GA v. Lacy Boles - Day 6

(14:58 - 15:29)

So, I guess that's no better than it was yesterday. I expected it to work better when we put it under the microphone, but it didn't. It didn't compare? It didn't compare.

(15:33 - 16:06)

So, let's see. Well, I'm not a tech guy. I'm going to have to bring somebody else in from outside.

(16:06 - 17:58)

Yeah. Libo, do you know if the jurors are here? I don't think they are. All right.

(17:59 - 18:09)

Good morning, Mr. Steel. Good morning. We think they are all here, if y'all are ready.

(18:11 - 18:39)

Yes, sir. Bring them out, please. You don't need me to see you? No.

(23:58 - 24:20)

Sure. It was time to talk to him. We would ask for an extra 20 minutes if we could have that to talk to this witness during the lunch break.

(24:22 - 24:34)

And I guess he will be here at lunch. Is that correct? Because the intention is to let him be called out of order, and he will be their first witness after lunch, is my understanding of what we're trying to do here. That's fine.

(24:34 - 24:43)

And whenever it's convenient for the trial progress. But he's not far. I just need maybe 30 minutes' notice.

(24:44 - 24:54)

And I told him that that's not – Mr. Treadaway said that he didn't speak with him. Mr. Warren said that they did speak. But I said regardless, that's not what we're doing.

(24:55 - 25:27)

So he's going to be open, and I'm going to share all my – before that, before they meet me, I'm

going to share all my notes with the prosecutors as well so that they're more educated. And I also said if it's just too much information, I don't know if the court wants to do this, I don't know if the state wants to agree, but he just can't be here after today. But if you do Zoom, if they need more time, I can just Zoom him Monday or Tuesday with the court's acknowledgment if they want more time to understand and digest.

(25:27 - 25:35)

So whatever accommodations need to be made, I'm not trying to limit it to 20 minutes. All right. I appreciate that.

(25:35 - 26:10)

It sounds like Plan A may work, but we might have to even consider the Zoom option. So we'll take a slightly longer lunch today, and hopefully that'll work. Sure.

(29:36 - 32:24)

Yes. This is probably redundant, but this witnessing type of motion that we discussed yesterday, she's Mr. Aker's aunt, and she states that Lacey Boles hit her in 2015. We believe that should not come in, and that Lacey's children, I was told this is wrong, but were born positive, testing for drugs, would be hearsay.

(32:24 - 32:39)

It's untrue, and I believe it's untrue anyway, and I don't understand why that would come into a trial. And there was a recording, I believe. It won't.

(32:40 - 32:45)

Very good. Okay. And there was a recording that I believe the prosecutor said last trial they would not claim to use.

(32:46 - 32:55)

So I assume that's fair. I think that was a recording that was made on another student, and this witness coming up was certainly recorded on that user. Okay.

(32:56 - 33:01)

Makes it easy. Thank you. Good night.

(33:01 - 33:43)

Good night. Good morning, everybody. Welcome back.

(33:44 - 34:40)

Does the State have another witness? Ma'am, good morning. I'll swear you're in. If you would please raise your right hand.

(34:40 - 35:06)

Do you swear or affirm the testimony you're about to give in the matter before the court? I do not, sir. Virginia Edwards. I did.

(35:08 - 35:19)

He was my brother. Very. Okay.

(35:24 - 35:51)

Absolutely. Yes, I am. I would see Dan probably more than not during the week.

(35:51 - 36:03)

Four times a week, five times a week he would come over and stop at our house. Every holiday. Mm-hmm.

(36:04 - 36:21)

Yep. Yes. Friday night.

(36:24 - 36:43)

Mm-hmm. Well, he called me. He was getting a mitt for his daughter.

(36:46 - 37:02)

Yeah, like a little girl's mitt. He was going to put her in softball when she was old enough. But it was... She's great.

(37:11 - 37:33)

A lot of Dan's things were at our house, and there's still a lot of things there now. Yes. Football, baseball, basketball.

(37:38 - 37:45)

His right hand. No. No.

(37:50 - 38:02)

His right hand. I've never seen him do it, so I assume not. No.

(38:10 - 38:15)

No. No. Absolutely not.

(38:44 - 39:02)

No. No. Most of the time.

(39:05 - 39:21)

Regularly. Mm-hmm. Torsion.

(39:22 - 40:02)

Tumultuous. I do. Can you tell the jury about that? When you say she, are you referring to this event, Lacey Boles? I am.

(40:17 - 41:06)

I believe so. Yes. Okay.

(41:09 - 41:20)

I did. No. Yes, twice.

(41:24 - 41:42)

A little surprising. The first time, I saw her through glass doors, so she was out back, and she was just loading herself up with body spray. And then the second time, she came in the courtroom and was just... didn't acknowledge any of us.

(41:45 - 41:53)

I'm sorry. Yeah, a little bit. Yes.

(41:58 - 42:42)

When you say you never saw her acknowledging any of us, who was it of us? Everyone that was there for Dan. Me, his two daughters, all his family. I 100% believed he was employed.

(42:43 - 42:55)

Well, no. Not at all. No.

(43:01 - 43:23)

No. No. No.

(43:28 - 44:13)

No. Mm-hmm. Yeah.

(44:13 - 45:20)

May I approach a witness, please? Yeah, Dan. You mean as Dan? Yeah, it's Dan. Yes.

(45:44 - 46:01)

No, it wasn't an old photo. I was there when it was taken. October 11th, a couple of years before he passed.

(46:03 - 46:10)

Maybe two. No, no, no. Not at all.

(46:34 - 46:53)

Actually, I did once see her going into a tanning salon. That was the only time. Yes.

(51:18 - 51:25)

Yes, Your Honor. Go ahead. Thank you.

(51:28 - 51:53)

Go ahead. Okay. That sounds fair.

(51:54 - 52:03)

Thank you. Next witness. Take cause of Aaron Edwards.

(53:10 - 53:20)

Thank you, sir. Please have a seat. Could you state your name, please, sir? Aaron Edwards.

(53:21 - 53:45)

And how are you employed? I'm a sheet metal worker at BHM Metals. Locator at 5. Yes, sir. It was not at all.

(53:54 - 54:42)

My whole life. How often would you see Mr. Akers during the course of your life? And when you

saw him, what types of locations do you see Mr. Akers? Yes, I was. What did you call Mr. Akers? How did you address him? Danny.

(54:42 - 55:12)

Danny? And so when you saw Danny, did you continue to see him all the time during the course of his life? Yes, sir. When he lived locally, you know. And when was the last time you saw Danny? Probably Thanksgiving.

(55:15 - 55:29)

What Thanksgiving would that have been? 2019. So that was Thanksgiving before he died? Yes, sir. And where did you happen to see Danny? We were at my grandparents' house.

(55:30 - 55:38)

Oh, I'm sorry. We were at my sister's house for that Thanksgiving. Now, what sister's house were you at? Amanda's.

(55:40 - 56:10)

And that's your sister? Yes, sir. And what kind of a gathering was that for Thanksgiving? About how many people were there? 20 maybe, 15, 20. And when you saw Danny, who did he come there with? Lacey and their kids, their younger kids and his kids.

(56:11 - 56:33)

Okay, now when you say his younger kids, how many kids are his younger kids? Three. And then you said the other children, what other children was there? Lindsay and Ava. And they were also Mr. Agardanny's children as well? Yes, sir.

(56:34 - 56:54)

Okay, now what was the atmosphere at this Thanksgiving gathering? Typical. Good. And did you happen to see or pay attention to this defendant, Lacey Boles, at that gathering? Not particularly.

(56:57 - 57:27)

Now, since you've been around this defendant several times, about how many times a week would you be around Danny? I mean, it varied, you know. From, you know, a couple times a week to, you know, we'd go a month sometimes, you know. We were close, we would exchange messages and stuff, but, you know, I would see him often enough.

(57:29 - 57:48)

Now, did you ever work with Danny? Yes, sir. And where did you work with Danny? It was the

Piedmont Atlanta job. We both worked at Knox at the time, and we were on different job sites, but I would come work weekends with him when his job site had overtime available.

(57:53 - 58:26)

And how many years were you apart from Danny in life? What were your age differences? We were five years apart. And what kind of a relationship did you have with Danny as far as knowing his capacity to use a right hand or a left hand or something like that? I knew Danny very well. He was one of my best friends.

(58:31 - 58:43)

He was right-handed. I'm sorry. Did you ever see him use his left hand to throw a ball or do anything with his left hand? No, nothing.

(58:46 - 59:19)

And you knew him from the time you were born about to when he died, is that right? Yes, sir. Now, when you would see Danny from time to time, was he ever with this defendant? And that's Lacey Boles. Do you recognize Lacey Boles in court this morning? Yes, sir.

(59:20 - 59:32)

Can you point her out and describe what she's wearing? She's over there. She's wearing a black jacket. Let the record reflect he's identified the defendant Lacey Boles.

(59:36 - 1:00:27)

When you would see him with this defendant, were you able to notice any type of relationship they had with each other? Did you ever become aware of that? I was aware of it, of them having arguments and stuff, but aside from maybe Dan coming to stay at my house a time or two or stay at my grandparents a time or two, they, I feel like, did a pretty good job of presenting themselves. I'm sorry, go ahead. Presenting the better side of the relationship, I guess I would say.

(1:00:30 - 1:00:54)

Who called the shots in the relationship about what's going on from what you observed? Oh, I can tell you that. All right. And did you ever see Danny in such a state that you were concerned about his mental well-being? No, sir.

(1:00:55 - 1:01:21)

Did you ever see Danny in such a state that you felt like maybe mental health authorities might need to be contacted to help him in some situation he was struggling with? No, sir. Now, were you aware of any prescription drugs that Danny was on? Yes, sir. And what was that? Adderall.

(1:01:32 - 1:01:50)

And what was the general mood of Danny? You said you never saw him in any more concern about his mental health. What was his mood generally when you were around him? Happy. Energetic.

(1:01:52 - 1:02:02)

And were you, you obviously were around him on Thanksgiving. Were you ever around him on Christmas? Yeah, most years. Yeah.

(1:02:03 - 1:02:18)

And what was his attitude around Christmas time? Good. He was a family man, you know. That's all the questions I have for you.

(1:02:29 - 1:02:38)

Just the way you approached it? Yes. The way you applied for us? Yes. Thank you.

(1:06:21 - 1:07:40)

Ladies and gentlemen, let's take a coffee break, okay? Y'all give me a minute and then we'll put on the record what we discussed. And then we'll just step off and brief you while I'm talking. Sure.

(1:19:17 - 1:19:26)

Whenever you're ready, Mr. Steel. I'd just like to record a little bit of the party with Franklin, F-R-A-N-K-L-I-N, versus State. It's 2-5-1, Georgia, 77.

(1:19:28 - 1:19:36)

Okay. This is a concurrent opinion, but it's the majority opinion. The last three paragraphs, they're not numbered.

(1:19:36 - 1:22:48)

It has a 2 next to it, but it's not from Division 2. Okay, and I'll give them the court quarterload time to search for it. I'd like to give the lawyers a chance to put on the record what we discussed. In the last two bench conferences, it was the same thing, but... I can start, or I'll just let you.

(1:22:48 - 1:22:59)

Why don't you go ahead, Mr. Steel? Sure. The first one was during Ms. Virginia Edwards' testimony today, Your Honor. We approached the bench with the knowledge of Ms. Boles.

(1:23:00 - 1:23:17)

Ms. Boles is about to hear what happened. If you have any questions, we will answer them as well. But what my recollection is that Mr. Layl and I, the two prosecutors, approached the Assembly Court's bench outside the presence of the court reporter and the jurors and Ms. Boles.

(1:23:17 - 1:23:55)

Ms. Boles was in your courtroom and watched us approach and knew that we were approaching for this purpose, and I specifically stated, potentially on the record, that Ms. Boles, for purposes of that conference, is waiving her right to be president under Georgia, the federal constitution. I didn't say all that, but that's... I said that Ms. Boles will be waiving her presence. The issue discussed was that Ms. Virginia Edwards stated, I'm not saying that this is verbatim, and we asked at the appropriate time for the Assembly Court to permit the court reporter to enlighten us what was actually said, but the prosecutor elicited testimony.

(1:23:57 - 1:24:09)

Did Ms. Edwards ever see Mr. Akers carry a gun? That's my notes. Of course, we'll go by the transcript. Ms. Edwards was excused without asking any questions.

(1:24:09 - 1:25:08)

She did not remain in the courtroom pursuant to the Assembly Court's order because we were going to take this up at a later witness. What we asked for is we believe that testifying that never saw Mr. Akers carry a gun after she said that she's so close with him, they're brother and sister, they've been together her whole life, and that's misleading to the jury, and we'd like to test her knowledge of her relationship with her brother because there's a 2002 Cobb County plea of guilty by Mr. Akers to being a party to a crime, although it's him personally and the other gentleman who testified yesterday. Burglarizing a home and firing a weapon and then playing guilty to theft by receiving, I believe it was at least six firearms, different calibers.

(1:25:08 - 1:25:20)

That's my memory. The court said no, not at this time. That's the initial ruling, and I'm not saying it's not the permanent ruling, but that's what the Assembly Court said.

(1:25:20 - 1:25:39)

It's Ms. Boles' number, and I can't remember the exhibit number, but I will get it right now. It's the 2002 Cobb County guilty plea that I'm referring to, and for the record, it's not in evidence at all, and it's number 144. Ms. Boles.

(1:25:39 - 1:26:26)

Then we had another witness who came, I believe, right afterwards, Aaron, A-A-R-O-N Edwards, also a family member of Mr. Akers. During his testimony, the prosecutor said at the bench, well, we approached the bench to answer your question, and we said again, Mr. Lowell and I asked the Assembly Court to again permit us to test the witness's knowledge of Mr. Akers since he stated he's very close, knows him, and that he described Mr. Akers as a family man. I don't know many family men who commit the crimes that Mr. Akers commits.

(1:26:26 - 1:26:34)

I'm not trying to disparage him. I'm just challenging the witness, characterizing him as a family man. I believe that this is sympathy.

(1:26:34 - 1:27:02)

I believe that it opens the door. Yes, the prosecutor said the defense already proved Mr. Akers' prior convictions, got in the Douglas County case of probation revocations, that there's a Cobb County case. I understand that, but there's another case in Cobb County that the jurors did not hear about, and we would like to test this witness's memory of why do you call him a family man? Is this what you call a family man? Now, he may say he's changed.

(1:27:02 - 1:27:22)

That's fine, but right now there's no change in here. And the court, at that point, I believe we broke and we stepped back, and I believe that is what happened outside the presence of Ms. Foltz. If I left something out, I wouldn't use it.

(1:27:22 - 1:27:45)

It was all partly about whether or not she was a family man. That's my memory of what happened. The prosecutor's position was they were asking about Christmas, if Mr. Akers, how was his demeanor at Christmas, without limiting it to any Christmas, I think, but they may limit it to this Christmas.

(1:27:45 - 1:27:52)

We're talking about 2019, and that's where Happy came from, and he's a family man. I believe that was the prosecutor's position. All right.

(1:27:53 - 1:28:01)

So there's two things. Number one, I agree that's what was discussed. Perhaps with a little bit more detail now.

(1:28:02 - 1:28:48)

But anything else you want to say, because the motion is allowed to. John, the state would point out for the record, obviously, with Mr. Edwards' testimony, absolutely no mention of any gun was ever addressed with regard to anything. And the question that I recall that was put to Mr. Edwards, Mr. Aaron Edwards, was what was Mr. Akers, Danny Akers' demeanor at Christmas? And he, you know, I was expecting happy or whatever, but he said happy, and he's a family man, which, of course, is not responsive to my question.

(1:28:48 - 1:29:02)

And I don't believe that had any bearing on saying that this is a family man that never does anything wrong or anything like that. Obviously, he knows this man. He knows he's known him all his life.

(1:29:03 - 1:29:40)

He knows about those convictions, I'm sure, and that is not painting a picture of a wholesome individual in the entirety of his life. And I don't believe that did open the door. I think that the issue before the court is whether these other items are more probative or prejudicial with regard to the witness' testimony and his victim, and I don't believe that there needs to be a pile-on at this particular moment, and I would urge the court not to allow the defense to proceed with that.

(1:29:41 - 1:30:27)

All right. One of the reasons I asked a court reporter to tell me out, and she did, is because I want to know, you know, is it a cumulative where we're getting multiple comments that look like good character? We know everybody just heard this witness say family man, which is good character, and I know you didn't ask for that, but you all have an obligation to, and I know you do, talk to witnesses outside and tell them what they can't get into. Then I heard some tests, and by the way, I've got the case that Mr. Steel just cited, the Franklin case, and I found another, Hill v. State, H-I-L-L v. State, 243 Georgia Appeals 124, saying someone's a good father is good character evidence, and that's pretty similar to what we heard here.

(1:30:28 - 1:30:46)

I heard testimony about him going to church, I think, with the family. Donovan City State, 279 Georgia Appeals 407, that's evidence of good character. I heard evidence about him coaching children, being a good worker.

(1:30:48 - 1:31:08)

Holt v. State, I'm sorry, Holt, H-O-L-T v. State, 352 Georgia Appeals 506, 2019 case, that's evidence of good character, so I just think there's a cumulative effect, and I think you've opened the door, and that's my ruling. All right, let's get the jury back. All right.

(1:31:17 - 1:32:31)

May I approach you at the exit? Sure. Could we get our witness back, please? Welcome back, sir. You can have a seat.

(1:32:31 - 1:32:42)

You're still under oath, okay? Okay. You may have one on your arm. Yes.

(1:32:43 - 1:33:28)

Pardon me. How long have you known Mr. Akers? My whole life. I'm sorry for the loss.

(1:33:29 - 1:33:47)

Thank you. All right. I just wanted to do that without car accidents.

(1:33:47 - 1:34:53)

Yes. Y'all worked it out? No. Okay.

(1:35:12 - 1:36:07)

Okay, I'm so sorry. So I don't forget, note from the jury says, jurors agree to work up to 8 o'clock on Monday and Tuesday and not work at all on Wednesday. That's court to exhibit 8. Yes.

(1:36:07 - 1:37:05)

Yes. Yes. Yes.

(1:37:09 - 1:37:12)

Yes. Yes. Yes.

(1:37:13 - 1:37:20)

Yes. Yes. Yes.

(1:37:21 - 1:37:28)

Yes. Yes. Yes.

(1:37:28 - 1:37:30)

Yes. Yes. Yes.

(1:37:30 - 1:37:43)

Yes. Yes. Yes.

(1:37:43 - 1:37:46)

Yes. Yes. Yes.

(1:37:47 - 1:37:57)

Yes. Yes. Yes.

(1:37:58 - 1:38:03)

Yes. Yes. There cannot be a boundary there, or put his character at issue to the point where it could be repeated.

(1:38:03 - 1:38:11)

His character could be repeated, his good character could be repeated by theft by receipt, because that's what it boils down to. That's all it is. It's on the scimitar.

(1:38:12 - 1:38:27)

So I don't know if it possibly affects the court's decision on the matter in a certain way or more. It's not a violent crime at this point, like it was when we were arguing about this. Obviously now when you look at it, it's not violent, it's not the actual transportation or possession of firing a firearm.

(1:38:27 - 1:38:48)

So I think it's a perspective where I would never try to invade the podium of this court. But I think it's possibly something the court might find difficult. All right, well, the basis of the court's ruling was that I felt like the state had opened the door to good character evidence.

(1:38:48 - 1:38:59)

And I think that theft by receiving is bad character evidence. So that wouldn't change my ruling. And just for the record, to be complete, Your Honor, I disagree.

(1:38:59 - 1:39:30)

But I do agree that there seems to be a page missing of the sentence. It says on the face of the indictment that Mr. Akers pled guilty to count two and three, which is what was announced, the firing the weapon into the doorway of Mr. Davis, causing criminal damage to property, as well as count three, which is what theft by receiving the six firearms. But what the prosecutor, and I'll show it to them just so that they're aware.

(1:39:30 - 1:39:53)

It appears that the Honorable Judge Lark Ingram in Cobb County wrote this sentencing sheet. For count one and two, and it's missing, and it has count three and four. And the reason I say that is because for the co-indictee who's a witness, Mr. P-O-A-G.

(1:39:54 - 1:40:08)

He pled guilty to count one, two, and three. And what we have here is going to be the same as the sentencing sheet. And it only goes on one page.

(1:40:08 - 1:40:33)

It talks about count one and three, and he pled guilty to count one, two, and three. The sentencing sheet has count one and three on page one, but then when you turn it over, then it has count two on a separate page. So I'm comfortable that we're just missing a page, but regardless, it's just the door was open, so.

(1:40:34 - 1:40:44)

Anything else? But I can show it to the prosecutor if you want to talk about it, if they want to see it. I would just ask that the cross-examination subject matter be limited to FRC. That's all we have today.

(1:40:44 - 1:41:00)

It says count three and count three only. Whether or not there's a good basis that something's missing, then that's on the defense to reduce the document or introduction, as evidence in this case, that he pled guilty to one, two, three, or two, or three, or whatever. All we have is the sentence order, which appears to me to be complete.

(1:41:01 - 1:41:07)

It says guilty on count three. So I would ask that it just be limited to FRC. And that's just factually wrong.

(1:41:07 - 1:41:22)

On the face of the indictment, it says the defendant, meaning Mr. Akers, waives copy of the indictment, lists the witness's formal arraignment, and pleads guilty to count two and three. And does it say what count two is? Yeah. Okay.

(1:41:22 - 1:41:35)

Can I see it? Yeah. May I approach? Yes. Regarding this, your honor, what is factually wrong, what I said is on the sentence order, it shows count three.

(1:41:35 - 1:41:53)

How is it factually wrong that on the indictment, it says two and three? What I said is factually correct. On the sentence order, which is all we have to show we've pled guilty to on the sentence order by the sentencing judge, it's count three only. What someone's, sometimes we're in court, we're busy, people sign accusations or indictments.

(1:41:53 - 1:42:00)

That's not what matters. What matters is on the sentencing order. He couldn't be revoked for a count that he put on the sentencing order.

(1:42:00 - 1:42:19)

I'm sorry, from a count that he put, or a guilty plea that he put on the face of the indictment. He couldn't be revoked for that, he would never sentence to that, because we have to go out and sentence him. If it matters, we're clearly missing the first page of the sentencing, because it's a count one and two that are not addressed in the sentence on three.

(1:42:19 - 1:42:34)

And it says count four is no price. You pled guilty count three, we're missing the additional page that shows count one should be no price, that's the burglary, and count two is the sentence. I just don't want to, we don't have it, but we'll get it.

(1:42:34 - 1:42:44)

It's the clerk's office, I'm confident in Cobb County they have it. We'll supplement the record. But regardless, face of the indictment says that he pled guilty to count two and three.

(1:42:45 - 1:43:02)

And when you look at Mr. P-O-A-G, Mr. Progg's sentence, they're separated. We're just missing a page. If you keep going back, you'll see Mr. Progg, and he has sentenced on count one, two, and three, and count four was no price.

(1:43:03 - 1:43:15)

And the judge has it separated. She says count one and three on one page, and then count three, or two and four on the next, and count four, no price. We're just missing a page, it's clear to me.

(1:43:15 - 1:43:33)

Isn't the onus of the movement for the admissibility of this evidence, isn't it the onus of the clarity

and completeness on the movement? We didn't produce this evidence, the defense did. And if they're missing a page, then we should have to, a theme of this case is we should have to guess. We should have to guess.

(1:43:34 - 1:43:48)

What the defense had gotten in the entire exhibit, we wouldn't have to guess what judge in the most sense did that to them. It's incomplete, that's on the movement for the admissibility of the exhibit. But on the first page, it says, and this is, I guess, when they joined the issue.

(1:43:49 - 1:44:07)

He pleads guilty to counts two and three, and then we see what counts two and three are. Yes, sir. And as the court's seen and had experience with a hundred times, there can be negotiations in the middle before the ultimate sentence.

(1:44:07 - 1:44:27)

Somebody can sign up on Wiccan forms in the face of the indictment, and further negotiations can go on. Prosecutor can change their mind and say, that's fine, you can just plead to count three, or whatever. And that's all we have on the sentence order for the exactitude of the matter that's at issue, is all we have is to show that he was sentenced to count three.

(1:44:27 - 1:44:49)

And I disrespectfully say that while what's on the face of the indictment could be indicative that he intended to plead to one and two, or may have pleaded one and two, all we have is that he pleaded count three. And again, the onus of clearing the completeness is on the movement for the criminal exhibit. You can't just guess that he was convicted on one and two, because of what it says on the indictment.

(1:44:49 - 1:45:04)

Like I said, let's say that somebody brought a petition to revoke his probation on count one, and he came forward with a sentence order and said, I only pled on count three, here's the sentence order. And they said, well, you signed up on one and two, I mean, that doesn't matter. You can go by the sentence order.

(1:45:04 - 1:45:27)

I mean, why didn't you give your statement by the one and two? So I'm gonna admit it, and you can argue what you want about the significance of that, so. Thank you, sir. All right, does anyone need a break? We're ready to go.

(1:45:30 - 1:46:23)

All right, stand back. Sir, welcome back. You can have a seat.

(1:46:24 - 1:46:56)

Try to minimize that happening. Yes, sir. Did you know that on Halloween of October 31, 2019, that Mr. Akers wrote a text message saying that he was depressed and lonely and sad? Did you know that? No.

(1:46:57 - 1:47:45)

Did you know that the next month Mr. Akers wrote an email saying that he was in turmoil? I mean, a text message, excuse me, that he was in turmoil. No. Did you know that Mr. Akers ever said that he was going to bury Lacey and himself and the children would go to foster care? Were you aware that to you during this time, he seemed okay? Right, he was okay.

(1:47:46 - 1:48:40)

And did you know that the night before he's gone for the death, so the night of Saturday, December 21, 2019, he was writing a text message how nobody looks at anyone but him. If he can't support the family, can't feed the family, can't give shelter to the family, did you know that? No, sir. Were you aware that he was in bad financial straight that he couldn't even take out $30 or $40 from an ATM machine? I didn't know that.

(1:48:42 - 1:48:50)

We've been there, I've been there, so it doesn't surprise me, he was an apprentice. Did you know? Yep. Okay.

(1:48:52 - 1:49:41)

And were you aware that in 2002, so we're going back 17 years before he got the big pass, did you be aware that he pled guilty to criminal damage to property in the second degree by intentionally damaging the property of Mr. Davis in Cobb County? To the window, the wall, the door, and the furniture of Mr. Davis without Mr. Davis' consent by breaking the window and firing a gun. Damage exceeding $500 along with a man named James Poag, P-O-A-G. Were you aware of that? I don't remember that.

(1:49:42 - 1:50:23)

Were you aware that on that same date in February 26, 2002, that Mr. Akers along with Mr. James Poag, P-O-A-G, received and disposed of stolen property. By receiving stolen property, two 9mm handguns and four .40 caliber handguns, the property of Mr. Davis, that Mr. Akers knew or should have known the property was stolen. Were you aware of that case too? You're talking

about when he was 16 back in high school? Do you remember that? I don't remember that.

(1:50:24 - 1:50:28)

I was supposed to be sold at the time, 11. Say it one more time. I don't remember that.

(1:50:29 - 1:50:37)

I'm gonna show you what's been marked and admitted. I move for the admission of Ms. Ball's number 143. Move for objection.

(1:50:37 - 1:50:50)

May I approach? Yes. May I approach you? You. I'm just showing you number 143.

(1:50:50 - 1:50:55)

We're going to display it on your screen, okay? Okay. You might have it right here. Okay.

(1:50:56 - 1:51:19)

May I approach the investigation? Yes. Ms. Ball's 143. Sir, this is an evidence.

(1:51:19 - 1:51:30)

This is a general bill of indictment. It's the Superior Court of Cobb County. You see, I don't know if you can see where I'm pointing, but it's at the top right of the, there's a lot of writing on here.

(1:51:30 - 1:51:42)

You see that? Cobb County, Cobb Superior Court. Yep. And then it says, it's 2002, the March-April term, the state of Georgia versus, and do you know Mr. Poag? Yes.

(1:51:43 - 1:51:50)

And are you friends with him as well? No. He was more of Ms. Akers' friend? Yes. Okay.

(1:51:50 - 1:51:56)

And then it says Daniel Lee Akers. Do you know who that is, of course? Yes. That's the gentleman we're talking about, right? Mm-hm.

(1:51:57 - 1:52:05)

You have to answer yes or no. Yes, sir. And this is a true bill, 18th day of April 2022, and this is a four-person signature.

(1:52:06 - 1:52:19)

And then if you can scroll up a little bit, if you don't mind. This is, I don't know if you recognize it, do you know what a verification or a certification of a clerk of court is? I see it. And that's right here.

(1:52:19 - 1:52:40)

Do you recognize that as a clerk of court of Cobb County's certification that these documents are accurate? Yes, sir. And then underneath it, it says that the defendant herein, a defendant, that's what people are called if they're charged with a crime. Are you aware of that? Yes, sir.

(1:52:41 - 1:52:50)

Okay. Wages a copy of the indictment, the list of witnesses, formal arraignment, and pleads guilty. And you see this counts two and three, Daniel Akers' signature.

(1:52:51 - 1:52:57)

You see that? Yes, sir. Okay. And then that's his lawyer, and this is the prosecutor.

(1:52:58 - 1:53:11)

If you could turn, and then Mr., just for completeness, on this side, this is Mr. Poag, you see he pled guilty to count one, two, and three. You see that? Yes, sir. Okay, and if you could just turn the page over.

(1:53:19 - 1:53:29)

I'm going to skip all this, but this is the grand jury. Have you ever been on a grand jury? Do you know what I'm talking about? No, sir. All right, I'm going to skip that, and then we're going to skip count one.

(1:53:29 - 1:53:39)

We don't need that. We did not make a plea to count one. When I say a plea, a guilty plea, you know what I'm referring to? Yes, sir.

(1:53:39 - 1:54:02)

Okay, but this is what I just read to you, just to be fair. Count two, this is what both Mr. Poag, but I'm really not interested in him, Mr. Akers, the grand jury's of four said, in the name and behalf of the citizens of Georgia, charge and accuse Mr. Poag and Mr. Akers with the offense of criminal damage to property in the second degree. You see that? Yes.

(1:54:02 - 1:54:32)

For that said accuse, that said means these two gentlemen. In the county of Cobb, state of Georgia, on the 26th day of February, 2002, did intentionally damage the property of Mr. Davis. To wit, and that means they're going to explain it, a window, wall, door, and furniture, without the owner's consent, by breaking said window and firing a gun, said damage exceeding $500, contrary to the law of said state.

(1:54:33 - 1:54:38)

Good order, peace, dignity, error. You see that? Yes, sir. And then count three was plead guilty.

(1:54:38 - 1:54:44)

You remember that from page one? Yes. And this is just for Mr. Akers. It's Mr. Poag too, but I'm interested in Mr. Akers.

(1:54:45 - 1:54:57)

The grand jury's of four had named behalf of citizens of Georgia, charge and accuse Mr. Poag and Mr. Akers. With the offense of theft by receiving stolen property. For that said accuse, that's Mr. Akers and Mr. Poag.

(1:54:57 - 1:55:31)

But in the county of Cobb, state of Georgia, on the 26th day of February, 2002, receive and dispose of stolen property to wit, two 9mm handguns and four .40 caliber handguns, the property of Mr. Davis. And accuse new and should have known that the property, excuse me, said property was stolen and said property not having been received and disposed of with the intent to restore it to its owner. Contrary to the laws of the state, the good order, peace, and dignity thereof.

(1:55:31 - 1:55:41)

That's what it says, right? Yes, sir. All right. And were you aware that, that could come back.

(1:55:42 - 1:56:05)

Were you aware in 2009, Mr. Akers pled guilty to drug offenses in Douglas County? Are you aware of that? Yes. Okay, and the jurors have already seen those documents. Were you aware that probation was revoked? Yes.

(1:56:05 - 1:56:18)

You know what I mean by persons not in prison, they're allowed to be at home, work, but they're

under supervision by the government. That's probation, is that your understanding? Yes. All right, and you knew he was on probation, right? Yes.

(1:56:18 - 1:56:43)

And you knew that while on probation, he was brought back to Douglas County Court for revocation, meaning, according to the judge, he wasn't following the judge's requirements and he had to be resentenced, are you aware of that? Yes. And then you were in Cobb County again, he was arrested for other drug offenses, you're aware of that? Yes. And that was methamphetamine, you remember that? Yes.

(1:56:44 - 1:57:26)

And then, you remember he was concerned, or did you know, Mr. Akers, right around the time of his death, he was concerned that he was looking at going to prison on probation revocation until 2024, were you aware of that? No. Okay, all right, I want to thank you so much. We have, you're not telling the jury that Mr. Akers doesn't use his left hand, you're saying he's a righty, that's what you're saying, right? I'm saying he doesn't use his left hand to throw a ball.

(1:57:26 - 1:57:35)

Say it one more time. He does not use his left hand to throw a ball or shoot a gun. You never saw him throw a ball with his left hand? No.

(1:57:36 - 1:57:47)

But he uses his left hand, right? As much as I use my left hand, yes, sir. Yeah. And you never saw him shoot a gun with his left hand? No, sir.

(1:57:48 - 1:57:56)

You saw him shoot a gun with his right hand? I don't recall ever seeing him shoot a gun, to be honest. Okay, then you wouldn't know which hand, I guess. No.

(1:57:56 - 1:58:03)

He shoots it. I would. Kevin, I don't know if you're on.

(1:58:03 - 1:58:33)

Yes, sir. Ms. Boles, number 145? Yes. Just give me one second.

(1:58:35 - 1:59:36)

I have to show it to the prosecutor. I'm not going to, I'm withdrawing 145, Ms. Boles. I have no other questions.

(1:59:36 - 1:59:54)

Thank you, Your Honor. All right, we correct. Now, Mr. Edwards, was there a time when Danny lived with you? Yes.

(1:59:54 - 2:00:18)

Well, I lived with him more. Okay, well, what age was it that you lived with Danny? Maybe 17 to 18 years old, or a year, maybe two. I lived with him and my cousin Jessica in Douglasville.

(2:00:19 - 2:00:40)

I would have been about, somewhere around 18 years old. Okay, did you live with him also, or did he live with you when you were about 11? Yes, yes. Where did that occur? That was at my parents' house in Powder Springs.

(2:00:41 - 2:01:04)

That was in Compton? Yes, sir. And how old was Danny at that point? Do you recall roughly how old he was? I want to say Dan was around 16 years old when he came and lived with us. And you've known Danny all your life, you've known him.

(2:01:04 - 2:01:22)

Yes, sir. And everything this defense attorney brought up about Danny, you were aware of all the troubles he'd had in his life, weren't you? Yes, sir. And you were asked what his demeanor was.

(2:01:22 - 2:01:31)

You recall saying it was happy and that sort of thing. And then you added something and said, well, he was also a family man. Do you recall saying that? Yes, sir.

(2:01:31 - 2:02:01)

Now, what did you mean by him being a family man? He was just all about the kids, all about us getting together and stuff. Actually, to go into that, my bachelor party was earlier that year. And I invited him, I think it was in October of 2019.

(2:02:02 - 2:02:14)

Objection to specific instances, it's the state's witness. Specific instances of character? Specific instances of character. It's the state's witness, I think.

(2:02:14 - 2:02:21)

OK. Next question. Well, let me rephrase the question then, Mr. Edwards.

(2:02:25 - 2:02:49)

You remember on direct examination a while back, I asked you, were you aware of who controlled the relationship about who did what and determined, you know, I'm calling the shots in the relationship. Yes, sir. And do you recall one specific instance involving this defendant concerning your bachelor party? Yes.

(2:02:50 - 2:03:07)

And what do you recall about this defendant and your bachelor party concerning this, concerning Dan? I'll object to specific instances, character, for a four-B notice, for a three, ask and answer. I won't insist on it, Your Honor. OK.

(2:03:26 - 2:03:37)

The question that was initially put to you is you said that Danny was the family manager. Do you recall me asking you that? Yes, sir. And you started the answer with a specific instance.

(2:03:39 - 2:04:05)

But without addressing a particular exact moment in time, can you tell me why you say that Danny was a family man in your opinion, in spite of knowing all of these other things about his troubled past? Yes, sir. His kids and Lacey always came first. Some of the places I hear.

(2:04:06 - 2:04:10)

Any recrawls? No, sir. Sir, thank you very much for being here. Thank you very much.

(2:04:11 - 2:04:18)

Yes, sir. Everybody get on the jury? Good. All right.

(2:04:18 - 2:05:28)

Next witness. State College of YVC. Thank you.

(2:05:28 - 2:05:37)

You've already served in the story, Your Honor. I can never as a right-hander, do you swear or affirm the testimony that I've given you as to the truth, the whole truth, and nothing but the truth, sir? Yes, sir. I'll take it.

(2:05:37 - 2:05:50)

Thank you, sir. Thank you, sir. Now, can we take a brief recess, please? All right, let's have a little talk, everybody.

(2:06:06 - 2:06:55)

No, no, Tom, Tom, you're right, he's here. Okay, he is, but I'm sorry, the opposing counsel indicated that this name was not provided to him prior to trial. I found that hard to believe, but anything can happen.

(2:06:56 - 2:07:04)

He's not a supplemental witness, you're right. Okay. Alright, well, everybody's been taking breaks except the court staff, so let's take just a quick five-minute break.

(2:07:04 - 2:16:45)

Thank you. Thank you. Sir, I believe you've been sworn in, is that correct? Yes, sir.

(2:16:46 - 2:17:02)

And could you state your name? Dwight Eason. And where do you live, Mr. Eason? I currently stay in Ohio, working on a different company. Who's your company? RF Knox.

(2:17:03 - 2:17:22)

How long have you worked for the Knox Company? Since 2004, so 22 years. And how did you get here to testify today? I drove. Alright, sir.

(2:17:23 - 2:17:42)

And you drove from Ohio to here? Yep, last night. Alright, sir. And did you work for the Knox Company in 2019? Yes, sir.

(2:17:42 - 2:17:56)

And during the time you worked for the Knox Company in 2019, did you come in contact with Daniel Lee Akers? Yes, sir. Me and him worked hand in hand. He was my apprentice.

(2:17:57 - 2:18:13)

He was your apprentice. And what does that mean? That means I was a field foreman, and I get a group of guys that I work with every day. And so he was just one of my guys that I had.

(2:18:14 - 2:18:38)

When he got hired on, he started working with me. And when you say he worked with you,

approximately how many days a week would he be working with you? Whatever we worked, five, six days a week. And what hours would you work with him? I believe on that Piedmont job, we were coming in at four o'clock in the morning and leaving at five o'clock in the afternoon.

(2:18:40 - 2:18:54)

You know, five or six o'clock. And how many days a week was that? That was during the week. That was five days a week, and then we'd work Saturdays on occasions.

(2:18:58 - 2:19:19)

Now, he was your apprentice. How dependable was he for coming to work and being able to rely on him being there? He was pretty dependable. He had a couple issues with his probation, which he'd shoot me a message and let me know that he'd have to take off.

(2:19:20 - 2:19:50)

You know, we don't hold that against nobody. And what actually did he do as your apprentice? What was his job? So starting out, I had to learn what he was capable of. But he's worked his way up where I was over seven different areas.

(2:19:50 - 2:20:00)

And so I kind of handed him off an area. It was a place at Piedmont Hospital called the auditorium. So I was kind of letting him lead that area.

(2:20:01 - 2:20:26)

And when you say letting him lead that area, what does that mean? That means that I gave him a set of drones, and he used to go install all the duct work. And if he had a question, he could call me or shoot a message. You know, I'm trying to lay the foundation for the kind of worker this man was and how dependable he was.

(2:20:26 - 2:20:38)

And how he was an asset to the company and was not about to lose his job. That's the whole point for this line of questioning. All right, sir, if you will continue.

(2:20:39 - 2:21:06)

You were talking about you gave him a set of plans, and he would, I guess, what would he do once you gave him the plans? So I had him and two other guys working in the auditorium. You know, it was his job to go work that area and finish all the duct work and install everything. Well, who was in charge of these other two men that were working on that area? Technically me.

(2:21:07 - 2:21:29)

All right, and then, have you ever heard the term right-hand man? Absolutely. And what does that mean to you? As somebody that's dependable and that I can count on. And how would you classify Daniel Akers? He was very much my right-hand man, and he would have been something in the future.

(2:21:31 - 2:21:38)

You say he would have been something in the future. What do you mean by that? He was... Objection. Relevant to statements.

(2:21:39 - 2:22:04)

All right, sir. All right, sir. Did you ever have any concerns in observing Mr. Akers that his mental health was in crisis mode? No, sir.

(2:22:04 - 2:23:04)

Did you ever observe anything by Mr. Akers that would make you think, Hey, we might actually contact some of the board professionals to help address Mr. Akers and his emotional crisis or anything like that? No, sir. Now, you worked with him, I mean, you're talking about maybe 40, 60 hours a week, is that right? Yes, sir. And were you able to know whether he was right-handed or left-handed? I mean, everything he did was with his right hand, so... Did you ever see him use his left hand as a dominating hand in whatever he did? No.

(2:23:10 - 2:23:50)

And what about Mr. Akers' tools on the job? Did he have his own tools on the job? He did. And what does that mean when you have your own tools on the job? So, we're to supply our own sheet metal hand tools, which are snips, hammers, screwdrivers, cheaters, I mean, just the basic essentials, and then all power tools are provided by the company. Were you aware, being his supervisor, were you aware of his job being in jeopardy at all in December of 2019? No, sir.

(2:23:51 - 2:24:53)

And what was your attitude about him working, once this one job was completed, what kind of position did you have in mind for him? It was just, I would roll him over to push him in another area. So, he was not going to lose the job at all? Absolutely not. He was just going to quit and just go do his job? No, my job is to build people up.

So, I start with people down at the bottom and I work them up to take over more and more responsibilities. And how was Mr. Akers fitting into that dynamic? Wonderful. Thank you, sir.

No questions, sir. Thanks. Next witness.

(2:25:19 - 2:26:21)

Welcome, sir. Good morning. I'll swear you in, if you don't mind.

(2:26:22 - 2:26:42)

Do you swear or affirm the testimony that you're about to give in the matter before the court will be the truth, the whole truth, and nothing but the truth, so help you God? I do. All right. Thank you.

Good to see you. Good morning, sir. If you could please introduce yourself to this court and spell your first and last name.

(2:26:44 - 2:26:52)

My name is Keith Layman. First name Keith, K-E-I-T-H. Last name Layman, L-E-H-U-A-N.

(2:26:52 - 2:27:04)

How are you employed at this time, sir? I'm employed as a medical examiner and forensic pathologist. I work for the state medical examiner's office here in Georgia. It's part of the Georgia Bureau of Investigation.

(2:27:05 - 2:27:25)

Can you please give the jury an idea of your qualifications and education so I can hold a job as a medical examiner? Yeah. I earned a degree in chemistry from Wake Forest University. I earned a medical degree from Medical University of South Carolina.

(2:27:25 - 2:27:46)

I successfully completed five years of residency training in the field of pathology at the University of North Carolina Hospital System. And during my five years there, one of those years was spent in a special year of study called fellowship. That was in the field of forensic pathology, and that's the field I work in now.

(2:27:47 - 2:28:16)

And then after my residency training in North Carolina, I did another year of fellowship training, again in the field of forensic pathology, this time at the Fulton County Medical Examiner's Office, which is in Atlanta. I'm board certified in anatomic and clinical pathology, which basically means general pathology. And I'm board certified in the subspecialty field of forensic pathology, which is the field that I work in now.

(2:28:17 - 2:28:30)

And I have a license to practice medicine in the state of Georgia. Have you done forensic pathology before in the state of Georgia? Yes. How many times? Over 300 times.

(2:28:30 - 2:29:02)

Any other states in this country where you've been considered as an expert in the area of forensic pathology? In North Carolina. How many times? Probably, maybe, it's been a long time, but approximately 10 times. You keep current with annual continuing education in your field, which allows you to know and be abreast of the most recent changes in forensic pathology.

(2:29:04 - 2:29:27)

You attend conferences on that subject matter, forensic pathology. Yes. Have you ever had a chance to lead one of those conferences? No, I've never.

I've given a presentation at a conference many years ago. So I guess I haven't led a conference, but I've given a presentation at a conference. Have you offered an article of thought in your field of study? No.

(2:29:28 - 2:30:05)

Do you tend to go with this as an expert in the area of medical examination, forensic pathology? No opposition, yeah. Dr. Lang, if you can please tell me, did you work in the medical field prior to working in the TBI? No, I came directly out of my training. As soon as I finished my training, I came to work at the GBI, and I've worked there ever since.

That was 27 years ago. I see. As a medical examiner, do you know how to do autopsies? Yes.

(2:30:05 - 2:30:24)

What is an autopsy? An autopsy is an examination of a body after death in order to make certain determinations, including determining what caused the death. How many of those procedures have you undertaken to complete? Over 7,000. 7,000 autopsies? Yes.

(2:30:24 - 2:30:42)

All with GBI? The large majority of the GBI. I did some at the Fulton County Medical Examiner's Office during my training there, and in North Carolina during my residency training, I did some of those there as well. The overwhelming majority, did you say, were with the GBI? Yes.

(2:30:42 - 2:31:27)

As a GBI, a board certified medical examiner, forensic pathologist? Yes. Can you tell the jury

about the autopsy process and why you conduct autopsies? We're involved in determining circumstances surrounding the death. In certain cases, we're involved in confirming or establishing the identification of the body.

(2:31:28 - 2:31:57)

For example, if the body, the appearance is damaged by post-mortem decomposition or thermal injury or some other trauma, we can be involved in assisting with making the identification. Collecting evidence from the body can be important features. So there's a number of reasons why you might, a number of goals we have in performing an autopsy, depending on the case itself.

(2:31:59 - 2:32:46)

What is your jurisdiction? Since you work with the Fulton County Medical Examiner's Office, what is your jurisdiction with the GBI currently? The GBI provides forensic pathology services for the state of Georgia, with the exception of the largest metropolitan Atlanta area counties of Fulton County, Cobb County, Gwinnett County, DeKalb County. They're big enough to where they have their own county medical examiner's office. They handle the forensic pathology.

Those counties handle their own forensic pathology. But we're available to provide forensic pathology services for the rest of the state of Georgia. To your knowledge, does Fulton County have its own medical examiner's office? No.

(2:32:46 - 2:33:43)

If a person were to be deceased in Fulton County, is it possible that your office headquartered in, I guess, to cater with conducting autopsies? Yes. Is that primarily where you do your autopsies? Yes, it is. Can you tell the jury just the type of facility that is, and just describe the room or facility in which you prepare and do the actual autopsies themselves, please? Yes, sir.

The GBI headquarters, the medical examiner's office is there. Also, I believe all of the divisions of the crime lab are there. The other divisions, the other departments, which would include toxicology and chemistry, the fingerprint department, the firearms department, they all have labs there.

(2:33:43 - 2:34:07)

And there's an investigative division has offices there as well. The medical examiner's office is there, and we have where we perform the autopsies. In that area, we have large coolers where we can store the bodies, both before the examinations and after the examinations, to preserve the body.

(2:34:07 - 2:34:37)

And the exam room that we use is a room where there's eight stations, where each station we can bring a different body out. So we could, in that room, we could examine as many as eight bodies at a time. We have another room in the medical examiner's office that has two stations that we can also use if necessary.

(2:34:38 - 2:35:09)

For your service as a forensic pathologist in the medical examiner's office, have you ever had an opportunity to examine victims where the person, where the cause of death was? Yes. You know, how many times, approximately? Yeah, I would estimate probably somewhere in the neighborhood of a thousand. A thousand autopsies performed on a gunshot wound? Right, over my career, yes.

(2:35:10 - 2:35:42)

You mentioned one of the reasons or focuses on conducting an autopsy is to determine manner of death and cause of death. Are those different? Can you tell the jury how they're different, and did you find both, please? Yeah, so the cause of death, it's a very specific, it's a very specific process that causes the death. There's many, many different causes of death, and they can be a natural disease, such as a heart attack, cancer, pneumonia.

(2:35:43 - 2:35:57)

It can be traumatic, so we can have a gunshot wound or wounds. You can have blunt force injuries. You can have sharp force injuries, so there's different traumatic causes of death.

(2:35:57 - 2:36:15)

You can have death from toxins, so a significant percentage of the cases that we do are drug overdose deaths, so you can have acute drug toxicity. So there's many different types of causes of death. The cause of death is the very specific thing that results in the death.

(2:36:16 - 2:36:43)

So manner of death is a classification system that we use, and here in Georgia, all the deaths get classified into one of five categories. One of those categories is natural. So if somebody dies as a result of a natural disease process, like heart attack or cancer, then that's designated as a natural, that's classified as a natural death.

(2:36:43 - 2:37:20)

If a person dies as a result of their own actions, when they're attempting to take their own life, for example, if somebody shoots themselves or if somebody hangs themselves, that's a suicide. If a person dies under accidental circumstances, that would be an accident. Common accidental

circumstances we see are people that die in automobile accidents and people that die from drug overdoses in a situation where they weren't trying to take their own life.

(2:37:23 - 2:37:56)

And then the fourth option we have for manner of death is homicide. Homicide is typically when a person dies as a result of the actions of one or more individuals, and it's usually where there's intent to injure. That doesn't cover all the cases, but that would cover the vast majority of the cases where somebody dies as a result of the actions of another individual, usually where there's intent to injure.

(2:37:56 - 2:40:18)

And then the last choice we have for manner of death, if we can't make a determination whether the death should go under natural, suicide, accident, or homicide, we have the option to classify the death as undetermined. So if a person were to shoot somebody else and the victim in that gunshot scenario did not survive, how do you classify that? Yeah, that would be, if a person pointed again at somebody and intentionally pulled the trigger and resulted in a gunshot injury to the other person that caused their death, that would be a homicide. In your job, sir, and doctor, if I'm not mistaken, have you had familiarity with the job, doctor, of differentiating between homicide, suicide, and natural death? Is that something that you do on every autopsy? Yeah, for every autopsy we do, we make a determination of manner of death.

So we make a determination whether we think it's natural, accident, suicide, homicide, or undetermined. So you have that catch-all number 5, if you are unable to make a clinical diagnosis of manner of death, you can say undetermined. Can you please tell the jury members, doctor, just give us a road map of the autopsy process itself, please? Typically, if the coroner, as they're investigating the death, feels like it's a kind of case that requires a forensic autopsy, an autopsy by our office, they will call us and provide us the information that they've gathered regarding the circumstances surrounding the death and what their examination of the body has shown, either at the scene or at the hospital, if the person made it to the hospital.

(2:40:18 - 2:40:44)

And then we'll make a decision as to whether we think a forensic autopsy is warranted. If we decide that it is, then the coroner's office will make arrangements to have the body transported to our office. They'll place the body in a body bag, label the body with identification tag to indicate who's in the bag, and then they'll have the body sent to our office.

(2:40:46 - 2:41:17)

When it arrives to our office, we'll check the body in, we'll put it in the cooler to preserve the body until such time as it's time to do the examination. And then when we actually examine the body,

we'll bring the body out into the exam room, and we do, in a case where we do a full autopsy, we'll examine first the outside of the body and do the external examination. And we're looking for any evidence of trauma or natural disease findings to help us understand what happened to the person.

(2:41:17 - 2:42:11)

Let me just stop you right there, because you're using the term we. Do you work with an assistant? Do you work with an assistant on every autopsy? Is that person medically trained? What is that person's title? Is it a medical examiner's assistant? We call them death investigation specialists, and so we train them to be able to gather investigative information so they can do some investigation, and to assist us with performing the autopsies. In addition to these DIS, death investigation specialists, we also have photographers that assist us.

(2:42:11 - 2:42:43)

Do you have other people within the FBI that can tell the jury how many? The FBI and the GBI, other forensic pathologists, we probably have, I don't know the exact number, probably around 15. 15 for the state, statewide, other than counties that have their own medical examiners office? Yes, that's just part of the state medical examiner's office, part of the GBI. And, I'm sorry, you continue, I think you were up to external examination of the body.

(2:42:43 - 2:43:05)

Yes, so for the external examination, again, we're looking at the outside of the body, looking for any findings that might help us understand what happened to the person. We'll document any clothing on the body, we'll document any emergency medical devices. Sometimes the people that have died have received emergency medical treatment, so we'll make those documentations.

(2:43:05 - 2:43:24)

And part of what we do for documentation is we take photographs, so there will be photographs of the body. And depending on the type of case, we also may do x-rays. And then after the external examination, we perform an internal examination.

(2:43:25 - 2:43:45)

So in the case of a full autopsy, we'll look inside the body, including inside the chest, inside the abdomen and pelvis. We'll examine the internal organs of the neck, and we'll open the head. We'll remove the internal organs of the brain, the internal organs in the neck, the organs within the chest and abdominal and pelvic region.

(2:43:47 - 2:44:07)

And then we will examine those organs, dissect those organs and examine them. And then we'll look back inside the body once the organs are removed to see if the removal of the organs has uncovered any other findings. And we're looking for any evidence of trauma or natural disease or any other findings that might help us understand what happened to the person.

(2:44:08 - 2:44:21)

And during the autopsy, we'll collect different types of evidence. Depending on the case, we'll collect blood, if it's available, and often other body fluids. And then depending on the case, we may collect other pieces of evidence as well.

(2:44:21 - 2:45:09)

And then at the conclusion of the autopsy, eventually the autopsy findings are compiled into a report that lists those findings, and it will also list the classification of the cause of death and the manner of death. I want to back up just a moment. You mentioned terms of pathology and forensic pathology.

Is there a difference? Yeah, pathology is a branch of medicine that involves examination of body tissues and sometimes body fluids. Most pathologists look at tissue from living people. So if you have a biopsy taken, that biopsy will typically get sent to the pathologist.

(2:45:09 - 2:45:41)

The pathologist will look at it, including under the microscope, and make a diagnosis, usually a medical diagnosis. Is it cancer? Is it an infectious process? Is it some other kind of process? So most pathologists look at tissues from living people. A forensic pathologist, our primary job is to perform autopsies, which as we stated is an examination of a body of a deceased individual, in order to make certain determinations, including determining what caused the death.

(2:45:42 - 2:46:01)

So forensic pathology is a branch of pathology. You mentioned homicide. Do you know, sir, Dr. Lane, if you have this information, do you know what percentage of autopsies result in the finding of homicide? In our office, I would say it's probably close to relevant.

(2:46:03 - 2:47:00)

What percentage of your manner of death findings in your office are homicide, sir? I would say approximately 15%. Can you tell the jury, please, what is the purpose of generating an autopsy report or a medical examination report? Well, it's to provide a permanent record of what the autopsy findings are, and sometimes we'll list opinions that the pathologist had, including the opinion as to the cause and manner of death, so that it preserves that information, that evidence that was seen. So in a case where you make calls to testify or questions may come up years later

after the autopsy, you'll have a record of what was identified during the autopsy, what the findings were.

(2:47:00 - 2:47:37)

You make a report in every autopsy? Yes. Does that report stay with that case, or that file, if you will, throughout its journey through the GBI? Yeah, those materials are retained indefinitely, that information, yes. I can please show a person counsel that I'll mark for identification purposes, something like, oh, this case is in a 229.

I'm sure that's what I have. Stacey's is at 229. If I may approach a person of counsel, please.

(2:47:59 - 2:48:03)

229, sir. Thank you. May I approach a witness? You may.

(2:48:03 - 2:48:40)

Let me show you what's been marked for identification purposes. Only Stacey's is at 229. Do you recognize that? Do you recognize that document, sir? Yes, I do.

(2:48:41 - 2:49:10)

How do you recognize the document? This is a, just from reading through the, briefly reading through some of the different pages, this represents a copy of the autopsy report I prepared for the autopsy of Mr. Daniel Akers. Do you recognize your signature on it? Yes. Other than just maybe being on different photocopies, does it appear to be fair and accurate to the examination report that you made in the case of Daniel Akers? Yeah, as best I can tell, it is, yes.

(2:49:10 - 2:49:38)

Seeing you go through multiple pages of it, if you need to, you can do so. But does it look like there's been any changes, alterations, deletions, that would make it somehow not accurate as to the report you prepared after the autopsy of Daniel Akers? No, not that I can tell. That could move the court to get it out.

(2:49:39 - 2:49:47)

That's what's been previously marked for identification purposes. Only Stacey's is at 229. I don't object to the purpose of the courtroom, but I'd like to discuss whether it goes out with the jury.

(2:49:48 - 2:50:14)

It's a noted. When you undertake an autopsy, if you could please give the jury an idea of any kind of documents or records or information from any source that you may consider other than the

actual physical body of the examiner. Yeah, so we always get investigative information regarding the death.

(2:50:14 - 2:50:39)

What were the circumstances surrounding the death? It may include medical history, social history, such as drug, alcohol use. That's information that we will always get, and that information is typically provided by the coroner's office, although sometimes it can be provided by local law enforcement as well. Depending on the case, we may also look at additional records.

(2:50:39 - 2:50:48)

We may review death scene photographs. We may review law enforcement reports. We may discuss the case.

(2:50:49 - 2:50:58)

In addition to just receiving their initial report, we may discuss the case with local death investigators. It could be the coroner's office. It could be local law enforcement.

(2:50:59 - 2:51:14)

If the GBI is involved in the investigation, we will sometimes talk to the GBI agents about it. Sometimes we'll review medical records, and like I said, sometimes we'll review police investigation records, too. It really just depends on what's necessary for the case.

(2:51:15 - 2:51:41)

So sometimes, you mentioned something you see a lot about, unfortunately, auto accident cases, where people are deceased from auto accidents. Is it possible you might review medical records for any attending physicians at a hospital? Yes, that's possible, yes. But more with a criminal type of case or a suspected homicide case, do you ever have occasion to review law enforcement records? Yes.

(2:51:42 - 2:52:00)

Did you perform an autopsy on a person that you may have known to be named Daniel Akers in 2019 or early 2020? Yes. Do you know the date you performed that autopsy, sir? I've got a copy of my report here. It was on December 23, 2019.

(2:52:12 - 2:52:20)

Dr. Raymond, there's a moniker in front of you. You can look at that, although it's hard for some other people. It's kind of blurry, so you may want to look at the big screen.

(2:52:20 - 2:52:49)

But I want to take you through some of this information contained on States 229, because I believe you said your report of this case is off the top of your head. So in this case, do you see the DOFS case number here ending in 419? Yes. Would that be the unique, conspicuous number that would follow this report, this subject, this case, through the GBI as it winds its way through various divisions? Yes.

(2:52:49 - 2:53:26)

Has that number ever changed, sir? No. And then your report date, I see, I can't help but see here is different than what you just said. You said 12-23-19 was your examination date, but then we see here on States 229, you see where it says May 25, 2020? Can you tell the jury why those dates might be different? Yeah, because the date that the autopsy is performed, where the examination of the body is performed, is different, because the date of the report is the date when the report is released.

(2:53:26 - 2:53:47)

So we have to have time to prepare the report, and sometimes there's other things we need to do other than just prepare the report. We may need to wait on toxicology results or results from looking at tissue in the microscope. We may need follow-up with the board to get more investigative information.

(2:53:47 - 2:54:06)

So there's a number of reasons why, but the reports in our office are basically never released on the day of the exam. We don't have the ability to get reports out that same day. I guess theoretically it's possible, but I think in reality, it doesn't happen.

(2:54:06 - 2:54:23)

So in this case, is it fair to say that it looks like about five months elapsed between the examination of the victim's body and the release of the report? Is that right? Yeah, approximately six months. I'm sorry, six months. I apologize, six months.

(2:54:23 - 2:55:10)

So during that six months, can you just give the jury... You mentioned, for example, you may have to wait on one of your colleagues in toxicology to give you something, or they may be waiting on this or that. Can you give the jury an overall idea of what you were waiting on exactly in this case that may have taken that kind of time? Yeah, well, this case was presented to be... felt to be a straightforward self-inflicted gunshot wound. When we did the examination, the findings were highly unusual for a self-inflicted gunshot wound, so we needed to get in touch with

law enforcement and collect more information, more investigative information about the circumstances surrounding the death.

(2:55:11 - 2:55:24)

So that's part of it. There was additional testing done in this case, too. There was examination of the gun that was performed.

(2:55:26 - 2:55:44)

In a case like this, this type of case would have to be peer-reviewed in our office, too. It would go through an official peer review, so that means another medical examiner has to review the case and sign off on it. And so those are some of the things.

(2:55:44 - 2:56:08)

Gathering additional information, having additional testing done, and having a peer review done on the report, those are some of the things that would have delayed... created a delay between when we actually did the examination of the body and when the report was released. Can I get your past quote relieved and give the mic just for a little bit? Yes. Thank you, sir.

(2:56:11 - 2:56:37)

Doctor, I'm going to go back to the States Exhibit 229 here, maybe on your screen in front of you, if you can read it. You see here where it says agency, Pauldin County Coroner, L, and your name is Lindsay Everhart? Yes. So what does that mean as far as your report, as part of your report? What can you tell us, Drew, what that means? So this is part of just sort of a form for the GBI Crime Lab reports.

(2:56:38 - 2:57:01)

I think probably all the different divisions might have this sort of part up on there. The part that I add in doesn't come until you get down to reason for examination. Everything above that is filled in by... I don't even know exactly... It's sort of the process of going through the crime lab and getting entered.

(2:57:02 - 2:57:15)

So I don't fill that information in. And that just indicates where you specifically referenced Pauldin County Coroner. It was a death in Pauldin County, so the Pauldin County Coroner's Office had jurisdiction of it.

(2:57:15 - 2:57:34)

And they were probably the agency that called us and gave us the initial information. And Lindsay

Everhart is the Pauldin County Coroner, or was at the time. If a person is in a car wreck, like you say, out on Highway 278, they die, unfortunately, at Pauldin Wellstar Hospital, for example.

(2:57:34 - 2:57:57)

Does the hospital release the body to you and ask for your autopsy findings, or would that still go through the coroner? In other words, is the coroner only for suspected criminal cases or self-inflicted cases? Is there a difference? Well, for us, it would almost always go through the coroner's office. All right. Thank you, Doctor.

(2:57:57 - 2:58:30)

If you can raise that up just a little bit, and we'll get down to what you pointed out was where you come in, so to speak, in your reason for examination. Can you basically summarize what that section of your report would contain and why it's written there? Yeah, that's just a very brief statement. It typically will indicate what some of the circumstances were surrounding the death and give an indication as to why the body was brought to our office.

(2:58:30 - 2:58:38)

Because most people that die don't get a forensic autopsy. Most people that die don't come to the GBI. There are certain types of cases that do.

(2:58:38 - 2:59:02)

So that's an indication of why this person, Mr. Akers, came to our office. You see here where it says, Daniel Akers was a 36-year-old man who, according to reports, shot himself in front of his wife. Where does that information come from for you to put that in as a reason for examination? The large majority of cases, we get that information from the coroner's office.

(2:59:03 - 2:59:52)

Do you have any reason to believe, in this case, that that information did not come from the coroner's office? Yeah, I've got our investigative report here, and it indicates that it, in fact, did come from the coroner's office, that initial report. Is it fair to say that's just a summary of how and with what information you received the body for examination? Yes. And then we have your actual date and time of the autopsy process commencing at 10.58. How long does it take to do? It depends on the case and how complex it is.

(2:59:55 - 3:00:20)

Probably a simple autopsy might take an hour, but a complicated autopsy might take multiple hours or even most of a day. Do you know how long, if you remember, estimate this autopsy took, you and your team, to perform? The examination of the body, I don't recall that. The

autopsy itself wasn't a complicated autopsy.

(3:00:21 - 3:01:20)

It may have taken two or three hours, a couple hours maybe. When you're undertaking and actually performing the autopsy surgery, do you have access to high-intensity light to show you what you do? We do have lighting in a morgue, yes. Is it just like what you see on TV or a table that the body is examined on? Is that fair? It's a station.

Our bodies, in our office, the bodies are on, when they are brought into our office, they're put on a rolling table, so a table on wheels. And that table is, they're in the cooler on that table and when it's time to do their examination, that table is rolled out to the autopsy station. It may become relevant, more relevant later, but I want to go through the lighting just a little bit more.

(3:01:20 - 3:01:56)

Is there overhead lighting that you're able to use? Like if a dentist comes down on any kind of a stand, explain the lighting. We have, I think approximately six, four or six lights that are movable, that are attached to the ceiling and that we can move around and focus the light. Can you concentrate light on any specific area of the body you really want to pay close attention to? Yes.

(3:01:57 - 3:02:24)

You mentioned that there is an extensive photographic examination or photographic documentation of the body. Is that before the autopsy commences? We do, yeah, we start out, we photograph the identification tag on the body bag before we even open the body bag. And then we'll open the body bag and we'll take photographs of the body before we really do any significant manipulation.

(3:02:25 - 3:02:47)

And then we'll take a photograph, once the face is cleaned up, sometimes there may be material on the face, blood or vomit or something else, or sometimes there's not. But once we have the body cleaned up, we'll do an ID shot, a facial shot. And then depending on the case, we may do additional photographs as well during various portions of the autopsy.

(3:02:48 - 3:03:06)

Is the death investigation specialist doing the photography or is that somebody else? It's usually the photography. We have photographers, so if they're available, the photographers will take the photographs. And if they're not available, it's the DIS? The DIS will usually do it and occasionally will do it as well.

(3:03:06 - 3:03:14)

You mean the physician? Yes. In this case, do you remember who did the photographs? No. Have you had an opportunity to review the photographs? Yes.

(3:03:21 - 3:04:05)

Continue to go to findings here, you see where it says presentation of body and associated items. Can you explain why you include that in the report, what your findings were in this case? That's basically sort of the beginning of the case, how the body is in a body bag, if the body is supine, make sure that the body bag has the identification to indicate who it is, make sure we pulled out the right body. And then basically just the initial overview, what clothing or personal effects may be with the body, what obvious foreign material might be on the body will typically get noted in that section as well.

(3:04:15 - 3:05:30)

I'm going to show opposing counsel, please, what I'll mark for identification purposes on the estate. Is it a 230, 231, 232, 233? Thank you. Thank you, sir.

(3:05:31 - 3:06:38)

May I have a witness, please? Let me show you what's marked for identification purposes only. It states 230, 231, 232, 233. Have you had an opportunity to look at states 230, 231, 232, 233? Yes.

(3:06:38 - 3:06:54)

Do you recognize those? Yes. Two of them I recognize. Which ones? 233 and 230.

(3:06:54 - 3:07:20)

Okay, so they approach 230, 233, and I was going to ask you about these. So do you recognize, you said you recognize 230 and 233? Yes. Can you tell the jury how you recognize those? Yeah, these appear to be photographs taken at the time of the autopsy of Mr. Akers.

(3:07:20 - 3:07:57)

They've got the type of plaque that we use, and the unique GBI crime lab case number is on that plaque. Does that appear to be accurate, those 230 and 233? Do those appear to be accurate as far as that plaque or that DOFS board that you refer to? Yes. Can you change those alterations or deletions to 230 or 233 to make it not representative of that board or that placard from the DOFS? Not that I can say.

(3:08:01 - 3:08:23)

I think I'll just, to stay in chronological order, if I can just re-number those, I'm going to see what

Dr. Lang is going against 230 and 231. I don't have a check. Alright, I'm going to just, that was already 230, so let me re-number 233 as just 231, Doctor, just to stay in order.

(3:08:30 - 3:08:37)

So, the 230 and 231, you recognize those. Yes. May I publish these? Yes, sir.

(3:08:37 - 3:08:56)

230 mentioned, like, kind of a placard or a board. Can you tell the jury how you recognize that and why this is important in your job, sir? Yeah, so this is the kind of board we use. We put the unique case number for the case for each of the autopsies we perform.

(3:08:56 - 3:09:31)

We generally start with a photograph of just the board, just to show the case number, and then we'll use that board for some of the photographs that we take, including the, typically the photograph where we show the identification tags on the closed body bag and the overall shots where we're basically showing the body as it's received once we open the body bag. And we use it for the identification photograph as well. And you see that, the number ending in 419 here? Yes.

(3:09:31 - 3:09:58)

Does that match the number on your autopsy report? Yes, it does. Also, on 231, if I can show you that, do you see a unique DOFS identifier tag ending in 419 on this photograph? Yes. So, when you see this kind of black vinyl or rubberized background and then there's a tag here, do you see that? Yes.

(3:09:58 - 3:10:30)

What's the significance of those signs? What are we looking at? Yes, so the black material is the body bag itself, and then the yellow there, that's a plastic lock that goes through the two zippers on the body bag. So, the body bag has two zippers that when the body bag is closed, those zippers are together. To open the body bag, you move the zippers apart, and then you can open the body bag.

(3:10:30 - 3:11:08)

So, we receive the body, there's identification, typically through these closed zippers, and then often there's a plastic seal that's present through the zippers as well. Is the extra bag or body bag, do you think, is that used to preserve the body in as great a condition as it can possibly be until it gets to your table or your table? Yes. I'd like to go back to Exhibit 229, please.

(3:11:09 - 3:11:41)

Did you receive this body, or do you have any indication, Dr. Lehman, that this body was received in such a way that you would question the integrity of the evidence that you're looking at? No. So, you've documented what we just saw, and you say you saw the identification tags, and then you also say there were clothing and personal effects worn on the body. Did you have an opportunity to examine those? Yes.

(3:11:41 - 3:12:28)

Does the body, when it comes into you in that bag that you just looked at, you open that, you manipulate that yellow safety tag or whatever, and then what do you see? In this case, what did you see as far as the way the body was preserved in the bag? Yes, so the body was supine, so Mr. Akers was on his back. There was a large amount of blood on the face, and he was wearing clothing, including a hooded shirt, pants. On one foot, he had a boot and a sock, and there was another boot and sock that was with the body that looked like it may have been removed so that an identification tag could be placed on that foot.

(3:12:28 - 3:12:58)

Is it typical for you, doctor, when you receive a body, is there anything atypical about it being arrived at you fully clothed as it was when the person expired? I'm sorry, could you repeat that question? Yeah, sorry. Is it typical for you to get a body in the body bag and receive it, sir, at the laboratory when it had been fully clothed? That's common. It's not always the case, but it's commonly the case.

(3:13:00 - 3:13:25)

Sometimes you receive a body, I guess, maybe from a medical environment that may have been unclothed. When would you receive an unclothed body? Well, if somebody died and they weren't wearing any clothes and they were pronounced dead at the scene, that would be one example. As you were indicating, sometimes people, especially if it's a witness collapse, someone's witness to become unresponsive, will call 911.

(3:13:26 - 3:13:58)

Emergency responders will come and often carry the body, in an attempt to resuscitate the body, carry the body to a local hospital. During that process, the clothing is often removed so that the medical responders can better identify anything on the body that might require treatment, such as any trauma or wounds present. So it's common for bodies that make it to the hospital before they're pronounced dead to have the clothing removed that they may have been wearing at the time the incident occurred.

(3:13:58 - 3:14:12)

Does it help you in your job sometimes, maybe not every time, but does it help you sometimes to extend the clothing? Yes. Did you do that in this case? Yes. Thank you.

(3:14:51 - 3:15:05)

I can show you, Dr. O'Brien, what I'll mark, or I'll show a posting council photo flip. I'll mark it as State's Exhibit 230. Let's see it.

(3:15:05 - 3:15:17)

I'll approach the posting council for extension. I'll approach the witness. Yes.

(3:15:17 - 3:15:32)

Sir, let me show you what I can mark for identification purposes. It's State's Exhibit 232. Do you recognize that? Yes.

(3:15:33 - 3:16:00)

How do you recognize that, sir? This brown paper bag has an inscription on it indicating, in part, the unique GBI crime lab case number given in this case. And it indicates that the contents represent a black hooded sweatshirt. Do you see the unique identified number 419 on that anywhere, sir? Yes.

(3:16:00 - 3:16:19)

Do you see it? If I can just describe it for the jury, is what you're seeing just a brown, large brown, quite a big brooch in the bag? Just for the record. Yeah, that's right. Is that typical of something that your office or you personally, one of your DISs, would use to preserve evidence? Yes, it is.

(3:16:19 - 3:16:48)

Are you familiar with that format, the bag with the evidence tape or DOFS tape on it? Yes. Do you believe that that fairly accurately represents a collection bag containing a piece of clothing that you made? I'm sorry, I couldn't hear the last part. Do you believe that this State's Exhibit 232 fairly accurately depicts the evidence collection bag containing a piece of clothing that you made in this case, sir? Yes.

(3:16:49 - 3:17:06)

Do you respect or move the court to admit evidence that's been previously marked for identification purposes under State's Exhibit 232? No opposition, Your Honor. Admit. Sir, there are some medical examples you can look at in front of you.

(3:17:06 - 3:17:19)

Some of it here, too. I think it's in the slide that it's on. I have it for you.

(3:17:19 - 3:17:26)

It's in Cedarville. Can I put it to witness? Yes, sir. I'm asking you to open State's Exhibit 232.

(3:17:26 - 3:18:12)

Okay. Let's see what's inside here. Open the bag and move the contents? Yes, sir.

(3:19:02 - 3:19:40)

Yes, sir. There's another bag that's present inside the main bag. How would you describe the article that you're holding now? Yes, sir.

This represents a hooded pullover sweatshirt. Color, please. Black.

(3:19:41 - 3:20:03)

Do you believe this is – do you have any reason to believe this is not an article of clothing that you examined on or about December 23rd as part of your overall autopsy of this decedent, Daniel Akers? No. I have no reason to think that. Your Honor, I'm going to try to label – and I'll do it more securely at the break – but I'm going to label the interior of the contents of 232 as 232A, unless there's some objection.

(3:20:04 - 3:20:09)

No opposition, Your Honor. Okay. Let me try to put 232A on there, Doctor.

(3:20:24 - 3:20:40)

I'll just put 232A near the tag or back part of the hoodie, sir. So is this accurate to what you examined on December 23rd as part of your autopsy of this decedent, please? Yes, it does appear to be. Okay, sir.

(3:20:43 - 3:20:52)

Do you see biological material on the hood? Yes. What do you know that to be? Well, it's consistent with blood. It's dried at this point, but it's consistent with blood.

(3:20:54 - 3:21:11)

Do you see biological material on the front? There is some discoloration there. So you see – may I approach the jury rail, please? Yes, Your Honor. Thank you.

(3:21:14 - 3:21:40)

Is it fair to say the majority of the biological material would be around the hood in this search? It did appear to be during my brief examination just now. I want you to take a look at the left sleeve of this state exhibit 232A, please. Take a look at that left sleeve or cuff of the hoodie sweatshirt.

(3:21:56 - 3:22:02)

This cuff? Yes, sir. Left cuff of 232A, left sleeve. Yes.

(3:22:02 - 3:22:42)

Have you had an opportunity to look at the cuff area? The cuff area, yes. Does it appear to have the same quantity or concentration of biological material anywhere consistent with the hood? No, I don't see anything that I can identify as material that looks like blood. So, is it possible that you could put this under a microscope or have one of your colleagues in blood or serology go and dab it with a Q-tip or do testing on it to see the presence of blood? Would that be possible? Yes, I believe so.

(3:22:42 - 3:22:51)

That wouldn't be our office. That would be another lab within the GBI crime lab. They can test for blood? Yes, they can.

(3:22:51 - 3:23:17)

Serology might be able to trace evidence, might be able to look at this more closely, but with your naked eye, sir, do you see any human biological evidence on the left cuff, the left hand area of state exhibit 232A? Any at all? I did not. Thank you. All right.

(3:23:17 - 3:23:29)

I'll keep those on for just a minute. I want to see your confidence change. I know you're loving every series of these.

(3:23:29 - 3:24:00)

Thank you. Is it fair to say that the body came in a supine position wearing that hoodie? Yes. How do you remove or how does your team remove clothing? Is it cut away the way you pull it into that bag or is it carefully – is the person carefully unclothed? It's typically – it's not cut.

(3:24:00 - 3:24:15)

Certain circumstances we may cut clothing, but most of the time it's not cut. It's removed without cutting. Let's go to closing counsel, please.

(3:24:15 - 3:24:27)

We'll all mark for a decision. State exhibit 233, please. Yes, sir.

(3:24:27 - 3:24:45)

Thank you. I'm going to share what's been marked for identification purposes only as 233. Thank you.

(3:24:46 - 3:24:55)

Can I approach you with this, please? Yes, sir. Sir, let me show you what's been marked for identification purposes only as state exhibit 233. I ask that you recognize that.

(3:25:09 - 3:25:28)

Yes. How do you recognize that? It's a similar paper bag that we – of the type that we use for evidence. It's got evidence tape on it, and it's got an inscription indicating it includes the unique GDI Crime Lab number for this case.

(3:25:30 - 3:25:52)

Is that something – again, same question. Is there anything about that bag that would make you doubt that that's a – contains clothing that you may examine in connection to gang-related results? No. No opposition.

(3:25:52 - 3:26:53)

You're out. All right. Can you please open and remove the contents of the state exhibit 233? Yes, sir.

(3:26:53 - 3:27:16)

There's another bag, evidence bag, inside of the main bag. And then also present, there's a piece of paper that has the – that same case number again on it, inscription including that case number. Yes.

(3:27:16 - 3:27:24)

Okay. That's great. So the contents are gray sweatpants.

(3:27:25 - 3:27:34)

All right, sir. I'll label that. And those sweatpants include for admission of 233A.

(3:27:35 - 3:28:27)

Do you have opposition? All right. Thank you, guys. For verification purposes, only the state

exhibit 234.

(3:28:29 - 3:28:34)

That's okay. Thank you, sir. May I approach the witness, please? You may.

(3:28:35 - 3:28:52)

Sir, Dr. Lane, let me show you one more for verification purposes. Only the state exhibit 234. Let me show you 234, sir.

(3:28:52 - 3:29:13)

Do you recognize that? Yes. How do you recognize it? It's similar to the others. It has a bag that's on the top that we would use for – that is often used for evidence.

(3:29:13 - 3:29:31)

It's got inscription including the unique – that same unique crime lab case number on it, and it's got inscription indicating that the contents represent a white short-sleeved shirt. Respectfully move forward with the admitted evidence. What's been previously marked for verification purposes, only the state exhibit 234.

(3:29:31 - 3:29:34)

No opposition, sir. Amen. Please.

(3:29:36 - 3:29:43)

May I approach the witness? Yes, sir. Please open that bag and show us the contents there. Oh.

(3:30:20 - 3:30:47)

Seeing as the contents of 234 – So there was another bag inside the main bag, and in addition to the other bag, there was this short-sleeved t-shirt. Can you check both sides? Your Honor, I'd like to ask – leave a board to identify the contents of 234 as 234A and move to 10A. No opposition, Your Honor.

(3:30:47 - 3:31:25)

Amen. I can show you what I've marked now as 234A and see if you see any type of defect or any type of marking that would be notable to you in your examination of that officer. I don't see any obvious defects.

(3:31:26 - 3:31:32)

There's a patchy standing-in shirt with material consistent with blood. Yes, sir. Thank you.

(3:32:10 - 3:32:34)

May I approach you with what I'll mark? May I approach you with the contents of what I'll mark as, for verification purposes, only the state's 235. Yes, sir. Witness, please.

(3:32:34 - 3:32:51)

Yes, sir. Well, let me show you what I'll mark for verification purposes, only the state's 235. Do you recognize this item? Yes.

(3:32:52 - 3:33:25)

How do you recognize that, sir? There's inscription on the bag, on this brown paper bag, indicating the same unique GBI crime lab case number given in this case and inscription indicating a pair of brown boots. So indicating the brown boots that were present with Mr. Akers at the time of the arrest. Does that 235 have the same type of characteristics with the evidence stated in the brown collection bag? Anything causing you to believe that that is not accurate as to what you may have examined, sir? No.

(3:33:26 - 3:33:35)

Okay, sir. Respectively, moving forward to the defendant, that is what's been marked for verification purposes, only the state's 235. No acquisition, Your Honor.

(3:33:35 - 3:34:30)

235, I think, is all I know. Sir, may I approach you with this? Please take the scissors and remove the contents of 235. What are you seeing as the contents of 235? It appears that there's another bag inside.

(3:34:30 - 3:35:02)

The main bag had been a pair of boots. Is that something consistent to what you examined on 12-23-19 as part of the self-advocacy? Yes. May I approach your Honor and ask for leave of order to admit the left boot, the contents of 235, as 235A, and the right boot, content of 235, as 235B? No acquisition, Your Honor.

(3:35:02 - 3:35:48)

All right, 235, 235A, and 235B are all removed. Thank you, sir. Can we diagnose that, sir? Chair, folks, and counsel, what are all marked for identification purposes? Only the state's 236, please.

(3:35:57 - 3:36:03)

May I approach you with this, please? Yes, sir. Thank you. Sir, Dr. Lang, let me show you what's been previously marked for identification purposes.

(3:36:03 - 3:36:07)

Only the state's 236. Okay. Deal with it.

(3:36:16 - 3:36:25)

Yes. What is that to your knowledge, sir? These appear to be the socks that were with Mr. Akers at the time of his autopsy. Gray socks.

(3:36:26 - 3:36:49)

Do you have any reason to believe that that evidence collection bag is not the same or is under similar conditions to when those items were backed up? No. Do you recognize the manner of collection of the evidence? The practical bag with the UFS evidence tape. Do you recognize that? Yes.

(3:36:49 - 3:37:05)

It's in a brown paper bag. It's commonly used for evidence, and there is evidence tape on the bag. Respectfully move the court to admit that evidence that's been previously marked for the state's 236.

(3:37:05 - 3:37:09)

No opposition, Your Honor. I will. Thank you.

(3:37:09 - 3:37:15)

You can open 236. It's published in the hearing, sir. Okay.

(3:37:17 - 3:37:42)

So similar to the other bags, there was another bag inside this bag, and there are balled up pair of socks. Okay. They were balled up together as one.

(3:37:42 - 3:37:58)

Can you open the bag, sir? Yes, Your Honor. It's balled back up. And just we'll put, Your Honor, with leaving the court, I'll attach 236A to the contents of 236 and move to admit 236A to that contents.

(3:37:58 - 3:38:01)

No opposition, Your Honor. It's admitted. Thank you.

(3:38:01 - 3:38:25)

Thank you. So let me show you what's been previously entered in the evidence. It says that it's 18 since you recognized this.

(3:38:29 - 3:38:43)

Thank you. Defendants, this ball is 18. Do you recognize this ball? No.

(3:38:44 - 3:38:50)

Thank you. Do you recognize the clothing in this picture? Yes. Okay.

(3:38:50 - 3:39:20)

Does it appear to be consistent with any color, type, with clothing that you examined as part of the 223 autopsy that we just looked at and was admitted to court? Yes. And one more. Just because we don't have the lower portion of the decedent here, can I show you, please, what's already been admitted into evidence as States Exhibit 47? This will show, hopefully, the lower part of the decedent.

(3:39:20 - 3:39:38)

Do you see the boots there that may be consistent with what you just saw admitted into evidence? Yes. All right. If I can go back to 229, States 229, please, for publication.

(3:39:38 - 3:39:54)

The report. All right. So you have documented in your report, this is page 1 of States 229, again, on the screen, you've documented all the clothing, is that right? Yes.

(3:39:54 - 3:40:09)

And what you've documented on your report, is that consistent with what we just saw in person in court as being admitted into evidence? Yes. It's consistent with those. Anything missing or left off that you believe is not accurately portrayed in your report? No.

(3:40:11 - 3:40:56)

Do you remember this sentence here, there was a red band around the decedent's left wrist? I see that. Did you catch any significance of it other than just noting it on the report? No. Anything that sticks out in your mind, what that might have been, a whiz band or entrance into a restaurant or club type of band? Do you remember? I don't recall specifically, but it seems reasonable to

suggest that it may have been a band that someone might have received, as you indicated, in entering into a club or bar or some other establishment that does that sort of thing.

(3:40:56 - 3:41:30)

Okay, and I don't want you to suppose or guess, but if a person did have a band or a whiz band like a club or bar or restaurant, would that be the type of notation that you would make in your report, the same as you make here? Yes. And then you have put in your report what I asked you about, if you'll go up a little bit, Investigator Burke, I can show you here. Will you read what it says there? You wrote, prominent bloodstaining and blood clot are present on the face.

(3:41:30 - 3:41:34)

Do you remember writing that? I see that. That's in the report. Yes, sir.

(3:41:38 - 3:42:01)

I'm going to show you what I will, what's already been actually admitted into evidence is holes or dependencies in the 47. Yes, sir. Sir, let me show you this hole's 47 as it's been identified for admission.

(3:42:01 - 3:42:19)

And it's been approved. When you say there was extensive clotting and blood evidence on the face, is this what you saw when the body was, is this the same or similar condition the body, the face of the body was in when we unbacked it? Yes. All right, sir.

(3:42:19 - 3:42:43)

So if you can just tell the jury what you see, and may I approach a witness? Yes. I have a pointer if you need it, sir. Can you just tell the jury what notations you may have made concerning the condition of the face or the facial structure as you saw it on admission for your autopsy? I'm sorry, repeat the question.

(3:42:43 - 3:43:08)

Yeah, you put on your report there was clotting, there was major blood loss, whatever language you used in your report. What do you see on this picture that would have indicated in your report as far as the condition of the face physically? Yeah, the initial examination reveals, you know, prominent blood on the face, including blood. There's some areas where there's blood clotting, and then there's other areas where it's not clotting.

(3:43:08 - 3:43:33)

It's more liquid or possibly dry there. But all of the red and the dark color like that represents

blood on the face. So what is clotting then? Clotting is a process whereby blood, which is normally liquid, becomes into solid form.

(3:43:36 - 3:44:23)

When would there be a time when the liquid blood would more become solid form? How long does it take? I don't know that there's, it could potentially clot over different time frames. I don't know that there's a specific time frame, but it could clot within what I would expect, within minutes. Would you, when you receive the body and you do an external examination of the face as is depicted in this defense exhibit 18, I believe it was, that we're looking at, would you, what type of examination, if any, would you make of the body in this state? We would note the presence of blood.

(3:44:24 - 3:44:52)

Any injuries that you might see, we would further look at those. If it's a case where it's a gunshot wound and we see a gunshot injury, we would go ahead and examine it before the body's cleaned up so that we could examine it before any gunshot residue might be wiped away. Did you undertake such an examination here in this case? Yes.

(3:44:52 - 3:45:23)

Tell the jury what you did and what your findings were, please. Yes, so initially this case was portrayed to us as an intraoral gunshot wound, so the belief could be a gunshot wound where a person puts the gun inside their mouth and then pulls the trigger. As we're cleaning the blood from the face, a gunshot wound, an injury became apparent that eventually was determined to be a gunshot wound to the right side of the nose.

(3:45:26 - 3:45:40)

Are there any other remarkables in this case other than what you just said? No. Perhaps a good stopping point. All right.

(3:45:40 - 3:45:50)

It is noon. We're going to take just a little bit longer for lunch so we can address something. So let's say 1.30 to be back, please.

(3:45:50 - 3:46:30)

Thank you. All right, do we need to talk about anything before we break for lunch? Not on behalf of Ms. Bolger. Have a good lunch.

(3:46:30 - 5:17:08)

See you 1.30. Gentlemen, I'm ready when y'all are. Yes. Yes.

(5:17:09 - 5:17:39)

All right, I'm going to get our witness. Yeah, we need to get the witness back. All right, we'll have the jury.

(5:18:21 - 5:19:56)

Welcome back. Let's resume. May I approach you with this, please? Yes, sir.

(5:20:01 - 5:20:24)

Yes, I do. These are photographs taken during the autopsy of Mr. Akers. Yes.

(5:20:37 - 5:21:10)

No objection, Your Honor. Yes. Yes.

(5:21:27 - 5:22:23)

Yes. So we've removed the clothing from the body, and we've cleaned the surfaces of the body so that we can see more clearly what might be there or what might not be there on the body's surface. We typically, to clean the body, we'll use towels with soapy water.

(5:22:23 - 5:22:29)

That's usually what you use to clean. Sometimes there's not very much. You can use a dry towel.

(5:22:34 - 5:22:38)

No. No. No, we do not.

(5:22:56 - 5:23:02)

No. Yeah. Yes, yeah.

(5:23:02 - 5:23:16)

We want to know what abnormalities are on the body. We don't want to create any abnormalities by the cleaning process. We want the body to be as preserved as possible.

(5:23:28 - 5:23:49)

Yes. Yes. Well, once we started cleaning the body, then we discovered this wound here.

(5:23:50 - 5:24:08)

Well, I said this wound here, but the wound that you can kind of see on this photograph on the right side of the nose. We discovered this wound, and eventually, as we further cleaned and examined the body, we realized that the gunshot wound wasn't an integral gunshot wound. It was a gunshot wound to the nose.

(5:24:09 - 5:24:17)

Let me show you that. It's sort of on the stasis of the 238. Let's see if that better shows what you found during the cleaning process.

(5:24:19 - 5:24:57)

You recognize 238 now? Yes. And does that show specifically the decedent's right nostril? Does that show more clearly what you— does it describe what you found during the cleaning process? Yes, so as we started to clean, we saw this wound, and the wound is actually— I'll demonstrate with the pointer here. This area right here, this area of red discoloration, there's a tearing of the tissue there, and there's what we call marginal abrasion or a scrape-type injury around that laceration.

(5:24:58 - 5:25:30)

Those are features that you typically see with a gunshot entrance wound, so where a bullet enters the body, impacts the body, and then enters the body. Sir, did you note at all any type of— when I, as a layperson, call it just called exit wound, did you notice anything that you would say might be called exit wound? No. Is this that means, sir, that then the projectile remained enlarged in the body? Yes, and we confirmed that upon internal examination that that was the case.

(5:25:30 - 5:25:51)

Okay. Did you perform radiological testing on the body to see if you could find a projectile inside the skull? Yes. I'd like to show opposing counsel, we'll all mark for identification purposes on this case, exhibit 240, please.

(5:26:07 - 5:26:19)

Yes, sir. Showing opposing counsel 240. Dr. Lange, let me show you— I'll mark for identification purposes on this case, exhibit 240.

(5:26:19 - 5:26:39)

Do you recognize that? Yes. How do you recognize that, sir? This appears to be an x-ray, a portion of an x-ray taken during the autopsy of Mr. Akers. Do you have that capability with a laboratory or x-rays or radiological film to be performed on bodies as part of your autopsy? Yes.

(5:26:40 - 5:27:03)

Does that—stage 240 appeared fairly inaccurately to pick radiological reports that you viewed in conjunction with your autopsy? I'm sorry, your— Yeah, yeah. Does it look like x-ray film that you may have looked at as part of your autopsy process to the business scene? Yes. Does it fairly inaccurately pick radiological film that you reviewed? Yes, it does appear to.

(5:27:03 - 5:27:19)

Do you think it—other than being a photograph, has it been materially altered in any way to make it somehow not accurate? Not that I can see now. Respectfully move the court to admit in evidence what's been previously marked for identification purposes on this case, exhibit 240. No opposition, your Honor.

(5:27:20 - 5:27:23)

Mr. Miller. Thank you. Let me see if I can take that back real quick.

(5:27:24 - 5:28:01)

Dr. Lange, in stage 240, you said that you didn't see an exit wound, and based on that, did you suspect that the projectile possibly could still be in the cranial cavity? Yeah, you know, one of the first things we do is an x-ray. So before we even opened the body, we saw what looked like a bullet inside the—in the head region. So at that point, we suspected that that was the— we likely suspected at that point that that was the bullet that corresponded with the gunshot-limited nose.

(5:28:01 - 5:28:22)

I'm having just a little bit of a hard time following the chronology of it, if you'll bear with me. Did you order radiological examination prior to your physical examination or after? Prior. Okay, so is that customary that you would do radiological examinations on all autopsies that you think there might be a reason for prior to the physical examination? Yes.

(5:28:22 - 5:28:43)

You may not do radiological examination on every body, but if you feel there's a need to, you order that first? Well, usually, yeah. If it's a—based on the case information, certain types of cases automatically get x-rayed. It's possible you may not think the case needs an x-ray, and then during the autopsy, you may have a finding, and you're like, okay, let's go back and do an x-ray.

(5:28:43 - 5:29:00)

But usually, we know ahead of time if an x-ray needs to be performed, and the x-ray is done

before the initial examination. Do you remember if you reviewed these x-ray films before or after the physical examination? I don't remember. It could be either way.

(5:29:01 - 5:29:20)

Yes, correct. And once you find—once you determine that upon your physical examination, the cranial cavity or the exterior of the head, you saw no exit wound, then was it important for you to go look at the x-rays? Yes, it would be important. Yeah, it would be important to look at the x-rays regardless.

(5:29:20 - 5:29:33)

Okay. Did that confirm then that it appeared to be a projectile still in the cranial cavity? Yes. Do you see that here on Stacy's 240? Is that what that is? That's correct, yes.

(5:29:34 - 5:29:54)

Is this the largest portion of the projectile remaining inside the cranial cavity? Yes. Do you see—looks like I'm starting with around the center of 240, Stacy's 240. You see those dots, those small dots there, and then there's a dot over here at the 9 o'clock region? Yes.

(5:29:54 - 5:30:29)

Do those have any significance for you in the radiological evaluation? Yes. Can you tell the jury why? Yeah, those appear to be small fragments of the bullet that broke off from the bullet as it traveled through the head, especially after it struck some part of the body, especially if it strikes the thumb. You can kind of see a linear pattern, kind of a faint linear pattern from the nose region into the atrial cranial cavity, which is the cavity where the brain is located, leading all the way up to the large fragment in the back of the head, which represents the main bullet.

(5:30:31 - 5:30:49)

So does this show for you perhaps almost a bullet pathway or trajectory up through the skull cavity there? Yes. Starting with the fragments and then finally ending with the largest piece of projectile remaining? Yes. All right.

(5:30:49 - 5:31:33)

Is it common in your experience in your examinations of the performance of autopsies that you will see a bullet or projectile fragment in that manner? Yes. Were you able to collect and recover the large fragment there? Yes. As well as the small fragments? The small—I believe we only recovered the large fragment, which is the—the very small fragments are generally not useful for examination purposes, so it's not necessary for us to collect those.

(5:31:34 - 5:31:48)

But you did discover or, excuse me, recover the largest bullet fragment that lodged on this picture states 240 toward the far left. Yes. I can show opposing counsel what I'll mark for identification purposes.

(5:31:49 - 5:32:02)

I'll only please the States Exhibit 241. Here, let me show you what's been marked for identification purposes against 241. Do you recognize that? Yes.

(5:32:02 - 5:32:27)

What is that, sir? That's a photograph of a bullet that was recovered from the brain of Mr. Akers. Does it fairly accurately depict what was recovered from the cranial cavity of Mr. Akers, as you saw, on or about 12-23-2019? Yes, it does appear to. Is that a common photograph of a bullet taken and it's part and parcel of the autopsy procedure? Yes.

(5:32:27 - 5:32:41)

As far as anything that was recovered? Yes. Do you think that that's been altered or changed in any manner to make it somehow not accurate? Not that I can see. I respectfully hope the Court's admitted that it's what's been previously marked for identification purposes on the States Exhibit 241.

(5:32:42 - 5:33:09)

No objection, Your Honor. So here on 241, if you'll look at that, do you still see that unique identified case number, 419? Yes. So you have the subject name up at the top here, Daniel Akers.

(5:33:09 - 5:33:26)

Do you see that? Yes. And 36-year-old white male, is that that? Do you see that? 36-Y-W-M? That's correct, yes. And then we have the date again of the autopsy, right? 2-11-23-19? Do you see that? Yes.

(5:33:27 - 5:33:36)

And you say someone wrote brain here. I don't know who. Is it fair that that's just giving the general location of where this was recovered? Yes.

(5:33:36 - 5:34:17)

And if you see, can you describe the defect in the projectile that you see? If you can maybe zoom in just a little bit, Investigator Burke. You'll just explain the defect in the projectile and tell the jury

how and why that would happen. If we were to assume that the projectile started out as kind of being conical, as would be, I guess, typical conical bullet or rounded bullet, how does it much rather become defective like this, please? Well, as a bullet won't deform until it strikes something.

(5:34:18 - 5:34:52)

So in this case, as the bullet enters the body and impacts tissue, it can cause the bullet to start to deform, especially hard tissue like bone. And the bullet, based on its pathway, it would have gone through bone near the base of the skull to go from the right nose and the right nasal cavity into the intracranial cavity where the brain is located. So to access that area, it would have to go through bone.

(5:34:52 - 5:35:02)

And bone is particularly deformed from bullets. And this is already in evidence. It's entered as states number 224.

(5:35:03 - 5:35:13)

If I can have you take a look at this. Just take a look at 224. Do you recognize that? That's already been in evidence.

(5:35:30 - 5:36:23)

Do you recognize that? It appears to, well, what it appears to be, again, it has label with the, there's two plastic boxes in here. They both appear to have the case number for this case. And one of the labels appears to indicate 22, a long rifle bullet, which is the report being tied to the bullet that was fired in this case.

(5:36:24 - 5:36:42)

And you see the little plastic container, you zoom out a little bit and that's where you see the plastic container that preserves the evidence. You're only states two, I forget what number that is, but what's on the screen, you see the little plastic container? Yes. Is that consistent with what's in that specific old unit? It is, yeah.

(5:36:42 - 5:37:04)

It does look similar. That is the type of plastic box that we use to secure bullets once they're recovered. So once the bullet was recovered, the main fragment that was remaining inside the PC, would it have been preserved and possibly sent on to another section for further analysis? Yes.

(5:37:04 - 5:37:15)

Yes. I'm going to go back to your report. If you can go back to the report.

(5:37:22 - 5:37:33)

239 for the record of your report. 229, sorry. Can you go to there, page two of 229 and continue on with your report? A little better.

(5:37:33 - 5:38:09)

So you have here evidence of injury section. Can you tell the jury generally what type of findings, why you included evidence of injury section in your report? Yeah, so we separate out, you know, the injuries are an important focus for us in a lot of our cases. And so we separate out, we have a separate section for injuries so you can go quickly to know exactly where the injuries are.

(5:38:09 - 5:38:37)

You know, if you're intermingled with the other, say you've got external injuries that are intermingled with the other findings in the external examination, you may have to weave through, if you just want to know what the injuries are, you may have to weave through a lot of non-injury stuff. And it's more efficient and effective in a report, especially if the injuries are reported, to put it in a separate section. Did you note, if you'll read here, what you note where it starts to say, these lesions, please read that sentence if you can see it.

(5:38:37 - 5:38:49)

Okay, what is that? Yeah, in the middle of this paragraph, where it starts, I'll just read it. These lesions do not appear in a pattern that would be expected for gunpowder stippling. Can you remember writing that? Yes.

(5:38:49 - 5:39:10)

Can you, first of all, let's talk about gunpowder stippling. What is that? Yeah, so when a gun is fired, more than just a bullet comes out of the end of the barrel of the gun. One of the things that comes out of the end of the barrel of the gun is gunpowder particles that are not completely burned up.

(5:39:11 - 5:39:34)

When a bullet is fired, there's gunpowder that's in the bullet cartridge. It's ignited, and it produces a large amount of gas, hot gas, and that production of gas propels the bullet at very high speed down the end of the barrel and out. So that gas comes out of the end of the barrel of the gun.

(5:39:35 - 5:39:57)

The combustion of the gunpowder particles results in the production of soot, a great black

material. So soot comes out of the end of the barrel of the gun, and these gunpowder particles, which you can think, they're little, they're a little, they're very small, you can almost think of them a little bit like grains of pepper or something. They're very small.

(5:39:57 - 5:40:30)

They can vary somewhat in size because there's different types, but these particles, they burn to create the gas, as I said before, but they don't completely burn up. So some of these particles either don't burn or don't completely burn, so these little particles come out of the end of the barrel of the gun, and you're at what's called, what we refer to as medium or intermediate range. These particles will impact the skin around, typically around the entrance wound, around where the bullet goes in.

(5:40:30 - 5:40:58)

You'll see where these particles impact the skin with sufficient force to create very small, pinpoint or slightly larger abrasions or scrape injuries in the skin. So you'll see, if there's gunpowder slipping across, it'll typically be a pattern around the entrance effect where there's these little punctate or slightly larger abrasions. That's what gunpowder slipping is.

(5:41:00 - 5:41:17)

And how is stippling different than soot? Soot is the gray-black material that's produced. It's a gray-black material that can at least be partially wiped away. Stippling is an actual injury.

(5:41:18 - 5:41:33)

They are actually little abrasions or scrape injuries caused by the gunpowder particles. Sometimes you'll see the gunpowder particles embedded in the stipples, but often you don't. And a final term, are you familiar with the term tattooing? Yes.

(5:41:33 - 5:42:07)

In this context of gunshot impact injuries, would tattooing be differentiated from those two prior terms? Tattooing is just another term for gunpowder slipping. So sooting is the chemicals that are possibly left near the entrance limb and it's stippling of the abrasions? That's correct. Is it fair that sometimes that stippling, did you say it can become subcutaneous or embedded under the skin? Well, the stippling themselves are on the surface.

(5:42:07 - 5:42:22)

You'll see it pinpoint abrasions. Sometimes the powder particles can become embedded in the skin. They don't typically become subcutaneous, they don't go below the skin, but it can be embedded in the skin near the surface.

(5:42:22 - 5:42:26)

I see. Embedded in the skin but below the surface. Yeah.

(5:42:26 - 5:42:44)

And sometimes protruding from the surface. Alright. You stated to the jury that yourself or one of your assistants washed the face of the deceased mechanic prior to your more thorough examination or physical examination, external examination, right? Remember saying that? Yes.

(5:42:45 - 5:43:14)

Is it possible that in your opinion, sir, I think you said 7,000 autopsies, 1,000 gunshot wounds, is it possible in your opinion, sir, for all of the sooting to have been removed during the washing process? I think it's possible, but I think it's very unlikely. Do you think it's possible at the same level of your experience, sir, for all of the stippling to have been removed just from the whitewashing process that you described? No, you wouldn't be able to remove stippling. Why not? It's an actual injury.

(5:43:14 - 5:43:30)

It's not material on the surface that can be wiped away. It would be like if you had a, you know, if you fell and scraped your knee and had a knee scrape and abrasion there, trying to wipe that away. You can't wipe an injury like that away.

(5:43:30 - 5:43:47)

Okay. Is there any relationship between the amount of stippling and what started with sooting first? I apologize. Is there any relationship in the amount of sooting that you would see as to the muzzle to target distance? Yes.

(5:43:47 - 5:44:20)

Can you explain that to the jury? Yeah, I mean, I think if you're, the, if you're out of contact with near contact range, near contact, I would say, would be less than half an inch away. Contact, and contact meaning with the barrel of the gun touching the skin of the person being shot. With that, you would get the most soot, the contact, near contact range.

(5:44:20 - 5:45:04)

As you get farther away, one inch, two inch, three inch, you'll start having less soot visible. Do you have a point based on your expertise, sir, at what point distance, muzzle to target distance, at what point would there be no soot? Would you expect to find no soot? Well, it's been reported that you can commonly see soot, you typically see soot as far as six inches away, but once you

get past a couple inches, you may not. Once you get past the contact, the near contact range, I think it's, when you get to one inch or farther, it can be variable whether it might be present or not.

(5:45:04 - 5:45:29)

But as you get farther away, you're less likely to see it. And did I ask you, is there a relationship similarly with the stippling, the proportion of stippling or the amount that you would see? Is that proportionate also like sooting to the range of fire? It is, yeah. The amount that you see and pattern of the stippling varies depending on how close the gun is.

(5:45:30 - 5:45:51)

Okay. When would you see the most stippling regarding range of fire? Well, if you're talking about the most, when you're very close, say you're, once you get to about a half inch, that's when you start seeing stippling. Because if you're closer than that, all those gunpowder particles that come out of the end of the barrel, they're going to go into the wound.

(5:45:51 - 5:46:25)

But once you get far enough out, maybe a half inch or so, some of those particles can start impacting the skin around the wound, causing the gunpowder stippling, the pinpoint abrasions. And so initially, as you're, so as you're moving, if you say you're fairly close, a half inch or an inch away, what you would expect is a very dense but very small area of gunpowder stippling, close to the entrance wound. As you get farther and farther away, that stippling pattern will get wider and wider, but less dense.

(5:46:25 - 5:46:42)

And as you get farther away, it'll start to be more sparse, the pattern. And then eventually you'll get to a point where there's no stippling. So would you expect to see, would you expect to see soothing in a contact or near contact wound? Yes.

(5:46:42 - 5:46:55)

Did you see it appear on this to see? No. Would you expect to see stippling on a contact or near contact wound? No. Stippling, no stippling on a contact wound? That's right.

(5:46:56 - 5:47:13)

Would you expect to see, you know what, stellate tearing is, or stellate wound? Yes. Can you tell the jury what that is? Yeah. Stellate tearing can refer to tearing certain gunshot wounds, especially contact-range gunshot wounds.

(5:47:13 - 5:47:58)

Because, like I said before, in addition to the bullet, there's a large amount of gas that comes out of the end of the barrel of the gun. And that gas, if you're at a very close range of a contact, near contact range, you can have tearing of the, you can have tearing of the skin, especially, particularly if there's an underlying bony surface because the gas gets into the tissue and dissects between the skin and the bone and creates injury that way. So you, particularly with gunshot wounds in the head, you'll get, you'll often get stellate tearing associated with a contact or near contact gunshot wound because of all the gas that goes into the, into the body, into the wound.

(5:48:01 - 5:48:19)

Stellate, does it mean in solid shape? Yes. Did you see a stellate picture of a wound here on the system? No. I'm going to approach a person in counsel and show what I've marked as stachysitis 241 and 242.

(5:48:48 - 5:49:12)

Sir, if I can show you what's been marked for notification purposes, somebody has stachysitis 241 and 242. Before I do that, are you familiar with a book called Gunshot Wounds by DiMaio? Yes. Is that a reference that people, a lot of physicians in your capacity would use to see the characteristics of gunshot wounds? Yes, it is.

(5:49:13 - 5:49:30)

For, if you'll just excuse the term, is it kind of the go-to reference label for gunshot wounds in this country for people in your profession? Yes. DiMaio is, is he kind of considered the expert on gunshot wounds? Yes, he is. I'm sorry.

(5:49:30 - 5:49:57)

Yes, he's considered an expert. Have you, in the course of your career, referenced DiMaio's book on gunshot wounds before? Yeah, it's the primary reference I use for gunshot wound evaluation. As an aid to assist the jury with the evidence, would it help you to see, explain some pictures from, some illustrations from DiMaio's book Gunshot Wounds? Yes.

(5:49:57 - 5:50:04)

May I approach you with this? Yes, sir. I'll show you, sir. First, States Exhibit 241 for demonstrative purposes.

(5:50:06 - 5:50:26)

If you can take a look at that. Do you recognize anything on 241 from DiMaio's book? Yes. Permission to publish for demonstrative purposes, something as an aid to the jury, from a learned

treatise or source in this case? Anything after that? No, sir.

(5:50:26 - 5:50:37)

Just maybe an instruction that this is not our case. This is just from a book, from a textbook. An instruction that it's not our case.

(5:50:37 - 5:50:42)

Yes, it's not our case. We can all agree to that. I'll ask some more questions about that.

(5:50:42 - 5:50:59)

What you have with 4242, is that Daniel Aker's autopsy anyway? No. Is it just an illustration from DiMaio's book, which is a treatise you may write on in your relations sometimes? Yes. Do you think you would assist 242 in explaining the jury the different nature of these things? Yes.

(5:51:00 - 5:51:07)

Please, sir, publish. No opposition there. Just publishing this as a demonstrative aid that Dr. Lane, if you could possibly.

(5:51:09 - 5:51:17)

I'll call it States 241, but it's not. It's just a demonstrative. Can you take a look at the first illustration from DiMaio's book? The letter A is in alpha.

(5:51:17 - 5:51:42)

What do we see there as far as characteristics of gunshot wound? Yes, so what you see is essentially you see a defect in the position. That represents the entrance defect where the bullet struck the body and then entered the body. And then all around, all these pinpoint marks that you see, this represents gunpowder stick wounds.

(5:51:42 - 5:51:57)

These are very small abrasions. They're caused by impact where the gunpowder particles, the small gunpowder particles impacted the skin around the entrance when it caused these abrasions. Okay.

(5:51:57 - 5:52:23)

If we could go back to, and I want to make it clear one more time, 242, what you've shown the jury and pointed out with the green laser pointer, that's not misdeceiving, correct? That's correct. If we could go back to misdeceiving. In states number 237, please, we can go back to this to see that, knowing what you just showed us from DiMaio.

(5:52:28 - 5:52:55)

Do you see any stickling pattern, circular stickling pattern around the right nostril that you've identified as gunshot wound here? No, there's no gunpowder stickling. And going back to DiMaio now, or Section B for demonstrative purposes only, can you tell the jury what DiMaio shows us here? B, right for awful. Yes, so this is another wound.

(5:52:56 - 5:53:20)

This one, there's a defect in the center. It's kind of hard to see in the photograph, but there's heavy, these pump tape marks, these pinpointer-like electric marks representing gunpowder stickling. And these were gunshot wounds caused by a .22 long rifle cartridge, which was the same type of bullet cartridge that was used in Mr. Akers.

(5:53:22 - 5:53:46)

Mr. Akers was shot by, but this is not Mr. Akers, just shot with the same type of bullet cartridge. So DiMaio is in Subsection B, and he is in Bravo here that we're looking at. Did he identify, did the author identify that that's a .22 long rifle cartridge? Yeah, for this photograph and the previous photograph.

(5:53:46 - 5:54:07)

Both of them, okay. And are you aware that that's the same powder removed from the deceased's skull? Yes. What is the, if anything, sir, the significance of the grayish matter here on, I'm sorry, on, okay, just a moment.

(5:54:07 - 5:54:16)

If you need to know that we have a diabetic on the jury, do we need to stop your honor? No, unless she does. Okay, thank you. No problem.

(5:54:16 - 5:54:40)

So if you'll look at the gray matter or the blackish matter in the center of Subsection, or Subsection B, or Diagram B of the public Bravo from DiMaio's book, do we see any notable here in your eyes? It could represent soot. It's hard to tell, isn't it, when the stippling gets so dense that there may be soot superimposed on that, too. It's hard for me to tell.

(5:54:40 - 5:54:58)

Could it be possibly just a super concentrated area of soot? Yes, it could be. Okay. And going back to Diagram A as an alpha, did you see any sooting here on A, like alpha? Nothing that can be confident about that.

(5:54:59 - 5:55:39)

But the darker area similar to Diagram B, is it possible that that could be a super-populated grouping of stippling? Yes. All right, so can we go to Diagram B again, like Bravo? Okay, so you've gone over Diagram B like Bravo with the 22-caliber long rifle. And going back to the decedent in this case, did you see any of that similar superimposed or super-populated grouping of stippling on this entrance wound on this decedent on his right eye? No, there was no impact stippling.

(5:55:41 - 5:56:15)

All right. I believe I showed the opposing counsel also Stage 242 for demonstrative purposes. Can we take a look at Stage 242 only for demonstrative purposes? Let's see if you recognize that from Damian's treatise.

(5:56:15 - 5:56:34)

I do recognize it. Do you think 242 would assist the jurors in understanding the nature of the testimony by using that as demonstrative data? Yes. Have you published 242 as demonstrative, Your Honor? No.

(5:56:37 - 5:57:11)

Also, I'll show you that 242 is a demonstrative data from a 22-long rifle wound here, too, Dr. Layman. What is notable about Damian's photograph here from a 22-long rifle wound? These are two contact-range wounds, one here where you see the defect where the bullet entered and one here where the bullet entered. And you can see around the edges of the wound there's this great black material that is described as searing.

(5:57:11 - 5:57:32)

And searing is a burning of the tissue caused by all those hot gases that come out of the barrel of the gun. And what happens with searing, you get searing and stick together, you get a discoloration that you can't wipe away. So you can try to wipe it away, but you can't.

(5:57:32 - 5:57:36)

It's seared into the skin or tissue there. Almost burned in. Yes.

(5:57:36 - 5:57:59)

Almost like a brand, something burned into the skin. Is it the searing permanently, can it permanently alter the nature of the skin? I don't know that it permanently alters the nature of the skin, but at the time of... Immediately after, you can't wipe it away. It may go away in time.

(5:58:00 - 5:58:29)

Yes, I fear. But if you wash the body, for example, wash the wound like we see on Damian's page here, if you prepare the wound for further analysis, do you expect searing to disappear? No. Did you see searing on the decedent's entry wound on his right nostril here, please? Did you see searing in this area? No.

(5:58:31 - 5:59:32)

Is it more common or less common to see searing in a contact wound rather than a longer range wound? You'll see the searing in a contact or a near-contact range wound. Once you get out past that, I wouldn't expect to see it. Can I please show you something that's been admitted in the stases of the 238? You made some mention earlier of abrasion or... If that's not the term you used, I don't want to use that term, but you could take a look at this area here.

(5:59:32 - 6:00:08)

I thought you said abrasion, but what you see, this purplish discoloration area right here, what do you note that to be, sir? The red area here is abrasion. There's tearing here, too, because it's an entrance wound right at the edge of the nostril. It's hard to see the full measure because of the resolution of the photograph, but there's some tearing here that represents impact on the bullet.

(6:00:08 - 6:00:26)

The red coloration around it is all predominantly marginal abrasion. Let's see if we can get a little bit closer. Can we raise it up a little to the top? Thank you.

(6:00:26 - 6:00:36)

Hopefully we won't lose too much resolution. Dr. Landa, is this tearing of the skin that you talked about? Yes. Okay.

(6:00:37 - 6:01:10)

Is that more common with a contact or near-contact range wound? No, I mean this is just sort of an incomplete entrance because the bullet impacted sort of at the edge of the nostril. If the bullet had impacted on the cheek, you'd have a more circular, oval area of defective tearing. Based on your knowledge, training, and experience, what would cause that tearing? In this case, the impact by the bullet.

(6:01:11 - 6:01:20)

Okay. This is not a gas expansion or gas exhaustion from the muzzle. This is actually a projectile? Yes.

(6:01:20 - 6:01:49)

In your opinion? Yes. If you could please similarly explain in your professional learning and opinion, what would cause this, what you term an abrasion, to the top of that tearing or surrounding that tearing for the 12 o'clock area right here? It could be impact by the bullet. There's a somewhat tangential nature to the bullet here.

(6:01:49 - 6:02:07)

It comes in kind of at an angle. The marginal abrasion at a bullet, sorry, the marginal abrasion is a rim of abrasion around the entrance defect, right around the edge of the entrance defect where the bullet enters. It's where the skin has been scraped away or is missing.

(6:02:08 - 6:03:06)

It used to be thought that that was caused by the bullet scraping the skin as it went in, but there's been studies that now show it's related to overstretching of the skin because when the bullet hits, it comes at a high velocity, so it's a lot of energy hitting the body. It causes it to overstretch, and then when it comes back down, the skin apparently doesn't come back as far, the superficial part of the skin doesn't come back as far as the deeper, come back to normal as far, to the same degree as the deeper part of the skin, and so you get what we refer to as a marginal abrasion, but it's related to, it's essentially related to impact by the bullet. Did you have an opportunity to review photographs or in person a pistol, 22-caliber pistol that was recovered and tested by the GBI in this case? Yes, in photographs.

(6:03:07 - 6:03:13)

In photographs. Let me show you what's been iterated out of it. It's a state-exhibited .73, sir.

(6:03:13 - 6:03:41)

Do you recognize .73? Do you recognize that? That looks consistent with the photographs of the gun that was used in this case. Do you have any reason to believe this, because it's not a gun from those photographs? No, no, if you're telling me it is, I don't have any reason to believe it. It's not, and it does physically resemble it.

(6:03:42 - 6:03:56)

Let me show you on the projector, .173A, actually removing the revolver. From the evidence box, sir. Can you see it, sir? Yes.

(6:03:57 - 6:04:35)

If you need to see it or handle it, let me know, but I'll just go off of this photograph on .173A. Do

you know what this part of the firearm is, sir? Did you look at photographs of that? Yes, I did. You know that as the ejection rod? Yes. Is that a rod that just clears the shells from the cylinder? Yeah, you know, I'm not sure what the function of it is, but it's called, I've seen it referred to as an ejector rod or a cylinder rod.

(6:04:35 - 6:04:42)

Cylinder rod, okay. Or an ejector rod. Well, what term do you use in your practice? Ejector rod is fine, yeah.

(6:04:43 - 6:04:57)

Okay, ejection rod or ejector rod. It's a rod that protrudes, would you agree, almost equidistant from the muzzle? It's about the same level as the muzzle? In this case, yes. Okay.

(6:04:58 - 6:05:30)

At least in this, the way the firearm is situated, positioned now, right? Yes. So, can you see checkered marks on the ejector rod here? Yes. Going back to 238, you have an opinion, I'm sorry, I left it in that spot.

(6:05:31 - 6:05:48)

Thank you. Thank you. So, you have an opinion, based on your training knowledge and experience, whether this abrasion, what you call an abrasion here above the tearing, you have an opinion as to whether this abrasion was caused by the ejector rod? I do have an opinion.

(6:05:49 - 6:06:42)

Can you state it for the jury, please? It's my opinion that it was not caused by the ejector rod. Why do you believe that? Because if it was caused by the ejector rod, that would indicate that it was a contact range gunshot wound because you have to have the ejector rod up against the skin there, and that's something that we do see in contact range wounds sometimes, we'll see the outline of the muzzle, including the ejector rod, if it protrudes all the way to the barrel, as it did in this case. But the problem with that is we know the bullet, you can see the initial part of the wound path inside the nose, it travels on the inside of the right nasal cavity and extends all the way to this abrasion that we're seeing on the skin.

(6:06:42 - 6:07:32)

So we know the bullet traveled right adjacent to that abrasion, and if you're going to say it's a contact range wound, which you would pretty much have to say if you're going to say that was caused by the ejector rod, then the barrel of the gun, the opening where the bullet comes out would have to be right there adjacent to where this abrasion is and where this tear is in the right

nostril area. And if that was the case, if this was a shot fired by a long rifle cartridge, as it was in this case, you would expect there to be soot and searing. The long rifle cartridge, in a wound caused by a long rifle cartridge, you would expect prominent soot and prominent searing.

(6:07:32 - 6:07:47)

And so there would be a lot of soot, and you'd expect soot that you couldn't completely wipe away. In this case, there's no evidence of soot on the nose, around the nose, inside the nose, along the wound path. There's no evidence of it.

(6:07:47 - 6:08:22)

There's no even hint of soot. Yes. If this were... I can't remove... Let me show you 173A.

(6:08:22 - 6:08:33)

I can't remove the safety lock, because we're in a court. So it makes it impossible to depress the cylinder in the frame. The point is where it's not going anywhere.

(6:08:33 - 6:08:38)

Let me point that out. So do you see how... I'm sorry. I don't mean to block you, sir.

(6:08:39 - 6:08:56)

Do you see how the cylinder cannot be depressed into the frame of the weapon because of the gun lock? Yes. But let's just assume, or just do best to assume that the cylinder was fully inside the frame of the weapon. Can you imagine that? Okay.

(6:08:57 - 6:09:38)

Yes. Is it true, sir, how would the gun have to be positioned, if we can go back to that picture with the marginal abrasion, as Dr. Landy called it? Yes. So how would the gun have to be positioned if that wound, I know you don't believe it is, but if you think that wound is a... If someone thought that wound was caused by the ejector rod, how would the weapon have to be positioned? It would have to be positioned with the... It would be upside down, essentially, because you would have to have the ejector rod above the level of the barrel where the bullet comes out.

(6:09:38 - 6:09:55)

So it would be... Instead of like this, it would be like this. If you can sort of... Where the top of the gun is here, it would be with the top of the gun down. So it would have to be upside down, or I guess in this case it would be like this.

(6:09:56 - 6:10:09)

The abrasion jury round. Yes, sir. So if you see the weapon and the ejector fork here, do you have any doubt in your mind that the entrance wound was into the right nostril? No.

(6:10:10 - 6:10:29)

Okay, so would you agree that the... What you call a marginal abrasion is above the right nostril? Yes. Okay, so is it fair, sir, that in order for this ejection rod to have made that mark, the pistol would have had it inverted? Yes. And I'm holding my right hand, I'm holding my left.

(6:10:29 - 6:10:49)

So would it have to be held upside down? Yes. Let me show you what's been admitted in the notes. This takes us to page 239, please.

(6:10:54 - 6:11:13)

I'll show you this. Did you or a member of your team take this photograph? Yes. Can you show... Tell the jury, please, what... What is it you were trying to show in either directing this photograph to be taken or taking it yourself here? This is the close-up of the nose.

(6:11:13 - 6:11:23)

This is the right nostril. This is the area of the wound that we were looking at. This is that marginal abrasion on the edge of the nostril.

(6:11:23 - 6:11:54)

And then you can see here, this is a graze-type wound, a laceration, a graze-type wound where the bullet, it scrubbed the nose, as you can see in the location here on the edge of the right nostril, and it continued on the outer aspect of the right nasal cavity. You can kind of see it here. The outer edge of the right nasal cavity had extended up, up of the right nasal cavity before, until it eventually entered the intracranial cavity of the brain.

(6:11:54 - 6:12:13)

You can see the initial wound path here. And we photographed that just to show what it looked like, the nature of the wound, and the absence... It also shows the absence of any evidence of gunshot residue. That's what I'm getting into now.

(6:12:13 - 6:12:26)

Thank you for that segue. So did you have an opportunity... I'm sorry. Did you have an opportunity in your laboratory search to visually gain access up into the right nasal cavity here? Yes.

(6:12:27 - 6:12:47)

And you were talking about some lighting that you could pull down, position, and move. Did you have access to that type of lighting when you did the examination? Well, I don't recall exactly what lighting we would have used. In this case, in a small area like that, you could have just used a flashlight, or you could have used the overhead lights that we have.

(6:12:47 - 6:13:12)

They look sort of like what you might see in an operating room. In any event, did you... Are you confident, sir, that you had an ability to successfully look up into and examine the right nasal cavity? Yes. For the first portion of the wound, we could see far enough to where you would expect the soot and gunpowder particles to be present.

(6:13:13 - 6:13:55)

We could see that far up where you would expect to see them in a significant amount if there was a contact between them. We could see far enough up into the nose to be able to make that determination. If you had reason to believe that there could possibly be sooting or gunpowder residue or stifling at all in farther into the nasal passage, could you have ordered a microscopic test to be undertaken? Well, we would do the microscopic examination if we see dark discoloration at the wound, at the edge of the wound, at the opening where the marginal abrasion is or in a superficial wound path.

(6:13:56 - 6:14:26)

If we see dark coloration that we think, well, that could be soot, is it soot? That's when we would do a microscopic examination. In a case where you don't see anything, and not even a suggestion of soot, the microscopic examination is not helpful because to be able to, what you would expect, if it's a contact-rich wound, is a large amount of black material consistent with soot. In a wound where you don't see any evidence of it, you're not gonna have a large amount of it.

(6:14:26 - 6:15:06)

And a small amount's not helpful because you can commonly see a small amount of similar-appearing material in distant-range wounds. So the utility in looking at tissue under the microscope in the superficial wound path is if you see some dark coloration that you think might be soot, because if you don't see anything, you're not gonna see, microscopically, there's not gonna be a lot of it. Are you aware of any kind of chemical analysis that could have been undertaken up inside the nasal passage to determine the presence of soot? No, but there's been a lot of chemical testing that I'm aware of to make that determination.

(6:15:09 - 6:15:27)

I can go back to the evaluation. All right, so back to your report a little bit. We discussed a little bit of this.

(6:15:27 - 6:15:45)

If we could go up just a bit. Let's see. You say here that by the time the body came into your laboratory, you see that rigor mortis is well-formed and generalized.

(6:15:45 - 6:16:12)

Can you tell what that is, please? Rigor mortis is a post-mortem phenomenon where the muscles become stiff. It's not typically, it's not usually present right after the death, but in the minutes or hours after death, it starts to, the muscles start to stiffen up. If I can go up the next paragraph, up to the top above where you talk about rigor mortis, take a look at this.

(6:16:12 - 6:16:33)

Do you see where it says, examination of the hands reveals minimal amounts of material consistent with blood on the back of the right hand overlaying the fifth metacarpal region. On the palmar aspect, the left thumb near the thumb tip and on the back of the thumb near the metacarpal phalangeal joint. Can you see that? Right, sir? Yes.

(6:16:33 - 6:17:05)

Talk about what that means just if I, which I am, a layperson, and I didn't know those words, like what you're saying there, what would you see there to make note of in your report? Yes, so I'm just describing very small amounts of material consistent with blood on the back of the right hand overlying the fifth metacarpal region. That would be this part of the hand here, and I'll demonstrate on my own hand, not the fingers, but the part of the hand between the knuckles and the wrist. That's the metacarpal region.

(6:17:05 - 6:17:36)

So there's a little bit of blood there, and then on the palmar aspect of the left thumb, so on the opposite side of the palm, palmar aspect of the left thumb, near the tip of the thumb, and then on the back of that thumb, near the metacarpal phalangeal joint, that's basically the knuckle there. So there's minimal amounts of material that may represent blood on the hands. Did you see a large amount of blood on the left hand, for example? No.

(6:17:36 - 6:17:58)

Okay. The next picture, please. And then we segue into the internal examination.

(6:17:59 - 6:18:47)

In this case, did you find anything that was really notable to your determination of manner of death regarding that one as a result of the internal examination? Or is it all just what you expected to find? In the internal examination, there were a portion of the report. We put the internal examination of the body related to the gunshot wound in the evidence of injury section, but in the internal examination section of the report, it would be the non-injury findings. And I didn't see any findings... I didn't see any findings in the... I didn't mention any findings there that would be separate from the gunshot wound that would be expected to have caused or contributed to the death.

(6:18:48 - 6:19:11)

Go back to the X-ray footage. Just a moment, Dr. Lennon. Space exhibit 2-4, please.

(6:19:15 - 6:20:09)

Did you notice anything... Can you tell me generally anything about the trajectory path, the pathway of the projectile as it traveled into the deceased's body? What direction... What pathway did the projectile take? Yes, so when we give wound path directions, we give directions from the deceased individual's point of view, with them in what we call anatomic position, which would be standing up, facing forward, arms down by the side, palms forward. So basically in that position, the wound path, after it entered the body, or impacted the body here in the right nose, it traveled predominantly front to back, so towards the back of the head, and then to a lesser degree left to the right and upward. So it sort of, and I'll indicate with my finger, sort of the rough trajectory of it.

(6:20:09 - 6:20:25)

It ended up inside the skull, towards the back on the left side. And the bullets traveled mostly... Most of the time, it traveled close to a straight line. In this path, in this particular pathway, you said that the projectile traveled upward.

(6:20:25 - 6:20:42)

Can you explain that? Yes, so it traveled front to back, but also somewhat upward. So where it ended up in the head was above the level of where the bullet entered. So there was a... It wasn't just straight back.

(6:20:42 - 6:21:05)

There was a somewhat of an upward trajectory and somewhat of a right-to-left trajectory, too, towards the left side of his head. Could an upward trajectory of the bullet pathway indicate that the muscle was facing slightly forward when fired? Yeah, relative to the decedent's head. Now, we don't know.

(6:21:05 - 6:21:40)

We assume he was standing, facing forward just for purposes of designating the wound path direction, but we don't always know what the path of the bullet would be. I mean, I'm sorry, we don't always know what the position of the body is at the time the person was shot. So if you assume he's standing, looking straight ahead, not up, not down, that would be evidence that the gun was somewhat pointing upward.

(6:21:43 - 6:22:05)

Not sharply upward, but somewhat upward. And going to page 4 on stage exhibit 229, you're reporting in where you say, other procedures. Can we go over that just a moment? You did take photographs on number 1. Do you remember that? The photographs were taken.

(6:22:05 - 6:22:09)

Maybe you didn't take them. I'm sorry. And then you see full radiography.

(6:22:10 - 6:22:25)

You did recover the bullet from the skull, right? Yes. Then you say that some evidence was collected from the femur area and possibly submitted to other divisions within your agency. Do you remember that? Yes.

(6:22:26 - 6:23:04)

And then number 5, you say that this case was discussed with Lieutenant Mike Hill, Detective Hardy of the Pawnee County SO, Matthew Rollins, Ashley Good at the DA's office on 3-19-20 at the D.C. headquarters. Do you see that? Yes. Why would you discuss a case like this with those parties on March 19-20-23? Because in this case, the case was presented as a self-inflicted gunshot wound, but the findings in the case aren't a good fit for a self-inflicted gunshot wound.

(6:23:04 - 6:23:43)

So it's important for us to collect more information about the case, about what happened, about the appearance of the scene because we always, in determining the cause and manner of death, we always evaluate both the findings on the body and the investigative information. And so in this case, the findings on the body didn't seem to match the initial investigative information, so we needed to gather more. Is that the nature of your meeting in March 20-20? Yes.

(6:23:43 - 6:24:31)

When you say the findings on the body, does that include the things you've just now told us about, the stelae wound, the stippling, the soothing, things like the tearing, things like that? Yes, especially the aspects of the gunshot wound, the location of the gunshot wound, and the range of fire of the gunshot wound. Is there anybody at... Let me put it this way. Were you told on March

19 of 20-20 that there had been a text sent by Daniel Akers that said he was sad and lonely and depressed? I'm sorry, what did you say it was sent? I don't know what it was sent, but prior to his death, shortly before his death, were you told there was a text that said he was sad, lonely, and depressed? No.

(6:24:32 - 6:25:03)

If you had been told that, sir, would that have changed the findings scientifically on your observation of gunshot wounds? No. Were you told during the March meeting in 20-20 by any investigator or any source that this decedent was suffering financially or financially having financial problems? No. If you had been told that this decedent was suffering financially, would that have changed your observation scientifically of the nature of the gunshot wound? No.

(6:25:06 - 6:26:20)

Were you told on March 19, 20-20 by any source that this decedent was possibly divorcing or getting divorced or his wife was about to divorce him? Anything about his marital status on March 20-20? We were told that he was having marital problems. Did the fact that he was having marital problems change your observation of the scientific aspect of the gunshot wound? No. If you were told that... If you were told that this decedent was happy and upbeat and positive at any time during the March 20-20 meeting, would that have changed your opinion of the scientific observation of gunshot wounds? No.

(6:26:24 - 6:26:57)

Were you told at all in March of 20-20 that this decedent was about to become unemployed or possibly lose his job? Were you told that? I don't recall being told that, no. If you were told that, sir, would that have changed your observation and your analysis of the gunshot wound aspects? No. Were you told in March of 20-20, sir, or at any time, and these questions apply to any time, were you told that this defendant, this decedent, excuse me, was afraid of being revoked on probation? You remember being told that? No.

(6:26:58 - 6:27:59)

If you had been told that there was a fear of being revoked on probation until 2024, having to do time in prison, would that have changed your interpretation of the scientific way of gunshot wounds that you saw? No. Do you have an opinion of Ranger Fire in this case? Yes. So Ranger Fire, can you tell again what he is? Ranger Fire is, when a person sustains a gunshot wound, it's how far was the end of the muzzle of the gun away from the body, away from where the bullet struck on the body at the time the shot was fired? What is your opinion on Ranger Fire in this case? Distant Ranger Fire, which would mean at least, the muzzle of the gun would have been, I would expect the muzzle of the gun to be at least approximately a foot away from the nose or farther.

(6:28:10 - 6:28:45)

Was this, would you, I'm sorry, would you classify this wound as being legally incapacitated to the victim? Probably, it probably would have been. Do you think the victim would have been, based on your training, knowledge, and experience, would the victim in any way have been able to manipulate a firearm after suffering this type of wound? He probably wouldn't be able to have awareness or be able to have, yeah, so he wouldn't have been able to have awareness, so he wouldn't have been able to voluntarily manipulate a firearm. Probably, probably would have been able to.

(6:28:52 - 6:29:14)

What did you note in this case as being the cause of death? The cause of death was the gunshot wound. What did you note in this case as being the manner of death? Homicide. Did you arrive at that conclusion of manner of death with a reasonable degree of mental certainty? I wouldn't use the word certainty in this case.

(6:29:14 - 6:29:38)

I would say, as far as the manner of death goes, I would say the evidence strongly supports it, but it depends on what you mean by a reasonable degree of medical certainty. I wouldn't say certainty, and if you mean by a reasonable degree of certainty, well, I'm not 100% sure, but I'm so close to 100% sure, I'm basically sure. I wouldn't say the level of confidence is there either.

(6:29:38 - 6:29:58)

I would say the evidence in the case provides strong evidence of homicide. Certainty could only be arrived at if you were, say, an eyewitness, would you agree to that? As to what happened? Yeah. So you obviously were not an eyewitness.

(6:30:01 - 6:30:12)

You're not aware of any eyewitnesses to the events other than the defendant. That's correct. Did you... Let me ask you this.

(6:30:12 - 6:31:56)

If I can show opposing counsel what I'll mark for identification purposes on the United States Exhibit 243. Let me show you what's been previously marked for identification purposes on the United States Exhibit 243 and see if you recognize this, sir. Recognize that? Yes.

(6:31:57 - 6:32:13)

How do you recognize it? This is, just from reading through portions of it, this represents the

Georgia death certificate for Daniel Akers. Have you seen it before? Not to my recollection. Okay, that's fine.

(6:32:15 - 6:32:28)

At the time that the decedent arrived at your laboratory, sir, I'll take 243 back. Was the decedent Daniel Akers, was he deceased? Yes. Did he survive this? No.

(6:32:30 - 6:32:44)

Let me go through a few more things with you. How many examinations did you say you've conducted of gunshot wounds? I estimated probably around 1,000. 1,000.

(6:32:45 - 6:32:51)

Are all of those homicides? No. Some can be accident. That's right.

(6:32:51 - 6:32:59)

Some may be suicide. Yes. But they're all gunshot wounds, right? Yes, for... That's right.

(6:33:01 - 6:33:27)

How many of those have you reviewed that were suicides? I would say, I don't have an exact count or a close approximation. I would say probably, it's probably a similar number of suicides and homicides. They're probably about, it's probably about close to 50% one versus the other.

(6:33:27 - 6:33:39)

There's a few, we have some undetermineds too. And accidental gunshot wounds are rare. So it's a relatively small number of those.

(6:33:39 - 6:33:43)

Okay. So you said around 1,000 gunshot wounds. Is that right? Yes.

(6:33:43 - 6:34:00)

You take out just an infinitesimal amount of accidental gunshot wound cases, right? Yes. And so that leaves 50%, 50% of the remaining wounds, did you say, were some suicides and some homicides? Roughly. That would be a rough estimate of it.

(6:34:00 - 6:34:28)

Yeah, probably a similar number. How many of those suicide cases that you've worked, Dr. Langdon, were indicative of the victim shooting themselves in the nose? I can't remember having

ever had a case like that. I did go back and look at a nine-year period of all the non-homicide gunshot wounds that I autopsied.

(6:34:28 - 6:34:40)

So it was suicides, it was undetermined. I included the undeterminеds because I wanted to look at all of the potentially self-inflicted gunshot wounds I had. Included, I think, maybe one accidental gunshot wound.

(6:34:42 - 6:34:54)

About 10 or so undeterminеds, all the rest were suicides. It was over 200 suicides. I took out, and actually, yeah, for this purpose, I didn't take anything out.

(6:34:55 - 6:35:19)

So for all of the suicides or the gunshot wounds that were potentially suicides, there were no gunshot wounds to the nose. Were you able to subdivide those non-homicide gunshot wounds by dominant hand? No. There's no study on that.

(6:35:21 - 6:35:43)

I'm not aware of a study on that. If you're trying to determine if somebody is right-handed, what are the odds that they're going to shoot themselves with their right hand and not use their left hand to shoot themselves? I'm not aware of studies that indicate that. Logically, you would think the large majority of the time you would use your dominant hand.

(6:35:46 - 6:36:10)

I know you kind of didn't, kind of grizzly, but when you started, you were seeing a lot of suicide wounds. What are the most common suicide entry wounds that you've witnessed in your career? Yes, so probably the most common place people shoot themselves, where the entry wound is, is to the right side of the head, especially in the temporal region. I would say that's the most common.

(6:36:11 - 6:36:47)

Other places that we see, not infrequently, are inside the mouth, under the chin, sometimes to the left side of the head, less frequently. Occasionally, infrequently, we'll see to the forehead, especially the middle of the forehead, and then sometimes to the left side of the chest or the middle of the chest. Those are the areas that cover the large majority of entrance locations for the suicides we see, the gunshot wound suicides.

(6:36:47 - 6:37:45)

Sticking with that area of focus on gunshot wound suicides, sticking with the area of the focus on gunshot wound suicides, how many of those have you had in your career where you saw no stippling at all? It would be rare to have a... It would be... It's rare to have a gunshot wound, a self-inflicted gunshot wound that doesn't have any evidence of either contact or intermediate range of fire. That same group of cases I looked back at over that nine-year period, I looked at about 200 gunshot wounds. I'd say it was 215.

(6:37:45 - 6:38:16)

I took about 10 out because the wounds may have been altered by either post-mortem decomposition or thermal injury, say if somebody set the house on fire and then shot themselves and then they burn up or if they were in the hospital for an extended time. And so treatment or healing might have altered the gunshot wounds. I took those out and just looked at how many cases I had that were either suicides or possibly suicides.

(6:38:16 - 6:39:00)

I included undetermined too. They didn't have any evidence of either contact range of firing, near contact range of firing, which would be the large tearing, would be the sit-down position, or didn't have evidence of intermediate range of firing, which would have been gunfire sipping. In that group, there was only one case that was potentially a suicide that didn't have any evidence of either close contact or intermediate range of firing, and that was a case, a gunshot wound to the abdomen, where the person went into the hospital and their clothing was not with them when they came to us.

(6:39:00 - 6:39:14)

So we don't know. Commonly when people go to the hospital, the clothing gets taken off as part of the emergency medical treatment. And so we don't know if that person was wearing clothing over the abdomen, because that's important.

(6:39:14 - 6:40:03)

You can have what would be potentially a contact, near contact, or something that would normally be considered in the range of an intermediate range gunshot wound, but if there's clothing in place, it can block the deposition of the gunshot residue on the body so that if you just look at the body, you don't look at the clothing or know the clothing was there, you might think it's a distant range wound. So only one gunshot wound that was potentially a suicide in that group didn't have evidence of contact, near contact, or intermediate range of firing. In this case here that you've been looking at with decedent evacuators, do you have any indication that he was wearing a chastity or a bandana or any kind of clothing whatsoever that would have covered the right nostril entry wound? No.

(6:40:03 - 6:40:23)

Did anything like that come in with the body? No. When you arrived at, you mentioned, going over your qualifications, you mentioned a peer-reviewed system or a peer-reviewed scenario. In arriving, the manner of death determination that you did here is homicide.

(6:40:24 - 6:40:53)

Did you introduce that finding to a peer-reviewed system? Yes. How many other medical examiners were involved in that peer review? The official peer review was done by a single medical examiner who would have reviewed the case and signed off on it, would have reviewed the autopsy report, the autopsy photographs, and if they agreed, they would have signed off on it. That would be the official peer review that would have been done.

(6:40:53 - 6:41:46)

After the, subjecting your findings to the peer review, did you still arrive at the manner of death as being homicide, sir? Yes. You think it's important, sir, let me ask you this, why do you view, why is it you want to view the decedent's body in person at your laboratory? Couldn't you just look at photographs, for example? Photographs that were taken some other time, they show up with Dr. Lehman at the Oriza and makes all these findings? No, I mean, you can't, you can't photograph everything that might be important in the case. You need to be able to look, not just at what was photographed, but you've got to be able to see everything because you have to rule out other things.

(6:41:46 - 6:42:07)

You have to make sure there's no other injuries that are present or other findings. And you want to see it in person because it's not, it's not as good to see a photograph as it is to see the body in person, typically. There's things you might see in person that you don't, you won't see in a photograph.

(6:42:07 - 6:42:30)

Now, sometimes there's things you might see in a photograph that you didn't notice in person, too, but there's, so there can be advantages to seeing both, but there are definite advantages to seeing the body as opposed to just seeing photographs. And not only seeing the body, Yes. Yes.

(6:42:34 - 6:43:20)

Yes, that's correct. No. You've been tenured as an expert, or an expert, in forensic pathology.

(6:43:20 - 6:44:01)

Did you ever hire your services out to go outside the GBI and testify around the state or country, offer other opinions in other cases that they're not GBI in origin? I've worked, I've worked part-time in past years to perform autopsies in some of the county, a couple of the county offices in the Atlantic area, the Cat County Medical Examiner's Office and the Cobb County Medical Examiner's Office to fill in, to help with autopsies there, I think I got involved in one civil case many years ago. I don't remember the details. That person was an autopsy, though.

(6:44:01 - 6:44:33)

As far as testifying and being an expert witness and reviewing cases that other people have autopsied, I don't recall having, I don't believe I've ever I've never done expert work in that fashion. Have you ever been paid to go and give an opinion that was in contrast to another medical examiner, sir? No. Do you get paid anything other than your GBI salary to be here today for testifying? No.

(6:44:37 - 6:45:07)

Would it have been easier or more difficult, sir, just to write this as an undercard for you? It would have been easier. As far as you're talking about the amount of time and effort involved in the case and the amount of work, it would have been much easier to call that a deterrent. Do you get any kind of bonus or points or move up the chain of the GBI by calling this a homicide? No.

(6:45:18 - 6:45:43)

Did anybody, did anybody, sir, any party in law enforcement or anybody else pressure you to make a homicide determination in this case, sir? No. That's all I have. Thank you.

(6:45:43 - 7:05:33)

Thank you, sir. All right, ladies and gentlemen, we'll take a 10-minute break. All right, we'll... Ready now, sir? Yes, sir.

(7:05:34 - 7:06:51)

All right. Ready when you are, Daniel. Welcome back.

(7:06:51 - 7:07:10)

Cross-examination. Doctor, do you know Dr. Carol Terry? Yes. And do you know her fairly well professionally? I know her.

(7:07:10 - 7:07:19)

I know her. I worked for, I worked for one year with her many years ago during my training. She was a fellowship coordinator.

(7:07:19 - 7:07:36)

She was a fully trained forensic pathologist in the Fulton County Medical Examiner's Office when I did my fellowship, my last year of forensic pathology fellowship training there. So I worked with her then. And I know she's, she's been a chief medical examiner in Gwinnett County for a long time.

(7:07:36 - 7:07:42)

And she has a great reputation fair to say. Yes, yes. She has a reputation of being a very good forensic pathologist.

(7:07:43 - 7:07:58)

And do you know Dr. Jamie Downs? Yes. And how do you know him? He worked for the GBI in our medical examiner's office for, for a number of years. It's been a while now.

(7:07:58 - 7:08:08)

It may have been 10 years ago. I don't remember exactly, but he worked in our system down in the Savannah area lab. You still, you hold him in high regard also as far as his medical.

(7:08:09 - 7:08:28)

While he was at the GBI, he did good forensic pathology work. You answered questions by the prosecutor about did you ever go out and get paid for your time and your expertise to look over other people's works at autopsies. Remember those type of questions? Yes.

(7:08:28 - 7:08:39)

There's nothing wrong with that, is there? No, no. No, there's not necessarily anything wrong with doing that kind of work. I mean it's, it's, these are people's opinions, right? Yes.

(7:08:39 - 7:08:47)

And people's opinions can agree. I'm sorry? People's opinions can agree with one another. They can agree.

(7:08:47 - 7:08:54)

They can, they can say yes, I think that that person got it right. Yes. And people's opinions can disagree, right? Yes.

(7:08:55 - 7:09:03)

It doesn't mean anybody is doing anything wrong. These are just the way they look at it based

upon their expertise. Yeah, that's right.

(7:09:03 - 7:09:17)

Just because you have a disagreement in a case doesn't necessarily mean that, doesn't necessarily mean that one party is wrong and the other party is right. Yeah. I mean, that's why we have peer reviews, right? Yes.

(7:09:17 - 7:09:31)

I mean, you've, you've disagreed with other medical examiners that you respect, right? At times? Yes. And they disagreed with you at times? Yes. And it's just the nature of what we're human beings, correct? Yes.

(7:09:32 - 7:09:50)

And there's nothing wrong with being paid for your time and your expertise, is there? That's correct. I mean, you're getting paid and I'm not going to ask you how much, but that's just how we function in America, right? Somebody gives a service, you get paid for a service or you could donate your time. True? That's correct.

(7:09:51 - 7:10:19)

Okay. And if you wanted to do consulting work, independent consulting work, when you left the GBI, there's nothing wrong with that, is there? That's correct. Now, you're not a firearms expert, but because of what you do, you do understand somewhat about range of fire and what comes out of a gun and things like that.

(7:10:19 - 7:10:28)

Is that fair to say? Yes. But there are people who are firearms experts, per se. They just focus on it and they may know more than a medical examiner or more than you.

(7:10:28 - 7:10:47)

Would you agree with that? Yeah, a firearms expert would know more about the actual gun, evaluating a gun, evaluating a bullet, matching bullets to a gun. They wouldn't have more expertise as far as any kind of examination on the body. Sure.

(7:10:47 - 7:11:23)

You start the body, that's where yours starts, your expertise starts, firearms ends once the bullet strikes the body, basically. Their involvement is testing, evaluating the gun, testing and evaluating the bullets and also possibly evaluate, they can do some evaluation for a range of fire and evaluation of clothing. And that's because range of fire deals with the gun, how far the soot may

come out or the unburned gunpowder, things like that.

(7:11:23 - 7:11:39)

Yes. It's really the gunpowder pattern and the stippling pattern that they can measure. They can test fire the gun if there's a gunpowder stippling pattern and give you some idea of how far the gun would have been away from the body at the time of the shot.

(7:11:40 - 7:12:08)

Now with Mr. Akers, when he suffered, God forbid, the fatal bullet to the right nostril area and it entered the brain, that's almost instantaneously decapitating, I mean decapitating, that's wrong, he can't function. Is that fair to say? Probably. The most likely outcome with a gunshot when the bullet enters the brain is the person becomes unconscious and incapacitated.

(7:12:08 - 7:12:23)

Okay. And then if there was momentum going backwards and the bullet goes into the nasal passage into the brain, God forbid, Mr. Akers may just fall totally backwards. Yes.

(7:12:24 - 7:12:40)

I think if you're standing in your shot, I think it's difficult to predict exactly how a person's going to fall. But is it consistent with just falling backwards, hands at the side? That could happen, yes. I'm going to show you what I believe you've seen before, but you tell us.

(7:12:40 - 7:13:12)

It's Miss Boles 17 and Miss Boles 41. Dr. May I approach you? Yes. Do you recognize those? Yes.

(7:13:13 - 7:13:43)

I'm just going to ask the court if I can display it on the court screen. This is Boles 41. So if that's Mr. Akers and the... Thank you, Sheriff.

(7:13:45 - 7:14:13)

He just takes the... He was standing with momentum going backwards. Once that bullet goes into his body where it was, would you expect him to land something like this? I think if you're in a standing position and you're shot in the head, and with injury to the brain, it's hard for me to predict exactly how the person would fall, whether they would fall backwards or forwards or sideways. It could be variable.

(7:14:13 - 7:14:28)

But if there's momentum going backwards, if he's going backwards a little bit and then while the bullet then was discharged, would this be consistent with how he could fall? Yes. All right. I'm just going to show you the other one just for the jurors, but it's a similar photograph.

(7:14:28 - 7:14:33)

It doesn't say St. Paul Boles on it. It's Miss Boles. I apologize.

(7:14:34 - 7:14:45)

I'll correct it. This is just another picture, but it's the same example. Is that fair to say? Yes.

(7:14:45 - 7:14:49)

It's a photograph from a different vantage point. It appears. Okay.

(7:14:49 - 7:14:51)

All right. I want to continue. Thank you very much, sir.

(7:14:56 - 7:15:14)

I want to show you Miss Boles' 145, 146, and 147. May I approach, Your Honor? Yes. Dr. Cacampoli? Yes.

(7:15:17 - 7:15:34)

Yes. Your Honor, do you recognize these? Yes. These photographs that you had taken at the time of the autopsy? Yes.

(7:15:35 - 7:15:47)

Your Honor, I move to the admission of Miss Boles 145, 146, and 147. No objections permitted. Boles 145.

(7:15:49 - 7:16:14)

Doctor, this is when you meet Mr. Akers after he is washed up. Is that fair to say? Yes. And you made it clear, but he has to be washed up for you to really see what's going on because the blood is covering the area of the mouth and the nose so you need to see where the defect is.

(7:16:14 - 7:16:33)

That's correct. And you mentioned to the jurors that it is possible that when Mr. Akers was being washed up, cleaned up, I guess, so you could do your work, the soot was removed from his body. True.

(7:16:34 - 7:16:51)

Yeah, I think it's I think it's possible. I think the likelihood given the bullet cartridge that was used that all of the soot would have been able to wipe away is very unlikely, but I can't say it's impossible. Okay, and you didn't do the cleanup.

(7:16:51 - 7:16:56)

You had a co-worker do that. Probably. I don't recall specifically, but that's probably the case.

(7:16:58 - 7:17:04)

Okay, but the stippling you can't wipe off. Fair to say? Yes. Okay.

(7:17:06 - 7:17:24)

You can show the next one. Hole 146. And this is another example of what you did when you looked at Mr. Akers, and you talked about this right here.

(7:17:24 - 7:17:34)

Do you see the pointer I'm using? Yes. Did you say there's another I call this an abrasion. Is that what I heard I learned from you? Is that an abrasion? Yes.

(7:17:34 - 7:17:50)

Okay. And did you say there's a secondary abrasion on the nose? There's a tear. There's a tear there at the edge of the nose that represents where the bullet impacted and injured the tissue, and then there's abrasion around that.

(7:17:50 - 7:18:14)

You're talking about right here? Yes. Is there another abrasion to this nostril area? No. On the inside, there's a laceration or a graze wound from where the bullet enters the nose at this point and goes up along the outer aspect of the nasal cavity, the lining of that nasal cavity on the right side.

(7:18:14 - 7:18:29)

And we'll just you discussed this before, but if you can show the next exhibit number and announce what it is. Please. And this is what you're talking about.

(7:18:31 - 7:18:38)

This abrasion right here. Yeah. I would call that probably a laceration, but deep abrasion or superficial laceration.

(7:18:38 - 7:19:30)

Okay. And is there anything down here that you notice for abrasion? No, the laceration continues up into the cavity as far as we could see and then it disappeared past the point where we could see and then after that entered the intracranial cavity. And using Ms. Boles' number 147, if it can be usable, can you see where the bullet actually entered the nasal cavity? The nasal passage actually struck and burned its way into the brain? Yes, the tear where it initially hits the edge of the nostril here, causes a tear, causes the abrasion there, and it continues along the outer edge of the nasal passage and causes a graze wound or laceration along the inside of that path.

(7:19:30 - 7:19:50)

Do we have any photographs of showing the actual abrasion defect inside the nasal passage? Yes, you can see part of it there. Where is it? Are you talking about there? Oh, sorry, I forgot how to point it. Yes, so here's the abrasion and the laceration extends here like that.

(7:19:51 - 7:20:28)

The bullet disappears inside the brain. I'm asking you, did you do anything like a rod or any type of probe to put in to show us exactly the path going into the brain besides? No, I don't recall if we used a rod at the time, but if we did, we didn't photograph it. Okay, and did you take a Q-tip or any other device and just swab the inside, and when I say you, it could be your co-worker, the inside of the right nostril to determine whether there was any soot.

(7:20:29 - 7:20:44)

No, we didn't do any swabbing. And did you, thank you sir, did you put in your report anything about looking into the nose for soot with a light or without a light? Is that in your report anywhere? No, it's not in the report. Okay.

(7:20:46 - 7:21:16)

So, I'd like to discuss with you a couple things. This is, you know, any homicide or suicide is a tragedy at some level to people. So, I understand it's a tragedy, but this is also, Mr. Aker's person is also, tells a story, it's evidence, is that true? His body's evidence.

(7:21:16 - 7:21:27)

Yes. And the evidence can really, people like you or Dr. Terry or Dr. Downs or others, can really look at it to try to tell what happened here. True.

(7:21:27 - 7:21:41)

Yes. And by doing that, you're looking at the physical findings of the body when you see it, right?

Yes. And you try to collect all the possible evidence that you can.

(7:21:41 - 7:21:50)

Everything that we think would be useful. Yes. And I'm not critical at all, but being human beings, sometimes we don't gather all the evidence.

(7:21:50 - 7:22:12)

Is that fair to say? Yes. And just like I asked you if there was evidence it's pretty easy to do, I'm not saying you agree with that, but to take like a Q-tip or a swab and take you know, the inner wiping or swiping of the nose to determine whether there was soot there, that's a pretty easy thing to do. Fair to say? It would be easy, but I don't think it would be useful.

(7:22:13 - 7:22:15)

Right. Oh, sorry. Go ahead.

(7:22:16 - 7:22:39)

Yeah, I mean, it would be easy to swab the nose, but it wouldn't be useful in giving us any information. Because you don't think there was soot there. Well, because I don't know that there's a test for soot.

(7:22:39 - 7:22:56)

I don't know that there's any test that you can run. I'm not aware of any test you can run on a swab that we would have taken during the nasal passage that would determine if the gunshot wound was a contact range wound or not a contact range wound. Oh, go ahead.

(7:22:57 - 7:22:59)

I'll never interrupt you. Go ahead. I apologize.

(7:23:00 - 7:23:22)

Yeah, I think that the testing that would be considered if I saw anything that appeared like it might be soot, then you could look at it under the microscope. That would be the thing to do. But in the absence of finding grossly to the naked eye soot, there's I don't think there's any other testing that would be useful to make that determination.

(7:23:23 - 7:23:43)

But you didn't swab the inside of the nose or even just take a sharp instrument and just peel out you know without defacing the body but just take some of the tissue on the inside of the nostril and then look at it under a microscope and say that you didn't do that either. I did not do that.

Okay.

(7:23:45 - 7:23:52)

And I think you said it already. There's nothing absolutely nothing to report about even looking in the nose with a light or otherwise for soot. Yeah.

(7:23:53 - 7:24:00)

I did mention in the report that I looked in the nose but I didn't specify that I used the light. Or for soot. You never specified that.

(7:24:00 - 7:24:11)

No, but I would have absolutely done that. I mean that was that's a key part of this case the absence of soot on the surface of the nose and in the interior of the nose. Yeah.

(7:24:11 - 7:24:41)

It is a key part of the case but you don't mention it in your report at all that you did that. Am I correct? It says well let's see what it says. It says I described the abrasion I said extending from this abrasion is a laceration along the wound path involving the mucosal surface of the right nasal cavity superior laterally.

(7:24:41 - 7:24:49)

That's the inside of the nose. And then the sentence after that says no soot or gunpowder stippling is seen. So I examined that area.

(7:24:49 - 7:26:29)

I examined the outside. I examined the inside. And I stated that no soot or gunpowder power strip when you're seen.

Okay. That's with the naked eye? Yes. Okay.

Now, I want to talk with you about, you said that, and I know you're not a firearms expert, but you said that you're, from your training experience and knowledge, if there's 12 inches or more you would not expect to see soot or stippling with this type of gun in that type of wound. Is that true? Yeah, what I would say is, for this type of gun, what you would expect is once you get to around 12 inches away, you may not have stippling. It's possible you could have stippling maybe out to around a foot and a half or so, possibly a little farther, but, so I can't precisely say how far the gun would have to be away, but it could be as close as around a foot.

Okay, and a foot is 12 inches obviously. Yes. And just for demonstration, is it fair to say that if

something is a contact wound, so on skin let's say, I'm turning this on, something is a contact wound, it touches and there's no stippling.

(7:26:29 - 7:33:35)

True? That's correct. Because the stippling gets consumed in the soot, it just goes straight in because it's contacted with the skin or the wall or whatever it is, right? Yeah, the gunpowder particles that cause the soot in a contact wound would all go, the unburned gunpowder particles would all go into the wound, and so they wouldn't be able to impact the skin around the surface of the wound. But just like a flashlight, if you move the light away, then that's what, the light gets bigger and that's what we're talking about, the stippling.

It can spread out, it has room to spread out. Yes, that's correct. And at some point you're saying in this case, I'm just using your number, and it's an estimate, but 12 inches, maybe we don't see any soot or stippling around this wound according to you.

Fair? That's correct. And 12 inches, if this is reliable, I have a ruler, it's about this long. Yes.

Is that fair to say? Yes. And this is not a gun, this is a toy. Your Honor, may I disclose? This is a toy.

If I am holding, if I am holding this item, this toy, and I'll mark it, I can get this to be 12 inches from my nose. Fair to say? Yes. And you said earlier that, or maybe I'll say it, things are dynamic.

When you come out the body, the body can, some people's bodies can move. Fair to say? Yes. And because of that, the fact that the bullet strikes into the right nasal passage, it doesn't mean that Mr. Akers is standing straight up and the gun is pointed at him and it happens to go right through the nose and hardly make any defect except that little abrasion according to you.

Right? I mean the head can move up, down, it can be moving sideways. True? Yes. And the hand can also be up or down and moving sideways, right? Yes.

And on the gun that we have here, if it's pointed at Mr. Akers' mouth, he's pointing the gun at his own mouth, if he's holding it, you can make that 12 inches. But it's difficult, right? I mean the wrist has to bend. True? Yeah, I think, yeah, I think it would be, you would have to hold the gun in an atypical way, I think, to be able to hold it in your left hand and have the wound path that we have in this case.

And atypical doesn't mean it can't be done, it's just not being held in the general way we think about holding a gun, right? That's correct. Because if all I do is move my wrist, that's all I'm doing, now the gun is right here at my nose, right? Yes. With my left hand.

True? True. Yes. And if I pulled the trigger, if this was the gun and I pulled the trigger, we could make it easy, easy for me to take the wound with the wound path that you described to the jurors,

which is front to back, slightly upward, slightly upward, and from slightly right to left.

True. Yeah, the wound, as far as the location of the wound and the wound path direction, you could. And I'm going to show you, this is a toy, but the actual gun that we have here, because of, you know, the safety, it has a lock on it, did you notice that? Yes.

And because of that, the cylinder can't close. Did you notice that? Yes. So even though the jurors can see it, you can't get this muzzle of the gun and the cylinder right next to each other because of safety in the actual gun, right? Yes.

So I have a replica and it's not the same model or anything. But can I approach you on it? Can I approach you? Yes. I'd like to show you the cylinder at the bottom, underneath the muzzle, it doesn't come out as far as the actual weapon, which is in States Exhibit 173.

Is that fair to say? Yeah, if you're saying that the ejector rod here in the actual weapon comes all the way out to the, as I recall, all the way out to the end of the muzzle, whereas this one is retracted about an eighth of an inch. Can I approach you? Can I approach you? Yes. And what you're talking about is you can just look at it? Yes.

And don't touch it if you don't mind, because we're not wearing gloves. But that cylinder, the end of the cylinder, almost looks like it touches almost the equivalent to the end of the gun. Yes.

Can we show the jurors? Would you mind helping me? Oh, yes, sure. The gun here, if it were to lock, is it fair to say that that cylinder we're talking about on the muzzle and on the end of the gun, they almost look like they ended the same way. Is that true? Yes.

Can you show the replica gun? And the replica gun is not really great because the cylinder is just, you said that, an eighth of an inch shorter than the muzzle of the gun. Is that true? Yes. Can we do it to the next set of jurors? Yes.

And it's going to be the same thing. If this was closed, the way it would be if it was functioning on the night, but the bottom, the farthest part of that cylinder is almost equivalent to the farthest part of the muzzle. Is that fair to say? Yes.

And can you just show on the replica? Just show that little space that you're talking about, the eighth of an inch. Yeah, it looks like on that gun, the projector rod goes all the way to be equal to the end of the barrel. And then at the end of the rod on the real gun, states exhibit 173, it's a silver piece and there's no grating to it, smooth looking.

Yes. All right. I want to ask you some questions if I can.

(7:33:37 - 7:41:02)

So if I am, would you mind helping me? Oh, sure. If I am Mr. Akers and you are, if you come into

the room with the gun, and you come at me and pull my arm anywhere around you, tell the jury if it's possible I can just turn my wrist over. You can turn your wrist, Judge.

I'm going to object that that's outside this line of questions, outside the scope of the expertise of the witness. He's not an accident reconstructionist, a shooting senior reconstructionist, et cetera. His specialty and his knowledge and expertise is forensic pathology.

Now we're getting into reconstruction, we're acting out pantomiming possibilities. I believe the defense has something to put on that. That's not a doctor.

Well, I haven't heard your question yet. I just feel just about his area of expertise. Absolutely.

I'm talking about the range of fire that you talked about on direct examination. Okay. So if I'm like this, and you come at me, which I may have to do with the court's permission and your permission, if you don't mind, and just grab my arm, is there a way I can just turn my wrist, have you 12 inches, and just gun the fire? Again, that's calling for scene reconstruction, shooting reconstruction, actually subbing in this witness, Dr. Lane, as the defendant, how this might have unfolded.

That's for an expert in scene reconstruction, accident reconstruction. Mr. Steel's trying to tie it to range of fire. Dr. Lane gave range of fire in the terms of mathematical figures.

This is possible. We didn't talk about locations of weapons, acting out, this is how it may have happened. So it can't be tied to range of fire.

Well, let me hear the question, and then I'll make a ruling on whether I believe it's outside of his range of expertise. So if I'm like this, and then you come at me, and I go back, and I just turn, can you make that 12 inches? Yes, it's physically possible. Okay.

And if it's 12 inches, maybe 18 inches, I'm just using 12 for the shortest, and that's what the rule is. That would show no stippling, and we can make the shot. True.

Oh yeah, I would expect at 12 inches, it may not have any stippling, and by the time you get to 18 inches, very likely you wouldn't have any stippling. Okay. Understood, and that's what you testified to earlier.

Yes. And these are estimates, you're saying 12 inches or more. Yes.

More likely, once you get to 18, no more stippling, so that's what you testified. Right. Okay.

So I said 12, I'm just using 12. Now, same question. Remember how you were discussing the abrasion on the outside of the nostril? Yes.

I'm now going to interject the cylinder rod. I'm discussing with the prosecutor on direct examination about the cylinder rod. Yes.

And the abrasion, and has he really hit the bullet? Remember all those questions? Yes. And you didn't believe it was a cylinder rod? Remember all those questions? Yes. Okay, I want to ask you about that, okay? Okay.

If, again, I'm like this, and you come at me, grab my hand, or my arm, and if I go like this, and I shove that gun, muzzle into my nose, does the cylinder rod touch approximately where the abrasion is? Yes. And if the gun, muzzle, on the end of the gun, the arm piece, if that goes into my nose, if that jammed, caught the real gun, the cylinder rod into the area where there's that circular abrasion. Yes, that would, the way you had the gun positioned, that would position the end of that cylinder rod right where the abrasion was present, and if it's a contact range wound, you could have it cause that abrasion.

Right. And if it was a contact wound, then you wouldn't have any stiffness. True.

That's correct. And if it's a contact wound, all of the soot that comes out of the gun would go into the nasal cavity. True.

Not necessarily. Now you may, with contact range wounds, you'll often have, you'll often have soot around the edge. Can you explain that, once you get back to your seat, can you explain what you just said? It's possible that you, that all of the soot goes just inside, but oftentimes you'll have searing of the outer edges of the wound, as we saw in the previous photograph, and you can see on the skin surface, there was deposition and searing.

So you'll often see it on the skin, but sometimes, the vast majority of it can go in, especially if it's a hard contact wound. We're going to talk about searing in a minute. I promise I'll come right back to it, okay? But, under what I just asked you, according to your answer, and track me, because I'm not trying to misstate you, if the gun is, my left hand, the gun is rotated, I forget your word, but not typical, I forget what word you use, but upside down, that abrasion mark you said is consistent with where the rod is, the cylinder rod.

Fair? Yes. And then if it's discharged, the gun is discharged while the muzzle gun is into the nose, you said there may be some soot on the outside of the nostril, that's what I think you said. Yes, yeah, the gun, yeah.

Okay, and then you already said it, but that soot could have been washed away in the cleanup phase. Certainly some of the soot could, I think it's very unlikely that you'd be able to wash all of it away, but I can't say it's impossible. I know, I know.

Okay. Can you, do you still have the pictures of the searing? And if you need, I could help find them. Yes.

Thank you, sir. Yes, sir. I'm just going to show you from the book, examples that we looked at

earlier, and it's the same numbers that the prosecutor just announced.

Tell me which one we're going to use to show the jury what you were just talking about when you mentioned searing. Yeah, 246. Yes.

(7:41:09 - 7:41:24)

And help us orient, and get, you know, nobody's trying to confuse the jury, this is clearly just, this is for teaching purposes, this is not Mr. Aker's body. Fair? Yes. Okay.

(7:41:24 - 7:42:04)

Okay, so if the lights can be dimmed, Your Honor, if that's okay? Yes, sir. So these are two, you said, you talked about searing, correct? Because they're contact wounds, right? Yes. Okay.

And what part of the body is either or both of these gunshot wounds touching? It doesn't say. Well, I don't, I mean, it doesn't matter, but let me, let me say this for you. It's not the nose, fair to say? I think it's probably not the nose.

(7:42:04 - 7:45:02)

Because it's continuous skin. It's continuous skin, right? Yes. Because the nose is different because if somebody put a gun to my forearm and touched it, like these are contact, right? That's what you believe.

And fired, my skin would get that searing around it, true? Yes. But my nose has an opening, true? That's correct. That's how I breathe, right? It's like my mouth, right? Yes.

I can breathe through my mouth too. So this searing is on the actual skin without an opening. That's an example of that, true? That's right.

Because in the nose, if I have the gun and I'm just using a replica, this is the replica. And if I have the gun into my nose, all that burning gunpowder, that actually goes into my head, right? It can tose back. I have an opening there.

Yes. There would be a lot of it that went there. Well, it depends, I guess, on the gun, but it goes into my nose.

I mean, this isn't tricking. It's not like the skin where the skin is covered and now the skin is being burrowed apart. I already have the opening if the gun is into my nose and the trigger is pulled.

But in this case, you know the opening of the muzzle is right there adjacent to the skin because the graze wound that you see on the inside of the nose, it's created by the bullet, extends all the way to that abrasion. And so you know that that opening has to be adjacent to the skin there. So it's possible that you might have... So you're going to either have soot on the... You're going to

have it at the edge.

Now, whether it's just barely inside the edge, I guess that's possible that you don't have it on the skin surface, but there's a good chance you're going to have it on the skin surface as well. But it may just be inside the nose too. Either way, I don't think you'd be able to wipe all of that soot away, whether the searing is on the skin or whether it's just inside the nose either way.

And a lot of that is you're basing it on the graze wound, which we're going to talk about too. Fair to say? Yes. Okay.

And I'm just putting that aside because this is complicated. Fair? Yes. This is a complicated exercise, right? Or examination or analysis.

Fair to say? Yes. I mean, you have cases. We've had other cases together.

(7:45:03 - 7:46:41)

It's not complicated. I'm not saying the cases are complicated, but the wound path is not complicated, right? Yes. Yeah.

There are other types of wounds where the wound itself is simpler to evaluate. I mean, this one takes a lot of time, correct? Yes. I mean, the prosecutor asked you some questions about would it have been easier to say and determine.

I mean, we don't sign up for easy, right? We sign up for doing our best we can. That's correct. So, I want to go back, and I promise you I'll come back to the graze wound.

I promise you. But if the gun, at the time that it discharged, was inside, I'm saying inside the nasal cavity of Mr. Akers, the abrasion could be made by the cylinder rod and the soot could go into the head. What do you mean by inside? Just like I'm doing.

You'll have to come closer. I can't see exactly where it is when I approach it. Just like a finger can go in the nose, right? True? Yes.

The difference is this gun, you can put it inside the nose because the cylinder rod doesn't go all the way to the end of the barrel on this replica, but on the other gun it did, and so you wouldn't be able to get the cylinder to line up to the skin. You wouldn't be able to put the gun inside the nose. But the nose skin moves.

(7:46:42 - 7:56:13)

It's flexible, right? It is. And we have the abrasion, so the skin gave way to something, right? Yes. You're saying a bullet.

I'm suggesting, I'm just asking questions, that it's the cylinder rod. But either way, there's some

object that ripped that skin. True.

Yes, either the bullet or the cylinder rod, given the two choices. Yes, and they're equal choices. It may be the cylinder rod, right? You're not discounting that.

You're saying that's a possibility. It's not your opinion, but that is a possibility. Fair? I would say it's very unlikely, but I can't say it's impossible.

Okay. With regards to the Grey's wound, you mentioned it, I told you, I promise we'd come back to that. It is your, can you put up the one with the nose being open, if you don't mind, and announce which exhibit number it is when you get a chance.

State's 239. And doctor, you have a pointer and you are much more gifted than me, so don't let me, you just take over. But what I'm understanding from you is, the bullet strikes the outside of the nose, so I'm just, I'm moving over, I'm moving to the left nostril, and I am, to be fair, we are not saying that the left nostril has to be identical to the right nostril.

True? Correct. I mean, people's nostrils could look identical, but some people's nostrils do not look identical. Fair? That's correct.

But, just for simplicity, I'm just using it as a hypothetical example. You're saying that somehow, if it was on this side, the bullet strikes somewhere here and then goes into the nose, and then we come over here to the right nostril, and you're saying that the bullet itself took out this skin and then skipped here, I'm using the word skipped, but shows a path here, and that's your bullet path, right? Yes. And if that is the bullet path, when the tweezers are not on the nose, the bullet doesn't change direction, it didn't hit any bone at this point, right? This is just skin.

That's correct. So the bullet, at that point, we would believe would just keep going right here. True? Well, it's a little misleading, because what we've done is we've changed... And do me a favor, I'm going to interrupt you, just tell the jury this, if you don't mind.

So we've taken the nose, and we've changed the position, so we've changed the direction of the wound path, and so it looks like the wound path's coming down, but if you put this back down to its normal position, this wound path goes up into the nose. Do you have any photograph of that, you know, just a microscopic camera? No. Okay.

So, this right here, what we're calling, I'm adopting this grazed path here? Yes. That could also be the gun. A gun can make that type of... If the gun is inside the nose, that can make that type of rip in the skin.

True? No, I don't think that's the case here, because you can follow this wound, you can follow it all the way up into the nose. That's evidence that the bullet caused that. Do you have any pictures of that? I don't know.

Well, if you find them, just let us know, okay? Can I look at my autopsy photos? Yeah. I've got a device here with the photos on them. It's okay with me as long as the court gives permission.

No, I don't have any additional photos other than this photograph to show that wound path. And the Honorable Mr. Lyle just said to me, you know, this is probably a reasonably good example. This nostril is being forced.

That's my word. You tell us if that's too strong of a word. But forced to be open, wider than it typically is in this photograph, which is State's Exhibit No.

239. Is that true? Yes. But it's demonstrative because the nose can be malleable or open wide if forced, right? Yes.

Just like if I shoved the gun into my nose, it could open. The gun is harder than my nose. Yes.

Okay. Now, I want to ask you a couple of questions. If you need to stand, please stand, but otherwise you could sit if you're more comfortable.

You said in State's Exhibit No. 229 in your opinion, at the very end, the bottom two lines on page 405, you wrote that based upon the autopsy findings and the reported circumstances surrounding the death, the manner of death is classified as a homicide. True? Yes.

And the autopsy findings is what we've been talking about. That's the scientific analysis of Mr. Aker's person. Yes.

And that just is what it is. It doesn't have any veracity, determination. You don't need any truth.

It's just there's soot there, there's sipping there, there's searing there, there's tattooing there, or there's not. There's a bullet in the brain or there's not. I mean, these are just objective findings, right? Some subjectivity.

I'm not sure I understand the question. The body, when it's analyzed, you can take photographs of it and x-rays of it, but the body itself has no agenda. It appears in the disaster bed, God forbid, and you do your work and other people can review the work and look at photographs and reports, right? Yes.

But you also reached out to law enforcement and you wanted to know specifically, was there any depression, any signs of depression or suicidal tendencies by Mr. Akers? Remember those questions? Yes. I mean, that would have been part of it, but we want to know a lot more than that, but including that. And your response was, the response you got from law enforcement was that Mr. Akers was happy.

Remember that? Yes. And he had just bought a pig for one of the children for Christmas. Remember that? That's correct.

And it even said, the law enforcement wrote, who buys a pig and then buys the farm? Remember that? I don't remember that part of it. It's already in evidence. Let me just see if I can refresh you.

May I have one moment, Your Honor? May I approach Your Honor? This is already in evidence. Dr. Lehman, there's a series of emails. If you want to see the whole thing, just say it.

Okay. May I approach you, sir? Yes. If you need to see the series of emails, if you feel more comfortable, no problem.

(7:56:13 - 7:58:31)

I was referring to that. I may not have quoted it perfectly, but you were told by Lieutenant Hill of the Paulding County Sheriff's Department, in response to your question about, is there any depression by Mr. Akers, you wrote something like, you could read it, I don't have it anymore, but something like, who buys a pig and then buys a farm or something like that. Yes.

What was the actual quote? It says, not to mention that he bought a pig from Tractor Supply, comma, who buys an animal and buys the farm that evening? And buys a farm, do you know that's an expression meaning kill themselves? Yes. So, you were never told that there was no pig bought, were you? You were told the opposite, right? That's correct. Did anyone ever tell you that there was no pig bought? No.

Alright. And did anyone ever tell you that Mr. Akers had problems, much like the prosecutor was asking, that he was, he wrote that he may be going to prison for four plus years? It was 2019, so he said until 2024, you were not told that, were you? I don't recall being told that. And you weren't told that he had said that he was going to potentially bury him and his wife and have the children take him to foster care, you weren't, live in foster care, you weren't told that.

I'm sorry, could you repeat that? Yeah, that he was potentially going to, he wrote that he would, if circumstances happened, he would bury him and his wife and the children would have to live in foster care, you weren't told that? No. And you weren't told that he said that he's depressed, lonely, concerned that people, how people would look at him because he can't afford to support the family, you weren't told any of that, were you? No. Okay.

(7:58:34 - 8:03:26)

And when the prosecutor was asking the questions about, you know, did this, did these other reported circumstances that you were told by law enforcement, did that change the scientific findings of the autopsy? Of course they don't change your scientific findings because they're separate things, correct? Yes. I mean, he asked you a series of questions the same way you said no, the autopsy is different than what I'm being told. True.

Yes. And they're really separate parts, but you being a scientist want to get as much as

information as you can because it may be important background, it may not be. True.

Yes. And you can discount some things that you're told and you could increase some things you're told, but the bottom line is you kind of take it all together and then you made your finding in this case, right? That's right. When you were asked about to a degree of medical certainty, are you sure that it's a homicide? You're a professional.

You said, look, this is a tough case, right? This is a tough case. And this may be exactly, and you believe it, you would not be here. You're a great person in our community.

You believe that under all the circumstances that you were told and what you saw, this appears to be not a contact or near contact wound and you classify as a homicide for the reasons you already told the jury. True. Yes.

But you're also a fair person and you've also made it clear this could be a contact wound and it could be a suicide attempt with an accident component to it. True. I can't rule out that possibility.

And that's really what scientists do, right? I mean, scientists don't just, they're not advocates for anything, but is my hypothesis, does it work all the way through or are there alternative hypotheses, right? Yeah. What we do is we evaluate a case, we give an opinion and then we come to an idea, we come to an opinion to a certain level of confidence. And in this particular matter, the truth is you are leaning, however far, more heavily, I don't know, more, almost heavily, maybe just 51%, but you're leaning towards, this is not a suicide, but you do understand that this could be a suicide with a component of accident.

Somebody trying to stop the person from killing themselves, right? I can't, I can't rule out that possibility. Okay. Thank you.

You can't rule out that possibility because you weren't in the room, is that right? You're not an eyewitness. Yeah, yes, that's correct. So there's a number of possibilities in the universe that you can't rule out as a scientist because you don't have absolute certainty to exactly what happened, is that right? Yes.

Well, based on your knowledge of the case, your scientific evaluation, and your examination of the physical evidence on the body, did you list accident, or excuse me, did you list suicide with accident component as the manner of death? No. Why? Why not? You could have put suicide, and I guess suicide is one of the five, five groups, right? Yes. And maybe you could have put in parentheses with accident component.

Maybe that's just a laymanism, you could just add to that by Keith Lane. Why do you make that final? Because the evidence in the case supported homicide. Is that still your opinion? Yes, I think that the evidence in the case supports the homicide as a matter of death.

(8:03:27 - 8:12:47)

You were showing a picture of the decedent on the floor. You said you'd seen it. Can you show that? I'm going to show what's been previously admitted into evidence as defense for Municipal Police 41.

You remember being asked about this photograph on direct examination? Yes. You said you'd actually seen this photograph as part of your overall comprehensive investigation. You'd seen it before today, is that right? Yes, sir.

And I want you to remember, please, do you remember the defense attorney asking you, Mr. Steel, the honorable Mr. Steel, asking you if momentum from a gun could have caused, could that have been the momentum that caused the decedent to go backwards and fall just like this? Do you remember being asked that? Well, I remember him mentioning momentum, but I didn't understand that the momentum was meant to have been coming from the bullet. Okay. He may have said force, he may have said the force or momentum, what is force, momentum times mass or whatever it was back in physics class, but he said force or momentum could have possibly caused the body to fall this way.

Do you remember him asking you that? Yes. You said it's possible in some ways. Yes.

You said there's a number of variables that could cause a body to fall certain ways, right? Yes. Is it possible that that force or momentum, sir, that may have caused the body to come to this final rest in place could have been caused by somebody backing up from the shooter? Yes. Did you have access to, or did you watch any part of a video, an interrogation or interview of this defendant in law enforcement in some part of your investigation or your findings? Yes.

Do you remember when the defendant herself acted out or gave a recreation of how this happened? Yes. It was Detective Nick Hardy and he, do you remember if it was kind of a, seemed to be kind of a notable point in that video where he actually asked her to come up and get, get to be standing, much like the video of Mr. Steel, they were opposing each other and Detective Hardy asked the defendant to recreate how this happened. Did you watch that as part of your investigation? Yes.

And do you remember if at any time whether this defendant indicated with her recreation of how this happened that the weapon was inverted or upside down? I don't, I don't remember. I don't remember the, I don't remember from the video the orientation of the gun as it was depicted. Would it surprise you, sir, if she did not ever indicate that this gun was upside down or inverted? No, it wouldn't surprise me.

You said on direct examination that it's not impossible for all soot to be wiped away during this cleansing of the face. You said it's not impossible. Well, sir, Dr. Lange, is it probable that all soot would have been just washed away with this light cleansing of the face? No.

You said that it's not impossible for this abrasion to have been made by the ejection rod or cylinder rod. You said that's not impossible. Dr. Lange, is that probable? No.

You said it would not have been impossible for this entire muzzle to be inserted into the decedent's right nostril. At the time of the discharge of the projectile, sir, is that probable based on your findings? Yeah, I don't, no, it's not probable. And about the cylinder rod, you said, I believe I heard you say that it's not probable that that abrasion, that marginal abrasion that we see on the nose was caused by the cylinder rod because they're not, those two rods, the muzzle rod and the cylinder ejector rod, they're not exactly, they're almost exactly equal on the shooting weapon, right? But on Mr. Steel's replica, the ejector rod is, you said, an inch lower than the muzzle.

Remember that? Yes. Based on your findings, your investigation, your physical, your actual physical examination of the body, do you believe this weapon was inserted into the right nostril of Daniel Akers at the time the projectile was expelled from the muzzle? No. Do you think it's more likely, sir, that this was a longer range shot than contact? Yes.

Do you think it's likely, sir, that this was a longer range shot than intermediate contact, that it was intermediate or higher more? It is my opinion that it was distant range more, so farther away than contact or intermediate range. So even farther than intermediate? Yes. You talked about peer review, that there was a peer review process, that the GBI is formal and that you have to follow a certain practice.

Did you do that in this case? Yes. Was that the process where you took it and one other medical examiner reviewed the report? That's correct. But did you conduct, yourself, did you do any kind of informal peer review? Take your findings to other physicians at the GBI? Yes.

After doing that, sir, did your manner of death, ultimate finding on manner of death change at all? Well, I presented it to, I presented it to the group during one of our afternoon meetings. At that time, the manner of death had not been determined. And ultimately, was your manner of death still on the site? Yes.

Can I just have one second, Your Honor? With the court's permission and the doctor's permission, can I ask the doctor to step down one more time? This is the toy. Doctor, if I'm something like this, and you get scared, I'm going to hurt myself, and you come at me, grab me, and I do that, which way am I going? The way I'm going now. You're going backwards.

The gun discharge, is it consistent with the way you see Mr. Akers in the photograph? Yes. It's possible that as he was being shot, he fell backwards. And you know that Ms. Holtz announced that she fell on top of Mr. Akers.

(8:12:48 - 8:14:05)

Do you remember that? Yes. And if you fall on top of somebody, I assume they're falling one way

and you're falling the same way? You're falling backwards and you're falling on top of them? Yeah, I don't know exactly, I don't recall exactly what she described, but it's certainly possible if she were close to him when the shot was fired, if he goes backwards and she may go on top of him. It's certainly possible.

Okay. Thank you, sir. Thank you, No objection, thank you.

Thank you for being here, Doctor. Thank you, Doctor. Tonight is going to be similar to last night, I think just after five we're going to have dinner here.

Can you all go until five or do you need a break now? Good? Alright. I think I just need a minute to check the availability of someone. Maybe step out? Sure.

(8:14:06 - 8:17:32)

I think this will be quick, so we'll leave you all right here, okay? Can you approach this for a moment? Alright, and you're fine doing that without your client present, right? Yes. What that means is the state has not rested their case yet, but because these lawyers are both also accommodating to each other, they've agreed even though they haven't rested their case yet, they're going to take a defense witness. Normally the state would have to rest, and then if the defense had any evidence, they don't have to present any evidence.

(8:17:32 - 8:17:54)

But if they did, that would be their opportunity. So that's what's happening now. Alright, sir.

(8:18:02 - 8:21:58)

Please state and spell your name for this honorable court. My name is Eric E-R-I-C, last name Warren, W-A-R-R-E-N. And can you do me a courtesy and explain to the jury your education, your training, your background, and your occupation, please? Yes.

So I'll start backwards. I'm currently co-owner of SEP, that's S-E-P Forensic Consultants, based out of Memphis, Tennessee. Prior to that, I was employed by the Tennessee Bureau of Investigation as a special agent forensic scientist.

And then prior to that, as a requirement to be hired by the TBI, I obtained my bachelor's degree in molecular and cellular biology and my doctorate degree in biochemistry. Both of those were from Vanderbilt University. And what do you do as an occupation right now? What's your business? Yes, so as co-owner of SEP Forensic Consultants, my area of specialty is firearms identification, crime scene reconstruction, and shooting incident reconstruction.

In that regard, I routinely work cases for the prosecution and the defense and criminal cases for plaintiffs and defendants, civil cases, as well as military cases as well, in addition to working

cases and, if needed, coming to testify at court. I also do research in the field and routinely give lectures and talks and workshops in those areas that I mentioned earlier. Can you explain what a crime scene response team is and what your knowledge and experience is with that, as well as collection of evidence? Yes, so when I was first hired by the TBI, I went through a two-year on-the-job training program.

The first part of that was reading textbooks and journal article-type materials on the forensic areas. Also included towards the beginning of that two-year program was a crime scene processing school that was four to six weeks long. I don't recall the exact length at this moment.

And that was so that I could be assigned to a violent crime response team. That was essentially where if a local agency in the state of Tennessee had a potential crime and they needed assistance with working that scene, they could call the TBI and we would be dispatched to assist and to essentially take control of the scene itself. And along those lines, I was trained in the documentation of crime scenes, the identification of potential evidence, as well as the preservation, collection, and if needed, field testing of that evidence.

So it could be any number of types of evidence from footprints in the dirt, to fingerprints on an object, to swabbing an item for DNA, to making a firearm safe, to determine a trajectory of a bullet through an object, pretty much any of those things. My specific specialty was in all things firearms. Some people call that forensic ballistics, but we were all trained so that we could swap out as needed for whatever the scene dictated and everybody would pitch in to be able to, on the team, could pitch in to get the scene processed and worked.

(8:21:59 - 8:22:41)

Did you ever swab or collect evidence for DNA and fingerprints to be used to compare to a known firearm? So I have in my job at the TBI, but actually my co-owner with SEP Forensic Consultants is a DNA expert herself, so generally if we were to respond to a scene together, she's going to be, that's going to be her area, that's going to be her primary focus, whereas mine would be on the firearms. But yes, I have multiple times had to swab different items and have also taught others how to do so. And you're saying SEP, that's S-E-P? That is correct.

(8:22:42 - 8:23:07)

Okay. And have you published any books, treaties, articles related to your training and experience in firearms identification, shooting, scene reconstruction? Yes, I have. And have you taught any training or coursework in this area of expertise? Yes, again, I have taught numerous law enforcement agencies as well as attorneys in these fields.

(8:23:08 - 8:25:03)

Some of it is lecture-based courses. Some of it is actually workshops or practical exercises. And

then I also, of course, teach that at a collegiate level as well.

I'm an adjunct professor at a local university in Tennessee where I helped them develop the curriculum for a forensic science degree program and teach the forensic science specific courses. Are you a member of any professional organizations pertaining to your areas of expertise? Yes, I am. And which ones? A number of different organizations.

The Association of Crime Scene Reconstruction, the Association of Firearm Mental Mark Examiners, the American Academy of Forensic Sciences, just to name a few. Have you ever testified in a court in the area of crime scene reconstruction? Yes, I have. Proceeding how many times? I am frequently qualified as an expert in multiple fields.

Again, firearms identification, crime scene reconstruction, shooting incident reconstruction. I don't have a specific number of where I've just been qualified in one or the other, but in total as an expert I've testified somewhere in the neighborhood of 100 times in courts across the U.S. And does crime scene reconstruction also include things like gunshot residue analysis, analysis of trajectory of the bullet, collecting evidence of DNA, fingerprinting, soot, stippling, tattooing for analysis, including DNA and fingerprint analysis? Yes, generally not every case will have all of those or may just have one or two, but generally a lot of the things that you just mentioned would all be encompassed in that. Have you ever testified as an expert in Georgia, state courts in Georgia, superior courts? Yes, I believe I have.

(8:25:04 - 8:25:37)

Have you testified in the southeast as an expert in these fields? Yes, I have. Federal court as well as state courts? Yes, in federal and state. Your Honor, I move for Dr. Warren to be admitted as an expert in the field of crime scene reconstruction, gunshot residue analysis, analysis of trajectory of bullets, collecting of evidence of DNA, fingerprint analysis, soot, stippling, tattooing for ballistics.

(8:25:38 - 8:25:49)

Any guarantee that I'm not an expert? No, Your Honor. Your Honor, may I approach you? Yes. I'm going to show you this bulletin number 148.

(8:25:50 - 8:26:22)

Just make sure that that is complete and as updated as you believe it is and then tell me if you recognize it. Yes, this is an accurate copy. I do believe I have a slightly newer one, but the only difference would potentially be additional testimonies and maybe an additional training course or two.

(8:26:22 - 8:26:36)

But what is here is accurate as of probably September of this year, I had to guess. Your Honor, I move for the admission of Ms. Bolton, one, four, eight, as the CV of Mr. Dr. Warren. Yes.

(8:26:37 - 8:26:41)

No. Yes. Okay, and you can just place it in front of me if you don't mind.

(8:26:42 - 8:27:14)

All right, Dr. Warren, let me ask you some questions. What materials did you utilize to reconstruct the shooting incident in this case? So provided to me, and the items that I analyzed would be photographs of the evidence that was recovered from the scene, scene photographs themselves, so photographs of the actual scene, not just the evidence collected. A video of the scene, or it might have been a multi-part video of a, what we call a walkthrough video.

(8:27:15 - 8:27:36)

I also reviewed the autopsy report and autopsy photographs, a scene diagram, as well as statements from Ms. Bolz. Had that officer's statement supplemented with what? Yes, that is true. I also reviewed the case file or supplements of the investigating officers.

(8:27:36 - 8:27:56)

And are you getting paid for this work? Yes, this is my full-time job. And in this case, who asked you to do this review? I was engaged by Mr. Steel's law firm. And can you tell the jurors how much you're getting paid? Yes, my hourly rate is $350 an hour, and that would apply to anybody that would engage me for this type of case.

(8:27:57 - 8:28:41)

What scientific methodologies did you utilize to reconstruct the shooting incident in this case? So for that, the physics of a firearm functionality, how a firearm would discharge and function included in that would be interior and exterior ballistics. So what is happening to the bullet as it is being fired inside of the gun and as it exits the firearm itself, as well as gunshot residue and distance determination would be specific forensic methods. Examining the autopsy photographs, what did you observe regarding, do you remember an abrasion being on the right nostril area of Mr. Aker? Yes, that is correct.

(8:28:41 - 8:29:12)

So that is, I would say, one of the predominant findings in the review of those autopsy photographs, essentially in his, Mr. Aker's right nostril toward on the outside leading onto the inside of the right nostril, what would be called the alar ridge. So this outer portion of skin on your nose moving towards the tip of the nose, there was an abrasion. It measured approximately

seven millimeters or three eighths of an inch in diameter.

(8:29:12 - 8:29:25)

I'd like to show you, may I approach you, sir? Yes, sir. I'm showing you what's already in the evidence case, Stacey, to the number 173. There are gloves if you want to handle it.

(8:29:26 - 8:29:39)

Right, right, yes, sir. And I'm just opening it, 173A. If you take a look at that when you can, there is a safety lock on it, so you can't put the cell on the rod.

(8:29:41 - 8:30:20)

I also ask, with the court's permission, the honorable investigator to put up the number, Ms. Boles, 146. Dr. Warren, you'll see right here. And if you need the pointer, I'm not trying to control this.

(8:30:21 - 8:31:18)

Is this the abrasion you just referred to? Yes, you are pointing with the red laser to that approximately three eighths inch abrasion that I just referred to. Okay, and can you explain the significance of that abrasion compared to that firearm to the jurors from your analysis? Yes, so the abrasion itself, generally for a gunshot wound, if you have a bullet defect, you have a nice hole punched in an individual, the abrasion is generally called an abrasion ring, and it's just around the periphery of that gunshot wound or bullet defect. In this case, we do not have a clear circular bullet defect, and this abrasion is actually larger in diameter than the bullets or projectiles that would be fired in this revolver, which is unusual.

(8:31:20 - 8:31:59)

But what drew my attention to it is when looking at the revolver that's currently labeled State's Exhibit 173A, it has what's called a cylinder pin that is approximately that exact same three eighths of an inch in diameter that would correspond quite nicely to this abrasion ring. And would you explain just now that the bullet itself that comes out of that gun is smaller than that abrasion? Is that what you said? Yes, sir. So the revolver in question is a high standard, is the brand, and Sentinel is the model.

(8:32:00 - 8:32:31)

It is chambered in or designed to fire an ammunition that is .22 long rifle caliber. So that designation tells me that that bullet is approximately .222 inches in diameter or just under a quarter of an inch, which is less than three eighths of an inch. And this abrasion? Yes, again, it was a little over seven millimeters, which the closest, if you were to translate that on a ruler,

you're looking at about three eighths of an inch.

(8:32:33 - 8:33:07)

And can you show the jurors the cylinder, what do you call it, the cylinder, the ejector rod, the cylinder rod? Cylinder pin in this particular revolver also serves as the ejector rod. Can you show the jurors where is the weapon and just show them what the size of that cylinder rod is? Yes. With the court's permission, Your Honor, can Dr. Warren come off the witness stand? So before I step down, I just want to note that the cylinder, which I will explain in a second, is empty, the gun is safe.

(8:33:08 - 8:33:21)

Not only is it unloaded, but as you mentioned before, it has the safety lock through it so that it couldn't be closed even if it were loaded to fire. Would it help using a ruler also or you don't need a ruler? I don't think I need a ruler for this. Thank you, Your Honor.

(8:33:22 - 8:33:39)

I'm going to keep the revolver pointed down just for safety reasons. Can you give me your favorite category of safety reasons? Yes, absolutely. So on the revolver, this is considered the barrel right here which, pointing it out, would be on the top.

(8:33:40 - 8:34:13)

And then below the barrel, this portion, which is called the cylinder, would close. You have the cylinder pin here that I have referred to previously. So this cylinder pin has a rough or textured pin so that the user can grab it and push rearward on it and doing that lifts a portion of the cylinder up so that the rounds that would be in it could be ejected out of the cylinder.

(8:34:14 - 8:34:22)

So I'm using a lot of terms. On the revolver, you've got the hole that the bullet travels down that's rifled. That's your barrel.

(8:34:23 - 8:34:34)

At the end of the barrel, you have what's called the muzzle. So that's where the bullet will be exiting out into the air and beginning its flight outside of the revolver. Just below that, you have the cylinder.

(8:34:34 - 8:34:54)

This piece rotates or revolves inside of the revolver. That's why it's called a revolver is as you either pull the hammer back or pull the trigger. This cylinder is revolved to place the next round in

one of these chambers or holes in line with the barrel to fire.

(8:34:55 - 8:35:25)

And importantly, the part that I was talking about being approximately three-eighths inch in diameter is this part right here. And if it could be closed with this lock or not present, you can see it lines up essentially with the end of the muzzle or the end of that barrel. And when you say that the cylinder is approximately how big, how long? The cylinder pin itself is essentially three-eighths of an inch in diameter.

(8:35:26 - 8:35:42)

And that's the very tip of it? Yes, that is just this portion here that is textured or checkered is sometimes what it's called. And according to the autopsy report, is that the same size of this abrasion right here? It is the same amount. Approximately the size of that abrasion, yes.

(8:35:43 - 8:36:49)

In your opinion, what made that abrasion? So that abrasion would be consistent with what is called a hard contact shot. And that abrasion would essentially be caused by the skin slapping up against the cylinder pin itself. What does the abrasion that we're talking about, in this bowl is number 146, and the cylinder rod that you just talked about, the seven-eighths, what does that tell you about the orientation of the weapon if it made this abrasion? Sure.

(8:36:50 - 8:37:46)

So as described in the autopsy report, the trajectory or path that the bullet took through Mr. Aker's body would be from front to the back, from right to the left and upward. And when you take that angularity or that trajectory into account, with the abrasion itself, again, kind of that, as you see in the photo in State's Exhibit 146, that would necessitate that the revolver would have to be upside down at this moment, at the moment of discharge. So if I were to use my finger to point more safely, and my thumb would be the hammer on the back of the revolver, and imagine these two fingers were about the same length, the barrel would be on top in a normal orientation holding the revolver, as I had it pointed down to the right, and that cylinder rod would be below the barrel.

(8:37:47 - 8:38:16)

And if, in fact, the correspondence between the cylinder rod and this 3 1⁄8 inch approximate abrasion would necessitate that the revolver is upside down. So what I mean by that is, instead of this way, the revolver would essentially be with the cylinder pin or cylinder rod above the barrel itself. Dr. Warner, this is a replica gun, this is a toy gun.

(8:38:16 - 8:38:27)

You know what I mean, this way? Yeah. So, using this replica gun, toy gun. Tell me if this is what you described.

(8:38:31 - 8:38:41)

Yes, that is, I was actually gonna mimic it with my hand, but that is pretty much what I was describing. May I cross you? Yes. May I cross you? Yes, sir.

(8:38:41 - 8:39:07)

If you need it, if you don't need it, that's fine, you can put it down, but if you need it, throughout your testimony, or if you wanna show the jurors now what you're discussing, please do so. May I step down here? Thank you. So this is a toy revolver, it has actually an orange, the muzzle has an orange insert to indicate that it is a toy gun.

(8:39:08 - 8:39:40)

And essentially, just like the revolver in question in this case, you have the barrel on top and the cylinder pin or the ejector rod down below. So in a normal aiming position, again, you have the barrel on top and the ejector rod or cylinder pin, as I'd call it, on the bottom. So in order for it to be inverted, the way I've described it previously, essentially just coming up like this.

(8:39:41 - 8:39:57)

And you have the cylinder rod on that outer, the ailer surface of the nose, and now the muzzle is essentially pointing right into the nostril itself. Step back a little bit. You should have turned it the other way.

(8:39:58 - 8:40:32)

That's where I'm at now. I've never done this before. Dr. Warren, in your field of expertise, have you had the opportunity to see or review gunshot wounds and the physical effects caused by the gunshot wounds from different distances? Yes, sir, I have.

(8:40:32 - 8:41:08)

Can you briefly explain what those physical effects are from the different distances? Yes, so when a firearm is discharged, the bullet is not the only thing that comes out of the end of the barrel. Out of the orifices of the gun itself, all around the cylinder and also behind the bullet as it exits the barrel, there are products of combustion that also exit. These products are the product of combustion as the gunpowder is being burned, and that comes out as essentially a cloud of smoke or soot.

(8:41:09 - 8:41:45)

In addition to that, there are gunpowder particles that are currently burning, but have not been completely consumed and turned into that soot, and then also there can be particles of gunpowder that are not burning yet, that maybe the barrel is too short and that hasn't had time to ignite. So all of these materials come out of the muzzle of the gun and travel in a cone shape. So if you imagine taking a flashlight and shining it onto a surface, when that flashlight is in contact, you essentially have a very dense, small beam of light.

(8:41:45 - 8:42:19)

But as you move that flashlight farther and farther away, that beam of light opens up and becomes bigger in diameter, but more diffuse. It's the same concept for gunshot residues when we're discussing a firearm being fired at different distances, or the equivalent forensic test called distance determination. And so by looking at the types of residues and their patterns that are deposited, we as experts can determine an approximate range at which that firearm was discharged.

(8:42:19 - 8:43:08)

And those ranges are broken down into what are the physical effects that are present in and around the wound itself, and then what chemicals are deposited, whether it's that soot or the gunpowder that is commonly called stippling, or the result of which is called stippling. And those are generally broken down into hard contact, which you've already heard me mention, contact, which is sometimes called loose contact, close range, intermediate range, and distant, or sometimes called indeterminate range. Can you break that down, starting with hard contact? Yes, so with hard contact, there is actually force pressing the object, or pressing the firearm against the object being shot.

(8:43:09 - 8:43:47)

And it is that pressure that as that gun is discharged, the gases that come out behind the bullet will essentially make the skin slap up against the end of whatever's being pressed into that surface. And so what you see there is generally all that soot and gases that are materials that are there, they can be blown into the wound, and then you generally get a mirror image or a negative impression of the end of that firearm. When you have loose contact, essentially the end of that gun, the muzzle, is still touching the surface, but it's not forcefully being pressed into it.

(8:43:47 - 8:44:06)

It's essentially hovering right at the surface. And in those cases, you frequently see what's called stellate, or star-shaped tearing. So it's not just a clean, like I described earlier, circular bullet hole, you get almost a cross tear in and around the gunshot wound.

(8:44:06 - 8:44:25)

You also end up with a lot of gunpowder and smoke in the form of soot being blown into the wound and right around the outside edge of the surface of that wound. That's that holding a flashlight just off of the wall. You can see that dense area of light right around where the flashlight is touching the wall.

(8:44:26 - 8:44:59)

Then you get to close range. So in this particular case, now with close range, you don't see the tearing, the stellate tearing, you don't see the muzzle imprint, but you do get a very dense cloud of soot surrounding the gunshot wound. Generally, a rule of thumb is that this close range can span anywhere from just off the surface out to six or 12 inches, depending on the firearm and ammunition combination that is used.

(8:44:59 - 8:45:31)

As you continue moving farther, you go from this close range regime to the intermediate regime. Now you're starting to see little to no soot. So that soot, the lightest cloud of material is dropping off, but now you're seeing that stippling from the slightly heavier gunpowder that has traveled that distance and is now striking the skin, leaving punctate abrasions or little pointy abrasions like you took a ballpoint pen and dabbed it all over the skin.

(8:45:33 - 8:46:04)

And again, it depends on the firearm and ammunition combination, but that generally can go from that 12-inch distance out to three or four feet. When you get beyond that four-foot distance, again, as a general rule of thumb, you get to the distance, the distant range, and that's characterized by having a lack of your soot and your stippling. Essentially, you just have the bullet wound or the gunshot wound with an abrasion ring around that periphery or outside edge of it.

(8:46:05 - 8:46:26)

Now, sometimes that is called indeterminate because it is possible that scenarios cannot be ruled out, that there would be an intervening object. And so essentially what that means is the firearm could be closer to the surface or person being shot than beyond four feet. It could be closer than that, but there's an intervening object.

(8:46:26 - 8:46:45)

Maybe it's a heavy article of clothing and they could have been shot through a doorway. So even though that firearm was much closer, that intervening object basically blocked those residues from being deposited. So that's why sometimes a distant range shot can be called indeterminate because that may not be able to be ruled out.

(8:46:46 - 8:47:18)

There's been discussion in this case, with the course permission, can we put up the demonstrative from the DiMaio book? Do you know who the author DiMaio is? Yes, I'm very familiar with him and his work. Do you have the other one? May I approach you on it? Yes. May I approach you, sir? Yes.

(8:47:19 - 8:47:25)

It's just for demonstrative, it comes out of the book. It states it's in the number 242. Just order it yourself and tell me when.

(8:47:32 - 8:47:37)

Okay. May I approach you on it? Yes. May I approach you, doctor? Yes.

(8:48:01 - 8:48:09)

It's on the Samba Court screen, the demonstrative. It's not this case, it's just the demonstrative from the book. Correct.

(8:48:11 - 8:48:27)

Can you just tell the jurors if you recognize what these are? So these are your typical contact, or what I would say, loose contact shots. So again, you see the gunshot wound or bullet defect. There's actually two of them side by side.

(8:48:28 - 8:49:04)

And then there's the very dark blackening or split deposition on the skin in and around the wound itself. The defect that came into Mr. Aker's right nostril, does that have anything to do with what you're looking at on the screen? No, it does not. Can you explain to the jurors why? Yes, so again, this has the soot or the blackening on the skin appearing on the external surface and surrounding the actual gunshot wound itself.

(8:49:05 - 8:50:13)

In the case of a hard contact wound, where you have this type of the abrasion that is essentially a mirror image of the object being pressed into it, that would have all of the soot be blown into the wound itself generally. And can you put up Ms. Boles' exhibit number? 146, if you don't mind. How would you describe this wound? So again, we've talked a lot about the abrasion mark that is there on the nose, but that in combination with the consistent size and diameter of the cylinder pin and the presence of a gray material that you can't see in this photograph that's inside of the nostril, it's the combination of those two items to me that suggests that this would be consistent with a hard contact shot.

(8:50:13 - 8:50:35)

So you would never see what was just shown on the demonstrative, Mr. DeMaio? Yes. Would you see, sorry, I'll rephrase. Would you expect to see what was just shown on the DeMaio book to the ladies and gentlemen during, in this case, a hard contact? So for a hard contact, no, I would not expect that.

(8:50:35 - 8:51:01)

Does it also matter that this is not just skin, but there's an opening? Yes, it actually matters that it is a skin with an opening to the whole sinus passage, as well as the fact that the firearm involved is a revolver. Explain that to the jurors, please. Sure, so a revolver has many different openings, I mentioned that earlier, as opposed to a semi-automatic pistol.

(8:51:02 - 8:51:28)

In a semi-automatic pistol, it actually generally harnesses the gases of the discharge to perform several steps automatically, and that would be the extraction and ejection of the just-fired round to clear it out of the gun so that it can load the next round automatically from a magazine. In a revolver, that doesn't happen. So there are a lot more open spaces in and around the cylinder.

(8:51:28 - 8:52:08)

That barrel is not sealed off from rearward-escaping gases once the bullet passes from the cylinder through what's called the forcing cone of the barrel and then into the barrel. So there's a lot more opportunity for gases to escape out into the environment, and less of it ends up coming out of the muzzle of the firearm to be deposited on the object that was shot. In addition to that, again, I mentioned earlier, the ammunition and firearm combination in this particular case with a .22 long rifle that is a very low-powered, low-pressure, therefore low gunpowder amount round.

(8:52:08 - 8:52:27)

So it already is going to be limited as to the amount of potential soot and stippling that it can deposit as compared to, let's say, a more common 9mm caliber cartridge. It's much bigger. Would you expect to find any stippling if the gun was inside the nose like you described? No, I would not.

(8:52:29 - 8:52:55)

Do you know the term searing? I am familiar with that, yes. And can you tell the jurors what searing is? Again, there is a several thousand degree muzzle flash that happens as those pressurized gases traveling down the barrel, pushing the bullet downrange. As soon as it hits the open, cool air, you get essentially a muzzle flash.

(8:52:55 - 8:53:48)

And it is this very rapid, high-pressure situation along with all of those burning gases and soot that can essentially cause a searing or burning of the skin at the location of the gunshot. The way you described the gun being inverted and making the mark, the abrasion with the cylinder rod, would you expect to find any searing in this case if the bullet was fired or discharged while the muzzle of the gun was inside the nasal cavity? So, again, with this combination of the ammunition and the gun itself, as I said, given the lower pressure and the lower amount of powder, I wouldn't generally expect to see that. But also, I wouldn't be surprised if it were there.

(8:53:48 - 8:54:36)

It really just depends on the gun and ammunition combination and, in this case, with the nasal cavity having that additional expansion area for that material to cool off and expand into that, again, would make me not expect there to be searing there. With regards to stippling, the way you understand that the gun was positioned inside the nasal cavity, would you expect to find any stippling? Again, not as I testified earlier, I would not. So that stippling would be once that firearm is multiple feet away from the individual before I would expect to see stippling.

(8:54:36 - 8:55:16)

You mentioned star-shaped, you remember that? Yes, I do. Can you explain to the jurors what you're talking about, star-shaped, and would you expect to see it here if the gun is the way you positioned it from your expert analysis? So the star-shaped or cellate tearing, again, it does depend on where on the body the gunshot wound is and how elastic that skin is and also whether it's a very bony part of the body, such as most of the structures in the face. There's not a lot of material between the skull and our face, the skin on our face.

(8:55:17 - 8:56:02)

And so if you have that close contact range shot, you would expect to see that type of cellate or star-shaped tearing because essentially those gases are being forced into the space between the skin and the bone and the skin has nowhere to go and it's elastic. So it will tend to essentially tear under the high pressure of that discharge. But again, here in this case, because A, I believe that it has hallmarks of being that hard contact shot and B, because again, we have all of the airspace in the nostril and into the sinuses for that pressure to essentially dissipate.

(8:56:03 - 8:56:39)

I would not expect to see a lot of heavy cellate tearing here, again, with this specific gun and ammunition combination. How many cases would you estimate you've worked where the gunshot wounds were part of your analysis? That is not a metric that I keep track of. So I will do my best to give you an educated approximation and I would say that's probably around or exceeding 100

different cases where I've looked at gunshot wounds and the physical features associated with them.

(8:56:39 - 8:57:12)

Now, you're not present when Dr. Lehman did the autopsy? I was not, I'm typically not present during the autopsy in these cases. Does that prevent you from doing an analysis, an expert analysis on the distance from which this firearm was discharged? No, not typically. So as long as the wound itself is properly documented and photographed with a scale and the physical features that are present are in those photographs, it does not prohibit me from then going forward and making a determination on the distance of discharge.

(8:57:13 - 8:57:57)

Were you able to, from the autopsy photographs that were taken by, at the direction of Dr. Lehman, were you able to make any determinations concerning the shooting at Akers? Again, we've kind of been talking about that and I actually demonstrated it earlier. When you take into account the totality of the evidence with this foreign gray material in the right nostril, it's not present in the left. The abrasion towards the tip of the nose consistent in size and shape with the cylinder pin, and to me, my opinion is that it is indicative of a situation.

(8:57:58 - 8:58:30)

Essentially, if you think about when you're holding a firearm, again, in that normal orientation with the barrel on top of the cylinder pin, and really, it doesn't have to be the firearm. It could be, let's say your child has grabbed your key, fobbed your car off the counter, and you're going towards that individual to take that object from them because they don't need to have it or for whatever reason. A natural reaction is essentially to retract the arm to prevent that person from getting the item that you're holding.

(8:58:30 - 8:59:01)

In the process of retracting that arm, you're automatically inverting that firearm. Inverting it in such a way also reproduces the abrasion, the, you would expect slip to be present inside of the passage, and you can also reproduce the trajectory again, that general forward to back, upward, and right to left. You mentioned gray material.

(8:59:01 - 8:59:25)

Can you, is there a photograph you can show the jurors what you're talking about? Yeah, there were a couple of the autopsy photographs that showed a foreign gray material inside of Mr. Aker's right nostril. I'd like to display, it's already in evidence, your honor, with the court's permission, Miss Boles number 147. Is this a helpful photograph of what you're talking about? Yes, it is.

(8:59:26 - 8:59:39)

Can you, I can give you the pointer if you want. Can you, can you explain to jurors what you're looking at? If I could stand. Your honor, can Dr. Warren stand? Thank you.

(8:59:40 - 9:00:01)

Would you like this or you have it? So this would be the abrasion ring we've been talking about. Essentially, the technician or the pathologist, whoever's taking this photo, is generally an autopsy technician. They've used forceps to basically open up the nostril to show what's inside of it.

(9:00:01 - 9:00:16)

And if you notice here, there is a gray material. I have asthma and I've had lots of sinus infections. I've never come across this type of gray material naturally in the nose.

(9:00:16 - 9:00:53)

Maybe if you're working in a coal mining facility or dealing with changing out brake pads where you're breathing in a lot of dark gray dust. But given the abrasion ring and its consistent size and shape, as I've said, this to me has the appearance of that dark gray soot from the combustion process of that gunpowder. What are the standard forensic and histological procedures recommended when evaluating a potential contact wound with possible soot? Sure, so it doesn't have to just be a contact wound.

(9:00:53 - 9:01:26)

Anytime there's the potential for a foreign material, especially with soot, one of the common practices is to take a tissue sample and do histology or histological analysis, essentially looking at that tissue sample under a microscope, under that magnification to see if you can determine better visually what that is. Alternatively, you can do chemical testing called sodium redisinate testing. I've actually done that in conjunction, doing an autopsy in conjunction with our medical examiner in Memphis.

(9:01:26 - 9:02:02)

It's basically an orange liquid that when applied in the presence of lead, which is a major component in soot, it will turn bright pink. So that is another way to confirm whether or not something is consistent with soot. And then much less frequently, but also discussed in literature, is to take that tissue sample and do SEMEDS, which stands for scanning electron microscopy with x-ray dispersive, electron dispersive x-ray spectroscopy.

(9:02:02 - 9:02:25)

It's a mouthful. That's why we call it SEMEDS. Do you know whether, in this case, the medical examiner did anything to preserve the tissue or do biopsies or any of the tests you just talked about? Of everything that was provided to me, I did not see any indication of any type of testing to confirm the presence or absence of soot was done.

(9:02:28 - 9:03:19)

Part of your shooting reconstructionist analysis, were you able to determine a scenario that would be consistent with the abrasion and possible soot, if it is soot, gray area, in this case? Yes, that was the scenario I was just describing, essentially retracting one's arm. Essentially, if you're holding the firearm and somebody is coming to and potentially take that firearm away and you're retracting the arm to keep it away from them, essentially this type of action would account for the different variables and the evidence that we've talked about today. How about collecting DNA or fingerprints for analysis of a firearm? Can you tell the jurors whether you said that that's what you and your partner had done? You've collected it.

(9:03:19 - 9:03:56)

Can you tell the jurors what could be done? Yes, so generally when a firearm is submitted to the crime laboratory or if we get a firearm in our lab and the request is for both latent prints and DNA, or more generally the request is to determine who potentially held or fired that firearm, it's typically a joint process. DNA is going to go first because theirs is the most sensitive and the types of chemical processing that latent prints is going to use could contaminate that DNA. So generally, we would use a double swabbing technique.

(9:03:56 - 9:04:35)

Essentially what that is, is you take two sterile swabs, so big long Q-tips with only the cotton on one end. The first swab, you will add one or two drops of sterile water onto it to moisten it. You will then take that swab and you will sample, generally you selectively pick the areas that are rough because those rough edges like the grip, like the trigger, like the hammer or the cylinder pin, they are going to abrade or scuff up the surface of your skin and that's where you're most likely to trap what we call trace DNA.

(9:04:35 - 9:05:00)

And so using that wet swab technique, we'll basically rehydrate any of those cells and pull some of those out. You will then immediately take a dry swab, that second swab, and go over those same areas to collect up the remaining material and then air dry those, package them and secure them for further testing. And that's not the testing part, I do not do.

(9:05:01 - 9:05:33)

And then latent print processing would proceed and again, you would focus on the larger, smoother areas because those areas are going to be the ones that are more likely to retain the oils and materials from fingerprints. Can you summarize the opinions that you hold in this case after review of all the information you've done? That would just be asked to answer a summary of what has just happened. If I could ask, is there anything new? That's fine, yeah.

(9:05:34 - 9:05:36)

I have no other questions. Thank you, doctor. Thank you.

(9:05:49 - 9:05:54)

I'm going to try to go fairly quickly. Doctor, I know you have to get a plane somewhere. I appreciate that.

(9:05:54 - 9:06:18)

Are you going somewhere else to testify after this? Yes, I'm going to a hearing in Kansas City. Okay, so you're basically, you said your primary or your only source of income at this point is professional testimony, right? No, so it is a full-time job that I work as a co-owner for SEP Forensics. But again, some of that is teaching, some of that is the adjunct faculty.

(9:06:19 - 9:06:32)

And then I would say though, the majority of it is reviewing discovery and if needed, testifying. Professional testimony and counseling with attorneys that's your primary focus at SEP Forensics. That would be the majority, yes, sir.

(9:06:32 - 9:06:57)

And do you even have a flight today to go somewhere else and testify for money that this week you're coming? Yes, that is correct, starting tomorrow. Starting tomorrow, you'll be in another courtroom just like this one giving opinions on this same type of subject matter? Potentially, yes, sir. How much have you been paid to come here today total? My retainer was the only thing that I've been paid and that was $2,400.

(9:06:58 - 9:07:14)

And then you'll add an hourly rate after that? Yes, I bill against the retainer and then anything over that would be in the next invoice. You have a witness testimony fee, is that different than the $350 an hour? No, sir, it's the same. Yes, that is correct.

(9:07:14 - 9:07:42)

Now if you had worked with these gentlemen here and you had an opportunity to review all the

materials in this case, investigate the case, and give your professional opinion on the case, if it had been inconsistent with the defense experience, actually you would have been hired to come testify. No, that's not true. So I'm generally hired before any review or before I express an opinion.

(9:07:42 - 9:07:51)

And in fact, my engagement agreement specifies that you're paying me regardless of whether what I say helps you or not. Yeah, I may have asked a bad question and I apologize. No, I apologize.

(9:07:51 - 9:08:00)

And I apologize, that's my fault. So what I'm saying is if you had, I know you're getting paid because you're valuable, your services are valuable. And nobody else has this kind of knowledge like you.

(9:08:01 - 9:08:41)

You're putting a lot of time and effort to get to this point. But what I'm saying is, if you had used your training knowledge and experience and your education, Vanderbilt, and set forensic experience and TBI experience, but if you had rendered an opinion that is inconsistent with the defense theory of the case, you would not have been brought to testify, right? That is generally my experience is if my opinion ends up not being helpful, there have been multiple cases where I've not been asked to testify and I submit a final bill and move on. So you're not gonna get the type of travel, you got travel fees coming out of that, right? The expenses and time, yes, sir.

(9:08:42 - 9:09:03)

You get the trial testimony time. But if you render an opinion that's inconsistent with the defense theory of the case or that's consistent with Dr. Laney, you're not gonna get the money to testify and travel and all that, is that fair? If they do not ask me to come and testify, yes, that would be fair. Do you know Dr. Laney personally? No, sir, I do not.

(9:09:03 - 9:09:22)

Okay, sir. Do you know he's a forensic pathologist? Yes, I'm aware of that. Do you have any reason to doubt his training at South Carolina Medical School or anything like that? I have no knowledge of his background or training, so I couldn't say one way or the other.

(9:09:23 - 9:09:35)

Did you know he's done 7,000 autopsies? That would not surprise me. Pathologists stay pretty busy. How many autopsies have you done? I am not a trained pathologist.

(9:09:35 - 9:09:54)

I have not been in medical school, so the answer to that would be zero. And tell the jury, please, if you will, doctor, when you physically examined the DNA for his body in this case, personally. Oh, I did not personally examine Mr. Ecker's body.

(9:09:55 - 9:10:16)

You were relying on photographs? Yes, that is correct. Did you know that Dr. Laney did personally and physically examine the deceased? I do not know if he personally examined it or how his process works with his technicians. But you read his autopsy report, right? Yes, sir, I did.

(9:10:16 - 9:10:39)

You saw the things that he noted in the autopsy findings? Yes, I did. Would you think it's likely that he physically examined the body and make all those findings? Yes, there are certainly parts of the autopsy where they would have to be involved as the pathologist. I just am not aware with the level of which, whether the technician was the one weighing the organs who made the FY incision, those types of things.

(9:10:39 - 9:10:53)

I do not know that. And did you know that, would you agree with me, sir, that Dr. Laney had the ability to manipulate those? I won't ask you a compound question. Let me just ask that question first.

(9:10:53 - 9:11:16)

Did you know, did you agree with me that he had the opportunity to physically manipulate those? Certainly, I would expect he had the opportunity, yes, sir. Would you agree with me, sir, that he had the opportunity to physically examine personally the right nostril or nasal cavity of the deceased? Yes, I would certainly agree that he had that opportunity. But you did not? That's right, I did not.

(9:11:34 - 9:12:04)

Do you agree, or do you understand, is it your understanding, sir, have you been told at all prior to this hearing today, did you know that Dr. Laney, who is not getting paid for his testimony as an expert professional witness, he does not agree with your finding that the marginal abrasion is the injector problem. Do you know that? I have not heard that, and I would be shocked that a pathologist wouldn't be paid a salary for their time. I'm sorry, I may have asked the wrong question.

(9:12:04 - 9:12:32)

What I'm saying is, are you aware that Dr. Laney does not share your opinion that that marginal abrasion on the right nostril was caused by what I call the injector problem? No, I'm not aware of that. Okay. You said that they may have a picture of a published journal, but not specifically.

(9:12:33 - 9:12:39)

The United States Exhibit... No, it's not. Oh, here it is, Mark. I apologize.

(9:12:39 - 9:13:00)

Defense Exhibit 146, please. I thought I'd have you take a look at that, sir. So the marginal abrasion... It's hard to see, I'm no doctor, so can you move it up, Investigator Burke, or should it be on your monitor, doctor, or do you need to stand up? I can see it.

(9:13:00 - 9:13:18)

See, is that the marginal abrasion that's of interest to you in this case? Yes, it is. You said that it's the same size as a cylinder injection rod? Yes, approximately. But you don't have medical training of any kind, do you? Not from a pathology standpoint, no.

(9:13:18 - 9:13:41)

My PhD was through the medical school at Vanderbilt, but no, I'm not, as I said earlier, a trained pathologist. Did you obtain a medical degree, a doctorate of medicine from Vanderbilt Medical School? No, sir, I did not. So you don't know the characteristics of a hematoma or a bruise and how it expands, such as this abrasion.

(9:13:41 - 9:14:06)

You wouldn't have any idea medically how an abrasion like that might expand throughout the nose, do you? Right, no, I am familiar with the terms, but I would not have that medical expertise to talk about how a human body reacts to a hematoma. Excuse me. I apologize.

(9:14:07 - 9:14:27)

Sir, did you have an opportunity to, as part of your preparation in the case, you said you reviewed a lot of materials. Is that fair? Yes, sir. Did you have an opportunity to review a police interrogation or interview video with this defendant? Yes, sir, I did.

(9:14:27 - 9:14:57)

Possibly, is that more than one? That's right, yes. Do you remember reviewing, sir, as part of your investigation, your analysis in this case, a March 5, 2020 interview with this defendant, with a detective named Harvey? I don't recall the date, but I don't have a reason to doubt that if that's one of the ones you're referring to. Do you remember, and specifically, I'll kind of orient you to it,

do you remember a video in which this defendant would, did you see the defendant? Do you remember seeing her in a video? Yes, I did.

(9:14:57 - 9:15:11)

So it's the same person we're talking about, seeing her in a video? I couldn't see. Okay. Did you see a female in a video with a police officer asking her questions and it looked like a camera from a distant room for her to see them? Yes, sir, I did.

(9:15:11 - 9:15:39)

And did you see on the video, sir, at any time where the detective said, hey, just get up, ma'am, or Ms. Boles, or interview me, and recreate how this happened? Do you remember seeing that? I do recall seeing that, yes, sir. Actually, Detective Harding, he requested of this defendant to show him how it happened, right? That is my recollection, yes, sir. If you recall that this defendant or the person you saw on the video, at no time did they indicate that this weapon was turned upside down.

(9:15:40 - 9:15:54)

At no time did that person indicate it. Do you remember that? Yeah, I just don't, I do remember that there not being an indication that it was turned upside down. But also, my recollection was general, like they weren't sure.

(9:15:55 - 9:16:16)

This was their best recollection, and this was them acting it, but they weren't saying it was exactly this way. If you don't remember this defendant, just when asked to recreate or show exactly to Detective Harding how this shot happened, you have that toy gun? Yes, sir. Can I put you witness to this? Yes, sir.

(9:16:17 - 9:16:26)

Let me show that toy gun to you. Now, this defendant, or this person you saw on the video, she didn't have a toy gun in her hand. You don't remember that? No, there was no toy gun.

(9:16:26 - 9:16:32)

Okay, well, it's probably not fair for me to use a toy gun. I'm going to use what she did in the video. She used a paper, remember? Yes, sir.

(9:16:32 - 9:16:50)

Do you remember that? She just said that this happened like this and just pointed it at the face of the would-be victim, sir, right? Yes, I do recall that, yes, sir. She didn't point it upside down or a

bird, did she? No, not in that. She did not mimic or give that as an example.

(9:16:50 - 9:17:17)

She didn't say anything about what you theorized that you're saying about, like, he was trying to avoid me getting the gun, so he was backing up and pointing it backwards and upside down. Actually, she didn't say that, did you? No, I do not recall her making that statement. So the only person that's alive that was in that room and tells how it happened according to her, she didn't even say that, right? That's correct, yes.

(9:17:18 - 9:17:47)

She didn't even say what you're saying, right? You weren't there, right? That's correct, I was not there. Okay, one more, a couple more points. On the weapon itself, do you still have it there? Yes, sir.

(9:17:47 - 9:18:24)

I understand that what you said, and please correct me if I'm wrong, Dr. Warren, but I believe what you said is with a revolver more so than a semi-automatic pistol revolver, sometimes you can have, or most times, all the time, perhaps, you can have escaping gases from the cylinder itself, right? Yes, that is correct. Because the revolver, the structure of the frame of the revolver and where the cylinder fits the frame, that's not, we're not talking about an incredibly low tolerance between the surfaces, right? Yes, that is correct. So there has to be tolerance, there has to be space so that that cylinder can freely revolve as either the hammer is cocked or the trigger is pulled.

(9:18:24 - 9:18:52)

But are you telling the jury, sir, that, you're not telling the jury that it's impossible to get soaking because it's a revolver, are you? No, sir, I'm not. It's just that some gases may escape the cylinder area, right? Yes, sir, that is correct. My testimony was with it being a revolver, you have those spaces for the gas to escape, and with it being a smaller caliber, there's fewer gases and fewer powder particles to begin with.

(9:18:53 - 9:19:17)

Similar to that vein, sir, you said in this type of a scenario that you described that the jury said that you would not, you would not, as the expert yourself, you would not expect, quote, heavy, stilling, tearing. Is that what you said? I don't recall if those were my exact words, but again, that sounds correct. I don't have a reason to doubt that.

(9:19:18 - 9:19:53)

Well, we were talking about the, or you were discussing the location of the injury wound with the Honorable Mr. Steel, and you're talking about it being in the nose or nasal passage and there being a passage upward to the brain, the sinuses, I think you mentioned the word sinus, did you remember that? Yes, that is correct. Would you doubt me if I just, am I not accurate in saying you would not expect to see necessarily, quote, heavy, stilling, tearing? No, I would agree with that. But it's not impossible for there to be a stilling, a partial stilling, tear, or some type of stilling, tearing, even in that area, it's not impossible.

(9:19:55 - 9:20:13)

No, in general, for a shot, if it is hard or loose contact, that is a possibility. Again, as I mentioned, it really depends on where on the body that shot occurred. But in this case, you didn't, from the photographs you looked at, you didn't see stilling, tearing of any kind, right? That is correct.

(9:20:24 - 9:20:52)

And you understand, or do you, sir, that the, did you know the GBI was asked to do DNA testing from the weapon in this case? Do you remember reading that? I do remember reading that, yes, sir. And they returned the weapon for reasons unknown in the theaters, that they would not do that, they would not undertake that testing, did you know that? I don't recall reading that anywhere, but I might have known that. I also object, Your Honor, I don't think that's an evidence, and that's hearsay.

(9:20:53 - 9:21:09)

One of the, Your Honor, one of the previous witnesses indicated, as Ms. Levin said, that the GBI would not undertake the test. It's still hearsay. Well, it's an evidence, I mean, to be honest with you, I don't recall the test, but it's, it's.

(9:21:11 - 9:21:20)

That's fine, I'll move on to another question. Do you have any indication, as far as your investigation, comprehensive review of the case, why GBI would not, could not do the test? You know. I do not.

(9:21:21 - 9:21:45)

Okay. And even in your vast experience, I know you have worked in a biological lab with Vanderbilt and all this, but would you agree with me, sir, sometimes there may be circumstances where DNA testing is not possible. I would say it's not that it's not possible, but generally it's a policy that prohibits it, or there's some scenario that prohibits that testing.

(9:21:46 - 9:22:04)

Maybe contamination of the subject that you're trying to test. It could be any number of reasons why an accurate result might not be able to be obtained so there's no testing. Is that right? Yes, there could be contamination, and that may be the reason that it could be returned or that test could be rejected.

(9:22:04 - 9:22:14)

It wouldn't prevent the testing from being done, but it may prevent the quality of the results obtained. It may affect the quality of the results obtained. I couldn't use that language.

(9:22:14 - 9:22:18)

That's perfect. Thank you for that. Quality of results obtained.

(9:22:18 - 9:22:23)

We don't know why it wasn't obtained. I know. I want to ask you another question.

(9:22:24 - 9:22:59)

It's about a particular exhibit that you looked at, and if I can approach and publish once more this picture. Defendant's exhibit 147, okay? Are you aware that Dr. Layman, he didn't find any soot inside the nasal cavity? Did you know that? I'm not aware of any indication that he actually attempted to find soot. I think that this documentation was the only thing that was provided to me that I've seen.

(9:22:59 - 9:23:15)

So you would be surprised if he, you would be surprised to learn, I guess, that he testified earlier that he specifically looked for soot with a magnifying glass all over the area of the face. I don't think that was the testimony, plus I'll object to asking. I'll rephrase it.

(9:23:15 - 9:23:29)

Would you be surprised if a forensic pathologist went over a body right in this scenario with a magnifying glass looking for soot? I don't remember any of that. I'll object to the form of the question. He testified that he looked over the face with a magnifying glass.

(9:23:30 - 9:23:40)

That is a fact. Will you, I didn't ask how to do that for you to borrow, this is what the other question was. All right, so you don't know if Dr. Layman looked for soot at all.

(9:23:40 - 9:23:47)

You don't, I guess, if he testified. Beyond the photographs that were provided in the autopsy report, no. Okay, all right.

(9:23:48 - 9:24:14)

In the autopsy report it said he had see-soot, right? That's correct. So wouldn't you suppose that if he says he didn't see soot it would look, isn't that like a? Yes, I would expect to see histology or sodium resinate testing to confirm whether or not an object that is clearly foreign to the body would be, whether or not it would be soot. Okay, and you said, I want you to look at this state's exhibit 147 here.

(9:24:14 - 9:24:34)

You may have to stand up again, but is this the area that concerns you grayish in color that you think may be soot? Yes, that's correct. And you said you wouldn't, you wouldn't necessarily expect to see that type of matter in the nasal passage. You remember saying that? I would need more context.

(9:24:35 - 9:25:04)

Well, the context you gave a moment ago, sir, was you wouldn't expect to see that type of foreign matter in the nasal passage unless it was something like maybe a coal miner or working with brake dust. You remember saying that? Yes, yes, I did. Well, what if this guy was a steel worker, like with the sheet metal union, the sheet metal workers union, and he was around cutting metals, metal fabrication and the cutting of metals all the time for his job six days a week.

(9:25:04 - 9:25:36)

Is that possible that that could introduce foreign matter like that gray in color to the nasal passage? Yes, so again, as I mentioned earlier, being a coal miner or around brake dust where you're breathing in material like that, there is certainly a possibility if there weren't N95 masks or the appropriate precautions being taken that that could lead to something like that. No further questions, thank you. I just want to ask you one question.

(9:25:38 - 9:26:10)

When you were asked about whether you saw on any of the statements of Ms. Boles whether she said that the gun was inverted, and you gave the example of a child holding the key fob and the parent trying to get it back and the child. How fast can somebody take a gun like this and put it to their nose? How quick can that happen? I mean, you just demonstrated it. It's less than a second.

(9:26:10 - 9:26:17)

It could be very quick. And with the person, you know, Ms. Boles said that she fell on top, so she was moving too. She fell on top of Ms. Akers.

(9:26:18 - 9:26:42)

Remember that? A series of leading questions. Hypothetically, I'll rephrase. Do you remember from the video anything about Ms. Boles falling? Again, just what we've already talked about, mimicking the movement of the firearm and then falling onto Mr. Akers and then the subsequent actions thereafter.

(9:26:42 - 9:27:04)

How quickly can a gun go from the position that you saw Ms. Boles hold it in the video to up the nose and gunfire the bullet? Sure. Again, a fraction of a second. Studies, I think, in 2010 have shown that the typical person can pull the trigger three to four times a second, and we're only talking about one shot here.

(9:27:04 - 9:27:09)

So at longest, potentially a third of a second. Thank you, sir. Thank you.

(9:27:12 - 9:27:27)

Yes. All right, we're going to take a break. Before we do, let me just say that I just made some rulings and in doing so, I'm not commenting on the evidence.

(9:27:28 - 9:27:38)

If I said, I don't recall the evidence, it's for you to recall whether or not there was that evidence or there wasn't. I'm not commenting on it. So that's entirely for you.

(9:27:38 - 9:27:46)

OK, does that make sense? Entirely for you to recall what the evidence was. Let's take a half hour dinner.

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(09:24:34 - 09:24:51)

...saying that? I would need more context. Well, the context you gave a moment ago, sir, was you wouldn't expect to see that type of foreign matter in the nasal passage unless you were something like maybe a coal miner or working with brake dust. You remember saying that? Yes, yes I did. Well, what if this guy was a steel worker, like with the sheet metal union, the sheet metal workers union,

(09:24:59 - 09:25:19)

and he was around cutting metals, metal fabrication, and the cutting of metals all the time for his job six days a week. Is that possible that that could introduce foreign matter like that gray in color to the nasal passage? Yes, so again, as I mentioned earlier, being a coal miner or around brake dust where you're breathing in material like that, there is certainly a possibility if there weren't N95 masks or the appropriate precautions being taken

(09:25:26 - 09:26:02)

that that could lead to something like that. No further questions. Thank you. I just want to ask you one question. When you were asked about whether you saw on any of the statements of Ms. Boles, whether she said that the gun was inverted, and you gave the example of a child holding the key fob and the parent trying to get it back, how fast can somebody take a gun like this and put it to their nose? How quick can that happen?

(09:26:11 - 09:26:35)

You just demonstrated it. It's less than a second. It could be very quick. And with the person, you know, Ms. Boles said that she fell on top, so she was moving too. She fell on top of Ms. Akers. Remember that? A series of leading questions. Hypothetically, I'll rephrase. Do you remember from the video anything about Ms. Boles falling? Again, just what we've already talked about, mimicking the movement of the firearm and then falling onto Mr. Akers

(09:26:44 - 09:27:06)

and then the subsequent actions thereafter. How quickly can a gun go from the position that you saw Ms. Boles hold it in the video to up to the nose and gunfire go off? Again, a fraction of a second. Studies, I think, in 2010 have shown that the typical person can pull the trigger three to four times a second, and we're only talking about one shot here, so at longest, potentially a third of a second.

(09:27:11 - 09:27:39)

Thank you, sir. Thank you. Anything else? Any issues? Yes. All right, thank you. Thank you, Judge. All right, we're going to take a break. Before we do, let me just say that I just made some rulings, and in doing so, I'm not commenting on the evidence. If I said I don't recall the evidence, it's for you to recall whether or not there was that evidence or there wasn't. I'm not commenting on it.

(09:27:40 - 09:27:50)

So that's entirely for you, okay? Does that make sense? Entirely for you to recall what the evidence was. Let's take a half-hour dinner. Yeah.

(10:05:01 - 10:05:45)

Looks like there's one more sandwich left in there. Looks like there's one more sandwich in there you didn't eat. You ate? I ate mine. Okay. We'll take that one home. Don't let it sit there and go to bed. We'll give it to Bonnie or something. We'll give it to somebody. Don't let it go bad. Gentlemen, ready? Yes, sir. Yes, sir.

(10:05:58 - 10:06:32)

Well, we'll – I'm told you all have two witnesses that won't take very long. So we'll do that, and then since we have some time, maybe we start looking at request to charge and get started on those. All right? I mean, Your Honor, I don't know who the witnesses are, but if it is – Can I just have one second? Okay. There it is. All right. Let's do it. May I just ask in regards to the former husband, Jeremiah Boles, I believe is the name.

(10:06:39 - 10:07:09)

The state's intended to call him. And he sent a post after the trial that he tried to undertake. It said something like, who's the monster now? And Lacey's picture or something like that. We're moving to exclude any character evidence. This is not a place where character can issue whatsoever. And to my knowledge, he really doesn't – to my knowledge, he can only talk about her character, what it's like living with her.

(10:07:19 - 10:07:47)

Whether he believes she's a truthful person, everything would be character to me. However, I don't know what the state's going to ask him, so he might have other information. But I'm just – same thing that we did before. We will be diligent to object and potentially – not willingly, but move for a mistrial if he starts talking about character. All right. Any response? No, Your Honor. Is that the juror?

(10:08:00 - 10:08:44)

Your Honor? Yes. While the jurors are coming, we – Mr. Lowe was kind enough to get the Cobb County – We'll talk later. We'll talk later. Thank you. All right. Welcome back, ladies and gentlemen.

(10:08:45 - 10:08:58)

I hope you enjoyed your dinner. I know it wasn't a gourmet meal or anything, but we appreciate you staying late. We'll see how far we get. We won't go past bail, okay? The state has no limits. Yes, Your Honor. If it pleases the court, the state calls Jeremiah Boles.

(10:09:29 - 10:09:51)

Good evening, sir. I'll swear to you. Will you please raise your right hand and return it up? Do you swear or affirm the testimony you've got to give in the matter before the court is approved? Nothing but the truth, sir. Thank you, Your Honor. Yes, sir. Excuse me, sir. Can you tell the jury your name, please? Jeremiah Boles. Just common spelling. Jeremiah. Yes, sir. Can you tell the jury how you're employed nowadays?

(10:09:58 - 10:10:28)

Yes, I'm a commercial rookie. I'm a project manager. Do you live locally in Palm County? Lithia Springs. Have you ever had an occasion to come and know a person that you may know and see in this court as Lacey Boles? Yes, sir. How did you know that person? That's my ex-wife. How long were you married to her? Roughly 60 years, I believe. Do you have kids? Yes, two children. Did you at any time have any knowledge of this event?

(10:10:33 - 10:10:58)

Do you see her as learning? Yes, sir. At any time during your marriage, sir, did you have an opportunity to have an opinion of her familiarity with fireworks and the use of fireworks? Oh, yeah. I'm just not familiar with it. Come up to the mic if you will. I'm sorry. Yes. I mean, we had fired arms. We shot at her. She has a cabin in Blue Ridge, so we would shoot up there often. Did you ever go to a shooting range?

(10:11:00 - 10:11:25)

No. Just outdoors? Yes, sir. Do you know what kind of pistol that was? I should say pistol. What kind of firearm was it? It would be a Glock 40. So a pistol? Yes, sir. Okay, sir. Did you ever know a person named Daniel Akers? Yes, sir. Did you know that person would be the defendant's spouse after your marriage ended? Yes, sir. Did you ever have an opportunity to see Daniel Akers on the ballot?

(10:11:29 - 10:11:47)

You made the move in late December of 2019. Yes, sir, I did. Can you tell the jury when you think you might have seen him for the last time? I dropped my son off this – that was a Friday. I think that would have been like the 19th or – I think this all occurred on the Saturday and the Sunday and it was the Friday before. So if we can say that the 21st of December 2019 was a Saturday, are you talking about

(10:11:53 - 10:12:14)

the very day before? Yes, the Friday before. Yes, sir, the day before. You said that you just happened to see him while you were dropping your son off with Mrs. Holmes? No, she wasn't there. I just met Dan alone. Okay, but was that the house they shared, I guess? No, it was at a church on Platt Valley. Okay, so sorry. You had a custody exchange at a church with Dan? And did you have any kind of – was this a tumultuous custody exchange or bad blood

(10:12:19 - 10:12:38)

with you and Dan or anything like that? Not at all. No, sir. Were you on good terms with Mr. Akers? Yeah, at this point we were kind of set if everything is set. Did you have an opportunity to – don't tell me what he said if you did, but did you have an opportunity to speak with him on December 20th, the Friday? Yes, sir, we had some casual conversation. Okay, were you concerned about that conversation that – anything about that conversation

(10:12:42 - 10:13:05)

might have caused you to be concerned about his mental state? No, not at all. Anything that caused you to maybe think you might need to inform somebody, hey, something's not right with this guy or anything like that? No, sir. I wouldn't let my son go. I thought that. You let your son go into his soul? Yeah, yes. How old was your son? How old was your son at that time? At that time, I would imagine – I can't remember, honestly.

(10:13:11 - 10:13:51)

So he's 22 now, so whatever that age would be. Teenager? Yes, sir. If there was anything wrong with Mr. – anything out of sorts or concerning to you with Mr. Akers on Friday? Did you exchange him at nighttime? It was evening, probably 5-ish. Yeah. If there's anything concerning to you about Mr. Akers' behavior, would you have let your son go? Ask and answer. No, sir, would not. All right. That's all I have.

(10:13:52 - 10:14:24)

Thank you. All right. No. Sir, thank you for being here. Please go. Please tell us Hope Allen. He can dance.

(10:15:19 - 10:15:54)

Could you state your name, please, ma'am? Yes, my name is Hope Allen. And how are you employed? I'm a registered nurse at Emory Healthcare. And how long have you been a registered nurse? Since 2012. Did you know an individual by the name of Daniel Akers? Yes, sir. How did you know Mr. Akers? Dan lived in my neighborhood when I was in high school. When you were in what? High school. Okay. And how did you know him besides being in your neighborhood when you were in high school?

(10:16:01 - 10:16:27)

We were friends. We had a close neighborhood group, so we all hung out together. And were you friends with him his whole life, or did you do stuff with him or see him from time to time? Just through high school when he moved to Georgia. Okay. So how often would you see him during the course of a year normally? I mean, during that time, we were together probably almost every day, at least every weekday.

(10:16:33 - 10:17:09)

We rode the same school bus and things like that. And what about after high school? After high school, I didn't really see him. I moved away from the neighborhood. Did you have any contact with him after high school? Very infrequently, just like social media. And how often would you contact him on social media? In the course of probably a year, maybe once or twice. So you went from seeing him almost every year until he got to being an adult, and then you saw him once or twice a year.

(10:17:15 - 10:17:35)

Did you live in this area at that time? I don't think that was the testimony. I'm going to object to the last statement. Okay, I'm sorry if I misspoke. How many times would you see Mr. Akers during the course of the year or have contact with him? I didn't see him really after high school. Just contact through social media. Okay, and how many times would you have contact with him through social media during this time?

(10:17:40 - 10:18:24)

Maybe once a year. Okay, now did you have an occasion to come in contact with him in December of 2019? I ran into him at a bar in Dallas. And when was that? December 21st of 2019. December 1st of 2019. You met him at a bar? No, December 21st. I'm sorry? December 21st. Okay, December 21st of 2019. Is that right? Yes, sir. Okay. Now, what bar did you meet him at?

(10:18:29 - 10:19:06)

It was 278 South. Now, was that a planned date that you had with him or meet him or anything? No, it was random. What brought you to that location at that particular time? We just decided to go, me and my husband and one of our neighbors. So you and your husband and a friend went to the bar at 278? Yes, sir. Now, about what time did you get to the bar? Right at 11.30 p.m.

(10:19:14 - 10:19:53)

Now, was there something special going on that you were celebrating or anything? No, sir. Okay, so you're at the bar at 11.30 and what, if anything, do you notice? Dan actually flagged me down right when we walked in the door. He was sitting at the corner of the bar. And he was at the bar? Yes, sir. And what did you notice about any company he was with at the bar? He was by himself. And what did you do when he flagged you down?

(10:19:57 - 10:20:28)

Me and my husband and our neighbor went over to him and I introduced everybody and gave them a hug. And how long had it been since you'd seen him before you decided to walk over this particular evening and give Mr. Akers a hug? It had probably been since I graduated high school. So that was in 2000. It had been a very long time. Okay, so you're at the bar, you've been introduced, you're hugging your friend to Mr. Akers.

(10:20:37 - 10:21:18)

Did you have occasion to converse with Mr. Akers? We talked for about 20 minutes or so. And were you able to observe what he was drinking? He actually ordered water. Do you know why he ordered water? He said that he had to drive home soon. And what did you order? I ordered a beer. And then, what if anything happened with regard to your meeting with Mr. Akers? As far as the topic of conversation, that sort of thing. Do you recall what you were talking about?

(10:21:26 - 10:22:01)

Yeah, he showed me some pictures of the kids on his phone. You know, he was telling me about his job and showing me some more pictures from that. And then I asked him to come to a table with us since he was there by himself. But he said that he had to get going. He was only staying for a little bit. That him and his wife had been kind of arguing and that's why he was there. Did you have any occasion about him and his wife arguing from what you observed when you were at the table talking to him?

(10:22:13 - 10:22:43)

He just said that they had been arguing and he left and that he was just headed back home. Did you ever have occasion to observe any text messages? I did, yes. I didn't really read them. He just kind of held up his phone and just kind of flipped like this. Just showing me that they had just been kind of going back and forth via text. And when he showed you the text messages, what was his attitude at that time? What was his demeanor like?

(10:22:49 - 10:23:30)

He was just smiling. He didn't, I don't know, he was just regular Dan. The Dan that I remember. You said regular Dan. What did that mean to you? Dan always just seemed to be like a go with the flow kind of person and just happy. And did you see him leave the bar that night? I saw him leave like inside of the bar, but after he walked out the door, I didn't see him after that.

(10:23:37 - 10:24:09)

So you saw him leave the bar? Yes, sir. Do you know approximately how long he was there at the bar? He was there before me, but I don't know what time he got there, but he probably left close to midnight. And so you got there approximately 11.30 did you say? Yes, sir. And he left at about midnight? Yes, sir.

(10:24:41 - 10:25:11)

Thank you. Keep him with you. Thank you, Mr. Allen. There's no question for her. Thank you, sir. Thank you. Ladies and gentlemen, what that means is the state does not intend to present any more evidence. There may be some final evidence later, I don't know. So at this point, I have to have a conversation with the lawyers. We may be done for the night. We may not. Will you please go back to the jury.

(10:25:22 - 10:25:22)

All right.

(10:25:55 - 10:26:32)

We do, Your Honor. Your Honor, we'd like the court to consider on all three counts. Malice, murder, felony murder, nightly assault, and directed verdict of acquittal based on the test that the court must supply. And the way I will summarize, I know the court's been very attentive, but the way I understand the case as it postulates right now is that Detective Ogden is the lead detective.

(10:26:37 - 10:27:04)

I asked him whether he has any evidence to prove that Lacey Boles walked downstairs and introduced a gun at this time of the fatality. He said no. I asked him whether he has any evidence that Mr. Akers did not come in the house with the gun and introduce the gun. He said no, he doesn't have any evidence that that did not happen. I asked the same exact questions to Detective Hardy and he said the same response.

(10:27:10 - 10:27:22)

He said I don't have any evidence that Lacey Boles came downstairs with a gun and he has no evidence to dispute the fact that Mr. Akers may have come in the house with a gun. I asked Dr. Lehman, who testified today, he did not, he said that it is possible, it's not his opinion, but it's possible that this was a self-inflicted wound as stated by Ms. Boles.

(10:27:52 - 10:27:52)

Your Honor, the law in Georgia that will be applied is that the court must instruct the jury at some point that circumstantial evidence must exclude every reasonable hypothesis save the guilt of the accused.

(10:28:19 - 10:28:43)

There is no evidence here pointing that Ms. Boles took the life of her husband, did anything but try to save his life. I'd ask you to consider, based upon the law, and I know where we are now, I know it's a directed verdict, and the facts, that Ms. Boles be found not guilty by the court. Ms. Boles. May it please the court, Mr. Steele, Your Honor, I think Mr. Steele said it pretty effectively.

(10:28:50 - 10:29:12)

He said that the jury needs to be instructed, so I think he kind of concedes that there is a jury question as to the guilt or innocence of this defendant. And we would ask the court to listen, to pay attention to all the evidence that has been presented, and allow this case to go to the jury for determination as to the verdict. Thank you. The court overrules or denies the motion for a directed verdict.

(10:29:18 - 10:29:38)

Let me ask you, Mr. Steele, is now an okay time for me to talk with your client about her right to testify? Yes. Ms. Boles, let me ask you some questions for you, okay? Okay. Ma'am, do you understand that you have a right to testify, and that if you want to testify, nobody can stop you or prevent you from testifying? Yes. Do you understand that? Yes. You also have a right to not testify if you don't want to, and if you don't want to testify, no one can make you testify. Do you understand that?

(10:29:50 - 10:30:12)

Yes. Ma'am, do you understand that it's not your lawyers that make the decision on whether you testify? They can advise you, but you get to make the decision on whether to testify. Yes. Or not testify, you understand that? Yes, I do. If you do not testify, then upon request by you or your lawyers, the court will instruct the jury that your decision to not testify cannot be held against you in any way. Do you understand that?

(10:30:26 - 10:30:52)

If you do testify, then not only will your lawyers examine you on the witness stand, but the district attorney or assistant district attorney will cross-examine you. Do you understand that? Yes. Have you had enough time to make a decision on whether to testify? No. Do you want to think about it more? Yes. Okay, I'll let you. Can you hand out?

(10:31:17 - 10:31:45)

I forget what number it is, but it's the Cobb County indictment number 021480, dealing with Mr. Akins and Mr. Proag. What do you want to do, add the page? Yes, Mr. Lau was instrumental, and I showed it already to the prosecutors unless they need more time, but it was just simply the pages missing. It is here that the sentence is on. The prosecutors were challenging that count two really wasn't a guilty plea, but it's right here, the sentence.

(10:31:52 - 10:32:15)

It must have been omitted the first time, but it is here that Mr. Akins did in fact plead guilty to count two, as well as count three, just like it says on the front. I don't have any objection to supplementing that page. I appreciate Mr. Bill's efforts in getting that. Okay, very good. We'll do that. Thank you. And I think there's another record that I have the same exhibit number, and I was supposed to alert the court and ask you if I could change one to an A, as in Elisa, so it would be the same number, but an A.

(10:32:29 - 10:32:33)

Okay, any problem with that? And I forget what number it is. If the court reporter can assist, I'll put it on the record.

(10:33:01 - 10:33:24)

All right, what everybody should have is a copy of the jury instructions, and what we have here is a compilation. If you requested it, it's in this stack or group of documents here, and we'll go through them and see where the problem is, and then we'll get it cleaned up, and I'll make rulings where I have to, and then before you argue, you're going to get a clean copy of this so you'll know in advance exactly what I'm going to say.

(10:33:32 - 10:33:45)

The first request is 11010, indictment, which is a patterned charge, and so what I'll do is I'll leave in the first parenthetical there where it says the grand jury has indicted. I'll take out the district attorney has accused, and then instead of re-reading the indictment, what I think I'll do is I'll say the indictment is as I read to you, and you'll have it with you in the jury room.

(10:34:06 - 10:34:11)

All right, can we approach this for one second? Sure. The way the client's present, correct? Yes, yes.

(10:34:41 - 10:35:19)

Tuck them loose. We're not going to need them anymore, and we'll see them 8.30 Monday morning. Okay. They can—that's right. Could we— I'm sorry, one second, Dan. I'm sorry. May I ask you—just an abundance of caution. Could we re-charge these jurors? Please do that. This is a late one. All right, bring them back in, and I'll give them some instructions. Okay, thank you. All right, thank you for reminding me, Mr. Steele.

(10:35:21 - 10:35:21)

That's what the bench conference was, just that we needed to address the jury.

(10:35:58 - 10:36:17)

All right, we're not going to have any further witnesses this evening. I'm going to cut you all loose, and we're going to reconvene Monday morning. You all can be here at 8.30, right, Monday morning. This is going to sound familiar to you, but since we're about to have a long break, it's worth me re-instructing you. Do not conduct any research about this case or about any people or places mentioned during the trial.

(10:36:23 - 10:36:42)

Do not visit any locations you've heard mentioned. Do not refer to any books or documents that were not admitted at trial. Do not use dictionaries or other reference materials to research anything related to this case. Do not search the Internet, websites, blogs, or use any other media to get information about this case. Do not research legal terms or the law, and you must avoid any accounts of this trial that might appear in the news media,

(10:36:50 - 10:37:13)

whether online, in print, or on the radio. Remember that you are the ones who have been qualified as fair and impartial jurors in this case. No outside influence can affect your decision. For this reason, you may not discuss this case with anyone, including your family and friends, or let anybody discuss the case with you or even around you. This includes discussing or sharing information by email, texting, blogging, or any form of social media.

(10:37:19 - 10:37:51)

Until actual deliberations begin, you must not discuss the case, even amongst yourselves in the jury room during breaks or anywhere else. There is a chance we finish Tuesday, but I can't promise anything, okay? So we're getting there, and we're grateful to all of you. So we'll see you next week. I think the note y'all sent out said you could go till 8, Monday and Tuesday. Is that still okay?

(10:37:53 - 10:38:01)

And as you can see, like today and yesterday, especially today, we don't quite get to 8. But if necessary, we'll go to 8, okay? And we'll get dinner for you as well.

(10:38:32 - 10:39:04)

All right, so now we're up to the second submitted jury instruction. That's 1.10.20, issue and plea of not guilty. I assume there's no problems there. Y'all stop me or shout out when you have a problem with one of these. The third submitted jury instruction is 1.20.10, presumption of innocence. I will give that. There's one parenthetical on the second page kind of towards the top. When a defense except insanity is raised by the evidence.

(10:39:08 - 10:39:48)

I'll just strike except insanity and leave the rest if that's satisfactory. Then grave suspicion. That always seems to be an argument. What's the state's position? All right. Any argument from the defense? Yes. It's a pattern charge. We'd ask for it. I would like grave suspicion to be given by the court. I typically don't give it, but that doesn't mean I never give it. So I'll consider it and I'll let you know.

(10:39:53 - 10:40:20)

Thank you. Yes, sir. Then there's 1.20.30, jury, judges of law and facts. I will give that. Then we have 1.30.10, evidence generally. There are some parentheticals here. I think I can strike the one on the third line that says or the equivalent, such as depositions, because we don't have depositions. I did hear you all say you stipulate to something once or twice, but then the evidence was admitted.

(10:40:27 - 10:41:01)

So I can leave stipulations in there if y'all want it. It's up to you. Steve, I don't believe it's necessary. What it was about was a photograph and we just admitted them in. You can take it out. Okay. Then I'm also going to take out matters in which the court has taken judicial notice that doesn't apply. The next one is 1.30.20, direct and circumstantial evidence. There's two versions.

(10:41:03 - 10:41:39)

I don't have a preference. Do y'all? We usually like the long version. Okay. Any argument there? No. All right. I can take out 1.30.12, right? Stipulations? Yes, sir. All right. That is out. All right. I've got the limiting instruction on transcripts, which may be non-pattern, but I really don't see a problem with it.

(10:41:50 - 10:42:34)

That's fine. I plan to give 1.31.10. Do y'all want any of those factors removed? I'm okay with their intelligence. It doesn't matter. All right. I'm just going to read the whole list. Next is 1.31.40. I'm not sure who requested it. It was me, Your Honor. Okay. What is your suggestion? We don't need character for untruthfulness.

(10:42:47 - 10:43:31)

How do you want to handle bias towards a party? I think that applies. So I was charged bias towards a party shown by... How would you like me to read that? So you're talking about for bias? Right. There's a bullet point that says bias towards a party, period, and then there's some parentheticals, so some of that can come out. I'm just wondering how you want me to charge that. I just think it would be...

(10:43:36 - 10:44:01)

Bias towards a party, period? Yeah, bias towards a party, specific instances of conduct of the witness that may relate to the witness's bias towards a party. I think that's the code section. So instead of the first bias towards a party, just... Bias towards a party shown by specific instances of conduct of the witness. We can just use bias of a party. I see what the court's saying. Okay.

(10:44:03 - 10:44:42)

All right, so bias towards a party, period. Any problem with that state? No, Your Honor. And then the next option that they give us is criminal convictions, which... We don't need that. Okay. Next charge that's been submitted is pattern charge 1.31.45. I think that's fine, but I have an option, first or the second part. I'd like the first part. What's the state say? I have no objection to the first part.

(10:44:45 - 10:45:29)

So we'll do it. Then we have 1.31.30, dealing with expert witnesses. I'm going to give that for sure. As soon as there's no objection. Next one is 1.31.47, prior statements. I will give... I think I'll give that. Any objection? No, I think that people... We talked about their prior statements. I think that's appropriate. 1.31.90. Any problem there? I'm objecting to it. I think that the court doesn't need to stay without a single witness.

(10:45:35 - 10:46:16)

You want to argue about that, Mr. Kobler? No, Your Honor. I think it applies, because if we could put up 100 witnesses, but if they believe one beyond a reasonable doubt, that's sufficient. Stay with us, we'll give them. All right, I'll let you know. 1.32.10, defendant's choice not to testify. I guess we'll come back to that. Yes, sir. 1.32.16. Any objection?

(10:46:20 - 10:46:49)

I'm going to withdraw it. You know, I know I challenged the statements, but at this point, and I understand the ruling, I'm not waiving, but we don't need a jury instruction on voluntariness. And... You want it out? Yeah. Okay, so you want that out. I would think all this comes out. Okay, so that means 1.32.17 would come out. Yes, sir. I would have a problem with that, because we still have to show that any statement made by the defendant

(10:46:53 - 10:47:20)

is voluntarily given, whether in custody or not. And I think the jury needs to be apprised of that. I'm not so sure to just say the in-custody statement, because I don't believe there were any statements that were entered while this defendant was actually in custody or under arrest. I do not believe there was one. So that part is not applied, but it is still part of the state's duty to show that the statement was freely and voluntarily made.

(10:47:24 - 10:47:46)

That's why when those statements were issued, that we made sure that the statement was freely and voluntarily given. I mean, just the other side of that coin is if you could bludgeon someone into a statement, and it comes in, that would not be right. So we have to show that it was freely and voluntarily made, and the jury needs to know that. I respectfully disagree, because this is voluntariness.

(10:47:51 - 10:48:14)

I'm not shouting voluntariness. I'm not saying that anybody bludgeoned Ms. Boles, and the jury instruction could. I'm not saying a jury would do this, but they could find that, oh, that wasn't a voluntary statement because she was under the stress of the situation, and then they ignore the entire statement. That's what the law is. I'm not asking for this. If I did, I think I did ask for it,

(10:48:16 - 10:48:54)

but I don't know if I asked for it, actually. But I don't want this to be here. All right, so the defense doesn't want 132-16, 132-17, 132-18. Stop me if I'm wrong. 132-19, 132-21, 132-40, 132-50, I guess. You want all that out? Yes. And the state wants all that in. No, Your Honor, I do not believe that she was required to have her constitutional rights given to her. Okay. That only applies if she's in custody.

(10:48:57 - 10:49:41)

All right, so 132. There has to be proof of voluntariness. All right, so the state wants those ones I just mentioned except for 132-21. And I don't think 132-18 about the detention of the defendant would apply because she was never in detention, so I don't think that would apply. So you all agree on that one? Okay, so just to be clear, state wants 132-16, 132-17, 132-19. Right?

(10:49:50 - 10:50:33)

Can you say those again, Your Honor? Yes, sir. The state wants pattern charges 1.32.16, 1.32.17, 1.32.19. Right so far? Yes, Your Honor. Okay, but you don't want 1.32.21, and I'm not sure about the next two. Do you want those 1.32.40 and 1.32.50? I don't think 132.40, 132.50 would apply. Okay. All right, so I'll get you. Constitutional rights because that's not required.

(10:50:35 - 10:51:18)

All right, so I'll get you a decision on 1.32.16, 1.32.17, and 1.32.19. Then I have 1.34.20. I guess there's been some evidence of prior difficulties between Ms. Boles and Mr. Akers, and I think— I don't think it applies.

(10:51:20 - 10:51:57)

I agree that there have been frequent discussions about their marriage, and volatile, I guess, is the right word, but this is a limiting instruction that the evidence illustrates such matters, and what matters would be on the front, that they are volatile? State wants it? Yes, Your Honor. Well, I'm kind of inclined to give that, Mr. Steele. There was evidence of it, and I think if I do give it, it's evidence of prior difficulties between—

(10:52:08 - 10:52:38)

now, let's take out the first parenthetical there, or lack thereof that would come out, between the defendant and the alleged victim, and then take out a witness and do the same thing in the next part of the sentence. Take out witness. The reasonableness of—I'm reading this parenthetical. The reasonableness of any alleged fears by defendant or alleged victim. I don't know about that. I don't know why that would happen.

(10:52:40 - 10:53:22)

Yeah, I think that would come out. Okay, so I plan to give that. 1.35.11, identification. Any problem there? No. No, Your Honor. I think I can take out, or was a party to it, which is in that charge there. I don't think identification was part of the case. We're not saying this was in the room called 9-1-1, and if you were to detect it, we're okay with removing it, but the State wants it, it's 9-1-1.

(10:53:25 - 10:54:09)

You want it? Yes, Your Honor. Okay. All right. What about 1.37.10, character of the defendant? Can it come out? Yes. Okay. Then I'll give 1.40.10, but I'll take out where it says, or omission to act, or criminal negligence. Okay. Then I've got 1.41.10, intent. I will give that charge. That brings us to 2.10.10, malice, murder, which we may have to adjust a little. Any suggestions?

(10:54:14 - 10:54:57)

I would ask the parentheticals on the third line of the second full paragraph, last line. We asked that the Court charge them all, so without justification, excuse, or mitigation. Any argument from the State? No, I'm not sure how the evidence applies to the parentheticals in the first paragraph.

(10:54:59 - 10:55:39)

I don't know that it was ever addressed, that there was justification or excuse or mitigation. All right, so the State wants all that out? I'm just asking. Yes, sir. Okay. Then the defense wants those three in. Yes, sir.

(10:55:53 - 10:56:37)

I'll let you know. Okay. 2.10.12, any objection to motive? Yes, I do not like motive to be charged. Any argument? I'm sorry, I didn't understand what you said. I don't want motive to be charged. I know it's a patent charge. Well, the State wants it, obviously. The State won't be willing to give it. All right, I think I'll give that. Okay. 2.10.20, any suggestions? We'll probably see an indictment, and the indictment is aggravated assault.

(10:56:43 - 10:57:00)

I believe that the line should be aggravated assault, and I just wanted to make sure that I'm saying the right stuff. Will the indictment? I think I have it right here. I think I have it right here now. Thank you.

(10:57:26 - 10:58:05)

It's with a deadly weapon or revolver by shooting Mr. Akers in the head. So I would get, I'm sure it's in here, the definition of aggravated assault. Okay, I just feel an aggravated assault is a felony, and then I would go to, we would like the next causation, and at the end it would be aggravated assault. All right. Any argument about 2.10.20? Mr. Steele wants me just to put aggravated assault in the blank

(10:58:08 - 10:58:46)

and then we'll leave the rest, I think. No objection. Okay, and then that brings us to 2.10.30, and that would be aggravated assault as well, right? Yes, sir. And then we have a definition of aggravated assault at 2.20.21. And Division 2. We think that we've removed, or the court removed the ascending parentheses because it's charged as location of the deadly weapon. Okay, and then we have a couple options in the immediately following paragraph as well.

(10:58:54 - 10:59:20)

I think that the way it's charged, both of them apply the attempt to cause a violent injury to the person or committing the act that placed the person in reasonable apprehension to be or to be in receiving a violent injury. They both apply. If the state wants one of them, that's fine. If you don't, that's fine. All right. Any comment from the state? The state's content. Content. 2.20.21, I'll give that.

(10:59:26 - 10:59:47)

I think that we've removed the, if I can go back to 2.20.21. Yes, sir. The second paragraph, doesn't that need to be removed since it was charged with a deadly weapon and then just looks to a firearm when used in a way a firearm is a deadly weapon? There's no reason to talk about an offensive weapon, I don't believe. All right, so take out an offensive weapon as an object, et cetera, et cetera,

(10:59:51 - 11:00:23)

and then just go straight to 2.20.22. 2.20.22. That's what I believe would be under the conduct of this. Any problem with that? No, sir. Okay. All right, 2.23.10, reckless conduct. What do you all want to do? We'll withdraw a drug. I believe I asked for that, sir. Okay. Then we have a charge for voluntary manslaughter, pattern charge. I have to talk to Ms. LaValle and Ms. Boles because she has not been consulted on whether she wants that.

(11:00:27 - 11:01:11)

I'll hold on that. Can you just give us time, Your Honor? Sorry? Can you give us some time? Of course. So I'll hold on that. Same thing with the drug. I'll hold on 2.10.44. We'll come back to it. And we have the same situation at 2.10.45? Yes. We've never discussed any of those. Okay. We have a charge on proximate cause at 1.41.60. Can we talk about that later too? Sure. I'm sure we'd better go over that.

(11:01:13 - 11:01:57)

Okay. Thank you. Yes, sir. Next charge I have is 3.00.00 affirmative defense burn proof. Read about that. It's got to be accident. At this particular moment, I don't believe that's adjusted to the facts. So we say we have reason to at this point. All right, I'm not making a ruling. I'm just asking. The defense wants it on the second line to say what? Justify, excuse, mitigate?

(11:02:00 - 11:02:41)

Yes. We want all three of them, because it's justification and accident. He has to admit it. He committed the act on it. So I'm not sure I want to do that. Well, it's not self-defense. It would be a defense of others. She's trying to help the man not kill himself. I understand both of y'all's positions, and I'll look at some cases and figure it out.

(11:02:47 - 11:03:29)

And I'll look at it as well. Okay. We will look at it. 3.1.10, justification generally. That's where we're going to look at that question. Okay. Okay. Okay, if you want me to hold on justification generally. We would like an accident. That's a charge already got on accident? Yes. It would just be an act, not very bad.

(11:03:42 - 11:04:25)

Your Honor, at this point, the state would continue that it doesn't apply to the facts that are presented to this jury. Accident? Correct. Let me back up a second. So 3.01.10, justification. Defense wants me to hold on that. Then 3.10.10, we don't want that. Justification in the use of force and defense. If we can hold on that.

(11:04:27 - 11:04:58)

Hold on that. Yeah, that's supposed to be held on, yes. Okay. If that's okay. Yep. Accident, we got it. We got it. 1.51.10, venue. I'll give that. And I'll take out. I think I'll take out indicted and just say tried in the first sentence. And I'm not sure why I would need to say except as otherwise provided by law. Right. So that could come out. No objection. I would ask in the fourth line from the bottom.

(11:05:04 - 11:05:48)

That is the, I would say, supposed crime or alleged crime. Same thing. Second line two. Says in which the crime is. Should say the alleged crime. These are boilerplate languages. Charge is going to stay with us. That's the court following the charge. If there's no crime, there will be no worry about it. All right. I tend to agree with you, Mr. Cole. 1.60.10. Verdict generally.

(11:05:52 - 11:06:31)

We'll clean that up. And y'all will see it. I think Mr. Steel says he wants to talk to his client about 160.11. Yes. For lesser offenses. So hold on that. I'll give 1.70.10. I'll give 1.70.11. Does anybody have any objection to reading that whole list of factors? 1.80. In 1.70.11. I don't really object. I'll take many of them. But whatever the court. Any. Any thought on that?

(11:06:37 - 11:07:21)

Mr. Steel. The. The dangerous. When you start eliminating. What the jury may be picking up on. That we are not picking up on its own. I'm kind of afraid that. To. Eliminating. Good. All right. This is the way I said. We got. The corporate. I will agree with Mr. Lay on that. Corporate statics would not apply. 1.70.20. I'll give that. 1.70.30. I'll do that. 1.70.40. I'll give. 1.70.50. I'll do that.

(11:07:26 - 11:08:09)

And 1.70.60. I'll give that. And. We'll have some more time. Next week. To address this matter. Okay. Anything else? Before we split. I don't think so. And we will have all. Okay. We'll see you all. 830. Monday morning. Enjoy the rest of your week. Thank you. God. God. God. God.

(11:08:12 - 11:08:14)

God. God.