GA v. Lacy Boles - Day 7

(0:56 - 1:17)

Let's go to 41, let's go to 47, let's go to 147, let's go to 146. And your honor, I was just told by the Honorable Raymond that he lay off Dr. Mainz here. I am very fascinated, so I wasn't going to inconvenience him.

(1:18 - 1:26)

Well, so who do you want to call? Dr. Mainz. Okay. Alright, so everybody's ready? Okay, jury please.

(2:32 - 2:41)

Great to see you all, good morning, hope you had a good weekend. At this point I'll ask Mr. Steele if he has a witness. Do your honor, we will call Dr. Ruby.

(2:42 - 3:33)

We will be calling him very briefly, your honor. Good morning, welcome back sir. I'll re-administer and hope, okay? As soon as you raise your right hand, do you swear or affirm the testimony you're about to give in the matter before the court, being the truth, the whole truth, nothing but the truth so help you God.

(3:34 - 3:49)

I do. Alright, please have a seat. Dr. McLaughlin, everyone remembers, but would you just do me a favor and state your name for the court reporter and the jury.

(3:50 - 4:01)

Yes, my name is Keith Lehman. And it's spelled L-E-H-M-A-N, fair? That's correct. Alright, and I apologize for bringing you back here.

(4:02 - 4:07)

You testified this past week. True. Yes, in this case.

(4:07 - 4:35)

Alright, I just want to ask you, something came up after you left. Did you ever tell anyone on the jury or anyone that you used a magnifying glass to look into the nostril on the right side of Mr. Inker's face while searching? No, I don't believe I did. And did you ever place anything in your report that you used a magnifying glass? No.

(4:35 - 4:39)

Okay. Okay. Thank you.

(4:39 - 4:52)

Thank you, doctor. Thank you. Alright, Ross, do you remember if you used a magnifying glass in this case or not? Whether or not it's in your report when you examined the body of the deceitful Daniel Akers? I don't recall.

(4:53 - 5:08)

So you may have, you may not have, you don't remember. That's correct. And if you had seen any sooting or any clue of sooting, any indication of sooting, a trace of sooting, you could have used a magnifying glass, couldn't you? Yes.

(5:08 - 5:41)

And if you had seen any trace of sooting around the right nostril at all, you would have taken a tissue sample, could have, and examined it under a microscope, is that right? Yes. My normal routine is if I suspect a wound could be contact or near contact range and there's any discoloration to potentially indicate the presence of soot, but if it's not clear, sometimes you can see the discoloration and you can clearly determine that it's soot. If you're not sure what it is, my routine is to take a piece of tissue to look at under the microscope.

(5:41 - 6:08)

So if there were any indication of sooting at all, did you in fact take any tissue samples or use a little knife or some type of blade to remove any tissue at all in this case? No. There was some testimony, I know you've already left from last week, but there was testimony from another expert who possibly said he saw sooting up into the right nasal cavity. Did you see that? No.

(6:08 - 6:24)

Did you perform a very detailed and finite physical examination of that area? Yes. That area obviously would have caused you to take great care and examine it, right? Because that's the entry wound. Yes.

(6:24 - 6:43)

That's the only entry wound, right? That's correct. And there's no exit wound to examine or study, right? Yes, correct. So is it fair to say that your primary area of focus, if there can be such a thing in an autopsy that would cover all areas of the body, but the primary focus would have been the entry wound, I guess, right? Yes.

(6:43 - 7:02)

Okay. Did you see any indication of sooting into the upper, the entrance wound, the beginning of the nasal passage or cavity, or up further into the nasal passage? No. You had an opportunity to look at that with appropriate lighting, I guess, right? Yes.

(7:02 - 7:34)

Much brighter than what we see here, these kind of dim colored cream lights. You're using LEDs or bright lights, right? Yes, we had lighting sufficient to be able to do that examination, yes. Ma'am, Dr. Tenz has two more questions.

(7:35 - 8:21)

Yes. If you would have used such a tool like a magnifying glass to look into the right nostril of Mr. Akers, should you have put that in your report? Because I noticed on your report that's in evidence that it states that you put everything in the report that you did during the autopsy. I wouldn't necessarily put that in the report if I used a magnifying glass.

I may or may not have, if I had used it. Right. And that was my last question.

You're not claiming to this jury that you used a magnifying glass, are you? That's correct. I am not claiming that I did. Okay.

I want to thank you, doctor. You're welcome. Your Honor, thank you.

(8:30 - 9:26)

All right. Do you have another witness? Yes, sir. All right.

Go right ahead. Dr. Carol Terry. Hey, good morning, Will.

(9:27 - 9:29)

Good morning. I'm going to swear you in, if that's okay. Yes.

(9:29 - 9:38)

All right. Do you swear or affirm the testimony that was given in the matter pending before this court? I swear to tell the truth, the whole truth, nothing but the truth, Your Honor. I do.

(9:38 - 9:45)

All right. Thank you. May we see? Yes, ma'am.

(9:49 - 10:21)

Good morning. Good morning. Can you do me a favor and state and spell your name for this honorable jury? Yes.

My name is Dr. Carol, C-A-R-O-L, Terry, T-E-R-R-Y. And can you just explain, if you don't mind, maybe from education to training, your experience, your occupation to the jury so they know who you are? Yes. And what you focus on.

(10:21 - 10:43)

Okay. Yes. As I said, I'm Dr. Carol Terry.

I function as the chief medical examiner for Gwinnett County. I am a forensic pathologist. And to tell you a little bit about my training and experience that allow me to perform these duties, I'll begin with, in 1986, I graduated from Emory College of Emory University.

(10:44 - 10:58)

I have a double major. I have a Bachelor of Arts in Religion and a Bachelor of Science in Biology. And then from 1986 to 1990, I attended Emory University School of Medicine, where I received my Doctor of Medicine degree.

(10:59 - 11:10)

Following medical school, I did a residency in pathology. And I did a combined program of anatomic and clinical pathology. And this was a five-year residency.

(11:11 - 11:48)

Anatomic pathology is tissue-based pathology and involves diagnosing disease states from tissues such as biopsies or organs or tissues removed from living people at the time of surgery, as well as from autopsy specimens. Clinical pathology is the laboratory medicine aspect of pathology and involves diagnosing disease states typically from fluids and involves such areas as chemistry, hematology, microbiology, and blood banking. During the last year of my five-year residency, I was allowed to work exclusively in a subspecialty of pathology, forensic pathology.

(11:49 - 12:07)

Forensic pathology is the medical legal investigation of death. And I was allowed to spend my fifth year of my residency at the Fulton County Medical Examiner's Office. And at the Medical Examiner's Office, we investigated deaths that were reportable to our office under the Georgia Death Investigation Act.

(12:07 - 12:25)

So these types of deaths that we are interested in as medical examiners are dictated by law. And

are deaths that are sudden, unexpected, unexplained, or as a result of non-natural causes. And as a medical examiner, it's our job to determine cause and manner of death.

(12:26 - 12:45)

Cause of death is what it sounds like, what causes a person to die at this point in time. Manner of death is a way in which we as medical examiners categorize the deaths for purposes of reporting on the death certificate. And as a medical examiner, when it comes to classifying a manner of death, we're limited to five manners here in Georgia.

(12:45 - 13:05)

Natural, accident, suicide, homicide, and undetermined. And in carrying out these duties as a medical examiner, oftentimes I have to do autopsies. In some cases, I can just do an external or outside examination of the body and draw fluids for additional testing, such as drug screens.

(13:06 - 13:22)

And in some cases, I can determine the cause and manner by reviewing medical records. So these are what the duties that we perform as medical examiners. And so as I said, I was doing that for a year during the last year of my residency.

(13:24 - 13:42)

Following the completion of my residency in 1995, I did an additional year of training at the Fulton County Medical Examiner's Office. And this year of training outside of the residency was referred to as a fellowship year. But because I already had a year of experience in that office, I was essentially treated like a junior attending.

(13:42 - 14:06)

And I got to supervise other individuals in training who were rotating through the office. I completed my fellowship in 1996, and I stayed on staff at the Fulton County Medical Examiner's Office until 2004. In 2004, I left Fulton County and went to work for Dr. Gerald T. Gallat, and that's G-O-W-I-T-T, who is the chief medical examiner in DeKalb County.

(14:07 - 14:52)

And not only did we handle medical examiner cases for DeKalb County, but we also handled the medical examiner cases for Hall, Henry, Rockdale, and White counties as well. Towards the end of 2005, Dr. Gallat informed me of the upcoming vacancy for the medical examiner position in Gwinnett County and encouraged me to form my own company and put in a bid for that position. The medical examiner position in Gwinnett County is a contracted position.

It is not a county department. I formed my own company, I put in a bid, and was awarded that

contract in February of 2006. My contract comes up for renewal every five years, and I have maintained that contract since February of 2006.

(14:53 - 15:06)

So, as I said, I function as the chief medical examiner for Gwinnett County, and I have since February of 2006. So I've been there for 20 years. I am licensed to practice medicine in the state of Georgia and have been since 1992.

(15:06 - 15:34)

I am triple board certified by the American Board of Pathology in all three areas of which I have trained and studied, anatomic, clinical, and forensic pathology. I have personally in my career examined over 10,000 bodies, and I have conducted autopsies on between 7,100 and 7,200 bodies. And I have been tendered as an expert witness in the Superior Courts of Georgia over 480 times.

(15:36 - 16:58)

Now we'd like to, through the court's permission, approach and ask you to look at Ms. Bowles' No. 153. Just tell us if you look at what is now marked as Ms. Bowles' No.

153, and if it was authored for what it is. Yes, it is. And, Your Honor, I move for you to issue Ms. Bowles' No.

153. Dr. Terry, can you explain to jurors what is No. 153, Ms. Bowles? It is a copy of my CV, or resume, that was current as of December of 2025.

(17:00 - 17:40)

And on the CV that's now been disposed of, is there anything else that you would like to tell the jurors about that you didn't already cover? Well, in 2012 I was awarded the Medical Examiner of the Year by the State of Georgia. This also has some of my past history in terms of hospitals where I worked and had privileges, but I currently do not do any hospital work at this point in time. This also explains or notates some of the presentations I've given in my career.

(17:40 - 17:53)

I've also given many since then. So I've hit the high points when I went over my background and experience with you. But this has just a few more things in terms of presentations.

(17:54 - 18:09)

And teachings. And teachings, yes. And I neglected to mention that when I was at Fulton County from 1998 until 2004, I was the co-director of the Fellowship Training Program.

(18:11 - 18:39)

And did you ever come in contact with the gentleman who just left the Sonoma Courts room, Dr. Lehman? Yes, I am familiar with Dr. Keith Lehman. I want to ask the Sonoma Court to permit Dr. Terry to be recognized as an expert in forensic pathology. Any day.

(18:45 - 19:16)

Doctor, I'm going to ask you to explain to the jurors how you got introduced, if you were introduced to the case of State of Georgia v. Lacey Bowles. And then, it's a subpart question so maybe I have to wait, but what have you reviewed to come into the courtroom today? Okay, the way I was introduced to this case was Mr. Steele called me at the end of March of 2026. I believe it was on March 23rd.

(19:16 - 19:40)

And told me that he had this case and asked if I would review it. And provided me some brief information about it. And then sent me some materials because mainly I was interested in a copy of the autopsy report and photographs from the autopsy and from the scene.

(19:40 - 20:00)

And also in conjunction with that, there were some other documents that pertained to some of the investigation and things of that nature. But I received these documents electronically. If you need to see anything, please let us know.

(20:01 - 20:26)

If you have brought anything with you that you would like the jury to see, we have to make sure that the prosecution sees it and the court approves it. With that being said, I'd like to approach and show you what's already marked and admitted to evidence as Miss Bowles number 147, 146, number 47, number 41, and number 145. And tell us if you need anything else.

(20:26 - 20:35)

Also tell us if you reviewed these. Okay. Yes.

(20:36 - 21:21)

These are already in evidence, but just do me a favor and just look at them yourself. Yes, I've seen these photographs before. Do you need anything else? And we have Dr. Liener's report also that's in evidence if you need to see that as well.

(21:22 - 21:29)

Okay, that would be great. I did bring a copy of it, but if you would like to show me the one that's in evidence. May I approach you, Your Honor? Yeah.

(21:30 - 21:35)

I just have to find it. You can just give me whatever one you have. It's the one that's in evidence.

(21:35 - 21:38)

It's the jury's. Do you have it? Thank you. Yes, I do.

(21:59 - 22:24)

Oh, I'm sorry. Are you ready? Yes. Okay.

(22:25 - 22:48)

And if you need anything else, please let us know, and we'll ask Your Honor for court, okay? Yes. And I was going to say, if I might, I brought some cotton tip applicators, so as I gesture at my nose, if I can use these instead of using my finger to point at my nose. We will ask the Honorable Court for permission not to use your finger inside your nose.

(22:52 - 22:55)

Is that okay, Your Honor? It works. Thank you. All right.

(22:55 - 23:11)

Doctor, I want to start. Will you tell us where is a good place to start? And I assume it's with the autopsy photograph just to orient the jurors again? Yes, I think so. Okay.

(23:11 - 23:44)

And which number should we use? Let's start with, oh, is it 146? Okay. May I approach? Your Honor, can I give Dr. Terry a point of vision? Yes. This, you just pressed twice.

(23:44 - 23:48)

The first time is a flashlight. The second time is a red laser. Okay.

(23:48 - 24:22)

And if I could take his, and this gentleman here is really kind, and he's going to put on the stitch. Doctor, it's not ready on the screen yet. Would you feel comfortable, with the Court's permission, to just show this to the jurors? Is this place on the screen ready? Oh, yes.

(24:23 - 24:31)

Okay. So, we're going to have to do some parts. If you can come over to the jurors.

(24:31 - 24:42)

If I may. I'm just going to give you, sorry to negative this, but 146. You're making, you know, six jurors and seven jurors.

(24:42 - 24:49)

Can you just explain what they're looking at until the ammo is ready? All right. I'll let him take it. All right.

(24:49 - 25:02)

In looking at this photograph, you said it's 146. We're looking at the face of the deceased, and you can see an injury that involves… I object. There's been no question lodged in the witness's scenario.

(25:03 - 25:12)

My question was, what does Miss Bowles' number 146 show of injuries to you? And that's sort of my question. All right. You can answer that.

(25:12 - 25:52)

Okay. So, in looking at this photograph, on the right side of the face, involving the right side of the nose, this flap of skin, the basal ala, we have an abrasion or a scrape. An abrasion is a friction-type injury, and you can see that this is relatively round, and also at the edge of this abrasion where it extends into the opening into the nose and into the nostril, there's… It's like laceration or tear.

(25:52 - 26:07)

Laceration is a blunt force injury. It involves tissue being torn apart, and so that tear is right there at the edge of the opening into the nose. So we have an abrasion and a tear.

(26:09 - 26:30)

In the autopsy report, this area is described essentially as being the entrance headshot wound. And from looking at the scene and reading the information about the firearm and the recovered bullet, this was a small-caliber bullet. It was a .22 bullet.

(26:31 - 26:59)

This type of abrasion, when I first saw this photograph and having read the report, this abrasion is much thicker than I would expect to see in association with a .22-caliber bullet. It's entrance wound. When I see this type of abrasion associated with an entrance wound of a .22-caliber bullet, it's typically as a result of a muscle injury and as a result of a contact wound.

(26:59 - 27:16)

I know this is not a contact wound because I don't have any soot associated with it. Also, there's no burning of the skin. But in looking at the firearm, and I wanted to see pictures of the firearm because at this point in time, when I first saw this, I only had pictures of the firearm at the scene.

(27:16 - 27:51)

And I was concerned about this having been produced by the cylinder pin or ejection rod underneath the barrel of the firearm. And in looking at the pictures of the firearm and having to do some conversions and looking at Dr. Lehman's measurement of this wound, it is consistent with that firing pin, or not firing pin, cylinder pin or ejection rod underneath the barrel of the gun. And in looking at a subsequent picture, ma'am, of this wound.

(27:51 - 28:12)

And the gun, the offer court admitted into evidence, the .22 you're referring to, it's right here and there are gloves over there if you need to see it. But the gun in court has a safety lock. So you can't put the revolver into the gun itself.

(28:12 - 28:23)

Okay. And if I may show Exhibit 147. And if it helps you, I was just told that the ELMO is now working.

(28:23 - 28:49)

Okay. Can we put up 146 before I go to 147? May I come forward, Your Honor? May I approach the doctor? Yes, you may. The officer said he will do the best he can if you can zoom in at all.

(28:49 - 29:08)

Okay, that'd be great. So if we can zoom in, because I want to see if we can show the laceration. Your Honor, for the record, it's not in the court's room.

(29:09 - 29:31)

It is displayed as well as in 146. Okay, I'm not sure if you can see it, but the laceration is right there. And then this whole round area is the abrasion or scrape.

(29:31 - 29:53)

And as I said, that is too broad for a .22 caliber bullet. And the only times when I've seen an abrasion that thick around an entrance associated with a .22 is when it's been due to a muzzle injury. And again, this is not a contact with the barrel of the gun being there because I don't have any deposition.

(29:53 - 30:02)

So let's continue on and look at 147, if we may. May I approach the doctor? Yes, you may. Okay.

(30:20 - 30:32)

Yes, that'd be perfect, right like that. Doctor, can you just orient the jurors to... Yes, I'll orient you. May I stand so I can... Sure.

(30:32 - 30:42)

Okay, thank you. All right, so as we're looking at this, we can see the right eye and the left eye. This is the right nostril and the left nostril.

(30:42 - 30:56)

And there are two sets of forceps or kind of tweezers that are used to hold this nostril open. And so here we can see that abrasion. It's a little distorted.

(30:56 - 31:13)

And we see the laceration or tear that's there. And it's exposed by these forceps holding the nostril open. And in Dr. Lehman's report, he's describing this laceration as moving superior laterally.

(31:14 - 31:33)

And that means upward and towards the outside. So that would be towards the right side. Now, where this bullet was recovered, it's going from the front towards the back, and it's going from his right side towards his left, and it's going upward.

(31:33 - 31:52)

So the path that the bullet's taking is in this direction. He's describing this laceration as going laterally. As I said, it's my opinion that this injury is produced by the cylinder pin and that our entrance wound is actually further inside the nostril.

(31:53 - 32:20)

And I don't know that we've got a better photograph here, but the emphasis in this photograph is on this laceration and showing it. But when you look at the photograph, it's actually black, a dark gray to black higher up in the nostril. That's where I believe your soot is.

(32:21 - 32:47)

I think the entrance wound is further up in the nostril. And that the firing, not firing, sorry, I keep saying that, cylinder pin or ejection rod is what has produced that injury on the outer part of the nostril. And so now I guess it would be appropriate to maybe look at the firearm.

(32:48 - 33:02)

He has, may I approach you? Yes. It has already been marked and entered into evidence as one of the stitches of the number 173A, as in Elisa. The box is 173.

(33:02 - 33:14)

There are gloves in front of you, but I would rather not put the gloves on. Let me see. May I approach you, Doctor? Yes.

(33:14 - 33:19)

May I approach you? Yes. I'm just going to put the box here. Okay.

(33:34 - 33:45)

Get it out of the way. Okay. Okay, I'm ready.

(33:45 - 34:10)

May I stand again? You have to ask me on the floor. I'm sorry, may I? Sure. So now because of the deadlock, the kit snapped the cylinder back in place, but this cylinder pin or ejection rod extends right out to the edge of the barrel here.

(34:11 - 34:40)

And the diameter of this pin is consistent with that abrasion that's on the nostril. And what I think has occurred is that the gun is inverted and winds up hitting the subject or the deceased in the face, producing that injury in the nostril, and then is distorted so that the insurance is inside the nose. We have the surge inside the nose.

(34:40 - 35:06)

We have the wound path going from front to back, from the right to the left, and outward. And that initial autopsy, that abrasion on the edge of the nostril was misconstrued as being associated with the insurance itself. The insurance is inside the nose because that's where the surge is.

(35:07 - 35:41)

And what we're looking at is an injury from the cylinder rod that's on the other part of the nose. And the way I reconcile this with the information that was reported to me was that there was... that Mr. Akers was holding the firearm and had it pointed at him and that there was some struggle or grabbing of his arm or his hand and the gun winds up going off. And I think these findings are consistent with that.

(35:41 - 36:20)

If I have this firearm and I have it pointed at me and I'm reticent to point a firearm at me, even knowing that it can't fire, but if I've got it pointed at me and somebody grabs, it is not unreasonable to think that I might turn my hand and pull my arm and then it's just a matter of how you pivot your hand or how you pivot your head. And if this person is pulling back and maybe this other person lets go and gets hit in the face, squeezes, and the gun goes off. I have no quarrel with Dr. Lehman's opinions as to cause and manner of death.

(36:21 - 36:38)

For me as a medical examiner, homicide means death due to the actions of another. And when I have two people struggling over a gun, I will call that a homicide. But when we're rendering these decisions about homicide, it's without regard to intent.

(36:39 - 37:04)

So in this case, I think where I have a dispute with Dr. Lehman is the range of fire. I think this is a contact wound because we've got an injury of the nasal ala of the right nostril that's produced by that cylinder pin. The entrance wound is going to be inside the nose.

(37:04 - 37:21)

We've got soot inside the nose. It gives us that wound path through the head. And this, I do not think, is an intentionally self-inflicted wound in my entire career.

(37:21 - 37:56)

Of 32 years, I've only seen one person intentionally shoot themselves inside the nostril. So it's not a place people typically choose to shoot themselves. It would be, in my opinion, difficult for someone to shoot someone in the nostril like that and give that abrasion associated with a .22. Again, that abrasion is just too thick to be associated with a .22. I think this is consistent with the information that was reported, that there was a struggle over the gun and the gun discharged.

(37:56 - 38:46)

And I think it happened to discharge when either he overcomes the struggle and kind of pops himself in the face and squeezes the trigger, or as they're struggling over it, either of them, both of them, somebody squeezes the trigger and it goes off. But it's my opinion that this is a contact wound and that the cylinder pin makes that injury and that when the gun's discharged, the barrel of the gun is in alignment with the nostril. Things that could have been done to have further demonstrated where the actual entrance defect in the head was is after the brain was removed.

(38:47 - 39:25)

Dr. Lehman noted the hole in the base of the skull, which was on the left side at the front of the left middle cranial fossa, which would be kind of roughly in this area here. He could have taken a probe, which is a metal rod, and passed it through there to see where it came out the nostril, and that was not done. I think there was, at the time of the autopsy, so much focus on that injury that could be seen with the abrasion and the assumption that that was an entrance that... Yes.

(39:25 - 40:05)

Can you explain the concentration and your understanding, and if you agree with or disagree with it, that the bullet made that abrasion and what could have been done to determine whether, in fact, that was a bullet or the gun was, as you said, touching or inside the nose of Mr. Akers when it was discharged? Yes, what could have been done was, first of all, you have to appreciate where the soot is. There was a focus on that abrasion on the edge of the nostril as being the entrance. I don't think the soot up inside the nose was seen.

(40:05 - 40:21)

I think it showed up in the photographs. That was something I had an opportunity of seeing when I was able to look at the photographs and enlarge them. It's kind of like when you take a photograph and later look at it and you see something in the background that you didn't intend to capture.

(40:22 - 40:50)

That's where the soot is. If there had been an attempt at the original autopsy to assess for the presence of soot, first of all, you've got to recognize that it's up in the nostril. One could have taken a swab and gone up there and swabbed to see if there was any soot, or gone up there with scissors, scalpel, forceps, and tried to take some actual tissue to look at it.

(40:50 - 41:05)

But that's higher up in the nose. Based on my reading of the autopsy, the focus and the assumption is that that abrasion on the nostril was the entrance defect, and it was not. That's an injury from the cylinder pen.

(41:05 - 41:40)

Does Dr. Lehman note in his report that he states exhibit number 229, and it's in front of you, I believe, District Attorney, conceded, stipulated that you're looking at an exact replica. Does he ever describe looking up deeper into the nasal cavity on the right side of Mr. Akers for any type of soot? No, what he does say is that... If you can match the page. Sure.

(41:41 - 42:02)

On page 3 of 5 of his report, let's see. I'm sorry. On page 2 of 5 of his report, under evidence of injury, the second paragraph, the last sentence says, no soot or gunpowder stippling is seen.

(42:03 - 42:24)

So he said he didn't see it, and I agree, he didn't see it. But the soot's higher up in the nose and was captured in that photograph where they were focusing on that laceration. I'd like to ask you whether it would be helpful, this is a toy, this is a replica revolver.

(42:24 - 42:37)

I'm not saying it's an exact replica in any way. Would this help you to demonstrate, rather than have a gun, even though it's safety, to show the jurors what you're talking about? I think it would. Your Honor, may I approach you? Yes.

(42:38 - 42:53)

It's the same. May I approach you, doc? Yes. And it has the arms pointed in as well, and you could check it yourself and make sure that that is a toy gun.

(42:54 - 42:58)

Yeah. Yes, it's a toy gun. All right.

(43:00 - 43:34)

And I'm sorry, your question evaded the... Instead of using the firearm that, obviously, no one wants to have the firearm pointed, if you could just explain to the jurors what, based upon your background, your expertise, your training, your experience, what occurred in this case, combined with the way that Ms. Ball said it occurred versus the way Dr. Lehman has organized it. Okay. Well, first of all, in looking at... This is beyond the scope of the witness' expertise.

(43:34 - 43:54)

Now we're into more shooting, passive reconstruction, what occurred. This is a specific question to explain what occurred. From a forensic standpoint or a medical standpoint, she can testify to

injuries that are consistent, et cetera, but having this witness take a toy gun and explain exactly what occurred is beyond her expertise.

(43:54 - 44:00)

She can't possibly do that. She's not a reconstructionist. She would be a firearms expert.

(44:01 - 44:23)

Any response to that? Sure. Dr. Terry is explaining exactly what she found medically based upon the significance of the photographs and of the information on a supposed struggle over the gun and how it worked, and she's making a demonstration. She's noted what she saw medically.

(44:23 - 44:40)

She's done that in great detail. Where she's not qualified to testify is about direct positions of the weapon, who was doing what during a supposed struggle. How could she possibly know that from being a medical doctor free of pathology? She can't.

(44:40 - 44:50)

She doesn't know who was doing what, where bodies were positioned, where hands were positioned, where weapons had to be positioned. She can testify to salt abrasion. That can be consistent with what she's recognized.

(44:50 - 45:33)

Okay, when you get into recreations, physical recreations, that's where it is beyond her scope. Okay, as a medical examiner, one of my areas of expertise is in evaluating pattern injuries, and while I'm not a ballistics expert, my expertise does involve terminal ballistics, what bullets do to bodies and evidence that they deposit on and in the bodies. In looking at the injuries on Mr. Akers, again, that abrasion that is on his nasal ala is too broad for a .22 bullet fired at a distance.

(45:35 - 45:49)

When you have an entrance wound and the bullet contacts the skin, it makes an abrasion, because as it's going in, it's striking the skin. A .22 is a very small bullet. That abrasion is quite thick.

(45:50 - 45:59)

Now, if the bullet had struck tangentially, you might expect an oblong abrasion. We don't have that. This abrasion is concentric.

(46:00 - 46:22)

It is consistent with the cylinder pin on the revolver. Now, on this toy, this cylinder pin or ejection rod is a little bit below the level of the barrel of the gun. In the actual firearm, it extends out to the same.

(46:23 - 47:13)

And so to produce what we have, that abrasion that's on the nasal ala, as well as the soot that is visible in the background, up inside the nose, when they take the picture of the nostril pulled open, showing that laceration, the gun would need to be inverted and put up against the nose. So, again, someone's holding the firearm. It doesn't take much to just turn the wrist around, and then, you know, the person gets popped in the nose, and I don't know who pulls the trigger, but as I said, I have no disagreement with Dr. Lehman in the ruling of this being a homicide.

(47:14 - 47:42)

Again, because as we define homicide as medical examiners, death due to the actions of another. And the fact that there's a struggle and the firearm goes off, yeah, I would agree with that. But the firearm has got to be in this position at the time it's discharged, and, again, up against the nose, where when the firearm's discharged, everything that's coming out of the end of the barrel is going into the nostril.

(47:44 - 48:14)

I'd like to show you what I'll mark as Miss Foles, number 154 through 161, but let me give you a copy to cross. Your Honor, may I approach? Yes. Doctor, I'm showing you what's been marked consecutively, Miss Foles, number 154 through 161, so we have 154 and 155.

(48:15 - 49:05)

May I approach you? Yes. Tell me whether you recognize these as compared to State's Exhibit number 173A. Yes, these photographs appear to be in that revolver.

(49:06 - 49:16)

Your Honor, move for the admission, Miss Foles, and it's consecutive, but 153 and 161. It might be 154 to 161. Those are related.

(49:17 - 49:23)

May I display, Your Honor? Yes. May I approach you, Doctor? Yes. And we're going to display them.

(49:23 - 50:11)

If you want to organize them in any order that makes sense to you, since you're going to be using

them, just do that, and it doesn't matter if they're not in the order that they're numbered. Okay. Okay.

(50:12 - 50:21)

May I approach, Your Honor? Yes. Yes, I'm sorry. Your Honor, may I give to the investigator to display? Sure.

(50:27 - 51:40)

Thank you. Doctor Terry, can you explain to the jurors what's significant, if anything, about Miss Foles number 161? Okay, in this Exhibit 161, as we're looking at the revolver, and it's got... It's made safe by the... material that's passed through the barrel so the cylinder doesn't go all the way back in place, but as we look at it again, the cylinder pin or ejection rod, whatever you want to call it, extends actually out to the end of the barrel or maybe even just beyond, but it's right there at the end of the barrel. And just for the jurors to... And I'm using a pointer now.

(51:41 - 52:02)

When you said that there's a safety, made safety, that's what's coming out of the muzzle of the gun through the barrel? Yes, this cable, yes. And that means that nobody can actually place the cylinder in its proper place and then put a bullet in it and fire. It's made useless now for firing.

(52:02 - 52:24)

Is that true? That is true. This... I just want the jurors... They probably recognize, but... This space you see between the... what you're calling the rod, the cylinder rod, and the muzzle of the gun, the barrel of the gun? Yes. If the gun was in place like it is on the scene, would they be almost touching? Yes.

(52:25 - 52:28)

Okay. I just want to make sure the jurors are aware. Okay.

(52:28 - 52:51)

Next number, if you don't mind. Is that it for the number 161 for Ms. Falls? Yes. Doctor, can you explain what's significant in Ms. Falls' number 159? Yes.

(52:52 - 53:41)

Again, this is a closer photograph of that revolver showing the cylinder pin in proximity to the barrel of the gun and, again, showing how it's right there at the end of the barrel, even though it can't be snapped all the way back in place there, essentially, even with each other. And also in this photograph, and you'll see in many other photographs, there is a scale for reference, and that

is actually in millimeters, so you need to do a conversion to convert it over to inches. But that does allow me to make a calculation to measure the diameter of this rod.

(53:42 - 53:48)

Okay. And there's other pictures that we could use for that? Yes. I notice the texture.

(53:49 - 53:58)

I don't know if that's right, but the metal is grooved or appears to be grooved, and it's on State's number 173A. The jurors have seen the gun. Yes.

(53:59 - 54:01)

It's ridged. It's rough. Okay.

(54:01 - 54:21)

Is that the same groove that they'll see on the very tip of this cylinder rod? And if you need a picture, we're going to show a picture. I'm not sure exactly what you're asking me, but it's like that is the cylinder pin or ejection rod. Okay.

(54:23 - 54:42)

Can we go to the next number? Doctor, was there anything else significant on that? No. Number 156 is on the screen. Can you tell what's of interest to you on this? Yes.

(54:42 - 55:13)

In this picture, it's showing the cylinder pin adjacent to the scale so that you can see what the diameter is of it. And what is that diameter, according to Ms. Bowles, number 156? As we're looking at this, it is looks like 7 millimeters. And can you convert that? Well, not off the top of my head, but I have converted it before, and it's one quarter of an inch.

(55:21 - 55:38)

Next number. Were you done with that one? Yes, I was. Can you explain what's significant in here? In exhibit 157, we're looking at a closer photograph of the cylinder pin from the side.

(55:38 - 56:10)

Again, you see the ridged edges of the side of the cylinder pin, and it's also got a scale in place. And do you know, is this in centimeters from other pictures? Yes, or millimeters, and as we go from three to four, that's one centimeter. And did you make that conversion? Not specifically for that length there, because that wasn't really relevant to me.

(56:10 - 56:20)

Okay, next. I could do the math, but I don't know it off the top of my head. I believe it's 155.

(56:21 - 56:42)

And Officer, there's a glare. Can you just move the exhibit over number 155 a little bit out of the glare? Thank you. Okay, what are we looking at? What are the jurors looking at there? Again, we're looking at the cylinder pin, but we're looking at it on end, before we were looking at it from the side.

(56:43 - 56:58)

And again, you see it with the scale. You can see the surface of it looks mainly smooth, but we have those ridged edges there at the side. So the ridged edges are where I'm pointing? Yes.

(56:59 - 57:33)

Okay, and then this is, you said, relatively smooth? It looks relatively smooth, yes. And you can look at the actual gun in number 173A if needed, but how about these darker areas compared to lighter areas? Do you know what that is? It looks like maybe wear or maybe rusted kind of areas. Okay, and again, what is the length of what the jurors are seeing in this exhibit number? It's displayed number 155.

(57:34 - 57:59)

It looks like it has a diameter of 7 to 8 millimeters. It's a little offset on this picture, but yes. And is that consistent with what Dr. Lehman found the abrasion to be? He reported the abrasion as being 3 eighths of an inch, but looking at the photograph with the scale, I was able to do the conversion, and it looked to be more like a quarter of an inch rather than 3 eighths of an inch.

(57:59 - 58:27)

But those measurements are very close. So is it consistent that the abrasion that you've shown, ladies and gentlemen of the jury, is similar, if not almost identical, as the diameter of what the jurors are seeing in 155 where I'm pointing to the end of the cylinder rifle set? Yes. Okay, and that's part of your analysis? Yes.

(58:30 - 58:52)

If this would have been this size, when I say this, the 155 in this bowl, but the abrasion would have been 5 inches, just a totally different ballpark of measurement, would you have the same conclusion? No, not if it were that kind of a discrepancy, no. Okay. All right.

(58:53 - 59:03)

Next, if you don't mind. I don't think I need any of these other pictures. I think I'm a juror.

(59:04 - 59:30)

Okay. Thank you, sir. All right.

Doctor, I want to ask you some things that the jurors are educated about. Do you know what satellite or star-shaped tearing is? Oh, like stellate? Yes. Or star-shaped? Yes, I do.

(59:30 - 1:00:09)

Can you explain that to the jurors? Okay. Typically, with a contact gunshot wound, let's say of the head, where the muzzle is against the scalp and the skin and soft tissue is relatively thin, and you have a contact wound, you'll typically get this stellate or star-shaped lacerated entrance wound, because when the firearm is discharged, a lot of things come out of the end of the gun other than just the bullet. You have gases.

(1:00:10 - 1:00:17)

You have some flame. You have soot. And you have burned gunpowder.

(1:00:17 - 1:00:39)

And all of these materials are coming out. And when you have a firearm pressed against the head like that, especially the gases get trapped between the scalp and the hard bone of the skull and cause the skin or scalp to tear. And so instead of getting a nice, round entrance wound, you typically get a lacerated or torn wound.

(1:00:39 - 1:01:02)

But if you put the edges back together, there's a central hole or defect where the bullet has gone through, and the tears are from the gases tearing the scalp. Would you expect to find from all the information you've reviewed, studied, and explained to the jurors that this had anything to do with a star-shaped tear? No. Explain why.

(1:01:03 - 1:01:24)

The properties of the nose and the tissues in this area are different. As I said, with the scalp, and it's being relatively thin overlying the hard bone, the gases get trapped between the scalp and the skull, causing the scalp to tear. Inside the nose, well, the nose is much more flexible.

(1:01:24 - 1:01:41)

You don't have firm, rigid bone like that. So I would not expect to see a hole that has a stellate shape. And in fact, in this case, no hole or entrance wound into the skull was ever described or

demonstrated.

(1:01:41 - 1:02:14)

There was that laceration or tear, again, that was just at the edge of the nostril, at the edge of that relatively uniform abrasion. Has Dr. Lehman, to your knowledge from everything you reviewed, ever taken some sort of image, photograph, of the entrance wound of Mr. Akers, the sufferer who got wounded? No. There's a depiction of that laceration, but no actual image of the hole that goes from inside the nose into the head.

(1:02:14 - 1:02:35)

Could that have been done? It could have been done, maybe with difficulty. As I said, I think the best way to try to approach that would have been to have passed, after taking the brain out of the head, to have passed a probe through the inside of the skull to actually see where that entrance wound was inside the nose and to demonstrate it. And then to photograph it.

(1:02:35 - 1:02:54)

And to photograph it, yes. Do you know what searing is? Yes, I do. Can you explain that to the jurors? Searing is the burning of the tissues or the skin that occurs when a firearm is discharged, either in very close range or in contact range against the body.

(1:02:54 - 1:03:17)

Because, again, lots of stuff comes out of the barrel then, including flame and superheated gases. Was there any searing depicted here by Dr. Lehman? No. Would you expect to find any searing? Not necessarily, because, again, the entrance is up inside the nose involving the mucosa or the lining of the tissues inside the nose.

(1:03:18 - 1:03:36)

And typically when you see searing, it is on the skin. And when you talk about the nose as different, let's say if I was shot in the scalp area, you said that the skin is tied against my skull. But the nose, does it have passages that we can breathe? Yes.

(1:03:36 - 1:03:52)

I mean, you've got sinuses, you've got turbinates inside the nose. The tissue lining inside the nose is the mucosa, which is moist. And the nose is very flexible, so the ends cartilaginous.

(1:03:53 - 1:04:14)

You have bone up where it joins the skull, but the tissues of the nose are much more flexible than, say, the rigid skull, and you can move the nostril around somewhat as well. Okay. How

about blowback blood? Are you familiar with that term? Yes, I am.

(1:04:14 - 1:04:38)

Can you explain that to the jury? All right. Blowback or back spatter, it is blood that is dissipated behind a force that's applied. So when a bullet strikes the head, blowback is blood that is kind of showered backwards.

(1:04:39 - 1:05:12)

So if I've got my hand holding a gun up against the head and discharge it, you might expect to see blood that comes back onto the firearm or onto my hand. Would you expect to find any blowback blood in this case? Not in this case. Again, with the entrance being inside the nose, with the muzzle of the gun being up inside the nose, because, again, when everything is discharged and it's going in the nose, if blood is dissipated, it's contained inside the nostril.

(1:05:12 - 1:05:31)

It's kind of like if a firearm is discharged inside the mouth and into an oral wound, I don't see blowback onto the hand or onto the gun because it's contained in the mouth. I'd like to show you what I've shown to the prosecutors. It's just for demonstrative, Your Honor.

(1:05:32 - 1:05:46)

But for the record, Ms. Bowles, number 149, 150, 151, and 152. May I approach you, Your Honor? Yes. Yes.

(1:05:47 - 1:06:07)

Let's take a peek at this. I guess these four exhibits, and tell me whether they will in any way assist you in demonstrating what you were just talking about with the jury. Yes, I believe they will.

(1:06:08 - 1:06:21)

Your Honor, it's just for demonstrative purposes. They are not affiliated with this case. I'd like to move to show the jury Ms. Bowles, number 149 through 152.

(1:06:24 - 1:06:37)

We will do that. May I approach you, Your Honor? Yes, sir. Doctor, is it helpful if we put it on the screen? Yes.

(1:06:38 - 1:06:53)

And if I may refer to my file because I do have some pages from corresponding reports that go to these. Absolutely. This one's important, but may I refer to it? Or do you need to review something

first? If I can just have a minute.

(1:06:56 - 1:07:14)

Do you need pen and paper to take a note of it? No, I think I'm good. Thank you. Okay.

(1:07:59 - 1:08:05)

Okay. Are you ready? I am ready. May I approach you? Yes, Your Honor.

(1:08:06 - 1:08:14)

If you don't want me to display it, it's better for you another way or just let us know. Oh, no, it's fine to be displayed. These are black and white pieces.

(1:08:14 - 1:08:22)

Are they better in color? I'm a pathologist. I think everything's better in color. But, yes, I think so.

(1:08:23 - 1:08:37)

And I believe I've got pictures of these in color if that's acceptable. I need to show them to the prosecutors if you can help us with that. Just a second.

(1:09:06 - 1:09:52)

I found two of the four. Let me just see if I can find these other two. All right.

(1:09:52 - 1:10:05)

I may not have printed them, so let's just go with the black and white. For all of them? Yes, for all of them. May I approach you, Your Honor? May I approach you, Your Honor? Yes, Your Honor.

(1:10:06 - 1:10:33)

Did you put them in an order that you would like to? Yes. With the court's permission, I ask the officer to display, and he'll announce the number. And, okay, this is Ms. Bowles, number 149.

(1:10:33 - 1:11:15)

Just for demonstrative purposes, does this have this picture? I know you're going to use it to explain something, but is this Mr. Akers? Is this involved in this case? Is this the same gun, anything like that? No, these pictures have nothing to do with this case. They're just to demonstrate when I say my experience with looking at .22 caliber bullets and the abrasion that I associate with a .22 caliber. And these are cases from Gwinnett County that I have personally examined these bodies on, and they all involve .22 caliber bullets from handguns.

(1:11:15 - 1:11:23)

Okay. Explain to the jurors what they are looking at and what it's significant about. For demonstrative purposes, Ms. Bowles, 149.

(1:11:23 - 1:11:58)

Okay, in this exhibit, this is a self-inflicted gunshot wound that involved the center of the forehead. And in this case, the type of firearm that was used was a .22 caliber long-barrel six-shot revolver, and this is a contact-range wound. So this .22 caliber weapon was up against her forehead at the time it was discharged, and we see the central hole where the bullet went in.

(1:11:58 - 1:12:21)

Go ahead, Doctor, please. And so it's right in the center there. That's the actual size of the bullet? That's the size of the bullet defect, and I'm... let's see, where was it? And that, in the next picture, will have a scale in it, but I have some pages to my report.

(1:12:21 - 1:13:07)

This defect I actually measured at being 3 16ths of an inch, and then the abrasion collar around it, so here from the 2 to 4 o'clock position, the thickness of that abrasion was 3 16ths of an inch. Now, this is a contact wound, so this is an injury produced by the barrel of the gun up against this wound. And as I said before, in looking at that abrasion that was on Mr. Aker's nose, that kind of thickness of the abrasion is something that I would see not from a distant-range wound with a .22, but if I had a muzzle or injury from the barrel associated with it or it's something else.

(1:13:08 - 1:13:32)

And in this case, it's my opinion, it's the cylinder pin producing that injury. But anyway, so here's an example of a contact wound with a .22. Okay? And the next picture. Okay.

(1:13:33 - 1:14:08)

This is Miss Bozeman, .152 U.R. All right, this is a closer photograph of the wound that we saw in the previous exhibit, and this has a scale in place. And again, the scale is in, actually, millimeters, centimeters, but I actually have my report, and at the time I did the examination, I was measuring in inches. So before, when I told you about the diameters of the wounds, the central hole here is 3 16ths of an inch, and that is the same as the thickness of this abrasion there.

(1:14:10 - 1:14:53)

Okay. Let's see. And in this case... And is this a different autopsy you performed? Yes, this is a different autopsy I performed, and I was just looking at this.

(1:14:53 - 1:15:56)

All right. In this photograph, again, this was produced by a .22-caliber handgun, and this wound here, we see the central defect produced by the .22, our hole, and we've got some slight tears at the edge, and we have a discoloration produced by the muzzle of the barrel of the firearm, but the actual abrasion is a very thin rim of scraping that is around the edge there that I said measured or had a thickness of 1 16th of an inch. So the actual defect was 3 16ths of an inch, and then the abrasion around it, 3 16ths of an inch.

(1:15:57 - 1:16:17)

Because this photograph is gray, you can't see it, but there is soot associated with this wound. This was a contact gunshot wound. It produced the little tears from the gases tearing the edges of the wound, but we do not have a marked abrasion around it.

(1:16:17 - 1:16:48)

Typically with .22s, the abrasion collar is very thin unless you have significant muzzle injury, and in this case, we mainly have a contusion or bruising producing that discoloration rather than actual abrasion. And something that's probably of note here is this .22 handgun was actually a semi-automatic and not a revolver, and so that may have something to do with the lack of muzzle abrasion associated with it. Okay.

(1:16:58 - 1:17:24)

Can you tell us what's significant, if anything, about for demonstrative purposes, not involving the shankers? Right. Okay. In this photograph here, we're also looking at another .22 gunshot wound that involved the right side of someone's head, and this was self-inflicted, and it involved a .22 revolver.

(1:17:25 - 1:17:53)

It's described as a heritage-ref revolver. And in this depiction, we have got the hole in the center, and again, this is gray. It's hard to see, but the actual abrasion around this is just right here at the edge of the wound, and we have dense soot, so that's not abrasion around it.

(1:17:54 - 1:18:29)

Again, it's hard to tell because of this being a black-and-white photograph, but the soot around it is very dense. This is a loose contact wound, and the actual abrasion is right at the edge of the wound, and then all of this out here is the smoke or soot around the wound. And even so, with that soot, the soot attained a maximal thickness of 3-16ths of an inch from the edge of the wound out.

(1:18:31 - 1:19:13)

But the abrasion itself, I measured it being less than 1-16th of an inch. So to say that this injury on Mr. Aper's nose had a diameter of 3-8ths to 1-4th of an inch, that is much bigger than I typically see in association with abrasions caused by .22 bullets on the skin. You mentioned earlier, and we'll show it, I think it's with the tweezers that are opening up the nose of Mr. Aker's, the right nostril area.

(1:19:14 - 1:19:36)

You said that there's little lines, abrasions maybe inside the nose, did you remember that? That there's the laceration? Laceration. Laceration, yes. How do you know the direction of those lacerations? Well, one is, Dr. Lehman described it in his autopsy report.

(1:19:36 - 1:20:12)

Can you tell us where it is described? Absolutely. On page 2 of 5 of his autopsy report, he says, and it's at the second paragraph, under evidence of injury, the next or last sentence, says, extending from this abrasion is laceration along the wound path involving the mucosal surface of the right nasal cavity superior laterally. And as I said, lateral is toward the outside of the body, medial is toward the midline or toward the middle part of the body.

(1:20:12 - 1:20:58)

So he's describing this laceration as going up and out. Why is that significant? If Dr. Lehman, I'm just hypothetically, I know you're not agreeing, but if the bullet made those lacerations, why is that significant to you in explaining the truth or your testimony to the jury? Because later on in Dr. Lehman's report, he describes where he recovered the bullet, and he also describes the wound path as going from the front to the back, from the right to the left, and upward. And so that would mean the wound path is going across the midline onto the left side.

(1:20:58 - 1:21:56)

This laceration that he's describing, that he's saying is along the wound path, is going in the opposite direction. And again, my opinion is that this laceration is not associated with the wound path, that it's associated with an injury produced by that cylinder rod, and that the actual path of the bullet is associated with a defect that was not seen nor examined because it's up further inside the nose, but they were focused on that abrasion and that laceration right there at the edge of the nose and did not look deeper into the nose. Does the nose have the ability to stretch as opposed to, let's say, or more ability to stretch as opposed to other parts of the skin that covers, let's say, the scalp like you were showing? Yes, like in taking this swab, I can pull my nostril around and certainly if something's poked against it, it can move and be distorted somewhat.

(1:22:01 - 1:22:59)

Doctor, I don't believe I have any other questions. May I just have one moment, Your Honor? Your Honor, I don't have any other questions. Dr. Terry, thank you for doing this.

(1:22:59 - 1:37:28)

Okay, it's time for a break, so let's take 10 minutes. Welcome back. Okay, cross-examination.

(1:37:34 - 1:37:54)

Good morning, Dr. Terry. Good morning. I'd like to know a little bit more about your practice or explain a little bit more about your practice for the jury, so do you know Dr. Ashraft, a Comcount Medical Examiner, Assistant Chief Medical Examiner? Dr. Ashraft? Yes.

(1:37:54 - 1:38:16)

No, I do not. I knew Dr. Gulledge, who is the Chief Medical Examiner, but is there a new Chief Medical Examiner? That's Dr. Ashraft's Chief Assistant to Dr. Gulledge, but in Cobb County, DeKalb, Fulton, there's a Medical Examiner's Office that's paid for by the counties. Is that how you understand it? It is my understanding that is how those counties are run.

(1:38:17 - 1:38:54)

And in other counties, like Paulding, the reason we have Dr. Lehman here is he works for the GBI. Do you understand how you would agree to that? That is correct, and, in fact, when I worked at Fulton County for a period of time, we had to cover cases at the Georgia Bureau of Investigation, so I am familiar with that system. But Gwinnett County is kind of like a different system, right? Because in Gwinnett County, there was an idea that came up, somebody came up with an idea, let's form a private company, a private entity, for-profit entity, and let's contract our services back to the county for private medical examination services.

(1:38:54 - 1:39:12)

Is that how you would describe it? That is how I would describe it. I am a private contractor with the county. I have to submit a bid every five years for the contract because it comes up for bid, and I have to submit a proposed budget.

(1:39:13 - 1:39:31)

How much was the bid, the last contract that was awarded to you by the Gwinnett County taxpayers? The last contract, I'm trying to remember off the top of my head. I think it was $1.6 million per year. It's somewhere in that range, yes.

(1:39:31 - 1:39:54)

So your company bid out the Gwinnett County medical examination services for $1.6 million at the last bid. That's correct, and that is to cover all the costs for transporting bodies, all of our equipment fees, all of our supplies, and all of our staffing. Including your salary, right? Including my salary as well.

(1:39:54 - 1:40:17)

That's for all of the running of the medical examiner and death investigation services for Gwinnett County. Is there any other county in Georgia that does it like that besides Gwinnett? No, because when you think about it, there are only four counties in the entire state of Georgia that have medical examiner systems. Cobb, Fulton, Gwinnett, and DeKalb.

(1:40:18 - 1:40:39)

Gwinnett is, as we said, a privately contracted medical examiner position. Cobb and Fulton are purely county, and DeKalb is a bit of a hybrid. I think most of the employees there are county employees, but Dr. Garrett is a private contractor with the county.

(1:40:39 - 1:41:01)

That's my understanding. So out of the 159 counties in Georgia, Gwinnett is the only one that's just a private company that provides medical examination services? Purely private, yes. Let's talk about how much you were paid to testify today, because you described it as Mr. Steele just calling you up and kind of casually wanting your opinion on this case.

(1:41:01 - 1:41:10)

Do you remember talking about that back in March? Yes, I do. But actually you paid to give your opinion on this case. Is that right? Actually, I have not been paid to give my opinion on this case.

(1:41:10 - 1:41:43)

I talked to Mr. Steele about this, and he asked if I needed a retainer. I told him no, I would just bill based on the time spent. In fact, when I do criminal defense work, because I do it so infrequently, since I have plenty of work to keep me occupied as it is, I actually reduce my hourly fees because I don't think someone should have their life or their freedom dependent upon not being able to afford adequate expert consultation.

(1:41:44 - 1:42:03)

So my entire involvement in this case, I'm going to charge $2,000. And typically when I do consulting, I charge $800 an hour. So in this case, while I value my time, I actually value justice and truth more.

(1:42:05 - 1:42:33)

You said that you testify for defense attorneys so infrequently. Right. Do you remember getting sworn deposition in a case called Horner v. St. Francis Hospital? Do you remember that case down in Columbus, Georgia? Down in Columbus? Yeah, Middle District of Georgia in the Superior Court of Muskogee County.

(1:42:33 - 1:42:39)

Do you remember that? No. And remember I said a criminal defense. I tend not to get involved in those.

(1:42:40 - 1:42:56)

I do get involved in other types of consulting, but can you remind me of what some of the circumstances were? Sure. So on page 26 of a transcript of a deposition you gave in that case. And can you tell me when this was? Yeah, 2006.

(1:42:57 - 1:42:59)

2006. 2006. Okay, so 20 years ago.

(1:42:59 - 1:43:15)

Yeah. Page 26 of the transcript, it's line 13. I think it's a quote from you, is it not? I think I probably get contacted more by defense attorneys, but I certainly get contacted by plaintiff's attorneys as well.

(1:43:15 - 1:43:36)

But I would say, you know, probably a third of my time, it's plaintiff's attorneys, more like two-thirds by defense attorneys. So back then, I guess maybe your practice has changed. Back then in 2006 when you gave that sworn testimony, you stated two-thirds of your consulting work was by defense attorneys, right? Correct.

(1:43:36 - 1:44:00)

And, again, mainly we're talking about civil cases then, and also at that point in time in 2006, that was just when I was coming up into Gwinnett. I have gotten a lot busier over the years and don't undertake as much consulting work because my full-time job keeps me busy. Well, it seems like you must be familiar with Mr. Steele.

(1:44:01 - 1:44:13)

He just calls you up on the phone and goes over a case casually. Have you ever worked with him

before? I'm trying to think. I don't think I have worked with him before, but I have certainly been cross-examined by him before.

(1:44:14 - 1:44:26)

Have you ever worked with Mr. Lale? Not to my knowledge. Did you speak with Mr. Steele about this case? I'm assuming you did. Yes, I did.

(1:44:26 - 1:44:46)

When was the most recent time? Most recently, I guess, was yesterday. You talked with him yesterday? Yes. What did you talk about? Well, first to let me know about what time to report and also to tell me what he thought some anticipated questions would be on cross-examination.

(1:44:47 - 1:45:11)

Did he talk about direct examination with you? Not specifically. We had discussed this case and exchanged e-mails over the months because, as I said, I was first contacted in March, so he was quite aware of what my opinions were on this case. Did he talk to you about any other expert that's testified so far, like Eric Warren? Not specifically.

(1:45:11 - 1:45:47)

That's the first time I'm hearing that name. You don't know Dr. Warren? I do not. Would it surprise you, just speaking, and I'll get to it a little bit later in more detail, but speaking of stellate pattern or star-shaped wounds, would it surprise you if you knew Dr. Warren testified earlier in this case that, as a defense witness, that he would not expect to see a stellate wound because there's so little skin between the surface of the skin and the skull on a head contact wound with a pistol? Would that surprise you? No, that would not surprise me.

(1:45:47 - 1:46:38)

As I showed you, we're talking about with .22 caliber bullets and contact wounds of the skull, I mean, or the head. No, because as the pictures that I showed you, we're dealing with all contact wounds in those three cases, and one of them had very slight lacerations or tears, but the rest of them were generally round. So you would disagree with Dr. Warren because you've seen stellate wounds on head, skull wounds before, right? Would you agree with a statement that there cannot be stellate wounds on the skull because the skin is too thin? Would you agree with that? No, I would not agree with that.

(1:46:38 - 1:46:47)

All right. And just for context, when you're saying that there cannot be, you're talking about with .22s? Yes. Okay.

(1:46:47 - 1:47:21)

Sometimes you do, sometimes you don't. Would you say that Dr. Lehman and yourself, you kind of came up through the Fulton County medical examiners, through the ranks, approximately the same time? Would you say that? Well, I was actually his attending when he was there in fellowship, but we were there at the same time. Would you classify him as having approximately the same type of level of experience as you did? Not exactly.

(1:47:21 - 1:47:39)

Actually, I think I've got maybe about four or five years more experience than he does. And then certainly over the years in Gwinnett, for about 20 years, I've been the only full-time medical examiner. So I do cases every day in Gwinnett, and I'm not sure.

(1:47:39 - 1:47:56)

I know they have a heavy load at the crime lab, but I don't know how often they work there. All right. So going back to Horner v. St. Francis Hospital again, on page 11, line 15, question.

(1:47:57 - 1:48:32)

I understand you've practiced longer than he has, he being Dr. Lehman, if I read your CVs correctly. Do you have any training that he doesn't have? In other words, any sort of specialized training that you're aware of that Dr. Lehman doesn't have? And you answered on line 20, Well, I don't know about that, specifically about his medical school training and that sort of thing. And I imagine that our training in forensics has been pretty similar, although, of course, I've had the benefit of, I think, a more senior staff when I came through the Fulton County Medical Examiner's Office than Dr. Lehman did at the time he came through.

(1:48:33 - 1:48:58)

Line 2, page 12. But by and large, in terms of rotation at the GBI and the experience to the toxicologists at the GBI, it would be substantially the same. Question, line 5. Would you agree that as far as it relates to commenting on the issues in this case, the training that you've had and the training that Dr. Lehman has had would be substantially the same? You answered, I think that's a fair statement.

(1:48:58 - 1:49:25)

Do you remember that? I do not remember that because, again, as you said, this is a transcript from 2006, so 20 years ago, and I have 20 years more experience than I did at the time I gave that deposition or that testimony under oath. And so does Dr. Lehman too, right? He's had 20 more years too. Yes, I guess so.

(1:49:25 - 1:49:37)

And again, but we're in different settings. He's been at the GBI. I've been, as I said, in Gwinnett as the only full-time medical examiner for about 20 years.

(1:49:39 - 1:50:03)

All right. Interestingly, in Horner v. St. Francis Hospital in that case, you were also called on to give an opinion that was in contrast to Dr. Lehman in that case as well. Do you remember that? I do not remember that, and I asked before, can you tell me some circumstances about this case? I don't remember what the issue was.

(1:50:03 - 1:50:48)

Again, this was 20 years ago. Do you remember ever having been in a position being retained expert to give a consultation or an opinion that was in contrast to Dr. Lehman before, like you did in Horner v. St. Francis Hospital down in Columbus? There is another case where I know I have a disagreement with Dr. Lehman's opinion, and it involves a criminal case, but I do not recall the circumstances of this case that you're citing from Horner v. what was it again? Horner v. St. Francis Hospital. In that case, you also disagree with Dr. Lehman's ultimate manner of death by you.

(1:50:48 - 1:50:57)

Do you remember that? I do not remember that. I do not remember that case at all. Again, it's 20 years ago, and I have done thousands of examinations since then.

(1:50:57 - 1:51:01)

Well, you haven't done thousands of cases where you were. Hold on. Let me ask a question.

(1:51:01 - 1:51:14)

You haven't done thousands of cases where you've specifically been called on in exchange for money to testify against or in opposition to Dr. Lehman's findings, right? Correct. You said there's only three. Correct, but that has been so long ago I don't remember this case.

(1:51:14 - 1:51:35)

Again, if I knew some of the details about it, I might recall it, but I don't recall specifically having had this disagreement with Dr. Lehman. So again, if I knew something about this case, but I do not remember this case. So ultimately, though, you would agree that reasonable and trained, experienced pathologists can disagree.

(1:51:36 - 1:51:38)

Oh, yes. Okay. Yes.

(1:51:38 - 1:52:09)

As you did in Horner and St. Francis Hospital with Dr. Lehman, right? Again, I don't remember any details, so I can't tell you what the disagreement was because I don't remember that case. Now, you said that you had done how many autopsies in your career, personal physical examinations? Between 7,100 and 7,200 autopsies. And would it surprise you to learn that Dr. Lehman said he's done approximately 7,000? It would not surprise me.

(1:52:09 - 1:52:34)

Again, he's been at the Georgia Bureau of Investigation, and they have a heavy case load. So going back to training experience, again, now if you learned he testified he'd done 7,000, that's about how much you've done, how many you've done, right? Well, in terms of autopsies, I don't know. And again, as I said, I've examined over 10,000 bodies in my career, and we're talking about the number of cases that he's done.

(1:52:35 - 1:52:58)

Those autopsies are all bodies that he's examined. Physically, in person, right? Well, I mean, I physically, in person, examined over 10,000 bodies because in addition to the ones that I told you that I autopsied, there's some I just did external examinations on. So I don't know if Dr. Lehman's numbers include external examinations only or if those are just autopsies.

(1:52:59 - 1:53:32)

And tell the jury, Dr. Terry, if you would, please, how many autopsies have you performed without physically examining the body? That would be during COVID. There's, I'd say, less than 10 that were done virtually where maybe I was in quarantine, and we did a limited dissection, but none of these were on homicides. So there were some that were done virtually, but like I said, less than 10, and it was out of necessity.

(1:53:33 - 1:53:59)

But the rest of them, I was physically there and present for. So fewer than 10 out of 7,100, 7,300 that you've done, fewer than 10 were made without physical examination of the body, right? Without my physically being there, yes. And that was due to a global pandemic, once-in-a-lifetime type of circumstance, correct? Those sort of circumstances, yes, and I was there virtually face time.

(1:53:59 - 1:54:21)

And that was a non-homicide situation or circumstance? Yes, none of those involved homicides.

Anything that was suspected homicide was held until I could physically be there. And you would agree with me, would you not, Doctor, that it's important to do a hands-on physical examination when you're conducting an autopsy, correct? Absolutely.

(1:54:21 - 1:54:48)

Because you could see things that other people couldn't see, correct? Correct. And you want to make sure, as a pathologist and the primary pathologist, you have one chance to get it right and to collect appropriate evidence. And you could see things, perhaps, in a physical examination or manipulation of a body that photographs might not capture, isn't that right? Correct, especially in terms of physical manipulation and being able to actually feel things.

(1:54:49 - 1:55:27)

In this case, you're limited to photographs that you've seen and seen photographs and witness statements and investigatory notes, is that right? I am limited to that, and I'm limited by the evidence in the photographs that were collected by the autopsy pathologists. You cannot testify before this jury, if I'm correct. If I'm not, please correct me, Dr. Terry, but you can't testify from any kind of personal knowledge who pulled the trigger in this case, can you? That is correct, I cannot.

(1:55:28 - 1:55:58)

You have no idea? I have no idea. The only person that would know that is people that were eyewitnesses to the event, is that right? If even they knew, yes, those would be the people in the best position. And you would agree that pathology, forensic pathology in your business, of the five determinations as to manner of death, you can't scientifically, to a certainty, exclude or confirm any of those, can you? To a scientific certainty.

(1:55:59 - 1:56:23)

Well, we do it to a reasonable degree of medical certainty, and as I indicated before, it depends on looking at how we as medical examiners define these different manners of death. And so, yes, we routinely certify deaths to a reasonable degree of medical certainty. But I said scientific.

(1:56:23 - 1:56:35)

Oh, scientific. What is your understanding? You can't endorse a specific one of the five causes of manners of death. You can't endorse that to a scientific certainty, can you? I would say yes.

(1:56:36 - 1:57:07)

Again, this is something we routinely do when we certify deaths on the death certificate. You believe that you can certify a manner of death to a mathematical scientific certainty, 2 plus 2 equals 4. Is that what you're telling us, Jury Dr. Terry? Well, I'm telling you this is something we

routinely do as medical examiners arriving at manners of death. And certainly in this case, as I said before, I am not at odds with Dr. Lehman on the manner of death in this case.

(1:57:08 - 1:57:24)

But you're at odds with the circumstances upon which he arrived at the manner of death. Correct. As medical examiners, yes, we are called upon to practice the scientific method, which is identify a problem, make observations, record data, you develop a hypothesis, and you check it.

(1:57:25 - 1:57:38)

And that's what we do as medical examiners. And I, as a medical examiner, have identified this problem. I've looked at the observations that were made and recorded as well as made my own observations.

(1:57:39 - 1:57:59)

And I look and see if there's a way that we can reconcile reported statements with the autopsy findings and the facts reported, and I believe it can be done. And I disagree with Dr. Lehman on his ultimate conclusion about the circumstances. But in terms of cause and manner of death, we're in agreement.

(1:58:00 - 1:59:00)

In arriving at the exact circumstances, you have no reason to believe Dr. Lehman didn't undertake exactly the type of scientific analysis that you just described. Do you? Yes, I do, because I think he misinterpreted the injury on the nostril, and I think that led him down a wrong path and that he did not, as the first pathologist and the only pathologist who had an opportunity to examine the body at the autopsy, did not undertake looking up in the nose, one, to identify where the actual entrance is going from the inside of the nose into the head, and two, to examine the tissues in that area to look for the soot that shows up in the background of another photograph where they're focused on that laceration associated with the nostril. Let's talk about that one of those photographs right here, please.

(1:59:00 - 1:59:20)

This is the appendix exhibit 147. Do you see that? Yes. Can we rotate it 180 degrees? Correct.

(1:59:24 - 1:59:42)

They're sooting here up into the nasal cavity in that area, is that right? Actually, can we dim that light a little bit? Because there— You can see it on your screen. I can see it on my screen, but in terms of demonstrating it for the jury. Is that okay? All right.

(1:59:44 - 1:59:53)

I don't know how to dim the lights any further. Deputy Alito, have you seen a way to dim them further than that? I don't know how to turn them off. I don't know if we'll be able to see.

(1:59:53 - 2:00:26)

Is that okay? So there's no way to have the screen on? Apparently not. Okay. What do you see sooting here? Well, we're both kind of intersecting our fleshes there.

(2:00:26 - 2:00:53)

So you believe they're sooting in that area, correct? Yes, because from the picture I have and the display I have here, there's somewhat of a demarcation here where it's very black. It's just dark up here, but there's an actual very black to dark gray area, and I think that's the soot. But the focus of this picture is on this injury here.

(2:00:53 - 2:01:02)

Yeah, I'm asking about the soot, not that injury there. Okay, but I'm telling you, this is what's in the background. I ask that Dr. Terry be allowed to explain or answer nothing.

(2:01:03 - 2:01:11)

That's not an explanation. That's a foray off into a complete area that I did not ask about. So I'll get a handle on redirect, I guess.

(2:01:13 - 2:01:36)

I'm sorry. I was just trying to say that this is the only picture that we have, and it was not specifically taken to show this area up here. But as we look up in the nostril, there is a demarcation where this is very dark or black, and that I believe to be soot.

(2:01:36 - 2:02:10)

But the focus of this picture is there on that laceration. All right. You didn't take this picture, right? That is correct.

I did not. Then how in the world can you get into the mind of the person that did to indicate why they took this picture like you just did to the jury when you said this picture was not meant to show that darkened area? How can you know that? Because I can see what it's focused on. We've got two sets of forceps demonstrating that laceration that involves the nostril, and what's in the background is what has happened to just be captured.

(2:02:10 - 2:02:22)

There's no pictures that are focused up in the nostril to show the absence or presence of soot. Do you know what Mr. Akers did for over a year? I do not. You don't? I do not.

(2:02:22 - 2:02:33)

I thought you had examined investigatory notes and defendant's statements and interviews. Did you do any of that? I did do that. I do not recall.

(2:02:33 - 2:02:48)

You don't recall? Do you remember if he was providing his holdings as a sheet metal worker? Do you know your memory at all? It does not jar my memory, but. Okay. Well, would you take my word for it? Of course he's a sheet metal worker.

(2:02:48 - 2:02:51)

Yes, I'll take it. I have no reason to not. No, I have no reason not to.

(2:02:51 - 2:03:32)

Did you know that another expert testified earlier in the case that discolored nostril like that or that type of material, it's very possible that that could be cause for somebody being exposed to metal fragments or iron dust, cutting metal for six to five, six to eight minutes on a sheet metal worker. Would that surprise you? It would surprise me that someone would say that. Again, looking at it, there seems to be a very clear, as I'm looking at this picture here, demarcation there, so it looks like a specific deposition and not just an overall global darkening of the lining.

(2:03:33 - 2:04:01)

So if somebody, if another defense expert said that they were wrong, right, and then Dr. Lehman is wrong too, right, on the sooting? On the sooting, I'm saying this looks like sooting to me, and it makes the best sense in terms of the constellation and pattern of injuries here. And at the time of the first autopsy, that area was not adequately examined. Well, it wasn't adequately examined according to you, like maybe what you would have done.

(2:04:01 - 2:04:12)

Is that right? That's correct. And, you know, range of fire is very important in this case, and it wasn't adequately examined. To you, right, according to you.

(2:04:12 - 2:04:31)

But Dr. Lehman testified it was adequately examined because he saw no evidence of soot whatsoever to prompt him to do further external or even internal endometrial nasal passage examination. Did you know that? Oh, yes, I did, and that's true. He said he did not see it, and I

believe it.

(2:04:31 - 2:04:40)

He didn't see it because he didn't look up in the nose. He's looking at this injury there of the nasal ala, which he has interpreted as being the entrance wound. And I agree.

(2:04:41 - 2:05:10)

There's no soot there at that abrasion, but that injury, that pattern, is more consistent with the cylinder pin rather than an abrasion associated with an entrance defect from a .22 bullet. So you believe that Dr. Lehman just missed it, right, even though Pamela, one of his assistants, took the soot, correct? I believe he did miss the entrance wound, yes. You're talking about the soot.

(2:05:11 - 2:05:31)

And the soot, yes, because it's up higher in the nose. I think the focus is on that abrasion and laceration of the nasal ala. And as I said, you know, how many times do you take a photograph, and then as you look at it, you later see something in the background that you didn't appreciate at the time? That's what I think has occurred here.

(2:05:31 - 2:05:36)

Especially when you're paid to see things later from that record. Sir, I haven't been paid. You're going to be paid.

(2:05:36 - 2:05:53)

Well, yeah, I mean, I will submit a bill, but I am here to offer my expertise. And whether I get paid or not, that is what I believe based on my background experience and training. You've done a lot of examinations where there was a suicide by a firearm.

(2:05:53 - 2:06:00)

Is that right? That is correct. I guess hundreds, if not over a thousand, right? Probably thousands. Yeah.

(2:06:00 - 2:06:13)

And you've noticed in your career these many years that there are certain patterns of suicide by gunshot. Would you agree with that? I agree with that. You see a pattern of a shot to the temple.

(2:06:13 - 2:06:20)

Would you agree with that? Yes. You could see a pattern of a shot under the chin. Would you agree with that? Yes.

(2:06:21 - 2:06:44)

I think even one of your pictures that you showed of an actual case file that you worked in Gwinnett, you could see a pattern of suicide to the front of the skull here, above the nose, above the eyes. Do you remember? You would see that sometimes. You might see even insertion of a muzzle inside the mouth and pull the trigger.

(2:06:44 - 2:07:04)

Have you seen that? Yes. But you would say, I think you already testified on direct evidence, a suicide by insertion of a muzzle, a purposeful insertion of a— listen to my question— a purposeful insertion of a muzzle into a nose, you would see that as being abnormal or unusual. It's very unusual.

(2:07:05 - 2:08:07)

I have seen it one time in my 32 years. Okay. How many gunshot wound suicide cases have you seen, Dr. Terry, if you could estimate for the jury, please, where there was a gunshot wound, a suicide gunshot wound, where there was no sooting whatsoever? How many of you have seen that? I've seen that in cases where maybe the body's made it to the hospital and the soot has been washed off, or cases where there's been an intervening object that has filtered out the soot, say, for example, a baseball cap or a knit cap or something, and it's been self-inflicted in a contact range, but the evidence that intervened between the muzzle of the gun and the body is gone.

(2:08:08 - 2:08:26)

So I have seen that. I'd say that's probably a low percentage of the time, and usually, as I said, involves transport of the body to the hospital with removal of articles of clothing. So I'd say probably 5% of the time.

(2:08:29 - 2:08:58)

And you didn't see any stellate wounding here, is that right? That is correct, and in fact, the entrance wound was never described. Any kind of hole was never described, only this laceration. And you believe that there's no stellate wound or stellate tearing because the muzzle was far embedded into the right nostril, is that right? Well, I think there's no stellate tearing for several reasons.

(2:08:58 - 2:09:29)

One, given that it's a .22, you don't always get the stellate-type pattern. Two, the type of tissue that the bullet's having to pass through, it's not over a firm surface like rigid bone. The tissues in

that area are softer and more yielding, so I would not expect to see a stellate wound, but no actual entrance defect was described in the autopsy report, nor is it documented in the photographs.

(2:09:31 - 2:09:55)

Did you perform any test firing of the weapon in this case? No, I did not. Did you perform any range of fire testing in this case with a similar type of weapon? No, I did not. I want to show you some of your pictures that you used for demonstrative purposes.

(2:09:56 - 2:10:12)

I'll just pick one. I think it's 149. I think this is your case from Gwinnett County.

(2:10:12 - 2:10:23)

It's used just to demonstrate, but we do have to label things. Much like you do in your business, we have to keep everything labeled and tracked. This has been labeled 149 defense, even though it's not been tendered into evidence.

(2:10:24 - 2:10:58)

Do you remember looking at this? Yes, I do. You made a lot of mention of direct examination, how there's just almost a real perfectly round, I think you called it something else, circumvented or something, you used a medical term, but I just call it round, like a round entry wound, and this was with a .22. Do you remember that? That is correct. He said that something about the round nature of the entrance wound was notable to you in your examination of this case here and of the photographs in Daniel Akers' case.

(2:10:58 - 2:11:21)

Do you remember saying that? I'm sorry, say that one more time, please. I'm trying to follow what you were saying, but I'm not a doctor, but I thought what you were saying is that if there's a contact .22 caliber entrance wound, a lot of times you see it being perfectly round, like what you showed here. It's pretty much round.

(2:11:21 - 2:11:58)

Okay, not necessarily perfectly round, but I'm saying when I have a contact wound, typically I'll have a muzzle injury that is a lot broader because it's not just the abrasion caused by the bullet entering into the head. It's caused by the injury of the muzzle around the entrance wound. So a lot of times what you were trying to show, I think, with this one, and correct me if I'm wrong, is that there was a confined circular entry wound here that's consistent with .22 caliber pistol.

(2:11:58 - 2:12:43)

What I'm trying to show here is that the abrasion and burned area of the skin around this wound is very thick because it is a contact wound there, and that's when I see abrasion that's very thick around the hole associated with the .22. It's with a contact wound. I don't see that with distant range entrance wounds associated with .22 bullets. Are you familiar with Mr. DiMaio's book, Gunshot Wounds? It was Dr. DiMaio, yes.

(2:12:44 - 2:12:59)

What do you mean it was Dr. DiMaio? He has passed away, and he is a physician. I just said are you familiar with him. You said Mr. DiMaio.

It's Dr. DiMaio. Dr. DiMaio. I know he passed away last year, but you're familiar with his work, Gunshot Wounds? Yes, that is correct, I am.

(2:12:59 - 2:13:24)

It's kind of a learned treaty, would you agree, for people that are in your business? It is a reference textbook that is often used, yes. Okay, if I can show opposing counsel what's been marked for identification purposes on the state's exhibit 241, and this was entered as a demonstrative in Dr. DiMaio's book. Let me show you this from Dr. DiMaio's book specifically.

(2:13:25 - 2:13:54)

This wound here, do you see the wound on the top left there? Okay, that's the one that has that little A under it? Yes, that A like alpha, and Dr. DiMaio indicated that that was a .22 caliber wound also. Are you aware of that? I mean I'm not aware of it, but I'm not surprised by it, but okay. You see how that's an abnormal or an elongated type, more of a lateral type elongated entrance wound.

(2:13:54 - 2:14:11)

Do you see that? I mean the hole there is elongated. This wound has got stippling around it, and it does appear that we have somewhat of a muzzle injury there as well, but yes. Okay, thank you.

(2:14:11 - 2:14:18)

This looks like a close range wound. Yeah, DiMaio indicated it was a contact wound with the same exact caliber. Okay.

(2:14:18 - 2:15:17)

Okay? All right. Would you agree with me if I said, is it fair to say that sometimes in your business you can see a lack of close range or contact range indicators on a wound? Is that correct? That we can see a lack of it when it is in fact a close range wound? No, just do you examine in all your

gunshot analysis and your examinations, have you seen wounds that you could say did not have those classic close range indicators? Yes. Okay, and that could indicate to you, somebody with your learned experience and education, that could indicate to you that this shot was from farther away in your immediate distance or distance.

(2:15:19 - 2:15:37)

Indeterminate range, meaning that there's no material there that allows me to establish a range of fire. So some indicators could indicate a range of fire that was intermediate to distant, correct? A lack of, I mean, it's kind of a bad question. I want to make sure I understand myself.

(2:15:37 - 2:16:42)

So if you look at a wound and it lacks the type of close range indicators that you're looking for, then the obvious inverse result from that is you could find it was an indeterminate or distant range shot, correct? If I don't have indicators around the wound to allow me to establish a rough range of fire, then it could be distant or it could be indeterminate, meaning I can't tell. Would you agree that Dr. Lehman is finding that the pathway or trajectory of the bullet traveled, I don't know the term that you would use, but I just say lower to higher, upward to down, excuse me, downward to upward? Correct. I do agree with his description of the pathway because I was able to look at photographs of the x-ray and he described the wound path as mainly being front to back with a lesser degree of upward and lesser degree of right to left.

(2:16:42 - 2:17:09)

So it was, we can both agree with Dr. Lehman then that it was upward. Correct. It's going, if I gesture again, it's going in this right nostril, it's going from the deceased right towards the left, it's going upward and it's going from his front towards the back and the bullet's being recovered in the backside of the left side of the brain.

(2:17:09 - 2:17:33)

You would agree then with those findings of yourself and Dr. Lehman, where you are on the same page, you would agree that that trajectory has to be consistent with the orientation of the firearm, correct? It's got to be consistent with the orientation of the firearm, yes. Do you know how tall Daniel Akers was? Do you remember that? Yes, I do remember seeing that in the report. He was 70 inches tall, which is 5'10".

(2:17:33 - 2:17:54)

5'10". Do you remember seeing how tall this defendant was at the time of the shooting? I do not recall. You don't remember that as part of your overall examination of the investigatory notes? I do not recall that because, again, heights of individuals really in most cases are not terribly

relevant.

(2:17:56 - 2:18:09)

It's the relationship of the firearm to the body and the wound path because people don't always walk around in an anatomic position. In fact, we rarely do. Shootings are very dynamic.

(2:18:09 - 2:18:37)

My main concern is the relationship of the firearm to the wound track, and the body can be manipulated in all different kinds of ways as long as we maintain that wound track. Well, you said that, to an unfortunate extent, you said, if I heard you correctly, you said that the wound path is going to have a relationship, a specific and distinct relationship with the orientation of the firearm. Did you say that? Correct, with the firearm, yes.

(2:18:38 - 2:18:48)

But then you said at the same time, you said people's height has nothing to do with anything, right? Right. There's no holding a forest to you, I can say. Right, because it's how the bodies are positioned.

(2:18:48 - 2:19:06)

I mean, you can be standing upright, you can be lying on the ground, you can be bent over. It's the relationship of the firearm to that wound track, and I don't know what position the individuals were in at the time that the firearm was discharged. Most likely, they're not both fully standing upright.

(2:19:07 - 2:19:26)

My main concern is the relationship of the gun to that wound track. And again, however the injured party moves, that gun has got to move in a corresponding manner to maintain that wound track. One relationship of the gun to the wound track could be from a shorter person.

(2:19:27 - 2:19:54)

I'd like one explanation of the relationship between the gun position, the muzzle position, and the wound track would be if it were fired from a person who was shorter than this person. Because isn't that right? I mean, it potentially could be, yes. You didn't come across any indication that the defendant was 5'4 at the time of this incident? It may have been there.

(2:19:54 - 2:20:20)

Again, I did not consider that to be relevant in my examination of it. Okay. Did you come across which dominant hand the deceit was said to have used in your investigation? I saw discrepant

information about that.

(2:20:21 - 2:20:49)

I understand he typically did most tasks with his right hand, but I understand that he possibly could have oftentimes used the left hand as well. But my understanding was he was right-hand dominant. When you say you saw discrepant information on that, what you mean is everybody on earth who knew Dan Aker says he was right-handed and this defendant says he was left-handed.

(2:20:49 - 2:20:59)

That's discrepant information, isn't it? I apologize. That's misstating the testimony. Ms. Bowles said that he's a right-handed person.

(2:21:00 - 2:21:33)

I don't recall the testimony, but I can rephrase it. The discrepant information that we saw was that a large number of people said that in their statements Mr. Aker was right-handed, and while this defendant said he was also right-handed, she indicated he could use both hands and left hands as well. Right, I recall seeing the term ambidextrous, but I do also remember seeing that other people said he was right-handed, a right-hand dominant, and wrote with his right hand and did most tasks with his right hand.

(2:21:33 - 2:21:59)

Have you seen a lot of gunshots, suicides in your career that were administered with a non-dominant hand? I don't know that I can say that because in most cases I don't know what the person's dominant hand is at the time I did the examination. I mean, I'm right-hand dominant, but I do a lot of tasks with my left hand. Pretty much if you can reach your head and point to it, you can shoot yourself there.

(2:22:00 - 2:22:17)

So there are cases where I've definitely had people use non-dominant hands to shoot themselves, but that is not the majority of the cases to the best of my knowledge. But in most cases I don't know. But typically people do shoot themselves if they're going to inflict it.

(2:22:17 - 2:22:42)

They typically use their dominant hand. Did you do any type of, and I don't mean just you, Dr. Terry, maybe you have other people on staff and wouldn't have to do this, but did you do any examination of the trigger pull force on this pistol? No, I did not. So you have no idea how much power or force it would take to activate the trigger and the discharging the projectile on this pistol, do you? I do not.

(2:22:48 - 2:23:05)

Did you look at the scene photos in this case? Yes, I did. That was important to you? Yes. Do you remember seeing the pistol by the decedent's left hand? In fact, the grip was almost under his thumb.

(2:23:05 - 2:23:30)

Do you remember seeing that? I do remember seeing the revolver near his left hand. Was there any investigatory or medical or professional significance to you that this defendant said that she picked up a gun and threw it when 9-1-1 called her to do that? Did you see that? I'm also going to object. Ms. Bowles also said she picked up and dropped it.

(2:23:30 - 2:23:44)

She didn't know what she did with the gun. If we're going to state testimony, I believe that that's a good thing for you. That's something the witness could answer if she didn't hear the way I said it, and the jury will recall the testimony anyway, so I'd be allowed to answer the question.

(2:23:46 - 2:23:53)

So you saw the final resting place of the weapon on the floor underneath the hand. It was partially underneath the hand. Correct.

(2:23:57 - 2:24:39)

Did you see the defendant's statement where she said she picked up and threw the gun or dropped it somewhere in the direction of the 9-1-1 operation? I recall seeing where she did. It was attributed to her as having said that she picked up the gun and dropped it. I don't remember seeing it being rephrased as being thrown, and I do recall seeing somewhere that it said that the defendant had said that she had moved the gun based on the 9-1-1 operator telling her to do that, but looking at the transcript from the 9-1-1 call where the operator had just asked where the gun was, there was no instruction to move the gun.

(2:24:39 - 2:25:05)

That's what I recall regarding that. Okay. Did you listen, did you watch the defendant's interview where she herself specifically described for Detective Paulie how this shooting occurred? That would be of interest to you.

(2:25:05 - 2:25:14)

I did not see that video. It was not provided to me. That's what I understand.

(2:25:14 - 2:25:28)

You didn't watch the video where this defendant specifically acts out how this shooting occurred? You didn't look at that? Well, subject to the acts out, it was a still. I mean, you're a son of a gun. I'm a drunk.

(2:25:29 - 2:25:32)

This was your honor. All right. You're a drunk.

(2:25:33 - 2:25:36)

I'm sorry? He withdrew his answer. Oh, I'm sorry. I didn't know that.

(2:25:37 - 2:25:49)

You didn't look at a video where she, I don't know, acts out, reenacts. She shows how she said this happened as an eyewitness in the ring. You didn't see that? I did not see that.

(2:25:49 - 2:26:06)

I was not provided it. Don't you think that that would be important to you? Well, I did not know that such a thing existed, and it was not provided to me. But for me, what is important is the patterned injury.

(2:26:08 - 2:26:34)

But you yourself have gotten up here this morning to kind of know whether this happened, right? Correct. And you would agree, then, that the person that was in the room and said she saw this happen, she was an eyewitness to it, you would agree that that would have medical significance, for instance, to an individual student. To an extent.

(2:26:35 - 2:26:57)

For me, what's important is that she said, it's my understanding from the statement, either she grabbed the arm or grabbed the hand. And for me, once another person inserts themselves in a firearm injury where the gun is discharged, I refer to that as a homicide. Death due to the actions of another.

(2:26:58 - 2:27:37)

And based on the patterned injury, this wound, this is a contact wound of the nose, can I reconcile the statement that was provided to me with what happened? Yes. Now, what I have found specifically from witnesses who have witnessed a traumatic event, something like this, they may have a rough recollection of what happened, but this happened so quickly and is so traumatizing that they may not know exactly what happened. For me, what is important is her saying that she intervened and that she grabbed the hand or the arm.

(2:27:37 - 2:28:33)

As I said, I don't dispute Dr. Lehman's calling this a homicide because I'm in agreement with that based on that information provided to me. Dr. Terry, how can you sit here and discount what the witness may have said because she doesn't remember or she's going through trauma or she may not have an accurate recollection of what she said happened? How can you discount her recollection of what happened when you didn't even see it? You didn't watch it. I was not aware of it.

I was not provided it. The information I was provided was that she intervened and, as I said, based on the injury exhibited by the deceased, the wound path, I can reconcile what happened. And to me, based on the gun being turned upside down and her saying she intervened, I would refer to this as a homicide.

(2:28:33 - 2:29:04)

Her saying that, based on what I had to read, that she thought he had shot himself in the mouth. These things happen so quickly, and it is a very traumatizing event. And I know from personal experience watching people who actually self-inflict wounds that oftentimes I have to rewind and watch again because it happens so quickly and when it is so unexpected, it's hard for people to really take it all in and know exactly what has happened.

(2:29:06 - 2:31:07)

So if this defendant did act out the shooting, what she saw, and she made no mention of a gun being inverted or upside down, you're saying that that was due to transit? I'm saying it likely happened so quickly that it's hard to take in exactly what is going on. If the defendant also included in her statement or her acting out or reenactment or recount of the events of this, can I approach the witness, please? If the defendant in her reenactment or how this happened, she used this gun because she didn't use a gun, so I'll put that aside. She didn't say anything about it being, not only not upside down, she didn't mention it being a contact wound at all, like a muzzle up in the nose.

(2:31:07 - 2:31:28)

That wasn't mentioned either. Would that surprise you that that wasn't mentioned either? If you had seen the video? No, it would not surprise me. Again, these things happen so quickly that, again, a witness's recollection and as to where a wound might be on the head, range of fire, these things can happen so quickly.

(2:31:28 - 2:32:03)

It would not be surprising to me that someone involved in this doesn't know exactly what has

happened. And you would agree with that? I don't know that it would help me, but I would appreciate watching it and understanding. But again, based on what I have to examine objectively, the findings that were documented at the autopsy, that gun has got to be inverted.

(2:32:03 - 2:32:34)

And regardless of what the witness says, that's how this injury has been sustained. So I would appreciate seeing any video, but again, realizing that there are limitations associated with someone's recollection of watching something traumatic. From your forensic findings, that gun has to have been inverted and shot upside down into the nose with non-dominant hand, right? No, it could have been shot with the dominant hand, non-dominant hand, or both hands.

(2:32:37 - 2:33:17)

As I said before, my concern is the wound path, and you can do that with either hand, and it depends on how the head is moved. I approach it again, you kind of again used this toy gun to kind of act out or recreate a possible scenario with Mr. Steele, remember? Yes. Because at that time, you testified and didn't know that there was a recreation from this defendant, right? Well, I did not know, but again, as I said, someone's eyewitness testimony can be fraught with error.

(2:33:17 - 2:33:48)

Okay. So you didn't know that that video existed, and you went for a recreation with Mr. Steele, right? Correct. And you said that either hand, I'll just use the left hand, that the muzzle was likely inserted into the right nostril at some point prior to discharge, correct? Correct.

It's against the right nostril, yes. And you were mentioning or acting out with Mr. Steele, if you were, that there was a struggle. Okay, yes.

(2:33:48 - 2:34:43)

Was there a struggle? Is that consistent? That is consistent. Okay, and you can't say that perhaps Mr. Akers was trying to fight off a shooter. That's correct.

Once someone else, as I said, has inserted themselves in this and indicates that there's a struggle over the gun, you know, again, I'm going to call this a homicide, and I think what happened was there was some sort of struggle over the gun, and then the gun winds up smacking him against the nose and getting discharged. And again, not knowing who has pulled the trigger, but in a struggle, that gun has gone and produced that injury of the nostril and resulted in that wound path through the nose and into the brain. Thank you, Dr. Terry.

(2:34:57 - 2:35:03)

Can I ask you some more questions? It's up to the judge. That's true. Okay.

(2:35:03 - 2:35:35)

That's true. Your Honor, may I ask another question? Your Honor, while I'm doing that, can somebody help me with the exhibit number, the state's exhibit number of the December 30th, 2019, video, audio interrogation of Ms. Bowles? Does the court reporter have that number? I have it here. Can I have a moment, Your Honor? Dr. Terry, may I have a moment? Yes.

(2:36:01 - 2:36:28)

Your Honor, this is what I believe to be state's exhibit. I can't read it. I see it.

(2:36:40 - 2:36:49)

182. Can you play this to me one more time? I do not have it with you. Your Honor, may I have a motion? Sure.

(2:36:53 - 2:37:03)

May I have a motion, sir? Just tell us when you're ready. Okay. Your Honor, I'm handing already my evidence, state's exhibit number 182.

(2:37:07 - 2:37:16)

And just tell us when you're ready. Doctor, I'm going to come back to that, and we're going to find the time period. The prosecutor asked you a lot of questions about a demonstration.

(2:37:17 - 2:37:23)

Okay. So we're going to come back to that and show you what the jurors have seen. I'm going to ask you some questions in the meantime.

(2:37:23 - 2:37:49)

Do you remember this Muskogee County case involving a person named Horner and an entity named St. Francis Hospital as you sit here? I do not recall that case. Let me ask you a couple of questions from what you were asked by the prosecutor. He didn't show you your deposition.

Is that true? That is correct. He didn't show you any pleadings from that case. Is that true? That's true.

(2:37:49 - 2:37:57)

He didn't show you anything about Dr. Lehman. Is that true? This is all on reading, and this witness is on redirect. I think these questions are appropriate.

(2:37:58 - 2:38:02)

Sorry? I think they're appropriate. Well, just tell me. Sure.

(2:38:02 - 2:38:17)

Did the prosecutor show you anything about Dr. Lehman involvement in that case? No. Well, let's assume, and I'm not saying it's not true, let's assume that everything the prosecutor asked you was true, okay? Okay. Just using those questions.

(2:38:18 - 2:39:43)

When the prosecutor took issue with you that you said that you don't work on many criminal cases outside of Gwinnett County, remember that? I remember there was a question about defense versus plaintiff's work, and as I indicated, yes, I've done consulting, and most of the consulting I do is in regard to civil litigation. I rarely do consulting as an expert for criminal defense cases, and I think there was an issue with that, but in terms of consulting that I do, most of it is in the civil realm, and I did much more back then than I do now because my full-time job keeps me so busy. And for people who are not as involved with the litigation in courts as you are, can you just help break down, what is a criminal case in the state of Georgia? Can you tell me? That sounds like a legal sort of determination, but a criminal case typically involves such things as violence against people, such as murder, child abuse type cases, things of that nature.

(2:39:44 - 2:40:22)

Again, that's more of a legal determination, and as I said, most of the consulting cases that I would undertake were not in the criminal realm. They involved things that had to do with, let's see, maybe medical malpractice issues or product liability type things, but not like crimes against people and death. In this case, do you know the caption of this case being state of Georgia versus Miss Lacey Bowles? Yes.

(2:40:23 - 2:40:40)

And the state of Georgia is a party. Correct. And that party is represented by the district attorney's office in whatever county in Georgia that's bringing that case.

Is that true? That is true. And then the individual whose charge is a citizen or a non-citizen, but the person who's accused. Yes.

(2:40:41 - 2:40:59)

Did the case that you talked about in 2006, the Horner versus St. Francis Hospital, did that involve a criminal case from the title? From the title, no. Because if it was a title, then the party would be the state of Georgia. Is that true? Yes, sir.

(2:40:59 - 2:41:29)

Is it true that if it was a criminal case, it would have been the state of Georgia against whoever they charged, right? Yes. Okay. So when the prosecutor asked you that there's some sort of inconsistency that you don't work on many defense criminal cases, does that have anything to do with what you were told about the Horner versus St. Francis Hospital case? No.

(2:41:30 - 2:42:09)

Because is that even a criminal case as far as we know? As far as we know, no. It was a civil case. All right.

Now what's interesting though is Dr. Lehman obviously was hired as a consultant in that civil case. Is that true, according to what we were told? According to what we were told by the prosecutor when he questioned you, was Dr. Lehman somehow hired in that civil case? I have no idea. I assume he has some involvement in this case based on the questions I was asked, but I have no recollection of this case based on the information that's been provided to me about this.

(2:42:09 - 2:43:09)

If I knew something about the circumstances, I might recall, but I do not recall anything about this case or even the fact that Dr. Lehman was involved. Is there anything inconsistent with what your statement was that you don't get involved much in criminal cases for the defense and the Horner versus St. Francis Hospital case that you were questioned by the prosecutor? No, there's nothing inconsistent with that statement. And to be clear, you work with prosecutors, especially in Gwinnett County, all the time.

Is that true? Have you worked with prosecutors, especially in Gwinnett County? Yes. For how many years? Full-time in Gwinnett County for 20 years. Who mostly calls you as a witness in the cases that you work on in Gwinnett County? I'm sorry, I missed the beginning part of that question.

(2:43:09 - 2:44:18)

If it matters, who usually calls you as a witness? Usually it's the state that calls me. And that's the district attorney's office? That is correct. All right.

I want to ask you now, are you ready, sir? Okay. While that's being set up, I want to ask you a couple of things. You were asked the number of suicides that you've seen through the nose.

Do you remember those type of questions? Yes. Do you have any belief, based upon everything you've seen, and you used the word a dynamic situation, that this was some sort of static where the gun went into the nose deliberately or on purpose? No, I do not believe that. Okay.

(2:44:20 - 2:44:43)

So if the deceased, whose name is Mr. Akers, was intending or not intending to take his life that day, something you said intervened. What intervened, according to what you've read and reviewed? Ms. Bowles. And potentially trying to save his life? Objection.

(2:44:44 - 2:45:35)

That's what you have looked at, is that true? That she was potentially trying to save his life? I don't think that's the leading question. Yes, that is my understanding. And you were asked by the district attorney whether this could be a person, in this case Ms. Bowles, I think who he's referring to, but who got into a struggle with the deceased and the gun went into, you know, not on purpose, but the gun did exactly what you said, went into the nostril.

Do you remember that question? Yes, I remember something like that. And the district attorney was saying that that may be Mr. Akers or the deceased trying to fend off the attacker. Do you remember that question? I do remember that.

(2:45:35 - 2:45:59)

If the question posed by the district attorney was accurate, then Dr. Lehman's thoughts in this case would be wrong, true? Yes. Because again, you'd have a contact into the nose, not a contact, but into the nose with the assertion of the muzzle of the gun when it discharged, right? That is correct. Our dispute is on the range of fire, yes.

(2:45:59 - 2:46:21)

Are you ready? Yes, sir. If you can pull up 10 minutes and 54 seconds. Your Honor, this is the exhibit of the state's, the December 12th, 2019 interview.

And I said the, I couldn't read it personally, but I read, the prosecutor told me it's the exhibit number. All right. It's already in evidence.

(2:46:22 - 2:46:29)

Yeah, just to one portion. It should be 1054. Dr. Terry, if you could watch it, the jurors have already seen this.

(2:46:30 - 2:46:48)

Okay. And if I, if there's any other portion, you know, the district attorney can get up and re, uh, reorient you or whatever he wants, but I'm trying to, you asked a lot of questions about, um, a, uh, I think it was called a recreation. Okay.

(2:46:49 - 2:47:29)

Okay. Can you make that screen bigger? Just announce what time you're starting. I'm starting at

1041.

I think you can hear it on 1054 as well. What do you want me to demonstrate? How he told it. It's a hard thing to explain.

(2:47:29 - 2:47:39)

It's easier. I'll show him. Just demonstrate how he told it.

(2:47:40 - 2:47:47)

If he's saying far away, it's no. I'll work to try. Okay.

(2:47:47 - 2:47:51)

So if he was like this. Okay. I don't know if it's far away.

(2:47:53 - 2:48:00)

And that's what I'm saying. That's why I'm going to demonstrate it. Because that way it shows me, you know, what's going on here.

(2:48:00 - 2:48:03)

Yeah. Okay. So you got it.

(2:48:03 - 2:48:07)

Yeah. Okay. Did he say anything? No.

(2:48:09 - 2:48:20)

Was it the same thing? Yeah. I mean, I don't know exactly what he was trying to say, but I was just like, no. And then he was just like, duh.

(2:48:21 - 2:48:24)

Okay. That's it. Okay.

(2:48:25 - 2:48:30)

Did he have it in his right hand or left hand? Left. Left hand. Is he left-handed? No.

(2:48:30 - 2:48:34)

He's right-handed. He's left-handed. Oh.

(2:48:35 - 2:48:44)

And right when that happened, you went through CPR? Yes. Or was there another step in there? It was going to be my step. It was going to be my step.

(2:48:44 - 2:48:52)

It's like, so he does what he does. What do you do? Just grab him. I just grab him.

(2:48:53 - 2:49:00)

I just grab him. I just grab his hand. And then I'm going to grab his chest.

(2:49:03 - 2:49:17)

Can you just announce what time you stopped this, sir? I stopped at 12, 18, and 21. And Doctor, there's another one on March 5th, 2020. 10.

(2:49:18 - 2:49:23)

Of a video with a similar demonstration. I'm not saying it's identical. Okay.

(2:49:23 - 2:49:28)

If you want to see that one, we're going to get the time as well. I'd appreciate seeing it. Yes.

(2:49:28 - 2:49:42)

Okay. Can I have the computer back, please? Your Honor, may I approach? Yes. Yes.

(2:49:46 - 2:50:10)

I'm returning the state's exhibit. Doctor, may I put it back in the box? And Doctor, we will remember to show you one other one, but it's got to be found, the location. Okay? Okay.

(2:50:12 - 2:50:25)

We'll come back to that. Okay. And then I'm going to ask you a series of questions, but you'll remember that, what we just discussed.

(2:50:25 - 2:50:42)

Fair? Yes. All right. I want to talk with you about what the prosecutor asked you and showed you from Doctor Demeyer's work.

(2:50:42 - 2:50:51)

Do you remember those, that exhibit A, I guess it is? Yes. All right. The prosecutor said that's

contact.

(2:50:52 - 2:50:59)

You said that's close contact. I said it looked close. And why is that? There was stippling that was somewhat dissipated.

(2:51:00 - 2:51:30)

I don't recall if there was a scale there, but as I said, when you have a contact wound, everything that is coming out the barrel of the gun is going into the wound. And in looking at that wound, I was able to see some pinpoint or punctate areas of stippling. So to me, that would indicate that the barrel of the gun is not flush contact with the surface, but that there's something that's somewhat intervening, allowing that gunpowder to kind of funnel out a little bit and be around the wound.

(2:51:30 - 2:51:50)

But it's very tightly aggregated. It's very close, but it to me does not look contact because everything is not going directly into the wound. And the jurors saw early in the trial, when you say funnel out, is that like a flashlight against like a wall? And then as you move the flashlight back, you get more distance? Yes.

(2:51:51 - 2:52:15)

Or if you imagine taking one of these bug assault guns that are firing the salt out, it funnels out. So it's more concentrated up close, and then as it gets further away, fans out. The exhibit from the Honorable Dr. DiMaio that was shown to you by the prosecutor, does that have any relation to this case? In my mind, no.

(2:52:16 - 2:53:16)

And for the reasons you said, that the muscle is inside the nose? Correct. It's inside the nose, and we never had a good look at what the actual entrance defect into the head looks like. With regards to – I'd like to show you with the investigative permission, the court's permission, this Bowles No.

147 again. I think you had just shown this on cross-examination. You remember being shown this by the prosecutor on cross-examination? Yes.

(2:53:21 - 2:54:19)

And can you see the left and right nostril in this image? I can see part of the left nostril, but more of the focus is on the right nostril. When the prosecutor was asking about somebody who works with steel, remember that as a profession? Yes. Do you see any discoloration that you would

think comes, if you have any opinion, on the left nostril? Not the nostril that's being opened on Ms. Bowles No.

147. Do you see any discoloration that you can point out for us? I do not see any discoloration there. And if somebody is in an environment for work purposes, would you expect – and they're getting contaminants – would you expect to see it in both nostrils potentially? Yes.

(2:54:19 - 2:54:36)

So that question about the work, does that have any impact on your testimony today whatsoever? No. I'd like to show you what's already in evidence in the State's Exhibit No. 199.

(2:54:37 - 2:54:46)

It's a March 5, 2020 interview, interrogation. I'd like to show it to you, but it's already in evidence. The jurors have seen it.

(2:54:46 - 2:55:32)

Your Honor, may I approach the exhibit? May I come forward? It's 199. May I come forward? I am showing – this is State's Exhibit No. 199.

(2:55:33 - 2:55:48)

It's already in evidence, Your Honor. And with the court's permission and the assistance of the officer, if you can find 4610, if you don't mind. Of course, Your Honor.

(2:55:49 - 2:56:57)

May I approach, Your Honor? You may. May I come forward? And this is a March 5, 2020 interview. And it should be 4610 to 4718 with the court's permission.

(2:56:57 - 2:57:52)

Already in evidence, Your Honor. Can you just announce what time you're starting an exit? 4547. Your Honor, may we? Yes, sir.

(2:57:52 - 2:58:10)

You may get up. Okay. But he has carried a gun.

(2:58:10 - 2:58:19)

Just because the story says that he has it, he has carried a gun. And it was a gun, I think. What do you mean, a gun? It had the – the only thing I think it did was shoot his partner.

(2:58:20 - 2:58:40)

He's carrying a gun around and shooting his partner? The only thing in my head I can possibly think about or understand. Who? You. I did never have the gun.

(2:58:40 - 2:58:44)

You did. I did not. No, sir, I did not have the gun.

(2:58:50 - 2:58:58)

No, sir, I never had the gun. Never. I am telling the truth.

(2:58:58 - 2:59:04)

I am telling the truth. I never had the gun. He had the gun in his hand when I looked down there to try to stop him.

(2:59:04 - 2:59:15)

I am telling the truth. I am. No, sir.

(2:59:15 - 2:59:19)

No, sir. No. No, sir.

(2:59:19 - 2:59:24)

I didn't do anything. He pulled the trigger and killed himself. I never had the gun.

(2:59:25 - 2:59:36)

Ever. No, sir. I watched my husband kill himself right in front of my face, and I tried to stop him, but I couldn't.

(2:59:37 - 3:00:04)

There was nothing that I felt in this world that could have stopped him. Not his kids and not anything. You stopped it at what time? I see 47 to 44.

Is that true? 47 to 44. Your Honor, I had the wrong time. I apologize.

I'm going to correct that. May I take back the computer? Yes, Your Honor. Your Honor, may I approach? Yes.

(3:00:04 - 3:00:35)

I apologize. I will find it and correct it. I need the help of a... Dr. Terry, I'm going to show you what has already been entered into evidence, and I will get that number right now as well.

(3:00:36 - 3:00:47)

But this is Ms. Bowles' written statement. May I approach, Your Honor? Yes. It is already in evidence.

I will get the statement. May I approach you? Yes. Take a look at that.

(3:00:48 - 3:00:52)

It's in evidence. It's a real evidence. Just read it yourself.

(3:00:52 - 3:00:56)

Okay. Just tell me. You can read the whole thing.

(3:00:57 - 3:01:03)

But it's on... First the bottom page five, then the page six. Okay. So you can read it.

(3:01:03 - 3:02:09)

All right. Okay. This is State's Exhibit Number 184, and it's been read to the jury.

(3:02:14 - 3:02:27)

Doctor, just orient yourself with the whole thing just because I guess you should. Have you seen this exhibit before? Oh, the one I'm looking at now? Yes. No, I have not.

(3:02:27 - 3:03:04)

All right. Tell us when you're ready. I thought you said you were ready, but... Oh, no, no.

Not yet. May I approach the investigator, Your Honor? It's at the top left. You should see the page number.

(3:05:00 - 3:05:50)

May I approach the officer, Your Honor? May I have 9199? 9199. Well, while we're sitting here, why don't we take about... I want to take just a little break, like a five-minute restroom break. Then, if it works for you all, let's go come back and go to about 1230 and then wait for lunch.

(3:05:50 - 3:05:52)

Is that okay? Yes. All right. Let's take five minutes.

(3:15:16 - 3:15:48)

Thank you. Let's resume. Dr. Terry, during the break, were you able to review what's been marked and read to the jurors previously? State's exhibit.

(3:15:51 - 3:15:59)

Number... I think you have the original. It's on the back. No.

(3:15:59 - 3:16:02)

Okay. I don't see a number on this. All right.

(3:16:03 - 3:16:09)

What number is it? Please. 184. Your Honor, may I display 184? You may.

(3:16:09 - 3:16:14)

On page five. Doctor, I don't think I let you answer the question. Did you read it during the break? Yes, I did.

(3:16:14 - 3:16:25)

All right. If we need to see any other portions, just let us know. But I am asking, and I've asked the court to permit the investigators, the officer's permission.

(3:16:26 - 3:16:40)

This is page five. And this is the dated January 7, 2020, handwritten statement by Ms. Bowles according to the document that's been submitted. Is that fair to say? Yes.

(3:16:40 - 3:16:50)

I just want to go with you and tell me if I read this correctly. And if we need to see something else, just tell us. Okay.

(3:16:50 - 3:17:09)

When I walked through the door, he had the gun almost to his mouth, saying something like, You can't save me, you. And then we're going to ask him to talk to the judge on page six. And this is page six, the very top line.

(3:17:10 - 3:17:29)

Can't help me. I reached out and grabbed his forearm. Same forearm, the gun was in his left,

screaming no, no, no, bam, a sound that haunts me.

(3:17:30 - 3:17:38)

I fell with Dan when he fell. I fell on top of him. I touched all of his hand left.

(3:17:38 - 3:17:47)

I thought he had given CPR, ran upstairs, called 911. Is there any other part of the statement that we need to discuss with you being asked by the prosecutor? No. All right.

(3:17:48 - 3:18:03)

I'm going to show you one more exhibit. So I know we've discussed State's exhibit number, the one about December 30th, 2019. Remember that? Yes.

(3:18:03 - 3:18:10)

By pointing the gun into Mount Wall, Ms. Bowles. You don't know Ms. Bowles, do you? I do not. All right.

(3:18:10 - 3:18:16)

Let's assume that's Ms. Bowles sitting down. I'd like to just show you this one. Your Honor, this is already in evidence.

(3:18:16 - 3:18:30)

This is State's exhibit number 199. It's a March 5th, 2020 interview interrogation by Detective Hardy of Ms. Bowles. And I'm going to ask it to be played at 46.10 at the beginning.

(3:18:32 - 3:18:40)

Thank you, sir. I haven't seen you in a long time. It's the time it's set up.

(3:18:40 - 3:18:49)

It's exhibit number 199. It's 43.55. I feel like it should be cued up. You just announced the time you're asking to start it.

(3:18:59 - 3:19:20)

43.54. I'm sorry. Jump back three seconds. 43.

(3:19:25 - 3:19:28)

43. And it fell on top of him. That's all I know.

(3:19:28 - 3:19:36)

But it had already gone off before that current. When what? When you grabbed his arm. No, I grabbed his arm as he was pulling the trigger.

(3:19:36 - 3:19:42)

So wherever. Where did you grab his arm? Right here. I'm trying to stop him.

(3:19:43 - 3:19:46)

Yes. And I'm trying to stop him. So that's the only.

(3:19:46 - 3:19:51)

How tall was Ben? Six foot. Six foot. How tall are you? Five foot.

(3:19:52 - 3:19:55)

Five foot. Yeah. So I'm about six foot.

(3:19:55 - 3:20:01)

Okay. So I'm about six foot, right? Mm-hmm. And I'm holding the gun like this.

(3:20:01 - 3:20:08)

Yes. And you grabbed it like that? Yes. I was literally trying to put whatever I could in front.

(3:20:08 - 3:20:12)

But it was not. So you're using his left hand just like this? Yes. Yes.

(3:20:13 - 3:20:21)

No. Okay. All I know is there's some blood coming from here.

(3:20:21 - 3:20:24)

I know exactly where it's at. I'm pointing it at him. I'm trying to stop him.

(3:20:24 - 3:20:32)

And then I heard it go off again. Stop at 44.50. 44.50, yes, sir. Thank you.

(3:20:32 - 3:20:51)

Okay. Dr. Terry, seeing the two states exhibit that we just showed, one is jurors have an evidence

for December 30th, 2019, and there's a handwritten statement. You read the whole thing.

(3:20:51 - 3:21:04)

I just showed a portion of it on page five and six. Correct. It's January 7th, 2020, and now you've seen the March 5th, 2020, the states exhibit 199, a portion of that interview.

(3:21:05 - 3:21:14)

Okay? Correct. The prosecutors asked you a question about you didn't see these documents. Remember that? Or videos, audios? Correct.

(3:21:14 - 3:21:32)

Tell the ladies and gentlemen jury about now that you've seen these three different statements, audio, video, tell the ladies and gentlemen jury your opinion about this shooting. With all the evidence that you have. Okay.

(3:21:32 - 3:21:57)

With all the evidence I have to review, what is primarily of importance to me is the physical evidence. Looking at the pattern of the injury and knowing about the type of bullet recovered and where it was recovered. As I said before, I think there was an error by the original pathologist focusing on the abrasion on the nose and that laceration.

(3:21:58 - 3:22:22)

That abrasion is too big to be associated with a .22 fired from an indeterminate or distant range. That injury is from the cylinder pin or ejection rod of that firearm. Looking at the photograph where the nose is opened up, in the background there is a well demarcated area that's black.

(3:22:22 - 3:22:46)

That's going to be soot. Also, in looking at the picture inside the wound, sorry, inside the nose, you see that laceration, but you never see an actual defect or hole that goes with the gunshot wound that's going into the head. So I know about, based on that pattern injury and looking at the picture of the firearm, the orientation of the gun.

(3:22:47 - 3:23:41)

Now, looking at the statements, and this was information that had been provided to me before, but now I've seen the actual video and the written statement where Ms. Bowles indicates that she tried to intervene and she grabbed the forearm, but she was consistently saying he was holding the gun in his left hand, pointing it at himself, and that he had the gun near his mouth. It's my opinion, based on the pattern of the injury, that as there's pulling of the forearm, the wrist just gets

turned, the gun's upside down, he winds up hitting himself in the nose with that, and the trigger gets depressed. Whether it's by him or her or both, I don't know, but the firearm is at his nose, in his nose at the time that it's discharged.

(3:23:41 - 3:23:51)

And again, I do not dispute Dr. Lehman's assessment that he died as a result of a gunshot wound to the head. Yes, he did. The entrance wound is inside the nose.

(3:23:52 - 3:24:27)

I also agree with manner of death, and for us, manner of death, as homicide means death due to the actions of another, is my opinion he would not have shot himself at this point in time and in this location without another individual intervening. Not saying that she intended to have him shot, but because of her intervening and the struggle of the gun, that's how it winds up with that range of fire in that position and gets discharged. The big dispute I have with Dr. Lehman is the range of fire issue.

(3:24:28 - 3:24:47)

This would be classified if it could be, because you told us, Dr. Lehman told us, there's five different categories. Yes, five different manners of death that we have when it comes to certifying a death certificate. Natural, accident, suicide, homicide, and undetermined.

(3:24:47 - 3:25:03)

And we, as medical examiners, usually do not use the term accident as it pertains to firearms because, by and large, firearms don't just go off. Occasionally they may get dropped, and okay, and then someone's injured. Okay, that would be an accident.

(3:25:03 - 3:25:22)

But where another person's involved and a firearm is discharged and someone dies, we typically classify those as homicide, death due to the actions of another without regard to intent. And if it doesn't have intent, it's an accident, suicide. That would be a better classification.

(3:25:22 - 3:25:38)

Well, suicide, as it pertains to a gunshot wound to the head, is when someone discharges a firearm with the intent of injuring themselves. And this could be an accident. Objection, bleeding.

(3:25:39 - 3:25:41)

That's not bleeding. You're correct. Okay.

(3:25:42 - 3:26:16)

Could this be classified, from all your information now, as an accidental, nonintentional discharge? Again, like I said, we tend not to use the term accident because, in this case, someone pulled the trigger. I don't know who, but someone pulled the trigger causing the gun to go off, and given that we've got two people involved, you know, as I said, I would call it a homicide, but that's the medical definition. As I said, this medical examiner's death due to the actions of another.

(3:26:16 - 3:26:28)

This is not a legal determination. And so do I think the firearm was discharged inadvertently? I do. But by whom? I don't know.

(3:26:28 - 3:26:48)

I think it went off in the course of the struggle. And, like I said, because I've got two people involved, yes, I would call it a homicide. It would not have gone off at this point in time and in this location, you know, inside his nose, without the involvement of the defendant.

(3:26:50 - 3:26:55)

Thank you. You're welcome. Thank you.

(3:26:57 - 3:27:18)

Thank you, Your Honor. Terry, I was just under the impression, or it's my fault for assuming, I was just assuming you hadn't seen the March 5, 2020, interview of the defendant. But now I'm under the impression that you haven't seen this written statement before today either.

(3:27:18 - 3:27:21)

Is that correct? That is correct. I had not seen the written statement. Okay.

(3:27:21 - 3:27:29)

So you formulated an opinion prior to coming in, and it goes against Dr. Blanton. You haven't seen that written statement either. That's correct.

(3:27:29 - 3:27:49)

Based on the written statement, again, I'm basing my opinion on basically the physical evidence that's demonstrated by his autopsy report and by the pictures that he had taken in the course of the examination. And you didn't see the December 30th interview of the defendant either. I'm gathering that.

(3:27:50 - 3:28:16)

That is correct. But the information that I think is germane is the fact that I was told that she intervened and said, by she I mean Ms. Bowles, intervened by grabbing the defendant's arm. Do you think it's germane on States Exhibit 184 on page 5? Let's see.

(3:28:18 - 3:28:32)

States Exhibit 184 is the statement that you have in front of you. Page 5, it says at the bottom, he had the gun almost to his mouth. Do you see that when she wrote that? I do see that.

(3:28:32 - 3:28:39)

I know you've just seen this today for the first time. Do you have any reason to believe this defendant did not write that? No, I do not. Okay.

(3:28:40 - 3:28:52)

So she said he had the gun almost to his mouth. Do you remember when she acted out in both videos, December 30th and March 5th, that she left him using her index finger as a muzzle. Correct.

(3:28:52 - 3:28:57)

She put the gun almost to the mouth. Do you see that? Correct, yes. I saw that.

(3:28:57 - 3:29:19)

And your understanding or hypothesis of how this happened is that even though she wrote he had the gun almost to his mouth, and even though she acted it out with her index finger almost to her mouth, then subsequent to that, the wrist was turned, the gun was inverted and inserted into the nose prior to discharge. Is that what you believe? Yes. Okay.

(3:29:20 - 3:29:55)

Let me ask you if you know this word. Let me show you. Let me ask you if you know what this means, doctor.

(3:29:56 - 3:30:09)

I don't know a lot of your terms. Let me ask you if you know this term. What do you say? I don't even know how to say it.

(3:30:09 - 3:30:17)

Do you know what that means? No, I do not. Vibrasse? Vibrasse. It's a medical term for nose

hairs, isn't it? Okay.

(3:30:18 - 3:30:23)

Okay. All right. Let me show you now something that's been admitted into evidence.

(3:30:26 - 3:30:50)

As Defense Exhibit 147, we've been looking at it quite a lot. If you remember this, it's kind of become a big focus, right? Correct. Do you see the lights dimmed a little, please? All the way off.

(3:30:50 - 3:30:54)

Let's see. That didn't work out too good last time. Let's do it again in a little bit.

(3:30:55 - 3:30:59)

Okay, again. Okay, I'm sorry. I thought that dimmed a little bit.

(3:30:59 - 3:31:06)

It's available to you. Do you see? It's hard to see, so let me just show it to you. Real light here.

(3:31:07 - 3:31:14)

Mm-hmm. Do you see on State's exhibit or Defense Exhibit 147, take a look at the right nostril, please. Mm-hmm, yes.

(3:31:14 - 3:31:27)

Do you see the nose hairs in the right nostril? Yes, I do. Do you see the nose hairs in the left nostril? I do. And it's your contention that the muzzle is inserted in the right nostril, right? That is correct.

(3:31:28 - 3:31:46)

And you would agree with me, I'm assuming that you would agree with me if I said the explosion of the power in the cartridge, even on the .22, that's a powerful event, right? I mean, yes, it's like having an explosion inside your nose, yes. Explosion inside your nose, right? Correct. I'll take it from now.

(3:31:46 - 3:32:16)

Thank you. And, again, it's Defense Exhibit 147, so there's this explosion in the nose, if this is a contact wound, but you'll notice that these nose hairs, they survived the explosion, right? Well, yes, and some of them are dark, but bear in mind, too, a lot of times I see people who shoot

themselves in the side of the head, and it's not like I have burned hair. And so I'm not surprised at the way the nose hairs look here.

(3:32:16 - 3:32:31)

Yeah, so the nose hairs survived this internasal explosion of the gases and powers. The nose hairs have survived untouched in the right nostril. Well, yes, and I'm not saying untouched because I've been able to zoom up and look at these, and some of them look quite dark.

(3:32:32 - 3:32:54)

And, again, there's a well-demarcated area there that is black that looks like soot. And, again, based on my experience with seeing contact wounds of the head and other areas that are hairy, it's not like you see burned hair. So the appearance of the nostril hairs and nose hairs is not surprising to me.

(3:32:55 - 3:33:26)

If you had been, if you had been, I'm going to say retained, I guess, but you say you're not charging any money, but I say retained. I said I have not charged any money yet, and I have limited how much I am going to charge for the expenditure of my time. If you had been retained, contracted, hired, whatever you want to use, and you had expressed an opinion that was contrary to the defense theory of the case, you wouldn't have been called to come testify, would you? I would imagine they would not have called me.

(3:33:26 - 3:33:32)

Okay. But I offered my opinion, and it seemed to be surprising to them. Okay.

(3:33:33 - 3:33:46)

And I want to show you this right here real quick. You said that you don't see any soot up into the left nostril, right, on this photograph? I said I didn't see any soot. I don't see a dark coloration there.

(3:33:46 - 3:33:55)

Well, you don't have the same type of forceps manipulation of the nostril over here on the left, do you? That is true. I do not. Okay.

(3:33:55 - 3:34:17)

So you don't know what you might have seen up in the left if this had been more manipulated or forced open, right? That is true. I do not. But to the point about the industry in which you had worked, if you thought that that discoloration was due to an environmental exposure, you'd expect

to see some blackening there, and we don't see any there.

(3:34:18 - 3:34:33)

Well, we don't see it from this photo, but you don't know that it's not up into the nose as far as it is up here, do you? No, but we don't see any black discoloration even in the part of the nose that we can see. Yeah, and you remember Dr. Lehman noted no soot at all. You read that, right? Right.

(3:34:33 - 3:34:52)

He said he did not see any soot. Right. And then you don't know scientifically, from a scientific cellular tissue type of standpoint, you don't know that that's soot at all, do you, scientifically? Scientifically, no, because the first pathologist did not adequately explore that area.

(3:34:52 - 3:35:15)

And he said he didn't explore that area because, based on his training and knowledge and experience, he saw no need to take tissue samples due to the obvious lack of soot. Do you know that? I do not know he said due to the obvious lack of soot, but again, based on my reading of his report, he's focused on that wound at the nostril as being the entrance, and that is not the entrance. Thank you.

(3:35:16 - 3:35:20)

You're welcome. All right. I'll leave it to you.

(3:35:20 - 3:35:24)

Yes. Thank you very much for your time. Thank you, Your Honor.

(3:35:24 - 3:35:28)

Thank you, too. Dr. Jamie, you're up. I'm sorry.

(3:35:30 - 3:35:36)

We're going to call another witness. Let's start another witness. Dr. Jamie, down.

(3:35:37 - 3:36:32)

I'm sorry, what's the last name? Down. Thank you. Welcome, sir.

(3:36:32 - 3:36:42)

I'm going to square you in. Please raise your right hand and sit up. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth, so help me God.

(3:36:42 - 3:36:50)

I do. Please have a seat. Good afternoon, sir.

(3:36:50 - 3:37:03)

Good afternoon. Can you do me a courtesy when you can, get organized? Can you state and spell your name for this honorable court? Sure. James Claude Upshaw Downs, MD, DOWNS.

(3:37:06 - 3:37:34)

And would you explain to the jurors your education, your background, your training, your experience in the field that you practice? Sure. Bachelor of science degree in biochemistry from the University of Georgia, magna cum laude, Phi Beta Kappa. I did my medical school training in my hometown of Charleston, South Carolina, as well as my residency in anatomic pathology and clinical pathology.

(3:37:35 - 3:37:52)

In addition, I did a fellowship in forensic pathology at the medical university. That included one month in the Dade County Florida Miami medical examiner department. In addition, during the course of that training, I did an internship at the FBI behavioral sciences unit in Quantico, Virginia.

(3:37:52 - 3:38:07)

Since that time, with that formal education, every year since then, I've done continuing medical education every year. And, sir, I'd like to approach with the court's permission to show you what I've marked as Miss Bowles number 162. Thank you, your honor.

(3:38:07 - 3:38:19)

May I approach you, doctor? May I approach you? Yeah. Never been asked that before. Showing you Miss Bowles number 162.

(3:38:19 - 3:38:45)

Tell me whether you recognize that document. I do. And what is that document? This is a copy of my biography, my CV, which is a resume, and also a list of various testimonies I've given in a private capacity through the years, as well as a fee schedule on the last page.

(3:38:46 - 3:38:53)

Your honor, I move for the admission of Miss Bowles number 162. No objection. All right, that's admitted.

(3:38:53 - 3:39:06)

If you need to refer to that in any way, doctor, please do so. And would it be fair to say that's your CV, resume? Is that any additional items that you attach to it? No, sir. All right.

(3:39:07 - 3:39:33)

Explain to the jurors, since graduating from medical school, how you have focused your time, if you have, on forensic pathology. Sure. So as I mentioned, once I finished medical school, I did training in pathology, two different big subcategories of that, and then subspecialty of forensics after that.

(3:39:34 - 3:39:45)

Once I finished all of that training, I became state medical examiner in Mobile, Alabama. I was there for five years. I was named director and chief medical examiner for the state of Alabama.

(3:39:45 - 3:39:57)

I served in that capacity for four years. Came home to the low country in Savannah. Was in Savannah working for the GBI a total of 14 years, I believe.

(3:39:57 - 3:40:18)

Lived in Savannah for 20 years total, and then moved back closer to home, Charleston, where I am now. I also served as a forensic pathologist for the coroner's office in Charleston County, South Carolina, Dorchester County, South Carolina. Also as an associate medical examiner in Gwinnett County.

(3:40:19 - 3:40:44)

And also, one day a week, I'm the medical director for the physician assistant program at Charleston Southern University. The rest of my time, I spend doing medical legal consulting, very much like what I'm doing here today. And are you currently a forensic pathologist for a state agency? For a state agency.

(3:40:44 - 3:40:52)

For a county agency. Counties, Charleston County, South Carolina, Dorchester County, South Carolina. Associate medical examiner in Gwinnett County, Georgia.

(3:40:53 - 3:41:12)

Okay. And have you testified before and been qualified as an expert in forensic pathology? Yes, sir. I've given sworn testimony in 20, 21 different states, also in federal courts, and all branches of

the military, save the Marines and Space Force.

(3:41:12 - 3:41:30)

Given sworn testimony before subcommittees of the U.S. House and U.S. Senate. Also sworn testimony before the National Commission on Forensic Sciences. Do you know approximately how many times you've been qualified and accepted as an expert in forensic pathology? I've always been accepted.

(3:41:31 - 3:41:43)

I can only tell you hundreds. I don't have a specific number. And do you ever publish any articles, books, or journals? Can you tell the jurists about that? Sure.

(3:41:43 - 3:42:16)

Probably the two biggest ones would be an academic book, Ethics in Forensic Science, which is the largest academic textbook on that subject of ethics in my discipline. I also was the senior editor of the FBI Trauma Atlas, Forensic Investigators Trauma Atlas, which is the first document the FBI ever published in color. Are you a member of any professional organizations? Yes, sir, quite a few.

(3:42:16 - 3:42:49)

Can you give a sampling to the jurists? Sure. I'm a fellow of the American Academy of Forensic Sciences, a fellow of the National Association of Medical Examiners, a fellow of the College of American Pathologists, a fellow of the American Society of Clinical Pathologists, a past board of directors for the National Association of Medical Examiners, past president of the Harvard Associates in Police Science. Have you ever taught this field? A fair amount, yes, sir.

(3:42:49 - 3:43:12)

Can you tell the jurors a sample? Sure. Every year I chair a section of the American Academy of Forensic Sciences where people bring their cases and we present them to the entire attendee population of the Academy of Forensic Sciences meeting. I'm the chair of that section.

(3:43:13 - 3:43:33)

So that's something I do every year. I also lecture at the Student Academy where we have high school students come in and I'm responsible for the pathology section of that training. I just last month lectured for the Berkeley County, South Carolina Coroner's Office on child fatalities.

(3:43:33 - 3:44:01)

I routinely lecture across the country on various forensic topics. Oftentimes that involves things

like ethics, child death and injury. Have you ever authored anything about suicide and pattern of injuries, autopsy? I don't think directly that I don't recall anything specifically about that.

(3:44:01 - 3:44:22)

It was obviously included in the trauma atlas, but I don't recall a specific publication about pattern injuries in suicides. Have you ever received any awards? Yes, sir. Can you tell the jurors about some of those? I've received multiple commendations from the National Association of Medical Examiners for my contributions there.

(3:44:22 - 3:44:41)

Also been recognized by the American Academy of Forensic Sciences. Received commendations from the director of the GBI. In your 14 years of working at the GBI, did you ever work with a person named Dr. Keith Lehman? I did.

(3:44:42 - 3:44:52)

Okay. I'd like to offer for this honorable court's consideration Dr. Downs as an expert in forensic pathology. No objection, Your Honor.

(3:44:52 - 3:44:57)

Thank you. Okay. Doctor, I want to talk to you, with you.

(3:44:57 - 3:45:08)

I want you to educate the jurors. Are you familiar with the case entitled State of Georgia versus Ms. Lacey Bowles? I am. Do you know Ms. Lacey Bowles? I do not.

(3:45:08 - 3:45:48)

Can you tell the jurors what you have reviewed, if you don't mind, in order to understand the case from your perspective? Sure. I've reviewed a search warrant affidavit. I've reviewed 11 autopsy photographs, 2 photographs of autopsy x-rays, 170 scene photographs, the entire Paulding County investigative file, the autopsy report, the toxicology report, in addition to several professional publications regarding the subject, gunshot wounds.

(3:45:49 - 3:46:00)

And from that basis, who asked you, who provided you that information, who asked you to acquaint yourself with this matter? You did. Okay. And are you getting paid? Yes, sir.

(3:46:00 - 3:46:21)

Can you tell the jurors what you're being compensated? I'm being compensated for my time. I

charge $600 an hour, which is my standard fee. To date, I've probably worked, that I've billed 12 hours on the case, plus whatever it is today.

(3:46:22 - 3:46:35)

Have you formed conclusions and opinions based upon what you have reviewed? I have. I want to talk with you about those conclusions. There's some items in front of you, and we have more.

(3:46:35 - 3:47:00)

Can you look at, it should be directly in front of you, to your left, there's some autopsy photographs. I'd like you to tell us what you need to explain to the jurors what you found significant in the case, explain to them, take them, walk them down your path of study and why you have certain opinions and conclusions. And there's a lot more photographs and exhibits.

(3:47:02 - 3:47:15)

So the, well, there's two, really, I think, that will help. There is one that I don't see here, which is the actual entry site to the right nostril. I don't see just that photo.

(3:47:15 - 3:47:56)

May I push you on it? Yes. Dr. Downs, may I push you? Sure. All of these are in evidence.

(3:47:57 - 3:48:11)

If you find them to be significant, just do me a favor, there will be an exhibit number. And just announce which ones you're interested in, and then the court's permission will display them on the screen. Yes, sir.

(3:48:15 - 3:48:29)

And there are others, so whatever you're thinking about that you need. I think 147 is useful. 146 may be useful.

(3:48:29 - 3:48:48)

These are all Miss Bowles, by the way. I think in the box is the actual weapon, so I don't know that the photograph 161 may be useful, but we have the actual, as I understand it, the actual weapon here. Can I just interject, Doctor? Please.

(3:48:48 - 3:48:57)

The actual weapon has the safety on it, so you can't connect it. You can't connect the chamber the way it would function. I understand.

(3:48:58 - 3:49:12)

Okay. We also have a toy gun here. Discretion being the better part of valor, I'll say that 161, 159, potentially 154.

(3:49:32 - 3:50:27)

And there is another of the nose without the pickups, the tweezers lifting the nostril up. Can I impress the court please? Can I impress? Yes, sir. I'm going to show you anything that you need, and there's more to this, too.

(3:50:28 - 3:50:33)

Thank you, sir. And I'm also going to show you what's been marked and entered here. It states that you did a 229.

(3:50:33 - 3:50:46)

That's Dr. Levy's report. So the particular photo I'm thinking of is an autopsy photo. At a quick glance, these all appear to be seen photos.

(3:51:25 - 3:51:37)

May I have what I just gave you? And I'll change your view, but I'm going to look at that. Yes, sir. I'm going to also hand you back the other ones that you gave me earlier that aren't the ones I might need.

(3:52:35 - 3:52:45)

If it helps to locate it, the picture that I'm thinking of, I included in a written report that I prepared for this. I'm sure it's in evidence. I want to make sure.

(3:52:49 - 3:53:01)

If you can show me and the prosecutor which one, I'm sure we can find that exhibit for you. I'm sorry, I didn't understand the question. If you can just tell us which one you're looking for.

(3:53:02 - 3:53:13)

It is the picture, I believe it's the left that just shows the nostril, a little bit of the mustache. Yes, sir, we do have that in evidence. We'll find it.

(3:53:32 - 3:53:52)

Thank you. Please. I'll trade you.

(3:53:52 - 3:54:20)

Yes, sir. Yes, I have the photo that I'm thinking of. There's no number on the one that you just gave me.

(3:54:20 - 3:54:27)

It's on the back. Oh, I'm sorry. Is that 138, 238? I'll look at it.

(3:54:29 - 3:54:55)

Okay, and then 147 is the one with the tweezers lifting the nostril up. So, Dr. Polak, from you, just announce which ones you'd like to be displayed to explain to the jurors. Sure, so we can start with 238.

(3:54:55 - 3:55:21)

May I approach you, Your Honor? Yes. Dr. F., after this image, the honorable court is going to take a break. So, if you think that this is going to be long, we'll take a break now, otherwise.

(3:55:22 - 3:55:40)

I think it would be better to take a break now because it kind of all goes together, and it might be better in an entire bite. Okay. All right, so it is 1230, and why don't we give this vigilance just, you know, an hour and 15 minutes.

(3:55:40 - 3:57:13)

So, 145. Someone's lying, the rest of their life, things like that. That goes to sentencing.

(3:57:13 - 3:57:19)

That goes to punishment. And that's inappropriate. And, yes, I did ask for the question for compensation, but I didn't do it.

(3:57:20 - 3:57:30)

There is a testimony about sentencing, and clearly that's what she was dealing with that. And I'd ask that that not be permitted to further expert witnesses. It clearly meant to break a sentence.

(3:57:30 - 3:57:38)

And when you start talking about concepts like people's lives at stake, the rest of their life, things like that. Thank you. All right.

(3:57:38 - 3:57:49)

Can you respond? No. All right. So, clearly, we need to stay away from a life sentence or anything like that.

(3:57:49 - 3:58:05)

So, I don't really anticipate, of course, sometimes I'm surprised, I don't anticipate this expert saying that. But the expert would stay away from any reference to sentencing, potential sentences. Do you want me to? Please let them know that during the break.

(3:58:05 - 3:58:09)

Okay. All right. Anything else before lunch? No.

(3:58:09 - 5:11:38)

No? All right. Thank you. Give themselves a little bit if they want to see what's on it, which is fine.

(5:11:39 - 5:11:52)

Your Honor, I served on the state. If they need a hard copy, I can get one. But I heard the court say you don't have the supplemental proposed jury instructions.

(5:11:52 - 5:11:58)

No, I do have them. I misunderstood. Do you mean a hard copy? Okay.

(5:12:03 - 5:12:22)

Anything else before we bring back in the jury? No? All right. Everybody's good? Can you see if they're here? Can we have more exhibit stickers when you get a chance or at the end? We have some. Can I come forward? If you want to.

(5:12:23 - 5:12:45)

If you wanted to say. Still going to last. Okay.

(5:14:27 - 5:14:45)

Welcome back, everybody. Let's resume. Doctor, when we broke, you explained that there's an exhibit that you'd like to start with that would help walk the jurors through your analysis of this matter.

(5:14:45 - 5:14:55)

Is that fair? Yes. Can you just repeat what number it is? Actually, it's with the officer. May I ask the officer to just state what it is? Yes, sir.

(5:14:56 - 5:15:05)

238. May we display your eye? Yes. And, Doctor, there may be something like this in front of you if you need a laser pointer.

(5:15:07 - 5:15:15)

If you don't see it, I could give you this one with the court's permission. Do you need a laser pointer for that screen? Yes, sir. Sure.

(5:15:15 - 5:15:29)

Would that be helpful? May I approach you? Probably, yeah. May I approach you? Yes. If you click it the first time, it may be a flashlight.

(5:15:29 - 5:15:53)

The second time, it may be a red. So, Doctor, tell us what is significant, what we are looking on this albacore screen that's already marked and entered into evidence. What we're looking at is the face slightly to the right of center, his right of center, and at his right nostril, just at the edge, you see an abrasion.

(5:15:54 - 5:16:00)

An abrasion is a type of blunt force injury. It's a rubbing injury. Think of falling on the sidewalk, skinning your knee.

(5:16:00 - 5:16:16)

That's an abrasion. At the edge of that, right at where the nostril goes in, there's a laceration, a tear. Of note here is the directionality of that abrasion.

(5:16:17 - 5:17:19)

There is a single gunshot wound to the head, and the question is, what caused this? Was this caused by the gunshot or something else? Something associated with the gun or something other than that? And that's really the way you approach forensic pathology is, I see this, I think I know what it is, but what else could it be? So you kind of eliminate. That's what science really does. It takes what you think you know, and then you say, why am I wrong? Why is it not what I think it is? So if I think that's a bullet, we have to approach it scientifically from, we know that's not a bullet, so what is it? So I look at the weapon, and I look at that, and in the weapon here, which is before me as State 173, may I open that? With the question, yes, but there are gloves to your left on the table.

(5:17:19 - 5:17:40)

And Your Honor, may the box that's marked State 173 be open, and then I believe the next question will be, can State 173A, which is the revolver, be displayed by Dr. Downs? Yeah, that's fine. Doctor, they're both in evidence already, the jurors have seen them. Tiny gloves.

(5:17:52 - 5:18:06)

Doctor, do you need to come off the witness stand or chair? We just need to ask the Honorable Court. I think it would be easier, because what I'm going to show is small, and it's hard to see at a distance. Your Honor, is that okay? That's fine.

(5:18:07 - 5:18:37)

Doctor, if you could just do it in half the jury, and then do the same thing the other half. I'm going to take the pointer in case I need it. So this is the firearm in question, and it's a revolver, which is significant here.

(5:18:37 - 5:19:07)

Not only is it a revolver, it's a .22, which is the weakest caliber we typically deal with. There's not a lot of gunpowder here, and that becomes important in this case. So it's a revolver, it has a cylinder, and that cylinder revolves around something called a cylinder pin, which is the part I've indicated here.

(5:19:08 - 5:19:45)

And it's a revolver, so there's a cylinder that revolves around this cylinder pin, this axis. So, in looking at that, I'm trying to figure out if there's anything, because I know the bullet comes in this general area. So, if we take the gun, and turn it upside down, and stick it at the nostril, then it all lines up, and this cylinder pin is the same diameter as that abrasion border that we see in the photograph.

(5:19:47 - 5:20:05)

All right, so now I have something from the gun that would explain that injury, but there's more to it. Now I have to go back and look, okay, it could be the bullet that caused that. If it's not the bullet, why is it not the bullet? So here it might help to diagram.

(5:20:06 - 5:20:28)

Do you know what I mean? We approach with the easel, set up the easel. You can set that up, and the counselor can just move around the courtroom, that spot as well. Doctor, wherever the court allows you to be, and what you think would be helpful to the jury.

(5:20:29 - 5:20:42)

Yeah. I think maybe in the middle? Yes, sir. You guys? I'll reposition myself, doctor.

(5:20:42 - 5:21:28)

Thank you. So, I'm not much of an artist, but we've got the nostrils here, we've got the nose coming out, and the area that we're talking about, the abrasion, I'm going to indicate that in blue here. And notice the location where I'm drawing it is about one to two o'clock.

(5:21:28 - 5:22:28)

That becomes important when you're dealing with bullet events, because when a bullet goes into the body, if we have a bullet that goes into the skin surface and comes straight down, that bullet is going to rub the margins. And so the gunshot wound, if I'm looking where this arrow is, and I turn the skin so it's facing you, that's going to create a round injury, and the abrasion associated with that directly perpendicular gunshot is going to be directly around it. Now, if I take a bullet and I fire it at an angle, like I've indicated here, what's going to happen is the bullet is going to strike the close side, and you're going to get a longer abrasion on that side than the far side.

(5:22:29 - 5:23:10)

So then if I diagram that here at an angle, what's going to happen there is the wound might be a little more oval, but the abrasion border where the bullet rubs against the skin is going to be bigger on the side that the bullet is coming from. So I can look at a body, at a scene, and say the bullet probably is starting here, probably going this way. So with what I've diagrammed here in the upper right, that bullet is starting to his left and going to his right if a bullet caused that.

(5:23:11 - 5:23:34)

If you look at the photograph, that's going left to right. I know this wasn't caused by the bullet because the abrasion border is in the wrong place. If it was caused by the bullet, it would be bigger over on the other side.

(5:23:36 - 5:24:00)

Right? So I know that can't be. So I've eliminated that reasonably being the bullet. I've included what it reasonably would be.

(5:24:04 - 5:24:26)

So I'm left with my cylinder pin being the cause for that injury. Now why would that happen? If the gun is pushed into the nostril, it's going to change the position of the nostril. The nostril is very soft.

(5:24:27 - 5:25:03)

So it can push it into the direction that we're seeing here. So my belief is that abrasion that you're seeing here in the photograph. But you see how that's going from his left towards his right and down? We know this gunshot wound is going from his right to his left and up.

(5:25:04 - 5:25:20)

So this is exactly opposite what we would expect from a bullet causing that abrasion. So it doesn't fit forensic pathology that that was caused by the bullet. It does fit forensic pathology that it was caused by the cylinder pin.

(5:25:22 - 5:25:30)

Okay. Now may I remove the drawing? Yes. Thank you.

(5:25:50 - 5:26:15)

Doctor, is there another? Well, are your findings using the exhibit that's been displayed in the courtroom concluded for this photograph at this time? I think so, yes. Can we use the next photograph? We could go to the next photograph, which is 147. May I approach you, Your Honor? Yes.

(5:26:16 - 5:26:25)

May I come forward, sir? Yes. Your Honor, may I display? Sure. This is Ms. Bowles, R.A. and F., Your Honor.

(5:26:33 - 5:26:48)

And can you orient the ladies and gentlemen of the jury? They've seen this photo before, but explain the significance in your expert opinion, if you don't mind that. Sure. So what's happened here is the nostril, I'm going to indicate, is lifted up.

(5:26:48 - 5:27:11)

I'm sorry to be kind of gross here, but lifted up, and you can see into the nostril. And notice that when that nostril is moved, it now lines up in the right place. Can you explain what you mean by that? I mentioned earlier in the diagram that with the abrasion border, a bullet causing that would be directed the wrong way.

(5:27:12 - 5:27:48)

Here, with the nostril lifted up, as would happen if you put the muzzle of that gun inside the nostril, and the cylinder clamp pushing it up, it would adjust the position to account for that abrasion being where it is, with the gun, the muzzle of the gun, at and in the nostril. Anything else significant using this pose number 147? Yes, you can see the laceration here inside the nostril.

That could well be part of the bullet track inside the nostril.

(5:27:51 - 5:28:02)

Unfortunately, I don't have a range of fire for you. That test was simply not conducted. Multiple failures of testing there.

(5:28:03 - 5:28:16)

The sample, which was easily attainable, had autopsy. You see the tweezers here. All you would have to do is lift up that tissue with the tweezers that you see, a scalpel that you use to conduct the autopsy.

(5:28:16 - 5:28:31)

Cut it out and put it in the microscope. And what would that display if you cut out some of the tissue inside that nostril? You'd know definitively whether or not there was gunshot residue associated with that wound. Is that also known as soot? Yes.

(5:28:32 - 5:28:53)

Well, gunshot residue is soot and gunpowder, partially burned and unburned gunpowder particles, which is important here because, again, we're dealing with .22. That is, in my world, what we call a low velocity. There's half a grain, .7 grain, to give you an idea of a grain. That's 1 7,000th of a pound.

(5:28:55 - 5:29:08)

Tiny, tiny load in that. A 9mm, which is the usual firearm I think most people are familiar with, has five times that powder. So a .22 has very little powder.

(5:29:08 - 5:29:25)

It doesn't have a lot to push the bullet out. In addition, if the ammo is old, it's not going to burn as well, so even less. Actually, if I can come down again to the weapon? With the court's permission.

(5:29:26 - 5:29:35)

Actually, if you do have a toy, it might be easier with the toy because I can put the cylinder back into position. We do have a toy and a dowel, if that assists you. Yes.

(5:29:35 - 5:29:51)

Your Honor, can Dr. Downs step out? Sure. Doctor, there's a toy gun right here, and just make sure, excuse my word, but make sure that this is what I said it is. And if you need a dowel, this is the dowel.

(5:29:52 - 5:30:11)

Yes, sir. Your Honor, Mark Bruce. So with a revolver, you have that cylinder, and again, it's important because there's a gap here, what we call the cylinder gap, where the cylinder rotates.

(5:30:12 - 5:30:24)

When a firearm discharges, the bullet gaps and burns, pushing the bullet out. Some of those gases escape from that cylinder gap. So there's even less coming out of the muzzle.

(5:30:25 - 5:30:43)

So we have a .22, and it looks like it's an old weapon. I don't know the age of the ammo because that was not tested, which is, again, a failure of testing. Old powder is not going to burn as well, less powder with a wound.

(5:30:44 - 5:30:55)

Cylinder gap, less powder with a wound. Whatever's coming out of the .22, this might be a good point to bring up another picture showing the bloody face. Yes, sir.

(5:30:56 - 5:31:12)

The blood on the face, the moisture, also the nose, all of that is going to decrease the posit of soot and gunpowder particles on the skin surface. May I touch it on? Yes. I believe it's in front of you, sir.

(5:31:12 - 5:31:25)

You can just identify which photograph you would like to display. 47. May I touch it? Yes.

(5:31:26 - 5:31:36)

You're not moving my slide? Sorry. Yes, sir. Can you come forward, sir? That's Miss Bowles, number 47, Your Honor.

(5:31:36 - 5:31:52)

Can you explain why you asked for Miss Bowles, number 47? Yes, you can see the extensive bleeding associated with that wound. That bleeding doesn't happen instantaneously. I've got videos from cases I've been involved with.

(5:31:53 - 5:32:05)

When you get a gunshot wound, it doesn't instantaneously bleed. It takes a while for that volume

of blood. But once it's there, in order to examine the wound, the forensic pathologist has to clean it.

(5:32:06 - 5:32:34)

Part of that is rubbing the surface. And easily, with that volume of blood, with the moisture inside the nose, with the hairs inside the nose, with a .22 caliber revolver, all of these things decrease the likelihood of seeing soot, powder, septic visible. But if you bother to collect the sample, you can see it under the microscope.

(5:32:35 - 5:32:42)

And we would know if it was there. As it is, I can't tell you. It's darker.

(5:32:43 - 5:32:48)

I think there's something there. I think there's smoke there. But I'm not positive because it wasn't tested.

(5:32:51 - 5:33:05)

Who on the earth had the only opportunity to decide whether to collect that evidence? Dr. Lehman, who did the autopsy. And that's now gone forever? Yes, sir. All right.

(5:33:05 - 5:33:30)

Anything else remarkable about Ms. Bowles, number 47, that you need to show the jury? Just one other comment about the dissipation of gunpowder. If you think about a gun discharging inside the nostril, right, if I do that, it's open. So any soot, powder that comes out can easily go out the other side into my nasopharynx.

(5:33:30 - 5:33:46)

My nose connects to the back of my throat. So, again, more opportunities to dissipate the charge, the fire, if you will, from the muzzle of a gun. So it's not surprising you don't see anything.

(5:33:47 - 5:34:12)

If you don't look, you don't find it. And definitively, how unique or complex is it to take out part of the interior nostril tissue? It's unbelievable to me that it wasn't collected, knowing that that's the question here. It's so easy to do this.

(5:34:13 - 5:34:35)

It should be routine. It doesn't require a couple of seconds of time to have a definitive answer. And if that's the question before you, if you recognize this is an unusual location for a gunshot

wound, which it is, it's not only unusual for a suicide, it's unusual for a homicide.

(5:34:35 - 5:34:49)

But if you're only thinking about a homicide, you missed the suicide or the inadvertent discharge of the gun. And it was so simple to do this test. So simple.

(5:34:51 - 5:35:13)

Doctor, anything else with Ms. Bolzano before 7? I don't think so. Next. A number that you need to show to the jurors to explain your opinion? I think the close-up pictures of the firearm you can get from the toy, from the box gun, I'm happy to put it up there.

(5:35:13 - 5:35:31)

But, again, I think you've already seen the point that I'm making here. If you want to put up, if you can do a split screen with 146 and 161. May I press your eye? Yes.

(5:35:31 - 5:35:45)

May I come forward? And actually, yeah, that'll work. Can I come forward now? Yes, sir. And if you could put 161 upside down and to the left of the other picture.

(5:35:46 - 5:35:55)

So I don't believe there's a split screen. If the court permits, we can do it in front of the jury with two pictures at the same time. Is that okay, Your Honor? No.

(5:35:55 - 5:36:02)

Would you mind? Not at all. I could hold one, and you could, I could hold both, and you can just tell me what to do. Okay.

(5:36:03 - 5:36:09)

Okay. So in my hand, upside down is Ms. Bowles' number 161. It's already 11s.

(5:36:09 - 5:36:23)

And then in my other hand, my left hand is Ms. Bowles' number 146. And we'll do it in sections. Can you? Sir, so I'm going to hold the left a little bit, what I'm talking about here.

(5:36:24 - 5:36:44)

And these are not to scale, so they're different print sizes. But if you look at the scale and look at it, you will see that cylinder pin that I'm indicating is the same diameter as that braze moment.

Okay? But you can see how that position places the muzzle of the gun inside the nostril.

(5:36:46 - 5:37:18)

And you can imagine this .22 caliber with not a lot of gunshot residue coming out and a lot of smoke dissipating inside the nostril itself. You can see that cylinder pin and, again, the abrasion, and those are the same size, again, at the scale. So that's why there's no gunshot residue grossly described.

(5:37:19 - 5:37:53)

The only test that could have printed was a gun. Sir, are you familiar with Dr. Lehman's report? I am. And you worked with GBI for how many years? Fourteen.

(5:37:53 - 5:38:06)

And you were also a medical examiner? Yes. With the GBI? Yes, sir. And did you write policy and did they change policy based upon your work at the GBI? Yes, sir.

(5:38:08 - 5:38:46)

When doing a report, when you worked at GBI, is it similar to the report that Dr. Lehman would have issued at the time of this case? They changed the language a little bit, but other than that, yes, sir. And in the report, is the medical examiner for GBI at the time Dr. Lehman wrote the report obligated to put into the report everything that he relies upon that he did in the case? Yes, sir, and actually there is a specific disclaimer, and the copy that I have here only has four of the five pages. For some reason, I'm missing the last page.

(5:38:46 - 5:39:34)

Well, we're going to get you the last page. May I have one second here on the floor? I'm sure that was just in the room. Your Honor, I will mark this Ms. Bowles, number 163.

(5:39:35 - 5:39:50)

May I ask your question? Yes, Your Honor. I think I may have had two pages stuck together because now I can count them, I can count five. They're fine.

(5:39:50 - 5:39:59)

My apologies. No, no, that's fine. Okay, so explain to us what you found significant on this report.

(5:39:59 - 5:40:16)

Sure. So on the very last page, page five, it says, quote, only those items discussed in the results above were analyzed for this report. The above represents the interpretations, opinions of the

undersigned analyst, end quote.

(5:40:16 - 5:40:25)

The rest goes on to talk about preserving evidence and matters like that. Is there any mention in this report? You've read this report before. Yes, sir, many times.

(5:40:26 - 5:40:43)

Is there any mention in this report of even looking in the nose for soot with a flashlight or anything like that? No, sir. Which would be in here or should be in here. The fact that it's not in here means he didn't consider it if he did.

(5:40:44 - 5:41:18)

Any mention there about using a magnifying glass to look inside the nose for soot? No, sir, and if it was done by what's said in the report, it could not be considered here. Did you notice any discussion in Dr. Lehman's report about blackheads? Yes. Is that significant in any way as an example? Well, I think it's remarkable that you spend four lines in a five-page report talking about potential blackheads, and you don't bother to take a microscopic section that would answer the question.

(5:41:20 - 5:41:29)

Okay. I want to ask you whether you're familiar with a star-shaped tearing. Do you know what I'm talking about? Star-shaped tearing? Yes, sir.

(5:41:29 - 5:41:44)

Can you explain to the jury what that is? Sure, and this might be easier again if I come down and diagram it. You're on? I'm on. Did you set up the easel you're on? Yes.

(5:42:01 - 5:42:14)

Your answer is yes, and the court asks that the jurors concede the easel and the paper. Say it again. The court asks and inquires of the jurors that they concede the paper and the easel.

(5:42:14 - 5:42:20)

All right, I can't see them now. Go ahead. Go ahead, Doctor.

(5:42:20 - 5:42:51)

I'm sure you can diagram this better. So if we have a firearm, the bullet comes out, but behind that bullet is burning and unburned gunpowder particles and smoke associated with the burning.

So if we make the smoke pink, it's smoke.

(5:42:51 - 5:43:08)

So it dissipates very quickly. Depending on the firearm, within a foot, whether 22 is going to be closer than that, whether 22 with old ammo, revolver, it's going to be closer. But it goes out.

(5:43:10 - 5:43:38)

Also, following our gunpowder particles, okay, little dots, and at close range, those are concentrated. As you go out, they form a cone, so they spread out. So if we're at a close range, what we're going to see is an entry wound.

(5:43:39 - 5:44:06)

If it comes straight on, it's going to be an entry wound, round. You're going to have at close range, you're going to have smoke and gunpowder particles. Then if you get farther out, like somewhere between two feet and one foot, it really depends on test firing the gun, which wasn't done here.

(5:44:06 - 5:44:28)

I have to give a favor. But you have intermediate. What happens there is you will have the powder particles will spread out.

(5:44:29 - 5:44:56)

So there will be fewer around that entry wound. So that tells us, looking at the wound, you're farther away from the target, the skin surface. Then there's what's called distant, where not only is there no smoke, but there's no gunpowder particles.

(5:44:57 - 5:45:15)

That happens beyond a couple of feet. There's also a fourth category called indeterminate. That means I don't know.

(5:45:16 - 5:45:21)

It could be any of those. It means I don't know. It does not mean intermediate.

(5:45:22 - 5:45:32)

It doesn't mean distant. It means I don't know. Because something can cause it to not have the appearance of a close shot.

(5:45:32 - 5:46:20)

So let's go back to your question about the stellae. What is that? Well, I had to get to this stage to explain that. When you have a gunshot wound to the skull, the scalp overlies that, right? When you put a muzzle in contact with the skin surface, all of this stuff that's coming out is all projected into this space between the skull and the scalp.

(5:46:21 - 5:46:46)

What happens is you've got this big cloud of material that's directed down. That causes the scalp to lift up, and it overstretches the skin. That overstretch causes the scalp to tear.

(5:46:47 - 5:47:14)

And it causes, instead of this nice round wound, you get a stellae wound, where you've got a round wound, but you've got star-shaped to it because it's tearing on the edges. Alright, so that is a stellae. And we see that in hard contact.

(5:47:16 - 5:47:36)

That means the muzzle of the gun is pressed right up against the skin surface. Okay, so I'm going to use the paper here to illustrate this a different way. Go like this.

(5:47:36 - 5:47:52)

Just for the instant when the bullet passes the skin, it'll let all those gases and burning gunpowder in, but the skull is beneath it. It's going to lift the scalp up. And what happens is the skin is stretched.

(5:47:54 - 5:47:58)

That's where you get a stellae contact wound. You wouldn't expect that here. This is in the nose.

(5:47:58 - 5:48:09)

As we described earlier, there's all this place inside the nose for gas to go. You're not going to get a stellae wound here. It would be silly to think you would.

(5:48:10 - 5:49:01)

Can I take this down, Your Honor? Sure. Doctor, when you just explained that there's all these places for the bullet and the other items coming out of the gun to go in the nasal cavity, what are you referring to? Where can they go? It can go into the sinuses. It goes into the nasopharynx, which is you've got your hard palate and soft palate.

(5:49:01 - 5:49:12)

There's all spaces in there where nasal bones exist. So the bones keep the structures open. So it could go and could actually come out of the mouth.

(5:49:13 - 5:49:27)

It's got the airway, the trachea. That's all one big open system. There's a large number of places, a large volume, for a small amount of soot and gunpowder to go.

(5:49:29 - 5:50:05)

Was, according to the information you reviewed, including Dr. Lehman's report, was anything ever looked for in the sinus cavities, in the throat area, in the mouth area for any of these items, including soot? No, sir. I want to ask you whether, and I think you answered it, so I'm not trying to repeat, does that type of contact wound to the skull have anything to do with this case? I just diagrammed that cellulite wound? No, it's completely unrelated. It's a completely different type of gunshot wound.

(5:50:07 - 5:50:21)

The physics of it are completely different. Do you know what searing is? Yes. Can you explain that to the jurors? Searing, some people talk about the flame from the burning coming out of the muzzle of the gun.

(5:50:21 - 5:50:29)

There is some flame there, but there really is no searing. People have studied this under the microscope. There's no burning of the margins of the wound.

(5:50:29 - 5:50:38)

It doesn't happen, and this has been presented at international meetings. It's an old-fashioned concept. It just doesn't hold water well.

(5:50:38 - 5:50:51)

Is there anything about searing that we need to discuss in this case according to your findings? Not unless you want to waste time. Okay. How about blowback? Do you know what blowback blood is? Yes.

(5:50:52 - 5:51:19)

Can you explain that to the jury? Sure. So blowback, if you have a wound, a weapon that's close enough to a bleeding source, you can get from this gunshot, you can get blood and tissue coming back onto the gun, provided there's blood and tissue that can get there. If you have a muzzle that's occluded, for example, you have – can I grab one of those pieces of paper? You're on it.

(5:51:19 - 5:51:35)

Is that okay? Yes, sir. Thank you. So you've got the toy gun here.

(5:51:35 - 5:52:03)

If I had this inside my nose and my nasal cavity is wrapped around the muzzle of the gun, there's nothing that's going to come back on the outside because it's shoved up in there and the tissues are wrapped around it. So I wouldn't expect anything necessarily outside. I have this burning cloud that's going forward, and the gun is only in that position for an instant because once it's fired, the person goes limp.

(5:52:04 - 5:52:16)

So it's not there long enough for the massive bleeding that's going to follow, like we saw in the picture. It's not there long enough to get that necessarily. It could happen, but it doesn't have to happen.

(5:52:17 - 5:52:42)

With regards to the wound path that Dr. Lehman announced and found, are you familiar with that? I am. And what is that wound path? It goes from front to back, slightly up, and slightly below. And can you show the ladies and gentlemen jury using the toy gun? If you need it, the dowel if you need it, nothing if you need it.

(5:52:42 - 5:52:54)

Can you make that type of wound path with the gun, as you said, inverted in the nostril? Sure. And would it line up with the abrasion? Yes. Can you show the jurors? Sure.

(5:52:54 - 5:53:22)

If I take this toy and put it in my nose like this, you can see I have lots of mobility with it to aim it down, up, all the way left, all the way right, but the path is generally, as I'm demonstrating now, inside my nostril. You can see my nose is sealed around the margin. The cylinder pin is in the location of the abrasion we talked about earlier.

(5:53:23 - 5:53:42)

If I take the dowel and grab the dowel. The other side will fit in nicely probably. So you can project.

(5:53:42 - 5:54:03)

The bullet is going to travel in a straight line basically, unless it ricochets off of the surface. Here it

goes straight in. So basically if you follow that length there into my nose and follow that, I don't want to shove this all the way up my nostril, but you get the point of the directionality.

(5:54:05 - 5:54:15)

Also, by the way, notice the location of my hand. I'm easily within distant range with my hand on the gun. So I point that out.

(5:54:16 - 5:54:28)

Could it be the gun inverted, like upside down, so you get that abrasion? Sure. Can it be closer to your face or to the nose? Sure. I believe that abrasion is caused by the gun, the cylinder.

(5:54:28 - 5:54:41)

So easily with my right hand I can hold a gun like this and operate the trigger. I can hold it with my left hand and operate the trigger. I can hold it with both hands and operate the trigger.

(5:54:42 - 5:55:01)

I can turn my hand over. I can use either hand to do that. So you can't, how you might want to hold a gun, that's not necessarily how a gun was held.

(5:55:02 - 5:55:09)

And, again, it's not science to say, oh, he would hold the gun like this. I don't know that. I wasn't there.

(5:55:09 - 5:55:35)

Instead, I'm asked to look at a wound and say reasonably, how could this have been inflicted? Is there another way that it could have been inflicted? And one of the things that I do when I look at a case is if I have an idea, how am I wrong? I try to prove myself wrong. That's how you do science. All right? So I come up with theories and try to prove other ways it could have happened.

(5:55:37 - 5:55:43)

And what I see here is what I showed you. I think that's the most reasonable. Everything is explained.

(5:55:43 - 5:56:20)

But that doesn't mean that's absolutely the way it happened. That's the way I interpret this case. From your study, your experience, training, education, and focus on this case, what should have been done in order to tell this jury whether that gun was a distant wound, gunshot wound, or up to the nose? What should have been done is at the autopsy, there should have been tissue

collected to look under the microscope.

(5:56:21 - 5:56:43)

If you want to do a collection of tissue before you – or a collection of material on the surface of the skin before you clean the body, you could have easily put tape on the skin surface and lifted that off because if it's there, it's going to stay. It might be washed off. But if it's there, you're going to hopefully get something.

(5:56:44 - 5:56:57)

You're going to do testing of gunshot residue on any party that might be involved in this case. That's another very significant thing here. Let me ask you a question.

(5:56:58 - 5:57:17)

Hypothetically, and it's in evidence, if the gunshot residue on the deceased's hands had more than the maximum – you're talking about the five particles? Do you have any idea what you're talking about? Yes. Is that significant to you? Absolutely. Can you explain why? Yes.

(5:57:18 - 5:57:50)

With a .22 caliber firearm with low smoke, low powder, with cylinder gap in a revolver where everything is going away from where we're looking and you've got five particles on the subject's hand, that's significant. That's significant. Absolutely, if you have somebody who you think is a questionable shooter, you'd want to test everybody who's a questionable shooter here.

(5:57:51 - 5:57:58)

That wasn't done. Only the deceased was tested. You asked about other stuff that should have been done.

(5:57:59 - 5:58:02)

Yes. Range of fire testing. You have the weapon.

(5:58:03 - 5:58:17)

You have the ammo. You just fire it at a target, and you see where the deposition starts and stops. So you know with this gun, with this ammo, you have the answer.

(5:58:17 - 5:58:32)

That wasn't done. That's a failure. You testified that you have seen bodies that have died as a result of what you believe to be suicide.

(5:58:32 - 5:58:58)

Is that fair to say? Many times. And if the jurors are contemplating, like, this is such an odd place for a suicide to occur in the nose, do you have any experience that this was a dynamic situation like you said before? This would have been a dynamic situation. Explain what a dynamic situation means.

(5:58:58 - 5:59:12)

If you have two people involved in something, they're moving. So people seldom just stand there and get shot. If people are arguing, people are moving, and things happen in an instant.

(5:59:12 - 5:59:31)

Positions change, relative positions. If you're grappling over a firearm, I would expect, again, this instantaneously snapshot in time when the trigger is pulled doesn't represent the whole situation. It doesn't represent immediately before.

(5:59:32 - 5:59:52)

We know immediately after the person who gets the gunshot wound to the brain is going down right away. So things change during the event. Do you know whether, in your experience, DNA can be taken off the trigger of a revolver? Yes.

(5:59:53 - 6:00:04)

And what's the answer? Yes. With regards to Dr. Lehman, you know his conclusion, obviously. Yes.

(6:00:06 - 6:00:24)

With regards to his conclusion that, it's not on the screen anymore, but the abrasion, as we're calling it, and the tear, the little triangle tear that the jurors may see. Yes, sir. Do you believe that was made by the bullet itself from a distance? I do not.

(6:00:24 - 6:00:52)

I believe that was made by the cylinder pen, as I've already testified. Now, when you went through your past experiences with analyzing autopsies and bodies and bullets to people, have you testified on behalf of the prosecution in the state of Georgia case? I've been told by the state I don't really testify for a side. I testify for the truth.

(6:00:52 - 6:01:03)

The truth doesn't have a side. It just exists. So, when I've been called by the state as a state

employee, I testify to the contents of my report.

(6:01:04 - 6:01:20)

I'm working several cases right now for Chatham County, that district attorney's office, and their police force. I'm just telling you what I see. It's going to be the same question, and I'm sure if it's the same answer, you'll say the same answer.

(6:01:20 - 6:01:29)

Same thing, you don't care if it's the defense that is calling you as a witness. It's all about your findings. My findings are what my findings are.

(6:01:29 - 6:01:38)

I don't color it. I don't sway it. If the prosecutor's office called me to look at a case, I'm happy to do that.

(6:01:39 - 6:01:48)

It's not going to color my opinion, no matter who calls me. That's not what it's about. Do you have a side in this case? No, sir.

(6:01:48 - 6:01:50)

The truth. The truth. That's it.

(6:01:51 - 6:02:10)

Thank you. Thank you, Your Honor. Dr. Downs, you said that there should have been a range of fire attacks undertaken in this case.

(6:02:10 - 6:02:15)

Do you remember saying that? Yes, sir. And it was a failure of the investigation. Do you remember saying that? Yes, sir.

(6:02:15 - 6:02:30)

And you would agree that the entry wound on here was on the projectile. The projectile, when it contacted the body, was on naked skin. Do you agree with that? Or cartilage or bone or whatever? Well, those are vastly different things.

(6:02:31 - 6:02:40)

Let me ask you this way, sir. Was the entry wound on any type of clothing, to your knowledge?

Did it pass through any type of clothing? Not to my knowledge, no, sir. Yes, sir.

(6:02:40 - 6:02:53)

So may I approach the witness, please? Yes. So when the gun was fired, sir, and it was destroyed, there was at no point that the projectile passed through clothing. Is that correct? To your knowledge? That's correct, yes, sir.

(6:02:53 - 6:03:13)

And talking about a range of fire tests, sir, are you aware that the GBI does not consider it scientifically reasonable or viable to do a range of fire testing when the projectile contacts naked skin without passing through clothing? Did you know that? I worked there for 14 years, and that's news to me. Oh, that's news to you. Okay.

(6:03:14 - 6:03:34)

I'm sorry? That's news to you? Yes, because they'd done it for me when I was in Savannah, specifically after that be done more than one occasion. Back when it was considered scientifically reliable in the community, is that right? It's scientifically reliable to see if powder is deposited on skin surface. That tells you an idea.

(6:03:34 - 6:03:55)

Skin is not the same target surface as clothing or fabric, but it gives you the best information available. The fact that they don't do it, they don't do a lot of testing, I think they should do. And similarly, sir, it would surprise you to know that the FBI, in this case, won't perform range of fire because it did not pass through clothing.

(6:03:55 - 6:04:07)

Did you know that? I did not know that, and it doesn't surprise me. The FBI also doesn't do a lot of testing, but I think it should be done. Do you know a person named Dr. Brian Leppert, the guy in Boston? Yes.

(6:04:08 - 6:04:14)

He's a ballistics expert. He's a firearm judge, which is different than ballistics. You're familiar with him? Yes.

(6:04:14 - 6:04:35)

And did you know even he considers a range of fire test not scientifically viable when there's a wound right to the skin? He wouldn't even do it, right? All I can tell you is that Brian specifically, I believe, has done that testing for me. Back when it was viable. Well, it's still viable, sir.

(6:04:35 - 6:04:48)

The fact that you don't think it's viable doesn't make it not viable. Well, did you know that both Mr. Steele and the state sought to get Brian Leppert to do that test, and he won't do it because it's not viable? Did you know that? No. According to him.

(6:04:49 - 6:04:52)

Okay. Again, I think it's valuable information. I would have gotten it done.

(6:04:52 - 6:05:08)

So the GBI, the FBI, and Mr. Leppert, these sources all say you can't do it, but Dr. Downs says it can be done and it should be done. Well, I don't think they say it can't be done. I think what you just said is they said they wouldn't consider the result scientifically valid.

(6:05:08 - 6:05:28)

I wouldn't call for a firearms examiner to talk about range of fire on a human body. I specifically would reject that, but I would want to know the information from fabric so I would have an idea about deposition. So the tests are not interchangeable, but there's valid information that comes from the test.

(6:05:30 - 6:05:36)

You said also a failure. You said a lot of your sources. I think you reviewed investigatory notes.

(6:05:37 - 6:05:47)

I think you said you reviewed the entire Palm County police report or sheriff's office report, correct? Yes. You reviewed GBI reports. That's your own former agency, right? Yes.

(6:05:47 - 6:05:58)

And then you said another failure of this investigation was nobody test fired a weapon. Yes. Do you know Sarah Van Holm at the GBI? I do not.

(6:05:58 - 6:06:10)

You didn't see in her report where she did test fire this weapon with the ammunition that was in the cylinders at the time of the death. Did you not see that? Not for range of fire, which is what I was commenting on. Oh, okay.

(6:06:10 - 6:06:25)

Well, so with this failure of the investigation, when you mentioned that nobody test fired the

weapon to see how the bullets would fire, the characteristics of the ammunition, which you classified as old, you said nobody did that. That was a failure. But they did do that, sir.

(6:06:25 - 6:06:36)

No, sir. They didn't do what I said they didn't do, which is range of fire testing with that gun and that ammo. Yes, they did a function test, which is not the same thing.

(6:06:36 - 6:06:46)

Guess what? The gun worked. We know that because it killed someone. And they didn't do range of fire testing, sir, because it's not a scientifically reliable test.

(6:06:46 - 6:07:05)

Isn't that why they didn't do it? No, sir. They didn't do it because for a firearms examiner to opine about a wound on a human body is not the same as doing the test on a test fabric, which is what they do it on. But I can take their results and look at what I find in a body and opine about that.

(6:07:06 - 6:07:21)

You can, but all these other experts currently at the GBI, FBI, they won't. All the other experts in a different discipline that aren't in my discipline, yes, they can't do it. You can do it.

(6:07:21 - 6:07:24)

They can't. I understand. That's right, because I'm a forensic pathologist and they're not.

(6:07:25 - 6:07:32)

Yes, sir. So you classified the weapon itself. You classified it as it looks old.

(6:07:32 - 6:07:44)

Can you see it here? No, sir. You classified it as looking old and kind of weathered, I guess. Do you understand? I don't remember weathered, but it doesn't look like it's brand new.

(6:07:44 - 6:07:51)

I had written down what your exact word was. Let me find it. You said it looked worn.

(6:07:51 - 6:08:06)

You remember saying that? Yes. The weapon looks worn, right? Is that a yes? Yes, sir. So when you hypothesize or opine, sir, that the ejection rod made that abrasion, you know the one I'm talking about.

(6:08:06 - 6:08:10)

The cylinder rod, yes, sir. I call it the ejection rod. You've heard that term, right? Yes, sir.

(6:08:10 - 6:08:15)

Dr. Terry called it the ejection rod. Some people call it that, right? Yes, sir. We're talking about the same thing, though.

(6:08:15 - 6:08:18)

Yes, sir. Arbutin, different name for it. Yes, sir.

(6:08:18 - 6:08:33)

In order for your hypothesis or your opinion about the cylinder rod making that imprint on the nostril, it would be necessary for the cylinder rod to be rigid, wouldn't it? To be? Rigid. Rigid? Yes, sir. It's steel, yes, sir.

(6:08:34 - 6:08:43)

It's stationary, right? Yes. Well, it's... Yes. Because if it weren't stationary, it would have some give to it, have some play to it, correct? Correct.

(6:08:44 - 6:08:51)

You're not a firearms expert, though, are you? No, sir. But you have had a lot of experience dealing with firearms. Quite a bit, yes, sir.

(6:08:51 - 6:09:11)

Had a lot of experience forensically in forensic pathology with gunshot wounds, for example, correct? Yes, sir. And are you aware, sir, that, is it not true, sir, and you've seen this, maybe you have, but is it not true, sir, that when a weapon is old and fired many, many times like this one, it's not going to be a gunshot wound? I object to that. I apologize.

(6:09:12 - 6:09:18)

I object to fired many, many times. There's no evidence of that. It's not a good thing to question.

(6:09:18 - 6:09:23)

All right. If a weapon were fired... He is an expert. He can give his opinion.

(6:09:23 - 6:09:29)

If a weapon were fired many times and it were worn, you said it was worn. I didn't say that. I had written down what you said.

(6:09:29 - 6:09:55)

So do you agree that it looks worn? Sure. Well, do you agree, sir, do you know that when a weapon is worn, if it is fired repeatedly, it's an older weapon, that that similar rod can develop play and it may not necessarily remain rigid? Did you know that? Well, it's still a rigid object. The question about having play in a rigid object, it's still going to cause, potentially, the injury we're talking about.

(6:09:56 - 6:10:16)

So you're talking about a hypothetical movement of a rod that still would cause the same kind of injury that we're looking at. The rod is not necessarily, over time, an older weapon. It would have lateral movement.

(6:10:16 - 6:10:25)

Did you know that? Yes, sir. Any object, mechanical object, when it gets worn can have movement, but it's still a rigid object. Yes, sir.

(6:10:25 - 6:10:38)

That rigid object can move three-dimensionally in space, but it's still rigid and still, in my opinion, cause the mark on the nose. It's a possibility that that caused the mark on the nose. Correct? I believe it's a probability.

(6:10:38 - 6:10:48)

I think it's likely. Yes, sir. And the lateral movement of the ejector pin could affect that? It could affect it to a certain extent.

(6:10:49 - 6:11:03)

If it did, indeed, have play, I've not established that it does. Did you watch a video, in this case, of the defendant being interviewed by law enforcement? I have not personally seen it. I'm aware of it.

(6:11:03 - 6:11:13)

How so? I was told by Mr. Steele. When? I was told by Mr. Steele. I believe earlier today was the first I was made aware that the video existed.

(6:11:14 - 6:11:26)

Was that after Dr. Terry testified? I wasn't here when she testified, but I think it was. Do you know what the rule of sequestration is? Yes, sir. Have you ever heard that? Yes, sir.

(6:11:26 - 6:11:56)

And that means people have to wait outside so that subsequent witnesses' testimony cannot be affected by prior witnesses' testimony, correct? Yes, sir. Correct. Don't you think the rule of sequestration and the validity of that rule and the reason for that rule is compromise? If Mr. Steele came up and told you, hey, you need to be aware there's this video out there, they're going to ask you about this video, they're going to ask Dr. Terry about it, don't you think that kind of compromise is furthest from the rule, sir? Well, if that what you presented is what happened, it happened.

(6:11:57 - 6:12:13)

No, sir. What he asked me was, have you seen a video? Okay. And you think he was just asking you that just coincidentally, not that Dr. Terry had seen this video? Well, sir, I wasn't here.

(6:12:14 - 6:12:23)

I'm not aware of the content of Dr. Terry's testimony, so it wouldn't affect me either way. I have a counsel asking me a question. I answered it.

(6:12:23 - 6:12:31)

End of story. Did you talk with Dr. Terry about her testimony at Chick-fil-A when you all went to lunch together? No, sir. Actually, we talked about Broadway plays.

(6:12:31 - 6:12:45)

She's a big Broadway fan, as am I. So we talked about Chick-fil-A. So you didn't view the video that we're talking about, but you now know it exists because of the break Mr. Steele told you. Well, you just told me about it.

(6:12:45 - 6:12:55)

Sir, listen to my question, okay? You know there's a video. The first point you became aware of the video was when Mr. Steele told you, hey, you need to know there's this video. That's not what happened, sir.

(6:12:56 - 6:13:07)

He said, have you seen a video? And you said, what video? I don't know what you're talking about, right? You've never seen it? Yep. And you said, oh, there's this video about where the defendant was in. Is that what happened? That's if you say so.

(6:13:08 - 6:13:13)

I'm asking you, sir. And I'm telling you that he said there's a video. I said I haven't seen it.

(6:13:13 - 6:13:33)

What was the content of the video that you mentioned, sir? He said the video about this, I assume. Okay. Did you know that there was a video where this defendant, two videos, so two different videos, interview videos with police, where she mimics or reenacts or acts out of the way that the shooting occurred? Did you know that? I didn't know.

(6:13:37 - 6:14:08)

Do you think it would be of scientific interest to you to watch a video where the only other person in the room that you see that acts out how the shooting occurred? It would be of note to you, wouldn't it? It would be notable, but I also had to consider the source and what position they were in to recall what happened and when this was done. Memory is a very slippery thing. It's time affects memory.

(6:14:09 - 6:14:33)

I would be interested in the contents, but I don't know how much weight I could give it. You don't know, especially since you haven't seen it, right? Correct. And similar to Dr. Terry, even though you haven't seen it, you're, I guess, giving a caveat that someone's memory may not be accurate or traumatic event can affect their memory, something like that, right? Sure.

(6:14:33 - 6:14:55)

So like Dr. Terry, you're kind of disqualifying maybe the defendant's version of what happened because you know you haven't seen it, right? I'm not addressing anybody's version of events, sir. I'm simply telling you what I see from looking at the injury. If there's another version of events that's out there and you would like me to consider that, I'm happy to do that.

(6:14:56 - 6:15:23)

You said that the possibility, the scientific possibility that the abrasion, we're talking about it in question here, the abrasion, you called it abrasion, right? The red mark on the nostril. Yeah. You said that that's just contrary to forensic pathology, to think that that's caused by bullets.

(6:15:23 - 6:15:35)

Remember saying that? No, sir. I didn't say that. I said to think that a bullet causing that in that direction doesn't make sense because it's going in the opposite direction that we know this bullet was going in.

(6:15:36 - 6:15:58)

But yet Dr. Lehman, he's a forensic pathologist, right? Yes, sir. Do you have any reason to believe he's not competent, sir, in this field? He takes longer than most folks to do an autopsy. Maybe because he's more careful? No, sir.

(6:15:58 - 6:16:04)

That's not what I mean by that. Okay. So Dr. Lehman, you have reason to believe he's not competent.

(6:16:04 - 6:16:10)

No, sir. I didn't say that. But he takes longer than some people to do an autopsy, most people to do an autopsy.

(6:16:10 - 6:16:14)

Yes, sir. Okay. And you know he is a board-certified forensic pathologist.

(6:16:14 - 6:16:23)

He's a board-certified forensic pathologist. I've been practicing for many years, many years with the GBI. And he determined that a bullet caused that abrasion.

(6:16:24 - 6:16:32)

Did you know that? Well, that's his opinion. Yes, sir. Your opinion, I understand, is different, but reasonable medical minds can differ.

(6:16:32 - 6:16:56)

Absolutely. You said something that I wrote down, and I know you're really good at recalling what you said. If I wrote this down wrong, I want you to please tell me like you have been doing.

(6:16:56 - 6:17:03)

If I said anything wrong at all, please, sir. If you don't look, you don't find. You understand that? Yes, sir.

(6:17:03 - 6:17:17)

You were commenting, if I'm right, sir, you were commenting about Dr. Lehman's examination overall, and you said if you don't look, you don't find. Yes. Words to that effect, it may not have been a direct quote, but that's generally the concept I'm trying to convey.

(6:17:18 - 6:17:33)

But, sir, Dr. Lehman, did you know that Dr. Lehman testified? He did look, sir. He looked for the serum, and he didn't even find any trace of it to cause him to go the extra step to do a tissue sample or microscopic review. He did look.

(6:17:33 - 6:17:45)

Did you know that? In his report, it speaks for itself. He describes it. He certainly would have looked with the naked eye, but here that's not good enough for the reasons I already said.

(6:17:46 - 6:17:59)

One thing in your report, I want to talk about your report for just a moment. Sure. Talking about Dr. Lehman's report.

(6:18:00 - 6:18:04)

I don't think I have a copy of that. Here it is. That says report.

(6:18:04 - 6:18:06)

Yes, sir. Dr. Lehman's report. Yes, sir.

(6:18:06 - 6:18:09)

I thought you said mom. No, sir. I am going to get to yours.

(6:18:09 - 6:18:11)

I'm sorry. I confused her. I'm sorry about that.

(6:18:12 - 6:18:20)

You're right. I did say something about yours, but first I want to reference you to Dr. Lehman's report. I can publish it.

(6:18:22 - 6:18:28)

It will go to the Council as to the market admitted in the evidence. It says 229. If I can publish that.

(6:18:29 - 6:18:45)

Let me have you take a look at Dr. Lehman's report. It says 229. If you can just zoom in on the top portion where it says, the very top where it says requested by.

(6:18:49 - 6:18:58)

That's great. Right there. We'll wait for it to come into focus a little bit.

(6:19:38 - 6:19:44)

Can you see that, Dr. Downs? Yes, sir. It's on your monitor there, too. I'm going to point to a part of it here.

(6:19:45 - 6:19:52)

Do you see where it says victim Daniel Akers right here? Yes, sir. Okay. Do you see that on your screen? I do.

(6:19:53 - 6:20:22)

Now, you wrote a report, in this case, like a refinance, right? And one of the things you put in your report, if you remember, sir, you said about, in commenting about Dr. Lehman's report, you said that he exhibited implicit cognitive bias because he called Daniel Akers a victim. Yes, sir. Do you remember writing that? Yes, sir.

(6:20:22 - 6:20:30)

So you think Dr. Lehman was biased. I'm going to make sure I've got the right term that you use. I don't want to miss a word.

(6:20:31 - 6:20:46)

The report here, I think your report's in evidence, says Dr. Lehman should have avoided cognitive bias. By calling the victim a victim, or Daniel Akers a victim. Do you remember saying that? Yes, sir.

(6:20:47 - 6:21:00)

Did you notice, sir, that, and that's what you're talking about, right, where he puts victim Daniel Akers right there? Yes, sir. Actually, when I was under direct, that was the section I said things had changed. Yes, sir.

(6:21:00 - 6:21:07)

That's specifically the section that I was commenting on. I'm personally responsible for that section being changed. Okay.

(6:21:07 - 6:21:21)

Well, that's great. Let me ask you about that, though. Did you know that Dr. Lehman testified that

by the time he gets involved in the report, all of this is filled out already like a boilerplate form? Did you know that? Yes, sir, I did.

(6:21:21 - 6:21:32)

He didn't call Daniel Akers a victim. It's in his report, sir. That biological information is already filled out before he even makes a single finding of this pen and paper.

(6:21:32 - 6:21:42)

Did you know that? Yes, sir, I did. And he knows it, too. But you still say he suffers from cognitive bias by calling Daniel Akers a victim.

(6:21:43 - 6:21:46)

Yes, sir. That's one of his failings in this report. I agree, yes, sir.

(6:21:46 - 6:22:43)

Okay. Now, you said that if I could show you another picture. Obviously, I understand that this particular photograph or the blood, clotted blood on this particular photograph, I understand that this may have taken a while to develop and get into this facial condition that this picture represents, correct? Yes, sir.

(6:22:43 - 6:22:51)

This may not have been instantaneous that someone would end up in this particular condition. No, it definitely was not instantaneous. Yes, sir.

(6:22:52 - 6:22:59)

But you would agree this is a pretty bloody condition. The condition of the face here is pretty bloody. I agree.

(6:22:59 - 6:23:30)

There was clotted blood that we see here, and there was more, I guess, liquefied blood or fluid blood here and clotted, thicker blood here, correct? Yes, sir. And you are saying to the jury that it's possible, even with this type of wound, it's possible that now we have the muscle inserted into the right nostril, according to your hypothesis, correct? Yes, sir. At the time of the discharge of the projectile.

(6:23:31 - 6:23:42)

Yes, sir. And you're saying to the jury that it's still possible, in your opinion, that there would be no blowback at all, either in tissue or blood, on the pistil after the discharge. Is that your opinion?

Yes, sir.

(6:23:43 - 6:23:59)

And one explanation of the possibility that there would be no discharge, no blowback, either tissue or blood, one explanation for that could be from a distance shot. Isn't that right? That is one possibility to cause absent blowback. Yes, sir.

(6:24:06 - 6:24:12)

Talking to you a little bit. Let me take that down. Can you take that down, sir? Yes, thank you.

(6:24:12 - 6:24:20)

Talking about the bullet path trajectory. I don't want to use the wrong term. I just call it a bullet pathway.

(6:24:20 - 6:24:30)

Is that fine? That's fine, yep. So a bullet pathway. You said it was to, it was slightly, I don't want to use the word, I don't want to use words you didn't use.

(6:24:30 - 6:24:44)

It was upward, it started lower and final resting place was higher. Yeah, the way you're indicating it was way higher than it actually was. What he said was toward the left, slightly up, and back.

(6:24:46 - 6:25:00)

Well, you've seen an x-ray in this case. Yes, two x-rays. If you remember, just for demonstrative purposes.

(6:25:10 - 6:25:29)

So I'll label this as States 244 just as far as a demonstrative. The actual radiological problems are in evidence, sir, but if you'll just bear with me, I'll show you on the, I'll show you a closing count in a while, Mark. Just for identification and demonstrative purposes, I'm going to go under States Exhibit 244, please.

(6:25:32 - 6:25:42)

Is this just States Exhibit 244? Does that look like, that's probably your report. I believe you'll recognize it. Does that look like one of the radiological films you reviewed? Yes, sir.

(6:25:43 - 6:25:57)

So is it fair, then, to say that there was a slightly lower to higher bullet trajectory pathway? Yes, sir. If I can use the pointer here. Yes, sir.

(6:25:57 - 6:26:05)

Can you zoom in on it a little bit for Dr. Danz? Thank you. Thank you. Let me move it up just a little bit, Mr. Rains.

(6:26:05 - 6:26:08)

Thank you. There you go. Yes, sir.

(6:26:08 - 6:26:21)

So you can actually see his nose here, as I've indicated. And if you look, you'll see fine white dots along the wound track. That's where pieces of the projectile, it's soft lead.

(6:26:21 - 6:26:46)

They'll break off as it goes through the bone. So there's little pieces, and you can see the final resting place where the majority of the projectile there is, in the back of the left side of the brain. And part of what you said was, get back to the trajectory pathway in a minute, doctor, but part of what you said was that this bullet is lead, I guess, right? Typically lead bullets.

(6:26:46 - 6:26:54)

With a .22, yes, sir. And it actually, the impact was forceful enough that it fragmented. Do you agree with that? I don't know if that's your time.

(6:26:55 - 6:27:06)

That's what I've mentioned, the little dots that you see. If you look at the picture, you'll see little white dots along the path, and those are little fragments. It's soft lead, and that's very typical.

(6:27:06 - 6:27:28)

And you said that there's all this area of, I guess there's area up into the nasal cavity, the sinuses. There's a void, esophagus, all that other stuff you said, mouth. There's all this area for gases to go, right? I don't think I mentioned esophagus, but it's right there.

(6:27:28 - 6:27:41)

I thought you did. I'm pretty sure you did. But there was a bone, and eventually the projectile met with something hard enough substance because it fragmented.

(6:27:41 - 6:27:52)

Yes, eventually it got to the skull and entered the skull. Before that is the area where everything would dissipate. It's well before you get to the skull.

(6:27:53 - 6:28:06)

How far? Sorry? How far? Probably... What? Millimeters. Oh, no. I'm thinking like two, three inches maybe.

(6:28:06 - 6:28:20)

It's a big space. Think about where your spine is in your mouth and your nostril. That's what we're talking about, that kind of distance.

(6:28:20 - 6:28:27)

This is not millimeters. This is a big, gaping space. Ultimately, the bullet did contact.

(6:28:27 - 6:28:52)

That space ends, correct? That space ends and something more powerful begins because the bullet fragmented into those pictures we see. Depending on the direction you're talking about, the space is open to the airway and to space through the other nostril, through the mouth open to space. Yes, there's bone on one end of it, but there's open space on the other.

(6:28:53 - 6:29:10)

Let me ask you back to the projectile pathway or bullet trajectory pathway that we're looking at here. You've actually kind of drawn a line or used your pointer to show that the nose would actually be more than the final resting place of the main projectile, I'll call it. Right? Yes, sir.

(6:29:10 - 6:29:26)

Again, if you look at it, it's a little blurry here, but you can see the nose right here. This is the upper jaw tilting up to the base of the nose here. I think you can actually, if it was focused, you'd see the nostril.

(6:29:28 - 6:29:44)

Then you can follow that line back towards the projectile. Can I approach you with this, please? Yes, sir. You would agree, sir, that that bullet trajectory or pathway would have a direct relationship to the muzzle location at the time of the fire? Yes, sir.

(6:29:44 - 6:29:55)

Right? Those two have to be related. Unless the bullet ricochets off something which I don't see

happening here. You didn't have any indication in this case that the bullet ricocheted off anything? As I said, no, sir.

(6:29:55 - 6:30:10)

In this case, there's a direct relationship between the orientation of the muzzle and that final trajectory that we see in the radiological films. That's correct. Are you aware of the height of the deceiver? Do you remember that? Off the top of my head, I'm not.

(6:30:10 - 6:30:20)

I apologize. Take a look and would you believe me if I said Dr. Lehman measured his typical measure of body, I guess, when you don't see it? Yes, sir. I apologize.

(6:30:20 - 6:30:24)

I usually have it off the top of my head. I just don't. Yeah, that's okay.

(6:30:25 - 6:30:36)

You've come with a copy of the report. I'm sorry. You have any reason to believe that Dr. Lehman didn't find the deceiver to be approximately 70 inches tall? Not at all.

(6:30:36 - 6:30:46)

Okay. Does that stand reasonable? Yes. Based on States 224 or 229? I have no reason to doubt that whatsoever.

(6:30:46 - 6:31:02)

All right, sir. Did you see in your investigation, in your preparation of the case, did you come across any word about the defendant's height being 5'4"? I don't recall a specific number, but I think it was in there. All right.

(6:31:03 - 6:31:30)

And is it not a possible explanation of a bullet trajectory pathway, sir, that a smaller-statute shooter could have pointed a pistol upwards at a higher or taller victim or deceiver? And that could explain the trajectory pathway here. Could it not? That's one possibility. It could explain the linear path.

(6:31:30 - 6:31:44)

It doesn't explain the entry wound. And we still have the thing on the nostril. But, yes, a muzzle, if I can use the rod here again.

(6:31:46 - 6:31:59)

I took the orange out of the toy gun. Let me put that back. So if you think about this rod going out in space, and I'm trying to replicate roughly the trajectory.

(6:32:00 - 6:32:16)

All right, so it's kind of going, it's definitely going back, kind of to the left, kind of up. So anything along this line, I'm 6'1", so if I stand up, anything along that path. But, again, I can tilt my head and that changes.

(6:32:18 - 6:32:27)

I can turn my body and that changes. But that line stays intact. So any of those possibilities could explain the trajectory.

(6:32:28 - 6:32:50)

But that doesn't explain the nose. I remember one thing I wrote down, sir, is I remember when you were trying to explain or theorize the location. You remember showing the weapon being used in either hand.

(6:32:50 - 6:32:55)

You showed the jury from your seat there. This could have been manipulated from either hand. Yes, sir.

(6:32:56 - 6:33:06)

And do you remember when you took the weapon and you actually used your left hand? And do you remember showing that? I used both. Yes, sir. Do you remember showing the left hand? Yes, sir.

(6:33:07 - 6:33:13)

And you manipulated the trigger with your left hand to show the jury that that was possible. Remember that? Yes, sir. And you used your thumb.

(6:33:13 - 6:33:24)

I think I used my thumb. I also think at one point I used my index finger. Do you remember using your thumb to show the jury that the trigger could be pressed with the weapon inverted into the right nostril? Yes, sir.

(6:33:25 - 6:33:39)

Again, I think I used both. So in your opinion, what you're saying is this weapon could have been fired. It could have been inverted, which means upside down, inserted into the right nostril, and operated with a thumb on the trigger.

(6:33:40 - 6:33:43)

That's one possibility you're stating. Yes. That's one event.

(6:34:04 - 6:34:16)

Do you find it significant that four particles of GSR were found on the scene at Sandy? I think it was five. I believe. We'll let the jury determine.

(6:34:17 - 6:34:27)

Mr. Steele said five. I believe the scientist said four because they only test up to four, and after four they don't test anymore. Are you familiar with the testing? Is that accurate? I think that's accurate.

(6:34:27 - 6:34:38)

Even though Mr. Steele said five, it's only four. They can only go to four, right? I don't know what they're doing presently. When I was there, I'm not sure there was a limit.

(6:34:38 - 6:34:42)

Okay. Do you know Alexander Coven? I do not. Okay.

(6:34:42 - 6:35:19)

He's with the GDI. Would you be surprised to hear he testified earlier last week or something that anybody who's in a room or in close proximity to where a gun was fired is likely to have GSR on their hands? Do you disagree with that? I don't know about likely, but certainly could. And including if somebody were the victim of a homicide and they were just shot from a distant range shot, they could have GSR on their hands, correct? I don't usually get that in gunshot wound homicides, but it could happen.

(6:35:19 - 6:35:33)

It could happen. Even four particles, they don't even test after four, so even up to four, that's possible, isn't it? It's possible. And you said something about DNA.

(6:35:33 - 6:35:38)

The DNA had been used. I'm sure you know what DNA is. You studied it.

(6:35:38 - 6:35:43)

You're not a DNA expert, right? That's correct. And I didn't say anything on that question about DNA. Yes, sir.

(6:35:44 - 6:35:50)

You have plenty when you were at the GDI. You have a whole section that concentrates on that, right? That's correct. Okay.

(6:35:50 - 6:36:13)

And if this decedent had ever touched that weapon in the past, wouldn't you agree based on your knowledge of DNA that DNA could be on the weapon from that point forward? It's possible. Certainly. And then also, sir, if the defendant had ever touched the weapon, if she owned it, her DNA could be on there if she touched it from that point forward.

(6:36:13 - 6:36:31)

Sure. If there's no intervening cause or, I guess, like Newton's Law, there would have to be some action to change the DNA profile of a weapon, like wiping it off or getting smudged or atmospheric conditions, erasing it. If someone touched it, their DNA could remain on there indefinitely.

(6:36:31 - 6:36:56)

I don't know that Newton, but Locard, the exchange principle, until somebody changes that environment, it's good instead. Okay. So if DNA were on this weapon and it was found to be the decedent's DNA, that really wouldn't mean a whole lot if he had had access to the weapon before he had touched it.

(6:36:56 - 6:37:12)

Say, for example, the way a witness said he saw him touching it at one point. It's unusual to get DNA off of a weapon because it's a very small amount sometimes, but it could be there. Okay.

(6:37:12 - 6:37:24)

It's unusual, and are you aware that there was a request for GBI to do DNA collection for this weapon? Sure. You were aware of that? I think they did. You think they were asked to and they couldn't.

(6:37:24 - 6:37:29)

You remember that? Yes. Could be a number of factors why they just couldn't. Or they wouldn't.

(6:37:29 - 6:37:54)

Yes, sir. Did you see a… I'm going to ask you this, sir. If I can please approach opposing counsel and show what's been admitted into evidence in the state's Exhibit 184, please.

(6:37:55 - 6:38:12)

May I approach the witness? Yes. Sir, have you seen this, the state's Exhibit 184, before today? Do you recognize that at all? It's a written statement. It was up here earlier.

(6:38:14 - 6:38:31)

I am not sure that I got a copy of this. Did you know that that was a statement written by the defendant in this case? Did you know that? That's what it appears to be. Did you know that before today? Again, I don't recall this specifically, so I wouldn't know that.

(6:38:31 - 6:38:54)

Do you recall, as part of your preparation for your ultimate findings, reviewing a written statement written by this defendant? I don't know that I saw written. I saw summaries from investigation that summarized what she had to say. So you didn't read, as part of your preparation or your ultimate, the arrival of your conclusion or your hypothesis.

(6:38:54 - 6:38:59)

You didn't read what she wrote herself as far as what happened, according to her. You didn't read that. No, sir.

(6:38:59 - 6:39:06)

I did not read that report. But there were summaries, detective summaries and notes. You knew there was a statement.

(6:39:06 - 6:39:15)

You just added that. That's correct. Did Mr. Steele say anything to you today about, A, you need to know there's a written statement? No.

(6:39:16 - 6:39:32)

No. Did you know in the written statement, were you aware that this defendant also gives an account in her own words how this, excuse me, happened, according to her? I'm aware of that, yes. Okay.

(6:39:32 - 6:39:53)

Do you remember what she said? That they were grappling over the gun and it discharged. Okay. Do you remember specifically on page 5 of Statement 584, I asked you, do you remember what she said? He had, quote, he had the gun almost to his mouth.

(6:39:53 - 6:40:27)

Do you remember that? I remember him not having seen that. I don't recall that specifically, but I remember from the summary that information. Not having read it, I couldn't tell you.

(6:40:27 - 6:40:35)

But I have no reason to doubt you. Reading on page 5, sir. You're reading on page 5. Three lines from the bottom.

(6:40:35 - 6:40:42)

You'll see it. Pay attention to page 5 here. It's seven total pages.

(6:40:45 - 6:40:57)

Page 6 and page 5. So third line from the bottom starts with D. I'm sorry. It's not on the day today. He made it.

(6:40:57 - 6:41:06)

Why don't you just look at page 5? You said three lines from the bottom. Go on to six. He had the gun.

(6:41:06 - 6:41:11)

There's two page fours, sir. Look where he says that he had the gun. See what he said.

(6:41:11 - 6:41:18)

See what she said about that. He had the gun almost to his mouth. Remember that? Do you see that? Yes.

(6:41:19 - 6:41:22)

Hold on a minute. So she wrote he had the gun almost to his mouth. Yeah.

(6:41:22 - 6:41:33)

Well, I'm just getting the context of the whole thing. I like to get what's being said. It's important to get the context and to see everything.

(6:41:33 - 6:41:47)

Is that right? Well, if you cherry pick a sentence, then I'm only looking at that. I want to see the context that that sentence is set in. You would have wanted to see this in making your ultimate findings, wouldn't you? Not really, because it's only one version of events.

(6:41:47 - 6:42:08)

And what I'm looking at is not somebody else's opinion of what happened, a recollection of what happened. I'm trying to objectively look at facts and not put a veneer of science on somebody else's opinion. Well, it's not an opinion, is it? I don't think Dr. Downs was finished with his answer, Your Honor.

(6:42:08 - 6:42:12)

I ask that you allow it to be completion of his answer. His answer was over. Sorry.

(6:42:15 - 6:42:45)

So to take something and put a veneer of science on it by including it in an autopsy report, making it almost seem factual when it's an opinion, that's concerning to me. What I'm talking about, though, in this written statement, that's not an opinion, though. Is it sort of because that was written by somebody who was in the room in close proximity, according to her, when that weapon was discharged? It's not an opinion.

(6:42:45 - 6:42:58)

And when was that written? That was written on December 30th, let's see, January 7th, 2020. So not contemporaneously, not at the same time as the events. Memories.

(6:42:58 - 6:43:21)

That's why I read it, I consider it, but I can't consider it as a factual recreation of what happened. It said it's somebody in an emotionally trying time, which I know this was from the reports. She had a heart attack, high heart rate, vomiting, her body's reacting to a stressful situation.

(6:43:21 - 6:43:36)

And then weeks later, she writes her recollection. I consider that, but again, I don't consider it to be a fact. Step by step, this is what happened.

(6:43:37 - 6:43:54)

In this case, though, you really don't read it and you don't consider it, because you did. No, sir, I did consider what people who were investigating the case thought was important from it, what they provided in their investigation and their summaries of it. I certainly read that.

(6:43:55 - 6:44:08)

So I got what they thought was important. Well, sir, what they thought was important, that would be an opinion that you just said you don't rely on, right? That's their opinion. You said just now you don't rely on opinions of others.

(6:44:08 - 6:44:54)

So if you think that the investigation is all just opinion, okay. I'm saying would it have value to you, sir, to read the lady's recount of what happened in her own words? Can I just explain to you why I would discount that? Okay. You said that the scientific analysis or the scientific findings, the wound characteristics, the wound aspects, they don't take into account or they don't represent what happened immediately before, right? Do you understand that? Correct.

(6:44:55 - 6:45:32)

So they wouldn't take into the scientific findings or your wound aspects, they wouldn't take into account other things that happened before the discharge of the projectile, right? I have one snapshot in time, and that's all that factually, scientifically, I have as fact. So you wouldn't have, when you're looking at that one snapshot in time, you're not considering an uneaten McDonald's hamburger on the floor, are you? Well, it's there at the scene. And you're not considering a booby trap that would have been set up to hear the snap from the door.

(6:45:32 - 6:45:42)

That's before your scientific analysis, right? Okay. Your opinion that something's a booby trap. There's, from what I understand, a Swiffer that's set up by the door.

(6:45:43 - 6:46:05)

I don't know that I would consider that a booby trap. Your scientific snapshot that you're talking about, those things have to be different, right? Yes. Thank you.

(6:46:05 - 6:46:10)

Thank you. You all ready? Yes. Thank you.

(6:46:51 - 6:59:42)

The next 10 minutes. That's fine. And I assume it's states, just because.

(6:59:42 - 7:00:02)

I shouldn't, I don't want to confuse anybody. Is that okay? Do you have a little incident, or do you want me to just write it? Thank you, Your Honor. And then, Your Honor, while District Attorney's

doing that, I believe the District Attorney's Office, the next witness is Mr. Ross Gardner.

(7:00:03 - 7:00:10)

And we have his PowerPoint. I already served him previously on the state. I gave them a thumb drive that he gave to me today.

(7:00:10 - 7:00:17)

I didn't look at the thumb drive, but I'm presuming it's the exact same thing. I showed it to the state, so I just want you to know. I'm trying to move the case.

(7:00:18 - 7:00:25)

Okay. Can we talk just a little bit about that briefly? Let me put 226A. Is that what you have? Yes, Your Honor, 226A.

(7:00:26 - 7:00:31)

Thank you very much. Is that, take a look at that and see if that'll work. Yeah, that's perfect.

(7:00:34 - 7:00:39)

It's all his pictures that I sent you. That's all it is. Yes.

(7:00:39 - 7:00:42)

Thank you. Did you need this? Yes. Okay.

(7:00:43 - 7:00:47)

Thank you. You're welcome. All right.

(7:01:36 - 7:01:39)

All right. Read the rest. Thank you, Your Honor.

(7:01:41 - 7:01:58)

Dr. Downs, do you remember the district attorney asking you about gunshot residue? I do. And do you remember referencing a gentleman at the Georgia Crime Lab who did a test in this case? I do. Mr. Covin, C-O-V-I-N? I do.

(7:01:59 - 7:02:12)

And the district attorney saying that I said it was more than five particles, and the district attorney said it was four or something to that effect. Do you remember all that? Yes, sir. I want to show

you now, with the court's permission, I'm going to put it on the screen, but you'll be able to see it.

(7:02:13 - 7:02:19)

This is already in evidence, Your Honor. State's Exhibit Number 226A is in Elisa. May I approach the… Yes.

(7:02:20 - 7:02:45)

Investigator, can I come closer? I need to put it on the screen. But you just took the jury, so they orient that? I know this is not your field, but are you aware that once five particles are found or more, the TBI stops testing, they stop counting? That's my understanding. So five is a maximum? Correct.

(7:02:45 - 7:02:55)

All right. And this is… And we can show it to you, but this is the gunshot residue results for the hand of the deceased. His name is Mr. Akers, okay? Yes.

(7:02:56 - 7:03:06)

And I'm just pointing here. Can you see… I know it's a little blurry, but can you see where it says, Examination of Item 9? Yes, sir. Right above the Methods of Analysis, the capital letters? Yes.

(7:03:06 - 7:03:15)

The line above that? Yes, sir. So there are more than five particles? Yes. Characteristic of GSR, which is Sanford Gunshot Residue? Yes, sir.

(7:03:15 - 7:03:18)

Okay. So it's more than five? Correct. All right.

(7:03:18 - 7:03:39)

You can take that back, Your Honor. Thank you. With regards to DNA on the gun, on the gun itself, and the prosecutor asking you, well, if at any time, if I touch an object, I may leave my DNA on it, and it could last, you know, for years, potentially, right? If undisturbed, potentially, yes, theoretically.

(7:03:40 - 7:03:57)

And in this case, testing the trigger of the gun I'm talking about, that would have been interesting, right? Oh, yes. I would be interested to know the results, one way or the other. Because the trigger is different than touching any part of the gun, correct? I didn't finish the question.

(7:03:58 - 7:04:04)

It's a leading question from the get-go, so this is re-directed. Well, if there's a question, I'll rephrase it. I'll rephrase.

(7:04:05 - 7:04:26)

Would it be interesting to know whose DNA is on that trigger? Yes, definitely. What would it mean if Ms. Bowles' DNA is not on the trigger? It could be argued that she didn't touch the trigger. What would it mean if Mr. Aker's DNA was on the trigger? It could be argued that he did touch the trigger.

(7:04:27 - 7:04:37)

Okay. I want to talk with you, District Attorney. Do you remember he used a toy gun, and he had, I think, your thumb.

(7:04:38 - 7:04:51)

You said that you showed with your thumb in the trigger. Do you remember that? Yes, sir. And did you make it clear that you were just showing different examples of how the trigger could be pulled, right? That's correct.

(7:04:53 - 7:04:59)

Do you— Yes, sir. Okay. Are there other ways to pull the trigger? Certainly.

(7:05:00 - 7:05:04)

Okay. May I approach, Your Honor? Sure. May I come forward to you? Yes, sir.

(7:05:05 - 7:06:01)

May I take that toy gun for a second? Yes, sir. Hypothetically, if I'm holding this toy gun, and it's a toy gun, and I have my finger on the trigger, if I have it pointed at my mouth, and a person comes and grabs my arm to pull it away from my mouth to stop me from shooting myself in the face, what prevents this gun, me pulling back, and the gun just turn over by my wrist and go right in the nose like you said? Nothing at all. When you were asking about, being asked about on cross-examination, you know, what Ms. Bowles said in the statement in the video, is that interesting to you or remember all that? Yes, sir.

(7:06:01 - 7:06:20)

I'm talking objective items that you have from the autopsy and the gun. I don't want anybody's memory. I'm talking about the photograph, the description of Dr. Lehman, and the actual revolver,

okay? Yes, sir.

(7:06:28 - 7:06:46)

Was that revolver from a distance or pointed right into the nasal passage on the right side of the deceased, in your opinion? My opinion is where it was located. The revolver. My opinion is the revolver was upside down in the nostril.

(7:06:47 - 7:07:10)

All right. I want to ask you whether you have ever been hired, paid by the Paulding County District Attorney's Office as an independent medical examiner to analyze the case. I believe I have.

(7:07:11 - 7:07:22)

Did they ever consult with you, the Paulding County? This district attorney's office in this county? I believe that's correct. Okay. Do you remember the case? I think it was a child case.

(7:07:22 - 7:07:48)

It's been a minute, maybe 10 years. It's been a while. Was there anything wrong when the district attorney's office called you as an independent person who didn't do the autopsy? This officer actually called me in a case where I told them that they were wrong and they didn't have a case, and actually they didn't tell the defense what I said.

(7:07:49 - 7:07:54)

I have no other questions. Thank you. We've never met, right? No, sir.

(7:07:54 - 7:08:04)

And I wasn't working on that case, right? I don't know if you were working on it or not. I certainly don't remember you, and I'm not meaning to malign you. I'm just telling you what happened.

(7:08:04 - 7:08:10)

I appreciate it, sir. I know you wouldn't do that because we don't know each other. If I told you, I just started here less than two years ago.

(7:08:10 - 7:08:47)

It was before that. And if the defense, and if you had, let me, this is kind of a tricky question to ask, but if you would please bear with me and try to follow me, I can be confusing, but I am telling you, okay? So if you didn't look at this case, if you didn't look at the facts, the photographs, the investigatory reports, everything that you looked at to form your opinion, if you hadn't come up

with a conclusion or hypothesis that was counter to the defense theory of the case, you wouldn't have called to testify, would you? You'd have to ask them that. I don't call myself.

(7:08:47 - 7:09:17)

You're unlikely that you would testify to coming to say theory consistent with government, right? Not necessarily. I've actually had cases where the question was, who did it? So that my testimony was more used by the attorneys to bring out that element of it. So here, let's say I called it undetermined, which means as a medical examiner, I can't assign it a homicide.

(7:09:18 - 7:09:26)

I can't assign it as a suicide. I could see very easily the government calling me in without opinion. But that's not your opinion.

(7:09:26 - 7:09:41)

No, not your opinion. So in this case, do you know if any other pathologists were called on to be examined by the defense who did not arrive at a conclusion similar to yours? Do you know about that? I don't. I'll state in my place that that never happened.

(7:09:42 - 7:09:49)

I mean, he's not testifying under oath. It's improper for him to state anything in his place. I mean, he's not examining the witness.

(7:09:49 - 7:09:57)

It's improper to do so. Have you asked him for a jury? Yes, Your Honor. I asked for a jury instruction.

(7:09:57 - 7:10:07)

Comments of counsel, testament of moment by counsel. Well, I'm going to ask for an admonishment. I mean, if the district attorney wants to go down this road, I have cases for you.

(7:10:08 - 7:10:24)

Well, I've already instructed the jury that what the lawyers ask is not evidence, and what they argue is not evidence. So they're aware of that. So what's your call? I want to talk about DNA just a minute.

(7:10:24 - 7:10:45)

You said that it would have been reported to you, or it can't be, right? Yes, certainly. And you

said, well, what would it mean if there was a hypothesis posed to you? What would it mean if the defendant's DNA is not on the trigger? Do you remember being asked that question? Yes. Well, you said something like, well, it could mean that she did not pull the trigger and dismiss the death.

(7:10:45 - 7:10:54)

Is that right? That's correct. Well, it could also mean that her DNA was wiped off intentionally. Before these images, she could have, I would say, cleaned off rather than wiped off.

(7:10:55 - 7:11:11)

Sorry, cleaned off or removed effectively. That's certainly a possibility. And then you said, well, what would it mean if you were asked a similar hypothetical, what would it mean if the victim's DNA was on the trigger? Do you remember asking that? Being asked that kind of question, the inverse? Yes.

(7:11:11 - 7:11:25)

And you said, well, it could mean that the victim pulled the trigger and missed the death. Yes. But it could also mean that at any point prior to the death that the victim had contact with a weapon, like other witnesses say he did.

(7:11:25 - 7:11:46)

Could that be a possibility if that's what was found? Well, what happens with DNA, the problem is once somebody touches something, somebody else comes and touches it, that pressure one can contaminate an underlying stain. It gets very complicated. I am not a DNA analyst, so it's kind of going down a path that I would prefer not to go down.

(7:11:46 - 7:12:08)

Yes, sir. And being an expert in forensic pathology, not in the area of DNA analysis or examination, you don't know the number of factors or the myriad of factors that were considered in the GBI, and you would have refused to test it, in my words, couldn't test it. Anyway, they didn't test it.

(7:12:08 - 7:12:19)

You don't know why. I don't know why. I know that when I worked there, they would refuse to test a great number of things that I thought had evidentiary value.

(7:12:19 - 7:12:23)

They refused to test. Yes, sir. You just don't know why here.

(7:12:23 - 7:12:27)

I don't know here, no. It could be any number of reasons. You just don't know.

(7:12:27 - 7:12:41)

I don't know here. I would thank you. Thank you.

(7:12:41 - 7:12:46)

Anything else? Would you like to be released? Yes, sir. No objections. Sir, thanks for being here.

(7:12:46 - 7:12:52)

I had a great afternoon. Sure thing. Mr. Wood? Yes, sir.

(7:12:53 - 7:13:41)

Mr. Ross Gardner. Sir, welcome and good afternoon. I'm going to swear you in.

(7:13:41 - 7:13:50)

Please raise your right hand and receive an oath. Do you swear or affirm the testimony you're about to give in the matter before this court will be the truth, the whole truth, and nothing but the truth, so help you God? Yes, sir. Please have a seat.

(7:13:56 - 7:14:10)

Good afternoon, sir. Can you please state and spell your name for this honorable court? Ladies and gentlemen, the jury. Ross Martin Gardner, R-O-S-S-M-A-R-T-I-N-G-A-R-D-M-E-R.

(7:14:14 - 7:14:23)

And Mr. Gardner, I'd like to show you what I will mark as Ms. Bowles exhibit. Give me one second, please. Yes, sir.

(7:14:45 - 7:15:00)

May I approach you, sir? May I approach you, sir? Yes, sir. I'd like to show you what I just marked as Ms. Bowles, number 180. Take a peek at that and just tell me whether you recognize it.

(7:15:01 - 7:15:07)

Yes, sir. It's my curriculum vitae. Your honor, I move for the admission of Ms. Bowles, number 180.

(7:15:09 - 7:15:11)

I approach you, sir. Okay. Get to the end.

(7:15:12 - 7:15:36)

Okay. Mr. Gardner, what experience or training do you have in the area of crime scene examination, crime scene analysis, and criminal investigation? Tell me, ladies and gentlemen. I spent 29 years in active law enforcement.

(7:15:36 - 7:16:00)

My direct training, 1978, an eight-week course, military police investigator. I followed that in 1980 with a five-month-long basic CID agents course. 1985, I attended the scenes of crimes officers course at New Scotland Yard.

(7:16:02 - 7:16:40)

Over the breadth of my active law enforcement, I've attended in excess of 3,000 hours of formal training relating to criminal investigations. Easily one-third of that was directed at crime scenes, crime scene analysis, and those areas. From 1979 until 2003, I was either conducting, supervising, or evaluating felony criminal investigations.

(7:16:42 - 7:17:05)

Since 1997, I have been conducting independent analysis of major crime scenes. What experience and or training do you have in blood pattern analysis? Initial training came from senior agents that I worked with back in CID. Both have been trained by Herbert MacDonnell.

(7:17:05 - 7:17:24)

I attended the first course, if you will, part of a seminar at the U.S. Army Crime Laboratory. I attended the basic course in, I think it would have been 80, 81 perhaps. It's been a while.

(7:17:25 - 7:17:34)

And if you need to look at your CV, it's in evidence, so you can do that. Just generally, I know it's back in the 80s. I attended the basic blood stain pattern analysis course.

(7:17:35 - 7:17:55)

Which at the time was not my partner, but my mentor, Tom Bevel. I attended a three-day advanced course with Judy Bunker two years later. And in 1987, I attended the math and physics course for blood stain pattern analysts at Carleton University in Ottawa.

(7:17:56 - 7:18:29)

And then over the course of 1989 to now, I have attended numerous two- and three-day seminars presented by various professional associations that dealt with the application of blood stain pattern analysis and crime scene analysis as well. What's your formal education? I have an associate's degree in police science. I have a bachelor's degree in criminal justice, and I have a master's degree in computer and information systems.

(7:18:30 - 7:19:17)

Are you a member of any organization that limits membership to those involved in the scientific investigation of crime? Yes, currently I'm a member of the International Association for Identification, the International Association of Blood Stain Pattern Analysts, and the Association for Crime Scene Reconstruction. What is the purpose of these professional associations? Their primary purpose is they provide a forum for new research of concepts and ideas and sharing information that keeps you informed and up to speed. They also provide ethical guidelines that I, as a member, am expected to follow.

(7:19:17 - 7:19:48)

Have you ever authored any publications or published research or articles in the area of criminal investigations and crime scene analysis? Yes, sir. Can you tell the ladies and gentlemen in the jury about that? In 1990, Tom Bevel, my mentor, and I published Blood Stain Pattern Analysis, Theory and Practice. It was a 100-page manual, about 50 pages of reference, and then the rest was the lab manual when we taught.

(7:19:50 - 7:20:08)

We knew we had not completed the task when we took that on. In 1997, we published Blood Stain Pattern Analysis with an Introduction to Crime Scene Reconstruction. That is now in its fourth edition.

(7:20:11 - 7:20:22)

In 2003, I published Practical Crime Scene Processing and Investigation. That is a text. All of these were published by CRC Press.

(7:20:22 - 7:20:37)

That is now in the third edition. I brought on a co-author, Donna Kressup, out of Texas to assist me in that. In 2008, Tom and I co-wrote Practical Crime Scene Analysis and Reconstruction.

(7:20:41 - 7:20:57)

A few years later, I edited Michael Maloney's Crime Scene Procedural Guide. That is published by CRC Press. Those are the primary ones.

(7:20:57 - 7:21:38)

Over the years, I have published in peer-reviewed publications a number of articles relating to crime scene analysis and blood stain pattern analysis. Probably the more important ones were Foundations of the Discipline of Blood Stain Pattern Analysis, Response to the National Academy of Sciences, Methodology for Blood Stain Pattern Analysis, Qualitative Theory for Crime Scene Reconstruction, Using Hill's Criteria to Evaluate Causation in Crime Scene Reconstruction. Again, there are quite a few.

(7:21:38 - 7:21:50)

Those are the ones I recall immediately. You mentioned the International Association for Identification. Do they use any of your books? If yes, explain that to the jury.

(7:21:51 - 7:22:05)

The IAI has certification programs, both in crime scenes and blood stain pattern analysis. They used to have one in crime scene reconstruction. They kind of stopped it for a while.

(7:22:05 - 7:22:40)

They are trying to get it back in a year. The bottom line is that in order to get certified, you have to establish a certain level of experience and you have to show a particular level of knowledge. My books, two of them currently, and I think the third one is going to be brought back in, are used by the IAI as reference material and the tests that individuals who want to be certified on take the information that comes from those books.

(7:22:41 - 7:23:11)

Have you held any offices or received any honors or certifications from these organizations? I was the president of the Rocky Mountain Association of Blood Stain Pattern Analysts back in 1990. I served two years as a chair of the Education Committee. I served on the Proficiency Testing Committee of the International Association of Blood Stain Pattern Analysts and four years as a chairman of the Education Committee.

(7:23:12 - 7:23:34)

I'm currently a distinguished member of the IABPA. I served as president of the ACER, the Association of Crimes and Reconstruction, in 2000 and served several years on the Board of Directors. I also served as chair of the Ethics Committee for about two years.

(7:23:35 - 7:24:01)

I am a current fellow of ACER and I am a current distinguished member of ACER. Have you ever

worked with the FBI Scientific Work Group? I was a charter member of the FBI Scientific Work Group on Blood Stain Pattern Analysis. I chaired the Terminology and Taxonomy Subcommittee from 2002 to about 2011.

(7:24:02 - 7:24:30)

I also served on the Validation Task Group of the Organization of Scientific Area Committees when we served about a year ago. Do you teach in the area of crime scene analysis, blood stain pattern analysis, and crime scene examination? I've been teaching for an extended period. I used to be an adjunct professor for Central Texas College in their crime scene investigation seminars and criminal investigations.

(7:24:33 - 7:25:02)

As an independent person, I teach Blood Stain Pattern Analysis Levels 1 and 2 and Fabric Course. I teach Crime Scene Analysis Levels 1 and 2. I occasionally will second chair shooting incident reconstruction and then I teach crime scene processing. We teach those through my company throughout the United States and internationally.

(7:25:04 - 7:25:23)

Do you only teach police officers these skills? No, sir. The people who come to our courses could range from police officers, criminal investigators, medical examiner investigators. We have crime laboratory scientists.

(7:25:23 - 7:25:56)

I even have medical examiners that show up occasionally. Have you previously been qualified as an expert in crime scenes, crime scene analysis, blood pattern analysis, crime scene investigation? Yes, sir. As an analyst, does it matter who you're working for as for the nature of the methods you use or the manner in which you arrive at a conclusion? No.

The science is the science. The data is the data. You follow the path and then you report what you find.

(7:25:56 - 7:26:11)

Do you know Ms. Lacey Bowles? Not personally, sir. I assume that that is her. Are you receiving money or compensation for your time and efforts, skill, and insight in this case? Of course.

(7:26:12 - 7:26:24)

Regarding that compensation, are you paid by anyone for conclusions? No. Lawyers pay me for my time. They do not get to define my conclusions.

(7:26:26 - 7:26:39)

Simple and to the point. With regard to the content of your conclusions after doing all of your analysis and work, does it matter who you're working for? No. I work for prosecution.

(7:26:39 - 7:26:45)

I work for defense. Occasionally, I work for families. We do pro bono work for families.

(7:26:47 - 7:26:57)

Again, the science is the science. You just follow it. I move for the Senate of the Court to consider and admit Mr. Gardner.

(7:26:57 - 7:27:28)

As an expert in blood spatter analysis, crime scene analysis, crime scene investigation. Mr. Gardner, in this case, did you conduct a blood stain pattern analysis and crime scene analysis? Yes, sir. It's primarily blood stain pattern analysis.

(7:27:28 - 7:27:47)

They overlap. There were certain aspects that relate to the discipline of crime scene analysis, but it's primarily a blood stain pattern analysis. In preparation for your testimony, did you prepare a PowerPoint slide to share with the ladies and gentlemen of the jury if this honorable court permits it? Yes, sir, I did.

(7:27:47 - 7:27:53)

I'd like to show you what I've marked. I've already shown it to the prosecutors. Ms. Bowles, number 163.

(7:27:54 - 7:28:06)

May I approach you, Your Honor? Yes. May I approach you? Yes, sir. I put a sticker on there, but do you remember preparing that? Yes, sir.

(7:28:07 - 7:28:17)

May I take it back? Please. Your Honor, I'm going to move to admit Ms. Bowles, number 163 for purposes of demonstrative only. I'm sorry, Judge.

(7:28:17 - 7:28:26)

I have a 163 as a document already in front of me. Good point. I'll make it 163A.

(7:28:27 - 7:28:38)

Can I do that? Is that okay, Your Honor? I don't even have to change that. Okay. I change it to Ms. Bowles, 163A.

(7:28:49 - 7:28:54)

Mr. Chief, may I approach you, Your Honor? Yes. May I approach you, sir? Yes, sir. You still have that opportunity.

(7:29:18 - 7:29:40)

While that's being set up, can I ask you some questions, Your Honor? Yes, sir. Did you have an opportunity to personally visit with the Paulding County District Attorney's Office, Paulding County Sheriff's officials, and view physical evidence in this case? Yes, sir, twice. And do you remember what you viewed? And if not, we can maybe help you.

(7:29:41 - 7:29:56)

The first time the weapon was present, the clothing of Daniel was present. And that pretty much was it. His shoes and his outer clothing.

(7:29:59 - 7:30:21)

Okay. And did you take images or photographs? Yes, sir, I did. Your Honor, may I have one second? Yes.

(7:31:37 - 7:31:54)

May I approach you, sir? Yes, sir. I'm going to show you what's been marked as Miss False Number 164 through 178. Tell me if you view those and you recognize those images.

(7:32:18 - 7:32:28)

Yes, sir. There are photographs that I took, and I believe that was back in May. May I look at that document? Yes, we have to ask the Honorable Court.

(7:32:28 - 7:32:38)

Do you need to refresh your memory? Yeah, I don't remember the initial date. Yes, the answer is probably yes, but it's up to the Court. Your Honor, can Mr. Gardner refresh his memory? Yes.

(7:32:41 - 7:32:55)

These photographs would have been taken back in 2022. Do you remember when in 2022 by any chance? I'll give you a date, sir. October 12th of 2022.

(7:32:56 - 7:33:06)

And was this under the supervision and observation of the officials of the District Attorney's Office at Paulding County as well as the Sheriff's Office at Paulding County? Yes, sir. They gave me access. Okay.

(7:33:07 - 7:33:22)

The items are here in court if you need to see the actual physical items. Otherwise, I was going to use your PowerPoint and the photographs. Your Honor, I move for the admission of Miss False Number 164 as an executive to 179.

(7:33:26 - 7:33:33)

If you need any of these photos, we're going to use them, but we're going to go to your PowerPoint if that's okay. PowerPoint should be sufficient. Okay.

(7:33:35 - 7:33:54)

I'm going to ask the investigator if he can show us slide number one. And then, Mr. Gardner, I'm going to do the same thing. I just want to explain to the jurors that there should be a blue flashlight in front of you.

(7:33:55 - 7:34:09)

If you push one time, it's a flashlight. And twice, you'll need to see like a red laser. If you need to look at a photograph or anything... Okay.

Got it, sir. You got it? Yes, sir. Your Honor, can we just dim the lights? Sure.

(7:34:11 - 7:34:27)

And, Mr. Gardner, if you need to stand, you just have to ask them on the floor. You can just walk the jurors through what they're seeing. If you need photographs, images to orient the jurors, just please let us know.

(7:34:28 - 7:35:02)

Yes, sir. Everything is already in there. Can we go to slide number... No.

(7:35:03 - 7:35:10)

You see the highlighted down at the bottom to the left of where you're at? Fourth one over. No, no, no. Okay, where it's highlighted.

(7:35:12 - 7:35:16)

You can just use your pointer. Yes, sir. I didn't think about that.

(7:35:16 - 7:35:32)

Your Honor, can I stand for a second? Yes, sir. Slide number... Right there. There you go.

(7:35:34 - 7:36:01)

Can you orient the jurors what we're looking at and what is significant about this image? This photograph just shows the primary scene. It provides context of where everything is. That's the only reason I'm showing it, is that you kind of revisit where Mr. Daniel is, where the bag was, where the gun is, and so forth.

(7:36:02 - 7:36:19)

And Mr. Daniel Akers, you identify that person just through your study of this case? Yes, sir. Okay. And then, are there any significant bloodstains present that assist us in understanding what's occurring in this bedroom? Yes, sir.

(7:36:19 - 7:36:49)

Can we go to the next slide? Would you mind if I... And tell us what's significant. So this are two crime scene images taken by Paulton County. And what we're looking at on the carpet and on the bag is what's referred to as a pattern transfer.

(7:36:49 - 7:37:02)

And very simply, something got bloody, came in contact, and left an image or characteristic behind. When we look at that pattern, we're seeing that it is very clearly a hand. And specifically, it's a left hand.

(7:37:03 - 7:37:22)

And you can tell that by the dip at... Right here, you'll see that the fingers come across, and then there's that little dip for the opposing thumb. So this is the left hand. This can only be Miss Bowles.

(7:37:23 - 7:37:42)

Daniel cannot be the source of this. And we have no one else in the scene who had any reason to be that bloody. And so her left hand, at some point in time, got dramatically bloody and came into position there.

(7:37:48 - 7:38:17)

What conclusion can you draw from this image on the court's screen? Well, we can be confident that Miss Bowles' left hand was significantly bloody. She was on the ground or low to the floor at some point because we're getting full compression. So it's as if she were down and trying to raise up, perhaps, after leaving Daniel.

(7:38:18 - 7:38:29)

And obviously, at this point, she has interacted with Daniel's head or face in some fashion to get that level of blood on her. And you're saying, Daniel, I called Mr. Akers. Mr. Akers.

(7:38:31 - 7:38:34)

Yes, sir. That's the blood source is what you identified. Correct.

(7:38:34 - 7:38:43)

It's the only viable blood source. There was no DNA work, but in the context presented, that's obviously Mr. Akers. Okay.

(7:38:45 - 7:39:07)

Next slide, is that fair to say? Please. Nothing else about this slide that's significant? No, sir. What does the next slide represent? This is a complex pattern off to what would be Mr. Akers' left side, probably 12 to 14 inches off to the side.

(7:39:07 - 7:39:30)

It's made up primarily of passive drips, in other words, blood dripping down. Down in this area, right here, we're getting some small spatter associated to it, so that suggests, well, it tells us that there was blood dripping into blood. A blood source was above this area and dripped down.

(7:39:31 - 7:39:45)

There's some limited disruption of the blood on the carpet, so something has disturbed it. Can you show us what you're talking about? Yes, sir. You know, I apologize.

(7:39:46 - 7:40:06)

Am I okay just to tell? Here and here and then right up in here, the stains are no longer just kind of circular. It's a bad substrate to begin with. Carpet just isn't good for bloodstain patterns, but nonetheless, that's where we're seeing some disruption.

(7:40:07 - 7:40:33)

And when you say drips, and I believe, did you say the word spatter? Well, there's some smaller

spatter. Can you show the jurors? Right here, here, and here, we're going to see a few small spatter. A drip is a large, when I use the word spatter, what that means is that blood has been in flight.

(7:40:33 - 7:40:54)

So a drip of blood has been in flight. Blood that's been cast off has been in flight. But here what we're seeing is that's just telling me that the drip happened and continued for a short period of time, one drop landing into another drop, which produced the satellite so small spatter we see.

(7:40:54 - 7:41:01)

That's all it's telling us. Anything else significant about this image? No. Okay.

(7:41:02 - 7:41:09)

Next slide. Can we go back for a second? I don't think you asked. Of course.

(7:41:10 - 7:41:28)

Can you define how the stain was produced? What we know is that some blood was above that area dripping down. That's what we can be confident of. And obviously, it's got to be Mr. Achor's blood.

(7:41:28 - 7:41:51)

There are two potential explanations for this blood. One I think is less likely is that as Mr. Achor's collapsed, that if he were left oriented, could there be blood dripping down from him? I don't know how far that really is. I'm thinking it's 14, 15 inches between the space.

(7:41:51 - 7:42:19)

I don't think that's the most likely explanation. The other explanation goes back to finding Mrs. Bowles' hand so bloody. And what that, if it's that bloody and another pattern we'll see in a moment, then that would suggest that she was either standing or in this area with a bloody hand and the blood was dripping down.

(7:42:20 - 7:42:48)

So we can't be confident of exactly how it got there. I think the best explanation is that Mrs. Bowles was in this area dripping down. Mr. Gardner, when you are estimating the distance between, let's say, the hat and the blood, suspected blood on the carpet you've been pointing to, as well as the suspected blood and the, let's say, the sweatshirt area.

(7:42:49 - 7:43:05)

Has it ever been, to your knowledge, measured? No, sir. There were no crime scene sketches or measurements taken at the scene and not a single photograph taken by Baltimore County included a scale. So we're left to estimate.

(7:43:05 - 7:43:14)

I think we can estimate it effectively based on what we see. Okay. Can we now go to the next slide? Please.

(7:43:15 - 7:43:31)

Okay. Can we go to the next slide? We may have to take a step back and orient where this is. I think it's easy enough to orient.

(7:43:32 - 7:43:51)

Mr. Akers is laying in the middle of the floor. If we were standing adjacent to him and looking back at the door, that's where we are looking. That door is to the left side, just above the trash can we saw and whatever that other object area is.

(7:43:51 - 7:44:32)

This is what's referred to as a cast off. A cast off occurs when blood is adhering to some surface and I put that surface into motion and the blood's ability to adhere to that object is limited and as I change the orientation, I change the speed, blood is thrown off in a series of little spatter, those circles and ellipses. So seeing circles and ellipses in a linear, curvilinear orientation and seeing that they're changing on that surface, you'll notice they're becoming much more elliptical at the bottom.

(7:44:32 - 7:44:46)

I know that a bloody object was swung down and across that wall at about a 45 degree angle. There's some secondary off to the left. It was never photographed completely.

(7:44:47 - 7:45:01)

It's probably cast off as well. It has parallel directional angles and such. What this tells us is that an object was swung, it's about two feet off the ground.

(7:45:01 - 7:45:33)

Again, I don't have absolute measurements but it's probably starting two to three feet off the ground and it's going like that. So whatever was bloody was moved in this fashion. Can you explain or define how this pattern was created anymore? The only explanation for this pattern is Miss Bowles.

(7:45:35 - 7:46:00)

We know that when she was in contact with the floor, three feet from this area, her left hand was particularly bloody. And why she swung her hand I can't presume to know. But the left hand appears to be the only bloody source that could produce this cast off.

(7:46:01 - 7:46:34)

So sometime after making contact with Daniel's face and head, touching the bag, and as she stood up or as she's standing up, her left hand came down and across. Can you tell direction of this blood? Yes. Individuals spattered the long axis of the ellipse, the long edge, tells us the motion of the droplet.

(7:46:34 - 7:46:43)

And that tells us its orientation to a surface. And then the tails tell us which way it's going. So if you have an ellipse, you could be going this way or that way.

(7:46:44 - 7:47:24)

Those little tails that you can see over here and here, those are telling us that the motion is from up, left to right and down. And is it coming into the room or out of the room if you could tell from this photo? Miss Bowles has to be in the room and somewhere between Mr. Akers and that wall. Again, given what we're seeing and being so low on the ground, I would think she was probably in the process of getting up.

(7:47:25 - 7:47:36)

That makes the most sense. But she has to be within the room after becoming bloody. Anything else significant on this slide? No, sir.

(7:47:37 - 7:47:52)

Can we go to the next one, please? And tell us what is interesting and significant about what is on the court screen. This is simple saturation. Blood has been deposited onto the carpet.

(7:47:53 - 7:48:10)

This is where Mr. Akers' head was. There are some drips. Up here, there are some individual drips that make absolute sense.

(7:48:10 - 7:48:41)

The left side of his head had two flows that came off and so some of those drops landed on the carpet. I think what's most significant about the saturation is the fact that this tells us Mr. Akers

went down and there was no significant movement of him other than, as we'll figure out here in a minute, is that he was probably right side oriented. His right side oriented.

(7:48:41 - 7:48:54)

The two flows coming off, dripping down and into another area that we'll look at in a moment. But beyond that, there's not a lot of movement of his head. He's not been moved in that scene.

(7:48:55 - 7:49:25)

There might be, again, I don't have any measurement of that. There might be enough movement, the lighter area to the dark area for a couple inches in which his head might have moved. Can you tell from this blood source whether Mr. Akers was on one side of the room and then moved to another side or does this look like he fell? No, this is where he fell and he remained there.

(7:49:43 - 7:50:21)

Can you tell whether it looks like on the right of the picture there's a small stain? Yes, there's actually a small contact stain. Can you explain that to the jury? Right about here. Disassociated with where the head was, there's a small contact stain.

(7:50:21 - 7:50:45)

It's ambiguous, but that tells us that something was bloody not dramatically bloody, but bloody and made contact with the carpet. So there's some kind of additional action going on there that we're not seeing. Could it be hypothetically consistent with Ms. Bowles touching the back of the head? Or any portion of the head.

(7:50:45 - 7:51:04)

Not with the left hand, but with the right, yes. It would give every indication that someone else has blood on them and is now interacting. First to get the blood on her, she has to interact with the head because that's the only source of blood.

(7:51:04 - 7:51:24)

And then that contact stain tells us something's going on there. Mr. Gardner, the jurors have seen this image before, but this photograph is that law enforcement rolled the body over. Is that your understanding? At this point in time, yes, sir.

(7:51:25 - 7:51:40)

They've rolled Mr. Akers over. Now we can see the saturation in its entirety and then that secondary stain off to the top. Anything else significant in this slide? No.

(7:51:40 - 7:52:16)

The large coagulation right here, when you look at the other photographs of Mr. Akers, when he was reoriented, at one point he was slightly right-side oriented. And then when he was reoriented, that blood came down his neck into his hoodie and as he lays in final scene, we can see that coagulated material is correlating to that blood that's just flowing down into his hoodie. And there'll be pictures of that later for the jurors.

(7:52:16 - 7:52:27)

Say that again, sir? There'll be pictures of clothing later for the jurors to look at. No, I think we could go... Well, yes, there will be, I think. Anything else on this slide? No, sir.

(7:52:28 - 7:52:48)

Can we go to the next slide of what does it represent that's of significance? It's a crop of the crime scene image 0067. This is a complex pattern that's pretty ambiguous. And what we're talking about is this staining through here.

(7:52:51 - 7:53:11)

What this tells us is that blood has been dripping down into this area, not in any volume. You'll note there is coagulated material here, coagulated material here. That coagulated material is not smashed down, so it hasn't been disrupted.

(7:53:11 - 7:53:28)

There's no evidence of contact. The only reasonable explanation for this goes to the two flows. You can see a primary flow here, and you can see another primary flow here.

(7:53:28 - 7:53:40)

And they seem to correlate. So at some point, Mr. Aker's head was oriented left side. The blood's coming off those flows and dripping down.

(7:53:43 - 7:54:17)

When you say the blood on the carpet, is it oriented to this area you say or this area? The two primary points of coagulated material here and here that are not disrupted correlate effectively to where the two flows are. Again, we don't have any scales. We don't have any other images of this area.

(7:54:17 - 7:54:57)

This is about the only image we have looking down. But when I look at that and I see those two

flows coming off the right side of his face, there appears to be a correlation. Can you define more specifically how this pattern was created or did you fully do it? What this pattern tells me is that Mr. Aker's head was probably in a supine position.

(7:54:58 - 7:55:19)

He's down on the ground but his head was probably oriented slightly to his right. If someone suggested this pattern transfer, this was a pattern transfer that was caused by Mr. Aker's face, would you agree with that in any way? No. The coagulated material is not smashed.

(7:55:20 - 7:55:47)

In order to have a pattern transfer, you have to have contact. More importantly is when he was right side down, the right side of his face got pretty bloody to include the ear. If his head's coming down and we're getting some contact here, then we'd expect to see additional cavity in this area here.

(7:55:47 - 7:56:18)

There's nothing here that would suggest a pattern transfer. Are you familiar with the term face, and I'm going to spell it P-A-R-E-I-D-O-I-L-L-I-A? Peridelia is how I pronounce it, yes sir. What is it? Peridelia is a human response that's been identified as humans, we're used to looking for faces.

(7:56:20 - 7:56:53)

Peridelia, psychiatrists and psychologists tell us is we look at things that aren't faces and we see faces. You see a face in a potato chip, you see a face in a cloud, you see a face in a tree knock. There's nothing here that suggests contact, let alone that we have some aspect of Mr. Aker's face in contact here.

(7:56:53 - 7:57:10)

And for it to be in contact, where's the ear? The ear had to get bloody before the rest of the body. So, no, there's no contact here. Anything else significant on this portion of the exhibit? It's a portion of the exhibit in front of the jury, correct? Correct, nothing more.

(7:57:10 - 7:57:28)

Can we go to the next slide? And tell us what this slide demonstrates. I apologize to put Mr. Aker's up, but he is important in our understanding of what's happening. There's several areas to notice.

(7:57:29 - 7:57:41)

First and foremost is there is evidence of contact on his face. That contact we can see on the nose, we can see it. That was disrupted.

(7:57:41 - 7:57:57)

We can see contact here, we can see some contact here. If you look between the flows, you'll see that the area between the two flows shows blood. So there has been some kind of interaction with his face.

(7:57:58 - 7:58:21)

There's also what appears to be contact down here on his neck, but there were no other signs of contact. So what we know is there's some kind of interaction with his face. The other thing we know is in terms of how the head was oriented.

(7:58:22 - 7:58:39)

Initially, we had that flow going off to the right, going down into the ear. But you'll notice that there's a volume that is collected in the right eye. That is moving up the head here.

(7:58:40 - 7:58:55)

We have coagulated material, all of which is undisturbed. What that tells us is that he was right side oriented at some point. Then he was reoriented with his head slightly back.

(7:58:56 - 7:59:12)

Otherwise, we would not be getting that flow across the forehead. Once he was reoriented, there was no further contact. Then ultimately, he was reoriented and he bled.

(7:59:13 - 7:59:35)

How long? No one can say, but ultimately, all that coagulated material was developing on his face and it was no longer disturbed. You'll also notice in his beard. That's helpful in understanding his collapse.

(7:59:36 - 7:59:58)

He's got a very distinct wound that is bleeding in significant ways. But this tells us that he did not remain upright for any period of time. He effectively went to the ground very quickly and that's where the flow and his head was there when the flows were occurring.

(8:00:00 - 8:00:19)

When you talk about the beard area and the sacred point down rather quickly, are you saying that

because there seems to be no blood in this area? Well, there is no blood in that area. From here across, we're not seeing any. I mean, just compare the volume that's present on his face.

(8:00:19 - 8:00:28)

He's bleeding dramatically. If he had been upright for any period of time, that blood would have can't defy gravity. It's going to go into the beard.

(8:00:28 - 8:00:44)

It's not there. So again, the only reason I think that's important is it tells me he went down pretty quick. There are some areas right here where it's not flow.

(8:00:44 - 8:01:04)

There's no blood flowing into that area, but we're seeing some blood there which suggests additional contact, but I can't be absolutely sure. Can you show us that again? Right in this area right here. You can see it on the hairs.

(8:01:05 - 8:01:17)

There's not a specific source of blood flowing to that area, so it suggests contact. When you say contact, that means somebody else. Yeah.

(8:01:18 - 8:01:46)

Mr. Akers is not the source of any of the contact stains we see. Can't be. First and foremost, it's my understanding that based on the M.E.'s opinion, he was incapacitated, but more importantly, when you look at his hands, he doesn't have any blood on his hands other than a single drip and a tiny contact, so he's not moving his hands around and doing something to his own face.

(8:01:48 - 8:02:34)

Can you tell from this photograph whether it appears that somebody tried to get close to or touch Mr. Akers in that area while bleeding? At this point, no. The contact occurred, and then he was in this position and bled a little longer and you got a lot of volume coagulated material, so what's under the coagulated material, I don't know. The evident blood on the lips and on the chin, is that a function of something else we're not seeing? No, I don't know.

(8:02:34 - 8:02:46)

I can't. I would not offer an opinion on that. You mentioned that there may be transfer on the nose, is that the area you're talking about? That's contact.

(8:02:47 - 8:03:00)

Okay. Does that mean someone else contacted that area? Yeah. Blood doesn't flow like that and nor does it flow up, and then, like I said, you're seeing something on the neck, you're seeing up on the, just below.

(8:03:01 - 8:03:19)

you're talking about? Say again? Is that the neck area you're referring to? Yes, sir. And then you can see a small smear above or in between the eyelid and the lower portion of the eye. Can you show the jurors that? Yes, sir.

(8:03:19 - 8:03:30)

Right there? Yes, sir, that. And that's all from the third part? It's got to be. So someone touched that bloody face? Someone has interacted with his face.

(8:03:32 - 8:03:53)

And also, I believe you mentioned that in between the blood flow, is that this area here? Yes, sir. That also contact? Yes, sir. There's blood smeared across surfaces where no flow went, so that blood had to pre-exist and then the flows occurred over the top.

(8:03:54 - 8:04:30)

Is that consistent with, hypothetically, Ms. Bowles landing on top of Mr. Bowles, excuse me, Mr. Akers, who's becoming bloody, and she trying to touch his face? That's kind of ambiguous in the sense of if she landed on him, maybe. That's one explanation. I don't know what the specific interaction is.

(8:04:30 - 8:04:49)

When you combine it with the chest interaction, it suggests an initial attempt at CPR, but how far that went or didn't go, it's impossible to say. Let's talk about, we'll come back to the CPR. I'd like to ask you a hypothetical question.

(8:04:49 - 8:04:57)

I'm not saying this is accurate, I'm just asking hypothetically. Assume Ms. Bowles interacted with Mr. Akers' body. Yes, sir.

(8:04:59 - 8:05:17)

He's bloody, so she's becoming bloody. She went upstairs, washed her hands, then later returned to this room downstairs where Mr. Akers lay and bloodied her hand again. Does this seem to support such a claim? No.

(8:05:18 - 8:05:39)

Tell us why. The coagulated material in the eye, below his mouth, at the nose, the flows, none of them are disrupted a second time. The contact happened, the flows occurred, and then there was no further interaction with the head through some other party.

(8:05:40 - 8:06:02)

So, that's the only blood source available. The blood to his immediate, if we look at the bottom of the photograph, the blood to his immediate left by his ear, it's coagulated material, it is not disrupted, so it's not a source. There is no other source for her to get bloody a second time.

(8:06:03 - 8:06:08)

By the face. That's the only place the blood is. Thank you.

(8:06:09 - 8:06:14)

All right. Can we move on to the next slide or is there more to discuss? No, sir. To teach the jury.

(8:06:17 - 8:07:16)

Interesting. What are we looking at here? So, it's given access to Mr. Aker's clothing, and as a bloodstain pattern analyst, I'm interested in any and all bloodstains, particularly a spatter that might be on him, but what we're finding on his chest are these effectively elliptical kind of elliptical stains, larger masses, and you'll see that there's some limited flow going on and then there's disruption. The only explanation for these larger somewhat elliptical stains is that as he was collapsing, and we know he collapsed immediately because there's no blood between his feet and his head, at some point as he collapsed, his head was probably over his chest just a bit.

(8:07:16 - 8:08:07)

Again, it's very clear that this was a major bleeding injury, it wasn't messing around, and so volumes, what we would refer to as gush or splash, were ejected, landed on him at some point before he was completely down. The second thing that is apparent is throughout the chest it's very hard to see in this photograph but I'll try and lead you to where it is. Right here, this area right here, this area right here, there's some below this one, and again, there's evidence of disruption here.

(8:08:09 - 8:08:35)

A bloody object came in contact with his chest. Now, unless that occurred before the left hand got significantly bloody, I would presume that to be the right hand. Something's interacting with his chest area in the central chest.

(8:08:37 - 8:09:13)

what the bloodstains tell us is that he was collapsing, there was some volume, and then there's some kind of interaction at the chest level. Is that consistent with you mentioned the word CPR earlier? Well, I've trained as an EMT and your general expectation if you're going to do CPR is one of two, well, two things. One, you have to position the head and you generally position the head upright, slightly back.

(8:09:13 - 8:09:46)

And second, you gotta do chest compressions so you gotta bring your hands into play on the chest. So I'm seeing both areas interacted with which at the very least suggests something might have started. I can't tell you that CPR was conducted but the two areas where you would expect CPR to be occurred, there's evidence of it, of interaction.

(8:09:47 - 8:10:30)

So, from the slides and the photographs that jurors have seen with the blood on the face, God forbid, as well as the sweatshirt with the ellipticals and the blood are consistent with CPR being given in both places. Is that good? Is that accurate? It's necessary. Tell us whether from your analysis it is consistent or inconsistent with what you've seen that CPR may have been given in both the facial area or attentive facial area and the sweatshirt area and explain that to the juror.

(8:10:30 - 8:10:54)

The best I can respond to that is the areas required for CPR were touched. Now whether that means CPR occurred or didn't occur, I can't tell you. But the two areas where one would be required to interact in order to perform CPR were touched.

(8:10:54 - 8:11:13)

There was interaction at both. You mentioned the left hand versus the right hand just now. You wouldn't expect it to be the left hand from this pose.

(8:11:13 - 8:11:54)

Can you explain why you made that distinction? If we assume that the left hand got bloody interacting with the head and then you go to see you interact I'll just simply say you interact with the chest we're not seeing the left hand with that volume present. But then again that doesn't surprise me either because in CPR you put your strong hand down you put your weak hand on top and that's how you perform your compressions. What I can be confident of is something was touching the chest that wasn't as bloody as the left hand.

(8:12:14 - 8:12:43)

Mr. Garner did law enforcement take any of these photos? Not these no. Anything about the blood on the clothing? Alden County's approach to crime scene photography was at best D+. There were no close-up photographs taken.

(8:12:48 - 8:13:01)

I saw no photographs of anyone having examined this and then taking standard crime scene photos. I don't know what was going on there. No scales.

(8:13:01 - 8:13:59)

I don't know what was going on there that night but it wasn't standard procedure. If hypothetically Ms. Bowles tried to stop Mr. Akers from shooting himself in the face and falls on top of Mr. Akers after the gun discharge, would her clothing have been interesting to maybe tell a story on whether that was true or not? Well, it would have been interesting for both sides of the coin. Her clothes represented a possibility to find impact spatter present so obviously the issue is is it contact or is it indeterminate or distance? If the weapon was fired at some distance then what is produced is referred to as back spatter.

(8:14:00 - 8:14:53)

From the wound, the entry wound, spatter, small droplets, are ejected back in a conical pattern and they travel out three, four, five feet. If I'm in front of someone and I shoot them then I certainly have the potential to get those impact spatter on my person, on my hands. Just the same if the claim is I went to the ground and I was on top of him, well we can see from the sweatshirt there were small saturations and so in contact those saturations probably would have been transferred onto her and if depending upon where she ended up, her clothing up here, if she fell forward into the volume that's coming off his face, those would have been present.

(8:14:54 - 8:15:05)

So the clothes represented from a BPA perspective a significant point to evaluate. You say BPA, just to tell the jury. Well it's a pattern analysis.

(8:15:05 - 8:15:36)

And you're aware that no photographs were taken of Ms. Bowles' personal clothing? There were no photographs taken of her at the crimes. Sorry. Have you seen any photographs of Ms. Bowles' person taken by law enforcement on this night? No, none at the house, none at the hospital.

(8:15:37 - 8:16:11)

Have you ever seen any of the clothing that was worn by Ms. Bowles? The clothing, by all accounts the clothing was not recovered. And if it would have had photographs, quality

photographs, or the clothing itself, is that something that you would be able to come in and tell the jurors if anything significant was found in the clothing with a photograph? Of course. It's a standard thing that criminal investigators are taught.

(8:16:11 - 8:16:27)

Whoever finds the body, you take the clothes. It's not an iffy, you do it, because you don't know what your issues are going to be later. Those clothes might very well have solved the issue at hand.

(8:16:27 - 8:16:55)

I can't tell you they would have, but they had the potential to solve whether the shot was fired from some distance or whether the shot was fired close up. Is this enough for this slide? Yes, sir. I'd like to go to the next slide and tell the ladies and gentlemen of the jury what is significant about this slide.

(8:16:56 - 8:17:38)

This is the revolver as it lays in the scene and very clearly, again, Mr. Akers can't do that, but very clearly Ms. Bowles has interacted with the weapon at some point. The revolver is not a real good substrate surface on which to evaluate the blood stains, but what we're seeing effectively are contact stains. So this would suggest just based on the volume that once again her left hand probably held the revolver at some point.

(8:17:39 - 8:18:12)

The other interesting thing about this is if you were looking almost straight down but not perpendicularly and you'll note that there's what we refer to as superposition layering. The gun is below the hand so we can be confident that the gun was not simply dropped to this position as the hand lay there. So either the gun has been moved or the hand has been moved at some point.

(8:18:14 - 8:18:59)

Whether that's the gun, well it obviously would not be the gun's original position where the gun initially was when Miss Foles picked it up we have no idea and this is a secondary position and whether the arm or the hand was moved or whether the gun was pushed in some fashion I don't know but there's been some alteration there. And you said either the gun or the hand, could both of them have been moved? You couldn't exclude that. There's a demarcation right here, can you explain to the jury what that is if anything that you can tell? That's not the best photograph of that area.

(8:19:01 - 8:19:35)

There are two, actually that's the context thing, there are two stains on his thumb. One is a contact, it's kind of square, you can see it there in the photograph and the other is a single drip that fell in this orientation down. Given the other drips that are on his left side, I'm not surprised by finding that there, but it's a single one so that may suggest that the arm was further out adjacent to those other drips at some point, but it doesn't have to be.

(8:19:36 - 8:20:07)

Can you just point to the jurors using your laser, the contact versus the drip? We can't see the drip in this photo, the contact's right here and I believe the drip is right alongside it. There's another photograph that shows it more effectively, I don't have it in PowerPoint, but once again, it's an ambiguous, it's a drip, that's what you know. And then we have that minor contact.

(8:20:09 - 8:20:56)

May I have a moment? Yes. May I approach the court for a moment? Yes. May I approach? Please.

(8:20:57 - 8:21:22)

I don't want to be presumptuous, so there may be other ones, but think of all the exhibits that have been admitted into evidence, those state's exhibit number 172 assist in what you need us to explain to you. May I approach? Yes. May I approach you? Please.

(8:21:22 - 8:21:40)

And if this is not it, I'm not trying to limit it. Thank you. Actually, I've got that backwards.

(8:21:42 - 8:22:10)

This photo shows both the drip, and the drip's actually on the thumb, so we're looking at the top of the thumb. So does that photograph that's in your hand assist? Neither of the these patterns is probative, but yes, in trying to understand where they are, I had it backwards. I was thinking that was the square context thing.

(8:22:11 - 8:22:29)

So there's a drip on the thumb, and there's a context thing on the wrist. And what exhibit number are you referring to? 172, and then it's circled 64. May I approach you, Please.

(8:22:29 - 8:22:47)

I'm just going to put out the screen so the jurors can see what you're... Yes, sir. If you can teach us using your... Actually, we'll do that later because the investigators state it will take a minute to flip over to the jury. Can you just hold it? We'll come back to it.

(8:22:47 - 8:22:57)

We will come back to it, okay? Yes, sir. Actually, let's just do it with the court's permission. Can you just walk it along the jury ramp and show them which is the drip? Yes, sir.

(8:22:57 - 8:23:17)

You're on set, okay? Yes. May I approach you now? Can you just do it in two sections for the jury so they can see what you're doing? I was backwards there. What we're looking at on the phone is this elliptical stain right here.

(8:23:17 - 8:23:25)

That's in the drip. Because it's going, the ellipse is downwards. That just tells us that a drop in down struck that.

(8:23:25 - 8:23:33)

That's all it tells us. The second stain was the contact stain up here between this. And that's just in.

(8:23:33 - 8:23:46)

There is some form of contact. So this is the drip, and you see that. And this is the contact.

(8:23:51 - 8:24:10)

And this is the drip. Now I'm putting it backstage because it's a number 172. Okay.

(8:24:11 - 8:24:36)

Mr. Gardner, anything more significant on this image that's on the honorable court screen? No, sir. Can we go to the next slide please? And tell us what this represents. When you come out of the bedroom where Mr. Akerson is found, and you turn to the left, you end up at the bottom of a stairway.

(8:24:37 - 8:24:56)

And of course, as we're looking, that would be the left, if we're going up the stairs, that's the left wall and the banister. And what we have there, got a contact stain here. We have some contact stains up here.

(8:24:57 - 8:25:15)

This one's ambiguous. Remember I was talking to you about spatter drips, tend to be elliptical. This stain could be a drip, but the characteristics are muted and it's like nobody can identify every

fingerprint, nobody can identify every DNA.

(8:25:16 - 8:25:52)

I don't know for sure if that's contact, like a bloody fingertip came in contact there, or if that was a drip coming off of something. What we know, and there's a small amount right up here, so what we know is that sometimes subsequent to being bloody, Ms. Bowles is on the stairwell and she touched things. Now whether she's going up or down, no one can tell you, but she has been in that area.

(8:25:54 - 8:26:18)

She's not as bloody now, and there's a reason for that. Can you explain that? She lost a lot of blood when she touched the carpet, and then when she did the cast off, that threw a significant volume of blood off of her. So now the hand is not as bloody as we see it when it's inside the room.

(8:26:20 - 8:27:00)

And is that just a function of what areas she was touching, or is that a function of some period of time? You know, it doesn't take long when blood is on skin for it to dry, I mean literally minutes sometimes, completely dry. So the only thing that's interesting is that the level of blood inside on the cast off and the pattern and when you get here, we're not as bloody at this point. That could be as simple as somebody wiping their hand and then touching.

(8:27:01 - 8:27:56)

Can you from your analysis and time on this matter, can you tell the jurors what the right hand, you keep talking about the left hand, was at least at one time bloody, of Ms. Bowles, can you talk about what the right hand was? I don't have any photographs of Ms. Bowles. I can draw a belief that the right hand is not as bloody based upon what I'm seeing on the chest. At the point in time when she first interacts with the head and then she, one assumes she interacts with the chest for whatever reason, and then she touches throughout that period of time, that left hand is significantly bloody, but we're not seeing that.

(8:27:57 - 8:28:29)

But we're seeing contact which would suggest the other hand has probably got a little bit of blood on it, but it's very difficult to lay a specific claim. My opinion based on everything I've seen is that the right hand is bloody, but not dramatically. When you say not dramatically, have you seen any photographs of Ms. Bowles' person including her right hand on the night? There are no photographs of her condition.

(8:28:30 - 8:28:54)

Would that have been significant to have seen so you could explain to the jurors what the right hand looked like bloody? In my opinion, that's a significant lapse. Again, we always in investigations, we're concerned with people who find bodies. We want to know how were they interacting.

(8:28:55 - 8:29:07)

So her clothes and her condition, her hands, are all important. Her face. If she had attempted some kind of CPR, there would be some evidence of that.

(8:29:09 - 8:29:32)

And that's just any old body that finds a body. But if your belief is that Ms. Bowles has committed this act, then that's triplicate as to why you want that clothes and you want to photograph her. I have never understood why that didn't occur.

(8:29:33 - 8:30:04)

When you talk about like the left hand is getting has less blood on it because over time blood dries on skin, you said. And you said about touching let's say the carpet and the bag. How about, do we have any evidence that the hand or hands rubbed on the clothing? Again, these are great questions but none that we can resolve because we don't have any photographs on the clothing.

(8:30:09 - 8:30:33)

Anything else on this? No, sir. Can you just orient the jurors what we're looking at here? We're in the upstairs of the house in a bathroom and I believe it's adjacent to the master bed. I'm not sure.

(8:30:33 - 8:30:47)

I don't have any crime scene sketches. But the crime scene investigator observed these stains in the sink and they photographed them. Okay.

(8:30:50 - 8:31:18)

Is there any way to know when these stains were deposited in that sink? First, they appear to be dilute blood. When a droplet dries, it dries from the interior out and as it dries, the red cells and all of the cellular material migrates outward. So when we have dilute blood, it will look exactly like that.

(8:31:19 - 8:31:38)

We'll have a stain with a red perimeter. So this looks like highly dilute blood. There's no shine coming off of the basin, so there's nothing to indicate moisture.

(8:31:39 - 8:31:54)

But in terms of when this might have occurred, assuming it's blood, that could have been there an hour. It could have been there three days. I can't tell you that.

(8:32:10 - 8:33:21)

Assuming hypothetically that, um, this is blood, there's a stain in the If Ms. Bowles came in contact with, let's say, her six-year-old child, her mother, and if she got blood on them somehow, do you know if those people maybe washed their hands? Assuming it's blood, it was never presumptively tested, it visually looks like blood. I can't offer any opinion as to who or how those stains got in the basin. Have you seen any photographs of Ms. Bowles' hands when she's at the house or leaving the house to indicate whether her hands were recently washed or cleaned? I've never seen photographs, but I think it was Detective Ogden who reported that her hands were still bloody at the hospital.

(8:33:21 - 8:33:45)

There was a reference to, by a that while at the hospital, her hands were bloody. Were you able to identify any other blood stains in this basin or potential blood stains? For the most part, no. Your Honor, I'm going to have to stand.

(8:33:45 - 8:34:01)

I don't want to hit you with illusions. Right here on that photograph, there may be another contact stain, dilute blood. It's not all blood, it's very limited.

(8:34:02 - 8:34:54)

And honestly speaking, you can barely make it out in any photo. My concern as to whether that is blood or that's just a lighting phenomenon, you've got an object straight in the back that could be, you know, reflecting light, is the crime scene investigator was right there. She's taking this photo, so if it was blood, why didn't she take that photo? Beyond that, we're not seeing blood on any other areas or surfaces in the bathroom, nothing on the walls, no indication of blood on the light switch, so effectively, no, we're not, we have no evidence of additional blood other than the visual in the basin.

(8:34:57 - 8:35:39)

Hypothetically, considering the condition from the limited information we have of Ms. Bow's left hand, I'm just saying her left hand, when she is leaving the downstairs playroom or bedroom where Mr. Akers got the delays, and had she washed her hands in this basin, would you expect any additional stains on the surrounding surfaces? A lot of variables there. It's how did she wash her hands, did she get them wet, now she's got the blood wet again. You have to interact with the

faucet.

(8:35:41 - 8:36:15)

I don't see anything that directly supports it, but again, it goes back to this issue as how quickly has it dried, and again, assuming that she's the source, what is she touching as she's washing her hands? That's a really tough one to offer any conclusion to. I want to talk with you about any more slides, by the way, for the jury? No, sir. Thank you very much.

(8:36:20 - 8:36:49)

Do you understand like Blue Star, Luminol, do you know what I'm talking about? Yes, sir, I teach Luminol to students. Tell the jury what Luminol is. Luminol is a chemical along with Amido Black and Leuco Crystal Violet.

(8:36:49 - 8:37:01)

These are chemicals that we use to enhance latent blood. The blood that you and I can see, we refer to as patent. Latent means it's invisible.

(8:37:01 - 8:37:22)

So if I'm interacting in that sink and I'm leaving those bloody drops behind, when I go to touch something, believe it or not, I'm leaving blood behind. It's not dramatic, you probably wouldn't see it, but that is the function of Luminol. It allows us to visualize latent blood.

(8:37:22 - 8:37:58)

And Luminol, Lumosine, Blue Star, they go by different trade names, but they're all using the same basic chemical. And what happens is we spray that chemical onto a surface where we believe there may be blood. You put on an oxidizer and a chemical reaction occurs and what you get is water, oxygen, and the creation of light, visual light.

(8:37:59 - 8:38:24)

And that light is generally blue to blue green, can be as far as lime green. So when we evaluate that response, we're looking at duration, intensity, and color. It's very effective for knowing if someone's cleaned up an area, we can go and spray and we can see the stains.

(8:38:24 - 8:38:50)

If there's very limited blood present, it will give us a response and so we have some indication that blood is present there. And that's what we use it for. And to bring out contrast, you know, somebody steps in blood and steps again, the pattern that's produced might not be all that dramatic, but if I hit it with luminol, photograph it, well, I can see the entire pattern.

(8:38:55 - 8:39:16)

What is a positive test with luminol or blue star or any of these products? When you get a light response within that blue to lime green color. If you get that color reaction, that's a positive presumptive test. If I get purple, that means I've got heavy metals present.

(8:39:17 - 8:39:33)

There are other light reactions. If I get a flash in the pants, white, sparkly, that's an indication of bleach or cleaning products. So what I'm looking for is that blue or blue greenish color response.

(8:39:34 - 8:39:57)

That is a positive reaction. If it's reported that there's a light reaction, what is that considered? Assuming that the individual who used it understands blue star, then a light reaction is a positive presumptive. That just means that the volume of light produced was limited.

(8:40:01 - 8:40:55)

If someone conducts a second test, the mist you talk about, the same object, can you explain to the jurors what the second spray could do? Well, the standard is the second spray anyway. Luminol is a visual thing, so we photograph the response so that we can say, hey, we had a reaction, here's the photograph. So the normal course of events is that I've got my camera and my tripod set up, I spray, I get a reaction, I immediately move my item into my field of view, I give a light spray, and that reaction should still be continuing if it's a standard reaction, a good amount of blood.

(8:40:56 - 8:41:10)

If I'm not, if it's starting to fade, well then I set everything up, I spray again, and my camera goes to work. The problem with our eyes is we don't see effectively that light. The light's there.

(8:41:11 - 8:42:01)

The moment you put the Luminol on, until it burns itself out, it is producing light. That's why we use a camera, because the CCD of a digital camera picks up the light more effectively, and we do 10, 30 second exposures, and we can visualize through the camera the actual reaction. From your analysis of what you review in this matter, from your training and experience with Luminol or Blue Star, have you seen any photographs or video of when this test was... No, sir, it was mentioned, but I saw no photographic effort.

(8:42:03 - 8:42:27)

Do you know how much time passed between the two sprays? No, sir, it wasn't mentioned. Is it

significant, the time between the two sprays, and if yes, can you explain to the jurors why? In this context, yes, because in the initial effort, there was a light reaction. The second effort, they observed no reaction.

(8:42:28 - 8:42:52)

Luminol is a chemical, and once you spray it, what it's doing within the red blood cells are hemoglobin and an Fe2 iron ion, and what happens is that red cell lies as it breaks apart. It exposes that iron ion. That's what the luminol is reacting to.

(8:42:52 - 8:43:26)

Okay, once you've exposed it, and once you have the luminol on it, that chemical reaction is burning through until there's nothing left. It's just going to keep burning and burning and burning, even if you're not visually seeing it. So, if I spray and I have a light, and then I allow a period of time to pass, that could explain a negative response, and then the other potential would be procedure.

(8:43:26 - 8:43:51)

What does that mean? Well, your eyes, don't visualize this as effectively as a digital camera. I teach this stuff all the time, and we're in a dark room. You want to be in dark, but in order to interact, get your spray bottle over to the side and get your camera, you've got to turn some kind of limited light source on so you can see.

(8:43:51 - 8:44:10)

A lot of folks these days use their camera phone, or the phone itself, excuse me. You just hit the screen, and of course you get enough light you can see. Any light source, however, impacts your ability to see the reaction.

(8:44:11 - 8:44:42)

It messes with your night vision. So, again, as a procedural thing, if I'm in the dark and I were to use any light source to read to the effort, that could eliminate my visual ability to see the luminal reaction, particularly if it's very light or limited. If it's a pretty standard, I mean, if it's a normal response, there's a good amount of light, these aren't issues.

(8:44:42 - 8:44:47)

Let me interrupt you, sir. Yes, sir. Right now? Yeah.

(8:44:47 - 9:15:19)

Okay. All right, Gaynor's here, and we'll take a half an hour and we'll be back up here shortly. Sir,

can I get back to the court report if that's okay with the court? It's fine by me.

(9:15:19 - 9:15:23)

It's still on me. Yeah. Okay.

(9:15:23 - 9:15:25)

Sure. Okay. Can we just leave it at that? Of course.

(9:15:25 - 9:15:27)

Thank you. Of course. Okay.

(9:15:31 - 9:15:58)

On the Blue Star Luminal, can you tell from any reports, documents that you reviewed, what was the lighting like in that downstairs playroom area? No, sir. All it said was, I used, I think he said Blue Star, but he used the chemical, he got a light reaction on the first effort and then on the second spray he didn't get anything. That's what was in the report.

(9:15:59 - 9:16:34)

No information about the lighting? No, sir. All right. Were you able to evaluate any more than you already discussed with the jury, the condition Ms. Bowles in terms of how bloody she was or how bloody she wasn't and what areas of the body were bloody? All we have are the contact stains that were left behind obviously by her.

(9:16:35 - 9:16:47)

Again, lacking photographs of her, her condition, her hands, and having clothing. No, nothing more can be said. Okay.

(9:17:03 - 9:18:01)

Based upon the position, and we'll use some photographs if needed, of Mr. Akers in that downstairs playroom bedroom area, regardless of who shot him, how he was shot, I'm putting all that aside, can you make any conclusions about his physical position at the time of injury? Based on where his feet are, and combining that with what the doctor indicated, he was incapacitated, that would put him probably approximately three feet from the doorway. Was he facing the doorway? Do you have an opinion? One would assume yes, because, again, some portion of his momentum took him straight back, and he fell supine. There's no evidence of movement right, left, anything like that that we can be confident of.

(9:18:01 - 9:18:39)

So, yeah, I would have him facing the door, probably within three feet of the door, no less, or no, yeah, no more. Okay. Based on your analysis, is there any doubt in your mind that someone touched Mr. Aker's face and sweatshirt in the chest area? No question about that.

(9:18:42 - 9:18:49)

So the answer is yes, someone touched it. Yes, someone touched it. There is no that's not a question.

(9:18:50 - 9:19:11)

There are contact stains. The only way you get contact stains is if you touch. From your analysis and insight, is there any doubt in your mind that Mr. Aker's head was moved in some fashion as he laid on the floor in the bathroom? Reoriented from slightly right down and up.

(9:19:12 - 9:19:31)

Is it possible there's a couple of inches of movement side to side? That's possible just based on the size of the saturation. Beyond that, no other movement. Could that movement of the head include lifting the head to do your work? In a limited fashion, yes.

(9:19:34 - 9:19:51)

But I think if you lifted his head dramatically, you're going to see the flows down from his mouth down onto the beard. I want to show you what has been marked. It's Ms. Gold's number, 179 through 187.

(9:19:51 - 9:20:22)

May I approach you, sir? Yes, sir. Just take a look at the numbers. Yes, sir.

(9:20:22 - 9:20:34)

I recognize these. And what are they? They're floating photographs that I took in 2022. And are they accurate of what you noticed? Yes, sir.

(9:20:34 - 9:20:57)

I move for the admission of Ms. Gold's numbers, 179, 180A, and then through 187. Your Honor, can I just mark 180A? May I approach you, Mr. Gordon? Yes, sir. You want 180A? I'll just take them all.

(9:20:58 - 9:21:01)

Oh, okay. Thank you, sir. Here you go.

(9:21:03 - 9:21:13)

And I'll take those too. Thank you, sir. Like this flag around? Yes.

(9:21:24 - 9:22:06)

Very fast, Mr. Gordon. Yes, sir. And just can you announce which exhibit you're putting on there? This is a photograph up in the right shoulder of Mr. Aker's sweatshirt.

(9:22:07 - 9:22:58)

There's some contact stains, some exploration stains. It's like one of those larger splash-type patterns going on here. And then over here, I'm going to get back to that other way, I'm not sure we're seeing them clearly.

(9:23:01 - 9:23:07)

That's one. There's one up here. A little spatter.

(9:23:08 - 9:23:22)

Again, flying through the air in some fashion. It's radiating, so it's some form of impact. The only explanation of that, we're going to find it here, we're going to find it right here underneath on his jacket.

(9:23:23 - 9:23:54)

That's exploration stains. So at some point after he was injured, he had to have had either some breasts or somebody was pumping on his chest, and that air being forced out of his lungs or expelling that air from his lungs, produces, you get blood intermixing with the air and it gets expelled out. It comes out in a generally irradiating pattern.

(9:23:55 - 9:24:13)

So there was certainly exploration stains around here. They're pretty limited, so there's no indication that he was breathing for any period of time. And just the same, you could not exclude that that could come from chest compressions.

(9:24:13 - 9:24:41)

That's possible with CPR. We see it. Well, we previously looked at the one area, the chest area, and that's that one.

(9:24:41 - 9:25:11)

And then we were just looking at that right shoulder, and those stains are up in this area. Can you

tell the jurors what we're looking at here? These were reported to be the boots Mr. Akers was wearing. And anything of interest in this photograph, 181? I think there was a small contact at two.

(9:25:12 - 9:25:17)

Nothing probative. There was another. Go to the next photograph.

(9:25:17 - 9:25:34)

Can we try the next photograph? If you don't mind, 182. I'm trying to remember where. I think it's at number one.

(9:25:34 - 9:25:44)

Go one more. These are just basic photographs, evidence establishing. When I go in close at one and two, if there's something there at that time, I photograph it.

(9:25:45 - 9:25:56)

The only function of this photograph is to give you a relationship. This is orientation? Yes. Can you show the next one? Yeah.

(9:26:01 - 9:26:32)

So number one, you're going to see a series of five small circular stains. They come across as potentially spattered, but because of where they are and because of the shape, the only way they'd get there is they had to come in perpendicularly. So the shape of a blood stain tells us its impact angle as well as its direction angle.

(9:26:32 - 9:26:41)

So this is the side of the booth at one. These stains, whatever they are, are coming through here. I thought them odd.

(9:26:44 - 9:27:01)

They were never tested, so I don't even know if they're blood. By the time I'm looking at them, they're black. They weren't photographed early on, so I don't know if they had a red tint to them after a while, blood oxidizes and it turns black.

(9:27:02 - 9:27:22)

So they're just there. Initially, I kind of assumed somebody would test it for blood. No, just another photograph.

(9:27:44 - 9:27:55)

I'm a blood stain pattern guy. Wherever I find blood, I'm kind of interested in it. So I'm taking these photos not knowing what they may tell me or not tell me.

(9:27:55 - 9:28:39)

Ultimately, there appears to be some very light contact on that aspect of the boot. Just a repeat. Again, this just helps you understand that the light contact is on the right boot, on an aspect that was oriented up.

(9:28:41 - 9:28:50)

There is nothing probative about that. It's some form of contact. And I'm looking at the boots after Mr. Ecker's been removed.

(9:28:50 - 9:29:16)

That may be a post-incident artifact, something produced when they were interacting with him. Again, at one, they appear to be small spatter. What they're from, there's nothing we could relate to the event of him being shot that would correlate to what we're seeing there.

(9:29:16 - 9:30:25)

Because effectively, again, they're on the boot here. The boot comes around. You can look at the boot and you can look at the boot here, and look at the boot here, and you can look at here, and you can look at the boot here, and you can look at the boot here, and you can look at the boot here, and you can look at the boot here, and you can look at the here, and you can look at the boot here, Not from Mr. Akers.

(9:30:25 - 9:30:51)

Mr. Akers did not do that, no. Also, can you just tell the jurors what is this over here I'm pointing to? It's up in the hood area, 164? That's post-incident, he's bleeding out, there's blood. Is that consistent with the blood found, the blood source behind Mr. Akers' head when he rolled over to his right side? Well, actually, the blood that we were talking about comes out the hoodie somewhere down here.

(9:30:51 - 9:31:06)

As the hoodie's laying back behind him, the blood flows down off of, I'm pretty sure his neck, and then comes out right around the base of the hoodie. So that's just contact, again, ambiguous. And this is the base of the hoodie? Yeah.

(9:31:08 - 9:31:37)

Anything else from Mark Lowe in 164? Up here, on the string, remember I described this idea that there was an expiration event. And there are about three or four small spatter on the string. And obviously, they are up, the string is on his chest, they are oriented up, the spatter came down.

(9:31:38 - 9:32:27)

Again, this is just telling us that at some point immediately after he was injured, he either was able to breathe a couple times, and or if there were significant compressions of his chest, we find that that, in CPR, that that can produce similar expirated events. And if, hypothetically, you were able to see Ms. Bowles' clothing, if it was taken by law enforcement and preserved, would you be able to juxtapose her clothing in the scene as well and explain potentially to the jurors what her clothing showed? Well, the potential would be, two potentials. One, would she reported that she went down on him.

(9:32:28 - 9:32:50)

So all of the large saturations when he's first injured, those are wet. And they're saturation, so just like when you kneel down in the green, in the grass, in the dew, it's gonna saturate. Well, when she comes in contact, if the two surfaces are in contact, there's gonna be a transfer, there's gonna be that transfer.

(9:32:50 - 9:33:10)

So that had the potential to support or refute that statement. The presence of the expectorate on him, it didn't last long. Again, there's no indication that he was breathing for any extended period.

(9:33:10 - 9:33:38)

There might be 15 at most that I could find. If she were down near him when that was occurring, then you might expect to find those similar spatter right at her mouth area, or below her mouth area, effectively. Cuz you gotta get a proximity for a CPR attempt.

(9:33:39 - 9:33:59)

So if she had done that, and there were, this was ongoing, it's possible you might have found similar spatter on her. I think that's less likely, but not possible. But nothing's preserved for us to show, or for you to show the jury? No, sir.

(9:34:00 - 9:34:08)

That's cuz law enforcement didn't preserve it in any way. They did not. Okay, next number is 165.

(9:34:13 - 9:34:32)

165. Can you orient the jurors? Well, in this photo, you're not gonna see it. In fact, let's just go to

the next one, cuz what we're gonna look at are two spatter that are on his left thigh.

(9:34:33 - 9:34:40)

And spatter are very difficult to photograph. There you go. This should be 165.

(9:34:44 - 9:34:56)

There's a small circular elliptical shaped stain right there. One A, and then there's a one B very near to it. These spatter are on his left thigh.

(9:34:57 - 9:35:14)

They're generally circular, but on a fabric, all we can do is, we can't tell you the angle. All we can do on fabric is give you an approximation. Did it strike perpendicular, or did it strike acutely? These two spatter struck generally perpendicular.

(9:35:14 - 9:35:24)

In other words, coming down, not like this, but down this way, when they struck his left thigh. Go ahead. Next.

(9:35:25 - 9:35:36)

Here we have the 167. I'm just worried the jurors, what they look, they may not have seen. They've seen the clothing, but the picture of the clothing that you took.

(9:35:37 - 9:36:00)

Well, again, off the photo on the right is the one B. One A is the spatter we just looked at. And then at one, we're gonna see some contact staining right there. And then that one B is right over here, which we should see a photograph of.

(9:36:00 - 9:36:05)

And this again is the pant. Left thigh, left front thigh. Okay.

(9:36:07 - 9:36:17)

168, in the previous photograph. Just another photograph, same thing. 169, if you don't mind.

(9:36:22 - 9:36:32)

More. Photographing spatter on dark gray is a very difficult task. And so I take multiple photographs of the same thing.

(9:36:33 - 9:36:43)

Continue. If you don't mind. 170, in this photo, is being displayed or not? Just more of the same.

(9:36:45 - 9:36:57)

171, if you don't mind. I'm sorry, Judge, I don't have 171 through 178 in the record yet. It was- At 164 to 170 was the grouping.

(9:36:58 - 9:37:08)

Okay. 171 to 170. Can I, do you need to see these photographs again, are these photographs you took? No, sir.

(9:37:08 - 9:37:18)

Are they photographs you took? Yes, sir. Are they accurate? As best I can, obviously. When I'm trying to photograph something on dark gray, it's difficult.

(9:37:18 - 9:37:32)

They're as effective as I could accomplish. But they are the photographs you took when you analyzed the clothing in 2022? Yes. Your Honor, I move for the admission of 171 through 178.

(9:37:33 - 9:37:42)

Any objection? No, Your Honor. Thank you, Madam Court Reporter. Being displayed, Your Honor, is- 171.

(9:37:46 - 9:37:53)

171. Thank you. And I don't know on the screen if you're going to pick it up.

(9:37:57 - 9:38:07)

The bloodstains are right there. Again, just a small spatter. There are only two present.

(9:38:07 - 9:38:17)

Thanks, Your Honor. 172. I think it's a little more evident now.

(9:38:20 - 9:38:38)

That's what it is. Now when I was able to get good contrast, it's a little easier to see it. That's 1B.

(9:38:39 - 9:38:57)

And where is this? Also on the left? Left thigh. Lower? No, upper thigh. Can you just point out to

the jurors what you have noticed? And how did you define that? It was what? It's an individual spatter.

(9:38:58 - 9:39:21)

Again, a spatter simply tells us that it's a droplet that's been in free flight. Same thing. I don't have any other questions.

(9:39:22 - 9:39:32)

Thank you, Mr. Gordon. Yes, sir. I'd like to move to admit, Your Honor, into evidence.

(9:39:32 - 9:39:42)

The defendant has hit a 163A on a caliper. There's been a lot of talk and discussion about it. I think it would probably be better to just get it removed from the record.

(9:39:42 - 9:39:45)

That's right. All right. Admit.

(9:39:45 - 9:40:03)

Thank you, Your Honor. Good afternoon, or good evening, Mr. Gardner. Good afternoon, sir.

(9:40:03 - 9:40:12)

A few questions just to recap and make sure I understand some of the things you've covered thus far. Yes, sir. If you'll allow me that, sir.

(9:40:16 - 9:40:38)

One of the areas you focused on, or I guess the crime scene analyst focused on it initially on December 27, 2019, and then you focused on it in your analysis, was the upstairs primary bath or the master bathroom. Do you remember that focus, that picture? Yes, sir, the bathroom. The basin, specifically.

(9:40:38 - 9:40:46)

Yes, sir. You said, I wrote down, and in fact, I think you put it in your report, your written report. You put it on your last page.

(9:40:46 - 9:41:04)

I don't know the number of pages, but on your last page, you put the photograph indicated to you that someone washed a bloody object in the master bathroom. Correct, sir. That's consistent with

your report, but also based on your analysis and your memory today, right? Yes, sir.

(9:41:04 - 9:41:18)

Do you know anything, or were you aware at all of a camouflaged pistol holster being a part of this case? Same one, sir? Yes, a camouflaged pistol holster. Oh, the pistol holster. Yes, sir, I'm aware of it.

(9:41:18 - 9:41:33)

Were you aware that kind of plays an important part in this case? Do you agree? Well, I don't know if it's important, but it's there, and it obviously has to be considered. But it's something that was notable, at least to me, to remember it. Yes, sir, clearly, I remember it.

(9:41:33 - 9:41:43)

I saw it, and I believe I even had, yeah, I'm pretty sure I got to look at it. You photographed it, maybe? I believe I did, sir. And you examined it, sir? Yes, sir.

(9:41:43 - 9:42:01)

It's not a mystery. Do you remember that being an issue in the case? Yeah, I think the issue was that it was found in a safe at some subsequent point during the investigation. And you don't know, sir, if it was possibly one of the objects that you talk about being obviously been washed in that basin.

(9:42:01 - 9:42:16)

You don't know if it was that holster, do you? I couldn't exclude it, no, sir. I mean, we don't have a clue what was washed. So, you know, if you said, hey, could it have been the holster? I couldn't exclude that.

(9:42:16 - 9:42:32)

Especially because you said that, is it fair to say you said the defendant's left hand were then, I think you said saturated with blood, right? Not saturated. When she made the first contact on the floor, there was heavy blood. Yes, sir.

(9:42:32 - 9:42:41)

When she made the cast-off, there was still a good amount of blood. Yes, sir. Then after that, we're not seeing the same level of blood.

(9:42:41 - 9:42:53)

Well, do you remember seeing a picture of the doorknob? Yes, sir. And that was heavily... No, sir,

that would be an overstatement. There was a light contact stain on the doorknob about yay big.

(9:42:54 - 9:43:06)

It was a very light smear. And then on the locking mechanism, there was some additional light stain. Saturated, I mean, I understand you're a lawyer, but my concept of bloody is much different than yours.

(9:43:06 - 9:43:18)

So, no, not saturated. It was enough blood on the... let's just assume that she unlocked the door for the police. Yeah, I visualized that she left a whole blood stain.

(9:43:18 - 9:43:25)

She left a stain on the door handle, right? Yes, sir. She left a stain near the master railing or the railing. Yes, sir.

(9:43:25 - 9:43:32)

The stairway. Correct. Did you see the stain that was left upstairs in the master bedroom on the wall? On the wall, yes, sir.

(9:43:32 - 9:43:35)

The same thing happened up on the wall. High on the wall. You saw that? Yes, sir.

(9:43:35 - 9:44:02)

Yes, sir. So you would agree that this is a person that was leaving... if we assume it was the defendant, we know it was somebody, and we assume it's the defendant, would you agree there was enough blood to leave these marks throughout the house or in those areas? Well, I think we can be confident it's Ms. Bowles downstairs at the door, and I don't know who is doing that in the bedroom. It's kind of... it would suggest Ms. Bowles.

(9:44:02 - 9:44:17)

I think we could assume that there. Again, maybe it is Ms. Bowles in the basin, but then you have a problem because she reappears at the hospital with bloody hands. So that doesn't really work.

(9:44:20 - 9:44:37)

But beyond that, yeah, I think most everything we see we should attribute to Ms. Bowles. And you understand, she says she... you know this, but she says she picked up this holster after the coma was discharged, picked it up, took it upstairs, and put it in a safe. Yes, sir.

(9:44:38 - 9:44:50)

Okay. And she had enough blood to leave in these different areas of the home, but then no blood was found later on the safe, according to the investigators. Is that your understanding? I'm sorry, on the holster, later.

(9:44:50 - 9:45:10)

Yeah, well, I would disagree because I don't know... when a criminal investigator says, I used aluminum and I got a light reaction, that tells me he got a light reaction. That means there was blood present, not any significant amount. So I would not agree that there was no blood there.

(9:45:13 - 9:45:27)

He said he got a reaction, and that would presume blood. It's a presumptive for blood. Did you know he said he got a light, faint white reaction... White green.

(9:45:27 - 9:45:46)

...that would be consistent possibly with a cleaning agent? No, white green is... the lime green he's going to get is a positive presumptive for blood. A light, a really bright, when you have cleaning products, what you get is this flash. Boom.

(9:45:47 - 9:45:59)

And it sparkles. You get little reds and blues in it. So all I can do, he's on his own to explain what he saw, what he observed.

(9:45:59 - 9:46:12)

He didn't document it. I don't know what he saw. But incorporating green in his description would suggest to me that he was getting a presumptive test for blood.

(9:46:13 - 9:46:33)

That's as far as I can go. And this is somebody who would surprise you to know, based on his documentation that you've read, this is somebody who's worked 25 years in a crime scene investigation and actually started a crime scene unit in this county. Would that surprise you? Based on the effort presented in that crime scene? Yes, sir.

(9:46:33 - 9:46:44)

I would expect somebody with 25 years would have done a much better job. Right. And he said, would you disagree with this statement, that when you see blood and it just pops more? No.

(9:46:44 - 9:46:57)

You don't agree with that either? First and foremost, there's this myth it's only blue. That's not true. It is blue and you can get to light green.

(9:46:57 - 9:47:16)

When you first hit it, if there's sufficient, you should get an intense reaction you can visualize. So depending upon his description, we probably would be in agreement there. And then depending upon the volume present, your intensity should stay.

(9:47:17 - 9:47:26)

If you keep everything, all the lights off, your intensity should stay. That's variables of how much blood is present. And there's any number.

(9:47:27 - 9:47:35)

Sometimes your luminol doesn't work. I've had blue star. I've applied blue star in actual crime scenes and have it fail.

(9:47:36 - 9:47:44)

So like I said, too many variables. I can only judge what he told, what he wrote. And he said he saw a lot of white green.

(9:47:46 - 9:47:56)

So you don't, obviously you haven't had the opportunity to review his testimony made over over the last week. You haven't looked at that. No, but his testimony isn't what's important to me.

(9:47:56 - 9:48:13)

It's a crime scene process and you document it. And you would agree, you know that the administration of blue star does not require a person to be in a completely dark room. That's false.

(9:48:13 - 9:48:19)

That is not true either. Blue star came out. It's a third generation recipe.

(9:48:19 - 9:48:30)

It's kind of interesting because part and parcel of what they said was, hey, you can photograph under ambient light. And there is a truism there. But I teach this.

(9:48:30 - 9:48:47)

I bring students in and I'm running blue star, lumosine and luminol reagents. And trust me, that was marketing that you don't have to have the lights off. That's if you're looking at a light reaction, you're not going to see it.

(9:48:47 - 9:49:04)

What blue star gives and what blue star does for you is it produces a light longer. If it's if you've got a decent amount and that allows you to photograph it under ambient light. Anybody who says, oh, I don't need to have the lights off, doesn't understand how to use it.

(9:49:04 - 9:49:21)

Anybody, including Detective Parker, who also teaches students how to administer blue star? Well, then he's teaching incorrectly. And what about with this set? Have you seen pictures of this set? I think I have seen the pictures of the set, sir. At some point.

(9:49:21 - 9:49:36)

With the set, you're aware that Detective Parker didn't see anything. Yes, sir. But at what point did he conduct the test? I don't know how long.

(9:49:37 - 9:49:41)

March. Okay. And the event happened December.

(9:49:42 - 9:50:00)

So you had a three month period in which if somebody cleaned up, somebody washed the wall, washed the safe. If you had told me he didn't find anything that night, I'd go, okay, I'm with you. I understand.

(9:50:01 - 9:50:06)

But three months later. A lot of time. A lot of time.

(9:50:06 - 9:50:17)

And we have no idea what could have happened in between there. A lot of time for somebody to try to clean the blood off that safe. Well, if that was your purpose and intent, I guess you could say that.

(9:50:17 - 9:50:46)

But you could also just want to have a clean room. I want to look at image 57 on 163A, please,

with you just a moment, sir. I can try to get to that.

(9:51:05 - 9:51:41)

Do you remember going over this on direct examination image 157 on, I'm sorry, image 57 on defense exhibit 163A, like alpha? Yes, sir. Is it true, did I hear you correctly to say, sir, that you're saying that this entire, all of these stains are from, you believe, the defendant? Is that right? No, sir. Okay.

(9:51:41 - 9:51:50)

What did you say about? I said there are two potential explanations. Okay. One could be the defendant, which, frankly speaking, I think is less likely.

(9:51:50 - 9:51:53)

Oh, excuse me. Let me get this ready. Yes.

(9:51:53 - 9:51:55)

Okay. From Ms. Bowles. That's what I thought.

(9:51:55 - 9:52:00)

Yes, sir. I think that's the best explanation for those things. I'm sorry.

(9:52:00 - 9:52:05)

I thought I had that right. That was me. You're way above me, so I thought you had passed me on by.

(9:52:05 - 9:52:18)

But we're on the same page now. So if I'm looking at image 57 on defense 163A, I thought you said that all of these you do expect to be from the defendant, right? Dripping off of her. Right.

(9:52:18 - 9:52:32)

But you don't have any idea the time that would have elapsed between the discharge of the firearm and when those drips would have occurred. You don't know, do you? You don't know that those drips. Let me be clear with the question.

(9:52:33 - 9:52:42)

You're asking when the drips occurred versus when the gunfire occurred. Yeah, you don't know how much time may have elapsed between the discharge of the firearm and these drips. Not

whatsoever.

(9:52:42 - 9:52:58)

You have no idea on that. All right. Can I go to image 92? Yeah.

(9:52:59 - 9:53:05)

You remember this photograph from your direct examination, sir? Yes, sir. Image 92. Correct.

(9:53:07 - 9:53:22)

You said that this image and this pooling of the blood, the saturation, can I use that term? The appropriate saturation. Okay, the saturation. It indicated to you that there had not been heavy manipulation of the body.

(9:53:23 - 9:53:31)

At any point. Is that right? Let me clarify that. The head's not moving around.

(9:53:32 - 9:53:42)

I thought that was something like what you said. Okay. With respect to the rest of the body, could the head stay stationary and other aspects of the body move? I would never know that.

(9:53:42 - 9:53:51)

Sure. Somebody could be moving feet up and down or an arm up and down, but with respect to image 92, you would say that the head remains stationary. Yeah.

(9:53:51 - 9:53:58)

He went to that position and there might be movement two or three inches left or right. That's possible. Okay.

(9:53:58 - 9:54:17)

Just based on lighter staining, and then you get over there and you've got the heavier saturation coagulation. My point on this is, sir, on image 92, there's nothing to indicate to you, sir, that there had been heavy manipulation of the head area by EMTs, for example. Is that right? No, I saw nothing to indicate that.

(9:54:17 - 9:54:22)

Right. EMT came in after the fact. All the flows were undisturbed.

(9:54:23 - 9:54:53)

The coagulated material was undisturbed, so there's no evidence that EMT directly interacted with the head. You don't have any indication that there was heavy EMT activity or police activity in the manipulation of the body to perform life-saving exercises? You don't have any? Well, based on the investigative reports, it's my understanding that the officers came in, they did not initiate CPR, and the EMT did something. I don't know.

(9:54:54 - 9:55:11)

EMT checked for life signs of some nature. Now how they did that, I do not know. So your understanding, which is consistent with image 92, is that law enforcement, I think they called signal 48 or something to indicate that the gentleman had passed away, and then EMTs didn't do any kind of heavy manipulation of the body either.

(9:55:11 - 9:55:21)

Is that correct? Yes, sir. I think that it would appear that way. Okay, and that's consistent with the saturation you see here that indicates to you the head was in a stationary position for some period of time.

(9:55:22 - 9:55:46)

Yes, sir. All right. And image 67 of 163A is kind of a similar question.

(9:55:47 - 9:55:51)

67 may not be an EMT. It's not an EMT. Let's go this way.

(9:55:54 - 9:56:04)

67. Same type of question here. I think you said you didn't see any disruption in the blood on these stains here.

(9:56:04 - 9:56:13)

Correct? No, sir. I said that the coagulated material is undisturbed. If you'll point that out.

(9:56:13 - 9:56:19)

Hang on a second. There we go. So right here, there's a small volume of coagulated material.

(9:56:20 - 9:56:27)

Right here, there's a small volume of coagulated material. And those have not been disturbed. Same type of general question then.

(9:56:28 - 9:56:40)

You don't see a lot of disruption in the head region or the body in general in this picture that would have indicated heavy EMT activity in the room. No, sir. No heavy lifesaving activity? I would dare say that it did not occur.

(9:56:40 - 9:57:01)

And nothing to your knowledge so much EMT activity that would have disrupted the scene is EMTs found or police found? I'd say basically, sir, you've got the head and that's what you know hasn't been manipulated. Beyond that, there's nothing that specifically suggests EMT activity. Okay.

(9:57:14 - 9:57:40)

So you have circumstances on the hooded sweatshirt that may be consistent with the application of CPR, right? Could be. Again, what we know is there is contact on the chest. Is that, in my experience, is that consistent with what I need to do to do CPR? Yes.

(9:57:41 - 9:57:53)

Do you remember, did you listen to the 911 tape? Yes, sir, I did. Okay, you did. So you remember when a 911 operator asked the defendant, would she go back down and try to perform CPR, and she said no.

(9:57:53 - 9:58:13)

Yes, sir. You remember that? I recall that. One thing I wanted to ask you about, and Mr. Steele asked you a question, he said it could have been important for somebody to preserve the clothing that the defendant was wearing on that night.

(9:58:13 - 9:58:44)

It could have offered evidentiary value to somebody like you, right? And he said one of the reasons it could have offered evidentiary value, I think he said it could have explained yes or no, but one thing he said is it could have had impact spatter on the clothing, right? Is that possible? Yes, sir. Well, I'm saying if that were, if we assume a distant shot, then there could very well have been impact spatter on the clothing. Okay.

(9:58:45 - 9:59:20)

So in your experience, and you gave kind of an explanation, you said, well, I think Mr. Steele actually explained what that was, and you said when there was an impact to the entry wound, it could have produced back spatter or impact spatter back toward the shooter, or the clothing,

right? Yeah. Back spatter is almost impossible to predict, but it does occur under certain circumstances, and certainly a bullet, we refer to it as impact spatter or back spatter in this particular instance. Don't assume anything other than that means a bullet was at a point source and we put it under a force or an impulse.

(9:59:20 - 9:59:38)

So even though it's a gunshot, it's still referred to as impact. Could there have been impact spatter if the weapon was at a distance? Yeah. And could there have been then, sir, impact spatter on the weapon itself, as there could be as you've described on the clothing? Could be.

(9:59:38 - 9:59:42)

But there wasn't. You know that, right? Did not observe any. Right.

(9:59:54 - 9:59:56)

If I can go to image 63,