

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

John C. Hayes, III, Circuit Court Judge

DAVID STEVENSON BOYD, II,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002560

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s): 2009GS2302385,
	)	2009GS2302386,
State of South Carolina,	)	2009GS2302388,
	)	2009GS2302389
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
David Stephenson Boyd, II	)	
	)	
Defendant.	)	

January 09-13, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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Volume 2 of 3

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Speed CAT 7

David Weiner - Redirect Examination by Mr. Fretwell

500

1 A Yes, sir.

2 Q Now, he's with SLED?

3 A Correct.

4 Q And it's his job to do what with respect to an
5 investigation of an officer-involved shooting?

6 A Whether or not it was a justified shooting by
7 the police department or the sheriff's office.

8 Q I believe Mr. Johnson asked you whether you
9 declined to speak with him.

10 A Correct.

11 Q Can you say why?

12 A Absolutely. He asked me five or ten minutes
13 after I had just shot somebody. My nerves are real
14 rattled. Obviously, it's been a long day. We just like
15 to, myself in particular, collect my thoughts overnight.
16 I'll write it all out to where I can look at it. That's
17 what I handed him.

18 Q That's what you did in this case with that
19 second report; is that correct?

20 A Correct.

21 Q Okay. Let me refer you to Defendant's Exhibit
22 1. You indicated, I think, in the foundation questions
23 that you were -- for a period of time, you were with
24 Office of Professional Standards; is that correct?

25 A Yes, sir.

David Weiner - Redirect Examination by Mr. Fretwell

501

1 Q Is that before or after this incident?

2 A After.

3 Q When you were a member of the Office of
4 Professional Standards, would you investigate the actions
5 of your fellow officers?

6 A Yes, sir.

7 Q Okay. Were you ever cooperative in a SLED
8 investigation involving an officer-involved shooting?

9 A Yes, sir.

10 Q All right. Is this a typical letter that would
11 be received by the sheriff's office in response to an
12 investigation by SLED?

13 A Yes, sir.

14 Q Would they use the words "insufficient evidence
15 to proceed with criminal prosecution"?

16 A Yes, sir.

17 Q Now, first of all, let's be clear. Are we
18 talking about the criminal prosecution of this defendant
19 or are we talking about potentially you?

20 A Me.

21 Q All right. Uh, have you ever had a letter say
22 anything like there is no basis --

23 MR. JOHNSON: Judge, permission to approach.

24 THE COURT: All right.

25 (WHEREUPON, a bench conference is held.)

David Weiner - Redirect Examination by Mr. Fretwell

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1 BY MR. FRETWELL:

2 Q Other than when SLED -- other than when SLED
3 finds a basis for criminal prosecution ---

4 A Right.

5 Q --- is this the language they use?

6 A Yes, sir..

7 Q Any other language you've seen?

8 A Just different names.

9 Q I believe Mr. Johnson asked you with respect to
10 the first fence you came to with your vehicle on the back
11 of, I believe, 18 Crane Avenue --

12 A Yes, sir.

13 Q The first yard you went through?

14 A Yes, sir.

15 Q And he asked you a question about chasing the
16 defendant across that back yard. By the time you arrived
17 in the yard and got to that fence, where was the
18 defendant?

19 A He was already in the next yard.

20 Q And then finally, he asked you about the
21 clothing that the defendant was wearing. You indicated
22 it was a black shirt?

23 A It was dark. It was wet. It looked black to
24 me.

25 Q It was wet. All right. And is it possible

1 that it could have been ripped?.

2 A It was that wet, yes, sir.

3 Q The shirt that he was wearing was collected;
4 is that correct?

5 A Yes, sir.

6 Q So we'll have it?

7 A Yes, sir.

8 Q All right. No further questions.

9 THE COURT: Yes, sir.

10 MR. JOHNSON: Brief recross?

11 THE COURT: Yes, sir.

12 RECCROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q Now, you just testified that it's typical for
15 -- it's typical to use this type of language in this
16 letter?

17 A Yes, sir.

18 Q Now, what's the date on that letter?

19 A March 13th, 2009.

20 Q Now, up until today, you didn't -- up until
21 today, you testified earlier you didn't know the
22 substance of this letter.

23 A That's correct.

24 Q You never read it before?

25 A Correct.

David Weiner - Recross Examination by Mr. Johnson

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1 MR. JOHNSON: Your Honor, permission to
2 publish this to the jury.

3 MR. FRETWELL: No objection.

4 MR. JOHNSON: No further questions.

5 THE COURT: All right. Mr. Johnson would
6 publishing it on the projector, would that be --

7 MR. JOHNSON: I don't believe it would.

8 THE COURT: All right. That will be fine.

9 (WHEREUPON, there is a pause.)

10 THE JUROR: May we ask a question?

11 THE COURT: Unfortunately, sir, no. But you
12 can -- if you'll just read that and pass it along.
13 Interestingly enough, juries in some states can. I
14 did not know that until...

15 (WHEREUPON, there is a pause.)

16 MR. FRETWELL: Judge, I don't have any
17 redirect.

18 THE COURT: All right. Sir, you can step
19 down.

20 THE WITNESS: Thank you.

21 MR. FRETWELL: Judge, would it be appropriate
22 while the jury is looking at that letter if we went
23 ahead and called Master Deputy Bobby Duncan.

24 THE COURT: That will be fine.

25 THE CLERK: Sir, place your left hand on the

Bobby Duncan - Direct Examination by Mr. Fretwell

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1 Bible and raise your right hand.

2 BOBBY DUNCAN

3 having first been sworn, testifies as follows:

4 THE CLERK: Thank you. Please be seated.

5 THE COURT: Just for planning purposes, about
6 how long do you anticipate your direct of this
7 witness to be?

8 MR. FRETWELL: Very brief.

9 THE COURT: All right.

10 MR. FRETWELL: Along with the following
11 witness.

12 THE COURT: All right.

13 MR. FRETWELL: EMS and we'll get her out of
14 here.

15 THE COURT: Okay. Just want to make sure we
16 take breaks when we need to.

17 MR. FRETWELL: Oh, that's fine.

18 MR. FRETWELL: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. FRETWELL:

23 Q Master Deputy Duncan, you work for the
24 Greenville Sheriff's Office?

25 A Yes, sir.

Bobby Duncan - Direct Examination by Mr. Fretwell

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1 Q How long have you worked at the Sheriff's
2 Office?

3 A Approximately six and a half years.

4 Q Okay. And to what unit are you currently
5 assigned?

6 A I'm assigned to uniform patrol, Bravo platoon.

7 Q Okay. And Wednesday, December 10th, 2008, were
8 you working that day?

9 A Yes, sir. I was.

10 Q To what shift were you assigned on that
11 particular day?

12 A At that time, I was currently assigned to Adam
13 platoon to come in at 7 p.m. that night. I was working
14 over with Echo platoon so I began my shift at 4:00.

15 Q Okay. And, uh, you recall what kind of
16 condition the Echo platoon was that particular day with
17 respect to the number of vehicles?

18 A They had reduced manpower. There were very few
19 of them. That was one of the reasons I was working over.

20 Q That was one of the reasons you what?

21 A I was working over with them.

22 Q Okay.

23 A To assist with manpower.

24 Q All right. And you recall whether or not when
25 you came on the manhunt was still in progress?

1 A Uh, yes, sir. It was.

2 Q So for the brief time period the manhunt was
3 still in progress, what were you doing during that time?

4 A I was answering calls in my assigned beat area,
5 calls for service.

6 Q Was your assigned beat area at the time the
7 westside?

8 A Yes, sir. It was.

9 Q Around 4:30, did you head over to Crane Avenue?

10 A Yes, sir. I did.

11 Q For what purpose?

12 A I was already headed in that direction. They
13 had called off the perimeter. I wanted to just drive to
14 the area to see if I could, uh, possibly help locate the
15 suspect. At that time, I was headed in that direction
16 when I heard a call from Investigator Weiner come out
17 that he had located the suspect on Crane Avenue. At that
18 time, I activated my lights and sirens. I was headed on
19 White Horse Road, made a right onto Blue Ridge. I know
20 he was on Crane Avenue. I didn't know where on Crane
21 Avenue. My plan was to turn on to Crane Avenue and just
22 proceed down Crane looking for a patrol car or something
23 to that effect. Is this an area that you are familiar
24 with?

25 A Yes.

Bobby Duncan - Direct Examination by Mr. Fretwell

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1 Q What did you observe as you arrived on Crane
2 Avenue?

3 A When I made a left onto Crane Avenue, I
4 observed Investigator Fortner run towards Crane Avenue.
5 He began waving me down, waving his arms at me. I
6 quickly stopped my vehicle and exited and made contact
7 with him.

8 Q Okay. What did you do at that point?

9 A He told me Dave's in the back. He's got the
10 suspect at gunpoint. I bypassed him, proceeded around
11 the residence and observed Investigator Weiner holding an
12 individual at gunpoint.

13 Q Okay. And what did you do at that point?

14 A I approached him from behind and advised him
15 that I was coming up behind him.

16 Q Advised who?

17 A Advised Investigator Weiner. I was approaching
18 him from behind. At that point, I could see that he was
19 on one side of a chain-linked fence. And the individual
20 that he had at gunpoint was on the other side of the
21 fence. He was, again, holding him at gunpoint. I moved
22 around to his right side to stay out of his line of fire
23 in case something happened. Holstered my weapon. Jumped
24 the fence and took the suspect into custody and placed
25 him into handcuffs.

1 Q Do you recall whether or not you or
2 Investigator Weiner were shouting any specific
3 instructions at the man on the ground?

4 A The whole time, Investigator Weiner was telling
5 him stay down and to show him his hands.

6 Q Was he complying with the show me your hands?

7 A No. He had his left hand out to the side but
8 his right hand was tucked underneath his stomach at his
9 waistband area.

10 Q All right. And then what did you observe
11 generally about the suspect who was on the ground?

12 A He was soaking wet, looked exhausted. His
13 clothes were, you know, it wasn't just from up top like
14 it would be if rain was hitting you. I mean, they were
15 drenched. They were soaking wet. He had mud and leaves
16 on his clothes. His clothes were very dirty.

17 Q Did you observe, at that time, any blood on
18 him?

19 A Uh, yes.

20 Q What did you do at that point once you got up
21 to him on that side of the fence?

22 A My main concern at that point was the right
23 hand which, at that point, you know, we had information
24 that he was armed. I was concerned with him being armed.
25 I knew his left hand was empty. I didn't see a gun

Bobby Duncan - Direct Examination by Mr. Fretwell

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1 laying around him. My focus was on that arm. As I moved
2 to him, I grabbed right at the wrist area with both hands
3 in case he was armed. I wanted to make sure I had
4 control of that arm. At which point, I moved it out to
5 the small of his back. Secured it in handcuffs. Moved
6 his other arm around and secured both arms behind his
7 back. Then I conducted a search of his person.

8 Q All right. Let me show you -- shortly
9 thereafter, did EMS arrive?

10 A Uh, yes, sir. They did.

11 Q I'll show you what's marked as State's 34 and
12 35. Do you recognize what's depicted in those
13 photographs?

14 A Yes, sir. I do.

15 Q And what generally is that?

16 A They are the clothes that were cut away from
17 the suspect by EMS when they arrived.

18 Q And do those pictures accurately reflect the
19 condition of the clothes and where they were as you
20 recall that particular afternoon?

21 A Yes, sir. They do.

22 MR. FRETWELL: Okay. Your Honor, at this
23 time, we would move State's 34 and 35 into evidence.

24 THE COURT: Any objection?

25 MR. JOHNSON: No objection.

Bobby Duncan - Cross-Examination by Mr. Johnson

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1 THE COURT: All right then. They are so
2 admitted.

3 (WHEREUPON, State's Exhibit 34 and 35 are admitted
4 into the record.)

5 BY MR. FRETWELL:

6 Q All right. First of all, showing you State's
7 34, can you give us a little idea of where we are with
8 respect to that fence?

9 A The fence is right here.

10 Q Okay.

11 A This is where the suspect was laying right in
12 here when he was taken into custody. EMS cut his clothes
13 off which are laying right here. His shirt and pants and
14 shoes.

15 Q What is that to the very far right over there?

16 A Right there?

17 Q Yes, sir.

18 A I believe that's another shoe.

19 Q Then let me show you State's 35.

20 A These are the pants that were moved from him.
21 Obviously, you could see the embroidered material here.
22 It was soaked with water and blood.

23 Q Okay. Thank you.

24 If I could have the lights back.

25 Did you remain with the suspect or the subject,

Bobby Duncan - Cross-Examination by Mr. Johnson

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1 Master Deputy Duncan?

2 A Yes, I did.

3 Q Do you recognize the defendant in this case?

4 A Yes, sir. I do.

5 Q Is it the individual that you placed under
6 arrest that particular day?

7 A Yes, sir. He is.

8 Q And was transported by EMS?

9 A Yes.

10 Q How tall is the defendant?

11 A I estimated him to be about 5'8, 5'9.

12 Q Okay. And how much did he -- was he standing
13 or was he on the ground?

14 A He was on the ground the whole time. I never
15 saw him actually standing.

16 Q How much did he weigh at the time of his
17 arrest?

18 A About 175 to 185 pounds.

19 Q Okay. Please answer any questions Mr. Johnson
20 may have of you.

21 THE COURT: Mr. Johnson, any questions?

22 MR. JOHNSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q Now, after you cuffed my client, was that the

1 end of your association with him?

2 A No, sir. It wasn't.

3 Q In addition, isn't it true that you also went
4 with him to the, uh, -- in the ambulance?

5 A Yes, I did.

6 Q And you stayed with him per, uh, -- who were
7 you instructed by to stay in the ambulance with him?

8 A Sergeant Cooper.

9 Q So you stayed with him into the ambulance?

10 A Yes.

11 Q Did you stay with him in the EMS? Well, in the
12 trauma bay or at ICU?

13 A Yes, sir. I did.

14 Q You remained with him throughout his surgery?

15 A Yes, sir.

16 Q Now, it states in your report that he had a
17 trauma score of 12. What does that mean? Can you
18 explain to us?

19 A That's what EMS rates an individual when they
20 are being transported. They quickly assess their status
21 and assign a number to him.

22 Q What does 12 mean? Do you know?

23 A It means he was good. He was fine.

24 Q He was fine? And he had been shot three times,
25 right?

Bobby Duncan - Cross-Examination by Mr. Johnson

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1 A Yes, sir.

2 Q Now, when you put the cuffs on him, you stated
3 that one arm was under him?

4 A Yes, sir.

5 Q One arm was linked to the side?

6 A Yes, sir.

7 Q And then he was bloodied?

8 A Yes, sir.

9 Q You saw blood. He had been shot.

10 A I didn't know that he -- I saw blood. I didn't
11 know that he had been shot.

12 Q You just saw blood. At that point in time, you
13 didn't know if he had been shot or not?

14 A Correct.

15 Q And then you proceeded to -- you said first,
16 grab the right arm?

17 A The right arm, the arm that was tucked
18 underneath.

19 Q How did you grab him, by the wrist?

20 A The wrist area. It was tucked. So come in on
21 this area and grabbed him with both hands.

22 Q You grabbed him with both hands and then you
23 pulled it around him?

24 A Pulled it around him and placed it in the small
25 of his back.

Bobby Duncan - Cross-Examination by Mr. Johnson

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1 Q Then you grabbed the left hand?

2 A Yes.

3 Q Then you put that together and you handcuffed
4 him?

5 A Yes, sir.

6 Q Now, did you again help load him onto the
7 stretcher on EMS?

8 A Uh, had a hand on the stretcher, I believe, as
9 we were pushing it up to the ambulance.

10 Q They put him in the ambulance?

11 A Yes.

12 Q And you were there with him the whole time?

13 A Yes, sir.

14 Q How long do you think it took for you to get to
15 the hospital?

16 A I couldn't estimate. It was a real bumpy ride.
17 They were having to work on him. I was trying to assist
18 them and keep them from falling all over the place while
19 they were doing their job.

20 Q Now, when you got to the trauma bay, why did
21 they take him to the trauma bay? Do you know?

22 A I'm not a medical doctor. I'm not a medical
23 physician. I mean, he's injured. To provide medical
24 treatment, attention.

25 Q Are you saying that you don't know or you don't

Bobby Duncan - Cross-Examination by Mr. Johnson

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1 know the totality?

2 A I'm saying I'm not a doctor. I -- he's
3 injured.

4 Q Okay.

5 A They took him in there ---

6 Q Okay.

7 A --- to assess his injuries I'm assuming.

8 Q Okay. All right.

9 A If I'm injured, I'm going to go to the trauma
10 bay.

11 Q Now, did they operate on him?

12 A Yes, they did.

13 Q How long did they operate on him?

14 A I do not know the extent of the time.

15 Q You don't have a rough estimate or anything?

16 A 30 minutes to maybe an hour.

17 Q Did they take anything out of him?

18 A Yes.

19 Q What did they take out of him?

20 A They took out two 40 caliber bullets.

21 Q Now, was there another wound or just two
22 wounds?

23 A To my knowledge, uh, I believe the surgeon
24 advised me there was two wounds. One was to the, I
25 believe, the buttocks and the thigh area. I believe he

1 was also hit in the elbow.

2 Q We talking about something like this?

3 A Yes.

4 Q I don't know if it was left or right, but it
5 was something like in the butt, thigh area right here?

6 A I didn't see him, but that's --

7 Q That's what was described to you?

8 A Yes.

9 Q Now, you remained with him throughout that
10 whole time?

11 A Yes, sir.

12 Q Was any other law enforcement ever present
13 there?

14 A As far as deputies, no.

15 Q Any like forensics or anything show up?

16 A Forensics showed up, yes.

17 Q Now, what did they do when they got there?

18 A They did GSR on him.

19 Q GSR, now what's that?

20 A Gunshot residue.

21 Q Now, they took that test. Did they take any
22 pictures or anything of that nature?

23 A I believe they did.

24 Q You believe they did.

25 MR. JOHNSON: I have nothing further for this

Bobby Duncan - Redirect Examination by Mr. Fretwell

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1 . witness.

2 THE COURT: Mr. Fretwell?

3 MR. FRETWELL: Just very briefly.

4 REDIRECT EXAMINATION

5 BY MR. FRETWELL:

6 Q When you testified, Master Deputy Duncan, you
7 remained with the defendant while he was in the hospital,
8 were you right next to him or were you across the room or
9 in some area where you could generally observe what was
10 going on?

11 A I could see him at all times. In the trauma
12 bay, it's an open area that has two beds in it. It can
13 be closed off with a curtain partition. At no point was
14 I -- he outside of my sight. I was at that curtained
15 partition the entire time. Then, uh, during the surgery,
16 he was within my sight as well.

17 Q But you weren't standing next to the bed. He
18 wasn't handcuffed to you or anything like that?

19 A No. No, sir.

20 Q All right. And, uh, during the course of --
21 one more question. I apologize, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. FRETWELL:

24 Q The, uh, -- during the course of putting him
25 into the vehicle and the transport and everything; could

1 you tell whether or not he had blood on his hands or
2 whether they were dirty?

3 A At that point, the EMS personnel were working
4 on him. I was standing behind them. I couldn't see his
5 hands. I wasn't focused on his hands. It was a rough
6 ride. We were being thrown all over the place.

7 MR. FRETWELL: That's all the questions I
8 have.

9 THE COURT: Anything further?

10 MR. JOHNSON: Brief recross.

11 THE COURT: Sure.

12 **RECROSS-EXAMINATION**

13 **BY MR. JOHNSON:**

14 Q You did cuff him, right?

15 A Yes, sir. I cuffed.

16 MR. JOHNSON: Thank you.

17 THE COURT: Anything else, Mr. Fretwell?

18 MR. FRETWELL: No, ma'am.

19 THE COURT: Sir, you can step down.

20 Ladies and Gentlemen, we've probably come to a
21 time for our morning break. We'll take a short
22 break about 10 minutes. All right.

23 (WHEREUPON, the jury exits at approximately.

24 10:37 a.m.)

25 THE COURT: All right. Let's be in recess

Deanna Heger - Direct Examination by Mr. Fretwell

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1 until 10 til.

2 (WHEREUPON, a short recess is taken.)

3 THE COURT: Ready to bring the jury back in?

4 MR. FRETWELL: Yes, ma'am.

5 THE COURT: All right. Mr. Johnson, we ready
6 to bring the jury?

7 MR. JOHNSON: Yes, ma'am, Your Honor.

8 (WHEREUPON, the jury enters at approximately
9 10:52 a.m.)

10 THE COURT: All right. Mr. Fretwell, you
11 ready to proceed?

12 MR. FRETWELL: Yes, ma'am. May it please the
13 court, Your Honor?

14 THE COURT: Yes, sir.

15 MR. FRETWELL: The State would call Deanna
16 Heger.

17 THE CLERK: Ma'am, if you will, come forward.
18 Please pause at the end of the bench. Place your
19 left hand on the Bible and raise your right hand.

20 DEANNA HEGER

21 having first been sworn, testifies as follows:

22 THE CLERK: Thank you. Please be seated.
23 Please state your full name for the record.

24 THE WITNESS: Deanna Heger.

25 THE COURT: And ma'am, I think you might have

Deanna Heger - Direct Examination by Mr. Fretwell

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1 a soft voice. I'm going to ask you to speak up if
2 you can just best as you can. Okay? All right.

3 Mr. Fretwell.

4 MR. FRETWELL: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. FRETWELL:

7 Q Ms. Heger, by whom are you employed?

8 A The Greenville County EMS.

9 Q Okay. And I'm having a little difficulty
10 hearing you. So if you can, just move up as close as you
11 can to that microphone and yell into it. Okay. What is
12 your job title?

13 A I'm a paramedic.

14 Q How long have you been a paramedic?

15 A Since 2002.

16 Q What are your duties as a paramedic?

17 A I respond to 911 calls and I provide pre-
18 hospital care and treatment and transport patients to the
19 hospital.

20 Q All right. And what kind of education and
21 training have you received to become a paramedic?

22 A I took two years at the community college and
23 earned an associates degree. Then I maintained my
24 license by taking monthly training, uh, assessments and
25 tests.

Deanna Heger - Direct Examination by Mr. Fretwell

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1 Q And were you on duty on Wednesday, December
2 10th, 2008?

3 A I was.

4 Q Were you working as a paramedic with Greenville
5 County EMS?

6 A Yes.

7 Q Did you respond to the area of 20 Crane Avenue
8 that day?

9 A I did.

10 Q For what purpose?

11 A We were called to that, uh, location by
12 Greenville County Sheriff's Office for a reported gunshot
13 victim.

14 Q All right. And when did you receive the call
15 and what time did you arrive on scene?

16 A We received the call at 4:36. We arrived, uh,
17 4:45.

18 Q All right. Who was with you that particular
19 day?

20 A My partner, Jane Garrett. And my sergeant, Joe
21 Woodman, arrived shortly after.

22 Q Out of those three, who was the primary
23 caregiver for the patient at 20 or 22 Crane Avenue?

24 A I was.

25 Q What did you observe once you arrived on the

1 scene?

2 A We pulled up on the scene. There were police
3 cars everywhere. We got out of our vehicle and grabbed
4 our equipment. We were escorted by an officer to the
5 back of a residence where we found an individual laying
6 on the ground in handcuffs.

7 Q What was the weather like that day?

8 A Like today. Cold and wet.

9 Q Okay. So was it the same temperature as today
10 or was it colder?

11 A It was colder.

12 Q Okay. Where did you find that -- what
13 condition did you find the patient once you, uh, found
14 him?

15 A Like I said, he was laying on the ground in the
16 back of the yard. He was soaking wet, covered in dirt
17 and leaves. Handcuffs behind his back. I could see
18 blood on his clothing.

19 Q All right. Was this blood on his person as
20 well?

21 A Yes.

22 Q Okay. What, uh, -- what -- it's a general
23 question but was the patient awake or was he in a coma or
24 what kind of condition was he?

25 A No, when I approached him, I asked his name.

1 Q Okay.

2 A He gave me a name. I can't recall what it was.
3 But then any other question after that, he would just
4 request a soda. He wasn't answering any of my questions
5 after that.

6 Q All right. You said he asked for a soda?

7 A Uh-huh.

8 Q Was he able to breathe and speak clearly to
9 your understanding?

10 A Yes, by able to -- by being able to talk to me
11 and answer just -- by saying "soda", I could tell that
12 his airway was clear. He could breathe. I didn't notice
13 any respiratory distress of any kind.

14 Q How did you assess his wounds?

15 A Uh, my partner cut his clothing. We exposed
16 the wounds as we cut off the clothing. We were able to
17 see three, on his leg and then two on his arm.

18 Q Do you know whether or not these holes -- these
19 are holes that you're talking about?

20 A Yes, sir.

21 Q You know whether these holes were entrance or
22 exit wounds?

23 A No.

24 Q Okay. All right. Let me show you State's 34
25 and 35 and just -- we'll just do this. Is this, uh,

1 condition and location of the, uh, clothes that were cut
2 off of the patient that particular day?

3 A Yes, we cut them off and left them there.

4 Q Okay. Does that seem to be or appear to be in
5 the condition that y'all left it?

6 A Uh-huh.

7 Q Okay.. Uh, what about the assessment of the
8 patient beyond the actual identifications of the wounds?
9 What about his extremities being hot or cold? What did
10 you do to assess him further?

11 A Uh, after we covered each of his wounds to keep
12 them clean, we, uh, assessed like circulation. We had to
13 make sure none of the apparent gunshots would have
14 affected any of his circulation to his arms or legs.

15 Q Now, you did something with your hands there.
16 What are you doing with your hands?

17 A Oh, I'm sorry. We, uh, check his circulation
18 just by doing a, uh, quick test. By pinching his finger
19 and it just shows us how his circulation is in his
20 extremities.

21 Q Is that what you call a capillary refill test?

22 A Yes.

23 Q And what are you looking for in that particular
24 situation?

25 A Just how long it takes for the blood to return.

Deanna Heger - Direct Examination by Mr. Fretwell

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1 When you pinch it, it goes white and then returns to
2 pink.

3 Q Is that the fingernail you are talking about?

4 A Yes.

5 Q Okay. So you are holding his hand, pinching
6 his fingernails to see how long before it turns?

7 A White.

8 Q White?

9 A It turns white and then goes pink.

10 Q And did that appear to be okay?

11 A It was a little slow. But due to the weather,
12 that could be a contributing factor because when you're
13 cold, your blood doesn't flow as well.

14 Q All right. Let me ask you about that. Did you
15 -- were you able to feel or come in contact with the
16 patient's trunk or his body?

17 A Yes.

18 Q Was it cold to touch, warm?

19 A Yes, he was cold.

20 Q Okay. And what about his extremities?

21 A They were cold.

22 Q And what happened, what did you all do in an
23 effort to provide him some treatment right there on the
24 scene?

25 A We'll, uh, place him on oxygen, put a C-collar

1 around his neck.

2 Q What's a C-collar?

3 A It's just a collar you throw on your neck to
4 maintain inline -- your spine in line.

5 Q Is that basically like the region of his spine?

6 A Yep.

7 Q Just a collar to keep him immobile?

8 A Right. Then we place him on a long spinal
9 board that also kept his entire torso in line. We
10 secured him to that.

11 Q Okay.

12 A Placed him on oxygen. Put him on a stretcher
13 and put blankets on him to warm him up.

14 Q Okay.

15 A Then we took him back to the ambulance to
16 further treatment, warm him up and then transport.

17 Q Did you provide him with any fluids?

18 A I did.

19 Q Okay. How did you do that?

20 A I started two IVs on either arm.

21 Q Just for the benefit of those of us that don't
22 know anything about starting IVs, ---

23 A Okay.

24 Q --- how do you do that?

25 A I put a tourniquet around his arm. I'll find a

Deanna Heger - Direct Examination by Mr. Fretwell

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1 vein. I'll clean that site with a little bit of alcohol.
2 Then I will put a catheter in and I'll hook it up to some
3 saline.

4 Q Do you have to turn his arm around like that to
5 find that?

6 A Sometimes, yeah. It depends.

7 Q All right. And was the patient cooperative
8 throughout this process?

9 A Yeah. He didn't refuse treatment. He didn't
10 fight it at all. As far as asking any information,
11 trying to get a name or medical history, he just
12 continued to ask for a soda.

13 Q Continued to ask for -- how many times would
14 you say from the time that you arrived until the time you
15 got to the hospital, how many times did he ask for a
16 soda?

17 A At least 20 ---

18 Q 20?

19 A --- or more. Uh-huh.

20 Q Uh, all right. Was he given any medication by
21 you that would affect his lucidity at any point?

22 A No.

23 Q What happened when you arrived at the hospital?

24 A Uh, we took him into the trauma bay and placed
25 him -- placed him on their bed and the trauma team took

1 over care. I gave the report to the trauma team and the
2 nurse.

3 Q You gave the report?

4 A Yeah, just as far as what kind of treatment we
5 provided and what kind of wounds we had seen.

6 Q Okay. And did they -- were they able to access
7 the patient?

8 A Yes.

9 Q And were they able to get information from him?

10 A Yes. As soon as we put him on his bed -- on
11 their bed, uh, one of the individuals in the room asked
12 him what his name and date of birth and everything was
13 and he said it all to them.

14 Q Was it the same name that he had given to you?

15 A I can't recall.

16 Q Okay. But you did find out that his name, at
17 that point, was David Boyd?

18 A I did.

19 Q Okay. Did a uniform deputy arrive with you to
20 the hospital?

21 A Yes.

22 Q Okay. Now, did anything happen with respect to
23 Mr. Boyd's care or anything with his clothing, uh, by
24 your partner or the sergeant that was there that happened
25 outside your presence?

1 A No.

2 Q Please answer any questions that Mr. Johnson
3 may have for you. Thank you very much.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q First thing, Ms. Heger, I'd like to confirm
9 that we have the same report. Did you bring one?

10 A Uh-huh.

11 Q May I take a look at it?

12 A Uh-huh.

13 Q You mind if I take a look at it briefly?

14 A Uh-huh.

15 MR. JOHNSON: Excuse me, Your Honor.

16 THE COURT: That's fine.

17 MR. JOHNSON: (Reviewing.)

18 BY MR. JOHNSON:

19 Q Okay. Uh, I'd like to talk first about the
20 injuries. Now, the injuries that he had are mentioned in
21 your report; correct?

22 A Yes.

23 Q Now, can you, uh, go over what his injuries
24 were and where they were -- where they were. Excuse me.
25 There's some language in there that I know I don't quite

1 understand. You see if you can elaborate on that for me.

2 A Can I just refer to this?

3 Q Of course.

4 A Okay. (Reviewing.)

5 The three injuries to his leg. I have, there's
6 one in the calf, the lateral posterior would be the
7 outside of the calf.

8 Q So lateral posterior, that means back here?

9 A Yes, sir.

10 Q Okay.

11 A Uh, that was the first one we came to because
12 we cut up the pants. Small, like barely any bleeding.
13 Then there was the second one that, uh, same general
14 area. Same side, thigh. Left posterior thigh.

15 Q Okay.

16 A That was also covered. Then there was a third
17 one to the upper left thigh.

18 Q Upper left thigh like where? Here?

19 A Uh, a little lower.

20 Q Right here?

21 A Yeah.

22 Q So right there?

23 A Yeah.

24 Q Okay. Now, you also -- I noticed on your form
25 you've got an assessment that I pointed out to you, but

1 there. Can you communicate that to us and what that
2 means?

3 A It just shows that, on exam, his lower
4 extremities had bleeding, but we controlled it by 4-by-4
5 and clean -- or 5-by-9 and clean. There wasn't any
6 bruising around that area.

7 Q Okay. There's also an assessment on there that
8 says skin findings, right?

9 A Correct.

10 Q And it says warm and dry; is that correct?

11 A Correct.

12 Q Now, something else you did was you stated that
13 you pinched his finger to get, I guess, a pulse; is that
14 right?

15 A It's a capillary refill test.

16 Q Excuse me. I guess I can't keep up so well.
17 Capillary? Can you tell us again what you're doing
18 there?

19 A Yeah, you're just checking circulation of his
20 extremities. You pinch the nail bed. It turns white.
21 You let go. It eventually turns pink.

22 Q Okay. And that's what happened here?

23 A Uh-huh.

24 Q It turned white and then it turned pink?

25 A No, it came back pink.

1 Q Came back pink. You did that test and you were
2 good with the results? Okay. Another thing you did was
3 IVs. How do you do the IV? Where do you stick the IV?
4 I don't know.

5 A With a trauma patient, we try and find the
6 largest vein.

7 Q Was that on the arm?

8 A Uh, typically in the forearm or the, uh,
9 antecubital area is what we call it.

10 Q So you took his arm. Did you pull his sleeve
11 back or did you cut the sleeve off?

12 A He didn't have any clothes on. We had cut them
13 off.

14 Q He didn't have any clothes on at this point?

15 A No.

16 Q So you just grabbed his arm and you stuck it
17 right there?

18 A The best I could because he was still
19 handcuffed to our backboard.

20 Q So he was handcuffed when you were trying to do
21 this?

22 A Both arms were handcuffed.

23 Q Okay. I have nothing further for this witness.

24 MR. FRETWELL: Your Honor, briefly?

25 THE COURT: Anything? All right.

REDIRECT EXAMINATION

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BY MR. FRETWELL:

Q Uh, Ms. Heger?

A Uh-huh.

Q Sometimes when you respond to the scene, do you find someone that is already expired or is dead when you arrive?

A We do.

Q Do you sometimes you note in your skin findings as that being a cold, uh, death has already occurred. Is that correct?

A Yes.

Q Now, Mr. Boyd, he was not dead?

A Huh-uh.

Q And he did have some circulation in his body; is that correct?

A Correct.

Q All right. So he would be warm compared to death?

A Right.

Q And the dry, you also note perspiration for, uh, uh, anything like that in conjunction with the skin, with your contact with the skin?

A Uh-huh.

Q Perspiration from the body itself?

1 A Right.

2 Q Okay. That's all the questions I have.

3 THE COURT: Anything else, Mr. Johnson?

4 MR. JOHNSON: No, Your Honor.

5 THE COURT: Ma'am, you can step down.

6 MR. FRETWELL: Your Honor, may Ms. Heger be
7 excused?

8 THE COURT: Any objection?

9 MR. JOHNSON: No objection.

10 THE COURT: I thank you, ma'am, for being
11 here.

12 MR. FRETWELL: Thank you, Judge. Your Honor,
13 at this time, the State would call Doug Smith.

14 THE CLERK: Sir, please place your left hand
15 on the Bible and raise your right hand.

16 DOUG SMITH
17 having first been sworn, testifies as follows:

18 THE CLERK: Thank you. Please be seated.
19 Please state your full name for the record.

20 THE WITNESS: Douglas Smith.

21 MR. FRETWELL: May it please the court, Your
22 Honor?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. FRETWELL:

Doug Smith - Direct Examination by Mr. Fretwell

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1 Q Mr. Smith, where are you currently employed?

2 A I'm employed with Greenville County Department
3 of Public Safety. I'm assigned to the Forensics Division
4 and Crime Scene Unit.

5 Q And what are your job responsibilities?

6 A Typically, identify, collect, preserve physical
7 evidence related to a crime scene. That includes
8 photography, CAD drawings of larger crime scenes.
9 Basically, assist the departments with whatever we can
10 help them with.

11 Q Make sure, if you can, if you'd just speak up
12 nice and clearly and maybe pull that microphone over just
13 a little bit.

14 A All right.

15 Q What is your actual job title?

16 A Forensics Officer.

17 Q And how long had you been a forensics officer
18 or investigator?

19 A Seven years.

20 Q Approximately how many crime scenes have you
21 investigated?

22 A To date, around 6000.

23 Q Okay. Were you working on Wednesday, December
24 10th, 2008?

25 A Yes, I was.

1 Q Did you respond to the Bank of Travelers Rest
2 on White Horse Road that day?

3 A Yes, I did.

4 Q For what purpose?

5 A An armed robbery had occurred.

6 Q Is the Bank of Travelers Rest on White Horse
7 Road within Greenville County?

8 A Yes, it is.

9 Q What was the weather like that day?

10 A Cold and rainy.

11 Q Did you review the videotape surveillance once
12 you arrived?

13 A Yes. After I get on scene, I assess and speak
14 with the first officer on the scene and get an overview
15 of what's going on. Then we review the tape to make sure
16 everything is in line and get all the information we have
17 so we can decide what we need to do.

18 Q Okay. I'm going to show you -- did you get a
19 physical description basically from this -- from
20 observing this video?

21 A Yes.

22 Q Okay. All right. I want to show you what's
23 been marked as State's 36 through 52. I'm going to give
24 these to you and have you flip through them quickly and
25 tell me if you recognize them as being -- just tell me

Doug Smith - Direct Examination by Mr. Fretwell

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1 what they are.

2 A They appear to be pictures or still images off
3 the video system from the bank.

4 Q More precisely, were those pictures that you
5 printed?

6 A Yes.

7 Q From that video?

8 A Yes.

9 MR. FRETWELL: Okay. Your Honor, at this
10 time, we would move State's 36 through 52 into
11 evidence.

12 THE COURT: Any objection?

13 MR. JOHNSON: No objection.

14 THE COURT: All right then. They are so
15 entered.

16 (WHEREUPON, State's Exhibits 36 through 52 are
17 admitted into the record.)

18 MR. FRETWELL: Judge, I'm just going to hand
19 them to the jury and continue to conduct that
20 examination.

21 THE COURT: All right.

22 BY MR. FRETWELL:

23 Q Uh, Mr. Smith, did -- at some point did you
24 learn that, either by looking at this video or from other
25 information you received, did you learn that the suspect

1 had been wearing gloves?

2 A Yes. When I first arrived on the scene, I
3 spoke with Deputy Carlisle. He advised me that the
4 subject had entered the business wearing a dark hooded
5 sweatshirt, hat, multicolored hat, bandana covering his
6 face, jeans with some embroidery design on the upper part
7 of the jeans, dark shoes and gloves. And we confirmed
8 that after reviewing the surveillance system.

9 Q As a forensics investigator, is there any
10 significance with respect to collection of evidence from
11 a scene when somebody's wearing gloves and --

12 A It kind of -- it changes what we are going to
13 do on scene; what type of response we're going to take.
14 Since he was wearing gloves, there would be no need for
15 any type of fingerprint processing or DNA collection
16 because the gloves would block any type of results for
17 us.

18 Q But you did, at the scene, take pictures; is
19 that correct?

20 A Correct.

21 Q And some of these pictures, and I know you
22 haven't been here, but some of these pictures such as
23 State's 1 through whatever do these appear to be pictures
24 that you took at the Bank of Travelers Rest? The
25 exterior and interior?

Doug Smith - Direct Examination by Mr. Fretwell

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1 A That's an accurate representation and appear to
2 be the pictures that I took.

3 Q Okay. Thank you. All right. So that was a
4 crime scene there at the bank; is that correct?

5 A Correct.

6 Q Later that day, did you respond to the area of
7 Crane Avenue?

8 A Yes. After I cleared the scene, I went back to
9 the office to download my pictures. I was later informed
10 of an officer-involved shooting in the 20 block of Crane
11 Avenue.

12 Q All right. And was the suspect that had been
13 shot, was he still there when you arrived?

14 A No. He had already been transported for
15 medical attention.

16 Q What did you do at the scene?

17 A I spoke with Investigator Bailey and SLED Agent
18 Kenley in reference to an officer-involved shooting.
19 I've been advised that a suspect had been shot, a
20 possible suspect had been shot, had been transported out
21 and the first thing I do is take photographs of the
22 incident location which my understanding went from 18
23 Crane Avenue, 20 Crane Avenue into 22 Crane Avenue.

24 Q And did you also collect the duty weapon of
25 Investigator Weiner that had been taken into possession

1 by SLED?

2 A The -- actually, the weapon -- yes, I did.
3 Part of what we do -- they since changed their policy.
4 But up until that point, part of -- I'm responsible for
5 -- the agreement we had with OPS was to actually -- we
6 photographed the officer to document what he was wearing,
7 what he looked like, injuries to him as well as the
8 suspect. We inventory the weapon, which includes
9 photographing it, serial numbers. We collected the
10 weapon originally. We document -- I also do that with
11 Weiner and Fortner to document how much -- to make sure
12 that they adhered to departmental policy. I was advised
13 Weiner had shot three times. His gun reflected three
14 cartridges missing. I was advised that Fortner did not
15 discharge a weapon. His gun was fully loaded as it
16 should be.

17 Q What about Investigator Weiner's weapon?

18 A Weiner's weapon was missing three cartridges.
19 It had one in the barrel of the gun and 11 in the
20 cartridge of it, which is 12. The gun is allowed to hold
21 16. Departmental policy carry 15. Due to glock
22 problems, they can't fully load them.

23 Q Okay.

24 A That's departmental policy.

25 Q Let's just be clear about something. You said

1 you are a forensics officer who work for Greenville

2 County.. Do you work for Sheriff Steve Loftis?

3 A No, I work for Greenville County. We work for
4 all agencies, the Greenville County Sheriff's Department,
5 Greenville City, all the small municipal agencies,
6 Travelers Rest, Greer, Mauldin, Fountain Inn. We also
7 work for the coroner's office. We work for all -- we do
8 work for all federal and state agencies inside of
9 Greenville County.

10 Q But you don't work for the sheriff?

11 A No, I do not.

12 Q You don't work for SLED?

13 A No, I do not.

14 Q Okay. Let me show you these, State's 34 and
15 35. Is this the -- first of all, are those photographs
16 that you took?

17 A They appear to be, yes.

18 Q Okay. And is that the condition of the
19 suspect's clothes in the backyard when you arrived on the
20 scene?

21 A Yes.

22 Q Were other officers basically standing by,
23 really all over that area?

24 A Yes. Upon arriving on scene, as you can
25 imagine, the scene was secured with officer presence,

1 crime scene barrier tape, but also you are looking at 20,
2 30, 50 officers out there. Pretty much when an officer
3 calls out, you know, an incident like that, pretty much
4 the entire police department comes.

5 Q Okay. All right. I also want to show you --
6 let me ask you this. The items that are depicted in
7 those pictures, those items of clothing, did you collect
8 those articles?

9 A Yes.

10 Q What did you do with those articles once you
11 collected them?

12 A Due to their condition, being saturated with
13 suspected blood and water, they were placed into brown
14 bags and taken back to our secure facility and placed
15 into a drying chamber so that they could dry and not
16 deteriorate.

17 Q Once they are dried -- even before they dry,
18 you take photographs of the --

19 A Typically, they are before the package at some
20 point whether -- before they go in the drying chamber or
21 after, they are photographed. These were dried first.
22 Then I secured additional photographs of these items
23 prior to packaging and placing them into Property and
24 Evidence.

25 Q Let me show you State's 53 through 63 and find

Doug Smith - Direct Examination by Mr. Fretwell

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1 out if those are the -- some of the pictures that you
2 took of those, uh, articles of clothing.

3 A Yes, these are my pictures.

4 Q If I can just for a second, in State's 54 and
5 55, you locate the number at the bottom on the right, do
6 the photographs appear to be the jeans in their wet
7 condition?

8 A Yes.

9 Q Okay.

10 A These pictures were taken because of the
11 embroidery on the pants. I took a couple of extra
12 pictures prior to drying them so the detectives could
13 have that information.

14 Q And you also, on 56, you took a picture of the
15 gray t-shirt in the wet condition; is that correct?

16 A Correct.

17 Q Later on, 57 through 63, are those pictures
18 after the articles had been dried?

19 A Yes, those are once they dried.

20 Q Okay. All right. I now want to show you
21 State's 64 and 65.

22 MR. FRETWELL: Your Honor, at this time, the
23 State would move State's 53 through 63 into
24 evidence.

25 THE COURT: Any objection?

1 MR. JOHNSON: Those were the items that --

2 MR. FRETWELL: The pictures.

3 THE COURT: Pictures.

4 MR. JOHNSON: No objection.

5 THE COURT: All right. Then they are so
6 admitted.

7 (WHEREUPON, State's Exhibits 53 through 63 are
8 admitted into the record.)

9 BY MR. FRETWELL:

10 Q I'm going to have you look at these behind the
11 counter here. They are not in evidence.

12 A Okay.

13 Q If you will, take a minute to see.

14 A Are they already open?

15 Q Yes.

16 A (Reviewing.)

17 Q You recognize both those items?

18 A Yes, those are items that I packaged.

19 Q Are those the items that are depicted in these
20 photographs?

21 A Yes, the pants and the shirt.

22 Q And specifically with respect to State's 64, is
23 that the pair of jeans?

24 A Yes, that is the pair of jeans.

25 Q All right. That's the pair of jeans that you

1 collected from behind 22 Crane Avenue?

2 A Yes.

3 Q That you photographed?

4 A Yes.

5 Q That you dried?

6 A Yes.

7 Q That you placed into Property and Evidence?

8 A Yes, it is.

9 Q And then State's 65. I'll give you a copy. Do
10 you fill out Property and Evidence forms when you placed
11 these items into evidence?

12 A Yes, yes, yes. It establishes the chain of
13 custody.

14 Q Okay. Let me show you what we marked as
15 State's Exhibit 2. The jeans that you just described,
16 are they listed on that shirt?

17 A Yes, they are listed as Item DES7.

18 Q Do you also indicate what State's 65 -- the t-
19 shirt, how do you describe that on your Property and
20 Evidence sheet?

21 A Gray Uptowntees t-shirt.

22 Q How did you mark that? With your initials as
23 well?

24 A Yes, it's listed as Item DES8. My initials are
25 DES.

1 Q All right. And you also placed the t-shirt
2 into evidence using that property form as well?

3 A Correct. It's also on there.

4 Q Now, when you would have placed these items
5 into evidence, you would have placed into evidence in
6 what condition?

7 A Dried condition.

8 Q And would they have been sealed?

9 A Yes. They are sealed with evidence tape and my
10 initials.

11 Q And did you locate your initials on the
12 package?

13 A They are torn and cut. I had not seen them.
14 That is my method of packaging. I can find the seal if
15 you need to be -- but those are how I packaged them.

16 Q But those are the items depicted in these
17 pictures?

18 A Yes they are.

19 Q That you collected from that scene that day?

20 A Yes, they are..

21 Q All right. Did you contact Forensic Technician
22 Iona Ooten in regards to this case?

23 A Yes.

24 Q And did you have her, uh, -- did you send her
25 somewhere to do something in particular?

1 A Yes, once I was on the scene and I was finished
2 with documenting Investigator Weiner's condition and he
3 goes off to OPS to deal with the sheriff's department
4 further and the suspect had been transported. Since I
5 was going to be on the scene for quite some time, I
6 called to ask if she could assist and go to those two,
7 one, the Greenville County Law Enforcement Center and
8 Greenville Memorial Hospital to assist in my
9 investigation to, you know, take care of those since I
10 would not be able to do that in an expeditious fashion.

11 Q So typically, that would have been something
12 you would have done?.

13 A Correct.

14 Q But you needed to stay and process the --

15 A Yes, it was such a large scene. I was out
16 there for several hours. I could not have gotten to both
17 of those other two locations quickly.

18 Q Okay. So you sent Ms. Ooten over there to do
19 that?

20 A Yes.

21 Q And then you placed those items, when you got
22 back to the law enforcement, you did what you described
23 with the photograph?

24 A Right.

25 MR. FRETWELL: Your Honor, we would move

1 Court's Exhibit 2, I believe, into evidence. It's
2 the form. That's a Court's Exhibit.

3 THE COURT: All right. Any objection?

4 MR. JOHNSON: No objection as a Court's
5 exhibit.

6 THE COURT: All right then. We'll mark it as
7 a Court's exhibit.

8 BY MR. FRETWELL:

9 Q Just one further question about this. You
10 filled out this form?

11 A Yes.

12 Q And on this form, you detail basically what you
13 place into evidence?

14 A Correct.

15 Q What time?

16 A Yes.

17 Q How you've labeled it?

18 A Yes.

19 Q Your initial, your item number.

20 A Where it was collected from. Date and time it
21 was collected, brief description of exact location.
22 Also, the item number and a brief description of the
23 actual item.

24 Q And your name and your signature go on this?

25 A Yes, sir. Yes, sir.

1 Q Okay. Please answer any questions that Mr.
2 Johnson may have.

3 A Okay.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q Now, you took the pictures of Weiner at the
9 scene?

10 A Yes, sir.

11 MR. JOHNSON: I want to get this marked as
12 Defense Exhibit number 2.

13 (WHEREUPON, Defendant's Exhibit 2 is marked for
14 identification purposes.)

15 BY MR. JOHNSON:

16 Q I'm showing you what's marked as defendant's
17 Exhibit 2. Do you recognize this?

18 A They appear to be pictures that I took from the
19 scene. Without any identifier on top, I can't say for
20 sure. That's how I take pictures.

21 Q Those are a series of pictures of -- who does
22 that depict?

23 A At that time, Deputy Weiner, who is now
24 Sergeant.

25 Q Does that reflect how he looked when you took

Doug Smith - Cross-Examination by Mr. Johnson

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1 the pictures back in 2008?

2 A Yes.

3 MR. JOHNSON: Okay. Uh, request to move
4 these into evidence as Defendant's Exhibit number 2.

5 THE COURT: Any objection?

6 MR. FRETWELL: There's no objection to the,
7 to the item coming in, Your Honor, with the
8 understanding of the time period or the time frame
9 in which these pictures would have been taken.

10 THE COURT: All right. I mean, he's
11 identified them, has he not?

12 MR. FRETWELL: Right.

13 THE COURT: So, I mean, the foundation has
14 been laid. They are admitted.

15 MR. FRETWELL: Yes, ma'am.

16 (WHEREUPON, Defendant's Exhibit 2 is admitted into
17 the record.)

18 BY MR. JOHNSON:

19 Q Now, did you also have dealings with Mary
20 Fields on this day?

21 A Yes, I did at the crime scene office fairly
22 briefly.

23 Q Now, what did she come to you with?

24 A She had brought a t-shirt to the crime scene
25 office after we had cleared the original armed robbery at

1 the bank.

2 Q Now, this was after you went out to Crane
3 Avenue.

4 A That's correct.

5 Q Now, where did you get this item from?

6 A I believe it was somewhere on Hilong Avenue.
7 16 Hilong Avenue. It's a blue Nautica shirt.

8 Q It's a blue Nautica shirt. Why'd she bring it
9 to you?

10 A I can't say exactly what her method was, why
11 she brought it to me. From my understanding, someone had
12 called the sheriff's office and stated it was sitting on
13 the road and it was, you know, a suspicious item. She
14 picked it up due to the somewhat close proximity, brought
15 it to our office to process.

16 Q Do you remember what the item looked like? Was
17 it just a blue shirt?

18 A She had what she felt was a flake on the shirt.
19 It was just a metallic flake on the lower front of the
20 shirt.

21 Q Excuse me. I'm sorry. Did you remember if it
22 had any stains or anything?

23 A Not off the top of my head. I'd have to refer
24 to my pictures.

25 Q Are those pictures something that are readily

1 available?

2 A They should be in evidence at this point.

3 Q Okay.

4 A All my pictures have been listed in there.

5 Q Now, are you aware that some of the items that
6 you collected were sent to SLED?

7 A Uh, I was unaware exactly what happened with
8 the evidence. Once I release it, we go on to the next
9 case.

10 Q You don't have anything to do with all that?

11 A No, once it's placed into Property and
12 Evidence, I write my report. I have no further
13 involvement in the case.

14 Q Okay.

15 A Like I stated, I don't work for the sheriff's
16 department.

17 MR. JOHNSON: One second please, Your Honor.

18 THE COURT: Yes.

19 (WHEREUPON, there is a pause.)

20 MR. JOHNSON: Your Honor, I actually have
21 nothing further for this witness.

22 THE COURT: All right. Mr. Fretwell?

23 MR. FRETWELL: Very briefly.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

1 BY MR. FRETWELL:

2 Q Mr. Johnson talked about the shirt that was
3 brought to you by Investigator Fields. In fact, did you
4 examine this shirt? How did you observe this metallic
5 flake on this?

6 A Visual observation. Also documented with the
7 digital still images.

8 Q Did you use a magnifying glass?

9 A It would -- we would have used what we probably
10 then called a Henry glass at the time. That's what we
11 used to examine fingerprints to take a closer look at it.

12 Q All right. Did you determine this metallic
13 flake to be at all related to gunshot residue?

14 A It didn't appear so but I still collect.

15 Q And the stain, did you determine what had
16 caused that stain on that shirt?

17 A Uh, I don't recall.

--18 Q Do you recall indicating that it was made with
19 bleach?

20 A Yes, I do now. She had brought -- in her
21 report, she had listed that there was a mark on the
22 shirt.

23 Q Okay.

24 A It was a discoloration that was probably most
25 likely caused by bleach.

1 Q And this exhibit right here, uh, the pictures
2 that you took at the scene, they weren't the very first
3 thing that you did once you arrived, were they?

4 A No.

5 Q Okay. So you collected some information first.
6 The pictures there, would they have been later in the day
7 than when the actual shooting occurred?

8 A Yes. They would be probably several hours
9 later.

10 MR. FRETWELL: Okay. No further questions,
11 Your Honor.

12 THE COURT: Anything else, Mr. Johnson?

13 MR. JOHNSON: No, ma'am, Your Honor.

14 THE COURT: Sir, you can step down.

15 MR. FRETWELL: And may this witness be
16 excused, Your Honor?

17 THE COURT: Any objection?

18 MR. JOHNSON: No objection.

19 THE COURT: Thank you, sir, for being here.

20 MR. FRETWELL: Your Honor, at this time --
21 may it please the court?

22 THE COURT: Yes.

23 MR. FRETWELL: The State would call Iona
24 Ooten.

25 THE CLERK: Ma'am, please place your left

1 hand on the Bible and raise your right hand.

2 IONA OOTEN

3 having first been sworn, testifies as follows:

4 THE CLERK: Thank you. Please be seated.

5 Please state your full name for the record.

6 THE WITNESS: Iona Ooten.

7 MR. FRETWELL: May it please the court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. FRETWELL:

12 Q Ms. Ooten, where are you currently employed?

13 A I'm a Forensic Officer with the Greenville
14 County Department of Public Safety Forensic Division.
15 I'm assigned to the Crime Scene Unit.

16 Q Now, do you do -- you perform a similar task
17 as, uh, Doug Smith who was just here?

18 A I do.

19 Q And, uh, what kind of training have you
20 received to help you perform your duties?

21 A I have an Associates Degree in Crime Scene
22 Technology. I received my certification as law
23 enforcement officer from the South Carolina Criminal
24 Justice Academy.

25 Q And were you also working on December 10th?

1 Wednesday, December 10th, 2008?

2 A I was.

3 Q What actions did you take in this particular
4 case?

5 A I spoke with Forensic Officer Smith around
6 approximately 5 p.m. And he requested for me to bring a
7 metal detector over to Crane Avenue. Upon my arrival
8 over there, he then asked me to go to the Greenville
9 Memorial Hospital and meet up with Deputy Duncan who was
10 with the suspect.

11 Q Did you do that?

12 A I did.

13 Q When you arrived at Greenville Memorial
14 Hospital, did you, uh, -- were you able to locate Deputy
15 Duncan?

16 A I did. Deputy Duncan was in the trauma bay
17 with the suspect.

18 Q Uh, when were you able to -- what was your
19 purpose for being --

20 A I was requested to go over there so I could get
21 photographs of the suspect's injuries, as well as do a
22 GSR collection, a gunshot residue collection kit on him
23 and to collect any remaining clothes he may have had.

24 Q Are those two tasks part of your standard
25 procedure?

1 A Yes.

2 Q And did you collect a GSR kit and photograph
3 the suspect that particular day?

4 A I did.

5 Q When were you able to do that?

6 A I photographed the suspect on arrival.

7 However, the medical staff was very busy working on him.
8 They told me to take pictures as best as I could. I was
9 not going to be able to get up close to do any
10 photographs up to scale. I did my photographs as they
11 were bandaging him to just get a general idea where his
12 injuries were located at. I was able to do the gunshot
13 residue collection kits approximately, which would be,
14 uh, I guess -- was it 16:23 hours? Or 18:23 hours? I
15 apologize.

16 Q You have your report?

17 A I don't have a --

18 Q You don't have a copy of your report. Would a
19 copy of your report help you determine that?

20 A Yeah. That would be great.

21 Q All right. While we're locating that, let me
22 show you State's 68 through 73 and ask you if you can
23 look through those pictures and tell us if --

24 A These are the photographs that I took of the
25 suspect.

1 Q Those are photographs that you took?

2 A Yes.

3 Q All right. Do these photographs accurately
4 represent what you photographed that particular day?

5 A Yes, they do.

6 MR. FRETWELL: All right. Your Honor, at
7 this time, we would move State's 68 through 73 into
8 evidence.

9 THE COURT: Any objection?

10 MR. JOHNSON: No objection.

11 THE COURT: All right. They are so entered.

12 (WHEREUPON, State's Exhibits 68 through 73 are
13 admitted into the record.)

14 BY MR. FRETWELL:

15 Q And I think you wanted -- first of all, let me
16 see is this the report that you are referring to.

17 A Yes, it is. I obtained those GSR collection
18 kits at 18:23, which would be 6:23 p.m. and 18:28, at
19 6:28 p.m.

20 Q So roughly about five minutes apart?

21 A Yes.

22 Q And those are the kits that you collected in
23 the hospital of Mr. Boyd?

24 A Correct.

25 Q All right. At 6:23 and 6:28, was that the

1 earliest that the hospital staff would allow you to make
2 those collections?

3 A Yes, it was. They were busy bandaging him up
4 and that's when they gave me the first clearance.

5 Q Okay. Once you were cleared by hospital staff
6 to do that, uh, tell us the process that you go through
7 to collect the GSR.

8 A Basically, I obtain the A.A. kit first, which
9 is the daubers on his hands. Then --

10 Q Let me have you stop for just a second. All
11 right. Tell us about how you collected those -- the GSR
12 kit samples.

13 A There are two sets that you are to get. There
14 is the A.A. and then the S.E.M. The A.A. is daubers that
15 you dab on the hand. The S.E.M. is a Q-tip that you
16 apply a liquid to to pull off any kind of additional
17 gunshot residue. The A.A., the daubers are applied
18 first. I did that to the suspect's right hand. Then I
19 also did the swab to the right hand. Then I went to the
20 left hand and followed suit.

21 Q And you did those particle lifts on the palms
22 and the backs?

23 A Yes, it's on both sides in between the fingers.

24 Q What, if anything, did you notice about Mr.
25 Boyd's hands while you were collecting the GSR kit?

1 A The only thing I noticed, they were very dirty
2 and they had some blood on them.

3 Q What about the swabs when you looked at the
4 swab? What, if anything, did you notice about the swabs?

5 A The swabs were also very dirty. They turned
6 practically black just from the dirt.

7 Q Do you have any experience with bank dye?

8 A I had not at that time, no.

9 Q Did you collect anything else from Mr. Boyd?

10 A I collect his boxers, two sets of socks and
11 then, I believe, some bandages that were -- had been put
12 on him.

13 Q Did you view anything else connected with this
14 case?

15 A After that, I then went to the Greenville
16 County Law Enforcement Center. And I found Deputy Weiner
17 at the time in the armed robbery division. At that
18 point, I did his GSR collection kits as well. I had been
19 advised he had already been photographed so I did not
20 photograph him.

21 Q Okay. And do you have a record there? Can you
22 recall when you collected Investigator Weiner's?

23 A According to the report, I did Investigator
24 Weiner's at 19:10 or 7:10 p.m. and 19:15, 7:15 p.m.

25 Q And did you get to him as soon as you could

1 clear the hospital?

2 A Yes.

3 Q All right. Did you follow the same procedure
4 you just described with respect to collection of Mr.
5 Boyd's, uh, gunshot residue?

6 A I did.

7 Q All right. When you collected the kit from
8 Investigator Weiner, were his swabs dirty like the one
9 you described?

10 A No. His hands were clean.

11 Q What did you do with the items you collected?

12 A I then packaged and placed them into the
13 Property and Evidence division.

14 Q Okay. Please answer any questions that Mr.
15 Johnson may have.

16 THE COURT: Okay. Mr. Johnson?

17 MR. JOHNSON: Just briefly.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Uh, in the pictures that were submitted into
21 evidence, you could see my client's hands; correct?
22 Now, were they always bare or did they have something on
23 them?

24 A His left hand had a bag on it that was torn.
25 But the right hand was bare.

1 Q Why would they put bags on his hands? Well,
2 first, do you know who put bags on his hands?

3 A I'm not for sure because he was already gone
4 prior to Forensic Investigator Smith arriving.

5 Q Okay. Do you know why somebody would put bags
6 on his hands?

7 A Typically, we, as forensic officers, would bag
8 peoples' hands after any type of firearm incident or any
9 incident to protect any type of trace evidence like
10 gunshot residue or any type of DNA if they had been in a
11 fight.

12 Q So if they had shot a gun, it would heighten
13 the chance that you would find something?

14 A If they had shot a gun, it's supposed to
15 protect any evidence that would be on there.

16 Q Okay. Thank you.

17 A You're welcome.

18 THE COURT: Anything else?

19 MR. FRETWELL: Very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. FRETWELL:

22 Q You indicate that this bag was already torn?

23 A Yes.

24 Q And do you know is it important to get those
25 bags on the hands as soon as possible after the firing of

Remarks

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1 that weapon?

2 A Yes.

3 Q Okay. And you don't know what kind of time may
4 have elapsed between the time that the bags were placed
5 on his hands and he was alleged to have fired a weapon?

6 A I have no information on that.

7 MR. FRETWELL: Nothing further, Your Honor.

8 THE COURT: Mr. Johnson, anything else?

9 MR. JOHNSON: No, ma'am.

10 THE COURT: All right. Ma'am, you can step
11 down.

12 Ladies and Gentlemen, we've been sitting for a
13 while. If y'all want to, feel free to stand up.
14 You don't have to. Stretch your legs.

15 MR. FRETWELL: Your Honor, may she be
16 excused?

17 THE COURT: You have any objection to that?

18 MR. JOHNSON: No, Your Honor.

19 THE COURT: All right. Thank you, ma'am, for
20 being here.

21 I want you to be comfortable throughout the
22 trial. I hope you know that if you do need to take
23 a break at some point, then if you'll let Mr.
24 Anderson know, he'll let me know. Or if you can
25 catch my attention, that's fine too. Okay. You

Remarks

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1 need a break? All right. Let's take a break.

2 Let's take about a five-minute break.

3 (WHEREUPON, the jury exits at approximately

4 11:43 a.m.)

5 THE COURT: Ma'am, with the camera, you are

6 fine. You've been fine. No problems whatsoever.

7 When the jury comes back, I am going to advise them,

8 since this is the first time probably most of them

9 have been in court that you are not taking any

10 photographs of them. I certainly know that you are

11 not. I'm going to advise them of that. All right.

12 Okay. Let's be in recess for about five

13 minutes.

14 (WHEREUPON, a short recess is taken.)

15 MR. FRETWELL: Judge, can I tell you a little

16 bit about what the issue is?

17 THE COURT: Sure.

18 MR. FRETWELL: The money in the case, the

19 currency that was located in the van, we have.

20 THE COURT: Right.

21 MR. FRETWELL: I would like to put that into

22 evidence in a sense of being able for the jury to

23 see it. But I also understand, of course, if the

24 defendant is not convicted, it's not an issue. If

25 he is convicted, for the purpose of storage of

Remarks

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1 \$19,000 worth of cash, I'd like to take a picture of.
2 that as we've done in other cases with a pocketbook
3 or large item. Put that picture into evidence. It
4 can be taken as the money is arranged on a table or
5 whatever we need to do. I want to make sure before
6 I put that into evidence that we are not obligating
7 potentially the clerk's office or the Court Reporter
8 and keeping the bank out of \$19,000 for the
9 foreseeable future.

10 THE COURT: All right. Mr. Johnson?

11 MR. JOHNSON: Your Honor, I may have the
12 answer later. I'm not -- that's not an evidence
13 question I encountered today.

14 THE COURT: Right. Well, this is how we'll
15 handle it. You will certainly be able to show the
16 money to them. But so far as what we'll mark and
17 put into evidence, then we'll just put a photograph
18 in. I think in this instance, there's definitely a
19 reason to deviate from our best evidence rule. So
20 we'll do that.

21 If we need some sort of marker, as he says a
22 purse or something of that nature to show the amount
23 that we're talking about, that's fine. I don't have
24 any problem with that either as long as it's not
25 anything suggestive. For instance, his pants or

Remarks

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1 something like that. It couldn't be anything like
2 that. If it were something, you know, that the jury
3 would not recognize, I don't have a problem with
4 that. All right.

5 All right. Let's get them back in.

6 (WHEREUPON, the jury enters at approximately
7 11:58 a.m.)

8 THE COURT: Ladies and Gentlemen, earlier or
9 throughout the trial, you might have heard a camera
10 or seen a camera being used. It is being used by a
11 professional and someone that I have authorized to
12 be able to be in the courtroom to do this. This
13 photographer is well acquainted with the rules of
14 court. I just want to assure you that she
15 understands and she would not and is not taking any
16 photographs of you all. But I needed -- I wanted
17 you all to be very sure and have that, uh,
18 confidence. All right.

19 You ready to proceed, Mr. Fretwell?

20 MR. FRETWELL: Yes, ma'am. May it please the
21 Court? The State would call Sergeant Dar Shaw.

22 THE CLERK: Sir, please place your left hand
23 on the Bible and raise your right hand.

24 DARWIN SHAW

25 having first been sworn, testifies as follows:

Darwin Shaw - Direct Examination by Mr. Fretwell

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1 THE CLERK: Thank you. Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: Darwin Shaw.

4 DIRECT EXAMINATION.

5 BY MR. FRETWELL:

6 Q Sergeant Shaw, where are you currently
7 employed?

8 A The Greenville County Forensic Division.

9 Q And what are your job responsibilities with the
10 forensic division?

11 A I'm a sergeant as well as a supervisor. I help
12 assist with training. I also sign off on reports.. But I
13 also work crime scenes as well as the other technicians
14 do.

15 Q Just as I clarified with, I believe, Mr. Smith
16 and Ms. Ooten, you would supervise those technicians; is
17 that correct?

18 A That's correct. I have a group that I actually
19 supervise that are under me.

20 Q And you do not work for the Greenville County
21 Sheriff's Office.

22 A That's correct. We're an independent agency.

23 Q Right. You don't work for SLED.

24 A That's correct.

25 Q In fact, your boss is Captain Jackie Kellett

1 sitting back here; is that correct?

2 A That's correct.

3 Q All right. What kind of training have you
4 received, Sergeant Shaw?

5 A Uh, I was with the police department for 21
6 years, seven years a road officer, 14 years as an
7 investigator. I been with forensics for 13 years. I've
8 gone to numerous schools dealing with crime scene
9 processing, the collection and preservation of evidence
10 and, uh, death investigations. Numerous schools I've
11 attended.

12 Q How many total years in law enforcement?

13 A Uh, 34 and a half.

14 Q Let me take you to Wednesday, December 10th,
15 2008. Did you respond to the area of Emile Street and
16 Leone Avenue that day?

17 A I did.

18 Q For what purpose?

19 A I was requested to respond in regards to the
20 followup of a bank robbery and also an individual had
21 been shot at that location.

22 Q What did you do once you arrived on Emile
23 Street?

24 A When I first got there, I met with Investigator
25 Weiner. Typically, when I arrive on a scene, I try to

1 get basic information as far as what the crime is, any
2 potential evidence that may be there so it will help me
3 better understand what the scene is like and what
4 evidence I'm going to be looking for.

5 Q All right. And what information did
6 Investigator Weiner provide you?

7 A He indicated that there had been a bank
8 robbery. An individual had apparently followed the
9 suspect and a shot had been fired, went through the
10 windshield of a pickup. The victim and his pickup had
11 been struck and had already been transported to the
12 hospital.

13 Q Could you describe the incident location up on
14 Emile Street?

15 A It's just a -- it was an intersection between
16 Emile and, uh, Leone. That's where the pickup was
17 parked. Farther down the road on Emile, there was a van
18 that was partially off the roadway.

19 Q Did you note anything about the white pickup as
20 far as its condition?

21 A Uh, outside of the pickup, there were paper
22 items, it looked like from bandages from EMS. There was
23 also a piece of fabric, which my understanding from
24 talking with Investigator Weiner, it was part of the
25 sweater that he had cut off from the victim to help stop

1 bleeding. I also saw a hole in the windshield and also
2 saw what appeared to be blood on the interior side of the
3 pickup.

4 Q Did you also note that the pickup truck itself
5 was still running?

6 A That's correct. It was.

7 Q Had the victim, or who you had advised was the
8 victim, been transported by EMS by the time that you
9 arrived?

10 A Yes, he had..

11 Q What did you do specifically at the scene?

12 A Once I obtained the basic information, I began
13 by taking photographs of the pickup in its location,
14 where it was parked. I also took photographs walking
15 from the intersection to where the van was off the
16 roadway to kind of get an idea as to the distance from
17 where the pickup was as -- and where the van was located.

18 Q All right. Let me show you what we've marked
19 as State's 74 through 78. Do you recognize as having
20 taken State's 74 through 78?

21 A Yes, sir. I do.

22 Q Do those pictures accurately reflect what you
23 observed that particular day?

24 A Yes, sir. They do.

25 MR. FRETWELL: Your Honor, at this time, we

1 would move State's 74 through 78 into evidence.

2 THE COURT: Any objection?

3 MR. JOHNSON: No objection.

4 THE COURT: All right then. They are so
5 entered.

6 MR. FRETWELL: Thank you, Judge.

7 (WHEREUPON, State's Exhibits 74 through 78 are
8 admitted into the record.)

9 BY MR. FRETWELL:

10 Q So in addition to the photographs that you took
11 at the minivan, what was your basic understanding of what
12 actually had occurred on Emile Street?

13 A My understanding was that the van where it was
14 parked alongside the roadway, the victim had been driving
15 the pickup, had pulled into a driveway, backed up, was
16 somewhere facing the location of the van when a shot was
17 fired. It penetrated the windshield and struck the
18 victim through the right hand and entered his neck.

19 Q Okay. So your understanding was the shooting
20 and the weapon had been fired from the area of the van
21 toward the intersection?

22 A That's correct.

23 Q All right. So with respect to that area right
24 around the van, what did you do at that point?

25 A The first thing I did was I took photographs of

1 the exterior in this situation. Any time that we have a
2 vehicle where there is a major crime, most of the time,
3 there is going to be a search warrant, so we secure the
4 vehicle, tow it to a secure location pending, uh, --
5 waiting for a search warrant for the vehicle. So I took
6 photographs of the outside to show its condition noting
7 that the driver's window was down, also the tag is
8 visible. I also took a photograph through the driver's
9 window where you could see money on the back floorboard.
10 Then, I opened up the side door of the van and took some
11 photographs of the, uh, -- of the money on the floorboard
12 there.

13 Q Just to be clear, these pictures that have
14 already been introduced into evidence are pictures that
15 you took of the side of the road?

16 A Some of those are. I believe some of the
17 others might have been during the search warrant two days
18 later.

19 Q We do have photographs -- you later took
20 photographs of the interior of the vehicle when it was at
21 the forensic facility?

22 A That's correct. That's correct.

23 Q You took photographs of the vehicle on the side
24 of the road in the condition it was, engine still
25 running, et cetera?

1 A That's correct.

2 Q All right. Okay. And you indicated that you
3 searched the area around the minivan. What were you
4 looking for in that particular area?

5 A Due to a weapon being fired and the information
6 that I had was that the suspect had fired the weapon from
7 somewhere outside of this van, I searched the immediate
8 area in front, along the sides, along the roadway, even
9 on the passenger side down in the weeds for a shell
10 casing is actually what I was looking for.

11 Q Okay. And you know -- let's say, with a
12 revolver, you would have shell casings. But with a,
13 let's say, a semiautomatic handgun, where do those shell
14 casings go when the weapon is fired?

15 A A semiautomatic, when they fire, there's an
16 ejections out of the right side. It normally will --
17 three to five feet, it may kick to the right.

18 Q Okay. And to the right of that minivan, do you
19 know what was in that area right there?

20 A There were weeds. There were pieces of
21 asphalt. It was a dumping area, so it was pretty well
22 weeded, large, tall grass area.

23 Q And you indicated by the time you arrived on
24 the scene, that the patient -- that the victim had been
25 transported from the area?

1 A That's correct.

2 Q And there were police cars in that area all
3 over the place?

4 A Yes, there were.

5 Q Do you know if vehicles had driven up and down
6 Emile Street?

7 A Not while I was there.

8 Q Right. But do you know if they had before you
9 got there?

10 A In some of the photographs, there were
11 deputies' cars that are there. There were certainly
12 vehicles that had driven on that road.

13 Q All right. And did you take an estimate,
14 basically, of the measurements from, uh, the vehicle
15 where it was and it's position when you got there? The
16 pickup truck, the white pickup truck. Did you take a
17 measurement from there to the minivan?

18 A I did.

19 Q How many feet did you determine it to be?

20 A I think it was like 317 feet.

21 Q All right. And that would depend, of course,
22 where exactly the vehicle was, the individual was or the
23 shooter was?

24 A Correct. My reference point was the north
25 curb, from where the curb would have been to the front of

1 the van. So it's an approximate area, yes.

2 Q What did you do with the vehicles that were on
3 the scene?

4 A Due to knowing that the vehicles were going to
5 be towed, uh, I went to the victim's pickup. I took the
6 keys. I locked it up. I also -- because the driver's
7 window was down on the van, knowing it was going to be
8 towed, to make sure that none of the money or anything
9 was destroyed or came out of the van, I rolled the window
10 up. I locked the doors and secured the -- kept the --
11 maintained both sets of keys.

12 Q And you took those photographs by the side of
13 the road so you could also have the condition of the
14 currency, et cetera. Is that correct?

15 A That's correct.

16 Q All right. Once the vehicles were towed from
17 the scene, where did you go?

18 A I went to the hospital.

19 Q Okay. And for what purpose did you go to the
20 hospital?

21 A I wanted to get photographs of the victim as
22 far as with the injuries that he had sustained. However,
23 when I got there, I was advised that he was in surgery
24 and was not accessible to me so that I can get
25 photographs. I asked if they had x-rays available so

1 that I can at least photograph the x-rays which they
2 provided. So I photographed the x-rays of the injury to
3 his hand as well as the projectile.

4 Q Okay. Let me show you 79 and 80 and ask if
5 those are the pictures that you took of the x-rays that
6 you were furnished by hospital personnel with respect to
7 Mr. David Boyd?

8 A Yes, sir, they are.

9 Q Did they accurately reflect the x-rays as you
10 saw them?

11 A They do.

12 MR. FRETWELL: Your Honor, at this time, we
13 would move State's 79 and 80 into evidence.

14 THE COURT: Any objection?

15 MR. JOHNSON: No objection.

16 THE COURT: All right then. They are so
17 entered.

18 (WHEREUPON, State's Exhibits 79 and 80 are admitted
19 into the record.)

20 BY MR. FRETWELL:

21 Q Now; furthermore, the projectile, you
22 indicated, had been removed but was not a mail --
23 available?

24 A I was advised by hospital staff that they had
25 protocols that they needed to follow and that I could get

1 the projectile at a later time but not that day.

2 Q In fact, on Friday, December the 12th, did you
3 return to the hospital?

4 A Actually, I went onto Patewood. I went to, uh,
5 the histology department.

6 Q Yes, sir.

7 A They called and said I can get that projectile.
8 So I went on the P&E sheet and I obtained the, uh, -- a
9 projectile from one of the nursing staff.

10 Q Is that the standard procedure that you would
11 take in any case where there's been a gunshot victim?

12 A If they don't relinquish it at the time, yes.

13 Q Okay. Did you also go -- let me ask you where
14 did the pickup truck and the minivan go?

15 A Uh, our service bay that we use for any time we
16 have search warrants it's, uh, it's small enough so we
17 could only have one vehicle at a time. Because of the
18 van having the most potential evidence, I suggested that
19 the van go to our office. The pickup was towed to the
20 vehicle service center that was on Keith Drive.

21 Q So did you go to the service center to examine
22 that and take pictures of that pickup truck?

23 A I did later on, yes.

24 Q And who was in possession of the keys?

25 A I did.

1 Q Okay. Did you photograph the pickup truck?

2 A I did.

3 Q Did you note anything with relation to shards
4 of glass, et cetera, either inside or on the exterior of
5 the pickup?

6 A I did.

7 Q What did you note?

8 A I noticed there were shards of glass not only
9 on the front, the front seats but on the center console
10 and even on the back seat of the pickup. There were
11 shards of glass there. There was also a section of glass
12 -- there was a hole in the windshield which looked like a
13 plug which would have been the tint of the glass. It
14 actually popped inward. It was laying up on the dash.

15 Q That's what I want to ask you. The pole and
16 the shards that you saw, is that consistent with a bullet
17 coming in or going out of the pickup truck?

18 A Coming into the vehicle.

19 Q All right. And you said you already testified
20 that you saw some suspected blood inside the vehicle, the
21 truck, the pickup truck?

22 A Yes, sir.

23 Q And did you make a note of the vehicle make,
24 model and tag number?

25 A I did.

1 Q What other actions did you take? Did you go
2 and examine or process the minivan?

3 A Uh, I did two days later.

4 Q Okay.

5 A It was at our office once the search warrant
6 was secured.

7 Q Okay. Let me show you -- did you take pictures
8 of the van while it was in the service area?

9 A Yes, sir. I did.

10 Q Let me show you 81 through 90. I ask you to
11 look through these pictures 81 through 90.

12 A (Reviewing.) Yes, sir. These are photographs
13 that I took.

14 Q Now, those photographs were taken where?

15 A At our crime scene office, which is our office.

16 Q All right.

17 A In the bay.

18 Q These are not the photographs that were taken
19 on the side of Emile Street?

20 A That's correct.

21 Q So you photographed the money that was on the
22 floorboard. What -- let's --

23 MR. FRETWELL: Your Honor, I would move
24 State's 81 through 90 into evidence.

25 THE COURT: Any objection?

1 MR. JOHNSON: No objection.

2 THE COURT: All right then. They are so
3 admitted.

4 BY MR. FRETWELL:

5 Q I think I'm going to run through those pictures
6 briefly. You can step around if you'd like. Can you see
7 all right from there?

8 A Yes, I can.

9 Q Okay. Can you just kind of take us through the
10 photographs. While you're taking the photographs, that
11 process that you go through.

12 A The, uh, -- typically, when we have a vehicle
13 that is going to be searched, we start by taking
14 photographs of the -- just of the exterior. A lot of
15 times, we will take evidence tape and secure the doors.
16 Let's say if there's no keys available, we'll put
17 evidence tape on the doors securing that since I had
18 locked the vehicle up and had the keys with me, I knew
19 the vehicle was secured. But the photographs are
20 basically just to show what the vehicle looks like, show
21 the tag number, if there's any damage to the vehicle, et
22 cetera.

23 Q All right. And that was State's 81. Let me
24 also show you State's 82.

25 A That again is another. -- we take four corners.

1. Just to show all four sides of the vehicle.

2. Q. And State's 83?

3. A. That's a photograph of the right front tire.
4. which just shows the mud that was on the tire which was
5. consistent with where it was at on the roadway on Emile.

6. Q. And then 84 is --

7. A. It's just a closeup photo of the same tire.

8. Q. And then State's 85?

9. A. I opened up the side door and then the money
10. that -- there was money that was visible. I just took
11. photographs of it prior to collection.

12. Q. 86?

13. A. It's just a closeup, not only of the money, but
14. of a bag that was on the rear floorboard.

15. Q. And are you kind of moving across the back of
16. that floorboard area with these photographs as you --

17. A. That's correct. Started with the side door and
18. just progressed on in from one side to the other. Again,
19. that's just another photograph a little farther over plus
20. to show any other potential evidence that may be on the
21. floorboard.

22. Q. And State's 88. That was 87. This is now 88.

23. A. All right. That is the center console and the
24. emergency brake handle and just showing that there was
25. money down between the console and the emergency brake.

1 Q And show us, if you will, what you're talking
2 about.

3 A All right. This is the center console.

4 Q Yes, sir.

5 A The money was on the floorboard in the back is
6 back here. This is, uh, the seatbelt -- where the
7 seatbelt attaches on the driver's side. The -- you also
8 have the emergency break handle that the money is
9 actually tucked down in between that console.

10 Q What about that, what can you see right under
11 the handle of the parking brake?

12 A There is more money under the side of the --

13 Q Okay. Now State's 89.

14 A Again, that's just another photograph. A
15 little closer showing what looked like dye on the
16 seatbelt buckle as well as on this side of the console.
17 The side of this bundle of money and also just kind of
18 show the denominations.

19 Q And finally, State's 90.

20 A That is just to show the denomination of a \$50
21 bill that was under the emergency brake handle.

22 Q All right. At that point, uh, I know you took
23 some other photographs.

24 Mr. Anderson, if we could have the lights.

25 I know you took some other photographs, but did

1 you collect this currency that was in the van?

2 A Yes, sir. I did.

3 Q Okay. And uh, I'm going to show you what's
4 been marked as State's Exhibit 91. If you could, look in
5 that bag.

6 A (Reviewing.)

7 Q Is that the money you collected from the
8 vehicle?

9 A Uh, yes, sir. I'm going to say that it is.

10 Q All right. Now, was it in neat little stacks
11 like that in the back of the vehicle?

12 A Uh, no. It was scattered throughout.

13 Q As the pictures show?

14 A That's correct.

15 Q And who got it in that condition?

16 A I did. Once I collected all the money that I
17 could find, I put it on the butcher paper. Once I was
18 completed with searching the rest of the vehicle, the
19 money was split up into denominations, counted and I put
20 it in ziplock bags and then wrote the denominations on
21 the outside of the ziplock bags.

22 Q And what did you determine the total amount of
23 money recovered from that vehicle to be?

24 A \$19,371.

25 MR. FRETWELL: Your Honor, at this time, we

1 would move State's 91 into evidence.

2 THE COURT: Any objection?

3 MR. JOHNSON: Just what we previously
4 discussed.

5 THE COURT: All right.

6 BY MR. FRETWELL:

7 Q Sergeant Shaw, did you also come in contact
8 with what are known as dye packs?

9 A Yes, sir. I did.

10 Q Did you photograph those?

11 A I believe they were photographed along with the
12 money.

13 Q Is that what's depicted in State's 7?

14 A That's correct.

15 Q Okay. That's a picture you took?

16 A Yes, sir.

17 Q Okay. And in the process of, uh, photographing
18 the interior of the van, did it have a floor mat behind
19 the seats?

20 A There were actually two floor mats that were in
21 there.

22 Q What color were those floor mats?

23 A They were red.

24 Q All right. So they were actually red floor
25 mats?

1 A Yes, sir.

2 Q Did you take photographs of the interior of the
3 van all over?

4 A I did.

5 Q All right. Let me show you, uh, -- let me show
6 you State's, uh, -- Okay. You collect items of evidence
7 from the minivan as well in addition to the money. Is
8 that correct?

9 A That's correct.

10 Q Can you tell us what you collected from the
11 minivan in addition to the money?

12 A I had observed a pair of gloves, cloth gloves
13 that were up on the dash by the windshield. I found
14 another pair. In fact, I think one of the photos show a
15 pair of gloves there. I collected those.

16 Q Okay.

17 A There was a sock that was draped over the gear
18 shifter. I collected it. I did swabs for a possible DNA
19 from under the interior door handles. I also did swabs
20 of potential or possible from the dye, the discoloration
21 from various areas of inside the vehicle.

22 Q Did you photograph all of these things that you
23 both collected and removed from the vehicle?

24 A I did.

25 Q Let me show you State's 93 through, I believe

1 it's 108. Sergeant Shaw, among the things that you
2 collected, you also collected a piece or a cutting of the
3 carpet with red dye? Do you recall?

4 A I believe I took the carpet.

5 Q Took the whole carpet: Okay. I'm going to
6 show you what was marked as 93 through, I believe, 108.

7 A (Reviewing.) Yes, sir. I took these
8 photographs.

9 MR. FRETWELL: Your Honor, at this time --

10 BY MR. FRETWELL:

11 Q Do they accurately reflect what you saw that
12 day, Sergeant Shaw?

13 A They do.

14 MR. FRETWELL: Your Honor, at this time, we
15 would move State's 93 to 108 into evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No objection.

18 THE COURT: All right. They are so admitted.

19 (WHEREUPON, State's Exhibits 93 through 108 are
20 admitted into the record.)

21 BY MR. FRETWELL:

22 Q Sergeant Shaw, I'm going to do the same thing
23 that we did just a minute ago. I'm going to put these up
24 on the screen and ask you if you will just kind of
25 basically orient the jury to what we're looking at,

1 what's depicted in these photographs.

2 A This is the photograph of the pair of gloves,
3 the Joe Boxer gloves that were up on the dash at the
4 windshield and then the vents, the air conditioning
5 vents. That's where it was at was up on the dash.

6 Q Are those gloves kind of balled up? How did
7 you -- what condition were they when you found them?

8 A They had been put together and folded inwards.

9 Q That was State's 93. Let me show you 94. Is
10 that basically the location of where the gloves were
11 found?

12 A That's correct.

13 Q And then State's 95.

14 A This is the floorboard, the driver's seat is
15 here. There was a second pair of gloves on the
16 floorboard behind the driver's seat.

17 Q Did you find those gloves in a similar type
18 rolled up condition as the gloves that were on the front
19 deck?

20 A Yes, sir. They were.

21 Q Was this picture taken obviously after some of
22 the money has been removed from the floorboard?

23 A That's correct.

24 Q Does that show the red floor mat that's in
25 the --

1 A It does. The edge of the mat runs along here.
2 Then up to behind the driver's seat.

3 Q With that being State's 95; I now show you
4 State's 96. What did you photograph on State's 96?

5 A Just a photograph of the -- normally, I
6 photograph the ignition to show whether it's been
7 tampered with or not. It's just a photograph. Also,
8 we've got the sockets hanging on the, uh, gear shift
9 which didn't seem natural to me.

10 Q And this is State's 97. I guess that would be
11 a closeup.

12 A That's a closeup of the sock that was draped
13 over the gear shift.

14 Q Did you collect that sock?

15 A Yes, I did.

16 Q Okay. I'm going to show you just a few minutes
17 State's, I believe it's 92 and ask you if that's the same
18 sock. Let me show you State's -- that was 97... This is
19 State's 98.

20 A Again, this is a photograph of the floorboard
21 in showing that some of the red dye was actually on top
22 of a book where the money had been laying. It was
23 transferred onto the book.

24 Q And then State's 99.

25 A Again, this is a photograph. The one mat had

1 been taken out. The second mat that was by the sliding
2 side door was still in tact. It was showing not only the
3 discoloration of the dye that showed that it was bare
4 carpet underneath.

5 Q That's 99. This is 100.

6 A A photograph -- normally, part of the
7 photographs that I'll take is of the -- like in the
8 passenger seat and also as well as the driver's seat in
9 case there's anything on the door panels that I might
10 later find when I look at the photographs.

11 Q How about State's 101?

12 A This is a photograph that I took outside of the
13 driver's door. Just showing the driver's seat as well as
14 the passenger's seat.

15 Q And 102?

16 A This is a down view photograph. The steering
17 wheel is here. That's the driver's seat. It was to look
18 for any possible dye or anything. Any potential evidence
19 that might be on the seat cushion.

20 Q All right. What about 103?

21 A Again, this is a photograph of the driver's
22 seat. The back of the seat as well as the armrest.

23 Q 104?

24 A This is the back of the driver's seat. This is
25 the rear seat and this is the back of the driver's seat

1 as well as the armrest.

2 Q And 105? 105.

3 A It's hard to see in the photograph. But along
4 the top of the door, there was -- it looked like a pink
5 color, like possibly some dye was on the outside. Then,
6 in this area of the door, uh, I -- I saw what appeared to
7 be like half circles of marks that were on the paint. It
8 had a pink hue around those semicircles.

9 Q All right. Let me show you 106.. Can you
10 explain what that little sticker is?

11 A Normally, we're going to use a scale to show
12 the approximate site. It also shows the location. It's
13 hard to say it's 12 or 14 inches down from the top.
14 We'll use a scale which can give you a better idea with
15 taking photographs as far as where the items or where the
16 potential evidence is located. But it also, uh, was to
17 show the size because of having these in centimeters. It
18 shows the size of these marks that were on the door.

19 Q Is that what's here in 107?

20 A That's correct. There's one here. Like I
21 said, they are like half-moon shaped. There's one there.
22 I believe there's also one up in that area.

23 Q Then finally, 108.

24 A That's a photograph that was taken before the
25 scale was put in place. Again, we're looking at an area

1 there, a half area there, one in this area and again one
2 over here.

3 Q That's a closer up of what we've already seen?

4 A That's correct.

5 Q Thank you, Mr. Anderson.

6 All right. I want to show you also State's 92.
7 I will ask you if you will -- I will ask you if you will
8 take a look at that item there. Tell me if that was the
9 sock you collected after photographing it hanging on the
10 gear.

11 A May I open it?

12 Q Sure. Just be mindful of the fact that it's
13 not into evidence yet so just, if you can, keep it in
14 your lap.

15 A Okay. Yes, sir. It is.

16 Q If you could, just put that back in that
17 envelope. Sergeant Shaw, what did you do once that was
18 collected? I think you were starting to discuss about
19 processing the vehicle for latent prints. Is that
20 correct?

21 A After I went through the vehicle and collected
22 everything that I felt might be necessary as far as
23 trying to identify who the driver may be, once all the
24 evidence was collected, then I processed the vehicle for
25 fingerprints.

1 Q What kind of results did you come up with? How
2 do you qualify if you find a print or if you don't find a
3 print?

4 A Well, either the prints are there or they are
5 not.

6 Q Okay.

7 A And the process that we typically use for a
8 vehicle is using regular fingerprint powder and a brush.
9 You apply the powder to the smooth areas, whether it be
10 the windshield, the windows, the painted surface itself.
11 Those areas that are conducive for retaining prints, any
12 ridge detail that I believe looks like it might be viable
13 to map somebody. I collect those, lift those on
14 fingerprint tape and apply those to a fingerprint card
15 and write the information on the latent card as far as
16 where the fingerprint was found.

17 Q Were you able to lift any latent prints in this
18 case?

19 A I did.

20 Q And you lifted it in the manner you just
21 described?

22 A Yes, sir. I did.

23 Q Have you received specific training on how to
24 lift prints?

25 A Uh, I've had several schools that I've attended

1 as far as how to properly lift, what processes to use,
2 whether it be using magnetic tape, uh, if I use magnetic
3 powders. So I have attended schools, yes.

4 Q With respect to the exterior of the van, how
5 does weather affect your ability to obtain prints?

6 A Weather can play a big part, especially if the
7 vehicle was wet when its touched. Oils don't stick to
8 water. It's very difficult to get a print to stay on. I
9 have had dry surfaces that after it was wet and then
10 dried again, I could still process it and obtain prints.
11 But weather certainly is a factor.

12 Q Would wearing gloves or other kind of
13 protective clothing affect your ability to obtain prints
14 that otherwise would be left by the person wearing those
15 gloves?

16 A Absolutely. Yes, sir.

17 Q How fragile are fingerprints?

18 A They are enough that you could actually touch
19 on a fingerprint and could smudge it, could smear it. It
20 could be removed. So as long as it hasn't been hampered
21 by some type of outside force, the potential could be
22 there to retrieve the fingerprint.

23 Q Were you able to obtain, you remember the
24 little half circles that you talked about earlier, the
25 little marks on the door that we saw the little tape?

1 A Yes, sir.

2 Q Were you able to identify any kind of
3 fingerprint information from those little marks?

4 A Once I applied the fingerprint powder, there
5 was no ridge detail that developed in those areas.

6 Q And those are very slight marks, is that
7 correct?

8 A That's correct.

9 Q Once you lifted the prints that you could
10 obtain, what do you do with those prints?

11 A All of the information is put onto the latent
12 cards. They are put into a latent envelope. And we have
13 a lock box in our office that -- where the latent
14 division are the only personnel that have keys to those.
15 They were dropped into the latent box and then later
16 picked up by somebody from latents.

17 Q And who is in charge of the latent print
18 division?

19 A Captain Kellett.

20 Q What did you do with the items that you
21 collected such as the sock and other items that you
22 collected from the van? What did you do with those
23 items?

24 A They were all packaged separately and then
25 later transported to Property and Evidence.

1 Q What's the manner -- you have to fill something
2 out before you put it into Property and Evidence?

3 A At that time, yes. We have a Property and
4 Evidence sheet which, uh, you have to put the case
5 information, the time in which the items were collected,
6 we can bracket those times. If it's a two-or-three-hour
7 period; we can bracket those times on it. We also have
8 -- each piece of evidence is assigned a separate number.
9 Typically, I use my initials, so I would start as DES1.
10 That would be my first piece of evidence. Then I would
11 go on down until the last piece of evidence is collected.
12 They all go onto a Property and Evidence sheet. Then
13 they are transported to Property and Evidence where those
14 personnel take custody of the evidence from me.

15 Q Let me refer you to that Property and Evidence
16 sheet in front of you which has been marked as Court's
17 Exhibit number 3. Is that a sheet or a copy of a sheet
18 that you filled out?

19 A Yes, sir. It is.

20 Q Does it contain all the information you just
21 described to the jury?

22 A Yes, sir.

23 Q Is that something that you sign and date with
24 respect to when you turn those items over to Property and
25 Evidence?

1 A Whoever picks it up from Property and Evidence
2 will sign and date when I transport it or transferred it
3 to their custody.

4 MR. FRETWELL: Your Honor, at this time, I
5 would move Court's Exhibit 3 into evidence as a
6 Court's exhibit.

7 THE COURT: All right. I'm not entering it
8 into evidence but I will allow it to be marked as
9 Court's Exhibit number 3. All right.

10 BY MR. FRETWELL:

11 Q Finally, Sergeant Shaw, on Monday, December
12 15th, did you process a couple of the items that you had
13 removed from the van?

14 A Yes, sir. I did.

15 Q And what were those items? Do you recall?

16 A One was a -- in the photographs, next to the
17 money was a plastic bag. I think it said Party City on
18 it. It had dye all over the bag. It looked like it had
19 been partially frayed from the heat, from the dye pack
20 when it went off. I collected that. Then, between the
21 console and the driver's seat, I found a larger trash
22 bag. I processed both of those for fingerprints.

23 Q Did you find any results on the Party City bag?

24 A No, sir. I did not.

25 Q And were you able to find some results on the

1 clear garbage bag.

2 A I found one print that I felt might be
3 comparable. It was sent to Latents.

4 Q Okay. Please answer any questions that Mr.
5 Johnson may have.

6 THE COURT: Mr. Johnson?

7 MR. JOHNSON: Mr. Erwin.

8 THE COURT: Excuse me. Mr. Erwin.

9 MR. ERWIN: Thank you, Your Honor.

10 (WHEREUPON, Defendant's Exhibits 3 through 8 are
11 marked for identification purposes.)

12 CROSS-EXAMINATION

13 BY MR. ERWIN:

14 Q Sergeant Shaw, I'm going to show you what I
15 just had marked as Defendant's Exhibits 3 through 8.

16 A (Reviewing.)

17 Q Do you recognize those pictures?

18 A Yes, sir. I do.

19 Q Those are pictures that you took in the, uh,
20 crime scene garage; correct?

21 A That's correct.

22 Q Do they fairly and accurately represent what
23 you took pictures of that day?

24 A Yes, sir. They do.

25 Q Okay. First, I'm going to draw your attention

1 to these of the interior of the van. On Exhibit 3 here,
2 is that fair to say that's a red stain on the side of the
3 driver's side seat?

4 A Yes, it appears to be.

5 Q Pinkish red. Uh, and if you could just go on
6 to the next one. The same thing on the side of the
7 driver's seat. Is there a red, pinkish stain?

8 A Yes, sir. There is.

9 Q Okay. This third picture here, this is the
10 floor of the front of the vehicle?

11 A Correct.

12 Q Is there a stain on the floorboard?

13 A Not that I see here, no.

14 Q Okay. Now, we'll look at these from the
15 outside. Those are pictures of the outside of the
16 driver's side door?

17 A That's correct.

18 Q And those are the pink swatches that were
19 referred to earlier. You can see those in those
20 pictures; correct?

21 A Yes, sir.

22 Q Okay.. Thank you.

23 MR. ERWIN: I'd move to have these introduced
24 into evidence, Exhibits 3 through 8.

25 THE COURT: Any objection?

1 MR. FRETWELL: No objection.

2 THE COURT: They are so admitted.

3 (WHEREUPON, Defendant's Exhibits 3 through 8 are
4 admitted into the record.)

5 BY MR. ERWIN:

6 Q Okay. So on December 10th, when you went out
7 to the crime scene on Emile Avenue, uh, you took some
8 pictures of the outside of the van; correct?

9 A That's correct.

10 Q And when you got close enough to the van to
11 see, you noticed that the driver's side window was rolled
12 down?

13 A I could see that it was down as I approached
14 the --

15 Q Okay. How close did you get to the van at that
16 time?

17 A Within close enough to look into the window.

18 Q Okay. And when you looked into the window, you
19 felt a sensation in your, uh, nose and eyes; correct?

20 A That's correct.

21 Q And I imagine that just with your job and
22 everything, you've come into contact with tear gas
23 before, you are familiar with it?

24 A I am.

25 Q And generally, how does tear gas affect your

1 senses when you come into contact with it?

2 A I guess it's each individual's senses. With
3 mine, the skin would have been irritated, will burn, eyes
4 will burn, nose will run.

5 Q Okay. So on December 10th, 2008, did you feel
6 any of those effects that you just described?

7 A I did.

8 Q You did?

9 A Yes, sir.

10 Q Okay. Now, uh, when the tow truck came to get
11 the van and truck, you said prior to the tow truck
12 arriving, you had rolled up the driver's side window;
13 correct?

14 A Before the vehicle -- before it left the scene,
15 yes.

16 Q And that was to make sure nothing on the inside
17 of the van was disturbed.

18 A That's correct.

19 Q Two days later on December 12th, once you got a
20 search warrant and was able to get to the inside of this
21 van, uh, you opened it back up?

22 A That's correct.

23 Q And when you opened it back up, did you feel a
24 familiar sensation, the tear gas like we were talking
25 about a minute ago?

1 A I don't recall as far as when I first opened it
2 up. But as the money started getting -- as I was
3 removing the money and getting it set out, yes, it did.
4 Uh, it was still there once I started shifting the money
5 around and collecting it.

6 Q So there were still fumes remaining from where
7 the dye packs had gone off?

8 A Yes, sir.

9 Q And you recovered the dye packs themselves out
10 of the van?

11 A That's correct.

12 Q And you put them into evidence.

13 A I turned them over to an investigator, yes.

14 Q Okay. Uh, another thing you did along with
15 taking pictures and recovering several items out of the
16 van as you've spoken about before is you took
17 fingerprints or you looked for fingerprints inside the
18 van?

19 A Yes, I did.

20 Q And you were able to find some fingerprints
21 that were suitable for comparison from the interior of
22 the van?

23 A I don't believe there were any on the interior.
24 I would have to check on my latents. Captain Kellett
25 should have that.

1 MR. ERWIN: One second, Your Honor.

2 THE COURT: Yes, sir.

3 (WHEREUPON, there is a pause.)

4 BY MR. ERWIN:

5 Q You found, uh, -- at the end of the day, you
6 had found six prints for comparison?

7 A I can't tell you. The process that's used is I
8 go through the prints. I put them in an envelope and I
9 send them up. I don't keep track. None of that is noted
10 anywhere until I review those latents to say, okay,
11 here's where I got the print from. They'll either be a
12 diagram or it will be written out as far as where those
13 prints were taken.

14 Q Okay. And you did find some prints at some
15 point somewhere?

16 A I did turn some latents in.

17 Q You turned some in?

18 A Yes, sir. I did.

19 Q Okay. And, uh, a few days later, on the 15th,
20 there were a couple of the items from inside the van that
21 you, uh, tried to take some prints from as well;
22 correct?

23 A That's correct.

24 Q And that was the Party City bag and the other
25 garbage bag that was found between the driver's seat and

1 the console?

2 A Yes, sir. That's correct.

3 Q Okay. And you got, uh, you found fingerprints
4 on one of those items?

5 A I believe there was one, uh, -- one fingerprint
6 that I set up for analysis.

7 Q Off of the garbage bags; correct?

8 A Off of the bag that was between the seats.

9 Q And you sent it off for analysis?

10 A I did.

11 Q Okay. We'll go back to December 10th, when you
12 were taking pictures of the outside of the van and the
13 general crime scene area. Was it raining at the time?

14 A Yes, sir. It was.

15 Q It was. Uh, I have no further questions.

16 THE COURT: All right. Mr. Fretwell.

17 MR. FRETWELL: Very briefly.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY MR. FRETWELL:

21 Q Sergeant Shaw, in the two days that had lapsed
22 from the time that the vehicle was towed to the service
23 center and the time you got to the vehicle to process the
24 minivan at the service center, did it remain in that
25 service center?

1 A You talking about our bay?

2 Q Yeah, that's what I meant. I'm sorry. Your
3 forensic processing center.

4 A Yes, sir. It did. It came directly to our
5 office and stayed with us until it was released.

6 Q And so as those pictures indicate, it's inside
7 and not outside?

8 A That's correct.

9 Q You said it was sealed up, the doors were shut
10 and it was locked?

11 A The doors were shut and locked and I had the
12 keys.

13 Q All right. And then also; were you aware at
14 the time that this vehicle had been reported stolen?

15 A Uh, my understanding it was earlier that
16 morning. But as far as a time, I don't know that.

17 Q All right. Thank you. Those are all the
18 questions I have.

19 THE COURT: Mr. Erwin?

20 MR. ERWIN: Your Honor, if I could just
21 publish these pictures that I entered into evidence.

22 THE COURT: All right.

23 MR. FRETWELL: Your Honor, if there's not any
24 re --

25 MR. ERWIN: There's not.

1 MR. FRETWELL: -- can this witness be
2 excused?.

3 THE COURT: All right. Sir, you can step
4 down. Mr. Erwin, may he be excused?

5 MR. ERWIN: Yes, ma'am.

6 THE COURT: All right then. Thank you, sir,
7 for being here.

8 MR. FRETWELL: With the court's permission,
9 Your Honor, can we call one last witness before
10 lunch?

11 THE COURT: How quick you think that witness
12 is going to be?

13 MR. FRETWELL: I'm hoping that, uh, --

14 THE COURT: I'm hoping it will be real quick.
15 (WHEREUPON, a bench conference is held.)

16 MR. FRETWELL: I want y'all to finish taking
17 a look at those photographs and then we are going to
18 break for lunch.

19 (WHEREUPON, Defendant's Exhibits 3 through 8 are
20 published to the jury.)

21 THE COURT: All right. Ladies and Gentlemen,
22 if we -- if I give you until two o'clock, is that
23 going to give you enough time to get lunch do you
24 believe? And if you think no, tell me no.

25 THE JUROR: Yes, as long as Paul don't make

1 us come back at 1:30.

2 THE COURT: I'll tell you what, if y'all
3 will, be back in your jury room at two o'clock,
4 we'll be ready to go, if y'all think that gives you
5 enough time. All right. Okay. All right. Hope you
6 have a good lunch.

7 (WHEREUPON, the jury exits at approximately
8 12:56 p.m.)

9 THE COURT: All right. Uh, now, we are not
10 to the point where we can take up any issue
11 regarding the bandana or anything?

12 MR. FRETWELL: No, Your Honor..

13 THE COURT: All right. All right.

14 MR. FRETWELL: We don't have all of the chain
15 in.

16 THE COURT: I didn't think we were to that
17 point. I just wanted to be sure. All right. Uh,
18 with things such as it is -- anyway, we'll, uh, --
19 one thing I need to apprise you of is I need to have
20 a hearing at three o'clock. I have let the
21 Solicitor's office and defense attorney know that I
22 will listen to five minutes of argument on each side
23 and that's all I'm going to do. That will be our
24 afternoon break some time around three o'clock. All
25 right.

1 MR. FRETWELL: Judge, just with respect that
2 hearing, I talked with Deputy Solicitor, Mr.
3 Culbreath. I have Captain Kellett right after lunch.
4 Then I have three surgeons that we are pulling from
5 the hospital from their practice to have them come
6 over here. I'm going to have them here, if you
7 start back at two o'clock, I'm going to have them
8 here by 2:30. If we can get their testimony in.
9 I've asked Mr. Culbreath if it will be alright if we
10 can just have the hearing right after those doctors
11 testify.

12 THE COURT: Fine by me. Fine by me. I think
13 the Solicitor's office is the one that set the
14 times.

15 MR. JOHNSON: Your Honor, I can say that the
16 surgeons may be something that we can take up out
17 the presence --

18 THE COURT: At this point? You think we're
19 ready to take it up?

20 MR. JOHNSON: Well, the surgeons -- I'll
21 remind you, Your Honor, the surgeons have to do with
22 identification -- maybe have to do with the
23 identification of the substance under my client's
24 fingernails. I think maybe that's something we can
25 take up outside the presence. I'm not sure what the

1 Solicitor thinks about that. I think that's
2 certainly --.

3 THE COURT: You mean you would like to argue
4 something with regards to it at this point?

5 MR. JOHNSON: It would probably be best if
6 they could proffer testimony. If they testify the
7 way I think they are, I would like to challenge that
8 said testimony.

9 THE COURT: You know you don't have to
10 challenge. I just want to say to you -- I understand
11 -- I sort of see what -- I sort of understand what
12 you were doing as far as asking all the dog -- the
13 dog handler folks outside the presence of the jury.
14 I sort of understand what you were doing there. I
15 understand the constraints of having your own expert
16 and that sort of thing. But so far as that's
17 concerned, is that something you're going to want to
18 do outside the presence of the jury or you going to
19 want to question them as to their qualifications for
20 the jury to hear.

21 MR. JOHNSON: Your Honor, I guess let's do it
22 this way. Let me try to tell you what my argument
23 is.

24 THE COURT: Okay.

25 MR. JOHNSON: You can just kind of go ahead

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1 and get your feel for it.

2 THE COURT: Sure.

3 MR. JOHNSON: Essentially, as I think, two of
4 the doctors may try to testify that they saw dye
5 under my clients fingernails.

6 THE COURT: Right.

7 MR. JOHNSON: Now, one of them, as I
8 understand it, was hearsay. When I spoke to him, at
9 least, he told me that some of the residents saw it
10 and told him. As I understand, that would be
11 inadmissible hearsay. The other doctor, as I
12 understand, is color-blind. Finally, I think that
13 we'd probably find out, at least when the forensics
14 people were called and tested for these types of
15 substances that they learned to identify the
16 substance based upon their experience. I think it's
17 also an expert testimony. They would essentially be
18 giving expert testimony for things they are not
19 experts for.

20 THE COURT: Well, are forensic people going
21 to see or forensic people going to testify that they
22 saw dye under his fingernails?

23 MR. FRETWELL: No, ma'am.

24 THE COURT: Okay. So the surgeons or these
25 three doctors, if I'm understanding right, they are

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1 going to say that they saw things under his
2 fingernails? They saw dye under his fingernails?

3 MR. FRETWELL: One surgeon, Your Honor; is
4 testifying merely to the care of Mr. Dill.

5 THE COURT: Okay.

6 MR. FRETWELL: The second surgeon is a
7 specialist called in by the first surgeon to deal
8 with the vascular injury in his neck.

9 THE COURT: Okay.

10 MR. FRETWELL: That surgeon and another
11 surgeon saw dye on this defendant's hands.

12 THE COURT: Okay.

13 MR. FRETWELL: One of the surgeons saw it on
14 the fingernails or in his fingertip area. The other
15 surgeon saw it on his palms.

16 THE COURT: Okay. And they saw it -- a
17 resident didn't tell them?

18 MR. FRETWELL: I don't know if residents saw
19 it as well. My understanding -- and I will make
20 sure I clarify it.

21 THE COURT: Okay.

22 MR. FRETWELL: I think I know which doctor
23 he's talking about.

24 THE COURT: Okay.

25 MR. FRETWELL: I will make sure that is

1 something he observed. My understanding is he
2 observed it with his own eyes. If he didn't, then I
3 would have him testify to it.

4 THE COURT: Sure. Okay. All right. That
5 takes care of potentially our hearsay problem on
6 that potentially.

7 MR. JOHNSON: Okay.

8 THE COURT: As long as he saw it. Now, what
9 about the fellow who is allegedly color-blind? Is
10 he going to be able to testify as to -- and you can
11 cross-examine him all you want to as his color-
12 blindness if he is color-blind. I don't know if he
13 is or not. But if he's color-blind, you can cross-
14 examine him at length about it. I'm sure you want
15 to.

16 MR. JOHNSON: I understand, Your Honor. But
17 I, of course, would like to make objections.

18 THE COURT: Okay. Of course. And let me
19 just say this, if where you are driving is you think
20 there has to be expert testimony for someone to say
21 I saw something under their fingernails that looked
22 like red dye to me, uh, I don't think we're going to
23 have to have expert testimony as to that. But I
24 think certainly that is something that's open for
25 cross-examination that they have not had any

1 training to know what that is. But I think a lay
2 person can say I saw something red. A doctor can
3 say I saw something red. It did not appear to be
4 blood.

5 MR. JOHNSON: Now, them saying I saw
6 something red, I don't know how I could object to
7 that. But them staying I saw bank dye under his
8 fingernails is where my objection comes.

9 THE COURT: Now, if they are saying I saw
10 bank dye, that's a horse of a different color.

11 MR. JOHNSON: Okay.

12 THE COURT: But if they are saying I saw red
13 dye or something that appeared to be red dye to me
14 and they may be -- I don't know if Mr. Fretwell is
15 going to ask him to distinguish it for other things
16 that they might normally see in the course of
17 treating the patients. If they are going to say
18 that, I don't think we need expert testimony for
19 that. I don't think they need any specialized
20 qualifications. Certainly, the fact that they don't
21 have any specialized qualifications will be the
22 subject of cross-examination.

23 MR. FRETWELL: Your Honor; just to make the
24 court aware. When the substance was described to
25 me, it was described as dye.

1 THE COURT: Okay.

2 MR. FRETWELL: Now, these surgeons were
3 advised that they were treating the victim of a
4 gunshot wound that occurred during the course of a
5 bank robbery.

6 THE COURT: Uh-huh.

7 MR. FRETWELL: I don't know if they are going
8 to say its bank dye or not. But clearly, Mr.
9 Johnson or myself would be able to say that they
10 don't know what bank dye is. They don't have any
11 experience with bank dye.

12 THE COURT: You might want to just mention
13 that to them.

14 MR. FRETWELL: I will. But I'm just saying I
15 don't know what they are going to say. But I'm
16 telling you the way it was described to me, it was
17 dye. Obviously, they would be subject to cross-
18 examination.

19 THE COURT: But if they are going to say
20 something like bank dye or I saw something under
21 their fingernails -- under his fingernails from an
22 explosion in a money bag or something tying it to
23 anything more than that that you going to believe,
24 I'll sustain your objection on that. All right.
25 Okay. All right. Uh, let's be in recess until two

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1 o'clock.

2 MR. FRETWELL: Thank you, Judge.

3 THE COURT: Thank you.

4 (WHEREUPON, a lunch recess is taken.)

5 THE COURT: All right. Let's get the jury.

6 MR. FRETWELL: Judge, just to remind you. I
7 will probably need just a moment before the second
8 and third doctor testify just to communicate your
9 admonition about the bank dye.

10 THE COURT: All right.

11 MR. FRETWELL: And also to inquire of the
12 doctor about any possible hearsay issue.

13 THE COURT: Okay. Very good.

14 (WHEREUPON, the jury enters at approximately
15 2:11 p.m.)

16 THE COURT: All right. Mr. Fretwell, you
17 ready to call your next witness?

18 MR. FRETWELL: Yes, ma'am. Your Honor, the
19 State would call Captain Jackie Kellett.

20 THE COURT: All right.

21 THE CLERK: Captain Kellett, if you will,
22 please place your left hand on the Bible and raise
23 your right hand.

24 JACKIE KELLETT

25 having first been sworn, testifies as follows:

Jackie Kellett - Direct Examination by Mr. Fretwell

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1 THE CLERK: Thank you. Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: It's Jackie F. Kellett.

4 DIRECT EXAMINATION

5 BY MR. FRETWELL:

6 Q Captain Kellett, where are you employed and in
7 what capacity?

8 A I am, uh, manager -- Forensic Division Manager
9 and Captain of the Greenville County Forensic Division
10 with the Department of Public Safety. I manage the crime
11 laboratory, the drug lab, the firearms lab, the DNA lab,
12 the latent print section, the crime scene section and
13 Property and Evidence.

14 Q Now, are your responsibilities purely
15 administrative or do you, uh, have, uh, a forensic
16 element to what you do on a daily basis?

17 A Yes, uh, I've been a police officer since 1978.
18 I became employed with Greenville County in 1982 where I
19 worked Crime Scene Unit just as Sergeant Dar Shaw that
20 testified before me did. I worked crime scenes up until
21 1989. At that point, I began specializing in latent
22 fingerprint working, trying to match fingerprints from
23 crime scenes. I've been doing latent print work since
24 1989. I'm also -- in addition to my management duties, I
25 am the Senior Latent Print Examiner with the Forensic

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Jackie Kellett - Direct Examination by Mr. Fretwell

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1 Division. Every fingerprint match that comes out on the
2 report issued by our office is approved by me.

3 Q Can you briefly clarify when you say that
4 you've been a police officer before, you worked for
5 Greenville County. How did your department differ from,
6 let's say, these officers back here and Sheriff Steve
7 Loftis who is the Sheriff.

8 A The Department of Public Safety is a support
9 agency. Although we are also employed by Greenville
10 County, we do not fall under the guidance or direction of
11 the sheriff. Our department head is an administrative
12 support, uh, county administrator. We provide support
13 services -- which part of that is the forensic division
14 -- to the Greenville County Sheriff's Office, Greenville
15 City Police Department, Highway Patrol, Mauldin, Fountain
16 Inn, Simpsonville, whoever requires forensic assistance
17 on a crime scene, we will respond to.

18 Q I think you may have mentioned this. But how
19 long have you been a latent print examiner?

20 A Since 1982. No, 19 -- I'm sorry. I started in
21 '82. Became latent prints in '89.

22 Q All right.

23 A Sorry.

24 Q Okay. Have you received specialized education
25 and training to become a fingerprint examiner?

Jackie Kellett - Direct Examination by Mr. Fretwell

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1 A Yes, I had -- when I started latent print work,
2 I had 40 hours of training in basic fingerprint
3 identification. Then I completed an 80-hour training
4 class in Advance Fingerprint Identification. I completed
5 120 hours of training in Administrative Advanced
6 Fingerprint Training at the FBI Academy in Quantico.
7 I've had an additional 80 hours of training on a school
8 known as CARDPACT, that is, the comparison and evaluation
9 and demystifying palm prints. They have these long
10 synonyms.

11 But in addition to that, every year, we undergo
12 and attend training seminars, conferences, symposiums, to
13 keep up with the world of forensics and specifically in
14 my area, latent print work. So I've attended those on a
15 yearly basis. That's required training for us. And we
16 also participate in a proficiency program whereby we are
17 tested every year as a latent print examiner by a company
18 called Collaborative Testing to make sure that we know
19 what we're doing. We participate in this every year. So
20 I've kept up with that since I began latent print work.

21 Q Over the course of your career, roughly how
22 many fingerprints have you examined?

23 A Hundreds of thousands.

24 Q Have you been qualified as an expert in the
25 courts of this state?

1 A Yes, I have. I've testified in local, state
2 and federal court as an expert witness.

3 Q In what field were you qualified?

4 A Number one, retrieving and evaluation,
5 developing fingerprints. And then later on, as I became
6 a latent print examiner, in the comparison and
7 identification of latent prints.

8 Q Approximately how many times have you been
9 qualified as a fingerprint identification expert?

10 A A hundred plus.

11 MR. FRETWELL: Your Honor, at this time, we
12 would offer Captain Kellett as an expert in
13 fingerprint identification.

14 THE COURT: Any objection?

15 MR. JOHNSON: No objection.

16 THE COURT: All right. She will be so
17 qualified. Ladies and Gentlemen, I spoke to you
18 yesterday a little bit about an expert witness.
19 That same statement that I gave you holds true
20 today. This officer will be able to give her
21 opinion in the area of fingerprint identification.
22 You can use that opinion however you see fit.

23 MR. FRETWELL: May it please the court?

24 THE COURT: Yes, sir.

25 BY MR. FRETWELL:

1 Q Captain Kellett, what is a latent print?

2 A A latent print -- latent means hidden. So a
3 latent print is an unknown or hidden print that is left
4 behind sometimes at a crime scene when someone's finger
5 comes in contact with something. Normally, these prints
6 are invisible to the human eye. You must make them
7 visible. And that's through the use of either
8 fingerprint powders or chemicals that the crime scene
9 officers use to make those prints visual so that you can
10 see them, lift them with fingerprint tape, transfer them
11 to a fingerprint card and use them for latent print work.

12 Q And what is the biological process by which
13 somebody would leave a fingerprint?

14 A Uh, you have pores in your fingers and your
15 palms. Normally, these pores exude oil, perspiration.
16 So when you touch something, you're going to leave an
17 impression behind. Just like your finger, if you look at
18 it now, you'll see little ridges and maybe some circles.
19 You're going to leave that behind when you touch
20 something. Not everybody leaves fingerprints though like
21 TV wants you to believe. Some people can touch something
22 and never leave a print. Other people can touch things
23 all day long and their prints are everywhere.

24 It depends upon the type of surfaces that they
25 touch. Is it clean? Is it smooth? The weather

1 condition. Is it hot? Dry? Raining? Wet? Cold? All
2 these factors are going to, you know, have some bearing
3 of whether or not a person's going to leave a fingerprint
4 behind.

5 Q What might be a reason why someone, if they
6 touch something where somebody else might leave a
7 fingerprint, that individual wouldn't leave a print?

8 A You get prints on top of prints on top of
9 prints. If you are in your car and you are in and out of
10 your vehicle, you don't clean the door handle every time
11 you go in it, kids are in and out of it. You've got
12 guest riders in there. You're going to have prints on
13 top of prints. That really makes it difficult to
14 identify one single latent print. If you go in and out
15 of that courtroom door, people constantly pushing on that
16 push bar in and out, in and out, that's going to make it
17 extremely difficult because nobody's cleaning that
18 surface for you there. You just got one transfer on top
19 of another on top of another.

20 Q Could you talk a little bit about fragility of
21 fingerprints?

22 A Yes, uh, fingerprint evidence is extremely
23 fragile in a lot of situations. Again, it depends upon
24 the surface area that you're dealing with and also the
25 environmental conditions are going to play a big part.

1 Some surfaces that are really slick, they crumple up,
2 you've got a lot of activity with them. They are moving
3 around. They brush up against each other. A print is
4 not going to stay there very long at all if it's
5 disturbed. You could have a piece of glass however
6 somebody could touch and the print could stay there from
7 now until dooms day if it's not affected by any outside
8 conditions.

9 Q How are latent prints recovered or collected?

10 A Again, when the crime scene officers go to the
11 crime scene, they try to think back in their minds what
12 -- if I were the suspect, what am I going to touch.
13 That's the areas that they are going focus on. Normally,
14 we use a graphite-based powder. You're going to take the
15 fingerprint brush, dip it in the powder, lightly brush
16 the surface that you are hoping to develop a print on.

17 If a print -- if the powder sticks to the print
18 and you can see it there, we're going to use just a plain
19 piece of, just like scotch tape, only it's wider, place
20 that scotch tape down on top of the latent, rub it really
21 good with your fingernails so that it sticks to the tape,
22 lift it up and then transfer that latent to a fingerprint
23 card. There, you're going to have a contrast in color,
24 the fingerprint that you left behind there that you
25 picked up is going to be black because the fingerprint

1 powder is black. And it's going to contrast against that
2 white background and it's going to be exactly what you
3 picked up off that surface that's going to go on that
4 fingerprint card.

5 Q I think you already briefly touched on this.
6 What kinds of surfaces are better or worse for
7 fingerprint collection?

8 A Your better surfaces are your good, clean,
9 smooth surfaces. Things that have a lot of ridge detail,
10 have a lot of dimples in them, uh, dashboards in cars are
11 horrible for trying to get prints off of because they've
12 got all the little ridges and dimples in them. Steering
13 wheels are hard, if not almost impossible to get a
14 fingerprint of. You are constantly doing this to the
15 steering wheel. It's not a good surface. A drink can, a
16 window glass, the outside of a car that's good and clean,
17 you're going to have a better chance of getting a print
18 off of that.

19 Q With respect to that, what kind -- what
20 environmental conditions might affect fingerprint
21 application and fingerprint collection?

22 A If a surface is wet, you can not take
23 fingerprint powder and put it on that wet surface.
24 Number one, you're going to ruin your brush. Number two,
25 you're not going to have any success because the powder

1 is just going to smear what's there. So you want a dry
2 surface. You don't want a lot of, uh, you know, rain
3 coming down on it. That's why a lot of times when the
4 weather is bad and its extremely cold outside or it's
5 raining, we're going to take that item back to the crime
6 scene office and process it after we have allowed it to
7 dry or put the vehicle in storage until it's allowed to
8 sit there and dry so that we can be in a controlled
9 situation. We control that environment and we can
10 process it there.

11 Q Now, when the individual leaves that
12 fingerprint, what effect does a dry surface versus a wet
13 surface have on that fingerprint either adhering or being
14 able to be later collected?

15 A Oil and water don't mix. So prints that you
16 try to leave behind on a wet surface, you're just not
17 going to have much luck trying to get a usable print off
18 of there. Whereas, if it's dry and you don't have a lot
19 of movement from that hand and you put your hand down and
20 pick it back up or you shut something -- you pick
21 something up and put it down, you're going to have a much
22 better chance of getting a usable latent off of a surface
23 like that.

24 Q And if prints were applied to, let's say, the
25 exterior of a vehicle and then it rained, is there a

1 better likelihood that they might remain as opposed to
2 one that -- when you try to touch something that's wet?

3 A Rain is no good. Rain is normally going to
4 wash away what we're looking for. That's why we prefer
5 -- if it is wet, tow it in where it can dry and then try.
6 You may have some luck and you just may not.

7 Q All right. Uh, what effect might wearing
8 gloves, or let's say, using something like a sock on a
9 gear shift have on fingerprint collection?

10 A You're not going to get any.

11 Q How are, uh, fingerprints compared once they
12 are collected and identified?

13 A Part of my job as a latent print examiner is
14 when the technicians go out to the crime scene and they
15 submit the latent prints to my office for comparison,
16 first thing I'm going to do is evaluate that fingerprint
17 and see if there's enough characteristics or information
18 on that print that I feel like I can make an
19 identification from, if I can tell the pattern type of
20 that print.

21 And by pattern type, I mean -- everybody --
22 there are three basic pattern types of prints, loops,
23 whirls and arches. You may have all loops. You can have
24 all whirls. You can have a combination of loops, whirls
25 and arches, but no two people are going to have the same

1 fingerprints. Even identical twins. Nobody's going to
2 match. You can have loops and you can have loops, but
3 yours are going to be different from every single person.

4 So when I get that information, then if I have
5 known prints submitted to me -- and by known, I mean,
6 those prints were taken with that person right there in
7 front of you and you know who those prints belong to --
8 I'm going to look, number one, to see if I have the same
9 pattern type. If my latent is a whirl and my known
10 prints, they have some whirls on their fingerprint card,
11 that's what I'm going to focus on first. Then, if I
12 determine that this one looks like it could be, it's
13 similar in size and in shape, then I'm going to start
14 looking for identical points of identification that are
15 the same in the same exact place between the latent print
16 and the known print.

17 From there, I'm just going to work my way
18 around. Everything, if it lines up, I've got enough
19 points of identification and I feel comfortable that it's
20 a match, then I'm going to call it a fingerprint match.
21 In Greenville County, our policy is at the forensic
22 division, another latent print examiner will always look
23 at that match and verify if it is or is not that print.

24 Q Is that process that you just described, is
25 that the same process you go through to, let's say,

1 eliminate?

2 A Yes, we do. If we have elimination prints
3 provided -- uh, your house was broken into and you and
4 your wife live there. When we come to the scene, we're
5 going to get elimination prints from you so that we can
6 rule out the latents that we got from the scene are not
7 yours. Your prints belong there. They should be there,
8 hopefully. That way, we don't waste our time trying to
9 find a fingerprint match on a latent print that belongs
10 in that particular situation.

11 Q Let me ask you specifically about the case that
12 we're here today. Did you analyze fingerprints that were
13 collected by Dar Shaw in today's case?

14 A Yes, I did.

15 Q And also, I believe, by Investigator Hamilton?

16 A Uh, Investigator Hamilton submitted the
17 elimination prints in this case.

18 Q All right. Now, did you compare the unknown
19 prints that were collected by Sergeant Shaw to the known
20 prints of both the elimination prints that you were given
21 as well as David Stephenson Boyd's?

22 A Yes, I did.

23 Q Okay. Could you give us the results -- let me
24 ask you this. Did you receive -- were they submitted all
25 at one time or on two separate sets?

1 A Sergeant Shaw processed, uh, the van on the
2 11th of December. At that time, he submitted five latent
3 fingerprints from the van. Of those five prints, one of
4 those latents was matched to Alberto Cepeda, who I
5 believe was the son of the victim. The other four
6 prints --

7 Q Let me stop you just a second. When you're
8 talking about the victims in this case, what do you mean
9 when you say the victim in this instance?

10 A The person that had this car stolen from them.

11 Q The owner of the vehicle?

12 A The owner of the vehicle, yes.

13 Q Okay.

14 A Four of those latents remained unidentified.
15 However, I did eliminate -- the remaining four latents
16 were not made by the juvenile Cepeda. Nor were they made
17 by, uh, the adult -- I guess it was the father and the
18 mother. The prints were not made by them.

19 Q What about with respect to David Stephenson
20 Boyd?

21 A The prints on the car were not made by Mr.
22 Boyd.

23 Q Now, can we talk about another print that you
24 received from Sergeant Shaw?

25 A On the 15th of December, Sergeant Shaw

1 processed -- he identifies it as a clear plastic bag that
2 was taken from the vehicle. He processed that at a later
3 date. On that particular date, he lifted a partial
4 latent or developed a partial latent off of one side of
5 that plastic bag. I did the same process. Uh, checked
6 the victim, the owner, the child of the vehicle, the
7 print -- I could exclude them. The print was not made by
8 them. However, I could not exclude Mr. Boyd as having
9 made that print. There were not enough points there to
10 either say no, it was not his or yes, it was.

11 Q When you say you couldn't exclude him, what
12 does that mean?

13 A We call that inconclusive. Again, I would go
14 through the same process. In this particular case, the
15 latent that I was looking at was a left-sloped loop.
16 Those are mainly found in the left hand of an individual.
17 In this particular case, the latent print was a small
18 count loop. Mr. Boyd has a small count loop in his
19 number 6 finger, which is the left thumb. The four or
20 five points that I could find -- points of
21 identification, I mean, uh, bifurcations or ridge
22 endings. Those points were the same in Mr. Boyd as in
23 the latent print. After that, there were just not enough
24 latent print available for me to look at to say
25 positively this was made by him or this was not made by

1 him.

2 Q But you were able to eliminate the elimination
3 prints of the Cepedas and others. They did not match?

4 A I could definitely exclude them. The pattern
5 types were not the same. Nor were the loops the same
6 general size and shape of that latent print.

7 Q That's what you indicate as an inconclusive
8 term?

9 A That is correct. I'm not going to identify a
10 print on just four or five points.

11 Q Do the results include the negatives that you
12 already have talked about of these latent print
13 comparisons, do your results mean that the individuals
14 that you mentioned, the van owners, their children, the
15 defendant were not in -- obviously, the one match to
16 Alberto Cepeda, excluding that match, but the rest of the
17 matches, do your results mean that the van owners or the
18 defendant were not in or around the vehicle from which
19 those prints were collected?

20 A The prints that we had developed were not made
21 by them. It could be another rider that they had in the
22 car. It could be someone else in the family that they
23 had ride in the car. It could be from contact at a
24 shopping mall, grocery store, somebody putting their hand
25 up against that car. They do remain unidentified.

1 Q Can I step back to those, uh, -- the five.
2 prints that you recovered from the minivan, can you tell
3 of those five prints how many came from the exterior of
4 the minivan ---

5 A Yes.

6 Q --- and how many came from the interior? I
7 think you testified that the one match from the exterior
8 was given to you.

9 A Latent lift number one was developed on the
10 exterior side of the driver's door glass. That's the
11 outside of the driver's door glass. Number two, the same
12 thing, exterior side of the driver's door glass. Number
13 three was matched to the child. Number four was on the
14 interior side of the front passenger door by the rubber
15 molding. So we're on the passenger side of the vehicle
16 now. Then, number five was from the roof of the vehicle
17 right above the front passenger door. So you have two
18 off the driver's door and the other came from the
19 passenger side.

20 Q Of the unknown?

21 A Correct.

22 Q Is it uncommon not to recover the prints of the
23 owners or regular users of a vehicle such as Mrs. Cepeda,
24 Mr. Cepeda, is that uncommon?

25 A No.

1 Q Why?

2 A Cause they -- again, you've got the prints on
3 top of prints on top of prints. It's very difficult on a
4 car sometimes to get even the owners prints off of there.
5 Because you are constantly in and out of the vehicle,
6 different people are driving it, different people are in
7 and out. Again, is it clean; is it dirty; has it rained;
8 what type of environment has it been in? Again, they may
9 be the type of people that just don't leave good latents
10 behind.

11 Q Do you regularly recover prints from a vehicle
12 that don't match the owners of the vehicle?

13 A All the time.

14 Q Those who regularly operate the vehicle?

15 A All the time.

16 Q Please answer any questions that either Mr.
17 Johnson or Mr. Erwin has for you. Thank you.

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q Captain Kellett, did you do a report for this?

23 A No, we do not issue reports for
24 nonidentifications or inconclusives. We only issue a
25 written report if we get a fingerprint match.

1 Q So -- excuse me.

2 A That's due just to the sheer volume of the
3 examinations. We do probably well over 300,000
4 fingerprint examinations every year. It's myself and
5 three other latent print examiners. If we wrote reports
6 on everybody we looked at, we would never get through
7 writing reports. You say if you had a match -- now, you
8 had a match with Alberto Cepeda, but not with my client.
9 Are you speaking with regards to the person of interest?

10 A Yes, we do not issue reports on victim matches.

11 Q Okay. But if you receive a match, for
12 instance, for a person of interest, in this case, David
13 Boyd, you would have issued a report?

14 A That is correct.

15 Q These prints also go through a verification
16 process? Someone else took a look at it?

17 A Yes, that is correct.

18 Q Okay. Uh, let me just make sure.

19 A In fact, they've been -- can I add one thing?

20 Q Yes.

21 A They had been looked at by three different
22 latent print examiners?

23 Q Three different?

24 A Yes.

25 Q Okay. So three in this --

1 A Yes.

2 Q Now, you talked earlier about -- say for
3 instance, if the prints aren't from, say for instance,
4 from the people who were in the elimination pool, then
5 the prints could be from anyone?

6 A Correct.

7 Q All right. Nothing further.

8 MR. FRETWELL: No questions.

9 THE COURT: Ma'am, you can step down.

10 MR. FRETWELL: May she be excused?

11 THE WITNESS: May I be excused?

12 THE COURT: Uh, Mr. Johnson, any objection to
13 her being excused?

14 MR. JOHNSON: No objection.

15 THE COURT: I thank you, ma'am, for being
16 here.

17 MR. FRETWELL: Your Honor, I believe the next
18 witness is in the hallway. That is Dr. Brian Dach.

19 THE COURT: All right.

20 MR. FRETWELL: For the Court Reporter, that's
21 D-A-C-H, Dach.

22 THE CLERK: Doctor, please come forward.
23 Sir, if you will, pause at the end of the bench.
24 Please place your left hand on the Bible and raise
25 your right.

1 BRIAN DACH

2 having first been sworn, testifies as follows:

3 THE CLERK: Thank you. Please be seated.

4 Sir, please state your full name for the record.

5 THE WITNESS: It's, uh, Brian Wayne Dach.

6 MR. FRETWELL: May it please the court?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. FRETWELL:

10 Q Good afternoon, Dr. Dach.

11 A Good afternoon.

12 Q Doctor, what is your occupation?

13 A I am a general, uh, general surgeon for the
14 Greenville Hospital System.

15 Q And that's where you're employed at the
16 Greenville Hospital System?

17 A Yes.

18 Q How long have you been employed by GHS?

19 A I have been employed for 11 years.

20 Q All right. Are you licensed to practice
21 medicine in this state?

22 A Yes.

23 Q Where did you attend medical school?

24 A At the University of North Texas Health Science
25 Center in Fort Worth, Texas.

1 Q I'm sorry. I'm having a little bit of
2 difficulty hearing. You mind pulling that microphone a
3 little bit closer to you?

4 A Sure.

5 Q Thank you, sir. Where did you complete your
6 residency?

7 A At the Greenville Hospital System.

8 Q Thank you. That's a lot better. Since that
9 time, where have you practiced?

10 A With the Greenville Hospital System with the
11 Medical University Group?

12 Q What does the trauma team do?

13 A A trauma team responds to trauma codes which
14 are brought into the hospital, uh, after a traumatic
15 event has occurred.

16 Q Would you be considered a trauma surgeon?

17 A Yes.

18 Q All right.

19 MR. FRETWELL: Your Honor, at this time, we
20 would move to qualify Dr. Dach as an expert in
21 trauma surgery.

22 THE COURT: Any objection?

23 MR. JOHNSON: No objection, Your Honor.

24 THE COURT: He will be so qualified.

25 BY MR. FRETWELL:

1 Q Dr. Dach, on Wednesday, December 10th, 2008,
2 did you treat a patient by the name of David Dill?

3 A Yes.

4 Q Where did you see Mr. Dill?

5 A In the trauma bay at the Greenville Hospital
6 System Emergency Room.

7 Q Okay. And what steps did you take in
8 evaluating his medical condition?

9 A I did a physical exam on Mr. Dill.

10 Q And did you note any areas of primary concern?

11 A Yes. He had a wound to his right bilateral
12 neck, uh, with, uh, a hematoma.

13 Q Can you tell us what a hematoma is?

14 A Hematoma is an apparent blood collection
15 underneath the skin.

16 Q All right. And was there any significance to
17 the location of this wound?

18 A The location of the wound was in what we
19 considered Zone 2. This is a known way of classifying
20 penetrating injuries to the neck.

21 Q And what about that Zone 2 injury that caused
22 you concern?

23 A Zone 2 is a, uh, anatomic location which
24 contains the, uh, large jugular veins as well as the
25 carotid artery.

1 Q And for those who may not know about those
2 particular arteries, how important are those arteries?

3 A You have paired carotid arteries that carry
4 blood flow to the vein.

5 Q And you said something about hoarseness?

6 A Hoarseness, uh, his voice did not have the
7 normal character. It was hoarse, which indicated to us
8 he either had a laryngeal tracheal injury or a nerve
9 injury.

10 Q The laryngeal tracheal area of the body is
11 where?

12 A It's your, basically, voice box.

13 Q All right. Did you note anything about his
14 blood pressure?

15 A His blood pressure initially was a little bit
16 on the low side which responded to some fluids.

17 Q After this evaluation, what did you determine
18 about the course of treatment for this particular
19 patient?

20 A With these type injuries, we determined that he
21 needed a surgical exploration of his neck.

22 Q So where was he sent?

23 A He was sent to the operating room.

24 Q And do you perform those surgeries or you
25 perform them in conjunction with anyone else?

1 A I performed his surgery in conjunction with Dr.
2 Langan.

3 Q Dr. Langan?

4 A Dr. Langan who is a vascular surgeon.

5 Q All right. And he works at Greenville Hospital
6 System as well?

7 A Yes.

8 Q In fact, what is his position at the Greenville
9 Hospital System?

10 A Uh, he was the Chairman of Surgery currently.
11 And at the time, was the fellowship director for vascular
12 surgery.

13 Q All right. Let me show you -- I don't know
14 that I asked you, but what about Mr. Dill's neck wound
15 warranted immediate exploration?

16 A Uh, he had a hematoma, which is the blood
17 collection, that was in the location of the injury, plus
18 he had some bleeding from the wound in conjunction with
19 the hoarseness. It was felt that there was either
20 impending compromise to the airway or ongoing bleeding in
21 the neck.

22 Q All right. Just give me one second. I meant
23 to set these x-ray photographs aside. Let me see if I
24 can find them real quickly. Oh, here they are. Would
25 you have reviewed the x-rays of Mr. Dill in this case?

1 A Yes.

2 Q Okay. Will you look at those x-rays and tell
3 the court whether or not that is the recollection, the
4 area where Mr. Dill was injured?

5 A It is the area that I remember being injured.

6 Q I think you discussed earlier the carotid
7 artery, the laryngeal nerve and possible tracheal injury.
8 Do you talk about, during the course of that surgery,
9 whether any of these injuries were confirmed? And if so,
10 what concerns might you have associated with those
11 injuries?

12 A The jugular veins did not appear to be injured.
13 There appeared to be injury to the carotid artery. The
14 small nerves in the neck could not be identified and
15 would not be repaired. We did not find an injury to also
16 the esophagus that could have potentially been injured.
17 We did not find an injury to the trachea or the larynx.

18 Q With respect to an injury to the carotid
19 artery, what are some concerns about an injury of that
20 nature?

21 A An injury to the carotid artery could cause
22 dissection or, uh, occlusion of the artery. Then, of
23 course, diminishing blood flow to the brain causing
24 stroke or, uh, death.

25 Q Okay. What is the concept of exsanguination?

1 What is that?

2 A Uh, if the artery is transected or has a hole
3 in it, then the patient could have bled to death, which
4 is exsanguination.

5 Q So Mr. Dill's injuries were treated through
6 exploratory surgery; is that correct?

7 A Exploratory surgery, yes, sir.

8 Q How would you characterize the severity of the
9 injury to Mr. Dill?

10 A Uh, extreme. Extremely severe.

11 Q And did you actually characterize it as a
12 potential mortal injury?

13 A Yes.

14 Q What does that mean in layman's terms?

15 A Mortal means the patient could have easily died
16 from these injuries.

17 Q With respect to the trajectory of the object
18 that struck this artery, what difference would
19 millimeters have had with respect to his prognosis?

20 A I think millimeters could have made a lot of
21 difference as far as the potential implications. The
22 artery could have been completely transected which means,
23 if that's the case, he may not have even made it to the
24 hospital. The jugular vein could have been transected
25 and injured. The, uh, trachea could have been injured,

1 which could have caused airway compromise, which again
2 may have caused suffocation prior to even making it to
3 the hospital.

4 Q Did you ever -- would there be any concerns in
5 that location with vertebral column injury?

6 A Uh, the injury could have penetrated the
7 vertebral column causing injury to the spinal cord, the
8 cervical spinal cord.

9 Q And what would --

10 A Which could have resulted in death.

11 Q Uh, do you know in the surgery that Dr. Langan
12 and you performed, was a vascular patch used?

13 A Yes.

14 Q What are the dangers of a vascular patch to
15 your knowledge?

16 A Uh, I think I would defer that to Dr. Langan.

17 Q Okay. Let me ask you this, how fortunate is
18 Mr. Dill to be alive?

19 A I think he's very fortunate to be alive at this
20 point?

21 Q Thank you, Dr. Dach. Please answer any
22 questions the defense might have.

23 THE COURT: Mr. Johnson, any questions?

24 MR. JOHNSON: No questions for this witness.

25 THE COURT: Thank you, sir, for being here.

1 MR. FRETWELL: Can I have Dr. Dach be excused
2 from his subpoena?

3 THE COURT: Yes. Yes, sir. Certainly.

4 MR. FRETWELL: Thank you. And Your Honor, I
5 think we need just that one moment before we
6 proceed.

7 THE COURT: You think 30 seconds to do it?

8 MR. FRETWELL: Sure.

9 THE COURT: Okay.

10 (WHEREUPON, there is a pause.)

11 THE COURT: All right. Mr. Fretwell, you
12 ready to call your next witness.

13 MR. FRETWELL: Your Honor, the State would
14 call Dr. Eugene Langan.

15 THE COURT: All right. Sir, if you will,
16 come forward and be sworn.

17 THE CLERK: Sir, if you will, please place
18 your left hand on the Bible and raise your right
19 hand.

20 EUGENE LANGAN

21 having first been sworn, testifies as follows:

22 THE CLERK: Thank you. Please be seated.

23 MR. FRETWELL: Your Honor, without objection,
24 we're going to have the next expert, Dr. Langan be
25 declared and expert in the area of vascular surgery.

1 THE COURT: There's no objection to that?

2 MR. JOHNSON: No, Your Honor.

3 THE COURT: I did not think there would be.

4 All right then. Then, he'll be -- I'm sure; based
5 on just what I already heard, he would be declared
6 to be such.

7 MR. FRETWELL: I just want to ask --

8 THE COURT: Sure.

9 DIRECT EXAMINATION

10 BY MR. FRETWELL:

11 Q Dr. Langan, how long have you been a vascular
12 surgeon?

13 A 18 years.

14 Q All right.

15 A I think.

16 Q Dr. Langan, what is the nature of vascular
17 surgery?

18 A Vascular surgery is the specialized care of
19 arteries, veins and lymphatic tissue in the body.

20 Q And in what situations might a vascular consult
21 necessarily be given?

22 A Well, obviously, for anyone who has peripheral
23 vascular disease. So we take care of -- the three major
24 categories we take care of are carotid artery disease or
25 stroke prevention. We treat aneurysmal disease; which is

1 enlargement of the arteries. We treat anything which
2 would be considered ischemic, which is a decreased amount
3 of blood getting to different tissues in the body. We do
4 bypasses or angioplasties and stentings. We're plumbers.
5 We're glorified plumbers.

6 Q All right. On Wednesday, December 10th, 2008,
7 were you consulted on a patient by the name of David
8 Dill?

9 A Yes, I was.

10 Q Where did you see Mr. Dill?

11 A I believe it was in the operating room.

12 Q Uh, could you describe his condition at that
13 time?

14 A Well, when I saw him, he was already intubated,
15 which means he had a breathing tube in. The trauma team
16 was there. They consulted me for the potential of, uh,
17 of an arterial venous injury in the neck to have me there
18 for my expertise.

19 Q And did you indeed participate in an
20 exploratory surgery on Mr. Dill?

21 A Yes, sir.

22 Q How do you characterize -- without going into
23 specifics of what you did during the surgery, how would
24 you characterize the severity of the injury, Mr. Dill?

25 A Critical.

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1 Q Was it life-threatening?

2 A Oh, yes, sir.

3 Q Would a slightly different trajectory of, let's
4 say, whatever item affected his, uh, his carotid artery
5 potentially had proven fatal?

6 A Yes, but the trajectory he was on, based on the
7 injury to the carotid in and of itself was potentially
8 fatal the way it was.

9 Q Doctor, were you consulted on a patient later
10 that day by the name of David Boyd?

11 A Yes.

12 Q Did Mr. Boyd's injuries require vascular
13 intervention?

14 A No, they did not.

15 Q Do you recall anything unusual about Mr. Boyd
16 from a non-medical perspective?

17 A Yes. Mr. Boyd was talking to us. On his
18 hands, there was a purplish discoloration, which I didn't
19 know what it was. I asked the residents outside the
20 room --

21 Q You can't say -- you can't tell us what the
22 other person outside the room would have told you.

23 A Okay.

24 Q A purplish discoloration on --

25 A A purplish-reddish stuff on his fingers and

1 fingernails?

2 Q Is there any chance that this might be dried
3 blood or some chemical that was used by medical
4 personnel?

5 A No, sir. I'd know what that is.

6 Q Okay. Have you ever seen anyone else in your
7 operating room with this kind of discoloration on his or
8 her hands?

9 A I'd never seen it before.

10 Q Thank you. Please answer any questions the
11 defense may have.

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q Now, when Dill came and you consulted with the
15 trauma team?

16 A Pardon me, sir?

17 Q When Mr. Dill came in, you consulted with the
18 trauma team?

19 A Yes, the trauma team called me to the OR.

20 Q Now, did you get a trauma score on Mr. Dill?

21 A No, sir.

22 Q No score. Now, uh, you state you consulted
23 with my client with regard to any vascular problems that
24 may or may not be there?

25 A Right. He had been shot, so they asked me to

1 come -- the trauma team with a different trauma attending
2 asked me to come see him.

3 Q Now, was that the only time that you seen my
4 client?

5 A To the best of my -- that I can remember, yes.

6 Q Okay. Now, you stated earlier that you thought
7 what you saw was a discoloration on his hands?

8 A It was purple stuff. Purplish-burgundy strange
9 stuff along the tips of his fingers that I saw when I
10 went to shake his hand.

11 Q Now, are you aware that a gunshot residue test
12 was done on his hands?

13 A No.

14 Q Do you know how that's done?

15 A No.

16 Q Well, let me describe, what they do is they
17 swab the front of your hand and the back of your hand.
18 Okay. Would you accept that as true?

19 A Whatever you're telling me.

20 Q Are you aware that those things were tested for
21 something that they found was red. Are you aware of
22 that?

23 A No.

24 Q Are you aware that that thing they found that
25 was red was not what they call bank dye?

1 MR. FRETWELL: Your Honor, I want to object
2 to the relevance of this testimony.

3 THE COURT: Mr. Johnson, I'm going to allow
4 you to continue with it, but he said he's not
5 familiar with a gunshot residue test.

6 MR. JOHNSON: I think I'm clearly able to ask
7 him if he's aware of certain things. If he says no,
8 I'll let it go.

9 THE COURT: Okay.

10 BY MR. JOHNSON:

11 Q Uh, anyhow, are you aware that his hands were
12 tested for gunshot residue?

13 A (Shakes head.)

14 Q And you said no, right?

15 A No.

16 Q Are you aware that that test was also tested
17 for bank dye?

18 A No.

19 Q Are you aware that the particle turned out not
20 to be bank dye?

21 A No.

22 Q Are you aware that it actually was believed to
23 be a blood particle?

24 A No.

25 MR. JOHNSON: All right. Nothing further.

1 THE COURT: Anything else, Mr. Fretwell?

2 MR. FRETWELL: No, Your Honor.

3 THE COURT: All right, sir. You can step
4 down.

5 MR. FRETWELL: May the doctor be excused?

6 THE COURT: Most certainly.

7 THE WITNESS: Thank you.

8 MR. FRETWELL: Your Honor, the State would
9 call Dr. John Rinkiff.

10 THE CLERK: Sir, please place your left hand
11 on the Bible and raise your right hand.

12 JOHN RINKIFF

13 having first been sworn, testifies as follows:

14 THE CLERK: Thank you. Please be seated.

15 Please state your full name for the record.

16 THE WITNESS: My name is John Michael
17 Rinkiff.

18 DIRECT EXAMINATION

19 BY MR. FRETWELL:

20 Q Dr. Rinkiff --

21 THE COURT: Hold on. Let him get some water.

22 (Pause.)

23 All right.

24 MR. FRETWELL: May it please the court?

25 THE COURT: Yes, sir.

1 BY MR. FRETWELL:

2 Q Dr. Rinkiff, are you also a surgeon at
3 Greenville Memorial Hospital?

4 A Yes, sir. I am.

5 Q How long have you been a surgeon at Greenville
6 Memorial?

7 A I've been a surgeon at Greenville Memorial
8 since 1997.

9 Q Are you licensed to practice medicine in this
10 state?

11 A Yes, I am.

12 Q Did you treat a patient by the name of David
13 Stephenson Boyd on Wednesday, December 10th, 2008?

14 A Yes, sir.

15 Q Where did you see Mr. Boyd?

16 A I saw him in the trauma bay.

17 Q Do you remember anything unusual about Mr.
18 Boyd?

19 A Yes, sir.

20 Q Can you tell us about that?

21 A Discoloration of the hands, both hands.

22 Q Okay. And what did you -- how did you describe
23 this discoloration of his hands?

24 A I describe it as a purplish discoloration,
25 red/blue type, purplish red/blue dye.

1 Q Okay. And why do you say red/blue?

2 A Uh, I am color-blind.

3 Q Okay. Uh, and before I get to that issue,
4 where on his hands did you see that?

5 A It was streaked on the inside, the finger types
6 -- palms type of thing.

7 Q All right. Let me show you State's Exhibit 70.
8 Do you recall that I showed you that picture when we
9 discussed what you just testified to?

10 A Yes, sir.

11 Q Okay. Did I point your attention to this
12 little, uh, color at the end of that pulse oximeter?

13 A Yes, sir.

14 Q What is that little light -- what is that
15 light?

16 A That light senses how much oxygen is being
17 delivered to the blood.

18 Q And did I ask you whether or not the color of
19 the dye that you saw was that same color?

20 A Yes, sir.

21 Q Did you identify it to be that same color?

22 A Yes, sir.

23 Q All right. Is there anything that might make
24 you think that what you -- that might make you think you
25 saw dried blood on his hands instead?

1 A No, sir. Even though I'm color-blind, I'm well
2 acquainted with what dry blood looks like.

3 Q Could this have been some kind of chemical used
4 by medical personnel?

5 A I've never seen this type of substance on the
6 hands.

7 Q Did the presence of dye on Mr. Boyd's palms
8 factor into your discussions on December 10th, 2008 with
9 any other doctors?

10 A Yes, sir.

11 Q Could you tell us about that?

12 A Yes, sir. Uh, because the patient had been
13 shot in the leg, it is our protocol to call a vascular
14 surgeon even though we didn't feel there was any
15 compromise. When Dr. Langan came into the trauma bay,
16 uh, we kind of said this is the fellow that we think shot
17 your other patient. He kind of was maniacal to the bed
18 and he went, "Alleged robber. The dye was apparent on
19 the hands." We kind of had a momentary pause there and
20 went about our work.

21 Q Was anything with respect to how you referred
22 to these two patients that stands out in your mind?

23 A This is the fellow that's been shot in the leg
24 probably shot the other fellow in the neck, the alleged
25 bank robber.

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1 Q All right. Please answer any questions Mr.
2 Johnson may have.

3 THE COURT: Mr. Johnson.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q Dr. Rinkiff, when did you first meet with the
7 Solicitor?

8 A I'm sorry?

9 Q When did you first meet with the Solicitor?

10 A It would have been last summer, I believe.

11 Q Last summer?

12 A Yes, sir.

13 Q Now, did you meet with me?

14 A No, sir.

15 Q Do you know if I tried to get you to meet with
16 me?

17 A I don't know.

18 Q Were you ever in contact with your secretary?

19 A Occasionally.

20 Q Occasionally?

21 A Yes, sir. She manages 13 other surgeons also,
22 yes.

23 Q Does she set your appointments?

24 A She among about four or five other people do.
25 Yes, sir.

1 Q Is it not true that you set up an appointment
2 with me only to break it?

3 A No, sir. I've never been asked to set up an
4 appointment with you.

5 Q So your testimony today is no one from my
6 office called your office and set up an appointment?

7 A I'm not aware of it.

8 Q So you're also stating that you're not aware of
9 it either?

10 A I'm confused about your question. Please
11 restate.

12 Q I'm sorry?

13 A I'm saying please restate what your question
14 is. I am not aware of any attempt or an appointment
15 made. I think your last question was that I had made an
16 appointment to see you. I've never made an appointment
17 to see you.

18 Q Okay. All right. Now, you stated earlier that
19 someone may have shot someone or something of that
20 nature, right, is that what you said?

21 A Yes, sir.

22 Q Now, who gave you this information?

23 A The EMS personnel.

24 Q EMS personnel told you this?

25 A When they bring someone in, they state the

Remarks

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1 circumstances of the shooting.

2 Q So they gave you their version of whatever
3 happened?

4 A Yes, sir.

5 Q Who do you think gave them their version?

6 A I have no idea.

7 Q Now, are you aware that, uh, my client's hands
8 were swabbed?

9 A No, sir.

10 Q Are you aware that those swabs were tested by
11 SLED?

12 A No, sir.

13 Q Are you aware that those swabs were tested for
14 bank dye?

15 A No, sir.

16 Q Are you aware that those swabs tested negative
17 for bank dye?

18 A No, sir.

19 MR. JOHNSON: Nothing further.

20 MR. FRETWELL: No questions, Judge. Could
21 Dr. Rinkiff be excused?

22 THE COURT: Certainly. Thank you, sir, for
23 being here.

24 THE WITNESS: Thank you.

25 MR. FRETWELL: Judge, that takes care of what

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Remarks

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1 we needed to do.

2 THE COURT: All right. Ladies and Gentlemen,
3 we probably came to a point for our afternoon break.
4 It might be just a little bit early for us to do it.
5 But I need to take care of a matter. It will take
6 me approximately 15 minutes so we'll have a little
7 bit longer of a break. If you need snacks or
8 something like that, if you will please let Mr.
9 Anderson know during your break. All right. Thank
10 you so much.

11 (WHEREUPON, the jury exits at approximately
12 3:06 p.m.)

13 THE COURT: All right. Unless there's not
14 any other matters we need to take up, uh, then we'll
15 be in recess for 15 minutes while I handle this re-
16 sentencing or motion to amend my sentence. If you
17 would, Mr. Fretwell, please let Mr. Culbreath know
18 outside that I'm ready for them.

19 (WHEREUPON, a recess is taken.)

20 MR. FRETWELL: Right now, we have a series of
21 1, 2, 3, 4, 5 witnesses that anticipate are going to
22 go fairly quickly.

23 THE COURT: Okay. Great. They are a
24 remaining group of witnesses. The majority of them
25 are from SLED or coming from SLED. They usually

Remarks

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1 ride together. Lieutenant Reinhart, who is
2 basically the head of the, uh, Property and Evidence
3 Division down there ---

4 THE COURT: Sure.

5 MR. FRETWELL: --- notified me on Monday that
6 there was a death in her family over the weekend.
7 The visitation was on Tuesday. The funeral was
8 midday today.

9 THE COURT: Okay.

10 MR. FRETWELL: I could try to call her and
11 tell them that maybe we were going to get to them
12 this afternoon and some of it could have been
13 reached, but I have not contacted them to tell them
14 to be here. So once we get through those next few
15 witnesses, that will be all that the State has
16 today.

17 THE COURT: Okay. Tell me about -- tell me
18 -- and that's fine. I've been pushing today because
19 I was under the impression we were behind.

20 MR. FRETWELL: Well, we were. We made some
21 great time.

22 THE COURT: Great. Okay. Good. That's good
23 to hear. So, so far as tomorrow is concerned, you
24 feel like you are in good shape to conclude
25 tomorrow?

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Remarks

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1 MR. FRETWELL: Yes, ma'am. In fact, I may
2 regret saying this, but in the morning.

3 THE COURT: Okay. All right. Mr. Johnson,
4 that look on your face.

5 MR. JOHNSON: I just have one issue.

6 THE COURT: Okay.

7 MR. JOHNSON: The FBI guy.

8 MR. FRETWELL: Yes.

9 MR. JOHNSON: You intend on calling him?

10 MR. FRETWELL: I don't, no.

11 MR. JOHNSON: Well, he's flying in from
12 Quantico.

13 THE COURT: When is he going to --

14 MR. JOHNSON: I expect he may be here on
15 Friday morning. I told him that based upon -- now
16 they are saying Thursday afternoon -- us being a
17 little behind.

18 THE COURT: Well, you think he's taking like
19 a -- you think --

20 MR. JOHNSON: He said he paid \$700 for the
21 plane ticket.

22 THE COURT: You think Friday morning? How
23 many -- I understand we haven't gotten to the point
24 of talking about your client and don't want to do
25 that at this point.

Remarks

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1 MR. JOHNSON: Yes, ma'am, Your Honor.

2 THE COURT: How many other witnesses? You
3 don't have to tip your hand. I'm just -- you feel
4 like you're going to have a lot more?

5 MR. JOHNSON: I think, uh, --

6 MR. FRETWELL: Would it help you if I told
7 you how many of your list I'm calling?

8 MR. JOHNSON: Well, I know two for sure. At
9 this point, I may want to slightly amend my list to
10 my investigator.

11 THE COURT: All right. So just for planning
12 purposes, if your people come in from SLED tomorrow
13 morning, we can get them done tomorrow morning.
14 Then we could potentially do your people tomorrow
15 afternoon with the exception of the guy from
16 Quantico?

17 MR. JOHNSON: Yes.

18 THE COURT: What we can do with the remainder
19 of the afternoon, it won't take this long, but we
20 could do a charging conference and y'all could have
21 an opportunity to get ready for your closing
22 arguments. We could do the guy in Quantico,
23 assuming that you don't have any reply testimony.
24 You may or may not. But assuming that you don't
25 have any reply testimony, we could probably still

Remarks

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1 argue and charge Friday morning. Your guy from
2 Quantico is not going to be that long, is he?

3 MR. JOHNSON: No, he won't be that long.

4 THE COURT: All right. And then we can argue
5 and charge Friday morning. Then the jury could
6 probably get it hopefully right around lunchtime ---

7 MR. JOHNSON: Yes.

8 THE COURT: --- on Friday.

9 MR. FRETWELL: Judge, when I spoke with Dr.
10 Brewer, who is the chemist he's talking about from
11 Quantico, they required all sorts of letters from us
12 as far as difficult protocols federally. But I
13 could contact him and see if he could be here any
14 earlier.

15 MR. JOHNSON: I mean, I can email him. I
16 just emailed him at lunch. I can email him again
17 and see if he could be here tomorrow.

18 THE COURT: If he can be here tomorrow -- if
19 he could be here tomorrow, that would be great. We
20 can make arrangements if he can not be here
21 tomorrow.

22 MR. JOHNSON: May I shoot him an email?

23 THE COURT: You go right ahead.

24 MR. JOHNSON: Thank you.

25 MR. FRETWELL: Judge, I'm saying some -- most

Remarks

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1 of these witnesses from SLED are very brief.

2 THE COURT: Sure.

3 MR. FRETWELL: Although some of them, I don't
4 know what degree of cross-examination, we may go up
5 into the afternoon.

6 THE COURT: Sure.

7 MR. FRETWELL: But I see a real possibility
8 that if we start at 9:00 and we move expeditiously,
9 potentially, we can get through most all the --

10 MR. JOHNSON: Your Honor, he offered
11 something. It may be something I should take him up
12 on. How many of my witnesses are you calling?

13 MR. FRETWELL: That I haven't already called?

14 MR. JOHNSON: Yeah. All of them except Dr.
15 Gibson and Dr. Brewer?

16 MR. FRETWELL: Yeah.

17 MR. JOHNSON: Okay. Then what I said stands
18 true.

19 THE COURT: Okay. So you think you might
20 have two, possibly three witnesses?

21 MR. JOHNSON: Yes.

22 THE COURT: And, uh, -- alright. We'll just
23 kind of see where it goes. I appreciate y'all
24 letting me know that. I've been wanting to hard
25 charge today just hoping we would get back on track.

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Remarks

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1 MR. FRETWELL: We are. I appreciate it.

2 MR. JOHNSON: Your Honor, as I've kind of
3 been briefly, just in passing, make the court aware
4 that I may intend to call my investigator Robin
5 Austin, and she's not on the list.

6 THE COURT: Okay. Well, I can ask the people
7 on the jury if anybody knows a Robin Austin. If you
8 feel you've got to call Robin Austin, then I can ask
9 them and we can just see.

10 MR. FRETWELL: Is this about Langan or
11 Rickman?

12 MR. JOHNSON: Rickman, yes.

13 THE COURT: All right.

14 MR. JOHNSON: It will be just like that.

15 THE COURT: I'll be sure -- I figured that's
16 what it's about. The chances that people on the
17 jury -- if they don't know you, they are probably
18 not going to know the investigator.

19 MR. JOHNSON: Yeah.

20 THE COURT: Chances are slim. I assume your
21 investigator's been in here.

22 MR. JOHNSON: Yeah, she's just sitting right
23 there.

24 THE COURT: Oh, okay. She hadn't said, yeah,
25 I know that juror. We're probably in pretty good

Remarks

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1 shape.

2 MR. JOHNSON: Okay.

3 THE COURT: Okay. All right.

4 (WHEREUPON, the jury enters at approximately
5 3:38 p.m.)

6 THE COURT: All right. Thank you, Ladies and
7 Gentlemen, for your patience. Again, that delay had
8 nothing to do with these attorneys. It had
9 everything to do with my duties as, uh, as
10 administrative judge here. So it had nothing to do
11 with these attorneys at all.

12 All right, Mr. Fretwell.

13 MR. FRETWELL: May it please the court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 MR. FRETWELL: The State would call Susan
17 Davis.

18 THE CLERK: Ms. Davis, if you would, please
19 pause at the end of the bench. Place your left hand
20 on the Bible and raise your right hand.

21 SUSAN DAVIS

22 having first been sworn, testifies as follows:

23 THE CLERK: Thank you. Please be seated.
24 Please state your full name for the record.

25 THE WITNESS: Susan Davis.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. FRETWELL:

4 Q Ms. Davis, by whom are you employed?

5 A Greenville Hospital System.

6 Q What is your position with Greenville Hospital
7 System?

8 A I'm the custodian of the medical records.

9 Q I'm having a little bit of difficulty hearing
10 you.

11 A I'm the custodian of the medical records.

12 Q That's perfect. Thank you. How are medical
13 records created and stored within the Greenville Hospital
14 System?

15 A They are made at the time or near the time of
16 the event by the personnel that's involved in the
17 patient's care.

18 Q Are the records created -- I'm sorry. Are the
19 records made and stored in the regular course of
20 business?

21 A Yes, sir.

22 Q In the regular course of your duties as a
23 medical records custodian, are you routinely asked to
24 retrieve medical records relating to certifications?

25 A Yes, sir.

Susan Davis - Direct Examination by Mr. Fretwell

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1 Q Were records subpoenaed for the treatment of
2 David Stephenson Boyd?

3 A Yes, sir.

4 Q Were you notified by my office about certain of
5 those documents and asked to bring those documents to
6 court?

7 A Yes, sir. We brought what was on the subpoena.

8 Q Is that consistent with 10 documents?

9 A Yes, sir.

10 Q All right. And in fact, you haven't even shown
11 those documents to me yet, have you?

12 A No, sir.

13 Q At this time, would it be appropriate for me to
14 take them?

15 THE WITNESS: Judge, is that okay?

16 THE COURT: Yes, ma'am.

17 THE WITNESS: Okay.

18 BY MR. FRETWELL:

19 Q All right. Are these the documents that you
20 brought?

21 A These are the documents that were attached to
22 the subpoena. These are the documents that I printed out
23 of the computer that matched these documents from the
24 medical records.

25 Q These are the documents that you can verify

1 their authenticity?

2 A Yes, sir.

3 MR. FRETWELL: All right. Your Honor, at
4 this time, I would like to mark those documents as
5 State's Exhibit 110.

6 THE COURT: All right.

7 BY MR. FRETWELL:

8 Q Ms. Davis, one final question. Are these
9 documents part of the medical records you retrieved on
10 David Stephenson Boyd, II for treatment date beginning on
11 12/10/08?

12 A Yes, sir.

13 MR. FRETWELL: Your Honor, I would move
14 State's 110, those 10 documents in at this time.

15 THE COURT: Mr. Johnson?

16 (WHEREUPON, there is a pause.)

17 MR. JOHNSON: Your Honor, permission to
18 approach on these documents?

19 THE COURT: Certainly.

20 (WHEREUPON, a bench conference is held.)

21 THE COURT: All right. I find that the
22 foundation has been properly laid for these records.
23 However, the court wants to take the records under
24 further consideration. Uh, I'll hold that decision
25 in abeyance. Anything else with this witness, Mr.

Susan Davis - Cross-Examination by Mr. Johnson

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1 Fretwell?

2 MR. FRETWELL: No, ma'am.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: Just briefly.

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q Now, were you involved in writing any of the
9 notes or anything in the records?

10 A No, sir. I'm just the custodian of the
11 records.

12 Q All right.

13 A We just keep them.

14 MR. JOHNSON: All right. Nothing further.

15 THE COURT: Anything else?

16 MR. FRETWELL: May this witness be excused,
17 Your Honor?

18 THE COURT: Certainly. Thank you, ma'am, for
19 being here.

20 MR. FRETWELL: May it please the court?

21 THE COURT: Yes, sir.

22 MR. FRETWELL: The State would call
23 Investigator Eric Whaley.

24 THE CLERK: Sir, please place your left hand
25 on the Bible. Raise your right hand.

1 ERIC WHALEY

2 having first been sworn, testifies as follows:

3 THE CLERK: Thank you. Please be seated.

4 Please state your full name for the record.

5 THE WITNESS: Eric Todd Whaley.

6 DIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q Investigator Whaley, how long have you worked
9 with the Greenville County Sheriff's Office?

10 A I been with Greenville County a little over 14
11 years but I have over 20 years in law enforcement.

12 Q Okay. And to what unit within the sheriff's
13 office are you currently assigned?

14 A I'm assigned to the homicide unit at the
15 sheriff's office.

16 Q Uh, Wednesday, December 10th, 2008, were you
17 involved in investigating a bank robbery that occurred at
18 the Bank of Travelers Rest on White Horse Road that day?

19 A Yes, sir, that's correct.

20 Q Okay. Along with what other Investigators did
21 you participate in the investigation that day?

22 A I'm sorry. That particular day, I was with
23 Investigator Christopher Miller.

24 Q And that's this gentleman sitting right here?

25 A That's correct.

Eric Whaley - Direct Examination by Mr. Fretwell

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1 Q Okay. Did you request a sample of the
2 defendant's blood for testing?

3 A Yes, sir.

4 Q For what purpose did you collect the
5 defendant's blood?

6 A For drug testing.

7 Q Okay. And what kind of drugs were you looking
8 for?

9 A Just normal street drugs, uh, marijuana,
10 cocaine, methamphetamine, that sort of thing.

11 Q Are you aware of the results of those tests?

12 A Yes, sir.

13 Q Did his -- what were the results?

14 A They were negative.

15 Q Okay. So none of those drugs were found in the
16 defendant's blood?

17 A None of the drugs requested were found.

18 Q Okay. Were you involved in any activities
19 related to this case on Friday, December 12th?

20 A Yes, sir.

21 Q Okay. What did you do that day with respect to
22 this case?

23 A Myself, Investigator Miller and Senior Agent
24 Rob Scott with the FBI went to the hospital to get a DNA
25 sample from the defendant.

1 Q All right. Let me show you what's been marked
2 as State's Exhibit 111. Can you take a look at that and
3 see if that's the sample you obtained from the defendant
4 from the hospital that day?

5 A (Reviewing.) Yes, sir. These are.

6 Q I think I may have used the term "buccal swab"
7 or maybe you do. Can you explain what a buccal swab is?

8 A Certainly. A buccal swab is a sterile Q-tip
9 that comes in a package. What we do with that, of
10 course, we wear gloves, we take the Q-tip from the
11 package, take it to the inside of whoever's mouth that
12 we're testing. It's just like rubbing a giant ear Q-tip
13 on the inside of your cheek to get DNA transfer onto the
14 Q-tip. Then we'll place it in a package and seal it in
15 these boxes and put evidence tape on it and put those in
16 Property and Evidence or storage for later testing.

17 Q All right. And let me show you what's been
18 marked as Court's Exhibit 4. You recognize this document
19 -- or that being a copy of a document that you recognize?

20 A Yes, sir. This is my handwriting of the copy
21 of the two oral buccal swabs that were placed in these
22 cartridges.

23 Q And is that the sheet that you fill out in
24 order to put that item into evidence?

25 A Yes, sir. It's a Property and Evidence sheet.

1 It's like a receipt.

2 Q And when you put that buccal swab into
3 evidence, is it in a sealed condition?

4 A That's correct.

5 Q All right.

6 MR. FRETWELL: Your Honor, at this time, we
7 would have the sheet marked as Court's Exhibit 4.

8 THE COURT: Any objection?

9 MR. JOHNSON: I'm sorry. I just want to see
10 it.

11 THE COURT: That's fine.

12 (WHEREUPON, there is a pause.)

13 MR. JOHNSON: Okay. All right. No
14 objection.

15 THE COURT: All right then.

16 (WHEREUPON, Court's Exhibit 4 is marked for
17 identification purposes.)

18 MR. FRETWELL: All right. Please answer any
19 questions that Mr. Johnson or Mr. Erwin has.

20 THE COURT: Yes, sir.

21 MR. JOHNSON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Investigator Whaley, what date did you visit my
25 client?

1 A. Uh, at the hospital, that would have been on
2 12/12/2008.

3 Q And you went with, uh, Agent Scott?

4 A Rob Scott and Investigator Christopher Miller.

5 Q Now, where is Rob Scott from?

6 A The FBI.

7 Q And Miller is -- that's Miller?

8 A Yes, sir. With the sheriff's office.

9 Q Okay.

10 THE COURT: Anything else?

11 MR. FRETWELL: Nothing further, Judge. Just
12 looking for my next witness.

13 THE COURT: All right. You can step down.

14 THE WITNESS: Thank you.

15 MR. FRETWELL: Can Investigator Whaley be
16 excused?

17 THE COURT: Certainly. Thank you for being
18 here.

19 MR. FRETWELL: Trying to see whether I can
20 call her out of order. (Pause.)

21 Your Honor, I think I'm going to skip a witness
22 and move to Investigator Laura Jones.

23 THE COURT: All right. Very well then.

24 THE CLERK: Please place your left hand on
25 the Bible and raise your right hand.

Laura Jones - Direct Examination by Mr. Fretwell

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1 LAURA JONES

2 having first been sworn, testifies as follows:

3 THE CLERK: Thank you. Please be seated.

4 Please state your full name for the record.

5 THE WITNESS: Laura Jones.

6 DIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q Investigator Jones, are you employed by the
9 Greenville County Sheriff's Department?

10 A Yes, sir. I am.

11 Q Where you are currently employed?

12 A Currently --

13 Q What unit are you currently assigned to?

14 A Currently, I'm an investigator in the Internal
15 Affairs unit.

16 Q All right. In December of 2008, where were you
17 assigned?

18 A At that time, I was in homicide or the violent
19 crimes unit.

20 Q All right. You have worked with Investigators
21 like Chris Miler and Mr. Whaley that just left?

22 A Yes, sir.

23 Q And Mary Fields?

24 A Yes, sir.

25 Q All right. Uh, let me show you this sheet to

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Laura Jones - Direct Examination by Mr. Fretwell

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1 kind of refresh your recollection, I want to ask you some
2 questions about this. What is this document I just
3 showed you?

4 A These are the SLED laboratory -- they are
5 forensic request forms that we have to fill out when we
6 send evidence to SLED for analysis.

7 Q And does this detail what pieces of evidence
8 that you took to the South Carolina Law Enforcement
9 Division for analysis?

10 A Yes, it does.

11 Q Can you go through -- well, let me see if I
12 can, uh, make this a little simpler. Let me show you
13 what has been marked as State's 29, State's 92, State's
14 65 and State's 64. Can you take just a moment and
15 determine whether or not any of these exhibits were
16 transported by you to the South Carolina Law Enforcement
17 Division lab for analysis?

18 A Sure.

19 Q Thank you.

20 A (Reviewing.) Uh, State's Exhibit 29. I did.
21 It's labeled as a blue and white bandana.

22 Q All right. So that's 29.

23 A This one here, yes, sir.

24 Q All right.

25 A I just need to take a minute to look at them.

1 Q That's okay. I also want to give you, uh, --
2 would it assist you to look at the P&E sheets?

3 A Yes, sir. That will help a lot.

4 Q I think this is three of them. It should be
5 four.

6 A (Reviewing.) I did take the, uh, the buccal
7 swabs as well. I don't know what they are labeled as.
8 State's Exhibit 111.

9 Q Okay.

10 A I'm assuming they go in this envelope.

11 Q When you are looking at this, do you mind
12 telling the jury what is it with respect to these
13 containers that you are looking at to determine that what
14 we are referring to is what you actually took down there.

15 A How did we label them differently? Is that
16 what you are referring to?

17 Q Yeah, what is a case number, what does that
18 mean and that kind of thing.

19 A All of these different packaging, when
20 forensics personnel collect these items from the scene or
21 from persons involved in this incident, they package them
22 to their standards properly. They always write on the
23 outside a case number, uh, which you can see at the top.
24 1-08 and such. That's the case number assigned to this
25 incident.

1 Each individual forensic person labels what
2 they collect. You may have different -- I don't know
3 who's testified so far. You have different forensic
4 persons who may work one incident. You may have three,
5 four, five different ones. They label them according to
6 their initials. For instance, Mr. Smith, Doug Smith may
7 label it DLS -- those are his initials -- 3, 4 and 6.
8 Those are the items he collected. That's how he labeled
9 them. And he sealed them in this envelope. He writes
10 them down on these P&E sheets, Property and Evidence
11 sheets, to coincide with the envelopes that he places
12 them in.

13 When I transport them, I don't unseal any of
14 this evidence. I didn't look at it other than seeing
15 what's written here, didn't know what was in them. I
16 simply picked them up from the Property and Evidence
17 room, kept them packaged as they were. Transported them
18 with the proper paperwork down to the South Carolina Law
19 Enforcement Division. I handed them over to those
20 technicians down there for analysis. That was my
21 involvement with the evidence. I didn't touch any of the
22 evidence other than the outside of the packaging.

23 Q When you submit the items to SLED, do they
24 require that they be in a sealed condition?

25 A Yes, sir.

1 Q Okay. Would you take also a look at -- we
2 marked as a State's Exhibit 64 and 65 with respect to
3 that.

4 A You know what the item numbers are? They
5 aren't labeled on the outside of here.

6 Q If you have to open them --

7 A If they are the jeans --

8 Q If you want to look at the packaging that's
9 inside, take a look at that.

10 A (Reviewing.) I can see it. They are labeled
11 DES-7 as item of the Akademiks brand jeans.

12 Q And what's -- if you'll look on the red sticker
13 number and tell me what sticker does that relate to?

14 A 64.

15 Q 64. How about 65?

16 A (Reviewing.) Uh, this is labeled DES-8, which
17 is the gray t-shirt.

18 Q Is that also one of the items that you
19 transported?

20 A Yes, sir. 65.

21 Q All right. All right. So you testified to
22 State's 111, State's 29, State's 65, State's 64 and you
23 did not transport State's 92, which is marked as DLS-3, 4
24 and 6.

25 A I did.

1 Q You did?

2 A Which is gloves, gray in color gloves.

3 Q All right. Take a look in there and see if
4 that corresponds with what --

5 A (Reviewing.) There's three different items
6 under this one -- in this one package. This is a black
7 sock.

8 Q And you did not transport that?

9 A I did not transport that.

10 Q All right. If you don't mind putting that back
11 into the package please.

12 A (Witness complies.)

13 Q All right. And just for the record, you
14 testified to what you did. Could you just tell us when
15 you picked them up and when you dropped them off at SLED.

16

17 A Sure. I'm sorry. I'm going to have to refer
18 back to the pages to get the date.

19 Q That's fine.

20 A February 19th, 2009. I picked them up at 9:30
21 in the morning and drove them to SLED. You need the time
22 I dropped them off as well?

23 Q Please.

24 A I do not see it on here.

25 Q Let me ask you this. Did you drop it off the

1 same day?

2 A Yes, sir. As soon as I picked them up at 9:30,
3 I drove directly to Columbia to SLED, which would have
4 been about approximately an hour and a half.

5 Q All right. You didn't make any detours or stop
6 off somewhere?

7 A No, sir.

8 Q Took them to SLED.

9 A Directly to SLED. Dropped them off and came
10 back to the office.

11 Q That's all you did?

12 A Yes, sir.

13 Q All right. Please answer any questions that
14 Mr. Johnson or Mr. Erwin would have for you.

15 THE COURT: Mr. Johnson.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q Briefly, Investigator Jones. You dropped five
19 items to SLED; is that correct?

20 A Yes. I'd have to refer back to the sheet.

21 Q That's alright.

22 A These items, these five items, yes, sir.

23 Q This sheet here? This sheet?

24 A Five different separate packages.

25 Q Five different separate packages?

1 A Yes, sir.

2 Q Can you -- can you -- I know you gave item
3 numbers and things of that nature. Can you say what's
4 that that you dropped?

5 A Sure.

6 Q I've got Akademiks jeans. I've got blue and
7 white bandana. I've got gray gloves. What was the other
8 two items?

9 A The buccal swabs.

10 Q Buccal swabs for my client?

11 A Of David Boyd, yes.

12 Q Okay.

13 A Blue and white bandana.

14 Q Okay.

15 A Like you said, the jeans, which is DES-7.

16 Q Uh-huh.

17 A The gray t-shirt.

18 Q All right. Thank you.

19 A Yes, sir.

20 MR. FRETWELL: No further questions, Your
21 Honor.

22 THE COURT: All right. Ma'am, you can step
23 down.

24 THE WITNESS: Thank you.

25 MR. FRETWELL: Can Investigator Jones be

Kara Bennick - Direct Examination by Mr. Fretwell

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1 excused?

2 THE COURT: Certainly.

3 MR. FRETWELL: Thank you.. Your Honor, at
4 this time, we call Kara Bennick.

5 THE CLERK: Ma'am, please place your left
6 hand on the Bible and raise your right hand.

7 KARA BENNICK

8 having first been sworn, testifies as follows:

9 THE CLERK: Thank you. Please be seated.
10 Please state your full name for the record.

11 THE WITNESS: Kara Bennick.

12 DIRECT EXAMINATION

13 BY MR. FRETWELL:

14 Q Ms. Bennick, where are you employed?

15 A Greenville County Department of Public Safety,
16 the Property and Evidence room.

17 Q All right. And in fact, you are the director
18 of the Property and Evidence department; is that
19 correct?

20 A Yes, sir.

21 Q What are your responsibilities as the
22 supervisor of P&E?

23 A In addition to administrative responsibilities,
24 I also take in evidence and sign for it.

25 Q How long have you been in charge of Property

1 and Evidence?

2 A Since 2003?

3 Q What is the purpose of your department?

4 A The care, custody and control of all incoming
5 property and evidence.

6 Q Okay. Let me take you back to December of
7 2008. I understand that you have a different system now.
8 But in December of 2008, at that time, how was evidence
9 handled in a typical case that would come into your
10 department?

11 A During business hours, the techs from Property
12 and Evidence would accept it. After business hours, we
13 did have, uh, individuals from the records department
14 that would come down. They had access to the secured
15 area of the office only. They could take in and secure
16 evidence. They would store it until we came to work the
17 next morning and we would then sign it in.

18 Q All right. Talking about during business
19 hours, you would have a technician that would actually
20 physically receive the evidence from whom?

21 A Whoever brings it to the counter. That could
22 be an investigator, an officer of a crime scene, whoever
23 is actually bringing it in.

24 Q In order for your technicians to accept that
25 evidence, what has to happen?

1 A There's a certain protocol. You must have a
2 Property and Evidence sheet with a chain of custody that
3 accompanies everything incoming. It's got to have an
4 inventory on it, dates, times, people who have touched
5 it.

6 Q What about the evidence itself? Do you require
7 the evidence to be in a certain condition when you
8 receive it?

9 A Based on a certain type of evidence, yes. We
10 have different protocols for different types of evidence
11 coming in, yes.

12 Q In a general sense, should it be sealed or
13 unsealed?

14 A That would depend on the type of evidence again
15 coming in.

16 Q All right. And what about clothing evidence?
17 How does that come in?

18 A Typically, if it's biohazards, yes.

19 Q All right. And, uh, clothing evidence would
20 come in after it's dried, is that correct, if it were
21 wet?

22 A Yes.

23 Q What about buccal swabs? How would they come
24 in?

25 A Those would come in sealed.

1 Q All right. And clothing, buccal swabs --

2 A Any kind of biohazardous items would have to be
3 sealed.

4 Q All right. Let me show you these, uh, four
5 Court's exhibits and ask you what are those.

6 A What is each item? These sheets are actually
7 the Property and Evidence reports that would accompany
8 the evidence.

9 Q All right. And are those required to be filled
10 out by your, uh, -- does your department require those
11 items -- those sheets be filled out by the people --

12 A Yes, one must accompany anything that comes in.

13 Q What's the purpose of that sheet?

14 A That is to keep the chain of custody and the
15 inventory of the property..

16 Q Once the property comes into your department,
17 uh, who has access to it?

18 A Only the four full-time evidence technicians.

19 Q And you supervise the other three?

20 A Yes, sir.

21 Q How about if Investigator Miller dropped
22 something off or wants to get it back out some time
23 later, is he required to do something specific to do
24 that?

25 A Yes. He would have to sign it out on the chain

1 of custody. The original chain of custody would follow
2 with the evidence. We would retain a copy of that so we
3 know he's got it in his possession.

4 Q Can evidence move out -- back out of your
5 department without -- at that time, December 2008 and the
6 time proceeding until you changed over to the new system,
7 which went into effect when?

8 A Maybe July of 2009. Don't quote me on that.
9 We've had a couple of new systems put into place. May
10 not have the exact date right.

11 Q All right. But until that system came into
12 place, if somebody wanted to take that evidence out of
13 P&E, would it have to be recorded on those sheets?

14 A Yes. Still to this day, that is a policy that
15 is in effect. You can not move any evidence without the
16 chain of custody.

17 Q So if evidence is sent off for testing, does it
18 have to be included on that?

19 A Yes.

20 Q All right. With respect to those four sheets,
21 can you tell us -- and just go one by one on these sheets
22 starting with the first. Can you tell us, uh, what --
23 where those items came in, if they were of a specific
24 nature, where they would be located in your area? For a
25 little bit of benefit for you, I'm referring to these

1 items right here.

2 A Okay.

3 Q We've got State's Exhibit 64, 65, 92, 29 and
4 111. If you take -- take just a minute and look at the
5 packaging to associate it with the --

6 A Okay. Uh, you just want to know what they are
7 and where they would basically be stored?

8 Q Right.

9 A DW-1, for our purposes, which would be the item
10 number affiliated with the inventory, would be a blue and
11 white bandana. That was located in the general storage
12 room. Okay. It was brought in through the drop box and
13 signed for by Rene Pruitt. The second items, ETWA would
14 be buccal swabs. They were brought in by Investigator
15 Whaley and signed for by Israel Flounders. They would go
16 into a biohazard room because they are buccal swabs.

17 Items DLS-3, 4 and 6 are all in the same sheet.
18 We would specify what we were doing with them as they
19 were moving. They also came in through -- they actually
20 came in by Sergeant Dar Shaw from crime scene. They were
21 signed for by Israel Flounders. Then we have items DES-
22 5, 6, 7 and 8. Those items came in through, uh,
23 Forensics Investigator Doug Smith and were signed for by
24 Tabitha Fricks.

25 Q Now, the place where all of these items were

1 stored and listed on these P&E sheets, was that within
2 your control and --

3 A It is, sir.

4 Q Limited access only to the people that work
5 there?

6 A Yes, sir.

7 Q All right. And can you take just a moment to
8 be able to verify that each of those packages and
9 exhibits that we have up there on the bar are included in
10 those sheets and that those sheets refer to those
11 packages?

12 A I actually was the one that signed all this
13 stuff out for court the other day, so I'm very familiar
14 with them.

15 Q All right. So you can testify that they do?

16 A Yes, sir.

17 Q Okay. Please answer any questions that Mr.
18 Johnson may have of you.

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor. Very
21 briefly.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Uh, Ms. Bennick, if I understand your testimony
25 correctly, when you get things in, you put them in

1 different places to see that they are cared for properly?

2 A Yes, sir.

3 Q Based upon what it says on the sheet?

4 A Based upon what it is, yes.

5 Q Now, you don't have any insight as to how it
6 had been treated before it got there or outside of your
7 sight, isn't that true?

8 A That's correct.

9 Q All right. Nothing further of this witness,
10 Your Honor.

11 THE COURT: Anything else?

12 MR. FRETWELL: No additional questions, Your
13 Honor.

14 THE COURT: All right. Thank you, ma'am, for
15 being here.

16 MR. FRETWELL: Your Honor, the State will now
17 call Investigator Christ Miller.

18 THE COURT: All right.

19 THE CLERK: Sir, please place your left hand
20 on the Bible and raise your right hand.

21 CHRIS MILLER

22 having first been sworn, testifies as follows:

23 THE CLERK: Thank you. Please be seated.

24 MR. FRETWELL: Your Honor, if I haven't
25 already, can Ms. Bennick be excused?

Chris Miller - Direct Examination by Mr. Fretwell

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1 THE COURT: Certainly.

2 MR. FRETWELL: Thank you.

3 THE COURT: Thank you.

4 THE CLERK: Please state your full name for
5 the record.

6 THE WITNESS: Christopher Todd Miller.

7 DIRECT EXAMINATION

8 BY MR. FRETWELL:

9 Q Investigator Miller, how long have you worked
10 for the Greenville County Sheriff's Office?

11 A 12 years and 18 years total law enforcement.

12 Q To what unit are you currently assigned?

13 A Homicide unit.

14 Q And in January of 2011, did you transport items
15 of evidence to SLED for analysis?

16 A I did.

17 Q If I could refer you to State's, I think, 92 is
18 up there on the ledge.

19 A Yes.

20 Q Can you, uh, identify that item from its
21 packaging as being the item that you transported to SLED
22 in January 2011?

23 A It is.

24 Q All right. Let me take you to, uh, December
25 10th, 2008. Did you respond to the Bank of Travelers

1 Rest on White Horse Road to investigate a bank robbery?

2 A I did.

3 Q Did you go with Investigator Whaley?

4 A Yes, we were riding together.

5 Q Did you and Investigator Whaley, at some point,
6 uh, go to the area of Augusta Hills?

7 A Yes, after we cleared the bank, we were
8 instructed by Captain Westmoreland to go to Augusta Hills
9 Apartments and search that area.

10 Q What was that in relation to?

11 A That was where the vehicle, the area where the
12 vehicle was taken from.

13 Q What area of Greenville County is that?

14 A That was the southern end of Greenville County.
15 If you are familiar with where Augusta Road and I-85
16 intersect, it was right near there.

17 Q Okay. And during the course of your
18 investigation -- well, first of all, do you recognize the
19 defendant, Mr. Boyd?

20 A I do.

21 Q All right. During the course of your
22 investigation, were you able to determine where he lived
23 at the time of this incident?

24 A Yes.

25 Q Can you tell us where that was generally? I

Chris Miller - Cross-Examination by Mr. Johnson

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1 don't mean street address, what general area of
2 Greenville?

3 A In the Fountain Inn area.

4 Q Okay. Please answer any questions that either
5 of the attorneys have for you, sir.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: Briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. JOHNSON:

10 Q Investigator Miller, did you work closely with
11 Mary Fields in the investigation of this case?

12 A For a few days, I did.

13 Q For a few days. You mean like the day of and
14 the first couple of days?

15 A The 10th, the 11th and the 19th.

16 Q Now --

17 A Of December.

18 Q Now, were you with her when she investigated
19 Hiland Avenue? Highlong Avenue?

20 A Yes, I was.

21 Q That was from a call that, as been said
22 earlier, a concerned neighbor or something, right?

23 A Yes, sir.

24 Q They stated that someone named Elliott Adams
25 may have robbed banks or something or robbed something in

1 the past; isn't that right?

2 MR. FRETWELL: Your Honor, can we take this
3 matter up?

4 THE COURT: Why don't y'all approach? You
5 think we can handle it at a bench conference or do I
6 need to excuse the jury?

7 MR. JOHNSON: We can approach briefly and
8 then see.

9 THE COURT: We'll see.

10 (WHEREUPON, a bench conference is held.)

11 THE COURT: All right. Mr. Fretwell, your
12 objection is sustained.

13 MR. FRETWELL: Thank you, Judge.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Thank you, Your Honor.

16 BY MR. JOHNSON:

17 Q Investigator Miller, you and Ms. Fields pursued
18 a lead on Hilong Avenue?

19 A That's correct.

20 Q And at that -- at that place, you collected
21 what was a blue sweatshirt?

22 A I remember a blue shirt. I don't remember if
23 it was a t-shirt or sweatshirt.

24 Q Now, would a map assist you in kind of telling
25 us where Hilong Avenue is?

1 A Possibly.

2 Q Possibly?

3 A Yes, sir.

4 Q Okay. If you would, step down.

5 A Okay.

6 Q How about this one? Can you help me out just a
7 little? If you could, show us where Highlong Avenue is?

8 A Let me get my bearing.

9 Q I guess I'll ask you, can you see it on the
10 map?

11 A No.

12 Q Now, getting your bearings, can you portray to
13 the court what general direction Hilong would be?

14 A It would be in this direction.

15 Q Be up here in this direction?

16 A Yes, sir.

17 Q All right. You can have a seat. You and Ms.
18 Fields collected a blue sweatshirt?

19 A That's correct. Or a blue shirt.

20 Q It had what appeared to be a red or pink stain
21 on it, right?

22 A Yes, sir.

23 Q Now, after you got one of the technicians to
24 preliminarily test the shirt, y'all let it go as a lead;
25 isn't that right? After you got one of the technicians

1 to preliminarily test it?

2 A I didn't have any part of it.

3 Q You didn't have a part of that?

4 A No, sir.

5 Q You don't know anything about it. What time
6 were you told to assist an officer-involved shooting?
7 About what time?

8 A It was probably right around 5:30. I cleared
9 probably around 4:00 or 4:15. It was getting close to
10 quitting time.

11 Q Do you remember what time you got the call to
12 come in?

13 A It was about 5:30.

14 Q About 5:30? Now, do you remember what time the
15 search was called off?

16 A It was about 4:00 or 4:15 when I headed back to
17 the office.

18 Q Okay. You went with Investigator Whaley to
19 collect a buccal swab; is that right?

20 A That's correct.

21 MR. JOHNSON: I have nothing further for this
22 witness.

23 THE COURT: Mr. Fretwell?

24 REDIRECT EXAMINATION.

25 BY MR. FRETWELL:

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1 Q Investigator Miller, were you present in the
2 courtroom earlier when Investigator Doug Smith from the
3 forensic department testified?

4 A Yes.

5 Q Were you present when he testified about the
6 stain on the shirt being identified as bleach?

7 A Yes.

8 Q And were you present when he testified that a
9 metallic substance was not related to gunshot residue?

10 A Yes.

11 MR. FRETWELL: No further questions, Your
12 Honor.

13 MR. JOHNSON: No recross, Your Honor..

14 THE COURT: All right then. Sir, you can
15 step down.

16 MR. FRETWELL: That concludes the witnesses
17 for today.

18 THE COURT: All right. Ladies and Gentlemen,
19 uh, we do have a couple of short legal matters to
20 take up, but we don't need you all here for that.
21 So y'all are going to get a little bit of an early
22 reprieve today. We will, uh, begin again tomorrow
23 morning at 9:00 a.m.

24 Please try to avoid any, uh, newspapers, TV
25 reports or anything on the internet that might talk

1 about this case. I'd ask you to please not to
2 discuss it with anyone or do any independent
3 research. All right. I hope you have a good
4 evening. Thank you.

5 (WHEREUPON, the jury exits at approximately
6 4:22 p.m.)

7 THE COURT: Let's revisit these medical
8 records.

9 MR. FRETWELL: Yes, ma'am.

10 THE COURT: Uh, I've had an opportunity to
11 take a look at them. I'll tell you -- how about we
12 do this. I'll just go through, Mr. Johnson. I will
13 tell you that I see three things in here. I don't
14 know if you object to any of these three things or
15 not.

16 MR. JOHNSON: Okay.

17 THE COURT: On page 4, about halfway down
18 labeled D. Patient's mother, Sheila Boyd requesting
19 to speak to a physician regarding patient's
20 condition and why he's not on antibiotics. Doctor
21 then paged and informed the patient's mother would
22 like to speak with him.

23 I count that as being some hearsay. I can --
24 if you've got an objection to it, then I'll have
25 that redacted. I don't know if you have any

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1 objection to it.

2 MR. JOHNSON: Well, I'm interested to hear
3 Your Honor's take on the other items.

4 THE COURT: Okay. Under past medical
5 history. It is the third page from the end. Past
6 medical history, there is under psychiatric history,
7 history of homicidal ideation. I'm going to go out
8 on a limb and say that you're going to object to
9 that.

10 MR. JOHNSON: Yes.

11 THE COURT: All right. I think that needs to
12 be redacted. History of homicidal ideation. Okay.

13 Uh, then on the next page, under doctor's
14 notes, there are the doctor's impressions there.
15 Uh, my impression is of a healing hematoma. Patient
16 says he was seen yesterday by ortho and says his
17 wound is much worse than it was yesterday. Really,
18 the only thing that I find that probably needs to be
19 redacted from that would be my impression is of a
20 healing hematoma.

21 In my review of the remaining medical records,
22 I do not see anything that -- I do not see anything
23 else that is objectionable in there. I do believe
24 that those are the three things that have any basis
25 -- any objectional basis whatsoever.

Remarks

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1 MR. JOHNSON: Your Honor, I apologize if I'm
2 wrong, but I thought you said four. Was it just
3 three?

4 THE COURT: I just had three.

5 MR. JOHNSON: Apologizes, Your Honor.

6 THE COURT: If I misspoke, I apologize.

7 MR. JOHNSON: No, that's my fault. They told
8 me I'm crazy so.

9 THE COURT: I do have those three things that
10 I marked as I reviewing those when I had an
11 opportunity. I looked through them pretty
12 thoroughly. Those are the three things. I'll
13 certainly order any of that to be redacted that you
14 -- that you believe ought to be redacted. So far as
15 the patient's medical records in general and a
16 general objection to those, I find those to be
17 admissible generally. They are records kept in the
18 ordinary course of business and were taken down very
19 close in time to when, uh, these events occurred.
20 Any other statements that are in here are just
21 particularly with regard to medical treatment.

22 MR. JOHNSON: Your Honor, if I may?

23 THE COURT: Certainly.

24 MR. JOHNSON: As I understand, your ruling is
25 that the record will be admitted. Now, with regards

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1 to the additional items, the homicidal ideation, of
2 course, I would objection. The impression of a
3 healing hematoma is something I would also.

4 Otherwise, I would -- unless the Solicitor has an
5 objection, I -- I am okay with the one on page 4.

6 THE COURT: Okay. All right. Do you -- do
7 either of you have an objection with my using a
8 black magic marker and we'll -- I'll make sure. If
9 it turns out that you can still -- sometimes you can
10 read through a black magic marker. I'm going to
11 strike through those two things. My impression is
12 of a healing hematoma and then on the previous page
13 about the homicidal ideation. Strike through both
14 of those. We'll wait for it to dry and see if you
15 can read through it. If you can read through it,
16 then I'll ask that we take the sticker off and make
17 a photocopy and see if that doesn't fix everything.

18 I'm going to also, under past medical history,
19 since I am taking out that part about homicidal --
20 history of homicidal ideation, I'm going to take out
21 psychiatric history.

22 MR. FRETWELL: Thanks, Judge.

23 THE COURT: And your general objection to the
24 records is noted.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: I can read straight through what
2 I did. So we're going to have to do just a little
3 more doctoring. But we'll work on that. I'll --
4 I'll give this to you all to approve before it's our
5 final exhibit. All right. So we've taken that
6 matter up. Is there any other matters that we need
7 to take up at this time?

8 MR. FRETWELL: Judge, the only thing I can
9 think of is with respect to the bench conference on
10 the third-party guilt issue. I have to get my head
11 around what kind of damage control I need to do with
12 respect to that question. I don't know if it's
13 going to entail -- I can't really think right now.
14 I've got to deal with that. I may want to call
15 another witness.

16 THE COURT: That will be -- that will be
17 certainly fine. My impression is -- you do what you
18 want to do. But, uh, already, the sweatshirt had
19 been talked about. I don't think he went too much
20 further than that. I think we're probably all
21 right.

22 MR. FRETWELL: Your Honor, I'm not talking
23 about the sweatshirt or what Mr. Johnson refers to
24 as a sweatshirt, the shirt that was collected on
25 Highlong Avenue. I'm referring to the mentioning of

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1 a specific name and referencing to a criminal
2 history associated with that name in the presence of
3 the jury.

4 THE COURT: All right. Well, if you want me
5 to give a curative instruction to the jury in the
6 morning, I can do that.

7 MR. FRETWELL: If you were to give a curative
8 instruction, what would it basically entail?

9 THE COURT: I don't know. But it probably
10 would be that I sustained an objection to a
11 particular -- reference to any particular suspect.
12 I probably would give a very brief, one-sentence
13 statement on the law in South Carolina regarding
14 third-party guilt.

15 MR. FRETWELL: As long as you did refer to
16 him as a suspect and just you mention that he had
17 mentioned a name with reference to, uh, activities,
18 I think that may do it.

19 THE COURT: Let's all sleep on it.

20 MR. FRETWELL: Yes, ma'am.

21 THE COURT: Let's all sleep on it and see if
22 that's what you want tomorrow morning.

23 MR. FRETWELL: Yes, ma'am.

24 THE COURT: All right. Okay.

25 MR. JOHNSON: Thank you, Your Honor.

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1 THE COURT: All right. Is there anything
2 else we need to take up?

3 MR. JOHNSON: Uh, just the matter of, I
4 guess, bringing SLED tomorrow. I guess we finally
5 will be able to get a final decision on --

6 THE COURT: Okay. Then we'll be --

7 MR. FRETWELL: I promise to move it in.

8 THE COURT: All right. We're heading towards
9 it. Why don't you -- Mr. Johnson, are you in a
10 position to give me some sort of preview as to what
11 your objection to the chain in this case would be?

12 MR. JOHNSON: Well, first of all, I think
13 you've heard the testimony about the bandana. I
14 think it's been obvious to the court that there was
15 not always a separate item once it was first in the
16 custody of the K-9 officers.

17 THE COURT: Now, let me just -- I just want
18 to make sure we're on the same page about it. If I
19 understand the testimony -- I want you to correct me
20 if I'm wrong about this in any way. If I understand
21 the testimony, there was an officer who first
22 spotted the bandana, then called another officer
23 with the K-9 unit to the bandana. The bandana was
24 then picked up and maybe was given to the dog to
25 smell. The bandana was then put in that officer's

Remarks

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1 side pocket in his pants, is that not right?

2 MR. JOHNSON: Your Honor, uh, when that
3 second dog, when the first dog mouthed it, uh, the
4 second thing -- they switched out the dog. The
5 second dog, uh, was -- moved 50 feet. The second
6 dog, sniffed it, tracked and it was left where it
7 was. Then some time later, I think Cannon took it.
8 A while later, Cannon came back to the bandana and
9 they picked it up. It was put in Weiner's pocket.

10 THE COURT: Okay. I see. The bandana itself
11 ultimately, what do you anticipate -- I mean, what
12 happened once it got to SLED?

13 MR. FRETWELL: It was tested for the presence
14 of DNA.

15 THE COURT: Uh-huh.

16 MR. FRETWELL: A DNA sample was extracted.

17 THE COURT: All right.

18 MR. FRETWELL: A DNA profile was created. It
19 was compared to the profile created from the buccal
20 swabs from this defendant. The chemist will say
21 that they match.

22 THE COURT: They matched? Okay. Well, I
23 mean --

24 MR. FRETWELL: That's the shortened version
25 of what she will say.

Remarks

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1 THE COURT: Sure.

2 MR. FRETWELL: She has odds into the millions
3 or trillions.

4 MR. JOHNSON: Your Honor, the second issue is
5 the DNA itself.

6 THE COURT: Uh-huh.

7 MR. JOHNSON: The DNA itself is not something
8 you'll see -- I believe that the technician will
9 testify that it is transferable. Obviously, if I
10 touch this paper, my DNA is probably on it. It's
11 not anything you can see. I think the way the
12 bandana was treated, especially considering that
13 Detective Weiner was also the one who shot my
14 client. There were -- in addition to my client,
15 there were three other people's DNA found on the
16 bandana that have not been identified.

17 THE COURT: Okay.

18 MR. JOHNSON: So it's been --

19 THE COURT: Let's start with the bandana
20 itself. We can revisit this, but while we've got a
21 little time, let's start with the bandana itself.
22 If I understand the testimony -- I haven't seen the
23 bandana. We've talked a lot about it. It's going
24 to be dark blue, somewhat identifiable and there are
25 some holes in it from the dog and that makes that

1 bandana identifiable.

2 MR. FRETWELL: That's correct.

3 THE COURT: In other words, because of that,
4 that bandana is no longer fungible. It can -- it
5 can be -- it can not be traded out for just any
6 bandana. It is recognizable. Uh, so the
7 recognizable bandana is then picked up by officers
8 and then kept in whatever manner until it finally
9 goes to SLED and it is tested. All right. You
10 agree with me?

11 MR. JOHNSON: I think I agree with you in
12 that. I guess my challenge is not that it is --

13 THE COURT: So the chain --

14 MR. JOHNSON: It's not that it's --

15 THE COURT: I don't know that our argument
16 is --

17 MR. JOHNSON: I think that's fungible. I
18 think I would agree that's fungible. But I think --

19 THE COURT: Not fungible.

20 MR. JOHNSON: I think that's fungible.

21 THE COURT: You believe that bandana is
22 fungible?

23 MR. JOHNSON: I believe that it's
24 identifiable.

25 THE COURT: Okay. I believe it is

Remarks

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1 identifiable and thus not fungible.

2 MR. JOHNSON: It also must conclude that the
3 chain of custody must be established to the point
4 that it's reasonably probable that the item has
5 either been exchanged with, contaminated or tampered
6 with. I think that's where my objection comes. I
7 think that's also part of the fungible test.

8 THE COURT: I see. Okay.

9 MR. JOHNSON: That's where my objection
10 comes. I think -- it's kind of hard to decide, but
11 I think it goes hand in hand with my argument on the
12 DNA itself or on whatever they find. It had to be
13 hair, skin particles, uh, any of that stuff.

14 THE COURT: But the care of the evidence goes
15 to the weight. If we're still in a chain analysis
16 here, if we're still talking about it from a chain
17 analysis, the care of it goes to the weight, not
18 necessarily to whether a chain was established if we
19 say it is fungible evidence. But if it's not
20 fungible evidence, then I don't know -- I don't know
21 that we need to have a chain analysis. Yes, sir. I
22 interrupted you.

23 MR. JOHNSON: I apologize. I'm sorry, Your
24 Honor. I really apologize.

25 THE COURT: I interrupted you.

Remarks

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1 MR. JOHNSON: As I understand, if it's
2 fungible; then -- uh, then it requires substantially
3 more than non-fungible. But non-fungible still
4 requires that essentially the substance or DNA is
5 not -- it can be transferred. I think the
6 technician will testify to that. She can not say
7 how it got there or things of that nature. I think
8 the way it was handled -- I think the way it was
9 handled, uh, transfers to my argument that I'm
10 making here today. I think that's the way I want to
11 put it to you.

12 THE COURT: I see. I see exactly what you're
13 saying. Ultimately, if things keep on as they are,
14 ultimately, I'm probably -- unless there is some
15 surprise from SLED that I don't know about -- while
16 I appreciate your argument on behalf of your client.
17 I don't think anybody could be arguing these points
18 any better than you are arguing here today and have
19 been arguing throughout the trial -- I'm inclined to
20 allow the bandana. I'm inclined to allow -- if the
21 chain is still rocking along as it is -- as I say,
22 we might have some disagreement as to whether we
23 actually need, but if we're rocking along as is,
24 those DNA results, I'm probably going to allow
25 those. Now, I think all those points you've brought

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Remarks

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1 up are certainly for cross-examination. I have no
2 doubts whatsoever that you will more than adequately
3 cross-examine everyone on it.

4 MR. JOHNSON: At this point, can we consider
5 my point argued and is the record, uh, is the
6 record, uh, -- have I set the record for --

7 THE COURT: You have.

8 MR. JOHNSON: Okay.

9 THE COURT: You have.

10 MR. JOHNSON: My objection.

11 THE COURT: Your objection is noted. If, at
12 any point however, you feel like you have additional
13 argument based on the testimony and evidence that's
14 presented -- because we're sort of doing it in an
15 advisory type thing -- but, uh, based on the
16 evidence that I've heard so far and my understanding
17 of what the evidence is going to ultimately show,
18 then that's my ruling. I will say to you if it
19 turns out that you have some new argument based on
20 the testimony and evidence presented, I certainly
21 will hear you on that and I'm not going to foreclose
22 you from making any argument.

23 MR. JOHNSON: Okay. Thank you.

24 THE COURT: Okay.

25 MR. FRETWELL: Your Honor --

Remarks

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1 THE COURT: Yes, sir.

2 MR. FRETWELL: You know I can't help but say
3 something.

4 THE COURT: Well, let's hear it.

5 MR. FRETWELL: Just for purposes of the
6 record, uh, with respect to some of the things that
7 Mr. Johnson has touched on, I just wanted to point
8 out to the court -- I know the court's aware of this
9 -- but the testimony did establish that the bandana,
10 during the time it was located and transferred among
11 individuals, that it was in a secure a perimeter
12 that was established through testimony. That
13 furthermore, based on several officer's testimony
14 who were in that area during that time period, did
15 not come across anyone.

16 The fact -- uh, the first officer, the K-9
17 officer who's dog found it testified that he took it
18 from his dog creating the, uh, holes that would make
19 the bandana non-fungible. He then kept it on his
20 person, transferred it from hand to hand to the
21 second K-9 officer. The second K-9 -- that transfer
22 and the location of the bandana initially was all
23 witnessed by Deputy Al Cannon who said he was there
24 the entire time.

25 Deputy Al Cannon is the one who said he was

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Remarks

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1 there when the transfer was made and when the second
2 dog smelled it, dropped it, he identified where it
3 was and they continued on the track. Deputy Cannon
4 is the one who brought Deputy Weiner back into that
5 area, took him to the exact location where the
6 bandana was. He said it was in the same spot that
7 it had been left. It was in the same condition as
8 when it was left. He identified it by the holes.

9 It was transferred to Deputy Weiner who said he
10 then took it. He placed it in his cargo pocket. He
11 later sealed it and put it into Property and
12 Evidence. We've had testimony from the chain
13 witnesses from that point until now about what has
14 been happening with that bandana.

15 I agree with the court. It's not fungible. I
16 also want to address the issues that Mr. Johnson has
17 raised under, uh, potential tampering or any kind of
18 contamination of that bandana for purposes of the
19 record.

20 THE COURT: All right.

21 MR. JOHNSON: Your Honor, may I respond?

22 THE COURT: Yes, sir.

23 MR. JOHNSON: I think it's quite genius to
24 make a piece of evidence non-fungible. That is.
25 essentially what has happened. The dog ate holes in

Remarks

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1 it. Now, it's not fungible. I think that's quite a
2 unique argument and quite unique to this situation.
3 I don't know how often that happens, but I think
4 that's quite unique. I'm not even sure how to place
5 my objection to that particular fact. But I assume
6 the court sees that's placed.

7 In any case, Your Honor, once again, as far as
8 the Solicitor's argument that they testified that it
9 hadn't been tampered with. Detective Weiner is the
10 one that picked it up. Detective Weiner is the one
11 who shot my client. I think that should definitely
12 be taken into account as the basis.

13 THE COURT: I want to say, Mr. Johnson, and
14 Mr. Fretwell, I certainly understand you were giving
15 -- you were giving your understanding of the facts.
16 That is -- that's, I think, essentially very, very
17 similar to Mr. Johnson's understanding of the facts
18 as well. You were doing that for the record to be
19 very clear.

20 I'm not foreclosing any line of defense that
21 you might -- that's allowed by law that you might be
22 wanting to make. Uh, I'm not going to foreclose
23 that to you. If that's -- I think, you know, that's
24 certainly something for cross-examination. It's
25 also certainly something for argument to the jury.

1 I understand that you will be doing that. All
2 right. If there's nothing else, then we'll be
3 adjourned until nine o'clock in the morning. Thank
4 you.

5 (WHEREUPON, the court recesses for the day at
6 approximately 4:43 p.m.)
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8
9
10
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Remarks

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1 P R O C E E D I N G S

2 (WHEREUPON, the court resumes on the 12th day of
3 January, 2012 at approximately 9:12 a.m.)

4 THE COURT: All right. Any matters we need
5 to take up before the jury -- we bring the jury in?

6 MR. FRETWELL: Your Honor, can I have just
7 one moment?

8 THE COURT: Sure.

9 (WHEREUPON, there is a pause.)

10 MR. FRETWELL: Little bit of a witness mixup.

11 THE COURT: All right.

12 MR. FRETWELL: Just trying to figure out
13 which one.

14 THE COURT: Is there anything we need to take
15 up before the jury comes in?

16 MR. FRETWELL: Your Honor, I just wanted to
17 bring to the court's attention with respect to the
18 medical records that we talked about yesterday.

19 THE COURT: Yes, sir.

20 MR. FRETWELL: That in further review after-
21 hours yesterday, I found something on the same page
22 that the court found the homicidal ideations.

23 THE COURT: Right.

24 MR. FRETWELL: Earlier in that page, it says
25 admission urgency, admission source, jail; detention

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Remarks

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1 facility.

2 THE COURT: Okay. All right.

3 MR. FRETWELL: That, uh, is because, at some
4 point apparently, Mr. Boyd was transported from the
5 jail to the hospital.

6 THE COURT: Sure.

7 MR. FRETWELL: I would just possibly either
8 redact that portion or just take that page
9 completely out.

10 THE COURT: What about -- what are your
11 thoughts? I hate a redaction because it looks a
12 little bit like we're hiding something.

13 MR. FRETWELL: That would eliminate two
14 redactions if we just took that page out.

15 MR. JOHNSON: I can tell you it sounds like I
16 may need to take another glance.

17 THE COURT: Sure. I'll tell you what, let's
18 just -- let's just hold off about the medical
19 records. I appreciate you finding that. That
20 sounds like a good resolution to it. I'll give you
21 an opportunity to look through it again. That makes
22 me feel like maybe I should look through it again
23 too just to be absolutely for certain.

24 MR. JOHNSON: Yes, ma'am, Your Honor.

25 THE COURT: I hate I missed that.

Remarks

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1 MR. FRETWELL: Your Honor, I think we had to
2 send Investigator Miller back down to Property and
3 Evidence to get one piece of evidence.

4 THE COURT: Oh, Okay.

5 MR. FRETWELL: So in order to not waste the
6 court's time, I think we're going to skip ahead and
7 start with Mr. Dickinson.

8 THE COURT: That will be fine.

9 MR. FRETWELL: He is here, Your Honor. So as
10 soon as I shut my phone off, I believe I'll be
11 ready.

12 THE COURT: Okay.

13 (WHEREUPON, there is a pause.)

14 MR. FRETWELL: Judge, just before the jury
15 comes out, I want to apologize to the court. For
16 some reason, I think I have contracted something.
17 I'm feeling just a little under the weather.

18 THE COURT: Oh, I'm sorry.

19 MR. FRETWELL: If I give you a signal, I may
20 need to leave somewhat rather --

21 THE COURT: That will be fine.

22 MR. FRETWELL: I apologize in advance.

23 THE COURT: No, no need for apology. You do
24 whatever you need to do.

25 MR. FRETWELL: Yes, ma'am.

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Remarks

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1 THE COURT: Any time we need to take a break.

2 While I'm waiting on the jury to come back, I
3 do want to say to both of y'all, not to sound
4 patronizing or anything like that, I really do want
5 to thank y'all for being so -- just doing such a
6 good job this week. A week-long trial can be a
7 grind. I know when I tried them in private
8 practice, it was rough. People got testy. But
9 y'all have been great to deal with. I can't tell
10 you how much I appreciate what a good job y'all have
11 done, both of you. All three of you.

12 MR. FRETWELL: Thank you, Your Honor.

13 MR. JOHNSON: Thank you, Your Honor.

14 (WHEREUPON, the jury enters at approximately
15 9:18 a.m.)

16 THE COURT: All right. Good morning, Ladies
17 and Gentlemen. I apologize keeping you waiting this
18 morning. We took up a few, uh, matters that we
19 needed to so we would be more efficient when we got
20 started today. Uh, but, uh, I want to give you a
21 little bit of a road map about where we are going.
22 These attorneys last night spent some time moving
23 heaven and earth so that we think there is a real
24 possibility that we may finish with the testimony
25 and evidence this evening. We might not. It might

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1 go -- we might have some tomorrow. But in any
2 event, they have really, really done, both of them,
3 some scheduling magic to be able to have that work
4 out that way.

5 That being said, tomorrow morning, at some
6 point tomorrow morning, we anticipate you will hear
7 arguments from the attorneys and you will hear my
8 charge on the law. Our goal would be that, uh,
9 either some time tomorrow morning or around lunch
10 time tomorrow, the case would be in your hands.
11 That would give you a little bit a roadmap about
12 where we are going. All right.

13 All right. With that being said, Mr. Fretwell,
14 you ready to proceed?

15 MR. FRETWELL: Yes, Your Honor. May it
16 please the Court?

17 THE COURT: Yes, sir.

18 MR. FRETWELL: Your Honor, the State would
19 call Don Dickinson.

20 THE CLERK: Mr. Dickinson, if you would,
21 pause at the end of the bench. Please place your
22 left hand on the Bible and raise your right hand.

23 DON DICKINSON

24 having first been sworn, testifies as follows:

25 THE CLERK: Thank you. Please be seated.

1 Please state your full name for the record. ,

2 THE WITNESS: Donald A. Dickinson.

3 MR. FRETWELL: May it please the court, Your
4 Honor?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q Good morning, Mr. Dickinson.

9 A Good morning.

10 Q Mr. Dickinson, by whom are you employed?

11 A The company name is 3SI Security Systems.

12 Q All right. And in what capacity are you
13 employed with 3SI?

14 A I actually retired from 3SI two years ago. I
15 currently do some part time work on the parts that we
16 supply to financial institutions.

17 Q Okay. And Mr. Dickinson, if you will, you kind
18 of have a little bit of a soft voice.

19 A Okay.

20 Q Pull that microphone as closely to you as
21 possible.

22 A Okay.

23 Q Speak up as much as possible.

24 A Okay.

25 Q I'm not sure this courtroom was designed for

1 acoustics.

2 A Okay.

3 Q So you indicated that you still do some part-
4 time maintenance or installations and maintenance on
5 equipment?

6 A Yes.

7 Q What kind of company is 3SI?

8 A We make security products for financial
9 institutions to aid in apprehensions of robbers, prevent
10 losses of money.

11 Q Okay. And primarily, what kind of equipment
12 does 3SI manufacture?

13 A Uh, the security pack, dye pack is our primary
14 product. In addition to that, we have some other
15 products that are GPS based.

16 Q As far as the manufacture of dye packs, is 3SI
17 the only manufacturer of dye packs?

18 A Yes.

19 Q Okay. What position did you hold at 3SI prior
20 to your retirement?

21 A Our last position with the company was Senior
22 Sales Rep covering a four-state territory.

23 Q Did that include the Carolinas?

24 A Yes, sir.

25 Q Okay. And how long did you hold that position?

1 A Uh, that -- my last position I just described
2 was since 2001 until 2010.

3 Q All right. So about nine years?

4 A Yes.

5 Q Uh, how long have you worked for 3SI total?

6 A Uh, 38 years.

7 Q Okay. And, uh, how long have you worked on
8 bank dye products?

9 A 34 years.

10 Q What did your duties involve during your time
11 at 3SI?

12 A Uh, the first four years on dye packs, I
13 actually worked directly with Harold Robeson, the
14 inventor of the product. I was actually the first
15 service tech and the first person for the company that
16 actually installed dye packs in financial institutions.

17 Q It was quite some time ago?

18 A It was a long time ago.

19 Q What kind of education and training have you
20 received, sir?

21 A My education was I was in the Air Force for
22 four years and went through a year -- over a year of
23 electronics training. Then, when I was discharged from
24 the Air Force, I immediately went to work. At that time,
25 it was called Atlas Chemical Industries, which later

1 became 3SI. I was an electronic lab tech. Then, from
2 there moved into when the security pack product was fully
3 developed, I was the first person that started installing
4 the equipment throughout the country.

5 Q And you indicated, I think, already that you
6 worked for several years with the inventor?

7 A Yeah, four years total.

8 Q And the inventor of that product is who?

9 A Harold J. Robeson.

10 Q Okay. When you were with the Air Force, can
11 you tell us what program you were assigned to?

12 A I was a minuteman missile electronic technician
13 working on minuteman missile with, uh, solid based.

14 Q All right. Lonely job. Did you participate in
15 the installation of dye pack systems?

16 A Yes, sir.

17 Q All right. What about participation in
18 authoring any of manuals or et cetera for security dye?

19 A Yes, myself and another party actually
20 developed the installation manual that the companies use
21 to this day as far as providing safe, reliable
22 installation of the dye pack system and institutions,
23 financial institutions.

24 Q Have you conducted any training in the use of
25 dye pack systems?

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Don Dickinson - Direct Examination by Mr. Fretwell

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1 A Yes, numerous times.

2 Q All right. And over the course of your
3 training and career, approximately how many dye packs
4 have you activated for training purposes for banks,
5 credit unions or --

6 A Over 2000.

7 Q Have you provided expert testimony about the
8 design, use and operation of these dye packs?

9 A Over the years, probably approximately 50
10 cases.

11 Q Okay. And in what areas have you been
12 qualified to provide expert testimony?

13 A In a federal case in Charlotte, North Carolina,
14 the federal prosecutor had me certified as an expert
15 witness based on my years of experience and knowledge of
16 the product.

17 Q And was that in the operation and function of
18 bank dye packs?

19 A Correct.

20 Q And has any court -- let me ask you this. Have
21 you been certified in Virginia, Maryland, North Carolina,
22 South Carolina and Georgia?

23 A Just North Carolina.

24 Q Okay. Has any court declined to qualify you as
25 an expert?

Don Dickinson - Direct Examination by Mr. Fretwell

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1 A No, sir.

2 MR. FRETWELL: Your Honor, at this time, we
3 would offer Mr. Dickinson as an expert in bank
4 security dye packs.

5 THE COURT: Bank security dye packs?

6 MR. FRETWELL: Yes, ma'am.

7 THE COURT: Any objection to that?

8 MR. JOHNSON: Permission to voir dire please.

9 THE COURT: All right. Yes, sir.

10 VOIR DIRE EXAMINATION

11 BY MR. JOHNSON:

12 Q Mr. Dickinson, you stated that you worked for
13 10 years as a sales representative?

14 A Correct.

15 Q Now, the job that you held before that, can you
16 give me your titles? I know you been with the company
17 for 38 years. But can you just give me kind of a brief
18 overview?

19 A I was a -- initially, I was a service rep.
20 That was my first title. Then I moved forward with
21 experience and knowledge to become a senior service rep.
22 From there, I moved on to the sales side. This was
23 probably 1985. Then, I was promoted to an eastern
24 regional sales -- service manager, pardon me. I held
25 that position until I moved into the -- in 2001, I moved

1 back into the sales side.

2 Q Now, what were your responsibilities and duties
3 as a service rep?

4 A Installing and training -- installing the
5 security package system in financial institutions and
6 provide training to the tower and staff of each location.

7 Q I know it's obvious. What were your other
8 responsibilities as a sales rep?

9 A To keep my job, I had to develop new customers
10 and maintain the customer base that we presently had.

11 Q Now, I got your background as far as the Air
12 Force. Did you go to any sort of school after that?

13 A No, sir.

14 Q Now, can you communicate to us the courses that
15 you had taken in MAAQ?

16 A I did not have courses on it. I just have
17 knowledge of what it is.

18 Q How did you gain the knowledge of what it is?

19 A Through Howard J. Roberson and going through
20 the process that he went to develop a product. I was
21 hands on with him on that development.

22 Q What was your -- what was your role?

23 A Testing the electronics area of the product to
24 make sure it functioned as designed and was safe.

25 Q So you tested the electronics?

1 A Correct.

2 MR. JOHNSON: No further voir dire.

3 THE COURT: All right. Any objection to him
4 being qualified as an expert in bank security dye
5 packs?

6 MR. JOHNSON: Your Honor, I don't have an
7 objection to him being qualified as an expert. I
8 think it may need to be potentially limited to some
9 degree. He doesn't have any education in the dye
10 packs. Had not been to a school to study them. It
11 seems like he's been a sales rep most of his life
12 and a service rep based upon the electronic side and
13 not the dye side. I don't know if there's a way to
14 limit what exactly he's qualified as. But
15 otherwise, I don't think I have any objection to him
16 being qualified as an expert.

17 THE COURT: All right. While I certainly
18 appreciate your argument on behalf of your client, I
19 do find, based on his experience and education as
20 well, that he is qualified to give his opinion in
21 the area of bank security dye packs. That opinion
22 testimony, Ladies and Gentlemen of the jury, is for
23 you to use as you see fit.

24 MR. FRETWELL: Thank you, Your Honor.

25 THE COURT: Thank you.

1 DIRECT EXAMINATION (con't)

2 BY MR. FRETWELL:

3 Q Mr. Dickinson, what is a security dye pack?

4 A It's a device that is maintained in the
5 financial institution by the teller in their possession
6 at the cash drawer. It's maintained in the cash drawer.
7 The purpose is to be given and included during the course
8 of a robbery along with the rest of the loot out of the
9 drawer.

10 How it is controlled is at the doorway.
11 There's a device called a transmitter. Once the money,
12 along with the dye pack, exits the building, actually,
13 it's a 10-second time delay. Then, the dye pack
14 activates. It produces a red smoke and tear gas, CSC
15 tear gas. The smoke will stain the current -- the
16 currency taken during the course of the robbery.

17 The closer -- when the smoke is expelled, it's
18 very, very hot initially. So within a foot and a half of
19 the dye pack, if it's activated, will do, basically,
20 permanent staining on porous materials. Go beyond a foot
21 and a half, it will get on you, you brush it off. It
22 might be difficult, but you get it off. And, uh, it's
23 going to stain the money and it's no longer of any value.
24 Hopefully, it will be abandoned.

25 With the CS tear gas, if they are in a vehicle,

Don Dickinson - Direct Examination by Mr. Fretwell

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1 hopefully because of the tear gas, it will force them out
2 of there. Just to clarify, when the pack activates, it --
3 uh, the total duration of the smoke and tear gas is 25
4 seconds of smoke and tear gas.

5 Q Mr. Dickinson, once again, I want to see if we
6 can get to you closer to that microphone.

7 A Sorry.

8 Q I'm just having a little bit of difficulty
9 hearing you. It may very well be my sinuses. I'm not
10 sure. Okay. So I noticed that you used the term
11 "activates". Uh, maybe people have heard the expression
12 a dye pack "explodes". Maybe they've seen a movie where
13 the dye pack explodes all over. Is that how a dye pack
14 works?

15 A No, no, no. The reason being is that when you
16 develop a product, it has to be safe for everyone
17 involved, including the bank personnel. Occasionally,
18 we'll have one go off by accident within a bank. We
19 certainly can't stain everything in the bank and the
20 people either. So, uh, as I described, the actual
21 staining occurs within a foot and a half of the pack. It
22 has to be safe for everyone involved and exposed to the
23 product.

24 Q We'll talk more about that in a minute. But
25 let me ask you, uh, the actual purpose, the ultimate

1 purpose of the dye pack specifically is to do what?

2 A Stain the currency so it's no longer of any
3 value.

4 Q Okay. And the ultimate purpose of the smoke
5 that is emitted is what specifically?

6 A The smoke is the staining.

7 Q Right.

8 A The smoke -- the purpose of staining is to draw
9 attention to witnesses and provide evidence.

10 Q And the tear gas that is released with the
11 smoke, what is the purpose of the tear gas?

12 A The purpose of the tear gas is to hopefully
13 separate the person from the money. If he's on foot, if
14 he has smoke and tear gas coming back in his face, tear
15 gas makes your eyes water, difficulty breathing. So you
16 want to get away from it. The source of the smoke and
17 tear gas is coming from the bag of money. So that's the
18 purpose of it. Drop the money so the bank can recover
19 their money.

20 Q That's the ultimate goal ---

21 A That's the goal.

22 Q --- of the dye pack.

23 A Correct.

24 Q All right. Specifically, you talk about
25 staining occurs within a foot and a half of the dye pack

Don Dickinson - Direct Examination by Mr. Fretwell

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1 itself.

2 A Uh-huh.

3 Q Can you explain how that process works with the
4 heat?

5 A Yeah, it's, uh, -- it's initial temperature, as
6 soon as the pack activates, is 395 degrees. It cools
7 very, very rapidly as far as -- it's confined to that
8 foot and a half. Then it cools very rapidly. It's no
9 longer a permanent stain. It gets on you. You might
10 have to brush it off. I have to set off every 2000 of
11 these devices. Occasionally, I mess up. You know, I get
12 it on my hands. Depending on how I'm holding the pack,
13 it could be difficult for me to get it off.

14 Q Do you set off a dye pack wearing a suit or a
15 white shirt?

16 A I have, yeah.

17 Q And how did you come out?

18 A Well, you check wind direction.

19 Q Right.

20 A So I have messed up. I've stained a few pairs
21 of slacks before. It does not explode as always
22 described. That's a misconception.

23 Q And can staining occur by transfer?

24 A It can.

25 Q Tell us about that.

1 A I can just give you an example from my
2 experience.

3 Q Okay.

4 A I do a live demo. It's usually near the end of
5 a presentation. I actually simulate a robbery by going
6 out the exit door with the dye pack in my hand and take
7 it about 50 yards outside. My timing usually is pretty
8 good. I just sit it on a -- I use a, uh, new gallon
9 paint can and I sit it on top of that so I don't stain
10 the sidewalk or wherever I sit it. So when I do that,
11 that's.-- I've lost your question. I'm sorry.

12 Q No, talking about the transfer.

13 A Transfer, yeah.

14 Q The ability to stain by transfer.

15 A So after setting off the dye pack, we'll go in.
16 We'll finish up the training meeting. And then I'll go
17 back out to retrieve it. I certainly don't want it
18 laying out in the parking lot. But it retains heat for
19 about 10 minutes after it's activated. If I mess up and
20 grab it the wrong way, I'll get some staining on me. It
21 will transfer onto me.

22 Q After that staining from your hand, it then
23 transferred to your clothing if you touched your
24 clothing?

25 A Yeah, definitely.

1 Q Okay. Now, I think you eluded to this before
2 with respect to, uh, the safety aspects of the dye packs
3 and the fact that they are in banks.

4 A Yes.

5 Q Is safety a consideration in the design of the
6 dye pack?

7 A It has to be. You know, you don't -- most
8 financial institutions certainly don't want to expose
9 their employees or their staff to something that's
10 dangerous. It has to be safe. Occasionally, we'll have
11 a pack activate inside the branch. Typically, you know,
12 the tellers pick it up or do something wrong with it.
13 Just drop it on the floor, you know, and get away from
14 it. It's not going to harm anybody as far as
15 permanently, physically hurting someone.

16 Q And what about the dye or the staining aspect
17 of that accidental activation?

18 A Say, for example, if I was going to activate a
19 pack and drop it on the floor here, you're going to see
20 -- with that much heat, you're probably going to see a
21 little bit of melting of that tile or that carpet there.
22 It's not anything humongous. It might be out there like
23 that. Typically, if the cleaning company comes in with
24 some harsher chemicals and try to get it out, sometimes
25 they might have to replace that section of carpeting.

1 Q And can that -- can the effects of that dye
2 pack be affected by whether or not its in a, let's say, a
3 bag.

4 A Yeah, the more we confine it, in a bag, the
5 more staining that will occur. We are confining that
6 smoke and smoke is the dye.

7 Q Okay. Does a dye pack always contain CS tear
8 gas?

9 A In the US, yes.

10 Q Okay. Uh, are there some applications in which
11 the bank might be part of a -- inside of a mall or
12 something like that. Are there some applications in
13 which dye packs are used without --

14 A Yes. Yeah. That's correct. Yeah.

15 Q Okay.

16 A Well, let me back up. The question was always
17 have tear gas. In a mall setting, we would not use the
18 tear gas in it.

19 Q Okay.

20 A Because of the location.

21 Q All right.

22 A We also have some locations within grocery
23 stores and so we don't want tear gas in a grocery store.

24 Q Okay.

25 A So to clarify that, I misspoke on that.

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1 Q You indicated that you were, at one time, the
2 service representative for the Carolinas.

3 A Yes.

4 Q Now the Bank of Travelers Rest on White Horse
5 Road, are you familiar with this branch?

6 A Yes.

7 Q Did they purchase their dye packs from 3SI?

8 A Yes.

9 Q Would those dye packs have been the dye packs
10 that contained CS tear gas?

11 A Yes.

12 Q All right. Let me show you a photograph that
13 has already been admitted into evidence as State's
14 Exhibit 7. Is this consistent with the dye packs that
15 would have been purchased by the Bank of Travelers Rest
16 on White Horse Road from 3SI?

17 A Yes, it would be.

18 Q Okay. Mr. Dickinson -- Mr. Dickinson, can the dye
19 be removed once it's stained something?

20 A It can to -- again, the closer we are to the
21 pack when its ignited, the much more difficult it is --

22 Q I'm going to ask you to get back on the
23 microphone.

24 A Okay.

25 Q I'm sorry. If you put your hands up, I can't

1 hear you as well. I apologize if all the jury can hear
2 you. I can't hear you.

3 THE COURT: Sir, you may want to take -- it's
4 right there. Bend it more towards you. That might
5 be good.

6 BY MR. FRETWELL:

7 Q That's much better.

8 A Is that better?

9 Q That's much better. Thank you.

10 A Your question again?

11 Q My question again is can the dye be removed
12 once it has --

13 A Yes. The closer it is to the pack when it's
14 activated within that foot and a half, the more difficult
15 it's going to be.

16 Q Okay.

17 A But yes, beyond that -- for example, if I got
18 some on me, I need a sip of water at the minimum to get
19 the stain off of me.

20 Q Okay.

21 A Usually, I'll use something harsher like
22 Fantastic or 409 or something. You can get it off.

23 Q That's when you are holding the dye pack.

24 A Right.

25 Q And then the farther, I guess, away from the

1 heat that's created by that activation, is it more likely
2 that, as you said before, you can brush the particles
3 off?

4 A Yeah, it's not -- it's really not embedded.
5 That's the difference. We use heat to embed the stain in
6 the fibers.

7 Q Is it your testimony that the dye pack can be
8 activated without getting any dye on those in the general
9 vicinity of the device?

10 A Oh, yes.

11 Q The dye packs that you have activated, have you
12 activated dye packs containing tear gas?

13 A Yes.

14 Q How has that tear gas affected you personally
15 in those demonstrations?

16 A If the wind changes directions on me and I get
17 a face full of tear gas, how it affects me personally, my
18 sinuses start draining instantaneously. That's how it
19 affects me. My eyes start watering and burning. There's
20 a burning sensation. You have to get away because it's
21 hard to breath also. That's how it affects me
22 personally.

23 Q Would those effects be amplified in an enclosed
24 space, such as a vehicle?

25 A Yeah. Yeah. In an enclosed area, yes.

1 Q And what basic effect would setting off two dye
2 packs have?

3 A Well, you're going to have twice, obviously,
4 twice the volume of smoke and tear gas. It's going to be
5 even more uncomfortable in an enclosed area than just
6 having one device.

7 Q Okay. Let me show you some photographs,
8 State's 85 through 89. Just take a look through those
9 really quickly so I can ask you a few questions about
10 them.

11 A (Reviewing.) Okay.

12 Q And what I'm going to do, uh, Mr. Dickinson, is
13 I'm going to give you a little laser pointer.

14 A Okay.

15 Q Use that by just pushing that little button
16 right there.

17 A All right.

18 Q And I'm going to display -- you might want to
19 scoot your chair back a little bit. I'm going to display
20 some of these pictures up on the screen and ask you some
21 questions about them. All right. First of all, State's
22 85. Now, looking at State's 85, is the dying on that
23 currency, is that consistent with the operation of a bank
24 security dye pack?

25 A Yes, sir.

1 Q Okay. Showing you State's 86 and, in
2 particular, what appears to be a white plastic bag there
3 on, it looks like it's on top of some of the currency, is
4 that consistent with the kind of staining you would see
5 if a dye pack went off inside a plastic bag?

6 A You're talking in this area?

7 Q Yes, sir.

8 A Yes, it is.

9 Q Okay. I actually have a pointer. All right.
10 Up in this region of the, of the picture on this plastic
11 seat part or whatever this is, uh, is that -- could that
12 staining there be consistent with warm dye that let's say
13 is drop or transfer?

14 A It could be, yes.

15 Q I'm also going to show you State's 88 and point
16 your attention to this little mark right here on the
17 seatbelt, plastic seatbelt holder. That mark right
18 there, if this packet of dollar bills or currency were
19 held above that, is that consistent with possibly the dye
20 dripping off of it?

21 A Yes. Uh, yes.

22 Q Then I'll just show you 89, just a closer up of
23 that same. All right. Let me now show you State's 95
24 through 108. If you will, just take a minute. I'll try
25 to get this light out of your eyes. Look through those

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1 pictures. I'll go through those with you as well.

2 A (Reviewing.)

3 Q This is State's 98. Call your attention to
4 this area. Do you see this red floor mat?

5 A Yes.

6 Q I'm not talking about the red floor mat, but
7 this area here, is that consistent with the staining or
8 the dye that would occur from the operation or activation
9 of a bank security dye pack?

10 A Yes.

11 Q Okay. Let me now show you State's 99. Is this
12 consistent with what the difference would be between,
13 let's say, a protected area and unprotected area with
14 respect to the staining of the dye pack?

15 A Yes.

16 Q Okay. Actually, I'm going to show you some
17 defense exhibits because they are better than mine. I'll
18 just put them up here on the screen. I hope you can see
19 these as well. I'm going to have to show them to you.

20 Mr. Anderson, you can turn the light back on.

21 This glossy picture, I'll show you a little bit
22 better. This is Defense Exhibit 3. Can you look on the
23 side of that seat? I'll also show you Defense Exhibit 4.
24 Look on the side of that driver's seat right there.
25 That's what I want to call your attention to. Are the

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1 stains that are on the side of that seat consistent with
2 someone potentially having dye on their hands and wiping
3 it on the seat?

4 A That's what it looks like to me.

5 Q Finally, let me show you. These glossy
6 pictures are better pictures. Let me show you State's --
7 I'm sorry -- Defense Exhibit 8, an exterior door area.
8 I'll call your attention to what have been described as
9 little half moon impressions or marks on that door. Is
10 that consistent potentially with fingers with dye on them
11 touching that metal surface?

12 A In my opinion, yes.

13 Q And looking at some other photographs that I've
14 already shown you, State's 102, 103 and 104. State's
15 102, being the seat, the driver's seat of the vehicle
16 that you were just looking at, the activation of that dye
17 pack behind the seat, would you expect to get a lot of
18 dye on that seat itself?

19 A Okay. This is the -- this is the back of the
20 back or the front seat?

21 Q The steering is right --

22 A Okay. Okay.

23 Q This is the front ---

24 A Okay.

25 Q --- bucket seat of that minivan. If you assume

1 for a moment that that's what this is ---

2 A Okay.

3 Q --- and the dye pack activated behind the seat,
4 would you expect to get a lot of dye in that area?

5 A Yes.

6 Q You would expect to get a lot of dye?

7 A Well, you're going to get dye.

8 Q Okay.

9 A It's filling up the --

10 Q I'm using the wrong word.

11 A Okay..

12 Q Are you going to get staining on that area?

13 A Uh, no. I wouldn't think -- I think it would
14 be -- it would take some effort.

15 Q Okay. And then the front of the seat, again,
16 would you expect to get staining on that seat area there?

17 A Yeah.

18 Q Okay. It could be staining on that seat area
19 there?

20 A Well, I'm talking two different -- we're
21 talking -- you're meaning a permanent type stain or just
22 dye?

23 Q I'm not talking about the dye particles.

24 A Okay.

25 Q The smoke through the air. I'm talking a stain

1 there. An indelible stain.

2 A Uh-huh. Not in my opinion.

3 Q Okay. What about the back? Would you be more
4 than likely to see staining on the back of this seat then
5 you would on the front and on the seat?

6 A Yes.

7 Q Would you be more likely to see staining on the
8 back of this seat than you would on anybody that was
9 perhaps sitting in that seat?

10 A Yes. Yes.

11 Q Okay. All right. All right.

12 Mr. Anderson, if we could have the lights
13 please.

14 Mr. Dickinson, please answer any questions that
15 Mr. Johnson or Mr. Erwin has for you. Thank you.

16 THE COURT: Mr. Johnson.

17 MR. JOHNSON: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Mr. Dickinson, you been selling this stuff for
21 about 15 years; is that right?

22 A Well, yes, as far as selling, yes.

23 Q What states have you sold it in?

24 A Washington, DC; West Virginia, Virginia; North
25 and South Carolina; and Georgia.

1 Q How many of these dye packs do you think you've
2 sold?

3 A Oh my goodness. I'm going to -- it would be
4 hard to say. But as far as branches, I can tell you.
5 Uh, between the states, probably about 6000 branches of
6 various banks.

7 Q And your primary thing that you're selling is
8 the security pack, is that what it's called?

9 A Correct.

10 Q Now, you're retired at this point?

11 A Yes, sir.

12 Q So you -- so you are able to retire. You made
13 a decent living out of this?

14 A Yes. Actually my wife handles the money.
15 That's why I retired.

16 Q Now, you have a guy you work with now named
17 Greg Lynch, right?

18 A Correct.

19 Q Who is Greg Lynch?

20 A Greg Lynch is a lucky man. He's the one that
21 took my job when I retired.

22 Q Okay. Now you work with him now, right?

23 A Yes, I know Greg.

24 Q In what capacity do you work with him?

25 A Actually, I work more -- I said I work with

1 him. How I work with him is I actually do installations
2 and do scheduled maintenance in his territory and other
3 territory throughout the US. But matter of fact, prior
4 to my leaving, Greg and I worked together for over a
5 month just calling on existing customers for an
6 introduction. He is -- in his territory, is he
7 essentially the boss?

8 A He runs his territory, yeah.

9 Q Okay.

10 A He's not the boss. He's not the -- I
11 concentrate my efforts now as a part-time job on
12 servicing equipment.

13 Q Oh, I didn't mean as the boss of you per say.
14 I meant as the boss of his territory.

15 A Well, yeah. As far as his territory, yes.
16 Yes, yes.

17 Q Okay. When y'all sell these items, is it
18 customary to sometimes give out brochures?

19 A Yes.

20 Q Does the security pack have a brochure?

21 A Yes.

22 Q Now, I'm handing you something Greg Lynch sent
23 me. It happens to be an email. Is this one of your
24 brochures?

25 A Yes, it is.

1 Q Okay. Now, this is obviously the first page.
2 As you understand, it's kind of the front cover.

3 A Front cover of the brochure.

4 Q And here this page would be the first page of
5 actual writing or information on the brochure, right?

6 A Correct.

7 Q Okay. Now, that right there, can you read that
8 for the court?

9 A Security pack electronic protection system is a
10 dye pack system that aids in the recovery of stolen
11 money, the apprehension of the robber and deters crime.

12 Q Okay. So the security pack has three main
13 purposes?

14 A Yes.

15 Q According to the brochure?

16 A Yes.

17 Q To stain the money, to apprehend the robber and
18 to deter crime. Is that right?

19 A Correct.

20 Q Now, you stated that, uh, in some instances,
21 you can -- if you get the dye on you, you can brush it
22 off. Is that right?

23 A Yeah.

24 Q In other instances, you can get it off with, at
25 the very least, soap and water?

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1 A The very minimum, yes.

2 Q When you say very minimum, can you explain what
3 you mean by that?

4 A You need some kind of detergent to help aid in
5 getting it off your skin. Typically, if I do demos, I
6 usually carry some 409 or some Fantastic in my trunk in
7 case I really get it on me. So I don't make my nails --
8 next sales presentation with red dye all over my hands.
9 Usually, that's what I use to get it off of me.
10 Generally, I can get most of it off. The only -- usually
11 the problem area I have most is underneath my nails which
12 is common no matter if you work on a car or setting off
13 dye packs.

14 Q Uh-huh. And what about your clothes? Is it
15 harder or easier to get it off?

16 A The last demo -- one of the last demos I did
17 before I retired, I kind of messed up. I actually had a
18 pair of black slacks on and I stained the heck out of
19 them. And, uh, one of the people witnessing the demo
20 said you've ruined your slacks. I kind of downplayed it.
21 I said I really didn't care for these anyway. But it
22 took two times to the dry cleaners to get it off.

23 Q Okay. You did eventually state you got all of
24 it off?

25 A Yeah.

1 Q Okay. Now, you say these security packs also
2 have tear gas?

3 A Correct.

4 Q Can you get all the tear gas out?

5 A As far as that particular instance. What I
6 did, I actually set the pack down. I was like within two
7 feet of it when it activated. That's why I got some dye
8 on me. As far as the tear gas, it's -- with solvents,
9 yeah, you'll eventually get it out.

10 Q Okay. I have nothing further for this witness.

11 THE COURT: Mr. Fretwell?

12 MR. FRETWELL: Your Honor, just a small.

13 REDIRECT EXAMINATION

14 BY MR. FRETWELL:

15 Q First of all, Mr. Dickinson, how -- you said
16 you been dealing in bank dye products for how many years?

17 A Actually, 38.

18 Q Okay. And Mr. Lynch, how long has he been
19 dealing with dye?

20 A He's going on his third year.

21 Q Third year. Did you participate any at all
22 when he took your job in his training?

23 A Yes, I did. Yes.

24 Q Okay. Uh, the brochures?

25 A No, they are not here.

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1 Q I'm going to give you back the brochure Mr.
2 Johnson was just asking you about.

3 A Uh-huh.

4 Q He read from one part. I'm going to ask you if
5 you'll look at the second page that you have in front of
6 you. I'm sorry. The third page. Third page. Go over
7 one more page. Down at the bottom where it talks about
8 system effectiveness?

9 A Yes.

10 Q The next to the last point, can you read that
11 line right there, "on average"?

12 A Oh average, 70 percent of the stolen funds are
13 recovered. One in three robbers are apprehended in
14 robbers where 3SI dye pack is used.

15 Q So 70 percent of the money is recovered?

16 A Correct.

17 Q But one in three or roughly 33 percent of the
18 robbers are apprehended.

19 A Yeah, apprehended.

20 Q Okay. And then the last line says what?

21 A Nearly 8 million in stolen funds have been
22 recovered due to security pack.

23 Q Is there anything on here that you can tell
24 that it tells how many robbers are apprehended?

25 A No.

1 Q That's under system effectiveness?

2 A Correct.

3 Q Isn't it also true that, uh, you have
4 instructions for how to, uh, treat your eyes, et cetera,
5 if you get tear gas in your eyes?

6 A Correct.

7 Q How are you supposed to get that tear gas out
8 of your eyes?

9 A Actually, you want to get fresh air into your
10 face. Do not rub your eyes. You just make the situation
11 worse. Worse case scenario, it should dissipate within
12 15 to 30 minutes. If that's not the case, you can wash
13 them out, flush them out with cold water.

14 Q Okay. So 15 minutes just out in the air and
15 water will assist in getting it out of your eyes,
16 clothing?

17 A Uh-huh.

18 Q I believe that's everything.

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Briefly, Your Honor.

21 THE COURT: All right.

22 RE CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Where -- is the dye in the smoke?

25 A Pardon me?

1 Q Is the dye in the smoke? Is that where it is?

2 A The smoke is the dye, yes.

3 Q Okay. Nothing further.

4 THE COURT: All right, sir. You can step
5 down.

6 MR. FRETWELL: I know it's early for a break,
7 Your Honor, but you think we could take a very short
8 break?

9 THE COURT: That will be just fine.

10 MR. FRETWELL: Okay.

11 THE COURT: Ladies and Gentlemen, we'll take
12 our morning break now. All right. If you will,
13 step to your jury room.

14 (WHEREUPON, the jury exits at approximately
15 10:01 p.m.)

16 (WHEREUPON, a short recess is taken.)

17 THE COURT: Is the State ready to bring the
18 jury back in?

19 MR. FRETWELL: Yes, ma'am.

20 THE COURT: Defendant?

21 MR. JOHNSON: Yes, ma'am.

22 THE COURT: All right.

23 (WHEREUPON, the jury enters at approximately
24 10:19 a.m.)

25 THE COURT: All right. Mr. Fretwell, you

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1 ready to call your next witness?

2 MR. FRETWELL: Yes, ma'am.

3 THE COURT: All right.

4 MR. FRETWELL: Your Honor, the State would
5 call Lieutenant Emily Reinhart.

6 THE CLERK: Lieutenant, if you would, come
7 forward. Please place your left hand on the Bible
8 and raise your right hand please.

9 EMILY REINHART

10 having first been sworn, testifies as follows:

11 THE CLERK: Thank you. Please be seated.

12 Please state your full name for the record.

13 THE WITNESS: Emily B. Reinhart,
14 R-E-I-N-H-A-R-T.

15 DIRECT EXAMINATION

16 BY MR. FRETWELL:

17 Q Lieutenant Reinhart, by whom are you employed?

18 A I'm employed by the South Carolina Law
19 Enforcement Division in the Forensics laboratory.

20 Q And what are your responsibilities at the
21 forensics lab?

22 A I am currently the Supervisor of the Evidence
23 Control Department and the Quality Manager for the
24 laboratory.

25 Q And how long have you been charged with

1 evidence control for SLED?

2 A I been at SLED for 23 years. I have been the
3 Supervisor of Evidence Control for about 13 years.

4 Q All right. And what is the purpose of your
5 department?

6 A The staff in the Evidence Control department
7 are the ones that are responsible for receiving the
8 evidence that is brought to us from the local submitting
9 law enforcement agencies. They are also responsible for
10 entering all the case information into our information
11 management tracking system. Then, they will package the
12 evidence, store it and then route it throughout the
13 laboratory depending on the request that has been made on
14 the analysis.

15 Q So what happens in a typical case where an
16 officer agent brings evidence to your department?

17 A In just about every situation, the submitting
18 officer will come to our evidence control department.
19 They will sit down individually with an evidence control
20 technician. That technician will review all of the
21 paperwork. They will discuss the case with the
22 submitting officer. They will enter that information
23 into our IM system. Then they will package it, seal it,
24 route it to the departments that it needs to go to.

25 Each time evidence is brought into our

1 laboratory, it receives what we call a unique case
2 identifier that we will refer to as the lab number. In
3 every situation, that lab number will start with the
4 letter L. It will have -- if evidence comes in in the
5 year 2012, it will be L-12 and then the number in
6 sequential order that it arrives in the laboratory that
7 whole year.

8 Q And once this evidence comes into your
9 department, where is it stored?

10 A It's stored in our main evidence room. There,
11 it's located right behind the Evidence Control area.

12 Q Is this a secured area?

13 A It is.

14 Q And who has access to this area?

15 A All Evidence Control staff.

16 Q Are those individuals that you supervise?

17 A That's correct.

18 Q Where does that evidence go from the main
19 evidence area?

20 A That evidence will go throughout the
21 laboratory. There's an evidence custodian that works in
22 our main evidence room. And people will come to her from
23 within the laboratory to check out evidence. It will be
24 electronically transferred to them and routed to their
25 departments for the proper analysis.

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1 Q Is this evidence identified by the unique lab
2 numbers that you talked about earlier?

3 A Yes. Each container or piece of evidence will
4 have a barcode on it with that lab number and a container
5 number or an item number on that lab number.

6 Q All right. When evidence is retrieved by your
7 staff to transfer to other departments within SLED, the
8 laboratory, is the movement of this evidence recorded?

9 A Yes. We have a barcode tracking system which
10 is very similar to in a grocery store.. You will see a
11 barcode on an item. We will scan the item. It will
12 document the person that puts that evidence into their
13 custody and the person that they are transferring it to.

14 Q Did you or a member of your staff receive
15 evidence from law enforcement, specifically the
16 Greenville County Sheriff's Office, relating to a case
17 number or lab number that you created, L09-202290 and
18 L09-200307?

19 A Yes, sir. We did.

20 Q All right. I want to call your attention --
21 well, first of all, that electronically recorded movement
22 and location of items within both the evidence room and
23 all of the laboratories. Is that electronic database, if
24 you will, accessible in the form of a report?

25 A Yes, it is.

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1 (WHEREUPON, State's Exhibits 115 and 116 are marked
2 for identification purposes.)

3 BY MR. FRETWELL:

4 Q All right. Let me show you what's been marked
5 as State's 115 and 116. I'll ask you if you know that
6 that's what these reports are for.

7 A Yes, sir. Both of these documents are what we
8 generally refer to as the chain of custody for each of
9 these cases.

10 Q Okay. Have you compared State's 115 and 116,
11 uh, with the items that -- the originals that you brought
12 from SLED to make sure that they are accurate?

13 A Yes, sir, I have.

14 Q Okay. Uh, let me call your attention to
15 several of the items that are on this chain of custody.
16 I want to call your attention first to four items. They
17 are enumerated, I believe, in the custody -- chain of
18 custody as SLED 1, SLED 4, SLED 9 and SLED 10.

19 A Okay.

20 Q Can we take each one of those and can you give
21 us the description that was identified with these items
22 when they came into SLED and who dropped them off and
23 when?

24 A Okay. Item number 1 is described as one sealed
25 heat-sealed pouch containing a buccal swab described as

1 David Stephenson Boyd, II. That item was delivered to
2 SLED on February the 19th of 2009 at 12:25 by Deputy
3 Laura Jones of the Greenville County Sheriff's Office.

4 Q All right. And now SLED's 4.

5 A Item 4 is described as one sealed heat-sealed
6 pouch containing an item described as a blue and white
7 bandana. That item was delivered on February the 19th of
8 2009 at 12:25 by Deputy Laura Jones of the Greenville
9 County Sheriff's Office.

10 Q All right. And SLED number 9.

11 A Item 9 is described as one sealed box
12 containing pants described as Akademiks jeans. That item
13 was delivered to SLED on February the 19th of 2009 at
14 12:25 by Deputy Laura Jones of the Greenville County
15 Sheriff's Office.

16 Q And finally in that group, SLED 10.

17 A Item 10 is one sealed box containing a shirt
18 described as a gray t-shirt. That item was delivered on
19 February 19th of 2009 at 12:25 by Deputy Laura Jones of
20 the Greenville County Sheriff's Office.

21 Q All right. I also want to call your attention
22 to SLED 13.

23 A Item 13 is described as one sealed envelope
24 containing socks described as a black sock. That item
25 was delivered on March the 11th of 2011 at 14:16 by S.A.

1 Manley of the Greenville County Sheriff's Office.

2 Q Okay. And I also want to call your attention
3 to two other items. Well, before we get to those, are
4 these exhibits that you just described related to the lab
5 numbers that you described previously?

6 A That's correct.

7 Q In fact, all of those exhibits actually are
8 related to the first lab number ending in 2290; is that
9 correct?

10 A Yes, sir. That's correct.

11 Q Let's take for example State's 111. Okay.
12 State's 111. The packaging that you find within State's
13 111, does that have a barcode on it?

14 A Yes, sir. It does.

15 Q Can you basically tell us about that barcode in
16 relation to what you already talked about with respect to
17 the evidence?

18 A Yes, sir. This yellow barcode here, this is
19 the type of barcode label that will go on each piece of
20 evidence that comes into our laboratory. It displays the
21 laboratory number or the unique case identifier and also
22 the item number. In this case, the barcode is L-09-
23 02290. It's item number 1.

24 Q Okay. Now, these items that we talked about
25 that you already described, once they've entered SLED,

1 they go to the evidence control room and they are checked
2 out for analysis. Is that correct?

3 A That's correct.

4 Q Does all of this process occur at the SLED lab
5 in Columbia?

6 A Yes, the check out of the evidence does, yes,
7 sir.

8 Q The individuals who are checking out this piece
9 of evidence, they work for SLED as well?

10 A They do. When they are routed within the
11 laboratory, those individuals do work for SLED. When we
12 return this evidence to the submitting agency, an officer
13 from that submitting agency will come to the laboratory
14 and we will transfer that evidence back to them.

15 Q All right. And what I want to ask you is with
16 respect to SLED 1, 4, 9, 10 and 13, will you check the
17 chain of custody that you described earlier and determine
18 whether or not those items were tested before they were
19 released back to whatever agency dropped them off.

20 A According to the chain of custody, item number
21 1, the information that's provided in the chain of
22 custody indicates that it was routed to a department for
23 analysis. That individual analyst will have to give
24 specifics about the type of analysis and whether or not
25 they analyzed it. The chain of custody does indicate

1 that this item was checked out of the evidence room and
2 given to someone in a department for analysis..

3 Q That works for SLED?

4 A That's correct.

5 Q Okay.

6 A That's item number 1.

7 Q Is that the same for items 4, 9, 10 and 13?

8 A Yes, sir. All of those items do indicate on
9 the chain of custody that they were routed to an examiner
10 or an analyst in another department.

11 Q The specific path of how that evidence travels
12 through SLED is indicated on those, uh, what we call
13 chain of custody; is that correct?

14 A That's correct. Each time a piece of evidence
15 moves within our laboratory, there is -- the barcode is
16 scanned. At any given time, we can track that piece of
17 evidence and tell you who has it or where it might be
18 located.

19 Q And at times, does SLED, per their policies,
20 limit the amount of items that can be analyzed or dropped
21 off with respect to a given case by a particular agency?

22 A There are situations where guidelines are in
23 place by a particular department where they will
24 initially limit the amount of items that comes in the
25 door. That does not mean they won't take additional

1 items after those items have been analyzed.

2 Q All right. Now, I also want to refer, in your
3 chain of custody, to SLED 4.1 and 13.1. When you have
4 item numbers that end in .1 or .2, what does that tell
5 you as the Evidence Control Director about where they
6 were generated or what relationship they have to the
7 items that are already in your custody and control?

8 A When we have an item that has a decimal and a
9 number behind it, we refer to that as a sub-item. In
10 this situation, item number 4, uh, if we have 4.1 that
11 has been created within our laboratory, that means that
12 that's sub-item for 4.1. What happens in a situation
13 like that is that the examiner or the analyst has
14 examined item 4. They have collected some evidence from
15 that item. It might be in the form of a swab. It might
16 be a cutting. But they will create sub-item 4.1. We'll
17 go back whatever the item is. We can go ahead and return
18 that item back to the agency, but we will maintain that
19 sub-item in the laboratory for further testing.

20 Q All right. So 4.1 comes into your lab as part
21 of 4 in a sense now. Obviously, the swab used,
22 potentially if you are extracting evidence, would be
23 something lab workers would have. But we're not talking
24 about a separate item or something that wasn't obtained
25 from the original item 4; is that correct?

1 A Correct. We would often refer to item 4 as
2 being the parent item.

3 Q Okay.

4 A The parent item, we will examine the parent
5 item and then the evidence that is collected from that
6 item is what we would give the sub-item to. It's not new
7 evidence. It hasn't been created by the laboratory.
8 It's simply a portion of that parent item that has been
9 removed for further testing.

10 Q And that item and it's traveling once it's
11 created as 4.1, for example, just to use that for
12 example. SLED item 4 is described as a bandana; is that
13 right?

14 A Correct.

15 Q What is 4.1 described as?

16 A 4.1 is described as a heat-sealed pouch
17 containing a swab described as from the bandana.

18 Q Okay. So once the -- once the technician
19 creates 4.1, does that sub-item also become tracked by
20 this chain of custody as it moves through the laboratory?

21 A Yes. A barcode will be placed on the sub-item
22 or a package containing sub-items. That item will be
23 tracked as well.

24 Q Let me show you, uh, what we will eventually
25 mark as State's Exhibit 113. In that package, is this

1 the kind of package that sub-items might be packaged in?

2 A Yes, sir.

3 Q And does it have the barcode that you
4 described?

5 A It does.

6 Q And you manipulate what is in there to see
7 whether or not that package contained item 4.1?

8 A Without opening it, it's difficult.

9 Q Let's just open it. Let me get a pair of
10 scissors.

11 A I can see it.

12 Q You can --

13 A I was able to --

14 Q I still think I'm going to go ahead and just
15 have you open it so that you can just verify that item.
16 We'll go ahead and mark it at this time.

17 A There is an envelope within this sealed pouch
18 labeled item 4.1. It is described as bandana.

19 Q I'm going to put this little mark. There's
20 nothing under where I'm placing the --

21 A That's correct.

22 Q Right on the back. Okay. So that item will
23 also be -- it is tracked on the chains of custody that
24 you earlier described; is that correct?

25 A Yes, sir. That's correct.

1 Q That would be the same process for SLED item
2 13.1. Can you tell us what is -- you told us that SLED
3 13 is described as a black sock. Is that correct?

4 A Yes, sir.

5 Q What is -- what is the description of SLED
6 13.1?

7 A Item 13.1 is described as a heat-sealed pouch
8 containing swab described from sock exterior.

9 Q Okay. The exterior of the sock?

10 A Yes, sir.

11 Q All right. And does that chain of custody
12 reflect that SLED item 13.1, uh, was sent for analysis?

13 A Yes, sir. It does.

14 Q The movement of that item throughout SLED is
15 recorded on those chains of custody; is that correct?

16 A That's correct.

17 Q Now, I'll refer you back to those two chains of
18 custody -- before we do this, let me refer you to the
19 other chain of custody under lab number ending in 307.
20 Do you have an item on there, item 2?

21 A Yes.

22 Q What is that described as?

23 A Item 2 is described as one sealed envelope
24 containing GSR kit described as David Stephenson Boyd,
25 II.

1 Q Okay. And are the movements of that item
2 throughout SLED recorded on that chain of custody?

3 A Yes, they are.

4 Q Okay. The two exhibits, 115 and 116 that you
5 referred to as chains of custody, uh, are these records
6 commonly requested for court purposes?

7 A Yes, sir.. They are.

8 Q What is the process that you go through for
9 verifying chain of custody?

10 A The process that we prefer is that we receive a
11 phone call in the laboratory. We have an individual that
12 who is assigned to initiating this process. When someone
13 ask for a verified chain of custody, we will first pull
14 this information from our information management system,
15 from our IMS. This document will then be sent to every
16 laboratory staff member that has played a part in this
17 case. In other words, each person that has participated
18 in the movement of these items will then review this
19 document. They will notify us that they have looked at
20 it and they have verified their individual portion of the
21 chain of custody. Once that has been done, then we will
22 provide this document to the Solicitor's office or
23 whoever has asked for the chain of custody.

24 Q Was that process followed with respect to
25 State's 115 and 116?

1 A Yes, sir. It was.

2 Q Are those properly identifiable as verified
3 chains of custody?

4 A There is not an indication on here. We do not
5 have a stamp that says verified. Our procedure in the
6 laboratory indicates that we will not release these
7 chains of custody or these documents to anyone until they
8 had been properly verified.

9 Q And were those documents released to the 13th
10 Circuit Solicitor's office upon our request in this
11 particular case?

12 A Yes, sir. They were.

13 MR. FRETWELL: All right. Your Honor, at
14 this time, we would move State's 115 and 116 into
15 evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: That's the chain?

18 MR. FRETWELL: Yes, sir.

19 MR. JOHNSON: No objection.

20 THE COURT: All right then. So admitted.

21 (WHEREUPON, State's Exhibits 115 and 116 are
22 admitted into the record.)

23 MR. FRETWELL: Please answer any questions
24 that Mr. Johnson may have.

25 MR. JOHNSON: I have no questions for this

1 witness.

2 THE COURT: All right, ma'am. You can step
3 down.

4 THE WITNESS: All right. Thank you.

5 THE COURT: Thank you.

6 MR. FRETWELL: Your Honor, the next witness
7 that we will call is John Roberts.

8 THE COURT: All right.

9 THE CLERK: Sir, please step forward. If you
10 would, please place your left hand on the Bible and
11 raise your right hand.

12 JOHN ROBERTS

13 having first been sworn, testifies as follows:

14 THE CLERK: Thank you. Please be seated.
15 Please state your full name for the record.

16 THE WITNESS: John Gray Dodd Roberts,
17 R-O-B-E-R-T-S.

18 DIRECT EXAMINATION

19 BY MR. FRETWELL:

20 Q Mr. Roberts, by whom are you employed?

21 A Worked for the South Carolina Law Enforcement
22 Division. We're commonly called SLED.

23 Q All right. What is your position with SLED?

24 A I am a Trace Evidence Analyst in the Forensic
25 Services building.

1 Q Are you also referred to as a forensic
2 scientist?

3 A Yes, sir. I am.

4 Q How long have you been a forensic scientist?

5 A Seven years in February.

6 Q Do your duties involve what is known as trace
7 examination?

8 A Yes, sir. They do.

9 Q Could you please explain what trace examination
10 is to the members of the jury?

11 A Trace examination is the examination and
12 analysis of evidence that you generally can not see with
13 your naked eye. In our department, we analyze gunshot
14 residue. We analyze fire debris from possible arsons or
15 fire scenes. We analyze MAAQ, which is
16 methylaminoanthraquinone, which is the red dye found in
17 bank dye packs. We do paint analysis, glass analysis,
18 fiber analysis, explosives analysis and duct tape
19 analysis.

20 Q And all of those are duties that you have; is
21 that correct?

22 A Most of them are duties that I have. I don't
23 do paint. I don't do glass. I don't do fibers.

24 Q And you don't do duct tape?

25 A I don't do duct tape.

1 Q Okay. What -- could you tell us what gunshot
2 residue is, sir.

3 A Gunshot residue is the term that we give to the
4 elements that are ejected out of a firearm when it's
5 fired. If you've ever picked up a bullet, a center fire
6 bullet --

7 Q Wait a second. What do you mean by a center
8 fire bullet.

9 A Center fire bullet. I'll explain that.

10 Q Okay.

11 A There's a difference between bullets. There's
12 room fire which is a 22 rifle, 22 long rifle. And
13 there's center fire which is, you know, if you've got
14 anything bigger than a 22, you've got a center fire
15 firing firearm. Center fire bullets have a primer in the
16 middle of the bottom end of the cartridge cases, either
17 silver or gold. It's off color from the cartridge case.
18 That primer has the elements that we look for in gunshot
19 residue. They are lead, barium and antimony.

20 What happens is the hammer or the striker of
21 the firearm hits that primer. That primer sets off the
22 main powder inside the cartridge case, expels the bullet
23 and you hit your target. Well, all those elements are
24 ejected out of that firearm in a mist. It comes out the
25 end of the firearm or out of the revolver gap, cylinder

1 gap of a revolver or the ejector port of a semiautomatic
2 firearm. Those particles, when they hit the air, they
3 cool off and they cool in droplets and they land on
4 things that are in the near vicinity of the firearm.

5 When I go out and shoot, I get gunshot residue
6 on my hands because my hands are exposed to that firearm.
7 If I shoot next to somebody that's close enough, they can
8 get it on them just from being near me when I shoot it.
9 If, heaven forbid, I shoot at somebody and they are close
10 enough, they are going to get it on them because they are
11 close enough to that stuff when it comes out that I can
12 find it on them.

13 Q Now, how is gunshot residue or GSR, how is that
14 collected?

15 A We hand out kits. SLED provides gunshot
16 residue kits to the various agencies in the state. There
17 are two different types of sampling media that are in
18 those kits. The first type of sampling is a particle
19 lift. It's a disk with carbon tape on it. It's supplied
20 like you would a bingo dauber. If you've ever been to a
21 bingo hall and they call I-19, you stamp I-19. That's
22 what happens with these particle lifts, they are just
23 little sticky stamps.

24 And they are applied on four areas of the
25 hands, your two hands. They have a right palm and right

1 back of the hand and a left palm and a left back of the
2 hand. The daubers are just dabbed and they are labeled
3 that says left palm. You dab the left palm. Cap it up
4 and put it in the envelope. Left back. You dab the left
5 back. You repeat that with the right hand.

6 After the daubers are done, you do swabs. They
7 are cotton. Q-tips are basically what they are. They
8 are treated with a dilute nitric acid. What happens --
9 excuse me. What happens is the acid will dissolve any of
10 those metals that come out of that primer on their hands.
11 Those metals are extracted and run through an instrument.
12 We check the concentrations of those metals.

13 Q What you have described as a dauber, is it an
14 oversimplification to say that it kind of looks like
15 scotch tape that you use on the hand?

16 A It's more closely to electrical tape cause its
17 black.

18 Q Okay.

19 A But yeah, basically, it's tape.

20 Q Is there any chemical or anything like that on
21 the tape other than the sticky adhesive of the tape.

22 A On the particle lifts, there are no chemicals
23 other than the adhesive.

24 Q What about on the actual swabs themselves? Is
25 there a chemical on the swab?

1 A The swabs come dry. Inside the kit, there's a
2 little bottle that says five percent nitric acid. You
3 can't drink it. It's not quite that weak. But you can
4 use it to put on the swabs to dissolve the metals on your
5 hands.

6 Q That's what the technicians would dip the swab
7 into?

8 A You drop it. It's a little bottle that drops.
9 You just drop it on the end of the swab and you wipe on
10 the areas that you want to test.

11 Q Approximately how many GSR or gunshot residue
12 kits have you examined over the course of your tenor at
13 SLED?

14 A It's in the thousands.

15 Q Have you also conducted analyses in the area of
16 MAAQ or the chemical used in bank dye packs?

17 A Yes, sir. I have.

18 Q What process is used to determine the presence
19 of MAAQ?

20 A It usually depends on the evidence that's
21 submitted. If it's money, it starts with a visual
22 examination. You know, if there's red stuff on the
23 money, there's your clue that it may be MAAQ. Uh, in
24 that case, what would happen is we would take another
25 swab -- not from a GSR kit but one that we have just for

1 this purpose -- and treat it with acetone. Acetone is a
2 solvent. Rub that on the red dye. Pick up some of it
3 off that swab and extract that swab into some more
4 acetone and run it on an instrument that would check for
5 the presence of MAAQ.

6 Q The chemical acetone and the chemical that you
7 described before, nitric acid, is that the same thing?

8 A No, sir. They are not the same. One is an
9 acid as denoted by nitric acid. The other one is
10 acetone. It's a solvent. You can go to Home Depot and
11 buy it.

12 Q And the nitric acid, what does that do to the,
13 I think you said barium an --.

14 A The three chemicals that we look for in a
15 primer, the lead, barium and antimony?

16 Q Right.

17 A What it does to those, the nitric acid
18 dissolves those. It turns them basically into their
19 atomic components.

20 Q Okay. So moving back to the MAAQ or the
21 acetone-based test, you said that the extract of that
22 swab is run through a machine?

23 A Yes, sir.

24 Q Can you tell us what that machine is?

25 A The machine is a gas chromatograph mast

1 spectrometer. I will refer to it from here on as a GCMS
2 since that is a mouthful to say more than once.

3 Q Is it fair to say that that's a pretty precise
4 and finely tuned expensive machine?

5 A It is all those things and more.

6 Q Okay. Mr. Roberts, have you been qualified as
7 an expert in this state before?

8 A Yes, sir. I have.

9 Q Approximately how many times?

10 A 49 times.

11 Q In what field or fields?

12 A I've been qualified in gunshot residue bullet
13 hole analysis which is muzzle to target distance
14 determination and fire debris analysis.

15 Q Has any court failed to qualify you as an
16 expert witness?

17 A No, sir. They have not.

18 MR. FRETWELL: Your Honor, at this time, we
19 would offer, uh, -- excuse me -- Mr. Roberts as an
20 expert in GSR and MAAQ analysis.

21 THE COURT: MAAQ you said?

22 MR. FRETWELL: Yes, ma'am. I can not
23 pronounce that word, Your Honor.

24 THE WITNESS: Methylaminoanthraquinone.

25 THE COURT: Y'all understand that?

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1 Mr. Johnson, any objection?

2 MR. JOHNSON: Your Honor, could I have just a
3 little brief voir dire?

4 THE COURT: Of course.

5 MR. JOHNSON: Thank you.

6 VOIR DIRE EXAMINATION

7 BY MR. JOHNSON:

8 Q Now, I have here a copy of your statement for
9 qualifications. Do you have a copy yourself?

10 A No, sir. I don't.

11 Q I assume that you know a lot of the stuff
12 that's on there.

13 A Yeah, I'm pretty familiar with it.

14 Q Okay. Now, you went to college at the Texas.
15 A&M Corpus Chrisi?

16 A Yes, sir. I did.

17 Q All right. And you finished in 2001?

18 A Yes, sir.

19 Q You got a Bachelor of Science in Chemistry?

20 A Yes, sir.

21 Q Is chemistry a good background to have with
22 regards to the things you do now?

23 A It's essential for our department.

24 Q Now, I see here a list of other training --
25 what I'll do is I'll hand this to you.

1 A Yeah, there's no way I can remember everything
2 I've done.

3 Q What type of, uh, -- first of all, how much
4 other training does your statement of qualification state
5 that you have and what are some of the things that may be
6 important to what we're doing here today?

7 A As far as the things that we are doing here
8 today, I've had the SLED's MAAQ training back in 2009,
9 gunshot residue training in '06.

10 Q All right.

11 A That's about it as far as today.

12 Q As far as today?

13 A Yes, sir.

14 Q But you've had other training in relation to
15 chemistry and other things with trace evidence?

16 A Yes, sir.

17 Q Okay. Now, what did you have to do to get the
18 job that you have today?

19 A It was a long and arduous process. I can tell
20 you that. I applied nine times. Went through a nine-
21 month wait from the time that they told me that I might
22 have the job to the time that they told me that I did
23 have the job. When I got the job, I trained under my
24 Lieutenant who had been doing trace evidence for about 20
25 years by then. He taught me gunshot residue. I worked

1 his cases with him to the point where I was working his
2 cases and he would sign off on them. After working them,
3 we would discuss, you know, possible scenarios or how I
4 would interpret this and that. That's how I got through
5 gunshot residue.

6 As far as MAAQ, it's close to the same. I
7 worked under a trained or a court-qualified examiner. We
8 analyze standards. Try and solve a -- excuse me. Try
9 and dissolve MAAQ off of different things to see if we
10 can find it on the mast spec. Things like that.

11 Q Now, uh, are you a member of any associations,
12 any professional affiliations?

13 A Associate member to the Southern Association of
14 Forensic Scientists.

15 MR. JOHNSON: I don't have any further voir
16 dire.

17 THE COURT: All right. Any objection to his
18 being so qualified?

19 MR. JOHNSON: No objection.

20 THE COURT: All right. Ladies and Gentlemen,
21 he will be -- this witness will be qualified in the
22 areas of GSR and MAAQ analysis. He will be able to
23 give his opinion in those areas.

24 Yes, sir.

25 MR. FRETWELL: May it please the court?

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION (con't)

3 BY MR. FRETWELL:

4 Q Mr. Roberts, how long does GSR remain on living
5 human skin?

6 A Six hours.

7 Q Now, what about that six hours? Are we talking
8 about definitely remains on there for six hours or it's a
9 maximum of six hours? Can you explain that a little bit
10 further?

11 A What we've seen -- and in looking at living
12 human or living people, you know, living subjects is that
13 GSR will remain in detectible quantities on your skin for
14 about six hours. It drops off, not quite immediately
15 after you put it on your skin, but very shortly after you
16 get it on your skin, it starts being absorbed into your
17 body and you start touching stuff. And when you touch
18 objects, door handles, put your hands in your pockets,
19 shake hands with somebody else, you transfer this
20 material off of you.

21 If you will, think of GSR as flour. You go to
22 dust your hands to make biscuits with flour so the flour
23 -- so the dough doesn't stick to your hands or it doesn't
24 stick to your countertop, if you get that flour on your
25 hands, as soon as you start touching things, you get

1 flour everywhere. Uh, when you wash your hands, that
2 flour is removed. When you wash your hands with soap,
3 it's really gone. Gunshot residue is a lot like that.

4 Q All right. And I think you described some of
5 the ways that GSR would come off the hands. When you
6 refer to the six-hour maximum time limit, is that the
7 time in which if there is remaining GSR on your hands, it
8 would be absorbed into the skin?

9 A It's absorbed down to levels that we don't
10 quantify.

11 Q Okay. And that you can't capture?

12 A I can -- I mean, I can capture trace amounts.
13 There's going to be -- there might be some lead, but it's
14 not lead that I can identify as being associated with
15 gunshot residue.

16 Q Because of what you just talked about, does
17 SLED have a policy with respect to testing GSR kits?

18 A Yes, sir. We do.

19 Q Can you explain that policy?

20 A Our policy is if a gunshot residue kit is
21 entered into the lab and the time between the suspected
22 incident and the time of the collection of the gunshot
23 residue kit is greater than six hours, we don't analyze
24 it.

25 Q In any circumstance?

1 A No, sir.

2 Q For the presence of gunshot residue?

3 A For the presence of gunshot residue, that's
4 correct.

5 Q All right. What effect -- I think you used the
6 flour example earlier in comparison to the GSR. What
7 effect would rain or perhaps emersion in a creek have on
8 the presence of GSR on someone's hands.

9 A Emersion in a creek would definitely remove it.
10 You basically dumped your hands in a vast body of running
11 water, the gunshot residue is going to go. Same with
12 rain. If you expose your hand to running water, which
13 basically that's what rain is. It's going to remove the
14 gunshot residue.

15 Q What effect would sweating potentially have on
16 GSR?

17 A Sweating can remove it. Especially if you're
18 nervous and you wipe your hands on your pants or you wipe
19 your hands on anything else, a towel that's handy, it's
20 going to remove the gunshot residue from your hands.

21 Q All right. Did you receive a GSR kit related
22 to or labeled with the subject's name of David Weiner ---

23 A Yes, sir. I did.

24 Q --- in this case? All right. Did you list
25 that as -- that's identified as SLED item 1?

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- 1 A Check my notes here real quick.
- 2 Q I'll give you the lab number in just a second.
- 3 A I've got it.
- 4 Q It's, uh, I believe --
- 5 A L-09-307.
- 6 Q 307?
- 7 A Yes, sir.
- 8 Q All right.
- 9 A I do. Item number 1 was one gunshot residue
- 10 kit from David Weiner.
- 11 Q All right. Did you also receive a GSR kit
- 12 labeled David Stephenson Boyd, II, for Item 2?
- 13 A Yes, sir. My item 2 was one gunshot residue
- 14 kit from David Steve -- I have it as Stephenson Boyd, II.
- 15 Q All right. When was that received by you?
- 16 A Excuse me. It was submitted to the lab on
- 17 12/10/2008. I got it. Bear with me here for just a
- 18 second.
- 19 Q Is that 12/2008 or 2009?
- 20 A I --
- 21 Q You said it was submitted in 12 of '08.
- 22 A Yes, sir.
- 23 Q When did you receive it?
- 24 A When did I receive it? 1/12 of '09.
- 25 Q Of '09. Okay. And that's why it's labeled '09

1 on the lab number?

2 A Yes, sir. That's correct.

3 Q Now, how were these kits packaged when you
4 received them?

5 A They were in sealed packages.

6 Q Any evidence that the package had been tampered
7 with?

8 A No, sir.

9 Q Seal still in tack?

10 A Yes, sir.

11 Q Did you test Item 1, a GSR kit from David
12 Weiner in this case?

13 A I did. I tested the swabs.

14 Q What were -- you tested the swabs?

15 A The swabs, yes, sir.

16 Q What were the results for your analysis?

17 A The results for the analysis -- and when we do
18 analysis on gunshot residue kit, we break it up into four
19 areas that we test. Right palm, right back, left palm,
20 left back. On the right palm, I found the quantities of
21 metals found are consistent with gunshot residue. He had
22 high levels of lead, high levels of antimony -- excuse me
23 -- high levels of antimony such that we would find that
24 consistent with gunshot residue from a firearm. On the
25 right back, the quantities of metals found did not

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1 indicate the presence of gunshot residue. Very low
2 levels if any at all.

3 On the left palm, quantities of metal found can
4 be associated, may be associated with gunshot residue,
5 slightly lower levels than the right palm, but still
6 metals that we associate with gunshot residue. On the
7 left back, the quantities of metals found did not
8 indicate the presence of gunshot residue.

9 Q Is that unusual for you to find GSR on one side
10 of the hand but not on the other?

11 A No, sir.

12 Q And with respect to the documentation that
13 accompanied this kit, were you able to determine whether
14 or not the time period between the suspected firing of
15 this weapon and the collection of the GSR samples from
16 Mr. Weiner were within the six-hour time frame?

17 A It was.

18 Q Okay. Did you test item 2, the GSR kit from
19 David Boyd for the presence of GSR in this case?

20 A No, sir. I did not.

21 Q Why not?

22 A It was taken beyond the six-hour time limit.

23 Q All right. And according to your
24 documentation, what was the time limit between the
25 suspected incident of the firing of the weapon and the

1 collection of the kit?

2 A What I have on my documentation -- and the
3 documentation that I'm using is the GSR analysis
4 information form. Officers filled this out so that we
5 know what times basically what happened. What I have is
6 that the date the shooting occurred was 12/10 of 2008 at
7 11:50 in the morning. The time of the collection was
8 12/10/08 at 18:28, which is almost 6:30.

9 Q All right. So that is more than six hours from
10 the time. That's why you did not test this item for GSR;
11 correct?

12 A That's correct.

13 Q At my request, did you examine item 2 for
14 anything other than GSR?

15 A Yes, I did.

16 Q What analysis did you use?

17 A I was requested to look for the presence of
18 MAAQ on the gunshot residue kit from Mr. Boyd.

19 Q And using some of the explanation and
20 foundation you laid already with respect to the
21 difference between those two kits, can you tell us first
22 of all the likelihood that you would have been able to
23 identify MAAQ and then ultimately why you did it.

24 A I was asked to look for, you know, red dye on
25 the particle lifts and the swabs from Mr. Boyd's gunshot

1 residue kit. Uh, as with any examination that looks for
2 MAAQ, it starts with a visual examination. The swabs
3 could not be analyzed for MAAQ.

4 Q Why is that?

5 A The swabs, when they are treated with nitric
6 acid, nitric acid reacts badly, to put it mildly, with
7 the instrumentation that we use to analyze for MAAQ. In
8 fact, it would, first of all, ruin the column that we use
9 to test for it. Then it would ruin my instrument,
10 thereby preventing me from doing other analysis or any
11 analysis on that instrument ever again.

12 Q Is that instrument, is that what you referred
13 to earlier as the GCMS?

14 A The GCMS, yes, sir. Nitric acid would kill it.
15 The particle lifts, I examine visually. On one particle
16 lift, I found a red spec.

17 Q When you say you examined it visually, is that
18 with your naked eye or did you use any kind of
19 instrumentation?

20 A I examined it with my naked eye first hoping
21 that I would see big red splotches.

22 Q Okay. You know, I could be able to see it
23 easily. When I didn't see big red splotches, I had to
24 take it to a stereo microscope which is what everybody
25 uses in chemistry, in high school or biology and high

1 school. It's just plain old stick-something-underneath-
2 it-and-shine-the-light-on-it microscope. In this case, I
3 found a red spec on the left palm labeled particle lift.
4 I retrieved that spec, dissolved it in acetone, ran it on
5 the GS mass spec and it was not MAAQ.

6 Q And as we -- I think as you testified before,
7 the lifts that are used in the GSR kit on the hands do
8 not contain any of the acetone used to extract MAAQ; is
9 that correct?

10 A That's correct.

11 Q So the likelihood of picking up bank dye or
12 MAAQ, even if it were present on hands, would be
13 difficult to say the least?

14 A It would be unlikely.

15 Q What about with the nitric acid on the swabs?

16 A I don't want to say it is impossible. It is
17 improbable.

18 Q Is this the first time you ever tested any part
19 of the GSR kit for the presence of MAAQ?

20 A Yes, sir. It was.

21 Q All right. Mr. Roberts, please any questions
22 that Mr. Johnson or Mr. Erwin have.

23 THE COURT: Mr. Johnson.

24 MR. JOHNSON: Thank you. I would like to
25 mark this as a defense exhibit.

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1 THE COURT: All right. Defense Exhibit what

2 now?

3 MR. JOHNSON: 9.

4 THE COURT: 9?

5 MR. JOHNSON: Excuse me, Your Honor.

6 (WHEREUPON, Defendant's Exhibit 9 is marked for
7 identification purposes.)

8 THE COURT: All right then. It's so marked.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q Now, Mr. Roberts, this is your report from the,
12 uh, test you did on the GSR for the MAAQ?

13 A Yes, sir. This was a copy of the report that I
14 made for the MAAQ test.

15 Q And did you give the information that you, uh,
16 communicated to the court today?

17 A With the exception of the explanation of how I
18 did it, yes, sir, it does.

19 Q Okay. Is it a reliable report otherwise?

20 A Yes, sir.

21 Q Is it within standards?

22 A Yes, sir.

23 MR. JOHNSON: I'd like to introduce this as
24 Defense Exhibit 9 into evidence, Your Honor.

25 THE COURT: Any objection?

1 MR. FRETWELL: No objection.

2 THE COURT: Okay.

3 (WHEREUPON, Defendant's Exhibit 9 is admitted into
4 the record.)

5 BY MR. JOHNSON:

6 Q Now, if you get the dye on you, how hard is it
7 to get it off?

8 A Fairly hard I would guess.

9 Q Fairly hard. Just how hard? What can you do
10 to get it off?

11 A I would have thought that it would have taken
12 something other than soap and water.

13 Q Uh-huh.

14 A Before hearing the previous expert's testimony,
15 I would have thought acetone at least.

16 Q Uh-huh.

17 A But I'll defer to his expertise because I've
18 never blown one of these up in my hands, so I don't know.
19 I would assume that I would have had to go to Home Depot
20 and buy a bottle of acetone and rinse my hands several
21 times to get it off.

22 Q So based upon your experience outside of what
23 you heard today, you --

24 A I would have thought it would have been.
25 difficult. I would have thought I would have been

1 running around with red hands for a while.

2 Q Now, have you ever testified on behalf of the
3 defense before?

4 A I've -- I want to say yes but I'm not sure.
5 I've gotten subpoenas for the defense.

6 Q Did you get a subpoena from me?

7 A Yes, sir. I did.

8 Q Uh, have you ever been asked to do tests on
9 behalf of the defense?

10 A Not to my knowledge.

11 Q This is the first time that you've been asked
12 to perform a GSR kit for the MAAQ or bank dye?

13 A Yes, sir. That's correct.

14 Q And the Solicitor asked you?

15 A Yes, sir. He did.

16 Q This guy here?

17 A Yes, sir.

18 Q Now, have you ever tested -- I assumed that you
19 tested things other than, say for instance, the GSR kit
20 for MAAQ, right?

21 A Yes, sir.

22 Q You tested clothes and things of that nature?

23 A Yes, sir.

24 Q Now, let's say you had some clothes that were
25 covered with maybe some mud or blood. Is it possible to

1 scrape that off and test it?

2 A It's possible. I would definitely give it a
3 visual examination first and look for areas that maybe
4 weren't covered with mud. It is possible to scrape it
5 off. Not having done that, I'm not sure of anything
6 other than possible.

7 Q So you would scrape it off and what you would
8 try to do is maybe get a swab with acetone and try to
9 extract something?

10 A That's correct.

11 MR. JOHNSON: Your Honor, at this time, I
12 would like to maybe publish this to the jury.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: I have nothing further at this
15 time for this witness.

16 MR. FRETWELL: Redirect, Your Honor.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. FRETWELL:

20 Q Mr. Roberts, you are a scientist. You passed
21 chemistry classes. The MAAQ compound, is that the right
22 term?

23 A Yes, sir. Compound. That's correct.

24 Q Is it molecular in nature?

25 A Yes, sir.

1 Q Okay. I'm getting a little out of my field.
2 But is it true that molecules and compounds react with
3 heat?

4 A Yes, sir.

5 Q That they can change their form from a solid
6 form to either a gaseous form or a liquid?

7 A Depending upon the heat and depending upon the
8 molecule, yes, sir.

9 Q And, uh, if a compound or molecule has been --
10 reacts with heat, it -- would you think it more likely or
11 less likely that it would adhere with a fibrous or porous
12 material?

13 A More likely.

14 Q And if that was in a cooled form or a solid,
15 even though it may be microscopic, that there would be
16 less likelihood of that bonding with that porous or that
17 fibrous material?

18 A It would be less likely to adhere to the
19 fibrous material, yes, sir.

20 Q And the removal would be easier in the solid
21 form or the gaseous form than it would be in the liquid
22 bonded form?

23 A As long as the solid isn't reacted by liquid.

24 Q Okay. All right. And so with respect to what
25 I think Mr. Johnson asked you about Mr. Dickinson's

1 testimony, the reaction, the heat, uh, from a scientific
2 basis, does that make sense that the closer you are to
3 that reaction; that heat and that MAAQ molecule, the more
4 likely you are to get more permanent stains than being
5 far away?

6 A Yes, sir. That's correct. Yes, sir.

7 Q And, uh; with any kind of dye, let's say it's
8 even something like this on the skin that seems to be a
9 permanent marker, will friction also eventually take some
10 of that off?

11 A Friction will eventually remove your skin which
12 was dyed.

13 Q Go along with it?

14 A Yes, sir. That is correct.

15 Q All right. And then, uh, all right. The
16 report that Mr. Johnson has handed to the jury.

17 A Yes, sir.

18 Q That report indicates that you tested an
19 electron particle lift and found no MAAQ; is that right?

20 A Yes, sir. That's correct.

21 Q Okay. Does that indicate that -- first of all,
22 let's be clear about this. You did not take the entire
23 lift and put that into the machine; is that correct?

24 A That's correct.

25 Q You didn't take the entire lift and rub it with

John Roberts - Redirect Examination by Mr. Fretwell

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1 acetone on a swab and put that on a machine?.

2 A No, sir. I did not.

3 Q You removed a particle under -- that you
4 observed under the microscope from that lift and then you
5 did that with acetone and put that swab into the machine?

6 A I physically removed the particles.

7 Q You physically removed the particles?

8 A Yes, sir. And put it in acetone. Extracted it
9 from that and ran it on the instrument.

10 Q Okay. So your report is indicating that there
11 in that particle, on that lift, there was no, that was
12 not MAAQ?

13 A Yes, sir.

14 Q That's the entirety of what that report means?

15 A Yes, sir.

16 Q The report doesn't mean that there is no MAAQ
17 on that lift, on the entirety of that lift, it doesn't
18 mean that there's no MAAQ on that lift?

19 A It means that I didn't find any MAAQ on that
20 lift.

21 Q Through your visual inspections?

22 A Yes, sir.

23 Q All right. It certainly doesn't mean that
24 there wasn't any MAAQ on the swabs; is that correct?

25 A That's correct.

1 Q Okay. Because you couldn't test those.

2 A That's right..

3 Q All right. And most importantly, it certainly
4 doesn't mean that wherever those swabs were in swabbing
5 the palm of whoever in this case, Mr. Boyd, that there
6 was no MAAQ on the hands or the palms or any area of Mr.
7 Boyd?

8 A That's correct.

9 Q All right. Nothing further, Your Honor.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: Brief recross.

12 RECROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q When you -- after you tested, what did you
15 suspect that particle was?

16 A I had no idea what it was.

17 Q You don't have a guess of what the particle
18 was?

19 A No, sir.

20 Q Okay. Uh, now is it customary to test certain
21 -- test certain -- say for instance, spots on -- let's
22 say you tested my jacket. You would test certain spots
23 and then you would put those results in your report?

24 A What was I testing your jacket for?

25 Q Say you were testing for dye.

1 A I would look for red spots. If I didn't see
2 any red spots, I would stop.

3 Q Now, let's say you saw red spots on my jacket.

4 A I would test that spot.

5 Q You would test that spot?

6 A Yes, sir.

7 Q And the limit of your results would be with
8 regards to that red spot?

9 A I would say the MA -- I would label your jacket
10 as item 1.

11 Q Uh-huh.

12 A MAAQ found -- was found on Item 1.

13 Q And your results would be limited to that spot;
14 is that correct?

15 A They would be limited to the spot that I found
16 on your jacket.

17 Q Now, is that customary? Is that the way
18 y'all's SLED protocol is?

19 A That's the way I write my reports, yes, sir.

20 Q Okay. Nothing further.

21 MR. FRETWELL: Just briefly on that subject,
22 Your Honor.

23 THE COURT: Sure.

24 REDIRECT EXAMINATION

25 BY MR. FRETWELL:

1 Q So you are indicated that at the conclusion of
2 that visual inspection on, let's say, an item of
3 clothing, if you don't see something that you suspect to
4 be MAAQ, your analysis ends.

5 A Yes, sir.

6 Q Is that SLED protocol?

7 A I'm not sure about that.

8 Q Let me ask you this. Is it the protocol you
9 follow in the analysis you perform in every case?

10 A Yes, sir.

11 Q Okay. Uh, slipped my mind. I apologize. Uh,
12 All right. I can't think of the question so I'll let it
13 go.

14 THE COURT: Anything else, Mr. Johnson?

15 MR. JOHNSON: No, ma'am, Your Honor.

16 THE COURT: All right, sir. You can step
17 down.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 Anybody need a break on the jury? Everybody
21 alright?

22 (WHEREUPON, the jurors respond.)

23 MR. FRETWELL: May it please the court?

24 THE COURT: Yes, sir.

25 MR. FRETWELL: Uh, can we recall Lieutenant

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1 Reinhart for a brief moment? We had to go and
2 retrieve an item of evidence. We now have it. I
3 just need to have that item marked.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: What is it?

6 MR. FRETWELL: It's item 13.1 that she spoke
7 about in her testimony.

8 MR. JOHNSON: Okay.

9 THE COURT: All right.

10 MR. FRETWELL: Very briefly.

11 THE COURT: All right. Very well.

12 MR. FRETWELL: Lieutenant Reinhart.

13 THE COURT: Ma'am, I'll remind you you are
14 still under oath.

15 **EMILY REINHART**

16 having previously been sworn, testifies as follows:

17 **DIRECT EXAMINATION**

18 **BY MR. FRETWELL:**

19 Q Lieutenant Reinhart, I want to ask you based on
20 the SLED label and the item number, is this the package
21 that you referred to earlier in your testimony that we
22 talked about being item 13.1?

23 A Yes, it is.

24 Q Okay. I want to mark that on the back where
25 there is nothing underneath the mark as State's Exhibit

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1 114.

2 MR. FRETWELL: I believe we already had the
3 testimony about what happened with that. I have no
4 other questions, Your Honor.

5 THE COURT: All right. Any questions, Mr.
6 Johnson?

7 MR. JOHNSON: No questions, Your Honor.

8 THE COURT: All right, ma'am. You can step
9 down.

10 MR. FRETWELL: Your Honor, at this time, may
11 Lieutenant Reinhart and Mr. Roberts be excused?

12 THE COURT: Any objection?

13 MR. JOHNSON: No objection at this time.

14 THE COURT: I thank you, ma'am and sir, for
15 being here.

16 MR. FRETWELL: May it please the court?

17 THE COURT: Yes, sir.

18 MR. FRETWELL: The State would call Ila
19 Simmons.

20 THE CLERK: Ms. Simmons, please place your
21 left hand on your Bible and raise your right hand.

22 ILA SIMMONS

23 having first been sworn, testifies as follows:

24 THE CLERK: Thank you. Please be seated.
25 Please state your full name for the record.

Ila Simmons - Direct Examination by Mr. Fretwell

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1 THE WITNESS: My name is Ila Simmons.

2 DIRECT EXAMINATION

3 BY MR. FRETWELL:

4 Q Ms. Simmons, are you also --

5 MR. FRETWELL: May it please the court?

6 THE COURT: Yes, sir.

7 BY MR. FRETWELL:

8 Q Ms. Simmons, are you also employed by SLED or
9 the South Carolina Law Enforcement Division?

10 A Yes, sir. I am.

11 Q And in what department are you assigned?

12 A I'm also assigned to the Trace Evidence
13 department.

14 Q Okay. And your position is also forensic
15 scientist?

16 A Yes, sir.

17 Q How long have you been a forensic scientist?

18 A 12 years.

19 Q And do your duties involve examination?

20 A Yes, sir. They do.

21 Q And would your definition of trace examination
22 mirror that of Mr. Roberts?

23 A Yes.

24 Q And that's basically evidence you can't see
25 with the naked eye?

1 A Yes, sir.

2 Q What kind of education and training have you
3 received as a trace examiner?

4 A I received a Bachelors of Science degree in
5 Chemistry. After completing that, I came to work at SLED
6 where in my first three years, I worked with a court-
7 qualified SLED certified trace evidence examiner who
8 taught me how to collect and analyze trace evidence.
9 During that time, I had to take written and practical
10 examinations and pass them all with 100 percent
11 efficiency. Then I was qualified by SLED to be a trace
12 evidence examiner.

13 Q Do your duties as a trace evidence examiner
14 include the identification analysis of MAAQ or the
15 chemical used in bank dye packs?

16 A Yes, sir. It does.

17 Q Can you describe the process that's used to
18 determine the presence of MAAQ?

19 A Yes, sir. Depending upon the evidence that we
20 will receive, we will do a visual examination of the
21 evidence. We remove the evidence from its sealed
22 container. We examine it to see if there is any red dye
23 on the item. If it's money, we would extract it using a
24 cotton swab with a small amount of acetone. We would
25 then analyze it using the gaseous chromatograph as Mr.

1 Roberts said.

2 If it were something like, I have received
3 weapons before, a firearm, I would also swab it with a Q-
4 tip and acetone and analyze it. Or clothing. We receive
5 clothing quite often to see if the clothing was in close
6 proximity to the dye pack when it discharged. We would
7 analyze it the same way. We would take clothing out.
8 Examine it. If we see red dye, we would take the swabs,
9 swab it with a little bit of acetone and then analyze it
10 using the gas chromatograph.

11 Q You testified as to what you would do if your
12 visual inspections revealed something that you suspected
13 to be MAAQ. What happens if your visual inspection does
14 not indicate something you believe to be MAAQ?

15 A If, after I examine the item, I do not find any
16 red dye or anything that looks visually consistent with
17 MAAQ, that would be the end of my examination. My report
18 that I did not find MAAQ.

19 Q What about if you -- what if it was an object
20 or article of clothing that was difficult to examine?
21 For instance, if it was stained with something else.

22 A If something were to come in like that, I would
23 do an examination, as well as the technical reviewer who
24 reviews my case. Every case that we analyze has to be
25 technically reviewed, which means someone else who is

1 qualified in that analysis has to go behind us and make
2 sure that they agree with our findings. In that sort of
3 situation, I would have that person come and inspect the
4 clothing as well. In this case, that is what happened.

5 Q Have you been qualified as an expert before?

6 A Yes, sir. I have.

7 Q Approximately how many times?

8 A Over 200 times.

9 Q In what field?

10 A In trace evidence, in all areas of trace
11 evidence that were mentioned.

12 Q Has any court failed to qualify you as an
13 expert witness?

14 A No, sir. They have not.

15 MR. FRETWELL: Your Honor, at this time, we
16 would offer Ms. Simmons as an expert in the area of
17 trace evidence.

18 THE COURT: Any objection?

19 MR. ERWIN: Brief voir dire.

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. ERWIN:

23 Q All right. Ms. Simmons, I have your statement
24 of qualifications here. Do you have a copy of this?

25 A No, sir. I do not. I provided it to you.

1 Q Would it help if gave you a copy of it?

2 A Absolutely.

3 Q I see that you mentioned that you have a BS in
4 Chemistry from Columbia College?

5 A Yes, sir. I do.

6 Q I'm sure you took a lot of chemistry classes.
7 Can you just kind of give us a couple of the advanced
8 chemistry classes that you may have taken there?

9 A Yes, sir. I took general chemistry. I also
10 took organic chemistry, which was an entire year. I had
11 to take two semesters. I also had to take biochemistry
12 and interpret the instrumental analysis where you learn
13 to use instrumentation. And I had to take physical
14 chemistry, which is how chemistry relates to physics. I
15 had to take four semesters of calculus. And I also took
16 biology courses.

17 Q Okay. Uh, I see that -- I also see that since
18 you been at SLED or at least since you been out of
19 college, you've done a lot of continuing education
20 workshops and services and things like that.

21 A Yes, sir.

22 Q A lot of things, I'm not going to try to
23 pronounce. But if you could, maybe just point out a few
24 of these that apply to what we're talking about today,
25 the MAAQ analysis.

1 A Okay. I've taken classes on mass spectral data
2 interpretation, which is the GC mass spec. It would help
3 me to look at the data that is presented from the
4 instrumentation and interpret what is present. I've also
5 taken, uh, paint examinations -- I don't believe one of
6 the courses is on here that I took -- that was hosted by
7 the FBI, as well that was a class taught by two FBI
8 chemists who analyzed bank dye. That is where the bank
9 dye originated. The FBI worked with chemist to formulate
10 it just for this specific cause. I also took a course on
11 that as well.

12 Q So it is fair to say that you are highly
13 trained in this specific area?

14 A Yes, sir. I am trained in this area.

15 Q And are you, uh, -- you a member of any sort of
16 professional associations or things like that?

17 A Yes, sir. I'm a member of the Southern
18 Association of Forensic Science, the American Academy of
19 Forensic Science. I'm also a member of the FBI's gunshot
20 residue symposium.

21 MR. ERWIN: Okay. Thank you. That's it,
22 Your Honor. I have no objections.

23 THE COURT: All right then. She'll be so
24 qualified in the area of trace evidence to give her
25 opinion testimony in that area.

1 MR. FRETWELL: May it please the court?

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION (con't)

4 BY MR. FRETWELL:

5 Q Ms. Simmons, what is the -- I think we've
6 already covered this with Mr. Roberts -- but from you,
7 what is the chemical name of the dye used in the bank
8 security devices?

9 A It's methylaminoanthraquinone.

10 Q Known as what for short?

11 A It's MAAQ.

12 Q All right. Did you examine -- I want to give
13 you what's been marked as State's, uh, 64 and 65. So 64
14 and 65. Just keeping in mind that these aren't not --
15 these items are not in evidence yet..

16 Q Okay. Can you tell whether or not you analyzed
17 these two particular items?

18 A May I take them out of the outer most
19 container?

20 Q You may. You may. You might just want to keep
21 them in your lap if you could.

22 A Okay.

23 Q And, Ms. Simmons, hold on just a minute. Hold
24 on just a minute and we'll get you some gloves.

25 A Okay. Yes, sir. I do recognize State's

1 Exhibit marked as 64.

2 Q Is that the exhibit that was also known as SLED
3 9?

4 A Yes, sir. It is.

5 Q And how was it described in the documentation?

6 A In my document, I described it as one pair of
7 jeans.

8 Q All right.

9 A But in the document when it was submitted, it
10 was described as Akademiks jeans.

11 Q Any doubt in your mind that those were the
12 jeans that you examined?

13 A No, sir. They were marked with my initials,
14 our unique identification case number as well as the item
15 number and the date that I analyzed the jeans.

16 Q What about the nature of the jeans themselves?
17 Are they distinctive?

18 A Yes, sir. They have a large quantity of blood
19 on them or what appears to be a blood substance.

20 Q All right. And in addition to the blood and
21 mud on the jeans -- if you need to unroll them down
22 there, you can. The jeans themselves, are they
23 distinctive?

24 A Yes, they have patterns on them.

25 Q Okay. All right. Did you examine that item on

1 April 9th, 2009?

2 A One moment. Let me just make sure of that just
3 for the date specific.

4 Q Sure.

5 A Yes, sir. I began my analysis on the 8th,
6 April 8th of 2009.

7 Q Okay. Let me refer you to then State's Exhibit
8 65.

9 A All right. Yes, sir. I recognize State's
10 Exhibit 65 as well.

11 Q Is that also known as SLED 10?

12 A Yes, sir. It is.

13 Q Is that also an item that you analyzed
14 beginning on April 8th of 2009?

15 A Yes, sir.

16 Q From whom did you receive those items?

17 A I'll check my custody one moment. Let me turn
18 the bag it was in. I received the items from our
19 evidence technician. Her name was Lisa Wananin.

20 Q Is that also Lisa McReynolds?

21 A Yes.

22 Q Okay. And you said she's an evidence
23 technician?

24 A Yes, she was. She has retired from SLED since
25 this case was submitted.

1 Q She would have been part of the -- were you
2 here for Lieutenant Reinhart's testimony about chain of
3 custody?

4 A Yes, sir. I was.

5 Q Would her name and what she did with the item
6 before getting it to you be recorded in that chain of
7 custody?

8 A Yes, sir.

9 Q Were all of -- were both of the items that I
10 asked you about, State's 64 and 65, were those items
11 associated with the lab number L-09-2290?

12 A Yes, sir. They were.

13 MR. FRETWELL: All right. Your Honor, at
14 this time, we would move State's 64 and 65 into
15 evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No.

18 THE COURT: All right then. They are so
19 entered.

20 (WHEREUPON, State's Exhibits 64 and 65 are admitted
21 into the record.)

22 BY MR. FRETWELL:

23 Q Ms. Simmons, did you examine -- at this point,
24 the items are in evidence. If you want to put them up on
25 the ledge in order to talk about them, you certainly may.

1 And just to -- if you don't -- have the gloves on still.
2 I'm going to ask you to come around with items too and
3 show them to the jury.

4 A Okay.

5 Q Did you examine these items for the presence of
6 MAAQ?

7 A Yes, sir. I did.

8 Q What tests were performed on these two items?

9 A I did a visual examination of both items to see
10 if any red staining was present that was consistent with
11 MAAQ.

12 Q All right. Did you perform any solvent
13 extraction?

14 A No, sir. I did not.

15 Q Why?

16 A I did not see anything -- any red stains that
17 were visually consistent with MAAQ.

18 Q All right. Was this a particularly easy visual
19 inspection or was this a difficult visual inspection?

20 A This was more of one of the most difficult
21 visual examinations I've ever done because of the
22 condition of the garments.

23 Q I'm going to clear you out a place right here.

24 A Okay.

25 Q If you want to come down with both of those

1 items, remove them from the packaging and explain why
2 this was a difficult examination.

3 Q I'll begin with State's Exhibit 64 which was
4 listed as a pair of jeans. It's okay for me to lay them
5 out here?

6 A It is.

7 Q Okay. In fact, I'm going to have you hold them
8 up.

9 A Okay. I'll do that too. I'll try and back
10 away. Okay.

11 Q All right. Can you show the Ladies and
12 Gentlemen of the jury why this was a particularly
13 difficult -- hold on just one minute.

14 MR. FRETWELL: Is something wrong, Madam Court
15 Reporter?

16 Oh, the bag's on the mic. I could tell that
17 there was a problem. There's a microphone right
18 here.

19 Apologies, Your Honor.

20 BY MR. FRETWELL:

21 Q Can you show why that was a difficult visual
22 inspection to the members of the jury?

23 A As you can see, the jeans have stains that
24 appear to be blood as well as mud. And they were stiff
25 with blood at the time of analysis. You can see that

1 there are large red splotches. But that's consistent
2 with blood. It was not consistent with visual appearance
3 of MAAQ. But it was still very difficult to see if under
4 the larger areas of blood if a spot or stain had been
5 under there, I wouldn't have been able to see it.

6 Q That was what my question was going to be is
7 what effect does that blood or that mud have on your
8 ability to do your visual inspection?

9 A It can. It can obscure any stain that may have
10 been under a very large thick area of blood.

11 Q And the patterns that you described being on
12 the jeans, can you show what patterns you're talking
13 about?

14 A The patterns here.

15 Q These jeans appear to have been cut. Is that
16 correct?

17 A Yes, that was prior to submission.

18 Q Is that consistent with being cut off, let's
19 say, in a medical situation, you would cut the clothing
20 off of an individual?

21 A We received clothing like that quite often when
22 someone has sustained an injury. When the EMTs arrive,
23 they try to remove the clothing so that they can render
24 aid.

25 Q You want to set that back down on that paper.

1 Could you do the same with, uh, State's 65, that being --
2 you just looked at State's 64 for the record. Now,
3 State's 65..

4 A This was the gray shirt that was also
5 submitted. It was also cut as you can see. You notice
6 there are large areas of blood that are a blood-like
7 substance that are present which may have obscured a
8 stain had it been present. There's also mud and blood
9 stains.

10 Q Obviously, the smaller the stain, the less
11 likely you would --

12 A Right.

13 Q Is there any way to remove the blood to render
14 further examination?

15 A It's very difficult to remove blood from
16 clothing. Just in personal experience, if you have a cut
17 or something like that, it's very difficult to get it
18 out. If you bleach it or do something like that, it can
19 generally remove or damage any evidence that may be
20 underneath the clothing. You can bleach it or treat it
21 with something like 409 or Shout or something like that.

22 Q Is there a SLED protocol for trying to remove
23 blood for purposes of seeing what's underneath that
24 blood?

25 A No, sir. We do not have a protocol for that.

1 Q So basically, is it possible for bank dye to
2 exist on clothing and escape detection?

3 A It is possible.

4 Q Uh, does SLED check for the presence of tear
5 gas in articles submitted for the analysis of the
6 presence of bank dye?

7 A We do not. Tear gas is a gas. It dissipates
8 so quickly that if I were to stand near something, you
9 may see the lapidations start. I may start tear up. I
10 may -- my sinuses may open up. But within an hour or so,
11 you won't be able to detect it on my clothing or my skin
12 or anything. It would be just from the fresh air. It
13 would dissipate away.

14 Q Would water assist in that dissipation?

15 A Yes, sir.

16 Q Rain, if you were to go swimming in the ocean,
17 would that assist in the dissipation of this tear gas?

18 A Yes.

19 Q All right. Does your examination of these
20 items and your conclusions mean that the person wearing
21 these items was not in the vicinity of a bank security
22 dye pack?

23 A No, sir. It does not.

24 Q Okay. All right. You can leave those there
25 and retake your place on the witness stand.

1 A Leave these here as well.

2 Q Ms. Simmons, did you also analyze, let's take
3 first May 19th, what is known as SLED 11, trace evidence
4 from the front of MF3 and on May 26th, SLED 18, described
5 as a blue long-sleeved t-shirt, MF3?

6 A Yes, sir. I did.

7 Q All right. Uh, from whom did you receive these
8 items?

9 A They were both received from Chris T. Miller of
10 Greenville County Sheriff's Office. That's who submitted
11 them in to the laboratory for analysis.

12 Q Chris T. Miller?

13 A Yes, that's how it's listed. That's how it's
14 listed on my paperwork.

15 Q And these were in a concealed condition?

16 A Yes, sir. They were when I received them.

17 Q Were all of these items associated with lab
18 number L-09-2290?

19 A Yes, sir.

20 Q All right. Did you examine these items for the
21 presence of MAAQ?

22 A Yes, sir. I did.

23 Q What was the result of your analysis?

24 A No MAAQ was found on either item.

25 Q Were you able to determine what caused some

1 pinkish red marks on Item 18?

2 A From a visual examination, it appeared that it
3 was a dark blue shirt that had gotten some sort of
4 bleaching agent on it. You know that if you get bleach
5 on a pair of dark jeans, then it will bleach a big white
6 spot and around the edges, it would look reddish pink.
7 That is what it appeared to be.

8 Q It was not MAAQ?

9 A No, sir. I did not find any MAAQ on those
10 items.

11 Q Going back to the description of SLED 18 and
12 from your recollection of testing it, this was like a
13 long sleeve t-shirt; is that correct?

14 A Yes, sir. It was a Nautica brand.

15 Q Nautica brand. Not a sweatshirt?

16 A No, sir. Not according to my analysis. It was
17 a long sleeve t-shirt type material similar to the t-
18 shirt type material that I just showed you.

19 Q And not a -- it didn't have a hoodie on it?

20 A No, sir.

21 Q All right. Were you able to determine what
22 SLED item 11 was that was the trace evidence extracted
23 from the front of the t-shirt?

24 A It was a small piece of material that when I
25 analyzed it on our instrumentation came back as aluminum.

1 So it looked almost like a piece of gum wrapper or
2 aluminum foil. It had some small blue fibers on it which
3 mostly came from the fact that it came from the front of
4 a blue t-shirt.

5 Q Just to be clear, and again, my sinuses are
6 kind of hurting today. Did you say a gum wrapper or gun
7 wrapper?

8 A Gum. Like a piece of tin foil. That's just an
9 example. It could have been from a candy wrapper or
10 anything that was a small piece of aluminum type foil.

11 Q And you are trained in GSR recognition and
12 analysis. Did this item number 11 have any relation to
13 gunshot residue?

14 A I did not test it for a relationship to gunshot
15 residue.

16 Q In your observation of it and your experience
17 with both gunshot residue and this item, does it appear
18 to be related at all to gunshot residue?

19 A I analyzed it on the scanning electron
20 microscope, which is what we use to analyze gunshot
21 residue and no lead, no barium and no antimony were
22 found.

23 A Thank you. Please answer any questions that
24 Mr. Johnson or Mr. Erwin may have for you.

25 THE COURT: All right. Mr. Erwin.

1 MR. ERWIN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ERWIN:

4 Q Ms. Simmons, there's been a lot of discussion
5 about the process of testing an item for the presence of
6 MAAQ. That process comes from SLED protocols; correct?
7

8 A Yes, sir.

9 Q And those protocols are sim -- are they similar
10 to those used by another agency, for example, the FBI?

11 A They would be similar. They are not exactly.
12 We use, like the FBI, ASTM and AFT as guidelines for our
13 protocols. They would be similar.

14 Q So SLED developed their protocols in part from
15 FBI protocols?

16 A Yes, sir.

17 MR. ERWIN: Okay. If you would, mark these
18 as 10, 11, 12.

19 (WHEREUPON, Defendant's Exhibit 10, 11, and 12 are
20 marked for identification purposes.)

21 BY MR. ERWIN:

22 Q Ms. Simmons, I'm going to show you what I just
23 had marked as Defendant's 10, Defendant's 11 and
24 Defendant's 12. Take a look at those. You recognize
25 what those items are?

1 A Yes, sir. I do.

2 Q Those are reports that were generated after
3 your analysis; correct?

4 A Yes, sir.

5 Q Okay. Uh, let's talk about those. What's the
6 function of a report like that?

7 A After completing our analysis, we have to get
8 the results of our analysis back to the agencies that
9 submitted the evidence to us. So we construct a
10 formulated report and send these to the agencies that
11 submit the evidence to our laboratory.

12 Q Also if you are going to use those reports at
13 trial, it could be several years later, right?

14 A That's a possibility.

15 Q It's also to help you -- help everybody
16 remember what the results of your tests were.

17 A Yes, sir.

18 Q Those were made near the end or at the end of
19 the analysis you performed?

20 A Yes, sir. Generally, I had completed all of my
21 analysis and my technical reviewer has reviewed over my
22 results and I construct the report.

23 Q And that's something that SLED and you, in
24 particular, do in the regular course of business.

25 A Yes, this is SLED protocol in our laboratory.

1 MR. ERWIN: Your Honor, I move to enter, uh,
2 Defense Exhibits 10, 11 and 12 into evidence.

3 THE COURT: Any objection?

4 MR. FRETWELL: No objection.

5 THE COURT: All right then. They are so
6 entered.

7 (WHEREUPON, Defendant's Exhibits 10, 11, and 12 are
8 admitted into the record.)

9 BY MR. ERWIN:

10 Q I'm going to let you hang on to these for just
11 a second. We're going to go through these and I'm going
12 to start with the most recent chronologically. So that's
13 the one that's labeled May 26th, 2011.

14 A Yes, sir.

15 Q Okay. So, uh, looking at this report, this
16 means that you got an item and it was a blue long-sleeved
17 t-shirt?

18 A Yes, sir.

19 Q And you analyzed that item for the presence of
20 MAAQ?

21 A That's correct.

22 Q And, uh, there was no MAAQ present?

23 A That's correct.

24 Q And that's reflected in your report?

25 A Yes, sir.

1 Q I'm going to now go back to the May 19th report
2 -- May 19th, 2011.

3 A Okay.

4 Q That is -- it was trace evidence from the front
5 of item MF3?

6 A Yes, sir.

7 Q And item MF3 was the blue shirt that we just
8 talked about a second ago.

9 A That's correct.

10 Q So this report means that you visually examined
11 the item for the presence of MAAQ?

12 A Yes, sir.

13 Q You did not find any?

14 A I did not.

15 Q Okay. Now, go back two years to April 9th,
16 2009.

17 A Yes, sir.

18 Q There's three items on this report; correct?

19 A Yes, sir.

20 Q The first one is two dye packs.

21 A Yes, sir.

22 Q They were red; correct?

23 A Yes, sir. They had discharged.

24 Q The dye that you saw on those dye packs, that's
25 consistent with the kind of dye that's usually used in

1 bank dye packs.

2 A Yes, sir.

3 Q MAAQ?

4 A Yes, sir.

5 Q The second item, item 9.

6 A Yes, sir.

7 Q It's a pair of jeans.

8 A Yes, sir.

9 Q You visually examined it for the presence of
10 MAAQ?

11 A Yes, sir. I did.

12 Q You did not find it?

13 A Did not.

14 Q Okay. The third item, the gray shirt, you
15 visually examined it for the presence of MAAQ?

16 A Yes, sir.

17 Q You did not find it?

18 A That's correct.

19 Q Now, there's been some discussion about the
20 condition of those last two items, the jeans and the
21 shirt.

22 A Yes, sir.

23 Q They had mud on them?

24 A Yes, sir.

25 Q They had blood on them?

1 A Yes, sir.

2 Q Were they 100 percent covered with blood?

3 A No, sir. They were not..

4 Q So there was some area that wasn't covered with
5 blood?

6 A Yes, sir. That's correct.

7 Q And there wasn't any -- you found no MAAQ in
8 those areas?

9 A That's correct.

10 Q For both of these items, the shirt and the
11 jeans?

12 A Yes, sir. That's correct.

13 Q Okay. So you weren't able to find MAAQ, but if
14 you had found a spot that you thought was MAAQ, it sounds
15 like from earlier testimony, the next step would be --
16 you would have to confirm that that spot was indeed MAAQ?

17 A Yes, sir.

18 Q And so you'd have to separate that spot from
19 the material that it's on?

20 A Yes, sir.

21 Q The way you would do that was using a swab
22 with, is it acetone?

23 A Yes, sir. We use acetone. Some laboratories
24 also use chloroform.

25 Q But both of those things are, they are

1 solvents, right?

2 A Yes, sir.. Acetone is one of the components in
3 fingernail polish remover.

4 Q Okay. And the reason that you need to use a
5 solvent to remove the dye is because the dye is not water
6 soluble; correct?

7 A That's correct. It doesn't -- it would not
8 come off. If you took a swab with just water on it and
9 swabbed it over the clothing, it wouldn't come out with
10 just water.

11 Q Okay. So if the -- if the dye had attached to
12 clothing, water would not get it off?

13 A No, sir.

14 Q Okay. So let's talk about how the dye sticks
15 to different materials.

16 A Okay.

17 Q Is skin, as compared to cloth, skin sticks to
18 it better or not as good as cloth?

19 A It would probably adhere similarly.

20 Q Okay.

21 A But since cloth is so porous and can actually
22 absorb something where your skin is, it's just going to
23 be a surface stain, like if you were using a magic marker
24 and you got it on your hand, you'll notice that it will
25 stay there for a while. But eventually, as your skin

1 cells start coming off, it will go away. It would be
2 snuffed off of skin more easily than it would clothing
3 because it's going to permeate into the fibers of
4 clothing.

5 Q So how about metal as compared to how the dye
6 sticks to cloth, does it stick more to metal or less to
7 metal?

8 A It would stick less to metal because metal is
9 not porous. It would be absolutely surfaced. It would
10 not stick to metal as well. It would be easier to remove
11 it from metal than it would skin or clothing.

12 Q Okay. So if we were going to put those in
13 order of how well they stick or how well dye sticks to it
14 starting with the easiest to stick and moving down, it
15 would go cloth.

16 A Yes, sir.

17 Q Then skin?

18 A Yes, sir.

19 Q And then metal, ---

20 A Yes, sir.

21 Q --- is that right?

22 A Yes, sir.

23 Q Okay. So as a trace evidence analyst,
24 scientist, you've seen people -- at a crime scene or
25 after a crime, have you ever seen the practice of bags

1 being placed on somebody's hands?

2 A Yes, sir.

3 Q And that is -- what's the purpose of that?

4 A It's to retain any evidence that potentially
5 may be on the hands so that it doesn't get knocked off or
6 removed in some way.

7 Q So the idea is that it's going to preserve any
8 sort of trace evidence that's on the hands?

9 A Yes, sir.

10 Q Okay.

11 MR. ERWIN: I want to publish these to the
12 jury.

13 THE COURT: All right.

14 MR. ERWIN: And I don't have any more
15 questions.

16 THE COURT: Mr. Fretwell?

17 MR. FRETWELL: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. FRETWELL:

20 Q Ms. Simmons, first of all, the items that have
21 been just submitted to the jury by the defense, those are
22 your reports?

23 A Yes, sir.

24 Q And they basically contain the conclusions, the
25 ultimate conclusions of your findings; is that correct?

1 A Yes, sir.

2 Q They don't contain any of the explanation that
3 you provided here in court today?

4 A No, sir. We do not -- we do not include our
5 scientific protocol into the reports because it would be
6 50 pages long probably.

7 Q Okay. And in fact, you retain your own
8 personal private notes from what you do in a particular
9 case at your laboratory?

10 A Yes, sir.

11 Q And your chain of custody, that's how you got
12 the name of Ms. McReynolds or Lisa --

13 A Wananin, yes, sir.

14 Q Wananin.

15 A Yes, sir.

16 Q And that information is not contained in these
17 reports?

18 A No, sir. It is not.

19 Q Now, Mr. Erwin asked you about the dye
20 attaching to clothing. Were you present this morning
21 for, uh, Mr. Dickinson's explanation of dye packs and how
22 they activate, et cetera?

23 A Yes, sir. I was.

24 Q And do you know how in the dye pack, if the dye
25 starts off as a liquid form or a solid?

1 A I'm not certain, sir.

2 Q Okay. If it starts off as a solid and the heat
3 element is introduced to this compound called MAAQ ---

4 A Yes, sir.

5 Q --- uh, a chemical reaction would occur; is
6 that correct?

7 A Yes, sir. That is correct.

8 Q All right. And that the likelihood of it
9 bonding with porous fibrous materials would be like --
10 would be higher the closer you got to that heat source;
11 is that correct?

12 A Yes, sir. Because the heat would dissipate --
13 as it was in, you know, an open environment, the heat
14 would drop. Just like if you were to take something off
15 of a stove and set it on a counter, the heat is going to
16 drop quickly. The closer you are to the item, the closer
17 you would be to the heat. You wouldn't burn yourself on
18 something that had been sitting out for a while.

19 Q And the substance MAAQ, uh, that's a substance
20 that's used also by the military, is that correct, in
21 their smoke grenades? Is that correct?

22 A I'm not certain about that.

23 Q Okay. But you are aware that in the bank
24 security devices, that there's a red smoke that goes up
25 to kind of single where the person is?

1 A Yes, sir.

2 Q Okay. Uh, and that -- that smoke that contains
3 the red particles.

4 MR. JOHNSON: Your Honor, this is his
5 witness. If he wants to ask her a question -- I've
6 been kind of waiting. But he needs to ask her
7 questions rather than testify.

8 MR. FRETWELL: I'm just trying to speed the
9 process up.

10 THE COURT: All right. And if your objection
11 is to leading, I'll sustain that objection.

12 MR. JOHNSON: Okay. Thank you, Your Honor.

13 BY MR. FRETWELL:

14 Q Would -- would, uh, the attachment of, uh,
15 MAAQ, uh, depend on whether or not it was in the liquid,
16 gaseous or solid form?

17 A Yes, sir. It would.

18 Q And the attachment that you were talking about
19 with respect to Mr. Johnson with clothing is in what
20 form?

21 A It would have had to have been in a liquid form
22 to get on the fabric and permeate into the fabric, a
23 solid would not go through the fabric.

24 Q Okay. And then finally, with respect to the
25 bags that Mr. Johnson asked you about, uh, -- I'm sorry.

1 Mr. Erwin asked you about. My apologies. Uh, would it
2 matter to you whether or not those bags were torn?

3 A If they were torn, then generally, the trace
4 evidence that they were trying to preserve could escape.
5 That's a possibility.

6 Q So that would make a difference?

7 A Yes, sir.

8 Q And when -- how soon after the occurrence, like
9 the firing of the gun, et cetera, should those bags be
10 put on?

11 A As quickly as possible.

12 Q Or else what?

13 A Any trace evidence that is present could
14 possibly be lost.

15 MR. FRETWELL: No other questions, Judge.

16 MR. ERWIN: Brief recross.

17 THE COURT: Certainly.

18 **RECROSS-EXAMINATION**

19 **BY MR. ERWIN:**

20 Q In addition to your report, Mr. Fretwell was
21 talking about some notes that you keep and about your
22 protocols and everything that you went through. There's
23 nothing contained in those notes that changes the final
24 answer of these reports?

25 A No, sir. The notes that I contain in my case

1 file are generally notes from observations I make during
2 my analysis.

3 Q Okay. And as we talked about when you first
4 got on the stand, you are highly trained. You are -- you
5 know, you've got a lot of education and experience in
6 this particular field. Your statement when you said that
7 MAAQ is not water soluble, your observations about what
8 it would and would not stick to, that comes from your
9 education and experience, right?

10 A Yes, sir. It comes from the fact that I have
11 analyzed hundreds of standards of MAAQ, which is just a
12 concentrated standard. I put it on different items.
13 We've seen how it can and can not be removed. I've
14 received different types of items that have had MAAQ on
15 it. I've had to remove them.

16 Q Okay. Thank you.

17 MR. FRETWELL: No questions, Judge.

18 THE COURT: All right. Ma'am, you can step
19 down.

20 MR. FRETWELL: And Your Honor, may this
21 witness be excused.

22 THE COURT: Certainly. Certainly.

23 THE WITNESS: Thank you.

24 THE COURT: I'll tell you what. Even though
25 we're getting closer to the lunch hour, let's take a

1 quick break. I'll ask you to step to your jury
2 room.

3 THE BAILLIFF: Your Honor, the evidence.

4 THE COURT: Oh, they are not finished. I'm
5 so sorry. I apologize. If y'all want to finish
6 reviewing that before we take a break, that's fine.
7 (WHEREUPON, there is a pause.)

8 THE COURT: All right. Ready for a break?
9 Thanks.

10 (WHEREUPON, the jury exits at approximately
11 11:56 a.m.)

12 THE COURT: Mr. Fretwell, just for planning
13 purposes, how many more witnesses do you anticipate?

14 MR. FRETWELL: Two, Your Honor.

15 THE COURT: Two. You think we'll be able to
16 get them in before lunch?

17 MR. FRETWELL: Absolutely.

18 THE COURT: All right. Okay. We'll be in
19 recess for maybe 10 minutes.

20 Yes, sir.

21 MR. JOHNSON: Should I try to get my
22 witnesses to be here right after lunch?

23 THE COURT: That would probably be -- that
24 sounds like that would be our time table. You think
25 they can be here by then?

1 MR. JOHNSON: I just have to send them some
2 text messages and make sure we're good.

3 THE COURT: I'll tell you what, let's take a
4 break until about 10 after. We've got a little
5 technical situation to take care of too. So we may
6 have to take a little bit longer.

7 MR. FRETWELL: Judge, just to clarify. I
8 certainly know we can get the majority of my last
9 witness' testimony in if we stop at one o'clock or
10 1:15, I'm just not certain based on what time.

11 THE COURT: Okay. Well, they've been eating
12 crackers and all kind of stuff. So unless we --
13 that's my understanding.

14 MR. FRETWELL: Okay.

15 (WHEREUPON, a short recess is taken.)

16 THE COURT: All right. We ready to bring the
17 jury back in?

18 MR. FRETWELL: Yes, Your Honor.

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: All right.

21 (WHEREUPON, the jury enters at approximately
22 12:16 p.m.)

23 THE COURT: All right. Mr. Fretwell, you
24 ready to call your next witness?

25 MR. FRETWELL: Yes, ma'am. The State would

1 call Verona Gibson.

2 THE CLERK: Ms. Gibson, please place your
3 left hand on the Bible and raise your right hand.

4 VERONA GIBSON

5 having first been sworn, testifies as follows:

6 THE CLERK: Thank you. Please be seated.
7 Please state your full name for the record.

8 THE WITNESS: Verona Gibson.

9 DIRECT EXAMINATION

10 BY MR. FRETWELL:

11 Q Ms. Gibson, are you also employed by SLED?

12 A Yes, sir.

13 Q And what is your position at SLED?

14 A I am a Forensic Technician in the DNA Evidence
15 Processing Department.

16 Q First of all, tell us what a forensic
17 technician and DNA processor does.

18 A Uh, a forensic technician is we assist the
19 analyst or perform tasks to, uh, get the evidence to the
20 analyst. Evidence processing is the department where
21 larger items such as bed linens, clothing, car parts,
22 just anything larger than about the size of a piece of
23 standard computer paper would come to us. We would look
24 for bodily fluids. Sometimes we process for ownership,
25 touch DNA or hairs.

1 Q Okay. And how long have you been a forensic
2 technician?

3 A A little over three and a half years.

4 Q You talked about processing large items. How
5 do you process a piece of evidence to determine
6 ownership?

7 A Ownership. Basically, we're looking for skin
8 cells. Can't visualize them but you take a single use
9 scraper, scrape down the areas that probably most touch
10 the body with clothing such as a shirt. It would
11 probably be the neck, the underarm areas, pants or the
12 waistband, socks. It's usually the interior of the
13 socks. Gloves. It's usually the interior of the gloves,
14 if we can determine interior or exterior. If not, we
15 could do both the interior and exterior. Uh, we scrape
16 those. We swab the item, the scraper we use and the
17 paper we scraped onto. Then we forward that on to DNA.

18 Q So your ownership refers to the DNA, is that
19 correct, and not the item in which the DNA is taken?
20 Does that make sense?

21 A No, sir. I'm sorry.

22 Q You talking about ownership of the DNA itself;
23 is that right?

24 A Correct. Yes.

25 Q Have you testified for a jury as a forensic

1 technician before?

2 A Yes.

3 Q Approximately how many times?

4 A Somewhere around 17.

5 Q Okay.

6 MR. FRETWELL: At this time, Your Honor, we
7 would offer Ms. Gibson as an expert in forensic
8 evidence processing. Just one second. (Pause.)

9 We would offer, uh, Ms. Gibson, as an expert in
10 forensic evidence processing.

11 THE COURT: All right. Any objection?

12 MR. JOHNSON: No objection.

13 THE COURT: All right then. Ladies and
14 Gentlemen, she will be so qualified in forensic
15 evidence processing to give her opinion in that
16 area. All right.

17 BY MR. FRETWELL:

18 Q Ms. Gibson, did you, uh, process items of
19 evidence at SLED related to lab number L-09-02290?

20 A I did, yes, sir.

21 Q Okay. Let me show you, if I can find it,
22 State's 29. State's 29. All right. That item is not in
23 evidence yet. While you are at it, I also want you to
24 look at State's 92. Uh, just down in your lap or
25 whatever, if you can look at those two items and

1 determine whether or not you analyzed or processed those
2 items.

3 A (Reviewing.) Yes, sir. It's the item that I
4 processed.

5 Q Both of those items?

6 A The first one. State's Exhibit -- I'm sorry.
7 29.

8 Q Is that also -- let's take one at a time. Is
9 that -- State's Exhibit 29, is known also as SLED item 4?

10 A Yes, sir. It is.

11 Q Is it described as a bandana?

12 A Yes, sir.

13 Q How can you recognize that item as being one
14 that you processed?

15 A My initials, the item number, the SLED lab
16 number are on the item itself. The paper that it's
17 wrapped in, which I used to process it, has all that same
18 information as well as the date that I processed it and
19 the envelope that it was sealed in has, uh, my name, my
20 initials and the date that I sealed it on there.

21 Q When you say the item yourself, you're talking
22 about it's actually on the bandana?

23 A It's on the fabric of the bandana, yes, sir.

24 Q Okay. Then also looking at State's 92.

25 A (Reviewing.) Yes, sir. This is item 30 -- I'm

1 sorry -- our item 13, yes, sir.

2 Q SLED 13?

3 A Yes, sir.

4 Q That's also been marked as State's 92; is that
5 correct?

6 A Yes, sir. That is correct.

7 Q And did you process or analyze this item?

8 A I did, yes, sir.

9 Q How do you know that?

10 A Same way. My initials, the item number and the
11 SLED lab number are on the item, the paper and the
12 package it was contained in.

13 Q And you analyzed and processed SLED item 13,
14 State's Exhibit 92. What is that item?

15 A It's a sock.

16 Q Is it anything more than just a sock?

17 A Uh, according to my notes, it has one eye
18 attached to it and possible glue spots on the item. It
19 kind of appeared to be maybe a sock puppet at one time.

20 Q Is that how you described it to me before?

21 A Yes, sir.

22 Q All right. Uh, were both of these items --
23 first of all, dealing with State's 92, the bandana, was
24 that received in September of 2009? I'm talking by you.

25 A By me or by SLED?

1 Q When did you receive it?

2 A I received it on 9/28 of 2009.

3 Q Okay.

4 A Yes, sir.

5 Q Then when did you receive the SLED item 13,
6 State's Exhibit 92?

7 A On 5/19 of 2011.

8 Q All right. Did you receive both of these items
9 from evidence control personnel within SLED?

10 A Yes, sir.. I did.

11 Q And would that information and the tracking of
12 those items from evidence control to you be listed on the
13 chain of custody?

14 A Yes.

15 Q And would the movement from you of these items
16 to anyone else, would that also be contained in the chain
17 of custody?

18 A Yes, sir.

19 Q All right.

20 MR. FRETWELL: Your Honor, at this time, we
21 would move State's 29 and 92 into evidence.

22 THE COURT: Any objection?

23 MR. JOHNSON: Just, uh, --

24 THE COURT: Other than those that are prior
25 -- that had been previously noted?

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1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: All right. And those are noted
3 on the record. All right. They would be so
4 admitted.

5 (WHEREUPON, State's Exhibits 29 and 92 are admitted
6 into the record.)

7 BY MR. FRETWELL:

8 Q Ms. Gibson, did you receive these items in a
9 sealed condition?

10 A I did, yes, sir.

11 Q Let's start with SLED 4. Did you process SLED
12 4 also known as State's 29 for the presence of DNA?

13 A Uh, yes, sir.

14 Q Okay. Did you collect any potential DNA from
15 that item?

16 A I took a swab from that item.

17 Q Is that fair to say that's collecting potential
18 DNA?

19 A Potential DNA, yes, sir.

20 Q Okay. What did you do with the potential DNA
21 sample that you collected?

22 A It was sealed into a coin envelope with my
23 initials and the date on the back, placed into a heat
24 sealed pouch and that was placed in a DNA drawer.

25 Q And you labeled that item as what?

1 A Uh, item 4.1 and 4.2...

2 Q Okay. Let me refer you to what's been marked
3 as State's Exhibit 113. Is that the item you are
4 referring to as 4.1?

5 A Yes, sir. It is.

6 Q What was -- in the description, what was item
7 4.1?

8 A It is a swab from scraping the entire item,
9 item 4.0.

10 Q And also, uh, you sealed that and you forwarded
11 that on to --

12 A I placed it into a DNA drawer.

13 Q What happened -- what happened once you put it
14 in a DNA drawer?

15 A It is in a secure location that only the DNA
16 department can get into. The analyst that's assigned the
17 case will go in and retrieve that evidence. Then she
18 would process evidence.

19 Q All right. Let's look at State's 92 or SLED
20 13, the sock puppet.

21 A Okay.

22 Q All right. Did you also process that item?

23 A I did, yes, sir.

24 Q All right. And did you remove -- how did you
25 process it?

1 A That item, I scraped as well. I scraped the
2 interior and the exterior of that item.

3 Q All right. And speaking specifically about the
4 exterior of the item.

5 A Yes, sir.

6 Q Did you swab it in that same manner that you
7 described?

8 A Yes, sir. I scraped it down with the single
9 use scraper, swabbed the item, the scraper and the paper
10 that I scraped onto.

11 Q And how did you label that item?

12 A That item is 13.1.

13 Q Okay. Let me refer you to what's been
14 identified as State's Exhibit 114. Is that the item that
15 you, uh, packaged?

16 A Yes, sir. It is.

17 Q And described as the swabbing from the exterior
18 of the sock?

19 A Yes, sir.

20 Q Okay. Did you also, uh, -- did you also put
21 item 13.1 in that same DNA drawer that is accessible by
22 the DNA analyst?

23 A No, sir. That sub-item went directly to the
24 DNA analyst that was assigned to the case.

25 Q And who was that?

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1 A Lilly Gallman.

2 Q Thank you, ma'am. Please answer any questions
3 that the defense may have.

4 THE COURT: Mr. Erwin?

5 MR. ERWIN: Your Honor, I don't have
6 questions.

7 THE COURT: All right. Ma'am, you can step
8 down.

9 MR. FRETWELL: May Ms. Gibson be excused,
10 Your Honor?

11 THE COURT: Any objection to that?

12 MR. JOHNSON: No objection.

13 THE COURT: All right. Ma'am, thank you for
14 being here.

15 MR. FRETWELL: Your Honor, we would call at
16 this time Lilly Gallman.

17 THE CLERK: Ms. Gallman, please place your
18 left hand on the Bible and raise your right hand.

19 LILLY GALLMAN
20 having first been sworn, testifies as follows:

21 THE CLERK: Thank you. Please be seated.
22 Please state your full name for the record.

23 THE WITNESS: My name is Lilly Smalls
24 Gallman.

25 DIRECT EXAMINATION

1 BY MR. FRETWELL:

2 Q Ms. Gallman, by whom are you employed?

3 A I'm employed with the South Carolina Law
4 Enforcement Division as Forensic Scientist..

5 Q All right. And how long have you been a
6 forensic scientist?

7 A January 17th will be 22 years.

8 Q Okay. Do your duties involve DNA analysis?

9 A Yes.

10 Q And how long have you analyzed DNA for the
11 South Carolina Law Enforcement Division?

12 A 22 years.

13 Q What education and training have you had as a
14 forensic DNA analyst?

15 A I received a degree in Biology from the
16 University of South Carolina. And once I received my
17 degree, I continued working in the area of molecular
18 genetics at the University. I began working with the
19 South Carolina Law Enforcement Division on January 17th,
20 1990 as a forensic DNA analyst.

21 Since that time, I have attended the FBI DNA
22 type schools. I've taken advance genetic courses. I've
23 taken statistics courses. All of these to help me do a
24 better job as analyst. I've been, uh, certified as a
25 commissioned police officer for the State of South

1 Carolina. I've also been trained in the area of
2 serology, which is the identification of biological
3 fluids..

4 Q All right. What does a known standard of DNA
5 mean?

6 A A known standard means that, uh, you can trace
7 this back to the individual. It could be blood, a buccal
8 swab meaning swabbing the inside of a person's mouth with
9 a Q-tip, but you know exactly where this particular piece
10 of information is coming from.

11 Q How do you generate what is known as a DNA
12 profile?

13 A Let's say, for example, with the standard from
14 an individual I would -- it's a buccal swab, a swab
15 inside the mouth, I would extract the DNA from that swab.
16 Once I've extracted the DNA, I would amplify that
17 particular sample and then generate a DNA profile.

18 Q All right. Approximately how many DNA profiles
19 have -- before I ask this, do you use that profile in DNA
20 comparison?

21 A Yes, I do. We compare standards to evidence.
22 In doing that, we're able to tell whether a person
23 matches or does not match the evidence that's been given
24 to us.

25 Q All right. Approximately how many DNA profiles

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1 have you generated and compared in your career?

2 A Thousands.

3 Q Have you been qualified as an expert in this
4 state?

5 A Yes, I have.

6 Q In what fields?

7 A In the area of DNA analysis, in the area of
8 serology and crime scene investigation.

9 Q Approximately how many times?

10 A Approximately 100 with all of those together.

11 Q Has any court failed to qualify you as an
12 expert witness?

13 A No, sir.

14 MR. FRETWELL: Your Honor, at this time, we
15 would offer Ms. Gallman as an expert in DNA analyst.

16 THE COURT: Any objection?

17 MR. JOHNSON: No objection.

18 THE COURT: All right then. She'll be so
19 qualified to give her opinion in DNA analysis.

20 BY MR. FRETWELL:

21 Q Ms. Gallman, did you analyze items related to
22 an incident date of December 10th, 2008 in lab number L-
23 09-2290?

24 A Yes, I did.

25 Q All right. Let me show you what has been

1 marked as, uh, State's Exhibit 111. State's Exhibit 111.
2 Also identified as SLED item 1. All right. Did you, uh,
3 analyze SLED item 1 or State's 111?

4 A Yes, SLED item number 1 is a buccal swab from
5 David Stephenson Boyd, II.

6 Q All right. Did you also analyze what has been
7 identified as State's Exhibit 113 or SLED 4.1?

8 A Yes, I did.

9 Q And how was SLED 4.1 described?

10 A As a swab from the bandana.

11 Q And that bandana would have been SLED 4. Is
12 that correct?

13 A That's correct.

14 Q Thus the 4.1?

15 A Yes.

16 Q And then finally, did you analyze State's
17 Exhibit 114 or also known as a SLED 13.1?

18 A Yes, I did.

19 Q All right. And that would be described as
20 what?

21 A Swab from the sock exterior.

22 Q That sock would have been SLED item 13?

23 A That's correct.

24 Q Did you receive all these items from either the
25 DNA storage locker or from evidence processing, uh,

1 technician Verona Gibson?

2 A Yes, I did.

3 Q Were these items in a sealed or secured
4 package?

5 A Yes.

6 Q What is meant by the testing procedure of
7 comparison analysis?

8 A Uh, as I stated, we receive standards and
9 evidence for the purpose of determining whether they
10 match or do not match. What we're doing, we are
11 comparing the DNA profile from the standard to the DNA
12 profile off the evidence that's generated in a particular
13 case.

14 Q Okay. I'm sorry. I was distracted for just a
15 second. Can you tell me again what is comparison
16 analysis?

17 A Comparison analysis is when you generate a DNA
18 profile from a standard and a DNA profile from evidence
19 in a particular case. Then you compare them to see
20 whether they match or they do not match.

21 MR. FRETWELL: All right. Your Honor, at
22 this time, we would move State's 111, 113 and 114
23 into evidence.

24 THE COURT: Any objection other than those
25 previously noted?

1 MR. JOHNSON: No, Your Honor. All right
2 then. - They'll be so admitted.

3 (WHEREUPON, State's Exhibits 111, 113 and 114 are
4 admitted into the record.)

5 BY MR. FRETWELL:

6 Q Ms. Gallman, did you perform comparison
7 analysis tests on those items?

8 A Yes, I did.

9 Q Were you able to identify DNA profiles from,
10 uh, some of these samples?

11 A Yes.

12 Q All right. Let's talk about SLED 1. Were you
13 able to identify a DNA profile from a buccal swab
14 identified as David Stephenson Boyd, II?

15 A Yes, I was able to generate a DNA profile from
16 the buccal swab.

17 Q Were you also able to identify a DNA profile
18 from SLED to a buccal swab from Alberto Cepeda?

19 A Yes.

20 Q Can you tell us to a reasonable degree of
21 scientific certainty what were the results of comparing
22 the samples starting with SLED 4.1, the swabbing from the
23 blue and white bandana?

24 A Okay. Am I able to read from my report?

25 Q Yes, ma'am.

1 A Okay. I compared the standards from, uh, Mr.
2 Boyd and also Mr. Cepeda to the DNA profile that was
3 developed from item 4.1. The DNA profile that was
4 developed from item 4.1 was a mixture of more than one
5 individual. But I was able to distinguish a major
6 contributor to that particular piece of evidence. So
7 based on my report, the DNA profile of the major
8 contributor to this mixture matches the DNA profile of
9 David S. Boyd, II. Then I go on when we are able to
10 attach a frequency of event or how often you would see a
11 DNA profile in a population. I'm reading from my report,
12 the probability of randomly selecting an unrelated
13 individual having a DNA profile matching a major
14 contributor is approximately 1 in 93 trillion.

15 Q Ms. Gallman, 93 trillion, does that exceed the
16 number of the current population?

17 A Yes.

18 Q But not the debt. What is the further analysis
19 that you did?

20 A Also the, uh, -- Mr. Cepeda is excluded as a
21 possible contributor to this mixture. So I was able to
22 exclude him.

23 Q Exclude him?

24 A Yes, as a contributor to this mixture.

25 Q And were the partial contributors, the other

1 two individuals, was that suitable for any kind of
2 further comparison?

3 A No, they were not.

4 Q Okay. What would you typically do with the
5 other samples?

6 A If the minor contributors were suitable, they
7 would be entered into our database.

8 Q What's that database called?

9 A It's called CODIS but it's the combined DNA
10 index system.

11 Q All right. Can you tell us a little bit about
12 what that is and what its purpose is?

13 A The purpose has many purposes. One of them is
14 to look for a missing person -- persons. That's the
15 database you would put the parents of an individual into
16 and if any remains or anything are found --

17 MR. JOHNSON: Your Honor, --

18 THE COURT: Hold on just one minute.

19 MR. JOHNSON: May we approach?

20 THE COURT: All right.

21 (WHEREUPON, a bench conference is held.)

22 THE COURT: You can continue.

23 BY MR. FRETWELL:

24 Q Ms. Gallman, I want to refer you to page three
25 of the report that you have that's dated March 26th,

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1 2010. Is that a table? Page 3 of your report.

2 A Page 3?

3 Q Yes.

4 A Yes, it is the chart that we utilize to put the
5 information in concerning the DNA profiles that we have,
6 uh, generated on the evidence and the standards.

7 Q Those were the items that were entered along
8 with this swabbing from the blue and white bandana, SLED
9 4.1?

10 A Yes.

11 Q Let me ask you --

12 MR. FRETWELL: Your Honor, I'm going to have
13 a, uh, item marked as 117.

14 THE COURT: All right.

15 MR. FRETWELL: It may be different than
16 what's on the list. This is page 3 of Gallman DNA
17 report dated March 26th, 2010.

18 THE COURT: All right. You had a chance to
19 look at this?

20 MR. JOHNSON: I know what it -- I have a
21 copy.

22 THE COURT: Okay. All right. Very well.

23 (WHEREUPON, State's Exhibit 117 is marked for
24 identification purposes.)

25 BY MR. FRETWELL:

1 Q Ms. Gallman, is this a blown up copy of page
2 three of your report?

3 A Yes, it is.

4 Q Is it accurate in the sense that it reflects
5 what is page three of your report?

6 A Yes, it is.

7 MR. FRETWELL: Okay. Your Honor, at this
8 time, we would move State's 117 into evidence.

9 THE COURT: Any objection?

10 MR. JOHNSON: The objection I already --

11 THE COURT: All right. Nothing -- nothing
12 that has not been previously noted. All right then.
13 I'll admit it as 117.

14 MR. FRETWELL: All right.

15 THE COURT: State's 117.

16 (WHEREUPON, State's Exhibit 117 is admitted into the
17 record.)

18 BY MR. FRETWELL:

19 Q Ms. Gallman, in just a second, I'm going to
20 have you step down and come around to where you can
21 explain this table. I have tried to secure a little bit
22 more of a substantial easel. I'm going to have you mark
23 on this report. Can you come step down for just minute?

24 A (Witness complies.)

25 THE COURT: That's quite an easel.

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1 MR. FRETWELL: I used what I could find.

2 BY MR. FRETWELL:

3 Q All right. Ms. Gallman, can you briefly
4 describe what this table is? Be aware of the fact that
5 you have a juror right there.

6 A Okay.

7 Q Make sure you keep your voice up -- you speak a
8 little softly -- so both the Court Reporter can hear you
9 and if your back is to the jury.

10 A You want my mother voice?

11 Q Yes, ma'am. Yes, ma'am. If you don't mind,
12 can you explain what this table is basically and then I'm
13 going to have you, uh, demonstrate a couple of things on
14 it. And if you need a pointer, uh, this little pen is
15 actually a pointer. If you push this button, it will
16 make a red dot.

17 A Okay.

18 Q Okay.

19 A What you're looking at is a chart of, uh,
20 different DNA profiles starting with Mr. Boyd, Mr. Cepeda
21 and then with the evidence that was submitted in this
22 case. Uh, we look at 60 different areas on the
23 chromosome. As you can see, you're going across. Here,
24 you see items, you've got your items listed.

25 Then you have the areas on the chromosome that

1 we look at including the amelogenin which is the sex
2 chromosome. So for a male, you have XY. And if it was
3 just a female that I was picking up, you would just have
4 the X. Uh, you get part of your DNA from your mother and
5 part from your father. So part of these numbers belong
6 to Mr. Boyd's mother -- it's coming from Mr. Boyd's
7 mother and one is coming from his father. So, uh, I
8 can't tell you that without having their DNA profile
9 which one is coming from whom. But that's how your DNA
10 profile is generated coming from your mother and your
11 father.

12 I have Mr. Boyd's complete DNA profile going
13 across. And Mr. Cepeda's complete DNA profile going
14 across. When we start comparing the DNA profiles to the
15 evidence, as you can see, item 4.1 was a mixture and a
16 major contributor was Mr. Boyd. All of the alleles are
17 numbers that are in bold telling you that bold equals
18 major contributor.

19 So if you go across starting with DAS1179, you
20 see the major contributor is the 13/14. Mr. Boyd is the
21 13/14. And D21S11, he's a 28/30. The major contributor
22 is a 28/30.

23 Q Let me stop you for just a second. These --
24 these columns right here, are those referred to as the
25 low side?

1 A Yes..

2 Q Okay. If you don't mind, that's why I brought
3 the heavy duty easel, can you use this highlighter and
4 highlight the alleles on Mr. Boyd's, uh, DNA profile and
5 the corresponding alleles in 4.1?

6 MR. JOHNSON: Now, Your Honor, am I assuming
7 that what was admitted into evidence was the whole
8 report and now what we're looking at is him marking
9 on basically evidence that's in, his own creation
10 with the chart? Are we staying that the whole thing
11 is in? Have you moved the whole report into
12 evidence?

13 MR. FRETWELL: I haven't, but I don't have
14 any objection to it..

15 THE COURT: All right.

16 MR. JOHNSON: I'm not asking for it to come
17 in. She's going to mark on this thing that's been
18 introduced into evidence.

19 THE COURT: I see.

20 MR. FRETWELL: She's actually going to
21 highlight numbers.

22 MR. JOHNSON: I didn't move for it to be
23 admitted in that form.

24 THE COURT: All right. And I'm going to
25 agree with Mr. Johnson. I'm not going to allow her

1 to highlight on this particular exhibit. All right.

2 BY MR. FRETWELL:

3 Q Okay. All right. Well, Ms. Gallman, if you
4 can, with the little pointer, can you take us through the
5 low side as you were --

6 A Okay. As I stated, this is Mr. Boyd's DNA
7 profile going across. This is Mr. Cepeda's DNA profile
8 going across. Each column is a different locus and all
9 of these are all what are called loci.

10 If you look at item number 4.1, which is just a
11 mixture, but you see quite a few numbers going across,
12 uh, the major contributor in this particular sample, the
13 DNA profile matches Mr. Boyd. At D8, he's a 13/14. The
14 major contributor in 4.1 is a 13/14. D21SA11, he's a
15 28/30. The major contributor is a 28/30. At D7S820,
16 he's a 10/11 here. At the CSF, he's 11/12. The major
17 contributor is 11/12. And as you go across, looking at
18 each one of the loci, you will see Mr. Boyd is the major
19 contributor in each one of these areas.

20 We also have the minor contributor here which I
21 stated that they were not suitable for CODIS entry and
22 that I also could exclude Mr. Cepeda. If you go across,
23 you will see indications that he could probably be there.
24 But then as you get further over, you see that he just
25 totally disappear. He's not there. His DNA profile is

1 not in that sample. But Mr. Boyd is the major
2 contributor in that particular sample.

3 Q Ms. Gallman, what is an elimination sample.
4 What does that mean?

5 A Uh, we often get elimination samples like from
6 home owners or people who are owners of cars who are
7 involved in a particular incident. So if you pick up a
8 DNA profile that's, uh, -- you can identify, the
9 elimination standard will help you -- will let you know
10 that this belonged to the owner of that particular item.

11 Q And was your -- what was your understanding
12 about who Alberto Cepeda was?

13 A Uh, Alberto Cepeda was an elimination standard.

14 Q All right. Ms. Gallman, is it your testimony
15 to a reasonable degree of scientific certainty that the
16 defendant's known DNA matches the sample of the major
17 contributor of DNA located and extracted on SLED item 4
18 blue and white bandana?

19 A Yes, item 4.1, uh, SLED's item 4.1, he is the
20 major contributor to this particular sample.

21 Q All right. Let me now take you to, uh, if you
22 need to get your report, I apologize. I'm going to put
23 up another report just like this. SLED 13.1. Did you
24 compare -- well, first of all, I'll ask you were you able
25 to generate a DNA profile from the DNA -- did you find

1 any DNA in the swabbing 13.1?

2 A Yes, I did. That item was a mixture also.

3 Q All right. The DNA profile was a mixture of
4 how many people?

5 A Of at least three individuals.

6 Q Can you tell us what your findings were with
7 respect to 13.1?

8 A I'm reading from my report. The DNA obtained
9 from item 13.1 is a mixture of at least three
10 individuals, Alberto Cepeda can not be excluded as a
11 possible contributor to this mixture. And then, uh, the
12 probability of randomly selecting an unrelated individual
13 who could have contributed to this, which is
14 approximately 1 in 4. The last statement is no
15 conclusive statement can be made as to the inclusion or
16 exclusion of David S. Boyd, II to this mixture.

17 Q Now, the table -- did you create a similar
18 table like this with respect to the DNA profile of David
19 S. Boyd and Alberto Cepeda to compare those to 13.1?

20 A Yes, I utilized the same DNA profile that I
21 used at first to compare to item 13.1 once that evidence
22 came in.

23 Q And is that page 4 of your report dated June
24 24th, 2011?

25 A Yes, it is.

1 MR. FRETWELL: All right. Your Honor, just
2 for the record, we've marked as State's Exhibit 8 --
3 118, page 4 of Gallman report dated June 24th, 2011.

4 THE COURT: All right.

5 (WHEREUPON, State's Exhibit 118 is marked for
6 identification purposes.)

7 BY MR. FRETWELL:

8 Q Ms. Gallman, does this -- is this a copy, a
9 blown up copy of page 4 of that report?

10 A Yes, it is.

11 Q All right.

12 MR. FRETWELL: Your Honor, at this time, we
13 would move State's 118 into evidence.

14 THE COURT: Any objection?

15 MR. JOHNSON: No objection. It's the gloves,
16 socks and t-shirt.

17 THE COURT: I see. I understand.

18 MR. JOHNSON: All right.

19 THE COURT: Your previous objection is noted.

20 MR. JOHNSON: All right.

21 (WHEREUPON, State's Exhibit 118 is admitted into the
22 record.)

23 BY MR. FRETWELL:

24 Q All right. Ms. Gallman, if you'd come back
25 around with the laser pointer. If you'll take us through

1 that table with respect to the first two DNA profiles and
2 13.1 as you did with 4.1 just a moment ago.

3 A This particular chart is from my supplemental
4 report. It's the second report that I generated. This
5 evidence came in later. I'm utilizing the DNA profiles
6 that I developed from Mr. Boyd and Mr. Cepeda from the
7 first report because it wouldn't change. I compared it
8 to the evidence, the second set of evidence that was
9 submitted, the gloves, the sock and the t-shirt.

10 We're looking at item 13.1. As you can see, it
11 is a mixture of at least three individuals. You see
12 quite a few alleles, quite a few numbers here. So going
13 through this particular item, I looked at Mr. Boyd's DNA
14 profile and I compared it to the evidence. I could see
15 information there would include him, but it was not
16 enough to say that he is in that particular sample. I
17 could not exclude him, but I could not give him a
18 definite that he is totally in this particular sample.
19 Once you start getting to the alleles of the numbers and
20 areas of DNA where you have larger pieces, you will see
21 where his numbers start to drop out. The statement that
22 we use that is part of our protocol is that no conclusive
23 statement can be made as to the inclusion or exclusion of
24 Mr. Boyd from this sample.

25 Q Ms. Gallman, in the first 11 loci, do the

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1 alleles of David S. Boyd match alleles found in this
2 13.1 swab of the sock?

3 A Yes, if you look at Mr. Boyd's profile, he's a
4 13/14. You see a 13/14 here. He's a 28/30. You see a
5 28/30. You see a 10/11. You see a 10/11 here. 11/12,
6 11/12. 14/15, 14/15. 8, 8. 12/13, 12/13. 11/12,
7 11/12. Uh, he's a 24/25. You see a 24/25.

8 When you get here where you see he's a 14/17.2,
9 the 14 is there but not the 17.2. When you -- the next,
10 you see a 15/17. He's a 15/17. And he's a 8/9, but the
11 9's not there. When you get here, he's a 15. But
12 there's no 15 present. Here, he's an 11/13. Only 11 is
13 there. When you get here, his 24 is not there. So to
14 err on the conservative side, we state that there's no
15 conclusive statement that can be made as to his inclusion
16 or exclusion to this sample.

17 Q And I may butcher this word, but the
18 amelogenin?

19 A Amelogenin, which is the sex chromosome,
20 there's an XY there, for male.

21 Q Okay. With respect to the loci TPOX, D18, S51
22 and FGA, would those be considered large allele areas?

23 A They are large. Uh, they are large locus.
24 They are large loci. When you start talking about large,
25 you talking about the length of the DNA. When you have a

1 sample of evidence, it's going to start with degradation,
2 breakdown of the DNA. So you'll start seeing the larger
3 ones disappear first before the smaller ones. We talk
4 about length of DNA: DNA is being chewed, uh, degraded
5 down. The larger ones will go first and then the smaller
6 ones.

7 Q What's that process called?

8 A Just degradation.

9 Q I'm talking about dropping out.

10 A Oh, allele drop out.

11 Q Allele drop out. Okay. Hold on just one
12 second. Ms. Gallman, when someone leaves DNA behind, do
13 they always leave all the alleles?

14 A It all depend on the case and how much evidence
15 you have in that particular case. So you don't know
16 until after you generate a DNA profile exactly what
17 you're going to get.

18 Q Even with respect to that, what about all the
19 alleles? Do all the alleles always show up?

20 A Not necessarily so. It don't.

21 Q And, uh, would allele drop out be more likely
22 larger loci or smaller loci?

23 A It's, uh, more likely in larger ones because
24 you have the, the degradation going on with the larger
25 ones. It all depends on how the sample was handled, what

1 the sample went through before the DNA profile was
2 developed.

3 Q SLED 13.2 on that chart, swab from the sock, is
4 that swab -- how does that relate to the original item,
5 SLED 13?

6 A It's also generated the same way as 13.1. I
7 believe that's from the -- I can't remember if it's from
8 the interior or exterior of the sock. 13.2 is from the
9 interior of the sock.

10 Q Okay. Were you able to generate a profile in
11 that case?

12 A Yeah, I did.

13 Q What were your conclusions with respect to
14 13.2?

15 A Okay. I'm reading from my report. The DNA
16 obtained from item 13.2 is a mixture of at least two
17 individuals. Alberto Cepeda can not be excluded as a
18 possible contributor to this mixture. It also go on to
19 give you the probability of selecting unrelated
20 individual who could have contributed to this mixture.
21 And it's 1 in 7.9000. David Boyd, II is excluded as a
22 contributor to this mixture.

23 Q Thank you, Ms. Gallman. Please answer any
24 questions the defense may have.

25 THE COURT: Mr. Johnson.

Lilly Gallman - Cross-Examination by Mr. Johnson

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1 MR. JOHNSON: Give me one second to collect
2 my stuff.

3 THE COURT: All right. Are you going to want
4 these exhibits up during your examination?

5 MR. JOHNSON: I'll think about it in just a
6 second.

7 THE COURT: That's fine. That's fine. I
8 just was going to get him to take it down if not.

9 MR. JOHNSON: I guess we can do that first.

10 THE COURT: All right. That will be fine.

11 MR. FRETWELL: Take it down?

12 MR. JOHNSON: No.

13 THE COURT: I think he wants to use it first.

14 MR. FRETWELL: I apologize.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q Ms. Gallman, can I ask you to step back down? I
18 apologize.

19 A (Witness complies.)

20 Q All right. Now, we talked about item 4.1;
21 correct?

22 A Yes. Do you want to look at that now?

23 Q Let's go to that one first.

24 A Okay.

25 Q I'll take that down. Now, we know what 1 and 2

1 are. That's the profile of David and the profile of
2 Alberto Cepeda. Now, you know who Alberto Cepeda is?

3 A No.

4 Q No. As you understand, it was an elimination
5 standard.

6 A It was given to me as an elimination standard.

7 Q Now, we talked about item 4.1, which is the
8 bandana. You also checked some other things, isn't that
9 correct, according to that chart?

10 A Yes.

11 Q Now, what are those other things that you
12 tested? Can you tell us?

13 A Uh, item number 5 is a swab from the steering
14 wheel, vehicle steering wheel. I don't know which
15 vehicle but it says from the vehicle steering wheel.

16 Q Okay.

17 A Item number 6 is from the inside door handle of
18 the driver's side.

19 Q Okay.

20 A Item number 7.1 is the swab from inside the
21 glove. It's coming from item number 7.

22 Q Uh-huh.

23 A Item 7.2 is also from inside the glove.

24 Q Now, can you now go to the place in your report
25 where you, uh, had the results and use that to

1 communicate to us the results.

2 A For which item?

3 Q For the rest. I'll let you just go down. The
4 items outside of the ones you already discussed.

5 A Okay. Item 5 and 6 on my report, the partial
6 DNA profiles from items 5, 6 and also item 18.1 are
7 insufficient for reliable interpretation. There's not
8 enough information there to include or exclude either Mr.
9 Boyd or Mr. Cepeda.

10 Q Okay. What about 7.1 and 7.2?

11 A 7.1 and 7.2, the DNA obtained from item 7.1 and
12 7.2 are mixtures from at least two individuals. The DNA
13 profile of the major contributor to these mixtures is
14 consistent with the DNA profile of Alberto Cepeda. And
15 partial DNA profile, the minor contributors to these are
16 not suitable for CODIS entry. David S. Boyd, II is
17 excluded as a possible contributor to these mixtures.

18 Q All right. Let's go to the -- that date was
19 March 26, 2010. You did that test then?

20 A Yes.

21 Q I suppose you were simply sent some more items.
22 Is that how it works? More items to test?

23 A Yes.

24 Q I was given more evidence to generate a DNA
25 profile.

1 A And this happened on June 24th, 2011.

2 Q That's when the report was generated. All
3 right. Now, -- excuse me. All right. You talked about
4 item 13.1 and 13.2. 13.1 is my client couldn't be
5 included or excluded; is that right?

6 A No conclusive statement could be made.

7 Q 13.2, he was excluded?

8 A Yes.

9 Q Now, let's talk about -- we got 12.1, 12.2 and
10 18.1. Can you tell us what your results were there?

11 A For item 12.1, uh, the DNA obtained from item
12 12.1 is a mixture of at least two individuals. The DNA
13 profile from the major contributor to this mixture is
14 from an unidentified female individual. That means that
15 I did not receive a standard from whoever this female
16 individual was to, uh, do a comparison. The DNA
17 developed from the minor contributor to this mixture is
18 insufficient for reliable interpretation. That's for
19 12.1.

20 Q Okay.

21 A 12.2 is the DNA obtained from item 12.2. It's
22 a mixture of at least two individuals. Alberto Cepeda
23 can not be excluded as a possible contributor to this
24 mixture. Then I go on and give you a probability. The
25 probability is 1 in 80 million -- I mean, billion. I'm

1 sorry. And David S. Boyd, II is excluded as a
2 contributor to this mixture.

3 Q Okay. I think we're done with the graphs. You
4 can have a seat.

5 THE COURT: Allen, you want to help him with
6 that?

7 MR. FRETWELL: Yeah. Sure. Sorry.

8 (WHEREUPON, there is a pause.)

9 BY MR. JOHNSON:

10 Q Now, uh, Ms. Gallman, does anyone have
11 identical DNA patterns?

12 A Identical twins.

13 Q And this is still true when 100 percent of DNA
14 is analyzed?

15 A Yes.

16 Q Now, in forensic situations such as this one,
17 only 15 of the genes are analyzed, isn't that true?

18 A We look at 16 areas.

19 Q Including the male/female?

20 A They are not genes. They are areas on the
21 chromosomes.

22 Q Apologies. That's just how I understand it.
23 I'm sorry. In any case, uh, these 16 only represent
24 roughly one percent of the total amount of DNA, is that
25 true?

1 A Only a small portion; correct.

2 Q All right. And, uh, so that still leaves, uh,
3 millions of areas where DNA is unique?

4 A I'm not answering yet because you are talking
5 about genes. We have certain genes that have to be the
6 same in order to make us a human being. But we do have
7 other areas that are unique.

8 Q Okay. And if we were to try to quantify them,
9 say for instance, with DS, et cetera, et cetera, how many
10 of those can there be?

11 A I don't know offhand.

12 Q You don't know offhand? Do you know, I mean,
13 more than 100 or more than 1000?

14 A It's possible that it's more than 100.

15 Q Okay.

16 A Different areas.

17 Q Okay.

18 A But you -- there are others that have -- that
19 are published. But you need to look at how unique that
20 particular area is before you can utilize it in
21 generating that DNA profile for this purpose.

22 Q Okay. Now, are there two -- how many
23 subspecialties of genetics are incorporated in forensic
24 analysis of DNA?

25 A I don't understand your question.

1 Q How many subspecialties of genetics? I'm
2 speaking, like, say for instance, with, uh, molecular
3 genetics and population genetics. Does that go into your
4 analysis?

5 A Yes, we utilize population genetics in order
6 to, uh, generate a frequency of a particular event how
7 often you see this particular DNA profile.

8 Q And that's one of the things that you did
9 earlier?

10 A Yes, that's part of the reporting.

11 Q Now, molecular genetics incorporates the actual
12 laboratory work leading to the generation of the DNA. Is
13 that right?

14 A Yes.

15 Q And once there is what you would call a match
16 between the subject's profile and the evidentiary DNA
17 profile, then the statistical analysis is done. That's
18 what we just talked about as far as that --

19 A Once you generate a match, then you generate a
20 statistical value for that match.

21 Q Now, would you agree that the need for
22 population genetics demonstrates while unless you analyze
23 100 percent of DNA, you could never be 100 percent
24 certain that a particular individual matches an
25 evidentiary sample?

1 A I'll put it like this. The very first thing
2 that you do is you determine whether you have a match or
3 you do not have a match. A statistical value is applied
4 to that particular, uh, DNA profile, not to whether there
5 is a match or not. You want to know how frequent is this
6 particular DNA profile seen in a given population. So,
7 uh, we are required -- and this is based on, uh, the
8 report -- that we generate a frequency of that evidence
9 because DNA is so powerful.

10 Q Okay. Now, the DNA technology that you used in
11 this case is called -- excuse me if I butcher --
12 polymeris chain reaction?

13 A Polymerase chain reaction.

14 Q Oh, okay. I can't always get it out quickly.
15 And this is very sensitive technology, isn't it?

16 A Yes, it is.

17 Q And this allows for a few cells on an
18 evidentiary sample to be analyzed?

19 A Yes.

20 Q Because of this, you wear gloves in the
21 laboratory; is that correct?

22 A Well, that's one of the reason we wear gloves,
23 but that's not --

24 Q That's not the reason but it's one of the
25 reasons you wear it?

1 A Yes.

2 Q Because --

3 A We don't want to contaminate anything.

4 Q You don't want to contaminate anything?

5 A That's correct.

6 Q Because say for instance you touch something
7 with your bare hands, you could possibly leave your
8 cells, i.e., your DNA on the samples, is that true?

9 A That's possible.

10 Q Uh, this will be called primary transfer?

11 A Yes, sir. But in our laboratory to guard
12 against situations like that, all the, uh, personnel,
13 their DNA profile is on file. So when you, uh, have an
14 unknown, you generate a DNA profile from a piece of
15 evidence. It is compared to their DNA profile.

16 Q For example, if I were to touch this, that
17 would be primary transfer?

18 A Yes.

19 Q If you were to -- that would be primary
20 transfer, that's what that is?

21 A Yes.

22 Q One of the reasons why you wear gloves is to
23 try to prevent that sort of thing even though you have
24 other precautions?

25 A Yes, sir.

1 Q Now, how often do you change your gloves?

2 A I change my gloves between cases.

3 Q Between cases or between samples?

4 A Between cases.

5 Q Okay. And, uh, one of the reasons why you do
6 this is you don't want to, like we just talked about,
7 inadvertently transfer from one case to another?

8 A That's correct.

9 Q You try to prevent that sort of thing.

10 A Yes.

11 Q Now, how often do you sterilize your work area?

12 A I sterilize it between cases. When I receive
13 standards on a particular case, they are not processed at
14 the same time of the evidence because you don't want any
15 transfer there either. But I do sterilize between each
16 case.

17 Q You do that because you don't want to
18 incorporate any DNA left, for example, on the previous
19 work area?

20 A That's correct.

21 Q And these types of standards go outside of the
22 lab as far as DNA transfer primary and secondary; is
23 that right?

24 A They should be.

25 Q They should be. Now, all right. Excuse me.

1 Now, we just talked about a mixed sample, right?

2 A That's correct.

3 Q Now, a mixed sample is when you find DNA from
4 more than one person on a sample?

5 A Yes.

6 Q Now, uh, that means -- we're talking about at
7 least two individuals?

8 A Yes.

9 Q Sometimes, say for instance in our case, three?

10 A Yes.

11 Q Now, nothing from it being a mixed sample
12 indicates in what order the DNA got on the item, does it?

13 A No.

14 Q And there was a mixed sample, say for instance,
15 on the bandana?

16 A Yes. All I can tell you is that there was more
17 DNA from Mr. Boyd than the other individuals who were on
18 the sample.

19 Q Does that indicate how it got on there?

20 A No, it does not.

21 Q Okay. What type of DNA can you test for? Say
22 for instance you got hair, you got skin. Can you kind of
23 go over the things that are actually composed in and you
24 can test for DNA?

25 A I could test for, uh, DNA from body fluids, as

1 you stated from hair, from skin, uh, samples where you're
2 looking for touch DNA ownership on clothes, skin cells,
3 like that.

4 Q Do you test them for like example sweat or
5 saliva?

6 A Yes. There are body fluids.

7 Q Now, saliva, that's called, uh, I'm going to
8 butcher the word again, amalis; is that right? Amalis?
9 Is that right? Tell me if I'm wrong.

10 A Amylase.

11 Q Amylase.

12 A It's an enzyme that's found in saliva.

13 Q In saliva. That's something you can test for?

14 A If I can test for amylase?

15 Q Yes.

16 A Yes. I can test for amylase.

17 Q Let's say, for instance, you have a mixed
18 sample. Can you tell whether any of the sample was
19 saliva or not? Is that something you can do?

20 A Yes, I could check for the presence of saliva.
21 It depends on how I receive the evidence. If it's, uh, a
22 swab and they wanted ownership, then I would check DNA.
23 If I'm looking for the presence of saliva, then there's a
24 test that I could do.

25 Q They probably just ask you to do that; is that

1 right? You can just be asked to just check for saliva
2 and check it?

3 A I would check it.

4 Q You can actually extract which DNA contributor
5 produced that saliva; is that right?

6 A No.

7 Q You can not do that?

8 A No.

9 Q Okay.

10 A Once DNA is extracted, it's just DNA. It's not
11 -- you don't know what's the source.

12 Q Can you, say for instance, extract saliva first
13 and then see the DNA of that?

14 A No. The cells that, uh, -- saliva is a body
15 fluid.

16 Q Uh-huh.

17 A And the cells from that particular person is
18 within that saliva. So if the skin cells are there and
19 the cells from the saliva are present together, what I'm
20 going to end up with is a mixture from those two
21 individuals like I have in this particular case.

22 Q Now, do DNA results in general, do they
23 indicate maybe the age or race of a donor?

24 A No.

25 Q Is that possible?

Remarks

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1 A It is possible to check for the race of an
2 individual.

3 Q It's possible to check for the race. Is that
4 something you do at SLED?

5 A No, it is not.

6 Q One second please. (Pause.)

7 Now, Alberto Cepeda is the only elimination
8 sample that you got; is that right?

9 A That's correct.

10 Q And do you -- I guess you don't get to decide
11 whether an elimination test is done. It simply, once
12 again, would be requested by someone.

13 A The submitting agency submit their evidence and
14 we test it.

15 Q Okay. I have nothing further at this time.

16 THE COURT: All right. Mr. Fretwell, any
17 redirect?

18 MR. FRETWELL: No questions.

19 THE COURT: All right. Then you can step
20 down.

21 All right. Ladies and Gentlemen, we come to a
22 good point for a lunch break. I'm going to ask you
23 to be back in your jury room by 2:30. So be back in
24 your jury room by 2:30. All right. Thank you so
25 much.

Remarks

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1 (WHEREUPON, the jury exits at approximately
2 1:17 p.m.).

3 THE COURT: Mr. Fretwell, was that your last
4 witness?

5 MR. FRETWELL: Your Honor, I just -- I would
6 like the lunch break to think about that. I
7 anticipate that will be my last witness.

8 THE COURT: All right.

9 MR. FRETWELL: There was one thing I wanted
10 to think about with respect -- before I rest my
11 case.

12 THE COURT: Okay.

13 MR. FRETWELL: In connection with that, can
14 the witnesses that I've already called be excused
15 such as Mr. Dickinson, Ms. Gibson and Ms. Gallman?

16 THE COURT: You have any objection to that?

17 MR. JOHNSON: I don't believe so, Your Honor.

18 THE COURT: They certainly may be. I'll tell
19 you what, let's be back here maybe about 2:25. If
20 you're ready to rest at that point, I'll certainly
21 let you rest in front of the jury. But if you are
22 ready to rest, anticipating that Mr. Johnson might
23 have a motion or two, maybe we can do that prior to,
24 uh, -- prior to bringing back in the jury if
25 necessary.

Remarks

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1 MR. FRETWELL: Can I bring up one other
2 issue?

3 THE COURT: Yes.

4 MR. FRETWELL: The medical records. I
5 believe the court had not yet ruled about the
6 admissibility of that.

7 THE COURT: All right.

8 MR. FRETWELL: I just wanted to bring that
9 your attention.

10 THE COURT: Have you had an opportunity, Mr.
11 Johnson, to take a look at those records once more?

12 MR. JOHNSON: I have not.

13 THE COURT: I'll tell you what. If you have
14 time over the lunch hour to do that, I know you are
15 going to have a full plate though so to speak at
16 lunch because, Mr. Boyd, we're now -- the hour is
17 approaching for you to make a decision about whether
18 or not you're going to testify. Okay. So if you've
19 got any last minute thoughts about that. It might
20 be time to talk to your attorney about that. Okay.
21 I'm going to have some questions for you when we
22 return. Okay. All right then. We'll be in recess
23 until about 2:25.

24 MR. FRETWELL: Thank you, Your Honor.

25 (WHEREUPON, a lunch recess is taken.)

1 THE COURT: All right. Mr. Fretwell, what's
2 your intention?

3 MR. FRETWELL: Pardon me, Judge.

4 THE COURT: Your intention.

5 MR. FRETWELL: Judge, I wanted to first
6 inquire of the Court Reporter to see if all of the
7 items that I marked that were not supposed to be
8 court exhibits have been placed into evidence. And
9 I'm specifically concerned about State's 92, if I
10 moved that into evidence. We don't have that into
11 evidence. That was my concern as well.

12 THE COURT: What is State's 92?

13 MR. FRETWELL: It's the black sock.

14 THE COURT: Okay. All right. Okay.

15 MR. FRETWELL: Your Honor, I would move that
16 item into evidence at this time.

17 THE COURT: All right. Any objection?

18 MR. JOHNSON: No.

19 THE COURT: All right. State's 92 is so
20 admitted. All right. Anything other than that?

21 MR. JOHNSON: Your Honor, I --

22 THE COURT: Okay.

23 MR. JOHNSON: I can tell you that I still
24 have not yet reviewed that paperwork.

25 THE COURT: That's fine.

Motions

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1 MR. JOHNSON: I apologize.

2 THE COURT: I'll tell you what we'll do. I'm
3 tentatively admitting those medical records. I
4 understand you had a lot to do over the lunch hour.
5 We'll revisit that. I'm tentatively admitting them.
6 We know they are going to come in.. It's just
7 whether or not anything needs to be redacted from
8 it.

9 MR. FRETWELL: And I'm withdrawing my request
10 for that particular page that I mentioned with the
11 jail and the homicidal ideation.

12 THE COURT: Okay.

13 MR. FRETWELL: So it would be a total of nine
14 pages.

15 MR. JOHNSON: Page 4, Allen? You don't
16 remember?

17 MR. FRETWELL: It's the same page the judge
18 has already redacted, the homicidal ideations.

19 THE COURT: Where it says psychological
20 impressions or psychiatric impressions?

21 MR. FRETWELL: Yes, ma'am.

22 THE COURT: I can't remember what's
23 underneath it. But it's at the bottom of it. All
24 right. Anything else?

25 MR. FRETWELL: Not at this time, Your Honor.

1 THE COURT: All right. So you think you're
2 ready to rest?

3 MR. FRETWELL: Yes, ma'am.

4 THE COURT: Now, I can -- it might just be
5 more efficient if you don't have any objection that
6 if you've got any motions for us to hear them now.
7 I'll bring the jury back in and let them -- let him
8 rest on the record. We just won't send them back
9 out if we continue on.

10 MR. JOHNSON: That's very fine. First of
11 all, there's an indictment for Possession of Stolen
12 Vehicle.

13 THE COURT: Yes, sir.

14 MR. JOHNSON: I don't believe we've heard any
15 evidence on that.

16 THE COURT: All right. Mr. Fretwell?

17 MR. FRETWELL: Your Honor, the testimony from
18 Sergeant David Weiner is that the information
19 related to his examination of that vehicle indicated
20 that it had been stolen earlier that morning. He
21 identified it by its vehicle identification number
22 and its tag. He also identified the owners of the,
23 uh, of the, uh, vehicle by name, Cepeda, -- I'm not
24 sure that's how he pronounced it -- also that the
25 value of the vehicle was in excess of \$1000. All

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1 right. All right. Anything else on that matter?

2 MR. JOHNSON: Well, Your Honor, first of all,
3 if this had been reported stolen or if there's some
4 sort of report. There's nothing that I've seen. I
5 think someone needs to come in and say somebody
6 stole my car.

7 THE COURT: Well, uh, of course it might not
8 be -- that might not be the most convincing evidence
9 to have heard the officer testify to it, but I think
10 it is enough to get pass, uh, -- to go to a jury, in
11 other words, at this point. The testimony, I think
12 there is something more than a scintilla of evidence
13 that this vehicle was stolen. So I'm going to deny
14 your motion on that ground.

15 MR. JOHNSON: Okay. The second motion is,
16 one, of course, I would like to preserve all prior
17 objections.

18 THE COURT: Yes, sir.

19 MR. JOHNSON: Third is a more broader motion
20 for directed verdict. I believe that this case is
21 pretty much only circumstantial. There's no gun.
22 There's no proof that my client shot a gun. There's
23 no proof that he was at the crime scene. He hasn't
24 otherwise been identified by any eyewitnesses. The
25 dog track did not track to my client. He was seen

1 in an area that -- I understand it's circumstantial.
2 But as I understand in the more recent Supreme Court
3 case, State versus Owens where they required
4 substantial circumstantial evidence. I think -- if
5 you could just give me one second, Your Honor. I
6 actually wasn't quite prepared to make the argument.

7 THE COURT: I understand.

8 MR. JOHNSON: If you give me one second.

9 THE COURT: You go right ahead.

10 MR. JOHNSON: Uh, now, uh, one of the things
11 they relied upon was the traditional circumstantial
12 evidence definition. What they essentially said is
13 every circumstance relied upon by the State be
14 proven beyond a reasonable doubt and all
15 circumstances proven to be consistent with each
16 other or taken together conclusively to be given the
17 accused to the exclusion of every other reasonable
18 hypothesis. I believe that the facts in that case,
19 I believe, is probably for the court to compare.

20 In this case, uh, the State relied upon the
21 fact that less than 90 minutes after a burglary, the
22 police located the person in a getaway car with the
23 burglaries and stolen goods. That the person fled
24 from law enforcement and that person had somebody to
25 lie for him. I think -- it's not totally on point --

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1 I think, while it's not totally the same situation
2 should I say ---

3 THE COURT: Yes, sir.

4 MR. JOHNSON: --- I think the facts and
5 circumstances are similar. What we have here is a
6 witness saying that they saw my client come out of
7 an area near where some K-9 officers were searching.
8 Meanwhile, those K-9 officers did not find my
9 client.

10 A short time later, my client was shot. They
11 said he was wearing similar clothes. However, once
12 again, part of the outfit is a gun, a hat, a
13 sweatshirt. I think all of these things or lack of
14 all of these things or lack of DNA in the van or any
15 bank dye that could be contributed to them and
16 things of that nature by credible sources, I think
17 that leads to a circumstantial case. I don't think
18 we're beyond the point where we have circumstantial
19 evidence to override the need for directed verdict
20 in this case.

21 THE COURT: All right. All right. Mr.
22 Fretwell?

23 MR. FRETWELL: Your Honor, I believe that the
24 evidence that's been submitted exceeds
25 circumstantial. I don't characterize it as

1 overwhelming evidence of this defendant's guilt.
2 Your Honor, the testimony has been that this
3 defendant, uh, was apprehended in the area that the
4 officers described as being in the rough perimeter
5 area as far as Crane Avenue area. I think Sergeant
6 Cooper described it as the safety area in his
7 football analogy that there were perimeter units in
8 that area, that when he was apprehended, he was
9 wearing a shirt that was gray in color.

10 The bank teller, Ms. Correa, described as being
11 underneath the hoodie that was depicted in the video
12 that he was wearing pants that are identical down to
13 the embroidered feathers and knives that are
14 depicted in the bank video in the photographs that
15 are before the jury. Your Honor, he was observed
16 prior to the time coming to Crane Avenue by Shawn
17 Muserallo who observed him coming up out of the
18 creek and, Your Honor, identified that individual as
19 the same individual that was taken into police
20 custody and as the defendant, David Boyd.

21 Your Honor, furthermore, that the creek that he
22 was seen coming out of is a tributary that flows
23 into the creek where the K-9 tracking team last
24 tracked the scent coming from the bandana that they
25 found a fresh human scent that started at the point

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1 where the robber/shooter was last -- was seen
2 entering the wooded area. That was not only a creek
3 that flowed into that larger creek, but it was also
4 in the close geographical area to that particular
5 creek where the officer testified his dog was
6 tracking to the point at which he was removed or
7 they got out of the creek at that pole that came
8 across the creek, backing up the bandana that was
9 located along that trail by the second K-9,
10 following the first trail was established by K-9
11 Smeris. That bandana was consistent with the
12 bandana that was depicted in the video. That
13 bandana was unique. That bandana was later tested
14 and determined to contain the DNA profile of the
15 defendant as the major contributor on that bandana.

16 Your Honor, the testimony of David Dill and the
17 testimony of Shawn Rafferty that identified the
18 individual, uh, that was standing near the bank in a
19 minivan dressed in a similar manner as what was
20 described by the tellers in the bank as being the
21 individual who had robbed them dressed similar in
22 the clothing and that he raised his arm in their
23 direction, Your Honor.

24 Mr. Dill said he saw numerous puffs of smoke,
25 that he was struck in the throat. The bullet

1 pierced his windshield, pierced his hand and nearly
2 caused his death. There were numerous puffs of
3 smoke. Mr. Rafferty testified that the individual
4 waived him down on Emile and raise his arm in his
5 direction and Mr. Rafferty indicated that he felt
6 fear and apprehension. He backed out of that area.

7 Your Honor, Mr. Dill previously testified that
8 this minivan that he went past and saw the
9 individual get out of, when he went past the
10 minivan, he saw the individual clothed with a hoodie
11 over his head with a bandana across his face and the
12 bill of a hat sticking out. That that was the exact
13 description, Your Honor, that had been given by the
14 bank tellers. The testimony of Mr. Dill was that he
15 followed that minivan, that white Windstar minivan
16 from the bank parking lot to the location on Emile,
17 that he observed the red smoke come out of the
18 passengers -- out of the driver's window.

19 THE COURT: Uh-huh.

20 MR. FRETWELL: And that that was the reason
21 that he followed the vehicle.

22 THE COURT: Uh-huh.

23 MR. FRETWELL: The tellers inside the bank
24 indicated that when the individual came into the
25 bank that he left in the white Windstar minivan.

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1 The images of the individual, as depicted by the
2 bank video and described by the tellers match those
3 of the defendant, David Boyd.

4 THE COURT: All right. Uh, --

5 MR. FRETWELL: Furthermore, just for clarity,
6 that the tellers and the bank video display that the
7 defendant was armed at the time -- that the bank
8 robber was armed at the time of the bank robbery.

9 THE COURT: All right. Uh, --

10 MR. FRETWELL: Just one last thing.

11 THE COURT: Yes, sir.

12 MR. FRETWELL: I've also, in your preliminary
13 questions with respect to the stolen vehicle; uh,
14 alluded to the testimony of David Weiner that the
15 vehicle was determined to had been stolen earlier
16 that morning and its value exceeded \$1000.

17 THE COURT: All right. I appreciate it. I'm
18 going to -- I'm going to deny your motion. I
19 believe that there is, uh, substantial
20 circumstantial evidence in this case as been
21 presented so far. And though that evidence might be
22 subject to interpretation, which I'm sure you will
23 very ably argue before the jury, while it might be
24 subject to that, viewed in the light most favorable
25 to the state that there is substantial

1 circumstantial evidence in this case. Anything
2 else?

3 MR. JOHNSON: Not before --

4 THE COURT: All right.

5 MR. JOHNSON: Not before he rests.

6 THE COURT: Okay. Mr. Boyd, the State has
7 not yet closed their case, but they are about to.
8 They are about to rest. Have you discussed with
9 your attorney whether or not you intend to testify
10 in the trial of this case?

11 MR. BOYD: Yes.

12 THE COURT: Okay. Will you stand and raise
13 your right hand for me? Raise your right hand.

14 (WHEREUPON, the defendant is first duly sworn.)

15 THE COURT: Okay. You can put your hand
16 down. You say you've discussed your decision of
17 whether or not to testify in the trial of this case
18 with your attorney; is that correct?

19 MR. BOYD: Yes, ma'am.

20 THE COURT: Have you felt pressured at all to
21 make this decision?

22 MR. BOYD: No, ma'am.

23 THE COURT: Has anybody promised you anything
24 to get you to make this decision?

25 MR. BOYD: No, ma'am.

Remarks to Defendant

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1 THE COURT: You understand that this trial
2 will be your only opportunity to tell your side of
3 the story. You understand that?

4 MR. BOYD: Yes, ma'am.

5 THE COURT: You also understand, and with
6 equal emphasis that you have an absolute right to
7 remain silent about this whole matter. You
8 understand that?

9 MR. BOYD: Yes, ma'am.

10 THE COURT: And in fact, if you choose not to
11 testify, I will instruct the jury that they can not
12 discuss it. It can not even be brought up in the
13 jury deliberation room. The jury can't consider it
14 in any way whatsoever. You understand I'm going to
15 instruct the jury as to that if you choose not to
16 testify?

17 MR. BOYD: Yes, ma'am.

18 THE COURT: You understand -- I believe the
19 indication was earlier there might be, uh, some
20 previous convictions that the State might wish to
21 introduce against you to what we call impeach you if
22 you take the stand. Have you discussed that with
23 your attorney?

24 MR. BOYD: No, ma'am..

25 THE COURT: You feel fully apprised of that?

Remarks to Defendant

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1 MR. BOYD: Yes, ma'am.

2 THE COURT: You under the influence of drugs
3 or alcohol today?

4 MR. BOYD: No, ma'am.

5 THE COURT: What is your decision? Are you
6 going to testify in the trial?

7 MR. BOYD: No.

8 THE COURT: All right. Thank you, sir.
9 And, uh, Mr. Johnson, you've discussed it fully
10 with your client?

11 MR. JOHNSON: Yes, ma'am, Your Honor.

12 THE COURT: You feel like he understands your
13 discussions?

14 MR. JOHNSON: I do, Your Honor.

15 THE COURT: And this decision has been his
16 decision?

17 MR. JOHNSON: Yes, Your Honor.

18 THE COURT: All right. All right. Thank
19 you, sir. All right. Let's bring the jury back in.
20 (WHEREUPON, the jury enters at approximately

21 2:48 p.m.)

22 THE COURT: All right. Mr. Fretwell?

23 MR. FRETWELL: Your Honor, at this point, the
24 State rests.

25 THE COURT: All right. Thank you, sir.

Robin Austin - Direct Examination by Mr. Johnson

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1 Mr. Johnson, do you care to put up a defense in
2 this case?

3 MR. JOHNSON: Yes, ma'am, Your Honor.

4 THE COURT: All right. Yes, sir.

5 MR. JOHNSON: The first person I would like
6 to call to the stand is Robin Austin.

7 THE CLERK: Ma'am, please come forward.
8 Please place your left hand on the Bible and raise
9 your right hand.

10 ROBIN AUSTIN
11 having first been sworn, testifies as follows:

12 THE CLERK: Thank you. Please be seated.
13 Please state your full name for the record.

14 THE WITNESS: Robin Austin.

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Now, Robin, where do you work and what's your
18 association with me?

19 A I'm an investigator for the Public Defender's
20 Office. And Brian is one of my attorneys that I, uh, do
21 investigative work for.

22 Q Now, uh, I called you up here with regards to a
23 Dr. Rinkiff. Were you there when his testimony was being
24 given?

25 A Yes.

1 Q Now, I'd like for you to portray to the court
2 what it is -- what relationship you have with Dr. Rinkiff
3 or Dr. Rinkiff's office.

4 A The first time that I called over there, I
5 talked to his assistant, his secretary Dondria to set up
6 an appointment to -- for a phone conference with Mr.
7 Johnson. That was in June -- June the 16th of 2011.
8 Maybe a week or -- she set the appointment and then maybe
9 a week or so later, I called to confirm it. She told me
10 that --

11 MR. FRETWELL: Objection, Your Honor.
12 Hearsay.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Prior inconsistent statement.

15 THE COURT: I'm just going to allow it. I'm
16 going to allow this. All right. Go ahead.

17 THE WITNESS: I called to confirm the
18 appointment and she told me that he was not
19 obligated to speak to us and that he was not going
20 to. The second time I called was on December the
21 22nd. I spoke to his secretary Dondria to set up
22 another phone conference. She told me that Dr.
23 Rinkiff had talked to the Solicitor and he was not
24 interested in talking to Mr. Johnson.

25 BY MR. JOHNSON:

1 Q So in both instances, as you understand it,
2 this was Dr. Rinkiff giving word to his secretary per his
3 instructions?

4 A Yes.

5 MR. FRETWELL: Objection, Your Honor.

6 THE COURT: I'm going to sustain that
7 objection.

8 MR. FRETWELL: Thank you.

9 MR. JOHNSON: I have nothing further.

10 MR. FRETWELL: Very briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FRETWELL:

13 Q I forgot your last name.

14 A Austin.

15 Q Ms. Austin, you never spoke with Dr. Rinkiff,
16 did you?

17 A No.

18 Q And what you testified to is your understanding
19 of what his receptionist gave you?

20 A Yes. She said she was his secretary.

21 MR. FRETWELL: All right. No other
22 questions, Judge.

23 THE COURT: Anything else?

24 MR. JOHNSON: Nothing further.

25 THE COURT: Ma'am, you can step down. Thank

1. you.

2. MR. JOHNSON: Your Honor, I'm going to call
3. Dr. Jason Brewer. I have to step out and get him.

4. THE CLERK: Dr. Brewer, please come forward.
5. If you would, pause at the end of the bench. Place
6. your left hand on the Bible and raise your right
7. hand.

8. JASON BREWER

9. having first been sworn, testifies as follows:

10. THE CLERK: Thank you. Please be seated.
11. Please state your full name for the record.

12. THE WITNESS: My name is Jason Brewer, last
13. name B-R-E-W-E-R.

14. DIRECT EXAMINATION

15. BY MR. JOHNSON:

16. Q Now, Mr. Brewer, where do you work?

17. A I work at the FBI laboratory which is located
18. in Quantico, Virginia.

19. Q Okay. Now, can you tell us where you are from?

20. A I live right near Quantico in Virginia.

21. Q Let's go -- first of all, go through some of
22. your background and things of that nature. Okay. Where
23. did you go to college?

24. A I did my undergraduate studies at James Madison
25. University, which is in Harrisburg, Virginia. My degree

1 is Bachelor of Science in Chemistry.

2 Q And did you go to graduate school?

3 A Yes, I did my graduate studies. I have a PhD
4 degree in chemistry from the University of North Carolina
5 in Chapel Hill.

6 Q When did you finish this?

7 A I graduated August 2003.

8 Q Upon completion of your PhD, you are now -- now
9 you are Dr. Brewer; is that right?

10 A Yes, sir.

11 Q Now, upon completion of your PhD, what type of
12 work did you go into?

13 A I did what's called a postdoctoral fellowship
14 at the FBI laboratories Counterterrorism and Forensic
15 Science Research unit. There, I helped develop new
16 methods for the analysis of ink and dye. Then, after
17 that, I started my current position at the FBI
18 laboratory.

19 Q When you say ink and dye, you are referring to
20 ink dye or otherwise MAAQ?

21 A No, that particular project was on ballpoint
22 pen ink.

23 Q Ballpoint pen ink?

24 A Yes, sir.

25 Q Now, at what point did you begin working on

Jason Brewer - Direct Examination by Mr. Johnson

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1 MAAQ or what is known as bank dye?

2 A In, uh, November of 2004, I got hired as a
3 chemist within the FBI laboratories chemistry unit. And
4 during that position, which I currently hold, one of the
5 many things I analyze is MAAQ, which is the bank dye
6 substance.

7 Q What are some of the other things you analyze?

8 A I analyze controlled substances. Anything
9 that's of unknown nature, say, a liquid at a crime scene
10 or a powder and the investigator just wants to know, hey,
11 what is this stuff. I will analyze that. Lubricants,
12 pepper sprays, ink. Anything where the question is what
13 is a material and the material may be chemical in nature.

14 Q You ever been qualified as an expert witness
15 before?

16 A Yes, I have.

17 Q How many times have you testified as an expert
18 witness?

19 A On six occasions.

20 Q You know what states?

21 A Yes, I've testified in Baltimore, Maryland;
22 Newport News, Virginia; Charlotte, North Carolina;
23 Winston-Salem, North Carolina; Tallahassee, Florida; and
24 I believe it was Columbus, Mississippi.

25 Q Has anyone ever declined to have you admitted

Jason Brewer - Direct Examination by Mr. Johnson

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1 as an expert?

2 A No.

3 Q Uh, what does the FBI require to have the job
4 that you have? First of all, what's your job? What is
5 the, uh, -- how would you describe your title?

6 A My official title is Chemist Forensic Examiner.

7 Q Okay. What do you have to do to become a
8 Chemist Forensic Examiner?

9 A The typical approach is, first of all, you get
10 hired as a chemist, which is similar duties as far as
11 analyzing evidence. But you don't actually write reports
12 and make conclusions and testify in court. When you get
13 that job, you spend approximately a year in training
14 learning all the protocols for that job. Ultimately, you
15 have to pass a number of qualification exams. If you
16 then go on to become a forensic examiner, you do another
17 training program, which is approximately one year in
18 length dealing with courtroom issues, testifying, writing
19 reports, drawing conclusions. Things of that nature.

20 MR. JOHNSON: All right. Your Honor, at this
21 time, I'd like to move him as an expert in forensic
22 chemistry including the detection of bank dye.

23 THE COURT: Yes, sir.

24 MR. FRETWELL: No objection.

25 THE COURT: All right then. He will be so

1 qualified in forensic chemistry and detection of
2 bank dye, Ladies and Gentlemen. Use his opinion
3 however you see fit.

4 Yes, sir.

5 MR. JOHNSON: Thank you, Your Honor.

6 BY MR. JOHNSON:

7 Q Dr. Brewer, are you aware of why we are here
8 today?

9 A Yes, sir.

10 Q Can you kind of communicate to the court what
11 your involvement was?

12 A I received a number of items in an
13 investigation of a bank robbery and was asked to
14 determine if the dye, known as MAAQ, which is found in
15 bank security devices was present on any of these items.

16 Q Okay. Now, did you do reports with regards to
17 these tests that you did?

18 A Yes, I issued three separate reports.

19 Q If you don't mind, are your reports currently
20 accessible?

21 A Yes, I have them right here.

22 Q Can you consult and tell us different things
23 that you have tested?

24 A Yes, sir. The first submission I tested
25 consisted of a shirt, a pair of jeans and a belt. I

1 issued one report on those items. Then I received
2 another submission, which included a bandana. I issued a
3 report on that item. Then, finally, I received a third
4 submission which included two pairs of socks, so four
5 socks total, a pair of boots, a piece of carpet from a
6 minivan, a \$50 in United States Currency from a minivan
7 and two dye packs retrieved from the minivan.

8 Q All right. Let's go over the results of these,
9 uh, these tests. Let's start with the first one. First
10 of all, what's the date of the first examination that you
11 did?

12 A The first report I issued was on August 6th,
13 2010. Oh, I apologize. That's wrong. I got them out of
14 order here. First report, July 13th, 2010.

15 Q That was the shirt, jeans and belt?

16 A Yes, sir.

17 Q Now, can you tell us what you did with regards
18 to your tests?

19 A Yes. I use what's known as our analysis of
20 bank security devices standard operating procedure. The
21 first step in this procedure is to visually look at the
22 items of evidence. What I'm looking for is a pink or
23 reddish color stain which I would then sample to test
24 that stain to see if it's bank dye. These particular
25 items were covered in a reddish brown substance that did

1 not appear to be bank dye. Particularly, the shirt and
2 the jeans were heavily covered in this material.

3 I did not visually see anything that looked
4 like it was bank dye. However, I still chose to sample
5 the dark reddish-brown material and test it by a
6 technique known as solubility testing. What I do is take
7 a small sampling of the stain of interest, put it in a
8 test tube and then add a liquid chemical that would pull
9 that material into it -- into the chemical if the bank
10 dye were present. The testing on each of those items did
11 not pull bank dye or something that looked like bank dye
12 into the chemical. Therefore, those exams were ceased and
13 the report was issued as negative for MAAQ.

14 Q Does that mean that on any other part of the
15 items that you tested, there could not be bank dye?

16 A What that result means is that specifically for
17 the part that I sampled, there was no bank dye within
18 that part.

19 Q Can you tell -- what does it mean when I say
20 that you chose your best representative samples?

21 A Well, for this -- for instance, for the shirt
22 and the jeans, for example, there was a dark reddish-
23 brown staining on those. All the staining appeared to be
24 that color. So I took a cutting from the accessible part
25 of each of those items as representative of that

1 staining. The particular result, that bank dye did not
2 go in that chemical is limited to that particular cutting
3 that I took. I felt that was a good representative
4 sample for each of the items.

5 Q So basically what you're saying is you chose
6 the best part of the whole sample to test?

7 A I chose what I would call a representative
8 sample that should represent that staining on each of
9 those items.

10 Q Okay. Now, was the whole shirt or the whole
11 jeans covered with this substance?

12 A Not completely covered.

13 Q Otherwise, did you examine the other part
14 visually?

15 A I examined everything visually looking for,
16 from my experience, what a bank dye stain would look
17 like. In this particular set of evidence, the items were
18 quite dirty and covered in stains. So it made that part
19 difficult.

20 Q If, for instance, you took a swab or did
21 solubility testing from the stain that, say for instance,
22 was covered with blood, if there were dye under that
23 stain, would you be able to detect it?

24 A My opinion would be yes. But I've never
25 actually done that particular experiment. For instance,

1 if that was blood or mud; it should not prevent the bank
2 dye from going into solution.

3 Q How would that work? As I understand it, you
4 put it in some sort of machine. Would this machine
5 separate it or how would that work?

6 A If I got -- if, after the solubility test, that
7 liquid chemical appeared to be pink or red in color, I
8 would then go on to a number of instrumental techniques,
9 one of which is known as GCMS or gas chromatography mass
10 spectrometry. It's two instruments combined in one. The
11 first part, the GC would separate that mixture of
12 chemicals into its individual components and it pass each
13 of those components one at a time into a mass
14 spectrometer.

15 So in this particular instance, when I'm
16 looking for one chemical and one chemical only, the bank
17 dye, I know how it should come out on the instrument and
18 I know what spectrum or fingerprint the mass spectrum
19 would give. I could use that instrument in one way to
20 determine the presence or absence of that chemical. But
21 in this instance, the shirt, the jeans and the belt, that
22 step was not even done because the solution did not turn
23 color.

24 Q Okay. Now, let's go to your second
25 examination.

1 A Yes, sir.

2 Q Now, as I understand, the second examination
3 was an examination of a bandana.

4 A Yes.

5 Q And what date did that take place?

6 A I issued the report August 6th, 2010. The
7 actual exams, I'd have to look at my notes. But I
8 believe they occurred on August 5th or August 6th, 2010.

9 Q Now, what were the results of your examination?

10 A Again, the first step was to visually look at
11 the item. This is a dark colored bandana, dark navy
12 blue, possibly black. They did not have the staining
13 that the dark reddish mud-like staining that the other
14 items had. When we get dark clothing items and I'm
15 looking for a like pink or reddish staining, you can
16 imagine it might be hard to see to contrast it. In this
17 particular instance, I took a swab, wet it with a
18 chemical that would dissolve bank dye if it were present.
19 I sampled the entire item by swabbing the item. Each
20 time I would swab, I would look at the swab itself it see
21 if color transferred. I swabbed the entire item and did
22 not observe color transfer.

23 Q In this instance, you're saying you swabbed the
24 whole thing?

25 A Yes, sir.

1 Q And the results of your test were what?

2 A There was no color transfer to the swab,
3 therefore, the exam was ceased and the report was issued
4 as negative for the bank dye material.

5 Q Let's go to your third report. That was on
6 November 18th, 2010; is that right?

7 A Yes, sir.

8 Q Now, uh, you tested some sock, uh, a pair of
9 socks, some boots, and a \$50 bill; is that right?

10 A Yes, sir. Two pairs of socks and dye packs.

11 Q Can you communicate to the court the results of
12 your test?

13 A The socks were similar to the shirt and the
14 jeans in that they had dark reddish-brown staining on
15 them. I took the most representative sample that I
16 could, tested those by solubility again. There was no
17 color transfer to the solution. So that exam was ceased.
18 The boots had two areas of possible staining that I
19 swabbed similar to the bandana and did not observe color
20 transfer. Those exams were ceased and those items were
21 issued as negative for MAAQ. For the piece of carpet,
22 the \$50 and the dye packs, I did get color transfer to
23 the solution. I tested that by a mass spectrometry
24 technique and then the GCMS that I discussed. Each of
25 those items were positive for MAAQ, the bank dye and for

1 tear gas, known as CS tear gas which is a common tear gas
2 used in bank security devices.

3 Q What were the condition of these items?

4 A Those items were heavily stained. The piece of
5 carpet was heavily stained in red. The \$50 had red
6 staining. The dye packs were -- they looked like dye
7 packs that had gone off. They had red staining and they
8 had burn marks on them.

9 Q Now, what about the, uh, boot and the socks?

10 A The boots and socks were similar to the jeans
11 and the shirt in that they had heavy reddish brown
12 staining on them and were dirty essentially.

13 Q Now, did you, uh, -- with regards to the boots
14 and socks, did you ever test anything pilling -- any
15 pilling of the boots and socks? First of all, can you
16 explain what that is and explain what you did with it.

17 A Yes, on the boots and socks, I observed what I
18 wrote in my notes as pills or little -- you know, fabric
19 will roll up and you get the little lint or fabric balls.
20 I observed those on the exterior of the socks and also on
21 the interior of the boots. They had a lighter reddish,
22 sort of pink hue to them. I picked those pills and put
23 them into test tubes to do the extraction test as well to
24 see if color would transfer to solution. I did not get
25 any color transfer. So the exams were stopped.

1 Q Now, you have a copy that you could potentially
2 provide to the court for these reports?

3 A Yes. Each of these three copies are for the
4 court.

5 MR. JOHNSON: I'd like to have these marked
6 as Defendant's Exhibits 13, 14 and 15.

7 THE COURT: All right.

8 MR. FRETWELL: I don't have any objection.

9 THE COURT: All right then. You want to have
10 them admitted?

11 MR. JOHNSON: I request that Defendant's
12 Exhibits 13, 14 and 15 be admitted.

13 THE COURT: All right then. They are so
14 admitted.

15 (WHEREUPON, Defendant's Exhibits 13, 14, and 15 are
16 marked for identification and admitted into the record.)

17 BY MR. JOHNSON:

18 Q Now, I notice how on all of these tests, you
19 did a solubility test; is that right?

20 A Not on the belt.

21 Q Not on the belt?

22 A Yes, sir.

23 Q On the belt, why didn't you do the solubility
24 test?

25 A I saw no area of staining at all, whereas on,

1 like, for example, the shirt, there was at least the dark
2 reddish brown stain. The belt just -- first of all, it
3 was only a portion of the belt. I don't know where the
4 other portion was and I didn't see anything worth
5 sampling on that item.

6 Q Now, can you tell whether there is MAAQ or bank
7 dye on an item just visually?

8 A I would never stop at just a visual exam, but
9 from my experience, I can usually hazard a pretty good
10 hypothesis as to whether or not that item is positive for
11 bank dye. But I always go on and confirm it with the
12 instrumental techniques.

13 Q Let's talk about the bank dye or MAAQ once you
14 get it on you, how hard is it to get off?

15 A I've never actually tried to get it off. I can
16 comment on its chemical nature and what would dissolve it
17 and what would not dissolve it.

18 Q Okay. Can you do that for the court please?

19 A MAAQ is known to be soluble in acetone, which
20 is the common ingredient in fingernail polish remover.
21 It's soluble in chloroform, another chemical solvent, and
22 in methyl alcohol, another common chemical solvent. It
23 is not soluble in water or other very polar compounds
24 like that.

25 Q Now, the difficulty of getting it out, does it

1 depend on what it's on?

2 A Yes. If a material were smooth in surface and
3 didn't have pores, imagine like a metallic surface, that
4 may be easier to remove any chemical but bank dye as
5 well. A material that is more spongier or porous, like
6 cotton for example, where a chemical can settle down into
7 it or a material like plastic which MAAQ is very stable
8 in, those are harder to remove the chemical from.

9 Q Now, say for instance based upon your
10 experience, if you wanted to get some dye of some, uh,
11 let's just say a t-shirt, what would you do?

12 A First, I guess I would try laundering it maybe
13 with bleach material.. If that didn't work, one of the
14 solvents I mentioned, acetone, chloroform, methyl
15 alcohol.

16 Q Now, would you be able to tell for instance
17 from a bleach stain -- would you -- excuse me. Would you
18 be able to tell from a bleach stain whether that would be
19 dye or not? Is that something you could potentially
20 test?

21 A We do have procedures for testing if a material
22 that was in contact with bank dye was then bleached. We
23 can tell if that bank dye has been exposed to bleach.
24 It's a common practice to try and remove bank dye with
25 bleach.

1 Q Let's talk about where the dye attaches. First
2 of all, where is the dye -- how does the dye start and
3 what does it transform into?

4 A The dye is within a little capsule inside of a
5 bank security device. That device will, based on a small
6 explosion, uh, that bank security device will dissipate
7 the bank dye and the tear gas that's present by -- uh,
8 basically the bank dye is a solid powder. It will ride
9 on the cloud of smoke that's coming off of the dye pack.
10 Then it will dissipate and land on items in its vicinity.

11 Q Now, what type of -- what type of, uh, surfaces
12 does the dye like to attach to?

13 A As I mentioned, surfaces that would be more
14 porous or more plastic like. It would adhere to better
15 than surfaces that were, say, metallic or less porous.

16 Q One second please. (Pause.)

17 MR. JOHNSON: Your Honor, at this time, I'd
18 like to publish 13, 14 and 15 for the jury.

19 THE COURT: All right. Yes, sir.

20 (WHEREUPON, Defendant's Exhibits 13, 14 and 15 are
21 published to the jury.)

22 MR. JOHNSON: Your Honor, I could go ahead
23 and allow Mr. Fretwell to start.

24 THE COURT: That's up to Mr. Fretwell. That
25 will be fine. If you want to go ahead, that's fine.

1 MR. FRETWELL: I don't want to be sitting
2 here when I'm supposed to --

3 THE COURT: That's fine. You're fine.
4 You're fine. All right. Thank you, sir. I
5 appreciate it. All right. Mr. Fretwell, at any
6 point that you want to begin, you can, but if you
7 want to allow the jury to take a look at these
8 reports, that's fine too.

9 MR. FRETWELL: Judge, when you phrase it that
10 way, I certainly don't want to interfere with the
11 jury's doing. I'm happy to continue, but I'm also
12 happy for them to look at the exhibits.

13 THE COURT: I might not want to cross
14 somebody while the jury is looking at it. You do
15 what you want.

16 (WHEREUPON, there is a pause.)

17 THE COURT: Mr. Fretwell.

18 MR. FRETWELL: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q Dr. Brewer, uh, your duties involved at the FBI
24 lab in Quantico were receiving of items of evidence,
25 right?

1 A Ultimately, yes.

2 Q Okay. Analyzing them for the presence or
3 absence of a variety of chemicals?

4 A Yes, sir.

5 Q Preparing a report of the findings.

6 A Yes, sir.

7 Q And then testifying to the findings if
8 requested.

9 A Yes.

10 Q All right. And you've been qualified today to
11 give expert testimony in forensic chemistry, you have a
12 PhD in chemistry; correct?

13 A Yes, sir.

14 Q And also the detection of bank dye.

15 A Yes.

16 Q All right. You haven't been qualified as an
17 expert in the operation of bank dye. That's not your
18 area of expertise; is that correct?

19 A Correct. I just know essentially how the pack
20 works but not the details.

21 Q Right. You haven't tested dye packs in the
22 sense of activating them or anything like that in the
23 course of your work with the FBI.

24 A I've only observed them activate, but correct.

25 Q Okay. All right. Would you agree -- and I

1 think you identified that the dye exists initially in the
2 dye pack as a solid powder?

3 A Yes, sir.

4 Q Would you agree that that solid powder, the
5 MAAQ, the process by which it stains is based on the heat
6 that's generated by that dye pack. Is that correct?

7 A I don't have the knowledge in that particular
8 area on exactly the mechanism of how it stains.

9 Q So that -- All right. Okay. Uh, you have
10 experience -- have you experienced dye when it's in its
11 liquid form and warm, MAAQ, it has heat to it?

12 A Not with heat. But when I do my analyses and
13 pull it into that liquid solvent, it is then in a diluted
14 liquid form.

15 Q Would you agree with me that the substance of
16 the compound, MAAQ, when it's in its heated liquid form,
17 that is the process by which it adheres to porous
18 materials, to fibrous materials, et cetera?

19 A It would make sense that it would be more
20 amenable to a high probability of staining something in a
21 heated form.

22 Q Okay. And then have you ever handled the MAAQ
23 in its raw form before it's ever been used in a dye pack
24 or anything like that, the powder form that he described?

25 A Yes, we have the powder in our laboratory as a

1 positive control, that is to detect what fingerprint data
2 it gives on instruments.

3 Q You ever placed that powder on your hand?

4 A No.

5 Q Okay. Do you know if you placed that powder on
6 your hand whether that would stain your hand in its
7 original solid powder form?

8 A I imagine that it would just because of the
9 nature of the greases and wet and things that are on your
10 hands. But it depends on what you mean by having it in
11 contact with your hands.

12 Q Would you disagree that if a dye pack activated
13 for more than a foot and a half to two feet away and
14 that, uh, -- let's say the smoke from that dye pack
15 wafted over an individual that that individual thereafter
16 could dust some of that smoke off he or she got that on
17 his clothing or his person?

18 A I don't have the experience to answer that
19 particular question.

20 Q Would you agree with me that if you were
21 holding the dye pack or you had it in your pocket or you
22 were maybe standing right over it, there's a higher
23 likelihood if that backpack activated, you would get
24 staining on your person and on your -- potentially, your
25 clothing.

1 A Yes, I would agree with that. The closer you
2 are to anything, that would be a staining item -- a
3 better chance of it being stained.

4 Q All right. Now, uh, if I could -- I know you
5 don't have your reports in front of you, do you?

6 A No.

7 Q Let me see if I can collect those from the
8 jury. I just want to go through your reports. I don't
9 know if they are in the order that you -- I want to
10 refer, first of all, to the report -- I don't know how
11 its marked. Perhaps you can tell me what defense exhibit
12 that is dated July 13th.

13 A They are in chronological order, 13, 14, 15.

14 Q So Defense 13 is the one that is dated July
15 13th, 2010?

16 A Yes, sir.

17 Q With respect to that report, you received items
18 from Special Agent Robert Scott of the Greenville office;
19 is that correct?

20 A Yes, not directly, but yes, sir.

21 Q He was the authorizing agent that sent those
22 items to you; is that correct?

23 A Yes, sir.

24 Q Through whatever FBI process there is for
25 getting evidence to you.

1 A Yes.

2 Q That contained a shirt, jeans and you indicated
3 a belt.

4 A Yes.

5 Q Now, the jeans or the belt were basically the
6 same item, is that a fair assessment?

7 A They were packaged together, yes.

8 Q I guess because you list on your report that
9 both Q2 and Q3 with Greenville County Sheriff's Office
10 DES7 and DES7, but then Q1, which is the shirt, is listed
11 as GCSO DES8.

12 A Yes, we provide those, in this instance, GCSO
13 numbers. That is so that particular agency or laboratory
14 will know which item we are referencing. But within our
15 laboratory, we gave those different item numbers.

16 Q Maybe this is a better way to do it, let me get
17 you a pair of gloves ---

18 A Okay.

19 Q --- and ask you if you recognize -- let me give
20 these to you.

21 A Thank you.

22 Q If you don't mind stepping down here. I'll
23 bring your reports. Defense 13.

24 A Yes.

25 Q I think -- take a look at State's Exhibit 64

1 and see if that is consistent with Q2 I believe.

2 A First of all, this packaging, I recognize this
3 as my handwriting here.

4 Q All right. It says Q2 through Q3 would be the
5 items you are referring to.

6 A Yes, I recognize this as item Q2, the jeans.
7 The belt is in here.

8 Q You know or do you recall whether or not the
9 belt was in the belt loops of the jeans when you --

10 A I do not recall. The belt is not even in tact.
11 It's half a belt. I don't remember.

12 Q The jeans do appear to look like they've been
13 cut; is that correct?

14 A Yes, the jeans were cut when I received them.
15 As if ---

16 Q Okay.

17 A --- a paramedic or something.

18 Q Right. So the jeans and the belt. You did a
19 visual examination of the jeans?

20 A Yes.

21 Q Can you show the members of the jury -- if you
22 can kind of pick the pants up -- what you were talking
23 about with respect to the discoloration on the jeans.

24 A The front left leg here, you can see pretty
25 much from the waste to the hem at the bottom. They are

1 covered in a reddish-brown substance.

2 Q That's the same for the other side as well?

3 A Each side, back and front pretty much. It was
4 heavily stained and discolored.

5 Q And you did a visual inspection of those jeans
6 as the first step of your protocol; is that correct?

7 A Yes. And I'm looking for a light pink or red
8 stain. You can see the dilemma.

9 Q Right. And the dilemma is from the fact that
10 you can't see what's underneath that red or that dirt on
11 there in every instance. Is that the case?

12 A Yes.

13 Q And your report, which is, I think, right next
14 to you, indicates that you did a solubility test on this
15 item.

16 A I did a solubility test on the sampling of this
17 item.

18 Q And can you show the members where you secured
19 that item. Is that from the --

20 A I took it from the pant lining here, the pocket
21 lining. My initials are right here.

22 Q That would be basically like the inside of a
23 pocket?

24 A The front left pocket, yes.

25 Q Did you do any cuttings or any solubility tests

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1 on the exterior of the trousers?

2 A No, I did not.

3 Q And, uh, with -- is that the same for the shirt
4 as well? You did a representative sample, a small
5 cutting from the shirt. You took that sample and you --
6 is that correct, first of all?

7 A Yes.

8 Q You took that sample and you either -- did you
9 dissolve the entire cutting into the emulsion, the
10 acetone to determine whether or not there was the
11 presence of MAAQ?

12 A I take the cutting. I place it into a test
13 tube and add enough solvent to cover that.

14 Q That's when it's introduced into the GCMS?

15 A Only if I get color change.

16 Q I got you.

17 A These instances for the clothing items, I did
18 not see color change.

19 Q So there was not introduced -- that sample was
20 not introduced into the --

21 A Correct.

22 Q Okay. All right. And with respect to -- with
23 respect to the remainder of the item, the entire outside
24 of the pants and the rest of the shirt and a couple of
25 the -- go ahead and just have you look at -- you don't

1 need to pull it all out. You don't have to put this
2 away. This is -- just pull that out.

3 A Again, I recognize my symbols and everything.
4 It appears to be.

5 Q It appears to be what you examined?

6 A Yes.

7 Q How many cuttings did you make from this?

8 A One cutting.

9 Q Okay. One cutting and approximately how big of
10 a cutting.

11 A I'll be able to find it, I think. (Pause.)
12 Approximately the size of a quarter, I would
13 say.

14 Q Okay.

15 A I see my initials.

16 Q And with the exception of that cutting on that
17 particular article of clothing, the remainder of the
18 clothing, you didn't take any -- you didn't do any other
19 cuttings; is that correct?

20 A You mean of all the clothing?

21 Q No, this article.

22 A This particular article, that is the only
23 cutting.

24 Q Okay. And you didn't swab any of the rest of
25 that clothing.

1 A No.

2 Q Clothing: This shirt.

3 A This shirt.

4 Q And you didn't swab any of the rest of the
5 jeans other than the part in the pocket where you did a
6 cutting. And your testimony is that on the cutting from
7 the shirt and the piece that you cut out of the pocket
8 that you were unable to identify MAAQ on those two
9 cuttings; is that correct?

10 A Those two are negative for MAAQ by the visual
11 exam and solubility testing.

12 Q All right.

13 A The entire garment, I did not visualize
14 anything that would look like bank dye beyond the samples
15 I took.

16 Q And I think -- I believe when you testified on
17 direct you indicated that the -- in the cutting that you
18 took, whatever it is, if it's blood, if it's mud, if it's
19 on the exterior of that clothing would not prevent you
20 from determining whether underneath it was -- there was
21 any MAAQ; is that correct?

22 A Yes, in my opinion, when I put it into that
23 liquid solvent, MAAQ should go into the solvent
24 regardless of the presence of that material on the item.

25 Q So is it possible -- I'm just asking if it's

1 possible. I'm not talking about protocols with the FBI.
2 Is it possible to take back those entire jeans and this
3 entire shirt, put them into a bucket of acetone and
4 figure out if there's any discoloration that would
5 indicate the presence of MAAQ?

6 A It would be possible. However, that experiment
7 has not been done. Once you start dealing with a volume
8 large enough to consume -- to cover this item,
9 concentration becomes an issue. There's not a lot of
10 MAAQ -- let's say there happens to be MAAQ on it when
11 that experiment was done. You wouldn't see the color, so
12 you brought the volume down small enough for the naked
13 eye to be able to see that color.

14 Q That was not done on either of those?

15 A Absolutely not.

16 Q And that was not FBI protocol; is that
17 correct?

18 A No.

19 Q Okay.

20 A The most important part of our exam is the
21 visual part, to see the pink stain or the reddish stain.

22 Q All right. That's the report that is -- one
23 more thing. The CS tear gas. If you do not locate the
24 suspected MAAQ, you do not perform a test to determine
25 the presence of CS tear gas; is that correct?

1 A Correct.

2 Q Okay. All right. So that's the first --
3 that's the first report. On the second report, you
4 tested the bandana.

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q In fact, you, uh, actually did, uh, swab the
9 bandana in an effort to determine whether or not you had
10 any discoloration change for purposes of finding MAAQ;
11 is that correct?

12 A Yes.

13 Q You did not identify tear gas; is that right?

14 A Yes, there was no color transfer.

15 Q And more specifically, because you didn't find
16 the color transfer, you didn't test that item for the
17 presence of CS tear gas?

18 A Yes. To make it clear, the presence of CS tear
19 gas without the bank dye with it has no meaning in this
20 type of investigation.

21 Q And in fact, you would not test it even if
22 requested to test it because it does not fit within your
23 protocol; isn't that correct?

24 A Within the bank dye analysis protocol.

25 Q Exactly. Okay. All right. And then finally,

1 with the socks and the boots, take just a second to find
2 those on here. Did you test those in the same manner as
3 the shirt and the jeans or did you test them in the
4 manner of swabbing -- oh, you did the pills.

5 A Pills and cutting.

6 Q Pills and cutting. And the pills and the
7 cutting, you did not identify MAAQ.

8 A Correct.

9 Q And you did not perform any kind of CS tear gas
10 test.

11 A Correct.

12 Q All right. And then on the piece of carpet
13 that was sent to you, the \$50, those were actually sent
14 to you at your request. Is that correct? So that you
15 could do a comparison and determine whether or not there
16 was actually MAAQ even involved in this incident?

17 A To elaborate ---

18 Q Okay.

19 A --- oftentimes, uh, an investigator, whoever
20 may be submitting evidence will see heavy red stains and
21 make the assumption it's bank dye.

22 Q Right.

23 A I usually provide them guidance that they might
24 as well send it in for chemical analysis to absolutely
25 confirm. In this case, I believe that's the conversation

1 we had, you might as well send it in. I'll do the
2 chemical testing and identify.

3 Q So you can confirm what you are talking about?

4 A So you are not making assumptions.

5 Q Absolutely. And for purposes of the CS tear
6 gas ---

7 A Yes.

8 Q --- would it make a difference to you as far as
9 your expectations and enable to be -- in an effort to
10 find the presence of CS tear gas, would it make a
11 difference to you whether or not those items had been
12 sealed and preserved in a -- not out in the weather and
13 in a controlled environment soon after they were exposed
14 to be tear gas and the bank dye?

15 A Yes, that would be true of any chemical.

16 Q Okay. All right. And then items that were
17 potentially exposed to that chemical that were out in the
18 elements, fresh air, rain, even submerged in water, that
19 would have an effect on whether or not would be able to
20 locate reliably any tear gas on those items or determine
21 whether or not tear gas had ever come in contact with
22 those items.

23 A Yes. The request was is tear gas present or
24 not.

25 Q Right.

1 A And to be reliably -- to be able to say
2 reliably that these items never came in contact with tear
3 gas, uh, it would affect your analysis if you knew that
4 they had been out in the weather for hours, potentially
5 submerged under water, subjected to the elements and that
6 kind of thing.

7 A Yes, again. That would be true of any
8 chemical. The quicker it's properly packaged, the
9 better.

10 Q And in fact, I don't want to misstate the
11 report, but Defense Exhibit 15.

12 A Yes.

13 Q It would be your final report?

14 A Yes, sir.

15 Q You actually indicate in that report that since
16 CS tear gas is found in a smaller concentration in dye
17 packs than MAAQ and is a volatile chemical, it's not
18 always detected?

19 A Right. There are instances when a dye pack
20 that contained MAAQ and CS, if we were to identify MAAQ,
21 we don't always detect the CS.

22 Q Okay. I'm sorry.

23 A That's what that's trying to say.

24 Q The continuation of that paragraph is in
25 instances where items are negative for MAAQ or where

1 visible pink red color stains are absent, no further
2 examinations are performed for dye pack chemicals; is
3 that correct?

4 A Yes.

5 Q And then one last thing I want to ask you, I
6 think it is the last paragraph on that page, the MAAQ is
7 actually a colorant used in some plastics in older
8 formulations of military red smoke.

9 A Yes.

10 Q So like a smoke that would be out on
11 battlefield to signal somebody's location or something
12 like that.

13 A Yes, sir.

14 Q Okay. So used by the military?

15 A Yes, it was.

16 Q All right. And I'm not saying that for
17 purposes of tear gas, just MAAQ.

18 A Yes.

19 Q Okay. You don't have to stand up. You can
20 return to your seat. Let me make sure there isn't any
21 other questions I want to ask you. (Pause.)

22 I'm not going to make you go back over those.
23 Isn't it true that these items, because of their
24 condition, the shirt and the pants were difficult to
25 examine visually?

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1 A Yes. Difficult to visually examine for the
2 presence of a red or light pink stain.

3 Q Exactly. In that context, yes, sir. And then
4 your findings do not mean -- the findings that are in
5 these reports that have been entered into evidence by the
6 defense do not mean that you are saying conclusively
7 there is no MAAQ on these articles of clothing?

8 A That is correct.

9 Q And it is possible for bank dye to exist on
10 clothing and escape visual detection; is that correct?

11 A Yes, in some instances.

12 Q Those are all the questions I have. Thank you
13 very much, Dr. Brewer.

14 THE COURT: Mr. Johnson.

15 MR. JOHNSON: Very quickly.

16 REDIRECT EXAMINATION

17 BY MR. FRETWELL:

18 Q I called you here to testify today, isn't that
19 true?

20 A Yes, sir.

21 Q I didn't -- did I ask you to do these tests?

22 A No, sir.

23 Q These tests were ordered by Rob Scott; is that
24 correct?

25 A Yes, sir.

1 Q And were you aware that they were sent up from
2 SLED?

3 A I noticed that they had SLED labels on them.

4 Q Did you know that initially when you tested
5 them?

6 A I saw they had SLED labels, but it was my
7 understanding other testing was done on them.

8 Q Okay. Nothing further.

9 THE COURT: Mr. Fretwell, anything else?

10 MR. FRETWELL: I don't think I have anything
11 further.

12 THE COURT: All right. Sir, you can step
13 down.

14 THE WITNESS: Am I free to leave?

15 THE COURT: Mr. Johnson, ---

16 MR. JOHNSON: Of course. Of course.

17 THE COURT: --- he's asking if he may leave.

18 MR. JOHNSON: He can be relieved.

19 THE COURT: All right. Mr. Fretwell?

20 MR. FRETWELL: No objection.

21 THE COURT: Thank you, sir, for being here.

22 MR. JOHNSON: He can go on back to Virginia.

23 THE COURT: Okay. We wish you a safe trip
24 back.

25 Tell you what, we've been going for a little

Remarks

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1 while now. Let's take a break. Let's take a brief
2 break. We'll be in recess until four o'clock. All
3 right, Ladies and Gentlemen.

4 (WHEREUPON, the jury exits at approximately
5 3:53 p.m.)

6 THE COURT: All right. Let's be in recess
7 until four o'clock.

8 (WHEREUPON, a short recess is taken.)

9 THE COURT: All right. Let's bring the jury
10 back in. I'll let you rest on the record.

11 MR. JOHNSON: Thank you, Your Honor.

12 THE COURT: I apologize about that. I'm
13 sorry. I just jumped the gun.

14 MR. JOHNSON: No, I told you three. I told
15 you three. If I could have caught you sooner, I
16 would have.

17 (WHEREUPON, the jury enters at approximately
18 4:04 p.m.)

19 THE COURT: Ladies and Gentlemen, y'all are
20 going to be mad at me. Mr. Johnson -- I jumped the
21 gun before Mr. Johnson could tell me that he was
22 ready to conclude his case.

23 So Mr. Johnson.

24 MR. JOHNSON: The defense rests at this time,
25 Your Honor.

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1 THE COURT: All right.

2 MR. FRETWELL: Nothing in reply.

3 THE COURT: Nothing in reply. All right. So
4 I gave y'all a break for absolutely nothing. I
5 really do apologize about that. All right. We're
6 going to break for the evening. We need to take up
7 some legal matters. We'll begin in the morning.
8 We'll hear argument, final arguments from both of
9 these attorneys. Then you will hear my charge on
10 the law and you will have the case probably sometime
11 mid to late morning. All right. I hope you all
12 have a good evening. Please don't discuss the case
13 with anyone. Okay. Yes, sir?

14 THE JUROR: Nine o'clock?

15 THE COURT: Time? Let's do 9:30 tomorrow.
16 Let's do 9:30. I think that would be better. All
17 right. All right. Good. I appreciate you
18 mentioning that to me. I'm so sorry. Okay. Bye-
19 bye.

20 (WHEREUPON, the jury exits at approximately
21 4:06 p.m.)

22 THE COURT: All right. Any motions, Mr.
23 Johnson?

24 MR. JOHNSON: Your Honor, I would like to
25 renew my motion for directed verdict. If I may just

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1 put one other --

2 THE COURT: Certainly.

3 MR. JOHNSON: I believe I mentioned earlier
4 the State versus -- State versus Owens. That case
5 also quoted another case. I believe that case is
6 State versus Bostic, 392 S.C. 134. In that case,
7 the State presented in evidence that the
8 investigator found personal items belonging to the
9 culprit including a watch and a set of car keys.
10 They also matched a pattern from, uh, the
11 defendant's shoes that matched the gasoline. The
12 gasoline was what the assailant used and start a
13 home fire. The home fire was, of course, the
14 culprit of the death with this person. Then
15 Investigators found blood on his clothes that he was
16 wearing the day of the murder. The court decided
17 that that was mere suspicion. I think in this
18 instance, that's even -- we don't have that much in
19 this case.

20 So again, I'd like to assert my, uh, motion for
21 directed verdict. I don't think that Weiner's
22 testimony was sufficient for especially possession
23 of stolen vehicle. I don't believe that he gained
24 firsthand knowledge. I believe that we need someone
25 to come in and essentially say that my car was

1 stolen and the value was not proven. He also -- he
2 stated the value was this. I think those are items
3 that need to be proven rather than just asserted and
4 accepted as true.

5 THE COURT: All right. I do think that there
6 was, as I said, at least some testimony in that
7 area, enough to survive a directed verdict motion. I
8 appreciate you bringing that other case to the
9 court's attention. However, uh, as I said, in an
10 interpretation of the facts most favorable to the
11 State, I find that there was substantial
12 circumstantial evidence and thus respectfully will
13 deny your motion.

14 MR. JOHNSON: Thank you, Your Honor.

15 THE COURT: Uh, now, we've gone over the
16 verdict form. I've got a copy of the verdict form.
17 I'll tell you what, just so that we're sure, not
18 that I think y'all are going to try to pass off a
19 verdict form or anything like that, but I'm just
20 going to mark it so we don't have a couple of
21 verdict forms floating around, in other words. I
22 just put a mark on the front. It will be something
23 for you to have. If you need to refer to the
24 verdict form, I'll have it down on your table in
25 front of the jury in case you want to show it to the

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1 jury at any time during either one of your
2 arguments. All right.

3 Uh, now, turning to the charge itself, my
4 charge is by and large, uh, straight from the charge
5 book. It's not anything unusual. I go over, of
6 course, their duties. Reasonable doubt. I say it's
7 proof beyond a reasonable doubt -- uh, proof beyond
8 a reasonable doubt is proof that leaves you firmly
9 convinced of the defendant's guilt. There are very
10 few things in this world that we know with absolute
11 certainty. In criminal cases, the law does not
12 require proof that overcomes very possible doubt.

13 If, based on your consideration of the
14 evidence, you are firmly convinced the defendant is
15 guilty of the crimes charged, you must find the
16 defendant guilty. If, on the other hand, you think
17 there is a real possibility the defendant is not
18 guilty, you must find the defendant not guilty.

19 MR. JOHNSON: Your Honor, any language of
20 charge of reasonable doubt is the type of doubt that
21 cause you to hesitate to act?

22 THE COURT: I don't have it in here. I'll
23 tell you what, I have added it at the request of the
24 defense on several occasions. So we'll add that if
25 you would like.

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1 MR. JOHNSON: Yes, I would request that.

2 THE COURT: All right. I don't think it's
3 inconsistent with my charge in the least. We added
4 a statement with regards to hesitate to act. I go
5 over direct and circumstantial evidence, of course
6 credibility of witnesses and expert witnesses. I
7 talk about failure of the defendant to testify. I
8 go over that pretty strongly that they can not even
9 discuss that in the jury room. Identification being
10 an issue. I go over criminal intent, of course.
11 Assault and battery with intent to kill. I'll tell
12 you what we'll do since we've got some time.

13 Teresa, you don't have to put all this down. We
14 don't have to have all this on the record.

15 If y'all don't mind, we'll go off the record
16 and I'll just read to you what my charge on each of
17 the crimes charged is. All right.

18 (WHEREUPON, the court goes off the record.)

19 (WHEREUPON, the court recesses for the day at
20 approximately 4:33 p.m.)
21

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P R O C E E D I N G S

(WHEREUPON, the court resumes on the 13th day of January, 2012 at approximately 9:39 a.m.)

THE COURT: All right. Here's what I've added based on our charging conference yesterday. What is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. I added that in addition to my regular charge.

And, uh, for assault and battery with intent to kill, I've added in order for you to find the defendant guilty of assault and battery with intent to kill, you must be satisfied beyond a reasonable doubt that if the victim had died, the defendant would have been guilty of murder. And there's case to support that. All right.

Yes, sir.

MR. FRETWELL: Judge, I just wanted to let the court know that I didn't know if it was the lateness of the hour yesterday, I had no objection to your charge.

THE COURT: Okay. All right. Okay. And, uh, I feel real good about, uh, that as long as Mr. Johnson doesn't have any objection to it.

MR. JOHNSON: No objection, Your Honor.

1 THE COURT: All right. I feel good that if
2 there is need for appeal in this case that that
3 wouldn't be something that the Supreme Court would
4 be too upset about. All right. Got that. I do
5 have a little statement in there about how to use --
6 I think I read that to you all about how to use the
7 jury charge back in the jury room. I also have
8 taken out language in the charge itself just talking
9 about filling out the indictment. I've removed
10 that. In my instructions to the foreperson, I tell
11 him that he needs to fill out the verdict form.

12 MR. JOHNSON: Your Honor ---

13 THE COURT: Yes, sir.

14 MR. JOHNSON: --- one thing, the Solicitor
15 and I went over the State's Exhibit 110.

16 THE COURT: Oh, great.

17 MR. JOHNSON: I think what we've come to is
18 that the last three pages can be taken out all
19 together.

20 THE COURT: All right. Very well. Well, if
21 y'all are in agreement about that and you want to
22 take those three pages off --

23 MR. JOHNSON: I'm afraid I'm going to remove
24 the staple or something.

25 THE COURT: Okay. That's fine. We have a

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1 stapler up here.

2 MR. JOHNSON: Why don't I let you handle it:

3 THE COURT: Mr. Fretwell, are you going to
4 want to open on the law?

5 MR. FRETWELL: No.

6 MR. JOHNSON: We've also taken a look at the
7 verdict form. I think we're both good with it.

8 THE COURT: Okay. All right. Very well
9 then.

10 MR. JOHNSON: Excuse me, Your Honor. This is
11 just a copy?

12 THE COURT: That's just a copy. I'll tell
13 you what I'm going to do so you don't have to show a
14 copy to -- so you don't have to show a copy with a
15 marking on it to the jury, I'll put this right here.
16 Some people like to explain the verdict form to the,
17 uh, jury. I'll put it right there for you. All
18 right. All right. Anything else?

19 We're going to be off the record for just a
20 minute.

21 (WHEREUPON, the court goes off the record.)

22 THE COURT: All right. If there's nothing
23 else, then we'll go ahead and bring the jury in..

24 (WHEREUPON, the jury enters at approximately

25 9:45 a.m.)

1 THE COURT: All right. Ladies and Gentlemen,
2 you've heard all the evidence and testimony in this
3 case. We are now ready to begin with our closing
4 arguments from the attorneys.

5 Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes, sir.

9 MR. JOHNSON: To buy something, we all know
10 you need money. Now, a long time ago, there was an
11 invention of credit. What credit would allow you to
12 do is if you didn't have money at that time and it
13 was something that you needed, it would allow you to
14 get that item. Unfortunately, that type of thing is
15 involved in getting things you also don't
16 necessarily need. Of course, you have to pay that
17 money back at some time. Anyhow, that's how things
18 work now. It's a pretty good system except, of
19 course as I just mentioned when you get behind.

20 In a legal case, if you have a criminal case,
21 the State needs evidence. The evidence that
22 supports their conclusion that someone's guilty.
23 Now, is there some sort of equivalent of credit if
24 you don't have that evidence? No. It doesn't work
25 that way in criminal cases. There's no credit. You

1 have a certain crime. You have certain aspects.
2 You have certain evidence that you expect to find.
3 You have certain evidence that is collected. You
4 expect to come out a certain way. If it doesn't,
5 then that person is not guilty. That's the way that
6 works. I'm asserting here to you today that the
7 Solicitor is asking you to do that. He's asking you
8 to give him credit for things that he doesn't have.

9 Now, let's go into the evidence. The first
10 thing I'd like to talk about is the fingerprints.
11 What we know is Captain Kellett testified that she
12 analyzed six of them. She also analyzed some
13 elimination prints from the people who were supposed
14 to have owned the van. That's just a different
15 story.

16 I don't believe we even had any evidence
17 presented on who owned the van. We've got a Cepeda
18 name, but there's no Cepeda here to say I had a van.
19 I owned it. It was worth this much and it was
20 stolen. That wasn't even presented. I don't -- I
21 can't even really comment too much on it. I just
22 know that it just wasn't even presented. I believe
23 it was briefly mentioned by the officer that the car
24 was reported stolen. But I don't believe -- you
25 want to hear something, I believe the saying is from

1 the horse's mouth or proof of something. Police
2 report. Something like that.

3 Again, we had six prints. They took -- they
4 had a sample of my client's prints. They had a
5 sample of the three Cepedas who supposed to have
6 access to the van. Elimination prints are to
7 prevent maybe some -- prevent implications from
8 something that somebody was supposed to be there.
9 They took six prints. One came out to one of the
10 Cepedas. Four were just totally negative. That
11 mean there weren't any Cepedas and it wasn't
12 David's.

13 One they claim was inconclusive. I know the
14 Solicitor wants you to believe inconclusive means it
15 could have been him. That's not any type of
16 standard I know. I know that, for example, Captain
17 Kellett stated that if we had a match, I would have
18 done a report. There's no report.

19 People don't like deciding on things they can't
20 stand behind. That's everyone. I'm not going to
21 give you a blank check and let you figure out what
22 to put in it. If I write you a check and I want you
23 to have \$20, I'm going to sign my name under it.
24 The same thing with a contract. Think of it that
25 way. If I sign something that says something is

1 this, this and this, that's what I expect it to be.

2 I know they still want you to believe that
3 inconclusive means it could be him. Think of it
4 like a six-pack of cupcakes. Let's say you've got
5 six cupcakes and you've got icing on top. You can't
6 really tell what's under it per say. But you eat
7 five of them and five of them are chocolate. What's
8 the next one going to be? Chocolate. It's bad
9 logic to say we've got five chocolates and this one
10 is going to be vanilla. That doesn't make sense.
11 That's just bad logic. I know that's what they want
12 you to believe. Time was spent on that. But the
13 truth of the matter is Captain Kellett could not say
14 there was a match. So that's what we've got to
15 take.

16 The next thing I want to talk to you about is
17 the gunshot residue or GSR. As we all know at this
18 time, it wasn't tested. I believe it was Forensic
19 Agent Roberts from SLED. He said it was outside of
20 the six-hour time frame. Now, I know again it's
21 kind of like playing -- you've got a basketball
22 player and you're playing defense when you need
23 points to win. You've got a minute left. You've
24 got to score. You can't just get back to the
25 defense. That's not how it works.

1 Another thing to consider is what if Weiner
2 hadn't shot him. What if he hadn't gone to the
3 hospital. What if he hadn't got in the ambulance?
4 Think about what you know about it. My client
5 wasn't armed. He got up on the stand. He was
6 armed. I knew he was armed. I knew he was armed.
7 I knew him to be armed and dangerous. I knew him to
8 be armed. No gun. Not armed.

9 Other things we know about him was the way he
10 was dressed and his car. His car was a regular
11 white Ford Taurus. We know that he ran him down in
12 that car. Think about what he said. He broke
13 through the fence. Through a locked chain-link
14 fence. The car bottomed out on the other side. He
15 drove that car through the yard.

16 I don't know about you guys, but I'm not
17 stopping. Somebody driving, trying to run me down
18 in a car. There's no lights on top of this car.
19 How are you supposed to know it's a police car?
20 There's no sirens. There's no horn. He gets out of
21 the car. You see what he's wearing. I know they
22 try to say it's a regular police uniform, but it's
23 not like one of those. Take a look at it. When you
24 get back in the jury room, take a look at this green
25 suit. Someone is pulling a gun on me in this green

1 suit. I'd never seen this suit before. You've got
2 to act fast. Somebody's driving you down in a car.
3 Got a gun pointed at you. Think about what's
4 reasonable in that situation.

5 Also think about where he shot him? I believe
6 it was back left. Excuse me if I'm wrong. It could
7 have been right left. Back left. Bottom left
8 thigh. That's in the back. That's what you call in
9 the back. I understand somebody -- you've got
10 somebody you don't know he has a gun and they turn
11 and they're facing you and you shoot them. That
12 makes sense. I understand if you are scared, you
13 think this might be someone -- you think this might
14 be someone who just committed a horrible crime. I
15 understand that. He shot him in the back.

16 Anyhow, because of that, he had to go to the
17 hospital. Ooten, one of the CSI technicians, had to
18 come and do the GSR test where you swab the front of
19 the hand and swab the back of the hand. It was
20 outside of the six-hour time frame. So we don't
21 know. She didn't testify he ripped his hand away or
22 something like that like he was -- she didn't say
23 anything like that. So know we don't know. They
24 want credit. They want to swipe that card. They
25 want credit for it, for evidence that they don't

1 have.

2 Of course, I'm going to get back into the GSR
3 when we get around to the dye pack. Remember that
4 was tested for dye. Let's talk about what we know
5 the person in the video looked like. Black hoodie.
6 Gray baseball cap. Jeans with some embroiders.
7 Gloves. They had a bandana. Of course, the big
8 thing would be the gun.

9 First thing we know is when my client was
10 encountered, there was no hoodie and there was no
11 hat. Now, I know that the next day -- the day of,
12 the next day and the next day, the police and their
13 K-9s and I have no reason to believe they are not
14 well-trained. I voir dired them extensively. It
15 sounds like they are very well trained, did not find
16 any of those items. So the assumption is if you
17 know a guy -- could I have that please? Excuse me.
18 Put it right there for me please.

19 Let's say you know a guy that went like this.
20 And on three occasions, you go back in that same
21 line looking for stuff and you don't find anything.
22 The suggestion is that he could have thrown those
23 items. I don't know if you ever tried to throw a
24 baseball cap, but you can't throw it very far. I
25 don't care how hard you try. You can't throw it

1 outside of where you're standing. Maybe you can do
2 it with a hoodie. Maybe you can do it with a gun.
3 The hoodie, you are saying it's wet. Maybe you
4 could.

5 What else do we have here? We've got trees.
6 They say there was dense vegetation. We've got a
7 gun. The only thing that was really clear was the
8 logging road. We've got dense vegetation. It was
9 described extensively. That's essentially having
10 big Shaquille O'Neal blocking your shot. How is it
11 supposed to go far? How does that work? If
12 somebody tries to throw it, it wouldn't go far. We
13 know they searched for it. We know they were really
14 searching.

15 We know the dogs were working, once again,
16 because they are competent too. They found a pen.
17 Now, a pen, I know it was -- made sense that it was
18 a kind of big pen, but it was still a pen. The pen
19 is not larger than a gun. The pen is not larger
20 than a sweatshirt.

21 Now, I know a lot has been made of the jeans
22 that my client was wearing. I know essentially what
23 they're trying to do is to say that they are the
24 same or that they are unique or something of that
25 nature. Well, a long time ago, a genius, a

1 manufacturing genius, decided that he would make
2 more money if he made more than one pair of jeans at
3 a time. He decided he might be able to make more
4 money that way.

5 Another thing --and I'll come back to this with
6 regards to dye -- what would make the jeans unique
7 would be the presence of bank dye. Dye is in the
8 smoke. David Dill described the smoke. He was
9 following this guy for two minutes. There was smoke
10 when the police got there after, uh, the shooter was
11 gone.

12 What else do we know? We know about gloves.
13 We know that Shawn Rafferty stated essentially he
14 could tell that the person who shot was African-
15 American because there was no longer anything on his
16 face and he could kind of see his hand. So what we
17 know is that -- what we also know is that the person
18 who robbed the bank had gloves on in the video. I
19 think that is something that you find is undeniable.
20 Where would the gloves be? The gloves would likely
21 be found in the van at this point, right? Okay.

22 Now, these gloves were tested. There were two
23 pairs of gloves found in the van. Both were tested.
24 One of them had Alberto Cepeda's DNA and some
25 unknown person.. The other one just had some unknown

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1 people's DNA in it. But both excluded my client. I
2 don't understand you can say well somebody has on
3 gloves, maybe they can't put DNA in a car or the
4 van. But the gloves are off. Plus, you know,
5 you've got gloves on. Obviously, on the inside of
6 those gloves, you get DNA. That's not what
7 happened. The State still wants you to give them
8 credit for it.

9 Now, again, we're saying that the State is
10 accusing my client of shooting someone. Who knows
11 what this gun looks like? We don't have a gun. We
12 don't know what this gun looks like. Again, the
13 dogs, uh, backtrack even from where my client was
14 shot and they backtracked. I believe they are
15 effective. I believe they know what to do. They
16 went in the relative vicinity and tried to go back
17 to where the van was. Wannemacher took his dog
18 adjacent to where the van was in a field beside it.

19 There's no gun. Where is the gun? Well, I
20 think one thing you could assume is whoever had the
21 gun maybe still has it. We're talking about highly
22 trained professional K-9 handlers and K-9s and
23 people trailing alongside them. You've got a guy
24 with a leash with a dog on it. You've got people
25 behind them. They are combing the woods. I think

1 we've all got a picture in our brain of what that
2 looks like. I think we've seen -- it's not exactly
3 the same. I think we've seen something like that on
4 TV. We've got people looking for items that's not
5 found. Of course, we've still got a problem with the
6 hoodie and the hat.

7 Accusing someone of shooting somebody and you
8 don't have a gun is the same as saying that you
9 drive drunk but I don't know what car it is. Can't
10 find the car. How does that work? They just want
11 you to give them credit for it. That's alright, but
12 that's not how it works here.

13 Now, I know what they were trying to do with
14 the dog. They are trying to say the dogs, they got
15 close. The dogs got close. It's interesting to me.
16 You know you're this close. Say for instance you've
17 got K-9 Croc and Deputy Fuller. They came out of
18 the creek. Up above, I believe Deputy Cannon at
19 least said he could see the police lights. He could
20 see the police cars. The perimeter was right here.
21 He was right here. He said I've got this guy. I've
22 got them right here. Right up above, I can see some
23 lights. You've got them right here. You say just
24 quit. Just quit.

25 What made sense is we're right here. I can see

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1 cars right here. Let's get some more dogs over
2 here. Let's get some more people. Let's get it.
3 Let's make it happen right now. We've got them
4 right here. No, that's not what happened.
5 What did they do? They went somewhere else.
6 They went to Clankston -- uh, I believe Claxton
7 Avenue or Claxton Drive. Excuse me if I'm wrong. I
8 know it's Claxton something or other. They went and
9 searched over there. We also know they searched on
10 other leads. Hiland Avenue. Multiple calls came in
11 of people spotting things. They are not crazy.
12 They are citizens like you and I. They think they
13 see something and they report such things.
14 Meanwhile, they are saying we've got it right here.
15 I know -- for example, if I want to know where
16 my wife is, she says, Brian, I'm home. I'm not
17 going to go looking at the mall. That don't make
18 sense. It doesn't make sense at all. The State
19 wants you to give credit for it.
20 Now, another thing has to do with the dogs.
21 What we've established is that it's rainy. It had
22 been raining on and off. Some hard, some soft. We
23 also know that there's a logging road. They
24 describe the dirt and gravel and the other parts of
25 the woods. So water and dirt that comes together is

1 mud. That's what we know.

2 I just find it interesting that, okay, you've
3 got a dog tracking and you're on the right track,
4 but not a footprint. Not one mention of a footprint.
5 Now that's just common sense. Okay. You following
6 somebody and there's mud, there's going to be a
7 footprint, right? No mention of a footprint, not
8 one. Maybe you may not take a picture of it. I
9 understand that. You in the middle of the woods.
10 It might not make sense. But one -- not one mention
11 of a footprint. Okay. This guy was going this way.
12 I know the dogs were on the right track because I
13 saw a footprint.

14 I know these people are highly trained with
15 regards to the K-9s and they understand how to read
16 their language, but it would help us to say okay I
17 know, I really know because I saw footprints.
18 That's common sense. Common sense. But no mention
19 of that. It's just interesting. They want you to
20 give them credit for it. It's unfortunate in my
21 opinion.

22 Now, the biggest issue that I really have; the
23 biggest issue I think here is the dye. None of the
24 bank dye was found. What we know from the testimony
25 is the dye is in the smoke. I think Brewer may be,

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1 uh, described it the best. He stated it starts as a
2 powder. Heat activates and it starts smoke. It's
3 just like water and steam. You know, anything just
4 like that. You come in contact with the smoke.

5 Now, there should be -- first of all, we got
6 two dye packs. That's double the smoke. Two dye
7 packs. Not one, two. So two dye packs were in that
8 bag. Uh, David Dill testified that he followed this
9 car for about a couple of minutes. He saw smoke
10 coming out of the car. Even when the police got
11 there, it was still smoking. We know there was
12 plenty of smoke. Plenty of opportunity.

13 Now, I know that the 3SI guy, the 3SI sales
14 person, he stated that it's only supposed to protect
15 the money. I don't know if he needed the memo or
16 what, but his brochure, that's not what his brochure
17 says. The brochure says supposed to get the money
18 and apprehend the suspect. He says the point is to
19 save the money. But that's not what his brochure
20 said. I cross-examined him on it. He saw. He read
21 it. That's how it was. I don't know the motivation
22 behind whatever it was that he was saying. But
23 that's what it says. I can read. He can read. He
24 read out loud. You know, he speaks English like the
25 rest of us. That's what it says.

1 Now, another thing I found interesting is that
2 he and the Solicitor talked about where it should
3 be. The Solicitor asked him should it be on the
4 seat. He goes yes. It was like some awkward
5 silence, some awkward questions. Maybe not. Maybe
6 shouldn't be here. Once again, the dye was the
7 smoke. I don't want to spend too much time on that,
8 but the dye was the smoke.

9 Now, if I may -- excuse me one second. You
10 have pictures of the seats. I want you to take a
11 look at them. Take a look at something like this.
12 What you see -- when you get back in the jury room,
13 you take a look at it. What you'll see is you have
14 dye starting to come up here. You have dye on the
15 seats and there is no dye on the seats.

16 Probably the best way to illustrate something
17 like this, say I use my finger. I'm going to draw a
18 line. That's how that works. There is no dye where
19 somebody would be sitting. Wouldn't that make
20 sense? You've got dye right inside of the seat.
21 It's right there. You've got dye on the outside of
22 the van.

23 I know the Solicitor wants you to believe they
24 are fingerprints, but Dar Shaw said I didn't find a
25 fingerprint. That's not a finger print. Think

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1 about that. If you have somebody sitting there,
2 they got dye on them. That's how that works.
3 Whoever robbed the bank -- and it wasn't my client
4 -- dye should be on them.

5 Now, another thing we know is dye is difficult
6 to get out. That's what they say. Very difficult.
7 I know that they say you can brush it off. But
8 that's not what the people who are educated in this
9 stuff would say. Dr. Brewer and Roberts and
10 Simmons, that's not what they say. They say it's
11 very difficult to get out. At the very least, at
12 the very least, you need soap and water. Unless
13 they are trying to claim that my client had a bottle
14 of 409 in the woods that he hid in some ditch or
15 something, that's just ridiculous. Even then,
16 Brewer said you can even try to bleach it off. But
17 I can still tell that if that's what you were trying
18 to do, if you were trying to bleach off dye or not,
19 that's something that I can go and I can tell.
20 These stains can be tested.

21 Now, they tested these items -- first of all,
22 let me start at the beginning. First of all, I
23 didn't order these tests or my client or anybody
24 with my client. We didn't order these tests.
25 Basically, the thing is that they make two claims.

1 One is that they don't really expect it to get on
2 there. Two is that you would find them because of
3 the stain. I thought they were talking out of both
4 sides of their mouth, trying to have the cake and
5 eat it too. Either way you want to put it, I think
6 that's what you would call it.

7 I didn't order any of these tests. These items
8 were tested by Ila Simmons on 4/9/09. She tested
9 some jeans and a shirt and the same stuff was sent
10 to the FBI on 7/13/10. Then they sent some more
11 stuff to the FBI on 8/16. Then they sent some more.
12 stuff to the FBI on 11/18/10. Then they sent the
13 gunshot residue report back to SLED on 6/21/10.
14 That's a lot of testing to not care or to report to
15 be insignificant. That's a lot of testing to do. I
16 heard people say I didn't really care, but you could
17 always tell when they do. That's a lot of testing.

18 Sounds like they got some doubt in their mind.
19 Do we have the right guy? We don't have any dye.
20 Do we have the right guy? We don't have any dye on
21 this man. Brewer said whether it was blood or it
22 was mud, that didn't restore the dye for him. He
23 said he can test that. He said he can swab an area.

24 First of all, they choose the best place. That
25 just makes sense. If I have an area on this board

Closing Argument by Mr. Johnson

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1 and that's the best, that is the best spot for a
2 possibility, that's just what they do. Of course;
3 it would be irresponsible to say I tested all of
4 this so I know all of this didn't have anything.
5 What they do is they have protocol. So they pick
6 the best spot. That's the best spot and that's what
7 they choose.

8 What he said he can do is he puts it on a
9 spinner and that spinner can distract one from
10 another. He can detect blood from dye or mud from
11 dye. He can do that. That's what he said he can
12 do. Now, he did his test. He didn't find anything.

13 Now, a lot has been said also about the
14 bandana. But here's the biggest issue I have here.
15 We know who shot David Boyd. That was David Weiner.
16 We also know who collected the bandana. That was
17 David Weiner. The bandana itself was a mixed
18 sample. That means it was one person and two other
19 people. You can begin to run different ideas in
20 your head. I'm not suggesting anything. There had
21 been no evidence presented. That's just an
22 interesting situation. It just so happens that the
23 person who shot my client in the back is the person
24 who also had the bandana. I mean, it just is what
25 it is there. That's just an interesting situation

1 as far as I'm concerned.

2 . . . Think about what SLED talked about. Lilly
3 Gallman talked about wear gloves -- wearing gloves
4 in a workspace because she was afraid about DNA
5 transfer. You don't want to transfer from one item
6 to another. What -- you know, who knows. People
7 have -- it goes towards the credibility of that
8 evidence. Is that something you should focus on in
9 a mountain of everything else that we know?

10 Now, another item that was made a lot of was I
11 think item -- it was on here, 13.1 and 13.2. Now,
12 what Lilly Gallman says -- and this was focused on.
13 Lilly Gallman says that can't include or exclude. I
14 know what the Solicitor wants you to believe.
15 Include, that's what he wants you to do. But again,
16 these people have standards. They're not going to
17 sign their name to something that that's not what it
18 means. Nobody does that. That's not how it works.

19 What about -- I understand what they want you
20 to do. It's still bad logic. It's kind of like
21 with the cupcakes. 13.1, can't include or exclude.
22 13.2, exclude. Which -- which way is the scales
23 leaning if you were going to add it up that way.
24 They suggest -- I don't suggest you make an
25 assumption. They want you to make an assumption.

Closing Argument by Mr. Johnson

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1 What assumption is the one that you're supposed to
2 make logically?

3 Another thing you have is Solicitor brought in
4 Dr. Rinkiff, Dr. Langan who testified they saw
5 something. Once again, the GSR test. What we know
6 for a fact is both of his hands were swabbed. They
7 tested it. They extracted something that looked
8 like what may be a red particle or pink particle.
9 They said okay. Well, is this dye? No. It wasn't
10 dye.

11 Another thing we have is, you know, several
12 people came in contact with his hands. Duncan who
13 cuffed him. I believe it was Cooper that helped him
14 to the chair. If you look at those medical records
15 down in evidence, you will see that there was a
16 guard by his bedside the whole time. Take a look at
17 that. All these people, law enforcement, not one of
18 them makes mention of this.

19 Meanwhile, what these doctors say is they'll
20 have conversation about how this guy shot that guy.
21 Who told them that? Did they just go through four
22 days of trial like we did and hear all this
23 evidence? Is that what happened with them? Is
24 there something else that I don't know about before
25 I got involved with this case?

Closing Argument by Mr. Johnson

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1 Somebody told them that, so they are biased.
2 That's the definition of a biased witness. They
3 believe -- they already believe that something
4 happened this way. That's all they wanted to see.
5 We know -- what we know and what I asked you about
6 was those tests. Once again, these were tested.
7 These things were tested and we have a result. They
8 came back negative.

9 Last but not least, I'd like to talk about the
10 law a little bit. Just a little bit. Now, even now
11 until the judge asks you to start deliberating, he's
12 still considered innocent. I ask you to look at him
13 with innocent eyes. They haven't proved it. Of
14 course, as I just stated, I'm stating they can't
15 prove that. Now, another thing that he gets the
16 benefit of is reasonable doubt. She's going to tell
17 you what it is. I think she's going to tell you
18 something of the nature that a reasonable doubt is
19 the type of doubt that causes a reasonable person to
20 hesitate to act. That's what you need.

21 It's not -- it's not -- people in the audience,
22 they are watching this. They are here the whole
23 time. They can say I don't know. I think he did or
24 I don't know. I think he did it. That's not how it
25 works in criminal court. That's not how it works.

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1 It can work that way in civil court. That's
2 preponderance of the evidence. That's if you've got
3 -- if 51 percent of your mind decides that someone
4 is guilty, you can say 50.1 decides someone is
5 guilty, that's what you do. That's not the way it
6 works in criminal court. The thing about it is
7 there is an intermediate standard between
8 preponderance of the evidence which is just more
9 likely than not.

10 There is called clear and convincing evidence.
11 And that's what they use, say for instance, to take
12 someone's children. That's a big deal. That's a
13 big deal in the United States taking someone's
14 children. Someone's right to have children and keep
15 their children. That's a big deal. But reasonable
16 doubt is an even higher standard than that.

17 So it's like this, and I'm just going to put
18 it, clear and convincing, preponderance. So it goes
19 up like that. It's a high standard. Think about
20 what that is.

21 Again, I think -- I suggest to you that the
22 State believes there's reasonable doubt. Again,
23 they are trying to say that, again, okay, these, say
24 for instance, dye tests don't matter. Dye test
25 don't matter. Once again, I noticed they just kept

1 testing it. What were you looking for if you don't
2 -- if it doesn't matter. If you weren't expecting
3 to find anything, why did you keep testing? You got
4 doubts in your mind? Is that why? You should. I
5 understand that cause you should, but why do you
6 keep testing? Think about it. We've got, what?
7 4/9/09, 7/13/10, 8/6/10, 11/18/10, 5/26/11, 6/21/11.
8 If it doesn't matter, than why? Why?

9 Ladies and Gentlemen, at this time, when you go
10 back to deliberate, I'm going to ask you to find my
11 client not guilty of these charges, Assault and
12 Battery with Intent to Kill, Possession of a Weapon
13 During the Commission of a Violent Crime, Possession
14 of a Stolen Vehicle. I'm going to ask you to find
15 that because the evidence supports, being that it
16 isn't there, that my client is not guilty of these
17 crimes. Thank you.

18 THE COURT: Thank you, sir.

19 MR. JOHNSON: Excuse me, Your Honor. I'm
20 just going to take my stuff before the Solicitor
21 starts.

22 THE COURT: Certainly. Take your time.

23 MR. FRETWELL: Please the court, Your Honor?

24 THE COURT: Yes, sir.

25 MR. FRETWELL: I deeply apologize for asking

Closing Argument by Mr. Fretwell

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1 this, but could I just have a brief moment.

2 THE COURT: Certainly. I would like to have
3 a brief moment myself too. Ladies and Gentlemen, I
4 ask you to step to your jury deliberation room for
5 just about five minutes. Okay.

6 (WHEREUPON, the jury exits at approximately
7 10:20 a.m.)

8 THE COURT: Let's be in recess for about five
9 minutes.

10 (WHEREUPON, a short recess is taken.)

11 THE COURT: Mr. Fretwell, have you had enough
12 time?

13 MR. FRETWELL: Yes, ma'am.

14 THE COURT: Okay. All right.

15 MR. FRETWELL: Thank you.

16 MR. JOHNSON: Ready to go.

17 THE COURT: All right.

18 (WHEREUPON, the jury enters at approximately
19 10:32 a.m.)

20 THE COURT: Mr. Fretwell?

21 MR. FRETWELL: Thank you, Your Honor. May it
22 please the court?

23 THE COURT: Yes, sir.

24 MR. FRETWELL: Mr. Johnson.

25 Good morning, Ladies and Gentlemen. Ladies and

1 Gentlemen, according to Forensic Chemist Lilly
2 Gallman, the defendant's DNA is located on this
3 bandana, the bandana that was found on the fresh
4 scent trail that started at the point that the
5 robber/shooter was observed by two witnesses
6 entering the woods. Mr. Johnson has told you about
7 the reliability of the well-trained officers who
8 tracked to this bandana and located this bandana
9 containing the defendant's DNA, 1 in 93 trillion.
10 That's the major contributor.

11 This bandana, Ladies and Gentlemen -- and I
12 know these were passed along around you. I don't
13 know how much time you got to spend on each one of
14 them. But this is the bandana that is clearly
15 visible. I know you haven't been able to see this,
16 but this is in evidence. It's clearly visible in
17 the bank video.

18 As I mentioned, police K-9s discovered this
19 within, you have the 17 minutes and Doug Wannemacher
20 said he tracked for 55 minutes and you know it was
21 somewhere in between 18 minutes and whatever 55 and
22 17 is is when this bandana was located very quickly
23 after the incident. Recall that that location that
24 was identified by Mr. Dill and by Mr. Rafferty was
25 right across the road from where that abandoned

1 stolen minivan sat. Precisely the point at which
2 they indicated that the robber/shooter entered the
3 woods is precisely where the first dog picked up
4 that trail.

5 Ladies and Gentlemen, there's something also
6 about this bandana that's interesting. When you
7 take this bandana and you fold it in a triangular
8 manner, if you were going to tie it across your
9 face, these two ends line up. The holes are right
10 in the same area. And you recall or you might not
11 recall, you might have to have the testimony played
12 back, but Doug Wannemacher indicated, yeah, I
13 recognized the two holes. How many sides to the
14 mouth does a K-9 have? He has two. Two holes.

15 It's kind of like when you cut one of those
16 snowflakes open, you make a cutting on it and you
17 open it up. It turns into four holes. When the
18 bandana is open, four holes. So what condition was
19 it when it was found? It was found like this, lying
20 there. Not muddy. Not bloody. Not like the
21 clothing. Not too long after the robber/shooter
22 entered the woods.

23 Those K-9s continued to track the fresh human
24 scent, the scent that the dog handler, Doug
25 Wannemacher, indicated his dog indicated to him was

1 on that bandana all the way down the creek. You
2 remember from however many maps you saw in the
3 course of this trial, you remember that the
4 testimony was that the van was on Emile Street.
5 They tracked into the woods. Interestingly enough,
6 they talked about tracking over here almost to this
7 logging area. And you remember the testimony about
8 the vehicle that was parked right there with its
9 blue lights on?

10 The trail went this way. Then the trail went
11 back into the woods. What would send someone
12 fleeing from Emile Street back into the woods? They
13 tracked that trail, Ladies and Gentlemen, down to
14 the creek. The creek that they entered, not because
15 the dog wanted to, on a day like today, add rain,
16 add the freezing water as it was described at this
17 creek. Track down that creek all the way down that
18 creek to this area right here. Tracked to the creek
19 within the search perimeter.

20 The testimony of reporter Shawn Muserallo is
21 that he saw this defendant coming out of the creek,
22 coming out of the creek, Ladies and Gentlemen. Not
23 near the creek. Not around the creek. Coming out
24 of the creek. His testimony was that he was soaked
25 up to his chest. A creek within a search perimeter

1 where no one else had been found shortly after the
2 manhunt had been called off.

3 How do we know that Mr. Muserallo saw the
4 defendant? Well, because number one, he testified
5 that the person he saw coming out of the creek was
6 the same person that he saw police taking into their
7 custody a few minutes later on Crane Avenue.
8 Furthermore, he identified that individual as the
9 defendant, David Boyd.

10 Muserallo noticed that the defendant appeared
11 exhausted. He was wearing only a long sleeve t-
12 shirt and jeans. In weather like today in the rain
13 and in a creek, that's all he was wearing.
14 Muserallo also testified that the defendant made eye
15 contact with him, stared at the news van and then
16 ran across the road into another wooded area. Were
17 those actions consistent with the actions of an
18 innocent person?

19 When located on Crane Avenue, the defendant was
20 wearing clothing consistent with the bank robbery
21 video. Again, you have the option to have this
22 evidence to compare, to look at the designs that you
23 see on here, to find the side of the pants that are
24 cut off as they were cut off of his body that day,
25 but you can still tell which side is which. You can

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1 still look and put together and observe and compare
2 how the feathers here, the short feathers here, the
3 longer feathers here.

4 This color, if it's muddy and it's difficult to
5 see, we have pictures of what it looked like when it
6 was wet, how it was darker, how it appeared to be
7 darker than it looks once its dry. The same with
8 the shirt, how it appears darker than it does right
9 now when it's dry. That's the condition of the
10 clothing when observed by Mr. Muserallo, when
11 observed by now Sergeant Weiner.

12 I will point you to something in particular.
13 That's State's 99 where you see a long red feather
14 on the back of the right back side. When you look
15 at the right, that side, you see that same. These
16 are the jeans worn by the individual who committed
17 this robbery.

18 Furthermore, the testimony that the officers
19 gave you on Crane Avenue is that the individual who
20 they later identified as the defendant came out of
21 the woods. He came across Crane Avenue. Why did he
22 come out of the woods this way? The testimony was
23 that he was here on Agnew Road and he went into
24 these woods.

25 If you recall the testimony of investigator or

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1 Sergeant Weiner, there was a call that came out on
2 Crane Avenue, somewhere in the neighborhood of Nancy
3 Drive about a dog that had broken loose from the
4 leash and gone into the woods and had not returned.
5 So again, at this point, being pushed back into the
6 woods, at this point being forced to hide or secure
7 himself somewhere until that perimeter was released.
8 And now, again being -- hearing the sound of a
9 barking dog, not a police trained K-9, just a
10 barking neighborhood dog running into the woods.

11 It forces him back in this direction where he
12 is observed coming across the street looking at that
13 car trying to determine is this a police officer.
14 Still wanting to avoid responsibility for the
15 decisions that he had made. Running from officers,
16 dressed in the pictures that Mr. Johnson has shown
17 you -- telling, identifying themselves as sheriff's
18 officers. Saying stop and surrender. Continuing to
19 run. Jumping not one fence, but three and then
20 being shot saying just kill me and let's get this
21 over with.

22 Two medical doctors testified. Three medical
23 doctors testified. Two medical doctors testified.
24 Their only job is to treat patients and to see their
25 welfare, see to their welfare. They both testified

1 -- and in fact, if you will recall Dr. Langan, chief
2 of -- I can't remember -- Chief of Residency or the
3 department, testified not to the word dye but
4 discoloration. Remember him using that word
5 discoloration? Talking about the technical term for
6 dye. That's exactly what dye does. It discolors.

7 They both testified they saw this on his hands.
8 Dr. Langan said his fingernails. Dr. Rinkiff
9 indicated his palms. He said they were streaky on
10 his palms. Whether that came from trying to get
11 those stains off or trying to scrape them off with
12 your fingernails, doesn't matter. These doctors
13 identified that being on the defendant's hands.

14 Dr. Rinkiff called it purplish red or blue.
15 Red or blue don't look alike to you and I. But to
16 Dr. Rinkiff, who is color-blind, indicated that it
17 was purplish red or blue. He has to say that
18 because he knows that he can't tell the difference
19 by looking at it. That was why I asked him about
20 this picture that he was shown with the little light
21 or what's called a pulse oximeter measure. The
22 little pulse oximeter. Asked him if the dye he saw
23 was the same color as the light on that pulse
24 oximeter. He said yes it was. State's Exhibit 7.

25 Two trained medical doctors who indicated it

1 wasn't blood, it wasn't a chemical used by the
2 hospital. They know what that chemicals are. They
3 are something different.

4 . In fact, Mr. Johnson, in his closing, almost
5 indicated to you that the evidence about dye on the
6 defendant's hands would have been more credible
7 coming from a police officer than it would from
8 these two medical doctors after the suggestion about
9 Investigator Weiner and his possession of the
10 bandana and how the defendant's DNA might have
11 gotten on there that somehow Master Deputy Duncan or
12 one of the other officers credibility would be
13 higher when testifying about the presence of dye on
14 the hands and with two medical doctors, two
15 surgeons.

16 At the time when the defendant was shot, he was
17 out there. He was muddy. He had been shot. His
18 hands were covered in blood. There was testimony of
19 other individuals including Ms. Ooten who said that
20 there was blood on his hands when she swabbed them
21 for the GSR. Dr. Langan, Dr. Rinkiff indicated not
22 blood on his hands.

23 So what was different? His hands had been
24 cleaned. Now, the dye is visible. Not visible
25 because of the defendant's actions. Remember, when

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1 the defendant went into that bank, the defendant was
2 dressed with a hoodie over his head, with a ball
3 cap, the bandana across his face; the gloves on. A
4 large bulky hoodie sweatshirt with the hood up when
5 he went into that bank to conceal these items. But
6 when plans went awry and that dye pack went off in
7 the vehicle and he had to abandon that vehicle,
8 that's when he made mistakes.

9 But through to the end, you recall the
10 testimony of Bobby Duncan that when he came up on
11 the scene, when the defendant was lying there on the
12 ground and he had been shot, Duncan didn't know
13 that. What he did testify to is the fact that that
14 right hand, he wouldn't show it. The left hand was
15 out. The right hand, he wouldn't show it. He had
16 to grab it. Remember him saying he had to grab it
17 with both hands and pull it out so he could secure
18 it.

19 You're going to read in these hospital notes
20 about once the defendant got to the hospital, he
21 wanted to -- he declined care from the nurses and
22 the staff there about bathing, about dressing some
23 wounds. He wanted to do that himself. He wanted
24 his family to do that for him. Why? What is being
25 concealed here? What's on that hand? That in a

1 moment of being confronted with a doctor coming in
2 and saying so you're the guy who shot my other
3 patient, he says allegedly. That's when the dye was
4 visible. Not thinking, he reacted.

5 Well, how did that dye get there? How did that
6 dye get there when -- when the dye pack went off in
7 the back seat or behind the back seat, the back seat
8 is not covered in dye. The front seat's not covered
9 in dye. The bandana doesn't have dye that we can
10 identify on it. And Mr. Dickinson explained that
11 you wouldn't expect to, but in some cases, it
12 happens. So how does he get dye on his hands and
13 not on the rest of him? Well, we're going to deal
14 with that question in the concept of what reasonable
15 doubt is.

16 With the evidence that's been presented about
17 the DNA, about the bandana, about the jeans, about
18 the location of the defendant, about the dog track,
19 all of these items and all of this evidence. A long
20 time ago, accountants didn't have computer. They
21 did their accounting by hand. They did it with pen.
22 Some even -- go back far enough, you will find them
23 using a quill. In order to write in money that came
24 in, they used the most common ink they could find,
25 black ink. They would write the amount in black.

1 Then to differentiate, if there was something going
2 out or a debt that was owed, they would write that
3 in red.

4 At the end of the year, you wanted it to add up
5 and be able to write that final amount in black ink.
6 That's where the term "in the black" comes from.
7 When you get to the end of the year and its in the
8 red, you're in the red and you owe.

9 Ladies and Gentlemen, the DNA, the K-9
10 testimony, the evidence from the bandana, the
11 evidence from the location of where the defendant
12 was found, the defendant's actions and the
13 defendant's location where he was found, the jeans
14 he was wearing, all of that evidence indicates in
15 the end the State's evidence is in the black. Is it
16 reasonable to believe that this defendant did not
17 rob the Bank of Travelers Rest, flee in a stolen
18 minivan and shoot David Dill? Evidence firmly
19 establishes.

20 All of the evidence on each of the charges,
21 Armed Robbery. Let's look at the elements. Taking
22 something of value from another person in that
23 person's presence, using violence or by causing fear
24 while armed with a deadly weapon. Taking something
25 of value, money, in the form of US Currency --

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1 belonging to the Bank of Travelers Rest was taken --
2 from the person, from another person and in that
3 person's presence -- not just one, but three, Ladies
4 and Gentlemen, Adrian Correa, Audrey Samec, Yolanda
5 McCoy -- using violence or by causing fear --
6 violence is defined as relating to or characterized
7 by unlawful force. Ladies and Gentlemen, violence
8 was used in this case. You heard how the robbery
9 affected Ms. Samec, how the robbery affected Ms.
10 Correa. You can look for yourself in the video and
11 see Ms. Correa crying after this incident -- while
12 armed with a deadly weapon. Ladies and Gentlemen,
13 the testimony was that there was a gun used. The
14 pictures show that a gun was used. Mr. Dill knows
15 that a gun was used.

16 Possession of a Weapon during the Commission of
17 a Violent Crime. The judge will charge you that
18 Armed Robbery in the State of South Carolina is
19 classified as a violent crime. It is a separate
20 crime to be in possession of a gun during the
21 commission of that violent crime.

22 Possession of stolen goods. The white minivan
23 was stolen is the testimony of Sergeant Weiner, then
24 Investigator Weiner, from Veronica Cepeda earlier
25 that same morning. The stolen minivan was used in

1 the bank robbery. That's David Dill's testimony
2 that he followed it from the bank with the smoke
3 coming out. The presence of the dye stain. Money
4 in the minivan which we -- that we have before you.
5 The driver knew this was stolen. He knew this van
6 was stolen because it had been stolen that morning
7 for the purpose of using it in the bank robbery.

8 Look at the preparation that went into
9 disguising oneself and not showing identity. Don't
10 use your own vehicle. The robbery occurred less than
11 five hours. They said it was about seven o'clock
12 that morning. Less than five hours from the time
13 that the vehicle was stolen. The vehicle was
14 abandoned.

15 Most importantly, Ladies and Gentlemen, this is
16 where we go back and talk about how that dye got on
17 hands. You remember the testimony about the sock.
18 Here's the sock puppet. There's the little eye.
19 Kind of glued on. You stick your hand up in there.
20 Hang -- right here, hanging on the gear shift.
21 Notice the little eye hanging right there at the
22 bottom.

23 Why is this hanging on the gear shift, Ladies
24 and Gentlemen? Because at some point, when th
25 defendant was in that van being affected by CS tear

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1 gas which was causing him to rub and his eyes to
2 water, maybe he tried to rub his eyes with his
3 gloves and figured out tear gas gets in gloves so
4 takes the gloves off, puts them in his pockets.
5 He's now got clean hands to rub his eyes. He's on
6 the side of the road there trying to figure out what
7 he's going to do next and realizes, like I did, he
8 realizes that the gear shift is still in drive. His
9 gloves are off. He looks over to the side.

10 In the pictures, you can clearly see that this
11 is a kid's vehicle, a family vehicle. All the
12 little children's story books in it, he sees a sock
13 puppet. So he grabs the sock puppet and puts it on
14 the gear shift so he can put it into park.

15 And at what point and for what reason he might
16 have turned around with that right hand and just
17 thought about it one more time? There's the money.
18 All of this is for nothing if that money doesn't go
19 with him. So he reaches back to grab some. And
20 when he reaches back, he doesn't reach back for a
21 bundle of ones. He reaches back for a bundle of the
22 highest valued currency he could see. A bundle of
23 high dollar bills.

24 When he grabs that bundle of high dollar bills,
25 he realizes it's covered in hot, warm liquid dye.

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1 He drops it. Where does he drop it? He drops it
2 right there between the seats. Some of the dye in
3 fact rips on that little seat belt plastic casing
4 cover. Why else is a \$50 bill in this money
5 completely separate from the rest of the money? It
6 didn't blow there like Raising Arizona with the dye
7 pack detonated. You see dye all over the interior
8 of this vehicle.

9 In fact, with the amount of smoke that was
10 pouring out the window, at any given time -- you see
11 dye all over the side of the window and on top of
12 the window. By that time, it was in the ashes form.
13 It was in the solid form. It wasn't hot. It wasn't
14 in that bonding condition or state.

15 At that point, with the defendant's pictures --
16 they are better than the State's. They are glossy
17 -- he wipes his hand on the side of the seat trying
18 to get some of that dye off. That's why the dye is
19 here on the side of the seat. When he gets out of
20 the car, he goes to shut the door, leaving little
21 half-moon -- you look at the evidence yourself,
22 Ladies and Gentlemen. That's your province to
23 determine what caused those 1, 2, 3 little marks
24 that are half-moon shaped.

25 Now, he's outside. Bandana still on. He sees

1 David Dill down the street in that pickup truck. He
2 raises his arm and he fires multiple times.
3 Numerous puffs of smoke. All of a sudden, he sees
4 David Dill's truck back up and drive away. This
5 time, he sees another vehicle that he hadn't seen
6 before. He thinks to himself, well, I couldn't get
7 that car as a getaway. I got to get out of here.
8 What about that car?

9 What he does is he tears the bandana down or
10 takes it off all together and he puts it in a pocket
11 cause he knows he can't waive that car down wearing
12 a bandana across his face. He raises his hand again
13 to fire at Mr. Rafferty. Mr. Rafferty is flying
14 backwards. All of a sudden, now what does he hear?
15 What he hears coming from this direction is the
16 siren. The siren from David Weiner's patrol car and
17 he flees into the woods.

18 It's not theory. This is what the evidence
19 indicates. It's how the doctors saw dye on his
20 hands. It shows his -- it explains his actions
21 there with Bobby Duncan at the hospital not wanting
22 anybody else to come and wash him or clean him up.
23 He wanted to do that himself. It shows -- it
24 explains why Mr. Rafferty says I saw an ungloved
25 hand when we know the robber used gloves. And it

1 explains why Mr. Rafferty says he didn't have a
2 bandana when I saw him and Mr. Dill said he had a
3 bandana on when I saw him and he shot me.

4 While we're at this point, Ladies and
5 Gentlemen, you are the province. You are the judges
6 of the facts. You are all judges of the facts in
7 this case and collectively as the jury. Let me just
8 explain the difference. The State's evidence must
9 convince you beyond a reasonable doubt. It must
10 leave you firmly convinced of the defendant's guilt,
11 not the poor oratory powers of this prosecutor, not
12 what I can and can not demonstrate to you in my
13 brilliant closing, but the power of the evidence
14 that you heard from that stand will leave you firmly
15 convinced of this defendant's guilt. In fact, so
16 firmly convinced that you will not hesitate to act
17 in the same manner that Mr. Rafferty drove down that
18 road.

19 He didn't see a gun, but he realized the
20 situation. He didn't know what was going on over
21 here. When he saw that hand raised at him, all of a
22 sudden the light turned on and he stomped on that
23 gas and he got out of there. He was firmly
24 convinced that he was in danger. Not only that, he
25 did not hesitate to act. It saved his life. You

1 can hear him on the 911 call saying he had a gun. I
2 thought he had a gun. He was right. Someone else
3 beside him had just been shot.

4 Deputy Weiner also testified that the value of
5 the stolen minivan was over \$1000. We know that the
6 elements of ABWIK or Assault and Battery with Intent
7 to Kill, with which the defendant has been charged
8 are the assault and battery with malice
9 aforethought. Those two elements. Assault and
10 battery, the judge will give you the law of what
11 that means. The act of violent injury to a person
12 of another. You heard him testify he was shot by
13 the man that got out of that van and then fled into
14 the woods. With malice aforethought.

15 Ladies and Gentlemen, maybe malice is not a
16 word that you encounter every day. The judge is
17 going to charge you what malice means. Malice,
18 simply put, is meanness. It's a heart bent on
19 mischief. It's raising a gun at a completely
20 innocent member of the public simply trying to call
21 something in to police and continuing to fire
22 numerous puffs of smoke.

23 In fact, the law says that that malice must be
24 aforethought. What does that mean? That means that
25 malice must exist at the time of the act. In fact,

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1 malice may form in the time it takes to point a gun
2 and pull the trigger. Did the defendant have malice
3 in his heart when he shot Mr. Dill? If he didn't,
4 then why did he turn his attention to Mr. Rafferty
5 and try to get him a little bit closer and raise
6 that arm again? Ladies and Gentlemen, that's the
7 definition of malice, use of a gun. The judge will
8 charge you also that you are allowed to infer
9 implied malice.

10 So the State's burden of proof is that you are
11 firmly convinced of the defendant's guilt beyond a
12 reasonable doubt, the judge will charge you what
13 reasonable doubt means. It is not proof beyond any
14 doubt. As she will charge you, there are few things
15 in this world that you can know with absolute
16 certainty.

17 So what is not reasonable? What did the
18 defendant do with the gun, the hoodie and the other
19 clothing while he was hiding? What did he do with
20 it? Well, Mr. Johnson admitted that he could throw
21 the gun. You see on this exhibit there's a big
22 thick area of trees right here. He, uh, could have
23 thrown the gun. Maybe could have even if the hoodie
24 and the gloves were wet, could have thrown them as
25 well. What about the cap? The cap, he couldn't

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1 throw.

2 Well, the one thing Mr. Johnson forgot is that
3 there's a big creek in these woods. And if you want
4 to get rid of clothing, there's really no better way
5 to do it than to peel it all off and send it on down
6 the creek. What about the gloves in the vehicle?
7 Aren't those the defendant's gloves? If you look at
8 the pictures, Ladies and Gentlemen -- and I may not
9 be able to find them right here -- but look at them
10 when you get back into the jury room and see --
11 remember the testimony. Both of the gloves are
12 taken off like you would take one off and take off
13 the other kind of in a ball. The one on the dash is
14 like that. Also the one behind. Both of those are
15 in a consistent manner.

16 The testimony that Mr. Johnson elicited from
17 Ms. Gallman indicated that the swabs from those
18 gloves, one of them was pretty certainly one of the
19 Cepedas and one could have been consistent with the
20 Cepedas. Ladies and Gentlemen, neither of those
21 sets of gloves are the gloves used by this
22 defendant. He took them with him like he took his
23 hoodie, like he took his hat, like he took his
24 bandana.

25 Ultimately, what did the defendant do with the

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1 gun, hoodie and other clothing while he was in the
2 woods? It doesn't matter. He entered the woods
3 with these items and he came out of the woods
4 without them. What he did with these items do not
5 make him more or less guilty of any that the
6 defendant is charged.

7 Why wasn't any bank dye located on the
8 defendant's clothing? It doesn't matter. The
9 absence of dye, unlike the presence of dye doesn't
10 prove anything. You heard it from the scientists
11 and from the experts that came up here and
12 testified. Mr. Dickinson, in fact, told you it
13 wouldn't be unusual, in fact, highly likely for
14 there to be no dye in the clothing. By that time,
15 if you're not within that foot to foot and a half
16 radius, which would be all around, I guess about
17 three feet, the likelihood is by the time it reaches
18 you, it's cool. It's gaseous. It's something you
19 can just dust off.

20 Even Dr. Brewer admitted on the cross-
21 examination that he's an expert in the detection and
22 location of that dye. No question. We're talking
23 about you heard testimony from the guy that worked
24 with the inventor of that machine for 38 years. You
25 can say he doesn't have the degrees that Dr. Brewer

1 has and that's absolutely true. But just like those
2 dog handlers know their dogs, he knows his product.
3 If you ever sold anything in your life, you know you
4 know your product sometimes better than anybody.
5 You have to answer all kinds of questions about it.

6 Mr. Dickinson said it was -- the dye packs are
7 not simply designed for that purpose and it was
8 brought out by his brochure. 70 percent of the
9 money was recovered and only 1 in 3 of the robbers
10 are ever recovered. Now, are they going to put that
11 statistic on there? It's a sales thing. They want
12 the people to buy the product. They don't catch all
13 the criminals. But they don't list any details
14 about how many criminals are actually caught with
15 their product. But they do talk about the money.
16 That really does matter. That's really what it was
17 designed for. .

18 You heard him mention just briefly -- you heard
19 him mention just briefly when he first started
20 talking about the product that he makes a product,
21 their company makes a product. It's a dye pack, but
22 they also have one that's a GPS. Well, if you want
23 to track the individual, that's the GPS. This is
24 the bank dye. Not designed for that purpose.

25 In fact, the photographs that you'll have in

1 the jury room, you can look with your own eyes.
2 Nobody has to explain those photographs to you.
3 Nobody has to. You can see that there's not dye
4 covering the interior of that vehicle. I don't know
5 whether you've seen that movie or not, but it's not
6 like Raising Arizona. You don't have Nicholas Cage
7 sitting there with dye dripping from every part.
8 That's funny. That's hilarious for a movie, but
9 it's not real life. There's a lot of things on TV
10 that are great for TV but they are not real life.

11 Why were the defendant's hands swabbed for GSR
12 and then the kits were not tested? Well, Iona Ooten
13 testified it's standard procedure. Iona Ooten
14 doesn't get to decide, well, you know it's been
15 quite a while since the allegation was that this
16 individual fired the weapon -- no, you've got
17 somebody accused of firing a weapon. It doesn't
18 matter when you get them, whether it was four hours
19 later, by the way, not four hours later because of
20 the efforts of the sheriff's office.

21 They were on the scene immediately. In fact,
22 this manhunt, from the prospective of a manhunt,
23 couldn't have gone better. The dog team was there
24 immediately. They recovered the trail instantly
25 exactly where the witnesses indicated that the

Closing Argument by Mr. Fretwell

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1 robber/shooter entered the woods. They tracked that
2 trail until the dog tired the -- the third dog that
3 was used was tired, almost to the end of the next
4 perimeter.

5 So Ms. Ooten testifies it's standard procedure.
6 She doesn't get to say, well, because the defendant
7 fled into the woods and hid for four hours and then
8 was shot and we had to take that individual for
9 medical care that the first chance she got when she
10 was allowed by the people who were working to
11 prevent the bleeding on Mr. Boyd, the first
12 opportunity she had, she took that GSR sample. The
13 testimony from Mr. Roberts is that the protocol is
14 six hours. It's not an arbitrary number you just
15 snatch out of the air. This is based on science.
16 The science and the fact that if nothing else
17 happens, over six hours, whatever this antium,
18 barium antium -- these little components that he
19 described that a lawyer doesn't know anything about
20 are absorbed into the skin.

21 He also talked about how else you get them off.
22 You remember the analogy he used? Flour. Not
23 sticky little things that adhere and stick on there,
24 but flour. Now, you don't like to get flour on your
25 hands. You have to go over there and run them under

1 the water and get it off, but it's off. This
2 individual was out in the woods. He was out in the
3 mud. He was out in the creek. He was out in the
4 rain. The people that treated him, capillary refill
5 test, taking his hands, moving his hands around so
6 they could get the IVs in. Every time,
7 contamination of that area. Transfer that area
8 making it less and less likely you would have
9 anything at all. The time period itself prevented
10 him from testing it..

11 Mr. Johnson said in his opening to his closing,
12 he said something about you expect it to come out a
13 certain way and if it doesn't, he's not guilty.
14 Ladies and Gentlemen, the reason we are here on a
15 Friday and the reason you have to hear from these
16 witnesses that tell you we performed the test, but
17 we weren't able to identify something. Now, they
18 gave you the explanations for that that's not
19 written on those reports.. That's for your
20 knowledge. You can hear that again if you need to.

21 But the reason they have to come and testify is
22 because exactly that, the expectation. The
23 expectation of shows like CSI where in the space of
24 one hour, we go from absolutely no idea what's going
25 on to the conviction of someone, like in Law &

1 Order. It doesn't happen that way in real life.
2 You can't get a little camera in there and pluck
3 this little microscopic thing off and now we've
4 found it. That's great for TV, but that's not how
5 it works in the real life.

6 Ladies and Gentlemen, this is real life. What
7 you're in is real life. Your role, Ladies and
8 Gentlemen, aside from being representative of this
9 community, your role is real life. This incident
10 was real life. Real life, the way you handle
11 yourself is exactly the way you handle yourself as a
12 juror. You use your common sense. You don't check
13 that at the door when you come in. You are entitled
14 to keep your common sense and your everyday
15 experiences. That's the concept and the construct
16 of our jury system.

17 The defense would have you believe that David
18 Boyd, who lives in Fountain Inn, was all the way
19 over near White Horse Road out in the dense wood,
20 uninhabited, covered in briars, so difficult to walk
21 through the K-9 officers described it in detail in
22 the month of December, in the cold and the rain
23 wearing nothing more than a long-sleeved t-shirt.

24 He happened to drop a bandana matching the
25 bandana depicted in the bank video. He happened to

1 be wearing jeans that matched the jeans depicted in
2 the bank video. He happened to be wearing a gray t-
3 shirt like the one visible under the hoodie in the
4 bank video. Happened to be wearing black shoes like
5 the shoes in the bank video coming up out of a
6 freezing creek bed not far from where the dogs were
7 tracking within the search perimeter, a tight
8 perimeter where dozens of police officers were out
9 there, calls going out to informed citizens.

10 Incredible police and media present. Concerned
11 citizens calling in where no one else had been
12 found. Running into more woods after being spotted
13 by a news vehicle. Running from police when being
14 told to stop and surrender. Jumping not one, but
15 three fences and David Boyd was simply in the wrong
16 place at the wrong time. Come on. It's just not
17 reasonable, Ladies and Gentlemen. It doesn't make
18 sense.

19 What else might not make sense? A partial
20 fingerprint on a plastic bag found inside of the
21 Cepeda's minivan with the same pattern and ridge
22 detail as the defendant. It doesn't make sense
23 unless the defendant is guilty. A partial DNA
24 profile on the exterior. On the exterior. Not the
25 side that you stick your hand up for the sock

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1 puppet, but the exterior of that sock that Lilly
2 Gallman showed you matched the defendant in all of
3 those columns. It doesn't make sense unless the
4 defendant is guilty.

5 The defendant, wearing distinctively
6 embroidered jeans identical to the ones in the bank
7 video at a bank that was robbed just streets away
8 from where he was located. It doesn't make sense
9 unless the defendant is guilty. The K-9s traced
10 directly to the bandana lying in the middle of the
11 woods and containing the defendant's DNA. It
12 doesn't make sense unless the defendant is guilty.

13 Ladies and Gentlemen, I'm asking you to find
14 the defendant guilty of the armed robbery he
15 committed, guilty of being in possession of a weapon
16 he used while committing that robbery, guilty of
17 being in possession of a stolen minivan he used to
18 try to effect his getaway and guilty of Assault and
19 Battery with Intent to Kill on David Dill, who he
20 shot and left fighting for his life. Thank you for
21 your time.

22 THE COURT: Thank you, sir. Ladies and
23 Gentlemen of the jury, you have seen and heard the
24 evidence presented as well as the arguments of
25 counsel. And now, therefore, becomes my duty and

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1 obligation to instruct you on the law that is
2 applicable in this case. It will then be your duty
3 and obligation to begin your deliberations through
4 which process you will decide the facts, apply the
5 law as instructed by me and render fair and
6 impartial decisions.

7 Ladies and Gentlemen, I have a jury charge here
8 that I -- that I've prepared -- my clerk and I have
9 prepared. I'm going to read it to you. That's for
10 two reasons. One is I want to make sure I get it
11 right and don't leave anything out. And number two
12 is -- and I'm going to talk to you about this in
13 just a moment -- I'm going to give you a written
14 copy of this jury charge during your deliberations.
15 I want my spoken charge to be identical to my
16 written charge. All right.

17 It is your exclusive duty to determine what the
18 facts are. You do that based upon your own
19 commonsense examination and evaluation of the
20 testimony and other evidence received during the
21 trial of this case. You twelve jurors alone will
22 decide what weight, value and effect that is to be
23 given to any particular testimony or evidence
24 received. Your ultimate goal is to simply reach the
25 truth in this matter and, by doing so, you will have

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1 fulfilled your obligation as jurors to give both the
2 State and the defendant a fair and impartial trial
3 based upon the evidence presented and the law
4 applicable to this case.

5 In this case, the State of South Carolina
6 through the circuit solicitor has charged the
7 defendant with the following criminal offenses:
8 Assault and Battery with Intent to Kill, Armed
9 Robbery and Possession of a Weapon During the
10 Commission of a Violent Crime, and Possessing or
11 Receiving Stolen Goods. The allegations charging
12 the defendant with these crimes is set forth in the
13 indictments that have been previously explained to
14 you. The indictments are not evidence in this case
15 and may not be considered by you as evidence against
16 the defendant. Each indictment charges a separate
17 and distinctive offense. You must decide each
18 indictment separately on the evidence, the law
19 applicable to it uninfluenced by your decision as to
20 any other indictment. The defendant may be
21 convicted or acquitted on any or all of the charges,
22 offenses charged. You will be asked to write a
23 separate verdict of guilty or not guilty for each
24 indictment on the verdict form.

25 As to the charges set forth in the indictments,

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1 the defendant has entered a plea of not guilty.
2 That plea of not guilty has therefore placed upon
3 the State the burden of proving the allegations that
4 are set forth the burden of proving each of the
5 essential elements of the crime charged. Therefore,
6 the burden of proving the guilt of the defendant
7 beyond a reasonable doubt before a verdict of guilty
8 could be returned as to any of the indictments. The
9 burden is never upon a defendant to prove that he is
10 not guilty or to prove that he is innocent because
11 in some cases, that might not be possible. The
12 burden is always upon the State. They made the
13 allegations to prove the defendant guilty beyond a
14 reasonable doubt.

15 You are further instructed that it is a vital,
16 important and cardinal rule of law that every
17 defendant in a criminal trial, no matter how serious
18 the offense or offenses might be for which he stands
19 charged shall always be presumed innocent of that
20 charge and that presumption of innocence shall be
21 with the defendant from the moment of his arrest and
22 throughout the course of the actual trial. The
23 presumption of innocence shall be with the defendant
24 even as you go into the jury room to begin your
25 deliberations. And that presumption of innocence

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1 shall be with him there and be with him forever
2 unless you 12 jurors determine that he is no longer
3 entitled to that presumption of innocence. It is
4 only if, unless and until you are satisfied of the
5 defendant's guilt beyond a reasonable doubt that he
6 would no longer be entitled to the presumption of
7 innocence.

8 I remind you that during this trial, you and I
9 have certain duties to perform. As the trial judge,
10 it is my responsibility to preside over the trial of
11 this case. I also have the duty to rule on the
12 admissibility of the evidence offered during this
13 trial. You are to consider only the competent
14 evidence before you. If there was any testimony
15 ordered stricken from the record in this case during
16 this trial, you must disregard that testimony. You
17 are to consider only the testimony which has been
18 presented from this witness stand and any exhibits
19 which have been made a part of the record in this
20 case along with any stipulations that may have been
21 made.

22 I have the additional duty to charge you on the
23 law applicable to this case. As the presiding
24 judge, I am the sole judge of the law in this case.
25 It is your duty as jurors to accept and apply the

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1 law as I now state it to you. If you already have
2 any idea as to what the law is or what the law ought
3 to be, you must abandon this idea because you are
4 sworn to accept the law and apply the law exactly as
5 I state it to you.

6 In every case tried in this court before a
7 jury, the jury becomes the sole and exclusive judge
8 of the facts in a case. The trial judge can not
9 comment on in any way the facts in the case. Since
10 you, the jury, are the sole judges of the facts in
11 this case, you are not to infer from what I might
12 have said during the progress of this trial in
13 ruling upon the admissibility of evidence or
14 otherwise or anything that I say now during the
15 course of this instruction to you that I have any
16 opinion about the facts in this case. I do not.
17 The law does not allow me to have an opinion about
18 the facts in this case. This is a matter solely for
19 you, the jury to determine.

20 As jurors, it is your duty to determine the
21 effect, value, weight and truth of the evidence
22 presented during the trial. The State has the
23 burden of proving the defendant guilty beyond a
24 reasonable doubt. Some of you may have served as
25 jurors in civil cases when you were told that it is

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1 only necessary to prove that a fact is more likely
2 true than not true, such as by the greater weight or
3 preponderance of the evidence. In criminal cases,
4 the State's proof must be more powerful than that.
5 It must be beyond a reasonable doubt.

6 What is reasonable doubt in the law? A
7 reasonable doubt is the kind of doubt that would
8 cause a reasonable person to hesitate to act. Proof
9 beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt. There
11 are very few things in this world that we know with
12 absolute certainty. In criminal cases, the law does
13 not require proof that overcomes every possible
14 doubt. If, based on your consideration of the
15 evidence, you are firmly convinced that the
16 defendant is guilty of the crimes charged, you must
17 find the defendant guilty. If, on the other hand,
18 you think there is a real possibility that the
19 defendant is not guilty, you must give the defendant
20 the benefit of the doubt and find him not guilty.

21 There are two types of evidence which are
22 generally presented during a trial, direct evidence
23 and circumstantial evidence. Direct evidence is the
24 testimony of a person who claims to have actual
25 knowledge of a fact such as an eyewitness. It is

1 evidence which immediately establishes the main fact
2 to be proved. Circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the
4 existence of a fact. It is evidence which
5 immediately establishes collateral facts from which
6 the main fact may be inferred. Circumstantial
7 evidence is based on inference and not on personal
8 knowledge or observation.

9 The law makes absolutely no distinction between
10 the weight or value to be given to either direct or
11 circumstantial evidence. Nor is a greater degree of
12 certainty required of circumstantial evidence than
13 of direct evidence. You should weigh all the
14 evidence in this case. After weighing all the
15 evidence, if you are not convinced of the guilt of
16 the defendant beyond a reasonable doubt, you must
17 find him not guilty.

18 Necessarily, you must determine the credibility
19 of the witnesses who have testified in this case.
20 Credibility simply means believability. It becomes
21 your duty as jurors to analyze and to evaluate the
22 evidence and to determine which evidence convinces
23 you of its truth. In determining the believability
24 of witnesses who have testified in this case, you
25 may believe one witness over several witnesses or

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1 several witnesses over one witness. You may believe
2 a part of the testimony of a witness and reject the
3 remaining part of the testimony of that same
4 witness. You may believe the testimony of a witness
5 in its entirety or reject the testimony of a witness
6 in its entirety.

7 You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice or
9 other motive in this case. You may also consider
10 the appearance and manner of a witness while on the
11 witness stand. In other words, you are to judge a
12 witness' credibility in the same way you would judge
13 a person's credibility in your daily life.

14 The rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. An
16 exception to this rule exists for what we call --
17 witnesses we call expert witnesses. A witness, who
18 by education and experience, has become an expert in
19 some art, science, profession or calling may state
20 an opinion as to relevant and material matter in
21 which the witness claims to be an expert and may
22 also state the reasons for that opinion.

23 You should consider any expert opinion received
24 in evidence in this case and like any other evidence
25 give it the weight you think it deserves. If you