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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from State Grand Jury County
Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN J. GREEN,

APPELLANT

APPELLATE CASE NO. 2024-001684

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS #14, 15, 16, 18, 21, 22, 23, 26, 27, 28, and 29 (STILL SHOTS)**

1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
2 COUNTY OF LEE * TRANSCRIPT OF RECORD

3 -----X
4 STATE OF SOUTH CAROLINA, *
5 vs. * Case No. 2020-GS-47-00020
6 STEPHEN J. GREEN, *
7 Defendant. *
-----X

8 September 23-26, 2024

9 JURY TRIAL
10 SEPTEMBER 23, 2024 - VOLUME I

11 B E F O R E:

12 The Honorable R. Ferrell Cothran, Presiding Judge; and a
13 jury.

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

15 Barney Giese, Esq.

16 Margaret Scott, Esq.

Assistant Solicitors for the State

17 Matthew Hicks, Esq.

Attorney for the Defendant

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

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P R O C E E D I N G S

(The following proceedings started at 11:36 a.m.):

JURY VOIR DIRE

THE COURT: Do you have any questions for voir dire?

MR. HICKS: No, Judge. I'm assuming you have looked at their voir dire questions?

Can we approach, Your Honor?

THE COURT: Sure.

BENCH CONFERENCE

(The following bench conference occurred outside the hearing of the jury panel and others:)

MR. HICKS: The only one I would ask, Judge, is that, on Question 3 or 4, just include law enforcement in general and not just corrections. Other than that, I have no problem with any of these.

THE COURT: Okay. Okay.

MR. HICKS: Thank you, Judge.

(Open court resumes as follows:)

THE COURT: Ladies and gentlemen of the jury, if you'll give me your attention. We're about to begin the case of the State v. Stephen Green. Is there any member of the jury panel connected by blood or marriage, close personal friends, or social relations with Mr. Green? If so, please stand.

(No response given.)

THE COURT: I'm going to read out a list of potential

1 witnesses in this case, and I need to know the same
2 information about these witnesses, whether you're connected by
3 blood or marriage or close personal friends with any of these
4 potential witnesses:

5 Kristopher Butler, Emilie Locklear, Colonda Robinson,
6 Marquita McCullough, Clive Lopez, Lucretia Mack, Jamal Clavon,
7 Edwin Settles, Jale Brown, Deborah Stewart, Aaron Joyner,
8 Edward Tisdale, John Douglas, Janice Ross, Jamie Shaw, Cody
9 Wilson, Amanda Watts, Rayford Miller, Kevin Blake, John
10 Hollingsworth, Chris Voll, William Burley, Kenneth Greggs,
11 Thomas Clark, Randy Ward, Breanna Jeffcoat, Vicky Lindler,
12 Jeremy Smith, James Tallon, Annie McCullough, Courtney Adams,
13 Michael Myers, David Love [sic], Andre Boone, David Dozier.

14 Anybody connected by blood or marriage or close personal
15 friends with any of those potential witnesses? If so, please
16 stand.

17 (No response given.)

18 THE COURT: Okay. The attorneys in this case that
19 represent the State is Barney Giese and Margaret Scott.
20 Anybody connected by blood or marriage or close personal
21 friends or social relations with either one of these attorneys
22 or been represented by them? If so, please stand.

23 (No response given.)

24 THE COURT: The defendant is being represented by Matt
25 Hicks. Is there any member of the jury panel connected by

1 blood or marriage, close personal friends, or social
2 relationship with Mr. Hicks or been represented by him?

3 (No response given.)

4 THE COURT: Or anybody represented by the Jennings,
5 Bryan, Wheeler Law Firm? If so --

6 Yes, sir?

7 JUROR NO. 75: Represented probate for my parents'
8 passing.

9 THE COURT: Okay. What's your number?

10 JUROR NO. 75: 75.

11 THE COURT: And Mr. Hicks represented?

12 JUROR NO. 75: Yes.

13 THE COURT: Okay. Is he currently?

14 JUROR NO. 75: No.

15 THE COURT: How long ago was that?

16 JUROR NO. 75: Mother passed end of June, so it was just
17 a couple of weeks ago.

18 THE COURT: Okay. So, he's not currently representing --

19 JUROR NO. 75: No.

20 THE COURT: The fact that he's an attorney in this case,
21 would that affect your ability to be fair and impartial?

22 JUROR NO. 75: Oh, no.

23 THE COURT: So you could be fair?

24 JUROR NO. 75: Yes, sir.

25 THE COURT: Okay.

1 Do you have the indictments?

2 MR. GIESE: Yes, sir. Do you want me to read them out?

3 THE COURT: Yeah, you can, if you want to.

4 MR. GIESE: I'll just call the case.

5 THE COURT: Sure. I'm sorry; I should have let you do
6 that from the get-go.

7 MR. GIESE: That's okay.

8 If it please the Court, Your Honor, the State of South
9 Carolina calls Indictment No. 2020-GS-47-20, the State of
10 South Carolina versus Stephen Green --

11 MR. HICKS: Excuse me, Your Honor. We have a matter of
12 law that we have to discuss before this is published. May we
13 approach, please?

14 THE COURT: Okay.

15 MOTIONS/MATTERS OF LAW

16 MR. HICKS: Your Honor, one of the pretrial motions that
17 I intend to make is for you to dismiss the murder charge part
18 -- in the alternative, quash the indictment because it's
19 fatally flawed by statute. If you are inclined to grant that
20 after our arguments, I don't want the prospective jurors to
21 have heard anything about murder going forward until the State
22 can cure.

23 MR. GIESE: I mean...

24 THE COURT: He's going to call the case, and the fact
25 that you quashed the indictment -- I mean, he's charged with

1 murder.

2 MR. HICKS: But he's also charged with three other
3 things, and assuming that we go forward on those other three
4 charges absent the murder charge, then I think that knowing
5 about the murder indictment in the first place is going to be
6 prejudicial towards the other three charges. That's why I'd
7 like to address that first.

8 THE COURT: What are the three charges?

9 MR. GIESE: Mob first, conspiracy, and a weapon.

10 THE COURT: Okay.

11 MR. HICKS: The murder charge, I think, would be
12 especially prejudicial related to the assault and battery by a
13 mob resulting in death, which is the charge, Your Honor. So,
14 I think we're going to need to dispose of that before we
15 publish the case.

16 THE COURT: So, I'm not going to dispose of that without
17 hearing testimony.

18 MR. HICKS: But this is a matter of law, Your Honor.
19 There's no testimony. This has to do with flaws in the
20 indictment.

21 THE COURT: So, you think that they can't -- they have
22 got to choose one or the other?

23 MR. HICKS: I'm sorry, Judge?

24 THE COURT: Do you think they've got to choose one or the
25 other, and they can't go forward with both?

1 MR. HICKS: No. What I'm saying is that they can't
2 proceed on the murder charge because of the indictment is
3 flawed, Your Honor. There's no charging document because
4 there's no valid charging document.

5 MS. SCOTT: Judge, we would argue that it puts him on
6 notice of the charge of murder and has the elements required
7 for the indictment.

8 MR. HICKS: Well, I would argue that Statute 17-19-30
9 requires a little more than just saying murder. It requires
10 the plain English statement of the manner in which the death
11 of the decedent was caused, and it also requires allegations
12 of willfulness that's missing from both indictments, the
13 original and the superseding.

14 I view this as a notice issue in that the statement about
15 the manner in which the death of this deceased was caused.
16 Are they alleging he shot him? hung him? pushed him? I have
17 no idea.

18 THE COURT: All right. Well, what I intend to do is say,
19 "This is an incident alleged to have occurred on April 15th,
20 2018, in Lee Correction," and "Do y'all know anything about
21 it?" And then we'll put a jury in the spot and then I'll
22 argue all this. Okay?

23 MR. GIESE: Okay.

24 MR. HICKS: Thank you, Your Honor.

25 (Open court resumes as follows:)

1 Photographs, was marked for identification.)

2 MOTIONS/MATTERS OF LAW

3 THE COURT: Okay.

4 MR. HICKS: So, Your Honor, I think the first thing that
5 we need to address is that I'm asking you -- I'm moving the
6 Court to either quash this indictment or quash the indictments
7 on the murder charge specifically or -- I prefer you just
8 dismiss it or, in the alternative, quash the indictment to
9 allow the State the opportunity to cure.

10 The reason I'm asking you this is because, according to
11 South Carolina Code 17-19-30, every indictment is required to
12 not only state the time and place -- this is indictments for
13 murder specifically -- not only state the time and place that
14 the murder allegedly took place but also the manner in which
15 the -- the death of the deceased was caused as well as stating
16 that it was felonious, willful, and with malice aforethought.

17 In this case, the indictment -- both the original
18 indictment and the superseding indictment filed on May 20th,
19 2021, if you look at Count 5, Your Honor, they both fail to
20 include that statutorily required language regarding the
21 manner in which the death of the deceased was caused, and they
22 also failed to allege that it was willful.

23 So, the problem with the statutory language missing is
24 that, specifically with regards to the manner of death, it
25 fails to provide adequate notice to the defendant -- you okay?

1 It fails to provide adequate notice to the defendant about
2 what he is preparing to defend himself against. Sure, murder
3 is stated in there, as well as the statute regarding that, but
4 murder isn't just murder across the board, Your Honor. It
5 doesn't allege that Mr. Green pushed his alleged victim in
6 front of a bus. It doesn't allege that he kicked him off a
7 cliff. It doesn't allege that he stabbed him or shoved him.
8 We have no idea functionally, based on this indictment, what
9 we're preparing to defend ourselves against here.

10 Further, as far as the willful language is concerned, it
11 leaves the defendant a little bit vague, not as vague as the
12 original part but a little bit vague as to what charge he's
13 actually being called to answer for.

14 So, absent an allegation of willfulness, which is a part
15 of a murder, you can't accidentally murder somebody; there's a
16 willfulness portion that's not covered exclusively by the
17 malice aforethought. Absent an allegation of willfulness,
18 this charge could just as easily be one for involuntary
19 manslaughter as it is for murder.

20 So, for those reasons, Your Honor, I'm going to ask that
21 you dismiss the murder charge, and absent that, I'd ask that
22 you quash the indictment or at least Count 5 of the
23 indictment, which is the count for murder against Mr. Green.

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

25 MS. SCOTT: Yes, Your Honor. As you know, for Section

1 17-19-20 of this specific indictment charges the crime
2 substantially in the language of the statute. The murder
3 statute specifically says it's the killing of any person with
4 malice aforethought, either expressed or implied. The
5 indictment says just that but additionally adds the date April
6 15th, 2018, and the jurisdiction, Lee Correctional
7 Institution, located in Lee County, did, with malice
8 aforethought, kill Cornelius McClary.

9 State v. Gonzales at 600 S.E.2d 122, it's a 2004 case, an
10 indictment phrased substantially in the language of the
11 statute which creates and defines any offense is ordinarily
12 sufficient.

13 Other case law, State v. Means, discusses the fact that,
14 when you look at an indictment, you look at it in the -- you
15 examine objectively, not subjectively, in the eyes of the
16 defendant. Objectively looking at the indictment, Your Honor,
17 if you were to look, he's also charged with assault and
18 battery by a mob first degree, the weapon charge, and the
19 conspiracy charge.

20 Looking at all these together, you look at the totality
21 of the circumstances. The means in which the murder occurred
22 is not statutorily required in the indictment. He can -- you
23 can see some of that within the other language of the other
24 charges, but that's not needed in this charge.

25 What's needed for an indictment, which is simply a

1 charging document, is to put the defendant on notice of what
2 the State is seeking to go forward on the charges for and
3 whether he did plead guilty or not guilty, and I believe that
4 the State has done so by this murder indictment. It lays out
5 all the elements of the offense. We put him on notice of the
6 date and jurisdiction. We would say that it is a sufficient
7 indictment, Your Honor.

8 THE COURT: Okay. Anything else you want to tell me?

9 MR. HICKS: Yeah, Your Honor. The problem with the
10 State's argument is that they're basing it off 17-19-20, which
11 is indictments in general. But if you look down one paragraph
12 to 17-19-30, that statute -- that statute title is,
13 "Allegations Sufficient for Indictment for Murder." I'm not
14 contesting the other indictment allegations. I'm contesting
15 the murder one as it's written in the superseding indictment
16 filed in May of 2021.

17 The statutory language of that requires that the State
18 include a statement about the manner in which the deceased's
19 death was caused. There's just no way around that, Judge.

20 MS. SCOTT: And, Judge, we would just say that the
21 statutory language, which is what is required for an
22 indictment, and we believe that has been shown in the
23 indictment for this murder charge.

24 THE COURT: Okay. So, your position is not the
25 17-19-30 ---

1 MR. HICKS: Yes, Your Honor.

2 THE COURT: --- that the State -- to allege in the
3 indictment, the manner of death, in that he either shot the
4 defendant, stabbed the defendant, beat the defendant to death.
5 Was that your contention?

6 MR. HICKS: Yes, Your Honor. My contention is that there
7 must be a plain statement, devoid of fancy language, stating
8 the manner in which the death of the deceased was caused. If
9 you want to do it in terms of elements, that's one of the
10 elements that that statute requires for a sufficient
11 indictment for murder.

12 THE COURT: Okay. And the last time that statute was
13 amended was in 1962, wasn't it?

14 MR. HICKS: I believe that's correct, Your Honor.

15 THE COURT: Okay. All right. Of course the Supreme
16 Court has changed a lot of things about the indictments since
17 the Gentry case -- and apparently everything else -- that said
18 now that basically it's just to notify.

19 MS. SCOTT: That's correct, Your Honor. That Gentry case
20 is a 2004 -- I'm sorry. The Gentry case is a 2005 case. Our
21 position is the indictment is a notice document. It puts the
22 defense on notice of what the State is seeking to go forward
23 on criminal charges on.

24 Date and time is essentially the two main factors that
25 are needed for that as well as the statute, which, as the

1 statute for murder reads, is exactly what the indictment
2 reads.

3 There's another case, Your Honor. It's not about murder
4 but it is for a conspiracy charge. It's Thompson v. State,
5 and that discusses, when the indictment is still sufficient
6 when we don't have the actual details of the crime listed
7 within it. As long as it statutorily goes with the crime
8 that's charged, that's enough.

9 And we believe that we have provided ample -- the
10 defendant has ample notice of what the charge is for and has
11 been provided the notice of the murder charge.

12 MR. HICKS: Your Honor, I would argue that Gentry is not
13 challenging the jurisdiction of this court -- the subject
14 matter of this -- the subject matter jurisdiction of this
15 court to hear this matter based on the filed indictment. So,
16 Gentry, I think, isn't really a factor in this.

17 As far as the Thompson case is concerned, sure, that may
18 be absolutely accurate but that's under a completely different
19 statute. This statute clearly states that this is an element
20 of a sufficient indictment for a murder charge.

21 And in this matter, Your Honor, deficiencies like the
22 statutory flaws should be construed strictly against the
23 drafter, not against the defendant. There's an opportunity
24 for them to cure this. It's not even that difficult, I
25 wouldn't think, but still, it's something that they need to

1 cure before we can proceed.

2 THE COURT: Okay. Now, your only objection to the
3 indictment, then, is Count 5 on murder?

4 MR. HICKS: Yes, Your Honor.

5 THE COURT: So, Count 6 for assault and battery by mob,
6 first degree, you don't have an objection to that?

7 MR. HICKS: I don't have any objection to that count, no,
8 Your Honor.

9 THE COURT: Okay. All right. I'll read the Thompson
10 case and think about this and let y'all know something either
11 later today or in the morning before we swear the jury.

12 MR. HICKS: Yes, Your Honor.

13 And pending your decision, I'll potentially be making
14 further motions based on how you decide that matter.

15 THE COURT: Well, let's make -- what other motions do you
16 got?

17 MR. HICKS: Well, regarding that, Your Honor, if you
18 decide in my favor, I would ask that you exclude them from
19 making any motion -- or any mention of murder. That's just
20 going to taint the jury as far as this case is concerned.

21 I know it's kind of hard to parse that out with the
22 assault and battery by mob resulting in death, but,
23 definitionally, that's something substantially different than
24 murder. So, I would just ask you to exclude it in reference
25 to murder, exclude them from alluding to it, things of that

1 nature.

2 THE COURT: Okay. Well, I'll consider that. If I rule
3 in your favor, then I'll deal with that motion as well.

4 MR. HICKS: Yes, Your Honor.

5 THE COURT: Okay. Now, what other motion do you need?

6 MR. HICKS: Let me flip through my mega-size book here,
7 Judge.

8 Next up is I'd ask the Court to order a Biggers hearing
9 for every single witness who is going to make an eyewitness
10 identification of Mr. Green based on video footage or what
11 have you, both in court and out of court, Your Honor.

12 So, it's my contention that lineup procedures and
13 identification procedures used by the State out of court were
14 all illegal, and therefore, I'm demanding a Biggers hearing so
15 that they can prove the reliability of those out of court
16 identifications before they bring witnesses in to testify to
17 that in front of the jury.

18 THE COURT: All right. Do you want to respond to that?

19 MS. SCOTT: Judge, first off, I understand there are
20 certain people that are on the witness list or at least one or
21 two of them that would require a Biggers hearing because they
22 are eyewitnesses to the crime in realtime, but the officers
23 that we are calling to identify the defendant were not
24 eyewitnesses to the crime. They have every ability to
25 identify someone by name and sight based on knowing them and

1 their familiarity with the defendant, and a Biggers hearing is
2 not required in that situation. So, there are numerous
3 witnesses on our list that I don't think meet the standard for
4 a Biggers hearing. They're not eyewitnesses to the crime.

5 MR. HICKS: I don't disagree about the familiarity; that
6 obviates the need for a Biggers hearing, Your Honor. But
7 absent them specifying which of those witnesses are going to
8 contend that they knew Mr. Green well enough in advance that
9 they can make an eyewitness identification based off the video
10 lineup, I'd still like to be able to have a Biggers hearing
11 and question them, and also, it gives us the opportunity and
12 gives the Court the opportunity to evaluate the reliability
13 factors both from a witness's perspective and in regards to
14 the lineup procedures and identification procedures that were
15 used.

16 And, again, Your Honor, it's my contention that, based on
17 the South Carolina state law versus -- specifically State v.
18 Liberman (ph), all of their out-of-court identification
19 procedures performed were illegal and, therefore, we've got to
20 have a Biggers hearing for them.

21 MS. SCOTT: Judge, I can go ahead and give him the names
22 of the ones that I would say would not require a Biggers
23 hearing, and that would be William Burley, Clive Lopez --

24 MR. HICKS: See, Your Honor -- I'm sorry to interrupt --
25 this is where it's going to be a problem; right? In all of

1 the statements and all of the testimony and all of the
2 everything from Officer Burley, he specifically says he never
3 once worked in the F1 dorm, which is where Mr. Green was
4 housed. And now the State is contending that Mr. Burley
5 doesn't need a Biggers hearing because he knew Mr. Green.

6 This is where the problem is going to come in. Either
7 the discovery that they gave me was insufficient and
8 inaccurate, or we need to do these Biggers hearings and find
9 out why there's this disconnect, Your Honor.

10 MS. SCOTT: And, Judge, that would go to the weight of
11 the evidence, not the admissibility of the evidence. That's
12 for the jury to decide whether they take that particular
13 witness's testimony and the weight that they give it for the
14 identification purposes.

15 Anyone that has the familiarity with name and sight of
16 the defendant would be able to testify to that knowledge, that
17 person that they can see on that videotape, that is them. And
18 that's actually under Rule 701. That's going to be lay
19 witness opinions, Your Honor.

20 You can have identification testimony, and it's
21 admissible under Rule 701, and it's free for analysis
22 essentially where it shows the testimony based on the
23 perceptions of the defendant at the time they have been able
24 to be around that person, seeing them and everything like
25 that.

1 And then whether it's helpful for the jury to hear this
2 testimony at trial is a matter that's at issue at trial. And
3 here, it's my understanding from just listening to Mr. Hicks
4 that I think he's going to be going for an identification
5 defense. So, I would say it's clearly at issue in this trial,
6 and I think that they would be able to testify to that.

7 And, also, 701 also talks about there's no special skill
8 required to identify a familiar person. Judge, these officers
9 spent days -- every day around these people. They know a lot
10 of them. They know the way they talk, the way they walk.
11 They can know them by name and sight, by nicknames -- Stephen
12 Green is "Tank" -- or just by their last name and also by
13 physically looking at them on videotape. Also looking at
14 their booking photos when they come into SCDC too. They're
15 familiar with these inmates.

16 THE COURT: Okay.

17 MR. HICKS: Yeah, Your Honor, that doesn't negate
18 everything that I just said regarding Mr. Burley -- or, excuse
19 me, Officer Burley, who never met Mr. Green a day in his life
20 and yet, the State is saying there was familiarity. That's
21 just simply not the case.

22 And, in fact, most of these -- from the discovery that
23 I've received and the discovery that I have reviewed, prior to
24 testimony, prior witness statements, everything, there's
25 nothing that I can find where Officer Burley says, "Yep,

1 that's Mr. Green, and I know Mr. Green."

2 Even if -- even if Your Honor -- in fact, if I'm wrong,
3 I'd be happy to withdraw this as far as Officer Burley is
4 concerned, but at the end of the day, Your Honor, even if he
5 did have some familiarity with Mr. Green, we still have the
6 option or we still are entitled to the opportunity to question
7 the reliability of that identification based on the lineup
8 procedures that they used for Officer Burley to identify
9 Mr. Green in whatever video and photographs that they used.

10 THE COURT: And I understand that, and that comes in play
11 in everyday cases. That's what you do on cross-examination,
12 is to go and question the reliability of their information.
13 That's what you do on cross, and the jury can give it whatever
14 weight that they deem it.

15 That doesn't necessarily go to the admissibility of it.
16 It's simply the weight. And you certainly have a right to
17 question anybody's identification as to how reliable it is and
18 how they decide it. And that happens in every case.

19 So, I don't know -- I haven't looked at the discovery. I
20 don't get to see all that. So, if it's a particular thing for
21 the jury, but reliability -- if any witness is identifying
22 your client, you have the right to cross-examine them on it
23 and confront them as to how accurate they are.

24 MR. HICKS: Absolutely, Your Honor, but that's the point
25 of a Biggers hearing as well is for the Court to make a

1 reliability determination before that identification is
2 allowed into testimony or allowed into evidence.

3 THE COURT: And then we're going to try the whole case
4 twice.

5 MS. SCOTT: Right.

6 MR. HICKS: I'm sorry, Judge?

7 THE COURT: Then we'd be trying the whole case twice. I
8 mean, usually, it's only one or two witnesses. Usually,
9 you've got a victim, somebody standing on a street corner who
10 doesn't have any prior knowledge and that's important, or you
11 know -- but every eyewitness -- and it may be that situation.
12 We can go one-by-one, but you were talking about one
13 particular officer who never saw him and met him.

14 MR. HICKS: And as far as any of the discovery and
15 witness statements that I found, no, I haven't seen anything
16 where he said, "Yeah, I knew Mr. Green from having worked in
17 the F1 dorm." And, in fact, he clearly states he worked in
18 the F3 and the F5 dorm and not the F1 dorm and would have no
19 basis for knowing Mr. Green.

20 So, Your Honor, in the alternative --

21 THE COURT: Is that just one witness? I mean, if that's
22 just one witness, we can clear that up. If you take that
23 position with every witness --

24 MR. HICKS: I literally just got the witness list today,
25 Your Honor. So, I'll look at the rest of them and make that

1 determination. But perhaps, like I said, on a case-by-case
2 basis as we proceed, I'm fine with that.

3 MS. SCOTT: And, Judge, Officer Burley was a yard
4 sergeant, so he was very familiar with all the inmates'
5 movements throughout the day and knew other inmates besides
6 those in those dorms he just mentioned.

7 And I can try to point to you where there's -- in the
8 discovery, where Officer Burley does, in fact, identify your
9 client.

10 MR. HICKS: Oh, I'm sure -- I have it in the discovery
11 where he identifies my client. Your Honor, I'm not
12 questioning did he identify my client. I'm questioning the
13 basis for him making that identification and the reliability
14 of it, which is why I'm asking for a Biggers hearing.

15 Like I said, Judge, I'll make an objection in trial as
16 appropriate, and we'll deal with it then as necessary.

17 THE COURT: And based on prior trials that I have had
18 with corrections facilities, it's -- a lot of time, it is a
19 video, and in that video are people in the video, and somebody
20 is identifying who this person is; unlike, when you don't have
21 a video and they're saying, "This person did this, this, and
22 this," most of the time, in the video, the jury has an
23 opportunity to view your client and view the video and make
24 their own determination whether that's him or not him.

25 MR. HICKS: Yes, Your Honor.

1 THE COURT: You know, sometimes it's not clear enough and
2 they can't tell, but it depends on -- that's something you can
3 cross-examine the eyewitness. If he has never seen your
4 client before, when he's looking at the video and says,
5 "That's him," you can ask him how does he know that's him --
6 because I'm looking at this or looking at this, or either
7 somebody told me that was him, and then that changes
8 everything.

9 But I -- other than trying the whole case twice, you may
10 just have to make your objection, at least do the
11 cross-examination, and let's just -- well, let me ask y'all
12 this: Is there somebody who is going to identify your client
13 and it's not video involved; that they came in and said, "I
14 don't care what the video says" or maybe it occurred in a room
15 where there's no video camera and that your client did
16 something and they're going to identify him? Is that -- do we
17 have witnesses who are going to say that?

18 MS. SCOTT: No, Your Honor.

19 THE COURT: Okay. Then, other than dealing witness by
20 witness, do you think we need to try the whole thing twice?

21 A lot of times, the jury is going to see something
22 happening on the video screen and usually it's only a few
23 seconds or a few minutes of the actual potential crime or
24 murder. And then who is identifying doing what is what's
25 really important.

1 So, that's usually they don't have but one or two
2 witnesses that will say that versus ten witnesses who all will
3 say that.

4 MR. HICKS: Well -- and, see, that's what I don't know,
5 Your Honor. I am basing everything I'm saying off of trial
6 transcripts from the previous trial that took place. The only
7 witness that the State called that made a "this is that guy"
8 identification was Correctional Officer Burley.

9 This witness list that we have now is fairly substantial.
10 I have to go back to my office at some point. That's my night
11 tonight. Review it and re-read all their witness statements
12 and see who else is going to be making these identification
13 statements as well.

14 So, I don't know if it's fair to characterize it as
15 trying the whole thing twice or not, but I've just got to go
16 read all these witness statements and figure it out.

17 THE COURT: Okay. And maybe I think she ought to help
18 you with those witnesses who they intend to put up there are
19 going to identify your client. Maybe that would -- versus all
20 the witnesses they're going to -- I mean, many times, they've
21 got -- in most cases I have tried, they have got a long list
22 of witnesses and don't call but half of them maybe. Just
23 because they're on the witness list doesn't mean they're going
24 to get called, and many of them are based on reply or some
25 other issue based on any defense you raise.

1 But y'all can sit and talk about it, and I'll be glad to
2 deal with it, but I'm not going to have a Biggers hearing on
3 everybody that's going to testify.

4 MR. HICKS: Well, not everyone that's going to testify,
5 Your Honor. Just the people that are going to make a -- or
6 testify about an out-of-court identification of my client.

7 THE COURT: Okay. And maybe we can narrow that down.

8 MS. SCOTT: Judge, what we would still say is a Biggers
9 hearing is needed for an eyewitness identification, viewing
10 the crime in realtime. I don't think that the officers that
11 we are calling for identification, like Lopez, he didn't
12 witness that crime in realtime, so a Biggers hearing is not
13 needed for him.

14 THE COURT: He's simply going to say that's your client
15 on the video right there. Assume that that's what's normally
16 said, "Who is this? Who is this? Who is this?" and he names
17 those people, you have the right to cross-examine as to how he
18 knows that.

19 MR. HICKS: Were that the only thing that they were
20 doing, Your Honor, I would absolutely agree with you 100
21 percent, but what the testimony from the previous trial
22 indicates and what witness statements that I have indicate or
23 that, for example -- I'm going to keep going back to Officer
24 Burley because that's the one from the last trial that
25 testified.

1 They didn't just have Mr. Burley -- Officer Burley, who I
2 still contend had never met Mr. Green before -- sit there and
3 watch a video. What they did is they had the entire
4 contraband team come into a room together. It was not
5 performed blind like an identification procedure should be
6 performed. It was Special Agent Shaw administering it, and
7 she knew who they were investigating at the time.

8 It wasn't performed blind. There was no proper lineup
9 composition. It was three or four people sitting in a room
10 together, for all I know, drinking beer and eating popcorn and
11 laughing about it, influencing each other, potentially being
12 influenced by the investigator because it wasn't performed
13 blind.

14 These are the reliability factors that Biggers is
15 intended to address, and they absolutely apply in this case.
16 And I think because -- because they didn't record any of these
17 identification sessions, because they didn't preserve the
18 record with any video recording and they didn't make any
19 confidence statement recordings or anything like from the
20 witnesses, I can only assume that all of the witnesses that
21 they intend to have identify Mr. Green from video footage were
22 done somewhat similarly, which is why I believe, Your Honor,
23 that they all need to have a Biggers hearing to determine the
24 reliability of the identification and the procedures that
25 influenced it improperly and unnecessarily suggestively.

1 MS. SCOTT: Judge -- and I know it's like beating a dead
2 horse here, but these are not eyewitnesses to the crime. A
3 Biggers hearing is not needed.

4 He can question them on cross-examination, and he can
5 present that to the jury in his cross about, you know, how
6 reliable is your testimony and how great is your
7 identification of this person. That's not something that
8 would be had pretrial. That's something he can cross them on
9 when they testify. That's the point of testimony.

10 MR. HICKS: Your Honor, correct me if I'm wrong, but a
11 Biggers hearing is intended to determine the reliability of an
12 out-of-court identification, not an eyewitness personal
13 real-time identifier, just the reliability of out-of-court
14 identification.

15 THE COURT: Okay. Let me read the Biggers hearing case
16 again.

17 (Pause in the proceedings while the Court reviews
18 documents.)

19 THE COURT: I haven't had a Biggers hearing with the
20 depth of the issue that you're talking about.

21 MS. SCOTT: Judge -- and also, it's a --

22 THE COURT: State v. Taylor, which is a 2004.

23 MS. SCOTT: And there's State v. Warner, Judge. It's a
24 2022 case. It's 436 S.C. 395.

25 THE COURT: Okay.

1 MS. SCOTT: I can hand up my copy if you want, Judge.

2 THE COURT: Okay. That would be great.

3 (Pause in the proceedings while the Court reviews
4 documents.)

5 THE COURT: Well, you know, in Neil vs. Biggers, the
6 factors in determining the totality of circumstances is:

7 (1) the witness's opportunity to view the perpetrator at
8 the time of the crime. So, I assume that's what she was
9 talking -- one of the witnesses to the crime.

10 The witness's degree of attention is number two.

11 The accuracy of the witness's prior description of the
12 perpetrator and the level of certainty demonstrated by the
13 witness at the confrontation and the length of time during the
14 crime or this confrontation.

15 In every Neil vs. Biggers hearing I ever had dealt with
16 those issues.

17 MR. HICKS: Yes, Your Honor. I would actually refer you
18 to State v. Ramsey, if you would. That's 345 S.C. 607. And
19 the holding generally from State v. Ramsey is such that a
20 trial court must hold an in camera hearing when the State
21 offers a witness whose testimony identifies the defendant as a
22 person who committed the crime and the defendant challenges
23 the in-court identification as being taken by a previous
24 illegal identification or confrontation. I have made that
25 allegation, Your Honor, on behalf of my client.

1 And that's what the Biggers hearing is for, for you to
2 have that in camera hearing and make a determination about the
3 reliability based on an illegal identification procedure used
4 by the State. And my contention that it's illegal is based on
5 State v. Liverman, Your Honor. That's 398 S.C. 130. It lays
6 out the factors that would make it legal versus illegal.

7 (Pause in the proceedings while the Court reviews
8 documents.)

9 THE COURT: All right. So, in the Warner case, the issue
10 is whether a probation officer could identify the defendant,
11 and basically, the Court said that they were not identifying
12 the defendant as the man in the crime scene video. He was in
13 the crime scene video and not an eyewitness to the crime and,
14 thus, a pretrial hearing was not required to determine whether
15 identification violated the defendant's due process rights.
16 You don't think that's the law?

17 MR. HICKS: I'm sorry, Your Honor. Which case?

18 THE COURT: It's the case she just handed me up. State
19 v. Warner.

20 MR. HICKS: I haven't read that case, Your Honor, but,
21 again, I would refer back to Ramsey -- State v. Ramsey where
22 it requires --

23 THE COURT: Do you have a copy of that? Wait a minute.
24 Let me pull up -- let me look at this. 2009 case?

25 MR. HICKS: 2001, Your Honor. 345 S.C. 607.

1 And, again, Your Honor, that case held generally that a
2 trial court must hold an in camera hearing when the State
3 offers a witness whose testimony is going to identify the
4 defendant as the person who committed the crime and the
5 defendant challenges the in-court identification based on the
6 allegations that it was an illegal identification that took
7 place. And that is exactly what we're alleging. Rather,
8 we're alleging that it's tainted by a prior illegal
9 identification, which was the identification performed by the
10 State with all their out-of-court identification procedures.

11 (Pause in the proceedings while the Court reviews
12 documents.)

13 THE COURT: It seems to me, in the Ramsey case, they said
14 not having a hearing was harmless error.

15 MR. HICKS: I'm sorry, Your Honor?

16 THE COURT: They said it was harmless error by not having
17 a hearing.

18 MR. HICKS: It says it was harmless error in that case
19 but it also indicates that an in camera hearing is needed to
20 determine whether in-court identifications are independent or
21 if they were tainted by the product of the circumstances.

22 THE COURT: Right.

23 MR. HICKS: In that case, yes, it was harmless error. I
24 contend, in this case, it may very well not be harmless error,
25 Your Honor.

1 THE COURT: But, in the Warner case, it deals with
2 similar factual situations as here in that it's dealing with a
3 probation officer who is identifying the defendant versus
4 somebody who is witnessing the crime.

5 MR. HICKS: I can barely hear you, Your Honor.

6 THE COURT: I'm sorry.

7 In the Warner case, it deals with a probation officer who
8 views a video and identifies the person versus an
9 identification of somebody who witnessed the crime. So, this
10 is -- this is the exact same scenario we have here in that we
11 have got officers who are viewing a video.

12 MR. HICKS: Well, I would except that case from this,
13 Your Honor, because we're talking about -- correct me if I'm
14 wrong, but you're talking about a probation officer using
15 video footage to identify one of their probation clients,
16 somebody with whom they are already intimately familiar from
17 having met, seen them in court, etc., etc., etc.

18 We're talking about corrections officers who, in some
19 cases, have never set eyes on Mr. Green's face before, using
20 video -- as far as I know -- using video footage to identify
21 my client and using an extremely flawed and unnecessarily
22 suggestive and illegal identification procedures. I would say
23 that that case is not even in the same ballpark, Your Honor.

24 MS. SCOTT: And, Judge, for the State, we would say it's
25 the exact same type of facts. It's an officer who has

1 knowledge, name and sight, of this defendant he's identifying
2 in court. It was not an eyewitness to the crime identifying
3 based on the photo or videos, exactly what we're dealing with
4 here.

5 Under 701, they have the ability to do so. They're not
6 eyewitnesses to a crime. An eyewitness to a crime that would
7 necessitate a Biggers hearing would be seeing a crime happen
8 live in realtime. And that's not what we have here with these
9 officers that would be testifying to knowing a defendant and
10 picking him out of a video.

11 MR. HICKS: Your Honor, I would argue this is smoke and
12 mirrors, because the Biggers hearing -- or, excuse me, Neil v.
13 Biggers subsumes the State v. Ramsey into it. And State v.
14 Ramsey clearly states that we are challenging this
15 out-of-court identification as illegal and tainted by court
16 procedures and, ergo, of a right, we should get a Biggers
17 hearing on all of that.

18 The rest of it is smoke and mirrors, trying to except
19 these other cases and all this stuff. But the root of the
20 manner, Your Honor, is that we are challenging the
21 authenticity and the legality based on procedure of these
22 witnesses and, ergo, the downstream effect is that any
23 in-court testimony that they give and any in-court
24 identification that they give is going to be tainted.

25 THE COURT: Okay. I mean, I understand what you're

1 getting at, and in most scenarios, if somebody is going to
2 look at a video and identify your client or anybody else on
3 the video, it's because some prior knowledge of something.
4 They either saw him commit the crime and "that's the same guy
5 I saw at this convenience store" that's on this video, or
6 robbing Walmart, is on the video.

7 I guess your argument is that people who are going to
8 identify him in the video don't know him. Somebody else who
9 was sitting in the room with him looking at the video told him
10 that's him. Is that your argument?

11 MR. HICKS: My argument is, Your Honor, is that, as far
12 as I know -- because they haven't -- they haven't produced any
13 evidence to the contrary -- as far as I know, they sat a group
14 of people in a room with a large screen video playing and then
15 they put a picture of Mr. Green -- like a close-up recent
16 photograph of Mr. Green in front of them and said, "This is
17 Mr. Green. Is that also Mr. Green?"

18 That's the point of us wanting this hearing is to
19 determine the reliability and the legality of the procedures
20 they used to identify Mr. Green out of court before that comes
21 in.

22 THE COURT: Okay. So...

23 (Pause in the proceedings while the Court reviews
24 documents.)

25 THE COURT: How many witnesses are going to get on the

1 stand and say that's Mr. Green in the video and ask him how
2 they know that? If they say, "I have worked on that floor
3 with him for the last ten years, I know him well, I see him,"
4 that's fine. He's implying that you're going to put a number
5 of witnesses up there who don't know him, never seen him
6 before, and have sat in a room with somebody saying, "This is
7 him. Let's all look at who is this."

8 If that's the scenario, we may need to have a Biggers
9 hearing. If that's not the scenario, it's like any other
10 trial.

11 MS. SCOTT: Judge, we have roughly four people that would
12 identify the defendant that we would put up to testify. One
13 of those is Officer Burley, who, as Mr. Hicks is saying, there
14 was a room where there were a team of contraband officers in
15 there, but it wasn't -- he'll be able to testify that it
16 wasn't just based on them in a room as to how he identified
17 Stephen Green. He knows Stephen Green. He was the yard
18 sergeant at the time. He's very familiar with the defendant.

19 THE COURT: Okay.

20 MS. SCOTT: So, that would be the only one --

21 THE COURT: Is that the only -- is that the main one you
22 have an issue with?

23 MR. HICKS: No, Your Honor. And I can tell you, the
24 reason I have an issue is, in large part, based off the -- and
25 I don't think this is going to come into evidence, I don't

1 know that this is even going to be an issue, but the report of
2 interview that Special Agent Shaw did after interviewing
3 Colonda Tiffany Robinson, for example, where they actually say
4 in the report of interview that "we put her in front of this
5 television, she identified a bunch of inmates. We put
6 pictures of these inmates in front of her." Like, that is --
7 that's a confession of unnecessarily suggestive lineup
8 procedures, Your Honor.

9 Like, I'm going to have a problem with every single
10 out-of-court identification coming in until they demonstrate
11 the reliability of it and that it wasn't unnecessarily
12 suggestive and illegal lineup procedures done. That's my
13 issue, Your Honor.

14 THE COURT: Okay. So, other than putting somebody on the
15 stand and asking them that, how am I going to get to the
16 bottom of it? I mean, do we have the witnesses here? Who is
17 going to -- I mean --

18 MS. SCOTT: Judge, we do have a couple of the witnesses
19 here. We don't have all of them here today because, again,
20 it's our assertion that a Biggers hearing is not needed for
21 them. But we do have a couple of them here, if that's what
22 you're inclined to do.

23 THE COURT: And if they have independent knowledge of him
24 and have known him for a number of time, I don't think a
25 Biggers hearing is needed. If we -- if the only way they know

1 him is if everybody is sitting in a room and people are
2 pointing him out we may could -- that would become the
3 reliability issues.

4 MS. SCOTT: Judge, all of these people know the defendant
5 by name and sight, not just -- they all know him. All the
6 people we will be putting up can identify him as having
7 interactions with him, seeing him at Lee, not just looking at
8 a videotape and that's the first time they're seeing him.
9 They would testify to knowing who this person is.

10 THE COURT: And I assume -- and I'm relying on what
11 you're telling me. And so, when he gets up on cross and says,
12 "You say that this person in the video is Mr. Green. How
13 do -- tell me about your past contact with him. How did you
14 know Mr. Green before this day?"; if they say, "I never knew
15 him, I never met him, I watched a video of it," then we've got
16 a problem. If they say, "I have been knowing him, I've worked
17 there this many years, I see him and I have had this encounter
18 and this encounter and this encounter with him," that's not a
19 problem.

20 And I guess if you tell me that's not the case, we'll
21 proceed with the trial. If we get into the middle of a
22 scenario, either we have got to have a hearing then or
23 sometime that bell may be rung and I can't unring it.

24 MR. HICKS: Well, and therein lies the problem, Your
25 Honor. So, I'll show you a case in point. I have got to dig

1 through my pictures here, Judge.

2 May we approach, Your Honor?

3 THE COURT: Yes, sir.

4 MR. HICKS: So, this is the photograph -- this is the
5 screen not taken from the video that Mr. Burley and the
6 security -- or the contraband team, rather, all signed off on
7 saying that they identified Mr. Green.

8 You mean to tell me, based on that, that that is going to
9 be a reliable out-of-court identification? That's objective
10 nonsense, Your Honor. There is no way that that is a reliable
11 out-of-court identification based on this picture that they've
12 circled that little fuzzy black spot and says that Mr. Green
13 right there.

14 They're just trying to parade witnesses in front to
15 compound evidence that I don't think even exists, and I think,
16 absent as to unreliability, Judge, we're going to run into a
17 lot of problems with it because of stuff like this.

18 THE COURT: Okay. So --

19 MR. HICKS: I mean, I'm cool with Officer Burley because
20 this is great impeachment, but...

21 THE COURT: I understand that, if you impeach him and he
22 says that's the pictures that identified him and the jury
23 can't determine who that is, that's a big plus to you.

24 MR. HICKS: Sure.

25 THE COURT: If he's watched the video for an hour and

1 seen your client walking through the dorms and stays tracking
2 with him and they just happen to have one still and he says,
3 "That's him, and I can back you up and show you I've got a
4 better view of his face," I don't know. If that's the only
5 identification, usually, the jury doesn't -- if the jury can't
6 tell who it is, if they can't discern features, that's a
7 problem.

8 MR. HICKS: Absolutely, Your Honor. But that is
9 indicative of the inherent unreliability based on the Biggers
10 factors and everything else that we have discussed to these
11 eyewitnesses identifying and misidentifications, and that's my
12 problem, Your Honor.

13 I mean, I'd be willing to wave off and make appropriate
14 objections and ask for Biggers hearings on all the individual
15 witnesses after I have had time to review their prior
16 statements, Your Honor, but you have got to know my position.

17 THE COURT: Okay. Well, other than us doing -- I mean,
18 never mind the Warner case, Justice Few wrote this opinion,
19 and he's saying that the Court said that judge made it right,
20 that he didn't need to have a Biggers hearing on that video.

21 (Pause in the proceedings while the Court reviews
22 documents.)

23 THE COURT: If you read under 506, they claim if they're
24 not an eyewitness to a crime, you don't need the Biggers
25 hearing.

1 (Pause in the proceedings while the Court reviews
2 documents.)

3 THE COURT: In light of page 5 of that hearing -- and you
4 need to probably read it -- it seems to be the most recent
5 law; it's a 1922 case that deals with this issue.

6 Now, whatever process they present in this trial, it says
7 here, "Only when evidence is so extremely unfair that its
8 admission violates fundamental conception of justice." I
9 think that's the only time, since they're not eyewitnesses to
10 the crime, that would come into play.

11 Now, until I hear it, I don't know whether that's true or
12 not.

13 MR. HICKS: Yes, Your Honor.

14 THE COURT: And maybe -- and maybe -- I think at least
15 you have put them on notice that that's a huge issue, and
16 maybe we want to address it, because, you know, you clearly
17 can cross-examine all these witnesses as well. And if you
18 show them that picture and show it to the jury and no way the
19 jury can identify any facial features in that, I'm sure the
20 jury is going to take that into consideration in their
21 deliberation.

22 Now, if there is some kind of scheme that the State has
23 done and brought all these witnesses in and identified people
24 in a grossly unfair amount, then we're either going to end up
25 in a mistrial or some other problem. But I'm assuming that

1 that's not going to be the case.

2 I'm assuming they're not going to bring another inmate in
3 here who's going to say that your client did it and he doesn't
4 know him, you know, if they bring some other inmate in here
5 that's identifying him and violates the factors in Biggers.
6 But I assume most of the men in that dorm knew each other to
7 the extent they could identify each other. And I don't know
8 if any inmates are going to testify in this case or not. It's
9 just, most of the time, they don't. So, I guess it's all
10 going to be by officer identification.

11 But if somebody gets on the stand who doesn't know your
12 client, who has never seen your client, has no prior history
13 with your client, and the only way he identifies your client
14 is from a video of the officers who have said this is him,
15 then we may need to have a Biggers hearing.

16 MR. HICKS: Yes, Your Honor. And I'll make any
17 objections and motions for that contemporaneous.

18 THE COURT: Okay. Okay. Now, what you want to talk
19 about?

20 MR. HICKS: I've got a couple of more. I think I have
21 got three more. One of them, we kind of already discussed in
22 the Webex hearing, so I think we'll probably dispose of it
23 quickly, but I want to vigorously ask: Daubert hearing. We
24 don't want referencing anything about gang membership, gang
25 activity, etc., etc., Your Honor. That's what I would like.

1 THE COURT: And did y'all want to respond to that?

2 MR. GIESE: I would, Your Honor. I think the way I look
3 at it -- I could be totally wrong about this, but I think it's
4 two levels. It's two different things. Obviously, mentioning
5 gangs and different gangs in the Department of Corrections is,
6 basically, our motive for the killing. So, gang fight. So, I
7 believe we ought to maybe use the word "gangs" and what gangs
8 are in the Department of Corrections and what gang -- well,
9 let me stop there. That's the first level.

10 The second level is whether or not Mr. Green is (A) in a
11 gang and (B) if he is, what gang is he in. And I think that
12 we intend to show and going to show is that Mr. Green not only
13 was in a gang, but he was in the Blood gang, which is, you
14 know, the gang that attacked the Crips in F1.

15 So, I guess on the initial question as to whether or not
16 we can mention gangs, I don't know how we try the case if we
17 can't because that's the motive. And then as to whether or
18 not Mr. Green is in the gang or not, we tend to put witnesses
19 up to show that Mr. Green was in the Bloods, and he's been
20 designated by the Department of Corrections as being in the
21 Blood gang.

22 MR. HICKS: Your Honor, I don't disagree with, as he's
23 saying, about Point No. 1. Absolutely talk about gangs. If
24 you're going to insinuate or imply or state that Mr. Green
25 is/was a member of a gang, had any position, any stature or

1 any influence, then, I think Rule 702 spells it out, Your
2 Honor. That's information that is beyond the grasp of the
3 layperson that requires specialized knowledge, training, or
4 experience to be able to glean that. I think we can't proceed
5 and allow the State to get into that unless we qualify
6 somebody as an expert in order to have them testify as such.

7 MR. GIESE: We can try.

8 THE COURT: And I understand your scenario. You know?
9 Mentioning gangs in a criminal trial when gangs have nothing
10 to do with it, just to do it to inflame the jury, I don't let
11 it in. But if the whole reason that this incident occurred is
12 because of gang conflicts and it's an integral part of the
13 facts in this case, I think it is admissible, because it's not
14 being offered for prejudice to the jury or inflame the jury.
15 It is the facts in the case that caused this hole right here.

16 And it could easily be that this whole situation resulted
17 from gangs fighting each other and your client or other
18 members of the dorm were not in any gang, and they were just
19 caught up in a situation and they acted either to defend
20 themselves or to hurt somebody else and it wasn't anything to
21 do with gangs.

22 But to say that your guy is a member of the gangs, if
23 it's true, then they have a right to prove it.

24 I had a situation last week, in the way the prosecutor
25 said in a bond hearing that he was a member of the Gangster

1 Disciples, and the lawyer objected heavily that that -- there
2 was no evidence of that, and they couldn't say that.

3 Well, the jail said he is a member of the Gangster
4 Disciples because, when he was booked in, he had the tattoos
5 all over him. And I asked him, "What gang are you -- are you
6 in any gang?" And he said, "Yeah, I'm a Gangster Disciple."
7 It came directly from the client.

8 MR. HICKS: Well, sure, but we don't have that in this
9 case, Your Honor. He hasn't said that to me, as far as I
10 know, or anybody else.

11 THE COURT: I understand. I'm just saying sometimes it
12 can be proven without expert testimony, is what I'm telling
13 you.

14 MR. HICKS: Well, again, Your Honor, I would also say
15 that, in a case like that, I would make the same assertion
16 that we need an expert because tattoos are pretty common and
17 prevalent these days, and there's a lot of people walking
18 around with gang tattoos that have nothing to do with a gang
19 and no idea that that is a gang tattoo in the first place.
20 So, I think we do need an expert to qualify before we can
21 connect A to B to C on that one, Your Honor.

22 THE COURT: And that may be true. I don't know about in
23 this case. Sometimes it is true that -- you know, I have had
24 scenarios where there's a video of gangs giving signs, and I
25 had somebody qualified as an expert that could read sign

1 language and everything else to explain to the jury what all
2 that meant, and that person was qualified as an expert and got
3 him in. You know?

4 MR. GIESE: Your Honor, in this case, it's kind of a
5 unique situation in that -- and I forget what year it was --
6 2023? There was a hearing concerning the defendant being
7 whether he was in a gang or not. And now, what they're doing
8 now is, at the Department of Corrections, they'll have an
9 actual hearing where Mr. Green was allowed to be there, along
10 with, for lack of a better term, prosecutor who was an
11 investigator, basically, who does this kind of work in the
12 Department of Corrections, and he was designated by the panel
13 at that point to be part of the Blood gang.

14 Now, we have one of the five people who works for the
15 Department of Corrections here to testify -- to testify that
16 she actually was one of the people that deemed him to be --
17 and he was found to be part of the Blood gang, and we intend
18 to go into all that with her.

19 Also, Your Honor, I believe -- and I don't want to put
20 the words in her mouth -- and she's not in here anyway -- that
21 she can also testify that, back in 2018 when this took place,
22 he was also a member of the Blood gang. And they base that on
23 his tattoos, I believe a statement that Mr. Green made saying
24 he was a Blood, and all these pictures from Facebook that we
25 can show Your Honor at some point that clearly shows him being

1 a Blood.

2 THE COURT: Okay.

3 MR. HICKS: The other side of that coin, Your Honor, is
4 that we'll definitely have to talk it out. I would think that
5 perhaps we'd like to have her qualified as an expert;
6 otherwise, her statements about the tattoos, they're going to
7 fall on deaf ears as far as I'm concerned.

8 But I'm willing to point out, again -- Mr. Giese said it
9 himself -- this is an administrative hearing. This was not
10 adjudicated. This was an administrative hearing that took
11 place in 2023. That's a lot of lookback. I mean, we're
12 looking back six years, five and a half years -- well,
13 five-years-and-some-change to make the assumption that he was
14 in a gang when this occurred.

15 And on top of it, Your Honor, I got the sheet right here
16 from Mr. Green this morning. The allegations are that he had
17 gang-related tattoos. It says they were fresh. It doesn't
18 say they were from 2018. It says, "Fresh." I can show you,
19 Your Honor. STG-related tattoos: Fresh.

20 THE COURT: Okay.

21 MR. GIESE: Your Honor, again, I think that might go to
22 the weight and not the admissibility.

23 MR. HICKS: Sure.

24 MR. GIESE: My witness will testify that this designation
25 word I use is what they're using now. Back in 2018, there was

1 a different -- I don't know, for lack of a better term
2 "designation" -- a different word that they used to show that
3 he was in the Blood gang or to say that he was in the Blood
4 gang, and that's what we intend to show.

5 THE COURT: Okay. I'll rule on it at the time. You can
6 make an objection.

7 MR. HICKS: I'll contemporaneously make the objection and
8 ask to qualify any an expert --

9 THE COURT: Probative value outweighs the prejudicial.
10 It depends on the circumstances.

11 MR. HICKS: I have got the list ready to go, Your Honor.

12 THE COURT: Okay. Now, what are we on?

13 MR. HICKS: Went over the expert witness, security
14 threat, classification.

15 Ready for the big one, Your Honor?

16 THE COURT: Yeah.

17 MR. HICKS: I'm going to ask you to exclude all ViconNet
18 footage. Get rid of it, Judge. The reason I'm asking for you
19 to exclude the ViconNet footage is because, while I have been
20 granted access to it when possible, the fact that the State
21 has had unlimited, unfettered access to the ViconNet footage
22 to manipulate the footage and my access to it has been
23 sporadic and sparing, not because of anything that they have
24 done but because of the physical distance between them, their
25 office and mine. I would ask to exclude it because I haven't

1 had access to it.

2 They contend that there's no physical way for me to get a
3 copy of the footage of the ViconNet format; yet, correct me if
4 I'm wrong, you have it on hard drives; right? I mean, there
5 are substantial hard drives, but you have it on external hard
6 drives; correct?

7 MR. GIESE: The problem with it -- we could give him the
8 hard drive, all of them -- as many as you want. He can't play
9 it. You have to have the ViconNet software to be able to play
10 it.

11 And I also -- just as an aside -- take great offense for
12 his claim that we manipulated the footage somehow.

13 MR. HICKS: Oh, no --

14 MR. GIESE: It's impossible -- and we'll have somebody
15 testify tomorrow. It is impossible -- impossible -- to
16 manipulate the tape. And he'll testify to that tomorrow.

17 MR. HICKS: Your Honor, let me clarify -- and I apologize
18 for that misunderstanding. By "manipulate," I mean the
19 ViconNet footage with the ViconNet software, they have the
20 ability to zoom, they have the ability to display multiple
21 cameras at the same time, and time sync. That's what I meant
22 by "manipulate." I did not mean to insinuate that they were
23 in any way changing the essential character or anything.

24 And I apologize for that, Barney.

25 But like I said, Your Honor, they did allow me the

1 opportunity to inspect and view the ViconNet footage, but it
2 required that I take over an hour travel time each way to go
3 to their office to do it because, for some reason, they
4 couldn't provide the software for me to be able to view it,
5 for whatever reason that is. I assume for proprietary
6 reasons.

7 MR. GIESE: Two, proprietary reasons, and from my
8 understanding -- and the gal will testify tomorrow -- and if
9 you tried to put it on your computer, it would fill your
10 computer up, all of it. It's got to be some mainframe
11 whatever.

12 MR. HICKS: Sure. But -- so, functionally --
13 functionally, Your Honor, what happens is that it costs me two
14 hours of my day -- over two hours of my day if I need to take
15 a look at a 30-second clip of footage on ViconNet to get a
16 better view of something.

17 And this is -- because they have had that functionality
18 available to them consistently, this has created a wildly
19 unfair advantage that I believe is prejudicial to my client in
20 favor of the State, and I would ask you to exclude the
21 ViconNet footage and force them to work with the same MP4
22 format footage that I have been forced to work functionally
23 this entire time.

24 THE COURT: Okay.

25 MS. SCOTT: And, Judge, we invited Mr. Hicks to come over

1 to your office any time he wanted to see this footage. We
2 even created a PowerPoint and gave him that to show the
3 different portions to help him track his client. We have done
4 a lot to help him with this case.

5 ViconNet is the format that is used within the prison
6 system for SCDC, and we have translated it to MP4 so it's
7 easier for people to view and download. The ViconNet is the
8 portion that cannot be tampered with at all. That is the best
9 evidence we have here, and so that's why we believe
10 introducing it into evidence is the way to go and to use it to
11 view it -- for the jury to view it.

12 THE COURT: Okay.

13 MR. HICKS: Again, Your Honor, by not having access to
14 the ViconNet version of all of this footage -- everything she
15 says is true; they have given me PowerPoints, they've given me
16 timestamps, they've given me all this stuff. I have found
17 pretty significant stuff outside of all those PowerPoints and
18 all those timestamps and all this stuff. I'm not saying that
19 I don't trust the State, but I'm a defense attorney; I don't
20 trust them to give me everything that's pertinent, relevant,
21 or useful to my case.

22 All that notwithstanding, not having the ViconNet footage
23 available to me, it's prevented me from being able to review
24 it and form an opinion regarding any objections that I have to
25 it or even the very authenticity of said footage.

1 That video footage that I didn't have -- I was provided
2 the opportunity; functionally, it wasn't going to happen. But
3 the footage that I didn't have, the material that I needed the
4 opportunity to review, I needed to review it in order to
5 determine if there's potentially exculpatory or even
6 inculpatory anything; that their functionality of time stamps,
7 syncing up, and zoom and all this stuff that's hidden from me
8 because I have been saddled with MP4s instead, Your Honor.

9 THE COURT: Well, my understanding from the conversations
10 that we've had in here on the record, they have provided you
11 the opportunity to come and view any of it.

12 MR. HICKS: Yes, Your Honor.

13 THE COURT: They haven't kept it from you. They've given
14 you the opportunity. They don't have the ability to give it
15 to you. And the rules don't apply for them to give it to you.
16 They just give you access to it.

17 MR. HICKS: Yes, Your Honor.

18 THE COURT: So, you had access to it. You could have
19 gone to Columbia as many times you wanted to and sat down and
20 viewed whatever. In all of these situations, ViconNet and
21 Department of Corrections and many police departments, their
22 computer systems aren't set up that you can take it home with
23 you.

24 But if they denied you the opportunity to look at it at
25 all, I'd agree with you, but they have given you the

1 opportunity, and you had to use it.

2 Now, you're also, in this scenario, whatever's presented
3 in this courtroom, you had an opportunity to view, and they
4 have got to prove it's authentic to get it into evidence, and
5 you'll have a chance to review it and cross-examine on it.
6 So, I'm going to deny your motion.

7 MR. HICKS: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. HICKS: And I believe, Your Honor, that is the last
10 of the pretrial issues that I need to address.

11 THE COURT: Because if you had specific instances of
12 one -- your client told you occurred and needed access to
13 that, it would be exculpatory, but just a fishing expedition
14 of hours and hours of tape from the Department of Corrections
15 wouldn't do you any good, as you've got to be specific of
16 something that's potentially exculpatory that they denied
17 access to you. Okay?

18 MR. HICKS: Yes, Your Honor.

19 THE COURT: Okay. Anything else?

20 MR. GIESE: Your Honor, just one brief motion the State
21 has. It's a motion in limine. We had one last trial -- Mr.
22 Conrad from the Attorney's General Office did it. We filed
23 one here. The gist of it -- a lot of it was about
24 self-defense because we weren't sure what his defense was
25 going to be. But it's basically a motion in limine to keep

1 the defense attorney from going for a jury nullification by
2 bringing in what I believe irrelevant facts as to whether or
3 not Mr. Green committed the offense.

4 And I say that by, for example, attacking the Department
5 of Corrections on certain things. I think if we could just do
6 it on a momentary basis just to understand that I'm going to
7 object every time that he brings up something that I don't
8 think is relevant in regards to that, I think that would cover
9 it, as long as he knows it.

10 MR. HICKS: Yeah, I'm not going to go down that road
11 anyway.

12 MR. GIESE: Okay. There you go.

13 MR. HICKS: Problems solve themselves sometimes.

14 THE COURT: All right. Anything else?

15 MR. GIESE: Not from the State, Your Honor.

16 MR. HICKS: Nothing from the defense.

17 THE COURT: I'll see y'all tomorrow at 9:30 in the
18 morning.

19 (The trial adjourned for the day at 3:24 p.m.)

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1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
 2 COUNTY OF LEE * TRANSCRIPT OF RECORD
 3 -----X
 4 STATE OF SOUTH CAROLINA, *
 5 vs. * Case No. 2020-GS-47-00020
 6 STEPHEN J. GREEN, *
 7 Defendant. *
 -----X

8 September 23-26, 2024

9 JURY TRIAL
 10 SEPTEMBER 24, 2024 - VOLUME II

11 B E F O R E:

12 The Honorable R. Ferrell Cothran, Presiding Judge; and a
 13 jury.

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

15 Barney Giese, Esq.
 16 Margaret Scott, Esq.
 Assistant Solicitors for the State

17 Matthew Hicks, Esq.
 Attorney for the Defendant

25 Court Stenographer: 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-ID	Enlarged Inmate Roster	32	---
2	Enlarged Second Floor Plan	32	141
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4	Enlarged McClary Autopsy	32	372
5	Enlarged Google Map	32	115
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20-ID	Photograph of Stephen Green	136	---
21	Photograph of Stephen Green	136	185

1	22	Photograph of Stephen Green	136	185
2	23	Photograph of Stephen Green	136	185
3	24	Photograph of Stephen Green	136	510
4	25	Hard Drive of Videos	137	149
5	26	Photograph from F-1 Dorm	156	171
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7	28	Photograph of Stephen Green	222	262
8	29	Photograph of Stephen Green	222	262
9	30-ID	Photograph of F1/A Wing	242	---
10	31-ID	Photograph of F1/A Wing	242	---
11	32-ID	Photograph of F1/A Wing	242	---
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16 Court's Exhibits

17	No.	Description	ID.	
18	1	Jury Note re: Foreperson Selection	465	465
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P R O C E E D I N G S

TUESDAY, SEPTEMBER 24, 2024 - 9:57 a.m.

(State's Exhibit No. 14, Jail Cell Photograph, was marked for identification.)

THE COURT: State ready?

MOTIONS/MATTERS OF LAW

MS. SCOTT: Yes, Your Honor. We would just also, just for the record, put the indictment issue on the record. We would also ask that the indictments get read to the jury before openings as well since they weren't read yesterday.

THE COURT: Okay. I have reviewed the case law that I have been presented on this indictment issue, and -- Margaret Joseph vs. The State, and there was a question about the indictment in light of the statute at that time. And, basically, the Supreme Court has said the indictment is a notice document to put the defendant on notice of the charges that are against him, as well as the date and time.

And, clearly, if you accuse somebody of committing a crime, accuse somebody of committing murder, you need to state where and when it happened so he will know how to defend himself. The fact that I just say that the defendant murdered someone, he has no way to draw up a defense because he doesn't know where or what time or the date or anything. So, it's important, I think, to give a date and time that the alleged murder occurred for you to ever form some kind of a defense,

1 and this indictment, in fact, does have it. I think it's
2 adequate in that it puts the defendant on notice of the place
3 and date and time that the statute requires for the murder to
4 occur.

5 And, then, the deficiency in this indictment is, as the
6 defense has pointed out, is that it does not go into detail
7 about the manner of death. Many times, the indictment will
8 say "to wit, shot the defendant" or "stabbed the defendant" or
9 "beat the defendant to death," and this indictment does not
10 say that.

11 But I think it does put the defendant on adequate notice
12 of the charges against him as to the time and place that he
13 can defend those, and so, I'm going to deny your motion.

14 Now, it will based on the evidence in this trial as to
15 what counts for this indictment. It will actually go to the
16 jury, and I don't know whether the evidence is going to show
17 it. And it may be that the jury will have to select between
18 one or the other, and based on the evidence, they may not be
19 able to find a guilty verdict on murder and mob one. Now,
20 they may be able to find mob two and murder, but I'm not sure
21 both of those should go.

22 Either the victim died as a result of mob violence or
23 there was mob violence that assaulted the victim in some
24 manner that the victim did not die as a result of that
25 violence, and at some later time, if they prove beyond a

1 reasonable doubt that the defendant came back and murdered
2 him, then he may be guilty of murder and he may have
3 participated in the mob violence that assaulted the victim but
4 he didn't die as a result of it.

5 I don't know what the evidence is going to show in this
6 case, but at the end of the case, based on what that evidence
7 shows, I will charge the jury to that effect as well as the
8 verdict form that they get and explain to them, even though
9 both may be on the verdict form, mob one and murder, but I'm
10 not sure that they can find him guilty of both if the evidence
11 deduces that. Clearly, y'all can argue that, and we can take
12 that up at the end of the trial after I know what the evidence
13 is going to be. Okay?

14 MR. HICKS: Yes, Your Honor.

15 MS. SCOTT: Yes, Your Honor.

16 THE COURT: Okay. Now, anything before we bring the jury
17 in?

18 MS. SCOTT: Nothing from the State, Your Honor.

19 MR. HICKS: Nothing from the defense, Your Honor.

20 THE COURT: Okay. And so, the counts on the indictment
21 that the State intends to proceed on is Count 5, Count 6, and
22 Count 7; is that correct?

23 MR. GIESE: And 1.

24 THE COURT: And 1?

25 MR. GIESE: Conspiracy charge.

1 THE COURT: Okay.

2 Okay. Anything else before we bring the jury in?

3 MS. SCOTT: No, Your Honor.

4 THE COURT: Bring the jury in.

5 You can swear the jury or somebody needs to swear the
6 jury.

7 (The jury entered the courtroom at 10:03 a.m.)

8 THE COURT: Madam Clerk, you may swear the jury.

9 THE CLERK: Okay. If you would all stand, please, and
10 raise your right hand.

11 (The jury duly sworn.)

12 THE CLERK: And you'll answer "I will" if that's...

13 ALL JURORS: I will.

14 THE CLERK: Okay. Any opposed?

15 (No response given.)

16 THE CLERK: Okay. Thank you.

17 OPENING REMARKS

18 THE COURT: Ladies and gentlemen, we're about to begin
19 the testimony of the trial of the State versus Stephen Green.
20 Now, Mr. Green has been indicted for the charges of criminal
21 conspiracy, murder, assault and battery by mob first that
22 resulted in death, and a prisoner carrying a concealed weapon.

23 Now, to this indictment, this defendant has entered a
24 plea of not guilty; therefore, it casts the burden upon the
25 State to prove each and every element of this indictment to

1 you beyond a reasonable doubt. And I'm not going to explain
2 to you at this point the elements of the crime that the State
3 has charged; I will do that at the end of the case when I
4 charge you on the law. But your job is to listen to the
5 evidence in this case and reach a verdict based on that
6 evidence that's been presented to you. And so, I need you to
7 listen very close to the evidence in this case, because if you
8 make a mistake, it is very hard to correct that mistake. If I
9 make a mistake, at some other time and some other place, it
10 will be reviewed.

11 So, your job is to determine what the facts are in the
12 case, and my job is to rule upon the law and the evidence that
13 can you hear in this case.

14 So, you're going to see the evidence basically three
15 ways. First of all, through sworn testimony. Witnesses will
16 come before you and sit on this witness stand and testify
17 about the facts and things that they have observed or know.

18 The other way you may receive evidence is through
19 exhibits or photographs or videos or things that, under our
20 rules, you're allowed to see.

21 And the third way that you may receive evidence in a case
22 is through the stipulation of the attorneys. Sometimes
23 certain facts in a case are stipulated; that both sides agree
24 that is a particular fact that we agree on.

25 But that's basically how you're going to receive the

1 evidence in this case. And your verdict has got to be based
2 on that evidence. So, it's important that you pay close
3 attention.

4 Having said that, I'm going to try to break every hour,
5 hour and a half. And I try not to break in the middle of a
6 witness's testimony, but sometimes that witness's testimony is
7 too long, and you may need a break in the middle. So, in
8 having said that, I need each one of you to pay close
9 attention, and if you're uncomfortable for any reason
10 whatsoever, you can't pay attention. So, if you need a break
11 for any reason, just simply raise your hand, and we'll take a
12 break, and we'll come back and continue with the trial. So, I
13 want you to pay attention. So, if you're uncomfortable and
14 you need a break, just let me know. Okay?

15 Now, when we do take a break, I'm going to tell you, you
16 can't talk about this case until I tell you it's time for you
17 to start talking about it. And I know many times you may hear
18 one witness's testimony or two witnesses' testimony and we
19 take a break and you go back in the jury room and you say,
20 "Well, why can't we talk about what that witness said?" And
21 the reason I don't want you to talk about what that witness
22 said is because, if you do, if you start forming opinions and
23 expressing those opinions to your fellow jurors at the
24 beginning of this case, at the end of the case, after you have
25 heard all the evidence in this case as well as the lawyers'

1 arguments and me charging you on the law, then and only then
2 is it time for you to share those opinions.

3 Because if you come up with a theory after the first
4 witness, you're going to want to defend that theory that you
5 had in the beginning to your fellow jurors. And so, I don't
6 want you to start sharing your opinions about this case until
7 you have heard all the case. And then and only then will it
8 be proper for you to talk about the case.

9 It is very important. You know, our system works when we
10 do it right, and it's important that you get it right and that
11 you follow my instructions.

12 The State and this defendant need a fair and impartial
13 jury who is going to listen to the evidence in this case and
14 reach a verdict based on that evidence. So, if you follow my
15 instructions, it works. Okay?

16 Now, the attorneys are going to get up in a few minutes
17 and make opening statements to you, and their opening
18 statements is not evidence. They're simply going to tell you
19 what they think the evidence is going to show or not show in
20 this case. Then we will start the trial of this case.

21 At the end of the case, the attorneys are going to get up
22 and make closing arguments to you. Those closing arguments
23 are not evidence either. They're simply going to express to
24 you what they think the evidence showed in this case or what
25 the evidence didn't show in this case. Then I'm going to

1 charge you on the law that applies in this case and send you
2 back to the jury room to reach a verdict.

3 So, I need you to pay close attention throughout this
4 trial, and if you have -- if you need a break, if you have any
5 issues at all, you need to let me know. The State is going to
6 begin their opening statement. They have got the burden of
7 proof. The defense doesn't have to make an opening statement,
8 but most of the time they do. The State has the burden of
9 proof in this case. And so, if you'll pay close attention,
10 we'll get started.

11 MS. SCOTT: Thank you, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, ma'am.

14 OPENING STATEMENT ON BEHALF OF THE STATE

15 MS. SCOTT: Ladies and gentlemen, this is a case about
16 mayhem, malice, and revenge. April 15th of 2018, here in Lee
17 County at Lee Correctional Institute, was one of the deadly
18 prison riots in the United States history. Seven people were
19 killed that night, many more were injured, all within the
20 course of just a few hours.

21 Now, what we're here for this week is the death of an
22 inmate, Cornelius McClary. He was the last person to fall
23 victim to the chaos that night and the violence. And as I'll
24 explain further in just a few minutes, Cornelius McClary was
25 killed in the F1 dorm of the Lee prison. That was the last

1 dorm that was overcome by this mayhem that night.

2 Now, the brutality that occurred within F1 that night can
3 only be described as blind revenge in the hands --
4 cold-blooded hands by this man, this defendant, Stephen Green,
5 in the name of gang loyalty. And I submit to you that the
6 State alleges and will prove that the riots were fueled by
7 this gang rivalry, and the State alleges and will prove that
8 Stephen Green was a member of one of those gangs, the Bloods;
9 how Stephen Green participated in a mob that stabbed an
10 innocent, helpless man 100 times in the back. He collapsed,
11 falls, bleeds out on the floor. And how Stephen Green took it
12 upon himself to strike one last final blow to Cornelius
13 McClary, the kill shot, the execution, ladies and gentlemen.
14 And you'll see that.

15 So, let me take you back to April 15th, and let me show
16 you what I feel that we will present to you this week and what
17 occurred in that case. So, I'm going to show you what has
18 been marked for identification as State's 5. This is an
19 overview of the Lee Correctional Institute. Okay?

20 So, what we're talking about this week, back in 2018,
21 there are two yards at the Lee prison. Okay? There's the
22 east yard and then there's the west yard. The east yard has
23 Dorms F2, F4, and F6. The west yard is going to be right
24 here. That's going to be F1, F3, and F5, and that is where
25 the majority of the riot occurred that night within the course

1 of just a few hours. Okay? So, I want you to focus on that
2 area right there.

3 And I suspect, during the course of the testimony, you'll
4 hear that there was a lot of gang rivalry that was occurring
5 within the Lee prison during that time period. Okay? And a
6 lot of it did occur on that west yard.

7 So, what I suspect we will prove to you and show is that,
8 around 7:00 that night, it's Sunday night, very rainy. A bad
9 storm was coming in. One of the inmates in F3, which is this
10 dorm right here, Rivera robs and killed another inmate. He
11 was a Gangster Disciple who killed another inmate. That set
12 off the entire riot right there.

13 So, the Blood members, they're angry. So, they go and
14 they kill Rivera. And then they kill another inmate, another
15 rival gang member.

16 Now, what you'll hear, ladies and gentlemen, is how this
17 news from F3, how it quickly spreads to F5. Now, officers
18 have radios where you can hear, you know, if there's trouble
19 going on and things like that, but what you'll also hear is
20 that cell phones were prevalent in the prison at this time.

21 Cell phones, obviously, are contraband, but these inmates
22 have them. And you'll hear how they were able to get them and
23 how they were able to get their hands on them, but the inmates
24 were calling each other, texting each other, posting videos to
25 social media. And that is how quickly it spread to the F5

1 dorm.

2 Now, in the F5 dorm, the Gangster Disciples and the
3 Crips, which this is F5, they're angry. Their gang members
4 have just been killed. The Bloods have just killed their gang
5 members.

6 The Bloods in F5 are a smaller group; they're not
7 prevalent as in F1 and F3. So, the Gangster Disciples and the
8 Crips, they band together, they gather up the Bloods, and they
9 go after the Bloods, and they end up stabbing and killing
10 three inmates, three Blood members.

11 F1, of course, were able to hear from the, you know, cell
12 phones and things like that. They find out what happens in F3
13 and F5.

14 And, ladies and gentlemen, I want to also just take a
15 moment to say that this was a long investigation. Many people
16 were charged. And I want to reiterate to you that those that
17 were part of this awful violence in these other dorms, they
18 will have their day in court. They will be held accountable.
19 But what we're here for this week is what occurred in F1. And
20 I say that to remind you and to tell you this back story just
21 so you understand where we're coming from and why we're here
22 this week and for the particular killing of Cornelius McClary.
23 Okay?

24 So, F1, they find out. These Blood members, they're
25 angry. They're angry and they decide, well, what we're going

1 to do is we're going to go for some retaliation here. Okay?

2 So, in F1, the Gangster Disciples are a large group but
3 the Bloods outnumber them. They decide that they're going to
4 make a truce with the Gangster Disciples, and they're not
5 going to fight each other, but the Bloods are going to go
6 after the Crips because they are a smaller faction within F1.

7 So, they come together, they make this truce, and I
8 suspect you'll see that and you'll hear from different
9 witnesses about that.

10 What you'll hear next is how these Blood members, they
11 decide, okay, we're going to go after them. They start
12 running up to the top floor. They're banging on cell doors.
13 They're kicking on cell doors where these Crip members had
14 barricaded themselves in.

15 Around 10:00 that night, they finally get one. They
16 track one down. That's Cornelius McClary. And you'll hear
17 how they run after him, start stabbing him in the back over
18 and over as he runs down the stairs, unarmed, running away, in
19 the back.

20 And you'll hear this defendant right here, Stephen Green,
21 is one of them. He is part of that mob that has a weapon and
22 stabbing him over and over. Five times, ladies and gentlemen,
23 until he collapses on the ground and bleeds there, helpless.

24 And I suspect that you'll hear this testimony, but one
25 thing I want to tell you, ladies and gentlemen, what we also

1 plan to present to you is video evidence of the actual killing
2 of Cornelius McClary. And I want to warn you: It is brutal
3 and it is hard to watch, but it is something that has to be
4 seen. It's actual video evidence of the crime being
5 committed. And that's rare. And that will be presented to
6 you. And you can see it with your own eyes, this man running
7 away, this man being chased down the stairs, this man being
8 stabbed over and over and over. But I want you to keep your
9 eyes open, pay attention, watch those actions that night.

10 What I want you to also see is, roughly 30 minutes later,
11 the State would submit and the State plans to prove, 30
12 minutes later, this defendant, Stephen Green, decides that
13 that's not enough. He comes back for one final stab wound,
14 one final kill shot, as a defenseless man, already wounded, is
15 laying on the ground.

16 And that's what he's charged with. He is charged with
17 assault and battery by a mob in the first degree, death
18 results; murder; criminal conspiracy; and possession of a
19 weapon. And those are -- you'll hear more from the judge's
20 instructions about the elements of those crimes, but I quickly
21 want to just kind of give you a little understanding of what
22 those are.

23 So, the assault and battery by mob is essentially what it
24 sounds like. Two or more people combining together to commit
25 a crime and assault another person that leads to their death.

1 In this case, Cornelius McClary. They created a mob, a group
2 of angry people, to go assault someone.

3 The criminal conspiracy is just that: Two or more people
4 coming up with a plan together and executing that to commit a
5 crime. The mob charge.

6 The weapon is that Stephen Green that night, in the Lee
7 prison, had a shank, a knife, some sort of weapon that could
8 harm another, and he had it on him that night.

9 The murder, the killing of another with malice
10 aforethought, that Stephen Green decided that 100 stab wounds
11 wasn't enough, and he came in with that one final one.

12 And those are the charges. And, ladies and gentlemen, as
13 you just heard the judge say, the State has the burden of
14 proof in this case. We have the burden of proving those four
15 charges to you beyond a reasonable doubt, and that is a burden
16 that we gladly accept, because I submit to you, at the end of
17 this trial, from the witness testimony, from actually seeing
18 the crime unfold before your very eyes, I submit that you'll
19 be firmly convinced that Stephen Green is guilty of these four
20 charges.

21 So, I'm about to sit down, ladies and gentlemen, but I do
22 want to remind you of something very important. The laws do
23 not cease to exist behind the prison walls. Every inmate's
24 life matters. Every inmate has the fundamental right to
25 safety and life. Their lives matter.

1 Heinous crimes such as these, whether they occur on the
2 streets or behind the prison bars, the person should be held
3 accountable for those crimes, and we are going to ask that you
4 find Stephen Green accountable.

5 Mayhem, malice, revenge. Chaos leading to an act of
6 misguided revenge. Someone looking to get, you know, that
7 revenge for what occurred to them, to their group of people.
8 Killing indiscriminately.

9 You know, Stephen Green and his mob that night, they
10 weren't looking for the real culprits of what occurred in F5.
11 They weren't looking for who had done that to their friends.
12 No, they were out killing indiscriminately.

13 Stephen Green didn't care that Cornelius McClary was
14 nowhere near F5 that night. Stephen Green didn't care that
15 Cornelius McClary was in F1. He didn't care that he had
16 nothing to do with it. No, he -- all he cared about was blind
17 rage.

18 Stephen Green, that night, decided he was the judge, the
19 jury, and the executioner, and I ask that you don't lose sight
20 of that, ladies and gentlemen, because blind revenge is a
21 dangerous thing that, in this case, led to the death of an
22 innocent man.

23 So, at the end of this trial, we're going to come back,
24 and we're going to ask you to render the only verdict in this
25 case that would be just and true, and that would be guilty on

1 all charges. Thank you.

2 THE COURT: Yes, sir.

3 MR. HICKS: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

6 MR. HICKS: Good morning, ladies and gentlemen. Thank
7 you all for being here.

8 Before I get started, I'd like to take a moment to
9 introduce myself. I realize some of you may not know who I
10 am. My name is Matthew Hicks. I'm an attorney, and I work
11 just across the parking lot here over at Jennings and
12 Jennings. I'm here today because I represent this gentleman
13 that you see sitting right here: Mr. Stephen Green.

14 First, Mr. Green and I would like to give you our
15 sincerest thanks and appreciation for being on this jury. I
16 hope that -- I know that the clerk is paying y'all for being
17 here, but it's not nearly enough for what we're asking all of
18 you to do.

19 I would hope that each of you understand that, without
20 citizens like you, without people willing to perform this
21 civic duty, our justice system, it just grinds to a halt.
22 Completely stops working.

23 Every single person in this room -- let me say that one
24 more time. Every single person in this room is protected by
25 the Constitution. That protection, it depends on each of you

1 to work.

2 You may hear this again. You may hear it again from me,
3 but I'd ask you to keep this in mind: Mr. Green is cloaked in
4 the presumption of innocence, and that presumption by law --
5 by law, survives every attack from the State unless the State
6 can erase all reasonable doubt from your minds.

7 Every one of us, no matter where we are, no matter what
8 we're doing in life -- we all have ideas, experiences,
9 preconceived notions that color our view of the world and
10 inform us about the world and events around us. That's the
11 root of the difficult task ahead of you over the next several
12 days.

13 Each one of you, just a little while ago, swore an oath.
14 You swore that, at the end of this thing, the decision that
15 you reach will be based only on the evidence that we present
16 to you here in this courtroom. Your difficult task is that
17 you-all have to set aside your experiences, your ideas, and
18 your preconceived notions, and you have to look to the
19 evidence. And I ask you to do that. That evidence is going
20 to tell you a story.

21 Let me talk about that evidence with you for a couple of
22 minutes now. On April 15th, 2018, there was a horrific,
23 terrible, tragic riot at the prison just down the road here.
24 I learned that something was going on because I was driving
25 back from Columbia, and I got off the interstate at Exit 120

1 there. I had to fill up my truck. And just on a whim, I
2 decided to drive through town to go the rest of the way home
3 instead of get back on the highway. When I drove by the
4 prison, there was lights and sirens everywhere. It was
5 absolute chaos. And just like you, at the time, I had no idea
6 what was going on. No idea at all.

7 What we have learned since then is that, as the
8 prosecutor said, there was an incident in one of the dorms on
9 the west yard, and it bled over into another dorm on the west
10 yard, and it eventually landed in the F1 dorm.

11 Sadly, tragically seven people lost their lives that
12 night, including Cornelius McClary. As the prosecutor said,
13 countless others were injured. Lives were permanently
14 altered, both inmates and staff at the facility. And nobody
15 deserved that.

16 What we're here about this week specifically are the
17 events that occurred in the F1/B side dorm. And that's where
18 we disagree. We agree about everything else basically, but we
19 disagree about what happened on the F1/B side.

20 A lot of people have been charged in relation to this
21 terrible riot. Some people have been convicted, pled guilty,
22 all of that stuff. What I'd ask you to remember is that the
23 only question before you -- the only question before you
24 during this trial is what was Mr. Green's involvement in the
25 F1/B side events, if there was any involvement at all.

1 Over the next couple of days, y'all are probably going to
2 see a whole lot of video footage. You're probably going to
3 see screen shots from that video footage. You're going to see
4 probably a couple of pictures as well.

5 Like I said before, listen to that evidence. It's got a
6 story to tell you.

7 The State, if I'm guessing correctly, is probably going
8 to parade a couple of witnesses, if not a lot of witnesses,
9 that are going to tell you what to see in the video, they're
10 going to tell you what to see in those screenshots, and they
11 are going to tell you what to see in those pictures. That's
12 an opinion. The evidence has another opinion. It's got a
13 story. Listen to that story.

14 The State has had over six years to investigate this
15 case. Six years. Six years and five months later, here we
16 are. Over the course of that investigation, the State has had
17 nearly unlimited manpower, money, and time available to find
18 any shred of physical, scientific, or forensic evidence from
19 an isolated, restricted environment that they had exclusive
20 control over. I mean, that would be great for their case --
21 right? -- if they could put a weapon in your hand and tie it
22 to Mr. Green by way of some DNA or fingerprints. But they
23 can't.

24 They can't because that evidence, it just doesn't exist.
25 That tells you something too. I mean, why couldn't prison

1 officials or investigators search Mr. Green's assigned cell?
2 It's not like -- I mean, they could have gone in there and
3 they could have found a weapon; right? It's not like he just
4 left the prison and went down to the dump and got rid of it.
5 I don't think that's likely.

6 Why couldn't they find the clothes they say he was
7 wearing, covered in blood for all of this violence that was
8 occurring? He didn't take them out back and throw them in a
9 burn barrel. That seems pretty unlikely as well.

10 They can't present that evidence because that evidence --
11 that hard, scientific, incontrovertible evidence, it doesn't
12 exist. I'd ask you again: What does that tell you? Listen
13 to the story that the evidence presented will tell you.

14 So, the last thing that I want to talk about, I want to
15 talk just briefly, I want to touch on the elephant in the
16 room. Why are we having this trial in the first place? I
17 mean, it's no secret that Mr. Green is in prison; right? Why
18 doesn't he just plead guilty and save us all a little bit of
19 time; right? It's because we don't operate that way.
20 Convenience is not the cornerstone of our justice system. Our
21 justice system is designed to search for and find the truth,
22 and that's part of your job.

23 Get the thought out of your head, if you're having it,
24 that there's a convenient or easy way to deal with this matter
25 because Mr. Green is already incarcerated. And if that's how

1 we operate, what would that say about us as a society?

2 We don't have disposable people because they're
3 incarcerated. We just don't. We don't have sacrificial lambs
4 who take responsibility for the actions of others. We don't
5 have whipping boys who suffer the punishment justly due to
6 another. We're having this trial because Mr. Green did not do
7 the things he is accused of.

8 And if you allowed convenience to drive your decision,
9 that would be just a grave injustice. I have no allusions
10 about my ability with language, and I can't compete with
11 Martin Luther King, Jr.'s use of words, so I'll just use his
12 words in regards to that great injustice: "Injustice anywhere
13 is a threat to justice everywhere."

14 We're having this trial today, like I said, because
15 Mr. Green did not do the things he's accused of. We're having
16 this trial today because Mr. Green is entitled to the same
17 presumption of innocence that each of you are entitled to.
18 We're having this trial today because Mr. Green is not a
19 disposable person.

20 The events that occurred at the prison on April 15th,
21 2018, were horrible. Terrible. I have reviewed the evidence.
22 I have seen it. You're going to see some of it. You won't
23 disagree with me, I don't believe. Awful.

24 But Mr. Green didn't do it.

25 I ask you again, during the course of this trial, listen

1 to the evidence. That will tell you the story.

2 THE COURT: You may call your first witness.

3 MR. GIESE: If it please the Court, the State calls
4 Deputy Warden Tisdale.

5 MR. HICKS: Your Honor, may we approach, please?

6 BENCH CONFERENCE

7 MR. HICKS: So, before we get started, I wanted to paint
8 a bigger picture. I'd like to have the witnesses sequestered.
9 Do you want me to ask for that right now? I don't know who
10 else is in the room.

11 MR. GIESE: I have got to find them.

12 THE COURT: Okay. You don't need to do that in front of
13 the jury. Unless you have any objections -- I can send them
14 out, if you want to object to it. If you want his witnesses
15 to --

16 MR. GIESE: Yeah, they're all in the Department of
17 Corrections.

18 MR. HICKS: Mine aren't going to be here until Thursday
19 because they're incarcerated, Judge.

20 MR. GIESE: I hate to send them out real quick, but, I
21 mean, there are some in here. This is just -- I mean, this
22 witness is just general background. He's not going to
23 identify his client, not going to do any of that.

24 MR. HICKS: He's also one I'd object to on relevance,
25 Your Honor.

1 THE COURT: But it leaves out that he testifies --
2 because my understanding -- I've heard his testimony -- he's
3 just going to talk about the prison.

4 MR. HICKS: I just want to preserve it for the record,
5 but I'll let the sequestration ride until --

6 THE COURT: We'll put it on the record as soon as we
7 finish.

8 MR. HICKS: Yes, Your Honor.

9 (Open court resumes as follows:)

10 THE CLERK: Please raise your right hand.

11 ASSOCIATE WARDEN EDWARD TISDALE,
12 after having been duly sworn, was examined and testified
13 to as follows:

14 MR. HICKS: Your Honor, before the State begins, per our
15 bench conference, I'd object to Associate Warden Tisdale's
16 testimony based on relevance to 401.

17 THE COURT: Okay. And I'll note your objection. At this
18 point, I'll overrule it.

19 DIRECT EXAMINATION

20 BY MR. GIESE:

21 Q State your name, please.

22 THE COURT: Does the State understand the relevant issue?

23 MR. GIESE: Yes, sir.

24 BY MR. GIESE:

25 Q State your name again, please.

1 A Edward R. Tisdale.

2 Q And, Deputy Warden Tisdale, you work at Lee Correction?

3 A I do, sir.

4 Q And you also, obviously, work for the Department of
5 Corrections?

6 A Yes, sir.

7 Q How long have you worked for the Department of
8 Corrections?

9 A I came to the Department of Corrections in 2012 as an
10 investigator.

11 Q And where -- what background -- do you have a law
12 enforcement background before that?

13 A Yes, sir, I do. I'm going on my 34th year now of law
14 enforcement.

15 Q And just tell us briefly as to that, if you would.

16 A I started out in 1990 with Williamsburg County Sheriff's
17 Department. I worked there until 2005. I transferred over to
18 Clarendon County Sheriff's Department. At both departments, I
19 was in the Investigation Division and patrol. With the last
20 part of the Clarendon County era, I was assigned to the
21 Marshals Task Force and, basically, my building was -- my
22 office was in Florence with the Fugitive Unit.

23 But SCDC -- I had a friend of mine that told me about a
24 position with SCDC, and I came over to them in 2012 as one of
25 the investigators. At the time, it was the Division of

1 Investigation. It has since changed to Police Services,
2 Office of the Inspector General.

3 Q And that would have been in 2012 is when you started
4 that?

5 A I started that in 2012, yes, sir. And then, 2017, I put
6 in for and was promoted to associate warden -- not deputy
7 warden --

8 Q Sorry.

9 A -- but associate warden out at Lee Correctional and have
10 been ever since.

11 Q So, in April 15th of 2018, you were the associate warden
12 at Lee Correctional?

13 A Yes, sir, I was.

14 Q If you would tell the jury what your first contact with
15 this case was.

16 A It was a Sunday evening. I was at home, and I received a
17 call from my control room officer, Ms. Mack. She advised me
18 that there was a stabbing in our F3 unit and the inmate was
19 going out by medical for outside treatment.

20 2018, that was -- that was enough to be notified for but
21 not enough to call me in.

22 I received a second call indicating that it was not
23 looking good. Looked like we were going to, in fact, have a
24 death, at which time I notified my warden -- another associate
25 warden in the command staff that I was going to be responding

1 to the prison, you know, to see what we had going on.

2 Q And who was the warden at that time?

3 A Aaron Jordan was the head warden.

4 Q And he's no longer with --

5 A He's retired.

6 Q He's retired.

7 All right. So, you contact them, let them know you're
8 coming -- you're going over there.

9 How long of a drive is it?

10 A It was, for me, about an hour. 45 minutes to an hour.
11 I'm 47 miles away from front door to front door.

12 Q Did you leave immediately or was there a reason why you
13 didn't leave immediately?

14 A Oh, there was a reason I did not leave immediately. The
15 15th -- that particular afternoon, there was a storm like I
16 have not seen in a while. It kept me pinned down. Driving
17 was slow. The response itself was slow.

18 Q But you eventually got there?

19 A About an hour and a half later, yes, sir.

20 Q And tell the jury what you saw and what you did when you
21 got there.

22 A Whenever I arrived at the institution, I had already been
23 in contact via telephone back and forth with the institution
24 during this time period, and I learned some other stuff that
25 was going on, such as inmates were refusing to go back into

1 their assigned cells in the F3 unit.

2 A duty warden, which is one of the officials who, after
3 hours and on the weekend, are basically in charge of the
4 prison for any emergencies was Annie McCullough. And she and
5 I had been on the phone and indicated that the inmates were
6 refusing to go in, in F3. Again, I'm responding to the
7 institution.

8 I get to the institution. I don't know if anyone in the
9 jury has been out to the prison before, but you go through a
10 security checkpoint before you actually get into the main
11 building. I went through there. Went into the main building,
12 and we have a control room just like anybody may or may not
13 have seen. We call it our dispatch center, for lack of a
14 better term. There's officers there, radios, cameras, phones,
15 this type of thing.

16 I stopped at the control room to get a briefing as to the
17 overall situation that we had. I knew we had one inmate
18 stabbed. I knew there was another that was laying
19 unresponsive on the floor. I knew I had inmates at this time
20 refusing to go in. And, at that particular time, I did not
21 know where one of my officers were.

22 Q Let me stop you. You said that the inmates were refusing
23 to go into their cells. I mean, is that required of them?

24 A Yes, sir. At 7:00 in the evening, every inmate would be
25 behind a closed door for count. It's a formal count that is

1 part of what the prison system does, to make sure all the
2 inmates are still at Lee and not running around somewhere
3 else.

4 Q Was the correctional institution on lockdown at some
5 point?

6 A The 7:00 lockdown would have been in effect at that time.
7 Due to the incident that was already taking place in F3, then
8 a quote/unquote security lockdown would have gone into place,
9 and the inmates had already been instructed to go behind their
10 door.

11 Q And that's announced over the P.A.?

12 A P.A. system that goes prison-wide.

13 Q So, once that happens, all the inmates -- even though
14 they're not down in lockdown, they have to go to their cells
15 and be locked down; is that correct?

16 A Correct, sir.

17 Q So, anybody out of their cell shouldn't be out of their
18 cell?

19 A They should not.

20 Q Now, you also mentioned that, once you got there, you
21 went to the control room; right?

22 A Yes, sir.

23 Q Explain to the jury what the control room is. Are there
24 cameras in there? I mean, what kind of control room is it?

25 A Again, like I said before, if you can imagine a dispatch

1 center for the jail, there's multiple camera systems in the
2 control room or should I say monitors in the control room.
3 There's phones, the P.A. system, the radio system. That
4 particular officer's job is to, again, for lack of a better
5 word, dispatch the stuff that goes on inside of the prison
6 itself.

7 Q And you specifically talked about monitors. What kind of
8 monitors are you talking about? TV monitors?

9 A They're TV monitors, yes, sir, for viewing the closed
10 circuit TV systems there.

11 Q Explain to the jury what the closed TV circuit system is.

12 A Security system or security cameras inside of the prison,
13 there's multiple inside of each dorm and other areas in and
14 around the prison system that the control room officer can
15 monitor. There's -- I don't want to misquote, but somewhere
16 around 422 cameras that Lee has that we can look and see
17 what's going on inside of the different dorms. I can see
18 what's going on on my yards. Lee, being unique, has two
19 different yards, an east yard and a west yard split. I can
20 see what's going on in some of my educational buildings.
21 Stuff such as that.

22 Q And, in fact, that night, were the monitors working?

23 A Yes, sir.

24 Q And when you say they could move the cameras around,
25 explain that.

1 A Some of the cameras are what's known as pan zoom. I can
2 zoom in on you. I can come back. I can take that one camera
3 and move it left or right, up or down.

4 Other cameras are fixed; you get whatever it's looking at
5 and nothing more.

6 And pan zooms are in all of my living quarters, not
7 necessarily in some of the other areas of the prison.

8 Q Can you control what camera -- I mean, obviously, you
9 can't have all the cameras on monitors at once. Can you
10 control what cameras to show on a monitor?

11 A Yes, I can choose -- and since we're talking about F1/B,
12 I can pull up -- top of it has a heading: F1/B left side,
13 F1/B right side, F1/B center, whatever it happens to be at
14 that time.

15 Q And when you got there could you -- were they watching --
16 were the people in the control room actually watching what was
17 happening?

18 A They were watching -- yes, sir. They were watching the
19 F3 dorm at that particular time.

20 Q And tell the jury what you did after you went in the
21 control room.

22 A Got to the control room, as I said. I entered the
23 control room. Associate Warden Kenneth Sharp -- he lived
24 closer than I did; he was already there -- and Regional
25 Director Tony Stines (ph), who lived, again, closer than I

1 did, were at the institution.

2 Myself and Warden Joyner were getting there roughly the
3 same time. Same distance, just different county that we got.
4 He was coming out of Chesterfield, I do believe.

5 We got in -- "we" being the command group. We looked at
6 the camera system. We're like, "Okay, we've got -- number
7 one, where is my officer?" Figured out where the officer was.
8 She was safe at this particular time.

9 We have got an inmate who was down in the F3 unit, and
10 we've got other inmates who were refusing to go in. We made
11 the decision -- the warden actually made the decision for us
12 to leave and go upstairs to a quote/unquote command area. His
13 office subs as a command post during any incident that you
14 have at the prison. We have the same capability there as they
15 do inside of the control rooms as far as being able to pull up
16 the cameras on the larger screen than the monitors they're
17 looking at in the control room.

18 So, the group of us go upstairs, and we -- me
19 specifically -- start pulling the camera -- get the camera up,
20 because it's not on. You got to cut it on, figure out which
21 camera we're going to be looking at, and then start trying to
22 form a plan of, okay, how are we getting these inmates where
23 they're supposed to go and get this injured inmate out?

24 Q And that was your goal at that point?

25 A Yes, sir.

1 Q Stop what's going on and try and get the injured inmate
2 out.

3 A Yes, sir.

4 Q What did you do?

5 A Again, they had the camera, looked at F3, saw the injured
6 inmate that was laying in front of the officer's booth that
7 was inside of the dorm. And the four of us again making a
8 decision, how are we're going to do this? Are we just going
9 to go in and get this inmate, or are we going to give another
10 directive for them to go behind the door, which had already
11 been done at least three times for them to go behind the door
12 and stay there.

13 At that time is when we received a call from -- it's
14 another group of individuals in Columbia that monitor cameras
15 with the Vicon system.

16 Q The same --

17 A The same cameras. Same cameras. And their job is to
18 monitor the cameras. I mean, when they come to work, they
19 don't go to count inmates. They go to a room and sit down and
20 look at cameras. And not just at Lee but other places inside
21 of the state.

22 And we received a call and wanted to know what was
23 happening in the F5 unit. I had no idea anything was going on
24 in my F5 unit; I was concentrating on F3. And I really
25 thought they were confused on numbers whenever they called

1 because they've never been to Lee before.

2 As I'm -- and when I say "pulling up," I'm actually
3 taking and typing in from one camera to another camera to get
4 the camera system there.

5 As I'm getting ready to go to F5 just to take a glance to
6 see what we have going on, an officer on-scene -- who was a
7 sergeant at the time, Timothy Sheppard, screamed across the
8 radio, "F5 is breaching the fence."

9 Q F-5 is breaching the fence?

10 A Yes, sir.

11 Q What did you think at that point?

12 A Well, my heart dropped because I thought that our inmates
13 in F5 were going across my perimeter fence.

14 Q And you say "across the perimeter fence." Are you
15 talking about the one on the outside?

16 A That's exactly where -- when he said they're breaching
17 the fence, that's exactly what went through my mind.

18 Shortly thereafter, another frantic call comes across the
19 radio; they're breaching the fence at PI -- "PI" being Prison
20 Industry, which is a secured area away from the living
21 quarters. There's only one fence left after this.

22 And myself and Associate Warden Sharp, we left the room.
23 We left Aaron Joyner, who was in command and regional director
24 there, and we left to start attempting to get some type of
25 control over what was happening right -- unfolding right then.

1 Q You're talking about trying to get control. You're
2 trying to get control of the facility; is that right?

3 A Yes, sir.

4 Q What did you do?

5 A I went to what is known as the rooftop. And it's a
6 rooftop detail. On any emergency, there is a specific door
7 upstairs -- only in the emergency. You can go out. There's
8 designated areas set up on top of this particular roof that
9 you can stand and fire chemical munitions from a launcher.
10 Some folks call it the gas gun. You can use a shoulder-fired
11 weapon, shotgun, rifle, something such as that if you have to.
12 Myself and Sergeant Edwin Settles went rooftop and we had
13 to go a little distance and climb some ladders to get to where
14 we were going, and I attempted to disperse a crowd that was
15 coming over the fence of my F5 unit and an assault that was
16 taking place at the F5 door.

17 Q Were you armed?

18 A Yes, sir.

19 Q And what were you armed with?

20 A I took a shotgun, literally, from a Rapid Response Team
21 member that was already on the rooftop. So, I took a 12-gauge
22 shotgun.

23 Q And you said Lieutenant Settles was with you?

24 A Sergeant Settles, yes.

25 Q Sergeant. I apologize.

1 A No problem.

2 Q Was he -- was he armed?

3 A He was armed with a chemical munition weapon.

4 MR. GIESE: Your Honor, can he step down?

5 THE COURT: Yes, sir.

6 BY MR. GIESE:

7 Q Let's take a look at what's been marked State's Exhibit
8 5.

9 MR. GIESE: And I believe --

10 MR. HICKS: No objection.

11 (State's Exhibit No. 5 was received into evidence.)

12 MR. GIESE: Thank you.

13 BY MR. GIESE:

14 Q If you would, for the jury -- oops, I got it upside-down.

15 Let me make sure everybody can see. Let me move it this
16 way a little bit. I think we can see.

17 MR. GIESE: Can you-all see over that way?

18 JURORS: Mm-hmm.

19 MR. GIESE: Okay. Tilt it a little bit.

20 BY MR. GIESE:

21 Q All right. If you would, just describe what that's a
22 picture of.

23 A A satellite view of Lee Correctional Institution here in
24 Lee County.

25 Q All right. And you talked about earlier being in the

1 original control center. Where would that be?

2 A It'd be in what we designated as our A Building here.
3 Upstairs. You can't see it, but this is actually the upstairs
4 area. It's a two-story building, this little section that I'm
5 showing.

6 Q And this is the parking lot?

7 A Yes, sir. This is the parking area.

8 This is the first what I refer to as secured area.
9 You'll come to the shake-down area. Come through there and
10 then into the main building. The control room is on the first
11 floor of this building.

12 Q And you mentioned earlier that F3 was the original
13 dormitory to --

14 A Yes, sir.

15 Q Can you show it to everybody?

16 A This is F3. I'll give it back.

17 This is F1, F3, F5, and this is on my west yard. There's
18 a wall that separates these two yards from one another. This
19 being 2, 4, and 6, which is not involved.

20 Q Nothing was going on over here?

21 A No, sir.

22 Q So, it starts in 3, goes to 5. People breaching
23 something.

24 A Starts in 3.

25 Q Right.

1 A 5 is where we received the call while we were upstairs,
2 what was going on, then they were breaching.

3 This is a Prison Industry -- this square here. This is
4 another one. But this is the one in particular. So, when
5 they started breaching the fence, this fence is around this
6 particular unit. They were coming across -- "they" being
7 inmates -- were coming across this fence here, which is a
8 12-foot fence with concertina razor wire up on top of it.
9 They were coming across.

10 There was indication that they were also breaching this
11 fence when we got the call they were breaching the fence at
12 Prison Industry.

13 Q But you were worried they were breaching that -- this
14 fence?

15 A This fence. "This" being my perimeter fence.

16 Once they're across this one, you've only got this one to
17 go. Okay? Once you're here, that's a short run for a
18 motivated individual.

19 The top of this building coming out of a door that's
20 right here, you can -- some of y'all can see it if you're
21 close enough. There's a line. That's actually a walkway that
22 we have up here. And there's designated spots on every one of
23 these for you to stand with whatever weapon you're using or
24 monitoring whatever you've got a monitor at the time.

25 What you cannot see is -- this is also a gym. First

1 floor. And then everyone knows how tall a normal gym would
2 be. You've got to climb up a ladder. Myself and Edwin
3 Settles had to go across the gym and come back down.

4 Once we came down and got here, there was inmates -- we
5 refer to it as the yard. There were inmates on my yard who
6 were, evidently, injured. I ordered them to go to the ground
7 or be shot.

8 There were inmates here that were being assaulted.

9 Q You could actually see that?

10 A Yes, sir. Yes, sir.

11 Q And you say "being assaulted." Is there, like, a
12 walkway?

13 A This is a walkway. "This" being the -- the 12-foot fence
14 has a gate. The walkway goes through the gate. They were at
15 this gate.

16 I gave a directive for Settles to fire this 37mm gas
17 launcher, utilized a Spede-Heat. He fired. And I can still
18 see the round leaves the weapon and makes a right and lands
19 somewhere over in here. The wind was still coming in. It was
20 still raining. It was no effect whatsoever, none, on that
21 particular group.

22 Q So, he fires it towards 5 and it ends up in front of 3?

23 A Yes, sir. He fires from here.

24 Q And he's firing toward 5.

25 A He's firing toward this group right here.

1 Q To try and break that up.

2 A That's what he's trying to do.

3 Q And did he fire another one?

4 A Another one was fired, but I cannot remember which --
5 now, he and another member actually progressed further so that
6 they could get in to deploy another munition.

7 Q So, once it didn't affect the people in F5, what did you
8 do?

9 A I have got I don't know how many at this time, of inmates
10 on the yard. I radioed back -- we got radio communications.
11 I let the command staff know that -- or the command with
12 Warden Joyner know that we had inmates who breached the yard.
13 They were injured. We didn't know injured by what at that
14 particular time, but I know I had a bunch of bloody inmates.

15 Secured area here. I had a group of officers and my
16 major. I gave inmates a directive one at a time. One of them
17 actually yelled up to me, called me by name, said, "We're
18 injured. We're bleeding out."

19 So, I instructed them one at a time to walk up to this
20 particular point; they'd be placed into handcuffs and carried
21 into our emergency room.

22 Some got up in this area -- this walkway is -- if it was
23 a little bit bigger; I'm about blind, y'all. But this walkway
24 here, and they were -- got off the walkway. They got over
25 toward F1.

1 Q And that's F1 over here?

2 A This was F1 here, yes, sir.

3 Got up. These are two story, but there's windows on both
4 sides, lower and -- and some of them got to the windows over
5 here as well.

6 I could not see under where that shadow is. I could not
7 see under that awning that sticks out. I didn't know if I had
8 inmates underneath there or not. I did know that there were
9 armed inmates still on my yard -- a lot of armed inmates still
10 on my yard.

11 Q Did y'all attempt to help those inmates that had been
12 injured?

13 A The ones that had been injured was the ones that I was
14 referring to that I had them brought to this one gate where
15 they could be secured and then carried to our medical division
16 here.

17 Q Were some subsequently sent off to hospitals?

18 A Yes, sir. There were 22 total, I believe, that were sent
19 out, which was a logistic nightmare because I had to send 44
20 officers.

21 Q Two with each?

22 A Two with each inmate, yes, sir.

23 And with it being a shift change was the only reason that
24 I had the amount that I did at that particular time. Of
25 course, later on in the particular night, it -- more and more

1 and more, we were depleting resources real fast.

2 Q Now, from the moment you got there until the canister is
3 fired and you're trying to send people down to get these
4 inmates to help them, would you -- how would you describe what
5 was going on in this area and in the facility -- on that side
6 of the facility?

7 A The F3 dorm whenever I got to -- whenever we first got to
8 the prison, the F3 dorm, the only thing they were doing at
9 that time -- they already had two stabbings because I got one
10 down and one had went out; that was my original call -- were
11 complying for the most part.

12 When the inmates in F5 -- when the Bloods were run out of
13 F5, that's when we had complete chaos. And when I say
14 "complete chaos," it was flowing so fast and they were moving
15 so fast that nobody could get ahead of it at that particular
16 time.

17 We knew that we had inmates injured we had to get out of
18 there. We knew that we had this perimeter that had to be
19 protected at all costs because of y'all, I mean, just Lee
20 County. They can't come across that fence.

21 Q Now, you testified earlier that, at some point, you went
22 up and saw that. Do you have any idea how -- why F5 went off
23 after F3?

24 A At that particular time, I did not. Of course this is
25 six years later. I know why that it -- you know, it took

1 place is because there was the inmate that was killed in the
2 F3 unit, there was some retaliation going on back and forth
3 between the groups that were involved, which was the Bloods,
4 Crips, and the GD, Gangster Disciples.

5 Q In your opinion, how would that -- how would that
6 information be transferred from 3 to 5?

7 A Cell phone to cell phone.

8 Q And you --

9 A We've seen the cell phone videos that they were sending
10 out that night.

11 Q On Facebook? That type of thing?

12 A Yes, sir. There was some on Facebook. There were phones
13 that were seized that had the images up on it. There was all
14 this good stuff.

15 Q And that's while this is going on?

16 A Yes, sir.

17 Q Now, the cell phones, did you have a cell phone problem
18 at Lee?

19 A Stopping it was the problem. We didn't have a problem
20 with cell phones at all. They were all over the place, but
21 stopping the cell phones was a major issue.

22 Q Well, clearly, they're illegal to have them.

23 A Yes, sir. They're contraband inside of the prison
24 system.

25 Q Explain to the jury how a cell phone would get into Lee.

1 A Smuggled by my staff for the right amount of money.
2 Thrown into the institution.

3 In 2018, there was only the 12-foot fence that I talked
4 about with the razor wire on top. Now, there's a 22-foot golf
5 netting around it, and -- you know, so the -- to prevent
6 throw-overs. And when I say "throw-overs," this is Mac
7 Stuckey Road, this back here, which is a public road, any of
8 y'all can drive down there and get out of your vehicle with a
9 little package, if you had contact with an inmate on the
10 inside, and come up through these little woods, run right over
11 here and literally throw that package over onto these rec
12 yards, and the inmates could get them.

13 I didn't know that was a thing until I came to the prison
14 in 2012. I wouldn't have thought it. So, to fight that,
15 Director Sterling installed netting around all of his prisons,
16 and it slowed them down tremendously until somebody thought
17 about utilizing a drone to drop them, and now it's almost a
18 weekly deal where drones are dropping contraband into the
19 prison.

20 Q So, the drones just fly over the netting?

21 A Way over the netting, yes, sir.

22 And that same road that I told you about, the drone
23 operator no longer has to be there. He can be, you know, way
24 down the road a couple of miles away.

25 Q Thank you. You may have a seat.

1 So, once you started to get the inmates off -- the
2 injured inmates off of the yard in F5, what did you do?

3 A I was providing overwatch for the group that was walking
4 toward where I pointed to where they're being secured to go to
5 medical. We received a call via radio from Warden Joyner at
6 that time that he needed us to respond to F1 and deploy
7 chemical munitions because they were attacking an inmate in
8 F1.

9 Q So, that's when -- so, here on top of the building, and
10 then you find out that F1 has -- something is happening in F1?

11 A Yes, sir.

12 Q And what did you do?

13 A Backing up just a little bit, the warden is monitoring --
14 at this time, he's got three different cameras pulled up since
15 we started in 3 and ended up in 5. We've got a problem on the
16 yard. We have got -- again, y'all, all kind of stuff going on
17 this particular night.

18 The warden sees a stabbing taking place inside of F1. He
19 sees this on camera. He gives a command for myself -- well,
20 he just says, "deploy chemical munitions." He's talking to me.

21 At that time, we only have one chemical munition launcher
22 at Lee Correctional, and we had to literally run from the top
23 of those buildings, up those ladders, across the building,
24 down the ladders to get back to where we were going and then
25 realized we could not enter that yard because we still had 30

1 to 40 inmates walking around with weapons on that particular
2 yard. Whether they were injured or what, they were still
3 there, and it was -- it was at a point where it was -- until
4 we got more resources, it was unsafe to even go on the yard.
5 I don't -- I know they're stabbing each other; I don't know
6 how they feel about me.

7 MR. HICKS: Excuse me, Your Honor. Can we do something
8 with this TV? I can't see the witness at all. I can't see,
9 and it's kind of blocking my hearing a little bit as well.

10 I don't want to go unplugging your stuff, but it's
11 squarely in the way.

12 Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. HICKS:

15 Q So, you find out something happens in F1 -- is happening.
16 Someone is being stabbed on TV -- on tape. And you can't get
17 to F1 to fire the round inside the building; is that right?

18 A Correct, sir.

19 Q Just curious, how would you do that? You get down to
20 a -- is there a door? How would you do that?

21 A We have forks built into the doors, the exterior doors of
22 the prison. That's what they were put there for. They're
23 actually called gas ports so that you can utilize -- whether
24 it be rubber balls, chemical munitions, whatever you have to
25 quell a disturbance that would be going on inside of the dorm.

1 Q And you said that it wasn't safe for you to go and do
2 that. What -- I'm just curious, what's a correctional officer
3 taught about situations that they're overwhelmed in? What do
4 they do?

5 A Self-preservation. This can be fight or flight, and most
6 of the time, it's going to be flight. You have a can of gas
7 and you've got 60, 70, 254 inmates with weapons. You're
8 leaving. You're finding a closet or you're heading for a
9 gate.

10 Q And you're taught that?

11 A Yes, sir.

12 Q And you were there when the facility was finally secured?

13 A Yes, sir, I was.

14 Q What time was that?

15 A It was late in the morning hours. I don't have the exact
16 time.

17 Q The next --

18 A Oh, it was the next morning, yes, sir. Yes, sir. It was
19 definitely the next morning before the all-clear went through.
20 And we utilized a bunch of resources that night to include our
21 Rapid Response Team, which is a specialized team in the state.
22 It used to be called a Riot Team. They would come in to quell
23 riots.

24 We had our Special Operations Response Team. Those guys
25 are super great. They came in behind SLED's SWAT team.

1 It was a bunch of resources we used that night to regain
2 control of that institution.

3 Q And it took that long?

4 A Yes, sir, it took that long. A lot of it was because of
5 the response time, but then it took that long to be thorough
6 and go in and secure each dorm, move wounded out of each dorm.

7 Again, the 22 inmates that went out, Lee County provided
8 coverage for those whenever Lee County -- or Lee County
9 Sheriff's Department provided coverage. Lee County EMS
10 actually brought the mass casualty van or bus to carry a
11 group.

12 So, everybody was working together. It was just taking
13 forever to get everything done.

14 Q Because it was so chaotic?

15 A It was past chaotic.

16 Q And widespread?

17 A Yes, sir.

18 Q And my last question: This facility -- on State's
19 Exhibit -- I've forgotten already -- 5, this is Lee
20 Correctional Institute?

21 A Yes, sir.

22 Q And what county is that?

23 A It's in Lee County, South Carolina, right outside of
24 Bishopville.

25 Q Thank you. That's all I have.

1 MR. HICKS: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. HICKS:

5 Q Before we get started, sir, I just would like to clear
6 this up: Is it deputy warden or associate warden?

7 A Associate warden.

8 Q Okay. Would you prefer I called you Associate Warden
9 Tisdale or...

10 You say.

11 A Everybody else calls me Rudy. It does not matter what
12 you call me, sir.

13 Q I'm going to give you the respect you deserve. We'll go
14 with --

15 A Associate Warden.

16 Q -- is it okay if I call you Warden Tisdale?

17 A Yes, sir, that's fine.

18 Q Because I'm going to trip over "associate warden"
19 repeatedly.

20 So, as the associate warden, you're familiar with the
21 standard operating procedures of the prison; is that correct?

22 A Yes, sir.

23 Q And this includes the procedures you use when integrating
24 new inmates into the facility; is that right?

25 A Yes, sir. Well, I utilize the classification system,

1 yes, sir.

2 Q Yes, sir.

3 But part of the process of integrating in a new transfer
4 or new inmate into your prison is that they're assigned to a
5 dorm; is that correct?

6 A Correct.

7 Q And just to drill down on it even a little bit further,
8 they're also assigned to a specific cell and even a bunk
9 number within that cell; correct? Like a top or a bottom?

10 A Correct.

11 Q And so, at any given time, staff and administrators of
12 the facility should know where any individual is roughly;
13 right? Like within a dorm at least; is that correct?

14 A Keyword "should."

15 Q Should. Yes, sir. Yes, sir.

16 But more specifically, you should know who is sleeping in
17 every single bed in every single cell every single night; is
18 that a fair statement? Again, should?

19 A Yes, sir.

20 Q But that wasn't happening, was it?

21 A No, sir.

22 Q And, in fact, most of the time, staff and administrators
23 didn't really know who was sleeping where, did they?

24 A A lot of times, we did not, sir.

25 Q Yes, sir.

1 And sometimes inmates would just move themselves to a
2 different dorm; is that correct?

3 A Different dorm? I'm going to say no, sir. Different
4 room was common.

5 Q Okay. Yes, sir.

6 But, for example, within the F1 dorm -- I'm just going to
7 make this up as a hypothetical. Within the F1 dorm, somebody
8 could say, like, "I want to go live over on A side" or "I want
9 to go live over on B side" and that would happen?

10 A I'm pretty sure it has.

11 Q Yes, sir.

12 On the night of the riot, April 15th, 2018, you never
13 went to the F1 dorm; is that correct?

14 A I did, sir.

15 Q You did?

16 A Yes, sir.

17 Q At which point?

18 A When SLED's SWAT team and SORT went in to rescue my
19 officer that was a hostage.

20 Q Yes, sir.

21 Prior to that, when the riot was occurring, prior to
22 regaining some control and having to go in to rescue
23 Correctional Officer Lopez from the dorm, you did not set foot
24 in the F1 dorm?

25 A No, sir, I did not.

1 Q Didn't respond to the F1 dorm in any meaningful way
2 before that other than maybe communication with Officer Lopez?

3 A I didn't myself, yes, sir.

4 Q Yes, sir.

5 So, you have no -- is it fair to say that you have no
6 firsthand knowledge of the events that occurred within the F1
7 dorm prior to the SWAT or SRT team taking it back over?

8 A Yes. Anything I saw would have been on video.

9 Q Yes, sir.

10 And during the course of this riot, you lost what's often
11 referred to -- I say "you," generally, the royal staff,
12 administrators, everybody lost what's called institutional
13 control; is that -- is that correct?

14 A In my opinion, yes, sir.

15 Q Can you -- I don't know if you went over this yet, but
16 could you please explain to the jury what that term means,
17 "institutional control"?

18 A As I was -- earlier, whenever I was showing the different
19 dorms, we had no control over Lee for a brief period of time.
20 We had control of the inmates not leaving Lee, but we didn't
21 have control of them inside of that fence.

22 Q Yes, sir. Thank you.

23 A So, institutional control was lost for a brief amount of
24 time. Inmates breaching 12-foot fences? Okay, we have no
25 control. I've got armed inmates on my yard; we do not have

1 control.

2 Q Yes, sir. I understand all of that.

3 So, control was only reestablished after the SWAT, the
4 SORT, and the RRT came in and entered all the dorms and locked
5 everyone down; is that correct?

6 A Correct.

7 Q And when they entered the dorms, one of the things they
8 did was they checked to see who was in which cell; is that
9 correct? Or did they just...

10 A The first -- and I wasn't part of the entry team.
11 Sometimes they will just make sure that people go into a cell.
12 Then the second wave will come through and make sure you're in
13 the correct cell.

14 Q Okay. So, let's talk about that then for a second.

15 After control was established and inmates were all locked
16 down in a cell, in a dorm, another team came through and then
17 verified who was in which cells in which dorms; is that
18 correct?

19 A That would be standard, yes, sir. They would take a
20 roster and then go cell to cell.

21 Q Yes, sir.

22 And one of the reasons they do this is, again, to make
23 sure that people are where they belong, where they're supposed
24 to be; is that right?

25 A Correct.

1 Q All right. And did your second wave -- your second wave
2 team, I assume, then found some people in the wrong places?
3 Because, like you said, they would just basically chuck people
4 in a cell and lock the door until we get control sort of
5 thing?

6 A I'm pretty sure they found people that were where they
7 were not supposed to be.

8 Q Yes, sir.

9 And there were no records kept about that, who was in
10 which cells in which dorms?

11 A No, sir. They would have been removed from wherever they
12 were and put where they were supposed to be inside of that
13 dorm.

14 Q Yes, sir.

15 And, again, just to reiterate, there was no records kept
16 of where they -- who they found where?

17 A Correct.

18 Q Okay. Yes, sir.

19 And then after this was all said and done, you had
20 completely regained institutional control late the following
21 morning, second wave has come through, they have put people
22 where they belong, all of this.

23 At that point, you and your staff went and shook down
24 every single inmate in every single cell; is that right?

25 A We -- I did not. We had folks that did, yes, sir.

1 Q I'm sorry?

2 A I said, "Me personally?" No, sir. But I did have folks
3 that did.

4 Q You had folks that shook down every single inmate in
5 every single cell?

6 A They went and did a complete what we call a shakedown.
7 They stayed with us -- "they" being the Rapid Response Team
8 Division security stayed with us for over two weeks.

9 Q Yes, sir. Thank you.

10 MR. HICKS: I have no further questions, Your Honor.

11 MR. GIESE: Just a couple of follow-ups, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. GIESE:

14 Q Mr. Hicks mentioned the F1 dorm. You actually went to
15 the F1 dorm at some point?

16 A I did.

17 Q And why did you go to the F1 dorm?

18 A After receiving notification that Officer Clive Lopez had
19 been taken hostage in the dorm, I went with the SWAT team and
20 SORT team to go. They were doing the rescue. I was there as
21 administrative to go get him out of that particular dorm.

22 Q Now, this F1 dorm -- in fact, all the dorms, does the
23 door -- okay, the doors to go in, do they lock from the inside
24 or the outside?

25 A The doors that go in -- the first door operates from the

1 outside. The officer is locked in the building with the
2 inmates, and then he has the keys to, as y'all said, A Side
3 and B Side. There's a door that goes to A Side and goes to B
4 Side. The officer inside the dorm has that key.

5 So, the officer is locked in with the inmates, and then
6 he has a key to both sides of those. And we, as in
7 administration, had the key to the door that had the gas port
8 in it, which is an exterior door, that the officer would not
9 have.

10 Q So, everybody that's in F1, including the correctional
11 officer, Lopez, they would all be locked in from the outside?

12 A Yes, sir.

13 MR. GIESE: That's all I have, Judge.

14 MR. HICKS: I have no further questions, Your Honor.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Everybody okay? Anybody need a break?

17 You may call your --

18 MS. SCOTT: Judge, if we can take a quick break so we can
19 get some of the technology set up, if that would be okay.

20 THE COURT: Okay. Well, maybe we'll take a break anyway.

21 MR. HICKS: Plus I have another matter to deal with, Your
22 Honor.

23 THE COURT: Okay. Y'all go to the jury room. You can't
24 discuss the case yet. I'll get you back out as quick as I
25 can.

1 (The jury exited the courtroom at 11:14 a.m.)

2 MR. HICKS: Your Honor -- are we still on the record?

3 THE COURT: Yes, sir.

4 MR. HICKS: I'd like to ask to sequester witnesses going
5 forward after this, now that the jury is not in the room.

6 THE COURT: Okay. Any objections?

7 MR. GIESE: No, Your Honor.

8 THE COURT: Okay. They're sequestered.

9 MR. HICKS: Thank you, Judge.

10 MS. SCOTT: Judge, we would ask that Jamie Shaw be able
11 to stay in here since she's the lead investigator.

12 MR. HICKS: I'm opposed to it but I'm not going to fight
13 that hard about it. I'm going to question her extensively
14 based on her testimony. I'd rather not she get a big lead on
15 it, but --

16 THE COURT: They're entitled to have their lead
17 investigator here.

18 MS. SCOTT: Thank you.

19 MR. HICKS: I understand, Your Honor.

20 THE COURT: All right. Y'all come get me when you're
21 ready.

22 MR. HICKS: Yes, Your Honor.

23 (A recess was taken from 11:14 a.m. to 11:30 a.m.)

24 (State's Exhibit Nos. 15 through 24, Photographs of
25 Stephen Green, was marked for identification.)

1 (State's Exhibit No. 25, Hard Drive of Videos, was marked
2 for identification.)

3 MR. GIESE: I still see Warden Tisdale. Can he be
4 excused?

5 THE COURT: If he wants to be.

6 MR. GIESE: I think he wants to stay but --

7 THE COURT: I don't think he wants to leave.

8 MR. GIESE: With the sequestration, I wanted to make
9 sure.

10 MR. HICKS: I'm fine with him being released, Judge.

11 THE COURT: Okay. All right.

12 We ready to go?

13 MS. SCOTT: Yes, Your Honor.

14 THE COURT: Y'all got any idea how long the next witness
15 is going to be? We will finish before lunch?

16 MR. GIESE: He's -- basically, we're putting the tape in.

17 THE COURT: It's not a two-hour tape, is it?

18 MS. SCOTT: No, sir. This will be rather short and then
19 we have another one that we can put right after that.

20 MR. GIESE: That one is going to be a little lengthy.

21 THE COURT: Okay. I'm just trying to figure out our
22 lunch. 12:30 be a good time to break? Will we be through by
23 then?

24 MS. SCOTT: Yes, sir.

25 THE COURT: Okay. All right. Y'all ready for the jury?

1 MS. SCOTT: Yes, sir.

2 THE COURT: Bring the jury.

3 (The jury entered the courtroom at 11:38 a.m.)

4 THE COURT: You may call your next witness.

5 MS. SCOTT: Thank you, Your Honor. The State calls John
6 Douglas.

7 JOHN DOUGLAS,
8 after having been duly sworn, was examined and testified
9 to as follows:

10 THE COURT: You can have a seat.

11 DIRECT EXAMINATION

12 BY MS. SCOTT:

13 Q Please state your name for the record.

14 A John Paul Douglas.

15 Q And where do you work?

16 A I work for the Department of Corrections, and I run the
17 camera shop.

18 Q The camera shop. Okay.

19 How long have you been at SCDC?

20 A This October will be 16 years.

21 Q 16 years.

22 And you have been working in the camera shop your whole
23 time at SCDC?

24 A I started in the IT group and did, you know, computers
25 and phones and stuff like that. And I have been in the camera

1 shop since maybe 2016.

2 Q Explain to the jury what the camera shop is.

3 A The camera shop is responsible for the installation,
4 maintenance of all cameras, recorders, and the infrastructure
5 that goes with it, the wiring and all the stuff like that.

6 Q So, it's safe to say that the institutions -- all the
7 institutions that SCDC has, we have to have some sort of
8 security footage inside each institution; is that correct?

9 A That is correct.

10 Q I'm going to show you a couple of things; if you can help
11 explain to the jury where some of these videos would be.

12 I want to show you first off State's Exhibit 3 that, I
13 believe, is in without objection.

14 MS. SCOTT: Is that correct?

15 MR. HICKS: Yes. Thank you, Your Honor.

16 THE COURT: Exhibit 3 is in without objection.

17 (State's Exhibit No. 3 was received into evidence.)

18 BY MS. SCOTT:

19 Q Mr. Douglas, if you wouldn't mind stepping down.

20 All right. So, if you could explain to the jury, what
21 are we looking at here?

22 A This is the typical -- what we call the butterfly-style
23 dorm at Lee. There's five of them of this design at Lee.
24 That's the F1, the F2, F3, F4, and F6.

25 Q Okay. Now, what about F5?

1 A F5, we call that a cross-style dorm. It's a different
2 type of design. It looks basically like a cross and has four
3 pods on it.

4 Q So, within these -- so, we're looking at F1 dorm; is that
5 correct?

6 A Correct. That's a representation of F1.

7 Q If you could explain to the jury the type of cameras that
8 are in this type of dorm.

9 A At the time of the incident, you have A side here. There
10 was basically what we call a PTZ camera; it's pan tilt zoom.
11 It's one that the control room, the wardens, and the major can
12 control as far as, if they see something, they can zoom in on
13 whatever, but it only records what it's looking at. Even
14 though you can spin it around and look at everything, it only
15 records what's on the camera.

16 There was one basically, you know, on this side --
17 roughly in the middle on this side, and then one in the middle
18 here.

19 Then, as far as fixed cameras, they're -- they only
20 record what they're pointed at also. But there was one on
21 this wall here -- well, it would be upstairs showing a wall --
22 and it was looking this direction.

23 There was one on this side that was looking in this
24 direction, and there's one here in the back wall that's
25 looking toward the door coming into the institution.

1 Q Okay. And would that be similar -- so, if this is the B
2 side of the dorm, would it be the same on A?

3 A It is identical on the A side.

4 And then the only other cameras that were installed at
5 that time in this entryway that we have here there's one
6 camera at the back looking that we have here, there's one
7 camera at the back looking at the front door; one at the front
8 looking at the back door. The same thing; one looking at,
9 like, A side and one looking at B side.

10 Q So, if this is an entrance to a dorm, what would this
11 area be called?

12 A We call it the entry.

13 Q The entry. Okay.

14 A Yeah, I mean, as far as for our labeling of cameras.

15 Q Okay. And I want to also just --

16 MS. SCOTT: State's Exhibit 2, we'd also like to admit
17 that into evidence.

18 MR. HICKS: Without objection, Your Honor.

19 THE COURT: Exhibit 2 is in without objection.

20 (State's Exhibit No. 2 was received into evidence.)

21 BY MS. SCOTT:

22 Q This is going to the top floor of F1; is that correct?

23 A Yes, ma'am, I guess. Yes, second floor. Correct.

24 Q Okay. And so, would that essentially be where the
25 cameras would be closer up towards that?

1 A They would be. I mean, they would actually be all
2 mounted up on the wall or, you know, above the first floor.
3 But since it's all open, you know, in these areas here -- the
4 entryway here, this is one story, so those are actually, you
5 know, reachable.

6 Q Okay.

7 A And in these areas here on each side -- the A side and B
8 side, it is closer to the ceiling of the dorm or on the wall
9 out of reach. And like I say, it's like there's these little
10 walls here. I think on there, they were, like, mounted here,
11 looking that way. You know, and the same thing here, looking
12 that way. And then, again, the one on this side looking back
13 at the front door.

14 Q Thank you. You can have a seat for me if you don't mind.

15 So, you just pointed out all the different locations
16 where these camera angles would go. Were they placed in a way
17 where you could try to capture as much footage as possible?

18 A We try to get 100 percent coverage, but due to
19 limitations of the cameras and stuff at the time, there were
20 some areas that were, you know, not as viewable as others.

21 Q And were there times where some of the cameras weren't
22 working?

23 A There are times, I believe, that location one of the PTZ
24 cameras that was on one of the ends was not working.

25 Q Okay. Now, you mentioned that you could view them, I

1 guess, in realtime. These cameras are in F1 dorm in Lee.

2 Where would -- who could view the footage at that point?

3 A At the local institution, they have a control room. The
4 control room can pull up all the cameras, you know, but
5 they're limited. Like I say, there's four monitors. There's
6 two big screens, and there's two smaller screens. On the
7 system we were using at that time, you could put up 16 cameras
8 on each monitor if you so choose or so chose. And that would
9 be up to whatever staff was working there. So, that control
10 -- everybody that had access could pull up similar views.

11 The wardens -- that's the main warden and the AWs and the
12 major had the system on their computer on their desk, and they
13 could pull up similar.

14 Q And they could watch it live; is that correct?

15 A They go watch it all live, correct.

16 Outside of the institution itself, Columbia at their
17 Visual Intelligence Center, they could pull up cameras from
18 Lee, and then certain people on the executive staff at other
19 places had access to the cameras remotely as well.

20 Q You're talking about, I guess, there's a system in place
21 where you're able to view this footage. Can you explain that
22 to the jury what that system is?

23 A Okay. The system that we were using at that time -- and
24 we still use at some locations -- is a ViconNet product. It's
25 a VMS, which is Video Management Software. It keeps track of

1 the cameras and makes sure that they're recording to the
2 recorders, you know, as they should.

3 It's network-based where older cameras were analog, where
4 you had to have it directly plugged into a recorder. The
5 ViconNet system, being network-based, you could put a recorder
6 anywhere, and that camera could be recorded to you as long as
7 that connection of the network is not broken, you know, in
8 between the camera and the recorder.

9 At Lee at that time, each dorm had a recorder located
10 within the dorm, so if you did have a network issue outside of
11 the dorm, you could still continue to record data.

12 MR. HICKS: Your Honor, I'd like to object -- make a
13 contemporaneous objection regarding my motion. We have
14 already decided with the ViconNet stuff.

15 THE COURT: On relevance?

16 MR. HICKS: I'm sorry, Your Honor?

17 THE COURT: Your motion on relevance?

18 MR. HICKS: No, no, on the ViconNet video footage.

19 THE COURT: Oh, okay. All right. I understand.

20 MR. HICKS: Thank you, Your Honor.

21 THE COURT: Okay.

22 MS. SCOTT: Thank you.

23 BY MS. SCOTT:

24 Q So, going to ViconNet, you mentioned that it's -- so
25 it's stored somewhere. Is there a process in which it is

1 saved so it won't overwrite itself?

2 A Yes. Well, the system automatically -- it's basically a
3 large computer, and in these particular models, there was 24
4 hard drives in each device. Each device was a 2 terabyte
5 drive, and out of those 24 drives, they were split into two
6 groups of 12. So, it had a duplicate backup, you know, onto
7 itself in case you had a hard drive failure. Hard drive
8 failures happen due to age, environment, like the heat or
9 something like that. And so, things just naturally fail
10 sometimes, so it had this built-in redundancy.

11 Q Okay.

12 A And I'd just add this too: As far as the video, the way
13 it worked is it took a piece of data, a video stream, and it
14 would split it up between the different drives, putting the
15 piece at each one of them so you couldn't manipulate it
16 easily, and it there wasn't any way of, you know, playing it,
17 let's say.

18 Q So, you say you can't manipulate it. Are you saying that
19 you can't manipulate the video that has recorded from
20 ViconNet?

21 A Correct.

22 Q Okay. Now, I want to go back to April 15th, 2018, the
23 time of the riot, what we're here for. Were you -- you were
24 working at SCDC at the time?

25 A I was employed by SCDC but I also -- it was a Sunday; I

1 was off that day.

2 Q So, Monday, do you come in to work and -- explain what
3 happens next.

4 A Well, we had heard about it. Got a call, something
5 happened. And then, in the F3 dorm, the inmates actually got
6 partial access to the drives, and there was a bunch of liquid
7 spilled on them. So, that drive was damaged.

8 It cut off the capability to view the F5 dorm because
9 they were linked up in series, but the cameras continue to
10 record in F5 because the hardware and everything was safe
11 there.

12 In the F1 dorm, everything was still viewable and
13 recorded, you know, purposely. We were given direction of
14 what the events were, and we were told to make backups.

15 By nature of the recorders, SCDC targets 30 days of 24/7
16 recording, and that number is really -- I mean, as far as --
17 it can go longer than that, but we try to have that minimum 30
18 days. It's based on the number of cameras, what the
19 resolution of the cameras are, and how many cameras are on
20 that recorder.

21 It's not like somebody goes in and deletes anything.
22 It's as the recorders, they're full; the oldest data gets
23 overwritten by the newest data. But, like I say, the target
24 is to have the 30 days' minimum of recording.

25 Q Right. So, the next day, you come in and you archive it?

1 A We archive it. We were given direction on what to
2 archive. There's a format -- ViconNet format that you go
3 through and you set up the time frames that you want to
4 archive, and that information is backed up. And at that
5 point, it's saved. It's taken off of the recorder, and that
6 video can't go anywhere.

7 Q Okay. And do you know roughly the times that you were
8 asked to archive footage?

9 A Ballpark, if I remember correctly, it was just a little
10 bit before 7:00 till on the date of the incident to the
11 following morning, I believe, at around 4:00 a.m.

12 Q Okay. So, from 7 p.m. to 4 a.m. roughly?

13 A Correct.

14 Q Once you've archived this footage, in order for -- if you
15 don't have a ViconNet server, is there a way to download this
16 footage onto a format that you can view, say, like, on a
17 regular laptop or something?

18 A There are two different types of formats that you can
19 save it. One is an MP4 format, and one is a -- the GIF --
20 JPEG, which is -- used to be an older video style. The MP4
21 became a predominant for us and it's easier to play shorter
22 videos on multiple devices.

23 Q And was that done in this case? Was it downloaded into
24 both formats?

25 A Okay. The camera shop created the archives, and then the

1 archives that we shared with, like, Police Services, they
2 prefer the MP4 format, and they saved everything that we gave
3 them in the MP4 format. And it was, you know, easier to take
4 it, like, in court and stuff to play it on the video without
5 having to have the ViconNet, software because you cannot play
6 the ViconNet archive or any of the video in the native form
7 without having the software installed on that computer.

8 Q So, the MP4 is the user-friendly version?

9 A User friendly. Just about any device you have can play
10 it.

11 Q So, Mr. Douglas, I can't unplug it, but State's Exhibit
12 No. 25 is a hard drive. Do you recognize this?

13 A Yes.

14 Q Okay. And how do you recognize this?

15 A Well, I can see -- from here, I can see Mike's
16 initials -- Mr. Myers' initials on it, and I believe initialed
17 right below it. I recognize that.

18 Q And these are your initials. Did you open this hard
19 drive? What was on this hard drive?

20 A If I remember correctly, there was the ViconNet files and
21 then there was also the MP4 files that were created from
22 Police Services at the time.

23 Q So, it's both formats that are on this hard drive?

24 A That is correct.

25 Q And you personally viewed this footage. Did the footage

1 on here fairly and accurately depict what occurred the night
2 of the riot that you were asked to archive?

3 A Yes, it does.

4 MS. SCOTT: Your Honor, at this time, the State would
5 admit State's No. 25 into evidence.

6 MR. HICKS: No objection, Your Honor.

7 THE COURT: Okay. It's in without objection.

8 (State's Exhibit No. 25 was received into evidence.)

9 MS. SCOTT: Your Honor, permission to publish to the
10 jury.

11 THE COURT: Okay. Granted.

12 BY MS. SCOTT:

13 Q Mr. Douglas, I just want to show -- pull it up so I can
14 get you to explain a little bit to the jury how we can see the
15 different angles and how it's going to be at the same time but
16 different angles.

17 A Okay.

18 (Video plays.)

19 Q So, if you could, while I have this pulled up, you talked
20 about the different cameras that were in the dorms.

21 A Yes, ma'am.

22 Q So -- I just want you to -- based on here, is this all
23 within one dorm, what the video is showing but just different
24 angles?

25 A That would be correct. That is correct. That's some of

1 the cameras that are in there. The ones that were labeled PTZ
2 at the end of them, that would be the ones that would either
3 be in the middle or the ends here. And the fixed cameras that
4 don't have PTZ would be the ones that would be in the front
5 and the one on the back.

6 Q Okay. So, what we're looking at here, like you just
7 explained, is four different cameras looking in -- from
8 different angles but in the same area at the same time?

9 A Correct.

10 MS. SCOTT: If you can just press play.

11 (Video plays.)

12 A And I'll just -- if I can add one thing. On that screen
13 before that she set up right there, there's a button at the
14 bottom that says "synchronize." And that ties it in all
15 together so that the recordings and all that -- all the times
16 are cued in so, when you play them, they are all merged
17 together realtime as far as consistent.

18 Q So, for example, if you were to watch someone here, you
19 can see that same person on these other screens move in the
20 same direction at the same time?

21 A That is correct.

22 MS. SCOTT: Beg the Court's indulgence. Thank you.
23 Please answer any questions the defense has.

24 CROSS-EXAMINATION

25

1 BY MR. HICKS:

2 Q That's a little weird, isn't it?

3 A Yeah.

4 Q Better?

5 A Yes, sir.

6 Q Mr. Douglas, my name is Matthew Hicks. Defense counsel
7 here. It's nice to meet you.

8 So, working in the camera shop, you're familiar with all
9 the set-ups for -- I would wager probably all the prisons; is
10 that a fair statement?

11 A That is correct.

12 Q And in the F-1/B side dorm, there's quite a few cameras;
13 would you agree?

14 A Yeah. I think there's approximately a total, with
15 everything, there's, like, 19 to 20 cameras.

16 Q In the B side alone? 19 or --

17 A In A side and B side.

18 Q Oh, okay.

19 A In that dorm itself.

20 Q I was going to say, there's a lot of footage I haven't
21 seen if that's the case.

22 A Six cameras minus the ones that weren't working on the B
23 side.

24 Q Yes, sir. Yes, sir.

25 So, sixish cameras is what we're talking about from the B

1 side?

2 A That's correct.

3 Q Even with all of those cameras, there's quite a few blind
4 spots within each side of the dorm; isn't that right?

5 A There's a few blind spots that are in there and then just
6 by nature of the construction.

7 Q Yes, sir.

8 A I mean, obviously, you can't see in cells. You know,
9 those would be considered blind spots.

10 Q So, you --

11 A But as far as you know, like, under stairs, potentially
12 obscured views, and there's, you know, actually a couple of
13 walled areas where you'll have a small blind spot.

14 Q So, no cameras within the individual cells at all then;
15 is that correct? Is that a fair statement?

16 A In that dorm, that is correct.

17 Q Yes, sir.

18 And just by looking at this, I'm counting somewhere
19 around 80ish cells, plus or minus?

20 A Correct.

21 Q So, there's at least 80 blind spots in F-1/B side,
22 counting for the cells alone; is that a fair characterization?

23 A Yes.

24 Q And then, in addition to those 80 blind spots, plus or
25 minus that we're talking about, there's some blind spots we're

1 looking at on this screen right now basically; is that
2 correct?

3 If you'd like, would you -- I mean, can you point to the
4 jury right up there what we're looking at, if that will help?
5 I don't want you to walk all the way over here.

6 A Well, like I say, these are the PTZs. These are just
7 pointed in where they go. That was the spot, if something is
8 occurring, that the person in the control room, if they're
9 watching an incident, they could turn and zoom in on them and
10 catch whatever they were wanting to see if something did.
11 That was the -- you know, the expectation is to eliminate some
12 of those blind spots.

13 So, if you're talking about the main floor, if these --
14 because these are on both ends. Okay? The middle PTZ looks
15 like the one that's not up there. But these look down, and
16 it's like -- so you do have, you know, in the shower stalls
17 where there's curtains up, you'd potentially have a blind
18 spot. But pretty much everything else you had the potential
19 to see.

20 Q Potential to see, but depending on where the PTZ camera
21 is facing, there's a blind spot somewhere; is that correct?

22 A Yes.

23 Q All right. You can go ahead and sit down. I'm sorry.
24 I'll take that from you. Didn't mean to leave you hanging
25 there, sir.

1 A Oh, you're good.

2 Q There is far more functionality in the ViconNet software
3 and footage than there is in an MP4; would you agree with that
4 statement?

5 A Yes.

6 Q As in, with an MP4, you can't -- for example, you can't
7 zoom in on an object without losing clarity, losing fidelity,
8 losing -- resolution. That's the word I'm looking for. Is
9 that correct?

10 A I would say within both. Okay? As far as zooming in
11 after the archive is made, you cannot zoom in without losing
12 resolution.

13 Q Sure. Absolutely. But the resolution is substantially
14 higher, though, in the preserved archived ViconNet than in,
15 say, a VLC media file; would that be a fair statement?

16 A I want to say I think they're similar as far as that
17 goes, but at that time, ViconNet, it caps off at 2 megapixels.

18 Q Mm-hmm.

19 A I'd say the big advantage of the native format is that
20 you can play multiple cameras and have them all connected,
21 where, if you do an MP4, it's individual cameras, you know,
22 that you can pull up. You can't link it all together.

23 Q Right. So, you're talking about where you said there was
24 a sync button, I think you said, and you push it and then
25 however many cameras you decide to pull up, it will time sync

1 them so that they're all playing the same snapshot moment in
2 time; is that an accurate --

3 A Correct, so you can walk around and follow someone around
4 the dorm.

5 Q Yes, sir. Right. But there's no way to do that with an
6 MP4 format; is that correct? Absent some fancy software?

7 A That is correct.

8 Q Okay.

9 MR. HICKS: I have no further questions, Your Honor.

10 THE COURT: Okay. Anything else from the State?

11 MS. SCOTT: No further questions, Your Honor.

12 THE COURT: Thank you, sir. You can step down.

13 Do you have a short witness you can get up before
14 lunchtime?

15 MR. GIESE: I don't think he's going to be short, Your
16 Honor.

17 THE COURT: Okay. So, it's time to go to lunch?

18 MR. GIESE: Yes, sir.

19 THE COURT: Okay. All right. We're going to go to
20 lunch. I'll meet you back about 2:00. Don't discuss the
21 case. If you have an emergency, call us. If not, I'll see
22 you at 2:00. Okay?

23 (The jury exited the courtroom at 12:05 p.m.)

24 MS. SCOTT: Judge, we're just asking that John Douglas be
25 excused from his subpoena as well.

1 MR. HICKS: Oh, yes, sir. No objection to that, Your
2 Honor.

3 THE COURT: He can be excused.

4 Anything we need to deal with before lunch?

5 MR. GIESE: Your Honor, just one quick thing. I
6 understand that we have two transport orders for Thursday
7 morning. They're both co-defendants in this case, and I don't
8 know if we have contacted their lawyers.

9 MR. HICKS: I have spoken with the counsel for
10 Mr. Dozier. I am calling the counsel for Mr. Boone at
11 lunchtime. It's Mr. Hodge. I wanted to have a conversation
12 with him.

13 MR. GIESE: If you can just tell them to be here on
14 Thursday morning.

15 MR. HICKS: Mr. Dozier's counsel is already aware of
16 that. I'll make sure that Mr. Hodge is as well.

17 THE COURT: Thank you.

18 MR. HICKS: No issues from the defense, Your Honor.

19 THE COURT: If they're co-defendants, their lawyers are
20 going to have to be here to advise them. I'm not going to let
21 them testify without going through their rights. Okay?

22 All right. I'll see y'all at 2:00.

23 (A lunch recess was taken at 12:07 p.m. to 2:00 p.m.)

24 (State's Exhibit No. 26, Photo from F-1 Dorm, was marked
25 for identification.)

1 THE COURT: Everybody ready for the jury?

2 MR. GIESE: Yes, Judge.

3 MS. SCOTT: Yes, Your Honor.

4 MR. HICKS: Defense is ready, Your Honor.

5 (The jury entered the courtroom at 2:17 p.m.)

6 THE COURT: Okay. You may call your next witness.

7 MR. GIESE: The State calls William Burley.

8 THE CLERK: Raise your right hand for me.

9 WILLIAM BURLEY,

10 after having been duly sworn, was examined and testified
11 to as follows:

12 DIRECT EXAMINATION

13 BY MR. GIESE:

14 Q Can you state your name, please.

15 A William Franklin Burley, III.

16 Q And where are you employed, Mr. Burley?

17 A I'm currently at Broad River Correctional Institution
18 with the South Carolina Department of Corrections.

19 Q And what's your rank there?

20 A Lieutenant.

21 Q And you said you're at Broad River?

22 A Yes, sir.

23 Q How long have you been at Broad River?

24 A Since the latter part of 2021.

25 Q Now, I want to very quickly go through your -- just quick

1 background. Is the Department of Corrections the first law
2 enforcement agency you have ever worked for?

3 A No, sir.

4 Q Okay. Tell the jury where you have worked.

5 A When I first moved back home from college, the first
6 place I actually worked at was Pageland Police Department.
7 Then I had a motorcycle wreck. After I got my back
8 straightened out, I was going to go back there, but a buddy of
9 mine worked at Kershaw Correctional Institution, and they were
10 actually paying more money. So, I ended up at Kershaw
11 Correctional Institution, and I was there for about three
12 years. Then I left. You know, I was taking care of my mom,
13 who was disabled.

14 And then, in 2017, I was contacted about the possibility
15 of coming back to work with the South Carolina Department of
16 Corrections, and I was brought back to Lee Correctional to
17 become a yard sergeant.

18 Q And that would have been in 2017?

19 A Yes, sir.

20 Q So, you were a yard sergeant in 2017. I want to draw
21 your attention to April 15th of 2018. What was your role then
22 at that time?

23 A I was still a yard sergeant.

24 Q Explain to the jury what a yard sergeant is.

25 A So, the yard -- basically, we had a crew on the yard that

1 consisted of two sergeants and a lieutenant, and our job was
2 basically to facilitate what we called the movement schedule.
3 It's a schedule that's put out by the command staff for how
4 they want the institution to run on a daily basis, pretty much
5 Monday through Friday.

6 Our job was to basically keep the institution on that
7 schedule to the best of our ability and to control the
8 movement on the yard.

9 Q Now, you say you're supposed to try and keep the schedule
10 to the best of your ability. Is part of that taking the
11 inmate to chow or to lunch and that type of thing?

12 A Yes, sir. So, basically, we have what's called
13 controlled movement on the yard. Most of your movement moves
14 on the top of the hour. So, every hour, there's a movement.
15 The only time when that really changes throughout the day is
16 when we have chow time.

17 Most of the time, there's -- different people do it
18 different ways, but most of the time, for that time when chow
19 is ready, the cafeteria lets you know, "Hey, chow is ready."

20 Basically, you'll move -- at Lee, we would do halves, so
21 we would send, like, F1/A would go. When they came back, F3,
22 one side would go. When they came back, another side. You
23 know, you basically do it until all six different sides of the
24 units have been able to go to chow and come back. At that
25 time, if they had any other movement, they were supposed to

1 move during the chow time.

2 Q And would you have contact with inmates at that point?

3 A Oh, yeah. Pretty much every day. You know, Monday
4 through Friday. Anybody that was moving to Education, chapel,
5 chow, Medical, they had an OTR to come up to speak with
6 Classification, they might have to go to Operations. You
7 know, anybody that came out for movement, you know, I met them
8 at the door because I was the only one with a set of keys.

9 Q And so, you dealt with the inmates on the F1, F3, F5
10 side?

11 A Primarily. Yeah, I was primarily the west yard sergeant,
12 so I was pretty much over there every day.

13 Q And that's a day-to-day basis?

14 A Yes, sir.

15 Q So, you see these inmates. I know there are a lot of
16 them, but did you get to know some of the inmates?

17 A Yeah. You know, I always try to be as cordial as
18 possible. You know, tell the guys "good morning," tell them
19 "good afternoon." Some of them, you know, they'll say it
20 back. Some of them will look at you like you're crazy. Some
21 of them might cuss you out.

22 A lot of times, you know, guys that had issues in the
23 dorm and maybe they couldn't get the staff in a dorm to listen
24 to them about their issue, they might come to me and see
25 whether I could help them out. You know, and I was grateful

1 to have good, you know, supervisors that taught me on, you
2 know, how to do my job effectively. So, I gained a reputation
3 of being somebody that, if they had a legitimate issue and
4 they came to me, I would try my best to fix it.

5 Q Now, have you ever been a Contraband officer at Lee?

6 A Yes, sir.

7 Q And when was that?

8 A Going into the end of 2018 into 2019, they moved me and
9 at the time Sergeant Clark into Contraband.

10 Q And what does a Contraband agent do?

11 A So, basically, Contraband, our primary focus is trying to
12 prevent, as much as possible, the introduction of contraband
13 into the institution. A lot of searching. A lot of trying to
14 gather intel, trying to figure out where it's coming from, how
15 we can stop it.

16 Q And there's a phrase. What's STG mean?

17 A So, STG refers to a Security Threat Group. That's the
18 terminology that's used to describe what most people would
19 call a gang. So, basically, a group of individuals that we
20 have perceived to be a threat that work together.

21 Q And did you have gangs at Lee?

22 A Yes, sir.

23 Q And what are the main gangs?

24 A Primarily, we had mostly Bloods, Crips. We had GDs. We
25 had a small number of Hispanic gang members. We had Aryan

1 Brotherhood. We had -- Muslims are actually identified as STG
2 as well.

3 Q As a Contraband agent, would you look for shanks and that
4 type of thing? Cell phones?

5 A Yes, sir, anything that's deemed contraband. It could
6 even be something that's State issued, but if it's modified,
7 it becomes contraband.

8 Q And you worked in that area after the riot of 2018?

9 A Yes, sir.

10 Q All right. So, on April 15th of 2018, were you working
11 that day?

12 A No, sir. It was the weekend. I was what they refer to
13 as C card, Monday through Friday. I was actually alerted to
14 the situation that was going on. One of the people called me
15 from the control room, and at the time, I was on -- I forget.
16 They called me, and basically, I told them I was getting ready
17 and I was getting dressed to come in.

18 And then I received a phone call, and they had told me to
19 stand down because they had enough, you know, response that
20 had came, you know, with all the different -- you know, RT,
21 SORT, and everybody else. And so, they wanted me to come in
22 early in the morning for the next day to help relieve some of
23 the people that had been there all night.

24 Q And you do that -- you did that?

25 A Yeah, I got there probably around 4:30, 5:00 in the

1 morning.

2 Q And that would be April 16th then?

3 A Yes, sir.

4 Q Okay. And did you help secure the facility at that time?

5 A It was pretty much secure by that point as far as most of
6 the -- all the doors being locked, everybody is behind a door.
7 Most of that day, I was spent -- just me and a couple other
8 guys from DOS, there were some sergeants that were there that
9 were working under Mr. Anderson, and we all hooked up together
10 and they just -- they sent us everywhere. We were picking up
11 -- we were helping to feed dorms, taking guys to Medical.
12 Just pretty much anything they needed done. You know, when we
13 got done with a task, we went back up front, and they'd tell
14 us to do something else.

15 Q Now, you say you secured the -- helped secure the
16 facility. Is that the main goal after a situation like this
17 or a riot like this?

18 A Well, yeah. I mean, any time that there's a disturbance,
19 the first thing is containing what's going on and try to
20 contain it as much as possible. If you can contain it to one
21 area, that's better. You know, knowing what happened, you
22 know, that night, they tried -- they pretty much contained it
23 to just the west yard. And then once you have it contained,
24 then you try to put it back and get it under control.

25 Q Now, you testified earlier just a minute or two ago that

1 during your role as yard sergeant, you came in contact with
2 the inmates on the west yard; is that correct?

3 A Yes, sir.

4 Q On a daily basis?

5 A Pretty much.

6 Q Did you know someone by the name of Stephen Green, also
7 known as Tank?

8 MR. HICKS: Your Honor, I'm going to object to this
9 out-of-court identification for the reasons we spoke about
10 previously during my Biggers motion.

11 THE COURT: Okay. The question he asked, whether he knew
12 him, I'll allow him to answer that question.

13 BY MR. GIESE:

14 Q And how did you know him?

15 A As far as knowing his name, I didn't really, you know,
16 know what his name was. But as far as me seeing him, I
17 identified him as being somebody that was in F1, and I had
18 seen him in the sally port a few times and coming out for chow
19 and stuff like that. I was familiar with his face but not
20 necessarily on a, you know, name basis.

21 Q So, this daily contact, this contact that you had with
22 Mr. Green, did you ever have a conversation with him?

23 A Not that I can recall. Like, not like a long-winded
24 conversation.

25 Q Did you have an opportunity to view his face?

1 A Oh, yeah. I mean, I pretty much saw every inmate on that
2 yard at some point during the day. You know, if I didn't see
3 them every day, it's whenever they came out, I saw them.
4 That's -- you got 1,200 inmates at the institution, and I'm
5 responsible for around 600 on the west yard. You see 600
6 people every day. You might not know everybody's name, but
7 you get to recognize, you know, their faces and who they are.

8 Q So, you were familiar with his face?

9 A Yes, sir.

10 Q And this person whose face you're familiar with was in
11 F1, to your knowledge?

12 A Yes, sir.

13 MR. GIESE: At this time, I'd like to have him
14 identified.

15 THE COURT: Okay.

16 BY MR. GIESE:

17 Q Could you identify Mr. Green?

18 A Yes, sir.

19 Q Could you point to him, please.

20 A The defendant.

21 MR. HICKS: Your Honor, I'm going to object to this
22 in-court identification based on the Biggers hearing request
23 that I made.

24 THE COURT: I understand, and your objection is
25 overruled.

1 MR. GIESE: Thank you.

2 BY MR. GIESE:

3 Q Now, you said that you have seen him in the sally port?

4 A The sally port.

5 Q What's the sally port?

6 A So, the sally port is an area -- you have a front door to
7 the unit. The sally port at Lee and five out of the six dorms
8 is basically across two hallways. You've got the front door.
9 You've got the two wing doors.

10 Q And you had an opportunity at some point to see him
11 there?

12 A Yeah.

13 Q Every day?

14 A I mean, not necessarily every day but enough. Like I
15 said, most of the time when I saw them is when they came out.
16 A lot of guys, some of them don't come out that often. You
17 know, they eat mainly canteen food that they buy from the
18 canteen; they don't eat the State food. But if there was any
19 reason for him to come out for movement, then, yeah, at some
20 point I saw him, but...

21 Q You also said that you had worked on April 16th, 2018.
22 At some point after that, did you have an opportunity to sit
23 down with law enforcement to review surveillance footage?

24 A Yes, sir.

25 Q Explain that to the jury.

1 A So, we were actually called to the AG's office at the
2 State House.

3 Q When you say "AG's office," the Attorney General's
4 Office?

5 A Yes, sir, the Attorney General's Office.

6 We were asked -- of course I got my orders from my
7 lieutenant, who was Clark at the time. And they basically
8 informed us that they wanted us to assist with the
9 identification process, and we -- most of the contraband team
10 that was there -- that had been there during the riot, they
11 asked us to come over there.

12 It was myself, Clark, Tucker, I believe Kennedy, Griggs.
13 We all went up there in the morning. Got upstairs. We went
14 into a conference room where they have, like, a projector big
15 screen set up where they were using the Vicon system, which is
16 our camera system. And basically, they were having us assist
17 them in identifying people that they wanted identified on the
18 camera from the footage from everything that was going on.

19 Q And that was an investigative function?

20 A Yes, sir.

21 Q Helping them investigate the case?

22 A Yes, sir.

23 Q All right. Did you watch the video at that time?

24 A We watched a lot of video, yes, sir.

25 Q I want to specifically draw your attention to F1. Do you

1 remember watching video in F1?

2 A Yes, sir.

3 Q And did you have an opportunity, when you watched the
4 video in F1, to identify people that were in F1 or inmates
5 that were in F1?

6 A Yes, sir.

7 Q Okay. Now, did anybody suggest that you pick anybody out
8 in this? Anybody from law enforcement?

9 A No. Actually, the way they had it set up, we had facial
10 arrays that had no names on it. It was literally just faces.
11 Most of them were -- pretty much all of them were what we
12 called the face sheet pictures. But there was no names on the
13 papers.

14 And between, you know, the group of people that were
15 there -- you know, some are always going to be more familiar
16 with others. That's why we work together as a team, you know,
17 especially when we're trying to deal with a situation.

18 But people -- they would say, "We need to know who this
19 guy is." Somebody might go, "Hey, it's this person right
20 here." You know? And they would be able to pull them up.
21 Because we have our own system that we can log into and pull
22 up a face sheet just by putting in the SCDC number. That's
23 the way that we identify people at work.

24 Q Now, when you identified someone on the tape -- on the
25 Vicon tape, did you do anything else with it? Did you back it

1 up? Put it forward? What did you do?

2 A Oh, yeah. Like, in one particular situation, there was a
3 group of individuals standing on a rock that they wanted us to
4 identify. And, basically, we started with the group, and we
5 ran the cameras forward and backwards to try to track each
6 individual's movement throughout the entire process of what
7 was going on.

8 And what we were looking for is, you know, a good face
9 shot. Can we see their face? Right? The sally port camera
10 was probably the most useful camera for identifying people.
11 It is literally a camera that points right at the sally port
12 door, and as they're coming through that door, you get a
13 really good shot. And we basically utilized, you know, that
14 technique to identify everybody in that group.

15 Q Now, you say the sally port door camera. To make sure I
16 understand, the sally port door is the door leading from one
17 side of the dorm -- either A or B side -- into that area
18 that's called the sally port?

19 A Yes, sir.

20 Q And there's a camera that looks right at that?

21 A There's four cameras. There's a camera that looks at
22 each wing door. There's a camera that looks from the front
23 door back to the back of the dorm, and there's one that looks
24 from the front to the front door.

25 Q Is it sort of like a T?

1 A Yeah, it's a T. And you have four cameras looking at --
2 each way.

3 Q If you come out of, say, side B and go to the right ---

4 A Mm-hmm.

5 Q --- there are doors down that way?

6 A Yeah, there's a couple of closets and offices and stuff.

7 Q How about the other way?

8 A That would be towards the front door.

9 Q Okay. The front door that leads out where?

10 A To the yard.

11 Q And that's the door that's locked from the outside?

12 A Yes, sir.

13 Q I'm going to hand you State's Exhibit No. 26 and ask you
14 if you can identify it.

15 A That was the picture I was talking about. So, when we
16 got there, while we were doing that, this was a picture that
17 they showed us. And it's kind of small on here, but this was
18 on a projector screen, and they said, "We want to identify
19 everybody that was in this group."

20 And so, each person that was in that group was followed
21 on a camera, and at some point, we were able to make an
22 identification by getting a good face shot, matching them up
23 with a facial array, and then, that way, we make a positive
24 identification.

25 Q And, in fact, is your signature on that?

1 A Yes, sir. Mine's right here below Sergeant Settles.

2 Q And certain names on it?

3 A Yes, sir.

4 Q Could you read those?

5 A Well, the names that are on this one is Michael Williams,
6 Tank, Jerrell Jackson, Andre Boone, Derrick Maynor, and Rico
7 Hickman.

8 MR. GIESE: We'd like to offer it at this time, I
9 believe, without objection.

10 THE COURT: Any objection?

11 MR. HICKS: No, Your Honor.

12 THE COURT: What's the number?

13 MR. GIESE: No. 26.

14 THE COURT: Okay. No. 26 is in without objection.

15 (State's Exhibit No. 26 was received into evidence.)

16 BY MR. GIESE:

17 Q In No. 26, actually, is that a photo of it? Can you see
18 that? Or can you look at that?

19 A Yes, sir.

20 Q Is that the picture you're talking about?

21 A Yes, sir.

22 Q And the numbers -- those numbers, you guys wrote those
23 numbers?

24 A Yeah. So, you know, we numbered everybody over there and
25 we made a list. And then, as we went through the camera

1 footage and we were able to make a good identification, that's
2 when we were able to put down the different names.

3 Now, you know, like, the first one, you know, they put
4 down the full name. The second one was a nickname.

5 Q And say for No. 2, it says, "Tank."

6 A Yes, sir.

7 Q And No. 2 up there matches it?

8 A Yes.

9 Q Okay. And you followed him on the Vicon?

10 A Yeah.

11 Q Okay. And you say you followed him. How far?

12 A All over the place.

13 Q So he's actually on tape.

14 A Upstairs, downstairs, through the sally port door, out
15 the sally port door, back in the wing. You know, there's a
16 lot of footage of us following him, and then there was really
17 good shots of him coming in and out of the wing door.

18 Q So, he's not the only -- Tank is not the only person that
19 you identified using that process?

20 A Oh, no. Pretty much everybody that we identified that
21 day, every single one, we went through an entire process of
22 trying to follow them and get a good face shot. That way, we
23 could positively identify them.

24 Q Now, when you also were going back and looking and going
25 forward and trying to identify these people, at that -- at

1 some point, were you able to watch the killing of Mr. McClary?

2 A Yes, sir.

3 Q On the tape?

4 A Yes, sir.

5 MR. HICKS: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the
9 hearing of the jury and others:)

10 MR. HICKS: I just didn't want to blime (ph) this out in
11 front of the jury, but when you say "the killing," do you mean
12 the first assault on Mr. McClary or the final assault?

13 MR. GIESE: The final.

14 MR. HICKS: Okay. That's all I wanted to clarify, Your
15 Honor.

16 MR. GIESE: It means consider parts of the first assault.
17 When you say "first," do you mean down the hall?

18 MR. HICKS: Yeah, yeah. The initial assault.

19 THE COURT: Okay.

20 (Open court resumes as follows:)

21 MR. HICKS: Thank you, Your Honor.

22 (Video plays.)

23 MR. GIESE: Okay. Just stop real quick.

24 BY MR. GIESE:

25 Q Can you see the date and timestamp on that?

1 A Yes, sir.

2 Q What does it say?

3 A It says 4/15/2018.

4 Q And what's the time?

5 A Approximately 10 p.m. 10:01:02 p.m.

6 Q Thank you.

7 All right. So, describe what you're seeing there.

8 A So, this is the F1 unit. I believe that would be the
9 right-hand side PTZ. That's one of the three main cameras.

10 MR. HICKS: Your Honor, I'm going to object to this.
11 This is best evidence rule. The jury has it in front of their
12 faces. He doesn't need to describe it. They can view the
13 footage.

14 THE COURT: I'll overrule your objection and let him
15 explain what he's seeing.

16 MR. GIESE: What he observes.

17 BY MR. GIESE:

18 Q Just tell us what you observe.

19 A So, it's a camera shot of the wing in F1.

20 MR. GIESE: All right. Hit play.

21 (Video plays.)

22 MR. GIESE: Could you stop it there?

23 Q What do you observe on that top hallway up there?

24 A A group of inmates coming down towards the showers.

25 MR. GIESE: Okay. Go ahead.

1 (Video continues to play.)

2 Q How about there?

3 A That's Stephen Green at the top of the stairs with the --
4 looks like a shank in his hand.

5 MR. GIESE: Back it up, please, just a couple.

6 (Video continues to play.)

7 MR. GIESE: Okay. Stop.

8 Q Now, you testified that's Mr. Green coming around the
9 corner there?

10 A Yes, sir.

11 Q How about on the other side?

12 MR. GIESE: Play it.

13 (Video continues to play.)

14 Q Coming down those other steps?

15 A That's McClary.

16 MR. GIESE: Okay. Play it through, please.

17 (Video continues to play.)

18 MR. GIESE: Now, stop.

19 Q All right. So, he's coming down the stairs? And you
20 lose sight of him?

21 A Yes. From this view, you lose sight of him.

22 MR. GIESE: Okay. Keep going.

23 (Video continues to play.)

24 MR. GIESE: Stop.

25 Q What is that?

1 A Hmm?

2 MR. GIESE: Keep going.

3 (Video continues to play.)

4 A That's Green running in right there.

5 Q Okay.

6 MR. GIESE: Go ahead.

7 (Video continues to play.)

8 A That's him striking McClary with the weapon.

9 MR. GIESE: Again, keep going.

10 (Video continues to play.)

11 A Again.

12 MR. GIESE: Keep going.

13 (Video continues to play.)

14 A Again.

15 Q All right. Now, we lost sight of him for a period of

16 time -- right? -- on that one?

17 A Yes, sir.

18 Q Okay. From the top of the stairs to this first strike?

19 A Yes, sir.

20 MR. GIESE: Could you go to the other view.

21 (Video play.)

22 MR. GIESE: Now, let me stop.

23 Q The group of inmates down there, do you know, through

24 your investigation, who they were?

25 A Those were the group of Crips that was on the right.

1 Q Or -- Gangster Disciples or Crips?

2 A Gangster Disciples.

3 Q All right. Where were the Crips?

4 A There was some locked in a room upstairs they was trying
5 to get to.

6 Q That would be that group upstairs there?

7 A Yeah.

8 MR. GIESE: Okay. Go ahead and play.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q When they were at that door, what were they trying to do?
12 What did you observe?

13 A They were trying to break the door down, when we were
14 watching the video.

15 Q How were they doing that?

16 A By kick -- trying to kick the door in.

17 MR. GIESE: Okay. Go ahead and play.

18 (Video continues to play.)

19 MR. GIESE: Stop.

20 Q Now, that corresponds to the last tape ---

21 A Yes, sir.

22 Q --- that we looked at?

23 A That's on the stairway on the left. That's Michael [sic]
24 Green. That's just the opposite direction shot of the same
25 thing we just saw him do on the other one.

1 MR. GIESE: Okay. Go ahead.
2 (Video continues to play.)
3 MR. GIESE: Stop.
4 Q So, that's him coming down the stairs?
5 A Right there close to the bench, as he's running over.
6 MR. GIESE: Back it back up to the top.
7 (Video continues to play.)
8 MR. GIESE: Stop. All right. Play.
9 (Video continues to play.)
10 MR. GIESE: Go back.
11 (Video continues to play.)
12 MR. GIESE: Stop.
13 Q Do you see anything in his hand?
14 A He still has the weapon in his right hand.
15 Q And is that what you would normally call a shank?
16 A A shank, improvise, or a homemade weapon.
17 MR. GIESE: Okay. Play.
18 (Video continues to play.)
19 MR. GIESE: Stop.
20 Q And that's that first blow you observed on the first one?
21 A Yes, sir.
22 MR. GIESE: Play.
23 (Video continues to play.)
24 MR. GIESE: Play.
25 Q So, it's your testimony ---

1 (Video continues to play.)

2 MR. GIESE: Stop.

3 Q --- that you can follow Mr. Green down those stairs all
4 the way to where he makes the strike with those other
5 individuals?

6 A Yes, sir.

7 Q The other individuals, were they also struck, that you
8 have seen?

9 A Yeah. When you watch the footage, there's several
10 different people that go after McClary and strike him. One of
11 the ways that we were able to -- if you -- like, on Vicon, you
12 can actually do a split view and watch the entirety of the
13 videos together. And so, as one person was leaving the frame
14 in one view, you can watch and follow that person from camera
15 to camera.

16 Q Sort of that?

17 A Yep.

18 MR. GIESE: Why don't you go back to when he comes down
19 the stairs and play it. All four.

20 (Video continues to play.)

21 A And see, the camera footage is synced.

22 Q Right.

23 A And so, you're actually able to follow the individuals.
24 So, you can see that guy is running, that guy is running.

25 And then there's Smith -- or Green coming down the

1 stairs.

2 Q Right.

3 A You can see him on the other camera over there.

4 Q Right.

5 A Everything runs together.

6 MR. GIESE: Stop. Go to the shot after the last stab and
7 what happens to Mr. McClary, please.

8 (Video continues to play.)

9 MR. GIESE: Now, stop right there.

10 Q The timestamp on that is what?

11 A 21:59:13. So 9 p.m. -- or 9:59.

12 Q So, this would be right before the stabbing?

13 A Yes, sir.

14 Q Stabbings.

15 And the group up on top there, you testified -- who were
16 they? What were they trying to do?

17 A They were trying to break in that door to get to some
18 Crips that were inside there.

19 MR. GIESE: Okay. Go ahead.

20 (Video continues to play.)

21 Q Do you recognize that guy?

22 A That is Green that just kicked the door.

23 MR. GIESE: Keep going.

24 (Video continues to play.)

25 MR. GIESE: Stop.

1 Q Do you see a shank in his hand there?

2 A Yes, sir.

3 MR. GIESE: Play.

4 (Video continues to play.)

5 MR. GIESE: Keep going. And stop.

6 Q And that is where we picked it up at the beginning?

7 A Yeah.

8 MR. GIESE: Go ahead and play. Keep going.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q That's Mr. McClary?

12 A Yeah, with the bloody shirt.

13 MR. GIESE: Go ahead and play.

14 (Video continues to play.)

15 MR. GIESE: And stop.

16 Q Who is that on the lower right side? Can you tell me?

17 A Talking about right by the phone?

18 Q No, on this side right there. If you can't tell, you

19 can't tell.

20 A From this angle, it's...

21 Q Hard to see.

22 MR. GIESE: Okay. Play.

23 (Video continues to play.)

24 A Oh, that's Green.

25 Q That's Green?

1 A Yeah.

2 MR. GIESE: Go ahead.

3 A Yeah, it's just the way it was turned.

4 MR. GIESE: Go ahead.

5 (Video continues to play.)

6 Q So you testified --

7 MR. GIESE: Stop.

8 Q You testified earlier that people downstairs were
9 Gangster Disciples and people upstairs were Crips. And
10 Mr. McClary was what? Do you know, or don't?

11 A He was -- McClary was a Gangster Disciples.

12 MR. HICKS: Your Honor, I'm going to object to this on a
13 number of grounds.

14 May we approach?

15 THE COURT: Okay.

16 BENCH CONFERENCE

17 (The following bench conference occurred outside the
18 hearing of the jury and others:)

19 MR. GIESE: I'll withdraw it. I won't --

20 MR. HICKS: What's that?

21 MR. GIESE: I'll withdraw it.

22 MR. HICKS: Yeah, my only concern is, like, the expert
23 testimony, if he's going to say something about Mr. McClary --
24 or Mr. Green's membership status and rank. But it's
25 withdrawn. Okay.

1 (Open court resumes:)

2 BY MR. GIESE:

3 Q You testified earlier that that group down there were
4 Gangster Disciples; correct?

5 A Yes.

6 MR. GIESE: Okay. Go ahead and play.

7 (Video continues to play.)

8 Q Now, there's a group on the right side going toward that
9 door upstairs.

10 MR. GIESE: Could you keep playing it?

11 (Video continues to play.)

12 Q So what do they appear to be doing again?

13 A Still trying to kick in the door.

14 MR. GIESE: Now, leave it right there.

15 Q Now, as a contraband agent, you said that you looked
16 for -- you tried to identify people through the tapes. Tell
17 the jury what you looked for in a situation like that, other
18 than the person's face.

19 A So, the face shots is always the best thing to get
20 because it allows us to put their, you know, face from the
21 camera shot against a face shot that we had. But sometimes
22 people cover up. So, you look for small details. Is there
23 marking on the clothing? What are they wearing compared to
24 other people? You know, you can look for the type of shoes
25 they have. Boots, tennis shoes, anything like that.

1 The weapon -- sometimes the weapons that they're carrying
2 are very unique. You can, you know, kind of use that as a way
3 to kind of identify.

4 How they walk. How they carry the weapon. You know,
5 there's a lot of different things. When you're tracking it --
6 like the split view, we use a lot when we're trying to follow
7 somebody around a dorm when they're doing stuff, but you know,
8 you try to look for small details that match up from each time
9 you see them on the camera.

10 Q All right. I'm going to --

11 MR. HICKS: No objection.

12 BY MR. GIESE:

13 Q I'll hand you a series of photographs. The first is
14 State's Exhibit No. 14; the second is State's Exhibit No. 21;
15 third is State's Exhibit No. 18; fourth is State's Exhibit No.
16 22; fifth is State's Exhibit No. 15; sixth is State's Exhibit
17 No. 16; and the seventh is State's Exhibit No. 23.

18 Why don't you take a look at every one of them and I'll
19 ask you whether you can identify them or not.

20 A Okay. No. 14 is the picture from the first camera that
21 we viewed --

22 Q Well, just look at all of them and make sure you can
23 identify all of them, and I'm going to enter them into
24 evidence and then we'll go into talking about it.

25 A Yes, sir.

1 Q And what are they?

2 A These are all screen shots from different camera views in
3 the F1 dorm that show Mr. Green.

4 Q And those are screen shots of what you used to identify
5 most all of the inmates; is that right?

6 A Yes.

7 MR. GIESE: I'd like to offer them at this time, without
8 objection.

9 MR. HICKS: No objection, Your Honor.

10 THE COURT: They're entered without objection.

11 (State's Exhibit Nos. 14, 15, 16, 18, 21, 22, and 23 were
12 received into evidence.)

13 BY MR. GIESE:

14 Q So, you've testified to what happened from maybe 9:56 to
15 10:02, as what you've already seen.

16 I'd like to step back prior to that and see if you can
17 tell -- observe and tell the jury what you're seeing.

18 THE COURT: And if you need to get out of the witness
19 stand, you can.

20 THE WITNESS: Oh, okay. Yeah, I'm craning my neck.

21 THE COURT: As long as you keep your voice up for the
22 court reporter.

23 (Video continues to play.)

24 Q Again, look at the timestamp. What timestamp is that?

25 A So, 9:56:08 p.m. That's Mr. Green sitting on top of the

1 officer's station on the right with an improvised weapon next
2 to him.

3 MR. GIESE: Okay. Play it.

4 (Video continues to play.)

5 Q What did he pick up there, in your observation?

6 A He picked up the weapon and took it with him.

7 (Video continues to play.)

8 MR. GIESE: Beg the Court's indulgence.

9 BY MR. GIESE:

10 Q I'm going to give you this, too, so you can point, when
11 you want to talk and look at something.

12 A Oh, okay.

13 MR. GIESE: Having a little trouble pulling it up, Your
14 Honor. I apologize. We're speeding it up a little bit.

15 (Video continues to play.)

16 Q Who is this still?

17 A That's Green right there. He's waving his cell phone.

18 MR. GIESE: Show that to the jury. Back up one. There.

19 A He appears to be waving a cell phone around, and he's
20 cupping a weapon in his right hand.

21 (Video continues to play.)

22 Q Still there?

23 A Still there.

24 Q What's that behind his back?

25 MR. GIESE: Stop. Go back.

1 A You can more clearly see the weapon.
2 Q Show the jury.
3 MR. GIESE: Stop right there.
4 A More clearly see the weapon in his hand.
5 MR. GIESE: Go ahead.
6 (Video continues to play.)
7 Q Can you still see Mr. Green?
8 MR. GIESE: Stop.
9 A I see him right there.
10 MR. GIESE: Okay. Go forward.
11 (Video continues to play.)
12 MR. GIESE: If you would just speed it up.
13 (Video continues to play.)
14 MR. GIESE: Stop.
15 BY MR. GIESE:
16 Q Do you see a group of people getting ready to go up those
17 stairs?
18 A Yep.
19 Q Do you see Mr. Green?
20 A He's at the front.
21 MR. GIESE: Okay. Play.
22 (Video continues to play.)
23 MR. GIESE: Let me stop you there.
24 Q Now, those inmates on the right side ---
25 A Mm-hmm.

1 Q --- see the inmates that came up this way and they're
2 both heading to the left, as I look at it. What's down there?

3 A That's towards the door where the footage where they were
4 trying to kick the door in.

5 MR. GIESE: Okay. Go ahead.

6 (Video continues to play.)

7 Q We also saw some ---

8 MR. GIESE: Stop.

9 Q --- some of that group came and went up these other
10 stairs and came back this way. What's down on that end? Do
11 you have any idea?

12 A You're talking about where they came around this way?

13 Q Yeah, mm-hmm.

14 A It's just a loop that goes around.

15 Q Same as the other side?

16 A Yep. There's a walk- -- the walkway pretty much starts
17 at the showers on this side and goes down and comes back
18 around in front of the day room and comes back around this way
19 in front of the showers over here.

20 MR. GIESE: Okay. Go ahead.

21 (Video continues to play.)

22 MR. GIESE: Stop.

23 Q Do you observe Mr. McClary in that picture?

24 A That's McClary right there.

25 Q And do you observe what these people are doing to

1 Mr. McClary?

2 A They're assaulting him with a weapon.

3 MR. GIESE: Go ahead.

4 (Video continues to play.)

5 MR. GIESE: Stop. Back it up. Okay. Stop.

6 Q Recognize that?

7 A Yes, sir.

8 MR. GIESE: Go ahead and play.

9 (Video continues to play.)

10 Q And do you see Mr. Green in that picture?

11 MR. GIESE: Stop it.

12 A Right there.

13 MR. GIESE: Go back. Go back.

14 A You can see him when he comes back in the frame after
15 coming down the stairs.

16 (Video continues to play.)

17 MR. GIESE: All right. Stop it.

18 Q You can have a seat.

19 All right. The photograph that you identified earlier,
20 I'm going to show you a series of those.

21 A Okay.

22 Q The first is State's Exhibit No. 14. And in State's
23 Exhibit No. 14, who is that?

24 A That's Green in the white shirt, pointing with a weapon.

25 Q If you can step back down, please. Point to him, please.

1 A That's Mr. Green right there (indicating).

2 Q And what's in his right hand, if anything?

3 A Some type of improvised homemade weapon, or a shank.

4 Q State's Exhibit No. 21?

5 A That's Mr. Green right here. It's basically a different
6 view of the same spot from a different camera standpoint.

7 Q Okay. And who do you see, if anyone, over in the left
8 corner up there?

9 A McClary, bottom of the stairs all the way over by the
10 showers. Right there.

11 Q So, in the direction that he's pointing?

12 A Yep.

13 Q You had testified earlier that you used Vicon to go back
14 and take pictures and find pictures of people that you see on
15 there and then you identify them that way?

16 A Yes, sir.

17 Q All right. This is State's Exhibit No. 18. The stamp
18 mark is 10:05 and 11 seconds. Tell me if you can identify
19 that.

20 A This is Mr. Green coming off the wing after he had picked
21 up and put on a jacket.

22 Q Now, this -- you talked about the sally port.

23 A Yeah. This is the view. This particular camera view was
24 probably the best one for identifying people, especially the
25 ones that came in and out the wing that didn't have anything

1 covering their face.

2 Q So, in your investigative process, you would see that
3 picture -- you could see that picture, identify it, and then
4 back it up?

5 A Yeah. You can pretty much follow -- follow the
6 timestamps of this picture, the screen shot of the video.
7 Again, you can use a split screen or go camera by camera and
8 follow the movement back all the way throughout the process.

9 Q State's Exhibit No. 22 with a timestamp of 10:12:50, can
10 you identify that picture?

11 A That's Mr. Green holding an improvised weapon in his
12 hand.

13 Q Where is the weapon?

14 A Right there (indicating).

15 Q Again, that's from that same camera angle but a different
16 time?

17 A Yes, sir.

18 Q State's -- okay. We've already done that. I'm sorry.
19 15.

20 State's Exhibit No. 15, time-stamped 10:12:51.

21 A That's Mr. Green holding a cell phone in one hand and an
22 improviso in the other.

23 MR. HICKS: I'm sorry; what did you say, sir?

24 THE WITNESS: That's Mr. Green right here holding a cell
25 phone in one hand and an improvised weapon in the other.

1 MR. HICKS: Yes, sir. Thank you.

2 BY MR. GIESE:

3 Q State's Exhibit No. 16, which is time-stamped 10:27:06,
4 can you identify that?

5 A That's, again, Mr. Green coming off the wing with an
6 improvised weapon in his hand.

7 Q And, finally, State's Exhibit No. 23, time-stamped
8 10:27:52.

9 A That's Mr. Green looking back at the camera, and I
10 believe he's going back onto the wing.

11 Q To that same wing he came off of?

12 A Yes, sir.

13 Q Where Mr. McClary was killed?

14 A Yes, sir.

15 Q You can have a seat. Thank you.

16 And the man that you have identified as Tank -- Stephen
17 "Tank" Green on these photos and on the tape, is he in the
18 courtroom?

19 A Yes, sir.

20 Q Point to him, please.

21 A The defendant.

22 MR. GIESE: Beg the Court's indulgence.

23 That's all I have, Your Honor.

24 THE COURT: Okay. Any of y'all need a break before we
25 get to cross-examination? Everybody okay?

1 Go ahead.

2 MR. HICKS: Good to go, Your Honor?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. HICKS:

6 Q How are you doing, sir?

7 A I'm hanging in there.

8 Q Long day already. I understand that.

9 Correction officer? Officer? How would you prefer I
10 refer to you, sir? I want to make sure you're okay with
11 whatever I call you.

12 A Lieutenant Burley is fine.

13 Q Lieutenant Burley?

14 A Yeah.

15 Q Lieutenant Burley it is.

16 You stated you had been away from SCDC for a little while
17 and you came back in 2017; right? Or somewhere thereabouts?

18 A Yes, sir.

19 Q And that's when you were assigned at Lee Correctional?

20 A Yes.

21 Q What month did you start there?

22 A I believe -- I want to say March ---

23 Q March?

24 A --- was when my -- when I came, my hire date, and I
25 graduated that August from the academy because I had to go

1 back through the academy again.

2 Q Okay. So, I -- thank you for that.

3 Your hire date was March, and you had to go back to the
4 academy. And you graduated in August, and then you were able
5 to go back to work? Or you were hired in March, started
6 working, and it was, like, a provisional hire?

7 A No. When you get hired -- so, when somebody gets hired
8 at SCDC, you have to wait until you're sent to the academy.
9 Once you're sent to the academy, you get certified and then
10 you can come back.

11 Until you get certified, you can't utilize -- you can't
12 hold weapons, you can't hold chemical munitions, keys. So,
13 basically, what we do as trainees, like, my time there as a
14 trainee, I would shadow other officers in the dorm. I
15 shadowed some people on the yard. They might, you know, put
16 me in the cafeteria.

17 With me being somebody that had, you know, been
18 previously hired, you know, been a correctional officer, you
19 know, sometimes we could still help search and still help with
20 different things. We just weren't allowed to actually carry
21 keys until you go and passed that.

22 Q Yes, sir. I totally understand everything you said.
23 Thank you for clearing that up for me.

24 I would ask, can you please speak up a little bit? I'm
25 half deaf in my right ear and mostly deaf in the left one. I

1 appreciate that.

2 So, in March, you were rehired, and you immediately, more
3 or less, started working at the prison again in some capacity,
4 either shadowing another officer or maybe doing some
5 administrative stuff that didn't require that stuff?

6 A It didn't require certification.

7 Q Yes, sir. Excuse me. I'm sorry. [Coughing]

8 So, when were you assigned to the yard sergeant team for
9 the west yard?

10 A I had my sergeant's interview the last week while I was
11 at the academy and then approximately three or four weeks
12 after I came back as a certified officer from the academy, I
13 was promoted to sergeant.

14 Q So, that would have been in August?

15 A Yeah.

16 Q And so, from August on, when you left the academy and
17 came back to Lee, and more or less, you went straight into --

18 A I went straight into the yard. That's where they were
19 putting me.

20 Q Yes, sir.

21 And so, between March -- when did you start at the
22 academy?

23 A I want to -- if I remember correctly, back then, it was
24 nine weeks, so it would have been --

25 Q Threeish months, more or less?

1 A June, maybe early July.

2 Q So, you were working/shadowing from March, April, May,
3 maybe part of June, something like that?

4 A Yes, sir.

5 Q Okay. So, from August on, back at Lee, west yard, yard
6 sergeant?

7 A Yes, sir.

8 Q That's correct? Okay. Got it straight. Thank you. I
9 get confused pretty easy. I appreciate that.

10 How many inmates are on the west yard?

11 A At the time, I think the total count of inmates on the
12 yard was around 1200. So, approximately 300 or 600 on the
13 west yard. So, each dorm on the west yard has 32 on each
14 side -- each tier. So, 64 rooms. Normally, two inmates to a
15 cell.

16 Q 600ish?

17 A Yeah, around 600. Five or six hundred inmates.

18 Q We're not calculating somebody's paycheck or anything,
19 and I'm okay with that.

20 You say that you're familiar with Mr. Green. You your
21 testimony is that you're familiar with Mr. Green?

22 A Yeah.

23 Q And you said you saw him a couple of times; correct?

24 A Yes, sir.

25 Q Off and on, not every day?

1 A Yeah, not necessarily every day, but you know, throughout
2 being on the yard, you know, every once in a while, I would
3 see him.

4 Q Okay. And you recognize him by his face; is that right?

5 A Yes, sir.

6 Q And there are, as you say, roughly 600ish, give or take,
7 inmates on the west yard?

8 A Yes, sir.

9 Q And in the course of seven or so months, you were able to
10 familiarize yourself that well with everybody's face and
11 everybody's mannerisms and everybody's walks and personal
12 style with their clothing?

13 A Not necessarily everybody, but certain people stick out.
14 Some people you interact with more often. There's some people
15 that you never have an issue with, you might not even
16 remember.

17 Q Sure. And so, where would Mr. Green fall on that
18 spectrum? Because you say you saw him a couple of times off
19 and on not every day but never spoke with him.

20 A Yeah. So, the first thing that sticks out in my mind --
21 I couldn't give you a date or an exact time, but I remember
22 him arguing at the door of the F1 because the door was locked.
23 The officer had the wing doors open and there were too many
24 people in the sally port. And I remember him being in the
25 sally port arguing about them wanting to get out the door.

1 And, basically, I was told by my command staff, if the
2 wing doors were open, the front door doesn't open. So, they
3 were arguing with me about wanting to open the door, but I'm
4 not opening the door until those wing doors are shut, and the
5 people in the sally port are people that need to go to
6 movement.

7 Q That sounds like a pretty fair response to me. I'll take
8 it.

9 MR. HICKS: If you could please bring up the F1 yard door
10 202 at the 10:01 and 20-second-ish mark.

11 The F1/B yard door, the 201/202. Thank you. Can you
12 take it a little forward, please. Zoom in, please.

13 A/V TECH: More?

14 MR. HICKS: Yeah. All the way on his face. All the way
15 on the face.

16 (Video plays.)

17 Please stand up.

18 I'm sorry, sir. Can you please stand up? Here's the
19 pointer.

20 BY MR. HICKS:

21 Q Can you, again, point out who you say is Mr. Green?

22 A Not at the moment. You would have to run the video back.

23 (Video continues to play.)

24 MR. HICKS: Run it back a little, please. It's going to
25 look kind of crazy. There we go. Right there.

1 A Can you zoom it out?

2 (Video continues to play.)

3 MR. HICKS: No, sir. Pause it, please.

4 A That's him right there.

5 BY MR. HICKS:

6 Q That footage is right there is the man that you met a
7 couple of times -- excuse me, didn't even meet -- you saw a
8 couple of times and were familiar with his face out of roughly
9 600 inmates.

10 Okay. Thank you.

11 MR. HICKS: Can you bring up the F1/B center PTZ at
12 approximately 22- -- 10:11 and 44 seconds.

13 (Video plays.)

14 MR. HICKS: I was going to say leave it up. Go ahead.

15 A/V TECH: What time did you say?

16 MR. HICKS: 22:01 -- 10 -- and 45 seconds. We're an hour
17 behind.

18 MR. HICKS: Oh, I'm sorry; I meant for you to pause that.

19 A/V TECH: That's okay. Just tell me when to pause.

20 MR. HICKS: Yeah. Right there.

21 BY MR. HICKS:

22 Q You mean to tell the jury that you're able to
23 identify ---

24 MR. HICKS: Go ahead.

25 (Video continues to play.)

1 Q --- that's the man you say that's Mr. Stephen Green?

2 A That's Mr. Green right there.

3 Q And you mean to tell the jury that you're able to
4 identify that as Stephen Green based on that image right there
5 and the fact that you met him -- excuse me; you never met
6 him -- you saw him a couple of times, never had a conversation
7 with him, out of approximately 600 inmates, and that blurry
8 picture was there was sufficient for you to make an
9 identification?

10 A Not just that one particular picture. You've got to
11 understand how long we spent watching the videos and
12 backtracking him from when we got a good facial view and being
13 able to track him throughout the entire process.

14 Q Okay. We'll go into that right now. Go ahead and have a
15 seat, sir. I'll take that. I appreciate it.

16 A Okay.

17 Q You said that you were able to track people's movements
18 on the video because you had the multi screen or the multi
19 camera screens up and all time synced together; is that right?

20 A Yes, sir.

21 Q And by way of doing that, you said you were able to use
22 people's different mannerisms, clothing, other small signals,
23 little clues to kind of piece it all together; is that
24 correct?

25 A So, the face shot is really -- trying to get the face

1 shot is probably the first thing I would do, in my experience.
2 As far as following them and tracking them, you try to look at
3 how they walk, how they carry a weapon, what clothes they have
4 on. That way, you can follow from camera point to camera
5 point to camera point throughout the entire process to be able
6 to make the identification and follow their movements
7 throughout the entirety of the situation that's going on.

8 Q You said something in your previous testimony that kind
9 of caught my attention and I want to lean into it. You said
10 that you were able to follow him based on the time stamps of
11 the different videos, but you used the words "pretty much."
12 What did you mean by that?

13 A What do you mean?

14 Q You said the words "pretty much." "We were able to
15 follow him with the timestamps and the video synced up pretty
16 much." Those were your words. Do you recall what you meant
17 by that?

18 A No.

19 Q Okay. Are you aware that there are blind spots in the
20 dorms?

21 A Yes, sir.

22 Q How many blind spots do you think?

23 A Couldn't tell you off the top of my head.

24 Q How many cells? There's no cameras in the cells; right?

25 A No, there's no cameras in the cells.

1 Q So at least 70 or so? Would that be a fair assessment?

2 A I mean, if you're going to count cells, the showers, and,
3 like, different corners, there's probably more than that.

4 Q Sure. And then there's a couple of spots where it's not
5 cells where the cameras don't have visibility; isn't that also
6 true?

7 A Yes, sir.

8 Q And from the time that you identified Mr. Green,
9 allegedly, by the face shot in the sally port area, how many
10 times did he enter blind spots?

11 A I couldn't tell you off the top of my head.

12 Q Was it more than one?

13 A I mean, it depends on which camera you're talking about.

14 Q On all the cameras, in total.

15 A So, all the cameras? The only time I remember is one
16 specific time.

17 Q So, you remember at least one specific time?

18 A Yeah.

19 Q Fair enough.

20 And we can talk about those later.

21 How many people were in those blind spots?

22 A I can't tell you that.

23 Q And when the so-called Mr. Green came out of the blind
24 spot, was he wearing the exact same clothing as when he went
25 into this blind spot?

1 A I'm not --

2 Q You said you were using clothing and mannerisms and body
3 language to track these people. Was he wearing the exact same
4 clothing when he came out of the blind spot?

5 A No, he wasn't.

6 Q He wasn't.

7 What was different about his clothing; do you remember?

8 A He had changed his shoes and had a mask on.

9 Q Changed his shoes and had a mask on.

10 And you don't know how many other people were in that
11 blind spot; is that correct?

12 A No, sir.

13 Q You don't know what anybody else was doing in that blind
14 spot?

15 A No, sir.

16 Q And you don't know that that was actually Mr. Green that
17 came out of the blind spot wearing different shoes and a mask
18 on his face; is that a fair assessment?

19 A I think, to the best of our judgment, I believe it was
20 him, yes, sir.

21 Q Well, I didn't ask to the best of your judgment. You
22 don't know for sure that that was Mr. Green that came out of
23 the blind spot wearing different clothing and a mask over his
24 face? Is that not a fair statement?

25 A I would say that, at the time that I spent in my job

1 learning how to use Vicon and how to identify people that, in
2 my opinion --

3 Q But I'm asking if you were sure. You are not sure that
4 that was Mr. Green that came out of the blind spot wearing
5 different clothing and a mask over his face; is that a fair
6 statement or not?

7 A I would say it's a fair statement.

8 MR. HICKS: Okay. I have no further questions, Your
9 Honor.

10 THE COURT: Okay. Anything further from the State?

11 MR. GIESE: Just a couple.

12 REDIRECT EXAMINATION

13 BY MR. GIESE:

14 Q When Mr. Hicks was asking you about Mr. Green going into
15 a blind spot and coming out clothed differently ---

16 A Yes, sir.

17 Q --- you're not talking about during the original assault?

18 A I'm not talking about any of the footage that we went
19 over. It's about footage that happened later.

20 Q You're talking about much later?

21 A Mm-hmm.

22 Q About how long?

23 A I'm not sure off the top of my head.

24 Q I'm going to show you State's Exhibit No. 21 again,
25 prior to the stabbing. Who is that a picture of?

1 A That's Mr. Green at the top of the stairs with a weapon.

2 Q And now 14 -- State's Exhibit 14.

3 A That's pretty much the same the timestamp. And Mr. Green
4 with a weapon on an opposite camera angle.

5 Q No doubt in your mind?

6 A No, sir, absolutely not.

7 MR. GIESE: Thank you. That's all I have.

8 THE COURT: Okay.

9 MR. HICKS: You can turn it off.

10 I'm sorry; I have a couple more, Your Honor, if that's
11 all right.

12 THE COURT: Under the rules, you don't get another
13 chance.

14 MR. HICKS: Oh, I'm sorry. I got excited.

15 THE COURT: All right. Ladies and gentlemen, we're going
16 to take a break. We'll take about a 10- or 15-minute break.
17 Don't discuss the case yet. We'll get you back out soon.

18 (The jury exited the courtroom at 3:37 p.m.)

19 THE COURT: We'll take a break.

20 MR. HICKS: Your Honor, I'd like keep Mr. Burley -- or
21 Officer Burley under subpoena. I may wish to call him in my
22 case.

23 THE COURT: Okay.

24 MR. HICKS: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 (A recess was taken from 3:38 p.m. to 4:03 p.m.)

2 THE COURT: Are we ready for the jury?

3 MOTIONS/MATTERS OF LAW

4 MR. GIESE: Just a second. Just for the Court's
5 information, the next witness we're going to attempt to
6 qualify as an expert in gangs in the Department of
7 Corrections, and also if so, she was a designation officer or
8 involved in his designation as a Blood -- I'm sorry -- as a
9 Blood. So, we were going to go into that also.

10 If he doesn't consent to that, that he's a Blood, we have
11 some social media posts --

12 MR. HICKS: I'm sorry, Your Honor, I didn't hear the
13 first half of what --

14 MR. GIESE: Yeah, we were getting ready to put up
15 somebody to be qualified. And if he's not going to admit that
16 he's a Blood or -- what's the right word? Consent or
17 whatever, then, Your Honor --

18 MS. SCOTT: That's the only copy we have. It's the ones
19 that -- social media.

20 MR. HICKS: Yeah, yeah, mm-hmm.

21 MR. GIESE: And then I think we have to prove that he is.
22 And that is what they use.

23 THE COURT: So, what's your position? Are you going to
24 stipulate? I mean, I understand this is kind of one of the
25 things -- sometimes the strategy -- you may be better off

1 stipulating but then you don't get other evidence in. It's
2 kind of like a DUI second. Sometimes you're better off
3 stipulating it's a second offense but they don't have to prove
4 it. But it's up to you. I mean, if you want to discuss it
5 with your client...

6 MR. HICKS: Yeah. So, Your Honor, I'm thinking about a
7 couple of things. First, like you say, there's the option to
8 stipulate but, also, if this officer that's going to testify
9 is going to present himself as a member of the classification
10 committee or whatever it's called that deals with security
11 threat groups and all that stuff, I'm actually more inclined
12 to demand a Daubert hearing for him, because there's got to
13 have some kind of specialized knowledge and experience that
14 goes into making these assessments.

15 If I could, may I just have a few minutes to discuss this
16 with my client?

17 THE COURT: Sure.

18 MR. HICKS: Thank you, Your Honor.

19 (Pause in the proceedings.)

20 MR. GIESE: And, also, the PowerPoint that was used at
21 the hearing. There it is.

22 THE COURT: I assume he's seen that.

23 MR. GIESE: Yes, sir.

24 MS. SCOTT: Yes, sir.

25 (Counsel confers with the defendant off the record.)

1 MR. HICKS: Your Honor, we're not willing to stipulate to
2 anything regarding this, but at the same time, we'll also not
3 demand qualifying this witness as an expert.

4 As far as these exhibits go that they showed you, we do
5 want to ask questions if somebody in the social media posts to
6 come in.

7 As far as the security threat clarification folder thing
8 they've got up there, I'm going to ask that that just
9 completely stays out. If you look at it, the whole thing,
10 just by its design and layout is unfairly prejudicial and
11 completely outweighs any probative value that that document
12 has. And some of the pages have what appears to be blood
13 spatter. There's some of the pages where the background is,
14 like, hands with gang signals.

15 Come on, Your Honor, that's, obviously, unfairly
16 prejudicial. So I'd ask to keep that out completely unless
17 they can just reformat the thing.

18 THE COURT: Well, I mean, I don't know where this
19 evidence came from. Are y'all alleging this is his Facebook
20 pages on his phone while he was in prison?

21 MR. GIESE: Yes, sir.

22 THE COURT: Are y'all going to be able to document that?

23 MR. GIESE: There are two separate things. One is his
24 Facebook page, and specifically, the last page is what we're
25 interested in on that. He makes a statement that I think an

1 expert could explain what the statement meant. As to the
2 other one, it's the actual PowerPoint that they used in his
3 designation, to have a hearing. She could explain that. She
4 was actually the coordinator for it. And that's what they
5 used to designate him as --eventually designate him as a
6 Blood. And I think if they're going to fight the fact that
7 he's a Blood, I think they have a right to put that in.

8 MR. HICKS: Well, you certainly have a right to get the
9 information in, but like I said, the format that it's in, Your
10 Honor, any lay person can look at that and say that's unfairly
11 prejudicial. I don't disagree, we have a right to get that
12 information in, but the way that it's formatted, that's just
13 toxic to every part of this case, Judge.

14 MS. SCOTT: And, Judge, if it -- what we could do is take
15 that formatting of the background out, and then we would
16 introduce the PowerPoint in its entirety without the
17 background that Mr. Hicks is so concerned with.

18 THE COURT: So, who do y'all think put this background in
19 here?

20 MR. GIESE: I guess the Department of Corrections did.

21 THE COURT: So, this is not a background or something
22 that he created?

23 MS. SCOTT: No.

24 MR. GIESE: No, sir. What we're claiming he created was
25 the second ---

1 MS. SCOTT: --- packet.

2 THE COURT: But as far as this is concerned, the
3 Department of Corrections created this.

4 MS. SCOTT: Yes, sir.

5 MR. GIESE: Yes, sir, for the PowerPoint to present his
6 designation hearing.

7 THE COURT: But who -- when you say "present it," who
8 made the determination that decided he was a member of the
9 Bloods?

10 MR. GIESE: My understanding is that there is a panel,
11 and there's an investigator that collects the evidence. It
12 has to go through somebody else, has to okay that they're
13 going to try and make -- designate him, at which point they
14 have a hearing. He's entitled to be at the hearing, and I
15 believe he was at the hearing.

16 THE COURT: Was he represented by counsel at the hearing?

17 MR. GIESE: No, sir.

18 MR. HICKS: No, Your Honor.

19 THE COURT: And who sits on the panel and how do they get
20 picked?

21 MR. GIESE: Great question. I mean, it's people from the
22 Department of Corrections, obviously. It's not like there's a
23 third --

24 THE COURT: It's not citizens from the community like a
25 jury.

1 MR. GIESE: No, Your Honor. This first officer is the
2 one that actually was the coordinator of the -- for lack of a
3 better term -- the prosecution of whether or not he was a
4 Blood or not. And then this panel makes the decision. He has
5 a right to say, talk, and say whatever he wants to say, and at
6 some point, they make a determination.

7 THE COURT: Okay.

8 MR. HICKS: Your Honor, I'm actually going to ask you to
9 exclude all of this. This is no more valid for bringing in,
10 unless my client testifies, than is any disciplinary stuff. I
11 think that is just rankly inadmissible.

12 THE COURT: So, do y'all have any case law that this is
13 admissible? I mean, how -- I understand at least the theory
14 of it. Usually, this gets brought up at a sentencing
15 situation in front of a judge and not to determine guilt or
16 innocence. So, I'm back to the 403 analysis, the probative
17 value versus the prejudicial value. And so, what probative
18 value is it going to have in this case?

19 MR. GIESE: Your Honor, it's my contention that this
20 witness can testify as to, if she's declared to be an expert,
21 which I believe he just stipulated to.

22 MR. HICKS: Yes.

23 MR. GIESE: She can testify as to the situation that
24 occurred. She says she can identify Mr. Green because she
25 dealt with Mr. Green for a period of time and seen the

1 pictures and can identify him.

2 As to the actual designation of being a Blood, I think
3 it's important to the case. If she can testify that he was
4 designated as a Blood and asked to put the designation hearing
5 in, then, certainly, he can cross-examine her on that aspect
6 of it, and we won't go into that.

7 MR. HICKS: But, Your Honor, if she does that, then that
8 runs us straight into improper character evidence. We run
9 into 404 with that one and that she's testifying that he's a
10 member of the Bloods, and it's the State's contention that,
11 because he's a member of a known criminal organization, he
12 acted in accordance with that membership or comport his
13 behavior with that membership. That's improper character
14 evidence, and I still say it's not admissible.

15 MR. GIESE: Unless -- unless -- unless being a Blood is a
16 good thing. There might be somebody out there that thinks
17 that. I'm just saying.

18 MR. HICKS: I mean, we have jumped the shark on that one.

19 MS. SCOTT: And, Judge, another thing under the 404(b)
20 analysis, as you know, we can get in this bad character
21 evidence if it falls under different categories, but you've
22 already talked about most of the identities as well. And I
23 know that that's one of the main issues here in trial.

24 The fact that he's a Blood member puts him in that mob
25 for the conspiracy charge and the assault and battery by a

1 mob, and that's an identity issue, and that's why we think, as
2 privy to a Blood member, we have to go into that.

3 MR. HICKS: Your Honor, that's about as far as they can
4 stretch this. They're not trying to identify him because he's
5 a Blood member. They're trying to use the association of
6 somebody that they already know who it is so that -- to back
7 door in some improper character evidence. This doesn't have
8 anything to do with his identity.

9 THE COURT: Okay. Let me ask y'all this: Do you have
10 any case in South Carolina that the Supreme Court has allowed
11 an expert to testify on gang activity?

12 MS. SCOTT: Yes, sir.

13 MR. GIESE: Yes, sir.

14 THE COURT: So, they have already predetermined that it
15 is -- unlike the child abuse cases, that there is such a thing
16 as an expert on gang activity and they have been qualified in
17 court?

18 MR. HICKS: Yes, Your Honor. There is Supreme Court case
19 law that says there is such a thing of expert on gang activity
20 and that they can be qualified to testify to it.

21 MS. SCOTT: Johnson v. State, Your Honor, 433 S.C. 550.
22 It's a 2021 case. In that one, they did qualify a SLED agent
23 as a gang investigations expert. They testified about the 135
24 Piru structure, the rituals, the characteristics, as well as
25 the defendant's role as a leader within that chapter.

1 THE COURT: Okay. So, as far as in this particular case,
2 I assume that your position is that the conspiracy occurred
3 because of the Bloods -- it was a conspiracy between the
4 Bloods and Crips.

5 Are you going to have anybody who is going to testify
6 that a group of Bloods got together and planned this? Or is
7 it just all on the video?

8 MR. GIESE: It's circumstantial. It's all on video.

9 THE COURT: Okay. So...

10 MR. GIESE: And, Your Honor, I understand that -- and I'm
11 going to be quite honest. I understand that being a Blood
12 member doesn't make him part of the mob. He's part of the
13 mob, but he's also a subset, which is a Blood.

14 THE COURT: Right.

15 MR. GIESE: Does that make sense?

16 THE COURT: Yeah, I understand that, but you also -- I
17 mean, based on y'all's statements, the jury has already got it
18 in that this is a gang war at the prison between the Bloods
19 and the Crips and the Gangster Disciples, who sat and watched.
20 So, that's before them.

21 And in this particular case, unlike some gang trials is
22 where you don't have an -- that you've got, allegedly, that
23 this happened because of the gangs, and this person did this,
24 and you have got witnesses. And so it becomes that testimony
25 that they're in a gang and other gang members were there, is

1 far more important than identifying what happened.

2 If you have got anything on video as to what happened and
3 you don't have any witnesses to come in, you're going to have
4 other inmates that's going to come in and say this, this, and
5 this, and "We got together as Bloods and this was an
6 interrogation and we went and stabbed this person." You have
7 got it on video.

8 I'm trying to determine that the prejudicial value
9 outweighs the probative in this case in that they should
10 just -- but that's my concern of what they're going to do with
11 it in Columbia, because this is one that -- that a gang
12 affiliation is not necessarily that important. You have a
13 video of a gang stabbing this guy, a mob stabbing this guy,
14 and --

15 MR. GIESE: And that is what the statute reads. It
16 doesn't say gang member. It says mob.

17 THE COURT: So, you kind of got proof. And putting this
18 Facebook in and all these pictures, it's almost like the new
19 autopsy pictures; it's got some huge prejudicial value. And I
20 don't know what they're going to do with that in Columbia.

21 MR. HICKS: Well, Your Honor, unless they've got a
22 warrant to pull that stuff from Facebook itself or a subpoena,
23 rather, to have the stuff from Facebook itself and were able
24 to track the IP address to a phone that was in Mr. Green's
25 possession, I'm going to question it.

1 MR. GIESE: We think it's self-identifying about a fact
2 that it's got his pictures on it and it says, "Valentino
3 Blood," which is a gang subset --

4 THE COURT: But how are you going to say that he did
5 that?

6 MR. GIESE: I think his picture is on that.

7 MR. HICKS: My sister had a Facebook page that was
8 somebody else she invented because she was weird.

9 THE COURT: Just because they're pictures doesn't mean --

10 MR. HICKS: Doesn't mean it's that.

11 THE COURT: Mine and your picture is going to be on the
12 news today maybe.

13 MR. GIESE: And I apologize, but you're talking to
14 somebody who doesn't have a Facebook page.

15 MR. HICKS: I understand.

16 MR. GIESE: So, I have no idea.

17 MR. HICKS: Well, the point is that Facebook and other
18 social media platforms, they have no verification of process.
19 So, if Barney Giese was to go on Facebook.com and try to sign
20 up for an account, you're not going to have to upload, like, a
21 state ID or anything to prove who you are. You can just put
22 whatever picture you find on the internet and attach whatever
23 name you want to it and, boom, that person now exists on
24 social media.

25 MS. SCOTT: And, Judge, if it's for self-identification,

1 there are multiple videos of him on there, in his cell,
2 throwing up gang signs and all that. We'd be happy to play
3 all that just to prove that it's his Facebook.

4 THE COURT: And, normally, on Facebook, I have got
5 somebody whose got their phone on them and says, "They sent it
6 to me," and authenticate it to prove that it is what it
7 purports to be. You know?

8 But if you don't have anybody who says that this is his
9 number, this is his -- you know, email address and that he
10 sent this to me and we did it back and forth, you've just got
11 a document that was created somewhere, I don't know how you're
12 going to get that through the chain issue.

13 I just ran into a similar situation in 19-5-920 with
14 Google and that statute lets you get something in without
15 bringing the Google people here, but all of that is
16 non-testimonial in the confrontation clause that applies.

17 Just because his picture is on here, you have got to
18 authenticate that somehow before you -- or the jury is going
19 to get to see that.

20 MR. GIESE: Let me fall back. And I understand what
21 you're saying, I think, where you -- at least to get around to
22 that ruling.

23 This next witness can, I believe, testify and pick him --
24 show him on the -- identify him on the tape. And she can do
25 that because she was the coordinator for his designation

1 hearings, to where he actually -- you know, she's watching him
2 for hours. Am I allowed to go into that?

3 THE COURT: Yeah, I mean, if she's going to identify him
4 on the tape, she can identify him -- she'll -- I mean, the
5 fact that she's saying that he's a gang member, unless -- I
6 mean, I have had a situation like that where, the way they
7 determine he's a gang member, because he's told them he was a
8 gang member, and he said, "I'm a member of the Bloods, here
9 are my tattoos." He told the officer that he was a gang
10 member, so it was not an issue at all because he's the one
11 that said it. You know, we didn't have any hearsay issues and
12 all this other stuff.

13 So, I mean, I don't know if she can get up and qualify as
14 an expert and say what she knows and whether it's going to
15 help you or not. In some cases, it's a huge difference. In
16 this case, y'all have got to decide.

17 MR. HICKS: Well, Your Honor, I'd refer you to State v.
18 Price -- that's 629 S.E.2d 363 -- which stands for the
19 proposition that, in the event you're going to have an expert
20 who is qualified to testify about gang-related activity. As
21 Ms. Scott said, they can testify to rituals, etc., etc., etc.
22 But as soon as they start talking about membership positions
23 with the organization, because these organizations don't have
24 websites publishing membership rules, it's hearsay based on
25 informants. I mean, that case law exists.

1 THE COURT: You know, a lot of times in a situation where
2 he told the jailer, he told the police officer, he told
3 somebody, or one of his friends who is in the gang, which is
4 really rare they can testify against each other, gets up there
5 and says that, or knows that. You know, I don't know. We'll
6 see. I just --

7 MR. GIESE: Your Honor, I'm going to, at this point, not
8 put her up until tomorrow so I can figure out to try and keep
9 this as clean as I can.

10 THE COURT: And I'll read all these cases and try to -- I
11 mean, I don't know that -- and the Supreme Court sometimes
12 questions why did that come in and it was prejudicial because
13 they didn't need it. They charged him with a mob, and you've
14 got video of a mob doing this and he was charged with murder.
15 You've got -- so, I don't know how this goes forward in
16 proving your case other than just being prejudicial. I mean,
17 that's kind of seeing the way they're weighing it in Columbia.

18 If you get something that's prejudicial, you better have
19 a strong evidentiary issue to get it in and that may be strong
20 evidence. You have got to prove -- and none of the crimes
21 that you have charged him with does being a gang member
22 require proof. You know, so, usually when that happens is
23 when they look at it really close.

24 If it's an element that you have got to prove as part of
25 a crime, that's a whole different ball game. But being a gang

1 member is not an element of any of these three crimes you've
2 got to prove. So, I just think you have got to be careful
3 going there.

4 But, in summary, y'all can decide it. It's your case.
5 I'll call the balls and strikes as y'all present them. If he
6 objects, I'll do my best. That's just my thought process of
7 how you can get it in. Okay?

8 MR. GIESE: We're going to move on to another witness,
9 Your Honor.

10 THE COURT: Okay. Now, are y'all ready for the jury?

11 MS. SCOTT: Yes, sir.

12 THE COURT: Bring them in.

13 (The jury entered the courtroom at 4:25 p.m.)

14 THE COURT: I apologize. I know y'all think I don't have
15 a clock. That was a long 15 minutes, but I had some legal
16 matters I had to deal with outside of your presence that took
17 longer than I thought, so I'm sorry. But I think they're
18 ready to go now. Maybe not.

19 MS. SCOTT: Judge, can we approach?

20 THE COURT: Yes, ma'am.

21 BENCH CONFERENCE

22 (The following bench conference was held outside the
23 hearing of the jury and others.)

24 MS. SCOTT: So, this is the one that I was saying -- we
25 just got her, taking out of order. I don't think we need to

1 do a Biggers hearing before.

2 THE COURT: Well, do you want -- we can probably do it in
3 the morning.

4 MR. HICKS: I'll leave it to your discretion.

5 MS. SCOTT: Save for the Biggers hearing.

6 THE COURT: Send the jury out?

7 MR. HICKS: As long as we go through all the factors, I'm
8 okay with it.

9 MR. GIESE: Well, I don't know how long she's going to
10 take.

11 THE COURT: If it looks like it's going to take a long
12 time, I'll send the jury home and we'll do it later.

13 MR. HICKS: I'm sorry, but I don't know what he's going
14 to say.

15 (Open court resumes:)

16 THE COURT: I have to send y'all back to the jury room
17 just a minute. I'm sorry. I've got one more matter I need to
18 resolve. I'll get you back out in a little while. And if I
19 can't resolve it, I'll send you home.

20 (The jury exited the courtroom at 4:28 p.m.)

21 LT. COLONDA ROBINSON,
22 after having been duly sworn, was examined and testified
23 to as follows:

24 MS. SCOTT: Judge, just before we get started, if I can
25 get these marked. Sorry.

1 (State's Exhibit Nos. 27, 28, and 29, Photographs of
2 Stephen Green, was marked for identification.)

3 PROFFERED DIRECT EXAMINATION

4 BY MS. SCOTT:

5 Q Just for this quick beginning part of your testimony --
6 we're doing this in camera hearing -- I want to go to -- well,
7 first off, you were working at Lee Correctional April 15th of
8 2018; is that right?

9 A Yes, ma'am.

10 Q Okay. Where were you working on that date?

11 A I was in the main control, lead control.

12 Q So, you were in the control room?

13 A Yes, ma'am.

14 Q Okay. So, in this control room, what time did you get to
15 work that day?

16 A Around about 6:30.

17 Q In the morning?

18 A Yes, ma'am.

19 Q So, when the riot started around 7:00, were you still
20 working?

21 A Yes, ma'am.

22 Q In the control room?

23 A Yes, ma'am.

24 Q Okay. So, you stayed past your time?

25 A We was at shift change, so yes, ma'am, I did.

1 Q So, when you're in the control room, are you watching the
2 video up on all the screens of all the dorms?

3 A Yes, ma'am.

4 Q And briefly describe, did you happen to see what occurred
5 in F3, what happened first?

6 A Yes, ma'am.

7 Q So, what did you -- from F3, did you then watch F5 video?

8 A Well, all the cameras was pulled up, so we was watching
9 multiple dorms at a time. So, our focus was on just the
10 units.

11 Q And, obviously, calling for help and things of that
12 nature while watching the video?

13 A Yes, ma'am.

14 Q While you had the video pulled up around 10:00 that
15 night, did you happen to see anything happen in F1?

16 A Yes, ma'am.

17 Q Okay. And what did you see?

18 A Mostly, I saw the inmates gathering in the rock and some
19 were like -- multiple inmates getting hit and stuff, and then
20 they scattered once I called A Team.

21 Q So, you saw multiple inmates gathering on the rock and
22 hitting another inmate; is that right?

23 A Yes, ma'am.

24 Q At that point when you saw it, were you able to identify
25 really what was going on at that point, or were you just in

1 the mode of trying to get help for the people?

2 A I was in the mode to get help on the yard.

3 Q Okay. So, you work that night. Do you then get
4 contacted by SLED Agent Jamie Shaw, I believe, to come in to
5 meet for an interview?

6 A Yes, ma'am.

7 Q Okay. So, do you remember the date of that, that you met
8 with Agent Shaw?

9 A No, ma'am.

10 Q Okay. Was it March 28th of this year?

11 A Yes, ma'am.

12 Q Does that sound about right? Okay.

13 Where did you meet?

14 A In Columbia at the office -- or the office in Columbia.

15 Q And explain why you were there that day. Explain what --
16 you know, what you were told to come do.

17 A To elaborate on what I saw and heard of the riot.

18 Q Okay. And, at that point, did you indicate to anyone
19 that you would be willing to see if you can identify any
20 inmates in the video?

21 A Yes, ma'am.

22 Q Okay. So, when you watched the video in Columbia, was it
23 similar to the same kind of setup that you had in the control
24 room where you had the cameras pulled up?

25 A Yes, ma'am.

1 Q So, it was ViconNet that was being used?

2 A Yes, ma'am.

3 Q Were you able to -- and let me go back for a second.

4 So, working in the control room, you had experience
5 dealing with seeing the screens in realtime track with each
6 other and you're able to track one person from one place to
7 another; is that right?

8 A Kind of, yes, ma'am.

9 Q Okay. So, you're in there. You're watching video to see
10 if you can identify any inmates; is that right?

11 A Yes, ma'am.

12 Q I want to show you what's been marked as State's Exhibits
13 27, 28, and 29. Can you tell me if you recognize these
14 pictures?

15 A Yes, ma'am, I do.

16 Q And what are they?

17 A They're pictures of the night of the riot, of Mr. Green.

18 Q Okay. And how do you recognize them? Do you see your
19 signature on there?

20 A Yes, ma'am, I do see my signature.

21 Q Okay. And, specifically, let's go to State's Exhibit 29.
22 Is there a number in the top right corner?

23 A Yes, ma'am.

24 Q Okay. Is that number --

25 A One.

1 Q Just -- if you could, can you please describe what this
2 picture is and if there's any writing underneath it?

3 A Yes, ma'am, it is writing underneath it. And it looks as
4 if the inmates was in the hallway and Mr. Green passing
5 something to someone, which looks like a homemade weapon. And
6 underneath there, it said -- it's circled "Tank 3/28/24."

7 Q So, that's the date that you identified this person to be
8 Tank?

9 A Yes, ma'am.

10 Q Okay. So, you identified this person to be Tank. And
11 that was on videotape; is that right?

12 A Yes, ma'am.

13 Q So, the way that this occurred, were you watching video,
14 waiting to see if you saw someone, and if it was paused and
15 you identified someone, would Agent Shaw then print out that
16 and you would sign it?

17 A Yes, ma'am.

18 Q Okay. After you identified knowing that person?

19 A Yes, ma'am.

20 Q So, No. 2, if you could describe what this picture looks
21 like -- or, I'm sorry, State's Exhibit 28, which is the No. 2
22 at the top.

23 A It's an image of Mr. Green.

24 THE COURT: Can you move that mic a little bit? I can't
25 hear a word you're saying.

1 THE WITNESS: I'm sorry.

2 It's an image of Mr. Green in the second page.

3 BY MS. SCOTT:

4 Q Okay. And so, after watching the videotape and you
5 identify Tank in that picture, were you then shown an SCDC
6 photo to further show that that is Tank?

7 A Yes, ma'am.

8 Q Okay. The State's Exhibit 27, again, is that another
9 picture where you signed identifying that inmate as Tank?

10 A Yes, ma'am.

11 Q And that's a different angle as the first one?

12 A Yes, ma'am.

13 Q All right. And you were able to identify Tank because,
14 back in 2018, you worked at the Lee Correctional Institute;
15 correct?

16 A Yes, ma'am.

17 Q Okay. Were you not only working control room, did you
18 work in other parts of the institution during that time frame?

19 A Yes, ma'am.

20 Q Okay. What were some of your other duties?

21 A I was an officer, so I worked on some dorms.

22 Q Okay. So, you were a dorm officer?

23 A Yes, ma'am.

24 Q Did you ever work the F1 dorm?

25 A Yes, ma'am.

1 Q As a dorm officer, do you get to interact with the
2 inmates often?

3 A Yes, ma'am.

4 Q So, when did you start in Lee?

5 A 2016.

6 Q Okay. So, from 2016 to 2018, you've had multiple
7 opportunities to be in the F1 dorm?

8 A Yes, ma'am.

9 Q As an officer?

10 A Yes, ma'am.

11 Q So, were you able to look at that picture and say to
12 yourself that you knew that person by name and sight, meaning
13 Stephen Green, that that appears to be him?

14 A Yes, ma'am.

15 Q Okay. Did you know him by Stephen Green, or what name
16 did you know him by?

17 A I usually know the inmates by their last name. Just
18 Green. Yes, ma'am.

19 Q Last name and nickname?

20 A Sometimes we'd know by nickname, yes, ma'am.

21 Q So, y'all weren't friends but you knew him? You'd seen
22 him multiple times?

23 A Yes, ma'am. I would say I would know him from being in
24 the dorm.

25 Q Okay. And you're able to identify him just watching the

1 videos and tracking back and forth?

2 A Yes, ma'am.

3 MS. SCOTT: Beg the Court's indulgence.

4 Judge, that's all I would have for right now.

5 THE COURT: Okay. Do you have any questions?

6 MR. HICKS: Just a couple, Your Honor. And I'd like to
7 focus this back to the Biggers reliability factors.

8 PROFFERED CROSS-EXAMINATION

9 BY MR. HICKS:

10 Q How are you today, ma'am?

11 A Doing all right.

12 Q My name is Matthew Hicks. Your name is Colonda Robinson?

13 A Yes, sir.

14 Q Would you prefer I refer to you as Ms. Robinson or
15 Officer Robinson? You tell me what works for you.

16 A Yes, sir. It's Lieutenant Robinson.

17 Q Lieutenant Robinson? Perfect, Lieutenant Robinson.
18 Thank you.

19 You stated that you worked in the control room at the Lee
20 Correctional facility on the day of the riot?

21 A Yes, sir.

22 Q And you had cameras or screens, monitors set up that you
23 were kind of observing the different dorms?

24 A Yes, sir.

25 Q How many monitors did you have that you were looking at?

1 A Just four.

2 Q Four? And they were on the ViconNet system?

3 A Yes, sir.

4 Q How many different camera views did you have on each of
5 the monitors at the time?

6 A I don't recall.

7 Q It was more than one?

8 A Yes, sir.

9 Q More than two, you think?

10 A I don't remember exactly.

11 Q Okay. More than one. We'll take it. So, you had, you
12 said, three monitors or four?

13 A Four, sir.

14 Q With more than one camera going on each. So, we're
15 talking at least eight different camera angles going?

16 A Could be.

17 Q Yes, ma'am. And thank you for that.

18 At the time that the riot took place -- at the time that
19 the riot started, you stated that you saw something that was
20 going on at some point in the F1 dorm?

21 A At some point, yes, sir.

22 Q And correct me if I'm wrong; I was trying to take notes
23 really fast and write some other thoughts down as well. You
24 said you tried to address them over the loud speaker? Did I
25 catch that right?

1 A No, sir.

2 Q I didn't? Okay. No, no, that's fine. I was somewhere
3 else with that. Thank you.

4 At the time things were going on in the F1 dorm that you
5 observed, what was going on in the other cameras; do you know?
6 Like off the top of your head?

7 A Yes, sir. There was stuff going on in the F3. We saw
8 people get dragged to that door. F5, we saw people get
9 homemade weapons. There was a lot going on that day.

10 Q Right. Okay. So, you're kind of split between watching
11 all this -- I mean, frankly, it was total chaos; right?
12 That's not an unfair description. You were split between
13 watching all this chaos on all these different screens kind of
14 -- and, at the same time, trying to call for help and
15 coordinate backup and all that stuff all at the same time?

16 A Mm-hmm.

17 Q Did you make -- prior to being interviewed by Agent Shaw
18 on the 28th of the March of this year, did you make any prior
19 identifications of Mr. Green on the -- based on this incident
20 or the video footage?

21 A Other than that day, no, sir.

22 Q I'm sorry?

23 A Other than that day, no, sir.

24 Q Okay. So, there was no prior descriptions of Mr. Green
25 before March 28th of 2024?

1 A What do you mean by "prior descriptions"?

2 Q As in you weren't interviewed and were like, "That's
3 Stephen Green right there on the video" before you spoke with
4 Agent Shaw?

5 A No.

6 Q Okay.

7 THE COURT: What was your answer?

8 THE WITNESS: No.

9 THE COURT: Okay.

10 BY MR. HICKS:

11 Q And then -- I'm not going to ask you about that, because
12 I have no idea and I don't know that you do either, so we'll
13 just let it go.

14 So, the riot was April 15th, 2018, and almost six years
15 later is when you were called in for the identification with
16 Agent Shaw; is that correct? March of this year?

17 A Yes, sir.

18 MR. HICKS: Okay. I have no further questions, Your
19 Honor.

20 THE COURT: Okay.

21 MR. HICKS: Thank you, ma'am. I appreciate your time.

22 THE COURT: Anything further from the State?

23 MS. SCOTT: No, Your Honor.

24 THE COURT: Anything else from the defendant?

25 MR. HICKS: No, Your Honor. Just that I would ask you

1 not to include this witness because she doesn't meet any kind
2 of benchmarks on any of the reliability factors from the
3 Biggers hearing other than the one I didn't ask about because
4 I don't know that she made any confident statements of
5 confrontation.

6 THE COURT: Okay. But my understanding of her testimony,
7 that her testimony is similar in that she was in the control
8 room at the time the riot started, but her only identification
9 of the defendant in this case was when she was sitting in the
10 office, I guess, at the Attorney General, looking at all the
11 videotape and seeing who she could or could not identify. And
12 she said that there was no prior interviews, that nobody said
13 to her or told her, "Is that Stephen Green?" I don't see
14 anything in the record that was -- her identification was un-
15 -- the process was unduly suggestive.

16 In the two-prong test in State v. Moore, that's it: Was
17 the out-of-court identification process unduly suggestive?
18 There's nothing that I have heard in the record that there
19 was. And even if it was, the defendant, nevertheless, is so
20 reliable that there's no substantial likelihood of
21 misidentification. And she said she had known him prior to
22 this and she knew his nickname and his last name, was my
23 understanding of the testimony.

24 And so, you know, the Biggers situation is whether Jones
25 deals with those five factors, but it's not a scenario in her

1 identification where she gets on the loud speaker and says,
2 you know, Stephen Green is doing this, this, this, and this,
3 and she's identifying him. Her whole process is just like the
4 other witnesses; she's taken in and looking at hours of video
5 to see who she could and could not identify.

6 And based of her prior knowledge of him, she said she had
7 been working there since 2016, and she knew him, she knew his
8 name, and she knew his last name. So, I don't see anything in
9 here that makes her identification unduly suggestive or in any
10 way violates Biggers or State v. Jones or State v. Moore.
11 Okay?

12 MR. HICKS: Yes, Your Honor. And before her testimony,
13 I'll make an objection just to preserve the record as we
14 proceed.

15 THE COURT: Well, you -- we're on the record right now.
16 You don't need to do it front of the jury. You can if you
17 want to but --

18 MR. HICKS: Okay. Yes, Your Honor.

19 THE COURT: Your objection is on the record.

20 Now, it's quarter to five. Do we need to quit for the
21 day, or do we think we can get her up and down before 5:30?

22 MS. SCOTT: Judge, essentially what we just went through,
23 a couple more questions I'd ask on the front end, but that's
24 essentially what she'd be testifying to in front of the jury.

25 THE COURT: All right. Let's try it.

1 MS. SCOTT: Unless she may take longer with you on
2 cross.

3 MR. HICKS: What time do you got to get out of here,
4 Judge? You said you had --

5 THE COURT: 5:30. And I usually promise the jury that I
6 can get them out by 5:00 or 5:30 because they got a life after
7 that. And only when we're trying to do the last day or I have
8 a witness that's not available the next day, we run late.

9 So, it's -- and I don't want to rush you in any way. We
10 can quit for the day. I just --

11 MR. HICKS: I don't want to split her testimony and have
12 to bring her back for my cross-examination tomorrow, but I
13 think --

14 THE COURT: If you're not going to cross her any longer
15 than you just did, we can get it in, because that whole thing
16 took --

17 MR. HICKS: I mean, you guys did it in what? 15?

18 THE COURT: 15 minutes.

19 (A discussion was held off the record between counsel.)

20 MS. SCOTT: Okay. He's saying he will take longer,
21 Judge, so we can -- I don't want to split her testimony
22 either. So, if his is going to last longer, then we'll be
23 fine just coming back tomorrow.

24 THE COURT: All right. I'll bring the jury in and
25 dismiss them for the day.

1 (The jury entered the courtroom at 4:47 p.m.)

2 THE COURT: Okay, ladies and gentlemen. I resolved the
3 legal problem, but the next problem -- and I promised y'all
4 when we started I'd try to get you home by 5:00 or 5:30 at the
5 latest and only, in rare circumstances, will I keep you later,
6 and this is not one of them.

7 But this next witness's testimony may take longer than 45
8 minutes, and so, we're going to do it in the morning. Some of
9 y'all have to go home and take care of family and supper and
10 everything else.

11 So, I'm going to excuse you for the day. Don't talk
12 about the case. Don't do any research. If you have an
13 emergency, call us. And I'll see you at 9:30 in the morning.
14 Okay. Thank you.

15 (The jury exited the courtroom at 4:48 p.m.)

16 THE COURT: Okay. I'm going to go into chambers for a
17 few minutes. After y'all figure out what you want to do,
18 let's have a talk about potential legal issues with tomorrow,
19 so, at least we won't have any hiccups when the jury gets in.

20 So, when you get a minute to kind of figure out your
21 trial strategy, y'all come back in chambers and let's talk a
22 little about tomorrow so it can run as smooth as possible.
23 Okay?

24 (The trial adjourned for the day at 4:50 p.m.)

25 * * * *

1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
2 COUNTY OF LEE * TRANSCRIPT OF RECORD

3 -----X
4 STATE OF SOUTH CAROLINA, *
5 vs. * Case No. 2020-GS-47-00020
6 STEPHEN J. GREEN, *
7 Defendant. *
8 -----X

September 23-26, 2024

9 JURY TRIAL
10 SEPTEMBER 25, 2024 - VOLUME III

11 B E F O R E:

12 The Honorable R. Ferrell Cothran, Presiding Judge; and a
13 jury.

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

15 Barney Giese, Esq.
16 Margaret Scott, Esq.
Assistant Solicitors for the State

17 Matthew Hicks, Esq.
Attorney for the Defendant

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19
20
21
22
23
24
25 Court Stenographer: 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-ID	Enlarged Inmate Roster	32	---
2	Enlarged Second Floor Plan	32	141
3	Enlarged First Floor Plan	32	139
4	Enlarged McClary Autopsy	32	372
5	Enlarged Google Map	32	115
6	McClary Autopsy Photograph	32	375
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10-ID	McClary Autopsy Photograph	32	---
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15	Photograph of Stephen Green	136	185
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18	Photograph of Stephen Green	136	185
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21	Photograph of Stephen Green	136	185

1	22	Photograph of Stephen Green	136	185
2	23	Photograph of Stephen Green	136	185
3	24	Photograph of Stephen Green	136	510
4	25	Hard Drive of Videos	137	149
5	26	Photograph from F-1 Dorm	156	171
6	27	Photograph of Stephen Green	222	262
7	28	Photograph of Stephen Green	222	262
8	29	Photograph of Stephen Green	222	262
9	30-ID	Photograph of F1/A Wing	242	---
10	31-ID	Photograph of F1/A Wing	242	---
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12	33	Photograph of Nike Shoes	242	
13	34	Still Shot with Email 8/1/23	398	398

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16 Court's Exhibits

17	No.	Description	ID.	
18	1	Jury Note re: Foreperson Selection	465	465
19	2	Jury Question	562	562
20	3	Jury Question	563	563

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25

P R O C E E D I N G S

WEDNESDAY, SEPTEMBER 25, 2024 - 9:59 a.m.

(State's Exhibit Nos. 30, 31, and 32, Photographs of F1/A Wing, were marked for identification.)

THE COURT: Are we ready for the jury?

MR. GIESE: State's ready.

MR. HICKS: We have a couple of matters I think we need to discuss outside the presence of the jury.

THE COURT: Okay.

MOTIONS/MATTERS OF LAW

MR. HICKS: So, firstly, Your Honor, I think we need to talk about -- I'd like to bring up the fact that Robinson's testimony and potentially Clive Lopez, if they call him, is going to be identification testimony based on lineup procedures that were conducted post-indictment.

U.S. v. Wade indicates that the right to counsel has attached for lineups extended by Herbie v. Illinois to include or to modify by Herbie v. Illinois, rather, to make sure post-indictment is included in that language.

I know United States v. Ash says otherwise; that lineup procedures are sort of -- or not lineup -- photographic lineups, six packs, that sort of thing, are not included in that. I would argue that U.S. v. Ash is distinguished from this matter because it didn't even address the possibility of photographic evidence.

1 Further, United States v. Ash, as well as this other body
2 of case law, discusses the primary reason for counsel being
3 attached is to, at critical stages of the prosecution, to
4 provide the defense counsel the meaningful opportunity to
5 cross-examine evidence and witnesses.

6 The issue that we run into in this case, Your Honor, is
7 if this testimony is allowed, the only way that I can
8 cross-examine the evidence and the procedures involved is
9 to -- I haven't been provided enough information to
10 reconstruct it for the Court, which was the point of excluding
11 that from the right to counsel.

12 So, the only way that I can get that information -- and I
13 don't see a way around this, Your Honor, is to call the three
14 prosecution attorneys, because they were present at some of
15 these lineups and identifications. And as you know, that
16 invokes Rule 3.7 issues. So, I don't know how you want to
17 proceed with this information, Your Honor.

18 THE COURT: Well, based on the testimony that I heard
19 yesterday, it wasn't a lineup. I didn't hear any evidence
20 that they presented a lineup -- photographic lineup to her or
21 anybody else. You know?

22 And the law is pretty clear on the lineup scenario, and
23 we go through and, you know, unless somebody hinted anything.
24 My understanding, it wasn't a lineup. She worked in the
25 prison since 2016. She was familiar with the inmates that had

1 been in prison. They just simply let her sit and look at the
2 video that she normally was looking at and try to identify the
3 people in the video.

4 And I heard no testimony that anything was suggested or
5 in any way anybody pointed out to her or asked her, "Is this
6 Stephen Green?" She went in, followed and picked out who she
7 knew and told the names of who she knew. So, I didn't --

8 MR. HICKS: So -- I'm sorry, Your Honor.

9 THE COURT: I didn't perceive that we have a lineup issue
10 at all.

11 MR. HICKS: Your Honor, may we approach?

12 THE COURT: Yeah.

13 MR. HICKS: Here's where the problem comes in. They did
14 the video identification, allegedly. First of all, they
15 didn't video record these identifications, so I have no idea
16 what happened. But then, at the end of it, if you look at
17 Ms. Robinson's report of interview, the last couple of
18 paragraphs there, they state that this is the picture they put
19 in front of her, "Is that Mr. Stephen J. Green AKA Tank?"

20 That is in inherently unnecessarily suggestive. And
21 because they didn't video record it, because there's no
22 narrative of it that is more detailed, I can only presume that
23 that's what happened, Your Honor. And absent that, the only
24 other way for me to interrogate that, I believe, is to call
25 opposing counsel as witnesses, which, again, invokes the 3.7

1 problem that we have.

2 THE COURT: She didn't testify to that yesterday.

3 MS. SCOTT: Your Honor, my understanding -- and from my
4 memory of her testifying yesterday -- what she said is that
5 the first -- she watched the video. It was paused. "Do you
6 recognize anyone from," you know, name and sight from her time
7 in the prison. She circled, recognized Tank as Mr. Green.
8 And then, based on that, just to confirm, they pulled up --
9 Jamie Shaw pulled up a picture from his SCDC photo to confirm
10 that. So, that was not a photo lineup. She picked him out
11 from the video and then pulled up another picture that she
12 circled, "Yes, that's Tank," and then another picture from
13 the video as well.

14 MR. HICKS: That may be true, Your Honor. I'm not saying
15 that it isn't. I'm saying I don't know because they didn't
16 video record the thing.

17 And by virtue of the fact that the prosecuting attorneys
18 were there, I don't know, absent interrogating them on the
19 witness stand whether or not they said any words that could
20 have been suggestive in any manner.

21 Honestly, if they said anything other than, "Good
22 morning, how are you doing? My name is so-and-so," I would
23 argue that would be overly and unnecessarily suggestive. So,
24 that's the problem I'm wrestling with, Your Honor.

25 THE COURT: I understand, but the witness gets on the

1 stand, and you can ask her whether they said anything to her.
2 The only time that I perceive that's a problem, if she says
3 they said this, this, and this.

4 MR. HICKS: Well, then, that's hearsay, Your Honor. I
5 can't get that from her.

6 THE COURT: You can get that if they don't object. I
7 mean, it's a scenario -- if she testifies, based on your
8 cross-examination, that they suggested that that was -- that
9 they did anything improper, then that opens up a whole 'nother
10 door.

11 You can ask her -- and we went through it yesterday --
12 how she picked him out. She's looking at the video. She's
13 working in the prison. "Do you recognize anybody in here?"
14 She tells them who she recognizes.

15 And so, I don't think that's suggestive at all or would
16 that trigger anything to bring them in as a witness, only if
17 she said, "I didn't know anybody in there. They showed me a
18 picture of this person. Who is this?" and suggested that I
19 find him.

20 She didn't say that. If she says that, then that opens
21 up a whole 'nother door. And the fact that they didn't video
22 it and -- they don't have to video every part of every
23 investigation. I have never seen a case do that. Like a
24 police officer, you know, you go by her word. If she says
25 something different that opens that door, we'll deal with it,

1 but she didn't say that at all.

2 MR. HICKS: Absolutely. Perhaps not, Your Honor. But
3 then that still opens the door for the Liverman factors
4 involved with the reliability of identification procedures,
5 and we haven't addressed that yet. Part of that is recording
6 the session where it happens if it's possible, and it's not.
7 I mean, the State had almost unlimited resources to
8 investigate this case. It's absolutely possible, as well as
9 several of the other --

10 THE COURT: The fact it's probable doesn't mean they have
11 to do it.

12 MR. HICKS: No, certainly not, but that goes to the
13 reliability of that lineup.

14 THE COURT: And that's what you argue to the jury, is
15 whether it was reliable or not reliable and whatever weight
16 they give it. Obviously, in cross-examination, you can argue
17 that -- what they didn't do and whether it's reliable. They
18 have got to determine whether they believe her testimony or
19 not and how reliable it is to pick him out, your client. But
20 that doesn't go to the admissibility of it; it goes to the
21 weight the jury gives. I mean -- and the fact that they
22 didn't videotape it, I have never had a trial where they
23 videotaped the police officer showing somebody a lineup. You
24 know?

25 You put the person on the stand and say, "Have you ever

1 seen this before?" "Yes." And they go through, "Did anybody
2 suggest anything to you? Who made this circle on here? How
3 did you know it was this person?" We go through that all the
4 time. And it doesn't have to required to be video.

5 MR. HICKS: Yes, Your Honor. So, I just want to make
6 sure that I'm not going to upset the Court in any fashion. On
7 cross-examination, if I ask Ms. Robinson, "Did any of the
8 prosecuting attorneys present say anything to you at all
9 during this process?", at that point, we freeze and have a
10 bench conference about this? Because at that point, I believe
11 it becomes a problem, and they become potential witnesses.

12 THE COURT: Well, in many cases I try, the defense
13 counsel asks a witness, "Did you talk about your testimony to
14 the prosecutors?" And most of the time, "Yeah, I did."

15 And you know, "What did you tell them?" Many times when
16 you have a co-defendant who is testifying or anybody, that's
17 always a question, "Did you talk to the prosecutors about it?"
18 What lawyer would ever put somebody on the stand if they
19 haven't talked to them?

20 MR. HICKS: Of course, Your Honor, but I just want to
21 make sure that I'm not running afoul of anything. If, for
22 example, I ask on cross and she says, "Yes, the prosecuting
23 attorneys spoke with me in there" --

24 MS. SCOTT: We did speak to her.

25 MR. HICKS: Well, sure, but --

1 MS. SCOTT: It's trial preparation. Of course we're
2 speaking to her.

3 MR. HICKS: But -- absolutely. But the next obvious
4 logical question from my part is, "Are they the ones that put
5 this pictures in front of you? What did they say to you when
6 they put this picture in front" --

7 At that point ---

8 THE COURT: And that's fine.

9 MR. HICKS: --- just go for it? Okay, Judge. All right.

10 THE COURT: Normally, they -- she said whatever they
11 said. Most of the time, "Did they tell you to tell the truth"
12 or whatever the issue was. That happens all the time. You
13 can ask her that question. You know? If she comes up with
14 some answer that is bizarre, we'll deal with that. You know,
15 if she said, "I didn't know anybody in there and they told me
16 who it was and they picked him out," if she goes there, we'll
17 deal with that. But the fact that they talked to them doesn't
18 ---

19 MR. HICKS: Well, sure. And, obviously, Judge, I know
20 there's no problem with them talking to witnesses; I get it.
21 My concern is the context of any conversations with this
22 witness in an identification session. That's the problem that
23 I have with this witness -- the context built around it.

24 THE COURT: And the standard as well -- the
25 identification process was unduly suggestive or tainted in any

1 way, that's what Biggers and everything else deals with, is
2 how reliable is that? Is it reliable enough to present to the
3 Court? And if it's unduly tainted or in some way, you know,
4 not reliable, we deal with that.

5 You have, certainly, a right to ask her that question,
6 but that doesn't necessarily trigger them to being witnesses.

7 MR. HICKS: Yes, Your Honor.

8 MS. SCOTT: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. HICKS: Nothing from the defense, Your Honor.

11 MS. SCOTT: Nothing from the State, Your Honor.

12 THE COURT: Bring the jury in.

13 (The jury entered the courtroom at 10:12 a.m.)

14 THE COURT: Ladies and gentlemen, I'm sorry. They had a
15 wreck on the interstate that delayed some of the parties
16 getting here. I apologize for having y'all sit back there 45
17 minutes. Invariably, this happens to me all the time. It's
18 just the nature of trying a case.

19 But, anyway, we're ready to go now. So, if you'll pay
20 close attention, we'll proceed.

21 You may call your next witness.

22 MS. SCOTT: Thank you, Your Honor. The State calls
23 Colonda Robinson.

24 THE CLERK: If you'll have a seat and raise your right
25 hand.

1 LT. COLONDA ROBINSON

2 after having been duly sworn, was examined and testified
3 to as follows:

4 THE COURT: If you will state your full name for the
5 court reporter so she can take that down.

6 THE WITNESS: Colonda Robinson.

7 DIRECT EXAMINATION

8 BY MS. SCOTT:

9 Q Ms. Robinson, what is your rank?

10 A As of right now, lieutenant.

11 Q Lieutenant Robinson?

12 A Yes, ma'am.

13 Q Where do you work?

14 A Lee Correctional Institution.

15 Q Okay. So, you work for the South Carolina Department of
16 Corrections?

17 A Yes, ma'am.

18 Q Okay. And how long have you worked with SCDC?

19 A Eight years.

20 Q Eight years. Okay.

21 So, what year did you start?

22 A 2016.

23 Q 2016.

24 So, when you started at SCDC, what institution did you go
25 to first?

1 A Lee Correctional Institution.

2 Q Okay. So, you have been at Lee this whole time?

3 A Yes, ma'am.

4 Q Okay. When you first started in 2016, what did you start
5 as? What were your duties there?

6 A I was an officer in the dorms.

7 Q Okay. So, you were a dorm officer. What does that mean?

8 A Basically, do inmate movement, locking down. Just
9 basically everyday movement of the inmates.

10 Q Okay. And was there a particular dorm you worked or did
11 you work all of them?

12 A I worked everywhere ---

13 Q Everywhere?

14 A --- at the institution, yes, ma'am.

15 Q Okay. Did you -- were you assigned to the west yard more
16 than the east yard?

17 A I wouldn't say that I was -- wherever they posted me,
18 they did. I'm not --

19 Q Okay. Had you ever been assigned to the F1 dorm?

20 A Yes, ma'am.

21 Q Okay. During that time frame, were you also working in
22 the control room?

23 A The night of the riot, yes, ma'am.

24 Q Okay. And so --

25 A And the weekends, yes, ma'am.

1 Q Explain what your duties would be in the control room.

2 A We pass out keys to the staff. We answer phones. We
3 observe the cameras. That's basically about it.

4 Q Okay. I want to show you what's been marked as State's
5 Exhibit 3. Do you recognize this, Lieutenant?

6 A Yes, ma'am.

7 Q Okay. And what is that?

8 A That's the outline of the institution.

9 Q Okay. If you wouldn't mind, if you could come down here
10 and point to the jury for me.

11 THE COURT: Just be sure you keep your voice up, okay,
12 for the jury and my court reporter to hear you.

13 THE WITNESS: Yes, sir.

14 BY MS. SCOTT:

15 Q So, just so you can explain to the jury, as a dorm
16 officer, you have keys. What do the keys go to that you have
17 when you're a dorm officer?

18 A When we're a dorm officer, the keys that we have are to
19 the cells and the wing doors.

20 Q The wing doors.

21 And will you point to where the wing doors would be.

22 A Those would be inside -- the way -- the inside. So,
23 these are the cell doors. And we would have keys to each --
24 well, it's a master key that locks all the cells, and then we
25 would have a key to the wing doors, which would lock the

1 wings.

2 Q Okay. And so you said the cell doors are where these
3 circles are; is that correct?

4 A Yes, ma'am. Those are the cell doors.

5 Q The wing doors -- are there two wings for each dorm?

6 A Yes, ma'am.

7 Q Okay. A and B side?

8 A Yes, ma'am.

9 Q Okay. Are the A and B side wings different sets of keys?

10 A Yes, ma'am.

11 Q Okay. Tell me about -- so, if you have keys to the A and
12 the B side and the cell doors, do you have a key to get
13 outside of the dorm?

14 A No, ma'am. That would be on the yard key set.

15 Q Okay. So, are you locked inside with all the inmates
16 when you are a dorm officer?

17 A Yes, ma'am.

18 Q Okay. So, you can't get out?

19 A Not to the yard, no, ma'am.

20 Q Okay. You can have a seat. Thank you.

21 Lieutenant, I want to go to the night of the riot, April
22 15th, 2018. Were you working that night?

23 A Yes, ma'am.

24 Q What time did you get to work that day?

25 A Around about 6:30 a.m.

1 Q 6:30.

2 Okay. And what position were you working that day?

3 A I was the officer for the control room -- the main
4 control, lead control.

5 Q Lead control.

6 Okay. And what time were you supposed to get off of
7 work?

8 A Shift changes at 7:00, but we always end up staying a
9 little bit past 7:00.

10 Q Well, tell us about that night. What happened first that
11 -- your experience with the Lee riot incident.

12 A I was getting ready to walk out that day, and then we
13 heard someone call for assistance to the F3 unit. So
14 Ms. Mack, she's in the control room for night shift, and she
15 was doing her inventory. So, I walked back to the control
16 room to see what was going on with the F3 unit so the cameras
17 was pulled up, and I saw someone getting dragged to the back
18 door with a trail of blood behind him.

19 Q Okay. And I want to stop you there for a second. So, in
20 the control room, you have all the monitors pulled up?

21 A Yes, ma'am.

22 Q Do you have all of the dorm cameras -- each dorm camera
23 pulled up, or do you alternate between them?

24 A That night, we had the F3 -- well, mostly, I have Alpha
25 unit dorms pulled up on the camera.

1 Q Okay. So, Lucretia Mack; is that right?

2 A Yes.

3 Q She was coming on to replace you?

4 A Yes, ma'am.

5 Q Did you end up leaving?

6 A No, ma'am.

7 Q So, continue on. I'm sorry.

8 A Yes, ma'am. So, when I saw the trail of blood, I called
9 for A Team to the F3 unit.

10 Q What's an A Team?

11 A A Team is all available staff that can assist with what's
12 going on -- the disturbance that's going on within the
13 institution.

14 Q At that point, was there an institutional lockdown?

15 A We didn't immediately go into institutional lockdown, no,
16 ma'am.

17 Q About what time do you know the institutional lockdown
18 occurred?

19 A I don't remember the time that we called the
20 institutional lockdown.

21 Q Do you know who called it?

22 A Yes, ma'am. I end up calling the institutional lockdown,
23 yes, ma'am.

24 Q You called it?

25 A Yes, ma'am.

1 Q And why did you call the institutional lockdown? Was
2 that one of your duties as part of the control room officer?

3 A We go into institutional lockdown if a duty warden or the
4 captain tells us to call the institutional lockdown. So, yes,
5 that's one of our jobs, to call over the loudspeaker and over
6 the radio an institutional lockdown.

7 Q Okay. And you said the loud speaker. Are there speakers
8 in each one of the dorms?

9 A Yes, ma'am. There are speakers for the intercom, yes,
10 ma'am.

11 Q Okay. And then did you call it over the radios that the
12 officers wear as well?

13 A Yes, ma'am.

14 Q All right. So, let me ask you this: Are there
15 typically -- is there only one officer at a time in the
16 control room?

17 A Yes, ma'am.

18 Q Okay. And this was a Sunday; is that correct?

19 A Correct, yes, ma'am.

20 Q Is it -- are there more people working during the week
21 than on the weekend?

22 A Yes, ma'am, because we have a C card shift.

23 Q Okay. What's C card shift?

24 A So, a C card is from 8:00 to 4:00. So, on the weekdays,
25 we have more staff at the institution than on the weekends.

1 Q Okay. So, on the weekends, you're shorter staffed?

2 A Yes, ma'am.

3 Q All right. Continue on. Tell us what -- after what you
4 see in F3 and you call institutional lockdown, what occurs
5 next?

6 A No, I didn't call institutional lockdown. I called A
7 Team to assist with the unit. Once A Team got to the unit,
8 they tried to breach but they couldn't breach the door due to
9 the inmates in the hallway. So, they didn't want them to come
10 out in the yard.

11 So, I called for Captain McCullough because she was
12 leaving out, and I caught her at the front gate. She was our
13 duty warden for that week. So, she ended up coming back in
14 the control room to observe what was going on. And then
15 that's when she told me that we need to go an institutional
16 lockdown.

17 MR. HICKS: Objection, Your Honor, that's hearsay.

18 THE COURT: All right.

19 BY MS. SCOTT:

20 Q What, if anything, did you do after speaking to Captain
21 McCullough?

22 A Say that one more time.

23 Q What did you do after speaking with Captain McCullough?

24 A Captain McCullough told me to call an institutional --

25 MR. HICKS: Objection, Your Honor. That's hearsay.

1 THE COURT: Don't say what she told you. Just say what
2 you did.

3 THE WITNESS: Oh, I called institutional lockdown.

4 BY MS. SCOTT:

5 Q Okay. And you called the institutional lockdown.
6 Captain McCullough, is she in the control room at this point?

7 A Yes, ma'am.

8 Q Okay. All right. Continue on. You're watching F3.
9 What, if anything, happens next?

10 A I don't really remember what happened next because I had
11 to call our warden. So I had used the phone to call the
12 warden and call other people. So, I wasn't always watching
13 the cameras.

14 Q Right.

15 A I had other people in the control room that was watching
16 the cameras as well.

17 Q So, normally, you would be in there by yourself, but
18 right now when there's a disturbance, you have multiple other
19 people in there; correct?

20 A Yes, ma'am.

21 Q Okay. What, if anything -- did you see anything occur on
22 the cameras in F1?

23 A Yes, ma'am. Later on that evening, yes, ma'am.

24 Q Okay. And what did you see?

25 A I just saw groups of inmates gathering on the rock. And

1 then I saw one inmate get hit. And then I didn't end up
2 finish watching the camera because I had to go to the window
3 to give out some equipment.

4 Q Okay. You mentioned that they couldn't breach the dorm
5 because there were inmates on the outside; is that correct?

6 A They were in the sally port.

7 Q In the sally port. Okay.

8 So, at this point, the institution, when you see this
9 occur in F1, was it under control?

10 A Was the institution under control? No, ma'am.

11 Q Okay. Do you know about what time -- you said you called
12 for the A Team. Was RRT, SORT, were they all called out as
13 well?

14 A They weren't -- they -- well, we don't call --

15 Q Or SITCOM (ph)?

16 A We don't call them out until our warden lets us know that
17 we need to activate them.

18 Q And what time, if you recall, did everything eventually
19 get locked down and under control?

20 A It was late in the -- like, the evening. Like 2:00 or
21 3:00 in the morning.

22 Q What time did you get off work eventually that morning?

23 A I got off work the next morning about 11:30.

24 Q Do you know which officer was working in the F1 dorm that
25 night?

- 1 A Yes, ma'am.
- 2 Q And who was that?
- 3 A At the time, it was Lopez.
- 4 Q Officer Lopez.
- 5 Lieutenant, at some point, were you interviewed about
- 6 what happened that night during the riot?
- 7 A Yes, ma'am.
- 8 Q Okay. And were you asked to watch videotape of what you
- 9 saw that night to try to interview or try to identify certain
- 10 individuals if you possibly could?
- 11 A Yes, ma'am.
- 12 Q Okay. And who did you meet with? Was it Agent Jamie
- 13 Shaw with SLED?
- 14 A Yes, ma'am.
- 15 Q Okay. I want to show you what's been marked as State's
- 16 Exhibit 27, 28, and 29. If you wouldn't mind looking at those
- 17 and tell me if you recognize them.
- 18 A Yes, ma'am, I do.
- 19 Q Okay. And how do you recognize those?
- 20 A These were the footages that I have observed. And when I
- 21 was watching the camera, I did recognize Mr. Green.
- 22 Q Okay. And do you have a signature on that page?
- 23 A Yes, ma'am.
- 24 Q So, you signed your name to that page?
- 25 A Yes, ma'am.

1 Q Okay. And all three of these you say are pictures of the
2 defendant?

3 A Yes, ma'am.

4 Q And you signed all three of these?

5 A Yes, ma'am.

6 MS. SCOTT: Your Honor, the State would offer 27, 28, and
7 29 for admission into evidence.

8 MR. HICKS: No objection, Your Honor.

9 THE COURT: Okay. They're in without objection.

10 (State's Exhibit Nos. 27, 28, and 29 were received into
11 evidence.)

12 BY MS. SCOTT:

13 Q Can you see that, Lieutenant?

14 A Yes, ma'am.

15 Q Okay. This is State's Exhibit 27. We just talked
16 about -- so, you met with Agent Shaw. If you could -- the
17 process in which that this was -- that you were able to take
18 this picture and sign your name, were you shown video footage
19 from the F1 dorm?

20 A Yes, ma'am.

21 Q Okay. And when you were watching the footage, if you
22 recognized someone, would you then say "that's someone that I
23 recognize from my time as a dorm officer" or just your
24 knowledge of that person?

25 A My knowledge of that person.

1 Q Okay. At that point, would then Agent Shaw then take, I
2 guess, a screenshot of that and print it out for you to sign?

3 A Yes, ma'am.

4 Q Okay. Now, here, we see that there's a red circle on
5 someone's face; is that correct?

6 A Yes, ma'am.

7 Q Okay. And, on the bottom, if you could tell me what that
8 says.

9 A It's a red circle, "Tank 3/28/24."

10 Q Okay. And is that your signature on the page as well?

11 A On the right-hand side, yes, ma'am.

12 Q Okay. And who is Tank?

13 A Inmate Green, yes, ma'am.

14 Q Okay. So, let me back up to that. Inmate Green. Do you
15 -- I guess you have been -- at least since 2016, you have
16 interacted with multiple different inmates, but when you get
17 to know them, do you know them more by their last name and
18 nickname?

19 A That's how we address the inmates, by their last name,
20 yes, ma'am.

21 Q I want to go to how you know Tank/Mr. Green. Your time
22 at F1 as a dorm officer, did you have much interaction with
23 Stephen Green?

24 A Oh, I have interaction with most of the inmates, whatever
25 side I'm working on, yes, ma'am.

1 Q And so, you get to recognize them by their face and their
2 movement and things like that?

3 A Yes, ma'am. When we lockdown, we definitely get to know
4 them by their last name because we have to do a count. So,
5 most of the time, that's how we get to know their last name,
6 or we look them up or something and find out who they are.

7 Q Okay. I'll show you State's Exhibit 28. If you could,
8 is that -- who is that a pictures of?

9 A Green.

10 Q Okay. And, at the bottom, what does that say?

11 A "SCDC Online Image, Tank, 3/28/24."

12 Q Okay. So, when this picture was shown to you, was it
13 after you identified Tank from the video and this was used as
14 just a headshot of the person you identified?

15 A Yes, ma'am.

16 Q Okay. And that, again, is Stephen Green?

17 A Yes, ma'am.

18 Q I want to show you State's Exhibit 29. And what is this
19 a picture of?

20 A It's a picture of Mr. Green.

21 Q And at the bottom, what does that say?

22 A Red circle, "Tank 3/28/24."

23 Q Now, this picture you have circled, he's turned a little
24 bit, so is it not as clear of an image.

25 A Yes, ma'am.

1 Q Okay. But, again, all three of these you would say are
2 the defendant in this case, Stephen Green?

3 A Yes, ma'am.

4 MS. SCOTT: Beg the Court's indulgence.

5 BY MS. SCOTT:

6 Q All right. Again, and just, Lieutenant, your experience
7 from being at Lee Correction for -- since 2016, you were able
8 to identify the defendant from the video footage; is that
9 correct?

10 A Yes, ma'am.

11 Q And do you see that man in court today?

12 A Yes, ma'am.

13 Q Okay. And if you could point out who Stephen Green is
14 that you identified in this footage.

15 A Yes, ma'am. He's sitting over there.

16 MR. HICKS: Your Honor, contemporaneous objection
17 regarding the in-court identifications.

18 THE COURT: Okay.

19 MR. HICKS: Preserving the record.

20 THE COURT: Your objection is noted. It's overruled.

21 MS. SCOTT: Thank you, Lieutenant. Please answer any
22 questions the defense has.

23 THE WITNESS: Yes, ma'am.

24 CROSS-EXAMINATION

25

1 BY MR. HICKS:

2 Q Good morning, Lieutenant Robinson. How are you doing
3 today?

4 A I'm all right.

5 Q I'm going to try and be as brief as I can so that we can
6 let you go, but I just ask you to bear with me for a little
7 bit here. And, also, you're a little bit soft spoken and my
8 hearing's not so great, so I'd just ask you to kind of keep
9 your voice up a little bit, if that's all right with you; I
10 think it's better that way than me having to ask you to repeat
11 yourself.

12 I'd like to talk with you a little bit more about your
13 job, if that's all right with you. You're currently a
14 lieutenant; is that correct?

15 A Correct.

16 Q And, as you stated before, you first started in 2016
17 working for the Department of Corrections?

18 A Correct.

19 Q When did you go to the academy? I would imagine it was
20 2016; is that correct?

21 A Yes, sir.

22 Q I don't need a date. Just a month, if you could.

23 A I don't remember which month I graduated.

24 Q Rough idea? Was it summer? Spring? Early in the year?
25 Late in the year?

1 A I think it was around maybe August or September.

2 Q August or September of 2016 you graduated from the
3 academy and started working at Lee Correctional immediately?

4 A What do you mean by "started working"?

5 Q I'm sorry?

6 A What did you mean by "started working"?

7 Q After the academy, you didn't go work at any other
8 facilities. You went right to Lee?

9 A Yes, sir.

10 Q And prior to going to the academy, you were working at
11 Lee as well doing, like, the shadow sort of thing; is that
12 correct, or no?

13 A Correct.

14 Q Okay. And so, that was all -- and I don't know the
15 terminology. I don't want you to think this is insulting or
16 any -- in any way. If there's better terminology, you just
17 please let me know and I'll use that.

18 At that point, you were just what I can only think of is,
19 like, a basic corrections officer. I don't know what the
20 right wording is for that. Is that right?

21 A I was a trainee, correct.

22 Q And then, after the academy, you were a corrections
23 officer?

24 A Certified officer.

25 Q Okay. Certified. That's the word.

1 A Yes, sir.

2 Q Okay. I'm sorry. I'll use that from now on.

3 So, as a certified corrections officer, not the
4 trainee -- as the certified corrections officer, you started
5 roughly sometime in August of 2016?

6 A Correct, yes, sir.

7 Q Do you remember where you were -- what your first
8 assignment was as a certified officer?

9 A Yes, sir. I was assigned to the F5 unit.

10 Q The F5 dorm?

11 A Yes, sir.

12 Q And how long were you in the F5 dorm; do you remember
13 that?

14 A No, sir, because we do different posts almost every day.
15 So whatever post they assign you.

16 Q Oh, so it varies?

17 A Yes, sir.

18 Q Widely?

19 A Yes.

20 Q So, one day, you might be in F5. The next day, you're
21 over in F2. Then you might be somewhere else. Okay.

22 Did you ever work the east yard or was it exclusively the
23 west yard?

24 A I worked both yards, yes, sir.

25 Q Okay. Ever work in Prison Industries? I don't know if

1 they even have corrections officers involved in the Prison
2 Industries.

3 A That's an assigned post. Like, you get assigned there,
4 so no.

5 Q Okay. What about in Medical? Do they have corrections
6 officers that are ever in the Medical?

7 A Yes, sir.

8 Q Did you ever work in Medical?

9 A I have, yes, sir.

10 Q Okay. So, then, at the time of the riot, you started as
11 -- sometime before you went to the academy, you started as a
12 trainee correctional officer? I think that's the word you
13 used.

14 A Yes, sir.

15 Q Do you remember what month it was that you started as a
16 trainee correctional officer?

17 A I believe in June.

18 Q June-ish? Okay.

19 So June, nine-week academy. We'll say sometime probably
20 July-ish you left Lee Correctional and you went to the SCDC
21 training academy; is that a fair kind of progress of how it
22 works?

23 A Could be, yes, sir.

24 Q Okay. And then sometime in August, you graduated and
25 came back to Lee Correctional, we think?

1 A Yes, sir.

2 Q Okay. So, that works out to -- before the riot occurred,
3 you had worked for the Department of Corrections for about a
4 year and a half, roughly?

5 A I think so.

6 Q I mean, if I'm wrong...

7 A It would be about two years.

8 Q About two years. Okay. We'll go with about two years.
9 I'm okay with all of that.

10 So, again, over the course of two years, between trainee
11 and certified correctional officer, you worked at a bunch of
12 different assignments throughout the prison. Sometimes it was
13 Medical. Sometimes it was west yard. Sometimes it was east
14 yard.

15 Did you ever work in the F1 dorm?

16 A Yes, sir.

17 Q Do you remember when?

18 A Well, I did different assignments. So, no, I can't tell
19 you exactly what day I worked F1 or what day --

20 Q We don't need days.

21 Did you work in the F1 dorm in November of 2017?

22 A Whatever my post assignment was, that's where I worked.

23 Q Did you ever work in the F1 dorm in December of 2017?

24 A Wherever they posted me, that's where I worked.

25 Q Did you ever work in the F1 dorm in January of 2018?

1 A Wherever I was posted, that's where I had worked at.

2 Q To speed it up a little, I assume that's going to be your
3 answer all the way through when I say until April of 2018; is
4 that fair?

5 And I understand, different assignments, different days,
6 you're not going to remember exact stuff. I get that.

7 But you don't -- is it fair to say, then, that you don't
8 remember a specific instance of working in the F1 dorm between
9 November of 2017 and April of 2018?

10 A No, I didn't say that.

11 Q So, you do remember a specific instance of working in the
12 F1 dorm between November of 2017 and November of 2018?

13 A Well, wherever they posted me at, that's where I worked.
14 I can't tell you exactly what date I worked those dorms, but I
15 know for a fact that I worked F1 dorm.

16 Q I believe that you worked in the F1 dorm. I'll ask it a
17 little more directly then. Did you work in the F1 dorm
18 between November of 2017 and April of 2018?

19 And to get us past this issue, I think the best answer is
20 either "yes," "no," or "I don't know." Any one of those three
21 things is going to make me fly right on past this.

22 A I can only answer to the best of my ability, which is,
23 where my captain posted me, that's where I worked.

24 Q That sounds to me like the equivalent of "I don't know."
25 And I don't want to mischaracterize what you're saying. I

1 don't want it to seem like I'm attacking your memory or
2 anything like that, but that's kind of what I'm getting from
3 that. Do you think that's an unfair characterization? You
4 don't remember a specific instance of working in the F1 dorm
5 during that time frame?

6 MS. SCOTT: Judge, we would object. I feel like this has
7 been asked and answered multiple times. She says to the best
8 of her recollection.

9 THE COURT: This is the last time. Just answer, to the
10 best of your ability, his question and we'll move on.

11 A I'm not going to say that I don't know because I worked
12 during that time on that west yard and in the F1 dorm.

13 BY MR. HICKS:

14 Q Okay. When did you become a lieutenant?

15 A 2019.

16 Q 2019? Okay.

17 Did your job change substantially when you became a
18 lieutenant at all?

19 A Yes, sir.

20 Q Describe to me the difference. Because I'm not familiar
21 with the rank structure or workings of SCDC at all.

22 A Yes, sir. When I made lieutenant, it was for RHU, which
23 is our Restricted Housing Unit. So, my job changed from a
24 yard officer to an RHU lieutenant working the Restricted
25 Housing Unit.

1 Q Okay. At any given time -- and I don't -- you don't have
2 to give me an exact number; I know you can't -- your best
3 guess at any given time how many inmates are housed at the Lee
4 Correctional Institute. Just ballpark it.

5 A It depends on which year you're talking about. If you're
6 talking about before the riot, we housed multiple -- I mean,
7 more inmates than what we do now. So, around then, it was
8 probably about 1300 for the whole institution.

9 Q You said now it's about 1300?

10 A No, sir.

11 Q Prior to that.

12 A Now -- it's probably about 1100 now.

13 Q But prior to you -- or the riot, you said it was about
14 1300?

15 A Yes, sir.

16 Q Roughly.

17 MR. HICKS: Excuse me. I'm sorry. Beg the Court's
18 indulgence for a moment.

19 BY MR. HICKS:

20 Q And it's your testimony that you were familiar with
21 Mr. Green from your time working at the prison prior to the
22 riot; is that correct?

23 A Correct.

24 Q And that familiarity with Mr. Green is based on your
25 performance of duties throughout the prison on various days at

1 various different assignments?

2 A Correct.

3 Q You also said that you interacted with most of the
4 inmates. What did you mean by that? Were there some inmates
5 that you never interacted with or you never saw?

6 A It depends on where I'm working.

7 Q I'm sorry? Can you speak --

8 A It depends on where I'm working. If I'm working in the
9 dorm, then I interact with the inmates on that wing or it
10 depends on which wing I'm working. So, when I say "most,"
11 it's not me working the whole dorm. It's working one side of
12 the unit.

13 Q Sure. But you said that you kind of cycled through the
14 different dorms and the different yards and the medical and
15 these other positions. So, in theory, you should have had an
16 interaction with almost all of the inmates, I would think.

17 A Well, we have inmates coming in and out of the
18 institution, so I can't tell you I interacted with every
19 inmate that's there.

20 Q Okay. That's fair. And thank you; I appreciate that.

21 Specifically, you stated that you had interactions with
22 Mr. Green and that's how you knew who he was prior to the
23 riot. You had interactions with him amongst these 1300 other
24 inmates that were compelling and significant enough that you
25 remembered him by face alone?

1 A What's your question?

2 Q My question is: You were able to recognize Mr. Green by
3 face before the riot?

4 A Okay.

5 Q You were able to recognize Mr. Green by his face alone
6 based on your familiarity with him in the midst of interacting
7 and working with, as you say, roughly about 1300 other inmates
8 in five other dorms and in Medical and in other positions
9 throughout the prison? That's what you're testifying to; is
10 that correct?

11 A Yes, sir.

12 Q What were the significant interactions you had with Mr.
13 Green that imprinted him so clearly on your mind that you
14 recognized him and remembered him?

15 A What do you mean by that?

16 Q Did you ever have a conversation with him about anything?

17 A I don't believe so.

18 Q You never had a conversation with him -- to the best of
19 your memory, you never had a conversation with him?

20 A No.

21 Q Never wrote up any kind of disciplinary thing for
22 Mr. Green?

23 A No, I haven't.

24 Q Never?

25 How is it that you had an interaction with Mr. Green that

1 was so profound that it was impressed upon your memory to
2 remember his face in spite of the fact that you're seeing
3 1,299 other inmates every day that you're having to interact
4 with and deal with?

5 A Well, I wouldn't say it was profound, but because I work
6 at the institution and I get to know most of these guys from
7 working, I can say that I can distinguish who they are.

8 Q You said roughly two years, a year and a half as a
9 certified correctional officer -- correct? -- that you worked
10 at the institution?

11 A Yes, sir.

12 Q And you said inmates cycle in and out?

13 A Yes, sir.

14 Q And you said you go from one position to another within
15 the prison and you're kind of all over the place, until you
16 got promoted to lieutenant, and then it changed. But that's
17 after the riot; we don't care.

18 But prior to the riot, you went to all these different
19 dorms, all these different wings, Medical, everywhere else?
20 You were just in different positions almost daily; correct?

21 A I wouldn't say almost daily, no.

22 Q Regularly?

23 A It was wherever I was assigned that day.

24 Q Wherever you were assigned that day, which often was
25 somewhere different from the previous day?

1 A I didn't say that, because I could get assigned to the
2 same post twice a month. It's wherever I'm posted.

3 Q That's fair.

4 Were you ever assigned to a dorm for a month where
5 Mr. Green was a resident?

6 A I don't recall.

7 Q Were you ever assigned to a dorm for a week where
8 Mr. Green was a resident?

9 A I can't recall how long I was assigned to a dorm.

10 Q Were you ever assigned to a dorm for a single day where
11 Mr. Green was a resident at the time he was a resident there?

12 A Yes, sir.

13 Q When?

14 A Again, I can't give you a date because I can't remember
15 back that far.

16 Q You were interviewed by Special Agent Shaw on Thursday,
17 March 28th of 2024?

18 A Yes, sir.

19 Q Did you get interviewed at all prior to that after the
20 riot occurred?

21 A No, sir.

22 Q Nobody ever took down a written statement?

23 A No, sir.

24 Q You never talked to anybody at all?

25 A No, sir.

1 Q Any idea why?

2 A No, sir.

3 Q But it took them six years to find you and this good
4 eyewitness identification?

5 A I can't tell you what their process is to why they found
6 me or why they didn't. I can't tell you that.

7 Q I have one last question for you and then I hope that you
8 have a wonderful day after this. You stated -- you stated in
9 your interview with Special Agent Shaw this March that, in the
10 days after the riot, you were not aware of any large-scale
11 cell searches that were done in any of the west yard dorms.
12 Is that still your testimony and your opinion?

13 A Yes, sir.

14 Q Okay. Thank you. I have no further questions. I
15 appreciate your time, Lieutenant Robinson.

16 MS. SCOTT: Judge, just briefly.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MS. SCOTT:

20 Q Lieutenant Robinson, you mentioned, as an officer in the
21 dorm ---

22 A Yes, ma'am.

23 Q --- one of your duties is count; is that right?

24 A Yes, ma'am.

25 Q Describe what count is.

1 A We have three different types of count, but our count is
2 we go from cell to cell to make sure that inmates are in their
3 proper cells. So, we do have a roll call count, which we have
4 a roster, and with our roster, we have the inmate's name on
5 the roster.

6 So, they have to come to the door with their ID and they
7 have to state their SCDC number and it has to go with the
8 roster, the SCDC number and the name have to match.

9 Q So, if you're in an F1 dorm and you have the roster,
10 you're calling all these names?

11 A We go door to door, yes, ma'am.

12 Q Door to door to each cell?

13 A Yes, ma'am.

14 Q Okay. You're not having a conversation with them, but
15 you're calling their name to come to the door?

16 A Yes, ma'am. They're supposed to be at the door.

17 Q Okay. Thank you.

18 MR. HICKS: Your Honor, I'd ask to recross based on the
19 fact that they brought in new information regarding the
20 counts.

21 MS. SCOTT: Judge, she testified to that on direct.

22 MR. HICKS: She certainly testified that counts existed
23 and they did them, but here, she gave detail to the
24 procedures, and I'd like to recross her on that, Your Honor.

25 MS. SCOTT: Judge, he had the opportunity on cross.

1 MR. HICKS: I'm sorry?

2 MS. SCOTT: You had the opportunity on cross-examination.

3 MR. HICKS: They brought in new information on their
4 redirect, Your Honor. That's what I want to recross.

5 THE COURT: All right. I'll let you ask her. Go ahead.

6 MR. HICKS: Yes, Your Honor. Thank you.

7 RECROSS-EXAMINATION

8 BY MR. HICKS:

9 Q I'm sorry to keep you again, Lieutenant Robinson, but I
10 will, again, try and be as brief as possible.

11 During these -- you called them counts?

12 A We have counts, yes, sir.

13 Q And it was sort of a lockdown. I don't know if that's
14 the right word. It was a lockdown that you did four counts?
15 Is that what it's called? A lockdown?

16 A I didn't say four. But three counts throughout the day,
17 yes, sir.

18 Q Are the inmates, then, put in their cells for these
19 counts?

20 A Yes, sir.

21 Q And you said you have a roster with names of who is
22 assigned to which cell?

23 A Yes, sir.

24 Q And as you proceed through the dorms, you stop at each
25 cell, inmate so-and-so, and they stand up and show their face?

1 A Yes, sir.

2 Q Do they have to show you their ID badge or anything like
3 that?

4 A Yes, sir.

5 Q To the best of your knowledge, were -- let me rephrase
6 that.

7 But inmates weren't always in the right cell, were they?

8 A No, sir.

9 Q And inmates often refused to lock in for count; isn't
10 that also true?

11 A I wouldn't say that but sometimes they refused.

12 Q Okay. And so, when you're doing a count or when you're
13 doing a count, rather, and an inmate refuses to cell in or go
14 in or lock in or whatever we call it, what do you do then?

15 A We continue to lock down and then we deal with the inmate
16 that doesn't want to go behind the door.

17 Q How do you deal with that inmate?

18 A We call for assistance.

19 MR. HICKS: I have no further questions, Your Honor.

20 THE COURT: Okay. And since I let -- do you want to ask
21 her any more questions?

22 MS. SCOTT: No, Your Honor. We're good. Thank you.

23 THE COURT: Thank you, ma'am. You may step down.

24 MR. HICKS: The State calls Agent Shaw.

25 SPECIAL AGENT JAMIE SHAW,

1 after having been duly sworn, was examined and testified
2 to as follows:

3 DIRECT EXAMINATION

4 BY MR. GIESE:

5 Q Agent Shaw, what's your position now?

6 A I am a special agent at SLED and I'm in the Narcotics
7 Unit.

8 Q So, a special agent?

9 A Yes, sir.

10 Q Okay. And just tell us a little bit about your
11 background. Did you graduate high school? Did you go to
12 college? That type of thing.

13 A I did. I'm from Columbia, South Carolina. I graduated
14 from Spring Valley High School. I then graduated with a
15 bachelor's degree from Lander (ph) University and began
16 working at SLED.

17 Q And tell the jury what your first contact with SLED was.

18 A I was actually going back for a second degree in nursing
19 and I was approached by someone that worked at SLED, thought
20 that I'd be a good fit for the agency. I was recruited. I
21 became a secretary for a major, who is now retired. I became
22 an admin assistant, and then, after that point, I applied for
23 a Narcotics position, which I was accepted.

24 Q And how long ago was that?

25 A I was hired as an admin in October of 2014, and I became

1 a special agent in July of 2015.

2 Q '16?

3 A '15.

4 Q And you have been with SLED ever since?

5 A Yes, sir.

6 Q And you said you were a special agent in Narcotics?

7 A Yes, sir.

8 Q Were you working with any other groups during that time?

9 A Yes, sir. So, I was assigned as a task force officer
10 with the FBI. What they do is they -- to help network with
11 local communities and local police offices, they ask agents
12 and investigators to basically join with them. You become --
13 you get top secret clearance, you do the background checks.
14 You basically work cases with them.

15 I became a task force officer with the Violent Crime Task
16 Force in Columbia. They concentrate on gang investigations,
17 human trafficking, armed robbery, things like that. So, I
18 still acted and conducted narcotics investigations but also
19 assisted my FBI team.

20 Q And these FBI teams, how large are they?

21 A Our squad had approximately 10 FBI agents and then they
22 would supplement with full-time and part-time TFOs, so we had
23 approximately 20 on our squad.

24 Q How long did you work with that task force?

25 A I was here for six years. I actually just came off last

1 week.

2 Q Okay. So, you're on the task force when you became
3 involved in this case?

4 A Yes, sir.

5 Q All right. And tell the jury what your first contact
6 was.

7 A When the incident happened, SCDC began the investigation
8 of the event. We reached out because of our investigations in
9 Violent Crime, asked if we could assist them in any way just
10 because of the scale of the incident. We -- they said,
11 "Absolutely. We'd love your help."

12 Myself and Special Agent Greenan (ph), who was an FBI
13 agent, then interviewed some COs just to kind of get a basis.
14 We met with the attorneys to kind of show what we could offer
15 through a federal investigation versus a state investigation.
16 And then that was really all the contact that I had with the
17 case at that point until I received a phone call from my
18 Narcotics major stating that somebody had made a call to my
19 chief and requested that I become the lead agent on the case.

20 Q So, you're the chief investigator from SLED on this case?

21 A I am now.

22 Q And approximately what year was that?

23 A It was about October or November of 2019. So, about a
24 year and a half after the incident.

25 Q All right. And tell the jury what you did when you were

1 first assigned to it.

2 A I just kind of wanted to understand. I wasn't there
3 during the event, so I just wanted to understand what
4 happened. I asked for any of the investigative content that
5 they had: any interviews, any recordings, any video. I
6 basically watched and read everything that I could do to get a
7 general understanding.

8 I then met with the case agent that was put as my
9 co-case, who was Lieutenant Jeremy Smith, and we put our heads
10 together on where a good starting point at this point, a year
11 and a half later, would be.

12 Q And what was that starting point?

13 A We wanted -- because of the video of the F1 dorm, we
14 thought F1 was a good place to start and make some progress,
15 so we started in F1.

16 Q And during the investigation -- you said you started in
17 F1. Were you aware of the total riot, that it happened
18 everywhere?

19 A Yes, sir. We had a full understanding of what happened
20 and what the investigation had revealed up to that point of
21 why it happened.

22 Q And you picked F1 for what reason?

23 A Because of the clear resolution of the video and the
24 video was full, where, in other places, we didn't have as much
25 video.

1 Q And when you say "other places," you're talking about F3
2 and F5?

3 A Yes, sir.

4 Q Through your investigation, tell the jury what actually
5 happened that night. Where did it start? Where did it end?

6 A So, my understanding through the investigation is, a
7 little bit before 7:00, there was a robbery -- attempted
8 robbery of an inmate in the F3 dorm. He goes by Miami. He
9 was killed in his dorm by several gang members -- Gangster
10 Disciples gang members, who then exited the cell. One of the
11 gang members -- his last name is Rivera -- he was assaulted,
12 and he was stabbed in the neck and head and chest area. He
13 was drug out of the F3 cell -- or, I'm sorry, F3 dorm and
14 taken to Medical.

15 From that, other assaults of Eddie Gaskins and other
16 inmates happened in the F3 dorm. We learned --

17 Q Let me stop you. Was any of this gang related?

18 MR. HICKS: Objection, Your Honor. May we have a bench
19 conference?

20 BENCH CONFERENCE

21 (The following bench conference was held outside the
22 hearing of the jury and others:)

23 MR. HICKS: Your Honor, we already discussed this
24 yesterday.

25 MR. GIESE: Yeah, but we can talk about gangs.

1 MR. HICKS: We can talk about gangs, but she's already --

2 MR. GIESE: Your guy's not in a gang.

3 MR. HICKS: She has already --

4 MR. GIESE: You can ask her that.

5 MR. HICKS: She has already alluded to one person being
6 in the gang, and I don't want to cross that line.

7 MR. GIESE: It's the motive. We talked about this the
8 first day. I thought I was allowed to do it.

9 MR. HICKS: Motive or not -- motive or not, case law
10 states that she can testify as far gang-related stuff as to
11 ritual and all this, but as soon as she starts getting into
12 membership, it's hearsay.

13 MS. SCOTT: That's not true.

14 MR. GIESE: We haven't said --

15 MR. HICKS: I'll get the case law.

16 MR. GIESE: During the investigation.

17 THE COURT: Okay. So, you asked her if any of this was
18 gang related.

19 MR. GIESE: Yeah.

20 THE COURT: You started and three -- I mean, it's already
21 in opening statements. This is whole riot, as my
22 understanding, is a result of a gang --

23 MR. HICKS: I'm not going to let go of the fact that it's
24 unfairly prejudicial, Your Honor. And besides, the case law
25 does say that it's hearsay to talk about any membership stuff,

1 especially rank as far as --

2 THE COURT: That wasn't the question he asked.

3 MR. HICKS: She's already said it once and it got past
4 me, because he was going fairly quick. I just want to make
5 sure I stopped this before it keeps going. I don't want to
6 object --

7 MR. GIESE: I thought we straightened this out the first
8 day. I can mention gangs. I can't mention he's in a gang.

9 MS. SCOTT: And, specifically, we're not going into that
10 he's a Blood member, but under a 404(b) analysis to motive, we
11 can go into the fact that it's a gang-related incident.

12 MR. GIESE: And maybe I missed it; it thought that was
13 ruled on already.

14 MR. HICKS: I'm sorry; say that again.

15 MR. GIESE: I thought we already ruled on that the first
16 day.

17 MS. SCOTT: We did.

18 MR. HICKS: Did you not hear the conversation we had
19 yesterday when you were talking --

20 MR. GIESE: Yeah, but I was talking about him
21 specifically.

22 THE COURT: As to him specifically.

23 MR. HICKS: I'm sorry, Your Honor?

24 THE COURT: The conversation we had yesterday was about
25 your client specifically, but this is --

1 MR. GIESE: This is two different levels.

2 MR. HICKS: I'll concede that point that, yesterday, our
3 conversation was about my client specifically, but now they're
4 tying it to other people and it's -- again, her testifying
5 that somebody is a member of a gang. It's going to be
6 hearsay. I mean, if that's the objection you want to make,
7 I'll make it every time.

8 MR. GIESE: It doesn't have to be through hearsay.
9 Through her investigation, she discovered it.

10 MS. SCOTT: It's res gestae, too, Judge.

11 MR. HICKS: Well, I'm going to object it to as hearsay
12 unless you ask it that way and then she explains it every
13 single time how she discovered it.

14 MR. GIESE: I'm not going to say it single every time.

15 MR. HICKS: Well, then I'll just object --

16 MR. GIESE: I'm going to say, "Through your
17 investigation, did you discover..."

18 MR. HICKS: Fair enough.

19 THE COURT: Okay.

20 (Open court resumes as follows:)

21 MR. HICKS: Thank you, Your Honor.

22 BY MR. GIESE:

23 Q Let me see if I can remember where we were. Through your
24 investigation of the riots that took place or riot that took
25 place at Lee Correctional, through your investigation, did you

1 discover as to whether or not people were involved in gangs
2 and whether or not this was gang related?

3 A Yes, sir, it was gang related.

4 Q All right. And which gang specifically?

5 A There were three gangs involved. That was the Bloods;
6 the Gangster Disciples, also known as the GDs; and the Crips.

7 Q And through your investigation, were you able to
8 determine, in F3, where you testified this started, what the
9 gangs were involved in that?

10 A Yes, sir.

11 Q And if you could tell the jury, please.

12 A For the majority, it was the Bloods and the Gangster
13 Disciples.

14 Q All right. And this first person that got robbed and
15 killed, Mr. "Miami" Milligan, was he in a gang, through your
16 investigation?

17 A We don't believe so. We believe he was known for
18 contraband, and that's why -- that was the motive for the
19 robbery.

20 Q Now, the person that actually goes in and robs him was
21 Mr. Rivera, I think you said?

22 A He was one of the inmates, yes, sir.

23 Q And he comes out of the dorm and then is stabbed by --

24 A Several inmates.

25 Q Several inmates?

1 A Yes, sir.

2 Q Through your investigation, did you determine whether
3 they were in a gang or not?

4 A They are.

5 Q And which gang?

6 A The Blood gang.

7 Q All right. So, gang members stab Mr. Rivera and he dies,
8 apparently?

9 A Yes, sir.

10 Q All right. And, through your investigation, did you
11 determine what happened after that?

12 A There were additional assaults including one homicide in
13 the F3 dorm. We then learned that news of the incident spread
14 to the F5 dorm, which is where we call a face-off. It was a
15 physical and verbal argument between who we identified to be
16 two rival gangs happened in the F5 unit.

17 Q Let me stop you. You said that one other death in F3?

18 A Yes, sir.

19 Q Was the victim in that case, through your investigation,
20 involved in a gang?

21 A Yes, sir.

22 Q Which one?

23 A The Gangster Disciples.

24 Q And, through your investigation, did you determine
25 whether or not a gang assaulted Mr. Gaskins?

1 A Yes, sir.

2 Q And which gang was that?

3 A The United Blood Nation.

4 Q You testified that, at some point, this all goes over to
5 F5; correct?

6 A Yes, sir.

7 Q Okay. Do you know, through your investigation, how it
8 got over to F5?

9 A We learned through cell phones.

10 Q Now, you said they had a -- F5 starts to get riled up.
11 This is the second of the two dorms?

12 A Yes, sir.

13 Q All right. Tell the jury what you saw.

14 A So, you can observe, in the F5 unit, where -- F1 and F3
15 have an A side and a B side. The F5 unit is split into four
16 dorms. It has an A, B, C, and D. We observed what we called
17 a face-off. It was just two groups kind of -- there was a
18 median they didn't pass, but they were throwing things back
19 and forth and yelling in the A side of the A dorm of F5.

20 Q And you say this face-off, were you able, through your
21 investigation, to determine what -- were there any gangs
22 involved in that?

23 A There were. On the -- when you were to enter the A pod
24 against the far wall -- so, they were blocked from the exit
25 for the -- for the Bloods, and then the gangs blocking the

1 exit closer to the door were a mixture of Gangster Disciples
2 and there were actually some Crips in there as well.

3 MR. HICKS: Your Honor, I'm going to object to this line
4 of questioning based on relevance. Mr. Green isn't accused of
5 anything in either the F3 or the F5 dorm or being associated
6 with it in any meaningful way. This has no relevance to the
7 case at bar.

8 THE COURT: There's been testimony in this record that
9 there was a riot at Lee County Correctional Institute and that
10 I think it is relevant in time how all this is involved, so
11 I'm going to allow the question. Go ahead.

12 MR. GIESE: Thank you.

13 BY MR. GIESE:

14 Q So, through your investigation, you determined that there
15 were three gangs involved at that point?

16 A Yes, sir.

17 Q All right. You said the Bloods, the Crips, and the
18 Gangster Disciples ---

19 A Yes, sir.

20 Q --- through your investigation.

21 Now, were you able to determine whether there were more
22 Bloods in F5 or more Crips and Gangster Disciples in F5?

23 A It looked as though the Bloods were outnumbered in F5.

24 Q And that's the opposite of what was happening in F3;
25 correct?

1 A Yes, sir.

2 Q So, you have got these two facing off. Tell the jury
3 what happened after that.

4 A We learned or we observed the group we identified as the
5 Bloods to walk against -- if you're looking from the front
6 door of the unit, the left wall, and they walked out of the
7 unit into -- unlike F3 and F1, it has that main sally port, F5
8 is made up of pods almost in a cross, and in the middle is a
9 control, like a circle, and it's a control room. You can walk
10 completely around that control room, and then there's two
11 doors similar to this courtroom where you can exit to go to
12 the front walkway, which is also fenced in. A side is closer
13 to one of the doors. So, they were led out of A, along the
14 wall, and then led out the front door to, like, a mezzanine
15 area. That's just a concrete, bigger open area before you got
16 to a concrete sidewalk.

17 Q And what did you see happen at that point?

18 A It appeared that one inmate fell and immediately -- one
19 of the -- sorry, someone that was identified in the group of
20 Bloods fell to the ground, and immediately, inmates started
21 making a stabbing and attacking motion towards that person.
22 The rest of the people identified in the Blood group started
23 running towards the end of the fence.

24 Q And you talk about running to the end of the fence.
25 Explain that. It's outside?

1 A If you have the image poster, I can actually --

2 Q Yeah, come on down.

3 Is this the image you're looking for?

4 A Yes, sir.

5 Q Okay. Could you step on down here, please?

6 A Yes, sir.

7 Q And for the record, that's State's Exhibit No. -- I
8 believe 5. Yes, 5. Show the jury what you're talking about.

9 A So, this is the main walk right here, the sidewalk. And
10 you can kind of see -- it's a fuzzy little area, but this is
11 the fence that goes around. There's also -- on each side of
12 the sidewalk, there's a fence, and it has razor wire on top,
13 so it almost like makes a chute along the sidewalk.

14 You have about, I would say, two to three feet on each
15 side of the walk where there's the fence the whole way down,
16 but you have about I'd say a 10-by-15-foot little sidewalk
17 here where you can stand before you get to that.

18 So, the inmates were in A side right here. They were
19 then led out to this little 10-by-15 square concrete, which is
20 where the assault started taking place. They then ran down
21 here to this fence where they were held up.

22 Q And you're saying "they." Through your investigation,
23 did you determine which -- who they were?

24 A It would be the Blood group.

25 Q And the people that you say were marching them that way

1 or making them go that way were who?

2 A It was the mixture of the Gangster Disciples and the
3 Crips, and they attacked the individual closer to the entryway
4 doors. Once the Blood group ran past, they then chased the
5 Blood group to the end of the fence.

6 Q And that's on tape?

7 A Yes, sir.

8 Q Now, when they get down to the bottom down there, can the
9 Bloods or the inmates who are trying to get out, get out?

10 A The doors to the gate -- the fence itself is locked. So,
11 the inmates decided to climb the fence and tried to hop the
12 razor wire.

13 Q And did several of them do that?

14 A They did.

15 Q Approximately how many?

16 A It was a good amount. I would say at least 20 to 30
17 probably jumped the fence and got over.

18 Q They actually went over the Constantine wire?

19 A They did. And then that put them in the main part of the
20 west yard to freely roam about. But some were stopped and
21 could not get over the fence.

22 Q And when you say "some," are you talking about --

23 A Some of the Blood members could not get over, three of
24 which died along the -- if you're looking at the unit, the
25 right side and the front of the fence.

1 Q And you say three Blood members. Through your
2 investigation, do you know who they were?

3 A Joshua Jenkins, Corey Scott, and Ramon Scott, who goes by
4 "Twin," who, through our investigation, we learned was a very
5 high-ranking Blood member at that facility.

6 Q So, these three Bloods that didn't make it out were
7 stabbed? shot? what?

8 A They were stabbed.

9 Q Numerous times?

10 A Yes, sir.

11 Q And what did the Gangster Disciples and Crips do at that
12 point after the stabbings?

13 A They continued to stab and assault the inmates that had
14 fallen to the ground. They then will walk back and forth in
15 and out of the unit and randomly come back and stab the
16 inmates on the ground again.

17 Q So, they just left them lying there?

18 A Yes, sir.

19 Q Now, once that happens in F5, through your investigation,
20 were you able to determine how the information went from F5 to
21 F1?

22 A We learned that more contact was made through cellular
23 devices to the inmates in F1.

24 Q And, ostensibly, to let them know that three Blood
25 members had died?

1 A I don't believe I can testify to the content. We just
2 know that they learned of the events that happened.

3 Q And when you say "F1," show the jury again where you're
4 talking about.

5 A This is the F1 unit, F3 unit, and F5. So, as it
6 happened, initial assault -- initial incident, secondary
7 incident, third incident.

8 Q Now, if you would, take your seat.
9 So, let's get to F1.

10 A Yes, sir.

11 Q Now, there's videotape of F1 that has been shown already?

12 A Yes, sir.

13 Q And, if you would, tell the jury what happened when they
14 got in -- when F1 started to pop off.

15 A It was similar to F5 in that there was kind of a face-off
16 between a group that was identified as the Gangster Disciples
17 and a group identified as the Bloods. You can see body
18 language on video; it just seemed that tensions were very
19 high. There's, obviously, no audio on the video, so we
20 weren't able to hear any conversations or anything like that.
21 But through body language, it looked very tense.

22 You then see members of the groups come and meet
23 together, kind of make a little huddle in the middle, go back
24 to their side and come back and huddle again and go back to
25 their side.

1 Q Through your investigation, were you able to find out the
2 identities of the people that came to that meeting?

3 A We were. They were -- one was a high-ranking Gangster
4 Disciple member, and others were high-ranking Blood members.

5 Q Was any -- to your investigation, were any Crips involved
6 in that meeting?

7 A No, sir.

8 Q And that happened out -- right on the -- near the rock?

9 A Yes, sir.

10 Q Explain what the rock is.

11 A It's just an open area in the middle of the dorm. It has
12 the bleachers and the CO booth. That's what they refer to as
13 the rock.

14 Q If you would -- I apologize -- step down one more time.
15 This is State's Exhibit No. 3. I might have it upside down.
16 No, I've got it right side up.

17 If you would, just for the jury, describe what we're
18 looking at here.

19 A So, this is the basic layout of the F1 and F3 dorms;
20 they're similar or identical. When you come in here, this is
21 your front door. Here, this is what remains locked during the
22 day. It's -- these are all the rooms, but there's basically a
23 hallway this way and hallway this way with the B side door
24 being on the right side and the A side door being on the left
25 side.

1 Q And when you talked about this face-off, where was that?

2 A It was on the B side, so it would have been on the right.
3 And through the cameras, we were able to see Gangster
4 Disciples to the right side of the dorm, and the Bloods would
5 stay on the left side of the dorm.

6 Q Now, you say they were -- the Gangster Disciples were
7 together on this side of the dorm. Were there -- how many of
8 them were there approximately? Hard to say?

9 A Yeah, 20, 30. It was a good amount.

10 Q But it's on the tape?

11 A Yes, sir.

12 Q Okay. We'll see that in a second.

13 And, as to the Bloods, what area were they on?

14 A On the left side.

15 Q And the parlay took place where -- or the meeting took
16 place where?

17 A It was more in the center in these areas.

18 Q And did someone approach from the Gangster Disciples and
19 someone approach from the Bloods?

20 A Yes, sir.

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

22 Now, after this meeting that took place out front,
23 approximately how -- I mean, just approximately, how far was
24 it before the actual -- Mr. McClary's stabbing took place?

25 A I believe it was 15 or 20 minutes. It was --

1 Q But it would be on the tape.

2 A -- different meetings between them.

3 Q Okay. But the time will be on there. I apologize.

4 So, the meeting takes place. They go back to each side.
5 What happens then?

6 A At one point, you can kind of see the group identified as
7 the Bloods -- I call it sucking in. There's a blind spot
8 where the camera wasn't working. We lose visual of them as
9 they get closer to the -- I call it the point of the wing.
10 And then, a short period later, it's kind of like they just
11 acted. They ran -- some ran to closer stairwells, some ran to
12 farther stairwells, but they ran to the stairwells. And most
13 of them ran upstairs to the two corners of the dorm on the
14 second floor.

15 Q And through your investigation, were you able to
16 determine -- when you said they ran up to both ends, were you
17 able to determine where the Crips were at that time?

18 A They were in one cell on the second story on the far
19 right side and one cell on the second story on the far left
20 side.

21 Q And you say on the left and the right side, and they
22 started running. Do you know which way they started to run?

23 A They came from -- if you're looking from the front door,
24 the bottom left, and then they -- some came across and some
25 came to a closer stairwell and they ran up to the two corners.

1 Q And what do you see after that?

2 A You see several -- well, you can only see one corner
3 again because of the blind spot, but the right corner, you can
4 see -- I call it donkey kicking. People would turn around and
5 use the back of their feet to kick the doors or just kick the
6 doors normally. And it looked as though they were yelling or
7 pointing to inmates that were inside the dorm -- or inside the
8 cell.

9 MR. HICKS: Your Honor, I'm going to object to this as
10 well. She's describing what's in the video. We have the best
11 evidence rule. The video is available. Rule 1002. Can we
12 please just stop this and go to the video if that's what she
13 wants to do?

14 MR. GIESE: We'll play the video in just a second, Your
15 Honor.

16 THE COURT: Okay. All right. I'll overrule your
17 objection and allow her to explain it.

18 MR. GIESE: It's what she observed.

19 THE COURT: Yes, sir.

20 MR. GIESE: I think she's entitled to that.

21 BY MR. GIESE:

22 Q All right. So, there's a group of inmates. Were you
23 able to determine, through your investigation, what gang that
24 was kicking the door in or trying to?

25 A The Bloods.

1 Q The Bloods. Okay.

2 And after they're doing this, tell the jury what you
3 observed on the tape.

4 A You can observe some of the inmates that were in the
5 Blood group run from the right side to the left side. Again,
6 we couldn't see everything that happened on the left side.

7 Then one camera shows a group stabbing a male in a white
8 shirt, and there's obvious blood on his back. He has his
9 hands up like this and doesn't appear to have any weapons in
10 his hands.

11 He's then chased to a stairwell. He falls down the
12 stairwell. Somehow stays on his feet. Inmates from the other
13 side come in, and then the inmates are behind him, stabbing
14 him, chasing him down the stairs. They continue to assault
15 and stab the victim. And he then walks towards the side where
16 the Gangster Disciples are and falls to the ground.

17 Q Now, were you later, through your investigation, able to
18 determine who that victim was?

19 A Yes.

20 Q And who was that?

21 A It's Michael Millage [verbatim].

22 Q No --

23 A I'm sorry. McClary.

24 Q Thanks.

25 And were you able to determine through your investigation

1 if he was in a gang?

2 A He was a Crip member.

3 Q Now, I'm going to jump forward. Specifically, was that
4 the last -- he falls down?

5 A Yes, sir.

6 Q The Gangster Disciples are on this end down here at the
7 bottom. They're still in a group?

8 A They're on the far right side.

9 Q How close are they to the body?

10 A Pretty close. Within -- you have to approximate within
11 10 feet -- five or ten feet.

12 Q Do any of them go to help him?

13 A No, sir.

14 Q Now, is that the last -- once he falls, is that the last
15 wound that Mr. McClary gets?

16 A No, sir.

17 Q Tell the jury when the last wound was.

18 A That is approximately 10:02 p.m. At approximately
19 10:30 p.m., you can see one individual attempting to cover his
20 head, walk up, stand over Mr. McClary, hold his hand high, and
21 have a stabbing motion to the back of Mr. Clary's upper body.
22 Mr. McClary then kind of jolts and moves a little bit, and
23 that's the last assault on him.

24 Q And Mr. McClary's body at some time gets moved at some
25 point by the inmates?

1 A It is.

2 Q And that's to try and get him out the front?

3 A I believe it was a wing door that he was taken out of.

4 Q To get him out -- trying to get him out into the yard?

5 A Yes, sir.

6 Q If we could now, we're going to go to the videotape, if
7 we could. We'll start at F1/B yard door.

8 If you would, so you can see, step down because I might
9 have you -- ask you questions. If you could point with this,
10 that would be great.

11 (Video plays.)

12 Now, the time stamp on that is 9:35:19. Could you
13 explain what you're seeing?

14 A So, this is a large contingent of individuals that have
15 been identified associated with the Blood gang. They are
16 walking towards -- you can see a smaller group of people
17 huddled in the bottom floor here, identified as Gangster
18 Disciples members.

19 Q So, in the way back, you have Gangster Disciples. And
20 your testimony, in the front, are Blood members?

21 A Yes, sir.

22 Q And they're kind of in a stand-off or what would you call
23 that?

24 A I always refer to it as a face-off, but yes, sir.

25 MR. GIESE: Keep going. Go to two.

1 (Video continues to play.)

2 Q And, again, the timestamp on that -- if you could, while
3 we're watching, what's the timestamp down there on the right?

4 A 9:36:33 p.m.

5 Q And I think you testified earlier that the actual assault
6 of Mr. McClary and the homicide of Mr. McClary was at 10:02?

7 A That was the assault by a large group. And then the
8 assault by a single individual was at 10:30.

9 Q So, explain to the jury what's going on right here, in
10 your opinion.

11 A Again, a face-off. You can see one group here. There's
12 a small buffer area between and then a secondary group on the
13 backside.

14 MR. GIESE: Go to No. 3.

15 Q And that was at 9 -- what time?

16 A 9:37 and 15 seconds.

17 Q We'll just let it keep running.

18 (Video continues to play.)

19 Q The timestamp, 93707?

20 A Yes, sir.

21 Q Still in the stand-off or face-off?

22 A Yes, sir.

23 MR. GIESE: Okay. Keep going. Stop.

24 Q There seems to be someone standing on a table?

25 A Yes, sir.

1 Q I call it a picnic table, but...

2 A It's a picnic table.

3 Q Okay. Were you, through your investigation, able to
4 identify who that was?

5 A Yes, sir. This individual right here is Stephen Green,
6 AKA Tank.

7 MR. GIESE: And you can stop it for a second.

8 Q I noticed -- at that point, what was Mr. Green wearing,
9 that you saw?

10 A So, he's wearing an SCDC-issued brown jacket but it has
11 no hood. Some of them do have hoods. His is specific where
12 it doesn't have a hood.

13 The other thing pretty specific about his is the
14 lettering is very bright, almost like a new jacket. He has on
15 a white shirt. He has on tan issued pants, and he also has
16 specific shoes on.

17 Q We'll get to the shoes in a minute.

18 MR. GISE: If you would, go to 9:37:47. It's about 20
19 seconds later. Go back. Okay.

20 Q Now -- okay. If you could look at this individual there.
21 And through your investigation, did you determine who that is?

22 A That's Stephen Green, as he takes off his jacket.

23 Q Okay.

24 A And he also has a homemade weapon in his left hand. Now,
25 his right hand.

1 Q And there are still those two groups that you testified
2 to earlier?

3 A Yes, sir.

4 MR. HICKS: Your Honor, may we approach, please?

5 BENCH CONFERENCE

6 (The following bench conference was held outside the
7 hearing of the jury and others.)

8 MR. HICKS: He's trying to back-door your ruling about
9 not getting information about Mr. Green's gang membership by
10 stating "look at this group and look at Mr. Green standing
11 right in the middle of it and it's still a group of Bloods."
12 And he's just back-dooring your ruling not to get that
13 information in.

14 THE COURT: He hasn't asked about a gang. He's simply
15 identifying your client, who has already been identified.

16 MR. HICKS: But she's already testified, and he has
17 reiterated repeatedly that she believes --

18 THE COURT: I understand that. He's not going to bring
19 in --

20 MR. HICKS: I'm sorry; I didn't hear you.

21 THE COURT: He's not going to bring in, I assume, the
22 fact that he is a gang member, he's in there, he's in the
23 group. The fact that he's in a group, based on a picture,
24 which they can see. She's not going to say -- I assume he's
25 not going to ask her, "Is he a member of the Bloods?" If it

1 goes that route --

2 MR. GIESE: I instructed her not to.

3 THE COURT: All right.

4 MR. HICKS: When we get back to it, I'll just make a 403
5 objection. I know you're going to deny it, but just to
6 preserve the record, Your Honor.

7 (Open court resumes as follows:)

8 MR. GIESE: That's No. 6?

9 MR. HICKS: And to preserve the record for my client,
10 Your Honor, I'm going to object to the testimony based on Rule
11 403.

12 THE COURT: Okay.

13 MR. HICKS: Thank you, Your Honor.

14 THE COURT: Go ahead.

15 MR. GIESE: 9:40:52.

16 (Video continues to play.)

17 MR. GIESE: Stop.

18 Q Do you recognize that individual, through your
19 investigation?

20 A Can you zoom out a little bit? I'm sorry. It gets
21 pixilated when you zoom in.

22 One of the individuals was Andre Boone, also known as
23 Fang.

24 MR. GIESE: And keep going.

25 (Video continues to play.)

1 Q And this is the meeting you talked about -- you testified
2 to earlier?

3 A Yes, sir.

4 Q Okay. And two groups are getting together?

5 A Yes, sir.

6 Q Okay.

7 A This is one of a couple.

8 MR. GIESE: All right. No. 8.

9 (Video continues to play.)

10 Q This is 9:46:50?

11 A Yes, sir.

12 Q Everyone still milling around?

13 A Yes, sir.

14 MR. GIESE: Stop. Change cameras. Go to Camera 9. F1/B
15 yard door.

16 (Video continues to play.)

17 Q And the time on that is...

18 A 9:47:20.

19 Q And the people talking out front here --

20 MR. GIESE: Stop.

21 Q Who is that?

22 A Stephen Green, Andre Boone, Rahim Carter.

23 MR. GIESE: Go ahead and play it. If you would jump to
24 No. 10.

25 (Video continues to play.)

1 Q Now, you testified earlier -- this is at 9:54:50 -- about
2 one of the groups being packed into an area?

3 A Yes, sir.

4 Q Okay. And is that what you're talking about?

5 A That's the group we identified as the Gangster Disciples.

6 Q And they're packed in that area?

7 A Yes, sir.

8 MR. GIESE: Go to 11. 9:56:22.

9 (Video continues to play.)

10 MR. GIESE: Okay. Stop.

11 Q Down here in the left corner, who is that?

12 A Stephen Green.

13 MR. GIESE: All right. Keep going.

14 (Video continues to play.)

15 Q And so, we're at 9:56:34. And the assault takes place
16 around 10, 10:01?

17 A Yes, sir.

18 Q And who is that?

19 A Again, that's -- he's sitting on the CO booth, but that's
20 Stephen Green.

21 Q Okay. Is that a better angle of it?

22 A Yes, sir.

23 Q Okay. The same time?

24 A It's 9:56 and 28 seconds.

25 MR. GIESE: Okay. Go ahead and play.

1 (Video continues to play.)

2 BY MR. GIESE:

3 Q What is that he just laid there, to you?

4 A It's a long homemade weapon.

5 MR. GIESE: Okay. Keep playing.

6 (Video continues to play.)

7 MR. GIESE: Stop. Go to 9:58, which is -- I'm sorry, No.

8 12. Play.

9 (Video continues to play.)

10 MR. GIESE: Okay. Stop.

11 Q Now, you testified earlier that, at some point, this
12 group on the bottom down here goes up toward the back end up
13 there?

14 A Yeah. So, if you come in the front door, this is kind of
15 like the midway point when you enter. The left side is
16 identical to the right side. So, a group sucked into the left
17 corner out of camera view for a small period of time. And
18 then you can see them come in the camera. Some run to this
19 stairwell, some will run to the stairwell right here, and some
20 will run to the stairwell right when you enter the dorm to the
21 left. And they march -- we can observe them march to the far
22 right corner.

23 Q Does that view help you better?

24 A Yes. Thank you.

25 So, this is the one that was closer to where they sucked

1 back into, in this corner right here. And then they also come
2 up to this stairwell, this stairwell, and that stairwell.

3 (Video continues to play.)

4 MR. GIESE: Okay. Stop.

5 Q And through your investigation, did you come to find out
6 who that was moving back?

7 A So, this is Stephen Green.

8 MR. GIESE: Play.

9 (Video continues to play.)

10 MR. GIESE: Stop. Oh, keep going. Yeah, go ahead.

11 (Video continues to play.)

12 MR. GIESE: Now, stop.

13 Q Now, you say they came up these stairs. Some went toward
14 the one end and some came back this way toward the end?

15 A Yep. And you can see some of these inmates came towards
16 this corner. We believe some of these did as well. And then
17 some of the inmates, we can observe on different cameras, go
18 across on the walkway upstairs and go to the far right corner.

19 MR. GIESE: Go to the first shot you have where they're
20 going down that way. Yeah, that's it.

21 (Video continues to play.)

22 A This is Stephen Green right here after he comes up this
23 stairwell and follows this walkway.

24 MR. GIESE: Play.

25 (Video continues to play.)

1 Q You mentioned donkey kicking. Is that what you're
2 talking about?

3 A A donkey kick is what we refer to is when your back is
4 turned and you use the bottom of your foot backwards. And a
5 normal kick would be facing and using the front of your -- the
6 underside of your foot but you're facing forwards.

7 (Video continues to play.)

8 MR. GIESE: Stop. Go back.

9 Q Through your investigation, did you determine whether
10 Mr. Green was still up there?

11 A Right there.

12 Q Was he doing any of the donkey kicking?

13 A He was.

14 MR. GIESE: Okay. Play.

15 (Video continues to play.)

16 A Can I explain what they're doing?

17 Q Sure. Please do.

18 A So, through our investigation, we learned that Crips were
19 barricaded in this door right here. Since they didn't have
20 keys to lock themselves in, what a lot of inmates would do is
21 called jamming the doors. They'd place objects in the door
22 seam basically to allow -- to try and lock themselves in from
23 the inside.

24 We also learned that inmates would also -- and this is
25 common for any time they would jam doors, not just specific to

1 this, but they also would press their bodies against the door.

2 We believe there was approximately five Crips on each
3 side using their bodies and also jamming the doors to make
4 sure the door stayed shut.

5 MR. GIESE: Go ahead.

6 (Video continues to play.)

7 Q What's happening down here?

8 MR. GIESE: Stop.

9 Q These two individuals.

10 A Andre Boone seems to be yelling.

11 MR. GIESE: Okay. Go ahead.

12 (Video continues to play.)

13 A Now, is that --

14 MR. GIESE: Stop.

15 Q Is that the donkey kicking you're talking about with
16 Mr. Green?

17 A Yes, sir. His white shirt reflects very well off the
18 light up there. Right there.

19 MR. GIESE: Okay. Could you go back just a couple of
20 frames.

21 (Video continues to play.)

22 MR. GIESE: Stop.

23 A So, you can only see his head. That's Mr. Green right
24 here. And he has his right -- his arm extended and a homemade
25 shank, almost as if to do this (indicating). There's a window

1 in that cell.

2 MR. GIESE: Go ahead.

3 (Video continues to play.)

4 MR. GIESE: Stop.

5 Q All right. Through your investigation, did you determine
6 who that is coming -- leading that pack?

7 A That is Stephen Green.

8 MR. GIESE: Go ahead.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q What's he doing there?

12 A Again, just like to the -- what we believe the window,
13 holding a homemade weapon out in his hand, almost pointing.

14 Q What's happening on this side to the right?

15 A Speaking to this?

16 Q No. Down -- all the way down to the bottom to the right.

17 A So, as he's coming down the stairs, if you compare the
18 videos together, McClary is being actively stabbed upstairs,
19 coming down this stairwell, and will eventually go against
20 this wall right here.

21 MR. GIESE: Let's play it. Let's see.

22 (Video continues to play.

23 MR. GIESE: Stop. Play slowly.

24 (Video continues to play.)

25 MR. GIESE: Stop. Slowly.

1 (Video continues to play.)

2 MR. GIESE: Could you go back just to where -- okay.

3 Keep going.

4 (Video continues to play.)

5 MR. GIESE: Okay. Stop. Now play.

6 (Video continues to play.)

7 MR. GIESE: Stop.

8 Q What just happened there?

9 A Mr. Green, along with others, were assaulting

10 Mr. McClary. Mr. McClary attempts to go up --

11 MR. HICKS: Your Honor, again, best evidence rule. The
12 jury is looking at it. If she's going to identify people, I
13 get it. She doesn't need to describe to the jury what they
14 just saw.

15 THE COURT: I'll overrule your objection.

16 A He attempts to go up this stairwell where he's kicked
17 back down.

18 BY MR. GIESE:

19 Q Who is that, that kicks him back down?

20 A It's Mr. Bisnauth (ph) and that's Jerell Jackson above
21 him.

22 MR. GIESE: Okay. Play.

23 (Video continues to play.)

24 MR. GIESE: Stop.

25 Q So, he's kicked back down the stairs. Who is that

1 assaulting him right there, through your investigation?

2 A This last strike is Mr. Stephen Green.

3 MR. GIESE: Okay. Play.

4 (Video continues to play.)

5 Q And did you -- where is Mr. Green? Where does he go? Is
6 that towards Mr. McClary?

7 A Yes, sir.

8 (Video continues to play.)

9 MR. GIESE: And stop.

10 Q Someone has just gone to confront Mr. Green. Who is
11 that?

12 A Juan Smith. Michael Juan Smith.

13 Q And what did Juan Smith do there?

14 A Get in between him and Mr. McClary. Is that what you're
15 referring to? Yes, sir.

16 Q And who is -- and is that Mr. Green there?

17 A Yes, still in the white shirt.

18 Q Right. Gotcha.

19 A Right here. That's Mike Smalls, and he is speaking to
20 Mike Smalls.

21 (Video continues to play.)

22 MR. GIESE: Okay. Stop.

23 A He retrieves his SCDC-issued jacket without the hood that
24 he placed earlier from the stairwell.

25 Q So, he actually picks his jacket up at 10:02:09?

1 A Yes, sir.

2 MR. GIESE: Okay. Go ahead.

3 (Video continues to play.)

4 Q And through your investigation, where are they going now?

5 A Back to the second floor right corner where Crips are
6 barricaded.

7 (Video continues to play.)

8 MR. GIESE: Stop. Play.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q Okay. Could you tell us what's happening there?

12 A So, again, this is still the Gangster Disciples here.
13 And Mr. Green has now walked down the stairs with the jacket
14 in his left hand and the homemade weapon in his right hand.

15 MR. GIESE: Play.

16 (Video continues to play.)

17 MR. GIESE: Stop.

18 Q So, at 10:03:48, Mr. Green exits left?

19 A Yes, sir.

20 MR. GIESE: Okay. Go ahead.

21 (Video continues to play.)

22 MR. GIESE: Stop.

23 Q Now, at that point, does any -- at this point, describe
24 what you see. You see Mr. McClary. What do you actually see?

25 A So, no one will get close to him. They don't --

1 actually, I don't believe anybody touches him. They're just
2 within speaking distance. I would call it a short speaking
3 distance. Another inmate is being walked through, that's
4 obviously been injured, through the dorm. And this is
5 Mr. Boone, who frequents the middle of the rock.

6 Q All right. You can take the stand, please.

7 And you said that -- earlier that you investigated the
8 case by having people identify these individuals maybe in the
9 sally port or some other area and then backing it up or making
10 it go forward.

11 A So, first, I just watched it in totality, and for myself,
12 tried to observe those that I saw striking any inmate that was
13 assaulted and kind of get an idea of the shoes, how the socks
14 were, the shorts, if the pants were rolled up, if the jacket
15 was a certain way. Just any characteristics that I can pick
16 out of that person for my complete understanding of it.

17 And then, as we interviewed people, the person would be
18 brought in. I would introduce myself. Without video or
19 anything on the screen, I would just ask them who they were,
20 their background, and how long they had been -- if they were
21 inmates, how long they had been in the Department of
22 Corrections, their experience in the Department of
23 Corrections.

24 And then leading up to this, what happened, what happened
25 on the day, what did you see, and just, from their memory,

1 what they remembered. If they didn't remember anything else,
2 then nothing further from them. We would inform them that,
3 "Hey, we do have a copy of the video. Would you mind looking
4 at the video and trying to identify anybody that you know?"

5 We were also provided, by the original investigators of
6 SCDC, two things, a set of two PDF files. One was -- it was
7 just SCDC inmate photos. They were arranged from F1 to F3 to
8 F5, but they were in, like, a pamphlet. Each inmate -- it was
9 just their picture and a number one through -- whatever it
10 was, 600-and-something.

11 That number correlated to the second PDF file, which
12 would use that same number and say who they were, their inmate
13 SCDC number, what dorm -- F1, F3, or 5 they belonged to, and I
14 believe if they were on the first floor or second floor, and
15 then their issued cell number.

16 MR. GIESE: Now, if you could go to F1/B right PTZ.
17 10:01.

18 (Video continues to play.)

19 MR. GIESE: Keep going. Keep going. Play through that.
20 Keep going.

21 (Video continues to play.)

22 MR. GIESE: Stop.

23 Q Is that still Mr. Green?

24 A Can I step down?

25 Q Yeah, please. Sorry.

1 A Stephen Green (indicating).
2 MR. GIESE: Keep playing.
3 (Video continues to play.)
4 MR. GIESE: Stop.
5 Q Is that -- what's he carrying, to your knowledge? Is
6 that him?
7 A Sorry. I --
8 MR. GIESE: Keep going. Just play through it.
9 (Video continues to play.)
10 A He's still here.
11 Q Okay.
12 A In his right hand is the homemade weapon. He kind of has
13 it behind his back like this (indicating).
14 Q In his right hand?
15 A Yes, sir.
16 (Video continues to play.)
17 That's him --
18 Q That's when he picks up his jacket?
19 A Yes, sir.
20 Q Okay. Go ahead.
21 (Video continues to play.)
22 A He just walks up this stairwell right here with his
23 jacket in his left hand.
24 Q And that's going toward the --
25 A Second floor, right upstairs corner.

1 Q To go back to the room?

2 A Yes, sir.

3 MR. GIESE: And jump to No. 2. 10:04. Same angle.

4 (Video continues to play.)

5 A If you stop it, I can explain.

6 Q Yeah, please do.

7 A So, at this point -- keep going -- a lot of it was
8 completely tracking somebody, not only in the dorm but also in
9 the sally port. If we were losing them in the blind spot --

10 Q Okay. Just play it.

11 (Video continues to play.)

12 A That's Mr. Green putting his jacket on and then taking
13 the covering eventually off his face, in the front. And then
14 walking to the sally port.

15 Q Okay. And that time is 10:05:09?

16 A Yes, sir.

17 MR. GIESE: Change angles.

18 (Video continues to play.)

19 MR. GIESE: Okay. Stop.

20 Q Is this -- and we talked about the sally port. Is that
21 the door that leads into B?

22 A Yes. This is referred to as a wing door. This is --
23 this hallway right here is the main hallway. The front door
24 is right here. The B wing door and the A wing door are
25 opposing, meaning they face each other. So, he is exiting the

1 B wing door and walking in the direction of the main area of
2 the sally port.

3 Q And would the A wing door be directly across from it?

4 A It's a mirror image. So, this camera just says "A" above
5 it. It faces B.

6 Q Okay.

7 A So that's the exact same time frame, just flipping the
8 camera around, basically is what it is.

9 MR. GIESE: And go back to the other one.

10 (Video continues to play.)

11 A So, this is Mr. Green. So, he still has the shirt that
12 he took off -- the material that he took off, it looks like a
13 long-sleeve shirt, off what was around his head and his face
14 and now in his hand.

15 And then another distinct characteristic also, if you
16 watch his shoes.

17 Q We'll get to the shoes in a minute.

18 You say distinctive. Do you know that they have -- I
19 don't know the right word -- shoes that are given to them by
20 the Department of Corrections?

21 A They are non-issued shoes by the Department of
22 Corrections. This -- I believe these are Nike -- I mean,
23 these New Balance shoes are issued by the Department of
24 Corrections. You'll also see black boots. But the shoes here
25 are not issued.

1 MR. GIESE: Okay. Go ahead and play it.

2 (Video continues to play.)

3 Q And when he goes to the left like that, where would he be
4 going to?

5 A This is towards the exit of the dorm, to the front side
6 of the dorm.

7 Q To where the yard is?

8 A Yeah, the main west yard.

9 Q And that yard gate is locked?

10 A That door is locked.

11 MR. GIESE: Go ahead.

12 (Video continues to play.)

13 MR. GIESE: Stop.

14 Q Do you have any idea what that inmate is doing?

15 A Yeah. So, he's attempting to break the camera. You can
16 see the items falling. This is a piece of it right here. He
17 just broke one of the cameras. I believe that's the one that
18 faces the main door. So, we actually did lose that video
19 because this inmate does break it.

20 MR. GIESE: Jump to No. 3, 10:12:23, please.

21 (Video continues to play.)

22 Q So, this is 10:12:05; correct?

23 A Yes, sir.

24 MR. GIESE: Okay. Stop there.

25 A This is Stephen Green entering back into the frame.

1 MR. GIESE: Play.

2 (Video continues to play.)

3 MR. GIESE: Stop.

4 A Stephen Green. Again, you can see his jacket has no
5 hood.

6 MR. GIESE: Okay. Play.

7 (Video continues to play.)

8 MR. GIESE: Stop.

9 Q Do you have any idea, through your investigation, what
10 he's doing there?

11 A He's refastening a handle of a homemade weapon.

12 MR. GIESE: Okay. Go ahead.

13 (Video continues to play.)

14 MR. GIESE: Stop.

15 A And that is a cellular telephone.

16 Q That this gentleman here just gave him?

17 A Yes. He originally gives him the wrong phone and pockets
18 the initial phone and hands him the secondary phone from his
19 pants.

20 MR. GIESE: Okay. Play. Jump to 5:17:10, No. 5.

21 (Video continues to play.)

22 Q The time is what?

23 A It's 10:17:06 right now.

24 MR. GIESE: Okay. And stop.

25 Q Who is that, through your investigation?

1 A Stephen Green.

2 MR. GIESE: Okay. Play.

3 (Video continues to play.)

4 MR. GIESE: Stop.

5 Q So, where is he going?

6 A Back to the B wing.

7 Q Where all this took place?

8 A Yes, sir.

9 MR. GIESE: Okay. Changing to the inside, please.

10 (Video continues to play.)

11 Q What do you see in that picture?

12 A That's him entering back inside the B wing.

13 And then, for good reference for B versus A, B has a dark
14 floor, a black floor; A has a white floor. So that's, from
15 just the camera angles, is how you can differentiate one side
16 versus the other.

17 MR. GIESE: Okay. Go ahead and play.

18 (Video continues to play.)

19 A He walks back towards the initial lower left corner.

20 MR. GIESE: Go ahead. And fast forward it to 10:18:40.

21 No. 7. We're almost there.

22 (Video continues to play.)

23 MR. GIESE: Oops, stop. Back up, back up, back up.

24 (Video continues to play.)

25 Q Through your investigation, that looks like -- well, tell

1 the jury who that is right there.

2 A That's CO Lopez. He was assigned to the F1 dorm during
3 the time of the riot.

4 MR. GIESE: Okay. Go ahead and play.

5 (Video continues to play.)

6 MR. GIESE: Stop.

7 A Stephen Green (indicating).

8 MR. GIESE: No. 8.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q Coming back through the door?

12 A Yes, sir.

13 MR. GIESE: Okay. Play.

14 (Video continues to play.)

15 A He's walking towards the A wing.

16 Q And do you know what side of the dorms he actually lived
17 on?

18 A He was on the A side. His assigned cell was on the A
19 side.

20 Q And that's Lopez again?

21 A CO Lopez right here, and Stephen Green right here.

22 MR. GIESE: Okay. Play.

23 (Video continues to play.)

24 Q And that's somebody that was hurt?

25 A Yes, sir.

1 Stephen Green right here.

2 Q What's that? Does he have something in his hand?

3 A It looks like he's handing his pants.

4 MR. GIESE: All right. Go ahead. Go to 10:20:07. Speed
5 it up until then.

6 (Video continues to play.)

7 MR. GIESE: Stop. Okay. Play.

8 (Video continues to play.)

9 MR. GIESE: Must have got that wrong. Go to 10:21:40. I
10 apologize; I got that wrong.

11 (Video continues to play.)

12 A That's Stephen Green.

13 Q And where is he coming out of?

14 A Out of the A side.

15 MR. GIESE: Okay. Play.

16 (Video continues to play.)

17 Q A side or B side?

18 A I believe it's an all white floor, and it's labeled A
19 side, so that would be A side.

20 MR. GIESE: Okay. Go ahead. Go ahead.

21 (Video continues to play.)

22 A He just turned around and walked back into the A side.

23 MR. GIESE: Could you back up just a bit?

24 (Video continues to play.)

25 MR. GIESE: Stop. Go ahead and play.

1 (Video continues to play.)

2 Q So, he's going back toward where his cell is; is that
3 right?

4 A Yes, sir.

5 MR. GIESE: Okay. Go ahead.

6 (Video continues to play.)

7 Q And, again, it's the white floor, so --

8 A A side.

9 Q A side. Okay.

10 (Video continues to play.)

11 MR. GIESE: And stop.

12 A He ends up back in the cell over here. So, it has the
13 red light so it's different than others. See the red above
14 it? He's in that cell.

15 Q Is that his assigned cell?

16 A It's consistent with the placement of his assigned cell,
17 yes, sir.

18 MR. GIESE: Jump to 10:26:30.

19 (Video continues to play.)

20 MR. GIESE: Stop.

21 Q So, again, is that a correctional officer up there?

22 A It is. It's CO Lopez right here.

23 Q On the A side?

24 A Yes, sir.

25 Q Okay. And who is that?

1 A Coming down the stairs is Stephen Green.

2 MR. GIESE: Okay. Go ahead.

3 (Video continues to play.)

4 A He just took off his jacket and put it on his left side,
5 left shoulder.

6 Q So, this is --

7 A 10:26 and 54 seconds. So, this is Stephen Green right
8 here.

9 Q And that's still the A side.

10 MR. GIESE: Switch it.

11 (Video continues to play.)

12 MR. GIESE: Stop.

13 A You see a homemade weapon in his right hand. He's got it
14 back like this (indicating).

15 (Video continues to play.)

16 MR. GIESE: And stop.

17 Q Describe those -- those shoes for me, if you would.

18 A So the shoes appear to have straps across the top.
19 They're gray or tan in color. They have a white bottom. In
20 another image, you can see a Nike check on the bottom.
21 They're consistent with Nike Lebron Soldier 11s.

22 MR. GIESE: Okay. Play.

23 (Video continues to play.)

24 A So he's going back on the A side.

25 MR. GIESE: Speed up.

1 (Video continues to play.)

2 MR. GIESE: Okay. Stop.

3 A So, again, jacket on left shoulder, homemade weapon in
4 his hand. The really distinct thing about him is his shoes.
5 The white -- the bottom is very white and then the top part is
6 very tan or gray in color.

7 MR. GIESE: Go ahead.

8 (Video continues to play.)

9 Q So, where is he going now?

10 A Towards the B. The B wing door.

11 MR. GIESE: Go ahead.

12 (Video continues to play.)

13 MR. GIESE: Stop.

14 Q Talked about the check mark?

15 A So, you can see the Nike check here on the bottom. And
16 as I said, the white on the bottom is very distinguishable,
17 especially from the -- the camera is higher up in the dorm, so
18 you can still see that white pretty predominantly against the
19 tan or gray. But that is a Nike check mark consistent with
20 Nike LeBron Soldier 11 shoes.

21 MR. GIESE: Okay. Go ahead and play.

22 (Video continues to play.)

23 Q And that's him exiting to the right?

24 A He's walking, exiting to the left.

25 Q I'm sorry. Sorry. Left.

1 A Opposite of where the Gangster Disciples were. As you
2 can see, the metal object in his left side still as he's
3 walking. And, again, the predominance of his shoes here.

4 MR. GIESE: Go ahead.

5 (Video continues to play.)

6 MR. GIESE: Stop. Stop.

7 Q Is that someone coming from the area he just came from,
8 where he just went into?

9 A Yes, sir, that is.

10 MR. GIESE: Okay. Play.

11 (Video continues to play.)

12 MR. GIESE: Stop.

13 A So, I just want to mention -- if you can back it up to a
14 second to when he gets to about here, please.

15 I talked about what someone was wearing but how someone
16 was walking and carrying themselves also is an identifier that
17 we use.

18 With Mr. Green, it was consistent with almost kind of
19 swinging one arm. If you can look at his gait, it's almost
20 like a hitch in his step almost. I would call it jock walk,
21 like an athletic walk, kind of wider.

22 But how somebody walks and how someone's arms swings and
23 the distance between steps is all consistent of a gait and
24 it's pretty particular with each person.

25 (Video continues to play.)

1 You can also cue in on the shoes. If you can back it up,
2 you can see the white bottom of the shoes are different. And
3 then it looks like gray and tan above, which were consistent
4 with those Nike LeBron. You can see the white on the bottom,
5 are all consistent with the shoes that Mr. Green was wearing
6 when he entered that corner. And you can kind of see the Nike
7 check when he walks.

8 MR. GIESE: Go ahead.

9 (Video continues to play.)

10 A And the shoelaces, how it's not tied. You can kind of
11 see how it's the straps. Go forward a little bit; I'm sorry.

12 (Video continues to play.)

13 You can see how the straps are kind of up right there.
14 It's not shoelaces. And those are also consistent with those
15 Nikes that he was wearing in the hallway.

16 MR. GIESE: Play.

17 (Video continues to play.)

18 MR. GIESE: Stop. So, that's at 10:30:01. Can you
19 switch the angle now?

20 (Video continues to play.)

21 A That's that same individual that came around.

22 MR. GIESE: Go ahead.

23 (Video continues to play.)

24 MR. GIESE: Stop.

25 Q That's Mr. McClary down there?

1 A It is. Lying on the floor is Mr. McClary still. He has
2 not moved since he last collapsed.

3 MR. GIESE: Okay. Go ahead.

4 (Video continues to play.)

5 A So, again, the swinging of the hand and the walk.

6 Q What is that in his right hand?

7 A It's a homemade weapon. You can see it as he -- as he
8 pulls his arm up after the stabbing motion, against the light
9 of the doors and the walls, you can see the object.

10 MR. GIESE: Could you back that up there? Back it up.
11 Just two frames.

12 THE WITNESS: I think you can use the spacebar. That's
13 how I had to freeze it. This is consistent with some of the
14 recordings we used for Narcotics, and the spacebar, you can go
15 frame by frame.

16 (Video continues to play.)

17 Q There. Is that what you're talking about?

18 A You can see it here, but on the other camera, when he
19 picks his hand back up, he does the stabbing motion and picks
20 his hand back up, and he kind of turns it, and you can see it
21 almost parallel to the ground against the wall.

22 MR. GIESE: Play.

23 (Video continues to play.)

24 A Yeah, as he's bringing his arm back. Sorry.

25 MR. GIESE: Now, stop.

1 Q The person that you just saw with that final blow to
2 McClary, what clothing was he wearing?

3 A The brown jacket with no hood, no shirt. When he walked,
4 you can see that the shirt has no hood. Non-issued shoes by
5 SCDC, tan pants. Just missing a T-shirt.

6 Q Doesn't have a T-shirt on?

7 A No, sir.

8 MR. GIESE: Go ahead. Just another one. The sally port.
9 (Video continues to play.)

10 Q And that person walks back to the same area that he came
11 out of?

12 A Yes, sir. He walks back to the lower left corner of the
13 B side.

14 Q And the final blow was around 10:30:10. What time is it
15 there?

16 A 10:33 and 51 seconds.

17 MR. GIESE: Okay. Go ahead.
18 (Video continues to play.)

19 Q All right. What do you see different about him?

20 A He's put on black boots and they're somewhat tucked in
21 here. Still has no shirt but has a shirt wrapped around his
22 head.

23 MR. GIESE: Okay. Play.

24 (Video continues to play.)

25 A And again, no hood. And then the "SCDC" is brighter than

1 other jackets and looked newer, with the more reflective
2 "SCDC."

3 Q You can have a seat. Thank you.

4 JUROR: Your Honor, I apologize, but can we take a quick
5 bathroom break?

6 THE COURT: Sure.

7 Y'all can't discuss the case. You can go right ahead.

8 If the rest of y'all need to go, you can go as well.

9 (A recess was taken from 12:17 p.m. to 12:25 p.m.)

10 BY MR. GIESE:

11 Q Special Agent Shaw, I want to direct your attention, if
12 we could, go to the 10:33:55 F1/B entry door. If you would
13 step down again, please.

14 (Video continues to play.)

15 MR. GIESE: Stop. Go ahead.

16 (Video continues to play.)

17 Q Now, which side are we on?

18 A You can see the white floor, so we're on the A side.

19 Q Is that the individual we're talking about?

20 A Yes. The individual in the black boots, tan pants, no
21 shirt, black jacket -- I mean, brown jacket with no hood and
22 T-shirt over his head.

23 Q Where is he going there?

24 (Video continues to play.)

25 A It's a cell on the top right side of the A wing.

1 Q Okay. Anything unusual about that, that you see?

2 A (Witness nodding.)

3 MR. GIESE: Go ahead.

4 (Video continues to play.)

5 Q Is that Correctional Officer Lopez again?

6 A Yes, sir. He just went up the right side of the stairs.

7 MR. GIESE: Go ahead.

8 (Video continues to play.)

9 MR. GIESE: Stop.

10 A So, this person just exited the same cell that the person
11 wearing the black boots and the white material over their head
12 walked into. When they exited, you can see they still had
13 black boots on, tan pants, and the jacket.

14 Q And that's Lopez right there?

15 A Talking to the individual, yes, sir.

16 MR. GIESE: Okay. Go ahead.

17 (Video continues to play.)

18 MR. GIESE: Stop.

19 Q And where is he going there?

20 A If you can see that red light, it's a cell consistent
21 with Cell No. 2150.

22 Q Yeah. Okay. And whose cell was that, to your knowledge?

23 A Stephen Green's.

24 (Video continues to play.)

25 Q That's Lopez coming back?

1 A Yes, sir.

2 MR. GIESE: Look at 10:47:27, please.

3 (Video continues to play.)

4 MR. GIESE: Stop. Stop.

5 A So, someone exited. In that one, you can see the cell
6 door open multiple times but no one exits. So, this is the
7 first time you saw someone exit that room. Again, it's that
8 brown jacket, tan pants, black boots.

9 MR. GIESE: Okay. Go ahead.

10 (Video continues to play.)

11 MR. GIESE: Stop.

12 Q What's that in his hand?

13 A Appears to be a cellular telephone that lights up.

14 MR. GIESE: Okay. Play.

15 (Video continues to play.)

16 MR. GIESE: Stop. Play.

17 (Video continues to play.)

18 Q Do you know what area he's going back to there?

19 A That's the A side rec yard.

20 Q You can have a seat.

21 (Mr. Giese shows Mr. Hicks a document.)

22 MR. HICKS: I don't know how you're going to lay a
23 foundation for it. It's just a picture off the internet.

24 MR. GIESE: I'll ask.

25 BY MR. GIESE:

1 Q All right. Special Agent Shaw, you have been talking
2 about these shoes.

3 A Yes, sir.

4 Q What type of shoes are they?

5 A Nike Lebron Soldier 11s.

6 Q And how do you know -- how do you know that? What did
7 you do?

8 A I'm not good with shoes, but I have a co-worker who loves
9 shoes, and I sent a picture -- a still picture of just the
10 shoes. "See that person?" I said, "Hey, do you have any idea
11 what shoes these are?" And within, I believe it was, like,
12 five minutes, he had the name of them and said, "Hey, I'm
13 going to try and find you a colorway." And within another
14 five minutes, he had a picture of those shoes and a colorway
15 that was similar to the ones on the screen.

16 MR. HICKS: Your Honor, that's all well and good if that
17 person was here to testify and be qualified as a sneakerhead
18 expert, but the witness here herself has testified that she's
19 not that good with shoes. This picture shouldn't be admitted
20 as evidence.

21 THE COURT: Okay. At this point, he didn't offer it into
22 evidence, I guess.

23 Are you offering that exhibit?

24 MR. GIESE: I was going to.

25 THE COURT: Okay. Has it been marked for identification?

1 MR. GIESE: No, sir.

2 THE COURT: How about marking it for identification and
3 let her look at it and see if she can identify it.

4 BY MR. GIESE:

5 Q I'll hand you what's been marked as State's Exhibit 33
6 for ID. Can you identify that?

7 A This is the image that it was -- after the name of the
8 shoe that was given to me, this was the image that my
9 co-worker found that was consistent with the placement of the
10 Nike check, the white bottoms of the shoes --

11 MR. HICKS: Again, Your Honor, I'm going to object to
12 trying to lay a foundation for it. She's doesn't have any
13 expertise. She's testifying to what somebody else told her,
14 whether it's by words or email. This shouldn't be coming in
15 unless they bring that gentleman in.

16 THE COURT: Okay. So, at this -- so, you're objecting --

17 MR. HICKS: She's testifying to hearsay, Your Honor.
18 That's the problem.

19 THE COURT: Well, you didn't make any hearsay objection.

20 MR. HICKS: Yes, Your Honor. Hearsay.

21 THE COURT: Make a hearsay objection.

22 I sustain your objection on hearsay, but that doesn't --
23 as far as the photograph is concerned, are you objecting to
24 the photograph coming in?

25 MR. HICKS: Yes, Your Honor, because the foundation she's

1 laying is hearsay.

2 THE COURT: Well, let me see the photograph.

3 MR. GIESE: And, Your Honor, I think his argument goes to
4 weight and not admissibility. He can cross-examine her all
5 day long about that. But I believe it's a weight issue versus
6 admissibility issue.

7 MR. HICKS: Your Honor, I would argue it goes to -- the
8 ultimate question of laying the foundation is, is this an
9 accurate representation -- a fair and accurate representation
10 of what it's purported to be?

11 She doesn't have the knowledge of what these shoes are.
12 She heard it from a third party, who is not here to lay that
13 foundation as to that picture and what those shoes are.

14 Both her testimony and the photograph are inadmissible
15 because of that, Your Honor.

16 THE COURT: Okay. The -- y'all stay right there. Let's
17 go out here a minute and then I'll come back and put it on the
18 record.

19 (An in camera conference was held off the record, outside
20 the courtroom, and outside the hearing of the jury and
21 others.)

22 (State's Exhibit No. 33, Photograph of Nike Shoes, were
23 marked for identification.)

24 BY MR. GIESE:

25 Q Ms. Shaw, I'll hand you State's Exhibit No. 33 marked for

1 identification. Was that downloaded off the internet?

2 A I don't believe I can testify to that. I didn't retrieve
3 the image.

4 Q All right. Does that picture fairly and accurately
5 depict the shoe that you believe the defendant was wearing?

6 A Its characteristics are very similar to the shoes on the
7 video.

8 MR. GIESE: We'd offer it.

9 MR. HICKS: No objection, Your Honor.

10 THE COURT: All right. What number is that?

11 MR. GIESE: 33, Your Honor.

12 THE COURT: Okay.

13 (State's Exhibit No. 33 was received into evidence.)

14 BY MR. GIESE:

15 Q And I hand you a picture, Picture 23 -- State's Exhibit
16 No. 23. What is that a picture of?

17 A That's an image of Stephen Green. And you can see the
18 Nike shoes.

19 Q And that's already in evidence.

20 On the screen is State's Exhibit No. 33.

21 A Are consistent with the shoes in that image, specifically
22 the straps and the Nike --

23 Q And the straps, are they Velcro or what are they?

24 A I believe they're Velcro, yes, sir.

25 And the placement of the Nike check towards the heel on

1 the bottom, on the sole, the white.

2 Q Down here?

3 A Yes, sir.

4 Q Okay. Now, State's Exhibit No. 23.

5 A Again, you can see the placement of the Nike, and can
6 even see one of the bottom straps towards the toe.

7 Q Could you step down real quick just to show us where
8 you're talking about.

9 A Again, you can see the Nike check, and the placement is
10 consistent on the bottom of the heel. And then you can kind
11 of see this black and tan right here that looks to be a strap
12 that's not fully pulled across.

13 Q Go ahead. Going back to 10:30:25.

14 A So, again, this is the inside of the foot, but you can
15 see the white bottom with the distinct color on top. And then
16 you can see, right here, what appears to be a strap towards
17 the toe.

18 Q Go ahead.

19 A If you rewind it, you can actually see the -- I
20 apologize. It picks like, when he walks, you can see the
21 black check on the outside since there's no check on the
22 inside and a black check on the outside.

23 MR. GIESE: Back it up a little bit, just out. There you
24 go.

25 (Video continues to play.)

1 Q Okay. Go ahead.

2 A You can almost see the black characteristics on the white
3 bottom when the individual walks.

4 Q Go ahead.

5 A So, on the left foot, you can see the strap or what's
6 consistent with the strap right here, moving.

7 Keep going. The white bottoms. And then, as it moves,
8 you can see a black image towards the bottom, which is
9 consistent with the Nike check. You can see right there.

10 Q Go ahead.

11 A I know it's fast; I apologize.

12 As the heel comes up, you can slow it down and see the
13 Nike check.

14 MR. GIESE: Go ahead. Keep playing.

15 (Video continues to play.)

16 MR. GIESE: Different angle. Go ahead.

17 (Video continues to play.)

18 A You can see the gait; the hand, the right arm swinging,
19 consistent as well as the way the individual walks, along with
20 the characteristics of the shoes.

21 (Video continues to play.)

22 MR. GIESE: Stop. Stop.

23 Q Drawing your attention to the shoes, can you see that?

24 A The straps -- as he walks, the straps, you can see -- as
25 he moves, the straps aren't down all the way. They're

1 somewhat up. You can see it there. You're just looking for
2 the differential between the dark floor. You can see the dark
3 floor and the shoe. You can see up here, the strap.

4 Q Okay. All right. Have a seat.

5 Now, the person that you have been talking about,
6 Mr. Green, for the record, could you please identify him?

7 A The defendant sitting right there.

8 Q That's all I have. Thank you.

9 THE COURT: We're going to lunch. All right? Thank you.
10 2:15 give you enough time? All right. I'll see y'all at
11 2:15. Don't discuss the case yet. I'll see y'all back at
12 2:15.

13 (The jury exited the courtroom at 12:47 p.m.)

14 THE COURT: Agent Shaw, you just can't discuss your
15 testimony.

16 THE WITNESS: Okay.

17 THE COURT: I'll see y'all back at 2:15 and we'll have
18 cross-examination.

19 Okay. Anything we need to deal with before we break?

20 MR. HICKS: Nothing from the defense, Your Honor.

21 MR. GIESE: No, sir.

22 THE COURT: All right. I'll see y'all at 2:15.

23 MR. HICKS: Yes, Your Honor.

24 (A lunch recess was taken from 12:46 p.m. to 2:21 p.m.)

25 MR. HICKS: Judge, we don't have my client in here yet.

1 THE COURT: All right. We'll wait on him.

2 (Pause in the proceedings.)

3 THE COURT: Are we ready for the jury?

4 MR. HICKS: I have one matter I'd like to have a brief
5 bench conference with you about, Your Honor.

6 THE COURT: Okay.

7 BENCH CONFERENCE

8 (The following bench conference was held outside the
9 hearing of the jury and others:)

10 MR. HICKS: There is a point at which, Your Honor, I may
11 want to have Mr. Green stand up and open his shirt to show his
12 tattoos to the jury. Do you have a problem with that? That's
13 Question No. 1.

14 And Question No. 2 is, are you --

15 MR. GIESE: Are you sure you want to do that?

16 MR. HICKS: Well, I'm getting there.

17 Question No. 2 is, are you going to consider that putting
18 anything into evidence?

19 THE COURT: Probably. I mean, if the jury gets to see
20 it, it is.

21 MR. HICKS: Then I'm not going to do that.

22 MR. GIESE: And if you do do it, let me know, because I
23 have got somebody in the back that can testify about tattoos.

24 (Open court resumes as follows:)

25 MR. HICKS: Thank you, Your Honor.

1 Oh, I'm sorry, Your Honor. We're ready for the jury.

2 THE COURT: All right. Bring them in.

3 (The jury entered the courtroom at 2:24 p.m.)

4 THE COURT: Okay. Y'all keep sitting in the same seats.

5 All right. Next?

6 MR. HICKS: Thank you, Your Honor. May it please the
7 Court?

8 CROSS-EXAMINATION

9 BY MR. HICKS:

10 Q Good afternoon, Agent Shaw.

11 A Good afternoon.

12 Q Would you prefer I called you Agent Shaw? Special Agent
13 Shaw? What do you like?

14 A Whatever you feel good with.

15 Q I'm going to go with "Agent Shaw" because I'm not going
16 to trip over that repeatedly.

17 I just kind of want to run through some stuff about your
18 qualifications and your background a little bit. You said you
19 joined SLED in 2015, I believe that was?

20 A I was an admin assistant in 2014, and I became an agent
21 in 2015.

22 Q Thank you. Agent in 2015.

23 Can you briefly describe the training that comes with
24 that, what's involved with becoming a SLED agent?

25 A Sure. Just like any other law enforcement agent, we are

1 hired into our agency. We then go to the police academy,
2 which has changed a little bit now. I went for 12 weeks. We
3 qualify on legals, firearms, driving. Different scenarios and
4 things like that.

5 You graduate from the academy and then back to your
6 department. I went to the Narcotics Unit. And we have a
7 thing called a Field Training Officer, which we basically
8 shadow them for about six months. It's initially shadowing
9 and there's no set time, but you start working cases and they
10 kind of watch you, and then you work together and they kind of
11 let you go. I say "let you off the leash," kind of let you
12 run. And that's kind of how it progresses.

13 Q Sure. And you said currently you're assigned to the drug
14 task force?

15 A I'm a Narcotics --

16 Q No, I'm sorry. Narcotics Task Force?

17 A Yes, sir.

18 Q And that's a joint task force with the FBI?

19 A I joined the FBI -- so, I became an agent with SLED in
20 2015. I joined the FBI and the Violent Crime Task Force in
21 2018. With that, I'm still an active member of the Narcotics
22 Unit at SLED.

23 Q I gotcha. Well, I'm going to commend you on -- that's a
24 serious career flight path. I'm impressed. Well done on that
25 one.

1 A Thank you.

2 Q Did you go through any specialized training as far as
3 investigative work is concerned, other than the basic law
4 enforcement academy?

5 A Yeah. So, we have recertification every year. We do
6 legal updates throughout the academy all the time. We are
7 encouraged but not mandated to go to any kind of training that
8 you want. SLED is very good about encouraging you to go to
9 training. So, I have gone on drug trends, cartel
10 investigations. You can go to a number of trainings on
11 different subject matter, and they encourage you to go to as
12 many as possible.

13 Q Okay. And have you been in any specialized training
14 regarding just investigative procedures and techniques?

15 A They get a little bit more specific, not so broad whether
16 it's, like, financial investigations, drug investigations, and
17 kind of go to more specific, and then they may cover certain
18 topics, depending on the training.

19 So, I think -- what you're asking is very broad; they
20 kind of try to narrow it down.

21 Q Yeah, and I'm glad you're here to clear that up, because
22 I never would have thought -- I mean, it makes perfect sense,
23 but I never would have thought it's broken down into
24 specialties.

25 But specifically for witness identifications, have you

1 gone through any sort of training, advanced training, or
2 specialized training that covers how to conduct those and how
3 to perform those?

4 A I have not.

5 Q You have not. Okay.

6 Are you familiar with the term "best practices"?

7 A Sure.

8 Q Are you familiar with what that means in relation to
9 identifications by witnesses?

10 A No, sir.

11 Q Okay. Can you please explain what best practices is for
12 the jury, just a general idea of what best practices are? Not
13 in relation to anything in particular but what they are
14 generally for the jury so they understand?

15 A My point of view on what a best practice would be
16 whatever that agency deems to be the best way or route to get
17 something done or to do an investigative function, is what I
18 would define it as.

19 Q Okay. And so, before April 15th, 2018, you had never met
20 Mr. Green; is that correct?

21 A No, sir.

22 Q I'm just going to guess, after April 15th, 2018, you have
23 never personally met Mr. Green in any capacity; is that also
24 correct?

25 A I have.

1 Q Did you attempt to interview him at some point?

2 A No, sir. I have served paperwork on Mr. Green, so I have
3 met him.

4 Q I gotcha. Absolutely. Thank you.

5 But before -- before you were assigned to this
6 investigation, you had no idea that Mr. Green even existed?

7 A No, sir.

8 Q Okay. And, at some point, he became the focus of your
9 investigation at least as far as these charges are concerned?

10 A The specific charges that he was charged with, yes, but
11 where he became a certain focal point, I think he was with a
12 group of people and became a focal point. Is that...

13 Q That's good enough. We'll take it.

14 But, again, specifically as it relates to Mr. Green, he
15 became a person of interest to you because, at some point,
16 somebody pointed him out on a video screen; is that correct?

17 A We developed evidence that we thought was probable to
18 bring charges against Mr. Green specifically.

19 Q And was some of that evidence witness identification?

20 A Yes, sir.

21 Q And those witness identifications were predominantly done
22 off of the video that the jury has so far seen substantial
23 portions of?

24 A The --

25 Q Not exclusively.

1 A We used the videos to assist, yes, sir.

2 Q Okay. And these were -- I know -- again, I know not
3 exclusively, but generally, we've heard a couple of witnesses
4 testify, people were asked to come to the Attorney General's
5 Office, and they were, I assume, put in a conference room with
6 a screen similar to this and shown a video?

7 A So, each time I would get any witness in to testify --
8 not to testify, I apologize -- to interview with me, I don't
9 have a screen on at all. There may be a screen in the room,
10 but nothing is pulled up. I want a memory of what happened,
11 history to the event to what happened during the entire event,
12 everything they can ever remember from their memory before I
13 ever put anything else in front of them. So, that was
14 standard for everything that I did during this investigation.

15 Q Sure.

16 A So, I would talk to them in its entirety, and when they
17 couldn't remember anymore, I would say, "Hey, we do have a
18 copy of the surveillance video. Would you mind taking a look
19 -- would you voluntarily take a look at it and attempt to
20 identify anybody you know?"

21 And that was, in general, anybody you know; not specific
22 to someone who is committing a crime. We want to know who
23 everybody was.

24 Q I gotcha. I gotcha. And that makes perfect sense.

25 As far as it relates to Mr. Green, one of the things that

1 you stated was you were able to track the person that you
2 believe is Mr. Green based on shoes, clothing, from this one
3 clear focal point forward and backwards and piece the whole
4 story together sort of? That's a rough approximation of how
5 you did it?

6 A We attempt to use any characteristics that were -- we
7 found specific to him to assist us in tracking.

8 Q Okay. Okay.

9 MR. HICKS: Can you please bring up the F1/B entry door,
10 the point 195 at the 10:05 and roughly 10-second mark. And
11 I'm sorry; I apologize.

12 A/V TECHNICIAN: What was the camera name?

13 MR. HICKS: I'm sorry?

14 A/V TECHNICIAN: Camera name?

15 MR. HICKS: The F1/B entry door, 200.195.

16 A/V TECHNICIAN: At what time?

17 MR. HICKS: 10:05 and 10 seconds.

18 (Video plays.)

19 MR. HICKS: Okay. Can you run it back just a little bit,
20 please. So, I told you to run it back; I meant forward. I
21 apologize.

22 (Video continues to play.)

23 MR. HICKS: Okay. Pause it, please. And if you could
24 back it up just a little bit. That's perfect. We'll go with
25 that. Thank you very much.

1 BY MR. HICKS:

2 Q If you need to stand up and look -- oh, you've got it
3 right there?

4 A I can, if you'd like.

5 Q I'm happy if you're happy.

6 A Okay.

7 Q This is one of those images -- freeze-frame, paused
8 images of the person that you believe is Mr. Green that you
9 have used to kind of track forward and backwards from?

10 A Yes, sir.

11 Q That's a fair statement?

12 A Yes, sir.

13 Q Okay. And so, from this point, I'm going to speak
14 exclusively about going backwards to the point at which Mr.
15 McClary was initially attacked in the dorm.

16 A Okay.

17 Q From this point, going backwards, this gentlemen that you
18 believe is Mr. Green, you never lose sight of him on the
19 cameras?

20 A I'd have to watch back all the way to testify to that,
21 because, on the left side, like I said, we do have a camera
22 out. So if we wound it back and watched it, I would
23 absolutely testify --

24 Q Okay. Well, I'll try and do that.

25 MR. HICKS: Can you please go to the F1/B right PTZ

1 camera at 10:04.

2 (Video continues to play.)

3 A So, yes, sir, he does go out of frame.

4 MR. HICKS: Okay. Pause it for just a second.

5 Q Can you please point to -- up here for the jury who it is
6 that you believe you're tracking as Mr. Stephen Green.

7 A Well, right now, they're not in the frame.

8 Q He's not in the frame?

9 MR. HICKS: I'm sorry. Run it forward. Thank you.

10 A So, the person that puts the jacket on and has the
11 shirt -- I believe it's a long-sleeve shirt over the face
12 right now -- will walk forward and take the shirt off, and
13 that person exits into the sally port and is observed as
14 Mr. Green.

15 Q Thank you.

16 And how many people do you think -- you have no idea how
17 many people are in that blind spot; is that a fair statement?

18 A Yes, sir, that's a fair statement.

19 Q Okay. And you don't have any idea what anybody was doing
20 in that blind spot?

21 A No, sir, I don't.

22 Q And the person that you see coming out of that blind spot
23 may or may not be Mr. Stephen Green because he's got something
24 over his head, and the person you say is Stephen Green went
25 into a blind spot and you don't know who is coming out?

1 A The person that I tracked from the hallway that I
2 identified as Stephen Green, when I wound that back, is the
3 person that puts the covering over his head and puts the brown
4 jacket on. That is Stephen Green.

5 Q Okay. All right. So, the gentleman you say is Stephen
6 Green, running it backwards from that entry, goes into a blind
7 spot?

8 A In the blind spot, I don't know, obviously, who he is and
9 what he's doing. But as we backtrack, I'm saying the person
10 that I see moving backwards, putting the face covering on and
11 putting the jacket on, that is who I follow into the hallway
12 to identify as Mr. Green.

13 Q Okay. And so, the shoes were kind of a big deal.

14 A Yes, sir.

15 Q Big enough of a deal that it seems like it was important
16 to your identification; is that a fair statement?

17 A I think it assists in the identification, yes, sir.

18 Q Is it possible or even possible that whoever the heck was
19 in that blind spot was trading shoes or other clothing items?

20 A Would you -- I mean, if we fast-forward to the sally
21 port, we can see if he still has the same shoes on.

22 Q I'm asking about in the blind spot. Is it possible or
23 plausible that whoever the people were there in the blind spot
24 there that we cannot observe, that we don't know who they are
25 and we don't know what they're doing, is it possible that they

1 were changing clothing items?

2 A They could, yes, sir.

3 Q And so, on that note, the gentleman that you believe
4 you're tracking on this that you say is Mr. Green, how many
5 different sets of clothing did he have on? How many different
6 outfits did you track him wearing?

7 A Depending on if he had his jacket on or off. And then,
8 again, when he puts on the black boots later on in the night.
9 Two complete sets.

10 Q And then the face covering?

11 A Yeah, with different configurations.

12 Q So two complete different sets but different variations
13 as well?

14 A Going off the boots. So, I would say the black boot
15 outfit is one, and then the other tennis shoes would be
16 another set.

17 Q Okay. All right. Well, thank you for that.

18 MR. HICKS: Can you please go back to the F1/B entry door
19 in .195, again, at the 10-minute-and-5-second mark. Or the
20 10:05 mark; that's going to make a lot more sense that way.

21 (Video continues to play.)

22 MR. HICKS: And pause it, please.

23 Q Let's go forward from here as well and try and use the
24 same technique that you did to track this. And so what we're
25 going to do is we're going to kind of go forward. We'll

1 eventually get to the final blow on Mr. McClary and we'll talk
2 about that a little bit, but we'll stop short of that.

3 From here going forward, does this person you believe to
4 be Mr. Green enter any blind spots?

5 A The -- he hangs a left from where he's at and enters the
6 front camera door -- or the camera door into the front door.
7 I do believe at some point we did have that camera. I can't
8 remember at which point the camera gets destroyed.

9 Q Oh, the one that the dude was beating up?

10 A Yes, sir.

11 Q Okay. To the best of your knowledge, this video footage
12 shows Mr. Green coming into the sally port from the B wing and
13 eventually going into the A wing. There's other little side
14 trips, but he eventually goes into the A wing from here?

15 A I know he does go in from B and go to A. I don't know if
16 it's this specific one. There's so many times he's coming
17 into the sally port, so I don't mean to be difficult at all.

18 Q No, no, no. That's a fair point. There's a lot of
19 people in and out. It was chaos when it happened, and it's
20 kind of chaos to watch. I understand.

21 But when he was in the A dorm -- when he was in the A
22 wing, rather, of the F1 dorm, he entered a couple of cells?

23 A He -- the person I tracked entered a cell on the top
24 right with the red light. He also enters a cell on the left
25 side.

1 Q Mm-hmm. And those cells don't have cameras either, do
2 they?

3 A I have never seen a camera from the cells.

4 Q So, they would be blind spots as well; is that --

5 A Yes, sir.

6 Q And we don't know who was in those cells?

7 A No, sir.

8 Q And we don't know what they were doing in those cells
9 either, do we?

10 A No, sir.

11 Q And, in fact, if what you say is correct, at one point,
12 he came out of one of those cells wearing a different
13 outfit -- or the gentleman you believe is Mr. Green came out,
14 if I'm not mistaken --

15 A He does. He exits in a different outfit.

16 Q So, clearly, people were changing clothes and outfits
17 within the cell?

18 A Yes, sir.

19 Q Within the cells and other blind spots. Okay.

20 MR. HICKS: Can you please go to F1/B entry door, 195
21 again, please, at 10:17:23. I'm so sorry. Okay.

22 Q And, by the way, I don't know what you called him during
23 your investigation; I named that fly Buzzy, because he was a
24 constant companion on the camera there.

25 MR. HICKS: Pause it. I'm sorry. 10:29, please. Go

1 ahead and play it.

2 (Video continues to play.)

3 MR. HICKS: And pause it.

4 Q Do you recognize this?

5 A Yes, sir.

6 Q Is the gentleman you believe Mr. Green in this?

7 A Yes, sir.

8 Q Can you point him out for the jury, please? Sorry. I
9 want to let you keep the talking feather.

10 A (Indicating.)

11 Q Okay. Thank you.

12 And to your best knowledge, what is that person wearing?

13 A That would be a brown SCDC-issued jacket with no hood,
14 tan pants. Again, the gray shoes that we have talked about
15 with the white bottoms. And no shirt. And the covering looks
16 like a face covering.

17 Q I would agree with you. I wouldn't argue with you about
18 the face covering thing.

19 But, interestingly enough, all the other pictures, video
20 footage, everything that you have shown of who you believe to
21 be Mr. Green, he's never covered his face; correct?

22 A No, besides the white shirt.

23 Q Yeah, shirt or towel or whatever?

24 A The video we just played, yes, sir.

25 Q Right. But -- so, in the video footage, if you remember,

1 of the initial attack on Mr. McClary, the gentleman that you
2 believe to be Mr. Stephen Green, his face was completely
3 exposed; right?

4 A Yes, sir.

5 Q And this gentleman is coming out of a blind spot, isn't
6 he?

7 A He is.

8 Q And your belief is that there's no possible way Mr. Green
9 or the gentleman you believe is Mr. Green went into this blind
10 spot, was in there for 40 seconds to a minute, and then
11 somebody else could have come out with no shirt, and brown
12 jacket, and their face covered?

13 A They could have, but I'm testifying that the person that
14 I see on camera walks consistently, moves his arm
15 consistently, has consistent pants, jacket, and shoes is that
16 Mr. Green had.

17 Q Okay. Okay. I'll take that.

18 MR. HICKS: Can you please do the F1/B yard door, the
19 point 200 one, at 10:30 and 10 seconds.

20 A/V TECHNICIAN: 200 point what?

21 MR. HICKS: F1/B yard door, 200.

22 A/V TECHNICIAN: Point 202?

23 MR. HICKS: Yes, I'm sorry. Point 202. Can't even read
24 my own handwriting.

25 A/V TECHNICIAN: What time?

1 MR. HICKS: 10:30 and 10 seconds, please.

2 BY MR. HICKS:

3 Q And it is your contention -- you have the stick; I'm not
4 going to try to give it to you again.

5 Could you please point to the screen and show the jury
6 who it is that you believe is Mr. Green?

7 A (Indicating.)

8 Q Perfect. Thank you very much.

9 MR. HICKS: Could you zoom in on that figure as close as
10 you can get without losing any resolution -- without losing
11 any substantial resolution? Out a little bit. One more out.
12 We'll take that.

13 Can you play it exceptionally slow and I'll tell you when
14 to stop?

15 (Video continues to play.)

16 MR. HICKS: Pause it, please.

17 Q Does the gentleman in that paused still frame appear to
18 be a dark-skinned African American man or a light-skinned
19 African American man to you?

20 A I don't --

21 Q And if you'd like us to zoom it out or in, we can.

22 A Yeah, I don't really feel comfortable testifying to that.
23 And I'm not trying to be difficult. I don't think I'd feel
24 comfortable testifying about the skin tone.

25 Q Okay. Okay.

1 Does the man in that freeze frame appear to have a torso
2 that is entirely covered in high-contrast tattoos?

3 A I -- I don't see it.

4 Q Okay.

5 A Or, like, I don't think that's a good enough video to say
6 yes or no either way.

7 MR. HICKS: Can you zoom it out a couple of clicks,
8 please?

9 (Video continues to play.)

10 MR. HICKS: Stop right there.

11 Q Is that any better?

12 A No, sir. To me.

13 Q I'm sorry?

14 A To me. No, sir.

15 Q I'm trying to give you the best image we can kind of ---

16 A I understand.

17 Q --- scrounge up. I'm not trying to have a gotcha thing.

18 Okay. So, you're not able to tell if that gentleman,
19 based on this video footage, is a dark-skinned African
20 American man or has a torso covered in really high-contrast
21 tattoos from navel to neck?

22 A No, sir. I don't feel comfortable saying yes or no with
23 this.

24 Q Okay. But Mr. Green has a torso full of high-contrast
25 tattoos from navel to neck, doesn't he?

1 A Images that I have seen of Mr. Green, yes, but I have
2 never seen him without his shirt on.

3 Q Okay. But you have seen the images?

4 A Yes, sir.

5 Q I want to go back to the cells thing for a minute. You
6 discussed that there was a couple of times you saw a gentleman
7 going into cells that you believe was Mr. Green. A couple of
8 different -- two, three, whatever. I'm not going to --

9 A Yes. So, the call was in the same approximate area as
10 his assigned cell.

11 Q Right. And I don't disagree that you saw a gentleman
12 going into a cell assigned to Mr. Green, but inmates just
13 moved into whatever cell they wanted, didn't they? Before the
14 riot, inmates would park themselves in whatever cell they
15 wanted; isn't that right?

16 A Through our investigation, we learned that that is
17 possible.

18 Q Right. And through your investigation, did you also
19 learn that sometimes inmates just parked themselves -- like,
20 they would literally move dorms if they wanted to? Did you
21 learn that?

22 A I believe that was more between F3 and F5. I don't know
23 if I particularly heard of this dorm doing that.

24 Q Right. But it was happening generally in the
25 institution?

1 A Yes, sir.

2 Q Okay. All right. I'm sorry. I've got notes on, like,
3 ten different pages. Let me go grab my other notepad. I'll
4 be right back. I'm sorry.

5 MR. HICKS: Begging the Court's indulgence.

6 Q Where are the shoes?

7 A Say that again.

8 Q Where are the shoes?

9 A I have no idea.

10 Q After institutional control was regained, every inmate in
11 every cell was shaken down. And Mr. Green doesn't have access
12 to a burn barrel out in the yard, does he, for destroying
13 clothing or anything like that?

14 A I don't know what he has access to.

15 Q So, we don't know where the shoes are?

16 A No, sir.

17 MR. HICKS: I have no further questions, Your Honor.

18 THE COURT: Okay.

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

20 THE COURT: Anything further from the State?

21 MR. GIESE: Just a couple of questions.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 BY MR. GIESE:

25 Q He's talking about the place being shaken down and cells

1 shaken down. At that point in the investigation, or lack
2 thereof at that point, was there any reason to see shoes at
3 that time?

4 A I wasn't there the day of the investigation, so I
5 don't -- I can't -- I don't think I can testify as to what
6 techniques were done or what decisions were made to shake down
7 or...

8 Q But the shoes you're talking about was something you
9 discovered later on?

10 A Yes, sir.

11 Q How many years later?

12 A Very -- like, several years later.

13 MR. HICKS: That's all I have.

14 THE COURT: Thank you. You can step down.

15 Ready for your next witness?

16 MS. SCOTT: Yes, sir. The State is going to call

17 Dr. Janice Ross.

18 THE COURT: Okay.

19 MR. HICKS: Your Honor, I have already expressed to the
20 State that I'll stipulate to her qualifications and all of
21 that because she discussed earlier, trying to get her in and
22 out.

23 THE COURT: Okay.

24 DR. JANICE ROSS

25 after having been duly sworn, was examined and testified

1 to as follows:

2 THE CLERK: Thank you. If you'll have a seat and state
3 your name for the court reporter.

4 THE WITNESS: Janice Edwards Ross.

5 DIRECT EXAMINATION

6 BY MS. SCOTT:

7 Q Dr. Ross, thank you for being here. What is your
8 occupation?

9 A I'm a forensic pathologist, which means I have been
10 through four years of college, four years of medical school,
11 five years of training in the field of pathology. The field
12 is where we identify and diagnose diseases, like cancers and
13 anemias, and then we also learn how to do an autopsy to find
14 the cause and manner of death.

15 A forensic pathologist is further trained to identify the
16 patterns of injury, like stab wounds, gunshot wounds,
17 accidents, and suicides.

18 Q You mentioned -- so, an autopsy is just -- can you
19 explain a little bit further? So, when you do an autopsy, do
20 you take pictures? Do you make diagrams? If you could
21 explain that.

22 A Yes. We take pictures. When I did this autopsy in 2018,
23 I was working in Newberry, South Carolina, and we did
24 autopsies at the morgue in the hospital. The translator --
25 the transporter would bring the patient to us in a body bag.

1 We would take pictures of the outside of the body bag, open
2 it, take pictures of the person clothed and unclothed, and
3 identify whatever injuries we can.

4 Q Dr. Ross, have you ever testified in court before?

5 A I'm sorry?

6 Q Have you ever testified in court before?

7 A Yes.

8 Q About how many times?

9 A About 300 times in South Carolina.

10 Q Okay. And were you qualified as an expert in all 300 of
11 those times?

12 A Yes.

13 Q And what were you qualified as an expert in?

14 A Forensic pathology.

15 MS. SCOTT: Okay. Your Honor, at this time, we would
16 offer Dr. Ross as an expert in forensic pathology.

17 MR. HICKS: No objection, Your Honor.

18 THE COURT: The Court so finds.

19 BY MS. SCOTT:

20 Q Dr. Ross, I want to go to what we're here for this week.
21 Were you asked to do an autopsy on the victim, Cornelius
22 McClary?

23 A Yes.

24 Q Okay. And what date were you asked to do that and what
25 date did you perform the autopsy?

1 A I performed the autopsy on April 18th, 2018, and was --
2 were asked by the coroner to do it the day before.

3 Q When you began the autopsy, did you -- I guess you said
4 you took pictures in this case?

5 A Yes.

6 Q Did you also create a diagram in this case?

7 A Yes.

8 Q And did you create a report that goes with the autopsy
9 results?

10 A Yes.

11 Q All right. And I'm just going to start off with this.
12 What was the cause of death that you found for Cornelius
13 McClary?

14 A He was in hypovolemic shock, which means he bled out due
15 to multiple sharp force injuries.

16 Q Multiple sharp force injuries?

17 A Yes.

18 Q What -- if you could explain to the jury the different
19 types of injuries; a sharp force injury versus I guess like a
20 slice or something like that.

21 A Yeah. There are basically two groups. There's blunt
22 force injury, being hit in the head by a rock or something
23 like that, or sharp force injuries, which indicates that
24 you're injured by something sharp: A knife, a sharp piece of
25 glass.

1 So, sharp force wounds include incised wounds or cuts
2 across the skin, superficial or stab wounds. A stab wound is
3 a sharp force injury made by a sharp instrument, and the
4 definition of that is that the stab wounds goes deeper than it
5 is wide.

6 Q What was the manner of death that you found for Cornelius
7 McClary?

8 A Homicide.

9 Q Homicide.

10 And can you describe, I guess, what that would be?

11 A A homicide is a death -- our definition of homicide is
12 death of a person at the hands or neglect of another person.
13 The law goes further into dividing homicides into
14 manslaughter, Murder I, II, etc.

15 Q Thank you.

16 Dr. Ross, I'm going to show you what's been marked as
17 State's Exhibit 4. Do you recognize this?

18 A Yes.

19 Q Okay. And this is the --

20 MR. HICKS: Without objection.

21 MS. SCOTT: And, Judge, we'd like to enter this into
22 evidence.

23 THE COURT: You're offering that into evidence?

24 MS. SCOTT: Yes, sir, Your Honor.

25 THE COURT: All right. It's in without objection.

1 (State's Exhibit No. 4 was received into evidence.)

2 BY MS. SCOTT:

3 Q Dr. Ross, if you would, would you mind stepping down and
4 helping? Sorry.

5 I want to -- if you wouldn't mind, I want to go over a
6 few of these wounds with the jury. I have your report, so I'd
7 like to just kind of go down.

8 I'm showing -- if you could, how many wounds did you
9 calculate that Mr. McClary sustained?

10 A Okay. Let me get my -- there are a total of 101.

11 Q 101?

12 A Yes.

13 And in the head, there were 23; some to the left
14 forehead, one to the cheek, one to the ear, in the right
15 cheek, and then the rest of them in the back of the head.

16 Q Okay. So, you said about 23 to the head and face?

17 A Yes.

18 Q All sharp force wounds?

19 A Yes.

20 Q Which would indicate a stabbing of some sort with
21 multiple different weapons? Could you be able to tell that?

22 A Well, the patterns were such that there was some wounds
23 that looked like they were made by, like, a kitchen knife or,
24 you know, some kind of knife. And there were some that were
25 round like an ice pick but a pick. Ice pick. So, there were

1 at least two different kinds of weapons.

2 Q And then I'm seeing nine to the neck?

3 A Yes. So, two on the right neck and then the rest, seven
4 on the back of the neck. And one went in and caused some
5 hemorrhage. Didn't hit a major artery. Cut some small
6 vessels.

7 Q Multiple -- I'm seeing multiple injuries to the backs of
8 the arms, is that correct, and also the front?

9 A Yes.

10 Q Okay. If you could explain to the jury what I'm looking
11 at in the diagram here, what would that indicate to you for
12 the way the arms would be positioned where the wounds are?

13 A Okay. Some of these symbols are EKG readings and medical
14 apparatus. In the wounds -- the places wounds are, these
15 are -- that's tattoo. Wounds in the palms of the hands, the
16 back of the right hand, in the back of the forearms. That
17 indicates a person saw a weapon coming. I'm just going to
18 call them -- I call them defensive wounds.

19 Q So, he had multiple defensive wounds on his arms?

20 A Correct.

21 Q Okay. And then also -- let's go to the back. How many
22 wounds did he receive on the back?

23 A 36.

24 Q 36.

25 And I see one of them punctures a lung; is that correct?

1 A Yes.

2 Q If you could explain that a little bit, that particular
3 wound.

4 A Okay. A lot of these were superficial, just under the
5 skin. But one goes into the right chest and cuts into the
6 lung, which would collapse it. So, he would have a hard time
7 breathing.

8 And one of these -- refer to the sides -- is the torso.
9 One of these on the left torso goes in and also punctures the
10 wound, so it also causes bleeding and collapse of the lung.

11 Q And I know that, just from my notes from speaking to you,
12 about how many of these wounds would have been fatal? I know
13 that the cause of death was hypovolemic shock, but were there
14 multiple wounds that would be considered fatal wounds?

15 A There were multiple, yes. A lot of the bleeding would
16 have been externally. There was 600cc's of blood in the right
17 chest and I think 50 on -- 150 in the left chest. So maybe
18 that's two units of blood. But the wounds of the face and
19 scalp will bleed a lot.

20 Q And, Dr. Ross, if you can have a seat; I want to show you
21 some pictures.

22 I want to show you what has been marked as State's
23 Exhibit 12. I'm sorry. 11, 12, 13, 6, 7, 8, and 9.

24 A Okay. 11 is the left hand. You can see the wounds on
25 the -- like, the knuckles of the hand.

1 Q Okay. And what I'll do is I'll just ask if you can look
2 at them and see if you recognize them, and then I'll put them
3 up there on the screen and we can go through them that way.

4 A Oh, okay, sure.

5 Q And do these fairly and accurately depict the pictures
6 that you took during the autopsy ---

7 A Yes.

8 Q --- in 2018?

9 A Yes.

10 MS. SCOTT: Your Honor, at this time, we would admit 6
11 through 11 into evidence -- 6 through 12.

12 MR. HICKS: Without objection, Your Honor.

13 THE COURT: Okay. 6 through 12 is in without objection.

14 (State's Exhibit Nos. 6 through 9 and 11 and 12 were
15 received into evidence.)

16 BY MS. SCOTT:

17 Q Dr. Ross, this is going to be Exhibit No. 8.

18 A Yes.

19 Q All right. If you could explain this photo.

20 A Okay. That shows the back and the wounds on the right
21 side, from which blood is pouring -- or stab wounds that go
22 through the wall of the chest, allowing the blood to come out.

23 Q And, again, this is 36 stab wounds?

24 A Correct.

25 Q This is going to be State's Exhibit 6. And what is that?

1 A That is the back of the head. We had to shave a lot of
2 the hair so we could identify the wounds better. It shows
3 incised wounds, superficial wounds. These wounds went through
4 the scalp and partially into the skull but didn't totally
5 break the skull.

6 Q I want to show you State's Exhibit No. 7. I believe
7 maybe just a different angle of the same area we're looking
8 at; is that correct?

9 A Yes. This is the -- includes the left ear.

10 Q Your diagram, Dr. Ross, there were 101 stab wounds. Is
11 that just too many to put on your diagram?

12 A Yes. Yeah, that's why we take a lot of pictures.

13 Q Right. So, the diagram -- there were just so many for
14 the head, 23. They weren't exactly on the diagram, but the
15 majority of the bigger ones were; is that correct?

16 A Correct, yes.

17 Q All right. I want to show you State's Exhibit 11.

18 A That's the left hand, again, with the wounds on the left
19 index finger and the third and fourth finger also.

20 Q And, again, you would be able to say that those were
21 defensive wounds; is that correct?

22 A Correct.

23 Q State's Exhibit 12.

24 A That's the same hand, left hand. And that shows another
25 wound on the back of the hand.

1 Q Okay. Again, defensive wounds; is that correct?

2 A Yes.

3 Q And then State's Exhibit 13?

4 A That is the left hand inside or palm aspect with incised
5 wound in the palm.

6 Q Okay. And this would be here, State's Exhibit 9, I want
7 to keep this up or hold this up. I don't believe there were
8 -- maybe one small wound on that one; is that correct?

9 A There's another -- yes.

10 Q And this is a different hand. So, these hands -- both of
11 these together, does that indicate to you empty hands?

12 A Yes.

13 Q When he was being attacked, his hands were empty?

14 A Most likely, yes.

15 Q Okay. And, Dr. Ross, you testified, 101 wounds?

16 A Correct.

17 Q Majority to the back and the neck and head?

18 A Yes.

19 Q As if running away.

20 I also want to ask you -- I know you have already
21 testified to this -- the cause of death was hypovolemic shock.
22 Explain that one more time what that is.

23 A Hypervolemia is loss of blood. So, as you lose blood,
24 you go into shock. And that's due to the multiple sharp force
25 injuries. And contributing to that is the collapsed lungs.

1 Q Right. Okay.

2 And then the manner of death, you said, is homicide?

3 A Yes.

4 Q Thank you, Dr. Ross. Please answer any questions the
5 defense has.

6 CROSS-EXAMINATION

7 BY MR. HICKS:

8 Q Good afternoon, Dr. Ross.

9 A Good afternoon.

10 Q My name is Matthew Hicks. We haven't met yet. I wish it
11 was under different circumstances, but I'm glad you're here
12 today.

13 A Thank you.

14 Q Your job, in all of this -- correct me if I'm wrong, your
15 job in all of this is to explain to the jury and everyone here
16 how Mr. McClary died; is that correct?

17 A That's correct.

18 Q But your job doesn't have anything to do with the
19 who-done-it part; isn't that also correct?

20 A No, it's a team effort. We have to rely on --

21 Q But your job doesn't have anything to do with identifying
22 a suspect, saying this suspect did this. No part of the
23 who-done-it?

24 A Correct.

25 Q Thank you.

1 MR. HICKS: No further questions, Your Honor.

2 THE COURT: Anything further?

3 MS. SCOTT: No, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down.

5 THE WITNESS: Thank you.

6 MS. SCOTT: Judge, we have another witness we need to go
7 get. This might be a good time for a quick break.

8 THE COURT: Okay. All right. Ladies and gentlemen, I'll
9 send you to the room. Don't discuss the case.

10 (The jury exited the courtroom at 3:09 p.m.)

11 (A recess was taken from 3:09 p.m. to 3:22 p.m.)

12 THE COURT: Are we ready for the jury?

13 MR. GIESE: I know Ms. Scott told you that we had one
14 witness. Actually, we have two, but one of them is going to
15 be fairly short. It's an ID.

16 THE COURT: That's fine. Whenever y'all are ready for
17 the jury.

18 MR. GIESE: We're ready.

19 THE COURT: If they're ready, we're ready.

20 MS. SCOTT: Judge, can I put something on the record
21 really quick? The photos I just entered were actually 6, 7,
22 8, 9, 11, 12, and 13. We withdrew 10.

23 THE COURT: Okay. 6, 7, 8, 9, 11, 12, 13.

24 MS. SCOTT: Yes, sir.

25 (State's Exhibit No. 13 was received into evidence.)

1 (The jury entered the courtroom at 3:24 p.m.)

2 THE COURT: Okay. You can call your next witness.

3 MR. GIESE: We'd call Breanna Jeffcoat.

4 THE CLERK: If you can place your left hand on the Bible
5 and raise your right hand.

6 LT. BREANNA JEFFCOAT,
7 after having been duly sworn, was examined and testified
8 to as follows:

9 THE CLERK: If you'll have a seat and state your full
10 name for the court reporter.

11 THE WITNESS: My name is Lieutenant Breanna Jeffcoat.

12 DIRECT EXAMINATION

13 BY MR. GIESE:

14 Q Lieutenant Jeffcoat, where are you employed?

15 A At SCDC.

16 Q You need to talk into that.

17 A SCDC.

18 Q And how long have you been employed there?

19 A Since February of 2016.

20 Q And how did you start there? What were you doing then?

21 A I started off of a regular correctional officer at
22 Manning, and then I was promoted to Contraband sergeant and I
23 was promoted again to Intel lieutenant at Kirkland.

24 Q Excuse me?

25 A To Intel at Kirkland.

- 1 Q Intel at Kirkland. Okay.
- 2 How long have you been in Intel at Kirkland?
- 3 A Almost two years.
- 4 Q During those two years, did you have an opportunity to
- 5 come in contact with Mr. Green?
- 6 A Yes, once.
- 7 Q Okay. And for how long did you meet him for?
- 8 A I'm not sure about how long. It was during a Teams call.
- 9 Q Okay. Was it a minute? Was it 30 minutes? Was it an
- 10 hour?
- 11 A Between 45 minutes to an hour.
- 12 Q Okay. And you sat in the same room with him?
- 13 A No, sir. It was during a Teams call.
- 14 Q Okay. Did you see him on the TV?
- 15 A Yes.
- 16 Q And, specifically, the times that you saw him on TV, he
- 17 is on -- I guess, he's on a screen that you were watching?
- 18 A Yes, sir.
- 19 Q Did he talk?
- 20 A Yes, sir.
- 21 Q And you were able to observe him?
- 22 A Yes, sir.
- 23 Q Is he in the courtroom?
- 24 A Yes.
- 25 Q Could you point to him, please.

1 A Right over there. (Indicating.)

2 Q Now, I want to draw your attention to some photographs.
3 State's Exhibit 21, 14, 16, and 18. Just take a look at them
4 and I'm going to ask you if you can identify them one at a
5 time.

6 A Yes, sir. On 16 and 18, I can see him clearly.
7 On 21, this looks like him.
8 And on 14, it looks like him.

9 Q Okay. If you would --
10 MR. GIESE: Can we show the tape?
11 (Video plays.)

12 Q If you could -- you can either watch it there or watch it
13 here.

14 A I think this one is better.
15 MR. GIESE: Okay. Back it up a little bit. Okay. Play
16 it.
17 (Video continues to play.)

18 Q Is that Mr. Green?

19 A Yes, sir.

20 Q Finish it.
21 (Video continues to play.)

22 Q And that's State's Exhibit No. 16. Can you identify
23 that?

24 A That's Mr. Green with, looks like, a homemade weapon.

25 Q And now No. 18.

1 A Mr. Green.

2 Q Is there something in his left hand?

3 A The T-shirt or white item.

4 Q That's all I have. Thank you.

5 THE COURT: Cross?

6 MR. HICKS: Your Honor, I would ask to have the Court
7 direct the prosecution to give me any witness statements or
8 previous interview statements that Ms. Jeffcoat has made, if
9 any.

10 MR. GIESE: I have none.

11 MR. HICKS: You haven't made any? Okay.

12 CROSS-EXAMINATION

13 BY MR. HICKS:

14 Q Is it Ms. Jeffcoat? Officer Jeffcoat? How would you
15 like me to address you, ma'am? We've never met; I want to get
16 it right.

17 A Lieutenant Jeffcoat.

18 Q Lieutenant Jeffcoat? Yes, ma'am. You've got it.

19 Lieutenant Jeffcoat, you said that you conducted a
20 hearing -- an administrative function with Mr. Green via some
21 kind of telecommunication device?

22 A Yes, sir.

23 Q When did that take place?

24 A When did it take place?

25 Q Yes.

1 A On December the 13th of last year.

2 Q 2023?

3 A Yes, sir.

4 Q Okay. And, prior to 2023, you have never met Mr. Green
5 before?

6 A Correct.

7 Q Okay. But you're able to identify Mr. Green from video
8 footage from 2018 based on having only met him but once via
9 video in 2023?

10 A He didn't change much from when I had seen.

11 MR. HICKS: No further questions, Your Honor.

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

13 THE COURT: You can step down. Thank you, ma'am.

14 MS. SCOTT: Your Honor, the State would call Clive Lopez.

15 THE CLERK: Mr. Lopez, if you could place your left hand
16 on the Bible and raise your right hand. You can turn around
17 and face me. Thank you.

18 SGT. CLIVE LOPEZ

19 after having been duly sworn, was examined and testified
20 to as follows:

21 THE CLERK: If you'll have a seat and state your full
22 name for the court reporter.

23 THE WITNESS: My name is Clive H. Lopez, Jr.

24 DIRECT EXAMINATION

25 BY MS. SCOTT:

1 Q Officer Lopez, what is your rank?

2 A Sergeant.

3 Q Sergeant. Okay.

4 Sergeant Lopez, where do you work?

5 A Lee Correctional Institution.

6 Q Okay. As part of the Department of Corrections; is that
7 correct?

8 A Yes.

9 Q Okay. How long have you been with SCDC?

10 A Since 2017.

11 Q Okay. Did you start at Lee or did you go to another
12 institution first?

13 A I started at Lee.

14 Q Okay. So, you have been at Lee for -- since 2017 and you
15 still work there?

16 A Yeah.

17 Q Okay. What were your -- I guess, when you first started
18 in 2017, I know we have heard a lot about dorm officers, yard
19 sergeants, everything like that. What did you start out as?

20 A A dorm officer.

21 Q A dorm officer?

22 A Yeah.

23 Q If you could briefly, what is a dorm officer's duties?

24 A You conduct count. You close and open, you know, cell
25 doors, so on and so forth.

1 Q And if you could, if you could speak into the microphone
2 just a little bit more.

3 A No, I'm saying you conduct count. You close and open
4 doors, you know, cell doors as well.

5 Q Okay. Did you primarily work a specific yard, east or
6 west?

7 A At that time, the west yard.

8 Q Okay. So, in 2018, you worked the west yard. Did you
9 work a specific dorm?

10 A F1.

11 Q What about the shifts? Did you have a day shift? A
12 night shift?

13 A I was on night shift at the time.

14 Q Night shift in primarily F1?

15 A Yeah. Yes.

16 Q So, you got to know at least by face these inmates pretty
17 well?

18 A Yeah.

19 Q April 15th of 2018, were you working that day?

20 A Yes, ma'am.

21 Q Okay. What time did you go in to work?

22 A Around 6:45, around that time.

23 Q That night?

24 A Yeah, that night.

25 Q Okay. So, tell me, when you first go in to work, when

1 you're changing shifts, tell me kind of what y'all do. What's
2 the process?

3 A We have a brief -- briefing, you know, tell us what's
4 going on at the institution, and then we go ahead and get our
5 keys and go, you know, to the dorm.

6 Q You get your keys. Explain the keys that you're given.

7 A We had different night shift keys and day shift keys.

8 Q All right. So, if I was to -- we're looking at a dorm.
9 Do you have keys to each A side and B side?

10 A Yes, ma'am.

11 Q Okay. Do you have keys to the entry doors to a dorm?

12 A No, ma'am.

13 Q So, when you go to a dorm, you get locked in there?

14 A Yes, ma'am.

15 Q All right. On April 15th, do you remember who you were
16 replacing or taking over?

17 A Yes. Officer James.

18 Q Okay. All right. Well, tell me, when you get there, you
19 have your briefing. Tell me what happens next.

20 A Well, that night, an incident had already happened in F3,
21 so we actually went to F3 first before we changed over on our
22 shift, and we got some inmates out of F3 that were hurt at the
23 time.

24 Q Okay. And where did you take those inmates?

25 A Medical.

1 Q So, you go to F3. You go to Medical. Do you eventually
2 go to F1?

3 A Yes, ma'am.

4 Q All right. Roughly what time do you think you made it
5 back to F1?

6 A Around 8:00 that night.

7 Q So, at this point, you know that the riot had already
8 started?

9 A Yes, ma'am.

10 Q What was the atmosphere like in F1 when you got there?

11 A Very tense.

12 Q Tense?

13 A Yeah.

14 Q Okay. Kind of give us a little more detail of what you
15 were experiencing.

16 A You know, people walking around in, like, coats.

17 Q Walking around in coats? So, why is that significant?

18 A They might be wearing armor underneath. They're probably
19 carrying a weapon. That type of situation.

20 Q Armor? What do you mean, armor?

21 A Like, you know, like homemade -- whatever they can get,
22 like, to, you know, protect themselves.

23 Q Okay. And you said they could be hiding weapons as well?

24 A Yes, ma'am.

25 Q All right. So, you go to F1. Kind of tell us what you

1 start doing when you get to F1. What should you be doing in a
2 normal circumstance?

3 A In a normal circumstance, we try to lock the unit down.

4 Q And did you try?

5 A It -- it was not a normal circumstance at all.

6 Q Right.

7 A It was just --

8 Q Chaos?

9 A Yeah.

10 Q So, when -- all right. Under a normal circumstance,
11 you're supposed to lock down. Does that mean you go to one
12 wing first and you go cell to cell to lock people down? Is
13 that how that would work?

14 A Yes, ma'am.

15 Q Okay. And did you attempt to actually lock people in
16 their cells?

17 A Later on that night but not at that time.

18 Q Okay. Were they refusing to go?

19 A They were, like, grouped up, carrying on conversations
20 about, you know -- you know, what was going on.

21 Q You mentioned grouped up.

22 A Yeah.

23 Q Was that on the A side or the B side?

24 A On the B side.

25 Q B side, they're grouped up.

1 Explain to the jury a little bit what you mean by
2 "they're grouped up."

3 A Basically, by gang affiliation.

4 MR. HICKS: Excuse me, Your Honor. Please ask him to
5 speak up. I'm having a hard time hearing.

6 THE COURT: I can't hear him either.

7 MS. SCOTT: Okay. See if we can scoot your chair a
8 little closer to here. Is that better?

9 THE WITNESS: Okay.

10 BY MS. SCOTT:

11 Q All right. Again, can you tell me what you mean by
12 "grouped up" in B?

13 A On this B side, it appeared they were separated by gang
14 affiliation.

15 Q Were they in different areas of the dorm?

16 A Yes, ma'am.

17 Q Okay. And how did that make you feel at that point?

18 A I never seen, you know, anything like that before.

19 Q Right. Let me ask you this: When you're in a dorm and
20 you're locked in there, how many inmates are usually in a dorm
21 with you at one time?

22 A It's usually over a hundred on each side.

23 Q So, roughly 200?

24 A Yes, ma'am.

25 Q And you're locked in?

- 1 A Yes, ma'am.
- 2 Q What kind of weapons do you have?
- 3 A We have a gas canister. Basically, pepper spray.
- 4 Q Pepper spray?
- 5 A Yeah.
- 6 Q And that's all you have?
- 7 A Yes, ma'am.
- 8 Q And some keys?
- 9 A Yes, ma'am.
- 10 Q And at that time in F1, were you the only officer in
- 11 there?
- 12 A Yes, ma'am.
- 13 Q Okay. Throughout the whole night?
- 14 A Yes, ma'am.
- 15 Q All right. So, you see these people grouped up on the B
- 16 side. What do you do then?
- 17 A At that time, you know, just observing them. Like, just
- 18 watching what's going on.
- 19 Q When you first started at the Department of Corrections,
- 20 did you go through training?
- 21 A Yes, ma'am.
- 22 Q Were you taught -- if a situation had come to something
- 23 like this, what are you taught to do?
- 24 A Basically, you know, barricade yourself in an area and
- 25 wait for assistance.

1 Q And, at this time, you're all alone?

2 A Yes, ma'am.

3 Q What was going through your mind at this point?

4 A It was a little surreal. You know? You know, I had
5 never seen anything like that.

6 Q Well, okay. So, you're on the B side. At some point, do
7 you decide to go to the A side?

8 A Well, on the B side, you know, I could hear that the --
9 one side was getting agitated and then started to make noise,
10 and then, basically, kind of started to move towards the other
11 end of the unit.

12 Q Okay. You said it was rival gangs grouped up?

13 A Yeah. Yeah. Yes, ma'am.

14 Q All right. I want to show you some video surveillance.

15 Officer Lopez -- I don't know. Can you see the -- you
16 have the screen there?

17 A Yes.

18 Q What we're looking at right here is F1/A entry door. The
19 time, it looks to be 10:04:13.

20 A Yes.

21 Q Is that correct?

22 A Yes, ma'am.

23 Q Had you locked yourself on the A side at this point?

24 A Yes, ma'am.

25 Q Okay. So, take us back a little bit to when you -- you

1 go to the A side and you lock yourself in. Roughly how long
2 had you been there? Kind of explain a little bit of that.

3 A Yeah, I secured myself on the A side, and then, at the
4 time, there were requests at the door to have me open the
5 door, and I was refusing the request to open the door.

6 Q So, what we're looking at right here, we see you at a
7 door. Is there someone else on the other side?

8 A Yes, ma'am.

9 Q And they were asking you to open the door?

10 A Yes, ma'am.

11 Q But, for your safety and the safety of the other
12 inmates ---

13 A Yes, ma'am.

14 Q --- you kept it locked?

15 A I refused, yeah.

16 Q Okay. And we're just going to play it from here.

17 (Video play.)

18 This inmate behind you, do you know who that was?

19 A I believe that's Henry Dukes.

20 MS. SCOTT: And pause it real quick.

21 (Video continues to play.)

22 Q What's happening here, Officer Lopez?

23 A I kind of -- he started punching me in the head. And I
24 tried to keep him off of me at the time.

25 (Video continues to play.)

1 Q Why was he doing this?

2 A He was -- like, at that time, he was, like, trying to
3 say, "Hey, open the door," go ahead, you know.

4 Q So, at this point, he's trying to get the keys from you?

5 A I would assume, yes, ma'am.

6 Q And did you see -- on the A side, did you see any inmates
7 with weapons around this point in time?

8 A I wasn't looking for weapons, but I just assumed that
9 they were carrying weapons with them.

10 Q Because they were clothed?

11 A Yes, ma'am.

12 Q Okay. Did you eventually give him the keys?

13 A Not him but when another inmate came at me with a knife
14 exposed, yes, I dropped the keys.

15 Q Okay. So, another inmate came after you?

16 A Yes, ma'am.

17 Q With a weapon?

18 A Yes, ma'am.

19 Q All right. So, you throw the keys at that inmate and
20 then what?

21 A I -- I walked away, yeah.

22 Q Okay. Did you eventually have to throw another set of
23 keys?

24 A Yes, because, you know, I realized at the time that they
25 had their own keys, and I didn't want them to come, you know,

1 after me again for, you know -- so I just gave them the right
2 keys.

3 Q Right. Okay.

4 So, we see, you know, you throughout the video,
5 throughout the night on A and B side. Do you eventually go
6 back to the B side?

7 A Yes, ma'am.

8 Q Okay. Explain that for me when you finally open the door
9 and go to the B side.

10 A When I went to the B side, you know, like, when I came in
11 the unit, you know, I could see that there was an inmate down
12 on the right-hand side.

13 Q So, there was an inmate down. At that point, in your
14 training, what are you supposed to do at that point if you're
15 surrounded by all these inmates?

16 A I mean, they told us, that, you know, unless -- if the
17 scene isn't safe, you know, it's more important that you
18 protect yourself.

19 Q And call for help?

20 A Right. Call for help.

21 Q And that's what you did?

22 A Yeah, I called for help.

23 Q So, in the video, you have your radio, calling for help
24 often?

25 A Yeah.

1 Q And I believe -- do you talk to the warden that night as
2 well?

3 A On the phone, yes, ma'am.

4 Q On the phone.

5 Sergeant, when you -- when this first happens -- let's go
6 back to when did you finally get out of F1 dorm. How did that
7 occur?

8 A The red team came in and took me out of F1.

9 Q Okay. So, they came in and got you. Do you know around
10 what time?

11 A 11ish. Around 11ish, I think.

12 Q And, at this point, you were trying, from 10:04 to 11:00.
13 At some point, were you able to lock down some inmates?

14 A On the A side, yes. I locked some doors on the A side.

15 Q So, you were able to secure some people before the red
16 team got there and make it a little less hectic for them?

17 A Yes, ma'am.

18 Q After you get taken out, do you get debriefed and things
19 of that nature?

20 A Yes, ma'am.

21 Q Do you eventually meet with law enforcement on this case?

22 A Yes, ma'am.

23 Q And then, when you meet with law enforcement, did you end
24 up meeting with Agent Shaw as well -- SLED Agent Shaw?

25 A I'm sure, yes.

1 Q Did you happen to meet with her to -- were you asked to
2 identify certain inmates from the video footage?

3 A Yes, ma'am.

4 Q Okay. Were you played the video footage like this and
5 were you asked if you see someone that you know, pause it,
6 print it, and sign your name? Is that how that kind of
7 worked?

8 A Yes, ma'am.

9 (State's Exhibit No. 34, Still shot Photo with Email
10 8/1/23, was marked for identification.)

11 Q I want to show you, Sergeant, what's been marked as
12 State's Exhibit 34. Do you recognize that?

13 A Yes, ma'am.

14 Q And what is that?

15 A A picture of the sally port with inmates in the sally
16 port.

17 Q And is there a circle on that page?

18 A Yes, ma'am.

19 Q Is there a signature and date?

20 A Yes, ma'am.

21 Q Is your signature?

22 A Yes, ma'am.

23 Q What's the date on there?

24 A August 1st of '23.

25 Q Okay. And who is this picture that --

1 MS. SCOTT: Well, first, Judge, at this time, we'd offer
2 State's 34 for admission into evidence.

3 THE COURT: Any objection?

4 MR. HICKS: I'm sorry, Your Honor.

5 THE COURT: They're offering --

6 MR. HICKS: Oh, no objection.

7 THE COURT: Okay. It's in without objection.

8 (State's Exhibit No. 34 was received into evidence.)

9 BY MS. SCOTT:

10 Q So, this is State's Exhibit 34. Who is this person that
11 you circled in this picture?

12 A Stephen Green.

13 Q Stephen Green.

14 All right. So, as the F1 dorm officer, were you familiar
15 with Stephen Green from, I guess, being on the dorm with him
16 multiple times?

17 A Yes, ma'am.

18 Q Did you know him by his first name? his last name? his
19 nickname?

20 A His name, his first and last name.

21 Q Stephen Green?

22 A Yes, ma'am.

23 Q Okay. And were you able to identify him throughout the
24 video but this is just one of the screen shots?

25 A Yes, ma'am.

1 Q And, to your memory, do you remember seeing Stephen Green
2 that night?

3 A I know I saw him. Yes, ma'am, yes.

4 Q So, you do remember seeing him that night?

5 A Yes.

6 Q I want to show you a couple more pictures, specifically
7 State's Exhibit 14 and 21. Do you recognize those pictures?

8 A Yes, ma'am.

9 Q And what are those pictures of?

10 A The second tier.

11 Q The second tier. Okay.

12 And do you recognize anyone in those pictures?

13 A Yes, ma'am.

14 Q And who is that?

15 A Stephen Green.

16 Q And you said on the second tier?

17 A Yeah.

18 Q And what side is this on? Is this A or B side?

19 A That's got to be B side.

20 Q B side.

21 And State's Exhibit 21, is that just a different angle of
22 the B side?

23 A Yes, ma'am.

24 Q Okay. Officer Lopez, you did mention that you remember
25 maybe seeing him that night; is that right?

1 A Yes, ma'am.

2 Q Okay. Do you remember seeing him go into his cell?

3 A No. I can't remember actually seeing him go into his
4 cell.

5 Q You don't recall?

6 A No.

7 Q But you do recall seeing him that night, though, on the
8 F1?

9 A Yes, ma'am.

10 Q B side or A side or both?

11 A Both of them.

12 Q And do you see Stephen Green in court today?

13 A Yes, ma'am.

14 Q And would you mind pointing him out, please.

15 A He's sitting over there (indicating).

16 Q Thank you. Please answer any questions the defense has.

17 CROSS-EXAMINATION

18 BY MR. HICKS:

19 Q Good afternoon. Excuse me; I apologize. Good afternoon.

20 Is it Officer Lopez or Sergeant Lopez?

21 A Sergeant Lopez.

22 Q That's what you prefer?

23 A That's fine.

24 Q Okay. Yes, sir.

25 So, Sergeant Lopez, on the night of this riot -- before I

1 even get into anything, there was some contention and maybe
2 misunderstanding about whether or not you were a hostage in
3 the F1 form. And I don't even care about all of that. I just
4 want to say that I'm glad you're safe. I know that must have
5 been terrifying, and it's unfortunate that you had to go
6 through it, whether it was a hostage situation or not. And
7 I'm glad you're here and able to even talk to us today.

8 Having said all of that, at the time that Mr. McClary was
9 first attacked over on the B side ---

10 A Yes, sir.

11 Q --- you were over on the A side of the dorm; is that
12 correct?

13 A Yes, sir.

14 Q So, you never witnessed any of the initial attack on Mr.
15 McClary; is that right?

16 A No, sir. No, sir.

17 Q And you didn't actually enter the B side of the dorm
18 until around -- I mean, I can pull up the video and show you
19 if you'd like, but until around 10:08 that evening, roughly?

20 A I'm sure that's right.

21 Q Okay. Again, to the best of your memory, you were only
22 over on the B side for just a couple of minutes, give or take?

23 A Yes, sir.

24 Q All right. And then, after that, you went back over to
25 the A side; is that correct?

1 A Yes, sir.

2 Q And then, later on, back over to the B side one more time
3 at about a quarter after, give or take, somewhere in that
4 ballpark?

5 A Yes, sir.

6 Q And then back over to the A side a few minutes later?

7 A Yes, sir.

8 Q About 10:18 or so, just shortly after?

9 I mean, you didn't go back over to the B side after that;
10 is that correct?

11 A I'm sure I -- I don't remember what -- the last time I
12 went over there, but...

13 Q Okay. All right. But you were not over there at 10:35
14 that night when the final attack on Mr. McClary occurred; is
15 that correct?

16 A No, no.

17 Q All right. So, you did not witness anybody actually
18 strike Mr. McClary ever?

19 A No, sir.

20 Q Okay. And that anybody also includes Mr. Green; is that
21 correct?

22 A That's correct, sir.

23 Q And so, to be clear -- I just want to be crystal clear
24 about this, your identification of Mr. Green is exclusively
25 based on the video, not that you physically were in the B side

1 and witnessed any of these assaults or anything take place?

2 A That's correct, sir.

3 Q Okay. Thank you.

4 How often did you work in the F1 dorm prior to the riot
5 occurring? So, here's what I'm struggling with in a couple of
6 places. It seems like, with SCDC corrections officers, you
7 don't have regular assignments; right? It's not like you, you
8 own F-1/B side dorm and you, you own -- like, you guys kind of
9 float around; is that right?

10 A It's at the discretion of the shift captain or
11 lieutenant.

12 Q Okay. All right. And so, again, how frequently would
13 you say you worked in the F1 dorm prior to the riot?

14 A Most nights, I worked F1.

15 Q Most nights?

16 A Yes, sir.

17 Q Five days a week, you work?

18 A About five. Two on, three on.

19 Q Of the -- in any given week, how many of the days that
20 you're on duty would you say you worked in the F1 dorm before
21 the riot?

22 A I can only say most, in case I'm not -- you know,
23 occasionally, I might be in F3 but mostly F1.

24 Q And when did you start working in the F1 dorm, again,
25 prior to the riot?

1 A I graduated December 15th.

2 Q Of which year, sir?

3 A 2017.

4 Q Okay.

5 A Yeah. I think, in January of '18, I started working in
6 F1.

7 Q January of 2018, you started working in the F1 dorm?

8 A Yes, sir.

9 Q Most of the time -- most of the days of your shifts you
10 were working in the F1 dorm ---

11 A Yes, sir.

12 Q --- over the course of roughly four months before the
13 riot started.

14 And would you say that you were pretty familiar with
15 Mr. Green and his appearance?

16 A I was familiar with his appearance, yes, sir.

17 Q Okay. Did you ever have any -- again, prior to the riot,
18 did you ever have any interactions with him, any conversations
19 or anything like that, that stands out or anything that sticks
20 in your mind?

21 A Nothing that really sticks in my mind, no, sir.

22 Q Okay. And there was a couple hundred inmates total in
23 the F1 dorm?

24 A Yes, sir.

25 Q And over the course of four months of you working in the

1 F1 dorm, you were able to become familiar enough with
2 Mr. Green, out of these couple of hundred other inmates that
3 you worked with, that you're able to easily pick him out of
4 video footage that's, frankly, a little bit grainy and hard to
5 see, for the most part? Is that your contention?

6 A Yes, sir.

7 Q Okay. Inmates regularly stayed in the wrong cells within
8 the various dorms of the prison; is that not -- again, I'm
9 talking before the riot. Let me clarify.

10 Inmates regularly stayed in the wrong cells, not the
11 cells that they were assigned to, prior to the riot; is that a
12 fair statement?

13 A It did happen, yes, sir.

14 Q And it would also happen that inmates would sometimes
15 just pack up their stuff and move to a different dorm if they
16 felt like? Is that also not a true statement? Not
17 necessarily as often as the cells, but it would happen?

18 A That, I'm not as sure about.

19 Q Okay.

20 A Yeah.

21 MR. HICKS: I have no further questions, Your Honor.

22 Thank you, Sergeant Lopez. I appreciate it.

23 THE WITNESS: No problem.

24 MS. SCOTT: No further questions, Your Honor.

25 THE COURT: Okay. Thank you, sir.

1 THE WITNESS: No problem.

2 THE COURT: Schedule-wise, are we going to call another
3 witness today?

4 MR. GIESE: Your Honor, we have two short witnesses but
5 they're tomorrow morning. They're going to be here in the
6 morning.

7 THE COURT: Okay. All right, ladies and gentlemen. That
8 means we're going to quit for the day. I'll see you back at
9 9:30 in the morning. Don't discuss the case and allow anyone
10 to discuss it with you. If you have an emergency, call us.
11 Thank you.

12 (The jury exited the courtroom at 3:57 p.m.)

13 THE COURT: Okay.

14 MR. GIESE: Thank you, Your Honor.

15 THE COURT: See y'all in the morning.

16 MR. HICKS: Thank you, Your Honor.

17 (The trial adjourned for the day at 3:58 p.m.)

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1 STATE OF SOUTH CAROLINA * GENERAL SESSIONS
2 COUNTY OF LEE * TRANSCRIPT OF RECORD
3 -----X
4 STATE OF SOUTH CAROLINA, *
5 vs. * Case No. 2020-GS-47-00020
6 STEPHEN J. GREEN, *
7 Defendant. *
-----X

8 September 23-26, 2024

9 JURY TRIAL
10 SEPTEMBER 26, 2024 - VOLUME IV

11 B E F O R E:

12 The Honorable R. Ferrell Cothran, Presiding Judge; and a
13 jury.

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

15 Barney Giese, Esq.
Margaret Scott, Esq.
Assistant Solicitors for the State
16 Matthew Hicks, Esq.
17 Attorney for the Defendant
18
19
20
21
22
23
24

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

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E X H I B I T S

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5	Enlarged Google Map	32	116
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9	30-ID	Photograph of F1/A Wing	242	---
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P R O C E E D I N G S

THURSDAY, SEPTEMBER 26, 2024 -- 10:36 a.m.

THE COURT: Anything before I bring the jury in?

MS. SCOTT: Nothing from the State, Your Honor.

MR. HICKS: Nothing from the defense, Your Honor.

THE COURT: All right.

(The jury entered the courtroom at 10:38 a.m.)

THE COURT: Ladies and gentlemen, it happened again and I'm sorry. No matter how hard I try, it happened outside of my control. I know y'all have been sitting back there for over an hour, and I apologize. But I think we're ready to go now.

You may call your next witness.

MS. SCOTT: Thank you, Your Honor. The State calls Cody Wilson.

THE CLERK: Mr. Wilson, if you'll raise your right hand to be sworn.

CHIEF CODY WILSON,

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

THE CLERK: Thank you. If you can have a seat and state your full name for the court reporter.

THE WITNESS: Yes, ma'am. My full name is Cody Wilson.

DIRECT EXAMINATION

BY MS. SCOTT:

1 Q Cody Wilson, you are Chief of Special Investigations; is
2 that correct?

3 A Yes, ma'am, that's correct.

4 Q With SCDC?

5 A Yes, ma'am.

6 Q Okay. If you could, tell the jury a little bit about
7 your background. How long have you been with SCDC, your law
8 enforcement career?

9 A Sure, yes, ma'am. I have a little over 13 years of law
10 enforcement experience. I have been with SCDC a little over
11 seven years. Prior to that, I was a deputy sheriff for about
12 6-1/2 years before that.

13 Q Okay. And back in 2018, what position were in at SCDC?

14 A I was a regional special agent.

15 Q Okay. And what kind of duties would that be?

16 A It would entail working on any kind of inmate-on-inmate
17 assaults as well as inmate-on-employee assaults, some public
18 corruption, introduction of contraband type of cases and so
19 forth. And we were also tasked, our office, with handling any
20 homicide investigations as well. So, violent crimes.

21 Q So you would be the lead investigator on those types of
22 cases; is that correct?

23 A Yes, ma'am. Or assisting investigators as well.

24 Q Back in April 15th of 2018, did you happen to become
25 involved in the Lee riot?

1 A Yes, ma'am, I did.

2 Q Okay. And if you could explain, you know, when you first
3 got involved. Did you get a phone call? What happened?

4 A Sure. Well, on that night -- I believe it was a Sunday
5 evening -- I received a -- I believe it was a text message
6 from my supervisor at the time. It was a group message with
7 the respective region and the special agents that were in that
8 region at the time. He was letting us know what was going on,
9 what was transpiring, and kind of giving us a heads-up, "Hey,
10 the situation is volatile. You-all may want to be prepared to
11 respond and assist as necessary." And how I was told at the
12 time was there was a large-scale disturbance in multiple dorms
13 at Lee that had potentially resulted in numerous assaults
14 there.

15 Q Okay. Roughly what time, I guess, did you get this call
16 or text?

17 A Between 8:30 and 9:30 at night.

18 Q Okay. So, it's a Sunday night. You get this text. What
19 time or how long does it take you to get to the prison?

20 A Between 45 minutes to an hour. It might have taken a
21 little bit longer. It was raining pretty heavily that night.

22 Q So, that's another thing. So, tell me about the weather.
23 Was it a pretty bad storm?

24 A It was. It was raining pretty bad. A large-scale
25 thunderstorm had passed through. Probably from 6:00 or 7:00

1 that evening, it had started raining probably up until maybe
2 midnight or so.

3 Q So, roughly what time did you arrive on-scene?

4 A I would say probably somewhere a little after 11:00.

5 Q Okay. So, 11:00 at night?

6 A Mm-hmm.

7 Q You get to Lee Correction. What was the atmosphere when
8 you got there?

9 A Well, the atmosphere on the outside, there was very large
10 law enforcement presence, as expected. There were assets from
11 the Department of Corrections to include their specialized
12 teams. There was numerous agents from our office there at the
13 time. There were law enforcement personnel from the sheriff's
14 office -- Lee County Sheriff's Office down here. There may
15 have been somebody from Bishopville Police Department; I know
16 it's not -- it's a little out of their jurisdiction, but due
17 to the magnitude, they may have been there. As well as the
18 South Carolina Law Enforcement Division, their special
19 response teams, or SWAT team, began to assemble and arrive
20 there.

21 So, obviously, upon arrival, very large law enforcement
22 presence. There was emergency response personnel and fire
23 service here from Lee County as well as EMS as well.

24 Q So, you have described or mentioned some of the SCDC
25 specialized teams. What are some of those that were there?

1 A Sure. The SORT team, which is basically the Department
2 of Corrections' equivalent of a law enforcement SWAT team.
3 They have very dynamic capabilities. They're armed. They go
4 through very extensive trainings in special weapons and
5 tactics and so forth.

6 And they also -- SCDC has a non-armed response team that
7 is more of a crowd or a riot control, and this would have
8 been -- I believe the correct term is the Rapid Response Team.

9 Q Okay. And they all were there when you get there,
10 essentially. Or everyone is kind of getting there at the same
11 time?

12 A Yes. I can't say that all of them were there, but a
13 large number had gotten there. They were still waiting on
14 some people but obviously trying to formulate a plan as to how
15 to handle the situation. But a large number began to assemble
16 there.

17 Q Okay. And at that point when you arrive, had they made
18 entry into any of the dorms at that point?

19 A I believe that they may have tried to begin making entry
20 in some of those. I did not take part in that, but I believe
21 at least one of the dorms, they tried to begin attempting to
22 regain some form of law and order.

23 Q Chief Wilson, if you wouldn't mind stepping down. I want
24 to show you State's Exhibit 5. If you can just -- I want to
25 go through, when you arrive, if you could show the jury when

1 you get there, where do you go when you initially arrive on
2 the scene?

3 A Sure. This is going to be the front entrance of the
4 institution where any visitors and employees park. Obviously,
5 this is going to be the main access.

6 This is where I entered that evening. And this is the
7 administration building where a lot of the law enforcement
8 personnel and special response teams had begun to assemble
9 inside of there. And, obviously, this parking lot was -- had
10 gotten probably completely full, from my recollection, as well
11 as the field areas between employee vehicles and special
12 response vehicles, law enforcement vehicles. So, there was
13 heavy presence here and heavy presence inside of the
14 administration building here as well.

15 Q Is Medical also in that building?

16 A Medical? Yes. It's going to be -- let's see. If you
17 enter -- this is going to main wing that you enter here, and
18 if you go over to my right, Medical is going to be one of
19 these areas in here.

20 Q And, at that point, had some of the injured inmates been
21 brought to Medical?

22 A From my recollection, yes, I believe there were some
23 there.

24 Q And, at that point, had some of the inmates that were
25 injured already left by ambulance to go to the hospitals?

1 A I believe so, yes.

2 Q All right. So, you arrive. Where do you go when you get
3 there?

4 A I go in this building here, the admin building. That
5 would have been in the center portion of this building.
6 Obviously, I spoke to my supervisor, asking where I was --
7 should be utilized at that time. At that time, I was directed
8 to the outer perimeter of the institution.

9 Q Okay. And what was the reason for that? Why is this
10 needing to be, I guess, secured?

11 A Sure. There was concern that multiple inmates had tried
12 to jump the fence. Whether that was to escape any violence
13 that was going on or whether it was to actually escape the
14 institution, that was not particularly known at the time. So,
15 there was a heavy focus on securing this whole outside
16 perimeter. Even though the events took place on the west
17 yard, obviously, you want to secure the whole facility just to
18 the magnitude of the incident.

19 But I was deployed to this outer perimeter with members
20 of the Lee County Sheriff's Office as well as other special
21 agents with our office.

22 Q So, to your knowledge, had numerous inmates actually
23 gotten out in the area, trying to get over the fence?

24 A Yes. They had gotten out, and they had actually gotten
25 over some of the inner perimeter fences, and that was what was

1 causing a major concern because I think, obviously, at that
2 point in time, nobody knew if any had -- during all this
3 transpiring, if any had made it over the outer fence.

4 Q So, you go to the outer perimeter. Where do you -- you
5 know, explain what you're seeing there. What's the scene when
6 you're there?

7 A Sure. I go to the outer perimeter here. It would have
8 been, from my recollection, somewhere in between -- this is
9 the F1 dorm, this is the F3 dorm. F5 dorm, that looks
10 different than the others. I would have been somewhere in
11 between F1 and F5, but I was closer to the F1 section because
12 I could see activity -- inmate activity taking place on the
13 rec yard there.

14 Q Okay. So, if you could point to the rec yard for F1.

15 A Sure. It's right here.

16 Q Okay. And what did you see going on in the rec yard?

17 A There were multiple inmates out on the rec yard as well
18 as there was an officer that was out there with them. From my
19 recollection, both the officers and the inmates kept going in
20 and out of the door to the rec yard. It wasn't -- it wasn't
21 secured. But inmates were having -- having conversations.
22 There was no violence on the rec yard taking place, but
23 obviously, there was commotion. I think they were trying to
24 communicate, from what I remember, with the officer that was
25 there as well as maybe law enforcement out on the outer

1 perimeter.

2 Q So, you mentioned that they were out on the rec yard.
3 Could they -- could the officer get out of this area or was he
4 locked into F1, essentially?

5 A He was -- from the rec area, he would have been locked in
6 here. This is a rather large chain-link, barbed-wire fence
7 with very sharp wire on the top of that fence.

8 Q At that point, did you know that anything had occurred in
9 F1, or were you only aware of F3 and F5 at that point?

10 A I don't recall if we knew exactly what had gone on in F1,
11 but we did know that there was -- or I did know that there was
12 large-scale disturbances in at least one of these three dorms
13 on the west yard.

14 Q All right. You can have a seat. Thank you.

15 So, you're outside. Do you eventually go back inside in
16 the prison towards, I guess, the other dorms, F3 and F5?

17 A Yes, ma'am.

18 Q Okay. Explain a little bit about that, please.

19 A Sure. Once I was no longer needed on the outer
20 perimeter, that would have been, from my recollection, really
21 in the early morning hours; probably between 1:00, 2:00, 3:00
22 in the morning, somewhere in there. I actually made it onto
23 the yard as I was asked to assist the South Carolina Law
24 Enforcement Division's Crime Scene Unit as well as the Lee
25 County Coroner's Office, making entrance onto the yard and

1 help them escort them in.

2 There was actually a large gate on the backside of the
3 institution that, if you look at it clockwise, from 12:00 to
4 6:00, 12:00 is the front and 6:00 would be the back. That is
5 where I entered.

6 We had to get -- I can't recall his name at this moment,
7 but an SCDC personnel to unlock that gate, and that's when
8 SLED's Crime Scene trucks were able to enter, as well as the
9 coroner's office, and we were able to proceed to the west
10 yard.

11 Q When Crime Scene got there, were they able to immediately
12 just go into the dorms, or were the dorms not secured at this
13 point?

14 A No, it was my understanding that they was still securing
15 of inmates that were being done. Obviously, it was still very
16 much chaotic.

17 Q Chaotic. So, it's chaotic. You see inmates kind of not
18 locked down. Do you see weapons of any kind?

19 A Yes.

20 Q Okay. Describe the weapons that you're seeing.

21 A Sure. They were homemade weapons that would be
22 consistent with that of a prison environment. Sharp-edged
23 weapons made from instruments that inmates are able to gather
24 there at the institution. Pieces of metal, aluminum, so
25 forth. They would have been, from my recollection, anywhere

1 from spike type of weapons to hatchet-looking weapons or even
2 knife -- homemade-knife-looking weapons. They were numerous
3 across the yard.

4 Q So many, many weapons that you're seeing?

5 A Yes, ma'am.

6 Q And so, at this point, for law enforcement and for
7 everyone involved, what's the focus right now at this time of
8 night?

9 A The focus at that time of night is to maintain or to
10 regain a sense of control over the institution, establish some
11 form of law and order inside the institution, and also, the
12 safety of the inmates, safety of the staff, and obviously, as
13 I mentioned before, any kind of escape concerns that were had,
14 the general well-being of the citizens of Lee County.

15 Q So, were there some people that were gathering the
16 weapons that they found to try to get them away from possible
17 inmates getting them?

18 A Yes, ma'am.

19 Q Okay. And when you were there, I guess, did you become
20 aware of what did occur within the dorms?

21 A Yes. I had gotten a good understanding of what had taken
22 place.

23 Q So, you're there that night. What time did you -- I
24 guess, did you get a call that you were going to be the lead
25 investigator?

1 A I actually got a text message, yes, ma'am.

2 Q Okay. So, around what time did you find out that you
3 were --

4 A That was probably 2:00 or 3:00 in the morning, I received
5 a text message in the same text message group that informed me
6 to what was going on and to proceed there. And I was told
7 that I would be the lead investigator on the case.

8 Q What time did you leave the institution that night?

9 A It would have been the following morning, probably 5:00,
10 5:30, 6:00 in the morning.

11 Q At that point, was there institutional control?

12 A There was more control than what there had been that
13 night. And when I say that, inmates were secured in cells to
14 the best of the ability. It may not have been the cell they
15 were assigned to. It may not have even been the dorm that
16 they were assigned to, but there had been somewhat of control
17 established. And when I say "control," inmates behind a
18 locked door.

19 Q So, when do you come back for the investigation?

20 A I went home, got a little bit of sleep. Maybe 9:00 or
21 10:00 that same morning that I left.

22 Q All right. So you're leading the investigation. What is
23 the first thing that, in your mind, is the best thing to start
24 doing in a case like this?

25 A A case of that magnitude, the strategy at that time was

1 to try to cultivate any potential witnesses that would
2 cooperate. Obviously, employee witnesses in particular,
3 inmate witnesses. The inmate witnesses, that was problematic
4 due to the gang nature of this case, but the initial strategy
5 was to cultivate as many witnesses as possible to piece
6 together what exactly happened.

7 Q So, trying to interview witnesses to figure out, I guess,
8 what caused this and who did what?

9 A Correct.

10 Q How many interviews do you think that you conducted in
11 this case?

12 A Between employees and inmates together, probably well
13 over 200.

14 Q Well over 200.

15 And did you interview some people more than once?

16 A Yes.

17 Q All right. What's another important factor in your
18 investigation that you saw that was important in a case like
19 this that you wanted to make sure you took care of when you
20 first became the investigator?

21 A Sure. Any video footage that -- obviously, SCDC, the
22 institution had cameras there, so capturing any of the video
23 footage that would aid in the investigation in any way.

24 Q To help you identify certain people?

25 A Correct.

1 Q Okay. At this point, you're conducting these witness
2 interviews, gathering the video surveillance and everything.
3 How long do you think it took for the institution to regain
4 control?

5 A I would say, an absolute form of operating, working
6 order, a fair assessment would probably be a couple of weeks
7 to regain some level of normal operations.

8 Q So, within those couple of weeks, is the focus for the
9 institution to be able to create a safe environment for the
10 others that are still living there?

11 A Correct, yes, ma'am.

12 Q And what you were focusing on is the witness interviews;
13 is that correct?

14 A Correct, yes, ma'am.

15 Q All right. And, at some point, after all these
16 interviews, did this case turn into a different -- a state
17 grand jury investigation?

18 A It did, yes, ma'am.

19 Q Okay. Explain that to the jury a little bit, please.

20 A Sure. Well, I would say, initially, in 2018, moving
21 further into the spring and the summer of 2018, due to the
22 magnitude of this case, the obvious gang connections in the
23 case, there were very early discussions with the Attorney
24 General's Office and SLED, in particular the State Grand Jury
25 section.

1 For whatever reasons, it was not adopted at the time.

2 And then I would say late 2019/early 2020, the South Carolina
3 Law Enforcement Division became more heavily involved, and the
4 case was initiated by the State Grand Jury.

5 Q And that's when Agent Shaw began investigating the case
6 on her end?

7 A Yes, ma'am.

8 Q But you were still involved as a liaison between the two
9 agencies; is that correct?

10 A Yes, ma'am.

11 Q So, again, when you're on-scene, that night and that next
12 morning as well, you mentioned the rain. Tell me a little bit
13 about when you're there. Is there a -- is it messy? Is it
14 muddy? Is it bloody? Kind of describe the scene a little
15 bit.

16 A It was all three. Obviously, like I had spoken too
17 early, the rain was extremely heavy that night. So, you
18 had -- some of the yard is, obviously, cement walkways. That
19 was wet. There's also mud and grass. It was extremely muddy.
20 And there were also -- in front of the some of the dorms,
21 there were deceased individuals. So, there was a large amount
22 of blood, mud, water, as well as trash, homemade weapons, and
23 I believe clothing items or sheets that it appeared that the
24 inmates who tried to hop over the fence of those respective
25 dorms had used so they would not get cut, I'm assuming.

1 Q So, again, April of 2018, the main focus is safety and
2 security of the inmates and the law enforcement that's there
3 at that time?

4 A Yes, ma'am.

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

6 Please answer any questions the defense has. Thank you.

7 CROSS-EXAMINATION

8 BY MR. HICKS:

9 Q Good morning.

10 A Good morning.

11 Q Is it Agent Wilson? Chief Wilson? Assistant Chief? How
12 would you prefer I address you?

13 A Chief is fine. I have been called a whole lot worse
14 things.

15 Q I'm going to call you chief, if that works for you.

16 A Okay. Yes, sir, that'll work.

17 Q I'm pretty sure I'm not going to trip over that one.

18 So, before you were in your current position with -- so,
19 I guess there's been some organizational changes where now
20 your position is under the Inspector General's Office; is that
21 correct? Or am I wrong on that one?

22 A Yes, sir.

23 Q Okay. And before you were in this position and what it
24 was prior to the organizational change, you were with the
25 Kershaw County Sheriff's Department, you said?

1 A I was, correct. Yes, sir.

2 Q As a deputy?

3 A Yes, sir.

4 Q And you went through the South Carolina law enforcement
5 academy?

6 A I did, yes, sir.

7 Q All right. How long were you a deputy?

8 A 6-1/2 years or so.

9 Q All right. And six years' experience as law enforcement.

10 During that time -- and this isn't unusual -- not trying
11 to attack you or anything -- but during that time, six years,
12 6-1/2 years as a deputy, you didn't go through any advanced or
13 specialized training at that point?

14 A Not for investigations, no, sir.

15 Q Right. Okay.

16 I mean, sure, for some other stuff related to the job.

17 A Sure.

18 Q Yeah, I gotcha.

19 And, again, this isn't an unusual thing at all -- we used
20 to do this in the military all the time -- you got hired into
21 this job, and then, after that, you ended up doing some more
22 specialized training after you were hired into this job?

23 A That's fair.

24 Q Okay, yeah. And like I said, it's not unusual to hire
25 people into the job and train them up for it at all.

1 And some of that advanced training was about
2 investigative techniques and crime scene processing and all of
3 this other stuff? Is that a fair statement?

4 A That's fair.

5 Q Okay. So, part of processing a crime scene -- part of
6 processing a crime scene that you learned out of some of that
7 training -- or that you learned about in some of that training
8 is evidence collection and preservation; is that right?

9 A Correct.

10 Q All right. Who is responsible -- and I'm asking this
11 because I have no idea. Who is responsible for the collection
12 and preservation of evidence on any given crime scene?

13 A Are you referring to our crime scene specifically?

14 Q No, no, no. Just any -- like, I legitimately don't know
15 the answer. Like, if a police officer rolls up to a car
16 crash, that individual officer is responsible for collecting
17 and preserving evidence?

18 A Sure, that's possible if he's the -- it's dependent upon
19 the circumstance and, obviously, the agency or the case.
20 Obviously, if a patrol officer responds to a scene and there
21 are evidentiary items there that are of value, then they would
22 collect those.

23 Now, our office, the way that works, depending upon the
24 case, you may collect evidence, or if it is a substantial
25 case, then you ---

1 Q Like this one.

2 A --- request assistance from -- normally, we'd request
3 that from the Crime Scene Unit with the State Law Enforcement
4 Division.

5 Q Okay. Thank you for that because I was -- after reading
6 all this stuff, I was still a little confused about it. And I
7 appreciate that.

8 And you were assigned as the -- at the point that you got
9 to Lee Correctional on the night of April 15th, 2018, at some
10 point that night, you were assigned to be the lead
11 investigator at the moment for the -- as far as SCDC's
12 investigation was concerned?

13 A Yes, sir, that's correct.

14 Q Okay. A little bit ago when Ms. Scott was talking to
15 you, you stated that inmates were in the wrong dorms. That
16 would, then, also mean that they were also in the wrong rooms;
17 isn't that right?

18 A That's correct, yes, sir.

19 Q Okay. You're familiar with the name -- I believe you're
20 familiar with the name of Cornelius McClary; is that correct?

21 A Yes, sir. The victim in this case.

22 Q Yeah. He was one of the victims in this tragic incident
23 at the prison.

24 He was killed in the F1/B side dorm; is that right?

25 A That's correct, yes, sir.

1 Q Okay. After -- I'm just going to call them reaction
2 teams because it's an alphabet soup of teams from SCDC that
3 came to help re-secure the prison.

4 After these reaction teams were able to regain control of
5 that dorm, Mr. McClary was removed; is that correct? Or was
6 he removed before control was sort of -- I know it took weeks,
7 but...

8 A Sure.

9 Q Before control was sort of reasonably established, was he
10 removed or was it after the SWAT teams went through and kind
11 of locked everybody in?

12 A He was, obviously, removed that night. I do not recall
13 if it was before or after.

14 Q All right. But from the dorm, he was taken to some sort
15 of staging area where they were doing, like, a medical triage
16 thing and initial treatment?

17 A Yes. They had done some medical triage, obviously, in
18 the medical area of Lee, and they may have done some triage in
19 the chapel area as well because there were some deceased
20 individuals that had been placed there.

21 Q Right. But it was all on-site at the Lee Correctional
22 campus?

23 A Right.

24 Q And then after he was taken to this triage area, was he
25 then transported to a medical facility, or did he go directly

1 to the pathologist from Lee Correctional?

2 A I don't recall.

3 Q Okay. At some point during the process, his clothing was
4 removed from his body; is that --

5 A That's fair.

6 Q That's fair?

7 Do you have any idea where his shirt went?

8 A No, sir. No.

9 Q But there could have been a significant amount of DNA
10 evidence that's on that shirt; right?

11 A That's always possible, yes, sir.

12 Q Right. But his pants weren't taken into evidence either,
13 were they?

14 A I don't recall whether they were or not, no, sir.

15 Q There could have also been a lot of DNA evidence on the
16 pants too; isn't that also right?

17 A That's potentially true, yes.

18 Q And that evidence could have ruled in -- it could have
19 ruled in some people as suspects; is that a fair statement?

20 A That's fair.

21 Q And that DNA evidence could have also ruled out some
22 people as suspects, to a greater or lesser degree to some
23 extent; is that also right?

24 A Potentially, yes.

25 Q Okay. After -- and, again, I know we're talking in a

1 fluid timeline. Let's just say roughly 12 to 24 hours after
2 the riot, there was some semblance of control at the
3 institution; is that a fair statement? Obviously, not full
4 operational control.

5 A Yes, sir, that's fair.

6 Q Okay. And that's because these reaction teams had gone
7 to -- and, to a great degree, had locked in all the inmates?

8 A Correct.

9 Q And so, at that point, collection of evidence,
10 preservation of evidence was going on, photographing the crime
11 scene, because now it's a safe environment for you and your
12 crime scene investigators to come in and do that; is that a
13 fair statement?

14 A A couple of days later, you're referring to?

15 Q Well, yeah, sure. A couple of days later.

16 A Well, Crime Scene was there the night of.

17 Q Yeah, yeah. But, then, actually, like, doing some
18 detailed work of collecting evidence, other than just
19 immediate photographs and impressions and drawings, it was a
20 couple of days later that you did that, you said?

21 A Well, SLED Crime Scene did everything -- all their crime
22 scene work that was done that night.

23 Q That night. Okay.

24 At what point were inmates searched and their cells
25 searched after they were locked in; do you know?

1 A I don't know a specific time frame. Probably, from my
2 recollection, it would have been an intermittent process,
3 obviously, over several days.

4 Q It's a lot of cells, I understand.

5 A A week, couple of weeks. It would have been a staggered
6 process.

7 Q Right. And so, during your investigation, while you were
8 the lead investigator on this before it was handed over to
9 SLED, to the best of your knowledge, there was no weapon
10 recovered from Mr. Green or his assigned cell; is that right?

11 A I don't have any knowledge to that, no, sir.

12 Q Okay. There's no yellow Nike high-tops recovered from
13 Mr. Green or his assigned cell; to the best of your knowledge?

14 A To the best of my knowledge, I can't recall that.

15 Q Recovered several cell phones, though, over the course of
16 your ownership of the investigation; is that not right?

17 A Sure, quite a few.

18 Q Quite a few?

19 But none of those were from Mr. Green; right?

20 A I can't recall at this time.

21 Q It's a standard practice at the prison in SCDC that, from
22 time to time, various events can trigger this to happen, but
23 inmate's property is inventoried on a somewhat regular basis;
24 is that -- or do you have any knowledge of that?

25 A I can't -- you know, I'm part of the law enforcement wing

1 of the agency. I can't necessarily speak to their policy of
2 when they inventory items. I do know that it does take place.

3 Q Sure.

4 A But I don't know what the policy is on that or how often
5 they do it or if that policy is strictly adhered to.

6 Q Okay. But those inventories, to the best of your
7 knowledge, they're documented in some fashion?

8 A They should be.

9 Q Okay. But you don't have any record of Mr. Green's
10 property inventories at all; is that right?

11 A Not that I can recall, no, sir.

12 Q And those property records, those inventory records, when
13 they occurred, they would have shown if Mr. Green owned some
14 sort of special SCDC jacket with no hood and super-glowing
15 letters on the back? Would it be fair to say that that would
16 have been listed on his inventory sheet?

17 A If the staff took those items from him, I think it would
18 be a fair assessment to say that it should be -- it would be
19 documented, yes.

20 Q Right. But -- and that inventory sheet would also say if
21 Mr. Green had some yellow Nike hightops in his cell and in his
22 possession; is that fair statement?

23 A Yeah --

24 Q It should show that?

25 A It should, that's correct.

1 Q And that inventory document -- those inventory documents
2 would have also shown if Mr. Green had a pile of bloody
3 clothes in his cell; is that not also a fair statement?

4 A Potentially, that's fair, yes.

5 Q When you were speaking with Ms. Scott earlier, you were
6 kind of talking briefly about the process of your
7 investigation versus what the reaction teams were doing to
8 secure the facility. It was mentioned that there was
9 something about creating a safe environment; right?

10 A True.

11 Q That's when you said -- that's the couple of weeks later
12 when they had full institutional, operational control, and it
13 was a safer environment?

14 A Right.

15 Q Wouldn't searching and seizing contraband be necessarily
16 a part of creating that safer environment?

17 A That's potentially correct, yes, sir.

18 Q And searching for and seizing contraband would include
19 weapons and cell phones in the possession of inmates; would
20 that not also be a fair statement?

21 A Yes, sir.

22 MR. HICKS: I have no further questions, Your Honor.

23 THE COURT: Okay.

24 MS. SCOTT: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. SCOTT:

2 Q Mr. Hicks asked you about possibly looking for shoes.

3 A Yes, ma'am.

4 Q At this time, during your investigation and weeks
5 afterwards, was Mr. Green even a suspect at that point?

6 A Not that I recall, no, ma'am. We were -- obviously, this
7 case is -- it is not normal, like a one-person homicide, with
8 all the individuals involved. A pair of shoes at that point
9 in time was not a center point of this investigation.

10 Q So, at that time, it is locating the weapons that could
11 cause harm?

12 A Yes.

13 Q And trying to find out who the potential people are that
14 you're looking to get charges on; is that correct?

15 A Yes, ma'am, correct.

16 Q And that could take weeks?

17 A Yes, ma'am. Longer.

18 Q And you do that by -- a lot of it by viewing videotapes?

19 A Correct.

20 Q And identifying the suspects?

21 A Yes, ma'am.

22 Q That's all I have. Thank you.

23 MR. HICKS: Your Honor, I'd like to recross. She brought
24 up something new regarding when they identified Mr. Green as a
25 suspect, and I'd like to address that.

1 THE COURT: I don't --

2 MS. SCOTT: Judge, he had --

3 THE COURT: She said generally it took weeks or something
4 longer than that generally to identify people. I don't recall
5 her specifying your client.

6 MR. HICKS: Well, sure, Your Honor, but at the same time,
7 they didn't address anything about identifying suspects in her
8 direct. But she brought it up on redirect, and that's new,
9 and I'd like the opportunity to recross him on that, Your
10 Honor.

11 THE COURT: She redirected because you brought it up.

12 MR. HICKS: I didn't bring up anything about identifying
13 suspects, Your Honor.

14 THE COURT: Well, I understand you identified about the
15 timetable.

16 MR. HICKS: Yes, sir, Your Honor, but then she, on
17 redirect, brought up identifying suspects, which was new
18 material that neither of us --

19 THE COURT: I'd let you ask, and then I'm going to let
20 her go again, too, then.

21 MR. HICKS: Yes, sir. That's fine, Your Honor.

22 THE COURT: But, technically, the rules don't allow you
23 to do that. Go ahead.

24

25

1 RECROSS-EXAMINATION

2 BY MR. HICKS:

3 Q On May 9th of 2018 -- let's change that up here.

4 On May 17th of 2018, you conducted interviews with unit
5 management -- unit manager ---

6 I'm sorry; the text is really small here.

7 A That's okay.

8 Q --- Unit Manager Marquita (ph) Scott and Correctional
9 Officer Rashona McCleese (ph); is that correct?

10 A Those -- I am familiar with both of those ladies, yes.

11 Q Did either one or both of those ladies identify to you,
12 on May 17th, 2018, any people that were potential suspects
13 that you should be investigating?

14 A I don't recall. I would have to see if --

15 Q Would it refresh your memory if I were to show you your
16 Report of Investigation?

17 A Sure.

18 Q Just from this paragraph down and read as far as you
19 need, sir.

20 A Sure. Obviously, they provided multiple names.

21 Q Thank you.

22 So, as early as May 17th of 2018 -- as early as May 17th
23 of 2018, Mr. Green should have been at least a person of
24 interest on your radar to some degree based on these
25 interviews that you conducted; is that a fair statement?

1 A Sure, that's fair, yes, sir.

2 MR. HICKS: I have no further questions, Your Honor.

3 MS. SCOTT: Just one, Judge.

4 FURTHER REDIRECT EXAMINATION

5 BY MS. SCOTT:

6 Q Again, Chief Wilson, that is roughly a month after the
7 incident; is that correct?

8 A Correct, yes, ma'am.

9 MS. SCOTT: Thank you.

10 THE COURT: Thank you, sir. You can step down.

11 You may call your next witness.

12 MS. SCOTT: Thank you, Your Honor. The State calls James
13 Tallon.

14 AGENT JAMES TALLON,

15 after having been duly sworn, was examined and testified
16 to as follows:

17 THE CLERK: Thank you. If you'll have a seat and state
18 your name for the court reporter.

19 THE WITNESS: James Tallon. T-a-l-l-o-n.

20 DIRECT EXAMINATION

21 BY MS. SCOTT:

22 Q Agent Tallon, if you could, tell me and the jury where
23 you work.

24 A I work for the South Carolina Law Enforcement Division,
25 commonly referred to as SLED.

1 Q And what position are you in at SLED?

2 A Right now, I'm in our training department.

3 Q Okay. How long have you been in the training department?

4 A I've been in the training department for about four years
5 now.

6 Q So, before the training department, where did you work?

7 A I worked, for six years, at SLED in the Crime Scene Unit.

8 Q In the Crime Scene Investigation? I'm sorry?

9 A Yes, ma'am.

10 Q So, six years of crime scene investigation. If you
11 could, tell me, before you came to SLED, your educational
12 background and where you worked before you came to SLED.

13 A So, before SLED, I went to the Savannah College of Art
14 and Design down in Savannah, Georgia, and I received a
15 bachelor's of fine arts degree. And then, after that, I was a
16 pharmacy technician for about 13 years, and then I joined the
17 Sumter Police Department, where I started on patrol. About a
18 year and a half after patrol -- being on patrol, I was
19 promoted to what was called the Burglary Task Force Team,
20 which is basically a small forensic unit that also answers
21 calls for service on patrol while you're working burglaries,
22 B&E autos, things like that, with forensics as your main focus
23 with collecting DNA, fingerprints, and photography.

24 Q How long -- so, how long, roughly, have you been in the
25 forensics field?

1 A Ten years.

2 Q Ten years.

3 All right. And that's essentially -- is your main focus
4 to go out to crime scenes?

5 A It was.

6 Q And roughly how many crime scenes do you think that you
7 have been to?

8 A It's a little over 400 if you count Sumter and SLED at
9 the same time.

10 Q And that's over ten years of going to crime scenes?

11 A Correct.

12 Q And when you go to these crime scenes, do you create
13 reports?

14 A Every time.

15 Q Okay. And do you take pictures and do diagrams as well?

16 A Every time.

17 Q All right. And have you testified in court before?

18 A Yes, ma'am, a lot.

19 Q Regarding crime scenes?

20 A Correct.

21 MS. SCOTT: Your Honor, at this time, we would offer
22 James Tallon as an expert in crime scene investigation.

23 MR. HICKS: No objection, Your Honor.

24 THE COURT: Okay. He's so qualified.

25 BY MS. SCOTT:

1 Q All right. If you could, tell the jury, when you go to a
2 crime scene, kind of lay out what your duties are when you get
3 there.

4 A So, basically, it starts with a phone call, usually in
5 the middle of the night about 2:00 because I'm usually very
6 asleep. And a call would come out from our dispatch, who
7 would tell us what the -- where the scene is, what kind of
8 scene it is, and who to contact.

9 We make contact by phone to whoever the lead is at the
10 time and get a little bit of information so we know what kind
11 of equipment to take and where we're going and what we're
12 fixing to get ourselves into.

13 We then get to the scene. Once we respond to the scene
14 and arrive, we talk to either another person or whoever is in
15 charge at that time to get any updates, if there's anything
16 new. And then, once we get that information, we do what's
17 called a walk-through where we literally just walk through the
18 crime scene with just us crime scene agents; we don't allow
19 anybody else at the time, where we will walk through, kind of
20 see where the evidence is, what we kind of have, what we're
21 working with.

22 And then, from that point on, it's mostly just taking
23 photographs, marking evidence, collecting evidence, taking
24 measurements, and taking notes.

25 Q So, generally speaking, when you go to a crime scene, do

1 you ever deal with something called cross-contamination?

2 A Yes, sir.

3 Q Can you explain to the jury a little bit about
4 cross-contamination?

5 A So, cross-contamination would be -- there's several
6 different kinds, whether it be blood or you can
7 cross-contaminate fingerprints or DNA, touch DNA. But, in
8 this chair right here where I'm sitting, I cannot tell you how
9 many people have sat here even today or over the last weeks or
10 months or years and have touched this microphone and pulled it
11 to their mouth to talk. There's going to be a whole lot of
12 DNA on here. That would be a cross-contamination, something
13 that's interrupting the evidence that's already there.

14 Q Now, if you were to add outside forces like rain, would
15 that affect it as well?

16 A It would.

17 Q Okay. Let me ask you about prisons. Just generally, the
18 atmosphere at a prison, are there cross-contamination issues
19 there?

20 A Very much so. You have people living together. Just
21 think about at your own home; the same concept with this. If
22 your spouse or brother or sister or somebody steals your food
23 out of your refrigerator and you do a DNA swab on your
24 refrigerator, it's probably not going to help because you-all
25 live together.

1 Q And if they share clothing and things of that nature,
2 would that be problematic as well?

3 A Very much so.

4 Q What about tampering with evidence? If there are people
5 on-scene that are probably moving things around, is that also
6 an issue that you've seen?

7 A That would also be an issue, yes.

8 Q I want to go to April 15th of 2018. If you could tell
9 the jury a little bit of how you became involved with this
10 case.

11 A Sure.

12 THE WITNESS: Your Honor, may I refer to my notes?

13 THE COURT: Yes, sir.

14 A So, on April 15th, at approximately 9:23 p.m., I was
15 notified by our OD, or operations desk, basically what normal
16 people would call a dispatch, and they told me that the South
17 Carolina Department of Corrections had a crime scene that we
18 needed to respond to.

19 I made contact -- or, actually, my partner, Special Agent
20 Margaret Tulley (ph), made phone contact with Mr. Tungstall
21 with SCDC who confirmed that there was at least one deceased
22 at the time and that the scene had not been secured due to
23 riot.

24 Q Okay. What time did you get on-scene?

25 A We arrived on-scene at 11:19 p.m.

1 Q When you first arrive, what do you do?

2 A So, when we -- usually, we would start our walk-through
3 after we talked to somebody, but in this case, the scene was
4 still not secure. So, we talked to Mr. Tungstall again, who
5 provided that multiple victims had been stabbed and that four
6 cell blocks of the prison were not contained and several
7 inmates were being transported to the hospital. So, we
8 basically had to sit outside for several hours before we could
9 make it inside because it was not safe.

10 Q So, at that point, you had been aware or made aware that
11 there were deceased inmates, but you didn't know where and how
12 many; is that correct?

13 A Correct.

14 Q All right. So, you wait outside. Do you eventually go
15 into the institution to start your investigation?

16 A We did. Once we were given the all-clear, we went inside
17 of the scene.

18 Q All right. And, at that point, where were you, I guess,
19 sent? What part of the prison?

20 A Originally, the first place we were sent was the F5
21 building.

22 Q And why was that?

23 A There was two deceased victims outside of the F5
24 building, and so that's where we responded to start the scene.
25 And I also believe that where we came into the prison, that

1 was kind of the first building to the left.

2 Q So, you start at F5. Tell us and tell the jury what
3 happens when you get to F5.

4 A So, when we get to F5 -- and on the way driving to F5, we
5 actually drove our vehicle onto the property. But on the way
6 there, there were several people dressed in red. They work
7 for SCDC. I believe they call them the SERT team, a Special
8 Emergency Response Team. There were several people walking
9 around the scene picking up different items, metal items,
10 handmade weapons, and put them all in trash cans.

11 And then, once we got into the corridor of F5, for lack
12 of a better term, we saw the two decedents on the ground in an
13 area that was surrounded by a fence and had constantine wire
14 around the top, and there was two grassy areas on each side
15 with pavement in the middle, and there was a lot of water and
16 blood and everything down in that area.

17 Q So, you mentioned a lot of water. Was that from the rain
18 that night?

19 A It had. It had rained a lot prior to us getting there.

20 Q And a lot of blood and trash and things of that nature?

21 A Correct. There was food items. There was handmade
22 weapons, what some people refer to a shank. But handmade
23 weapons is what we refer to them as.

24 Q When you see the -- in F5, you're out there where the two
25 victims are, what do you do next?

1 A So, at that point, we start taking photographs.

2 Q And do you then go inside the dorm after that?

3 A We did. We went inside of F5.

4 Q And did you go into the wing areas of F5?

5 A We didn't go fully into F5. Once we got into F5, the
6 guard at the front desk told us that -- to be careful because
7 none of the doors locked. So, they were in their cells but
8 they could come out at any time. So, we just did our overall
9 photos because we knew we didn't have any decedents in there.
10 We didn't know what we had in there, but we know we didn't
11 have a decedent in there, so we just took the photographs and
12 left.

13 Q So, is that one thing -- if you don't have a decedent in
14 an area, do you not go to that particular area to take
15 pictures?

16 A Not unless it's told to us why there would be a reason
17 for us to go there. If we know for a fact that something
18 happened there or if somebody comes to us and says X, Y, Z
19 happened here, then of course we would go. But we didn't know
20 -- all we knew was that it happened -- we were told at the
21 time that everybody was kind of forced out the front door into
22 that corridor and outside of F5.

23 Q So, after F5, do you go to a different dorm after that?

24 A We did. We went I believe it's F3.

25 Q Tell us what you did when you got to F3.

1 A So, F3, we made visual observings and took photographs
2 there. The place, for the lack of a better term, was flooded,
3 but it wasn't, like, you know, really high. It was just a
4 good amount of water across the whole floor. We saw blood
5 smeared all over the place and food items throughout the area.

6 Q Did you end up taking any evidence from F3?

7 A We didn't take anything from F3.

8 Q Did you take anything from F5 when you were over in F5?

9 A Not from inside of the F5 area, but we did from the
10 little corridor area once we took our photos and got with the
11 Lee County Coroner, who was removing the bodies. We did take
12 one handmade weapon that was underneath one of the victims.

13 Q So, why didn't you take anything from inside F3 and F5?

14 A So, one, we didn't visually observe anything that stood
15 out to us as that would be probative, and then, two, when we
16 were over into the F3 building, everything was so contaminated
17 with the water and all the blood mixing, and we didn't see any
18 homemade weapons or anything in there either. There may have
19 been, but they would have been cleaned up probably prior to us
20 getting there.

21 Q And when you arrived at F5, you testified earlier that
22 you saw multiple people just gathering weapons and putting
23 them in, I guess, a large area; is that correct?

24 A Yeah, there was a few of those gray, like, 50 gallon
25 plastic trash cans, and they were full. They were just

1 throwing them all in there.

2 Q Because, at that point, it hadn't been secured. They
3 were trying to get rid of the weapons; is that correct?

4 A Correct. I believe they were just trying to get rid of
5 any kind of weapon that may be used against them or they were
6 just getting them out of the way.

7 Q All right. So, you've gone to F5, F3. Where do you go
8 after F3?

9 A So, after F3, we went to the main building where we took
10 photos of two more decedents.

11 Q Was that in the medical area?

12 A Near the medical area.

13 Q And then, after that, where do you go?

14 A So, after we left there, there was, like, a chapel area
15 where we went and saw that there was another victim in there.
16 And the ones that were in the nurses area and the one that was
17 in the chapel had been transported there. They did not die
18 there. Let me say that's not where the incident occurred.
19 They were placed there by somebody.

20 Q And did you ever go into F1?

21 A We did not go into F1.

22 Q And why did you not go into F1?

23 A We were never advised that anything had happened in F1.

24 Q And the body -- if a decedent had been moved out of F1,
25 would you have gone in there?

1 A If I were told, yes. If we were told that that's where a
2 decedent had come from, we would have gone in there and
3 looked.

4 Q But, at that point, there was no one there -- no victim
5 at that point when you arrived?

6 A Correct. And I believe two other victims had been
7 transported to the hospital.

8 Q Now, you mentioned -- so, when you go into F3, you don't
9 take any evidence due to cross-contamination. Would that
10 apply to the other dorms as well?

11 A Correct.

12 Q I want to ask you, hypothetically, if you had gone into
13 F1 and taken swabs for DNA purposes, would that have been of
14 any evidentiary value, in your opinion?

15 A I can't say for a thousand percent, but I can say,
16 through my training and experience that I don't believe it
17 would have, unless I saw a specific weapon literally dripping
18 with blood just from the handle -- or not the handle but from
19 the sharp edge area.

20 Q Hypothetically -- it was just brought up about a victim's
21 clothing -- an inmate -- someone that lives in the prison,
22 taking swabs from that clothing, would that have been of any
23 evidentiary value?

24 A I have never found any evidentiary value from that. I
25 have worked I don't even know how many -- at least 30 inmate

1 deaths in my career -- probably more than that -- and we know
2 that they share clothing or that they will make a weapon and
3 sell it to someone or trade weapons. So, you're literally
4 just mixing DNA constantly.

5 Q And, hypothetically, if someone had gone and collected
6 evidence from F1 days, weeks later, would that have been of
7 evidentiary value in this case?

8 A I do not believe so.

9 MS. SCOTT: Beg the Court's indulgence.

10 THE COURT: Okay.

11 MS. SCOTT: Thank you. Please answer any questions the
12 defense has.

13 CROSS-EXAMINATION

14 BY MR. HICKS:

15 Q Good morning, sir.

16 A Good morning, sir.

17 Q Tallon. Is it Officer Tallon? Investigator Tallon? How
18 would you prefer I address you, sir?

19 A You can call me whatever, but senior special agent is my
20 title.

21 Q Oh, I'm going to trip over that. What do you guys call
22 each other --

23 A Just call me "Agent Tallon."

24 Q Agent Tallon. Okay. I appreciate that. Thank you for
25 indulging me.

1 So, you have been in forensics for ten years, give or
2 take, some time?

3 A Correct.

4 Q A little change.

5 When you were speaking with Ms. Scott, you guys discussed
6 a little bit about cross-contamination; is that --

7 A Correct.

8 Q And one of your assertions is that rain can affect the
9 purity or consistency of a sample; is that right?

10 A Certainly. Or it can also mix if you have blood along a
11 whole area and it rains, you're going to have blood mixed with
12 the touch DNA and everything kind of gets mixed together.

13 Q I gotcha. To the best of your knowledge, was it raining
14 inside the F1/B dorm the night of this riot? Inside the dorm,
15 was it raining there, to the best of your knowledge?

16 A Not to the best of my knowledge, but I never went in
17 there, so I don't know if that one was flooded or not.

18 Q Sure. Are you familiar at all with the videos from the
19 F1 dorm? Have you had an opportunity to view any of them?

20 A I have not watched any of the video. I was told that
21 they have some video, but I know that they were damaged or
22 something to some degree.

23 Q Well, no, we have the videos from the F1 dorm.

24 A Oh, I --

25 Q I'm not going to put them in front of you. I was just

1 curious if you have seen them.

2 A No, I have not seen them.

3 Q Are you familiar with any of the pathologist's finding or
4 any of the results regarding the investigation into
5 Mr. McClary's death?

6 A No, sir. We don't -- we will respond, but we don't -- we
7 don't do the pathology.

8 Q Sure. But are you familiar with the pathologist's
9 findings at all?

10 A Oh, no, sir. I haven't read the report.

11 Q Thank you.

12 But you're familiar with blood spatter; right? That
13 would be something within your wheelhouse?

14 A Sure.

15 Q Can you explain to the jury what that is, please?

16 A So, blood spatter is -- there's a lot of different kinds
17 of blood spatter, but basically, once blood letting occurs or
18 so, once you get hit or if it comes off of a weapon, it's
19 slung off of something or comes out of the body and hits the
20 ground or hits a wall or something to that effect.

21 Q And so, in your experience -- and I'm relying on you as
22 an expert, because I don't know nearly as much about it as you
23 do -- what sort of wounds/violent attacks are the most likely
24 to cause the most amount of blood spatter?

25 A I mean, if you -- depends on if the victim is moving or

1 not, if you had an arterial spurting that comes out from the
2 artery. Every time your heart pumps, it gets shot out. Or if
3 you just have a complete limb removal or a head wound. Head
4 wounds produce a lot of blood.

5 Q Right. Well, so, for example, if I were to stick a knife
6 into somebody and then leave the knife there, we're not going
7 to get much blood spatter, if any; is that a fair statement?

8 A Not until blood letting occurs.

9 Q Right. But then if I were to stick the knife in and then
10 pull it out, we're probably going to get a fair amount of
11 blood spatter?

12 A You could. It would just depend.

13 Q Sure. And if I was let's just say hypothetically close
14 enough to somebody that I could stick a knife in them and then
15 pull that knife out, it's fairly likely that some of their
16 blood would get on me; would that be a fair statement? I'm
17 sure there's --

18 A It's possible. Yeah, there's a lot of variables there,
19 but it's possible.

20 Q Okay. And you testified that one of the issues that you
21 have had in the past, and even in this investigation, is that
22 you know that inmates share clothing?

23 A Correct.

24 Q I don't disagree with you on that; I think that's an
25 excellent point.

1 Is it possible that, the night of this riot, inmates were
2 sharing clothing?

3 A It's highly possible.

4 Q And it's also possible, then, that during the night of
5 this riot, inmates were changing clothes repeatedly; is that a
6 fair statement?

7 A Sure.

8 Q Thank you.

9 MR. HICKS: I have no further questions, Your Honor.

10 MS. SCOTT: Nothing further from the State, Your Honor.

11 THE COURT: Thank you, sir. You can step down.

12 THE WITNESS: Thank you.

13 THE COURT: Okay.

14 MR. GIESE: The State rests, Your Honor.

15 THE COURT: Okay. Ladies and gentlemen, I need to take
16 up some matters of law. I'm going to send you to the jury
17 room, and I hope it won't be long. It won't be long. If it's
18 longer, I'll send you to lunch.

19 While you're there, I need you to do something for me: I
20 need you to select a foreperson. That person needs to be out
21 of the original 12. My two alternates are only there if I
22 need -- if somebody gets sick.

23 That person will have no greater vote than anyone else.
24 They'll simply fill out the verdict form and sign it.

25 So, while you -- I don't know any of you. So y'all have

1 at least spent this week together. So, I need you to go back
2 there and vote on a foreperson and let me the bailiff know who
3 that is, and I'll get you back out just as quick as I can.
4 Okay?

5 You can't discuss the case yet. Just decide who the
6 foreperson is. Thank you.

7 (The jury exited the courtroom at 11:37 a.m.)

8 THE COURT: Okay. Mr. Green, I need you to raise your
9 right hand, please, sir. You don't have to stand up but you
10 can if you want to.

11 If you'll raise your right hand.

12 STEPHEN GREEN,

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

15 DEFENDANT'S RIGHTS

16 THE COURT: The State has rested their case. Now, you
17 have an opportunity to put any evidence in if you want to.
18 You do not have to put anything in. The State has the burden
19 of proof, and you don't have to prove anything.

20 You also have a right to testify. You also have a
21 constitutional right not to testify. And if you choose to
22 testify, you'll be treated like any other witness. You'll be
23 subject to cross-examination. You'll be subject to
24 impeachment. I don't know how extensive your criminal record
25 is, but it may be that they can bring in part of that.

1 If you choose not to testify, then I will instruct the
2 jury that they cannot hold that against you in any way. Do
3 you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: They can't even discuss that in the jury
6 room.

7 Now, whether you testify or whether you don't testify is
8 your decision. Your lawyer can advise you as to what you
9 think you should do and he can give you whatever legal advice
10 he wants to on that, but it is ultimately your decision and
11 not his. Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: So, you can talk to him and make that
14 decision as to whether you want to testify or whether you want
15 to put up any witnesses or any defense, but that's your
16 decision. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you got any questions you want to ask me
19 concerning your rights?

20 THE DEFENDANT: I do not.

21 THE COURT: Okay. Thank you, sir.

22 Okay. It's 20 minutes till 12:00. So, y'all, from a
23 scheduling standpoint, I understand we had some transportation
24 issues with witnesses.

25 MS. SCOTT: He's on his way.

1 THE COURT: Okay. So, what kind of timeframe? And I'm
2 trying to figure out whether we need to take a relatively
3 short lunch break now and then come back and either you can
4 decide whether you want to put up a defense. If you don't,
5 we'll argue and charge.

6 MR. HICKS: Your Honor, we can do my motions right now
7 since the State's rested their case, if that suits the Court.

8 THE COURT: All right. Sure.

9 MOTION FOR DIRECTED VERDICT

10 MR. HICKS: Your Honor, I'd ask for a directed verdict.
11 And I'll go through each charge individually.

12 As to the murder charge, specifically because, during her
13 testimony, Dr. Ross testified that Mr. McClary suffered many
14 wounds. She testified that some of those wounds, taken in
15 isolation, would have been fatal, but what no one has
16 testified to is that the final blow caused to Mr. McClary --
17 or, excuse me, what no one has testified to is that the final
18 blow delivered to Mr. McClary caused a wound and that that
19 wound would have been fatal, taken in isolation from the rest
20 of this.

21 What that results in is we have a complete break in the
22 causal chain here, and under the -- any evidence rule, they've
23 failed.

24 You -- clearly, Your Honor, you can't have a murder
25 without a killing. They have not alleged, with a continuous

1 causal chain, that Mr. Green has killed Mr. McClary. So I'd
2 ask for a directed verdict on that charge.

3 Do you want to do them one at a time or do you want me to
4 run through them?

5 THE COURT: Okay. Yes, sir.

6 MR. GIESE: Your Honor, I believe that, since you are
7 going to charge the murder charge or the verdict to the jury,
8 I believe the "hand of one" counts in this. If you look at
9 the "hand of one" case -- there's 101 stab wounds -- two or
10 more people combining together to commit, you know, the
11 murder. "Hand of one is the hand of all."

12 MR. HICKS: While that may be true, Your Honor, they have
13 still failed to allege that this final blow caused a wound
14 that could have been fatal and is attributable to Mr. McClary
15 -- excuse me, Mr. Green. It just fails the element test of
16 murder. They failed to connect the causal chain and make this
17 a thing, Judge.

18 THE COURT: Okay. Well, in my review of the evidence in
19 this case, it's clearly, based on the videotapes that this
20 jury has seen, that there was a number of people, a mob was
21 together, that allegedly stabbed people dead.

22 Now, there's photographs that they have identified as
23 your client. Whether the jury believes beyond a reasonable
24 doubt that he did participate in that, then, potentially, they
25 have enough evidence to find him guilty of that.

1 It's also, in this case, not only was there a mob
2 situation but a number of people attacked the victim in this
3 case. That ended a little after 10:00. It was about 30
4 minutes later, one individual went back to Mr. McClary's body,
5 who is laying on the floor, and stabbed him a couple of times
6 in the back.

7 And after that stabbing occurred, based on the evidence
8 in the video, Mr. McClary turned over. So, he was still alive
9 when that last blow was delivered. It wasn't like -- you
10 know, you can't murder somebody that's already dead. But
11 there's evidence in this record that he was still alive at
12 that time.

13 And so, I think there's circumstantial evidence that the
14 jury can -- based on the circumstances in this case -- that
15 those fatal two blows could have killed him.

16 You know, the pathologist didn't -- she basically said,
17 as a result of all the stab wounds, he bled to death.

18 Now, he had a stab wound that collapsed his lungs, which
19 would have filled his lungs, which is far more serious, and
20 she did testify about the time frame of how long that wound
21 would have taken to kill him.

22 But there's at least evidence in this record that the
23 State alleges is your client that came back and stabbed him
24 roughly 30 minutes after the mob had attacked him, and based
25 on the videotape, he was still alive when those stabs occurs,

1 because he rolled over as a result of that.

2 So, I'm going to deny your motion based on the
3 circumstances in this case as well as the law of "the hand of
4 one is the hand of all."

5 Now -- and he's also charged with mob first, which
6 there's at least in the record that the mob attacked him and
7 stabbed him. And the jury -- you know, he died as a result of
8 stab wounds, and he ultimately bled to death. So, I think
9 it's enough for the jury to consider.

10 MR. HICKS: Yes, Your Honor.

11 So, as to the conspiracy charge, I'd ask you also for a
12 directed verdict on that because the State hasn't presented
13 any competent evidence that Mr. McClary -- or Mr. Green
14 entered into agreement with anybody, let alone to commit this
15 crime or any other crime.

16 THE COURT: And I understand that, and there's nobody
17 that's come and testified that "the two of us got together and
18 planned this." But they have submitted a number of hours of
19 videotape that -- circumstances that the jury can deduce from
20 this videotape that there was some kind of conspiracy or some
21 kind of -- creating this mob that caused all this.
22 Understanding it's circumstantial, but I think it's at least
23 enough circumstances in the record for it to go to the jury.

24 MR. HICKS: Yes, Your Honor.

25 Then, so, as to the other two charges, just general

1 insufficiency of the evidence, and I am well aware of what
2 your answer is going to be, Your Honor.

3 THE COURT: If they don't -- if the jury doesn't think
4 the State has proved your client is guilty of murder, they can
5 see whether the State has proved whether your client was
6 involved in the mob that attacked Mr. McClary caused his
7 death. And I think if they find that he's the one that
8 actually killed him, then he's guilty of murder, then they
9 can't find him guilty of mob one.

10 MR. HICKS: Yes, Your Honor.

11 THE COURT: But based on the evidence, they could
12 determine that he's guilty of mob two in that, at least some
13 medicals that they've alleged that he stabbed the victim in
14 this case, along with other people, would have caused at least
15 serious bodily injury, which would put him in a mob two
16 situation and that he came back after 30 minutes later and
17 actually murdered him and killed him. That's all
18 circumstantial evidence in this record. I don't think the
19 jury can find him guilty of murder and mob one.

20 MR. HICKS: Yes, Your Honor.

21 THE COURT: They can find him guilty of murder and mob
22 two based on the evidence that's been presented so far, but
23 they have got to determine -- you know, I will instruct them
24 that the State's got to prove each one of these beyond a
25 reasonable doubt. If they haven't met that burden, I'll

1 instruct them to find him not guilty, but it will be up to
2 them.

3 MR. HICKS: Yes, Your Honor. Thank you.

4 THE COURT: Yes, sir.

5 Okay. So, back to my scheduling issue. Is now a good
6 time to send the jury to lunch to at least give them a break
7 and y'all can decide whether you're going to put up any
8 witnesses? And if you are, that we can get them here?

9 MR. HICKS: Yes, Your Honor. I think that's probably the
10 best solution at this point.

11 THE COURT: So what -- having said all that -- and I'd
12 like to move this case on. I would love, if possible, to get
13 it to the jury today. So, I don't want to minimize the lunch
14 hour, but I don't want to have them to have to sit for an hour
15 either.

16 MS. SCOTT: Judge, I believe the inmate left at 10:58, so
17 he should be here in the next few minutes, if not already.

18 THE COURT: So 1:15? Will that give us enough time, if I
19 send the jury out? That's an hour and -- almost an hour and a
20 half.

21 MS. SCOTT: I think so, Judge.

22 THE COURT: Will that give us enough time? Or do you
23 want me to bring them back at 1:30?

24 MR. HICKS: I believe that should be enough time, Your
25 Honor.

1 MS. SCOTT: 1:15.

2 THE COURT: 1:15?

3 MS. SCOTT: Yes, sir. 1:15.

4 THE COURT: All right. If you'll bring -- somebody bring
5 the jury in. Can you get me the jury?

6 (The jury entered the courtroom at 11:48 a.m.)

7 THE COURT: My understanding, y'all have selected the
8 foreperson is Ms. Jones.

9 Okay. I have got some other issues. I'm going to send
10 you to lunch, and I ask you to be back at 1:15, and I hope
11 that we'll be able to finish this case today. But I'm going
12 to do everything I can to try for that.

13 Don't discuss the case. Don't allow anyone to discuss it
14 with you. Don't do any research. And I'll see you back at
15 1:15.

16 And when you come back, Ms. Jones, you need to sit in
17 this front seat. Okay? In that first seat on the bottom, so
18 I can transfer paperwork to you and everything else.

19 Okay. I'll see y'all at 1:15.

20 (The jury exited the courtroom at 11:49 a.m.)

21 (Court's Exhibit No. 1, Jury Note re: Foreperson
22 Selection, was marked for identification and received into the
23 record.)

24 THE COURT: Okay. What I'd like to do is you talk to
25 your client and any potential witnesses and try to figure out

1 logistically what I need to do to facilitate anything further
2 as far as transportation or communication with attorneys and
3 everything else. Okay?

4 MR. HICKS: Yes, Your Honor.

5 THE COURT: So, I'm going to go back in chambers, and
6 then, hopefully, when y'all figure something out, come back
7 in, where we can at least plan how things will go.

8 MR. HICKS: Okay. Yes, sir, Your Honor. Thank you.

9 (A lunch recess was taken from 11:50 a.m. to 1:20 p.m.)

10 THE COURT: Have you decided whether you're going to call
11 any witnesses?

12 MR. HICKS: Yes, Your Honor. We'll be calling one
13 witness.

14 THE COURT: One witness?

15 MR. HICKS: Currently, yes, Your Honor.

16 THE COURT: Okay. Is Mr. Green going to testify?

17 THE DEFENDANT: I am not.

18 THE COURT: Okay. All right.

19 The witness you're going to call, from my understanding,
20 is an inmate?

21 MR. HICKS: I'm sorry, Your Honor?

22 THE COURT: The witness that you intend to call is an
23 inmate?

24 MR. HICKS: Yes, Your Honor. It's Mr. David Dozier.

25 THE COURT: And it's my understanding he has pending

1 charges?

2 MR. HICKS: Yes, Your Honor.

3 THE COURT: So, I don't want to bring the jury in, talk
4 to him, and send them back out. So, maybe we can bring him in
5 here and let me discuss his rights with him and his
6 understanding and put it on the record, and then, if he
7 chooses to testify, we'll bring the jury in to start. Okay?

8 MR. HICKS: Yes, Your Honor. It's also my understanding
9 that the State would like to proffer before we bring the jury
10 in.

11 MS. SCOTT: Just so it doesn't run afoul of the motion in
12 limine that we filed regarding SCDC.

13 THE COURT: First of all, before he testifies, I'll
14 explain his rights to him, and then we'll deal with those
15 motions before I bring the jury in.

16 MS. SCOTT: Thank you, Your Honor.

17 (Pause in the proceedings. Mr. Dozier enters the
18 courtroom.)

19 THE COURT: Mr. Hicks, Mr. Dozier is the witness you want
20 to call?

21 MR. HICKS: Yes, Your Honor, that's correct.

22 THE COURT: Mr. Dozier, Mr. Hicks is calling you as the
23 witness in this case. Do you understand that?

24 MR. DOZIER: Yes, sir.

25 THE COURT: And I was told that you had a conversation

1 with your attorney a short while ago concerning your
2 testimony; is that right?

3 MR. DOZIER: Yes, sir.

4 THE COURT: And do you understand that you -- it's my
5 understanding that you have charges pending as a result of the
6 incident that happened at Lee Correctional, you know, as a
7 result of this riot; do you understand that?

8 MR. DOZIER: Yes, sir.

9 THE COURT: And you have a constitutional right not to
10 testify, to remain silent; do you understand that?

11 MR. DOZIER: Yes, sir.

12 THE COURT: And, if you choose to testify, anything you
13 say can and will be used against you in potential future
14 prosecution of this case. Do you understand that?

15 MR. DOZIER: Yes, sir.

16 THE COURT: And so -- and what advice did your attorney
17 give you as far as testifying?

18 MR. DOZIER: He told me not to testify.

19 THE COURT: Okay. And are you going to follow his
20 advice, or are you going to testify?

21 MR. DOZIER: No, I'm going to testify.

22 THE COURT: Okay. All right. And you understand the
23 potential dangers for you testifying, that anything you say,
24 then the State may use it against you related to that
25 incident?

1 MR. DOZIER: Yes, sir.

2 THE COURT: Okay. Any questions you want to ask me
3 concerning your rights?

4 MR. DOZIER: I don't know. What could I ask?

5 THE COURT: Just as far as you testifying. You're not on
6 trial here in any way. You may be at some other time, but if
7 you have any questions concerning your Fifth Amendment rights
8 under the Constitution, you can ask me. But if you choose to
9 testify, you understand they can cross-examine you and treat
10 you like any other witness?

11 MR. DOZIER: Yes, sir.

12 THE COURT: Okay. All right. Now, is there any
13 objection to leaving him in the witness chair and bringing the
14 jury in? I understand the State may have some other --

15 MR. GIESE: No, Your Honor.

16 THE COURT: So -- versus bringing him out and bringing
17 him back. Is there any problem with him just staying here?

18 MR. HICKS: No issue, Your Honor.

19 THE COURT: Okay. Now, I'll be glad -- I understand the
20 State has a motion.

21 MR. GIESE: Yes, Your Honor. We'd just like a proffer as
22 to what this witness is going to testify to. We had a motion
23 in limine at the beginning of the trial to keep him from
24 saying anything concerning the Department of Corrections, the
25 staffing, and that type of thing. We want to make sure that

1 that's not what he's doing.

2 THE COURT: Okay.

3 MR. HICKS: No objection, Your Honor.

4 THE COURT: All right.

5 MR. HICKS: Your Honor, I do have a question.

6 (Pause in the proceedings while the Court confers with
7 law clerk.)

8 MR. HICKS: Your Honor, at some point, I'm going to ask
9 that Mr. Dozier identify some folks on the video. I don't
10 know how you want to deal with that, being shackled. I don't
11 know if he can use the stick. Would you rather have him walk
12 out here and point to this screen somehow or -- I don't know
13 how you want to address that, Judge.

14 THE COURT: What do you want to do?

15 THE DEPUTY: He's got a screen in front of him that he
16 can see.

17 THE COURT: Do you want him to point something out with a
18 stick?

19 THE DEPUTY: I can control him. Right here will be fine.
20 He'll be right here.

21 MR. HICKS: Can we check to see if he's able to reach,
22 while he's shackled, with a stick to point?

23 THE DEPUTY: Mr. Dozier, can you stand up for a moment?

24 MR. HICKS: Thank you. I appreciate that.

25 THE COURT: Can you reach the screen?

1 THE DEPUTY: No, he'll be better off pointing on that one
2 over there.

3 MR. HICKS: I can start moving stuff around, and we can
4 make that work too, Your Honor.

5 Can you check? I mean, it should work but I just want to
6 make sure.

7 THE DEPUTY: Try to minimize how often you need him to
8 stand up.

9 MR. HICKS: I'm sorry?

10 THE DEPUTY: Try to minimize how often he's going to have
11 to stand up.

12 MR. HICKS: I'm going to get him up here one time and
13 that's it.

14 THE COURT: Okay.

15 MR. HICKS: Okay. That will work, Your Honor. Thank
16 you.

17 Thank you, Mr. Dozier.

18 MR. DOZIER: Mm-hmm.

19 THE DEPUTY: While you're in that chair, just watch out
20 for that ledge with those wheels.

21 MR. DOZIER: All right.

22 THE COURT: Okay. Do you want to proffer his testimony?

23 MR. HICKS: Yes, absolutely, Your Honor. I'll run right
24 through my questions and give it all to you.

25 DAVID DOZIER,

1 was examined and testified to as follows:

2 PROFFERED DIRECT EXAMINATION

3 BY MR. HICKS:

4 Q Mr. Dozier, how long have you been incarcerated, sir?

5 A I have been incarcerated for eight years.

6 Q I'm sorry; I'm really hard of hearing. Can you speak up,
7 please, sir.

8 A I have been incarcerated for eight years now.

9 Q Thank you.

10 And what were you charged with that led to your
11 incarceration?

12 A Assault and battery, armed robbery, and weapons
13 provision.

14 Q Okay. Thank you, sir.

15 And you were incarcerated at Lee Correctional -- when you
16 were incarcerated, you were placed at Lee Correctional
17 Institute at some point, yeah?

18 A Yes, sir. When I first came to prison, yes, sir.

19 Q Okay. And how long were you at the Lee Correctional
20 Institute?

21 A About eight months.

22 Q Eight months.

23 And what dorm were you assigned to at Lee Correctional?

24 A First, I was in Chesterfield dorm, and then I got
25 assigned to go to Kershaw dorm, F1.

1 Q To F1, you said?

2 A Yes, sir.

3 Q Okay. And were you on the A wing or the B wing of the F1
4 dorm?

5 A I was on the A wing.

6 Q The A wing? Okay.

7 And did you know any of the other inmates who lived on
8 the A wing?

9 A Yeah, I knew a good bit of them. Not all of them, but,
10 you know, we was almost one and the same, so, you know, faces
11 were familiar, but -- I mean, I haven't been familiar with
12 persons but faces were familiar.

13 Q Right. Just because you lived with them and get familiar
14 with people?

15 A Right.

16 Q Yes, sir. And did you know Mr. Stephen Green?

17 A Yes, sir.

18 Q How familiar would you say you were with Mr. Green?

19 A We were cordial. We -- you know, we spoke in passing,
20 you know. We were friendly with each other.

21 Q Okay.

22 MR. HICKS: From there, I'm going to go into the video.
23 Do you want me to keep going for it? Do you want me to just
24 keep rolling?

25 MR. GIESE: Well, I think that's if he's going to be

1 identifying people on the tape --

2 THE COURT: Right. Is that what he's going to do?

3 MR. HICKS: I'm sorry, Your Honor?

4 THE COURT: Are you going to ask him to identify certain
5 things on the tape?

6 MR. HICKS: That's all that I have got left is bringing
7 up the video and having him identify stuff.

8 THE COURT: And that's not going to violate any of the
9 prior motions, is it? Okay. So, are you done asking him, so
10 we can bring the jury in?

11 MR. HICKS: I'm happy if you're happy.

12 THE COURT: Okay.

13 MR. GIESE: Yes, sir.

14 MR. HICKS: Yes, Your Honor.

15 THE COURT: Then I need to see y'all. And can stay right
16 here with him. I'm going to move this out the way.

17 Let me see y'all in chambers real quick. And I need to
18 see the clerk of court.

19 (Pause in the proceedings while the Court meets with the
20 attorneys in chambers.)

21 THE COURT: Okay. We ready for the jury?

22 MR. GIESE: State's ready.

23 MR. HICKS: Defense is ready.

24 THE COURT: You can bring the jury in, please, ma'am.

25 (The jury entered the courtroom at 1:50 p.m.)

1 THE COURT: Okay. Madam Clerk, you can swear in the
2 witness.

3 DAVID DOZIER,
4 after having been duly sworn, was examined and testified
5 to as follows:

6 THE CLERK: Thank you.

7 MR. HICKS: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. HICKS:

11 Q Mr. Dozier, how are you doing this afternoon, sir?

12 A The best I can be.

13 Q I'm going to ask you to speak up just a little bit. I'm
14 pretty bad of hearing, and we had to shuffle some stuff around
15 here to make the TV screens work again.

16 Would you prefer I refer to you as Mr. Dozier or David?
17 You tell me how to talk to you, sir.

18 A Mr. Dozier is fine.

19 Q Mr. Dozier? Okay. I'll do that.

20 So, clearly, you're incarcerated. How long have you been
21 incarcerated, sir?

22 A Eight years.

23 Q Eight years?

24 And what were you convicted of that led to your
25 incarceration?

1 A I was convicted of assault and battery, armed robbery,
2 weapons provision, and kidnapping charges.

3 Q And what was the last one, sir?

4 A Kidnapping.

5 Q Yes, sir. At some point during your incarceration -- let
6 me back up. When you were first turned over to SCDC custody,
7 where were you incarcerated at?

8 A The first yard I hit was Lee County.

9 Q Lee County?

10 A After I left R&E, I went to Lee County.

11 Q And that's over at Kirkland at the R&E?

12 A Yes, sir.

13 Q You left there and came over to Lee County?

14 A Yes, sir.

15 Q And where did you go from Lee County? When did you leave
16 Lee County?

17 A After the riot.

18 Q After the riot.

19 So, it was after April 15th, 2018?

20 A Yes, sir.

21 Q And when you were assigned at the Lee Correctional
22 Institute, what dorm were you assigned to?

23 A The first dorm I was assigned to was to go to
24 Chesterfield dorm then I was moved --

25 Q Did you say Chesterfield?

1 A Chesterfield dorm.

2 Q We've been -- I'm sorry to interrupt, sir. We have been
3 referring to them as, like, F1, 2, 3, 4, 5.

4 A Yes, sir.

5 Q Would you, please, because we're not familiar with these
6 other names.

7 A F2 is Chesterfield, after I was -- I was assigned to
8 Chesterfield, and I left F2 and I went to F1.

9 Q F1. Okay.

10 And was your cell -- your assigned cell on the A wing or
11 the B wing on the F1 dorm?

12 A The left side. I believe that's the A wing; correct?

13 Q The A wing. Okay. The A wing.

14 And because you were assigned to a cell on the A wing of
15 the F1 dorm and Mr. Green was assigned to a cell on the A wing
16 of the F1 dorm, did you have an opportunity to get to know him
17 a little bit at least?

18 A Yeah, we had a cordal relationship.

19 Q Cordial relationship, you said?

20 A We were friendly -- we were friendly with each other.

21 Q Sort of talk in passing in the hall, that sort of stuff?

22 A Yeah. We'd see each other, "Hey, how you doing? You
23 doing good?" type of -- type of stuff like that.

24 Q Yes, sir. So, you're familiar with his face, you're
25 familiar with his characteristics and his mannerisms?

1 A Yes, sir.

2 Q Okay. I want to kind of go to the night of the riot, if
3 that's all right with you. Are you okay talking about that a
4 little bit?

5 A Yes, sir.

6 MR. HICKS: Do you mind bringing up -- I'm going to start
7 somewhere and kind of work backwards from there a little bit.
8 I'm sorry for the inconvenience of that.

9 The F1/B right PTZ at 10:30 and 24 seconds, please.
10 Okay. Play it, please. Just regular speed. I'll stop you.

11 (Video plays.)

12 MR. HICKS: Stop. I'm sorry. The F1/B yard door at the
13 same timestamp.

14 BY MR. HICKS:

15 Q Mr. Dozier, do you believe that you know Mr. Green well
16 enough that you could identify him absolutely and positively
17 from video footage?

18 A I believe I can, sir.

19 Q Okay. Could you please step on forward here, sir.

20 MR. HICKS: Zoom in and go back just a couple of frames,
21 please.

22 (Video plays.)

23 MR. HICKS: Right there. Stop.

24 BY MR. HICKS:

25 Q That gentleman you see on the video there, sir, does that

1 appear to be a lighted-skin African American man or a
2 dark-skinned African American man?

3 A Dark skinned, sir.

4 Q Appears to be a dark-skinned African American man to you?

5 A Yes, sir.

6 Q And is Mr. Green a light-skinned African American man or
7 is Mr. Green a dark-skinned African American man?

8 A Light skinned.

9 Q He's light skinned. Okay. Thank you. Just stand fast
10 for just a second.

11 MR. HICKS: Back it up to 10:30 and 48 seconds, please.

12 (Video plays.)

13 MR. HICKS: That's good right there. And zoom back down
14 a little, please.

15 BY MR. HICKS:

16 Q Does that man have a shirt on under his coat?

17 A No, sir.

18 Q He does not.

19 Can you tell if he has any tattoos all over his torso?

20 A I don't see any.

21 Q Does Mr. Green have tattoos all over his torso?

22 A Yes, sir.

23 Q And they're all really high-contrast tattoos? You can
24 see them really well from --

25 MR. GIESE: Objection.

1 BY MR. HICKS:

2 Q Are they really high-contrast tattoos that you can see
3 from a distance?

4 MR. GIESE: Objection.

5 MR. HICKS: Withdrawn, Your Honor.

6 Go ahead and have a seat, sir.

7 BY MR. HICKS:

8 Q So, on the night that the riot occurred in the F1 dorm,
9 you had a cell assigned on the A side but you were on the B
10 side where this violence and everything was taking place.
11 Where exactly were you at when Mr. McClary was initially
12 assaulted after he came down the stairs? Where were you
13 standing in the dorm?

14 A I was -- when you come in from the -- you go on the right
15 side, you come in -- I'm standing on the right side on the
16 bottom tier.

17 Q Right.

18 A Look up, and I seen when the assault happened.

19 Q Did you have a clear, unobstructed view of where
20 Mr. McClary was at, being assaulted when it occurred?

21 A Yes, sir.

22 Q Did you see Mr. Green assaulting Mr. McClary?

23 A No, sir.

24 Q Okay. And so, we just looked at some video of what was
25 the final assault on Mr. McClary. Do you remember when you

1 were -- where you were standing in the dorm when that
2 occurred?

3 A I believe I was about a few feet away from him, if I'm
4 not -- if I'm not mistaken, I was a few feet away from him
5 when it happened.

6 MR. GIESE: I apologize; I couldn't hear.

7 THE WITNESS: I was a few feet away.

8 BY MR. HICKS:

9 Q Excuse me? A few feet away?

10 A Yeah. A few feet away.

11 Q Yes, sir. And I know it's kind of difficult with, you
12 know, trust and everything, but try and kind of lean as close
13 to the microphone as you can so everybody can hear. And I
14 appreciate that.

15 So, from a few feet away, you had a -- did you have a
16 clear and unobstructed view of the gentleman that struck
17 Mr. McClary for the final time in the F2 dorm that night?

18 A Yeah, I could see that.

19 Q Was that gentleman Mr. Green?

20 A No, sir.

21 Q It was not. Do you know who it was?

22 A Nah, I do not.

23 Q Okay. Thank you.

24 How long were you at the Lee Correctional Institute, to
25 the best -- like, months and years. You don't have to get me

1 an exact date, count or anything.

2 A I had just came through -- it was about, like, no longer
3 than eight months, so maybe six.

4 Q No longer than about eight months, you say?

5 A About six months I was there.

6 Q In the time that you were at Lee Correctional Institute,
7 was it common for inmates to just decide what cell they were
8 going to move into and live in?

9 A Oh, yeah. Like, people might go from one dorm to the
10 next dorm. Like I said, I was in there too. You could have
11 somebody in there, too, go off to the West yard and go in F5
12 and be there for a month and nobody would, you know, be the
13 wiser.

14 Q Right. And you already answered my next question that --
15 would inmates also just go to whatever dorm they wanted to and
16 stay there for however long they'd like?

17 A Yes, sir.

18 MR. HICKS: I have no further questions, Your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. GIESE:

22 Q Mr. Dozier, so, am I correct in saying that you were on
23 the B wing when the initial assault and battery and mob
24 violence happened to Mr. McClary?

25 A Yes, sir.

- 1 Q And you're a co-defendant in this case, aren't you?
- 2 A Yes, sir, technically speaking.
- 3 Q And you also are charged with mob first; correct?
- 4 A Yes, sir.
- 5 Q Just like Mr. Green?
- 6 A Yes, sir.
- 7 Q And you also are charged with conspiracy, like Mr. Green?
- 8 A Yes, sir.
- 9 Q Now -- so, you were part of the mob that killed
- 10 Mr. McClary?
- 11 A No, I'm not.
- 12 Q Now, you say you're not a part of the mob. Who
- 13 exactly -- well, let start this -- let me do this. There are
- 14 gangs in F1; correct?
- 15 A Yes, sir.
- 16 Q And this was a gang war, wasn't it? A gang assault?
- 17 A It wasn't a gang war but, you know, it was gang violence.
- 18 Q Okay. When you say "gang violence," just because there
- 19 were basically three large gangs in F1; correct?
- 20 A Yes, sir.
- 21 Q Okay. One was the Crips?
- 22 A Mm-hmm.
- 23 Q They were outnumbered, pretty much. One was the Gangster
- 24 Disciples; correct?
- 25 A Correct.

1 Q And one were the Bloods?

2 A Yes, sir.

3 Q And the original stand-off -- since you were in there and
4 you were watching, the original stand-off was between the
5 Gangster Disciples and the Bloods; correct?

6 A Yes, sir.

7 Q And that was all on that first floor?

8 A Yes, sir.

9 Q And Mr. Green was with the gang or with the group with
10 the Bloods in it; correct?

11 A I can't say that. I didn't know where he was at, at that
12 time.

13 Q Excuse me?

14 A I do not know where he was at, at that time.

15 Q You never saw him that time?

16 A Not at that time.

17 Q You didn't see him at all in F1?

18 A Not that night, actually.

19 Q Excuse me?

20 A I cannot say where he was at. I don't know where he was
21 at, at that time.

22 Q Well, you didn't answer my question. Did you see him in
23 F1 or did you not, that night?

24 A I did not see him that night.

25 Q You did not see him that night?

1 A No, I did not.

2 Q So, it's your testimony, he wasn't in F1?

3 MR. HICKS: Your Honor, asked and answered. He's asked
4 that three times and answered that three times.

5 MR. GIESE: Your Honor, he just now answered it.

6 THE COURT: Go ahead.

7 BY MR. GIESE:

8 Q So, you never saw him that night?

9 A I do not recall seeing him that night, no.

10 Q Got a couple of photographs I want you to look at. Going
11 to hand you State's Exhibit 14, 15, 16, 18, and 21 and ask you
12 to take a look at all of them.

13 (Pause in the proceedings while the witness reviews
14 documents.)

15 A All right.

16 Q Now, I'm going to put them up on here and ask you some
17 questions about it. Okay? It will be right there or -- oh,
18 it's on the screen. I'm sorry.

19 State's Exhibit No. 15, is that your co-defendant,
20 Stephen Green?

21 A It looks like him.

22 Q Yes?

23 A I would say that it favors him. Yes, it could be him.

24 Q And the timestamp on that is 12 -- 10:12:51.

25 16. State's Exhibit 16, is that Mr. Green?

1 A On that one, I can't be certain.

2 Q Okay. 18, is that Mr. Green?

3 A That favors him, yes. It looks similar. Similar
4 features. It could be him.

5 Q Could be or is him?

6 A I mean, it looks like him, but...

7 I don't want to say yes because I'm not certain, but it
8 does look like him. It does favor him.

9 Q State's Exhibit No. 21, is that Mr. Green?

10 A I don't believe it is. I can't...

11 Q Then who is it?

12 A I don't know.

13 Q State's Exhibit 14?

14 A I can't say who that is.

15 Q State's Exhibit No. 22?

16 A That could possibly be him, yes.

17 Q Excuse me?

18 A I said that could possibly be him.

19 Q So, is that a yes or no?

20 A The similars are -- the features are similar. I can't
21 really tell you. He's not looking at the camera. Just got
22 the side view of his head.

23 Q Okay.

24 A From what I'm seeing, it could be him.

25 Q Then I'll have you look at State's Exhibit No. 15.

1 A Yeah, I would -- I would say that's a good one.

2 Q The timestamp on that is 10:12:51. What's in his hand?

3 A A cell phone.

4 Q A cell phone? Okay.

5 So, that's Mr. Green with a cell phone in his hand;
6 correct?

7 A I believe it could be him, yes.

8 Q You believe it could be him?

9 A Yeah.

10 Q And what's in the other hand? Is that a shank?

11 A Can I look at the picture?

12 Q You want to look at the picture?

13 A I don't see anything in his hand. I really don't.

14 Q Okay. I'll hand you State's Exhibit No. 15. Take a look
15 at it. Is that a shank?

16 A All I see is a string. So, I don't see any type of --
17 what are you -- can you tell me what I'm looking at? Because
18 I'm trying to figure out what I'm looking at.

19 MR. GIESE: Okay. Put it back up. We can put it back
20 up.

21 A Are you talking about this right here?

22 Q His hand, yes. That hand.

23 A In that hand, I'm saying all I see is string coming out
24 of his hand.

25 Q At the end of what?

1 A All I see is a string. I don't see --

2 Q Well, you said -- at the end of what?

3 A I'm saying I don't see -- now, there's a -- I see the
4 little thing on the ground. I'm assuming that's on the floor.
5 I don't know what that is, though. But I see the string, but
6 I don't see anything else. I don't see anything attached to
7 the string. I mean, all I see is the string in his hand.

8 Q I am specifically talking about Mr. Green's left hand.
9 You're saying that's not a shank?

10 A I'm saying, all I see is the string in his hand. Are you
11 talking about this metal thing on the -- the little thing on
12 the floor, it looks like?

13 Q No, it's not on the floor. It's in his hand. That right
14 there. That, you're testifying, is not a shank?

15 A It looks like it's something on the floor. I see the
16 string that you want -- that's in his left hand, but the other
17 thing, it looks like it's on the floor. I don't know what
18 that is. It --

19 Q Okay. Well, this -- go ahead.

20 A Like, I'm looking at it and trying my best to determine.
21 But all I see is the string in his hand. I don't see -- like
22 the metal thing that you're pointing at, I see it, but it
23 doesn't look like it's a shank of any kind, or a weapon. It
24 kind of looks like it's just on the floor.

25 Q So, you're saying that's not a shank?

1 A I'm trying to figure out what you're trying to determine
2 is a shank or not, because I have seen a lot of them.

3 Q Okay. Well, let's look at this one, State's Exhibit No.
4 22. It's one minute and one second after the last one you
5 just looked at. Does he have a shank in his hand there?

6 A Yeah. I would say that's a metal object that could be
7 used as a weapon.

8 Q It could be used as a weapon?

9 A I'd say it could be used, yes, as a shank, if that's what
10 you want to call it.

11 Q Well, you know what a shank is.

12 A Yeah.

13 Q I mean, you have been in prison eight years. Everybody
14 knows what shanks are; right?

15 A Yes.

16 Q And that looks like a shank?

17 A Not necessarily, but it could be used as one. It just
18 looks like a flat piece of metal.

19 Q State's Exhibit No. 23, who is that?

20 A That could be Mr. Green.

21 Q That's Mr. Green?

22 A It could be. It looks like him. It looks like him
23 but...

24 It could be.

25 Q But you know him real well; right?

1 A Yes, I do.

2 Q And you know a lot of the people that were in the F1;
3 right?

4 A Mm-hmm.

5 Q Who else was part of that mob that you say Mr. Green was
6 not a member of? Do you want to show it on tape? Do you want
7 to see it and maybe you can identify some people?

8 A I mean, if you show it, I'll -- I'll do my best.

9 Q Okay. All right. Can you see that picture?

10 A Yes, sir.

11 Q And you were there that night; right?

12 A Yes, sir.

13 Q All right. That group that's downstairs in the corner,
14 are those Gangster Disciples?

15 A Yes, sir.

16 Q Okay. And the Bloods were on the other end; right? It
17 would be this way. There. And those are the Bloods; right?

18 A Yes, sir.

19 Q All right. Where were you?

20 A I was on the other side of the rock.

21 Q Other side of the rock? Meaning right over here?

22 A Yeah, in the vicinity where the Gangster Disciples were
23 at.

24 Q So, you were down there near the Gangster Disciples?

25 A That's where I was standing, yes, sir.

1 Q Where are you?

2 A I can't quite identify myself from this image, but I was
3 somewhere out there.

4 Q Fair enough.

5 Who is up top in that picture? What gang is up top
6 there?

7 A I believe that would have been the Crips.

8 Q The Crips?

9 A I think so.

10 Q Can you talk a little bit louder? I apologize; my
11 hearing's terrible.

12 A Crips.

13 Q Crips?

14 A Yes, sir.

15 Q Okay. Thank you.

16 So, Crips were on that end, the Gangster Disciples are on
17 that end, and Bloods are on the other end?

18 A Yes, sir.

19 Q Were you there when the assault of Mr. McClary started?

20 A I was downstairs right there standing -- I was by that
21 table right there.

22 Q Excuse me?

23 A I was by that table that you see in the image. I was
24 somewhere around there.

25 Q Somewhere around up here?

1 A Yeah. By that table.

2 Q By that table?

3 A Yes, sir. Somewhere by that table.

4 Q All right. And the original assault on Mr. McClary is on
5 the second floor; right? You watched it; right?

6 A I saw it.

7 Q Okay. But it was all the way on the other end from that
8 picture?

9 A Yes, sir.

10 Q Okay. And there's another Crip room on the other end;
11 correct?

12 A Are you talking about on the end that's not on the
13 camera?

14 Q That you can't see. It's on the other end; right?

15 A Yes.

16 Q Okay. Who is that, scratching his head? Is that Andre
17 Boone?

18 A I don't know who that is.

19 MR. GIESE: Okay. Show us the attack, please.

20 (Video plays.)

21 Q And you watched that? And you watched that?

22 A Yes, sir, I saw that.

23 Q And you were near the table; right?

24 A Yes, sir.

25 Q Is that what you said?

1 A Yes, sir.

2 Q Which one of those are you?

3 A I'm looking for me. Can you replay the video?

4 Q Sure.

5 (Video plays.)

6 Q Because I believe you have been identified in your case
7 as having a towel around your neck; correct?

8 A I honestly don't remember what I had on that night. I'm
9 just -- I'm looking.

10 (Video continues to play.)

11 Q So, you were incorrect when you said you were near that
12 table when you watched it?

13 A I was there; I just cannot see. I don't -- there's a lot
14 of commotion going on. I just can't exactly identify myself
15 on the camera, but I was right there.

16 MR. GIESE: Play it one more time. I'll let you take a
17 look one more time.

18 (Video plays.)

19 Q Stop us when you see yourself.

20 A Can you replay it one more time?

21 Q Sure.

22 (Video continues to play.)

23 A One more time.

24 (Video continues to play.)

25 A I found out where I was.

1 Q Where? You did?

2 A Yeah.

3 Q Okay. Where?

4 A Play the video again.

5 (Video continues to play.)

6 A You'll have to rewind it a little bit. Rewind it some

7 more. I said, can you rewind it? Oh, you're rewinding it

8 now?

9 Q It's rewinding now.

10 (Video continues to play.)

11 A Oh, okay. All right. Pause.

12 Q Pardon?

13 A Pause.

14 Q Okay. Where are you?

15 A I'm right there standing by the table.

16 Q Which one?

17 A Right there. Not him. The other guy.

18 Q That guy?

19 A No.

20 Q That guy?

21 A No. Right there.

22 Q That guy?

23 A Yes, sir.

24 MR. GIESE: Okay. Play it.

25 (Video continues to play.)

1 Q You're saying that's you?

2 A Yes, sir.

3 Q So, you were involved in this; correct?

4 A No, I'm not. No, I was not.

5 MR. GIESE: Follow it. Follow that person, please.

6 (Video continues to play.)

7 Q Well, that person that you just identified as yourself
8 came from the Gangster Disciples gang; right?

9 A I have friends in that area, yes.

10 Q So, you were with the Gangster Disciples that day?

11 A I had friends, yes, but I am not a member of Gangster
12 Disciples.

13 Q But you were down there?

14 A Yes, I was.

15 MR. GIESE: All right. And play it.

16 (Video continues to play.)

17 MR. GIESE: Stop.

18 Q Are you saying that's you?

19 A Yes, sir.

20 MR. GIESE: Back it up.

21 (Video continues to play.)

22 MR. GIESE: Stop.

23 Q What's in your hand? Is that a shank?

24 A Obviously.

25 Q Excuse me?

1 A Obviously.

2 Q Okay. So, you have a shank.

3 And you know that's against the law; correct?

4 A There's a riot going on. What, you think I don't have a
5 weapon in my hand?

6 Q Just asking you.

7 A I'm just asking you --

8 Q You didn't answer my question.

9 A If there's a riot going on, you think I'm not going to
10 protect myself if somebody --

11 Q Just please -- just answer the question, please.

12 A I'm just asking --

13 Q Do you know that's against the law?

14 A It's against the law to have a weapon.

15 Q Thank you.

16 A Okay.

17 MR. GIESE: Proceed.

18 (Video continues to play.)

19 Q So, you don't actually watch who the State claims is
20 Mr. Green stabbing the victim because you're turned the other
21 way; correct? So, you didn't actually see the assault -- the
22 final assault, did you?

23 A Yes, I seen when he fell.

24 Q Excuse me?

25 A I was right there when he --

1 Q You weren't looking that way.
2 Who else assaulted him? Mr. Green? Mr. Smith? You
3 don't know anybody?
4 A I don't know these people by their name.
5 Q You don't know anybody? Okay.
6 Flame? How about Flame? Did Flame do it?
7 A I don't know who that is.
8 Q Do you know who Tank is?
9 A Tank? That would be Mr. Green.
10 Q Thank you.
11 MR. GIESE: Go to the actual stabbing down here, please.
12 (Video continues to play.)
13 MR. GIESE: Stop. Go forward.
14 (Video continues to play.)
15 Q And you don't know who that is?
16 A Who?
17 Q Right there.
18 MR. GIESE: Go back.
19 (Video continues to play.)
20 Q Is that Andre Boone?
21 A I can't identify that man.
22 MR. GIESE: Keep going.
23 (Video continues to play.)
24 MR. GIESE: Stop.
25 Q Who is that?

1 MR. GIESE: Back it up.

2 (Video continues to play.)

3 A I do not know.

4 Q You have no idea?

5 A Nope.

6 MR. GIESE: Okay. Keep going.

7 (Video continues to play.)

8 Q Who is that?

9 MR. GIESE: Back it up.

10 (Video continues to play.)

11 A I don't know.

12 Q That's not Mr. Green? That's not the person you know as
13 Tank?

14 A I can't say that it is.

15 Q You have no idea?

16 A I'm looking, but I can't say who that is.

17 Q Well, okay. You say you're watching this as it's going
18 on?

19 A I was -- yeah, I remember seeing it, I believe, yes, sir.

20 Q Okay. So, you actually saw about how many strikes there
21 were -- right? -- by that man?

22 A I saw the assault.

23 Q By Tank?

24 MR. GIESE: Play it.

25 (Video continues to play.)

1 Q Let's count them. One, two, three, four, five. And
2 you're saying you don't know who that is?

3 A I don't. I cannot say that's Mr. Green.

4 Q Excuse me?

5 A I cannot say if that's Mr. Green or not.

6 Q Can you say it's not Mr. Green?

7 A I don't believe it is.

8 Q Did Mr. Green have any special shoes?

9 A I don't know.

10 Q You said you were close to him.

11 A Every time I seen him, he had on boots or his New
12 Balance.

13 Q His New Balance? Okay. I'd ask you to look at State's
14 Exhibit No. 33. Have you ever seen shoes like that?

15 A Honestly, I don't -- I can't -- never seen those shoes.

16 Q Excuse me?

17 A I have never seen those shoes.

18 Q Take a look at State's Exhibit No. 23. I think you
19 previously identified that person as Tank; right?

20 A Yeah, I say it could be him. It favors him, yes.

21 Q That could be him?

22 A Yes, sir.

23 Q Okay. And what's he got draped over his shoulder?

24 A A jacket.

25 Q And that's an SCDC jacket?

1 A Yes, sir.

2 Q Okay. And what kind of shoes is he wearing?

3 A Some Nike shoes, it looks like.

4 Q Yeah. I thought you said he didn't have Nikes. He had
5 New Balance.

6 A I say, when I seen him, he had New Balance or his boots.
7 I never knew him to have those shoes.

8 Q But, clearly, he has them; right?

9 A The man is wearing some Nikes.

10 Q Excuse me?

11 A Yeah, in that image, that person is wearing Nike shoes,
12 yes.

13 Q That person?

14 A Yes.

15 Q You're saying that's not Mr. Green?

16 A I'm saying it could be. I'm not 100 percent sure if it
17 is. I can't tell.

18 Q Okay. You're not 100 percent sure that that is Tank?

19 A I'm saying it looks like him.

20 Q It sure does.

21 MR. GIESE: Can you go down to the timestamp 10:27:52.

22 Q Is that right? Down here?

23 A Mm-hmm.

24 Q And what hallway is that?

25 A I can't really tell. It's the sally port. I know that.

1 Q Excuse me?

2 A It's the sally port.

3 Q Sally port. That's right. And that's a door to one of
4 the wings?

5 A Yes, sir.

6 Q That Mr. Green or someone you say could be Mr. Green is
7 going into?

8 A Yes, sir.

9 Q Okay. Handing you State's Exhibit marked for
10 identification No. 24. Can you identify that? That person?

11 A That looks like Mr. Green, yes.

12 MR. GIESE: Okay. I'd like to enter it at this time.

13 Q And can you see the shoes that he's wearing?

14 A Yeah.

15 Q Do those look like the New Balances that DOC gives all
16 inmates?

17 A No, they don't.

18 Q Okay. So, he does have some shoes with the Nike swoosh
19 on the heel; correct?

20 A Yeah, I see it.

21 Q Now, you said you were hanging out with the Gangster
22 Disciples that night?

23 A I have friends in that area, yes.

24 Q Excuse me?

25 A Yes, I have friends in that area, yes.

1 Q Okay. So, you would know a lot of Gangster Disciples --
2 right? -- by name?

3 A Not necessarily. I mean, I hang with Crips and I hang
4 with Bloods as well, so...

5 Q I apologize.

6 A I hang with Crips and I hang with the Bloods as well.
7 I'm what you call a neutral. So, I'm -- but yes, I...

8 Q So, you know a lot of Bloods?

9 A Not a lot. I know who I hang with, though.

10 Q But, that night, it was very tense?

11 A Yes, it was.

12 Q Gangster Disciples were at one end. Bloods were on the
13 other.

14 Tell me who were some of the Bloods were on the other
15 end.

16 A I mean, I can't tell you who they were.

17 Q Do you want to look? You know some Bloods; right? What
18 Bloods do you know? Tell the jury what Bloods you actually
19 know in F1.

20 A In F1? Let's see. I don't got -- I don't even know --
21 remember their names. I don't know them by their names. I
22 would call them by their nicknames --

23 Q Okay. Give us some nicknames.

24 A -- but I haven't seen them in years, so...

25 Q Give us some nicknames.

- 1 A I can't recall them.
- 2 Q Do you know Flame?
- 3 A Flame? I believe I know who that is. I'm not sure.
- 4 Q Andre Boone? Mike Smalls?
- 5 A Nope.
- 6 Q All co-defendants of yours, you know?
- 7 A Uh-huh.
- 8 Q Yeah?
- 9 A Uh-huh. We were all in the same dorm.
- 10 Q You know Bloods but you don't know those Bloods.
- 11 How about Michael Antonio Williams, also known as Mikey?
- 12 A I can't quite remember who that is.
- 13 Q Jerrell Rashawn Jackson?
- 14 A (Witness nodding.)
- 15 Q Keyon Dante Moore?
- 16 A (Witness nodding.)
- 17 Q Rico Hickman?
- 18 A Nope.
- 19 Q Mike Smalls?
- 20 A Nope.
- 21 Q Tyrone Lewis?
- 22 A Nope.
- 23 Q Akeem Jackson, also known as Teran Hakim Jackson also
- 24 known as Two-Five?
- 25 A Nope.

1 Q Sean Bisnauth?
2 A Nope.
3 Q Arsenio Dante Coldclaw?
4 A Nope.
5 Q All right. So, again, you say you knew Bloods.
6 A Yeah.
7 Q But you can't give us the name of one; correct?
8 A I know faces, but -- I can remember faces, but I can't
9 remember names.
10 Q You know faces but not names?
11 A I can remember faces better than I can remember names.
12 Q Okay. Well, give me some names of the Gangster Disciples
13 that were down there with you. Your friends.
14 A Can't quite recall.
15 Q Now, if you could watch -- watch the tape. Okay?
16 And you said you were watching all this; right? And
17 you're saying you don't know who that is?
18 A No, I do not.
19 Q You have no idea?
20 A No, sir.
21 Q Okay.
22 (Video continues to play.)
23 MR. GIESE: Stop.
24 Q No idea?
25 A I cannot say who that is.

1 MR. GIESE: Play it all the way through.

2 (Video continues to play.)

3 MR. GIESE: Stop.

4 Q Does it look like the same guy that came down the stairs
5 that goes over to him, stabs Mr. McClary? Does that look like
6 the same guy?

7 A It could be. I can't say.

8 MR. GIESE: Play it.

9 (Video continues to play.)

10 MR. GIESE: Stop.

11 Q And you're telling the jury that you stay in F1, you have
12 Gangster Disciple friends, you have Blood friends, and you
13 don't know who any of these people are? Near where
14 Mr. McClary is stabbed, you don't know any of them?

15 A I'm not saying I don't know any of them. I'm saying I
16 can't recall people's names.

17 Q I'm sorry?

18 A I live in the dorm so, yeah, I was around them and I seen
19 them. I would talk to them in passing, but I was not in
20 everybody's room, talking to them like we were just friendly
21 like that. But I did know them.

22 MR. GIESE: Beg the Court's indulgence.

23 THE COURT: Okay.

24 MR. GIESE: Your Honor, that's all I have.

25 MR. HICKS: Want your stuff back?

1 MR. GIESE: Oh, thank you.

2 MR. HICKS: Oh, I apologize.

3 REDIRECT EXAMINATION

4 BY MR. HICKS:

5 Q Mr. Dozier, I'd like to take a moment to talk about this
6 photo with you for just a moment. This is State's Exhibit No.

7 22. Where was this screen shot from video taken?

8 A That would be the sally port.

9 Q It's in the sally port?

10 A Yes, sir.

11 Q So, not in F1/B side.

12 You talk about you see a string?

13 A Yes, sir.

14 Q Are you familiar with -- do you know what a phone bag is?

15 A Oh, yes, sir.

16 Q Can you explain to the jury what a phone bag is?

17 A A phone bag is something like --

18 Q I'm sorry; speak up, please.

19 A A phone bag would be something like, you know, we would
20 get -- somebody sold something like that, and -- to carry our
21 phones around our necks or maybe in our pants. We put our
22 phone in it and we'd just walk around with it on the yard.
23 The COs wouldn't see it. We would just have our headphones in
24 like we're listening to our radios, walking around, talking on
25 the phone.

1 Q This is State's Exhibit No. 15 that Mr. Giese showed you.
2 Where was this located at? Do you -- does that picture look
3 familiar?

4 A That's in the sally port.

5 Q Also in the sally port?

6 A Yes, sir.

7 Q And there's that string you were talking about.

8 A Right.

9 Q Does that appear to you to be a string from a phone bag?

10 MR. GIESE: Objection.

11 A It could be, yes.

12 MR. HICKS: Withdrawn, withdrawn.

13 BY MR. HICKS:

14 Q This is State's Exhibit No. 14, Mr. Dozier. Excuse me; I
15 apologize. Does this appear to be inside the F1/B wing, to
16 the best of your knowledge?

17 A Yes, sir.

18 Q Is that photo clear enough for you to make a positive
19 identification of the person at the top of those stairs?

20 A No, sir.

21 Q No, it isn't. Thank you.

22 MR. HICKS: Could you please bring up the F1/B right PTZ
23 at 10:01?

24 Oh, man, you should have said something. I see how you
25 unplug it.

1 10:01 and zero seconds. And play, please. I'll tell you
2 when to stop.

3 (Video continues to play.)

4 MR. HICKS: Stop. Thank you very much.

5 BY MR. HICKS:

6 Q Does this paused video footage appear to be this picture
7 from a different angle -- the last picture I showed you from a
8 different angle, Mr. Dozier?

9 A Yes, sir.

10 Q Is that paused video footage too blurry for you to
11 positively identify that person at the top of the stairs?

12 A Yes, sir.

13 Q Mr. Giese showed you a bunch of different footage and
14 asked you to identify some other people as well. Every single
15 time, was the video footage too blurry for you to identify --

16 MR. GIESE: No objection.

17 THE COURT: Don't lead him.

18 MR. HICKS: I'm sorry, Your Honor?

19 THE COURT: Don't lead him.

20 MR. HICKS: Yes, Your Honor. I have no further
21 questions.

22 THE COURT: Okay. You can step down.

23 Anything else?

24 MR. HICKS: Nothing from the defense, Your Honor.

25 THE COURT: Anything from the State?

1 MR. GIESE: No, Your Honor.

2 THE COURT: Okay. Ladies and gentlemen --

3 MR. HICKS: I'm sorry, Your Honor. I apologize.

4 THE COURT: I'm sorry; what?

5 MR. HICKS: I thought you were addressing me.

6 THE COURT: No, I wasn't.

7 We're going to take about a 10- or 15-minute break. When
8 you come back, we'll do closing arguments and the charge and
9 I'll give you this case to decide.

10 Don't discuss it yet. If you'll go to the jury room.

11 (The jury exited the courtroom at 2:43 p.m.)

12 MR. HICKS: Your Honor, you said 15; correct?

13 THE COURT: Yeah.

14 Any legal matters we need to deal with before we take a
15 break?

16 MR. HICKS: None from the defense, Your Honor.

17 MR. GIESE: No.

18 THE COURT: We'll be back at 3:00.

19 (A recess was taken from 2:44 p.m. to 3:03 p.m.)

20 MOTION FOR DIRECTED VERDICT

21 MR. HICKS: I'd like to renew my motion for a directed
22 verdict before we give this to the jury.

23 THE COURT: Okay. And I'll respectfully deny your
24 motion.

25 MR. HICKS: Yes, sir.

1 THE COURT: Anything?

2 MR. GIESE: The State's ready.

3 THE COURT: Okay. All right. So, we'll --

4 MS. SCOTT: Judge, there is one thing. During
5 Mr. Giese's cross, he wanted to enter State's Exhibit 24. I
6 don't think that was entered on the record, so we're entering
7 it now for the record.

8 MR. HICKS: Without objection. And I also used it.

9 THE COURT: 24 is in without objection.

10 (State's Exhibit No. 24 was received into evidence.)

11 THE COURT: Anything else?

12 MR. HICKS: Nothing from the defense, Your Honor.

13 THE COURT: So we'll argue and charge and hope to give
14 this to the jury by 4:00? Well, let me put it to you this
15 way: I think the rule says you have two hours on closing
16 argument. When I finished law school, the adult attention
17 span was 19 minutes; now, I think it's less than eight. Y'all
18 can talk more than that if you want to, but you're going to
19 lose them. My preacher loses me after 20 minutes. You have
20 done this a long time; you understand that.

21 MR. GIESE: I have rarely gone over 30 minutes.

22 THE COURT: I understand. But, anyway, whatever.

23 MR. GIESE: Yes, sir.

24 THE COURT: If either one still talking after two hours,
25 I'm going to tap the mic.

1 Okay. The jury is ready. Are we ready for them? We'll
2 get rolling.

3 (The jury entered the courtroom at 3:05 p.m.)

4 THE COURT: Okay. Ladies and gentlemen, we're missing
5 someone?

6 All right. At this point, you're going to hear the
7 closing arguments of the attorneys, I'm going to charge you
8 the law and give you this case to decide.

9 Yes, sir.

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

11 CLOSING ARGUMENT ON BEHALF OF THE STATE

12 MR. GIESE: Madam Forelady, ladies and gentlemen of the
13 jury, this is the closing arguments by counsel. It's not
14 really an argument because you can't ask me questions and I
15 can't answer them, and I can't ask you questions and try to
16 answer them.

17 It's really just the way that the lawyers have viewed the
18 evidence and applied it to the law, and that's what I'm going
19 to do in the next couple of minutes, is talk about the law and
20 about the facts.

21 Now, I'm sure that Mr. Hicks and I are going to disagree
22 on some things when we stand here, both of us. But, you know,
23 I really think there are some things that we can agree on.

24 We can agree that Cornelius McClary did not deserve to be
25 stabbed 101 times. He did not deserve to be chased down a

1 hallway, stabbed multiple times by a mob, a group of people,
2 fall down the stairs, and then get stabbed five times by
3 Mr. Green. He did not deserve any of that. He's unarmed.
4 He's innocent.

5 Now, I know you're thinking, "Well, he may not be
6 innocent because he's in the Department of Corrections." I'm
7 talking about he's innocent in this case. He had a right to
8 live. He had a right to do his time in peace and get out.
9 That was stopped. That was terminated. It was terminated on
10 April 15th, 2018, by a mob, a mob that Mr. Green was in.

11 Now, some people would say, well, Mr. McClary's death,
12 meaningless. What happened in the Department of Corrections
13 with all those people that got killed is meaningless. But
14 it's not. It's our rule of law, and those people, every
15 single one of them in the Department of Corrections, has a
16 right to live. Mr. McClary's life was taken from him.

17 Now, I want to talk to you about the law for just a
18 second. But right before I do, you know, the other thing
19 about this -- and Ms. Scott mentioned it in her opening --
20 this case comes down to one thing: Revenge. This was a
21 revenge kill. And I'll get into that in a minute. Revenge.

22 Now, His Honor is going to show --

23 No, go to the PowerPoint.

24 His Honor is going to talk to you about give you the law
25 of the case. He's also going to give you several different

1 potential verdicts. The first will be murder. Did Mr. Green
2 murder Mr. McClary? The second is mob first. Did Mr. Green
3 combine with other people to have Mr. McClary killed?

4 Now, he's going to tell you at that point -- he's going
5 to tell you at that point that you can't convict him of both
6 of those, if, in fact, you think he did any -- either one of
7 them. You can't convict him of both. It's one person dead.
8 One homicide. So, you can't do that. If you think that he
9 was involved, then you can convict him.

10 Let's talk about murder for a second. Definition.
11 Murder is the killing of any person with malice aforethought,
12 either expressed or implied. And it's fairly simple. Killing
13 of a human being by a human being but with malice
14 aforethought.

15 Now, His Honor is going to tell you what malice
16 aforethought means. But suffice it to say that malice is a
17 dark heart, it's a heart evilly bent on mischief and devoid of
18 all social duty. It's a dark heart.

19 Now, we can't cut Mr. Green open and see whether or not
20 he's got malice in him when he's striking those five blows.
21 What we can do is show what Mr. Green did. And the State
22 submits that's exactly what we have done.

23 We have shown you what Mr. Green did, which the State
24 submits is malicious. He's swinging a knife five times at
25 someone unarmed and badly injured and bleeding and stumbling.

1 And after his last strike, Mr. McClary goes down and falls,
2 never to move again. Never to get up. Never to get up.

3 So, the State submits that you can prove malice through
4 his actions, and the State submits that's exactly what we have
5 done.

6 Now, aforethought. Malice aforethought. Aforethought
7 just means you have to have the malice in you while you're
8 striking the blow or right before you strike the blow. I had
9 a judge one time describe it as the blink of an eye. In the
10 blink of an eye is all you have to have for aforethought.

11 So, that's what the State has to prove: Malice
12 aforethought, either expressed or implied. Malice is malice.
13 Both are forms of malice. It's just whichever one you find.

14 Now, there's another legal frame or term that's included
15 in the malice. Okay? And His Honor is going to tell you
16 about it. And it's called the "hand of one is the hand of
17 all." When two or more people bind together -- two or more
18 bind together to commit an unlawful act -- to commit an
19 unlawful act -- the "hand of one is the hand of all."

20 Under our law, Mr. Green, if you find was involved in the
21 attack, his blows, which were five, he's actually responsible
22 for all 101 because they bound together to commit the unlawful
23 act of attacking Mr. McClary. Every blow struck, Mr. Green is
24 liable for under that theory.

25 And ladies and gentlemen, the State submits that, because

1 of those 101 blows, malice -- malice is very obvious. How can
2 it not be malicious? How can 101 blows not be malicious. But
3 I say 101; it's a hundred. And then, 30 minutes later, it's
4 one.

5 Now, can we go to mob first?

6 All right. Assault and battery by mob first degree. Any
7 act of violence inflicted by a mob upon the body of another
8 person which results in the death of the person. All right?
9 So, was there a mob? Did the mob inflict violence on Mr.
10 McClary?

11 I can't imagine anyone watching the tape could think that
12 there wasn't a mob. That is a mob. The definition of a mob
13 in South Carolina is the gathering of two or more persons,
14 without color or authority of law, for the premeditated
15 purpose and with the premeditated intent of committing an act
16 of violence on another person.

17 They get together, all of them in one end. They run.
18 Half of them go up one way after some Crips, half of them go
19 the other. They catch a Crip outside of his dorm, Mr.
20 McClary, out of his room, somehow get him out, and that mob
21 destroyed Mr. McClary. Destroyed him.

22 And that's what is meant by a mob that results in the
23 death of a person. 100 stab wounds caused the death of Mr.
24 McClary.

25 Again, His Honor is going to tell you, if you think that

1 Stephen Green was involved, was there, and was guilty of
2 either one of these, you can only find him guilty of one.
3 One. Because it's one homicide.

4 So, the State submits it's either murder or it's assault
5 and battery by mob first degree. The State submits there's
6 ample evidence for both, either. He's been identified. You
7 have seen the tape. The State submits that's all you need.

8 Now, it gets a little confusing here, but you're also
9 going to have an opportunity to decide whether or not
10 Mr. Green is guilty of assault and battery by mob second. And
11 it says, "Any act of violence inflicted by a mob upon the body
12 of another person which results in serious bodily injury to
13 the person." And, again, that's exactly like mob first
14 except, instead of it causing his death, it results in serious
15 bodily injury.

16 His Honor is going to give you that option, because
17 they're two different assaults: the 100 and the one. He'll
18 explain that to you, but that's an option that you will have.

19 Go ahead.

20 All right. One of the charges that he's charged with in
21 his indictment is criminal conspiracy: "The defendant
22 combined with one or more persons for the purpose of
23 committing an unlawful act or of committing a lawful act by
24 unlawful means." Again, two or more people who decide, for
25 whatever reason, they're going to commit an unlawful act. It

1 could be any unlawful act: a riot, stabbing, attacks. Or of
2 committing the lawful act by unlawful means. That just means
3 that what you end up doing is lawful but you did it illegally,
4 and you planned on doing that. And that's what's the criminal
5 conspiracy. The State submits, ample evidence for that. All
6 you have to do is watch him. Watch him. Watch Mr. Green.
7 Clearly, he's conspiring with these other people.

8 Go ahead.

9 And the last one, possible verdicts: "An inmate of a
10 state correctional facility did have in his possession and
11 carry on his person and/or conceal an object, homemade or
12 otherwise, that would be used to inflict personal injury upon
13 another person."

14 The State submits that one is pretty easy. And you'll
15 have these back there. Take a good look. Take a good, close
16 look. Because the person that's been identified is Mr. Green
17 not only by four correctional officers in this picture and in
18 this picture but also by his own witness, Mr. Dozier. He
19 said, "Yeah, that's Stephen Green." But he wouldn't say
20 whether or not that was a shank in his hand.

21 You take a look. The State submits that's a shank.
22 That's a shank. And the State submits this is the shank that
23 Mr. Green used to strike those five blows on Mr. McClary.

24 By the way, this picture was 11 minutes -- 11 short
25 minutes after Mr. McClary is killed. And you can take it back

1 there and you want to look for timestamps, they're down here
2 on the bottom. So, you can look and see when exactly these
3 pictures were taken off the screen.

4 Go ahead.

5 All right. His Honor is also going to instruct you about
6 credibility, and we all pretty much know what credibility is.
7 Do you believe the person or do you not believe the person?
8 He's going to give you the different factors that you can use
9 to determine whether or not you want to believe him.

10 Did the person always tell the truth? What was the
11 person's demeanor? What bias or non-bias does the person
12 have?

13 Example: The four correctional officers that ID him --
14 Mr. Green -- they ain't got nobody to reward. They ain't got
15 nobody to punish. They've got nobody to help. They're up
16 there swearing an oath and telling the truth.

17 Compare that to Mr. Dozier, who testified today. Did you
18 believe him? Did you think he was credible? The State
19 submits he was not. The State submits he knew exactly who
20 those people were, and if he's not telling the truth on
21 something like that, how can you believe him on any of it?
22 How can you believe any of his testimony? If he's willing to
23 not tell the truth about some of the things that he testified
24 about, they're easily shown, how do you believe him now? How
25 do you believe him when he says, "I don't know if that's -- I

1 don't know if that's Mr. Green. I don't know if that's
2 Mr. Green." You'll have this back there. "I have no idea.
3 Too blurry." Take a look. When you get back there, sit down,
4 all of you, I recommend, and take a look at it. The State
5 submits that's Stephen Green.

6 It's not just only Stephen Green; it's Stephen Green
7 after he's been tracked on the videotape from 25 minutes
8 before. 25 minutes is when he's first seen. And we'll show
9 you that real quickly.

10 Go ahead for the identification.

11 All right. I haven't had a chance to put Mr. Dozier up
12 here, because he just testified, but these are the people that
13 have identified Mr. Green. Do they have a bias? Do they have
14 a prejudice? Do they want to convict Mr. Green for no reason?

15 William Burley, career Department of Corrections. He's
16 now a lieutenant. At the time, he was a yard sergeant.
17 Mr. Burley had absolutely, the State submits, no problem
18 identifying Mr. Green. Remember his testimony? He was the
19 first one. He said, "That is Stephen Green, and I know that's
20 Stephen Green because I knew him by name, I knew him by sight.
21 I had been working on the yard that he was on." And, in fact,
22 one time he's trying to get out of that door that we talked
23 about, and you can't lock -- it has to be unlocked from the
24 outside, and he's wanting to get out and he's screaming at
25 Mr. Burley to open the door.

1 He looked at him. Looked at his face. Talked to him.
2 Said, "I can't. There are too many people. We don't want
3 them on the yard." He looked right at him. But, yet, the
4 defense wants you to believe that, "No, no, Mr. Burley or
5 Lieutenant Burley, he's wrong."

6 Well, how about Breanna Jeffcoat? She was in the hearing
7 with him. She sat and watched him. Watched him talk.
8 Watched him walk. Watched him for a long period of time. She
9 came in and said, "Yeah, that's him."

10 And by the way, Clive Lopez -- by the way, why would
11 Brenna Jeffcoat come in here and lie to you? If she can't
12 identify him, she'd say, "I can't identify him." She could.

13 Clive Lopez. Clive Lopez. If ever, ever there was
14 somebody who, in a time of great stress, did as well as he
15 could and stayed alive, it's Mr. Lopez. That man was locked
16 into F1 while all this was going on. He couldn't get out. It
17 locked from the outside. He could only get unlocked from the
18 outside. He's in there. Right? Well, yeah, you know, did
19 Mr. Lopez say he knew Mr. Green? Yeah, he worked in F1 with
20 him numerous times. Numerous times. Saw him. Talked to him.

21 And what did Mr. Lopez say? Not only did he identify him
22 on the tape, Mr. Green running down the stairs to go stab Mr.
23 McClary, he said, "I saw him twice that night. I saw him once
24 on side A and once on side B." He said he was on both sides.
25 And you can see him on the tape -- you can see Mr. Lopez --