that?

8 A Myself, Dr. Mulay, Dr. Maddox, and you.

9 Q And Mr. Legette?

10 A And Mr. Legette.

11 Q And describe for the Court what that interview was
12 like, what you did.

13 A So we introduced ourselves and asked him questions
14 about why he was here today, did he understand what this
15 Court process today was going to be about. Asked about
16 the individuals in the courtroom, what their roles were.
17 What -- asked about things we had heard. Let him know we
18 had listened to some of his jail phone calls and had
19 questions about those things. We asked about those
20 things.

21 You know, things about jurisdiction and nationality
22 and due process, the terms that we had heard him use
23 during the jail phone calls. And he still was at a very
24 basic understanding of some of the criminal process in
25 terms of he knows that the solicitor, you know, wants him

1 to go to jail; that you would be trying to get him out of
2 jail.

3 We had to correct again that the judge was not
4 against him, that the judge was a neutral party, and that
5 the judge and the solicitor don't work together.

6 He struggled with understanding, you know, what
7 happens. We weren't quite sure if he understood that,
8 should he be found competent, his trial was already set to
9 go and ready to go. Not understanding the jury process,
10 what a jury trial was, he thought the judge was going to
11 make all the decisions.

12 So there were still some gaps in his factual
13 understanding. And then he demonstrated no good rational
14 understanding of how to use any of the information or how
15 to work with you, what he expected you to do in terms of
16 going about developing a defense or anything of that
17 nature.

18 Q So to follow up, then, your opinion about his
19 competency hasn't changed after you met with him today?

20 A No, it hasn't.

21 Q Thank you. Please answer any questions the
22 solicitor has for you.

23 THE COURT: Let's take a real short break before you
24 start your cross-examination. Okay?

25 MS. LIVESAY: Sure. Sure, Judge.

1 THE COURT: Thank you. Just very short.

2 (A brief recess was taken from 2:26 p.m. to 2:36 p.m.)

3 THE COURT: All right, Solicitor. Are you ready for
4 your cross-examination?

5 MS. LIVESAY: Thank you. Yes, sir, Judge.

6 And I want to mark the records that she reviewed
7 from the school. Do you want those marked as a State's
8 exhibit or a Court's exhibit?

9 THE COURT: For purposes of this hearing, let's mark
10 everything as a Court's exhibit.

11 MS. LIVESAY: I understand. Yes, sir. Thank you.

12 (Court's Exhibit No. 4, Horry County School Psych
13 Report, was marked for identification and received into
14 evidence.)

15 CROSS-EXAMINATION

16 BY MS. LIVESAY:

17 Q Dr. Hall, real quick so we can make sure we're on
18 the same page, these are the six things you looked at
19 prior to producing a report; correct?

20 A Those are the six categories, yes.

21 Q Okay. And this is all you reviewed and you produced
22 a report?

23 A Yes.

24 Q Okay. So the interview -- you interviewed him;
25 correct?

1 A Yes.

2 Q And the court order is just some court documentation
3 saying have him evaluated?

4 A Yes.

5 Q Okay. And the school records that you just
6 discussed; correct?

7 A Yes.

8 Q And some records from J. Reuben Long?

9 A Yes.

10 Q And the NCIC is his prior record; correct?

11 A Yes.

12 Q And a handful of documents from the file?

13 A Yes.

14 Q Case reports?

15 A That's what we were sent, the reports.

16 Q And this is what you looked at, and you produced a
17 report saying he's not competent?

18 A Yes.

19 Q Okay. And the majority of it seems to come from the
20 school records; am I correct?

21 A I'm not sure I understand your question.

22 Q The majority of your report includes school records.
23 That's what you discuss in the report.

24 A Not the majority. I wouldn't say it was the
25 majority of the report, no.

1 Q Did you address all these psychological reports in
2 your report?

3 A Yes.

4 Q Okay. But you didn't produce or include everything.
5 Just the numbers, the numerical number; correct?

6 A Yes.

7 Q Okay. Good. And do you have that with you? Do you
8 have these with you?

9 A Yes.

10 Q Okay. Good.

11 MS. LIVESAY: And, Judge, I'm going to hand you up a
12 copy because I'm going to be referring to it.

13 THE COURT: All right. Thank you.

14 BY MS. LIVESAY:

15 Q Now, Dr. Hall, would you agree with me that every
16 test, it matters how much effort the individual is giving;
17 correct?

18 A Yes.

19 Q Okay. So the kid that's giving more effort is
20 probably going to do better?

21 A Could be.

22 Q I'm sorry?

23 A Could. Not necessarily.

24 Q Okay. So somebody with more effort normally
25 produces a better result; correct?

1 A For some children, yes. Not all.

2 Q Okay. So let me ask you this: If the test is given
3 and one child is over there trying hard, right, and one
4 kid is just over there kicking the table and not even
5 looking at it, would you say the one that's kicking the
6 table is probably not going to do well, probably not going
7 to be an accurate result?

8 A Yes.

9 Q Okay. Good. Good, good, good. Okay.

10 So let's look first -- let's go down this list. And
11 I'm going to ask you to look with me. When you got the
12 school records, it included not only the number but also
13 the background and test behavior; is that right?

14 A Yes.

15 Q And that lets you know how the kid is acting that
16 day that he takes the test?

17 A Yes.

18 Q Okay. And we can agree, the first test that he
19 took, he was borderline; correct? It was 75.

20 A Yes.

21 Q Okay. And when you look at the background and test
22 behavior, at this time, it doesn't show that he is having
23 any behavioral problems; am I correct?

24 A Yes.

25 Q In fact, it says, "Behavior in school is reported to

1 be satisfactory"?

2 A Yes.

3 Q Okay. Good. Good, good, good.

4 And that's when he's 75? He scored a 75?

5 A Yes.

6 Q Okay. Now, the next test you talked a lot about
7 with Mr. Fox, you talked a lot about the deviations and
8 they can drop and all this kind of stuff; correct?

9 A I'm not sure I understand your question.

10 Q Let me ask you this way: Did you, at any time
11 during Mr. Fox's questioning, ever discuss anything about
12 the behavior of Mr. Legette when these tests were given to
13 him?

14 A No.

15 Q Okay. Good. We can agree on that. Let's discuss
16 it now.

17 So, on the first one, when it's 75, he had no
18 behavioral problems; correct?

19 A That's what the report says.

20 Q Okay. Good.

21 Now, let's look at 1994.

22 A Okay.

23 Q And that's going to be that second set of records.

24 MS. LIVESAY: Judge, if you'll -- it's right here.

25 It's going to be a few pages in.

1 THE COURT: Okay.

2 MS. LIVESAY: That first set is going to be 1991.
3 The second set is going to be 1994. It's going to be a
4 few more pages.

5 THE COURT: Gotcha.

6 BY MS. LIVESAY:

7 Q Now, Dr. Hall, tell this Court about his background
8 and test behavior in 1994, which was, by far, the lowest
9 IQ score.

10 A What she describes -- this report was completed by
11 Ms. Robins. She describes his background behavior that
12 was to include temper tantrums, disrespect, becomes
13 hostile, refuses to do academic work, and does not
14 complete work if he starts. Fighting was reported at
15 Homewood and Horry.

16 She talks about his completing school work,
17 according to his teachers; that he'll only work for a
18 short period of time. After refusing to do work, after a
19 "cooling off" period to help him regain self-control if he
20 has a temper tantrum.

21 She goes on to talk about she saw him initially on
22 May 19th. He worked for a short period of time, then
23 returned for class. He said he didn't have to work there.
24 He refused to work for candy, soda, or even a homework
25 pass. He didn't want any of those things. After not

1 being allowed to return to the classroom, he threw a
2 temper tantrum, kicking at the conference room door with
3 his fists. He picked up a chair but didn't motion it
4 toward the examiner. After being told that, after five
5 minutes, he can return to class. He complied and allowed
6 to return to class. He came back of his own volition and
7 worked for a short period of time.

8 So over a period of four or five different sessions
9 over different days, he would only work a short period of
10 time. During that time, he seemed to work as hard as he
11 could. When ceilings were reached and testing could be
12 discontinued, several more items were administered.
13 Occasionally, a few were responded to correctly, but
14 overall, ceilings appeared to be reflective of ability
15 more than lack of effort.

16 Q Okay. So let me ask you something. The day that he
17 scored the lowest, he was in there throwing a temper
18 tantrum; correct?

19 A Well, she administered --

20 Q Well, let me just ask you, Ms. Hall: What does the
21 record say? Does it say he was in there throwing a temper
22 tantrum on the day of the test?

23 A Well, that's what I'm saying. It was more than one
24 day --

25 Q I understand. So on the first day --

1 MR. FOX: Your Honor, can the witness -- excuse me
2 -- can the witness please finish her answer before the
3 next question comes?

4 THE COURT: Make sure the witness finishes the
5 answer before you ask another question.

6 MS. LIVESAY: Sure.

7 BY MS. LIVESAY:

8 Q On the first day, on May 19th, does it document that
9 he threw a temper tantrum?

10 A Yes.

11 Q Okay. Good. Good, good, good.

12 And, in fact, it was given over several days;
13 correct?

14 A Yes.

15 Q He would not sit consistently for the test to be
16 given during one day?

17 A That's what she alludes to, yes.

18 Q Okay. And, in fact, the test is supposed to be
19 given at all one time; correct?

20 A Yes.

21 Q Okay. Good.

22 So the test wasn't even given correctly this time,
23 was it?

24 A I'm not sure I understand what you mean by
25 "correctly."

1 Q Okay. So when you administer an IQ test, you sit
2 down and you give the test all at one time on one day; is
3 that correct? That's what you just said?

4 A Yes.

5 Q Okay. Good.

6 So you would agree with me that this record reflects
7 that the test was given to him over a several-day period?

8 A Yes.

9 Q Okay. Good.

10 So the test was not administered correctly?

11 A It was given in the only way that it could be given,
12 given his behavior. But there are periods or examples
13 when you have to give a kid a break and you choose when
14 the break happens. So you don't give a break -- you break
15 in between subtests and not during subtests unless, you
16 know, it's a dangerous situation.

17 Q Okay. Correctly, the test is all administered at
18 one time on the same day?

19 A Would we like for the test to be all administered at
20 the same time on one day? Yes.

21 Q Right.

22 A Do we acknowledge and understand that sometimes that
23 cannot happen? Yes.

24 Q Okay. And you would acknowledge that it was not
25 given in the optimal manner this time?

1 A Yes.

2 Q Okay. Good.

3 And this was his lowest score?

4 A Yes.

5 Q Okay. So the lowest score was done in a way that it
6 was not optimal, it is strowed over several days, and
7 clearly, on the first day, he threw a temper tantrum and
8 picked up a chair; correct?

9 A That is correct. But she goes on to say, "Overall
10 ceilings appear to be reflective of ability more than a
11 lack of effort."

12 Q I understand.

13 A So even with his disruptive behaviors, the person
14 who administered this test believed it was an accurate and
15 valid estimate of his functioning at that time.

16 Q So let me ask you, Ms. Hall, because I think I'm
17 curious myself: Do you think people are thinking as
18 clearly when they're throwing a temper tantrum and picking
19 up a chair, or do you think they're more clear when
20 they're sitting there and they're calm and they have got
21 their thoughts together?

22 A When they're calm.

23 Q Okay. Good.

24 So you would agree with me that a kid that's in
25 there throwing a tempter tantrum, picking up a chair, is

1 probably not as focused on the test?

2 A But she's not asking him questions at that time.

3 So we weren't there, so we don't know if she --
4 while he had the chair in his hand, was she trying to get
5 him to answer questions. I would posit -- you know what?
6 I don't want to do that because that would cause me to
7 speculate. I don't know what was going on. All I know is
8 what she put in the report, that she felt that this was a
9 valid estimate of his functioning at that time.

10 Q Okay. And would you agree she says, the very third
11 sentence, "He refused to work for candy, a soda, or
12 homework pass"?

13 A Yes.

14 Q Okay. So he is refusing to participate; right?

15 A That's what she says on that day, yes.

16 Q Okay. Okay. So you would agree, if somebody is
17 refusing to participate, they're probably not giving their
18 best effort?

19 A On the 19th, yes, I would say he was probably not
20 giving his best effort.

21 Q Okay. And, in fact, it had to be over four or five
22 different sessions on different dates; right?

23 A That's what she says.

24 Q Okay. And that was his lowest score; correct?

25 A Yes.

1 Q And the higher score, when we looked at his
2 behavioral issue, there were none. When he had the 75,
3 there were no behavioral issues at that time?

4 A Yes.

5 Q Okay. Okay. Now, can we go on to the third -- the
6 third year, which is going to be 8th grade; correct?

7 A Yes.

8 Q Okay. And, certainly, it's not as far off that
9 year. I think it's, what, 67?

10 A Yes. Full scale, 67.

11 Q Okay. But, again, behavior in school is reported to
12 be unsatisfactory?

13 A In school --

14 Q Is that right?

15 A It says, "Behavior problems have been reported at
16 home" and -- I don't have anything about -- I could be
17 skipping it.

18 Q I'm sorry?

19 A Can you point me to where you're referring to --

20 Q Sure. Right here.

21 THE COURT: Looks like on the first page.

22 A Thank you.

23 BY MS. LIVESAY:

24 Q You're welcome.

25 A Yes. Yes. Behavior is...

1 Q So, again, behavior is unsatisfactory.

2 And the second sentence says, "Serious behavior
3 problems have been reported at home"?

4 A Yes.

5 Q Okay. So, again, a lot is going on?

6 A Yes.

7 Q Okay. And that's when he scored 67; is that right?

8 A Yes.

9 Q Okay. And the last sentence says, "The results of
10 the evaluation should be considered to be a minimal
11 estimate" -- minimal estimate -- "of his current
12 functioning due to any possible interference from his
13 uncorrected vision." Do you see that?

14 A Yes.

15 Q Okay. So we got behavioral problems, we got vision
16 problems. And she's saying this 67 should be considered
17 minimal; correct?

18 A Yes.

19 Q Okay. Now, there are more records here, right, from
20 1999. Says, "Individualized Education Program." School
21 year '99 is what I'm looking at.

22 A Okay. I think I'm there.

23 Q Just let me know when you get there.

24 A I'm there.

25 Q On the second page of these records, right, the

1 school says -- the statement and post school outcome:
2 "Craig will be employed, live independently, and
3 participate within his community." Do you see that? It's
4 page 2 on the Individualized Education Program. Looks
5 like this right here. This is the first page here. I
6 think you're getting close.

7 Do you want this one, Ms. Hall?

8 A Yes, please.

9 Q You would agree with me these are the records you
10 reviewed?

11 A Yes.

12 Q This is nothing new.

13 A No, this...

14 Q Okay. Just making sure.

15 To get us on the same page. And I'm going to direct
16 you now -- so you're looking now at the Individualized
17 Educational Program for Craig Legette, year 1999?

18 A Yes.

19 Q Okay. I'm going to ask you to turn to page 2. And
20 where it says, "Statement of post school outcome," it
21 says, "Craig will be employed, live independently, and
22 participate with his community." Is that correct?

23 A Yes.

24 Q Okay. Good.

25 So that's what the school thought Craig was capable

1 of; correct?

2 A Yes.

3 Q Okay. Good.

4 Now I'm going to direct you, if you'll go one, two,
5 three, four pages. It's going to be the intervention
6 worksheet. Looks like this right here.

7 A Okay.

8 Q And what does the school say about the outcome and
9 results of Craig?

10 A "Craig has been absent that -- so many times that,
11 regardless of accommodations, he cannot pass."

12 Q So regardless of what they did for him, he didn't go
13 to school enough to benefit from any of those
14 accommodations?

15 A Yes.

16 Q Okay. Okay. So that's probably part of the problem
17 too, correct, if you're not going to school?

18 A That would definitely have an impact, yes.

19 Q Okay. And you would agree with me, the only time he
20 was tested, when he was not having behavioral problems, he
21 scored a 75?

22 A Yes.

23 Q Okay. Now, let me ask you this, because I think it
24 is important. None of that was in your report; correct?
25 Nothing about the behavior during him taking the test is

1 in your report?

2 A No.

3 Q Okay. And when I asked you -- do you remember when
4 the State asked you for everything you reviewed? Do you
5 remember that?

6 A Yes.

7 Q And you wouldn't turn it over; correct?

8 A No. I asked if I was allowed to turn it over
9 because of FERPA laws.

10 Q Did you turn it over?

11 A Once I was assured that I could turn it over and not
12 have my license affected, I did turn it over.

13 Q So once you received a court order, you turned it
14 over?

15 A Yes.

16 Q Okay. And you would agree with me that if I hadn'ta
17 asked for that, me nor Judge Hocker would know anything
18 about these behavioral problems from your report?

19 A No, it wasn't in my report.

20 Q So we would have never known that this whole time he
21 scored a 75, he was acting okay, and these lower scores,
22 he was in there throwing a temper tantrum, because it
23 wasn't in your report; is that correct?

24 A That's correct.

25 Q And you agreed with me earlier that certainly the

1 amount of effort someone gives is going to have something
2 to do with that, how focused they are on the test;
3 correct? You would agree that has something do with the
4 ultimate outcome?

5 A For some kids but not all.

6 Q Okay. But you would agree with me that, if somebody
7 is sitting at their desk calmly, thinking, that person is
8 going to have a better train of thought than somebody in
9 there throwing a temper tantrum, picking up a chair?

10 A For some kids, yes.

11 Q Okay. Okay.

12 And you would agree with me, we would have never
13 known that if the State hadn't gone and got a court order;
14 correct?

15 MR. FOX: Asked and answered, Judge. We've been
16 through this three or four times now. Asked and answered.

17 THE COURT: I think it has, Solicitor.

18 BY MS. LIVESAY:

19 Q Now, on that same train of thought, while we're on
20 it....

21 MS. LIVESAY: Would you mark that, please?

22 COURT REPORTER: Court's 5.

23 (Court's Exhibit No. 5, 3/24/23 SCDDSN Competency to
24 Stand Trial Instrument, was marked for identification and
25 received into the record.)

1 THE COURT: Solicitor, if you're finished with the
2 school records -- because that's the Court's exhibit,
3 sometimes they get -- it gets jumbled up with our stuff.

4 MS. LIVESAY: I understand.

5 BY MS. LIVESAY:

6 Q Do you recognize what I'm showing you now?

7 A Yes.

8 Q And what is it? Tell the Court.

9 A This is the interview form that we used with
10 Mr. Legette.

11 Q Okay. So those are the notes from your interview
12 with Craig Legette?

13 A Yes.

14 Q Okay. And are those the notes that you used in
15 order to figure out whether or not -- not to figure out
16 but to use to write your ultimate report that we got?

17 A Yes.

18 Q Okay. Okay. Good.

19 So everything from these notes should be reflected
20 in the report?

21 A Things that are relevant to the question, yes.

22 Q Okay. So this is what you ask and write down to
23 make the ultimate report I got and Mr. Fox got?

24 A Yes.

25 Q Okay. And Mr. Fox asked you earlier if it is to

1 determine whether or not this man can understand the
2 adversarialness of this courtroom; correct?

3 A Yes.

4 Q Okay. And he understands communicating with his
5 lawyer?

6 A Yes.

7 Q Okay. Good.

8 So I want to make sure we're on the same page. I
9 took some notes because it helps everybody kind of stay
10 together. So according to your notes, when we look at
11 whether or not he understands the charges against him,
12 right, and the possible penalties if he were convicted --
13 right? That's kind of one of the aspects of it?

14 A Yes.

15 Q Okay. Good.

16 And in your notes on page 9, you ask him; right?
17 And he told you that he was charged with murder?

18 A Yes.

19 Q Okay. Now, is that answer right or wrong?

20 A That's correct.

21 Q Okay. Good. Good, good, good.

22 So he got that one right. And you asked him about
23 some of the facts of the case; correct?

24 A Yes.

25 Q Okay. And he said, "They're saying I killed

1 somebody at somebody's house, at these apartments." Is
2 that on page 9 of your notes?

3 A Yes.

4 Q Okay. And is that a correct answer?

5 A Yes.

6 Q Okay. Good. You looked at the case, and you
7 determined he knows he's charged with murder ---

8 A Mm-hmm.

9 Q --- and he knows what the allegations are.

10 A Yes.

11 Q Okay. Good.

12 And, on page 9, you continue to ask him to figure
13 out if he knows the seriousness of it. Does he know that
14 he's charged with a felony?

15 A Yes.

16 Q Okay. So he answered that correctly.

17 A Yes.

18 Q So he knows he's charged with murder. He knows the
19 allegations. And he's knows it's a felony.

20 A Yes.

21 Q And the possible penalties. You ask him on page 11
22 of your notes about the possible penalties. Tell the
23 Court what he told you.

24 A "A lot of time. Might never come home."

25 Q Now --

1 THE COURT: Repeat that again, Dr. Hall. I didn't
2 hear what you said.

3 THE WITNESS: "A lot of time. Might never come
4 home."

5 BY MS. LIVESAY:

6 Q "A lot of time. Might never come home"?

7 A Mm-hmm.

8 Q Now, that answer, is it correct?

9 A Yes.

10 Q Okay. Okay.

11 Now, when you were writing your report, you left out
12 that he could -- might never come home; right? You just
13 put that he said "a lot of time"?

14 A Yeah.

15 Q Okay. But you do know that murder carries life?

16 A Yes.

17 Q And you would agree the fact that he says "might
18 never come home" tells this Court that he knows he's
19 looking at life?

20 A Well, "might never come home," I guess, yeah.

21 Q Okay. But you left that part out of the report;
22 right? You just put "a lot of time"?

23 A Yeah, I did not include "might never come home."

24 Q So "a lot of time" might mean 15 years; right? And
25 that ain't the right answer.

1 A It's not quantified, yeah. That answer is not
2 quantified.

3 Q Right, right.

4 But when you put the whole answer, then he knows;
5 right? He knows it carries life.

6 A Okay.

7 Q But you didn't put that in your report; correct?

8 A No.

9 Q Okay. Good. So, now the next part is, "Is he able
10 to assist his counsel with his defense?" That's part of
11 what we have got to look at; right? To know if he can --
12 if he's competent, he can get due process, all that good
13 stuff; right?

14 A Yes.

15 Q Okay. Good.

16 On page 9 of your notes, did he know his lawyer's
17 name?

18 A Yes.

19 Q And what was it?

20 A Fox.

21 Q Okay. Good. So he remembered that.

22 A Yes.

23 Q Okay. Good. He recalled that fact.

24 Did he recall, on page 9, how many times he had met
25 with his lawyer?

1 A He said a couple.

2 Q Okay. So he recalled that. He knew his lawyer. He
3 recalled how many times he met with him?

4 A Yes.

5 Q Is that correct?

6 A To his recollection, it was a couple. I don't know
7 if that's accurate or not, but that's what he told us.

8 Q Okay. So did you find out if it was accurate or
9 not?

10 A No. If he said "a couple," it was a couple.

11 Q Okay. So, on page 10, is he able to assist, what
12 does he say? He says, "I tell him to go and investigate;"
13 is that right?

14 A Yes.

15 Q Would you say that that is a defendant assisting,
16 cooperating, working with their defense attorney to say
17 "Hey, go out and investigate"?

18 A On the surface, yes, but when we asked about how is
19 he supposed to do that, he wasn't able to give us any
20 information or how he could give Mr. Fox any things to
21 investigate, he wasn't able to do that. So he was just
22 saying that's what he wanted him to do, but he wasn't able
23 to tell us how he could give things to Mr. Fox to
24 investigate.

25 Q And you think most defendants know how to instruct

1 their attorney to get the case ready for trial? Or do you
2 think maybe that's why they have got an attorney? What
3 are your thoughts?

4 A I mean, that's why they have an attorney, but a
5 defendant would be able to say, "Well, I want him to look
6 at these things. These are things that I think, you know,
7 would benefit me. This is the area that I think needs to
8 be looked at more." He couldn't do that.

9 Q Okay. So he tells him -- but he does tell him -- "I
10 tell him to go investigate"; correct?

11 A Yes.

12 Q And I don't see in these notes where you ask him
13 anything about "tell me how he should go investigate." So
14 did you ask that or you just kind of...

15 A No, I -- either myself or Mulay asked it.

16 Q Okay. Is that in your notes?

17 A No.

18 Q Okay. So you remember that now, but it's clearly
19 not in your notes?

20 A No, it's not in my notes, but I do recall that, yes.

21 Q Okay. But it's not in your notes. Is it in your
22 report?

23 A I didn't put that specifically, no.

24 Q Okay. How many interviews do you do a week?

25 A Two to three.

1 Q And when was this interview?

2 A Last year.

3 Q Okay. So you have probably done hundreds between
4 now and then; right?

5 A Probably.

6 Q Okay. And you're 100 percent certain, even though
7 it's not in your notes or your report, this follow-up
8 about your conversation with him about how to investigate?

9 A 100 percent? I mean, there's a margin of error, so
10 not 100 percent.

11 Q Right. So you're not for sure that really you got
12 into all that with him about what would you tell him as to
13 how to investigate?

14 A I'm confident I did, but can I say for 100 percent?
15 I cannot say 100 percent, but I'm confident.

16 Q That's fine. Let's go on.

17 Page 10, he discusses with you some stuff about
18 Eric, right, about the bond hearing?

19 A Yes.

20 Q Okay. And he tells you he was mad at Eric; right?

21 A Yes.

22 Q Because he made him out to be a flight risk?

23 A Yes.

24 Q Okay. Did he use the language "flight risk"?

25 A That's the term he used, yes.

1 Q Okay. And is that the legal term used as one prong
2 of consideration for a bond hearing?

3 A Yes.

4 Q Okay. So it's flight risk and danger to the
5 community?

6 A That's my understanding, yes.

7 Q Okay. And that's this defendant's understanding;
8 right? That flight risk matters?

9 A Mm-hmm, yes.

10 Q Okay. Good.

11 So he does know the bond hearing. He knows that
12 flight risk matters, and he's mad at Eric, correct,
13 because he thought Eric was making him look like he was a
14 flight risk?

15 A Yes.

16 Q And he knew that for his chances of getting a bond;
17 right?

18 A Yes.

19 Q Okay. So he knew all that.

20 And he says he tried to switch from Eric?

21 A Mm-hmm.

22 Q And that's true; right?

23 A That's true.

24 Q Okay. And he told you that the judge denied that?

25 A Yes.

1 Q Is that true?

2 A That's true.

3 Q Okay. So he understands what goes on at a bond
4 hearing; right? That flight risk is an issue at bond?

5 A Yes.

6 Q Okay. And he tells you that he was mad because Eric
7 kind of made him look like a flight risk; right?

8 A Yes.

9 Q And because of that, he tried to fire Mr. Fox;
10 right?

11 A Well, I don't know if that's why he tried to fire
12 Mr. Fox, but he did try to fire Mr. Fox.

13 Q Okay. He tried to switch him?

14 A No, I -- we asked was there anything that he ever
15 disagreed on, how he would handle a disagreement with
16 Mr. Fox, and that's when he told us that he had tried to
17 switch attorneys.

18 Q Okay.

19 A But it was not related to the bond issue.

20 Q Okay. But, at some point, he did try to switch
21 lawyers?

22 A Yes.

23 Q So he understood the process well enough to know
24 "I'm not happy with this guy, I want a different lawyer"?

25 A So, yes, he knew that he could get a different

1 lawyer, and he had attempted to do that.

2 Q Okay. Good.

3 A But I don't know if that was his initiation after
4 listening to the phone calls or if that was something that
5 was initiated by his brother. And, at the time, we didn't
6 know that because we hadn't listened to the jail calls.

7 Q Okay. But in the notes, it says, "Tell him tried to
8 switch him," which means he was trying to switch from
9 Mr. Fox?

10 A Yes, he was trying to switch.

11 Q Okay. So he knew enough to know he wanted a
12 different lawyer?

13 A He knew that he had tried to get a lawyer. He's
14 acknowledging that he tried to get a different lawyer.

15 Q Okay. And does he have an IQ enough to know what
16 happened when we had that hearing?

17 A Well, he knows he still has Mr. Fox, so he knows
18 that the judge said no.

19 Q Okay. So he knew enough to go to the hearing, try
20 to switch attorneys, and when the judge denied it, he
21 comprehended that, understood that, and was able to relay
22 it to you?

23 A Well, yeah, but a person with intellectual -- mild
24 ID would be able to understand that.

25 Q But he definitely understood that it was denied?

1 A A person with ID would be able to understand that,
2 yes.

3 Q So he understood a little bit about what was going
4 on.

5 Now, on page 10, when you're asking him about
6 Mr. Fox, he says, "He doesn't talk with me the right way.
7 He talks like he's against me." Do you see that?

8 A Yes.

9 Q Okay. And is it your experience that a lot of
10 defendants don't necessarily like what their attorneys
11 have to say to them?

12 A Yes.

13 Q Okay. Because if you get in there and you start
14 talking about "maybe you should take this plea," they
15 don't like that. Would you agree with me?

16 A Well, I don't know the circumstances about why they
17 don't like the way their lawyer is talking to them, but
18 it's been my experience that some defendants do not like
19 the way their attorney talks to them, yes.

20 Q I understand. So this isn't -- Mr. Legette, in that
21 manner, is not that different than a lot of defendants?

22 A No, that didn't stick out in terms of being
23 different.

24 Q Okay. Now, you asked him about who he should ask if
25 he's got questions about the evidence; right?

1 A Yes.

2 Q That's on page 11.

3 A Yes.

4 Q Okay. And what did he say?

5 A "The lawyer."

6 Q Okay. So he knew, if he had a question about the
7 evidence, to ask Mr. Fox?

8 A Yes.

9 Q He didn't say he was going to ask me, did he?

10 A No.

11 Q Okay. Good.

12 So he knows enough about the adversarialness of this
13 procedure to ask his own lawyer about whatever questions
14 about evidence; is that correct?

15 A He knew that he could ask Mr. Fox, yes.

16 Q Okay. Good.

17 Now, you asked him, on page 12, "What if you don't
18 understand something?" Did he know what to do?

19 A Yes. He said, "Ask the lawyer."

20 Q Okay. So he knows, if he doesn't understand what's
21 going on, he knows -- he says, "Look over there at Mr. Fox
22 and ask him"; correct?

23 A Mm-hmm. Yes.

24 Q Okay. And he knows, if he's got a question about
25 the evidence, look right over there to Mr. Fox; correct?

1 A Yes.

2 Q Okay. He didn't say he was going to ask me, did he?

3 A No.

4 Q Okay. I didn't think he would now.

5 So, No. 3, "Understands the roles of various
6 courtroom officers." That includes, me, Mr. Fox, kind of
7 everybody; correct?

8 A Yes.

9 Q And when you asked him the job of his lawyer on page
10 10, what did he say?

11 A "To be for me."

12 Q Okay. Is that the right answer?

13 A Yes.

14 Q Okay. Okay. So he understands that Eric is
15 representing him and making sure he gets due process, the
16 defense, all that?

17 A Well, he understands that Mr. Fox is on his side ---

18 Q Okay.

19 A --- but that's the limits of his understanding.

20 Q Okay. That's fair enough.

21 And you asked him about the prosecutor on page 10,
22 which is me?

23 A Yes.

24 Q And what does he say about that?

25 A "They the people that talk against you."

1 Q Would you say that's accurate?

2 A Yes.

3 Q Okay. Okay. Now, on page 10, you ask him about
4 whether or not he should talk with me. And what did he
5 say?

6 A "No, I ain't supposed to talk to them because he's
7 against you."

8 Q Okay. So he knows not to discuss anything with me;
9 correct?

10 A Yes.

11 Q And he knows his lawyer is for him; correct?

12 A Yes.

13 Q So he understands the adversarialness between myself
14 and Mr. Fox?

15 A Yes.

16 Q Okay. Good.

17 So then we go on and we -- you talked to him a
18 little bit about my job -- right? -- and plea offers to
19 figure out if he understands kind of the process. And
20 that's on page 12.

21 A Yes.

22 Q Who did he tell you makes plea offers? Page 12.

23 A "A solicitor."

24 Q Okay. And that's me; correct?

25 A Yes.

1 Q Is that answer correct?

2 A Yes. That was after a lot of education. So this
3 was not what he initially knew. This was after we
4 educated him with a courtroom diagram.

5 Q Okay. But, on your notes, how it reads is, "Who
6 offers the deal"; correct?

7 A Yes.

8 Q And he answered, "Solicitor"?

9 A Yes.

10 Q Okay. And then you ask him, "What do you get out of
11 the deal"; correct?

12 A Yes.

13 Q And what did he say?

14 A "A lesser sentence."

15 Q Okay. And is that normally how a plea offer works?

16 A Normally, yes.

17 Q Okay. I offer a plea, and normally, to plead
18 guilty, he's going to get a lesser sentence?

19 A Yes.

20 Q And that's how he answered?

21 A Yes.

22 Q So he answered that right?

23 A After education, yes.

24 Q Now, you say that, but is there anything in here
25 beside these questions to tell anybody how long it took

1 him to answer it, any details about that he had to be
2 educated about it? Is that in these notes?

3 A There are some -- not here, no.

4 Q Okay. Okay. That's all I was asking.

5 Now, on page 10, you ask him about a jury. Right?
6 Because we have jury trials in General Sessions?

7 A Yes.

8 Q And tell this Court what he told you the job of the
9 jury is.

10 A Initially said, "To listen." Initially he said, "To
11 listen." And then we had to prompt him, and he said, "To
12 decide if you're guilty or not."

13 Q Okay. Good.

14 So he knew that the job of the jury was to listen
15 and to decide whether he was guilty or not guilty?

16 A Yes.

17 Q And is that the correct answer?

18 A Yes.

19 Q Okay. So he's clear that he is to discuss evidence
20 and things with his lawyer; right?

21 A Mm-hmm.

22 Q I'm sorry? Yes?

23 A Yes. I'm sorry.

24 Q You're fine.

25 And he's clear that he's not supposed to talk to me?

1 I'm the adversarial; correct?

2 A Yes.

3 Q And he understands that the jury is to listen and to
4 decide whether or not he's guilty or not guilty?

5 A Yes. After education on this, he did not know that.
6 He did not retain that today during our interview.

7 Q Okay. But did he tell you that when you wrote this
8 down in your notes?

9 A Yes.

10 Q Okay. Good.

11 So, on this day, before you did your report, you
12 knew he was to direct his questions to Eric, he knew he
13 was not to talk to me, and he knew the jury was going to
14 decide whether or not he was guilty?

15 A Yes.

16 Q Okay. And all that is correct?

17 A Yes.

18 Q Okay. Good.

19 And, on page 10, you asked him about witnesses.

20 "What do witnesses do?"

21 A Yes.

22 Q Okay. And what did he say the witness does?

23 A "Somebody that say they seen something."

24 Q Okay. Would you say that's correct?

25 A Yes.

1 Q I would too. I would too. I think that's a good
2 answer.

3 And then, on page 10, you ask him kind of, "What is
4 evidence?"

5 A Yes.

6 Q And what did he tell you?

7 A "Witness." And then we said, "What kinds of things
8 could be used as evidence?" And he said, "A gun."

9 Q Okay. And is that correct?

10 A Yes.

11 Q Okay. I think so too. I think so too.

12 Now, so he definitely knows Eric's role, my role,
13 the jury's roles. He understands that witnesses are
14 somebody that say they have seen something. And he
15 understands that the evidence is going to be witnesses and
16 items like the gun, if we have it?

17 A Yes.

18 Q And would you agree that all of that is correct?

19 A Yes.

20 Q Okay. Now, No. 4 is "Responds appropriately to
21 inquiries and his counsel's instructions." Okay?

22 A Okay.

23 Q When I looked at your notes -- because I was trying
24 to go down here, and I was going down the notes. So when
25 I look on page 12, it says, "Capacity to disclose to

1 attorney facts pertinent to the proceedings." Do you see
2 that?

3 A Mm-hmm.

4 Q Okay. So, that's, to me, getting here, "Responds
5 appropriately to inquiries and his counsel's
6 instructions." Would you agree, when we start talking
7 about conversations with his attorney?

8 A Yes.

9 Q Okay. Now, when you ask him -- I don't know if you
10 ask him or not, but at the end of the day on your notes,
11 there are no answers for any of these questions. Would
12 you agree with that?

13 A Yes.

14 Q Okay. So you -- "What are you doing when the police
15 arrested you?" It's not answered; right?

16 A Yes.

17 Q "Why did they arrest you? What did they say?" It
18 wasn't answered; is that right?

19 A It wasn't answered.

20 Q I'm sorry?

21 A No, it wasn't.

22 Q Okay. So there's no information on that.

23 "Why did they think you did it?" Blank.

24 A No information on that.

25 Q No information.

1 And then, "Capacity to testify relevantly." Again,
2 we're kind of back down here.

3 "Do you have any rights?" Blank. Right? No answer
4 for that?

5 A Blank.

6 Q Okay. "Do you know what your rights are?" Blank.
7 No answer. Correct?

8 A Correct.

9 Q Okay. "Who talks for you in court?" Blank. Right?
10 No answer.

11 A Right.

12 Q None of this -- none of the rest of it is filled
13 out; is that correct?

14 A That's correct.

15 Q Okay. So, as to this, I don't know, did you not ask
16 or did he not answer? Because it's blank. I don't know.

17 A We assessed this. I typically -- because I have had
18 my notes subpoenaed before, I'm very careful about putting
19 anything in here because our information can -- I don't
20 want what the person says to be used against them even
21 though I know that it's not supposed to be when they're
22 answering questions for competency. I'm just extra
23 careful about that.

24 So we ask those types of questions and get them just
25 to tell us what they understand about why they were

1 arrested, and I kind of asked that -- picked at it more
2 about what evidence they have against him, and he just
3 didn't know what evidence there was. He said that Mr. Fox
4 told him there wasn't any evidence against him, so...

5 Q Let me make sure we're on the same page. Nothing in
6 your notes reflects any kind of answer to those questions;
7 correct?

8 A That's correct.

9 Q So whatever you're telling us now, you're going on
10 memory from 2023; right?

11 A Yes.

12 Q Are you 100 percent sure because this is -- I know
13 you know, I know, we appreciate how serious this is;
14 right?

15 A Yes.

16 Q These people back here have lost their son's life.

17 A Yes.

18 Q Are you 100 percent sure that what you're telling us
19 about that he didn't know this, that, and the third, are
20 you 100 percent sure that's the case for these questions?
21 Or are you just kind of thinking that? Because nothing is
22 written down here or in your report.

23 A Yeah, I -- I am sure that we talked to him about the
24 evidence, you know, why he thought he was arrested, all of
25 those things, and no, I did not write that down.

1 Q Okay. And you're telling us now that you discussed
2 that with him, and you're telling us what? He didn't
3 know? He didn't say? What was the answer?

4 A He gave very minimal answers. It was mostly that
5 Mr. Fox -- that he didn't know why they thought he did it,
6 he didn't know why he was arrested, and that his attorney
7 told him there wasn't any evidence to suggest that he was
8 the person.

9 And we mentioned that there was video --

10 Q He did mention there was video?

11 A We mentioned that there was a video.

12 Q Okay. Okay.

13 A And he said he wanted to see video. He would like
14 to see it. But he didn't think that that was him on the
15 video. If there was video, it wasn't him.

16 Q Okay. So he did acknowledge there was a video?

17 A He said -- at that time, he said he seemed surprised
18 that there was a video, but he was saying that he had not
19 seen the video, but if there was, it wasn't him on it.

20 Q Okay. And, again, this is all from your memory?
21 Because none of this is on your notes.

22 A Right.

23 Q Okay. And you would agree that, just today, me and
24 you have had some differences about what we have taken
25 from these notes?

1 A Yes.

2 Q Okay. Good.

3 And you would agree that he did tell you that
4 they're saying "I killed somebody at somebody's house, at
5 an apartment"?

6 A Yes.

7 Q Okay. So he knows something about some evidence;
8 right? He knows somebody is saying something?

9 A He knows that somebody said that he did it because
10 he was saying that there was a potential witness. So
11 somebody said that he did it, so yes, that's what he said.

12 Q Okay. And you would agree with me that he, by your
13 notes ---

14 Because all this was taken right out of your notes
15 from the report.

16 A Yes.

17 Q --- that he understood Mr. Fox's job, he understood
18 my job, and he understood the jury's job?

19 A After a lot of education and, again, today, he
20 retained little of that.

21 Q Okay. But would you agree with me, in your notes
22 beside these questions that I have put down here, it
23 doesn't say anything about how much education he was
24 required?

25 A No.

1 Q Okay. So when you say that today, again, we're
2 saying this from memory from 2023 between hundreds of
3 other interviews that you have done; right?

4 A Yeah, but I noted in the report that he required a
5 lot of education.

6 Q But do you know what questions he required a lot of
7 education on? Because that's not itemized in here; would
8 you agree?

9 A No, we educated him on the whole process several
10 times. Multiple times, we educated him on the whole
11 process.

12 Q Okay. And we have gone through this together ---

13 A Mm-hmm.

14 Q --- right?

15 A Yes.

16 Q And by your very notes, he understands the role of
17 Mr. Fox; right?

18 A Yes.

19 Q To help him.

20 He understands not to talk to me; right?

21 A Yes.

22 Q He understands that I talk against him?

23 A Yes.

24 Q Okay. And he understands that the people who sit in
25 this box are going to decide whether he's guilty or not?

1 **A** At that day, he understood that.

2 **Q** Okay. And that's in your notes; right?

3 **A** Yes.

4 **Q** That is 100, no doubt about that. That is written
5 down.

6 **A** We got him to get there, yes, to get that basic
7 understanding, yes.

8 **Q** Okay. Now, let's talk a few more things here.

9 So what else did you review? Because you did a
10 report based on this, and then now what else have you
11 reviewed?

12 **A** Mr. Fox sent the -- yeah, Mr. Fox sent the jail
13 calls, he sent the transcript for the plea hearing, he
14 sent the transcript for the change of attorney, he sent
15 over the information of all the orders for his canteen and
16 the disciplinary things and paperwork.

17 **Q** And did you listen to the jail calls?

18 **A** I did.

19 **Q** Okay. Good. Good, good, good.

20 And you know that a lot of these jail calls are to
21 Roger Legette?

22 **A** Yes.

23 **Q** And that's his brother; right?

24 **A** Yes.

25 **Q** Okay. And did you listen to the call where

1 Mr. Legette reports he feels he is being rushed to trial,
2 he is getting evaluated again on Monday, said his lawyer
3 looked bad in the bond hearing, discussed his \$100,000
4 bond, and said the police department has a vendetta
5 against him, and that his lawyer said he might win this
6 based on a lack of evidence?

7 A Yes.

8 Q Okay. Did you hear all that in the call?

9 A Yes.

10 Q Okay. Good. Good, good, good.

11 Now, in another call, he -- in Call F520,

12 "Mr. Legette discussed concerns about people cooperating
13 with the investigation and asked Roger to call Pops.

14 Mr. Legette was careful enough not to provide information
15 that could be recorded but inquired whether he should have
16 Pops give an affidavit." Did you listen to that call?

17 A I did.

18 Q Okay. And is that what's reflected in the call?

19 A He was -- he did talk about -- to his -- I don't
20 know who Pops is -- write an affidavit.

21 Q So he did talk about an affidavit?

22 A Right.

23 Q Is an affidavit like a legal document?

24 A I don't know if he understood what that meant or if
25 he was just parroting back what he had heard someone else

1 say. He didn't say what the affidavit would be used for,
2 what he would want Dad or Pops to put in the affidavit.
3 So it didn't suggest to me anything other than using that
4 word; that that's all he did, was use a word. And he was
5 asking his brother -- excuse me -- if he thought that was
6 a good idea, but they didn't discuss it.

7 Q So he had a discussion with his brother about
8 gaining an affidavit from somebody?

9 A He asked about it, yes.

10 Q Okay. And would you agree that he had concerns
11 about people cooperating with the investigation?

12 A Yeah, he was -- he reported saying he was scared,
13 "can't lose for winning" because he thinks that people
14 were out to get him.

15 Q Okay. Okay. And on another call, he stated he had
16 been reading and wanted to know what the probable cause
17 they had to search his residence. Do you remember that?

18 A Yes.

19 Q Did you listen to the call?

20 A I did.

21 Q And is that in the call?

22 A He did use the term, one about probable cause.
23 Again, I'm not sure if he understood what that meant, and
24 Roger told him, "Don't worry about that," so they didn't
25 discuss it further.

1 Q Okay. But would you agree he's used words like
2 "affidavit" and "probable cause"?

3 A He uses them, but I don't know if he understands
4 what they mean.

5 Q So you don't know either way. You don't know if he
6 understands or don't understand?

7 A That's what I say. I don't understand if he knows
8 what it means. That would be either way. I don't know if
9 he's using it correctly because he understands it or if
10 he's just parroting. Based on the call, I don't know
11 that.

12 Q Did you know that the police searched his residence?

13 A I believe I did. I think it was in the...

14 Q Okay. So he's asking, "I'm doing some reading, and
15 I want to know the probable cause they had to search my
16 residence," isn't that using the word correctly, "probable
17 cause"?

18 A Well, again, he knows that -- he may be -- you know
19 what, let me not speculate. He used the word to suggest
20 that he had heard it before or he read it, but, again, I
21 don't know for sure that he truly understands or is that
22 just something that he could say to kind of show or, you
23 know, get out of a situation. I don't know if he's
24 truly...

25 Q But he's talking to his brother; right?

1 A Right.

2 Q That's somebody he's comfortable with; right?

3 A Yeah, he respects his brother.

4 Q And his brother is in jail; right?

5 A Yes.

6 Q So he's kind of discussing with somebody else who is
7 in jail about his case?

8 A Yes.

9 Q Okay. That's what I took from it too.

10 On the next call, he discussed his motion to release
11 counsel. Do you remember that?

12 A Yes.

13 Q Okay. And so that's an accurate reflection of what
14 was on the call, him talking about getting rid of Mr. Fox?

15 A Yes.

16 Q Okay. So he knows enough to know that he can try to
17 get rid of his lawyer if he doesn't like him?

18 A Yes.

19 Q Okay. And on another call, he discussed that Horry
20 County uses facial recognition. He discussed this in the
21 context of identifying him on the video footage. Do you
22 remember that?

23 A He said this facial -- I think he said, "facial
24 recognition thing."

25 Q So you remember him using those words?

1 A Mm-hmm.

2 Q Okay. So he knew enough to think that Horry County
3 had facial recognition and that's how they identified him
4 on the video; is that right?

5 A He's suggested that that's what they used but that
6 it was incorrect.

7 Q Okay. But that's what he thought it was, facial
8 recognition?

9 A That's what he thought it was.

10 Q Okay. And those were words he used?

11 A Right.

12 Q Okay.

13 A But, again, we don't know where he heard that from,
14 if it was things that were heard in the jail and he's just
15 parroting back what he's heard.

16 Q But what you're saying is you don't know either way.

17 A I don't know either way.

18 Q You don't know if he's just parroting or maybe he's
19 a jailhouse lawyer; right?

20 A Well, I don't think he's a jailhouse lawyer, but I
21 do think -- I do not know for sure if he's just parroting
22 or if he's using those correctly, yes.

23 Q Okay. So you don't know if he's parroting or if
24 he's just using words like "affidavit," "probable cause,"
25 and "facial recognition" because he understands what's

1 going on? You don't know either way?

2 A I don't either way, yes.

3 Q Okay. But you would admit your report is saying
4 that he's not competent. So your report is indicating you
5 do know.

6 A Our opinion was that, yes, he knew some factual
7 things, but he --

8 Q But these are not factual things; right? Affidavits
9 are not factual things. Probable cause are not factual
10 things. Right?

11 A Right, but you're talking about what was in our
12 report and what we had in our report. Well, from our
13 interview, we understood that he understood some factual
14 things but that he was not able to use those to make
15 reasoned decisions about his case or help Mr. Fox make
16 reasoned decisions or choose between defense strategies,
17 appraise those defense strategies. Those are the pieces
18 that are also important to competency.

19 So having a basic understanding of the courtroom
20 process, yes, that's part of it, but that's not the full
21 and complete capacity level that you have to be at. You
22 have to have that rational capacity as well.

23 Q Let me ask you this: Do you think he's more
24 comfortable talking to you about these things or do you
25 think he's more comfortable talking to Roger Legette, his

1 brother?

2 A More comfortable -- he would be more comfortable
3 talking with his brother, yes.

4 Q So that's going to be a more authentic view of how
5 he talks, what words he uses, the language; right?

6 A I would say it's more comfortable, so I agree with
7 that, but those calls -- my opinion, those calls did not
8 give me enough information to change my opinion about his
9 level of competency.

10 Q Okay. So let me ask you this: Have you listened to
11 the calls over the weekend when he was talking about the
12 hearing today?

13 A Yes.

14 Q You did?

15 A Yes.

16 Q Okay. So you listened to the one where he was
17 talking about the fact that we had hired Donna Maddox?

18 A Yes.

19 Q And he understand what Donna's job was; right?

20 A Yes.

21 Q And he understood that she was a private forensic
22 psychiatrist; correct?

23 A Well, he said, "Paid doctor."

24 Q Okay.

25 A He understood that the solicitor -- your office had

1 paid her, yes.

2 Q Okay. So that's somebody -- that's true; right?

3 A That's true.

4 Q Okay. So that's somebody that knows enough about
5 the system and the adversarialness of it, that understands
6 I have gone out and gotten Dr. Maddox -- right? -- to do
7 another evaluation. He understands what's going on today
8 and that her report is adversarial to him; correct?

9 In fact, he calls her a bitch in the phone call.
10 Did you hear that?

11 A I wasn't sure if that was him or the other
12 gentleman, the person he called. Because I don't think
13 that was his brother. I'm not sure who the other person
14 was.

15 Q Okay.

16 A So I wasn't sure which one of them said it. But,
17 yes, she was called out of her name during the
18 conversation.

19 Q Okay. Now, did he talk like that around you?

20 A Oh, yeah, he was frustrated and used colorful
21 language.

22 Q So he talked to you just the same way he talks to
23 his brother?

24 A When he was frustrated, yes. He got very upset and
25 started crying during our evaluation. When he was calm,

1 no, he did not speak in that language.

2 Q How many calls have you heard him crying?

3 A I mean, he's been quite frustrated on quite a few of
4 the calls.

5 Q How many calls -- you have listened to them --
6 correct? -- these ones noted?

7 A Yes.

8 Q How many of them did he cry on?

9 A Maybe when they were talking about ---

10 Q Not maybe, Dr. Hall.

11 How many calls are you 100 percent sure that he
12 cried on?

13 A Right now, I don't recall.

14 Q Okay. So none. I didn't hear any that he cried in.

15 A I don't recall him crying.

16 Q You don't recall him crying?

17 A No.

18 Q That's right. But he cried with you; correct?

19 A Yes.

20 Q Okay. Okay. So let's listen to this call, and
21 we'll figure out who is talking.

22 MR. FOX: Your Honor, I know it's cross-examination
23 and I let them go, but if she's going to put anything in
24 evidence for jail phone calls, then I have got a motion to
25 exclude any jail calls. These were obtained without a

1 warrant, and I have a legal motion to exclude any evidence
2 -- I mean, she can cross-examine him about things, and I
3 have been letting that go, and maybe that was a mistake on
4 my part, but introducing anything into evidence and
5 playing these calls, I'm going to object to, and there's a
6 legal argument for that.

7 Again, these were obtained without warrants, and
8 there is an expectation of privacy. I don't care if he's
9 in jail. He's still got an expectation to privacy. They
10 are not warned before the call is accepted that these
11 calls can be recorded -- that's one there, but it's after
12 you have accepted and agreed to pay for the call. And
13 then at the very end, just before it says you can start,
14 then they let you know, "Hey, this can be recorded."

15 So he got no choice. He's in jail. Can't make
16 bond. But he hadn't forfeited his rights. He's still got
17 a right to some -- admittedly, in jail, you don't have the
18 same expectation of privacy you do me from my home calling
19 somebody, but his rights don't go away because he's
20 detained. And they didn't get a warrant. If they do,
21 they can produce it, but I feel very confident they did
22 not. Usually, they just call the jail, and the jail gives
23 them whatever the hell they want, which is how they got
24 all this other stuff. Doubt there's a subpoena. Maybe
25 there was; she can correct me. But I'm going to object to

1 any jail calls coming in from this point.

2 THE COURT: Well, I don't think -- I'm not trying to
3 speak for the solicitor, but I don't think she's offering
4 these jail calls into evidence. I think she has every
5 right, as you do, to ask any of these experts materials
6 that they reviewed in rendering their opinion, and I think
7 that's what the solicitor is attempting to do.

8 In addition, there's been a whole lot of discussion
9 so far about jail calls. So I'm going to allow her to ask
10 Dr. Hall about a jail call or jail calls, and I don't
11 think she's offering that necessarily into evidence.

12 So I'm going to deny whatever objection that you
13 have tendered.

14 Solicitor, you may proceed.

15 MS. LIVESAY: Thank you, Judge.

16 (Jail call audio plays.)

17 BY MS. LIVESAY:

18 Q Is that the call you listened to?

19 A Yes.

20 Q Okay. And is that the call where he's discussing
21 the fact that we reached out and hired Donna Maddox?

22 A Yes.

23 Q So he knew enough to understand that I was
24 adversarial and had gone out and hired a different
25 forensic person; correct?

1 A Yes.

2 Q And he knew that Dr. Maddox did not agree with your
3 report; correct? He knew she was saying that he was
4 competent?

5 A Yes.

6 Q Okay. So you would say he understands what's going
7 on today?

8 A He understood that there was an opposing opinion,
9 yes.

10 Q Okay. And he understands who Dr. Maddox is as far
11 as adversarialness?

12 A Yeah. He said that she's the paid person.

13 Q Okay. And I'm just going to ask one more question
14 because I didn't. Mr. Fox asked you about looking over
15 this stuff at the jail; correct?

16 A Yes.

17 Q And did you look over it?

18 A Yes.

19 Q Okay. And he ordered some books; right?

20 A Yes.

21 Q Okay. And do you know what books he ordered?

22 A I don't remember.

23 Q Okay. If I showed you this, would it refresh your
24 memory?

25 A Yes.

1 Q Okay. Good.

2 You can flip through there. You can flip through.

3 A Yes, I remember looking at these. These are, like,
4 urban -- yeah, I remember this.

5 Q And what type of books are those?

6 A I guess urban.

7 Q I'm sorry?

8 A Urban.

9 Q Yeah, kind of gangster?

10 A Yeah, I guess.

11 Q What do you mean by "urban"?

12 A These are set in urban communities. I don't read
13 this kind of stuff, so I'm not familiar with them, but
14 they're those kind of books set in urban communities.
15 Looks like they have to deal with street life.

16 Q Okay. Street life?

17 A Yeah.

18 Q Okay. And you would agree that these books seem to
19 be addressing kind of the street life of a Black person?

20 A Yes.

21 Q Okay. Is it crazy that that is what interests Craig
22 Legette?

23 A No. I mean, it's my understanding these type of
24 books are quite popular.

25 Q Okay. But he's not ordering Charles Dickens; right?

1 A No.

2 Q Or Jane Austen; right?

3 A No.

4 Q Okay. Those things probably don't interest him;
5 would you agree?

6 A Probably.

7 MR. FOX: Your Honor, what does that have to do with
8 competence, whether it's Dickens or urban street life?
9 Can we move it along?

10 THE COURT: I think she's winding down her --

11 MS. LIVESAY: I am. I am.

12 BY MS. LIVESAY:

13 Q But you would agree that these books -- it's
14 reasonable to believe that these books reflect his
15 interest, that he's interested in these things, these are
16 the type of things he enjoys to read?

17 A All I know is that he ordered them or requested
18 them.

19 Q Okay. But earlier you were saying that was to put
20 on -- right? -- to try to act like he was smarter than he
21 was.

22 A Right. I was saying people do --

23 Q People do do that.

24 A -- like do that, yes.

25 Q But would you say, in looking at this reading, that

1 maybe these are the things he's interested in? Maybe he's
2 not putting on. Maybe he enjoys these books.

3 A They might be stuff he likes or -- that would cause
4 me to speculate.

5 Q Right. It would cause you to speculate. So you
6 don't really know if he's reading the books or not?

7 A I don't.

8 Q Okay. And you don't know if he's really reading the
9 paper or not?

10 A I don't.

11 Q Okay. But you would agree with me that these things
12 have some reflection on his intelligence?

13 A Then, as you said, it's not Jane Austen. You know,
14 those books are written or tend to be written, you know,
15 in a low reading level. So it may be things that, you
16 know, could be -- could match his reading level.

17 Q So you would at least admit now that he knows how to
18 read?

19 A His school records made it clear that he knew how to
20 read.

21 Q Okay. Because, in the report, I thought you put he
22 didn't know how to read, but that's okay.

23 A That's what he said, he didn't know how to read.

24 MS. LIVESAY: No further questions, Your Honor.

25 THE COURT: Any redirect, Mr. Fox?

1 MR. FOX: Yes, sir. It will be brief.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. FOX:

5 Q Let's start at the end. Dr. Hall, do we have any
6 idea what kind of material -- number one, if Mr. Legette
7 reads at all, do you have any idea whether he does or not?

8 A No.

9 Q And, if so, do you have any idea what his interests
10 are?

11 A No.

12 Q The school testing. Let's go all the way back to
13 the school testing. These tests in general that they're
14 doing, would they take into account -- when they're
15 designed, do they take into account things like less
16 effort or distractions or things? Is there any kind of
17 built-in -- I'm going to use the word "cushion"; that's,
18 obviously, not a clinical term. But is any of that
19 factored in in any way?

20 A We are required, as part of the test-taking
21 procedure, to make note of that and to put in a statement
22 as to whether or not we think the scores are valid due to
23 effort or distractions or whatever.

24 Q Now, in all three tests, the tests are felt that
25 they were valid results; correct?

1 A They were confident, except for the one, that it
2 might be, you know, an underestimate or a slight
3 difference.

4 Q Because of vision?

5 A Because of vision.

6 Q Yes. But, in that same report, the third test, on
7 the last page, does it not also say, "Intellectual ability
8 appears to be significantly below average"?

9 A Yes.

10 Q So even factoring in the fact that it might be a
11 little bit low, his intellectual ability is significantly
12 below average?

13 A Yes.

14 Q On the IEP that Ms. Livesay asked you about where it
15 lists goals or things that Craig -- you know, what they
16 wanted to do -- work, live independently, etc. -- those
17 are aspirational; are they not?

18 A Yes.

19 Q So this is what we hope we can get to and this is,
20 like, best-case scenario -- correct? ---

21 A Yes.

22 Q --- Craig will work, live independently, etc.
23 To your knowledge, has Craig Legette ever held a
24 job?

25 A No.

1 Q Has he ever lived independently?

2 A No.

3 Q Is your opinion today based only on those IQ scores
4 from those tests when he was in school?

5 A No.

6 Q Could acting out, bad behavior on a young man of
7 that age -- grade school age, 11, 12, 13 -- could that, in
8 any way, be reflective of a symptom -- you talked about
9 the gap with peers over time -- that that could be a thing
10 with people who have ID. Can the acting-out behavior, the
11 disruptive behavior at school and home be a symptom of
12 that, the realization of falling farther and farther
13 behind, "I can't keep up like I used to"?

14 A Yes.

15 Q Switching lawyers, that was suggested by his
16 brother, Roger Legette. Getting rid of me as his
17 attorney, that was suggested by Roger Legette -- correct?
18 -- in the phone calls that you listened to?

19 A Yes.

20 Q Okay. Let me talk about phone calls. You were
21 given, I think, 25 calls. Does that sound correct? In
22 addition, three more today. You listened to these other
23 three today; is that correct?

24 A Yes.

25 Q So 25.

1 But you also have records. Included in the records
2 that you were provided recently was a whole stack, dozens
3 of pages of jail records; correct?

4 A Yes.

5 Q Okay. So probably hundreds of calls?

6 A Probably, yeah.

7 Q Okay. All using at least that account for
8 Mr. Legette at the jail to family, friends, whoever?

9 A Yes.

10 Q And you were given 25; correct?

11 A Yes.

12 Q And those originally came from the State through me
13 to you; is that correct?

14 A That is my understanding.

15 Q In your -- they asked you about -- the solicitor
16 asked you about your questionnaire that you filled out
17 when you did your evaluation and his answers to different
18 things. One of the things you look at, in addition to
19 identifying courtroom personnel, is appropriate courtroom
20 behavior; correct?

21 A Yes.

22 Q Do you recall -- in answer to what Mr. Legette would
23 do if he felt a witness was lying about him, do you recall
24 his answer to that?

25 A He would want to get upset and say the person was

1 lying.

2 Q Yes. And did he say he would yell out?

3 A Yeah.

4 Q On the same portion of that questionnaire, when he
5 was asked about the solicitor brought out that -- what
6 could happen if he was found guilty, "I could get a lot of
7 time," didn't he, in another portion, in response to the
8 same question, he could get probation?

9 A Yes.

10 Q And one of the options presented was jail time,
11 probation -- and I obviously forget the other two, but
12 jail time was an option, but, at that time, his answer was
13 probation?

14 A Probation.

15 Q So not the same as he had said before, not "a lot of
16 jail time." Not even jail time mentioned in that
17 incident.

18 A No.

19 Q Is that inconsistency in those answers, does that
20 factor in -- not just that specific one but in general --
21 his use of a term and then having to ask about the term
22 later with his brother or his incorrect use of a term, did
23 those things -- or when he says "due progress" or
24 "confidence" instead of "competence," do those things --
25 and, again, those inconsistencies -- does that factor in

1 to your opinion as to his ability to rationally understand
2 everything?

3 A Yes.

4 Q Okay. Do your notes reflect when you receive these
5 jail calls and so forth, the first batch of 25 and those
6 records, do you recall when I sent -- I emailed those to
7 you, I believe; correct?

8 A Yes.

9 Q And that was --

10 A I don't know if it was added to --

11 Q It was within the last couple of months, correct, in
12 preparation for this hearing?

13 A Yes.

14 Q Okay. And all the phone calls you listened to other
15 than the three you got today, those are all from 2022.
16 The 25 calls you got ---

17 A Yes.

18 Q --- every one of them was between, I believe, June
19 and August of 2022?

20 A Yes.

21 Q Mr. Legette has been incarcerated from September of
22 2020 until today?

23 A Yes.

24 Q Three and a half years?

25 A Yes.

1 Q So the solicitor selected 25 calls over a two-month
2 period to provide you with information to show he
3 supposedly knows what he's doing with regards to court?

4 A Yes.

5 Q Same thing with -- and those calls were in 2022, so
6 they would have been available for well over -- going on
7 two years before they were provided to me and to you?

8 A Yes.

9 Q Same thing with the information you got from the
10 jail with the canteen records and the phone calls. The
11 disciplinary records cover his entire period; right?
12 There's some from 2020. There's some from '21, '22, '23.
13 So, again, all information available to the solicitor well
14 before the spring?

15 A Yes.

16 Q Okay. And just now provided?

17 A Yes.

18 MR. FOX: All right. Almost finished, Your Honor.

19 No, that's all. Thank you.

20 THE COURT: Any recross?

21 MS. LIVESAY: No, sir.

22 THE COURT: Okay. Dr. Hall, you can step down.

23 Thank you, ma'am.

24 Any other witnesses?

25 MR. FOX: I do, Your Honor. They will not be as

1 lengthy. I do have Dr. Mulay, who also interviewed
2 Mr. Legette. May we have a quick bathroom break?

3 THE COURT: Sure, yeah. We'll take a five-minute
4 break.

5 MR. FOX: Thank you, Your Honor.

6 (A recess was taken from 4:06 p.m. to 4:20 p.m.)

7 THE COURT: Okay. Mr. Fox, next witness?

8 MR. FOX: Thank you. We'd call Dr. Abby Mulay.

9 DR. ABBY MULAY

10 after having been duly sworn, was examined and
11 testified to as follows:

12 THE COURT: Please spell your first and last name,
13 please, ma'am.

14 THE WITNESS: Sure. First name, A-b-b-y. Last
15 name, M-u-l-a-y.

16 THE COURT: Okay.

17 DIRECT EXAMINATION

18 BY MR. FOX:

19 Q And I'll start with that: What's the correct
20 pronunciation of your last name?

21 A It's "Mm-you-lay."

22 Q "Mm-you-lay." Okay. I have been butchering it all
23 afternoon.

24 A Everybody does.

25 Q I like to have it right.

1 All right. Dr. Mulay, what is your profession?

2 A I'm a clinical psychologist at MUSC.

3 Q Okay. And you practice in the State of South
4 Carolina?

5 A Correct.

6 Q For how long?

7 A I have been licensed since 2019.

8 Q Okay. Do you have any board certifications or
9 specialties?

10 A I don't have any board certifications. My specialty
11 happens to be forensics and personality assessments.

12 Q Okay. And just very briefly, again, forensic
13 psychology, what is that?

14 A Sure. It's the intersection of mental health and
15 the law. And so what I do mostly is write competency
16 reports, criminal responsibility reports.

17 Q Roughly how many competency evaluations would you
18 say you have done?

19 A Probably around 500 by now, I would say.

20 Q Would you give us your educational background,
21 please.

22 A Sure. I got my Ph.D. in clinical psychology in Long
23 Island University, the Brooklyn campus. I did my
24 internship in clinical forensic psychology at the
25 University of North Carolina School of Medicine in the

1 Butner Federal Correctional Complex. And then I did my
2 fellowship in clinical forensic psychology at MUSC.

3 Q Have you had any further training since earning
4 those degrees?

5 A I do CEUs every year. I teach CEU classes as well,
6 so yes.

7 Q Are you the author or co-author of any learned
8 treatises or articles or books?

9 A Yes, yes. I probably have around 40 or so
10 peer-reviewed articles, chapters in various books.
11 Co-edited a book.

12 Q And have you ever been qualified as an expert in
13 forensic psychology in the courts of the state of South
14 Carolina?

15 A I have.

16 Q How many times?

17 A Probably I think -- an estimate, five to ten by now.

18 Q Okay. And that includes General Sessions court?

19 A Yes.

20 MR. FOX: Your Honor, at this time, I'd move to have
21 Dr. Mulay qualified as an expert in forensic psychology.

22 THE COURT: Any objection?

23 MR. OSKIN: No, sir, Your Honor.

24 THE COURT: All right. Dr. Mulay is found to be an
25 expert in the area of forensic psychology. You may

1 proceed.

2 BY MR. FOX:

3 Q So, Dr. Mulay, you, along with Dr. Hall, interviewed
4 and did a competency evaluation of Mr. Craig Legette;
5 correct?

6 A Correct.

7 Q Okay. And when was that?

8 A That was back on March 24th of 2023.

9 Q And you were physically present for that interview?

10 A I was.

11 Q Okay. And Mr. Legette was in Charleston with
12 you-all face-to-face?

13 A Yes, at that time.

14 Q And you were there for the entire interview?

15 A Correct.

16 Q What was kind of the dynamic or structure of that?
17 You worked for DMH; Dr. Hall for DDSN. Does one person
18 take the lead or is it kind of both asking questions? How
19 does that work when there's two doctors?

20 A Well, Dr. Hall and I have been working together for
21 a number of years now, so we have a pretty natural flow.
22 Oftentimes I'll start the background -- if this is a DDSN
23 case, I might start the background and then right through
24 the mental status, and we do the competency together.

25 Q And do you recall at that time -- I know there have

1 been some further materials, but do you recall what
2 materials you had to review in addition to your interview
3 with Mr. Legette?

4 A I do. I recall the materials.

5 Q Okay. And what was that?

6 A We had incident reports, warrants. Of course the
7 school records. Jail records. Yeah, that pretty much
8 covers it.

9 Q With regard to the school records, what stood out to
10 you about those?

11 A What stood out to me was the testing, the three
12 different, in that he had, in fact, been determined to be
13 a student with ID, or intellectual disability.

14 Q Okay. And they had used a different term back then?

15 A Correct, correct.

16 Q Was it educable?

17 A Educable. Don't make me say that. Yes.

18 Q I can barely get it out myself. Okay.

19 But now we say that's intellectual disability. All
20 right.

21 You have, obviously, been present -- or have you?
22 You have been present for the testimony of Dr. Hall today?

23 A Correct.

24 Q So you have heard the questions and the discussion
25 about Mr. Legette's behavior before and during those

1 tests?

2 A I have.

3 Q Okay. What is your -- and you reviewed those --
4 again, you reviewed those reports?

5 A I did.

6 Q What is your view of his behavior and how that may
7 have affected any scores?

8 A Well, it may have. It might not have. I'm not sure
9 over that course of several days what tests were
10 administered when. Because he was actually administered a
11 very large battery. So I can't determine if the Wechsler
12 was administered in one day or multiple days.

13 Q And the Wechsler being an IQ test?

14 A The IQ test, correct.

15 Q And was he given -- there are, again, three
16 different testing periods.

17 A Mm-hmm.

18 Q Was he given the same IQ test each time?

19 A No. So he was given the Wechsler Intelligence Scale
20 for children and then the Stanford-Binet and then back to
21 the Wechsler again.

22 Q Is there any significant difference between the
23 Stanford-Binet and the Wechsler?

24 A I don't use the Stanford-Binet. I know that it's a
25 classic test of intellectual functioning. I was always

1 trained on Wechsler instruments.

2 Q Okay. But the Stanford-Binet is fully --

3 A Absolutely.

4 Q -- reliable?

5 A Accepted.

6 Q Accepted, etc. Okay.

7 Now, were you aware whether the interview and the
8 evaluation that you did was the first competency
9 evaluation for this case for Mr. Legette? Was it? Do you
10 know if yours was the first?

11 A I'm sorry? Can you repeat that, Mr. Fox?

12 Q Was the evaluation that you and Dr. Hall conducted,
13 to your knowledge, was that the first one related to this
14 case with Mr. Legette?

15 A I know Dr. Gottfried attempted an evaluation a year
16 prior.

17 Q And you had access and a copy of that report?

18 A Correct.

19 Q Okay. She was unable to render an opinion, but she
20 also documented the interview and what she observed, etc.?

21 A Correct.

22 Q Did you-all diagnose Mr. Legette with any mental
23 illness?

24 A We diagnosed him with cannabis use disorder, which
25 is a substance use disorder. It's considered a mental

1 illness in the DSM. And also with ID provisionally.

2 Q Why provisionally?

3 A That is, I think, how DDSN does it. So, remember,
4 he was a consumer, and he kind of lost touch with the
5 agency. So that label "provisional" was used just because
6 I think they might want to reconfirm if he were to ever
7 seek services. That's my understanding.

8 Q But you heard Dr. Hall testify that, in her opinion,
9 it's -- Mr. Legette met the criteria for intellectual
10 disability based on his testing, based on the timing, when
11 it was diagnosed, etc.?

12 A Correct.

13 Q Do you concur with that?

14 A I concur.

15 Q Okay. Based on -- well, let me ask you: So you-all
16 issued a report in April of last year; correct?

17 A Correct.

18 Q And the determination -- the opinion was that he was
19 not competent?

20 A Yes.

21 Q And not likely to be restored?

22 A Correct.

23 Q Why did you feel "not competent"?

24 A At that time, Mr. Legette, from my perspective,
25 really struggled on the rational prong. He really

1 couldn't walk us through his defense strategy. He
2 couldn't walk us through necessarily what would occur at a
3 trial, aside from very surface-level understanding.

4 We did feel that he tended to parrot back a lot of
5 terms that I think that he's heard, but I'm not confident
6 that he knows what these terms mean or refer to.

7 Q Now, you also heard Dr. Hall in the
8 cross-examination go through some of her notes. It would
9 have been -- there's a standard questionnaire kind of
10 guideline -- areas to ask about. I would assume there's
11 some ebb and flow with different clients that you kind of
12 go where it -- the interview takes you, so to speak?

13 A Absolutely. Not only is there ebb and flow with
14 different defendants but also evaluators ask these
15 questions in very different ways.

16 Q But you do have kind of a checklist. I mean,
17 there's a piece of paper, you know, fill in the answers,
18 and that's what the solicitor was asking Dr. Hall.

19 So you have heard several instances of Mr. Legette
20 being able to correctly answer some of the factual ---

21 A Yes.

22 Q --- details ---

23 A Yes.

24 Q --- about specifically court personnel and outcomes.
25 So why is it that those things to you don't tilt the scale

1 in favor of competence?

2 A Because one needs to have a rational understanding
3 of the proceedings against them; right? It's not just
4 enough to say that you know what the job of the judge is
5 or that you know what the job of the solicitor is or even
6 the public defender. You have to be able to apply that
7 case -- apply that knowledge to your case and really think
8 through the various aspects of your case and legal
9 demands.

10 Q Can you give us an example of where maybe factually
11 -- a person factually understands the situation and the
12 roles but is unable to rationally think it through?

13 A Sure. So, factually, a person might understand what
14 Mr. Fox does or, like, that you're on their side; right?
15 But then if you talk to somebody about, "Okay, what
16 exactly does the public defender do for you," aside from
17 just "on my side," right? Sure, they're on your side,
18 they're there for a purpose, but sometimes people don't
19 understand beyond just that nugget of information, if that
20 makes sense.

21 Q In other words what does that mean, "he's on your
22 side"?

23 A Yes.

24 Q And what does that mean --

25 A "What's the next step?"

1 Q Right. And if I understand, he's -- in your
2 opinion, Mr. Legette is unable to take that next step?

3 A Correct.

4 Q Okay. Now, subsequently, did you receive from me
5 some supplemental materials that were provided from the
6 solicitor's office? Jail calls and records from the jail
7 and different things?

8 A I did indeed.

9 Q Okay. What were some of those things?

10 A Well, we received 25 jail calls, and then three more
11 today. We received the -- how do I say? Detention center
12 hearing results; obviously, the canteen; and then the two
13 transcripts of hearings as well.

14 Q Okay. And you have had a chance to review all those
15 things?

16 A I did.

17 Q And listened to all the phone calls?

18 A I did.

19 Q Okay. Was there anything that you heard or read in
20 that supplemental material that altered or changed your
21 opinion about Mr. Legette's competence?

22 A There was nothing that altered my opinion.

23 Q Okay. So -- and these jail calls, why doesn't his
24 discussion of due progress or jurisdiction or affidavits,
25 why does that not change your opinion?

1 A To me, he did not demonstrate any understanding of
2 these terms, and oftentimes, in those calls, there really
3 was the other person on the line guiding and Mr. Legette
4 agreeing or making statements, oftentimes frustrated
5 statements.

6 Q Did he also at times ask the person on the other end
7 to repeat certain phrases or words?

8 A He absolutely did.

9 Q Sometimes within the same call?

10 A Yes.

11 Q Did that -- was that consistent -- that behavior,
12 that reaction to different terms, was that consistent with
13 the interviews that you had with Mr. Legette?

14 A Yes, it was, and very consistent, from my
15 perspective, with a compromised rational understanding of
16 the proceedings.

17 Q And I meant to ask: You also had a chance to meet
18 with Mr. Legette again this morning; correct?

19 A I did, correct.

20 Q So you were present with Dr. Hall and Dr. Maddox and
21 myself. Describe what went on in that interview.

22 A Sure. Well, we met, and Dr. Hall took the lead. I
23 asked some ancillary questions as well. He -- his affect
24 was calmer this time. As we talked about before, he was
25 upset when we interviewed him last year, but today, his

1 recall was quite poor. He wasn't recalling some of these
2 roles that we had talked about and gone over, which
3 suggests to me an inability to retain over the long haul.
4 Right? Because we went over this stuff last year. He got
5 some of it, and then, today, that wasn't demonstrated to
6 me.

7 Q During the interview today, did any of the three of
8 you -- did any of you doctors -- because that was some of
9 the questions again today was court procedure and court
10 personnel and those sorts of things; correct?

11 A Correct.

12 Q Where there was a misunderstanding on his part, was
13 there an attempt to educate him?

14 A Yes, yeah.

15 Q Did he appear able to retain that within the
16 interview just today?

17 A He did not. He, from my perspective, appeared
18 pretty confused.

19 Q Could he just not be trying or be faking, in your
20 opinion?

21 A Every time I have met with Mr. Legette, I felt that
22 he's given pretty good effort, actually. I think he's
23 pretty forthcoming about what he knows and forthcoming
24 about what he doesn't know.

25 Q So if he knows something, he'll tell you?

1 A Yes.

2 Q And if he doesn't, he'll respond ---

3 A He says, "I don't know."

4 Q --- "I don't know about that" or something?

5 Okay. Is that typical of someone who is trying to
6 feign their level of understanding or somebody who is
7 trying to fake it? Is that kind of response typical?

8 A That's not typically what I encounter, just from the
9 mental illness side. I mostly encounter a lot of feigned
10 voices, visions, the devil telling me do this, that, and
11 the other thing, or people just not engaging.

12 Q In the two interviews you had with Mr. Legette, he
13 did engage ---

14 A Correct.

15 Q --- and he did participate? Okay.

16 He responded to all the questions that were asked of
17 him?

18 A He did.

19 Q Let me ask you -- it seems like a -- kind of a silly
20 thing. With the disciplinary records hearings that you
21 reviewed, you mentioned something to me when we talked.
22 What did you think of those? They tend to be -- seemed to
23 be a sort of a notice of the right to a hearing and kind
24 of -- I think it might use the word "rights," but how did
25 you, based on your experience, see those?

1 A Yeah, in my correctional experience, when these
2 things happen, they read off the piece of paper, "Do you
3 understand what's happening?" And the person says yes or
4 no. And, to me, that doesn't really necessarily
5 demonstrate an understanding of what's actually happening
6 in that moment.

7 Q Do you have any idea who -- and I think, on these
8 forms, something is circled or there might be a place to
9 initial. Do you have any idea whether that's
10 Mr. Legette's -- whether he did the circling or
11 acknowledgment or someone did that for him?

12 A I do not know, correct.

13 Q And you don't know what the practice is, obviously,
14 at the J. Reuben Long, here at the detention center?

15 A Well, it does look like it's at least signed off by
16 correctional staff, which would suggest that it's not
17 mental health conducting these hearings.

18 Q Thank you. Please answer any questions the
19 solicitor has for you.

20 THE COURT: Okay. Solicitor, do you have any
21 cross-examination?

22 MR. OSKIN: Briefly Your Honor. Thank you.

23 CROSS-EXAMINATION

24 BY MR. OSKIN:

25 Q Good afternoon, Dr. Mulay. Nice to meet you in

1 person. Certainly read a bunch of your reports. How are
2 you?

3 A Nice to meet you too.

4 Q So you're a psychologist?

5 A Correct.

6 Q So you're able to give tests?

7 A Yes.

8 Q All right. So what test did you give Mr. Legette to
9 assess his effort on these tests to determine his IQ?

10 A I'm sorry? To determine effort or IQ?

11 Q The test -- just his effort in the test that he's
12 taking.

13 A Yeah, we did not administer effort testing. From my
14 perspective, he was giving good effort, when I met with
15 him.

16 Q But there are tests for effort?

17 A Yeah.

18 Q But you didn't do that?

19 A I did not.

20 Q Did you talk to anyone else for collateral
21 information about Mr. Legette to help you in making these
22 determinations?

23 A I did not.

24 Q Why did you not do that?

25 A I felt like I had enough information to render an

1 opinion.

2 Q Based off the tests that he took at eight, 11, and
3 13 years old?

4 A Well, those tests are important because they set the
5 precedent for the diagnosis of intellectual disability.

6 Q Okay. And I think trying to play catch-up through
7 this case and through this hearing this afternoon is
8 certainly a lot.

9 So, at eight years old, if I remember correctly, he
10 was borderline low, but he did have an IQ above areas of
11 concern at that time for ID or, whatever they called ID at
12 that time?

13 A Sure. I mean, yeah, yes. It was considered
14 borderline at 75, correct.

15 Q Okay. And I mean no insult to the scale or that
16 work by any stretch, if I miss these numbers or forget
17 them. I just want to focus on the format of those tests.

18 A Sure.

19 Q And I believe the report stated his behavior was
20 satisfactory when he took that test; right?

21 A Mm-hmm.

22 Q And I believe Dr. Hall stated that, if it's
23 possible, it's best to take this test in one setting?

24 A Right.

25 Q And you also said this afternoon that there could be

1 a lot of information, it may be hard. So just like every
2 lawyer says, you're going say case-by-case basis; is that
3 fair to --

4 A Absolutely fair.

5 Q Okay. But, as he got older, his behavior changed
6 during those tests. Not going to say temper tantrum five
7 times but that's what was indicated that happened;
8 correct?

9 A Sure.

10 Q He's focused on other things, not wanting to be
11 there, other than the test ---

12 A Sure.

13 Q --- to summarize it. Okay.

14 So that's not a best effort for most people. I
15 don't want to make you speculate, but that doesn't appear
16 to be the best effort for those tests?

17 A Right, but if we're thinking about ID, there's two
18 parts of it. Right? There's the intellectual part and
19 then there's the adaptive functioning part. Now, I can't
20 go back in time. I wasn't sitting in that room.

21 Q Sure.

22 A But I wonder how much of his behavior in those
23 moments were directly related to adaptive functioning
24 deficits that were directly related to ID as well.

25 Q And I wonder how much would his performance or

1 ability on this test be affected by his lack of attendance
2 in school.

3 A Well, hypothetically, it's a measure of
4 intelligence. Now, certainly, sometimes the deck is
5 stacked, so to speak, with that construct with various
6 populations, but IQ itself is considered to be a pretty
7 stable-ish -- with some variation, obviously, that we even
8 see here.

9 Q But certainly hard to learn study skills or
10 attention skills if you're not in school 28, 35 days out
11 of the year?

12 A Absolutely.

13 Q Okay. I want to talk about some more items for this
14 specific -- your personal evaluation of him. When you say
15 a rational understanding of what's going on, what does
16 "rational" mean to you?

17 A "Rational" means the ability to really just simply
18 think through your case and make well-reasoned
19 case-related decisions.

20 Q Okay. So how about this: When he said, "If there's
21 a video of this happening, that's not me on it?" that's a
22 pretty good claim if you were charged with murder; is it
23 not?

24 A Certainly. And, I mean, I think both Dr. Hall and,
25 myself have said this from the beginning. Like there's

1 stuff that Mr. Legette knows. Absolutely.

2 Q A pretty quick defense: "It ain't me"?

3 A Yeah.

4 Q That's a pretty solid defense. Right? Don't want
5 to assume any defenses when you're charged with murder.

6 I want to talk about the motion to relieve counsel.

7 A Sure.

8 Q And, also, I might be thinking in too simple of
9 terms here. When you say he just parrots people all the
10 time, what do you mean? Is that like the literal, like,
11 when I tell my little girl, "Say cat," and she says,
12 "Cat," is that what you mean?

13 A Yes.

14 Q Okay. So when I --

15 A Like -- sorry. I didn't mean to...

16 Q So when I tell her -- or when I ask her what the cat
17 says and she says, "Meow," then she's applied what I have
18 taught her -- what I'm teaching her; is that correct?

19 A I suppose if you've taught her that the cat says
20 "meow," yes.

21 Q Okay. And if someone were to tell someone to file a
22 motion and then they file it, would that not show that
23 they understand the knowledge or what they have been told
24 to do instead of just repeating it?

25 A Yes. But, in this case, am I wrong to recall that

1 Mr. Legette's brother filed this? Am I -- I might be
2 misremembering things.

3 Q Maybe filed on his brother's advice for sure.

4 A Yeah.

5 Q Okay. So then he goes and files it.

6 And back to those tests, there reaches a point with
7 his behavior where he's just uncooperative; is that
8 correct? It's a general pattern.

9 A Are we talking about as --

10 Q Talking about back to elementary school, initial IQ
11 test.

12 A Yeah, I think that's fair to say.

13 Q Okay. And then the beginning of these processes of
14 evaluation with Dr. Gottfried and even with Dr. Hall,
15 initially, he's just uncooperative; correct?

16 A My reading of Dr. Gottfried's is that he was
17 uncooperative. When we tried to meet with him the first
18 time -- meaning Dr. Hall and I -- he declined. And I
19 suppose that's uncooperative, but we give defendants that
20 liberty to go to speak with their attorney if they wish.

21 Q Okay.

22 A And he actually said he didn't want to do it
23 virtually. And then when we came in in person, he was
24 cooperative.

25 Q And when he talked to you in person, he seemed to --

1 as you have already seen, testified to do -- you know what
2 I'm going to ask -- he understood the roles of what
3 everybody does; correct? He understood his lawyer -- you
4 didn't see him walk out to our table and want to sit with
5 us.

6 A Correct.

7 Q He knew that was his team over there?

8 A Correct.

9 Q That's his defense lawyer.

10 A Yes.

11 Q And these jurors here, they're the people who decide
12 who is going to decide guilt or innocence at the end of
13 the trial?

14 A Yeah.

15 Q And he knew that, if he's guilty of murder, that
16 he'd go away for lot of time, maybe his whole life?

17 A Yes.

18 Q He might have also thought probation was an answer.
19 He doesn't have to be a legislator to be competent. Okay.

20 And throughout this process with Mr. Fox, how could
21 you tell that his not working with his lawyer is just a
22 product of his mistrust of the system?

23 A Well, we've had many phone calls where his brother
24 was instructing him not to work with anybody.

25 Q And his brother is not a lawyer; correct?

1 A Right.

2 Q His brother was in jail or --

3 A That's my understanding.

4 Q He had a prior record, at least?

5 A The brother, yes.

6 Q And you're aware that Mr. Legette has a prior
7 criminal record as well; correct?

8 A Correct.

9 Q All right. And that he's pled guilty multiple
10 times?

11 A I am aware of that.

12 Q Okay. You've read the transcript of that?

13 A Of the -- yes.

14 Q Of the guilty pleas ---

15 A Yes.

16 Q --- where he's informed of his rights and that he
17 doesn't have to do it, but this is what he's giving up.
18 This is the rights he's waiving.

19 A Yes.

20 Q And he understands that. Okay.

21 He certainly understands probation as part of his
22 guilty plea. That's what he was given. You read the
23 transcript.

24 A You mean from the transcript?

25 Q Sure. The guilty plea.

1 A It seems that way. I mean, there wasn't a lot of
2 wiggle room. It was a lot of, "Yes, sir; yes, sir; yes,
3 sir." He said "no, sir" incorrectly at one point when he
4 meant "yes, sir." So there wasn't a whole --

5 Q But he didn't say, "Hold up, stop the guilty plea.
6 I don't know what's going on"?

7 A He did not. You're correct.

8 Q All right. And then talking about today, did you
9 formally test his recall today?

10 A I don't think I understand what you're asking.

11 Q Memory recall. How do you -- you said he doesn't
12 recall information and know how to apply it. Did you
13 formally test that today?

14 A So we asked him a lot of the same factual questions
15 that we asked a year ago and he did not give the same
16 answers, the same factual understanding.

17 MR. OSKIN: Nothing further from us.

18 THE COURT: Any redirect, Mr. Fox?

19 MR. FOX: No, Your Honor.

20 THE COURT: You can step down, ma'am. Thank you.
21 Anything else on your side?

22 MR. FOX: Just one quick moment.

23 THE COURT: Sure.

24 MR. FOX: Nothing further from Mr. Legette, Your
25 Honor.

1 THE COURT: Okay. All right.

2 MS. LIVESAY: We're going to call a few witnesses,
3 Judge.

4 THE COURT: Okay. All right.

5 MS. LIVESAY: Thank you. They should be quick.
6 They're ready.

7 We'd like to go ahead and call Ms. Esther Labrador
8 from SCDC.

9 THE COURT: Okay.

10 MS. LIVESAY: Yeah. She's from Columbia, so I'm
11 going to try to get her out.

12 ESTHER LABRADOR,
13 after having been duly sworn, was examined and
14 testified to as follows:

15 THE CLERK: State your name for the record.

16 THE WITNESS: Esther Labrador. E-s-t-h-e-r
17 L-a-b-r-a-d-o-r.

18 THE COURT: Spell the last name again, please.

19 THE WITNESS: L-a-b as in "boy"-r-a-d as in
20 "dog"-o-r.

21 THE COURT: Okay.

22 DIRECT EXAMINATION

23 BY MS. LIVESAY:

24 Q And, Ms. Labrador, tell the Court where you're
25 currently employed.

1 **A** I'm employed with the South Carolina Department of
2 Corrections.

3 **Q** And what are your responsibilities at the South
4 Carolina Department of Corrections?

5 **A** I'm the division director of Men's Mental Health. I
6 oversee mental health services at all of our men's
7 prisons.

8 **Q** Okay. And as part of that, in South Carolina
9 Department of Corrections, is there a classification-style
10 setup to know where to put what inmate?

11 **A** Yes. We have classifications for custody -- so
12 they're security level, what level of security they need
13 -- and then we also have clarifications for mental health
14 levels of care to determine what level of mental health
15 services they need.

16 **Q** Okay. And tell this Court, does South Carolina
17 Department of Corrections have a separate holding part for
18 inmates that are of low IQ?

19 **A** Yes. We have a habilitation program specifically
20 for inmates with intellectual disabilities and related
21 disabilities.

22 **Q** Okay. And is that to protect them from other
23 inmates because they're vulnerable?

24 **A** Partially so. Partially to protect them if they're
25 vulnerable and also help teach them life skills.

1 Q Okay. So there are people at South Carolina
2 Department of Corrections that have been sentenced that
3 are in this special department for low intellect?

4 A Yes.

5 Q Okay. And Craig Legette has been to South Carolina
6 Department of Corrections; correct?

7 A That is correct.

8 Q And do y'all give any kind of test to determine
9 whether or not an inmate needs or requires this special
10 hab unit? Isn't it called hab?

11 A It's hab, yes.

12 Q And that's for the low intellectual inmate?

13 A Yes.

14 Q Okay. And what kind of test is given to know
15 whether or not they need to be in hab?

16 A So, currently, we don't test everyone that comes in.
17 We'll do an initial screening and ask questions related to
18 intellectual disability, such as, "Have you ever received
19 special education services before?"

20 If they screen positive for potential intellectual
21 disability, we'll administer intellectual testing. The
22 psychologist that does it will choose which test they
23 administer, so it can be one of several.

24 When Mr. Legette came to us originally, we were
25 doing --

1 Q And when you say "originally," give the Court that
2 date, please.

3 A I'm not sure if I have it. I don't have his
4 admission date.

5 Q Okay.

6 A But I have the date that his estimated IQ was
7 entered into our system. That was November 19th of 2007.
8 They were doing an abbreviated IQ test at that time on
9 inmates that came in, and his score at that time was a 97.

10 Q 97?

11 A Yes.

12 Q And did that require him to go into the hab unit?

13 A No, it did not.

14 Q Okay. So he didn't require this special unit for
15 low intellectual inmates; correct?

16 A No, he did not.

17 Q And how long was he in SCDC after this test?

18 A That, I don't know. I did not bring that
19 information with me.

20 Q Okay. But it was for probably more than a year;
21 correct?

22 A I'm really not sure.

23 Q Okay. Well, do you know if at any time he was
24 there, he required the hab unit?

25 A He did not.

1 Q Okay. For whatever time he was there, he was in
2 general population?

3 A Yes, that's correct.

4 Q He never required to be separated out with the other
5 inmates who are low intellectual ability?

6 A That's correct.

7 Q And when he tested your test -- which is pretty
8 important; correct?

9 A Sure.

10 Q You depend on that information to keep these people
11 safe?

12 A Absolutely.

13 Q And when you tested him, he scored a 97?

14 A Yes.

15 Q And does that require any kind of special
16 accommodations at the South Carolina Department of
17 Corrections?

18 A No, it does not.

19 Q And, to your knowledge, did he ever require any
20 special accommodations?

21 A No, not to my knowledge.

22 Q And, to your knowledge, was he ever in this special
23 unit for low IQ inmates to assist them?

24 A No, he was not.

25 Q And did he require it?

1 A Not that I'm aware of.

2 Q Okay. Did a 97 require that?

3 A No.

4 Q And, to your knowledge, he was never in the hab
5 unit?

6 A That's correct, yes.

7 Q Okay. So if something came up after he scored this
8 97 and he needed the hab unit, would you have put him in
9 the hab unit?

10 A Yes, we could still refer him even after these --
11 this test was done. We would have done additional testing
12 at that point.

13 Q Okay. And what kind of number -- he scored a 97.
14 So what kind of number are we talking about to go in this
15 hab unit?

16 A We're talking for 70 and below.

17 Q Okay. But he was well above that; correct?

18 A Yes.

19 MS. LIVESAY: No further questions, Your Honor.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. FOX:

23 Q Ms. Labrador, then why, on this form the solicitor
24 gave me this morning, it says, "Estimated IQ" -- and I'll
25 ask you what in the world was estimated -- but it says,

1 "Mental," -- it says, "Substance abuse: N." I take it
2 "N" is "no"?

3 A Correct.

4 Q Mental health? No.

5 A Correct.

6 Q Sexual offender medical information? No.

7 Mental retardation: A great big "Y," which I assume
8 is yes?

9 A So that says that -- it's a type of referral that
10 was made, but he never received any services for mental
11 retardation while he was in the Department of Corrections.

12 Q "Didn't receive" doesn't mean "doesn't have."
13 Didn't receive services doesn't mean he doesn't have a
14 need.

15 A No.

16 Q Okay.

17 A Yeah.

18 Q Did you have -- what acts -- did you do the test?

19 A I did not do the test.

20 Q Okay. What is -- and I don't mean to be -- what is
21 your qualifications? What is your educational background?

22 A I have a master's degree in rehabilitation
23 counseling.

24 Q Okay. Not in psychology?

25 A No.

1 Q Not in psychiatry?

2 A No.

3 Q Not in forensic psychology?

4 A No.

5 Q You did not perform this test? What is the test
6 that was done? There's an abbreviated IQ test. What in
7 the world is involved in an abbreviated IQ test?

8 A I'm not a psychologist, and I don't administer those
9 tests, so I can't answer that question.

10 Q So abbreviated would tell me not a full IQ test.

11 A Correct.

12 Q Okay. And despite a score of 97, an estimated, he's
13 still marked as having mental retardation?

14 A He's marked as being referred for mental retardation
15 services.

16 Q But you don't know what the test was; correct?

17 A No. Correct.

18 Q So you don't know if it was Stanford-Binet --

19 A I believe it was the WAIS, the Wechsler Abbreviated
20 Scale of Intelligence.

21 Q But you don't know?

22 A I don't know that for sure, you're correct.

23 Q And you can't tell me who, so we can't cross-examine
24 or find out who did it?

25 A Correct.

1 MR. FOX: Thank you. No further questions.

2 THE COURT: Redirect?

3 MS. LIVESAY: Just a couple. And I'd like to have
4 this document marked as a Court's exhibit.

5 THE COURT: Okay.

6 (Court's Exhibit No. 6, 3/30/24 SCDC Intake
7 Assessment Report, was marked for identification and
8 received into the record.)

9 REDIRECT EXAMINATION

10 BY MS. LIVESAY:

11 Q Now, I just have two questions for you. It says
12 here, "Other referral made? Yes. Substance abuse? No."
13 Is that correct?

14 A That's correct.

15 Q And "Mental health? No." Correct?

16 A That's correct.

17 Q Okay. And these come from somebody at SCDC
18 screening this inmate; correct?

19 A That's correct.

20 Q Okay. And the 97 came from the test that is used at
21 SCDC; correct?

22 A That's correct.

23 Q Okay. And Mr. Fox is asking you these questions to
24 kind of question the accuracy of it. Did he ever have to
25 go in the hab?

1 A No, he did not.

2 Q So this test was accurate; correct? He didn't need
3 that?

4 MR. FOX: She doesn't know that.

5 A I can't speak to the accuracy of the test. Again, I
6 did not give the test. That's what's documented in our
7 system, and there's no indication in our system, in our
8 records that he ever needed hab services.

9 BY MS. LIVESAY:

10 Q So there was never an indication he needed it?

11 A Correct.

12 Q Even after this test?

13 A Correct.

14 MS. LIVESAY: No further questions, Your Honor.

15 THE COURT: Any follow-up?

16 RE CROSS-EXAMINATION

17 BY MR. FOX:

18 Q Once a determination is made, how hard is anyone at
19 SCDC looking to change that determination from mental
20 retardation -- which requires extra services, special
21 services, different housing, different accommodations?
22 How hard is anyone honestly really looking at that point?

23 A I mean, we routinely see our inmates, screen our
24 inmates for higher levels of care. So every time he would
25 see a counselor, he would be considered for a higher level

1 of care and determine if that's appropriate or not.

2 Q Thank you. Excuse me one second.

3 How often in six months would he even see a
4 counselor?

5 A Probably none, considering he was not on the mental
6 health caseload.

7 Q Okay. Thank you.

8 THE COURT: You can step down, ma'am. Thank you.

9 You're free to leave the courthouse if you'd like or
10 you're welcome to remain with us.

11 MR. OSKIN: Your Honor -- sorry.

12 THE COURT: Sure. Yeah, go ahead.

13 MR. OSKIN: The State would next call Sergeant Sandy
14 Lowe with J. Reuben Long Detention Center.

15 THE COURT: Okay.

16 SGT. SANDY LOWE,

17 after having been duly sworn, was examined and
18 testified to as follows:

19 THE CLERK: State your name for the record.

20 THE WITNESS: Sandy Lowe. S-a-n-d-y L-o-w-e.

21 (Counsel confer off the record.)

22 MR. OSKIN: Court's indulgence, Your Honor.

23 THE COURT: Sure.

24 DIRECT EXAMINATION

25

1 BY MR. OSKIN:

2 Q Sergeant Lowe, good afternoon, ma'am. How are you?

3 A Good.

4 Q Thank you for being here with us.

5 Where are you currently employed?

6 A J. Reuben Long Detention Center.

7 Q And how long have you been employed with them?

8 A 32 years.

9 Q What are your responsibilities now?

10 A I am the sergeant over the Classification
11 Department. So I oversee the inmate records, disciplinary
12 hearings, the unit managers who decide where the inmates
13 are housed at.

14 Q And you have been in that position at least ten
15 years; is that correct?

16 A More like 20.

17 Q Okay. And so that's your responsibilities.

18 Let's talk about how inmates are housed and
19 accommodated at J. Reuben Long on a broad scale and then
20 we'll make it specific to Mr. Legette.

21 A All right. Inmate comes in the facility. They're
22 placed in the intake unit. They go through the
23 orientation process. The unit managers do an assessment
24 on them. And then after anywhere from seven to ten days,
25 they're moved to general population.

1 Q Are there inmates with mental deficiencies, and, if
2 so, are they treated differently at J. Reuben Long?

3 A Yes. We have a housing unit for people who are
4 considered vulnerable adults or who have mental health
5 issues.

6 Q Would that include low IQ, low functioning?

7 A Yes. If we think someone is vulnerable, we will put
8 them in that unit and then have our mental health nurse
9 speak to them and give us recommendations.

10 Q Okay. So they are -- help me out here. So that's
11 assessed on initial intake of the inmates?

12 A Yes.

13 Q All right. And then you have a nurse look over the
14 inmates as they come in?

15 A If we think someone maybe has some mental health
16 issues, we will have the nurse speak to them and give us
17 recommendations.

18 Q Okay. And are you familiar with this particular
19 inmate, Mr. Craig Legette?

20 A Yes.

21 Q How long has Mr. Legette been at J. Reuben Long?

22 A Since 2020.

23 Q Is he the longest -- he's been out there longer than
24 most?

25 A Yes.

1 Q Does he require any special accommodations at
2 J. Reuben Long?

3 A No.

4 Q Does he have any roommates at this time?

5 A Yes.

6 Q Does he regularly go out for recreational time?

7 A Yes.

8 Q Does he require any special accommodations?

9 A No.

10 Q Let's talk about some jail reports.

11 MR. OSKIN: Your Honor, I believe Defense doesn't
12 object to it; I would like to mark this as a Court
13 exhibit.

14 THE COURT: Okay.

15 MR. OSKIN: And I'll have Sergeant Lowe reference
16 that, if that's all right.

17 MR. FOX: That's correct, Your Honor. I have been
18 provided a copy previously.

19 THE COURT: Very good. Thank you.

20 (Court's Exhibit No. 7, Binder of J. Reuben Long
21 Records, was marked for identification and received into
22 the record.)

23 BY MR. OSKIN:

24 Q So do you recognize what's been marked as Court's
25 Exhibit 7?

1 A Yes.

2 Q And I'll give you a second to look through the tabs
3 and the documents. Just let me know when you feel caught
4 up.

5 A Yes.

6 Q There are some incident reports in there; is that
7 correct?

8 A Yes.

9 Q All right. What do those reports document with
10 regards to the incidents involving this defendant?

11 A There are disciplinary hearings that he had based on
12 an incident.

13 Q Okay. And how many are there?

14 A Three.

15 Q Was he ticketed or anything else?

16 A Yes. And then several tickets -- disciplinary
17 tickets.

18 Q And, if you will, please tell this Court how are
19 these incidents, whether they be reports or tickets, how
20 are those handled at J. Reuben Long?

21 A If an inmate is receiving a disciplinary ticket
22 which would be for a Category 2 offense like maybe trading
23 food, not making your bed, or something like that, the
24 officer writes them on a ticket, and then can sanction
25 them to a lockdown in the housing unit or even a warning,

1 you know, "I'm giving you a warning." They don't have any
2 -- lose any rec time but they just warn them, "Hey, knock
3 that behavior off."

4 Q Okay. How is that compared to the incident reports?
5 Is there ever a time where an inmate or detainee may have,
6 like, a hearing or a process for those?

7 A Yes. If an inmate commits a Category 1, then they
8 are charged on an infraction report, and they get moved to
9 the prehearing unit, and then they will have a
10 disciplinary hearing, and if they're found guilty, they
11 can be sanctioned time in that unit.

12 Q And please tell this Court a little bit about that
13 hearing. Is it just you throw a piece of paper in front
14 of him and he signs it yes or no and send them off? How
15 does it work?

16 A We ask them questions. You know, we let them know
17 what they're being charged with.

18 Q Okay. So -- go ahead. I don't want to interrupt
19 you and we'll come back.

20 A You know, we let them know that they -- what they're
21 being charged with, do they understand what they're being
22 charged with. If they act up during the hearing, we can
23 have the hearing proceed without them. Ask them did they
24 receive a copy, do they need an inmate representative?
25 And then they're asked, you know, "Are you guilty or not

1 guilty?" They give their answer. Then we give them a
2 chance to explain their side of the case, you know, what
3 happened -- explain what happened.

4 Q So it's almost like a mini discovery trial process?

5 A Right.

6 Q Quicker than juvenile court even. Okay.

7 And Mr. Legette indicated, through guilty or not
8 guilty pleas, that he was able to participate? Did he
9 request a lawyer witness or -- I'm sorry --

10 A Inmate representative.

11 Q Inmate representative? Okay.

12 And he didn't require any other special
13 accommodations during that process?

14 A No.

15 Q He seemed to understand it, what was alleged against
16 him?

17 A Right.

18 Q Okay. And so while I'm on that line -- you may have
19 said it -- I know you said when inmates get processed and
20 they go to general population -- I believe you said that's
21 B4? Or is that where he's housed?

22 A B4 would be where you would go if you're waiting on
23 a hearing.

24 Q Okay. And taking you back to the special
25 accommodations of the vulnerable inmates --

1 A That's A2.

2 Q That's what?

3 A A2.

4 Q Okay. So they do have their own special unit.

5 A Yes.

6 Q Okay. And at any time has Mr. Legette had any
7 issues, whether they be physical or anything, where he did
8 need special accommodations?

9 A Not in the mental unit, no.

10 Q Right. Okay. But in his general unit? I know you
11 established he's never been in the ---

12 A No.

13 Q --- in that unit.

14 And kind of like what you heard earlier, if
15 something were to be brought to your attention or if you
16 had concerns raised, could someone be moved into I guess
17 what we're calling the unit, the hab unit?

18 A Oh, yes.

19 Q And that hasn't happened with Mr. Legette?

20 THE COURT: You need to verbally answer, ma'am.

21 THE WITNESS: Oh, I'm sorry. No.

22 BY MR. OSKIN:

23 Q Yeah, make sure the court reporter hears you, as
24 well as the Court. He can't see you down there.

25 Let's talk about some of the general things you can

1 do out at the jail. How do inmates use the phone at
2 J. Reuben Long?

3 A If they have minutes, purchase minutes on the phone,
4 they enter their account number and then a PIN number to
5 use the phone.

6 Q So they have a PIN number they have to remember
7 every time they use the phone?

8 A Yeah.

9 Q Okay. And has Mr. Legette used the phone?

10 A Yes.

11 Q And are you able to determine -- does he need any
12 assistance or special assistance, help using the phone
13 when he does use it?

14 A Not to my knowledge.

15 Q Okay. Are you aware about how many calls he was
16 able to make in 2020? And it can be an approximation.

17 A I'm sorry? What year did you say?

18 Q Starting in 2020.

19 A From September the 1st, 2020, to August 31st, 2021,
20 there were 2,083 calls placed.

21 Q Okay. And how about, I guess, the next 12-month
22 period. So I guess that would be August of '21 into '22?
23 Is that how they're kept?

24 A That's how this report is.

25 Q Okay. How many then?

1 A There was that many calls placed but there was 1,465
2 completed.

3 Q Okay. So that means someone answered on the other
4 end ---

5 A Right.

6 Q --- and there was actual conversation?

7 A Right.

8 Q Now, the next sequential year?

9 A From September the 1st, 2021, to August 31st, 2022,
10 there was 1,824 calls placed and 1,169 completed.

11 Q What about from 2022 to 2023?

12 A From September the 1st, 2022, to August 31st, 2023,
13 there was 2,182 placed and 1,372 completed.

14 Q Okay. And then from that end of that time period to
15 now, '24?

16 A From September the 1st, 2023, until March the 5th,
17 2024, there was 951 placed, 484 completed.

18 Q Okay. And, again, he'd have to remember his PIN
19 number and use that to be able to go through the secured
20 calls every time he does that; correct?

21 A Yes.

22 Q And I believe it's a similar process for canteen,
23 maybe as far as accessing it. Well, you tell me. How
24 about the canteen at J. Reuben Long? Does he have access
25 to that?

1 A You put in your account number on the kiosk, and
2 that pulls up where you can order canteen.

3 Q Okay. So is that how people were able to utilize
4 the commissary items?

5 A Yes.

6 Q And has he been able to obtain items from the
7 canteen?

8 A Yes, I believe so. Yes.

9 Q All right. And each year, so 2020 through 2024?

10 A Yes.

11 Q And does that PIN number -- it may not matter. Is
12 that PIN number the same as it is for, like, the Securas
13 calls or...

14 A For the kiosk to order canteen, you just need your
15 account number.

16 Q Okay. And he hasn't required any special
17 accommodations to use the canteen?

18 A Not to my knowledge.

19 Q Okay. He's been able to order books?

20 A Yes, he has received books.

21 Q They have been classified as urban novels. You're
22 not a literary critic, so don't worry about that.

23 They do appear to be, like, a series or a set of
24 books; is that correct? Just numbered like one through
25 five or one through six?

1 A Some of them, yes.

2 Q I think "Animal" is the name of books; is that
3 correct?

4 A Yes. Two of them looks like were named "Animal."

5 Q And that's really irrelevant. That was more to
6 prove the series of the books.

7 Okay. So he's been able to have books delivered to
8 him and keep those.

9 He also has received the newspaper while in jail; is
10 that correct?

11 A Yes.

12 Q Do you know which newspaper he's been able to
13 receive?

14 A It looks like "The Horry Independent."

15 Q That's a great paper.

16 A And, once, "The Sun News."

17 Q All right. How long has he gotten "The Horry
18 Independent" or how long has he received "The Horry
19 Independent"?

20 A It looked like from 10/6 of '22 through 4/20 of '23.
21 And then "The Sun News," 4/27 of '23, and then two more
22 times: May 4th of '23 and May 11th of '23. That looks
23 like that was the last time.

24 Q And "The Horry Independent" is a weekly paper; is
25 that correct?

1 A Yes.

2 Q And just to tie everything up here together, had you
3 had concerns about Mr. Legette suffering from a mental
4 disability, deficiency, or any vulnerability, you would
5 accommodate him at J. Reuben Long; is that correct?

6 A Yes.

7 Q Does he require any additional or special
8 accommodations? I may have asked that.

9 A No.

10 Q All right. He's had the ability to navigate
11 J. Reuben Long to the best of his ability, as anybody
12 being detained, as well as utilize other resources that
13 are available to him: The phone, the commissary; is that
14 correct?

15 A Yes.

16 Q And what about the folks in J. Reuben that do
17 require special assistance? I know we said they have a
18 special housing unit. Is there anything else that's done
19 for them as far as the routine, daily maintenance or care,
20 while they're in your custody? I'm trying to say that
21 correctly.

22 A Every week, we have a meeting, and we discuss them
23 with the mental health nurse to see if anyone is improving
24 through medication and see if they could possibly move to
25 general population.

1 Q Okay. Great.

2 And last question: If someone needed to be -- on
3 the flip side of that, if somebody needed to go into
4 special care or require special treatment, that's
5 something you'd monitor to the best of your ability as
6 well?

7 A Yes.

8 MR. OSKIN: And that's Court's Exhibit 7. I'll
9 return it to Madam Court Reporter.

10 THE COURT: Mr. Fox, any cross-examination?

11 MR. FOX: Briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FOX:

14 Q Sergeant Lowe, you're aware that there are people
15 currently at J. Reuben Long who have been evaluated,
16 determined to be incompetent but able to be restored and
17 they're just waiting for a bed at DMH; correct?

18 A Yes.

19 Q And some of those people are, in fact, in general
20 population. They're not all in A2?

21 A I'm not sure where everyone that -- could be
22 waiting.

23 Q And Mr. Legette -- are you aware, Mr. Legette, when
24 he first arrived was, in fact, in A2 for two weeks?

25 A No, sir.

1 Q Okay. What sort of -- who does the assessing?

2 A What -- which assessing?

3 Q When they come in, to determine if they need to go
4 to A2, if they need any special services. Who does that?

5 A They could see the nurse in booking or even if the
6 officer booking them in thought that there was some red
7 flags that, hey, maybe there are some issues, they can put
8 them in there and then have the mental health nurse speak
9 to them.

10 Q Sure. But would you say, in your 20-plus years at
11 J. Reuben, there's a fair percentage of people who do have
12 issues who don't necessarily have red flags?

13 A It's possible.

14 Q That there are people come in that initially are not
15 deemed to have any special needs but, maybe later, exhibit
16 behaviors that say, "Hey, we need to check this out"?

17 A Possibly.

18 Q Right. So it would be fair to say some people would
19 never exhibit those red flags, although the need was still
20 there?

21 A It is very possible.

22 Q And people who have been in prison or in the jail
23 sometimes are able to learn to get along, institutionalize
24 in those facilities?

25 A It is possible.

1 Q Okay. And with this kiosk, certain phone calls --
2 inmates are assigned a PIN number. It's also true at
3 J. Reuben -- I would imagine pretty much any jail anywhere
4 -- inmates will share those PIN numbers quite often?

5 A Well, inmates -- they pick their PIN number. We
6 don't assign them.

7 Q Oh, I understand. But then they could quite easily
8 share that with others, if they chose to.

9 A If they chose to.

10 Q Are you aware that's a thing that goes on a good
11 bit?

12 A Sure.

13 Q Okay. So we don't know if he's made all these
14 calls. We have no idea how many may have been by somebody
15 else?

16 A There's no way to know.

17 Q Okay. And with the canteen, on this kiosk, once you
18 bring it up -- and I guess you've got to put your account
19 number in first -- like with snacks, that's done -- those
20 are by pictures; right? You can see a picture of
21 something and just tap on the picture and order it?

22 A As far as I know, it's the names. I have never
23 ordered it from -- so I'm not --

24 Q Okay. So you're not actually familiar. Okay.

25 What level would you say you have at any given time

1 at J. Reuben Long, how many people being housed?

2 A This morning, there was 806.

3 Q Fair to say that a certain percent of those people
4 maybe are illiterate?

5 A Sure.

6 Q Others that maybe just don't have a lot of
7 education?

8 A Yes.

9 Q So varying degrees. And so if you're running an
10 institution with 800 people, you've got to kind of target
11 the lowest common denominator as far as things that the
12 inmates are going to do ---

13 A Right.

14 Q --- like a kiosk or they can do complaints or things
15 or forms ---

16 A Right.

17 Q --- that they're going to look at.

18 Okay. So do you have any idea -- I'm going to use
19 the phrase "educational level." Would you have any idea,
20 for instance, with the kiosk, kind of what level that
21 might be targeting?

22 A I do not.

23 Q Okay. Now, same thing with these books. Do you
24 have any knowledge or any idea what reading level -- grade
25 level the books that were on Mr. Legette's account were

1 judged at?

2 A No.

3 Q Did anyone see Mr. Legette reading these books?

4 A I have no idea.

5 Q Okay. Same thing with the newspaper?

6 A Right.

7 Q Any idea if anyone saw him actually reading this
8 newspaper?

9 A I have no idea.

10 Q Okay. So, to go back, the assessment, when someone
11 is brought in -- arrested, the assessment -- it might just
12 be the arresting officer who is law enforcement but not a
13 mental health practitioner?

14 A Right.

15 Q So they may well miss something if it's not obvious.
16 Some people are quite obviously ---

17 A Right.

18 Q --- psychotic or in the throes of delusions or
19 whatnot. But if they're not exhibiting something obvious,
20 then law enforcement -- that's not what they're trained to
21 do; correct?

22 A Right.

23 Q And the nurse is a nurse. She's not a medical
24 doctor; correct?

25 A Right.

1 Q And she's not a psychologist or psychiatrist?

2 A Right.

3 Q And may not even see the nurse.

4 Okay. Thank you. That's all the questions I have.

5 THE COURT: Anything in redirect?

6 MR. OSKIN: Just real quick.

7 REDIRECT EXAMINATION

8 BY MR. OSKIN:

9 Q You mentioned people trading for commissary and
10 phone calls?

11 A Yes.

12 Q Do the inmates often trade PIN numbers to avoid
13 detection by law enforcement or having their calls
14 monitored?

15 A Sometimes.

16 Q So that would be a calculated move there?

17 A Yes.

18 Q All right. And then if Mr. Legette was in A2 for
19 two weeks, is it -- was he seen by the nurse and then
20 cleared to leave the unit? Is that how that would work?

21 A Yes. If you're in there and you get cleared, you
22 know, by medical, they would send us a form clearing you
23 out of that unit.

24 Q And, clearly, you've established they do the best
25 they can to protect intellectually disabled ---

1 A Yes.

2 Q --- and physically disabled vulnerable adults that
3 would be taken advantage of ---

4 A Yes.

5 Q --- emotionally and physically, to the extent you
6 can, at the county jail?

7 A Right, yes.

8 MR. OSKIN: Okay. Nothing further from the State.

9 MR. FOX: One moment, Your Honor.

10 THE COURT: Sure.

11 RE CROSS-EXAMINATION

12 BY MR. FOX:

13 Q Just one. So if it could be a calculated move to
14 have someone else use your PIN number, right, to avoid
15 detection ---

16 A Yes.

17 Q --- then could you not also have someone else use it
18 to help you access -- in other words, if you have
19 difficulty operating the system or understanding it,
20 wouldn't it just be easy to have someone do that for you
21 as well?

22 A Yes, you could get help that way.

23 Q Understood. Thank you.

24 THE COURT: You can step down, ma'am. Thank you.

25 THE COURT: I assume that the lawyers want to

1 continue to complete this hearing.

2 MR. OSKIN: The State certainly does, Your Honor.

3 We have two witnesses left.

4 THE COURT: Dr. Maddox is back there the whole time.

5 MR. OSKIN: Yes, she has other duties throughout the
6 state this week.

7 THE COURT: Bobbi, you good going?

8 COURT REPORTER: Oh, yes, sir.

9 THE COURT: You sure? Okay.

10 Security? Y'all all good?

11 THE DEPUTY: Yes, sir.

12 MR. OSKIN: Thank you, Your Honor. We would next
13 call Melanie Smith.

14 AGENT MELANIE SMITH,

15 after having been duly sworn, was examined and
16 testified to as follows:

17 THE CLERK: State your name and spell it.

18 THE WITNESS: Melanie Smith.

19 DIRECT EXAMINATION

20 BY MR. OSKIN:

21 Q I'll call you Agent Smith for the purposes of this
22 hearing. Is that all right?

23 A Yes.

24 Q And who are you currently employed with, ma'am?

25 A South Carolina Department of Probation and Parole.

1 Q Are you specifically assigned to Horry County?

2 A Yes.

3 Q How long have you been employed with Probation and
4 Parole?

5 A Since 2015.

6 Q All right. And what kind of training have you
7 undergone to work for them?

8 A Training at the criminal justice academy, different
9 trainings with the department, risk assessment, warrant
10 service, home visits, hands-on training.

11 Q All right. And that kind of probably goes to this,
12 but what about your responsibilities there now? That's
13 what you just said. Based off those responsibilities, are
14 you familiar with the defendant, Craig Legette?

15 A I am.

16 Q All right. And when did you first come in contact
17 with Mr. Legette?

18 A When he was sentenced to probation, December 2019, I
19 completed his intake the same month his case was assigned
20 to me.

21 Q December of 2019.

22 What is the process when someone is on probation? I
23 think you mentioned it with the intake. Start from there.

24 A They come in for their initial intake. We get
25 information from them, verify information, get their

1 fingerprints, drug test. Verify address, contacts. Do a
2 risks assessment. Find out if they have had any
3 counseling. If they need counseling, go over conditions,
4 financials with them. Just kind of orientation of
5 probation.

6 Q Okay. And was that the same process used for this
7 defendant, Mr. Legette?

8 A It was.

9 Q Did he appear to be able to understand the
10 conditions of probation as they were reviewed with him?

11 A Yes. He gave no indication that he did not
12 understand.

13 Q And how do you have them -- is it verbal? Is it a
14 piece of paper? Do they fill out a contract with you?
15 How does that work?

16 A I personally will go through all the conditions
17 verbally. They sign the conditions and they also get a
18 copy of those signed conditions.

19 Q So their signature, is that how you know they
20 understood or at least claimed to have understood ---

21 A Yes.

22 Q --- what was expected of them?

23 A Yes. And I also ask several times if they have any
24 questions.

25 Q Okay. In the beginning, did he seem to follow or

1 was he in compliance with the conditions of his probation?
2 Or did he ever comply with the probation?

3 A I mean, he had minimal violations at first.

4 Q Okay. What about the violations he did have, what
5 were they?

6 A Just some arrears with his financials and then
7 positive drug tests.

8 Q What drug specifically?

9 A Just THC.

10 Q People being in financial hardship with probation,
11 is that a common occurrence?

12 A Yes.

13 Q And he was assigned to you; correct?

14 A Correct.

15 Q Tell us about his behavior towards you or how --
16 it's probably not the ideal relationship for anybody but
17 how was his behavior towards you as his probation agent or
18 supervisor?

19 A The interactions I had with him, he was always
20 combative with me, argumentative. I mean, he didn't like,
21 obviously, being on probation.

22 Q Did he cooperate with you easily or was he
23 uncooperative?

24 A I would say more uncooperative. Like I say, just
25 combative for the most part.

1 Q Would he show up on time when he was supposed to
2 meet with you?

3 A He did show up on time to his two office visits
4 prior to the office closing due to COVID. He did show up
5 for his office visits.

6 Q Okay. And how did that change during COVID? I try
7 to forget those times, but how did that change?

8 A Once the office closed, the check-ins just went to
9 telephone. And he had two telephone check-ins with me.

10 Q Okay. And he complied with the telephone check-ins?

11 A Yeah, he checked in with me on those days.

12 Q Okay. Do you recall where Mr. Legette lived?

13 A Fountain Pointe over Clear Pond off Burkout (ph).

14 Q Is that in the Myrtle Beach area of Horry County?

15 A Yes.

16 Q Who did he live with?

17 A If I remember correctly, his girlfriend, but I am
18 not entirely confident in that.

19 Q Is he in a relationship, to your knowledge?

20 A To my knowledge.

21 Q Okay. And you may have said this already: Did you
22 come into contact with him at his home? Do you do home
23 visits when they get started on probation?

24 A I did a home visit. When I went out there, I wasn't
25 able to make contact with anyone, so a door hanger was

1 left for him to contact me.

2 Q Before COVID and phone calls, when you met with him
3 in person -- I want to talk about his appearance a little
4 bit. Did he seem to be neat and clean as far as able to
5 take care of himself?

6 A Yes.

7 Q Dressed appropriately?

8 A Yes.

9 Q We talked about contact. When you met with him,
10 about how much time did you spend with him?

11 A The initial intake, I would say 30, 45 minutes. His
12 second office visit, maybe 10, 15 minutes.

13 Q Is that standard for probation ---

14 A Yes.

15 Q --- and your intake?

16 A Yes.

17 Q And he was able to respond to your questions?

18 A Yes.

19 Q Were his responses appropriate to what you were
20 asking him?

21 A Yes.

22 Q Seemed to be able to have an intelligent
23 conversation with you when you met with him?

24 A Yes.

25 Q Did he have any problems conveying any concerns or

1 anything like that to you? Did you have any issues, other
2 than the uncooperativeness?

3 A None that he stated or that I got any indication of.

4 Q Okay. Did he require any special accommodations
5 during the meetings to help him follow along or understand
6 what was going on?

7 A No.

8 Q Did he require any special accommodations to meet
9 with you one-on-one in person or to talk to you?

10 A No.

11 Q So did he require anything more than the other folks
12 you supervise on probation?

13 A No.

14 Q See if you come across this in your time in law
15 enforcement and probation, tell me about if someone is
16 mentally disabled and can't understand the process or
17 someone just sent the wrong person in that capacity to
18 probation to you, how would you handle that?

19 A Typically, if someone is put on probation that has a
20 learning disability, from my experience, they are very
21 upfront and honest about that. That first meeting that we
22 have, they'll let us know that they do have a learning
23 disability, and they usually will bring someone in with
24 them to help walk them through but also just to be a
25 second set of ears to understand and help them to know

1 what's going on and what's expected.

2 Q And does Probation have any guardrails, so to speak,
3 to protect people on probation that may suffer from mental
4 disabilities?

5 A At that time, if there is any mental health issues,
6 we will do a referral. I mean, at this time now, we have
7 a specialized mental health caseload, but when he was on
8 probation, we didn't have that.

9 Q But you would have able to make sure -- would you
10 have been able to refer that out?

11 A Yes.

12 Q Okay. And you didn't -- that wasn't necessary ---

13 A No.

14 Q --- during his time on probation?

15 Did you have any concerns regarding his ability to
16 understand the process of what was happening and what was
17 required of him?

18 A I did not.

19 Q Did he seem to be able to read and write, in your
20 dealings with him?

21 A Yes. He was always able to sign any document I gave
22 him.

23 Q Was he able to ask questions?

24 A Yes.

25 Q Was he able to challenge the process?

1 A Absolutely.

2 Q Did he do that often?

3 A Yes.

4 Q About how many folks have you supervised in your
5 time with Probation?

6 A A lot. I have had a couple of different caseloads.
7 Typically caseload size, 100-plus. So a couple hundred.
8 It's hard to give an exact number.

9 Q I understand. You've done it for a while.

10 The caseload with Mr. Legette is similarly situated
11 to people on probation. Did he require any more help or
12 special assistance to navigate that process?

13 A No.

14 Q If you felt like he was mentally deficient or
15 couldn't understand the process -- I think you said you
16 would refer that out at that time?

17 A Yes.

18 Q Nothing further from me. Please answer any
19 questions from Mr. Fox.

20 THE COURT: Cross-examination?

21 MR. FOX: One moment, Judge.

22 CROSS-EXAMINATION

23 BY MR. FOX:

24 Q Thank you, Agent.

25 In your training to be a probation agent or any time

1 since, what training do you have to recognize or diagnose
2 an intellectual disability?

3 A I mean, limited as far as addressing, you know, any
4 sort of disability in that manner.

5 Q In other words, if someone didn't come in with a
6 family member to say, "Hey, I have got this history," how
7 would you yourself determine whether they -- what training
8 do you have to recognize it?

9 A I mean, not much training, but in my interaction
10 with somebody, I can pick up if they're not understanding
11 something. And like I said, from my experience, they will
12 let me know if they need assistance or help, further
13 explanation.

14 Q What -- you say verbally read the conditions and the
15 defendant signs; correct? Signs that?

16 A Correct.

17 Q Can't leave your office until he signs an
18 acknowledgement of the terms and conditions of Probation;
19 correct?

20 A Well, they sign the terms of probation the day that
21 they're sentenced to probation. I go over them again when
22 they come in for their intake.

23 Q But they have got to sign; correct?

24 A Yes.

25 Q Some acknowledgment somehow some way?

1 A Yes.

2 Q Okay. Can't leave until they at least acknowledge
3 that ---

4 A Yes.

5 Q --- they, at the very least, have been read these
6 things. Okay.

7 Minimal violations, behind on dollars, and tested
8 positive for THC; correct?

9 A Yes.

10 Q Okay. Combative, argumentative, uncooperative.
11 Wouldn't you say that would describe a fair number of your
12 probationers?

13 A Yes.

14 Q And not all of whom have -- well, that would
15 describe a fair number. Do not like being on probation,
16 that would also describe a fair number of probation people
17 that you supervise?

18 A Correct.

19 Q Did you have any reason at any time, during your
20 interaction with Mr. Legette, to discuss the role of
21 different court officers, including his attorney, the
22 judge, or the jury trial? Was there any reason to discuss
23 any of those things?

24 A I didn't have any reason to discuss any of that with
25 him while he was on probation.

1 Q So you have no idea whether he has a factual and
2 rational understanding of this proceeding or trial or
3 anything like that?

4 A Not in terms of this proceeding, but when he had an
5 administrative hearing within our department when I issued
6 the warrant, he had an understanding of his pending
7 charges because he refused to discuss his pending charges
8 at the administrative hearing.

9 Q Well, does that mean he had an understanding of the
10 charges or just the fact that he might do better to be
11 quiet?

12 A Maybe they go hand-in-hand. He knew not to talk
13 about it.

14 MR. FOX: I have nothing further, Your Honor.

15 THE COURT: Anything in follow-up?

16 MR. OSKIN: Just very briefly.

17 REDIRECT EXAMINATION

18 BY MR. OSKIN:

19 Q Agent Smith, if somebody determined they needed help
20 or if you -- if something changed two or three months into
21 probation and you thought someone maybe needed help or
22 assistance, is that something that could happen? Could
23 they then bring along that family member and say, "Hey,
24 this person has ID" or "this person has a little trouble
25 reading this" or whatever the situation may be?

1 A Yeah, it happens all the time.

2 Q And you sat in on multiple guilty pleas in court
3 sessions ---

4 A Correct.

5 Q --- and heard judges read them their rights and they
6 understand it and then they plead guilty and you do your
7 intake?

8 A Yes.

9 Q Okay. Thanks.

10 THE COURT: You can step down, ma'am. Thank you.

11 MS. LIVESAY: Thank you, Judge. We just got two
12 more to call real quick.

13 THE COURT: There's two more before Dr. Maddox?

14 MS. LIVESAY: No, sir, just Dr. Gottfried and
15 Dr. Maddox. That's all we've got left.

16 THE COURT: Okay. Do you want to take a short
17 break? Is that what you're asking or...

18 MS. LIVESAY: No, sir. I'm just letting you know
19 that we're winding down.

20 THE COURT: All right. We can keep going.

21 MS. LIVESAY: All right. Thank you, Judge. At this
22 time, we call Dr. Gottfried to the stand.

23 THE COURT: Okay.

24 DR. EMILY GOTTFRIED

25 after having been duly sworn, was examined and

1 testified to as follows:

2 THE CLERK: Please state your name and spell it.

3 THE WITNESS: Dr. Emily Gottfried.

4 G-o-t-t-f-r-i-e-d.

5 THE COURT: Let's take a five-minute break.

6 MS. LIVESAY: You got it.

7 (A recess was taken from 5:34 p.m. to 5:41 p.m.)

8 MS. LIVESAY: To speed this up, Judge, I don't know
9 if Eric will agree that this is an expert so we can
10 kinda...

11 MR. FOX: I would. If you'll just put in the
12 basics.

13 MS. LIVESAY: Yes.

14 MR. FOX: If I have any questions -- if you'll just
15 kind of establish the very baseline.

16 DIRECT EXAMINATION

17 BY MS. LIVESAY:

18 Q Dr. Gottfried, where are you currently employed?

19 A Medical University of South Carolina.

20 Q And what are your responsibilities?

21 A I'm an associate professor of Psychiatry and
22 Behavioral Sciences, so I do forensic evaluations for the
23 courts and for attorneys. I teach medical students,
24 psychiatry residents, psychiatry and psychology fellows,
25 and I conduct research.

1 Q Okay. And how does the Department of Mental Health
2 fall into all that?

3 A The Medical University of South Carolina has a
4 contract with the Department of Mental Health to perform
5 the court-ordered competency and criminal responsibility
6 evaluations that are ordered for certain counties in the
7 state.

8 Q So you work for MUSC, and MUSC has a contract with
9 DMH?

10 A Correct.

11 Q Okay. And you're a forensic psychologist?

12 A I'm a psychologist, correct.

13 Q Okay. And how many evaluations have you done?

14 A Total or related to competency?

15 Q Just related to competency.

16 A I'd say close to a thousand.

17 Q Okay. And how many times have you testified in
18 General Sessions?

19 A In South Carolina, I have testified, I believe, 42
20 to 45 times.

21 Q Okay. And out of all those times, were you
22 qualified as an expert in forensic psychology?

23 A Yes. Sometimes they add on sexual behavior and
24 things like that, but yes, related to forensic psychology.

25 MS. LIVESAY: Okay. Your Honor, at this time, I ask

1 for her to be qualified as an expert in forensic
2 psychology.

3 MR. FOX: Without objection, Your Honor.

4 THE COURT: Without objection so found.

5 You may proceed.

6 MS. LIVESAY: Thank you, Your Honor.

7 BY MS. LIVESAY:

8 Q And as part of your special duties, did you evaluate
9 Craig Legette?

10 A I began an evaluation. I attempted to evaluate him.

11 Q Okay. And tell me how that went in the beginning.

12 A So I evaluated Mr. Legette in April of 2022. That
13 was during -- or I should say, during the pandemic, we
14 started doing our evaluations virtually from the detention
15 center. So rather than have J. Reuben Long transport
16 officers, bring him to Charleston, we evaluate them via,
17 like, a secure HIPAA-compliant telehealth platform. So --
18 do you want me to kind of --

19 Q So would he agree to be evaluated over the internet
20 kind of deal, over Skype?

21 A If I recall, when I went over the notification form
22 with him, he asked a few questions about "Why am I on
23 video?" or something of that nature, and I believe, once I
24 explained it to him, he seemed okay with it.

25 Q Okay. And he was evaluated over video or in person?

1 A Over Doxy.me, which is the secure telehealth. So
2 over video and audio.

3 Q Okay. So he would agree to do that with you over
4 video?

5 A He answered some questions. I don't know if he
6 said, "Yes, I agree," but he answered some questions
7 suggesting that he was okay with it.

8 Q Okay. So you never met with him in person?

9 A That's correct.

10 Q Okay. And did you ultimately do a report?

11 A I did.

12 Q And, ultimately, did you form any kind of opinion?

13 A I did not.

14 Q And tell the Court why not.

15 A Well, Mr. Legette indicated that he did not want to
16 answer any questions or discuss his case. So despite
17 providing him with a lot of reasons for why I was asking
18 those questions, stressing that we would have to see him
19 again, that I wouldn't be able to give the judge an
20 opinion regarding his competency, he never answered any
21 questions related to any prong of competency with me.

22 Q Okay. So he wouldn't answer any questions related
23 to the incident?

24 A Well, not just related to the incident, but even the
25 name of his charge, the job of the judge. So not just

1 related to his specific incident but any related
2 competency question.

3 Q Okay. But he did answer some questions; right?

4 A He answered some questions. He frequently said he
5 didn't know. Like, for example, when asking him about his
6 history, he frequently said, "I don't know, I don't
7 believe so." So he answered some questions, but he
8 answered "I don't know" to a large number of questions.

9 Q Okay. So let me ask you something, on page 8 of
10 your report, was he oriented as to person, place, and
11 time?

12 A Yes.

13 Q Okay. And did he understand the reason for the
14 evaluation?

15 A I believe that he could repeat it after I explained
16 it to him, so, at the onset of the evaluation, typically
17 we ask the examinee to read a notification form. When we
18 do it virtually, I did not ask him to read it. So I
19 explained it to him. So I don't know if he knew the
20 purpose of the evaluation prior to me telling him what the
21 purpose was.

22 Q Okay. And was he able to do certain tasks? Like,
23 on page 8, you gave him three words. Was he able to
24 recall three out of three words?

25 A Is it okay if I refer to my notes?

1 Q You sure can. And I'm looking at page 8, if you
2 want to know where I'm at.

3 A Yes. So I gave him a word recall task as part of my
4 mental status examination. So I gave him three unrelated
5 words. Asked him to immediately repeat them, which he
6 did. And then, after a delay -- it's usually four to five
7 minutes of a delay, I asked him to recall those words. He
8 spontaneously recalled two out of the three words. Did
9 not recall the third word when given a hint but then
10 recalled it when I gave him a multiple choice. For
11 example: "Did I say 'daisy' or 'rose'?" for the word
12 "rose." He picked the right one.

13 Q Okay. So, eventually, he could give you all three?

14 A Yes.

15 Q Okay. And on page 9, it looks like you asked him to
16 list the days of the week in reverse order. Was he able
17 to do that?

18 A Yes. So that is the task that I give examinees when
19 they can't do serial 7s. So I first ask them to start
20 with the number 100, count backwards by the number 7. If
21 they're unable to do that, sometimes I will change the
22 task, and one of the tasks that I give is asking them to
23 tell me the days of the week forward and backwards.

24 Q Okay. So was he able to list the days of the week
25 in reverse order?

1 A Yes.

2 Q And could he complete simple addition, subtraction,
3 and multiplication problems?

4 A Yes.

5 Q So he was able to do simple math?

6 A He did not correctly solve a simple division
7 problem, even after being provided with a hint, but he did
8 simple addition, subtraction, and multiplication.

9 Q Okay. So he could do simple math: Adding,
10 subtracting, and multiplication?

11 A Yes.

12 Q Okay. And was he -- it looks like you asked him to
13 spell "cat" backwards and forward. Could he do that?

14 A He could. So, typically, I start with a more
15 complicated word. I don't recall why I started with
16 asking him to spell his first name. Sometimes if they
17 can't spell a complicated word, I'll then ask them to
18 spell their first name forward and backward, but I would
19 have noted that in the report, that I started with a
20 different word.

21 So I asked him to spell his first name. He spelled
22 it correctly forward, but then I think he just -- he
23 omitted a letter when he spelled it backwards. So then I
24 asked him to spell "cat" forward and backward, which he
25 did.

1 Q So he was able to successfully do that?

2 A Correct.

3 Q And was his abstract reasoning intact?

4 A Yes. So I -- that is just a very small sample. So
5 I ask how two unrelated words -- or two similar words are
6 related to one another. For him, I asked him how a nickel
7 and a dime were similar, and he knew that they were
8 similar because they're money.

9 Q Okay. So he was able to say that a nickel and a
10 dime were both money?

11 A Correct.

12 Q Okay. And, at some point -- so he was able to do
13 those simple tasks. So he answered those questions
14 correctly?

15 A Correct.

16 Q So he answered person, place, and time. He was able
17 to recall three words. Listed the days of the week. Did
18 some addition, subtraction, and multiplication. So he did
19 do all that; correct?

20 A Correct.

21 Q Okay. And just to talk a little bit about -- but he
22 would not answer any questions regarding his own charges;
23 is that correct?

24 A That's correct.

25 Q Okay. Now, it looks like you requested some

1 information -- and I'm looking now off of page 6, course
2 of previous and current periods of detention.

3 A Okay.

4 Q Do you see that?

5 A Yes.

6 Q Okay. And these, I'm assuming, are records from
7 some Department of Corrections?

8 A Those are records from J. Reuben Long.

9 Q Okay. So -- and these talk about his interactions
10 with different folks at J. Reuben Long; correct?

11 A Correct.

12 Q And some of these interactions, he's talking about
13 an attorney; correct?

14 A Yes.

15 Q And tell the Court about that.

16 THE COURT: What page are you on, Solicitor?

17 MS. LIVESAY: Page 6, Your Honor.

18 THE COURT: Six?

19 MS. LIVESAY: Yes.

20 THE COURT: Okay.

21 A According to the notes that I reviewed from
22 J. Reuben Long, when he was there for an unrelated charge
23 in 2014, the notes indicated that he became agitated; that
24 he had to take his medications as prescribed rather than
25 on an as-needed basis. And according to the notes, they

1 said that he said his attorney would ensure that he gets
2 all of his pain medication. And that was the quote that
3 was in the detention center records.

4 BY MS. LIVESAY:

5 Q Okay. So he said his attorney would ensure that he
6 got his pain medication?

7 A That is the quote that the person who wrote that
8 note in the detention center attributed to him.

9 Q Okay. And that would indicate that he appreciates
10 that his lawyer is for him; correct? That he would make
11 sure he's being looked after?

12 A It suggests to me that, in 2014, he thought that his
13 attorney could help him get medication.

14 Q Okay. Assist him; right? His lawyer could assist
15 him; right?

16 A It says, "Ensure." I don't know what word he used.
17 I don't know if that's the direct quote or if they're
18 paraphrasing, because they say that "his attorney" and
19 "he" rather than "me" or "my attorney."

20 Q Okay.

21 A But yes, that his attorney would ensure that he gets
22 it.

23 Q Okay. Is it in quotation marks?

24 A Yes.

25 Q Okay. So what does that indicate to you, the fact

1 that that's written in quotation marks, "His attorney
2 would ensure that he gets all of his pain medication"?

3 A Oh, I'm sorry. Those are my quotation marks.

4 Q Okay.

5 A So I am quoting from the records I reviewed.

6 Q Okay.

7 A That statement was not in quotes in the detention
8 center records.

9 Q Okay.

10 A I'm quoting the record.

11 Q Okay. Okay. And take me down a little further.
12 Does he talk about a lawyer again?

13 A Yes.

14 Q And tell me about that.

15 A It looks like, in 2019, he was complaining of
16 abdominal pain. He -- the detention center records
17 indicated he was swearing and yelling. And then he
18 reportedly stated that when he's -- quote, "When I'm in
19 pain, someone is going to come. You feel me? All I got
20 to do is lawyer up and y'all are going to come when I
21 ask."

22 Q What does that tell you about his knowledge about a
23 lawyer?

24 A I don't know what it tells me about his knowledge of
25 a lawyer. That his lawyer is going to help him get the

1 medication or the healthy things he needs for the pain.

2 Q Okay. But that his lawyer would assist him; right?
3 Get whatever it is he's trying to get? Would you say
4 that?

5 A I don't know how I would interpret it. I mean, my
6 -- I guess my read of it is that all he has to do is get a
7 lawyer, and then he thought the detention center staff
8 would come when he asked for them.

9 Q Okay. But you included it in your report?

10 A Yes.

11 Q So you gave it some significance; is that fair to
12 say?

13 A Yes. I had very minimal records on Mr. Legette, so
14 anything that I did have on him, I included in my report,
15 yes.

16 Q Okay. And when you asked him about -- some
17 questions regarding his charges, did he immediately tell
18 you he wasn't going to answer those?

19 A Yes.

20 Q Okay. And what does that tell you?

21 A That he wasn't going to answer the questions.
22 That's all it told me. I mean, I tried several times --
23 tried to give him rationale for why I was asking the
24 questions, but that was unsuccessful.

25 Q So let me ask you this, though: The fact that he

1 would do simple math but when you asked him about the
2 facts of his case, he wouldn't tell you, does that tell
3 you he that appreciates the importance of giving that
4 information to people?

5 A No.

6 Q Okay. So what does it tell you? Anything?

7 A Really nothing. There are lots of reasons why
8 somebody doesn't answer questions. Maybe he more readily
9 knew the questions of the mental status, but that would be
10 purely speculation. I don't know why people stop
11 answering questions. Maybe he was frustrated. I don't
12 know.

13 Q Okay. But he answered some of the questions; right?

14 A He did.

15 Q Okay. And did he answer any questions about his
16 background?

17 A He answered some of them.

18 Q He did answer some of them?

19 A Yes.

20 Q And did he answer -- well, you got some information
21 regarding mental health; right?

22 A He answered some of those questions, yes.

23 Q Okay. Good.

24 And did he answer some regarding previous and
25 current periods of detention?

1 A I don't believe so.

2 Q Did you ask him any?

3 A Oh, he answered some questions about his legal
4 history and his criminal history during the background,
5 yes.

6 Q Okay. Good. He did answer some questions about
7 that.

8 And did he answer some questions regarding his
9 mental status?

10 A He -- yes. I mean, he answered some of the
11 questions of the mental status examination that I asked
12 him.

13 Q Okay. So he -- and those are all the categories in
14 your report; correct?

15 A Yes.

16 Q And out of all those categories, he answered some
17 questions; correct?

18 A Yes. As I indicated, he frequently said he didn't
19 know, but that, I guess, is an answer, "I don't know."

20 Q Okay. But you would agree he did answer some of the
21 questions?

22 A I would agree.

23 Q Okay. And the only topic he wouldn't answer
24 questions on were when you asked him regarding the facts
25 of his case; is that correct?

1 A He indicated he didn't want to answer any of the
2 legal-related questions, and that, essentially, he was
3 finished answering questions.

4 Q Okay. And so that's the only topic he answered
5 nothing on?

6 A That is correct, but then I terminated the
7 evaluation because that is the last section of my clinical
8 interview.

9 Q Okay. So just so I'm clear, he answered -- there's
10 several sections in your report. We went through it. And
11 he answered some questions on all those sections?

12 A Yes.

13 Q Okay. And the only part he wouldn't answer anything
14 on was regarding his case?

15 A Yes.

16 Q Okay. And that tells you nothing?

17 A I mean, I could -- I could speculate, but there are
18 lots of reasons why people suddenly terminate an
19 evaluation or refuse to answer questions. I personally
20 don't know why he didn't answer those questions.

21 Q Okay. Fair enough.

22 MS. LIVESAY: No further questions, Judge.

23 THE COURT: All right. Cross-examination?

24 MR. FOX: Just one or two.

25 CROSS-EXAMINATION

1 BY MR. FOX:

2 Q Dr. Gottfried, were you present when Ms. Labrador
3 from SCDC testified?

4 A I believe I stepped out to use the restroom, but I
5 heard some of the testimony.

6 Q Okay. And the gist of it was that, back in 2007,
7 Mr. Legette was serving a sentence and went to SCDC and
8 they did their initial assessment to see if he needed any
9 kind of accommodations. And they did, and the Court has
10 the exhibit. And what she referred to was an abbreviated
11 IQ test?

12 A Yes, I heard that testimony.

13 Q Okay. Can you make a diagnosis of intellectual
14 disability from an abbreviated IQ test, in your opinion?

15 A You cannot, no.

16 Q You cannot?

17 A Cannot.

18 Q Okay. Thank you. No further questions.

19 THE COURT: You can step down, Doctor. Thank you.
20 Next witness?

21 MS. LIVESAY: Thank you, Judge. Dr. Maddox.

22 (Court's Exhibit No. 8, Notebook, was marked for
23 identification and received into the record.)

24 DR. DONNA MADDOX,
25 after having been duly sworn, was examined and

1 testified to as follows:

2 MR. FOX: Your Honor, I do need to -- and I
3 apologize; I was paying attention to something else.

4 I do have an objection to this witness at least
5 rendering an opinion. I believe she's going to render an
6 opinion, and I do have an objection on that.

7 THE COURT: What is your objection, Mr. Fox?

8 MR. FOX: Judge, so I gave you before a timeline at
9 the beginning of this whole day, and so back when the
10 solicitor determined that they wished to have their own --
11 they didn't like the opinion from the Department of Mental
12 Health, DDSN -- they sought to have their own evaluation
13 done, and because I wouldn't consent to that, then they
14 filed a motion, and that motion was heard by Judge Thomas
15 Cooper in June of last year.

16 And the basis for that, my recollection to the
17 solicitor was that they needed to retain an expert to
18 consent with to prepare for this hearing today. And I
19 didn't have a problem, and of course, they can do that.

20 My objection was based on the statute. The statute
21 lays out very clearly that the evaluation statute
22 44-23-410 and the subsequent statutes in that section lays
23 out very clearly the procedure. Right?

24 If it's raised, the judge has the ability and the
25 authority to order a competency evaluation to be done, and

1 it describes the process. It starts in the Department of
2 Mental Health, but if there's a suspicion of intellectual
3 disability, then that's when DDSN gets brought in. It
4 describes the timing, when they're to do it, how long they
5 have to get the report back, who gets the report, and what
6 happens. And it describes very clearly what happens
7 depending on the results of that evaluation.

8 If the person comes back competent, the statute
9 absolutely gives the defense a right to seek a second
10 opinion. Of course, as Your Honor knows, neither side has
11 any say on the particular doctors who are going to do the
12 evaluation. All right? We don't really have a say of
13 whether it will be DDSN or DMH. We can suggest, but they
14 make that determination, and whether it's a joint
15 evaluation, as we had here or not, those are not --
16 because they're neutral. They're not my doctors. They're
17 not the State's doctors. They're there to provide
18 information for the Court, because, in the end, it's a
19 legal determination that you will make as to competence.

20 But it sets forth very clearly what happens. It
21 describes what's supposed to happen if a finding of
22 incompetence is returned. Because, again, there can be
23 incompetent but likely to be restored, and it sets forth
24 the procedure for restoration and how that's to go. Or if
25 it is incompetent, not likely to be restored, what

1 happens.

2 What does not happen and what is not addressed
3 anywhere in that statute at all is that the State gets to
4 ask for their own evaluation and their own opinion. There
5 is a provision if a person is determined to be incompetent
6 and unable to be restored. The statute very clearly lays
7 out that either the Court or the State or the defense can
8 revisit. It doesn't have to be incompetent. A
9 determination can be revisited. Okay? But only after a
10 passage of six months and not a doctor of anybody's
11 choosing.

12 The Court can designate, "Hey, I think we need to
13 revisit this. It's a serious case. I've got questions.
14 Maybe the guy is competent now, so I want another one --
15 another evaluation." But, again, Your Honor wouldn't
16 direct who that would be. That would be DDSN or DMH,
17 depending.

18 The State couldn't pick the doctor and I couldn't,
19 if we were in that posture. But it lays out the procedure
20 to do that. It's very clear. It's very specific.

21 So when we had the motion and we had arguments, I
22 asked Judge Cooper -- because he was -- it was clear that
23 he was going to allow this -- allow Dr. Maddox to
24 interview Mr. Legette and render an opinion. I said,
25 "Your Honor, for the record, would you please state what

1 provision, what part of that statute you're relying on,
2 you're basing your decision on?"

3 And his answer was, "I'm not relying on the statute.
4 I'm relying on the State's right to consult with a doctor,
5 an expert, to get their opinion to prepare to
6 cross-examine the doctors from DDSN; in this case,
7 Dr. Hall and Dr. Mulay." And that's the reason. That's
8 the basis. Because that was the argument that the State
9 made: we needed to prepare for cross-examination.

10 So it's one thing -- and so the order isn't a simple
11 Form 4. We could not -- Judge Cooper's order just says,
12 "Dr. Maddox can interview and evaluate the defendant."
13 Okay?

14 So my point is, of course Dr. Maddox can consult
15 with, sit with, talk to the solicitor, suggest -- and I'm
16 sure they have discussed how to cross-examine and critique
17 or attack the evaluation and their result. But what I
18 believe the statute is very clear on that what they can't
19 do is retain their own -- and there's a very good case,
20 Judge: Monahan v. State. That's at 365 S.C. 130. That's
21 a 2005 Supreme Court of South Carolina case.

22 And in that case -- and I do urge Your Honor to look
23 at it. That case was slightly different factually. In
24 that instance, there had been a competency evaluation.
25 The State, for its own reasons, wished to have a

1 McNaughton, or criminal responsibility evaluation. All
2 right? So not the same evaluation. And the Court said,
3 "Well, yeah, they can do that because it's not" -- and the
4 part that I think we need to look at is they say,
5 "Although the defendant had been examined twice, only one
6 examination was at the State's request after it became
7 apparent that the defendant intended to proceed with an
8 insanity defense," which is not the case here, "and there
9 was no evidence the State was engaging in opinion shopping
10 by requesting another expert evaluation."

11 That is exactly what we have here, Judge. They
12 didn't like the first opinion. Neutral doctors, not
13 beholden to anybody. The statute lays out how it happens
14 and who does it. They render their opinion. They didn't
15 like that opinion, and so they want another opinion. And
16 that's why we're here. That's fine. And I realize it
17 might be -- I don't think it's an insignificant point at
18 all.

19 The argument they made to Judge Cooper was, "We need
20 this to consult, for consultation purposes to prepare for
21 this hearing." That's what the judge based his ruling on,
22 not on this statute. Because if you follow the statute,
23 there is no provision anywhere that the State can just
24 say, "Don't like that, we want to get our own." It is a
25 right afforded to the defense but, of course, you know,

1 defendants often have different rights. We often have
2 rights that don't attach to the State from we get ten
3 strikes and they get five. There's many things, but
4 that's one of them.

5 But there is nowhere in there that the State gets
6 to -- and, in my opinion, opinion shop, but even if that's
7 not what Your Honor feels is going on here, the statute
8 does not -- and it's very detailed. I mean, you look at
9 it, it covers all contingencies: If this happens, if this
10 is the situation, we do this. If not, we go here. It's
11 like one of those diagrams, one of those decision trees.
12 And it tells you exactly how to proceed. And nowhere in
13 there does it suggest that the State can get their own
14 expert to come in and give an opinion. They can consult
15 with anybody they want to, but nowhere does it allow for
16 the State to bring in their own doctor, hired by them,
17 paid by them, to come in and offer an opinion to the Court
18 in the Blair hearing.

19 So we'd object to Dr. Maddox's testimony.

20 THE COURT: Solicitor, do you want to respond?

21 MS. LIVESAY: Yes, please, Your Honor, very briefly.

22 First of all, I don't have the case on hand, but
23 there's a case that says, if the Court deems it necessary
24 to order an additional evaluation, sometimes like as in a
25 tie-breaker, if you must say, that the Court can do so.

1 And that's what the Court did here. And I want to mark
2 this as a court's exhibit.

3 Judge Cooper heard from myself. He heard from
4 Mr. Fox. And I don't know what Mr. Fox is talking about
5 as far as some sort of "to assist in us cross-examining."
6 That was never said. That was never in the order.

7 The order is clearly: "The State's motion for Donna
8 Maddox to conduct an evaluation of Mr. Legette is
9 granted." That's what we wanted. We presented the fact
10 that we presented here.

11 This lady from DDSN looked at about six or seven
12 things. The lady, Dr. Gottfried, looked at a slew of
13 different things. And Dr. Maddox said, "I want somebody
14 -- I'm sorry; Judge Cooper said, "I want somebody to look
15 at all of it."

16 But this is the order here where he clearly says
17 "examination." That's what we wanted. Dr. Maddox then
18 went out of the jail -- Eric Fox was present -- and
19 conducted an examination.

20 Now, what he's not telling you is that Judge
21 Culbertson after this -- this has been left out of the
22 timeline. He asked for Amanda Salas ---

23 Is that the correct name?

24 THE COURT: Dr. Salas?

25 MS. LIVESAY: Yes.

1 --- to evaluate Craig Legette. When it didn't come
2 back his way, he wrote me an email saying now he was just
3 using it to consult with her ---

4 MR. FOX: Because that was the truth.

5 MS. LIVESAY: --- but we also --

6 THE COURT: I'll get you to respond.

7 MR. FOX: I understand.

8 THE COURT: You can respond.

9 MR. FOX: Thank you, Judge.

10 MS. LIVESAY: But we also have the order where
11 Mr. Fox asked for an evaluation by that doctor. I don't
12 know whether that happened or not, but it was ordered by
13 Judge Culbertson, and I never received it.

14 So once we got this order and Donna Maddox did her
15 review, he then came back to the Court and asked for
16 another doctor to evaluate Craig Legette -- that was
17 ordered; it's in this stack of orders -- for an
18 examination.

19 When I emailed him and said, "Hey, can I get this
20 report?" then I got an email back saying, "No, that's just
21 for consultation."

22 Now, I don't know if we get to pick and choose once
23 these orders are signed, if we're going to do them or not
24 do them, but Judge Cooper ordered for that evaluation, and
25 Donna Maddox did the evaluation. He ordered it because

1 the Court can order it any time they deem it, that
2 information necessary to determine whether or not this
3 defendant is competent.

4 So I have never said that we hired somebody just to
5 consult with. The solicitor's office doesn't have that
6 kind of funding. We hired Ms. Maddox to do the
7 evaluation.

8 MR. FOX: I'll be brief, Judge. I'm not going to
9 address every single thing.

10 First of all, I believe that case that the solicitor
11 refers to -- but that clearly contemplates the judge
12 ordering another evaluation, not of a doctor of the
13 State's choosing, for goodness sakes. That would
14 undermine the whole point. They don't get to pick in that
15 scenario. So I disagree with that.

16 As far as Dr. Salas, it is true -- in fact, we had
17 that during discussion with Doctor -- I'm sorry -- with
18 Judge Cooper that, "Hey, you do understand" -- because the
19 statute allows me to, Judge. One of the things that's
20 going to happen if you do that is I'm going to do this.

21 That was for consultation purposes. There's no
22 requirement with any expert that a report be generated.
23 So that's all I was letting Ms. Livesay know was, didn't
24 intend to call Dr. Salas. There's already two doctors --
25 neutral doctors, not paid by me or by Indigent Defense,

1 but they were here -- going to be here to say and have
2 said "not competent and not likely to be restored."

3 So I have Dr. Maddox, reputation well known, to
4 prepare to -- these doctors, not my doctors. Yes, I have
5 talked to them, but they only know time or obligation.

6 So, in preparing for this hearing, I want someone of
7 proximate stature -- Dr. Salas -- to help me prepare for
8 that. That's all that was done. And, by the way, the
9 statute allows me to do that.

10 THE COURT: All right. Well, I mean, the -- right
11 or wrong, I have got an order from Judge Cooper that
12 allows for Dr. Maddox to do an evaluation, and I'm not
13 going to go behind Judge Cooper's order. Whether or not
14 he submitted his order in error, you know, that's not for
15 me to say. He submitted this order, and I'm not going to
16 go behind it.

17 So I'm going to, Mr. Fox, deny your motion to, I
18 guess, in essence, disqualify Dr. Maddox as an expert
19 witness in this case simply because -- getting Dr. Salas
20 involved, that's not factoring into my decision at all.
21 It simply means I've got an order of Judge Cooper. I'm
22 not going to go behind it. And so, based upon that and
23 that alone, I'm going to deny your motion.

24 MR. FOX: Thank you, Your Honor.

25 THE COURT: What is the date of that order,

1 Solicitor?

2 MS. LIVESAY: It is August 29th, 2022. I'm sorry.
3 June.

4 MR. FOX: June.

5 MS. LIVESAY: June. That writing is a little --
6 okay. Here we go. I got a better -- June 29th, 2023.

7 THE COURT: June 29th, 2023.

8 MR. FOX: That's correct, Your Honor.

9 MS. LIVESAY: The writing is hard to read, but
10 here's what I've got here. It looks like June 29th of
11 2023.

12 THE COURT: And Judge Cooper even acknowledges the
13 existence of the report that was previously done by ---

14 MS. LIVESAY: That's right.

15 THE COURT: --- these two doctors over here.

16 MS. LIVESAY: He put in there, was not going to
17 replace their evaluations.

18 (Court's Exhibit No. 9, Judge Cooper's Order, was
19 marked for identification and received into the record.)

20 DIRECT EXAMINATION

21 BY MS. LIVESAY:

22 Q Dr. Maddox, tell us currently where you're working.

23 A I'm self-employed.

24 Q Okay. And what are your responsibilities as a
25 self-employed person?

1 A I'm a solo practice, so I do 100 percent forensic
2 psychiatric work.

3 Q Okay. And tell me a little bit about your
4 educational background.

5 A Sure. I graduated from Furman University in 1985
6 with a bachelor's degree in psychology. And I graduated
7 from medical school in 1989 from the University of South
8 Carolina School of Medicine in Columbia. I completed a
9 four-year residency in general psychiatry in 1993. And
10 then I completed an additional year -- a fellowship in
11 forensic psychiatry, and I finished that in 1994.

12 I worked at the Department of Mental Health for, I
13 believe, about three years after that. Then I went to the
14 medical school at the University of South Carolina School
15 of Medicine where I stayed for 17 years. I was eventually
16 a clinical professor there.

17 And then I finished up my career. I'm married
18 and moved to -- remarried and moved to Anderson, and I
19 finished out my last eight years in a state career as the
20 chief of a psychiatric service at Patrick Harris Hospital.
21 And then I retired from the State after 28 years, and so
22 the last five or six years, I've been in full-time private
23 practice.

24 Q Okay. Now, let me ask you something: So you're a
25 forensic psychiatrist?

1 A Yes.

2 Q What is the difference between a forensic
3 psychiatrist and a forensic psychologist?

4 A I'm a medical doctor licensed to practice medicine
5 in the State of South Carolina.

6 Q Okay. And how many times have you testified as an
7 expert in forensic psychiatry?

8 A Over 850.

9 Q Okay. And always in General Sessions?

10 A No.

11 Q What other courts have you been qualified in?

12 A Federal court. District courts in Virginia,
13 Georgia, South Carolina, Arizona. State courts in
14 Mississippi, Alabama, Florida, Virginia, North Carolina,
15 South Carolina. And then state courts and civil Common
16 Pleas here in South Carolina, General Sessions, and Family
17 Court and also Probate. I didn't include the Probate
18 testimonies as part of the 850.

19 Q Okay. And do you always testify for the State?

20 A No.

21 Q Okay. How many times have you testified for the
22 defense?

23 A It depends on the kind of case. Usually, in
24 criminal cases, I testify for the defense. I'm much more
25 routinely retained by the defense than the prosecution.

1 Q Okay. And have you ever been retained by the
2 defense here in Horry County?

3 A Yes.

4 Q Okay. And so you have worked more for the defense
5 than the State?

6 A In this county, yes.

7 MS. LIVESAY: Okay. And, at this time, Your Honor,
8 I'd like to have Dr. Maddox recognized as an expert in
9 forensic psychiatry.

10 MR. FOX: Without objection, Your Honor.

11 THE COURT: Without objection, Dr. Maddox is found
12 to be an expert in forensic psychiatry.

13 You may proceed.

14 MS. LIVESAY: Thank you.

15 BY MS. LIVESAY:

16 Q Now, were you present for the prior two witnesses --
17 for Dr. Gottfried and Dr. Hall and Dr. Mulay?

18 A Yes.

19 Q Okay. And are all of those individuals
20 psychologists?

21 A Yes.

22 Q Okay. And that means they could not prescribe
23 medication; is that correct?

24 A Correct.

25 Q Okay. But you can do whatever is required,

1 including prescribing medication?

2 A Yes. And, mainly, the difference is we're also
3 looking -- when a psychiatrist is doing a similar
4 evaluation, we're also taking into account medical
5 conditions, things that could possibly impair someone's
6 capacity during a trial and those sort of things. So I'm
7 also looking at medical things.

8 And then, also, as part of my evaluation, I conduct
9 a neurological exam. I'm looking for conditions that
10 could perhaps cause intellectual disability that could be
11 related to neurological causes as well.

12 Q Okay. And did you receive an order from Judge
13 Cooper to evaluate Craig Legette, the defendant here?

14 A I did.

15 Q Okay. And prior to talking with Craig Legette, did
16 you review things submitted to you from the solicitor's
17 office?

18 A I did.

19 Q Okay. I'm showing you Court's Exhibit No. 8. Does
20 this include the items you reviewed as part of your
21 evaluation of Craig Legette?

22 A (Reviewing documents.) Yes.

23 Q And did you also interview Mr. Legette?

24 A I did.

25 Q Okay. And was he cooperative with you?

1 A Yes.

2 Q And was Mr. Fox present for the interview?

3 A He was.

4 Q Okay. And go ahead and tell us -- well, ultimately,
5 after reviewing, you know, numerous items, talking with
6 him, what was your opinion?

7 A If I can add too, Your Honor, I examined him and I
8 performed a little bit of a screening test to look at his
9 memory and the amount of effort that he was giving me
10 during the evaluation.

11 I also got collateral information. I spoke with his
12 probation officers. I also spoke with a family member to
13 obtain a little bit of history about his functioning.

14 And then, after I examined him, I requested the
15 telephone records. I have had cases before where there
16 was a question of how good an effort somebody was
17 providing, and so I found that, over the years, it's very
18 helpful to get telephone calls because sometimes -- and
19 not Mr. Legette's fault -- he's in a situation where it's
20 going to be difficult for him to trust somebody that's
21 there on behalf of the prosecution.

22 So I asked for those records, and I wanted them
23 around the time that I was evaluating him because they
24 would be another data point of his functioning. So I also
25 reviewed those -- listened to those records.

1 So, after that, I prepared a report. And it's my
2 opinion, Your Honor, I don't disagree with DDSN or DMH.
3 He certainly has a history of intellectual disability. I
4 don't think there's a question about that.

5 He was a young child when he had those tests. He's
6 had that history. He's had a history of requiring special
7 ed in school, and so I have no reason to doubt that
8 diagnosis.

9 But it is my opinion that he's competent to stand
10 trial, Your Honor. I think -- based on a number of
11 reasons. First of all, he's not new to this. This is the
12 fourth or fifth time that he's been involved in the legal
13 system. Had this been the first time that he was involved
14 in a legal situation, I would have great pause, but in
15 looking at all of his prior records, all of his prior
16 history -- he's even had a bench trial, Your Honor. He's
17 been through multiple pleas. He's pleaded guilty when --
18 if he was guilty or not, he's pleaded guilty in some of
19 these situations. And then, in some situations, he's not
20 claiming responsibility, which is his right.

21 But he's had prior involvement. This is not the
22 first time. That's the first issue.

23 Secondly, in looking at -- listening to his
24 telephone calls, it's very clear from, when he's in an
25 evaluation setting, that he's not as forthcoming with

1 information. And that's not a negative thing about him.
2 That's to be expected in this situation. But in listening
3 to his phone calls, it's very clear that he knows more
4 information than he's discussing.

5 Thirdly, these calls and looking at his history
6 shows that he is able to adapt. I'll give you an example.
7 The early calls when he realized that I was listening to
8 the calls, there was a period of time -- there was a call
9 where he is telling people don't -- he understood. He was
10 able to learn and said, "Don't talk about my case on the
11 phone." He understood that there was a period of time he
12 was following legal advice or at least being protective.

13 So I think one of the things that goes through all
14 of these proceedings, that he's protective. Persons with
15 intellectual disability that are not competent, they're
16 very gullible. They're not always protective. He's been
17 very careful in making sure that he's -- he's trying to
18 represent himself in the best light. He's trying to get
19 his case resolved.

20 I do agree also with Dr. Hall; he was very upset
21 when I saw him. He was tearful and it was genuine. He
22 was very confused. I think one of the things that the
23 Court needs to know is that, at the time of his
24 evaluation, he was getting conflicting information. His
25 brother, whom he loves and trusts -- and his brother does

1 have some legal knowledge -- was telling him to do one
2 thing, and then he had his lawyer on the other hand. And
3 so he was in a very uncomfortable situation of not knowing
4 who to trust and kind of getting conflicting information.
5 So that would be hard for anyone, even without
6 intellectual disability.

7 He also had a number of family members who were
8 sick. He's been locked up a long time, and he had family
9 members who were ill, and he's been worried about them.
10 So he had a lot on him.

11 The other thing that I considered, he has -- and no
12 one has diagnosed it -- he has a trauma disorder, Your
13 Honor. He's been shot. His leg -- if you look at the
14 wound on his leg, he's got massive scarring there. It was
15 during the -- I think when I saw him last year, the wound
16 was still weeping. There was times where that wound has
17 been infected and there's been a question of the level of
18 medical care he's gotten. He also has a history of
19 diabetes.

20 But he's been shot, and he's also seen a family
21 member shot. So he has got -- he had a lot of things
22 going on with him. So I do think his crying and his
23 anxiety were very genuine. I don't think that was
24 malingered at all.

25 But what I did do in his evaluation, which caused me

1 some concern, I'm trying to look at his effort. What kind
2 of effort is he putting forth? So I gave him a test. You
3 know, I'm not sure why the other examiners didn't formally
4 test his effort. He -- and I don't disagree with their
5 findings. He's been there -- there are some things that
6 he will answer, and he does a really good job answering.
7 And then there's other times that he'll say, "I don't
8 know."

9 But there's also other times where -- and I observed
10 it today and I observed it in my evaluation with him --
11 where he almost answers it correctly and just misses a
12 little bit, which, in my opinion, is volitional.

13 And I will give you the example. When I examined
14 him in the jail, one of the tests I do is I write the
15 letters A, B, C, and then, under it, I put the number 1,
16 2, 3. And then I turn the page over and ask them to write
17 what they just saw. And he put A, C, B. And that --
18 that's just a very obvious -- he should be able to answer
19 that correctly.

20 And then today what I noticed is Dr. Hall asked him
21 what year did he get put in jail, and he said 2019 and
22 then 2021, and it was 2020.

23 So, in my opinion, even though he's attempting to
24 answer and he does, there are some times where, in my
25 opinion, he's being misleading. And so I think that's a

1 higher order of function. If you're able to understand
2 that there's an expectation of you to answer something and
3 you give a near miss, that causes me some concern.

4 Your Honor, I can give you numerous examples. He
5 exercised his Miranda rights and didn't give a statement
6 when he got arrested. That is very self-protective.

7 He's had prior experience. As I've mentioned, he's
8 been through a bench trial in his past. It's clear from
9 the calls with his brother that he is able to discuss some
10 things -- and it doesn't -- I can't say whether he
11 understands the word "jurisdiction" or if he understands
12 the word "affidavit," but the point is, he's working with
13 his brother at things that he thinks will help his
14 defense. They are theories for his defense. His theory
15 is, "It wasn't me." They used facial recognition. He
16 mentions a still-shot in one of the pictures. So that is
17 a defense. He's trying to come up with ways to attack
18 what the State is alleging.

19 There's another phone call where he's asking for a
20 witness, a phone call yesterday to his girlfriend or
21 mother -- I don't know who it was -- said, "Make sure that
22 you tell them I never worked."

23 And so there's a theme of adaptation for him and a
24 theme that he is self-protective. And then there's my
25 observations where he's not always giving a good effort.

1 Overall, it would be unfair for me -- he was
2 cooperative. He gave me a history. He tried to do the
3 test.

4 But it is my opinion that he does -- he has the
5 capacity to assist in his defense, and he absolutely has a
6 rational understanding of these proceedings. He's
7 protective. He understands the roles. He knows the
8 adversarial system. And it's my opinion that he's
9 competent.

10 Q Let me ask you something: Have you been in here all
11 day during this hearing?

12 A Yes.

13 Q And have you observed the defendant during the
14 hearing?

15 A I have.

16 Q And have you gleaned any information from that?

17 A Yes. I saw him confer with his attorneys three
18 times during the proceedings. The first was when Esther
19 Labrador was testifying about his treatment at SCDC, and
20 then there's been two times since that.

21 Q So you have seen him actively appear to assist his
22 attorney during the course of this hearing?

23 A Yes. At least he's -- I don't know what they're
24 saying, but they're talking, they're communicating. It's
25 obvious he's been paying attention and listening and had

1 something to say.

2 Q Okay. And, for the most part, the way he's
3 conducted himself during this hearing, does it appear to
4 be rational?

5 A I can't say -- I don't know if rational is the
6 correct word. He's behaved.

7 Q Right.

8 A He appears to be paying attention, and he's been
9 calm.

10 Q And let me ask you something: In looking at all
11 items that were submitted, does the fact that he had an
12 alias on his NCIC, does that mean anything to you?

13 A Well, it just means that we -- one of the things we
14 look at, if you have aliases, number one, you have to make
15 sure that wasn't the real name and that his name hasn't
16 changed. But, two, it's an indication that somebody may
17 be criminally savvy, that they have different approaches.
18 And so that's not always a positive thing.

19 Q And how about the fact that he's got a driver's
20 license?

21 A In my opinion, that shows he's able to adapt. He's
22 had some ability to function. There's many people with
23 intellectual disability that aren't able to take the
24 driver's test or operate a motor vehicle.

25 Q Okay. And he can operate a motor vehicle; is that

1 correct?

2 A Yes.

3 Q And the fact that he lives with his girlfriend and
4 their kids together, what, if anything -- is that
5 informative about his ability to adapt and act rational
6 and, you know, make decisions?

7 A It doesn't say -- that's not necessarily indicative
8 of that. It means he found somebody that loves him. And
9 one of the areas of adaptation that you look for in
10 persons with intellectual disability, are they able to
11 adapt socially. So, at some level, that indicates he's
12 got some social adaptation.

13 Q Okay. And did you look at the fact that he had
14 filed motions in prior court cases, like a motion to
15 suppress and a sovereign citizen motion?

16 A Yes, again, but I'm not sure what those are
17 reflective of, since his brother was encouraging him to do
18 those things. I don't think he's a sovereign citizen, and
19 I don't think that was his idea. But I know he trusts his
20 brother.

21 And his brother, Your Honor, just for your
22 information, was calling from the Department of
23 Corrections, and evidently, ended up at Gilliam
24 Psychiatric Center, and Mr. Legette told me that his
25 brother was put in the hospital for smoking K2. So

1 there's a question about his brother's mental status as
2 well.

3 Q And have you reviewed everything that you feel is
4 appropriate to come to this opinion?

5 A Yes.

6 Q And do you feel he is competent and can assist in
7 his own defense?

8 A Yes. And, again, that's based on that he's -- he's
9 been through this legal system before. This is not novel.
10 He's not learning new things, number one.

11 Number two, Dr. Gottfried's testing and my testing
12 show that he's capable of making new memories. He's
13 capable of learning. He was able to remember words and he
14 could recall them later.

15 And I had some concern with their fact about his
16 inability to recall what a jury does this morning, when he
17 was able to a year ago. I purposely, in the evaluation
18 today, the only things I asked about were his mental
19 health, because I was looking for a medical reason perhaps
20 why he would not have remembered something that he knew in
21 the past. There's been no testimony that he has memory
22 deficits. And I tested him for those things. I was very
23 concerned about that because persons with intellectual
24 disabilities, they often have medical causes or genetic
25 reasons that need to be diagnosed and understood. And so

1 I had no idea of other cognitive impairment in him,
2 especially in terms of memory.

3 Q And did you review the same things that Dr. Hall
4 reviewed?

5 A I can't speak to that. Everything she discussed,
6 I'm familiar with.

7 Q Okay. And the numbers in the school records, in
8 your opinion, does that point to the fact that he's not
9 competent? Is that enough alone?

10 A No, your test scores -- your intellectual test
11 scores alone are not -- they -- just like with
12 schizophrenia, somebody with schizophrenia can be
13 competent and somebody with schizophrenia may not be
14 competent. And it's similar with intellectual disability.
15 Some people have can intellectual disability and
16 absolutely be competent, and then there are others that
17 are not.

18 And it's not always score dependent. It depends on
19 your life experiences, your ability to learn, your ability
20 to adapt. And like I said, had this been Mr. Legette's
21 first time, I would be concerned based on the testimony
22 that I hear. But based on the fact that he's been through
23 the legal system, he's been in the Department of
24 Corrections, he's been in jail, because he understands how
25 this works, and he's got more reasons to not give us his

1 best performance in these situations, and that's
2 protective in some ways as well.

3 Q Okay. And let me ask you something: When you
4 evaluated him, what date was that?

5 A The order was received, I believe, on the 23rd, and
6 I saw him very soon. July 19th. And I wrote the report
7 on July 19th so that everyone would have it on the day
8 that I saw him.

9 Q Okay. And, at that time, your opinion was that he
10 was competent?

11 A Yes.

12 Q Okay. And you witnessed the evaluation today and
13 saw him this morning; correct?

14 A Yes.

15 Q And is it still your opinion now that he is
16 competent to stand trial?

17 A Yes. And especially taking into account -- if you
18 listen to his phone call from yesterday and then see his
19 presentation today, there's a difference.

20 But he did understand, but he still answered the
21 questions. Many of the questions Dr. Hall asked him, Your
22 Honor, he did answer. And he was -- and he gave correct
23 answers. There were some that he would say he didn't
24 know, there were some that he didn't answer, and there
25 were some that he did answer.

1 Q Okay. And have you listened to calls right up until
2 Sunday?

3 A Yes.

4 Q Okay. And do those conversations indicate that he's
5 competent?

6 A Yes.

7 MS. LIVESAY: Nothing further, Your Honor.

8 THE COURT: Cross-examination, Mr. Fox?

9 MR. FOX: Just one moment, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FOX:

12 Q Dr. Maddox, I'm not going to attempt to go through
13 every single thing, but a couple of things jumped out to
14 me when you say someone with intellectual disability -- or
15 Mr. Legette -- might be gullible; right?

16 A Yes.

17 Q Means easily fooled?

18 A Yes.

19 Q Or credulous, believes things that are silly or not
20 based in fact?

21 A Yes. And, actually, the DSM-5TR says that, yes.

22 Q Right. So, for example, this stuff about the
23 Moorish American sovereignty and stuff that Mr. Legette
24 from these phone calls seems to embrace, that might be an
25 example of being gullible?

1 A No, I don't believe that at all. Gullible means
2 that you can take -- people can fool you or trick you that
3 mean to harm you.

4 His brother, he loves and trusts. So I wouldn't use
5 that as an example. It would be more if someone said, you
6 know, "Go and steal that woman's pocketbook, and we'll
7 split the money with you."

8 Q I understand. So not gullible -- so not being open
9 to vulnerable to harm but believing -- you would agree
10 that Moorish American sovereignty -- and I'm sure you have
11 come across that before in your travels.

12 A Yes, sir.

13 Q Fair to say that it's just complete nonsense?

14 A I'm no lawyer but, in my opinion, it is.

15 I think gullible would be more, "I believe my
16 brother -- I believe everything my brother said because
17 he's the smartest person I know."

18 Q Doesn't that describe Mr. Legette's description of
19 his relationship with his brother? "He's older. He's the
20 only person I trust." Right?

21 A Yes, but --

22 Q He's been in the system --

23 MS. LIVESAY: Your Honor, can she answer the
24 question?

25 Q I'm sorry. Please.

1 THE COURT: Let her answer.

2 MR. FOX: Of course.

3 A Yes, but that's why he was so conflicted during the
4 evaluations because he does trust and love his brother,
5 but he also knows, at some level, that you're telling him
6 something else to do. So I think he's able to weigh those
7 things.

8 Had he only done that and had he continued to
9 present as a sovereign citizen despite your legal advice,
10 I would call that gullible.

11 So he's at risk. But I think that's what
12 differentiates him, and in my opinion, that's one of the
13 things that makes him competent, is he's able to weigh
14 those things. And all of his decisions are always aimed
15 at trying to work on this case, to come up with ideas to
16 -- even though he may not choose to assist you, he's got
17 the capacity to do it.

18 BY MR. FOX:

19 Q You seem to put a lot of weight and do put a lot of
20 weight on his prior involvement in the criminal justice
21 system.

22 A Yes.

23 Q Right? That you talk about, even from your
24 interviews, although you have concerns about his results
25 and what you observed, but with his background, test

1 scores, etc. You have no question about his diagnosis,
2 his ID, and that if he was -- as you put it, if this were
3 his first rodeo, you might well come to a different
4 conclusion.

5 A Not a different conclusion but a lot more pause, and
6 I would have a lot more concern.

7 Q Okay. But his prior involvement in court.

8 Now, is it your experience -- bench trial, that was
9 in municipal court; right?

10 A Yes.

11 Q Okay. So we don't know what went on there. We
12 don't know if he had an attorney to advise him?

13 A Correct.

14 Q We don't know what the circumstances were of that.
15 We know there was a guilty verdict from the bench, but
16 that's about all we know about that.

17 A Correct.

18 Q Right. We don't even know if he was present.

19 A Correct.

20 Q Okay. Is it not common for all of us, not just
21 people with any kind of intellectual disability or
22 incompetence, not common for, in your experience, for
23 defendants when they're dangled with the prospect of going
24 home that they can read cues, in other words, get through
25 a guilty plea when the outcome is "I can go home"?

1 A Sure.

2 Q And they can pick up clues from the judge when it's
3 a string of, you know, obvious "no" answers: Are you
4 intoxicated, are you crazy, are you dissatisfied with your
5 lawyer, etc. And you can sometimes, depending on the
6 courtroom, even sit and watch everyone go in front of you
7 and see what the -- because judges tend to ask kind of
8 rote questions -- right? -- to cover all the bases or plea
9 colloquy for each judge tends to be the same -- that
10 judge's plea colloquy tends to be the same. So we don't
11 know the circumstances. We know he's pled guilty.

12 A Sure.

13 Q He has his record, but we don't know the
14 circumstances, do we?

15 A Correct. We know when some -- I do believe there
16 was one in a group setting where he was one of five. So,
17 yes, there's been one guilty plea where he was in a group
18 setting. So, yes, somebody with ID could easily mimic
19 somebody maybe that even perhaps may not have been
20 competent if he copies other people, sure, that could
21 happen.

22 Q And, in fact, in that one, in 2019, where there was
23 a group qualification from Judge Brown -- Judge Craig
24 Brown, and then he did go separately with each defendant,
25 including Mr. Legette, but that was -- the outcome of that

1 was he was given a time-served sentence and then placed on
2 probation, which Agent Smith testified about.

3 A Yes.

4 Q But the result that day was Mr. Legette is going
5 home; right?

6 A Correct.

7 Q Quibble a little bit. You have no idea what he and
8 I have talked about -- or Mr. Pinkerton in court today or
9 whether it's even been related to what's going on in court
10 or if it's a request to get a message to his family or
11 anything else. You don't know -- I mean, when you use the
12 word "confer," you don't know if we were conferring or
13 what we were speaking about. You just can't; right?

14 A Correct. But the point is, he's talking with you
15 and he's interacting with you, which he hasn't done a lot
16 of, certainly in the present today. And so it tells me
17 that, if he needs something, he's able to talk to you,
18 whether it is to go to the bathroom -- I noticed, at one
19 point, he asked for a glass of water. And it just shows
20 that he has the capacity and he's communicating with you
21 while you're sitting there.

22 Q But you don't -- certainly, someone who is not
23 competent doesn't have to be nonverbal and unable to do
24 basics for themselves and ask to take care of basic bodily
25 functions or ask for a favor or ask for assistance; right?

1 A Correct. Sure, sure.

2 Q Okay. Now, just a couple more things. You
3 mentioned that, of course, you assessed and did discuss
4 with Mr. Legette medical issues, including his leg and his
5 -- festering wound is a fair description, isn't it? I
6 mean, it's not in good shape.

7 A It certainly was -- it was not in good shape in
8 July of last year. It looked better today.

9 Q A little better today?

10 A There's one little area where it's healed, but it's
11 certainly not draining or an active infection right now.
12 But it's a substantial wound.

13 Q So, seeing how he was a year ago and the attention
14 or lack of attention he was getting at the detention
15 center here, does that give you any pause about how
16 effective their screening for mental health and their
17 desire to find mental health issues? In other words, do
18 you trust their screening process, if their medical
19 treatment, or lack thereof, is so poor? Would it give you
20 confidence in their ability to screen and take care of
21 mental health issues for inmates?

22 A No, I don't think those things are related. First
23 of all, I wouldn't say that it was poor care. He's got
24 diabetes. Diabetes makes it hard for wounds to heal.

25 I can tell you that, in listening to some of his

1 phone calls, he's trying to be compliant with his diet.
2 One of the phone calls he mentioned, you know, that he
3 wants cheese instead of eating sweets out of the canteen.
4 He's trying to take care of himself.

5 There's one medical record where he was refusing his
6 other meds, but he continued to take his medications for
7 his diabetes. So I don't know necessarily if the care is
8 poor, but I think if you were asking me does the screening
9 process necessarily pick up all mental illness and
10 intellectual disability, I will tell you it does not.
11 There's many people that are in jails that are quietly
12 psychotic that are not -- behavioral problems that caused
13 difficulties in that past screening. So I do have
14 concerns. I know they do the best they can, but there are
15 plenty of cases that are missed.

16 Q And just the last thing is just one of those details
17 to throw out there. You indicate his -- I'm not even
18 going to say use of an alias because we don't know that he
19 ever used an alias, but an alias being listed on his NCIC,
20 but that's basically possible other names where the
21 records might be hitting; correct? It lists three or four
22 possibilities for Mr. Legette; correct?

23 A Yes, they were actually on --

24 Q A couple of birth dates. A couple of social
25 security numbers. There's no indication he ever used any

1 of those things.

2 A They're actually in some of his court records. I
3 did find one where I believe the name Jerome Sherman is
4 used in a legal proceeding.

5 Q Where did that name come from?

6 A I have no clue.

7 Q Are you aware it might have come from law
8 enforcement?

9 A No clue.

10 Q Okay. Thank you. No further questions.

11 THE COURT: Anything in redirect, Solicitor?

12 MS. LIVESAY: No, sir.

13 THE COURT: Okay. You can step down, ma'am.

14 THE WITNESS: Thank you, Your Honor. May I be
15 excused?

16 THE COURT: You can be.

17 Any other witnesses for the State?

18 MS. LIVESAY: No, sir.

19 THE COURT: Mr. Fox, do you have any necessary
20 rebuttal case?

21 MR. FOX: No, Judge. I actually was able to ask
22 Dr. Gottfried the one question I had so we took care of
23 that already.

24 THE COURT: All right. Everybody be at ease for
25 just a moment.

1 (Pause in the proceedings.)

2 RULING

3 THE COURT: All right. I'm just going to read what
4 I just typed as far as what my ruling is.

5 Each side has presented very highly qualified and
6 highly respected experts with differing opinions as to the
7 defendant's competency. Based upon this, I find that the
8 defendant has failed to meet its burden of proof; however,
9 a very low burden, the lowest burden of proof that we have
10 in the law today, by a preponderance of the evidence to
11 prove that the defendant lacks a rational understanding of
12 the proceedings and lacks the ability to assist his
13 lawyers. Consequently, I find that the defendant is
14 competent to stand trial, and the proceedings will proceed
15 forward.

16 Anything else for the record before we adjourn this
17 evening?

18 The State?

19 MS. LIVESAY: No, sir.

20 THE COURT: Defense?

21 MR. FOX: No, Your Honor.

22 THE COURT: Thank you very much. Everybody have a
23 good evening. And the panel is coming back at what time?

24 MS. LIVESAY: She said 9:30.

25 THE COURT: All right. So we'll start back at 9:30.

1 I'll be here about 9:00 or maybe a little before, so if
2 there's anything y'all need to talk with me about, I'll be
3 here.

4 MS. LIVESAY: Okay. So come up here at 9:00?

5 THE COURT: Yeah, they'll be here. What we decided
6 was those who were not selected out of the group for Judge
7 Seals' Common Pleas would be put with the group that was
8 not called up to Judge Seals, just to make sure that we
9 have more than ample potential jurors.

10 MS. LIVESAY: That sounds good.

11 THE COURT: So we should be in good shape.

12 MS. LIVESAY: Okay. We'll be up here at 9:00.

13 THE COURT: All right. Thank you very much.

14 (The trial adjourned for the day at 6:49 p.m., to be
15 resume on April 2, 2024, at 9:30 a.m.)
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1 CERTIFICATE OF COURT REPORTER

2 CASE NAME/NUMBER: State v. Craig Legette

3 2021-GS-26-02637

4 DATE OF HEARING: April 1, 2024 (DAY 1)

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings to the best of my ability, and that I
9 am neither counsel for, related to, nor employed by any of
10 the parties to this case, and I have no interest,
11 financial or otherwise, in its outcome.

12
13 

14 _/s/ Bobbi Fisher_____

15 Bobbi Fisher, RPR, Court Reporter III

16 Date Submitted: 7/29/24

17
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STATE OF SOUTH CAROLINA * GENERAL SESSIONS
 COUNTY OF HORRY * TRANSCRIPT OF RECORD

-----X
 STATE OF SOUTH CAROLINA, *
 State, *
 vs. * Case No. 2021-GS-26-02637
 * 2021-GS-26-02638
 * 2021-GS-26-02634
 CRAIG LEE LEGETTE, *
 Defendant. *
 -----X

April 2, 2024
 Volume 2 of 4

JURY TRIAL

B E F O R E:

The Honorable Donald B. Hocker, Presiding Judge; and a jury.

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

Nancy Livesay, Esq.
 Seth Oskin, Esq.
 Assistant Solicitor for the State

Eric Fox, Esq.
 Clay Pinkerton, Esq.
 Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
 SC Official Court Reporter III

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
1	911 Call DVD	255	309
2	Video of Shooting	255	319
3	Video of Building 110 and 111	255	334
	Redacted		
4	Additional Video of Building 110 and 111	255	366
5	Offendertrak for Legette	255	325
6	Shell Casings from Breezeway	255	429
7	Shell Casing	255	
8	Shell Casing	255	
9	Shell Casing	255	
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11	GSR Kit from Victim	255	401
12	White T-Shirt	255	412
13	Enlarged Map	310	314
14	Scene Photograph	388	389
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7 Defendant's Exhibit

8	No.	Description	ID.	REC'D
9	1	Gun	255	

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P R O C E E D I N G S

(9:12 a.m.)

TUESDAY, APRIL 2, 2024

(State's Exhibit No. 1, 911 Call DVD, was marked for identification.)

(State's Exhibit No. 2, Video of Shooting, was marked for identification.)

(State's Exhibit No. 3, Video of Building 110 and 111 Redacted, was marked for identification.)

(State's Exhibit No. 4, Additional Video of Building 110 and 111, was marked for identification.)

(State's Exhibit No. 5, Offendertrak for Legette, was marked for identification.)

(State's Exhibit No. 6, Shell Casings from Breezeway, was marked for identification.)

(State's Exhibit Nos. 7, 8, 9, and 10, Shell Casing, was marked for identification.)

(State's Exhibit No. 11, GSR Kit from Victim, was marked for identification.)

(State's Exhibit No. 12, White T-Shirt, was marked for identification.)

(Defendant's Exhibit No. 1, Gun, was marked for identification only.)

(Jury duly sworn by the Clerk of Court.)

JURY VOIR DIRE

1 THE COURT: Good morning, ladies and gentlemen.
2 Nice to see you back here again today. Okay. Ladies and
3 gentlemen, what we're going to do this morning -- and for
4 those who were in Judge Seals' courtroom yesterday, he
5 asked questions that were specifically related to that
6 case. And we're going to do the same thing this morning
7 with the case being called for trial.

8 MS. LIVESAY: Can we approach?

9 THE COURT: Yes.

10 BENCH CONFERENCE

11 (The following bench conference was held at the
12 bench and outside the hearing of others:)

13 MS. LIVESAY: So I think he's got -- I'm sorry,
14 Eric.

15 MR. FOX: That's okay.

16 MS. LIVESAY: So he's got, like, four indictments,
17 but we're only trying him on the murder and the possession
18 of a weapon during a violent crime.

19 THE COURT: Okay. Just those two.

20 MS. LIVESAY: Yep, you got it.

21 THE COURT: I'm glad you told me that.

22 MS. LIVESAY: I did tell you that?

23 THE COURT: No, no, no. I'm glad you told me that.

24 MS. LIVESAY: I know, I know. And it was my fault
25 because I should have done it before now.

1 But you knew that; right?

2 MR. FOX: Yes.

3 MS. LIVESAY: Okay. Good. Can I look at these?

4 THE COURT: Yeah. Go and pull out what I don't
5 need.

6 MS. LIVESAY: Just so we can...

7 THE COURT: Just these two. Thank you.

8 (Open court resumes as follows:)

9 THE COURT: Ladies and gentlemen, the case that's
10 being called for trial today is the State of South
11 Carolina versus Craig Lee Legette.

12 Mr. Legette, if you would just stand and face the
13 panel for just a second, please, sir, just so they can see
14 you.

15 (Defendant complies.)

16 THE COURT: Very good. That's fine. Have a seat.

17 Now, ladies and gentlemen, Mr. Legette has been
18 indicted on two criminal offenses, and I'm going to read
19 the indictments to you in just a second, but let me
20 explain to you, the fact that Mr. Legette has been charged
21 and indicted with criminal offenses is not proof
22 whatsoever of any guilt on his part. The allegations
23 contained in the indictment is on the State. The burden
24 is on the State to prove the allegations in the
25 indictments beyond a reasonable doubt standard, and I'll

1 explain all that to you later on.

2 So you cannot hold it against Mr. Legette, the fact
3 that he has been indicted with two criminal charges.

4 The indictments serve two purposes and two purposes
5 only: one, it puts the defendant and his attorneys on
6 notice of the charges that the State intends to try him
7 on; and secondly, it gets us in to court today -- it's the
8 process to get us in to court today for purposes of the
9 trial.

10 I'm going to read the indictments to you. First
11 indictment, which is 2021-GS-26-02634, and it's on the
12 charge of murder and it reads as follows: That Craig Lee
13 Legette did, in Horry County on or about August 26th,
14 2020, willfully, feloniously, and intentionally kill the
15 victim, Kentrell Ferguson, with malice aforethought,
16 either expressed or implied, by means of shooting, and the
17 victim did die as a proximate result thereof on or about,
18 in Horry County, in violation of Section 16-3-10 Code of
19 Laws of South Carolina.

20 The second indictment is 2021-GS-26-02638, and it
21 charges or indicts the defendant with possession of a
22 weapon during the commission of a violent crime, and it
23 reads as follows: That Craig Lee Legette did, in Horry
24 County, on or about August 26th, 2020, did possess a
25 firearm or visibly displayed what appeared to be a firearm

1 or visibly displayed a knife during the commission or
2 attempted commission of a violent crime in violation of
3 Section 16-23-490 Code of Laws for South Carolina.

4 Now, I'm going to ask you a series of questions that
5 are related to this case, and if you'll remember
6 yesterday, when we were going over the general
7 qualification questions, I told you that, if you were
8 reluctant to respond to a question in front of everybody,
9 that was fine; I would speak with you privately, which I
10 did with many of you.

11 So the same rules apply. If you're reluctant to
12 respond to a particular question in front of everybody,
13 then I'll give you an opportunity in just a little bit to
14 talk with me privately.

15 Any member of the jury panel related by blood or
16 marriage, either now or formerly, to either Craig Lee
17 Legette or Kentrell Ferguson? If so, please stand.

18 (No response given.)

19 THE COURT: Any member of the jury panel have or
20 have had in the past a close personal or social
21 relationship with either Craig Lee Legette or Kentrell
22 Ferguson? If so, please stand.

23 (No response given.)

24 THE COURT: Now, I'm going to read a list of
25 potential witnesses in this case. When I say "potential,"

1 they may or may not testify. And then I'll ask you some
2 questions concerning these potential witnesses.

3 And there are a good number of potential witnesses,
4 so I'll probably break this list down in several parts.
5 Sara Goodman; Jana Weaver; Megan Fletcher; Lori Dudley;
6 Kenneth Marcus; Drew Edwards; David Dudley; Torry Lewis;
7 Josh Johnson; Sean Wydra, W-y-d-r-a; Greg DeWitt;
8 Lieutenant Mark Bonner.

9 Any member of the jury panel related by blood or
10 marriage, either now or formerly, to any of those people I
11 have just named or any member of the jury panel have or
12 have had in the past a close personal or social
13 relationship with any of those people I have just named?
14 If so, please stand.

15 (No response given.)

16 THE COURT: All right. Continuing with the list,
17 Sergeant Greg Lent; Sergeant Jack Johnson; Kenneth
18 Canterbury; Officer Tuggle; Officer Bellamy; Officer
19 Perkins; Edward Proctor; Patty Bellamy; Eric Falvey,
20 F-a-l-v-e-y; Jessica Rowan; Percy Deshields.

21 Any member of the jury panel related by blood or
22 marriage, either now or formerly, to any of those people
23 I've just named, or any member of the jury panel have or
24 have had in the past a close personal or social
25 relationship with any of those people I have just named?

1 If so, please stand.

2 (No response given.)

3 THE COURT: Continuing with the list: Niesha
4 Thomas; Dennis Lewis; Monique Alston; Jessica Legette;
5 Brian Scales; Chris Cook; Jamey Cary; Earnest Vereen;
6 Matthew Montgomery; Jason Wilson; Ben Grino, G-r-i-n-o;
7 James McKefray, M-c capital K-e-f-r-ay.

8 Any member of the jury panel related by blood or
9 marriage, either now or formerly, to any of those people I
10 have just named or any member of the jury panel have or
11 have had in the past a close personal or social
12 relationship with any of those people I have just named?
13 If so, please stand.

14 (No response given.)

15 THE COURT: Continuing: Daniel, D-a-n-i-e-l,
16 Wright; Chrissy Thompkins; Joe VanVoorhis
17 V-a-n-V-o-o-r-h-i-s; Michael Shea; Ryan Keefe; Steven
18 Plah, P-l-a-h; Michael O'Shea; Terrell Davis; Anthonio or
19 Anthoniel Taylor; Latoria Gilliad, G-i-l-l-i-a-d; Jeanette
20 Deshields.

21 Any member of the jury panel related by blood or
22 marriage, either now or formerly, to any of those people I
23 have just named or any member of the jury panel had or
24 have had in the past a close personal or social
25 relationship with any of those people I have just named?

1 If so, please stand.

2 (No response given.)

3 THE COURT: Continuing with the list: Jackie M.
4 Davis; Olivia Cartwright; Kimberly Spainhour; Sarah
5 Goodman; Alexis Fowler; Bailey Haynes; Hannah Jefferson;
6 Lori Dudley; Jamie Hall; Jennifer Nates; Merrell Hawkins;
7 Vera Martinez. Again -- well, let me -- I've got four
8 more names: Lieutenant Laurie Shacker, S-h-a-c-k-e-r;
9 Sandy Lowe; Melanie Smith; Kristin Euribe, E-u-r-i-b-e.

10 Any member of the jury panel related by blood or
11 marriage, either now or formerly, to any of those people I
12 have just named or any member of the jury panel have or
13 have had in the past a close personal or social
14 relationship with any of those people I have just named?
15 If so, please stand.

16 (No response given.)

17 THE COURT: Okay. Ladies and gentlemen, I'm going
18 to give the attorneys involved in this case an opportunity
19 to introduce themselves. And I spent some time with these
20 attorneys yesterday on some pretrial matters. I didn't
21 know them before yesterday, but I can tell you, we have
22 some excellent attorneys in this case, and I'm sure that
23 they'll do a fine job for their respective sides.

24 I'll allow the State to go forward first with
25 introduction.

1 MR. OSKIN: Good morning, everybody. My name is
2 Seth Oskin. I'm an assistant prosecutor here in Conway.

3 MS. LIVESAY: Good morning. I'm Nancy Livesay. I'm
4 also a prosecutor here in Horry County.

5 THE COURT: Okay. Defense?

6 MR. FOX: Good morning, ladies and gentlemen. My
7 name is Eric Fox, and it's my privilege today to be
8 representing Mr. Legette.

9 This is my co-counsel.

10 MR. PINKERTON: My name is Clay Pinkerton, and I'm
11 with the public defender's office here in Horry County.

12 THE COURT: Thank you.

13 Any member of the jury panel ever been represented
14 by any of the attorneys involved in this case or anyone in
15 their respective offices? If so, please stand.

16 (No response given.)

17 THE COURT: Any member of the jury panel related by
18 blood or marriage, either now or formerly, or any member
19 of the jury panel have or have had in the past a close
20 personal or social relationship with any of the attorneys
21 involved in this case or anyone in their respective
22 offices? If so, please stand.

23 (No response given.)

24 THE COURT: Now, I realize that you know very little
25 about this case, but I need to ask the question: Is there

1 any member of the jury panel already formed or expressed
2 any opinion about any issue or matter involved in this
3 case? If so, please stand.

4 (No response given.)

5 THE COURT: Any member of the jury panel aware of
6 any bias or prejudice towards either the State or the
7 defendant in this case? If so, please stand.

8 (No response given.)

9 THE COURT: Is there any member of the jury panel
10 who is a member of or a contributor to any group which has
11 as its primary concern the promotion of law enforcement or
12 victim's rights? And these groups would include, but
13 certainly not limited to -- and I'll give you the acronyms
14 -- MADD, SADD, or CAVE. If it applies to you, please
15 stand.

16 (No response given.)

17 THE COURT: All right. As I told you at the outset,
18 I'd give you an opportunity for anyone who wanted to speak
19 with me privately about any of the questions I asked or
20 any particular issue that you need to discuss with me.
21 Anybody needs to speak with me privately, please stand.

22 (No response given.)

23 THE COURT: I see none.

24 All right. Last question I'm going to ask you:
25 Does any member of the jury panel know of any reason

1 whatsoever why he or she should not serve as a juror in
2 this case, with particular emphasis being placed on your
3 ability to be fair and impartial to both the State and the
4 defendant in this case? And, ladies and gentlemen, that's
5 the key to serving on a jury, is we want people who can be
6 completely fair and completely impartial to both sides,
7 but if you believe, for whatever reason, you think that
8 you cannot be fair and impartial to both sides, then I
9 need to know that. So if that applies, please stand.

10 All right. I'll speak with you privately, so
11 just --

12 Just come down one at a time. I'd invite the
13 lawyers to join me.

14 BENCH CONFERENCE

15 (The following bench conference was held at the
16 bench and outside the hearing of others:)

17 THE COURT: Give us your name and number.

18 JUROR NO. 11: Juror No. 11. Ursular Armstrong.

19 THE COURT: Yes, ma'am. What would you like to tell
20 me?

21 JUROR NO. 11: I'm currently working for the
22 sheriff's department, and I'm a retired deputy.

23 THE COURT: Okay. All right. I'm going to excuse
24 you from the trial of this case. Okay? But just stay
25 with us. Okay?

1 JUROR NO. 11: Okay. Thank you.

2 THE COURT: But I'll excuse you. Thank you, ma'am.

3 (Open court resumes as follows:)

4 THE COURT: This juror is excused.

5 BENCH CONFERENCE

6 (The following bench conference was held at the
7 bench and outside the hearing of others:)

8 THE COURT: Your name and your number?

9 JUROR NO. 189: Kathleen Holston, 189.

10 THE COURT: What number?

11 JUROR NO. 189: 189.

12 THE COURT: Okay. You appear to be a little upset.
13 I'm sorry.

14 JUROR NO. 189: I was the victim of a crime with a
15 gun. Two black men said they didn't --

16 THE COURT: Okay. I'm going to excuse you from the
17 trial of this case, but just stay with us. Okay? But I'm
18 going to excuse you. Okay?

19 JUROR NO. 189: Okay.

20 (Open court resumes as follows:)

21 THE COURT: This juror is excused.

22 BENCH CONFERENCE

23 (The following bench conference was held at the
24 bench and outside the hearing of others:)

25 THE COURT: Yes, sir, your name and your number?

1 JUROR NO. 132: Kameron Falker, 132.

2 THE COURT: 132. Yes, sir.

3 JUROR NO. 132: I may be a little biased towards
4 this case.

5 THE COURT: Okay. Might be a little biased why?

6 JUROR NO. 132: Yeah. Like one of the people
7 walking over there, I smelled some weed, and I'm totally
8 against that, so...

9 THE COURT: Okay. You smell a little weed where?
10 Where is it coming from?

11 JUROR NO. 132: When some people walked in here.

12 THE COURT: Oh, okay. All right. Well, I
13 appreciate you informing me of that. I'm going to excuse
14 you. Stay with us, but I'm going to excuse you from the
15 trial of this case.

16 JUROR NO. 132: I go back to where I was seated?

17 THE COURT: Yeah, your seat.

18 (Open court resumes as follows:)

19 THE COURT: This juror is excused.

20 BENCH CONFERENCE

21 (The following bench conference was held at the
22 bench and outside the hearing of others:)

23 THE COURT: Good morning. Your name and number?

24 JUROR NO. 396: Steven Waldron, 396.

25 THE COURT: 396. Yes, sir.

1 JUROR NO. 396: 22 years as a police officer in New
2 York City.

3 THE COURT: Okay. I understand. Thank you. I'm
4 going to excuse you but stay with us.

5 JUROR NO. 396: Thank you.

6 (Open court resumes as follows:)

7 THE COURT: This juror is excused.

8 BENCH CONFERENCE

9 (The following bench conference was held at the
10 bench and outside the hearing of others:)

11 THE COURT: Your name and number?

12 JUROR NO. 227: Daureen Latham, 227.

13 THE COURT: 227.

14 JUROR NO. 227: I just have a lot of anxiety, and I
15 didn't know it was going to be a murder trial.

16 THE COURT: Yeah, okay. That's fine.

17 JUROR NO. 227: And I don't think I can do this.

18 THE COURT: I'm going to excuse you. You stay with
19 us, but I'm going to excuse you from the trial of this
20 case. Okay?

21 JUROR NO. 227: Thank you.

22 THE COURT: All right.

23 Let me ask the lawyers: That one juror said he
24 smell a little weed. Is that the people over in -- I
25 guess that's some of your folks over on that side that

1 came in? Do you know who he would be referring to?

2 MR. FOX: I don't. I mean...

3 THE COURT: I was just going to get Mira to just
4 kind of walk over there to see if she can smell it. I
5 don't know who else it would be.

6 MR. OSKIN: Your courtroom. It's fine by us. I'm
7 not sure who they are.

8 THE DEPUTY: We have guilty pleas today too, so...

9 MR. OSKIN: That's true. We do have guilty pleas in
10 3D, not to --

11 THE DEPUTY: And that's --

12 MR. OSKIN: But certainly go through whatever --

13 THE COURT: We had a juror just said that some
14 people came walking in and he could smell a little weed.

15 MR. FOX: Could we clarify whether he meant walking
16 in up here, like, in the hallway or here in the courtroom,
17 in light of what the deputy said.

18 THE COURT: I'm going to leave it alone.

19 MR. FOX: Okay. Judge, while we're up, and given
20 one of the responses, could I ask that you ask the panel
21 at large if any other have been victims, either themselves
22 or close family member, of a violent crime?

23 THE COURT: Okay. All right.

24 MR. FOX: Since we had at least one.

25 THE COURT: I can do that, sure.

1 MR. FOX: Thank you, sir.

2 (Open court resumes as follows:)

3 THE COURT: Ladies and gentlemen, I have one more
4 question, and if you need to respond to it, I need for you
5 to come down front and speak with me privately.

6 Any member of the jury panel or any of your
7 immediate family members ever been the victim of a violent
8 crime? And if you already came up here, you don't need to
9 come up again. Okay? But any member of the jury panel or
10 any of your immediate family members ever been the victim
11 of a violent crime? If that applies to you, please stand.

12 All right. Just get in line and I'll speak with you
13 one at a time. Okay?

14 BENCH CONFERENCE

15 (The following bench conference was held at the
16 bench and outside the hearing of others:)

17 THE COURT: Your name and number?

18 JUROR NO. 210: Hui Cha Jung, J-u-n-g. 210.

19 THE COURT: 210? Okay. Have you been a victim of a
20 crime?

21 JUROR NO. 210: My sister die from stabbing.

22 THE COURT: All right. I'm going to excuse you from
23 the trial of this case but stay with us though. Okay?

24 (Open court resumes:)

25 THE COURT: This juror is excused. 210, I think she

1 said.

2 BENCH CONFERENCE

3 (The following bench conference was held at the
4 bench and outside the hearing of others:)

5 MS. LIVESAY: Should we --

6 THE COURT: Could you go back just a second, ma'am?

7 MS. LIVESAY: Whatever y'all want to do is fine, but
8 we probably ask and then ask, "Does that affect your
9 ability to be fair and impartial?" If they say yes, then
10 excuse them. If they say no, keep them.

11 THE COURT: It's -- when they come up here and
12 they're emotional and they have been a victim or a
13 sister's been a victim, you know, I usually don't even ask
14 if they can be fair and impartial, because it's pretty
15 clear they're going to have a hard time with it.

16 MS. LIVESAY: Okay. It's up to you, Judge.

17 THE COURT: All right. But, now, if they're not
18 emotional I may ask it though.

19 MS. LIVESAY: Okay.

20 THE COURT: Your name and number?

21 JUROR NO. 150: Kannon Gerald, 150.

22 THE COURT: 150. Yes, ma'am.

23 JUROR NO. 150: My father was murdered in 2020.

24 THE COURT: Recently. Okay. All right.

25 I think -- would you have difficulties being fair

1 and impartial?

2 JUROR NO. 150: No, sir.

3 THE COURT: You could be fair and impartial to both
4 sides?

5 JUROR NO. 150: Yes, sir.

6 THE COURT: All right. Stay with us.

7 JUROR NO. 150: Yes, sir.

8 THE COURT: Put a little notation on that one.
9 Your name and number?

10 JUROR NO. 201: Kurtis James, 201.

11 THE COURT: 201. Okay. Yes.

12 JUROR NO. 201: My cousin was shot and killed about
13 a year ago.

14 THE COURT: Your cousin was shot and killed about a
15 year ago?

16 JUROR NO. 201: Yeah.

17 THE COURT: Would you have some difficulties being
18 fair?

19 JUROR NO. 201: Yeah.

20 THE COURT: Okay. I'm going to excuse you, but stay
21 with us, though. Okay?

22 JUROR NO. 201: All right.

23 (Open court resumes:)

24 THE COURT: This juror is excused.

25 BENCH CONFERENCE

1 (The following bench conference was held at the
2 bench and outside the hearing of others:)

3 THE COURT: Your name and number?

4 JUROR NO. 52: Good morning. Shannon, 52.

5 THE COURT: 52?

6 JUROR NO. 52: Okay. Yes, ma'am.

7 THE COURT: Yes, ma'am.

8 JUROR NO. 52: 2016, my nephew was murdered.

9 THE COURT: 2016, your what?

10 JUROR NO. 52: Nephew was murdered.

11 THE COURT: Okay.

12 JUROR NO. 52: It wasn't here though.

13 THE COURT: Is it going to be hard for you to be
14 fair and impartial?

15 JUROR NO. 52: No.

16 THE COURT: You can be fair and impartial to both
17 sides?

18 JUROR NO. 52: Yeah.

19 THE COURT: Okay. Stay with us then.

20 JUROR NO. 52: Thank you for your service.

21 THE COURT: Your name and number?

22 JUROR NO. 145: Sarah Gajewski, 145. My husband
23 watched the murder of the man that got ran over several
24 times at the Bojangle's gas station.

25 THE COURT: Your husband was a witness?

1 JUROR NO. 145: Yeah, he was a witness.

2 THE COURT: Would that prevent you from being fair
3 and impartial to both sides?

4 JUROR NO. 145: I don't think so. It was just very
5 traumatic for our family.

6 THE COURT: Okay. But you can be fair and impartial
7 to both sides?

8 JUROR NO. 145: Mm-hmm.

9 THE COURT: Okay. Thank you. Stay with us.
10 Your name and number?

11 JUROR NO. 105: Daniel Deveney, 105.

12 THE COURT: 105, yes, sir.

13 JUROR NO. 105: My youngest daughter was sexually
14 assaulted when she was 16 years old by a classmate. He
15 was sentenced and put in --

16 THE COURT: How long ago has that been?

17 JUROR NO. 105: Six years. She's still not
18 really --

19 THE COURT: Would that prevent you from being fair
20 and impartial to both sides?

21 JUROR NO. 105: I'm not sure, to tell you the truth.

22 THE COURT: Well, if you're not sure -- and I
23 appreciate you being honest with me -- I'm going to excuse
24 you from the trial of this case but stay with us. Okay?

25 (Open court resumes:)

1 THE COURT: This juror is excused.

2 BENCH CONFERENCE

3 (The following bench conference was held at the
4 bench and outside the hearing of others:)

5 THE COURT: Your name and number?

6 JUROR NO. 128: Jason, 128.

7 THE COURT: 128.

8 JUROR NO. 128: Several years ago, my dad was beaten
9 on a truck route that he was running. He was
10 hospitalized.

11 THE COURT: Okay. Can you still be fair and
12 impartial to both sides in this case?

13 JUROR NO. 128: I don't know if I can be impartial.

14 THE COURT: All right. Thank you for your honesty.
15 I'm going to excuse you from the trial of this case but
16 stay with us. Okay?

17 JUROR NO. 128: Okay. Thank you.

18 (Open court resumes as follows:)

19 THE COURT: This juror is excused.

20 MS. LIVESAY: Thank you, Judge.

21 THE COURT: All right. Does the State have any
22 additional voir dire or any exceptions to the Court's voir
23 dire?

24 MS. LIVESAY: No, sir.

25 THE COURT: And the defense?

1 MR. FOX: No, Your Honor.

2 THE COURT: All right. Thank you very much.

3 All right. If you'll compile the list, Madam Clerk.

4 Ladies and gentlemen, it will be a few minutes --
5 excuse me for coughing; it's allergies. This pollen is
6 terrible. The computer will pull out names at random, and
7 they'll create what we call a strike list, and I'll give
8 the strike list to the lawyers. They can review it, and
9 then we'll select a jury, and I'll tell you how that is
10 done in just a minute. Okay?

11 (Pause in the proceedings.)

12 THE COURT: Let me see the lawyers for just a
13 minute.

14 BENCH CONFERENCE

15 (The following bench conference was held outside the
16 hearing of the jury and others.)

17 THE COURT: Let me just explain why I give y'all the
18 strike list; I know some judges don't. It makes your job
19 a whole lot easier if you know the order. If you've got
20 somebody that you definitely don't want on the jury, you
21 will see where they're going to come up so you may not
22 want to, you know, lose a strike. So I've just found it's
23 a lot -- I know some judges don't do it, but it helps
24 y'all out a whole lot better if you get the strike list.

25 MS. LIVESAY: I'm down with it.

1 MR. PINKERTON: Thank you, sir.

2 MR. FOX: Thank you, Judge. I appreciate it.

3 (Open court resumes as follows:)

4 THE COURT: Lawyers, just take a few minutes and
5 review the strike list.

6 And, ladies and gentlemen, after the lawyers have
7 reviewed the list, if your name is called out, just come
8 down in that center area facing there, and you'll hear the
9 lawyers use words such as "swear the juror" or "seat the
10 juror" or you may hear "excuse the juror from the trial of
11 this case." If you're not -- if your name is called out
12 and you come down in front and you're not accepted, don't
13 take it personally. Okay? These lawyers have -- they
14 have their own reasons why they want some people on the
15 jury and others not on the jury. But don't take it
16 personally. Okay? All right. But if you are accepted,
17 then you'll be directed to have a seat in the jury box.

18 The lawyers, we know that it's five for the State,
19 ten for the defense. We'll go with two alternates. Two
20 and one for the alternates. So it will be just a few
21 minutes, ladies and gentlemen.

22 (Pause in the proceedings.)

23 THE COURT: Ladies and gentlemen, does anybody need
24 a break, a bathroom break? All right. Do this: Go take
25 your break and come right back in. Okay? Don't linger

1 around outside. If you don't need a break, just keep your
2 seat. Okay. You can stand up and stretch if you'd like.

3 (A recess was taken from 10:16 a.m. to 10:21 a.m.)

4 JURY SELECTION

5 THE COURT: Lawyers ready?

6 MS. LIVESAY: Yes, sir.

7 MR. PINKERTON: Yes, Your Honor.

8 THE COURT: Madam Clerk?

9 THE CLERK: When I call your name and juror number,
10 please come to the front of the courtroom, bring all of
11 your things with you, and you'll turn and face the back
12 wall.

13 Juror 408, Teresa Wilson.

14 (Juror No. 402, a Black female, presented.)

15 THE CLERK: What say the State?

16 MS. LIVESAY: Could you please present this juror.

17 THE CLERK: Defense?

18 MR. PINKERTON: Please seat this juror.

19 THE CLERK: Please be seated in the jury box.

20 Juror No. 221, Kim Kouba.

21 (Juror No. 221, a White female, presented.)

22 THE CLERK: What say the State?

23 MS. LIVESAY: Could you please excuse this
24 particular juror.

25 THE COURT: You're excused from this particular

1 case.

2 Juror No. 12, Michael Arpaia.

3 (Juror No. 12, a White male, presented.)

4 THE CLERK: What say the State?

5 MS. LIVESAY: Judge, can we approach?

6 THE COURT: Sure.

7 Can you hold it down just a little bit, please.

8 Thank you.

9 BENCH CONFERENCE

10 (The following bench conference was held outside the
11 hearing of the jury and others.)

12 MR. OSKIN: Your Honor, this witness [verbatim] has
13 a prior record for impersonating an officer. It was
14 diverted. I don't really know which way that cuts. I
15 would like to move for cause to strike him. If not, I
16 think he should be inquired if he can be fair and
17 impartial. It's just a weird charge. I don't know which
18 way it cuts.

19 THE COURT: So he was charged but it went through
20 some sort of pretrial diversion?

21 MR. OSKIN: Yes, sir. He was charged with
22 impersonating a law enforcement officer. It's been some
23 time.

24 THE COURT: Okay. All right. Let's just ask him,
25 in light of that, can he still be fair and impartial

1 instead of just automatically striking him for cause.

2 Y'all just stay up here.

3 (Open court resumes as follows:)

4 THE COURT: Mr. Arpaia?

5 JUROR NO. 12: Yes, sir.

6 THE COURT: Come up here just a minute, please.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the
9 hearing of the jury and others.)

10 THE COURT: The State indicated that you, sometime
11 previously, were charged with impersonating a law
12 enforcement officer, and it went through pretrial
13 diversion.

14 JUROR NO. 12: Yes, I did.

15 THE COURT: Okay. In light of that, can you still
16 be fair and impartial to both sides in this case? If you
17 feel like you can't, be honest with me and tell me that.

18 JUROR NO. 12: I'm not 100 percent sure, Your Honor.
19 I'm sorry.

20 THE COURT: All right. I'm going to excuse you from
21 the trial of this case. Just go ahead back and have a
22 seat. Okay, sir?

23 JUROR NO. 12: Thank you.

24 (Open court resumes as follows:)

25 THE COURT: This juror is excused.

1 THE CLERK: Juror No. 187, Terry Hitt.
2 (Juror No. 187, a White male, presented.)
3 THE CLERK: What say the State?
4 MS. LIVESAY: Could you please present this juror.
5 THE CLERK: Defense?
6 MR. PINKERTON: Please seat the juror.
7 THE CLERK: Please be seated in the jury box.
8 Juror No. 95, Stephanie Danesie.
9 (Juror No. 95, a White female, presented.)
10 THE CLERK: What say the State?
11 MS. LIVESAY: Could you please present this juror.
12 THE CLERK: Defense?
13 MR. PINKERTON: Please excuse this juror.
14 THE CLERK: You're excused from this particular
15 case.
16 Juror No. 153, Darnell Gimenez.
17 (Juror No. 153, a Hispanic female, presented.)
18 THE CLERK: What say the State?
19 MS. LIVESAY: Could you please present this juror.
20 THE CLERK: Defense?
21 MR. PINKERTON: Please excuse this juror.
22 THE CLERK: You're excused from this particular
23 case.
24 Juror No. 15, Kimberly Avallone.
25 (Juror No. 15, a White female, presented.)

1 THE CLERK: What say the State?

2 MS. LIVESAY: Could you please present this juror.

3 THE CLERK: Defense?

4 MR. PINKERTON: Please seat this juror.

5 THE CLERK: Please be seated in the jury box.

6 Juror No. 383, Theresa Sutton.

7 (Juror No. 383, a White female, presented.)

8 THE CLERK: What say the State?

9 MS. LIVESAY: Could you please present this juror.

10 THE CLERK: Defense?

11 MR. PINKERTON: Please excuse this juror.

12 THE CLERK: You're excused from this particular
13 case.

14 Juror No. 253, Stepheney McCrae.

15 MS. LIVESAY: I'm sorry; what number, ma'am?

16 THE CLERK: 253.

17 (Juror No. 253, a Black female, presented.)

18 THE CLERK: What say the State?

19 MS. LIVESAY: Could you please present this juror.

20 THE CLERK: Defense?

21 MR. PINKERTON: Please seat this juror.

22 THE CLERK: Please be seated in the jury box.

23 Juror No. 84, Adam Cook.

24 (Juror No. 84, a White male, presented.)

25 THE CLERK: What say the State?

1 MS. LIVESAY: Could you please present this juror.

2 THE CLERK: Defense?

3 MR. PINKERTON: Please excuse this juror.

4 THE CLERK: You're excused from this particular
5 case.

6 Juror No. 272, Julieth Morgan.

7 (Juror No. 272, a Hispanic female, presented.)

8 THE CLERK: What say the State?

9 MS. LIVESAY: Could you please present this juror.

10 THE CLERK: Defense?

11 MR. PINKERTON: Please seat this juror.

12 THE CLERK: Please be seated in the jury box.

13 Juror No. 102, James Dejong.

14 (Juror No. 102, a White male, presented.)

15 THE CLERK: What say the State?

16 MS. LIVESAY: Could you please present this juror.

17 THE CLERK: Defense?

18 MR. PINKERTON: Please excuse this juror.

19 THE CLERK: You're excused from this particular
20 case.

21 Juror No. 292, Wendy O'Connor.

22 (Juror No. 292, a White female, presented.)

23 THE CLERK: What say the State?

24 MS. LIVESAY: Could you please excuse this juror.

25 THE CLERK: You're excused from this particular

1 case.

2 Juror No. 17, Holly Babinski.

3 (Juror No. 17, a White female, presented.)

4 THE CLERK: What say the State?

5 MS. LIVESAY: Please present this juror.

6 THE CLERK: Defense?

7 MR. PINKERTON: Please seat this juror.

8 THE CLERK: Please be seated in the jury box.

9 Juror No. 43, Robert Booth.

10 (Juror No. 43, a White male, presented.)

11 THE CLERK: What says the State?

12 MS. LIVESAY: Could you please excuse this
13 particular juror.

14 THE CLERK: You're excused from this particular
15 case.

16 Juror No. 136, Olivia Fernandez.

17 (Juror No. 136, a White female, presented.)

18 THE CLERK: What say the State?

19 MS. LIVESAY: Please present this juror.

20 THE CLERK: Defense?

21 MR. PINKERTON: Please seat this juror.

22 THE CLERK: Please be seated in the jury box.

23 Juror No. 192, Patricia Howard.

24 (Juror No. 192, a White female, presented.)

25 THE CLERK: What say the State?

1 MS. LIVESAY: Please present this juror.

2 THE CLERK: Defense?

3 MR. PINKERTON: Please seat this juror.

4 THE CLERK: Please be seated in the jury box.

5 Juror No. 62, Kimberly Capps.

6 (Juror No. 62, a White female, presented.)

7 THE CLERK: What say the State?

8 MS. LIVESAY: Could you please present this juror.

9 THE CLERK: Defense?

10 MR. PINKERTON: Please excuse this juror.

11 THE CLERK: You're excused from this particular
12 case.

13 Juror No. 359, Haley Siemer.

14 (Juror No. 359, a White female, presented.)

15 THE CLERK: What say the State?

16 MS. LIVESAY: Could you please present this juror.

17 THE CLERK: Defense?

18 MR. PINKERTON: Please excuse this juror.

19 THE CLERK: You're excused from this particular
20 case.

21 Juror No. 85, Marina Cook.

22 (Juror No. 85, a White female, presented.)

23 THE CLERK: What say the State?

24 MS. LIVESAY: Could you please present this juror.

25 THE CLERK: Defense?

1 MR. PINKERTON: Please seat this juror.

2 THE CLERK: Please be seated in the jury box.

3 Juror No. 35, Victoria Blaess.

4 (Juror No. 35, a White female, presented.)

5 THE CLERK: What say the State?

6 MS. LIVESAY: Could you please excuse this
7 particular juror.

8 THE CLERK: You're excused from this particular
9 case.

10 Juror No. 360, Lamont Silva.

11 (Juror No. 360, a "Other " male, presented.)

12 THE CLERK: What say the State?

13 MS. LIVESAY: Could you please present this juror.

14 THE CLERK: Defense?

15 MR. PINKERTON: Please excuse this juror.

16 THE CLERK: You're excused from this particular
17 case.

18 Juror No. 13, Amanda Arrington.

19 (Juror No. 13, a White female, presented.)

20 THE CLERK: What say the State?

21 MS. LIVESAY: Could you please present this juror.

22 THE CLERK: Defense?

23 MR. PINKERTON: Please seat the juror.

24 THE CLERK: Please be seated in the jury box.

25 Juror No. 145, Sarah Gajewski.

1 (Juror No. 145, a White female, presented.)

2 THE CLERK: What say the State?

3 MS. LIVESAY: Could you present this juror.

4 THE CLERK: Defense?

5 MR. PINKERTON: Please excuse this juror.

6 THE CLERK: You're excused from this particular
7 case.

8 Juror No. 96, Angie Davis.

9 (Juror No. 96, a White female, presented.)

10 THE CLERK: What say the State?

11 MS. LIVESAY: Could you please present this juror.

12 THE CLERK: Defense?

13 MR. PINKERTON: Please seat this juror.

14 THE CLERK: Please be seated in the jury box.

15 Juror No. 184, Shirley Herring.

16 (Juror No. 184, a White female, presented.)

17 THE CLERK: What say the State?

18 MS. LIVESAY: Please present this juror.

19 THE CLERK: Defense?

20 MR. PINKERTON: Please present this juror or seat
21 this juror.

22 THE CLERK: Please be seated in the jury box.

23 THE COURT: Okay. The two alternates, one strike
24 and two strikes for each alternate.

25 THE CLERK: Juror No. 363, Adam Sloper.

1 (Juror No. 363, a White male, presented.)

2 THE CLERK: What say the State?

3 MS. LIVESAY: Could you please present this juror.

4 THE CLERK: Defense?

5 MR. PINKERTON: Please seat this juror.

6 THE CLERK: Please be seated in the jury box.

7 Juror No. 316, Austin Prince.

8 (Juror No. 316, a White male, presented.)

9 THE CLERK: What say the State?

10 MS. LIVESAY: Could you please present this juror.

11 THE CLERK: Defense?

12 MR. PINKERTON: Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 THE COURT: All right. Congratulations, ladies and
15 gentlemen. You have been selected as the trial jury in
16 this case. What I'll want you to do is go to the jury
17 room. You'll be escorted to the jury room.

18 One thing you're going to hear me say throughout
19 this entire trial: You cannot begin any discussions about
20 anything related to this case. You know very little about
21 it, but starting now, until I give you the case to begin
22 your deliberations at the end of the case, in order to
23 reach a unanimous verdict, no discussions about anything
24 related to this case. You can talk about anything else,
25 just don't talk about the case. There will be other

1 instructions I'll give you as well.

2 So go back to the jury room, and we'll get you back
3 out in a few minutes. Okay?

4 (The jury exited the courtroom at 10:40 a.m.)

5 THE COURT: All right, sir. Any exceptions to the
6 jury selection by the State?

7 MS. LIVESAY: No, sir.

8 THE COURT: From the defense?

9 MR. PINKERTON: No, Your Honor.

10 THE COURT: All right, ladies and gentlemen. I know
11 that some of you probably are glad that you were not
12 selected, but I hope that some of you are maybe a little
13 disappointed that you were not selected. And for those of
14 you who are a little disappointed, maybe you'll have an
15 opportunity sometime in the future to be summoned back to
16 this courthouse or another courthouse if you move and have
17 an opportunity to sit on a jury.

18 I have talked to a lot of jurors over the years, and
19 the vast majority have told me that serving on a jury,
20 whether a criminal case or a civil case, has been a good
21 experience for them. They have learned a lot of things
22 that they didn't know before they came into the
23 courthouse. So hopefully you'll have an opportunity in
24 the future to serve.

25 Now, I don't want to release you yet for the

1 remainder of the week, even though I don't anticipate
2 bringing you back, but this is only Tuesday. Things can
3 happen and I might need to get you to come back.

4 Madam Clerk, have they been given a card with a
5 call-in number?

6 THE CLERK: Yes, sir.

7 THE COURT: On the card that you have got, there's a
8 call-in number. There will be a recorded message, and it
9 will tell you what to do. Chances are, if you call after
10 6:00 this evening, more than likely, it will tell you to
11 call back after 6:00 tomorrow evening. But whatever that
12 recorded message says, you do what it tells you. Okay?

13 So have a good rest of your day. You're now allowed
14 to leave the courthouse. Don't forget to call that number
15 after 6:00 today.

16 (The remaining jury panel exits the courthouse.)

17 MR. FOX: May we approach, Your Honor?

18 THE COURT: Sure.

19 BENCH CONFERENCE

20 (The following bench conference was held outside the
21 hearing of the jury and others.)

22 MR. FOX: I'd just like to slip out behind the jury
23 and run to the restroom before we get started.

24 THE COURT: Sure, yeah. Y'all need a few minutes
25 before we get cranking?

1 MR. OSKIN: Yeah, that'd be great.

2 THE COURT: Yeah, that's fine.

3 (A recess was taken from 10:43 a.m. to 11:14 a.m.)

4 MOTIONS/MATTERS OF LAW

5 THE COURT: Okay. We are back on the record, and we
6 had one pretrial matter that we discussed in chambers. Do
7 you want to go ahead and put your motion to suppress on
8 the record?

9 MS. LIVESAY: Sure, Judge. So the defense attorney,
10 my understanding is, has brought the gun that was located
11 from the victim's car and marked it as an exhibit. The
12 motion from the State is that the actual murder was
13 captured on surveillance footage, and you can see the
14 hands of the victim, and he does not have a gun.

15 So the State's motion is, because the gun was
16 located -- just from an inventory search of the victim's
17 car, it was in a closed compartment of the vehicle, and
18 none of the shell casings from the scene matched the gun;
19 that it was irrelevant and it should not be admissible
20 until the defense is able to present a witness that can
21 show that the gun is somehow relevant or somehow used
22 during the time of the crime.

23 So the State's motion was that the gun should not be
24 brought up until there's testimony that makes it relevant.

25 THE COURT: And as I indicated in chambers, while I

1 don't really think it's going to necessarily help the
2 defense, I would allow the defense to examine whomever
3 about the gun being found in the car. Circumstantially,
4 again, not very strong circumstantial evidence, but I'm
5 going to allow the defense to question or ask about that
6 if it so chooses.

7 So your motion is certainly well taken but denied.

8 MS. LIVESAY: Yes, sir, Your Honor.

9 THE COURT: Anything else before we bring the jury
10 out? From the State?

11 MS. LIVESAY: No, Your Honor.

12 THE COURT: From the defense?

13 MR. FOX: No, Your Honor.

14 THE COURT: All right. Let's bring the jury out,
15 please.

16 (The jury entered the courtroom at 11:19 a.m.)

17 THE COURT: All right. Ladies and gentlemen, I need
18 to have you sworn in as the trial jury.

19 So, Madam Clerk, would you handle that for me,
20 please.

21 THE CLERK: Please stand and raise your right hand
22 to be sworn.

23 (The jury was duly sworn.)

24 THE COURT: All right. Ladies and gentleman, just a
25 couple of things we need to talk about. First of all, I

1 need to appoint a foreperson of the jury. If it is a
2 male, it's foreman; if it's a female, forelady.

3 Now, let me explain to you what a foreperson does.
4 One, I need someone to serve as the communicator between
5 the jury and the Court. If, at any time, there's an issue
6 that needs to be brought to the Court's attention or you
7 have a question once you begin deliberations, whatever, I
8 need a person to serve as that spokesperson for the jury.
9 All communications between the jury and the Court are to
10 be in writing and signed by the foreperson.

11 Secondly, I need someone -- this is really
12 everybody's responsibility, but I need someone primarily
13 to make sure that all of my instructions are being
14 followed. I have given you one instruction, that being no
15 discussion about this case among you until I give you the
16 case to begin your deliberations, and there will be some
17 other instructions I'll give you in just a minute. So I
18 need someone to make sure that those instructions are
19 being followed.

20 And, thirdly, once I give you the case to begin your
21 deliberations, I need someone to organize those
22 deliberations for purposes of discussion, vote-taking, and
23 that sort of thing. I'm confident that all 14 of you
24 would make excellent forepersons of the jury, but I can
25 only have one.

1 Now, Mr. Hitt, you're the sole male on the group of
2 12, so I'm going to select you as the foreperson, foreman
3 of the jury. When you come back in after a break, I want
4 you to maintain this first seat right here on the front
5 row.

6 The alternates, you'll maintain those two seats that
7 you're in. And let me explain the role of an alternate.
8 It's not unusual, during the course of the trial, where
9 one of the 12 has to be excused for purposes of illness,
10 emergency at home, that sort of thing. And so I need
11 someone to fill those shoes because you will have sat
12 throughout the trial up until that point, and I need to
13 have someone fill those shoes and serve as part of the 12.
14 So your role is very important. Certainly if I don't have
15 to excuse any of the 12, then you do not get to
16 participate in the deliberations. Okay?

17 So just a couple of comments. I know you had asked
18 one of the security about note-taking. I don't allow
19 jurors to take notes. And let me explain to you why.
20 It's been my experience that, oftentimes, if you're taking
21 notes, you're paying more attention to the note-taking
22 than you are listening to a witness on the witness stand
23 or comments or arguments made by the lawyers.

24 So be alert, be attentive, and so, at the end of
25 this case collectively, hopefully you'll have a really

1 good memory of what's been presented to you. Certainly,
2 individually, you're not going to remember everything, but
3 collectively you can.

4 Yes, sir?

5 JUROR NO. 187: Can we take notes when we go back to
6 the jury room?

7 THE COURT: Sir?

8 JUROR NO. 187: Can we take notes when we go back to
9 the jury room?

10 THE COURT: No, you can't do that either. What I
11 will allow, when you go home at night, if you want to take
12 some notes and leave those notes at your house, that's
13 perfectly fine. If you want to gather your thoughts as
14 far as what you heard, just so long as you don't bring
15 those notes to the courthouse, you can do that. Okay?

16 So it's very important to be alert and attentive
17 throughout this entire trial. Make sure you get some good
18 rest in the evenings. There's nothing more disappointing
19 to me, I'll look over at the jury, and I'll see someone
20 nodding off.

21 I even had a guy one time in Laurens actually fall
22 asleep, and when I kind of brought it to the attention of
23 the jury, without naming any names, he never woke up. His
24 fellow juror next to him had to elbow him. Now, that's an
25 unusual, isolated situation, but the point being is that

1 you cannot perform your duty as a juror if you're not
2 listening, not paying attention. Okay? So please do
3 that.

4 It's also really important to keep an open mind.
5 Don't make any quick decisions about anything related to
6 this case. Wait until all of the evidence has been
7 presented to you, the lawyers have made their closing
8 arguments, and I have instructed you on the law.

9 Your role is to determine the facts in the case, and
10 my role is to determine the law, and I will explain to you
11 at the end of the case the law that you are to use to
12 apply the facts to. Okay? But don't make any quick
13 decisions. Listen to everything to be presented to you in
14 this case.

15 And when you are on a break, as far as leaving the
16 courthouse, a lunch break or evening break, you cannot
17 talk to anybody that you come into contact with about the
18 case -- family, friends, neighbors, co-workers, whomever
19 that may be. You can say, "I have been picked on a jury"
20 and leave it at that.

21 And if you do decide, when we break for lunch and
22 you want to go to a local restaurant, keep your juror
23 badges visible, and the reason for that is, is if the
24 lawyers or witnesses or somebody connected with the case
25 don't recognize you as being on the jury and they talk

1 about the case, we certainly don't want you to overhear
2 whatever they're talking about. But if they see that
3 juror badge, then they'll know not to speak so loud as to
4 where you can hear something that they're saying. So just
5 do that for me, if you would.

6 And, also, when you go home during a break -- lunch
7 break or evening -- don't do any research into this case.
8 It's very tempting sometimes to go on the internet or
9 social media and try to find out something about this
10 case. Don't do that. Unfortunately, I had a case several
11 years ago where I had three jurors completely disregard my
12 instructions, and they did some research into the case.

13 And the reason for that is, while that information
14 that you receive by going on the internet or social media
15 more than likely is incorrect information, it is
16 information that is not brought out in this courtroom, and
17 your verdict that you reach in this case has to be based
18 100 percent on what is brought out in this courtroom.

19 So if you're out doing your own independent
20 research, it's information -- once again, probably
21 incorrect information -- but it's information that not
22 everyone on the jury is hearing. And so don't do any of
23 that while this case is going on. Okay?

24 All right. Now, the lawyers are going to make their
25 opening arguments to you. What they tell you is not

1 evidence. It's just what they believe the evidence will
2 show in this case and just kind of give an explanation for
3 their respective sides. Okay?

4 The State ready?

5 MR. OSKIN: Yes, sir, Your Honor.

6 THE COURT: You may proceed.

7 MR. OSKIN: May it please the Court?

8 OPENING STATEMENT ON BEHALF OF THE STATE

9 MR. OSKIN: Good morning. The eye in the sky
10 doesn't lie. When I was preparing for the opportunity to
11 talk in front of you here today, that was a voice that
12 kept coming back into my head, and it was my football
13 coach in college talking about the eye in the sky doesn't
14 lie.

15 What's that mean? He's talking about video
16 surveillance footage -- okay? -- where they would film and
17 monitor our practices, our games. And why would they do
18 that? They would do that to see who was doing what they
19 were supposed to do. Who was running the plays right.
20 Was I slacking on running my routes? Was the quarterback
21 reading the defense right? And he'd also find out some
22 people who were exceptional, who showed out better on the
23 video than what we could see on the field.

24 The point in telling you that is that the video
25 camera is kind of like a neutral, totally objective

1 witness. Okay? And that is the basis of the case that's
2 going to be in front of you here this week.

3 The case -- as you were told by the judge, the case
4 is front of you is for murder. And we don't always get to
5 stand up here in front of you and tell you, "Man, our
6 crimes happened on video." It would be nice if we could.
7 We don't always get that luxury. But this case, we have.
8 Okay?

9 So let me take you back to August of 2020. We're
10 all in the midst of the Corona pandemic, and there's these
11 apartments -- the Fountain Inn [verbatim] Apartments.
12 They're located somewhere between Forestbrook Road and the
13 Coastal Grand Mall in the Myrtle Beach section of Horry
14 County.

15 And on this night in late August, the defendant is
16 in the same area as our victim, Mr. Kentrell Ferguson.
17 Okay? In these apartments. And this video is going to
18 show Mr. -- the defendant and Mr. Ferguson, however far
19 apart they are. You're going to see the defendant begin
20 firing his gun as the defendant -- or as the victim,
21 rather, is walking away with his back to him.

22 As the defendant is firing, you're going to see
23 Mr. Ferguson take off running. Ladies and gentlemen, he's
24 running for his life. And what he did is he ran to his
25 vehicle. Okay? He left the apartment complex, and he

1 didn't make it too far from there. He didn't make it
2 probably half a mile, a block or two down the road, and
3 his car went off into a ditch. And that led some citizens
4 to call 911.

5 They called 911, and as you would imagine, Dispatch
6 sends out police officers. Police officers responded to
7 the scene. They see the car in the ditch. They see who
8 they would later learn to be Mr. Ferguson in the driver's
9 side of that vehicle.

10 Once medical staff and everybody is able to secure
11 the scene, see what they have going on, they pulled
12 Mr. Ferguson out of the vehicle. He is believed to be
13 deceased, and from there, police start looking at the
14 evidence, seeing what they have on a very ground-level
15 surface view. They start gathering some information, and
16 they respond to the Fountain Inn [verbatim] Apartments.

17 And, eventually, they become aware that they had
18 this video surveillance. They didn't pull it exactly that
19 moment, but they canvassed the area. They looked for the
20 evidence that is there; some casings from the fired
21 bullets, and they find this video. Okay?

22 Once they find that video, they're able to follow up
23 with people in the community who identified the defendant.
24 So, from there, he 's -- warrants are drafted. He's
25 eventually charged with murder once he returns to Horry

1 County. He's charged with murder, and that's led to his
2 trial here today. Okay? And that's his right to have a
3 trial and we're fine with that.

4 In a little bit, as His Honor told you, he's going
5 to tell you about the law, and anything I say different
6 compared to what he says, you absolutely defer to him.
7 He's the man in the robe for a reason. Okay? But I want
8 to prove to you that we know what we're here for and we
9 know the law.

10 So murder in South Carolina is the intentional
11 killing of another with malice aforethought, expressed or
12 implied. Intentional sounds kind of obvious; right? It
13 means you meant to do it. Killing, that means what you
14 did; you ended another person's life. Intentional killing
15 with malice, that's what's really important.

16 Malice is defined in our state as, like, a
17 wickedness, a depraved heart, an intent on doing evil or
18 wrong. And aforethought is the time that that evil or
19 that ill will was conceived. It doesn't have to be some,
20 long-planned, expressed, written-down manifesto. Malice
21 can be formed the moment that trigger is pulled. Okay?
22 And you can apply it from the circumstances.

23 And based off of some of what I have told you here
24 already -- mainly the video -- we're going to ask that you
25 find him guilty, and we're going to have to prove it

1 beyond a reasonable doubt.

2 Now, reasonable doubt sounds like a high burden, and
3 it is. It's a highest burden in all of the land. It's a
4 high burden but it's not an unsurmountable burden by any
5 stretch. It's a burden we're willing to meet. It's a
6 burden we believe we will meet. And, again, it's proof
7 that leaves you firmly convinced. We don't have to
8 disprove every possibility under the sun, but we do have
9 to firmly convince you that he committed murder. And he's
10 not guilty because I stand up here and say he is; he's
11 guilty because the evidence is going to prove it.

12 You're going to hear the 911 call. You're going to
13 hear from the responding officers. You're going to hear
14 from Crime Scene. You're going to hear what was done,
15 what was collected, where that was sent off to, how that
16 was tested, how all that lines back up to this defendant,
17 Mr. Legette, and most importantly, you're going to see
18 that video. And I want you to pay the most attention to
19 that. And what you'll see is you'll see the defendant out
20 in front of a doorway and the victim walking away from
21 him. You'll see him firing. You'll see the victim walk
22 off. And when the defendant is done, you're going to see
23 him slam the door, an explanation point on our victim's
24 life, "There, take that." That's what I gather from it.
25 But I want you to gather what you gather from it. Okay?

1 Everything that you're going to need to find him
2 guilty is going to come from this witness stand.

3 Certainly pay attention to all of us. It's
4 important to the State. It's important for the defendant.
5 It's important for the community that you live in that you
6 pay attention to what comes from this stand. I know we
7 live in a time where we all like Netflix and crime novels
8 and shows. Lord, my grandmother watches them every week;
9 she's always asking me questions about it. And that's
10 cool, but I tell you that, you know, those can be novels,
11 films. Other states, their laws may be different than
12 ours just a little bit. You know? So we are held to our
13 law and our standards in South Carolina of what murder is.
14 Okay? And, like I said, we expect that this murder will
15 prove him guilty, and at the end of this trial, Ms.
16 Livesay will stand back up here in front of you and show
17 you what the evidence has demonstrated, and it will show
18 you that the eye in the sky doesn't lie. That video is
19 going to show you that the defendant is guilty of murder.
20 Thank you for your attention.

21 THE COURT: All right. Thank you.

22 Defense ready for opening?

23 MR. FOX: Yes, sir. May it please the Court?

24 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

25 MR. FOX: Good morning, ladies and gentlemen.

1 Demand evidence and think critically. That's what
2 I'm going to, frankly, demand of you this week. You were
3 sworn just a few moments ago the sacred oath to fairly and
4 truly try this case, and that's vastly important. It's so
5 important. You have no friends to reward or enemies to
6 punish. You're here because you don't know anything about
7 this case because you're neutral. All right? And we
8 believe and we know that 12 heads are better than one, and
9 12 people selected at random from the community are far
10 better than allowing law enforcement or the State or
11 myself to determine what the outcome of this case should
12 be. And I'm going to hold you to that oath because it's
13 critical to Mr. Legette.

14 Part of that oath is that he sits before you -- he
15 comes before you today an innocent man. The Court will
16 tell you and already told you he is presumed -- which
17 means you have to take him as an innocent man unless and
18 until the State can satisfy you beyond a reasonable doubt,
19 the highest burden of proof in the law, civil or criminal,
20 that he is, in fact, guilty of murder and guilty of
21 possessing a weapon during a violent crime.

22 The eye in the sky doesn't lie, perhaps, but it also
23 doesn't provide context, it doesn't provide sound for you,
24 and it doesn't show you anything inside that apartment.
25 You will see this is a surveillance system at this

1 apartment complex that basically keeps track of the
2 apartments, the parking lot, and the areas outside. So it
3 is what it is. It will speak for itself. You can see it.
4 I'm asking you not to prejudge anything. You haven't
5 heard any evidence yet. I don't know exactly what the
6 State is going -- I know what they're going to try to
7 prove. I have a general idea. We have a discovery
8 process. They must provide me evidence, witness
9 statements, so forth, and videos that they intend to use,
10 but they don't have to tell me how they're going to do it.
11 They don't have to tell me if they're going to use this
12 piece or that piece.

13 We have got a list of 62 possible witnesses. They
14 don't have to call every one of those; it's their
15 decision. I feel very confident in telling you they're
16 not going to call 62 witnesses.

17 So I'm not going to spend time talking about
18 specific evidence right now, because I don't know exactly
19 how they're going to present it, and I don't want to waste
20 time talking about something that may not actually be in
21 evidence or that comes through in a different way than I
22 anticipate.

23 So I simply want to say don't forget your sacred
24 oath. Don't forget the burden of proof. The judge will
25 instruct you on that at the end of the case.

1 Beyond a reasonable doubt, a doubt that leaves you
2 not hesitating to act. In other words, if you hesitate to
3 act in this case to vote guilty, that is a doubt. If you
4 hesitate, that is a reason.

5 So I will talk to you at the end of the case, and
6 we'll discuss the specifics, and I thank you for your
7 time.

8 THE COURT: Thank you, Mr. Fox.

9 State ready to call your first witness?

10 MR. OSKIN: Thank you, Your Honor.

11 The State would first call Mr. Daniel Wright.

12 THE COURT: Okay.

13 THE CLERK: Please raise your right hand and place
14 your left hand on the Bible.

15 DANIEL WRIGHT,

16 after having been duly sworn, was examined and
17 testified to as follows:

18 THE CLERK: State your name and spell it.

19 THE WITNESS: My name is Daniel Wright.

20 D-a-n-i-e-l. Wright, W-r-i-g-h-t.

21 DIRECT EXAMINATION

22 BY MR. OSKIN:

23 Q All right, Mr. Wright. How are you, sir?

24 A Good. How are you, sir?

25 Q I'm doing fine.

1 Where do you work, Mr. Wright?

2 **A** I am working at 911 communications for Horry County.

3 **Q** And how long have you worked with them?

4 **A** I have been there six and a half years.

5 **Q** What are some of your job responsibilities?

6 **A** I'm the quality assurance specialist, so I review
7 calls based on our protocol set, see how the communicators
8 handle those calls and give them suggestions on how they
9 do better. And that makes me the records custodian of all
10 the 911 calls and records.

11 **Q** Okay. Will you please explain to this jury the
12 procedure of 911 I guess starting with calls and how that
13 information may be recorded.

14 **A** Okay. As someone who needs help, they'll dial 911.
15 We take that call. It immediately comes into our center.
16 Recording starts at that time. As well as we use a
17 computer-aided dispatch. Get the normal basic things out
18 of the way first, like name, phone number, just make sure
19 that we can call them back if we lose the connection. We
20 get their name, what location they are, so we have all
21 that information. And then we ask them a series of
22 questions so we can figure out what's going on so we can
23 get them the help that they need and get the right
24 response to them, in a nutshell. There's a lot more to
25 that, but that's the closest thing.

1 Q Sure. No, that's great.

2 And these calls and their records, are they kept in
3 the normal course of business?

4 A They are, yes, sir.

5 Q And are these calls kept in such a manner that would
6 protect them from being tampered with?

7 A Yes, sir.

8 Q And how is that done?

9 A They're logged with password protection, and anybody
10 who goes in gets to those. It's all logged as to when you
11 can access them or anything like that. And only certain
12 people have that capability to do so.

13 Q And you're certainly one of those persons?

14 A And I'm one of those people, correct.

15 MR. OSKIN: If may I approach the witness, Your
16 Honor?

17 THE COURT: You sure can.

18 BY MR. OSKIN:

19 Q Mr. Wright, I'm showing you what's been marked as
20 State's Exhibit No. 1. I'll ask if you recognize that.

21 A I do.

22 Q And what is that?

23 A This is the envelope that the CD containing the call
24 that we listened to on that date that I had that
25 initialled and signed.

1 Q That's the call made on August 26, 2020?

2 A My recollection from the information, yes.

3 Q And have you listened to this call yourself?

4 A I have.

5 Q And it's been kept in the usual course of business
6 that you described?

7 A Yes, sir, it is.

8 Q It's not been tampered with, edited, materially
9 altered, deleted?

10 A No, sir.

11 Q So it is the actual reflection of the call made that
12 night?

13 A Yes, sir, it is.

14 MR. OSKIN: Your Honor, at this time, the State
15 would seek to move into evidence State's Exhibit No. 1.

16 THE COURT: What says the defense?

17 MR. FOX: No objection, Your Honor.

18 THE COURT: Without objection, No. 1 is into
19 evidence for the State.

20 (State's Exhibit No. 1 was received into evidence.)

21 MR. OSKIN: And, Your Honor, I would seek to publish
22 it to the jury at this time.

23 THE COURT: Sure.

24 About how long is the call, Solicitor, just for my
25 information?

1 MR. OSKIN: Court's indulgence one moment.

2 I don't believe it's longer than five minutes, Your
3 Honor.

4 THE COURT: Okay. That's fine.

5 (Video plays/State's Exhibit No. 1.)

6 BY MR. OSKIN:

7 Q Mr. Wright, that's all I have for you right now.
8 Please answer questions of Mr. Fox or Mr. Pinkerton.
9 Okay?

10 A Yes, sir.

11 THE COURT: Any cross-examination by the defense?

12 MR. FOX: Not of this witness, Your Honor.

13 THE COURT: You may step down, sir.

14 THE WITNESS: Thank you, sir.

15 MR. OSKIN: Your Honor, I would ask that he be
16 released from his subpoena.

17 THE COURT: You're free to leave the courthouse.

18 THE WITNESS: Thank you, sir.

19 MR. OSKIN: And I'll return this to Madam Court
20 Reporter.

21 Your Honor, we would next call Officer Burton with
22 the Horry County Police.

23 COURT REPORTER: State's 13 marked.

24 (State's Exhibit No. 13, Enlarged Map, was marked
25 for identification.)

1 THE CLERK: Please raise your right hand and place
2 your left hand on the Bible.

3 CORPORAL ISAIAH PERKINS,
4 after having been duly sworn, was examined and
5 testified to as follows:

6 THE CLERK: Please state your name and spell it for
7 the Court.

8 THE WITNESS: Isaiah Perkins. I-s-a-i-a-h. Last
9 name, Perkins. P-e-r-k-i-n-s.

10 DIRECT EXAMINATION

11 BY MR. OSKIN:

12 Q Correct me if I'm wrong, you're a corporal now; is
13 that correct?

14 A Yes, sir.

15 Q All right, Corporal Perkins. Good morning, sir.
16 Thanks for being here.

17 Who you are you currently employed with?

18 A The Horry County Police Department.

19 Q About how long have you been employed with them?

20 A Five years.

21 Q What kind of training have you undergone and been
22 through to work for the Horry County Police?

23 A Per the state, we are required to attend the state
24 academy and pass all of their certifications and then pass
25 our personal training for the department.

1 Q And in your five years -- has your five years all
2 been at Horry County Police?

3 A Yes, sir.

4 Q Okay. What are your responsibilities there?

5 A I am a patrol officer, so I respond to calls for
6 service and paroling the area I'm assigned.

7 Q Is that similar to what your duties were in August
8 2020 without the new leadership responsibility?

9 A Yes, sir.

10 Q And taking you back to August of 2020, were you
11 working on August 26th of that year?

12 A I was.

13 Q All right. And did you respond to Claypond Road in
14 Horry County?

15 A Yes, sir.

16 Q And was that part of your beat or one part of your
17 beat at that time?

18 A Yes, sir. It's the Myrtle Beach section.

19 Q And when I say "beat," I mean your patrol area, for
20 those not in law enforcement?

21 A Yes, sir.

22 Q Why did you respond to that area, sir?

23 A I was dispatched to a vehicle in the ditch with the
24 driver of the vehicle possibly shot.

25 Q And was it still light outside when you responded?

1 A It was not. It was dark out.

2 Q When you arrived -- I guess on the initial scene
3 what did you see?

4 A So when I arrived, I observed the victim's
5 red-in-color Chevy SUV in the ditch with the driver's side
6 pinned to the ditch. Once I walked up to the vehicle, I
7 assisted fire and EMS to remove the victim from the
8 passenger side front door. Once we began to move him --
9 he had a white shirt on -- you could visibly see blood on
10 his shirt, and he was unresponsive.

11 Q Before we go on further, I'm going to...

12 MR. OSKIN: May I approach this witness, Your Honor?

13 THE COURT: Sure.

14 BY MR. OSKIN:

15 Q Are you able to notice this? Are you able to
16 recognize this?

17 A Yes, sir.

18 Q All right. What is this?

19 A It is the Fountain Pointe apartment complex and
20 Claypond Road.

21 Q Is that an accurate reflection of the area that you
22 responded to that night?

23 A Yes, sir.

24 Q And while we're on that topic, what county did this
25 occur in?

1 A Horry County.

2 Q And you said in the Myrtle Beach area?

3 A Yes, sir.

4 Q So not in the city limits?

5 A Yes, out of the city limits.

6 MR. OSKIN: Your Honor, at this time, I would seek
7 to move into evidence State's Exhibit No. 13.

8 THE COURT: 13? What says the defense?

9 MR. FOX: Without objection, Your Honor.

10 THE COURT: Without objection, 13 into evidence for
11 the State.

12 (State's Exhibit No. 13 was received into evidence.)

13 BY MR. OSKIN:

14 Q It's kind of big thing, so I do want the jury to
15 kind of be able to see it at least. Would you point out
16 the Fountain Pointe Apartments?

17 A The Fountain Pointe Apartments are these larger
18 buildings right here.

19 Q I think we'll -- staff can figure this out.

20 MR. OSKIN: Your Honor, if you don't mind, if I
21 could place this on our easel and if I could have Corporal
22 Perkins step down.

23 THE COURT: Sure.

24 Corporal Perkins, just make sure you speak a little
25 louder because you're away from the microphone but you can

1 step down. Sure can.

2 BY MR. OSKIN:

3 Q Thank you. Much easier for all of us now.

4 I'll just have you do it again. Where are the
5 Fountain Pointe Apartments?

6 A The Fountain Pointe Apartments are these larger
7 buildings right here.

8 Q Okay. Are you able to point out Claypond Road from
9 that aerial footage?

10 A Yes, sir. Claypond Road is this yellow road right
11 here.

12 Q So can you turn into the Fountain Pointe or turn out
13 of Claypond Road or onto Claypond Road from those
14 apartments?

15 A Yes, sir.

16 Q About how -- I see the road there, but how far --
17 does that seem to be almost connected to the apartments?

18 A Yes.

19 Q You can enter it off Claypond Road?

20 A Yes.

21 Q I think that's what I meant to say.

22 I'll have you return to your seat, but I will leave
23 this for context for now.

24 MR. OSKIN: If that's all right with Your Honor.

25 THE COURT: Sure, yeah, not a problem.

1 BY MR. OSKIN:

2 Q So you saw the car at Claypond Road. Tell me about
3 that car.

4 A It was a red-in-color Chevy SUV.

5 Q Did you see anything out of the ordinary like bullet
6 holes or anything in the car?

7 A I did not when I first responded.

8 Q Did you see any shell casings in or around the car?

9 A No, sir.

10 Q Did you see any evidence that led you to believe
11 that the shooting had occurred right there on Claypond
12 Road?

13 A At the time, no, sir.

14 Q Okay. About how long did you stay at Claypond Road?

15 A Approximately 20 to 30 minutes.

16 Q Where did you go or did you go anywhere as part of
17 this investigation after responding to that vehicle?

18 A Yes, sir. My supervisor at the time instructed me
19 to drive to Fountain Pointe to attempt to locate the crime
20 scene -- the primary crime scene.

21 Q And you may have said it but you responded there
22 why?

23 A I was just instructed to by my supervisor at the
24 time.

25 Q Okay. So you did go to Fountain Pointe?

1 A Yes, sir.

2 Q And what did you see once you got there?

3 A When we arrived at Fountain Pointe, a witness had
4 stated she saw the victim's vehicle back up, colliding
5 with another vehicle --

6 MR. FOX: Objection to hearsay, Your Honor.

7 THE COURT: Yeah, don't repeat what anybody told you
8 but as a result of the conversation with whomever you did
9 what.

10 BY MR. OSKIN:

11 Q And that's on me. Without telling me what people
12 said, but you can tell me what you learned about the
13 investigation.

14 A Yes, sir.

15 Q To your knowledge, was ever there a call out from
16 the 911 dispatcher to respond to Fountain Pointe? I think
17 you may have answered that.

18 A I'm not sure. I was just instructed to by my
19 supervisor.

20 Q All right. What all did you do on-scene other than
21 what people told you? Did you do anything else at the
22 apartments?

23 A At the apartment complex, I located a piece of the
24 victim's vehicle, which was matched with the officers with
25 the vehicle at the time, confirming that he did come from

1 that area.

2 Q And were you wearing a body-worn camera throughout
3 your time on the scene?

4 A I was.

5 Q Did you find any evidence that the victim had been
6 at Fountain Pointe Apartments?

7 A The piece of the taillight, I located in the parking
8 lot. On the victim's vehicle where he had collided with
9 another vehicle, the piece matched the victim's back
10 taillight of his vehicle, which I found at Fountain
11 Pointe.

12 Q All right. At this time, I'm going to show you --
13 show you what's been marked as State's Exhibit 2. I'll
14 ask if you recognize that. While you're doing that, I
15 will set this down.

16 Were you able to recognize that exhibit, sir?

17 A Yes, sir.

18 Q What is that?

19 A It is my body cam footage of that night.

20 Q Have you watched that direct copy?

21 A I have.

22 Q How do you know that?

23 A I watched it with the solicitor's office and I
24 initialled the envelope.

25 Q And that's an accurate reflection of the body camera

1 you were wearing that night?

2 A Yes, sir.

3 Q It hasn't been altered, edited, or deleted in any
4 way?

5 A No, sir.

6 MR. OSKIN: Your Honor, at this time, the State
7 would seek to move into evidence State's Exhibit No. 2.

8 THE COURT: Okay. What says the defense?

9 MR. FOX: No objection, Your Honor.

10 THE COURT: Without objection, No. 2 into evidence
11 for the State.

12 (State's Exhibit No. 2 was received into evidence.)

13 MR. OSKIN: And, Your Honor, we would seek to
14 publish State's Exhibit No. 2 to the jury.

15 THE COURT: Okay.

16 MR. OSKIN: Court's indulgence while we set that
17 video up.

18 (Pause in the proceedings.)

19 (Video plays/State's No. 2.)

20 BY MR. OSKIN:

21 Q Does that video summarize your response to the car
22 scene on Claypond?

23 A Yes, sir.

24 Q And just to clarify for this jury, after Claypond
25 Road, you went to the Fountain Inn [verbatim] Apartments;

1 is that correct?

2 A Yes, sir.

3 Q And did you state that you found evidence linking
4 that car to being at the Fountain Pointe Apartments?

5 A I did.

6 Q And then, to your knowledge, were investigators sent
7 to the apartments?

8 A Yes. We secured the crime scene to make sure it
9 wasn't tampered with, and CID or detectives responded.

10 Q Are you able to see this from where you are?

11 A Yes, sir.

12 Q Is that how the victim appeared to you on
13 approaching the vehicle?

14 A Yes, sir.

15 Q Did you notice any gun or shell casings or anything
16 in the vehicle at that time?

17 A I did not.

18 Q Please answer any questions Mr. Fox may have for
19 you.

20 THE COURT: Any cross-examination?

21 MR. FOX: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. FOX:

24 Q Officer Perkins, you know where the Chevy Traverse
25 with Mr. Ferguson ended up because that's where you

1 responded, right, in that ditch on Claypond?

2 A Yes.

3 Q Do you know yourself firsthand where it started and
4 how it came to be in that ditch?

5 A I do not.

6 Q Do you know if anyone else, when the -- at some
7 point, obviously, Mr. Ferguson got in his vehicle and
8 drove it. At the beginning of that journey that ended up
9 with him being in the ditch, do you know if anyone else
10 was in the car with him?

11 A I do not.

12 Q Did you -- you said you can't see anything in the
13 car. Did you have any part of searching through or
14 inventory or doing anything with that Chevy Traverse?

15 A No, sir. That was the detectives.

16 Q Okay. So you don't know what was found in that car?

17 A No, sir.

18 Q Okay. So you don't know if there was a gun or not
19 found?

20 A Yes, sir.

21 Q Okay. You do know?

22 A Sorry. No, I do not know.

23 Q Okay. Thank you.

24 A Yes, sir.

25 Q Okay. Just wanted to be clear.

1 Do you know -- so you said you certainly can't know
2 at the beginning of this last trip for Mr. Ferguson in the
3 car if anyone was in it. Do you know if, therefore,
4 anyone exited the car after it ran in the ditch?

5 A I do not know.

6 Q So pretty much that shows -- I mean, you got the
7 call, you drove there, you observed. There was another
8 officer already on the scene; correct? At least one that
9 I saw.

10 A We all arrived at the same time.

11 Q Okay. So you were there just a few moments and then
12 were directed to go over to the apartment complex;
13 correct?

14 A Yes, sir.

15 Q Okay. Thank you.

16 THE COURT: Any redirect, Solicitor?

17 MR. OSKIN: Nothing from the State. We'd ask that
18 Corporal Perkins be released from his subpoena so he can
19 return to his duties.

20 THE COURT: Corporal Perkins, you may step down.
21 You're free to leave the courthouse or welcome to remain
22 with us if you'd like.

23 MR. OSKIN: The State would next call Sandy Lowe.

24 THE CLERK: Please raise your right hand and place
25 your left hand on the Bible.

1 SANDY LOWE,
2 after having been duly sworn, was examined and
3 testified to as follows:

4 THE CLERK: Please state your name and spell it for
5 the Court.

6 THE WITNESS: Sandy Lowe. S-a-n-d-y L-o-w-e.

7 DIRECT EXAMINATION

8 BY MR. OSKIN:

9 Q Good morning. How are you?

10 A Good.

11 Q Where are you currently employed, ma'am?

12 A J. Reuben Long Detention Center.

13 Q I know we touched on this, but how long have you
14 been employed with them?

15 A 32 years.

16 Q And what is your position there?

17 A I am the sergeant over the Classification
18 Department.

19 Q How long have you been in that specific assignment?

20 A Approximately 20 years.

21 Q And does the jail -- based off some of your job
22 duties, are you aware if the jail keeps records of when
23 the inmates are booked in?

24 A Yes.

25 Q And are those records kept in the ordinary course of

1 business?

2 A Yes.

3 Q Is the person's home address documented at the jail?

4 A Yes.

5 Q How is that information kept in the ordinary course
6 of business?

7 A When a person is booked in, they give the
8 information, and then we maintain the records in our
9 office for about four years, and then we send them to
10 Records, and they're maintained for 75.

11 Q And how does the jail -- people in your position,
12 how do you get that information from the people coming in
13 there?

14 A In Booking, the booking clerks or an officer in
15 Booking would ask the inmate, you know, their address and
16 next of kin, phone numbers.

17 Q Okay. And is that information kept in a way that
18 would prevent it from being tampered with or altered --

19 A Yes.

20 Q -- or edited or messed up?

21 A Yes.

22 Q I'm approaching you with what's been marked as
23 State's Exhibit 5. I'll ask if you recognize it.

24 A Yes.

25 Q And what is that, ma'am?

1 A It is a booking sheet on an individual who had been
2 booked in.

3 Q Would that sheet be generated in the way you just
4 told this jury about the process?

5 A Yes.

6 Q Is that sheet an accurate reflection of the booking
7 sheet?

8 A Yes.

9 Q And what individual does it pertain to?

10 A Craig Lee Legette.

11 MR. OSKIN: Your Honor, at this time, the State
12 would seek to move into evidence State's Exhibit 5.

13 THE COURT: What says the defense?

14 MR. FOX: Without objection, Your Honor.

15 THE COURT: Without objection, No. 5 into evidence
16 for the State.

17 (State's Exhibit No. 5 was received into evidence.)

18 BY MR. OSKIN:

19 Q Are you able to determine the address off that sheet
20 for the defendant?

21 A Yes.

22 Q What is that, ma'am?

23 A It is [REDACTED] Fountain Pointe, Myrtle Beach, South
24 Carolina 2957- -- 9, I think. Yeah.

25 Q Showing you what's been entered into evidence as

1 State's No. 13. I'll just hold it up for you. Are you
2 able to recognize that?

3 A Yeah.

4 Q Does that indicate any address or apartment?

5 A Yes.

6 Q Does that seem to line up with the address listed
7 for Mr. Legette?

8 A Yes.

9 Q Okay. That's it for me. Please answer any
10 questions Mr. Fox has for you.

11 THE COURT: Defense, any cross?

12 MR. FOX: Just one or two.

13 CROSS-EXAMINATION

14 BY MR. FOX:

15 Q I think it's obvious, Ms. Lowe, you didn't do any
16 responding? It's not your duty to respond to the scene.
17 You're not a patrol officer; correct?

18 A Right.

19 Q Okay. You're here strictly on the recordkeeping
20 function at the jail?

21 A Yes.

22 Q Okay. Thank you.

23 MR. FOX: No further questions, Your Honor.

24 THE COURT: You can step down, ma'am, and you're
25 free to leave the courthouse or you may remain with us if

1 you'd like.

2 MR. OSKIN: And we do ask that she be able to return
3 to her normal duties, sir.

4 THE COURT: Sure.

5 Next witness?

6 MS. LIVESAY: Your Honor, actually, if we can, we'd
7 like to take a break. Our next witness will be here at
8 1:00.

9 THE COURT: Okay. Don't have anybody else we can
10 call until then?

11 MS. LIVESAY: No, sir. My apologies. We had the
12 next section coming at 1:00, but we will definitely be
13 able to fill up the afternoon until 5:00.

14 THE COURT: All right. Okay.

15 All right, ladies and gentlemen. We're going to go
16 ahead and take a lunch break, and we will -- it's 12:15
17 now. Be back here at 1:30. That will give you about an
18 hour and 15 minutes. Give you enough time to get you a
19 bite to eat. Have a good lunch. Remember all my
20 instructions. Okay? See you back at 1:30.

21 (The jury exited the courtroom at 12:13 p.m.)

22 THE COURT: Everybody have a good lunch. See you
23 back at 1:30.

24 (A lunch recess was taken from 12:13 p.m. to 1:30 p.m.)

25 THE COURT: All right. The State ready?

1 MS. LIVESAY: We're ready, Your Honor.

2 THE COURT: Let's bring the jury out, please.

3 (The jury entered the courtroom at 1:36 p.m.)

4 THE COURT: Let the record reflect, the jury is back
5 in.

6 The State ready to call its next witness?

7 MS. LIVESAY: Thank you, Your Honor. At this time,
8 the State would like to call Ryan Keefe.

9 THE COURT: Okay.

10 MS. LIVESAY: Thank you, Judge.

11 RYAN KEEFE,

12 after having been duly sworn, was examined and
13 testified to as follows:

14 THE CLERK: State your name and spell it for the
15 Court.

16 THE WITNESS: First name is Ryan, R-y-a-n. Last
17 name is Keefe, K-e-e-f as in "Frank"-e.

18 DIRECT EXAMINATION

19 BY MS. LIVESAY:

20 Q Mr. Keefe, if you don't mind, tell these folks where
21 you're currently employed.

22 A Security Vision of Myrtle Beach.

23 Q And how long have you been employed there?

24 A About 17 years.

25 Q And what are your job responsibilities?

1 A I'm a local technician -- security technician.

2 Q Okay. And what does that really entail?

3 A So we install camera systems, burglar alarm systems,
4 gates, anything that would secure a premise.

5 Q Okay. And where do you monitor security cameras at?

6 A We -- pretty much all over the Grand Strand, but we
7 do have security cameras at the Fountain Pointe.

8 Q Okay. And are these security cameras, the footage,
9 is it kept in a way it can't be tampered with?

10 A It is.

11 Q Okay. And how many people have access to the
12 footage?

13 A Our company and the property management company.

14 Q Okay. And are there cameras on most of the
15 buildings at Fountain Pointe?

16 A The majority of them, yes.

17 Q Okay. And if I showed you a map of Fountain Pointe,
18 I'm assuming you, of all people, would recognize it?

19 A I should.

20 Q Okay. How long have you had cameras at Fountain
21 Pointe?

22 A I want to say at least five years.

23 Q Okay. So definitely some time?

24 A Yes.

25 Q Okay. So I'm showing you now State's Evidence

1 No. 13. And you can stand up if it makes it easier. So
2 do you recognize this area?

3 A I do.

4 Q Okay. And does this include Fountain Pointe?

5 A It does.

6 Q And does this include the buildings that you have
7 cameras on?

8 A They do, yes.

9 Q And let me ask you something: It's already been in
10 evidence that the defendant lives at ■■■ Fountain Pointe.
11 Can you point that building out to the jury?

12 A This is Building ■■■ here.

13 Q So ■■■ is right here?

14 A Yes.

15 Q Okay. Hold on. Let's see if we have got a tack or
16 something because I won't remember that in five minutes.

17 Okay. So you're saying this building?

18 A No. This building here is ■■■.

19 Q Perfect. Can you mark that for me? Just put "■■■"
20 on the top if you don't mind.

21 A (Witness complies.)

22 Q Okay. Thank you.

23 And this building here, is that marked correctly
24 that that's 111?

25 A It is.

1 Q Okay. And this is Claypond?

2 A Yes.

3 Q Now, do you remember any kind of car being in the
4 ditch on Claypond?

5 A I do.

6 Q Okay. And how far is that from these buildings?

7 A Less than a mile going, I guess, east.

8 Q Okay. So going straight down here?

9 A Straight down here. Actually ended up in front of
10 our building that I work at.

11 Q So your building where you keep all the security
12 footage is right down the road from Fountain Pointe?

13 A It is.

14 Q Okay. Perfect.

15 Now, let me ask you something, so you remember that
16 car being in the ditch; correct?

17 A Yes, I do, yes.

18 Q Okay. And there was testimony earlier that the
19 victim's car had wrecked or something had happened at
20 Fountain Pointe. Did you ever check the surveillance
21 footage to see if anything had happened at Fountain Pointe
22 that night before?

23 A We did. Well, we were called in -- trying to think
24 the next day -- I believe to pull video with the
25 detectives or the IT team, yeah.

1 Q Okay. And so the police called you and said, "Hey,
2 you got any video footage out there?"

3 A Correct.

4 Q And did you have video footage?

5 A We did.

6 Q Okay. And did you look at the video footage to
7 show [verbatim] whether or not it shows any kind of
8 shooting that happened at Fountain Pointe?

9 A I did.

10 Q And tell these jurors, did it show the shooting that
11 took place at Fountain Pointe?

12 A It did. We have multiple systems throughout those
13 buildings. Again, not a camera on every single building
14 but it canvasses the majority of the neighborhood. Each
15 unit has its own recorder, so we went from building to
16 building to check for this incident, and we found multiple
17 buildings had, you know, credible information that we
18 needed to record.

19 Q Okay. And so it did capture the shooting?

20 A It did.

21 Q And you saw the shooting on the video?

22 A I did.

23 Q And did you give that to police?

24 A I did.

25 Q Okay. This is State's Exhibit No. 3. Do you

1 recognize it?

2 A I do.

3 Q And does it have your initials?

4 A It does.

5 Q And does this show video footage from Fountain
6 Pointe?

7 A Yes.

8 Q And does it include Building 111?

9 A Yes.

10 Q And does it include Building [REDACTED]?

11 A Yes.

12 Q Okay. So it's showing who is coming and what's
13 going around with those two buildings?

14 A Correct.

15 Q And does it show the shooting in front of 111?

16 A Yes.

17 Q Okay. And has it been altered in any form or
18 fashion?

19 A Not that I'm aware of, no, ma'am.

20 MS. LIVESAY: Your Honor, at this time, the State
21 wishes to place State's Exhibit No. 3 into evidence and
22 publish it to the jury.

23 THE COURT: And what says the defense?

24 MR. FOX: There's no objection, Your Honor.

25 THE COURT: No objection? All right. No. 3 into

1 evidence for the State.

2 MS. LIVESAY: Thank you, Your Honor.

3 (State's Exhibit No. 3 was received into evidence.)

4 BY MS. LIVESAY:

5 Q Mr. Keefe, do you mind stepping down?

6 THE COURT: You can step down. Just be sure to
7 speak a little louder because you're away from the
8 microphone.

9 THE WITNESS: Will do.

10 BY MS. LIVESAY:

11 Q This is the microphone here.

12 A Okay.

13 Q So tell these folks, what building are we looking at
14 now?

15 A We are looking at Building 110 here, I believe. No,
16 I'm sorry, this is Building 111. We're looking from 110.

17 Q Hold on now.

18 A I believe this is -- we're on 110, looking at
19 Building 111. Or, I'm sorry; this is ■■■ here. I'm
20 sorry. ■■■.

21 Q Stop to make sure we have got this straight. So
22 what are we looking at now?

23 A I believe it's ■■■.

24 Q Okay. And can you see down here?

25 A Yeah. We're on Building 119 looking across. Sorry,

1 yeah.

2 MS. LIVESAY: Can you start it over, Lacey? I
3 apologize. We were talking, and I want to make sure we...

4 BY MS. LIVESAY:

5 Q And, again, we're looking at Building [REDACTED]?

6 A This is [REDACTED], yes.

7 Q And [REDACTED] is written down here in the parking spot?

8 A That's correct, yes.

9 THE COURT: Mr. Keefe, if you could stand to the
10 side maybe. I want to make sure that the jury can see.
11 Either way, just to make sure they can all see.

12 (Video plays.)

13 MS. LIVESAY: Can you stop it right there, Lacey?

14 BY MS. LIVESAY:

15 Q And what building is this man coming into?

16 A He's coming into 111.

17 Q Okay. And so this is straight down from Building
18 111?

19 A It is.

20 Q Okay.

21 (Video continues to play.)

22 Q Now where are we looking? Are we looking now at
23 Building 111?

24 A Yeah. We're on Building 110. The camera is looking
25 across.

1 Q So now this car is the car that just pulled in at
2 111?

3 A Correct.

4 (Video continues to play.)

5 Q Now, again, those two folks walk into 111?

6 A Yes.

7 (Video continues to play.)

8 MS. LIVESAY: Pause it, please.

9 BY MS. LIVESAY:

10 Q So what are we looking at now?

11 A I believe we're on Building 114, and we're looking
12 across to Building 111 over here on the side building.

13 Q So is this the same building that we just saw the
14 shooting in front of?

15 A It is.

16 Q And this is just showing now this angle that shows
17 the back of the building?

18 A Correct.

19 Q Okay.

20 (Video continues to play.)

21 MS. LIVESAY: Can you stop it, Lacey.

22 BY MS. LIVESAY:

23 Q Are we still looking at 111?

24 A We're back on Building 110, looking at 111, yes.

25 Q Okay. And is this the same building that we saw the

1 shooting occur in front of?

2 A Yes.

3 Q And is this the same white car that drove up
4 earlier?

5 A It is.

6 Q So this is all during this same time frame?

7 A Correct.

8 (Video continues to play.)

9 Q Still looking at 111?

10 A We are, yes. 110 to 111.

11 (Video continues to play.)

12 Q Do you recognize that vehicle?

13 A I do.

14 Q Is that -- how do you recognize it?

15 A That's a patrolman, Horry County police officer. I
16 believe he was first on the scene.

17 Q And the white car had already been moved by the time
18 he showed up?

19 A Yes.

20 Q And did you see anybody waiting out there for him?

21 A No.

22 Q Okay. How often do you watch these cameras? Do you
23 monitor them every day?

24 A As needed, if there's issues, but no, we don't look
25 at them every day.

1 Q Okay. How often do you have to look at them for
2 issues or....

3 A Just for Fountain Pointe?

4 Q For -- at any --

5 A Oh, every day. Every day.

6 Q Every day you're watching video surveillance?

7 A Correct, yes.

8 Q Okay. For different things, to capture whatever is
9 going on or if it's needed at that moment?

10 A That's correct.

11 Q Okay. I want you to tell me something --

12 MS. LIVESAY: Can you fast forward it to right
13 before the shooting?

14 (Video continues to play.)

15 BY MS. LIVESAY:

16 Q Let me ask you something.

17 MS. LIVESAY: Go back, Lacey, if you don't mind.

18 BY MS. LIVESAY:

19 Q Have you seen this footage before today?

20 A Yes.

21 Q And this is the footage you gave to the police?

22 A It is.

23 Q And when it shows the back screen, is it showing the
24 back screen of this apartment here that the shooter went
25 back into?

1 A It is.

2 Q And can you see anybody leaving out of the screen?

3 A Yes. So at about 9:44 and -- I don't know -- maybe
4 roughly about 30 seconds, you see that screen door open
5 and an individual leave around back.

6 Q And that's going to be from the apartment that the
7 shooter walked back into?

8 A Correct.

9 Q So it's the same apartment, just the back screen?

10 A That's correct.

11 Q Now, do you have any cameras in the back to catch
12 where that person went?

13 A I do not.

14 MS. LIVESAY: Play it one more time, Lacey, please.

15 (Video continues to play.)

16 BY MS. LIVESAY:

17 Q Is this time the most correct, that this is all
18 along between 9:00 and 10:00?

19 A Yes.

20 Q So this is happening shortly after the shooter
21 leaves out of the back of the apartment?

22 A Yes.

23 Q These people are coming to get in the car?

24 A That's right.

25 Q Okay. And you watched most of the footage. Did you

1 ever see the shooter come back out the front?

2 A No.

3 Q And there's no cameras in the back?

4 A Correct.

5 Q If you don't mind, have a seat, Mr. Keefe. Thank
6 you.

7 Now, did you give the police all the footage that we
8 just watched?

9 A I did.

10 Q Okay. And did you alter it in any form or fashion
11 before you gave it to them?

12 A I did not.

13 Q Okay. And the part that showed the shooting, did
14 you see that before you gave it to them?

15 A Yes.

16 Q And how this jury just saw it is identical to how
17 you pulled it off the machine and gave it to them?

18 A It is.

19 MS. LIVESAY: Okay. No further questions.

20 THE COURT: Any cross-examination?

21 MR. FOX: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. FOX:

24 Q Mr. Keefe, who -- how many hours of footage did you
25 pull; do you remember?

1 A I don't recall the exact amount of hours. I mean,
2 it was the majority of the day, though, I would say.

3 Q So what we actually have is not what you pulled.
4 It's an edited version of what you pulled; correct? In
5 other words, you looked at many hours, you say, throughout
6 the day, and so this was a select few minutes from a
7 couple of buildings; correct?

8 A Yes.

9 Q Okay. Who made the decision where and when to cut
10 the different videos?

11 A I believe law enforcement.

12 Q Okay. So law enforcement. Did they look at it too?
13 Were they there when you were reviewing it initially or
14 did they look at it themselves?

15 A They were not.

16 Q Okay. Were you with them when they reviewed the
17 surveillance footage?

18 A No.

19 Q Okay. But at some point -- but you are aware that
20 they were provided with the opportunity -- I guess they
21 came to your facility or building to review those?

22 A Yeah. I believe I broke it down for them and gave
23 them what I thought was credible evidence to the
24 situation, and we looked at it together at my office.

25 Q So what you thought was credible. But you weren't

1 party to or part of law enforcement's investigation --
2 correct? -- other than --

3 A Well, other than being asked to pull the incident
4 within the time they wanted.

5 Q Sure. Because you're not law enforcement.

6 A Correct.

7 Q Okay. So it's their determination of what's
8 relevant, what should be explored, how much to explore,
9 what path to follow -- correct? -- because that's what
10 they do?

11 A Sure.

12 Q Now, isn't it also true that -- I have got at least
13 cameras from six different buildings; does that sound
14 right?

15 A You have cameras from six different buildings?

16 Q I have got surveillance footage from 106, 110, 111,
17 114, 119, and [REDACTED].

18 A Okay.

19 Q Okay. Does that sound right?

20 A Sure, yes, it does.

21 Q Those cameras are not synced with each other, are
22 they?

23 A No. Each unit has an individual recorder. So, no,
24 they're not synced with each other.

25 Q Okay. And then the individual cameras aren't

1 necessarily keeping Greenwich Standard Time, are they?
2 They can be off, some of them substantially?

3 A Well, after looking at the video, everything is
4 within a few minutes of each other. Nothing is online on
5 the internet, so there's nothing keeping that exact time.
6 So there is a little bit difference throughout each
7 recorder's time by a few minutes.

8 One recorder that was thought to be off
9 substantially was actually in military time. So it was
10 24-hour format as opposed to 12-hour format. So
11 everything was actually within a couple of minutes of each
12 other.

13 Q Well, one of them is about 12 hours out of sync, not
14 the military time one. Building 110 was about 12 hours
15 out of sync, was it not?

16 A Well, that would be because the other ones were in
17 24-hour format. So if something is showing at 2100 hours
18 and it's showing at 9:00, then it's actually the same
19 time.

20 Q Okay. Well, then what about Building 119 that says
21 plus 24 hours?

22 A I think that was not me doing that math. That was
23 somebody else. And then I told them that it's actually in
24 24 hours as opposed to a 12-hour format. So, again,
25 everything is in within a couple of minutes of each other.

1 MR. FOX: Thank you. No further questions.

2 THE COURT: Any redirect?

3 MS. LIVESAY: Yes, sir, just very briefly.

4 REDIRECT EXAMINATION

5 BY MS. LIVESAY:

6 Q Mr. Keefe, Mr. Fox asked you if -- who had edited
7 the videos. Do you remember that?

8 A Yes.

9 Q Okay. Are these -- I want you to tell these 12
10 jurors, you were the one that pulled it right off the
11 machine; correct?

12 A Correct.

13 Q Is the video slowed down, sped up, blown up,
14 minimized, edited in any form or fashion?

15 A It is not.

16 Q So just what these people saw is just what you
17 pulled off the machine?

18 A It is.

19 Q Okay. Now, it's not 24 hours of tape, is it?

20 A No.

21 Q It's not every building, is it?

22 A No.

23 Q Okay. Does it include the shooting?

24 A It does.

25 Q Okay. And when you pulled it off the machine -- the

1 shooting that you saw when you pulled it off the machine,
2 is that the same thing these people just saw?

3 A It is.

4 Q Okay. So nothing was edited?

5 A Altered? No.

6 Q Okay. Okay. And the parts that we have seen are
7 just the parts that you thought was relevant; correct?

8 A Yes.

9 Q And you pointed that out to the police; correct?

10 A I did.

11 Q And it showed Building [REDACTED] where the defendant
12 lived; right?

13 A Yes.

14 Q And we saw him coming in and coming out of the
15 building; do you remember that?

16 A Yes.

17 Q And it showed 111 where the shooting happened;
18 correct?

19 A Yes.

20 Q And we saw a guy that looked just like that coming
21 in and out, didn't we?

22 A Yes.

23 Q Okay. And you thought that was relevant?

24 A Yes.

25 Q And that's exactly what you gave us; correct?

1 A It is.

2 Q Okay. Now, then we see a guy right after the
3 shooting go out the back door; right?

4 A Yes.

5 Q Do we have any cameras back there?

6 A We do not.

7 Q If we had them, would you have given them to us?

8 A I would have.

9 Q Okay. Now, he asked you some questions about the
10 time.

11 A Yes.

12 Q Is there anything about the time that means that
13 shooting did not occur at Fountain Pointe?

14 A No, ma'am.

15 Q Anything about the time change the fact that the
16 victim was running away?

17 A No.

18 Q Now, tell these folks here, are those clips in
19 sequential order? Are they in the correct order?

20 A They are.

21 Q And are they all from the same night?

22 A Yes.

23 Q And are they all from the same time frame?

24 A Yes.

25 Q And when you see the guy coming in and out of [REDACTED],

1 he's wearing the same shirt -- right? --

2 MR. FOX: Objection, Your Honor.

3 BY MS. LIVESAY:

4 Q -- that he was wearing at Building 111?

5 MR. FOX: Wait, wait. Objection.

6 THE COURT: And the nature of your objection?

7 MR. FOX: The video will speak for itself. His
8 interpretation is not -- he's not able to give an opinion.

9 THE COURT: Rephrase the question, Solicitor.

10 MR. FOX: Thank you.

11 MS. LIVESAY: Okay. I understand.

12 THE COURT: Yeah, rephrase it.

13 BY MS. LIVESAY:

14 Q So he asked about the editing. The shirt that you
15 saw the guy coming in and out of [REDACTED]; do you remember
16 that?

17 A I do.

18 Q Okay. Well, did we edit the tape and put that same
19 shirt on the guy at Building 111?

20 A No, ma'am.

21 Q Okay. So all that was right what you pulled off the
22 machine?

23 A Yes.

24 MS. LIVESAY: No further questions, Your Honor.

25 THE COURT: Any recross?

1 MR. FOX: Just one.

2 RECROSS-EXAMINATION

3 BY MR. FOX:

4 Q I want to clarify. You said, again I think just
5 now, that you decided what was relevant -- right? -- and
6 provided that to law enforcement?

7 A Yes.

8 MR. FOX: Okay. Thank you. That's all.

9 THE COURT: You can step down, sir.

10 THE WITNESS: Yes, sir.

11 THE COURT: You're free to leave the courthouse.
12 You're more than welcome to remain with us if you'd like.

13 All right. Next witness?

14 MS. LIVESAY: Thank you, Judge. At this time, the
15 State calls Officer Brian Scales.

16 OFFICER BRIAN SCALES,

17 after having been duly sworn, was examined and
18 testified to as follows:

19 THE CLERK: State your name and spell it for the
20 Court.

21 THE WITNESS: My name is Brian Scales. It's
22 B-r-i-a-n S-c-a-l-e-s.

23 DIRECT EXAMINATION

24 BY MS. LIVESAY:

25 Q Okay. Mr. Scales, I know you got your uniform on,

1 but where are you employed?

2 A I work for the Horry County Police Department.

3 Q Okay. How long have you been at the police
4 department?

5 A Approximately 13 -- 12 years now.

6 Q Okay. And tell us about your training. What kind
7 of training have you undergone to be a policeman and as a
8 policeman?

9 A Well, initially, we go to the South Carolina
10 Criminal Justice Academy which, at that time, was a
11 nine-week training course. Since then, we do routine
12 annual training one week a year. We're required to go
13 through in-service training. I have also elected to go
14 through numerous training classes: homicide investigation,
15 sexual assault investigation, basic detective school.
16 I've been through child of victim crimes training,
17 interrogation and interview tactics training, and a few
18 others I can't seem to remember at this time.

19 Q Okay. And you get training every year?

20 A Yes.

21 Q Okay. And what are your responsibilities now?

22 A Right now, I'm a patrol sergeant. I'm in charge of
23 supervising a patrol shift.

24 Q Okay. And tell these folks what a patrolman does.

25 A The average patrolman responds to calls for service.

1 They're the ones you see on the street driving the marked
2 patrol cars. They pull people over, investigate crimes,
3 things of that nature.

4 Q So, as a patrolman, do you come in contact with
5 members of the community?

6 A Every day.

7 Q Business owners?

8 A That's correct.

9 Q Ryan Keefe, the guy we just saw?

10 A Yes, ma'am.

11 Q All kinds of people.

12 A That's correct.

13 Q People not in trouble; right?

14 A That's correct.

15 Q Just kind of everybody.

16 A Mm-hmm.

17 Q And have you always -- I guess you've always
18 patrolled Horry County; correct?

19 A That's correct.

20 Q And is Fountain Pointe, what we're talking about
21 today, is that in Horry County?

22 A Yes, it is.

23 Q So would that be included in your section of patrol?

24 A It is.

25 Q And do you know people out at Fountain Pointe?

1 A I do.

2 Q Just from being out and about in the community?

3 A Yes, ma'am.

4 Q And did you have an occasion to assist on the case
5 that we're here today, that shooting that happened in
6 front of 111 in August of 2020?

7 A Yes, ma'am, I did.

8 Q Okay. And what did you do to assist?

9 A At that time, I was assigned to the Homicide
10 Investigative Unit, and the day after the shooting
11 occurred, we had a meeting in which we discussed things
12 that needed to be done, things that we could do to further
13 the investigation.

14 I was familiar with Fountain Pointe. I was familiar
15 with the camera system that they had, and I was -- I had a
16 contact for a person to access those cameras. So I
17 volunteered to go to the apartments and look for the video
18 systems to see if we had any video of the shooting.

19 Q Okay. And you knew they had video just from being a
20 patrolman, kind of working the area?

21 A That's correct.

22 Q Okay. And when you went to try to get video, what
23 happened?

24 A When I went there, I was provided access to the
25 camera system they have on the buildings. It's not

1 something you can record off of but it's something you can
2 go into and you can actually watch the video. So I went
3 out to the various buildings and watched video clips from
4 the night prior about the time of the shooting just to try
5 to ascertain what video they did have.

6 Q And, ultimately, did you figure out whether or not
7 the shooting was captured on video?

8 A I did.

9 Q And was it captured?

10 A It was.

11 Q Okay. And to assist, did you get a copy of it?

12 A Not right then. So the way the system was set up as
13 I understood it, we were able to view the video at the
14 apartments but we had to put in a request for the security
15 company where they were able to download it offsite. And
16 so I put the request in and we retrieved the video at a
17 later time.

18 Q Okay. And, ultimately, was it downloaded and given
19 to the police?

20 A Yes, it was.

21 Q And did it include the part of the shooting?

22 A Yes.

23 Q Okay. And it included some other buildings as well;
24 correct?

25 A Yes.

1 Q And I'm going to show you now State's Evidence
2 No. 3. Do you recognize what I'm showing you now?

3 A Yes, I do.

4 Q And have you watched that video footage?

5 A Yes, I have.

6 Q And does it include the video footage that you
7 collected from Mr. Keefe at Fountain Pointe?

8 A Yes.

9 Q And did you watch the shooting -- the actual
10 shooting occur at Ryan's office or at the building --

11 A At the building, yes.

12 Q Okay. So you watched it right then and said, "Hey,
13 I need a copy of that"?

14 A Yes.

15 Q And have you watched that on this thumb drive?

16 A Yes, I have.

17 Q And does it include exactly what you watched at
18 Fountain Pointe?

19 A Yes, it does.

20 Q And it had been edited, slowed down, anything, in
21 any form or fashion?

22 A No.

23 Q And this encompasses exactly what you watched right
24 up there at the building?

25 A Yes, that's correct.

1 MS. LIVESAY: Lacey, can you put this in for me?

2 BY MS. LIVESAY:

3 Q Now, you are familiar with Fountain Pointe; correct?

4 A Yes, ma'am.

5 Q That's how you knew to go get the other footage; is
6 that correct?

7 A That's correct, yes.

8 Q And do you know people that live out at Fountain
9 Pointe, from being out there?

10 A Yes.

11 Q And how long, again, have you been with Horry
12 County?

13 A Since 2011, so that's about 13 years now.

14 Q So, by 2020, you kind of knew the ropes of your
15 sector in that area?

16 A Yes.

17 Q Okay. And you had a good enough relationship with
18 these folks to go and get the camera footage and all that?

19 A Yes, ma'am.

20 (Video plays/State's 3.)

21 BY MS. LIVESAY:

22 Q Okay. Now, I want you to watch this, and you tell
23 me if it is what you got and if this has been edited or
24 not.

25 A Yes, ma'am.

1 THE COURT: Do you need to get closer to it,
2 Officer?

3 THE WITNESS: I can see it from here.

4 THE COURT: Okay.

5 (Video continues to play.)

6 (Medical situation in the gallery.)

7 THE COURT: Stop the video, Solicitor, for just a
8 minute.

9 THE DEPUTY: Take a break, Judge.

10 THE COURT: Do we need to call EMS?

11 Ladies and gentlemen, how about go back to the jury
12 room for just a minute, please.

13 (The jury exited the courtroom at 2:32 p.m.)

14 (A recess was taken from 2:32 p.m. to 2:59 p.m.)

15 THE COURT: All right. We are back on the record.

16 Mr. Fox, I think you have a matter you want to put
17 on the record.

18 MR. FOX: I do need to, Your Honor. For the record,
19 the reason that Your Honor broke a few moments ago was
20 that, during the solicitor's examination of Officer
21 Scales, she was playing videos from the Fountain Pointe
22 apartment complex and the shooting, including portions
23 that showed the shooting of Mr. Kentrell Ferguson, and at
24 some point, a woman in the audience, who was directly
25 behind the solicitor's table, two or three rows back -- I

1 believe to be Mr. Ferguson's mother -- I'm not positive --
2 but a family member of the victim --

3 THE COURT: That's what I have been told.

4 MR. FOX: Yes. And I'm just going to use the
5 colloquial phrase "fell out," fainted. I'm not sure if
6 she lost consciousness, but you could see behind me that,
7 you know, she was starting -- that some family member was
8 going to take her out. Before she could be led out, she
9 fell over, kind of collapsed. Again, I don't know if she
10 lost consciousness and there was a bit of a stir. And
11 that was in the presence of the jury; I don't know how
12 many jurors were paying attention or watching initially.

13 But I'm afraid, at this point, that what we have got
14 is someone that's clearly sitting on the victim's side of
15 the courtroom -- whether they know that she's
16 Mr. Ferguson's mother or not, someone associated with the
17 family, reacting emotionally -- understandably, but
18 reacting emotionally. I'm afraid we may be -- and sort of
19 given kind of victim impact evidence during the trial
20 phase, not because she deliberately did that but just
21 because here's she's had this very emotional reaction
22 during the video showing the shooting of her son, and I'm
23 afraid we're at great risk at this point of having a
24 verdict from the jury based, in no small part, on emotion
25 and passion rather than the evidence presented, and I

1 think it's incumbent on me to request a mistrial at this
2 point.

3 THE COURT: Okay. Do you want to put anything on
4 the record, Solicitor?

5 MR. OSKIN: Just very briefly, Your Honor. Pursuant
6 to State v. Tisdale, the granting of a mistrial is an
7 extreme measure and only to be taken when the incident is
8 so egregious that prejudice couldn't be avoided any other
9 way and shouldn't be granted unless absolutely necessary.

10 I don't think we have that here, Your Honor. Your
11 Honor noticed -- Your Honor stopped the proceeding as soon
12 as the incident occurred. She has been removed from the
13 courtroom. She's not coming back today. We can take
14 remedies to cure any other viewing from the gallery. I
15 don't think it's a manifest necessity at this point.

16 THE COURT: Yeah. I mean, it's -- we have to assume
17 that the jury, number one, knows that the lady is the
18 victim's mom; two, that the reason why she appeared as she
19 did was due to emotion from watching the video as opposed
20 to some sort of virus, bug, whatever. And I didn't even
21 know who she was until somebody told me that. So I don't
22 think it rises to the level of justifying a mistrial, so I
23 will deny, respectfully, your motion, Mr. Fox.

24 MR. FOX: Yes, sir.

25 THE COURT: All right. Let's bring the jury -- I

1 don't know exactly where -- do you know where you kind of
2 were?

3 MS. LIVESAY: Yes, sir.

4 THE COURT: All right. Let's bring the jury out,
5 please.

6 (The jury entered the courtroom at 3:03 p.m.)

7 THE COURT: Let the record reflect the jury is back
8 in.

9 Solicitor, you may proceed.

10 MS. LIVESAY: Thank you, Judge.

11 BY MS. LIVESAY:

12 Q Now, you have watched this video right here with
13 everybody else; correct?

14 A Yes, ma'am.

15 Q And that's the video you collected from Fountain
16 Pointe?

17 A That's correct.

18 Q And has it been edited in any way?

19 A No, ma'am.

20 Q And are these the relevant clips showing Building
21 [REDACTED] and 111?

22 A Yes, it is.

23 Q Now, after you collected the video footage, did
24 y'all take it back and watch it?

25 A Many times.

1 Q Okay. And after you watched it many times, did it
2 yield any information that assisted the investigation?

3 A It did.

4 Q What did it yield?

5 A We were able to identify Mr. Legette.

6 Q I'm sorry?

7 A We were able to identify Mr. Legette as the shooter.

8 Q And did you know Mr. Legette before this incident?

9 A Yes, I did.

10 Q Okay. And you knew Ryan Keefe and the rest of that
11 crowd at Fountain Pointe?

12 A Yes.

13 Q And were you able to recognize him on the video?

14 A Yes, I did.

15 Q And are you able to recognize him today in the
16 courtroom?

17 A Yes, ma'am.

18 Q And can you point him out to the jury.

19 A That's Mr. Legette right there in the black shirt.

20 THE COURT: Let the record reflect that the witness
21 has identified the defendant, Mr. Legette.

22 MS. LIVESAY: Thank you, Your Honor.

23 BY MS. LIVESAY:

24 Q And is that the same guy that you saw in the video?

25 A Yes, ma'am.

1 Q And is that the shooter?

2 A It is.

3 Q Okay.

4 MS. LIVESAY: No further questions, Your Honor.

5 THE COURT: Any cross-examination from the defense?

6 MR. FOX: Yes, sir.

7 THE COURT: Okay.

8 CROSS-EXAMINATION

9 BY MR. FOX:

10 Q Watching that portion of the video that the
11 solicitor just played again that show what appears to be
12 someone shooting at Mr. Ferguson and he's running through
13 the parking lot, doesn't that appear to be slowed down a
14 little bit? Seems to be kind of slow motion.

15 A I don't -- I don't know -- it appeared to me as if
16 it was just not high-speed footage, where the camera just
17 can't catch up to the fast movement.

18 Q I gotcha. Almost like an old-fashioned movie where
19 you see it almost skip every other frame and so they're
20 kind of jerky? Kind of that sort of thing?

21 A Kind of. In my experience, I have noticed that
22 surveillance video requires a lot of data storage, so they
23 typically don't use high speed or high definition video.

24 Q I gotcha. And that's part of the reason you see in
25 different places little skips and jumps and things in the

1 stream of the video that's playing; correct?

2 A That's correct.

3 Q Now, you, as part of your duties in this case,
4 served a search warrant on the Chevy Traverse that Mr.
5 Ferguson was found in; correct?

6 A I don't believe I was personally involved.

7 Q Well, let me show you. Didn't you go get the search
8 warrant do the affidavit to get the search warrant?

9 A I believe I obtained the search warrant, but I don't
10 believe I was involved in the actual execution.

11 Q But then you would have been -- are you familiar
12 then -- so you obtained it so you knew to look for things
13 including description of property sought, any and all
14 evidence of firearms. Do you recall that?

15 A That's boilerplate language we typically -- involved
16 in a shooting, that's one of the things we look for.

17 Q And are you aware that, in fact, a Springfield
18 Armory .40 caliber semiautomatic was recovered from the
19 Chevy Traverse?

20 A I don't recall what was or was not recovered from
21 that vehicle.

22 Q All right. You know people out at Fountain Pointe
23 just from being around?

24 A Yes, sir.

25 Q Okay. You can tell in that video that there are

1 several people seen going in and out of the apartment;
2 correct?

3 A That's correct, yes.

4 Q Who were those people? Do you know those people?

5 A I wasn't able to identify any of those people, no.

6 Q But there's at least what appears to be a female ---

7 A Yes.

8 Q --- go in.

9 Two males?

10 A Yes.

11 Q Okay. One leaves some few minutes before ---

12 A Yes.

13 Q --- the incident.

14 And it looks like that same female is also out just
15 before.

16 A That's correct.

17 Q Do you have any idea who was already in that
18 apartment?

19 A No. I have no way of knowing that.

20 Q And the very short clip showing the back door,
21 impossible to identify -- you can see the door open
22 slightly but impossible to identify who is walking out of
23 that door, isn't it?

24 A That's correct.

25 Q Thank you. No further questions.

1 THE COURT: Any redirect, Solicitor?

2 MS. LIVESAY: Yes, sir, just a couple real quick,
3 Judge.

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY MS. LIVESAY:

7 Q Officer Scales, do you -- does the police department
8 try to collect surveillance footage kind of every time
9 they can?

10 A Yes, ma'am.

11 Q Okay. And is it unusual when the surveillance
12 footage is copied that sometimes it is compressed?

13 A Yes. Sometimes they won't fit on a disc or a hard
14 drive. If you will compress it, it will shorten it or
15 lessen the file size so it will fit.

16 Q Okay. And does that sometimes cause it to slow
17 down, speed up, that kind of thing?

18 A I'm not familiar -- I'm not a computer expert, so I
19 don't know what effects it may have on the actual quality
20 of the video, but I know video sometimes just acts weird
21 when we get it.

22 Q Let me ask you this: You watched the video at
23 Fountain Pointe?

24 A I did.

25 Q And what you watched here, is it the same?

1 A It is.

2 Q Okay. Now, Mr. Fox, I believe, asked you about a
3 .40 caliber weapon?

4 A He did.

5 Q Do you remember that?

6 A I don't believe -- I don't have any memory of any
7 other involvement other than the video in this case and
8 presenting the case for a search warrant.

9 Q I understand. But did he ask you about it?

10 A Oh, he asked me about it, yes.

11 Q Okay. And have you seen the video?

12 A Yes.

13 Q Okay. Did you see a gun in the victim's hand?

14 A I did not.

15 MS. LIVESAY: No further questions.

16 THE COURT: You can step down, sir. Officer, you're
17 free to leave the courthouse but more than welcome to
18 stay, either way.

19 THE WITNESS: Thank you.

20 MS. LIVESAY: Your Honor, at this time, the State is
21 going to recall Ryan Keefe.

22 THE COURT: Okay. Come around, sir. Just remind
23 you, you're still under oath from earlier today.

24 RYAN KEEFE,

25 after having been previously duly sworn, was

1 examined and testified to as follows: Previously. Recall

2 RECALLED DIRECT EXAMINATION

3 BY MS. LIVESAY:

4 Q You testified earlier; correct?

5 A I did.

6 Q Okay. Just to remind the jury, where are you
7 employed?

8 A Security Vision.

9 Q Okay. And you're the individual that turned the
10 video footage over to the police department?

11 A That's correct.

12 Q Okay. And this is State's Exhibit No. 4. Do you
13 recognize that?

14 A Yes.

15 Q And does it include your initials?

16 A It does.

17 Q And does it include the entirety of the footage that
18 you gave the police department?

19 A Yes, sir.

20 MS. LIVESAY: Your Honor, at this time, the State
21 wishes to put State's Exhibit No. 4 into evidence.

22 THE COURT: And that is the security footage but in
23 its entirety as opposed to what's been played to the jury?

24 MS. LIVESAY: Yes.

25 THE COURT: Mr. Fox, any objection?

1 MR. FOX: I just want to clarify.

2 THE COURT: Yeah, sure, take a look.

3 (Counsel confer off the record.)

4 MR. FOX: No objection, Your Honor.

5 THE COURT: All right. No. 4 into evidence for the
6 State.

7 MS. LIVESAY: Thank you.

8 (State's Exhibit No. 4 was received into evidence.)

9 BY MS. LIVESAY:

10 Q And one more question, Mr. Keefe: The shooting that
11 we have been watching on this video, did you watch that at
12 the actual security place?

13 A Yes.

14 Q Okay. And is it the same today as it was when you
15 watched it?

16 A Yes.

17 Q And what I just showed you shows twelve 24 hours of
18 those buildings?

19 A Correct.

20 MS. LIVESAY: No further questions, Your Honor.

21 THE COURT: Anything on cross?

22 MR. FOX: No, Your Honor.

23 THE COURT: You can step down, sir.

24 Next witness?

25 MS. LIVESAY: Melanie Smith, Your Honor.

1 THE COURT: Okay.

2 THE CLERK: Please raise your right hand and place
3 your left hand on the Bible.

4 MELANIE SMITH,

5 after having been duly sworn, was examined and
6 testified to as follows:

7 THE CLERK: State your name and spell it.

8 THE WITNESS: Melanie Smith. M-e-l-a-n-i-e
9 S-m-i-t-h.

10 DIRECT EXAMINATION

11 BY MS. LIVESAY:

12 Q And, Ms. Smith, do you live and work in Horry
13 County?

14 A Yes.

15 Q And how long have you lived here?

16 A My whole life. About 32 years.

17 Q Have you always worked in Horry County?

18 A I have.

19 Q And through your work, have you come into contact
20 with members of the community?

21 A Yes.

22 Q And is that a part of your job?

23 A Yes.

24 Q Okay. And so you know most of the people in this
25 courtroom; correct?

1 A Yes, I have seen them before.

2 Q Okay. And do you know Mr. Legette, the defendant?

3 A I do.

4 Q Okay. And could you recognize him outside the
5 courtroom settings?

6 A Yes.

7 Q And did you know him in August of 2020 when this
8 shooting occurred?

9 A Yes.

10 Q Okay. And have you seen video footage from Fountain
11 Pointe?

12 A I have.

13 Q Okay. And would you be able to recognize him if you
14 saw him on the video?

15 A Yes.

16 Q I'm going to put in real quick State's Evidence
17 No. 3.

18 Ms. Smith, you have seen this video we have been
19 showing in court before; correct?

20 A Yes.

21 Q The video surveillance from Fountain Pointe?

22 A Yes.

23 Q Okay. And can you tell these jurors who Craig
24 Legette, the defendant, is on the video, which person he
25 is?

1 **A** Yes.

2 **Q** Okay.

3 **A** That's Mr. Legette right there.

4 **Q** Ms. Smith, do you recognize that man getting out of
5 the white car?

6 **A** Yes.

7 **Q** Who is it?

8 **A** The defendant, Mr. Legette.

9 **Q** Okay. And tell these folks, are you 100 percent
10 sure that that's the defendant, Craig Legette?

11 **A** Yes.

12 **Q** Did you watch this video in the entirety?

13 **A** I did.

14 **Q** And did you see the shooting?

15 **A** I did.

16 **Q** And did you recognize the shooter?

17 **A** Yes.

18 **Q** And who is that?

19 **A** Mr. Legette.

20 **Q** Okay. Do you recognize that guy that shot and went
21 back into the apartment?

22 **A** Yes.

23 **Q** And who is it?

24 **A** Mr. Legette.

25 **Q** And are you 100 percent sure of that?

1 A Yes.

2 MS. LIVESAY: No further questions for this witness,
3 Your Honor.

4 THE COURT: Okay. Cross-examination by the defense?

5 CROSS-EXAMINATION

6 BY MR. FOX:

7 Q Ms. Smith, we have watched the -- when I say "entire
8 video" -- I don't mean the whole 12 hours that exist --
9 but more than that short little clip; right? You have
10 seen the several minutes before and a few minutes after?

11 A Yes.

12 Q Okay. And you have seen other individuals go into
13 that same apartment?

14 A Yes.

15 Q Okay. And you'd agree there's at least three others
16 that go in?

17 A I'd say that's about right.

18 Q There's a female that goes in?

19 A Yes.

20 Q There is two gentlemen that go in at the same time?

21 A Mm-hmm.

22 Q One runs up -- one appears to be getting out of a
23 car and another gentleman runs up and they walk up
24 together. Does that sound right?

25 A I believe so.

1 Q Okay. So that's three.

2 Do you have any idea who was in the -- and do you
3 recognize any of those individuals?

4 A I don't.

5 Q Okay. No idea why they were there?

6 A No.

7 Q Okay. Know whose apartment that was they went into?

8 A I don't.

9 Q Okay. Know who was inside when they went inside?

10 A I do not.

11 Q Okay. They're inside for how long would you say,
12 roughly?

13 A I'm not sure.

14 Q Okay. Let's narrow it a little. I certainly don't
15 expect an exact answer. Not as long as an hour?

16 A No.

17 Q Okay. But more than three or four minutes?

18 A Yeah, more than a couple of minutes.

19 Q Okay. And, again, don't know -- aside from the ones
20 you saw go in, don't know who might have already been in
21 there, whose apartment it was?

22 A Correct.

23 Q Okay. They were there. You say Mr. Legette went in
24 and then three other people. So we have got at least four
25 people in the apartment; correct?

1 A I believe so.

2 Q Okay. And they were in there -- the four of them --
3 in there for at least five or ten minutes? Does that
4 sound fair?

5 A Yeah. I mean, I don't have the exact time.

6 Q No, I understand. Definitely dealing with kind of
7 estimates. But we agree, not as long as an hour or
8 nothing like that. A few minutes.

9 A Yeah.

10 Q Say a few minutes. Okay.

11 And then the female -- actually, one of the
12 gentlemen comes out first; right?

13 A Mm-hmm.

14 Q Does that sound right?

15 A From what I remember on the video.

16 Q Sure. And, again, we're asking from your memory.
17 Okay. If you don't remember, it's fine. Just say "I
18 don't recall."

19 And then the lady comes out?

20 A Mm-hmm.

21 THE COURT: You need to verbally respond.

22 THE WITNESS: I'm sorry. Yes, yes.

23 BY MR. FOX:

24 Q Okay. All right. During that time when everybody
25 is inside, you have no idea what happened inside; correct?

1 A Correct.

2 Q You don't know what was said?

3 A Correct.

4 Q Don't know what happened?

5 A Correct.

6 MR. FOX: Thank you. No further questions, Your
7 Honor.

8 THE COURT: Any redirect, Solicitor?

9 MS. LIVESAY: No further questions.

10 THE COURT: You may step down, ma'am. Thank you.

11 THE WITNESS: Thank you.

12 MS. LIVESAY: Jeanette Deshields, Your Honor, will
13 be our next witness.

14 THE COURT: All right. The next witness is who?

15 MS. LIVESAY: Jeanette Deshields.

16 THE COURT: Okay.

17 JEANETTE DESHIELD,

18 after having been duly sworn, was examined and
19 testified to as follows:

20 THE CLERK: Please state your name and spell it for
21 the Court.

22 THE WITNESS: Jeanette Deshield. Jeanette,
23 J-e-a-n-e-t-t-e. D-e-s-h-i-e-l-d.

24 DIRECT EXAMINATION

25 BY MS. LIVESAY:

1 Q Ms. Deshields, where are you currently living?

2 A I live at 111 Fountain Pointe Lane, Unit [REDACTED], Myrtle
3 Beach.

4 Q And were you living in Fountain Pointe back in
5 August of 2020?

6 A Yes.

7 Q Okay. And this is Fountain Pointe here? If you'd
8 like me -- I'm horrible with a map but let me show it to
9 you.

10 A Yes.

11 Q So that's where you live now and that's where you
12 lived back in 2020?

13 A Yes.

14 Q And do you know the defendant, Craig Legette?

15 A Yes.

16 Q And about how long have you known him?

17 A About two or three years.

18 Q Two or three years?

19 A Yeah.

20 Q Okay. And did he live out at Fountain Pointe as
21 well?

22 A Yes.

23 Q And did he come to your house to visit?

24 A He visit my husband. He visited my husband.

25 Q Okay. And about how many times would he come over?

1 A Maybe two or three times a week. They watched
2 sports a lot.

3 Q Okay. Okay. So pretty regularly?

4 A Yeah.

5 Q So you saw him every week?

6 A Yes.

7 Q Okay. So you would recognize him if you saw him
8 outside the courtroom?

9 A Yes.

10 Q Okay. And do you see him in the courtroom today?

11 A Yes.

12 Q Can you point him out?

13 A (Indicating.)

14 Q What color shirt is he wearing?

15 A Black.

16 THE COURT: Let the record reflect the witness has
17 identified the defendant.

18 BY MS. LIVESAY:

19 Q Okay. And that's the guy that you know that lived
20 out at Fountain Pointe and come visit your husband?

21 A Yes.

22 Q Okay. And would you recognize him if you saw him on
23 the video?

24 A Maybe. I'd have to see the video.

25 Q Okay. Have you met with me before?

1 A Yes.

2 Q And have I showed you a video before?

3 A Yes.

4 Q Okay. And were you able to identify him on the
5 video?

6 A Yes.

7 Q Okay. And did I ask you to initial to show that you
8 had seen the video and you recognized it?

9 A Yes.

10 Q And I'm showing you now State's Evidence No. 3. Do
11 you see your initials up there?

12 A Yes.

13 Q Is that saying that you saw the video?

14 A Yes.

15 Q And you saw Craig Legette on the video?

16 A Yes.

17 (Video plays/State's 3.)

18 BY MS. LIVESAY:

19 Q Do you recognize that guy right there?

20 A I cannot make that -- I can't make out. It's like
21 an image. I can't see that face on that person.

22 THE COURT: If you want to step down and get closer
23 to the video, would that help you?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Just be sure to speak up a

1 little louder since you're away from the microphone.

2 BY MS. LIVESAY:

3 Q Do you recognize that guy?

4 A Yes.

5 Q Who is it?

6 A That's Craig.

7 Q Ms. Deshields, I'm sorry, I --

8 A That's Craig.

9 Q I'm sorry. Here you go right here.

10 A That's Craig.

11 Q Okay. That's the defendant?

12 A Yes.

13 Q And is he coming -- in fact, he's coming to your
14 apartment, ain't he? Isn't that your apartment he's
15 rolling up to?

16 A It could be. I can't really see where he's coming
17 to see the car. The one back there definitely is not my
18 apartment but I can't see the color of the apartment he's
19 coming into.

20 Q Okay. So you can't really tell if that's your
21 apartment he's running into?

22 A No. I don't see where he...

23 Q Okay. Let me ask you something: Looking across
24 now, is that your apartment building?

25 A That's my apartment building.

1 Q Okay. So this is your apartment building?

2 A Yes.

3 Q And which apartment is yours?

4 A The one on the bottom, last one to the right, right
5 here.

6 Q The end one?

7 A Yes.

8 Q Okay. And that's the one you lived in in 2020?

9 A Yes.

10 Q And do you remember him having a -- him and his
11 girlfriend having a white car during that time?

12 A Yes, they had a white car.

13 Q If you don't mind, have a seat, Ms. Deshields.

14 And you have known Craig for how long?

15 A Two or three years.

16 Q And did he live at Fountain Pointe during those two
17 or three years?

18 A Yes.

19 Q And you lived at Fountain Pointe during that time?

20 A Yes.

21 Q And how often would he come over?

22 A Maybe I'd say two or three times a week.

23 Q So for three years, he was over your house two or
24 three times a week?

25 A Yeah, yes.

1 Q And for that entire time, he lived down at Fountain
2 Pointe?

3 A As far as I know.

4 Q Okay. Okay. And that was him on the video?

5 A Yes.

6 Q And that's the same guy sitting over here, the
7 defendant?

8 A Yes.

9 Q And you knew him to have a white car during that
10 time?

11 A Yes.

12 Q Now, were you home when the shooting took place?

13 A No.

14 Q Where were you at?

15 A I was at work.

16 Q Okay. So you had no personal knowledge about
17 anything that went on that night?

18 A No. No knowledge at all.

19 Q And the only way you knew he was coming to your
20 house was from this video, you saw him on the video?

21 A Yes.

22 Q Okay. But you weren't at home at the time?

23 A No.

24 Q Okay.

25 MS. LIVESAY: No further questions for this witness,

1 Your Honor.

2 THE COURT: Cross-examination?

3 MR. FOX: Thank you.

4 CROSS-EXAMINATION

5 BY MR. FOX:

6 Q Ms. Deshields, you're married -- were married to
7 Percy Deshields?

8 A Yes.

9 Q You were married in 2020?

10 A Yes.

11 Q Okay. Is Mr. Deshields still with us?

12 A No.

13 Q He passed away?

14 A He passed August the 30th of '22.

15 Q Okay. So how long -- back in 2020, how long had you
16 lived there at Fountain Pointe?

17 A We moved in there in 2017.

18 Q Okay. So you had been there about three years at
19 the time all this happened?

20 A Yes.

21 Q Knew most of your neighbors?

22 A No, not most of them.

23 Q Some of them?

24 A I knew Percy's friends. Percy's friends I knew.

25 I'm not one to hang around the neighborhood. I'm usually

1 to myself.

2 Q I gotcha. And now you have watched the video the
3 solicitor was asking you about, and in that video, you can
4 see several other people go into the apartment that same
5 evening, can't you?

6 A On the video, yes. Absolutely, yes.

7 Q And you can see the person that you identify as
8 Mr. Legette; right?

9 A Yes.

10 Q And you can see a female, a woman?

11 A On the video she showed me, yes.

12 Q Yeah. Do you know who that woman is?

13 A Iesha.

14 Q Iesha Thomas? Niesha Thomas?

15 A Yes.

16 Q And then there was a gentleman, Sarge; right?
17 Ernest Vereen?

18 A Sarge, yes.

19 Q Okay. He came in?

20 A He was on the video.

21 Q He walked up with another gentleman; right?

22 A Yes.

23 Q Okay. Do you know who the other gentleman was?

24 A On the video, I couldn't make out the face who that
25 was on the video.

1 Q All right. So we have got Ernest Vereen, who goes
2 by Sarge. And we've got, you say, Iesha?

3 A Iesha.

4 Q Niesha Thomas, right?

5 A Yes.

6 Q Okay. Now, I don't mean to trifle with the memory
7 of your husband, but your husband liked to smoke, didn't
8 he? Smoke marijuana; right?

9 A Yes.

10 Q Okay. And sometimes he smoked with Iesha; right?

11 A Yes.

12 Q And maybe Sarge too maybe?

13 A Maybe, yes.

14 Q And, in fact, Percy, maybe to support his habit,
15 liked to sell a little weed to people too, didn't he?

16 MS. LIVESAY: Your Honor --

17 A I know nothing about --

18 THE COURT: Wait a minute, ma'am.

19 MS. LIVESAY: It appears now we have gone into some
20 questions about Percy Deshields who is now deceased and
21 not on trial. So I'm going to object as to relevance.

22 THE COURT: Right. And I would have to agree.

23 Certainly if Percy were still with us and, you know, a
24 witness on the stand, it may be something different,
25 unless you feel like you can tie in the relevance of that

1 to the facts of this case.

2 MR. FOX: I believe I can with one or two more. I
3 may need to do it -- I can either approach and explain the
4 next couple of questions or we can have the jury go out.

5 THE COURT: Let's do this. I'd rather for you to do
6 some in-camera examination outside the presence of the
7 jury so we can have a really good handle on where you're
8 going.

9 MR. FOX: Yes, sir. And it should be brief.

10 THE COURT: So, ladies and gentlemen, I'm going to
11 ask you to go back to the jury room. It should not be
12 long at all, and we'll get you back out shortly. Okay?

13 (The jury exited the courtroom at 3:32 p.m.)

14 THE COURT: Okay, Mr. Fox. Ask some questions and
15 we'll see if you can tie things in.

16 MR. FOX: Okay. I'm going to repeat the last
17 question, Your Honor, because they do kind of lead in.

18 THE COURT: Yeah, sure.

19 BY MR. FOX:

20 Q So the last question, ma'am, that I asked was that
21 you said, yes, Percy sometimes liked to smoke, and
22 sometimes that was with Iesha. And that's from your
23 personal knowledge; correct?

24 A Yeah.

25 Q I mean, you witnessed that. Okay.

1 And then I asked you whether Percy ever sold a
2 little bit of weed as well. And what was your answer to
3 that?

4 A No, I don't know anything about -- if he sold any, I
5 don't know anything about it.

6 Q Okay. And you're not aware whether he owed any
7 money to anybody for weed he bought? Or are you aware?

8 A No.

9 Q Not aware of that. Okay.

10 MR. FOX: Judge, based on -- of course she can
11 answer as she did, so based on her answer, that's
12 really --

13 THE COURT: Right. I think, since she does not
14 know, then I think let's just leave it alone.

15 MR. FOX: Yes, sir. I understand.

16 Okay. Then I'm ready to have the jury come back and
17 I'll continue.

18 THE COURT: Just a second. Anybody need to take a
19 quick break? Everybody good?

20 All right. Let's bring the jury back out, please.

21 (The jury entered the courtroom at 3:36 p.m.)

22 THE COURT: Okay. Let the record reflect the jury
23 is back in.

24 Mr. Fox, do you have any other cross-examination?

25 MR. FOX: Just one moment, Your Honor.

1 THE COURT: Sure.

2 BY MR. FOX:

3 Q Just briefly. So, Ms. Deshields, among the people
4 -- you say you knew some of the people out at Fountain
5 Pointe, not everybody. Do you know a fellow who goes by
6 Trey, "T"?

7 A What's his name?

8 Q Trey. I don't know his full name, unfortunately.
9 Trey or "T"?

10 A No.

11 Q Dreads?

12 A No.

13 Q Dread hair? Okay. Thank you. No further
14 questions.

15 THE COURT: Anything on redirect, Solicitor? Sure,
16 take your time.

17 REDIRECT EXAMINATION

18 BY MS. LIVESAY:

19 Q Just one question, maybe two. Ms. Deshields,
20 defense counsel asked you about some other people on the
21 video. Do you remember that?

22 A Yes.

23 Q And you recognized some of them; correct?

24 A Yes.

25 Q And you recognized Craig Legette; correct?

1 **A** Yes.

2 MS. LIVESAY: No further questions.

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

5 THE COURT: Solicitor?

6 MS. LIVESAY: Dennis Lewis is going to be our next
7 witness.

8 DENNIS LEWIS,

9 after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: State your name and spell it for the
12 Court.

13 THE WITNESS: Dennis Lewis. D-e-n-n-i-s L-e-w-i-s.

14 DIRECT EXAMINATION

15 BY MS. LIVESAY:

16 **Q** And, Mr. Lewis, if you don't mind, tell these jurors
17 where you're currently employed.

18 **A** I am retired.

19 **Q** And where did you work before you were retired?

20 **A** At the Horry County Police Department.

21 **Q** And how long had you worked there?

22 **A** Approximately 18 years.

23 **Q** And what kind of training did you undergo at the
24 police department?

25 **A** As the crime scene investigator, I went to crime

1 scenes, investigations, and evidence collecting, securing
2 of the crime scene, detective classes, the crime scene
3 photography, postmortem. I mean, it goes on and on and
4 on.

5 Q Okay. So you have had a lot of training?

6 A A lot of training, yes, ma'am.

7 Q And did you have training every year?

8 A Yes, ma'am.

9 Q And what was your position in August of 2020?

10 A I was a crime scene investigator.

11 Q Okay. And, if you don't mind, tell these folks a
12 little bit about what a crime scene investigator does.

13 A A crime scene investigator responds to most of the
14 major crimes, and what we do is document things by
15 photographing the scene, measurements, collecting the
16 evidence, and pretty much...

17 Q Okay. So photograph and collect evidence?

18 A Yes. Documentation. Measurements and searching the
19 vehicles and searching the premises.

20 Q Okay. And did you work the crime scene for the
21 murder of Kentrell Ferguson that we're here today for?

22 A I was.

23 Q And where did you respond to first?

24 A I went to Claypond Road and Bush -- I think it was
25 Bush Drive.

1 Q Okay. And what did you see when you arrived at
2 Claypond?

3 A I seen that the scene, they had the road blocked off
4 and it was secured. And there was -- I think it's a 2011
5 Traverse, burgundy four-door Chevy, in the ditch on the
6 north side of Claypond Road.

7 Q Okay. And, at that time, was the victim still in
8 the car or had he been removed?

9 A He had been removed.

10 Q Okay. And did you photograph what you saw when you
11 arrived at Claypond?

12 A I did.

13 Q Okay. And is that to document how the scene
14 appeared?

15 A It is.

16 Q Okay.

17 COURT REPORTER: State's 14 through 20 marked.

18 MS. LIVESAY: Okay. Thank you.

19 (State's 14 through 20, Scene Photographs, marked
20 for identification.)

21 BY MS. LIVESAY:

22 Q Mr. Lewis, I want you to look through these pictures
23 and tell me if you recognize them.

24 A Yes, ma'am, I do.

25 Q And are those the pictures you took of the vehicle

1 on Claypond Road?

2 A They are, yes, ma'am.

3 Q Okay. Now, let me tell you something --

4 MS. LIVESAY: At this time, Your Honor, the State
5 wishes to put 14 through 20 into evidence and publish at
6 the appropriate time.

7 THE COURT: Okay. Defense?

8 MR. FOX: No objection, Your Honor.

9 THE COURT: All right. Without objection, 14
10 through 20 into evidence for the State.

11 (State's Exhibit Nos. 14 through 20 were received
12 into evidence.)

13 (State's Exhibit Nos, 21 through 49 were marked for
14 identification.)

15 MS. LIVESAY: This is probably going to take a
16 second, Judge. I don't know if you want to let them take
17 a bathroom break or just stretch or hang out.

18 THE COURT: It shouldn't take her too long. I think
19 we're okay.

20 MS. LIVESAY: Okay.

21 COURT REPORTER: 21 through 49 marked.

22 MS. LIVESAY: Thank you.

23 BY MS. LIVESAY:

24 Q Now, Mr. Lewis, you -- just to get us back on track,
25 so you showed up at Claypond?

1 A I did, yes, ma'am.

2 Q And the victim had already been removed from the
3 car?

4 A He was.

5 Q Okay. And you documented how you saw the vehicle
6 when you arrived?

7 A I did.

8 Q And those have been put into evidence? That's
9 State's Exhibit Evidence 14 through 20.

10 Now, at some point, did you see the victim?

11 A I did.

12 Q Okay. And where was the victim when you first saw
13 him?

14 A He was in the ambulance.

15 Q And, at that time, was he talking? moving?

16 A No, he was deceased.

17 Q Okay. At that time, did you photograph the victim
18 to show how he appeared when he had been removed out of
19 the car and placed in the ambulance?

20 A I did.

21 Q And I'm going to show you now State's Exhibit 21
22 through 33. Could you look at those and tell me whether
23 or not you recognize those photographs.

24 A I do.

25 Q And are those the photographs you took of the victim

1 right there in the ambulance?

2 A They are.

3 MS. LIVESAY: Your Honor, at this time, the State
4 wishes to place 21 through 33 in evidence and publish at
5 the appropriate time.

6 THE COURT: And what says the defense?

7 MR. FOX: No objection, Your Honor.

8 THE COURT: Without objection, 21 through 33 into
9 evidence for the State.

10 MS. LIVESAY: Thank you, Your Honor.

11 (State's Exhibit Nos. 21 through 33 were received
12 into evidence.)

13 BY MS. LIVESAY:

14 Q At this time, we're going to publish the crime scene
15 pictures from Claypond. Can you step down, Mr. Lewis?

16 MS. LIVESAY: May he, Judge?

17 THE COURT: Sure. Just be sure to speak up a little
18 louder when you're down at the screen.

19 THE WITNESS: Thank you, Judge.

20 BY MS. LIVESAY:

21 Q What are we looking at right here?

22 A We're looking at Claypond. You're looking eastward
23 on Claypond Road. To the left, which would be the north
24 side of the highway, is the victim's vehicle in the ditch,
25 and the ambulance is sitting on Bush Road -- Bush Drive.

1 Q At that time, is the victim in that ambulance?

2 A No -- the victim is in the ambulance, yes.

3 Q Okay. And this is his car here?

4 A That is.

5 Q Okay. So now we're looking at State's 14. Now
6 we're looking at State's 15. What are we looking at here?

7 A You're looking at northward down again -- eastward
8 down Claypond Road, and that's the victim's vehicle to the
9 left, and the ambulance is on Bush Road.

10 Q State's 15?

11 A Just a side view of the victim's -- from Claypond
12 Road, the victim's vehicle in the ditch.

13 Q And this is State's 16 in evidence. Let me ask you
14 something: Do you see any bullet holes in the car?

15 A No, I don't.

16 Q What is that white -- what is this here?

17 A That's airbag deployment.

18 Q Were any of the windows -- did the windows have any
19 bullet holes in them?

20 A They did not.

21 Q Okay. Looking at State's 17, what are we looking at
22 here?

23 A The passenger side of the victim's vehicle that was
24 in the ditch on the north side of Claypond Road.

25 Q And did you see any bullet holes anywhere in this

1 part of it?

2 A I did not.

3 Q Windows knocked out?

4 A No.

5 Q Any shell casings around the vehicle?

6 A None, no.

7 Q How about now?

8 A This is a photograph from facing -- it's on Bush
9 Road facing Claypond, front side of the vehicle, of the
10 victim's.

11 Q And this is State's 18.

12 So let me ask you this: Was he in the -- do you
13 know if he was in the driver's seat?

14 A I don't know. It appeared that he was.

15 Q Okay. So the driver's door is down in the ditch?

16 A Yes.

17 Q So there was no way to open the driver's door?

18 A No. It was impossible to get that open.

19 Q Okay. And were there any bullet holes in the
20 windshield or in the front of the car?

21 A It was not.

22 Q Any shell casings in front of the car?

23 A No.

24 Q Okay. State's 19, what am I looking at?

25 A That's another view, shot from Bush Road down at the

1 victim's vehicle.

2 Q Okay. Again, are there any bullet holes on this
3 side of the car?

4 A No.

5 Q And what are those white things on this side of the
6 car?

7 A The airbag deployments, and there may have been a
8 sheet left from EMS, but airbag deployments is what...

9 Q So those are the airbags?

10 A Yes.

11 Q And no bullet holes anywhere in the car?

12 A None.

13 Q Any shell casings on this side of the ditch?

14 A No.

15 Q Okay. Looking at State's 20, what am I looking at
16 now?

17 A The driver's side view of the victim's vehicle in
18 the ditch.

19 Q Any bullet holes?

20 A None, no.

21 Q Any shell casings?

22 A No.

23 Q Was there any evidence that the crime occurred there
24 on Claypond?

25 A None.

1 Q And, at this point, was the victim already in the
2 ambulance?

3 A He was.

4 Q Okay. And you photographed him in the ambulance?

5 A I did.

6 Q Okay. At that time -- now let's publish those
7 pictures, if we can.

8 Did you look in the car out here at the scene?

9 A I did.

10 Q Did you see any shell casings in the car?

11 A I did not, no.

12 Q Did you see a weapon in the car?

13 A No, not at the time on the scene there, no.

14 Q Okay. So nothing out in the open?

15 A No.

16 Q What are we looking at?

17 A A photograph of the victim as he was in the
18 ambulance.

19 Q And what are these?

20 A That's what EMS done, some kind of diagnostic on
21 him.

22 Q At this time, he is deceased; correct?

23 A He is, yes.

24 Q And do you see any injuries on him?

25 A I do.

1 Q Where is the injury?

2 A I see one on his left arm. Right now, just on his
3 left arm.

4 Q So right here?

5 A Yes.

6 Q Okay. And this is State's 21. How about here? Any
7 injuries?

8 A Yes, on the left arm again.

9 Q Okay. But nothing in addition to the left arm?

10 A No, not -- no injuries that I can see.

11 Q Okay. And that's State's 22.

12 This is State's 23, what are you documenting here?

13 A An injury on his right knee.

14 Q And do you know how he got that injury?

15 A Not 100 percent. It looks like he probably was on
16 the asphalt, when he fell on the asphalt, just by
17 observing.

18 Q But definitely it's some sort of scrape on the knee;
19 correct?

20 A It is, yes.

21 Q Okay. Did you see the video?

22 A I did.

23 Q Okay. So did you see him stumble when he was
24 running away?

25 A I did.

1 Q Okay. That's State's 23.

2 Okay. What are we looking at here?

3 A Looking at the victim's feet. One shoe was on and
4 one was off.

5 Q Okay. State's 24.

6 Looking at State's 25, what are we looking at here?

7 A His left hand. Just documenting that there's no
8 injuries.

9 Q Do you see cuts on his hand?

10 A None.

11 Q See any bruises on his hand?

12 A None.

13 Q See a bullet hole?

14 A None.

15 Q How about this hand, State's 26? Do you see any
16 evidence there?

17 A No evidence. Just documenting that that's the way I
18 seen it. There was no injuries.

19 Q No defensive wounds of any kind?

20 A Of any kind, no.

21 Q State's 27?

22 A Also documentation of the hand.

23 Q So no injuries to the hand?

24 A None.

25 Q Okay. No defensive wounds? No cuts? Nothing?

- 1 **A** Nothing, no.
- 2 **Q** Okay. How about here?
- 3 **A** That's a gunshot wound to his left arm.
- 4 **Q** State's 28?
- 5 **A** That's a scrape that's on his right knee.
- 6 **Q** Close up to show it?
- 7 **A** Mm-hmm.
- 8 **Q** State's 29.
- 9 State's 30?
- 10 **A** I think that's his right foot with the bullet hole,
11 documenting that there's a little bit of substance on his
12 sock.
- 13 **Q** And did you take his sock off?
- 14 **A** I did.
- 15 **Q** Okay. State's 31? What are you looking at there?
- 16 **A** The gunshot wound to the foot -- right foot.
- 17 **Q** State's 32, what am I looking at?
- 18 **A** A gunshot wound to the right foot.
- 19 **Q** State's 33?
- 20 **A** Gunshot wound to the back.
- 21 **Q** Right here?
- 22 **A** That's correct.
- 23 **Q** Did you ever find out if there was an entrance wound
24 or an exit wound?
- 25 **A** At the autopsy, we determined it was an entrance

1 wound, and the exit was the left shoulder area of the arm.

2 Q So he was shot in the back?

3 A Yes, he was.

4 Q Mr. Lewis, if you don't mind, have a seat, and we're
5 going to keep talking for another minute. Thank you.

6 Did you see any wounds to the defendant's face?

7 A No, none.

8 Q Okay. So the only injuries on him were the gunshot
9 wounds?

10 A And a scrape on his knee.

11 Q Okay. And the scrape on his knee. Okay.

12 When he was in the ambulance, did you perform a
13 gunshot residue test on his hands?

14 A I did.

15 Q Okay. And what is the purpose of performing a
16 gunshot residue test?

17 A Just to show any evidence showing that someone had
18 fired some type of weapon where any gunshot residue would
19 be present within so many hours.

20 Q And I'm going to show you now State's
21 Exhibit No. 11. Do you recognize it?

22 A I do.

23 Q And what is it?

24 A It's the gunshot residue kit, GSR, that I collected.

25 Q For Kentrell Ferguson?

1 A Yes, that's him. Yes.

2 Q And tell these folks how you perform a gunshot
3 residue test.

4 A We have a sealed kit that we open, and it has, like,
5 little magnets in it, and we take the victim's hands and
6 we rub them all up and down the victim's hands, and then
7 we put them in a secured thing, and then we secure the
8 envelope and everything.

9 Q Okay. And did you put it in that secured envelope?

10 A I did.

11 Q Okay. And had it been tampered with in any form or
12 fashion?

13 A No, ma'am.

14 Q Okay. And does Horry County perform analysis on
15 gunshot residue or do you have to send it off?

16 A We have to send it off.

17 Q And was this after you took the test and sealed it
18 up? Did you put it into evidence?

19 A I did.

20 Q And has it been tampered with in any form or
21 fashion?

22 A No, ma'am.

23 MS. LIVESAY: Your Honor, at this time, the State
24 just asks that we put the kit into evidence, 11. The
25 results will come after the chain.

1 MR. FOX: No objection.

2 THE COURT: Without objection, No. 11 into evidence
3 for the State.

4 MS. LIVESAY: Thank you, Your Honor.

5 (State's Exhibit No. 11 was received into evidence.)

6 BY MS. LIVESAY:

7 Q And so you performed -- you took the pictures and
8 then you took the gunshot residue test to see whether or
9 not there was gunshot residue on the young man's hands;
10 correct?

11 A Correct, yes, ma'am.

12 Q And where did you go after you photographed
13 Claypond, photographed the victim? Where do you go next
14 to further your investigation?

15 A To Fountain Pointe.

16 Q Okay. And what did you find -- where did you go in
17 Fountain Pointe?

18 A Apartment [REDACTED], I do believe. Building 111,
19 Apartment [REDACTED].

20 Q So was that -- do you recognize what I'm showing you
21 now, State's Evidence 13?

22 A Yes, ma'am.

23 Q Point out 111 to these folks.

24 A Right here.

25 Q And Apartment [REDACTED] --

1 A Is on the east end -- far end on the bottom floor of
2 this building, 111. [REDACTED] is on the bottom floor on the far
3 end.

4 Q Okay. The very last one?

5 A Yes.

6 Q Okay. So you go to Apartment [REDACTED], Building 111.
7 What do you do once you get there?

8 A I photograph -- start documenting the exterior of
9 the building.

10 Q Okay.

11 A The parking lot and surrounding areas.

12 Q Okay. And do you collect any evidence?

13 A I do after I do the initial photographing.

14 Q Okay. And did you photograph the evidence you
15 collected?

16 A I did.

17 Q Okay. I'm going to show you 34 through 49.

18 A Yes, ma'am, I do.

19 Q And does that show Building 111, Apartment [REDACTED], and
20 all the evidence you collected outside of it?

21 A Yes, ma'am.

22 MS. LIVESAY: At this time, the State wishes to put
23 34 through 49 into evidence and publish it to the jury.

24 THE COURT: What says the defense?

25 MR. FOX: Without objection.

1 THE COURT: Without objection, 34 through 49 into
2 evidence for the State.

3 (State's Exhibit Nos. 34 through 49 were received
4 into evidence.)

5 BY MS. LIVESAY:

6 Q And if you don't mind, Mr. Lewis, can you step down?

7 A Sure.

8 Q Thank you.

9 What am I looking at?

10 A You're looking at -- facing Building 111, Apartment
11 [REDACTED].

12 Q And that's going to be State's Evidence No. 34.

13 And what am I looking at now, State's Evidence 35?

14 A Also from the parking lot area sidewalk facing the
15 Building 111. You're looking at Apartment [REDACTED].

16 Q Okay. Now, tell us real quick before we go any
17 further, why is this particular apartment relevant? Did
18 you find any evidence --

19 A Yes, there was evidence outside this apartment, yes.

20 Q Okay.

21 A Picture of the front of the Apartment [REDACTED].

22 Q Okay. And did it appear that there had been any
23 tampering or damage to the door or any kind of break-in or
24 anything like that?

25 A No, there was not.

1 Q State's 37, what are we looking at?

2 A Standing at the [REDACTED] door of the apartment facing
3 outward to the apartment -- I mean out at the parking lot.
4 It's the sidewalk area.

5 Q Okay. 38?

6 A Just the cars that's adjacent into the parking lot
7 area.

8 Q Okay. Is this in front of [REDACTED]?

9 A Mm-hmm, in front of [REDACTED].

10 Q Okay. And this is State's 39. What am I looking
11 at?

12 A I do believe that's a -- yep, a fired bullet.

13 Q Show the -- point that out to the jury.

14 A It's right here.

15 Q And that's a fragment?

16 A A fragment, yes, ma'am.

17 Q And that's State's Evidence No. 39.

18 And did you mark it?

19 A I did.

20 Q And did you collect it?

21 A I did.

22 Q Okay. And when you collected it, did you place it
23 into evidence?

24 A I did.

25 Q And was it tampered with while it was in your

1 custody or control?

2 A No, ma'am.

3 Q Okay. What are we looking at here?

4 A At the door of the Apartment [REDACTED] facing the parking
5 lot. And this is where I marked the evidence that I
6 found.

7 Q Okay. And what is being marked here: 2, 3, 4, 5?
8 What is that?

9 A Spent casings.

10 Q Okay. And this is right in front of the apartment?

11 A That is.

12 Q State's 41. What are we looking at here?

13 A Looking at three spent casings to the right side of
14 the sidewalk.

15 Q Okay. And this is showing where it is in
16 relationship to everything else in the apartment?

17 A The parking lot. I'm backed up close to the door on
18 Apartment [REDACTED] facing out, yeah.

19 Q So was it closer to the door or closer to the
20 parking lot?

21 A These spent casings here?

22 Q Yes.

23 A Closer to the door.

24 Q Okay.

25 A That's a spent casing, Item No. 2.

1 Q Is that a close-up?

2 A That is.

3 Q That's 44. And now I'm looking at 45. What are we
4 looking at?

5 A Two spent casings, Item 2 and 3.

6 Q Okay.

7 A On the right side of the sidewalk as you walk out of
8 the apartment.

9 Q Okay. And these are right outside the door of [REDACTED]?

10 A Apartment [REDACTED], that's correct.

11 And this is facing the apartment, and that shows you
12 evidence that it was collected or photographed there on
13 the left side and the right side of the sidewalk.

14 Q Okay. So this shows how close it is to the front
15 door and to that carpeted area?

16 A It does, yes.

17 Q Okay. State's 47, what are we looking at?

18 A Spent casing, Item No. 4.

19 Q Is that, again, right there in front of Apartment
20 [REDACTED]?

21 A It is.

22 Q Okay. What are we looking at here, 48?

23 A Spent casing, that's Item No. 5. That was the only
24 spent casing that was on the left side looking out at the
25 apartment on the left side of the sidewalk. The other

1 three was on the right side.

2 Q Okay. And this is State's 49. What are we looking
3 at?

4 A That's all spent casings: Items 2, 3, 4, and 5.

5 Q Were there any spent casings anywhere else in front
6 of the apartment other than in this area?

7 A None, no.

8 Q Okay. None were closer to the road?

9 A No.

10 Q Okay. And did you collect all spent casings, 2, 3,
11 4, and 5?

12 A I did.

13 Q Okay. And when you collected it, did you put it in
14 evidence?

15 A I did.

16 Q Did you tamper with it in any form or fashion?

17 A No.

18 Q If you don't mind, have a seat, Mr. Lewis.

19 Showing 6, 7, 8, 9, and 10. If you don't mind, take
20 a look and tell me if you recognize this.

21 A Yes, ma'am, I do.

22 Q And what are they?

23 A They're the spent casings.

24 Q And are these the spent casings you collected from
25 the area of Fountain Pointe?

1 A It is.

2 Q And are these the spent casings that are
3 photographed in the photographs we just looked at?

4 A They are.

5 MS. LIVESAY: Your Honor, at this time, the State
6 wishes to place 7 through 10 into evidence, and the
7 results at a later time upon establishing the chain.

8 THE COURT: 7 through 10. Defense?

9 MR. FOX: So it's just the physical shell casings at
10 this moment and not any test results; correct?

11 MS. LIVESAY: I'm sorry?

12 MR. FOX: Just the physical shell casings, not any
13 test results?

14 MS. LIVESAY: Right, right, right.

15 MR. FOX: Without objection, Your Honor.

16 THE COURT: Okay. 7 through 10 into evidence for
17 the State.

18 (State's Exhibit Nos. 7 through 10 were received
19 into evidence.)

20 BY MS. LIVESAY:

21 Q And if you don't mind, tell these folks what a spent
22 casing is.

23 A It's a bullet that's been fired. It's just the
24 shell -- the casing of where the projectile is left.

25 Q Okay. So it's the part that pops out the side?

1 A It is.

2 Q Okay. So when I'm firing and you see it coming out,
3 that's the spent casings?

4 A Little canister, yeah, right.

5 Q Okay. And does the spent casing on the back have,
6 like, a make, model, caliber type?

7 A It does, yes.

8 Q It does? Would you look at those spent casings and
9 tell me what, if any, information is on the back?

10 A Yes, there is. These -- I do believe that this was
11 a Winchester .380 auto.

12 Q I'm sorry?

13 A Winchester .380 auto.

14 Q .380?

15 A .380 caliber, yep.

16 Q And that's which piece of evidence? What number?

17 A This is Item No. 5.

18 Q Okay. And how about the rest of them?

19 A Item No. 4 is a spent casing, which is a Winchester
20 .380 auto. And Item No. 3 is spent casing, which is the
21 Winchester .380 auto.

22 THE COURT: Should he not refer to the exhibit
23 number as opposed to an item number for the record?

24 MS. LIVESAY: Certainly.

25 BY MS. LIVESAY:

1 Q If you don't mind, the tag that's on it, that's the
2 number that this court reporter will need.

3 A Oh, yes. Most certainly.

4 THE COURT: Go back and start over again on that,
5 please.

6 A Sure. Exhibit No. 10 is a spent casing, Winchester
7 .380 auto.

8 Exhibit No. 9 is also a .380 auto, spent casing,
9 Winchester.

10 Exhibit No. 8 is a Winchester .380 auto spent
11 casing.

12 And Exhibit No. 7 is also the Winchester .380 auto
13 spent casing, yes.

14 Q So every spent casing that was collected came from a
15 .380?

16 A It did.

17 Q Okay. Did you find any .40 caliber spent casings
18 out there?

19 A No, ma'am.

20 Q So everything you found was a .380?

21 A That's correct.

22 Q Okay. And were all of them -- I was trying to
23 listen close. Were all of them the kind of same make and
24 model?

25 A They were.

1 Q Okay. And when you collected those and put them in
2 evidence, is that to send them off to SLED?

3 A It is.

4 Q Okay. And are you trying to figure out if one gun
5 fired all four or two guns were fired; is that correct?

6 A That's correct. For analysis, that's correct, yes,
7 ma'am.

8 Q Okay. So you send that information off or you send
9 the casings off for that information?

10 A Yes, to see if it's been -- yeah.

11 Q Now, did you -- after you collected this evidence
12 and documented the pictures from the apartment, did you
13 attend the autopsy of the young man that was killed?

14 A I did.

15 Q Okay. And as part of the autopsy, did you collect
16 his clothing?

17 A I did.

18 Q Showing you now State's Exhibit 12. Do you
19 recognize what I'm showing you?

20 A Yes.

21 Q And what am I showing you?

22 A That is the victim's T-shirt that he was wearing.

23 Q And this was collected from the autopsy?

24 A Yes.

25 Q And what's that stuff on it?

1 A That's the blood.

2 Q Okay. So this was collected right after he was
3 shot?

4 A Correct.

5 MS. LIVESAY: Your Honor, at this time, the State
6 wishes to publish 12 -- place it into evidence and publish
7 it.

8 THE COURT: What says the defense?

9 MR. FOX: Without objection, Your Honor.

10 THE COURT: Without objection, No. 12 into evidence
11 for the State.

12 (State's Exhibit No. 12 was received into evidence.)

13 MS. LIVESAY: Thank you. And if you don't mind,
14 Judge, can he step down for a minute?

15 THE COURT: He sure can.

16 BY MS. LIVESAY:

17 Q Is this the front of the shirt?

18 A Yes, ma'am.

19 Q Okay. And you told these folks earlier that you
20 learned that the young man had been shot in the back; is
21 that correct?

22 A That is correct.

23 Q And does the T-shirt corroborate just that?

24 A It does.

25 Q And is this the back of the T-shirt?

1 A It is.

2 Q And do you see a bullet hole in the back of the
3 T-shirt?

4 A I do.

5 Q Where is it?

6 A Right here.

7 Q (Publishing the shirt to the jury.)
8 And you said there was an exit wound?

9 A There was.

10 Q And where was that?

11 A On his left arm in approximately this location
12 (indicating).

13 Q Is there anything on the shirt that corroborates
14 that?

15 A There is. There's an exit wound here on the
16 T-shirt.

17 Q So that's where the bullet came out of?

18 A That's correct.

19 Q Did you collect a bullet from the autopsy?

20 A No, I did not.

21 Q And why didn't you?

22 A There was none there.

23 Q So both wounds to the foot and to the back were
24 through-and-through?

25 A Were through-and-through wounds, yes.

1 Q So no additional bullets were collected from the
2 autopsy?

3 A Not from the autopsy. There was a fragment
4 collected from the parking lot area, about 60 foot from
5 where the front door of the apartment was, but no fired
6 bullet was collected at the autopsy, no, ma'am.

7 Q Thank you, Mr. Lewis. If you don't mind, have a
8 seat.

9 Mr. Lewis, were the shell casings sent to SLED?

10 A They were.

11 Q And was the gunshot residue test sent to SLED?

12 A It was.

13 Q And that was for further testing to figure out
14 whether or not our victim had gunshot residue on his
15 hands; correct?

16 A Correct, yes, ma'am.

17 Q And to figure out whether one or two guns fired
18 those .380 shell casings; correct?

19 A That's correct.

20 Q And nothing further was collected as far as bullets
21 from the autopsy?

22 A No, ma'am.

23 Q Okay. But the shirt was collected; correct?

24 A It was.

25 Q And the shirt was consistent with the wounds from

1 the victim; correct?

2 A Yes, yes, they were.

3 Q Did you collect any clothes from anybody else that
4 had been shot other than the victim?

5 A No, ma'am.

6 MS. LIVESAY: No further questions for this witness,
7 Your Honor.

8 THE COURT: Any cross-examination?

9 MR. FOX: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. FOX:

12 Q Mr. Lewis ---

13 A Yes, sir.

14 Q --- you have, earlier in your testimony, identified
15 and introduced or through the solicitors introduced
16 photographs at the Claypond scene where the Chevy Traverse
17 was located in the ditch and Mr. Ferguson, although
18 removed when you arrived, had been taken from that
19 vehicle; correct?

20 A Correct.

21 Q So that just shows, basically, the location of the
22 vehicle and the condition and where it was positioned;
23 right? Those photographs?

24 A Yes, sir.

25 Q Okay. Now, as part of your duties on that day, did

1 you execute a search warrant of the Chevy Traverse at some
2 point, whether that day or at some later time?

3 A I did.

4 Q And that was obtained actually by Detective Scales;
5 is that correct?

6 A I believe so.

7 Q But you executed the search warrant; correct?

8 A I did.

9 Q And in that, you collected several items from the
10 Chevy; correct?

11 A That is correct, yes.

12 Q And that's listed on the inventory. When you
13 execute a search warrant you, of course, are required to
14 do a return of what was found; right? You have to send
15 that back -- file that back with the Court ---

16 A Yes, sir.

17 Q --- and say, if anything, here are the items we
18 collected?

19 A That's correct.

20 Q Okay. And you collected several items from the
21 Chevy Traverse; right?

22 A Correct. Yes, sir, I did.

23 Q And among those items was a Springfield Armory .40
24 caliber semiautomatic handgun; correct?

25 A Correct.

1 Q Do you think you would recognize it if you saw it
2 again? Let me show you what's been marked as Defense
3 No. 1 for ID only, and just take a look and tell me if you
4 recognize what that is.

5 A Yes, sir.

6 Q Is that the handgun that was taken from the Chevy
7 Traverse?

8 A Yes, sir.

9 Q And, again, that's a .40 caliber handgun?

10 A It is.

11 MS. LIVESAY: Your Honor, if he's going to show it
12 to the jury, then it's in evidence.

13 THE COURT: Right. If it's just for ID for right
14 now, it doesn't need to be shown.

15 MR. FOX: Not showing it. For ID only, Your Honor.

16 BY MR. FOX:

17 Q That was a .40 caliber weapon?

18 A It was.

19 Q Okay. Now, at Fountain Pointe, at the apartment
20 that you went into, you also -- and inside the vehicle --
21 back to the Chevy Traverse -- you also found some live .40
22 caliber rounds?

23 A Yes, sir. In the handgun.

24 Q Actually in the handgun; right?

25 A Right.

1 Q And one in the chamber. These were live rounds;
2 correct?

3 A Yes.

4 Q Including one in the firing chamber?

5 A That's correct. 15 in the magazine and one in the
6 firing chamber.

7 Q Okay. And you also collected, from Fountain Pointe,
8 from that apartment, you collected -- in addition,
9 outside, you collected some inside the apartment; did you
10 not?

11 A I did collect some items inside the apartment, yes,
12 sir.

13 Q And included in that was two live .40 caliber
14 rounds?

15 A I got four S&W .40 caliber live rounds.

16 Q Okay. Four. I'll go with that.

17 So .40 caliber matching the .40 caliber gun that was
18 found in Mr. Ferguson's car?

19 A Well, I don't know -- .40 caliber.

20 Q I mean the same caliber. I don't mean -- I'm not
21 suggesting -- don't know whether they were ever in that
22 gun or not, but they are .40 caliber compatible with the
23 .40 caliber gun found in Mr. Ferguson's car?

24 A That's correct.

25 Q Thank you.

1 The gun from the car, the .40 -- the Springfield
2 Armory, was sent to SLED; right?

3 A Yes, sir.

4 Q Okay. The gunshot residue test determined whether
5 perhaps someone had fired a weapon; correct?

6 A That's correct, yes.

7 Q But it couldn't tell you if a gun of that size could
8 be used as a blunt object; could it not?

9 A Not the gunshot residue kit.

10 Q No, no. I'm sorry. Let me clarify. I don't mean
11 to suggest that would show whether it was used, but --
12 well, I do --

13 MS. LIVESAY: Your Honor, at this time, I'm going to
14 object to relevance.

15 THE COURT: Okay. Don't answer the question yet,
16 though, Mr. Witness.

17 Ask the question again.

18 MR. FOX: Yes, sir. It was garbled, I know. Let
19 me --

20 THE COURT: I'm not being critical.

21 MR. FOX: No, no, I understand.

22 THE COURT: I'm just trying to understand before he
23 answers.

24 MR. FOX: Yes, sir.

25

1 BY MR. FOX:

2 Q Mr. Lewis, a gun could be -- in your experience, a
3 gun could be a blunt object that could be used to strike
4 someone?

5 THE COURT: If you're going somewhere with it, I'll
6 overrule it at this time, if you can tie it in.

7 MR. FOX: It may not be through this witness. It
8 may be a longer project.

9 THE COURT: I'll allow it.

10 BY MR. FOX:

11 Q But if I understand your answer is yes to that
12 question, that a gun could be -- obviously, you can fire a
13 gun, fire a bullet, but you can also use a gun to strike
14 something or someone?

15 A You could.

16 MS. LIVESAY: Your Honor, I'd have to object because
17 it calls for speculation.

18 MR. FOX: It's within his experience.

19 THE COURT: Based upon your police experience, I
20 don't think it necessarily would cause for speculation, if
21 he's basing his answer on his experience and other cases
22 that he's worked.

23 MR. FOX: Yes, sir. Or his own personal experience,
24 either one. But your answer is --

25 THE COURT: If you can answer.

1 THE WITNESS: By my experience, the answer is yes,
2 it could be used. Yes.

3 BY MR. FOX:

4 Q Thank you.

5 And then, to tie that in, of course a gunshot
6 residue test doesn't test that sort of thing, because,
7 again, it can't tell you that answer; right?

8 A Correct.

9 Q Okay. And, in your experience, in law enforcement
10 or your personal experience, a gun -- a loaded gun could
11 certainly be used to threaten someone even if the gun
12 didn't fire? If I point a loaded gun at you, would you
13 consider that a threat?

14 MS. LIVESAY: Your Honor, again, that calls for
15 speculation.

16 THE COURT: Now, that would be more speculation, so
17 I'm going to sustain the speculation on that.

18 MR. FOX: Thank you. No further questions, Your
19 Honor.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. LIVESAY:

23 Q Mr. Lewis, just a few questions.

24 A Yes, ma'am.

25 Q Mr. Fox asked you about the fact that a .40 caliber

1 was in the Traverse. Do you remember that?

2 A Yes, ma'am.

3 Q Please tell these folks where it was in the
4 Traverse.

5 A It was in the center console of the vehicle.

6 Q Okay. And was the console closed?

7 A It was.

8 Q Okay. Good. So it wasn't laying out?

9 A No, ma'am.

10 Q So it's not like he ran and got in the car and threw
11 it into the car; right?

12 MR. FOX: Objection. That calls for speculation.

13 THE COURT: Sustained. That would be speculation as
14 well.

15 MS. LIVESAY: That's fine, Your Honor.

16 BY MS. LIVESAY:

17 Q So let me ask you something: How many rounds did
18 that .40 caliber hold?

19 A I think it was a 16-round magazine.

20 Q Okay. And how many rounds were in it?

21 A 16.

22 Q So it held 16 and had 16 in it?

23 A Yes.

24 Q Okay. So fully loaded? Holds 16?

25 A Well, the magazine holds 16 [verbatim], and then one

1 in the chamber.

2 Q Was there one in the chamber?

3 A There was. But the magazine only had 15.

4 Q Okay. So it was fully loaded?

5 A Yeah. Normally, you load the magazines -- you put
6 it -- rack it -- the gun -- and rack it and then it would
7 load it, the gun. That would allow only 15 in the
8 magazine and one in the chamber.

9 Q Okay, okay. So no evidence that one had been fired?

10 A No.

11 Q Okay. Okay. So fully loaded in a closed
12 compartment in the car?

13 A That's correct.

14 Q Do tell these folks, is that a crime?

15 A No.

16 Q You get to carry a gun in South Carolina?

17 A Yes, ma'am.

18 Q And it gets to be loaded?

19 A Yes.

20 Q And that's not a crime?

21 A Not a crime.

22 Q Okay. So the victim, by having that gun in the car,
23 is not a criminal, is he?

24 A No, ma'am.

25 Q Okay. And was he allowed to carry a gun?

1 A Yes, ma'am.

2 Q Okay. So he was not somebody prohibited from
3 carrying a gun?

4 A That's correct.

5 MR. FOX: Objection. Is that within his knowledge,
6 whether this man was prohibited or not? Does he know
7 that?

8 THE COURT: You need to base it on personal
9 knowledge, if you have personal knowledge of that.

10 BY MS. LIVESAY:

11 Q Do you have personal knowledge of the victim's NCIC?

12 A Yes, ma'am.

13 Q And was he prohibited from carrying a gun?

14 A No, ma'am.

15 Q Okay. So in no way was he committing in any kind of
16 crime?

17 A None.

18 Q And the gun fully loaded, no evidence that the gun
19 had been fired?

20 A That's correct.

21 Q Okay. Now, tell these folks what caliber was found
22 in front of the apartment.

23 A .380.

24 Q Okay. So no .40 calibers were found?

25 A None, no.

1 Q Okay. And did you see the make and model on the
2 back of the bullet in the .40 caliber?

3 A Yes.

4 Q Okay. And what was it?

5 A I have to look.

6 Q Okay. Real quick. Thanks, Mr. Lewis.

7 A Yes.

8 I don't see it right yet. 16-count magazine with
9 .40 caliber ammunition, but I don't think I documented it
10 exactly.

11 Q Were they all .40 calibers that were loaded in the
12 gun?

13 A Yes.

14 Q So even though we don't have the make and model, we
15 know without a doubt everything in the victim's gun -- all
16 16 -- were .40 calibers?

17 A Yeah, I got it here. PAC and Smith & Wesson .40
18 caliber.

19 Q And did you see any shell casings at the scene that
20 matched that?

21 A No, not at the scene, no, ma'am.

22 Q And did you watch the video?

23 A I did.

24 Q Okay. And did you see the victim with a gun?

25 A No, ma'am.

1 Q Now, he asked about what was in Fountain Pointe;
2 correct?

3 A Yes, ma'am.

4 Q A return that was done; is that right?

5 A That's correct.

6 Q And there were some .40 caliber live rounds;
7 correct?

8 A Yes, ma'am. There was four S&W -- Smith & Wesson
9 .40 caliber live rounds.

10 Q Please tell these folks, is that the only bullets
11 you found in the Fountain Pointe apartment?

12 A No, ma'am.

13 Q Tell them what else you found in Fountain Pointe.
14 What other bullets?

15 A Two Winchester .32 caliber live rounds; one
16 Winchester .380 live caliber round; one Hornady .380 spent
17 casing, one fake bullet. That's about it.

18 Q So a hodgepodge of .380, a .40, a .32, a fake
19 bullet, all kind of mess in there?

20 A Yes, ma'am.

21 Q Did you recover anywhere -- anywhere at Fountain
22 Pointe, Claypond, anywhere, a spent casing for a .40
23 caliber?

24 A No, ma'am.

25 Q Did you find one shred of evidence that that gun was

1 fired?

2 A No, ma'am.

3 Q Do you have any shred of evidence that that gun ever
4 went inside the apartment of Fountain Pointe?

5 A No, ma'am.

6 Q Did you see the video?

7 A Yes, ma'am.

8 Q Did you see the gun on the video?

9 A I did not.

10 Q Was he committing a crime by having the gun?

11 A He was not, no, ma'am.

12 Q And, in fact, the fact that it was in that
13 compartment, is that the correct way to carry it?

14 A Yes, ma'am.

15 Q Did you look at the gun when you collected it?

16 A I did.

17 Q Did you see any blood on the gun?

18 A No, ma'am.

19 Q So absolutely no indication that that gun was
20 involved in any form or fashion?

21 A No, ma'am.

22 Q Was a .380 ever recovered?

23 A There was a .380 recovered, yes, ma'am.

24 Q Okay. But was a .380 ever recovered off of this
25 defendant?

1 A Not to my -- I don't know. There was a .380 turned
2 into evidence, yes, ma'am.

3 Q But where was that one collected from?

4 A I'm not sure.

5 Q Okay. Will you look?

6 A I don't have that. It was turned in to Evidence,
7 and then it was given to me to process it.

8 MS. LIVESAY: Okay. No further questions, Your
9 Honor.

10 THE COURT: Anything on recross?

11 MR. FOX: No, Your Honor.

12 THE COURT: You can step down, sir. Thank you.

13 THE WITNESS: Thank you, Judge.

14 THE COURT: All right. Ladies and gentlemen, it
15 will be a good time to take a short afternoon break. I'll
16 ask that you go back to the jury room and talk with the
17 lawyers and try to figure out what else we're going to do
18 this afternoon and get you back out shortly.

19 THE WITNESS: Can I be released from my subpoena?

20 THE COURT: Yes, sir.

21 THE WITNESS: Thank you.

22 (The jury exited the courtroom at 4:31 p.m.).

23 (A discussion was held off the record regarding the
24 trial schedule.)

25 THE COURT: Let's put the housekeeping matter on the

1 record then. Go ahead.

2 MS. LIVESAY: So the four shell casings came in that
3 envelope, and I didn't put the envelope into evidence, but
4 the envelope is attached to the shell casings.

5 THE COURT: Okay.

6 MS. LIVESAY: Can we put the envelope into evidence?

7 THE COURT: Sure. Okay. You don't have a problem
8 with that?

9 MR. FOX: Oh, absolutely not.

10 MS. LIVESAY: The ladies were worried because it
11 wasn't in evidence and it was attached to the four
12 casings, but it was only attached to show that it came out
13 of this envelope.

14 THE COURT: Well, can that be just a part of 7
15 through 10 or do we need to number it another number?

16 MS. LIVESAY: It's already numbered separate, so
17 that's why they wanted me to put it in evidence.

18 THE COURT: Okay. So what number would the envelope
19 be?

20 MS. LIVESAY: It's No. 6.

21 MR. OSKIN: We formally move it into evidence at
22 this point, Your Honor.

23 THE COURT: So ordered.

24 (State's Exhibit No. 6 was received into evidence.)

25 THE COURT: All right. Let's bring the jury out,

1 please.

2 (The jury entered the courtroom at 4:53 p.m.)

3 THE COURT: Let the record reflect the jury is back
4 in.

5 Ladies and gentlemen, I have been informed that the
6 State has one more witness for today, and then, once we
7 finish with that witness, we'll go ahead and break for the
8 evening.

9 And I have noticed that y'all are kind of keeping
10 your same seats, not just the foreman and the alternates.
11 Everybody's kind of keeping the same seats. Looks like.
12 No? Okay.

13 All right. State ready?

14 MR. OSKIN: Yes, sir, Your Honor. Thank you.

15 We would next call Merrell Hopkins with Horry
16 County.

17 MERRELL HOPKINS,

18 after having been duly sworn, was examined and
19 testified to as follows:

20 THE CLERK: If you can state your name and spell it
21 for the Court.

22 THE WITNESS: Merrell Hawkins. First name is
23 M-e-r-r-e-l-l. Last name, H-a-w-k-i-n-s.

24 DIRECT EXAMINATION

25

1 BY MR. OSKIN:

2 Q Thanks for being here this afternoon.

3 Where are you employed, ma'am?

4 A Horry County Police Department.

5 Q About how long have you been employed with them?

6 A The end of this month, it will be five years.

7 Q And what's your current position?

8 A I'm a Property and Evidence custodian.

9 Q How long have you been in that position?

10 A For the entire five years.

11 Q If you would, please tell this jury what your
12 responsibilities are as part of Property and Evidence.

13 A I work in the Property and Evidence Unit. We
14 maintain the care, custody, and control of any and all
15 property and evidence that comes through our unit.
16 Essentially, it comes to us from police officers or
17 detectives, and we inventory it and we maintain it. If it
18 needs to be tested, we get it to wherever it needs to be
19 tested, and we keep it safe until court.

20 Q Would SLED be one of those agencies that items of
21 evidence are transported to or sent to from your
22 department?

23 A Yes, sir.

24 Q Taking items to SLED, is that a normal course of
25 business for you?

1 A Yes, sir.

2 Q And with regards to this particular case, did you
3 take any evidence to SLED?

4 A I did.

5 Q Particularly shell casings?

6 A Yes.

7 Q And how about a GSR kit?

8 I'm going to show you what's been entered into
9 evidence as State's Exhibit 6 through 10. Ask if you're
10 able to recognize those.

11 A Yes, sir. These would be the items that I took to
12 SLED.

13 Q Okay. Do those items appear to be tampered with in
14 any way?

15 A No, sir.

16 Q Would they have been tampered with when you took
17 them to SLED?

18 A No, sir.

19 Q In fact, do those items have -- like, the bag
20 themselves, can you please explain to the jury how are you
21 able to tell they haven't been tampered with?

22 A So when we took it to SLED, it would have been in
23 this envelope, and it's sealed with the evidence tape, and
24 the person who seals it has the initials and date on it.
25 And then so, when we take it, it will be sealed in this

1 package and then it has our stickers on it. These will be
2 the stickers that I generated to put on there to identify
3 the property. And then, when SLED returns it, they have
4 their sticker, and they seal it with the yellow tape.

5 Q Is that the same process for the casings?

6 A Yes. So the casings would have been returned in
7 this envelope. I actually put them in this nice heat seal
8 so that they could be shown, and that's why the envelope
9 is with it. They were in the envelope until the day
10 before yesterday.

11 Q Okay. And that same process applies like, say, if
12 we were to come and do an evidence review with you or
13 anything like that?

14 A That's correct.

15 Q And you were present for those?

16 A Absolutely.

17 Q In fact, that happened where Mr. Fox and us were
18 present for such a review?

19 A Absolutely. Actually, we have two of us from our
20 unit present at all time.

21 Q So nobody is able to tamper with them, is my point.

22 A No, sir.

23 Q And these were not tampered with throughout the
24 process of this case?

25 A No, sir.

1 Q Next I'm showing you what's been entered into
2 evidence as State's 11.

3 A Okay.

4 Q Are you able to recognize that exhibit?

5 A Yes, sir. This would be a gunshot residue kit.

6 Q Without asking I asked again, does that have the
7 same taping to show that it hasn't been tampered with?

8 A Yes, sir. This was -- you can actually still see
9 Dennis Lewis's initials and date on the tape where he gave
10 it to me and then SLED's tape after they opened it and
11 worked it.

12 Q And in your experience, would SLED accept any items
13 if they were tampered with?

14 A Absolutely not.

15 Q Please answer any questions Mr. Fox may have.

16 MR. FOX: No questions of this witness, Your Honor.

17 THE COURT: You may step down, ma'am. Thank you.

18 MR. OSKIN: I do ask that she be excused from her
19 subpoena, Your Honor.

20 THE WITNESS: Thank you.

21 THE COURT: Okay. Ladies and gentlemen, it's
22 straight up 5:00. We'll start back in the morning at
23 9:30. And just remember all my instructions and get some
24 good rest tonight and be ready to get back to work in the
25 morning. Okay? Have a good evening.

1 (The jury exited the courtroom at 4:59 p.m.)

2 THE COURT: All right. Have a good evening.

3 MR. OSKIN: Yes, sir, very briefly. We do -- we are
4 seeking clarification on Defense Exhibit No. 1. It's our
5 position that that exhibit was exhibited and presented to
6 the jury.

7 THE COURT: I have got one, the 911 call. That is
8 into evidence.

9 MR. OSKIN: Defense Exhibit No. 1.

10 THE COURT: Oh, I'm sorry. Defense Exhibit No. 1 is
11 ID, which was not offered into evidence.

12 MR. OSKIN: We're saying, whether inadvertent or
13 not, the gun was actually presented to the jury.

14 THE COURT: Yeah, I think Mr. Fox realized what he
15 had done once you brought it to his attention. But I
16 don't think it was significant enough to create any
17 issues. I mean, so what are you wanting, Solicitor?

18 MR. OSKIN: We're just saying that it should be
19 entered as an exhibit.

20 THE COURT: Oh, since it was shown. Okay.

21 MR. OSKIN: Yes, sir.

22 THE COURT: Do you have any issues with that, since
23 it was shown?

24 MR. FOX: Well, I certainly didn't intentionally
25 show it. Did not intend to. So I guess I'll go with

1 however Your Honor -- if Your Honor feels that was done --

2 THE COURT: Well, what about this? Allow it to be
3 put into evidence as a State's exhibit so, if you decide
4 that you don't want to put up a case, then you're not
5 going to be hampered by having one piece of evidence in;
6 therefore, you put up a case. So does it matter to the --

7 MR. OSKIN: It does matter to the State.

8 THE COURT: Okay. I know where you're coming from
9 now, yeah.

10 MR. OSKIN: And I have no doubt -- I don't think
11 Mr. Fox is trying to do anything sneaky. That's not our
12 point. The point was that the jury did however -- for
13 whatever reason, they did see the actual weapon at that
14 point. That's why we feel it is, in fact, a defense
15 exhibit.

16 THE COURT: Okay. All right. So you want him to
17 have a case, then, so you can have the last bite of the
18 apple, so to speak, with the jury.

19 MR. OSKIN: We think that's how the rules of case
20 law dictate, yes, sir.

21 THE COURT: Okay. Find me -- where is the box?
22 Find me the box.

23 MR. FOX: It's right there, Judge, in the cart.

24 THE COURT: I'll give it some thought. I'll give it
25 some thought. I guess -- and I'm not asking you to show

1 your hand, but -- and if you don't want to answer my
2 question, that's fine, but do you have an idea about maybe
3 putting up a case either by witness or some other piece of
4 evidence? Do you have any idea right now?

5 And, again, if you don't want to answer my
6 questions, that's fine. Because if you tell me now,
7 "Yeah, I plan to call a witness or two" or whatever, then
8 no big deal. Yeah, it goes in as a defense exhibit.

9 MR. FOX: The main -- I don't care to answer
10 directly. The main unknown really is Mr. Legette's desire
11 to testify. We certainly discussed all those things, but
12 of course, that's an ongoing discussion as the trial goes.
13 So that's one thing that could easily change.

14 THE COURT: Sure, okay.

15 MR. FOX: So I can't -- really can't answer.

16 THE COURT: Again, let me just wait, because if you
17 decide to put up any kind of case, then this is a moot
18 point.

19 MR. OSKIN: Sure.

20 MR. FOX: Yes, sir. That's right.

21 THE COURT: And it comes in.

22 MR. OSKIN: If he doesn't, our argument would be the
23 same tomorrow.

24 THE COURT: So let's just kind of wait and see how
25 it develops. I know, Solicitor, you won't let me forget

1 to make a ruling.

2 MR. OSKIN: We won't forget. Like I said, we don't
3 think it's anything sneaky, but...

4 THE COURT: Oh, I know. It was more inadvertent, I
5 think, than anything else.

6 Okay. Anything else before we --

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. Y'all have a good evening.
9 See you in the morning.

10 MS. LIVESAY: 9:00 or 9:30?

11 THE COURT: 9:30. I've got a little virtual hearing
12 I've got to do at 9:00 so 9:30.

13 MS. LIVESAY: Okay. Thanks, Judge.

14 (Pause in the proceedings.)

15 THE COURT: Let me see the jurors for just a second.

16 COURT REPORTER: On the record?

17 THE COURT: Well, yeah, probably.

18 All right. One juror asked the other bailiff, "What
19 is SLED?" And, you know, normally when you get a SLED
20 agent to testify, they always say, "I work for South
21 Carolina Law Enforcement Division, commonly known as
22 SLED." They all say that. But you haven't had a SLED
23 agent up there.

24 MR. FOX: Not yet. But you will.

25 MR. OSKIN: I will. Did I not mention that in my

1 opening as well?

2 MR. FOX: Maybe.

3 THE COURT: Do y'all have any problem, in the
4 morning when I bring them out, to say, "I understand that
5 there's a question." And I will remind them, any
6 questions that they have, they need to put it in writing
7 so it doesn't put the bailiff or anybody else on the spot.
8 But I'll tell them, "All right, somebody has a question
9 about what is SLED, South Carolina Law Enforcement
10 Division."

11 MS. LIVESAY: That's fine.

12 THE COURT: And there will be some SLED agents to
13 testify during the course of this trial. I'll go ahead
14 and mention that. And just remind them: "Any questions
15 have to be put in writing."

16 MS. LIVESAY: Sounds good.

17 MR. OSKIN: I mean, it will certainly be curative to
18 put on the record what SLED is whenever you decide to tell
19 them that.

20 THE COURT: Yeah, I'll do that.

21 (The trial adjourned for the day at 5:06 p.m., and
22 to be resumed on April 3, 2024.)
23
24
25

1 CERTIFICATE OF COURT REPORTER

2 CASE NAME/NUMBER: State v. Craig Legette

3 2021-GS-26-02637

4 DATE OF HEARING: April 2, 2024 (DAY 2)

5 *****

6 I, Bobbi Fisher, do hereby certify that the
7 foregoing transcript is a true and correct record of the
8 recorded proceedings to the best of my ability, and that I
9 am neither counsel for, related to, nor employed by any of
10 the parties to this case, and I have no interest,
11 financial or otherwise, in its outcome.

12
13 

14 _/s/ Bobbi Fisher_____

15 Bobbi Fisher, RPR, Court Reporter III

16 Date Submitted: 7/29/24

17
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STATE OF SOUTH CAROLINA * GENERAL SESSIONS
COUNTY OF HORRY * TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA, *
State, *
vs. * Case No. 2021-GS-26-02637
2021-GS-26-02638
2021-GS-26-02634
CRAIG LEE LEGETTE, *
Defendant. *
-----X

April 3, 2024
Volume 3 of 4

JURY TRIAL

B E F O R E:

The Honorable Donald B. Hocker, Presiding Judge; and a jury.

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

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Assistant Solicitor for the State

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Clay Pinkerton, Esq.
Attorneys for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
50	Diagram of Entrance Wounds	508	517

P R O C E E D I N G S

(9:53 a.m.)

THE COURT: Okay. Ready?

MS. LIVESAY: We're ready.

MR. FOX: Yes, sir.

THE COURT: Let's bring the jury out, please.

(The jury entered the courtroom at 9:59 a.m.)

THE COURT: Let the record reflect the jury is back in.

Good morning, ladies and gentlemen. Hope you had a good evening, got some rest, and ready to get back to work today.

It was mentioned to me yesterday that maybe one of you had a question about what is SLED, one of the, maybe officers. SLED is the State Law Enforcement Division. It is a statewide law enforcement division that they either conduct their own tests or they assist local law enforcement in cases, and they have labs that do various testing. So that's what SLED is. I'm assuming we may have some SLED witnesses today.

MS. LIVESAY: Yes, sir.

THE COURT: But let me emphasize: I don't want any of the court staff to be put in a difficult situation if a question is asked of them. That really puts them in a difficult situation.

1 So any questions that you have -- any -- need to
2 come to me in writing. Okay? So any time during the
3 remainder of this trial or when you begin your
4 deliberations, anything, put it in writing, Mr. Foreman,
5 and then you can give the paper to one of the bailiffs and
6 they can give it to me. Okay? And, again, it just puts
7 them in a difficult situation.

8 With that said, the State ready to call its next
9 witness?

10 MS. LIVESAY: We are, Judge. Thank you. Jackie
11 Davis.

12 THE COURT: Okay.

13 THE CLERK: Please raise your right hand and place
14 your left hand on the Bible.

15 JACKIE DAVIS,
16 after having been duly sworn, was examined and
17 testified to as follows:

18 THE CLERK: Please state your name and spell it for
19 the jury.

20 THE WITNESS: My name is Jackie Davis.

21 DIRECT EXAMINATION

22 BY MS. LIVESAY:

23 Q And, Ms. Davis, where were you working in 2020?

24 A South Carolina Law Enforcement Division, also known
25 as SLED.

1 Q And what goes on at SLED?

2 A A lot. I did evidence.

3 Q Okay. And do they test gunshot residue kits?

4 A They do.

5 Q And they test shell casings?

6 A Yes.

7 Q Test DNA?

8 A Yes.

9 Q And they do that for everybody in the State of South
10 Carolina?

11 A Yes.

12 Q Okay. Now, are you at SLED now?

13 A I am not.

14 Q Where are you at now?

15 A Highway patrol.

16 Q Did they work you too hard at SLED?

17 A No comment. [Laughter]

18 Q So when you worked at SLED -- and you're here today
19 for the -- for Kentrell Ferguson -- what were your
20 responsibilities at that time?

21 A I worked in the evidence room, and we would package,
22 log in, and transfer evidence from the different agencies.
23 What they would do is bring us their evidence, and the
24 evidence technician, such as myself, we would take it, log
25 it in, and put it in the evidence room in a secured

1 location until the analyst requested it.

2 Q And I'm going to show you now what's already in
3 evidence as State's No. 11. And as you see, it's got the
4 description on it, "Gunshot residue kit for Kentrell
5 Ferguson." Did you take that in at SLED, the State Law
6 Enforcement Division?

7 A I did.

8 Q Okay. And when you took it in, did it appear to
9 have been tampered with in any form or fashion?

10 A No.

11 Q And while it was in your custody and control, did
12 you do anything to tamper with it?

13 A I did not.

14 Q Okay. And when you took it in, what did you do with
15 it?

16 A I made sure it was sealed, initialled, and dated --
17 and it was -- by the agency who submitted it. And then we
18 log it in and we give everything a unique lab number. So
19 everything dealing with this case has this lab number.
20 And then I transferred it and put it in the secured
21 evidence room.

22 Q And then, once you put it in that room, is that a
23 secured area?

24 A It is.

25 Q And, in fact, the building of SLED is secure;

1 correct?

2 A Yes.

3 Q Okay. And not just anybody can go back there?

4 A Absolutely not. At that time -- and I know they
5 have built a new evidence room, but it's still just as
6 secure, but at this time, there were four evidence
7 technicians. We were the only ones allowed back in the
8 evidence room as well as two of our supervisors, and it
9 was locked by key and electronic, and there were cameras
10 in.

11 Q And, in fact, I have been to SLED, and I have not
12 been able to go back there.

13 A Nobody can go back there.

14 Q Good. I feel less offended then. Nobody gets to go
15 back there.

16 Now, some other items were taken to SLED too, shell
17 casings, but did you touch any of those items or did you
18 just touch the gunshot residue? There were four shell
19 casings as well sent. Four .380 shell casings. Did you
20 touch those or just the gunshot residue?

21 A There was quite a bit of evidence so hang on one
22 second. Let me look and see.

23 Q Okay.

24 A I did.

25 Q Did you touch the shell casings?

1 A I did.

2 Q And tell this jury when you touched those.

3 A It would have been 9/24 of '20.

4 Q And that was before or after the casings were
5 tested?

6 A Oh, no, we touch everything before.

7 Q Okay. And while they were in your custody and
8 control, did you do anything to tamper with those shell
9 casings?

10 A No. If they were not properly sealed when we
11 received them, we would have made a note of it, and
12 there's no notes of that in the chain of custody.

13 Q Okay. And tell these folks what you're looking at
14 when you were flipping through. What are you looking at?

15 A This is the chain of custody, and it basically --
16 once something comes in to SLED and we give it a unique
17 lab number, it is traced every step of the way. So if I
18 log it in, it tells the date and time it was logged in.
19 And then I have to scan it to a specific shelf in the
20 evidence room, and it tells the date and time I have done
21 that. It also tells the date and time when someone takes
22 it off of that shelf and transfers it to an analyst. So
23 every step is logged in while a piece of evidence is at
24 SLED.

25 Q So every time it moves, it's documented?

1 A Correct.

2 Q And that's the documentation you're looking at?

3 A Correct.

4 Q And if it had been tampered with or even appeared to
5 have been tampered with, somebody would have made a note?

6 A Correct.

7 Q And there's no note for this stuff?

8 A No.

9 MS. LIVESAY: No further questions, Your Honor.

10 THE COURT: Any examination by the defense?

11 MR. FOX: Just briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FOX:

14 Q Ms. Davis, it seems maybe a silly question, but your
15 job is to handle intake and log evidence; correct?

16 A That's correct.

17 Q You don't have any part of investigations or
18 anything like that?

19 A I do not.

20 Q And is one of the items that you took in relation to
21 this case also a Springfield Armory .40 caliber handgun?

22 A Do you know the --

23 Q I do. Give me one moment. I can tell you what item
24 it is. It would have come, I believe, at the same time.

25 That would be Item 12. Also on September 24th, 2020.

1 A Yes, sir. I logged that in as well.

2 Q Okay. Thank you. No further questions.

3 THE COURT: You can step down, ma'am. Thank you.
4 You're free to leave the courthouse. You're more than
5 welcome to remain us with if you'd like.

6 Next one?

7 MS. LIVESAY: Bailey Haynes, Your Honor.

8 BAILEY HAYNES,

9 after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: State your name and spell it for the
12 Court.

13 THE WITNESS: Bailey Haynes. H-a-y-n-e-s.

14 DIRECT EXAMINATION

15 BY MS. LIVESAY:

16 Q And, Ms. Haynes, where are you currently employed?

17 A I'm currently employed at the South Carolina Law
18 Enforcement Division, commonly known as SLED.

19 Q And how long have you been at SLED?

20 A I have been with SLED since June of 2020.

21 Q And what are your responsibilities?

22 A Currently, right now, I am a criminalist for the
23 Firearms Department, and my responsibilities include
24 training to be a firearms examiner.

25 Q Okay. And the lady before you just told us a little

1 bit about SLED, but tell us again, is that building locked
2 and secured?

3 A Yes, ma'am.

4 Q And the evidence that's taken into SLED, is that
5 kept locked and secured?

6 A Yes, ma'am.

7 Q And are there just a finite number of persons that
8 can come into that area?

9 A Which area in particular?

10 Q The evidence room.

11 A Yes, ma'am.

12 Q So I couldn't go back there, could I?

13 A No, ma'am.

14 Q Now, in this particular case, did you touch or take
15 in the gunshot residue kit for Kentrell Ferguson?

16 A I touched the outer packaging, this envelope, yes.

17 Q Okay. And where did you get it from?

18 A May I refer to my chain?

19 Q Yes. Of course.

20 A I received this item from a designated intake shelf
21 in our secured evidence room.

22 Q And where did you take it to?

23 A I transferred it to Forensic Technician Jamie Hall.

24 Q And during the time it was in your custody and
25 control, was it ever tampered with?

1 A No, ma'am.

2 Q And when you got it off the shelf, did it appear to
3 have been tampered with?

4 A No, it did not.

5 Q Is this the normal course of business for SLED to
6 have the chain of custody?

7 A Yes, ma'am.

8 Q And is that chain of custody documented in every
9 case?

10 A Yes, ma'am.

11 Q Okay. And there were also shell casings that were
12 taken in at SLED, four .380 shell casings. Did you at any
13 time touch those shell casings at SLED?

14 A Could you provide me with the item numbers for the
15 shell cases?

16 Q Ma'am, I sure can. I'm going to let you look at
17 this because I know it's got y'all's information.

18 A I did.

19 Q When did you touch the shell casings?

20 A I touched the outer packaging on August 13th, 2021.

21 Q And was that before or after the testing?

22 A That was after.

23 Q And, at any time, did you tamper with these cases?

24 A No, ma'am.

25 Q And when you touched them, they had already been

1 tested and a report had already been done?

2 A Yes, ma'am.

3 Q Thank you, Ms. Haynes. No further questions.

4 THE COURT: Mr. Fox?

5 MR. FOX: No questions of this witness, Your Honor.

6 THE COURT: You can step down, ma'am. Thank you.

7 You're free to leave the courthouse or more than welcome
8 to remain with us.

9 Okay. Next witness?

10 MS. LIVESAY: Jamie Hall, Your Honor.

11 THE COURT: Who was that? What was the name,
12 Solicitor?

13 MS. LIVESAY: Jamie Hall.

14 JAMIE HALL,

15 after having been duly sworn, was examined and
16 testified to as follows:

17 THE WITNESS: My name is Jamie Hall, H-a-l-l.

18 DIRECT EXAMINATION

19 BY MS. LIVESAY:

20 Q And, Ms. Hall, where were you employed in 2020?

21 A I was employed by the South Carolina Law Enforcement
22 Division in the Trace Evidence Department.

23 Q Okay. And what were your responsibilities?

24 A I was a forensic technician, so my responsibility
25 was to prepare GSR evidence for analysis as well as some

1 other administrative-type duties for the Department.

2 Q And, at that time, did you prepare, touch in the
3 chain of custody for the gunshot residue for Kentrell
4 Ferguson?

5 A You're referring to this item here in front of me?

6 Q Sure.

7 A Yes, ma'am, I did. It has my date and initials that
8 I processed it and identified by the unique lab number and
9 item number.

10 Q And where did you get the kit from?

11 A I picked the kit up from Bailey Haynes in Evidence
12 Control on February 3rd of 2021.

13 Q And when you picked the kit up, did it appear to
14 have been tampered with in any form or fashion?

15 A No, ma'am. Everything was sealed -- properly sealed
16 and initialled when I received it.

17 Q And then, while it was in your custody and control,
18 what did you do?

19 A Part of prepping a kit for analysis is I first
20 document the item and make sure everything is correct
21 there, and then I have a worksheet that I fill out and it
22 states whether the item was properly sealed and
23 initialled, whether anything seems out of the ordinary.
24 And inside the kits there are individual vials that hold
25 the stub that will be analyzed. Those get labeled with

1 the item number and lab number as well.

2 For this particular item number, I also made a note
3 that blood was suspected, which is common on a victim kit.
4 And then I did a process called carbon coating where a
5 thin layer of carbon is added just to make the imaging
6 easier for the analyst on the instrument.

7 Q Is that how you handled every GSR kit that came in
8 to SLED?

9 A Typically, yes, ma'am. The only samples that get
10 carbon coated are those that appear to have some sort of
11 debris on them.

12 Q Okay. And how long did you do that at the South
13 Carolina Law Enforcement Division?

14 A I started in 2015 as an administrative assistant. I
15 believe I became a technician in 2017 and I was there
16 until two years ago.

17 Q Okay. And when it left your custody and control,
18 where did it go?

19 A It went to a secure location in the Trace Evidence
20 Department waiting for the analyst to pull it to do the
21 analysis.

22 Q And we have already heard from a couple other folks,
23 but SLED is a locked building; correct?

24 A Yes, ma'am. The only people that would have access
25 at that time would be trace analyst employees?

1 Q And, in fact, just to get in to SLED, the building,
2 to get past the little lobby area is locked; correct?

3 A Correct.

4 Q And then you have got rooms -- evidence rooms,
5 analysts in there that are also behind locked doors;
6 correct?

7 A Correct.

8 Q And only a finite number of people could get back
9 there; correct?

10 A Correct.

11 Q And I couldn't get back there, could I?

12 A Not unless you were escorted, yes.

13 Q Okay. And let me ask you something: While you were
14 processing getting the kit ready, did you do anything that
15 would ultimately change the result of the kit?

16 A No, ma'am. Nothing I do adds or removes GSR from
17 it. And we actually have several processes that we do to
18 make sure that there is no contamination in the
19 department. So everything is clean before I open
20 anything, and even on the carbon coater, we put a blank in
21 there typically to make sure it comes out clean as well.

22 Q Okay. Everything you do is to protect the integrity
23 of the kit ---

24 A Yes, ma'am.

25 Q --- to ensure the result is correct?

1 A Yes, ma'am.

2 Q Now, I know you told me that that was your job and
3 responsibility at the time, but several other items were
4 submitted, so I do want to ask you: Did you touch any of
5 the shell casings that were submitted?

6 A Not that I'm aware of, no, ma'am. I would have no
7 reason to touch those.

8 Q And you looked through a document earlier. What is
9 that document?

10 A So I have the inventory worksheet for GSR evidence,
11 and it just kind of goes over the basic information, and
12 that's what gets passed on to the analyst.

13 And then the gunshot residue analysis information
14 form, which comes in the kit, the officer fills these out
15 before they submit them, as well as my chain of custody.

16 Q Okay. And the chain keeps up with everybody that
17 touches the kit; correct?

18 A Correct.

19 Q Every time it moves, it's documented in that chain?

20 A Yes, ma'am.

21 Q And is that to protect the integrity of the
22 evidence?

23 A Yes, ma'am.

24 MS. LIVESAY: No further questions, Your Honor.

25 THE COURT: Mr. Fox?

1 MR. FOX: No questions of this witness, Your Honor.

2 THE COURT: You can step down, ma'am. Thank you.

3 You're free to leave the courthouse or more than welcome
4 to remain with us.

5 Next?

6 MS. LIVESAY: Laurie Shacker, Your Honor.

7 THE COURT: Who? I'm sorry?

8 MS. LIVESAY: Laurie Shacker. S-h-a-c-k-e-r.

9 LT. LAURIE SHACKER,

10 after having been duly sworn, was examined and
11 testified to as follows:

12 THE CLERK: State your name and spell your last
13 name.

14 THE WITNESS: Laurie Shacker. S-h-a-c-k-e-r.

15 DIRECT EXAMINATION

16 BY MS. LIVESAY:

17 Q Ms. Shacker, back in 2020, where were you employed?

18 A I was employed at the South Carolina Law Enforcement
19 Division in the Evidence Control Department.

20 Q And how long had you been employed at SLED?

21 A I started at SLED in 1999 in the Toxicology
22 Department, and mid 2013, was promoted to the supervisor
23 of the Evidence Control Department.

24 Q And in -- so what were your job responsibilities at
25 that time in 2020?

1 A In 2020, I was supervising the Evidence Control
2 Department, so I was just supervising the daily operations
3 of that department.

4 Q Okay, perfect. And let me ask you -- I asked the
5 other folks, but I want to ask you: Evidence at SLED, is
6 it kept locked and secured?

7 A It is. It's kept in a secure evidence room.

8 Q And is the building itself kept locked and secured?

9 A Yes, it is.

10 Q Okay. And SLED does analysis for shell casings,
11 DNA, fingerprints, just about everything; correct?

12 A Among other forensic analyses, yes.

13 Q And that's for everybody: Horry County, Orangeburg,
14 Marion, everybody in the state?

15 A Yes, any agency -- police agency within the state,
16 yes.

17 Q Okay. And how many times have you testified?

18 A Well, just for evidence?

19 Q Yes.

20 A Gosh, probably 10, 15 times. Somewhere around
21 there.

22 Q All over the state?

23 A Yeah.

24 Q Now, in this particular case for Kentrell Ferguson,
25 the gunshot residue kit is right here, and it should have

1 SLED's markings on it; is that correct?

2 A Yes, that's right.

3 Q And these are the shell casings. And does this have
4 SLED's markings on it to show that it made its way up
5 there?

6 A Yes, it does.

7 Q And did you touch any of those items in the chain of
8 custody?

9 A Yes. I handled the sealed envelope that contained
10 these items.

11 Q Okay. And where did you get that envelope from?

12 A From the evidence room.

13 Q Okay. And when you got it from the evidence room,
14 did it appear to have been tampered with in any form or
15 fashion?

16 A No.

17 Q And then, when you got it out of the evidence room,
18 what did you do?

19 A I transferred it to Jana Weaver.

20 Q And while it was in your custody and control, did
21 you ever tamper with it in any form or fashion?

22 A No.

23 Q And tell these folks who Jana Weaver is.

24 A Jana Weaver is -- was a firearms analyst at that
25 time.

1 Q Okay. So she's the one that looks at this stuff and
2 says one gun fired, two guns fired, that kind of stuff?

3 A Yes.

4 Q Okay, good. And when it comes to you -- just so I
5 can show these folks -- all of these would have been in
6 that package; correct?

7 A I -- yeah, I'm pretty sure. The only one I don't
8 think -- it says Item 10. Oh, I'm sorry.

9 Q You're fine.

10 A I'm looking at the wrong item numbers. Sorry about
11 that.

12 Q You're absolutely fine.

13 A I'm sorry. Can you repeat the question?

14 Q So when you got it, were they all in that envelope
15 or were they separated out?

16 A They were all in the envelope, yes.

17 Q And when you got it, was the envelope still sealed?

18 A It was, yes.

19 Q So you got it out of the sealed -- you never even
20 broke the seal, did you?

21 A I did not.

22 Q So you took the sealed envelope to Jana Weaver?

23 A That's right.

24 Q And she's the one that looks at the casings and
25 says, "Hey, one gun fired all four or two guns fired all

1 four" or whatever the analysis is?

2 A Yes, whatever her analysis involved, yes.

3 Q So the seal is never even broken until it gets to
4 the analyst?

5 A Correct.

6 Q And SLED's chain of custody is kind of just making
7 its way through from when they drop it off to when the
8 lady actually does the testing. That chain of custody is
9 just to show everybody that touches it on its way to
10 testing?

11 A And after testing, all throughout the laboratory.
12 Any step that it goes through at the laboratory, yes.

13 Q Okay. So that chain keeps up from when y'all get it
14 in from when it's tested all the way until it leaves the
15 building?

16 A Correct.

17 Q And the gunshot residue test for Kentrell Ferguson,
18 the victim, did you ever touch that at any point?

19 A No.

20 Q Thank you, Ms. Shacker. No further questions.

21 A Thank you.

22 THE COURT: Mr. Fox, any examination?

23 CROSS-EXAMINATION

24 BY MR. FOX:

25 Q Just to be absolutely clear, the evidence room at

1 SLED is locked and secured; is it not?

2 A It is, yes.

3 MR. FOX: Thank you. No further questions.

4 THE COURT: Thank you, ma'am. You can step down.
5 You're free to leave the courthouse. More than welcome to
6 remain with us.

7 MR. OSKIN: Your Honor, the State would next call
8 Ms. Jana Weaver.

9 THE COURT: Okay.

10 THE CLERK: Please raise your right hand and place
11 your left hand on the Bible.

12 JANA WEAVER,
13 after having been duly sworn, was examined and
14 testified to as follows:

15 THE CLERK: State your name and spell it for the
16 Court.

17 THE WITNESS: Jana Weaver. J-a-n-a W-e-a-v-e-r.

18 DIRECT EXAMINATION

19 BY MR. OSKIN:

20 Q Good morning, Ms. Weaver. Thanks for making it down
21 here for us.

22 Where do you currently work?

23 A I'm currently at the Richland County Sheriff's
24 Department.

25 Q Okay. How about back in 2020, where did you work?