

1                   IN THE CIRCUIT COURT OF PUTNAM COUNTY, TENNESSEE

2                                   AT COOKEVILLE

3       **GREG LANCE,**

4                   **Petitioner,**

5       **VS.**

CASE NO. 2021-CR-1152

6       **STATE OF TENNESSEE,**

7                   **Respondent.**

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11                                   **PCR - VOLUME I**

12                                   **HONORABLE DON ASH**

13                                   **JULY 2ND, 2024**

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1 (BEGINNING OF VOLUME I)

2 (BEGINNING OF PROCEEDINGS)

3 THE COURT: Thank you. Have a seat, please.

4 I haven't had the opportunity to meet you all. Let me  
5 tell you who I am and where I'm from. I live in Murfreesboro,  
6 Tennessee. Before that I was raised in Lebanon, and then I  
7 opened my law office in Murfreesboro many years ago.

8 In 1994, I was elected circuit judge in Rutherford  
9 County. I served there for about 18 years, and then in 2012, the  
10 Tennessee Supreme Court appointed me to be a senior judge for the  
11 State of Tennessee. What that means is I travel across the state  
12 now and try cases all over Tennessee where judges have conflicts  
13 or there's other issues. For example, I'm doing a death penalty  
14 trial in Oak Ridge, Tennessee, and it's been going on for a  
15 couple months.

16 In regards to today's hearing, this is in regard to Mr.  
17 Lance. I know there are a number of people here, and I know many  
18 of y'all are passionate about this case. I certainly understand  
19 that, but if you are disruptive in this court at all -- this  
20 isn't TV court.

21 If you are disruptive at all, I'll have to ask you to  
22 leave, and I do not want to do that. If you can't control  
23 yourself, leave. But if you can, I am certainly welcome for you  
24 to be here.

25 Normally, I tend to sit here for a long time, so,

1 counsel, anytime y'all need to take a break, if you will just ask  
2 me, I will be more than happy to make that work for you. We will  
3 probably work today till about 5:00 or 6:00. Y'all need to have  
4 your witnesses ready to go so we can get through this as  
5 efficiently as possible.

6 Anything preliminarily from the State before we get  
7 started?

8 GENERAL GORE: Yes, sir.

9 THE COURT: Yes, sir?

10 GENERAL GORE: Judge, good morning by the way. Late  
11 last week the State filed notice of supplemental authority,  
12 writing notice to the Court that -- Judge, I'd like to be heard  
13 as to the summary of dismissal in the petition.

14 THE COURT: Okay. You want to argue it?

15 GENERAL GORE: I do.

16 THE COURT: Go ahead.

17 GENERAL GORE: Judge, in Clardy opinion that came out  
18 last week, the petition -- and this is set out in Clardy opinion.  
19 The petition must be based on new evidence discovered after the  
20 hearing. The evidence must show clearly and convincingly that  
21 the petitioner is actually innocent, and I think that is the key  
22 issue that you are considering here today at least preliminarily.  
23 Supreme Court gave somewhat of a definition of what "actually  
24 innocent" means, and that is that the petitioner did not commit  
25 the crime.

1           My argument is if you look at the obligations in the  
2 petition, you have affidavits from, Mitchell Horn, Derrick Helms,  
3 and Daron Dunn. If you consider the substance of those, Judge,  
4 they are simply allegations of a third party, not that the  
5 petitioner is actually innocent of what he was convicted of. In  
6 addition to that, if you consider the forensic DNA and the new  
7 forensic DNA results, at least one of the DNA samples has no  
8 interpretable data which does not and cannot exclude Mr. Lance's  
9 DNA from being on the murder weapon. Again, that is not evidence  
10 of actual innocence, Judge.

11           We would submit the petition fails on its face. It  
12 doesn't show his actual innocence, and one of the -- one of the  
13 cases I cited in the State's admitted response to the amended  
14 petition was a case of State vs. Douglas. If you look at  
15 Douglas, Douglas had actual innocence and timeliness. Douglas  
16 actually involved an affidavit from the victim in that case.

17           I think it was the Court of Criminal Appeals said  
18 that's not evidence of actual innocence. The victim in her  
19 affidavit said, I'm not aware of this crime. I'm paraphrasing  
20 that, Judge. I don't have that in front of me.

21           The victim essentially said it did not happen. The  
22 Court looked at that, and that was not actual innocence. If you  
23 look at the Clardy opinion, Judge, they actually cite to Douglas  
24 in one of the footnotes for the definition of "actual innocence".  
25 Because of those reasons, Judge, we would ask that the petition

1 be summarily denied.

2 THE COURT: Thank you, sir.

3 GENERAL GORE: Thank you, Judge.

4 MS. DODSON: Good morning, Your Honor. Margaret Dodson  
5 for the Petitioner Greg Lance. We are obviously aware of Clardy.  
6 The State had every option to ask for a dismissal prior to now,  
7 but we're happy to talk about it, because I think Clardy is  
8 actually helpful in that it clarifies equitable tolling standard  
9 which has been a mishmash up until now. It makes very clear that  
10 the new standard for equitable tolling and doesn't change the  
11 actual merits analysis of whether a petitioner is entitled to  
12 relief under coram nobis.

13 Clardy tells us that it's really a standard where the  
14 Court should look at the petition and look at all information in  
15 the petition considering as true. If it is true, then does it  
16 show clear and convincing evidence of actual innocence? If so,  
17 the petitioner is entitled to equitable tolling, and then we move  
18 on to merits analysis. That merit standard -- which we will get  
19 into today -- is that new evidence may have made a difference at  
20 trial.

21 With respect to Clary and equitable tolling, taking  
22 these affidavits as true that another person or persons were  
23 responsible for the crimes at issue, we've absolutely established  
24 clear and convincing evidence of actual innocence. The State's  
25 theory at trial was that Greg Lance was a single actor, that he



1 and he alone was responsible for this. If we have many new  
2 witnesses coming forward and saying, 'No, he wasn't. These other  
3 people did it', they're --

4 THE COURT: They raised that at trial, though, too.  
5 They said the fellow you said that did it -- they said he did it  
6 at the trial, too, did they not?

7 MS. DODSON: Well, there was one witness who testified  
8 as to the culpability at trial. That evidence was excluded at  
9 trial, because it lacked corroboration. We're here today, Your  
10 Honor --

11 THE COURT: It was excluded, because they didn't offer  
12 -- I thought the Judge said you should have subpoenaed these two  
13 people that --

14 MS. DODSON: No, Your Honor. Respectfully, that's not  
15 what I recall the transcript saying. I recall the Judge  
16 conducting a Brown analysis, Chambers and Brown. Brown is  
17 obviously our state's application of the Chambers rule and saying  
18 at this point, there's nothing to corroborate Billy Cleghorn's  
19 testimony. It is not forever excluded if the petitioner could  
20 come up with corroborating evidence, but there was no  
21 corroborating evidence in the record.

22 So Billy Cleghorn never actually testified to a jury.  
23 A jury never heard from him as to the Horn's culpability at  
24 trial. We're here today, Your Honor, with loads of evidence to  
25 corroborate what Billy Cleghorn said, and -- and our position is

1     that evidence would have come in at a new trial based on the  
2     analysis the Court conducted in Brown at Mr. Lance's trial  
3     because of the corroboration we are willing to offer today. In  
4     terms of the Clardy clear and convincing standard, it is clear  
5     and convincing evidence of actual innocence, and that's what  
6     we're saying.

7             We're saying it was not Greg Lance, these other people.  
8     I think Clardy itself is really instructive in that, because the  
9     Court went on to do an actual innocence analysis there and said  
10    this new evidence is not evidence of actual innocence, because  
11    there were always three actors in that case. So the fact that  
12    Thomas Clardy is bringing evidence forward that says, 'I didn't  
13    give a gun to this other guy or this other guy doesn't know me,'  
14    is not sufficient to say that he wasn't also there.

15            That's not what we have here. The State argued one  
16    actor, Greg Lance, was responsible for this, and here we have  
17    multiple witnesses willing to testify that another person  
18    confessed to them for this murder and that --

19            THE COURT: A dead person.

20            MS. DODSON: Correct. A deceased person confessed to  
21    them.

22            THE COURT: Twenty years later.

23            MS. DODSON: Well, we just now found them, Your Honor.  
24    We'll be putting that on as well today.

25            THE COURT: Very good. Thank you.

1 MS. DODSON: Thank you, Your Honor.

2 THE COURT: I'm gonna deny the motion at this time.

3 Read to call your first witness?

4 Your Honor, we had a brief opening statement I think --

5 THE COURT: Don't need one. I've read everything y'all

6 sent me. You've done a very good job of sending me stuff, so

7 thank you for your work. Who's gonna be first?

8 MS. DODSON: Your Honor, the petitioner calls Mitchell

9 Horn as his first witness, and he's here. We're getting him.

10 (WHEREUPON, the witness entered the courtroom and took  
11 the stand.)

12 \* \* \*

13 **MITCHELL HORN,**

14 **was called as a witness, and having first been duly sworn,**

15 **testified as follows:**

16 THE COURT: Speak into that microphone so everybody can  
17 hear. Tell me your first and last name and spell both.

18 THE WITNESS: Mitchell Horn, M-I-T-C-H-E-L-L, H-O-R-N.

19 **DIRECT EXAMINATION**

20 **QUESTIONS BY MS. DODSON:**

21 Q. Mr. Horn, we've met before, but for the record, again, my  
22 name is Margaret Dodson. I represent Greg Lance in this  
23 petition. Thank you so much for being here today. You already  
24 stated your name for the record. Can you tell us where you  
25 currently live?

1 A. Spencer, Tennessee.

2 Q. Are you employed?

3 A. Yes.

4 Q. What do you do?

5 A. I'm the maintenance manager for a company called Maguire

6 Management in Murfreesboro.

7 Q. And where did you live in August of 1998?

8 A. I lived in Lebanon, Tennessee.

9 Q. Okay. Are you related to Sam Horn?

10 A. Yes.

11 Q. How are you related to him?

12 A. He's my father.

13 Q. Am I correct that he was married to Peggy Lynn Horn in

14 1998?

15 A. Correct.

16 Q. And are you related to her?

17 A. No.

18 Q. Is she your stepmother?

19 A. Yes. I'm related to her by marriage.

20 Q. Did Sam Horn ever talk to you about Victor and Alla

21 Kolesnikow?

22 A. Yes.

23 Q. And was it one conversation? Multiple?

24 A. It was two.

25 Q. Two conversations. When was the first conversation?

1 A. It was just a few days after it had happened, just a  
2 couple days, and the reason I know that, because there was still  
3 smoke coming off from the house that was there.

4 Q. So --

5 A. Sorry, go ahead.

6 Q. No, please go ahead.

7 A. That's how the conversation started. I asked him what was  
8 going on over there.

9 Q. Okay. So where were you at this time?

10 A. In his driveway.

11 Q. In his driveway. So you had a conversation with him, and  
12 tell us about that.

13 A. As I saw, I kind of pointed over and said --

14 GENERAL GORE: objection.

15 THE WITNESS: -- 'What's going on?' --

16 THE COURT: One second. I didn't hear that.

17 GENERAL GORE: Objection to hearsay.

18 THE COURT: Okay. What's your -- why is it not hearsay?

19 MS. DODSON: Your Honor, I think it satisfies just about  
20 every possible exception that you can have. First of all --

21 THE COURT: Tell me which one it does.

22 MS. DODSON: It is not hearsay, because this is not for  
23 the truth of the matter asserted. We're not here to argue the  
24 jury has to find under matter of law that Sam Horn did this.  
25 It's to create reasonable doubt that Greg Lance did not. Even

1     so, it's the most obvious type of statement that could fall under  
2     804B3, Your Honor.

3             THE COURT: Give me a second. Let me look it up. So  
4     that's a statement -- you're saying this is a statement against  
5     interest by Mr. Horn?

6             MS. DODSON: Absolutely, Your Honor. Mr. Horn is  
7     unavailable. He is deceased as we've already established, and  
8     this is a statement against his pecuniary interest. The caselaw  
9     is crystal clear that this is the exact type of statement that  
10    this rule exists to allow, and -- and there's good authority on  
11    that, Your Honor, in Harris vs. State and Justice Coats current  
12    opinion that Supreme Court cited over and over in Clardy last  
13    week that 804B3 permits a defendant seeking coram nobis relief to  
14    have a third party's confession to prove that the crime for which  
15    the defendant was convicted was committed by someone else. Also,  
16    the State vs. Dodson case from the Supreme Court in 2008 says the  
17    most frequent reading of 804B3 is the tender of hearsay evidence  
18    unavailable deferent has confessed to the witness and that the  
19    deferent, not the defendant, committed the crime.

20            THE COURT: What's the State's argument relative --

21            GENERAL GORE: Judge, I think there's caselaw that's  
22    contrary to that. In the original response to the first  
23    petition, we were cited a case of Newsom vs. State, which was a  
24    writ of coram nobis, I believe if I remember correctly. There  
25    was a similar issue that came up in that, and the Court held that

1 not all hearsay evidence gets to come in.

2 It has to be admissible evidence. They ruled in that  
3 case in similar situations that it was hearsay evidence and not  
4 admissible.

5 THE COURT: Okay. I'll reserve this till the conclusion  
6 of this hearing. I'll let him go ahead and testify.

7 MS. DODSON: Thank you, Your Honor.

8 THE COURT: Go ahead. You can answer.

9 Can you repeat your question?

10 MS. DODSON: Absolutely.

11 BY MS. DODSON:

12 Q. I just wanted you to tell us about that conversation with  
13 your dad.

14 A. Okay. As I've already said, I saw the smoke actually, and  
15 pointed over and said, 'What's going on over there?' Well, let  
16 me back up. As I was growing up, my father had told me on  
17 several occasions that if you ever kill anyone to make sure that  
18 you're the only person that leaves the scene alive, and he told  
19 me that several times.

20 He stated that was his number one rule. He said, 'Son, I  
21 believe I screwed the pooch this time.' I said, 'What do you  
22 mean?'

23 And he said -- Peggy his wife was standing on the porch.  
24 She was not within earshot, but she was standing on the porch.  
25 He said, 'I took that stupid bitch with me,' and nodded over

1       towards Peggy.

2       Q.       Did he say anything else at this time?

3       A.       Again, this was twenty-something years ago. Like I said,

4       it was two conversations we had. He said something to the effect

5       that she nearly caught herself on fire and that she had left some

6       kind of evidence there, and he didn't tell me what. You want me

7       to go into both conversations?

8       Q.       Well, I just -- let me first ask, what did you do after

9       you had this conversation with your dad?

10      A.       I cut the conversation short to be honest with you. I

11      didn't want anything to do with it. I left.

12      Q.       Okay. You said there was a second conversation. When was

13      that?

14      A.       It was a few months later. I mean, I can't say -- it was

15      maybe three, four, five months later. I don't know, but it was

16      later.

17      Q.       Had you seen your dad in between these conversations?

18      A.       No.

19      Q.       So tell us about that second conversation.

20      A.       Again, I just went up to visit and really hadn't thought

21      anything else about the first one. Once I got there, he started

22      talking about it again, and he told me that either they were

23      investigating or had arrested somebody else for the crime. He

24      even said he felt remorseful that someone else was being charged

25      with this.



1           He said something to the effect of, 'Yeah, we did that  
2   shit,' and basically meaning that the person that was being  
3   looked at and was charged didn't deserve it. That's what I took  
4   from it, but he did say that he and Peggy did that shit.

5   Q.       Did he provide any other details during that conversation?

6   A.       Not that I recall.

7   Q.       What was his demeanor like when he talked to you about  
8   this?

9   A.       Well, he was -- in the first conversation, I could tell --  
10   I mean, my father used drugs at the time, and I think he was high  
11   then or intoxicated then. He was agitated; he was upset. Like I  
12   said in the second conversation, you could tell that he was -- he  
13   felt remorseful that all this had happened and that Greg was  
14   being looked at, Greg Lance. He didn't tell me at the time, so I  
15   had no idea who it was.

16   Q.       So he seemed serious to you?

17   A.       Absolutely, yeah.

18   Q.       Have you ever talked about this confession with anyone?

19   A.       Yeah.

20   Q.       Okay. Who is that?

21   A.       I had mentioned it to a person named Beth Shiffley. She  
22   and I have dated a little bit on and off, and I've talked about  
23   it with her.

24   Q.       Did you ever bring it up to anybody in law enforcement?

25   A.       Yes.

1 Q. And who is that?

2 A. Harold Eaton, TBI agent.

3 Q. Okay. Tell us about that.

4 A. Well, at the time --

5 GENERAL GORE: Objection, Judge, subject to hearsay.

6 THE COURT: I'm sorry, you'll have to stand up to object

7 so I -- I have a problem hearing sometimes.

8 GENERAL GORE: I'm sorry, Judge. I guess I've gotten a

9 little lackadaisical in court here, but --

10 THE COURT: That's all right.

11 GENERAL GORE: -- I object subject to hearsay.

12 THE COURT: What do you say, counsel?

13 MS. DODSON: I'm not sure how this is all -- I'm just

14 asking him about a conversation he had with Mr. Eaton, and it's

15 his own conversation.

16 THE COURT: It's still hearsay if someone else said it.

17 You're saying he should be able to tell me what the TBI agent

18 told him?

19 MS. DODSON: No. I'm asking him to just tell what he

20 told the --

21 THE COURT: What he told the officer?

22 MS. DODSON: Yes.

23 THE COURT: Okay.

24 You can tell him what you told him.

25 THE WITNESS: At the time, again, I didn't realize that

1 Mr. Lance was in jail, that anybody was in custody on this. I  
2 didn't know, so I told Harold Eaton that I knew about an unsolved  
3 murder of two people getting killed. Harold told me that he  
4 investigated --

5 THE COURT: You can't tell me what Harold told you.  
6 When did this take place?

7 THE WITNESS: It was in 2015.

8 THE COURT: Okay.

9 Next question.

10 BY MS. DODSON:

11 Q. Mr. Horn, did something happen to make you come forward  
12 with this information now?

13 A. Yes.

14 Q. And what was that?

15 A. Beth Shiffley saw a show on Sundance, I believe, and she  
16 contacted me and let me know that -- and that's when I found out  
17 that Greg Lance was in jail. That's how all this -- I got in  
18 touch with you all and this happened.

19 Q. Okay. I'm gonna show you a document.

20 MS. DODSON: Your Honor, permission to --

21 THE COURT: Sure.

22 MS. DODSON: -- approach the witness?

23 BY MS. DODSON:

24 Q. Mr. Horn, can you take a look at this document? Have you  
25 had a chance to take a look at it (passing document?)

1       A.       I will right now.

2       Q.       Okay.

3       A.       (Witness reviews document.) Yes.  These are text messages  
4       between Beth and I.

5               MS. DODSON: Your Honor, I'd move to make this an  
6       exhibit to the hearing of Mr. Horn's testimony.

7               THE COURT: Any objection?

8               GENERAL GORE: No objection.

9               THE COURT: Okay.  We'll mark that as Exhibit Number 1.  
10       (WHEREUPON, the above-mentioned document was marked as  
11       Exhibit Number 1.)

12              THE COURT: Next question.

13       BY MS. DODSON:

14       Q.       These messages say -- and I'm just gonna make sure this is  
15       consistent with your recollection, Mr. Horn.  So the dates  
16       October 3<sup>rd</sup>, 2021, around lunch time; is that right?

17       A.       Yes.

18       Q.       And she reaches out to you and says, "You need to watch  
19       True Crime Story on Sundance.  It is about a double murder here  
20       in 1998.  A guy went to prison for it, but people interviewed  
21       said your dad did it.  Did he marry another woman named Peggy  
22       after your mom?"  Does that sound right?

23       A.       Yes.

24       Q.       Then you say, "Yes.  Who was the guy?  I think I know what  
25       happened.  Was he a Russian guy that owned a trailer park?"

1 There was a missed call, and then you said, "It was him and his  
2 wife and the house was set on fire. My dad did it."

3 I'm gonna substitute -- "The guy had it coming. Is that  
4 what you're talking about?" Does that sound right?

5 A. Yes.

6 Q. Okay. And then --

7 GENERAL GORE: Your Honor, I object. I'm not  
8 understanding if we are trying to refresh the witness's memory or  
9 simply read from the exhibit.

10 MS. DODSON: We're just establishing the timeline, which  
11 is important for equitable tolling.

12 THE COURT: It was October 3<sup>rd</sup>, 2021?

13 MS. DODSON: Yes, Your Honor.

14 THE COURT: Okay. I got it.

15 MS. DODSON: And we are also using this to establish not  
16 for the truth of the matter but to show that Mr. Horn for the  
17 first time learned about Greg Lance being incarcerated through  
18 these messages.

19 THE COURT: Then it's for the truth of the matter then,  
20 isn't it? It matters that he found out he was incarcerated.

21 MS. DODSON: Well, it shows him being put on notice,  
22 Your Honor.

23 THE COURT: Okay. I'll give you a little leeway. Keep  
24 going.

25 ///

1 BY MS. DODSON:

2 Q. So then it says on Page 5, "Not sure that was mentioned,  
3 but it's the truth. My dad and his wife did it. They shot them  
4 and set the house on fire out in Double Springs close to Hidden  
5 Hollow." Again, you hadn't seen the show at this time, had you?

6 A. No.

7 Q. And then just one more. It looks like you call the  
8 Tennessee Innocence Project, and you say, "I'm trying and agree.  
9 I've also contacted Harold and left messages. I'll get a hold of  
10 someone.

11 "I've known about this forever but didn't know somebody  
12 else was doing time for it. I feel so sorry for the guy and will  
13 do what I can to help." Does that sound right?

14 A. Yes.

15 Q. So this was the first time that you learned that someone  
16 was incarcerated for the Kolesnikows' murders; is that right?

17 A. Yes.

18 Q. Mr. Horn, do you have anything to gain by coming forward  
19 with this information now?

20 A. Just trying to do the right thing. To get the proof out  
21 there, that's all. Nothing else.

22 Q. And that's why you've agreed to tell your story today?

23 A. Yes.

24 MS. DODSON: I'm gonna ask Your Honor for permission to  
25 approach one more time.

1 THE COURT: Go ahead.

2 BY MS. DODSON:

3 Q. Mr. Horn, before coming here today, did you prepare an  
4 affidavit in relation to this case (passing document?)

5 A. (Witness reviews document.) Yes.

6 Q. Is that --

7 A. Yes.

8 MS. DODSON: Your Honor, we would move to have this --

9 THE COURT: Exhibit 2.

10 (WHEREUPON, the above-mentioned document was marked as  
11 Exhibit Number 2.)

12 MS. DODSON: -- made as Exhibit 2. Thank you.

13 Nothing further for this witness.

14 THE COURT: Cross-examination, please.

15 **CROSS-EXAMINATION**

16 **QUESTIONS BY GENERAL GORE:**

17 Q. Mr. Horn, you testified you tried to speak to a TBI  
18 special agent; is that correct?

19 A. Yes.

20 Q. What was his name again?

21 A. Harold Eaton.

22 Q. How long have you known Mr. Eaton?

23 A. Since I was a kid. We played football together in high  
24 school.

25 Q. So what were the circumstances when you tried reaching out

1 to Mr. Eaton or Agent Eaton?

2 A. I was in jail.

3 Q. You were in jail. All right. What were you in jail for?

4 A. I don't remember.

5 Q. Do you have an explanation of why you don't remember the

6 time you were in jail?

7 A. I believe it was for violation of probation.

8 Q. And so what were you originally convicted of?

9 A. Sale and delivery of a scheduled drug.

10 Q. So you were convicted of that felony offense, correct?

11 A. Yes.

12 Q. You violated your probation?

13 A. Yes.

14 Q. So you went to jail?

15 A. Yes.

16 Q. You picked up a phone and tried to call a childhood friend

17 who's a TBI special agent?

18 A. Someone in jail had approached me about --

19 Q. I didn't ask you that. I asked you if you picked up the

20 phone and --

21 A. Yes.

22 Q. Your purpose for doing that was at that time you wanted to

23 come forward and do the right thing?

24 A. Yes.

25 Q. You wasn't trying to leverage information you had while



1     you were in jail to potentially get out of jail and get out from  
2     the violation of probation?

3     A.     I don't think that --

4     Q.     Have you done that before?

5     A.     No.

6     Q.     When did you --

7     A.     To get out of jail?

8     Q.     Yeah. A witness for the State or provide information or  
9     become an informant?

10    A.     I have done that before but not to get out of jail.

11    Q.     What were the circumstances of that? Were you trying to  
12    get out of trouble or --

13    A.     Yes.

14    Q.     Can you tell us about that?

15    A.     What do you want to know?

16    Q.     Well, I'd like to know the details. You went through it;  
17    I didn't. I'm asking you to tell us the circumstances.

18    A.     I worked with Harold Eaton.

19    Q.     And you were in trouble trying to get out of trouble?

20    A.     Yes.

21    Q.     What were you in trouble for?

22    A.     I believe it was a DUI.

23    Q.     So you were trying to trade information in an effort to  
24    get out of trouble?

25    A.     Yes.

1 Q. Let me ask you about your father Sam Horn. What was his  
2 reputation for the truth?

3 A. As far as I know, it was good.

4 Q. Well, you didn't believe him when he told you this  
5 information, right?

6 A. No, I believed him.

7 Q. Well, that's not what you told Beth Shiffley, right?

8 A. I don't know.

9 Q. You told her, 'Beth, I didn't think it was really real.'

10 A. I didn't. I mean, killing someone and burning their house  
11 down is a lot to absorb.

12 Q. So if Daddy tells you, 'Son, I've violated my number one  
13 rule and Peggy messed up. I took her with me. There's smoke  
14 across from the driveway' --

15 A. Uh-huh.

16 Q. -- and he tells you, 'We're responsible for this' --

17 A. He didn't tell me that the first time. He --

18 Q. I'm talking about them altogether. He tells you that, and  
19 then later on, some twenty years later, you tell Beth Shiffley,  
20 'Beth, I didn't think it was really real.' How is it you can now  
21 say, 'Oh, yeah, I believe that'?

22 A. I don't recall telling Beth it wasn't --

23 Q. I can show you. It's in those text messages, those  
24 Facebook messages.

25 A. Okay. That's a lot of information to absorb. I probably

1     didn't want to believe my dad did that to be honest with you.

2     Q.     But you didn't act on it at the time, right?

3     A.     I wanted to put it out of my mind.

4     Q.     Again, you didn't act on it, right?

5     A.     No, I did not.

6     Q.     You didn't go to the police?

7     A.     No, I didn't.

8     Q.     You didn't go tell your girlfriend or whatever, right?

9     A.     Not that I recall.

10    Q.     You knew there was a crime that had happened, right?

11    A.     Uh-huh.

12    Q.     You sat on the information?

13    A.     Yes.

14    Q.     And then 15 years later you say you tried to reach out to

15    your buddy to tel him about it?

16    A.     Yes.

17    Q.     Okay. Your father was a convicted felon?

18    A.     I didn't believe he was.

19    Q.     You don't believe or --

20    A.     I don't think he was.

21    Q.     Was he convicted of theft?

22    A.     Was he -- pardon?

23    Q.     Was he convicted of theft of property?

24    A.     I don't know my father's criminal record.

25    Q.     Okay. Well, was he a methamphetamine user?

1 A. Yes.

2 Q. Was he a methamphetamine manufacturer?

3 A. That's the rumor.

4 Q. Well, did you believe the rumor?

5 A. I didn't witness it.

6 Q. That's not what I asked you. Did you believe it? I mean,

7 you knew your dad, right?

8 A. Yeah.

9 Q. Did you believe it?

10 A. Yeah, I believed it.

11 Q. Then what were the circumstances that caused you to

12 believe it?

13 A. Because he used it and credible people told me that.

14 Q. Were other methamphetamine users around him at that time?

15 A. Sure.

16 Q. Did you see them?

17 A. I mean, Peggy his wife uses it.

18 Q. His wife was a methamphetamine user?

19 A. Uh-huh.

20 Q. Were you a methamphetamine user?

21 A. At that time I did not do anything. That's part of the

22 reason I didn't want any part of this.

23 Q. What about later on in life?

24 A. I experimented on and off with drugs, yeah.

25 Q. Was that part of the reason why you violated your

1 probation?

2 A. Yes, Suboxone. I was taking Suboxone.

3 Q. But did you also test positive for methamphetamine?

4 A. Not that I recall.

5 Q. Now, when your father -- you said in your affidavit, "My  
6 father was on methamphetamines during the conversation." You  
7 detailed in paragraphs that he was coherent and appeared to be  
8 fully aware of what he was saying at the time. Have there been  
9 times when he wasn't aware of what he was saying?

10 A. Regardless of what's believed of my father, he's a pretty  
11 smart man. When he says something, I tend to believe it. I tend  
12 to take him for his word.

13 Q. And you told Beth Shiffley he was strung out on meth and  
14 that you didn't pay much attention to it. Do you remember that?

15 A. I don't remember that.

16 GENERAL GORE: Judge, I don't remember which -- how  
17 those exhibits were marked, but I'd like to have access to the  
18 one -- may I approach, Judge?

19 THE COURT: Sure.

20 (Respite.)

21 GENERAL GORE: If I may approach?

22 THE COURT: Sure.

23 BY GENERAL GORE:

24 Q. Mr. Horn, I'm gonna hand you back what's been marked as  
25 Exhibit Number 1. On Page 25, if you will see if you can

1 identify that. It looks like Facebook messenger.

2 A. (Witness reviews document.) Okay.

3 Q. Do you remember sending that message to Ms. Shiffley?

4 A. I don't remember it, but I --

5 Q. If you don't remember it, let's read it.

6 A. "Beth, he was so strung out on meth I didn't pay it much  
7 attention. I was living in Lebanon at the time he told me and  
8 was living my own life. I should have paid more attention.  
9 "I just didn't want anything to do with it. I had no idea  
10 it was really real and certainly didn't know anyone else was in  
11 prison for it."

12 Q. But you did know somebody had been potentially charged  
13 with that crime, right?

14 A. That's how I -- yes.

15 Q. Your dad told you that, right?

16 A. Pardon?

17 Q. Your father told you that somebody was facing charges for  
18 it, right?

19 A. I believe he told me they were investigating someone else.

20 Q. And then over the years you've admitted you've been --  
21 you've had some problems and went to prison. You've admitted  
22 that, right?

23 A. Yes.

24 Q. You've admitted you've violated your probation, but  
25 there's been other times where you had charges from law

1 enforcement; is that accurate?

2 A. Yes.

3 Q. So to say that you didn't know somebody was in prison is

4 not really accurate? Is that fair?

5 A. No, it's not, 'cause I didn't know.

6 Q. But you knew somebody was facing charges for them, right?

7 A. Sure. But I didn't know the outcome of anything.

8 Q. If your dad allegedly confessed to a murder, then you

9 probably knew it's a murder case; would that be fair?

10 A. Yes.

11 Q. You having the experience of being in and out of jail --

12 somebody's probably going to go to jail for a murder.

13 A. Sir, I had no idea someone was in jail for this. I had no

14 idea. Like I said, I've tried to put this out of my mind.

15 Q. Would it be fair to say you just turned a blind eye that

16 your dad told you?

17 A. Sir, I don't know what you want me to say here.

18 Q. I just want the truth.

19 A. I don't know. I mean, I don't know how to answer that

20 question.

21 Q. You remember some of the details about what your dad told

22 you. You remember where you lived at during this timeframe?

23 A. Yes.

24 Q. Lebanon?

25 A. Yes.

1 Q. What was the address?

2 A. It was something Summerfield drive. I don't recall the  
3 exact number.

4 Q. Do you remember the apartment number?

5 A. No, I don't.

6 Q. How is it that you have memory of what your dad told you,  
7 but you don't remember where you lived at the time?

8 A. I mean, I could take you exactly where I lived, but I  
9 don't recall the exact number.

10 Q. You tell in your affidavit, "I was living in Lebanon at  
11 the time and did not want to do with the situation. I did not  
12 follow up on my father's confession." What do you mean you  
13 didn't want anything to do with it?

14 A. I didn't want anything to do with it.

15 Q. Don't you have a duty to report it?

16 MS. DODSON: Objection, Your Honor. I'm not sure if  
17 that's a legal question or what was the --

18 THE COURT: I'll overrule.

19 Go ahead. You can answer.

20 THE WITNESS: I have no idea.

21 BY GENERAL GORE:

22 Q. Would you have reported it if you had a duty to report?

23 A. Yes.

24 Q. You would have told on your father?

25 A. Yes.



1 Q. You would have betrayed your father?

2 A. Yes.

3 Q. Would you have told Ms. Shiffley about betraying your

4 father?

5 A. I don't recall.

6 Q. Well, if you would have reported it, would it have caused

7 problems for you?

8 MS. DODSON: Objection, Your Honor. It's speculation.

9 GENERAL GORE: I'm asking --

10 THE COURT: I will overrule.

11 Go ahead. You can answer.

12 Repeat your question, please.

13 BY GENERAL GORE:

14 Q. Would it have caused problems?

15 A. For me?

16 Q. Yes, sir.

17 A. I don't see how it would have caused problems for me.

18 Q. Would it have caused problems between you and your father?

19 MS. DODSON: Same objection, Your Honor.

20 THE COURT: I'll overrule.

21 THE WITNESS: I have no idea what my father would have

22 said, and he's dead now. I have no idea how he would have -- I

23 can't answer that question.

24 BY GENERAL GORE:

25 Q. Did he have a rule as to that if you betray him?

1 A. No. He never said anything about that to me.

2 Q. When was the first time you told the story that your  
3 father told you?

4 A. I have no idea.

5 Q. Well, were there times when you told your cellmate?

6 A. The only conversation I had in jail about it was with a  
7 guy name Vinny, and it was very brief. He's the one that brought  
8 it up, and I think I blew it off.

9 Q. Okay. Well, that's not what you say in your affidavit,  
10 though, right?

11 A. I said in my affidavit that I had discussed it with other  
12 people a few times. I didn't say how many people. I discussed  
13 it with Beth, and I discussed it with a guy in jail briefly. And  
14 I tried to discuss it with Harold Eaton.

15 Q. Okay.

16 A. And now I've --

17 Q. Let me see if you remember this. In your affidavit you  
18 said, "I have mentioned my father's confession to other people on  
19 few occasions, but at this time I can't recall names of any  
20 specific individuals I told about my father's confession."

21 A. I don't know the guy's name. I just call him Vinny.  
22 That's why I said that. I mean, I certainly know Beth's name.

23 Q. When you say -- and this is Paragraph 22 --

24 GENERAL GORE: Judge, may I approach? I'll just show it  
25 to him.

1 THE COURT: Uh-huh.

2 BY GENERAL GORE:

3 Q. If you will look at Paragraph 22. This has already been

4 admitted. If you will just read Paragraph 22 (passing document.)

5 A. (Witness reviews document.) "I mentioned my father's

6 confession to other people on a few occasions, but at this time I

7 can't recall the names of any specific individuals I told about

8 my father's confession."

9 Q. All right. So let's go over who you told up to this

10 point. You told Vinny, right?

11 A. Yes. Well, no, I did not tell Vinny. Vinny approached me

12 about it.

13 Q. You and Vinny talked about it?

14 A. I basically just said, 'Okay. I don't know what you're

15 talking about.' I blew it off. That's the extent of the

16 conversation.

17 Q. And you told Beth?

18 A. Yes.

19 Q. You told Harold Eaton?

20 A. Yes.

21 Q. Who were the other people you referred to in Paragraph 22?

22 A. There are no other people.

23 Q. Why is --

24 A. The only reason I said that I can't recall the names --

25 and you're taking this out of context -- is because I couldn't

1 remember Vinny's name. "Vinny" is just a nickname for him.  
2 That's not his real name. That's the only reason that statement  
3 is in there.

4 Q. So when you say the other people, that is Vinny and  
5 Harold?

6 A. And Beth.

7 Q. Again, in Paragraph 22, "I cannot recall their names."

8 A. Maybe "names" should just be "name". Like I said, the  
9 only name I couldn't recall is Vinny's, because I don't know his  
10 real name. Again, you're taking that statement completely out of  
11 context.

12 Q. I'm giving you the opportunity to explain.

13 A. Well, I've just explained it. That should say "name" and  
14 not "names".

15 Q. You say a day or two after this event in '98, "I did not  
16 have a defined purpose in visiting my father that day."

17 A. Right.

18 Q. How do you know -- how is it you remember you didn't have  
19 a defined purpose in visiting your father?

20 A. Because I was living out of town, and I came to see my  
21 mom. I just went out there. I mean, that's what I would do.  
22 That's why it was a few months later that I saw him again,  
23 because it was the next time I was in town. I would just come to  
24 town ever few months and visit.

25 Q. And you specifically remember a day or two after the day

1 of August 5<sup>th</sup> of 1999?

2 A. The only reason I say a day or two is because I seen smoke  
3 coming off, so I -- it was something that had recently happened.  
4 That's why I say that.

5 Q. So it could have been more than a day or two?

6 A. I mean, if it smoked more than a day or two, then, yes,  
7 you're right.

8 Q. What did you tell Beth Shiffley about when it happened?  
9 Do you remember that?

10 A. What do you mean?

11 Q. In these text messages, when did you tell her the date or  
12 timeframe that you remember of when your father told you about  
13 his involvement in the Kolesnikows' murders?

14 A. (No response.)

15 Q. Do you remember what you told her?

16 A. Word for word, no, I don't.

17 Q. Do you remember the timeframe you told her?

18 A. Timeframe? What do you mean?

19 Q. Well, do you remember the timeframe that you told her when  
20 your father gave you the details of this alleged confession?

21 A. I'm not sure what he's asking me. I'm not sure what  
22 you're asking me.

23 Q. That's okay. I'll move on.

24 In your affidavit you say you saw smoke coming from the  
25 Kolesnikows' house; is that correct?

1 A. Yes. You could see their house from his house.

2 Q. Did you know who the Kolesnikows were at the time?

3 A. I had no idea. I had no idea.

4 Q. You didn't know their names?

5 A. I did not.

6 Q. But when did you acquire the names of the victims?

7 A. When I saw that show. As a matter of fact, when I called

8 Harold Eaton, I didn't recall their names. That's why I just

9 stated it was a double murder out in Double Springs, 'cause I had

10 no idea who they were.

11 Q. So you learned the identity of the victims from the show;

12 is that --

13 A. I believe that's where I -- yes. I believe that's where I

14 first heard their names.

15 Q. Did you identify the victims as the Kolesnikows when you

16 were talking to Ms. Shiffley in the Facebook messenger messages?

17 A. Did I identify them?

18 Q. Did you name them?

19 A. I think I said two Russians, and I think that's wrong too.

20 I think they are from Ukraine. I've figured that out, but, no, I

21 did not call them by name.

22 Q. Let me read this to you and see if it's accurate. "Who

23 was the guy? I think I know what happened. Was he a Russian guy

24 that owned a trailer park?

25 "It was him and his wife in the house that was set on

1 fire. Yeah, my dad and his wife did it and the" -- I'll spell it  
2 out, F-U-C-K-E-R -- "had it coming." Is that what you're talking  
3 about?

4 A. I have no idea.

5 Q. You don't remember saying that?

6 A. No.

7 GENERAL GORE: May I approach, Judge?

8 THE COURT: Sure.

9 BY GENERAL GORE:

10 Q. I'm gonna hand you this, and this is Exhibit Number 1.  
11 Look at these text messages here(indicating) and here(indicating)  
12 and see if you can identify them.

13 A. (Witness reviews document.) Yeah. I mean, we all know  
14 that this is between me and Beth, yeah.

15 Q. Okay. Do you remember what you said in that conversation?

16 A. I mean, it's right here.

17 Q. You want to read it into the record?

18 A. "Who was the guy?" You just read it. You want me to  
19 reread it?

20 Q. Yeah, you can read it.

21 A. "Who was the guy? I think I know. Was he the Russian  
22 that owned a trailer park? It was him and his wife in the house  
23 that set on fire, and my dad did it and his wife." I don't know.  
24 It's blotted out.

25 Q. You can go down to the next message.

1       A.       "It was him and his wife in the house that set on fire,  
2       and my dad did it and his wife. The fucker had it coming. Is  
3       that what you're talking about?"

4       Q.       Okay. Thank you. And when you say the fucker had it  
5       coming, why did you say that?

6       A.       I had heard rumors about these people, that they were  
7       basically robbing people. They're selling them property and  
8       foreclosing on it for whatever reason and that they were very  
9       hated. I don't know if they had it coming or not. I have no  
10      idea.

11      Q.       Well, that's not the explanation you gave Ms. Shiffley,  
12      that they were robbing --

13      A.       I'm telling you that's something in conversation I had,  
14      what, five years ago maybe --

15      Q.       Well, five years versus twenty years ago --

16      A.       Uh-huh.

17      Q.       Right?

18      A.       Yeah.

19      Q.       So what did you tell Ms. Shiffley about -- in this  
20      conversation in these text messages, you told her something  
21      different.

22      A.       I told her that my dad and his wife did it.

23      Q.       No, no, no. I'm talking about the justification of what  
24      you say. 'That fucker had it coming.'

25      A.       I have no idea if they had it coming.



1 Q. You want to see the text messages?

2 A. I've said it, yes.

3 Q. But I'm asking you why. Why did you tell her that? What

4 was the justification in --

5 A. I really didn't --

6 THE COURT REPORTER: One at a time, please.

7 GENERAL GORE: I'm sorry.

8 THE COURT: Let's just try to slow it down.

9 THE COURT REPORTER: Please start your question over,

10 General.

11 THE COURT: Re-ask your question.

12 BY GENERAL GORE:

13 Q. So what did you tell Ms. Shiffley as to the reason why

14 that the fucker deserved it?

15 A. I had heard they were bad people and were dishonest

16 people, and I just made a stupid statement. I mean, I don't know

17 these people. I don't know if they had it coming or not. Did I

18 make the statement?

19 Yes, sir, I did. Is it justified? No, it's not, because

20 I really had no idea what I was talking about. I was just

21 talking.

22 Q. Let me read this to you and see if it's accurate.

23 "The guy and his wife were human trafficking girls from

24 Russia."

25 A. That's what I heard.

1 Q. Is that what you told Ms. Shiffley?

2 A. That's what I heard.

3 Q. And you sent those messages?

4 A. Uh-huh.

5 Q. So you admit you just told something to Ms. Shiffley that

6 is different than what you told today?

7 A. No. I'm not admitting anything different. I mean, it's

8 all in the text messages.

9 You're bringing them up in different context telling me

10 I'm saying something different. I'm not. It's all right there

11 in front of you.

12 Q. Did you report the human trafficking to law enforcement?

13 MS. DODSON: Objection, Your Honor. What's the

14 relevance of that?

15 GENERAL GORE: Judge, it's --

16 THE COURT: I'll overrule. It's in the text message, so

17 I'll allow it.

18 THE WITNESS: Not that I recall. I tried to talk to

19 Harold Eaton about it, and he said he investigated it and didn't

20 find anything about it. I told him it was an unsolved murder.

21 That's when I was incarcerated, so my ability to communicate with

22 people on the outside was very limited.

23 BY GENERAL GORE:

24 Q. Why did you say the Russian and his wife had it coming?

25 MS. DODSON: Objection, Your Honor. This is asked and

1     answered.

2             THE COURT: I'll overrule.

3             Go ahead.

4             THE WITNESS: This is the same question.

5             THE COURT: Just answer the question. Why did you say

6 they had it coming?

7             THE WITNESS: I have no idea. Like I said, I made a

8 stupid statement. I can't justify the answer.

9             THE COURT: That's a good answer.

10            He's got no idea why he said it.

11 BY GENERAL GORE:

12 Q.     "They F'd up when they started messing with my stepsister

13 Samantha." You said --

14 A.     I had heard Samantha had some issues with them, and, you

15 know, my dad was very protective over here in certain ways. But,

16 yeah. What's your point?

17 Q.     You say, "She was 14 or so at the time, so there you go."

18 A.     Uh-huh.

19 Q.     Your stepsister was 14?

20 A.     Yeah.

21 Q.     And she was a victim of human trafficking?

22 A.     No.

23 Q.     That's what you told Ms. Shiffley.

24 A.     No. I never told her that. I never told her my sister

25 was a victim of human trafficking. I never said that.

1 Q. Okay. Well, maybe you can explain it. "They F'd up when  
2 they started messing with my younger stepsister Samantha."  
3 A. But not human trafficking.  
4 Q. Okay. Well, how did they mess up then? What was  
5 happening to your stepsister?  
6 A. My stepsister was having sex at the time, and, evidently,  
7 there were some things that happened. Again, these are all  
8 things that I just heard, so I can't point out anything specific  
9 to you.  
10 Q. Well, you put it in your affidavit as the truth?  
11 A. Yeah, I had heard those things.  
12 Q. Now, your rule that your father had about if you're gonna  
13 kill somebody make sure you're the last one to leave the scene  
14 alive -- did he have other rules like that?  
15 A. No.  
16 Q. So that was the only rule --  
17 A. One time -- that's the only one he ever specified.  
18 Q. You say in your affidavit, "Several months later I go back  
19 to visit my father, and he confessed that he and Peggy Lynn were  
20 responsible for the Kolesnikows' murder. After the confession, I  
21 understood my father's statements in previous paragraphs." So  
22 when you say he confessed what were the details? You didn't  
23 provide those in your affidavit.  
24 A. I said it was a brief conversation. Again, I just wanted  
25 away from it. He had said someone else -- and I don't know if

1 Greg had been arrested at this time or not. I had no idea. He  
2 said someone else was being looked at for this crime and, 'We did  
3 that shit.' At that point, I cut the conversation short and  
4 left.

5 Q. What you said in your affidavit -- and you tell me if it's  
6 accurate. "He confessed that he and Peggy Lynn were responsible  
7 for the Kolesnikows' murders."

8 A. I just told you he said they did that shit.

9 Q. Yeah.

10 A. And someone else is being charged for it.

11 GENERAL GORE: If I could have just a minute, Judge.

12 BY GENERAL GORE:

13 Q. "My father said somebody else was facing charges for the  
14 murder of the Kolesnikows that should not be, because he and  
15 Peggy Lynn did that shit."

16 A. Is there a question there?

17 Q. Yeah, I'm coming with it.

18 A. I mean, we've already talked about this, like, three  
19 times.

20 Q. And you knew throughout your life that when you commit a  
21 crime somebody's probably gonna face charges? It's a simple  
22 question.

23 A. Sure.

24 Q. And then you say, "After speaking with Vinny, I placed a  
25 jail phone call to Harold Eaton, a TBI agent that I knew from

1 high school. I was telling him about my father's confession. At  
2 the time I believe the crimes involving the Kolesnikow murders  
3 were still unsolved and that this information would assist in  
4 resolving the case."

5 A. Again, we've already talked about this, but, sure.

6 Q. Are those two things incorrect? Your father tells you --

7 A. I guess they are.

8 Q. -- someone got charged, but then you say, "I got" --

9 A. I don't --

10 THE COURT REPORTER: One at a time, please.

11 THE WITNESS: They happened 15 years apart. How -- how  
12 do you put those two together?

13 BY GENERAL GORE:

14 Q. What was your childhood friend Eaton's response when you  
15 told him? Did he believe you?

16 A. He told me he couldn't find anything, and that kind of  
17 confused me. How could you not find a double homicide?

18 I mean, so that makes me question, did he even look into  
19 it? I don't know. You'd have to ask him that.

20 Q. Mr. Horn, you've testified you've been to prison and got  
21 convicted of a felony --

22 A. Uh-huh.

23 Q. -- correct?

24 A. Uh-huh.

25 Q. Have you also been convicted of theft?

1 A. I don't recall. I mean, you've probably got it right  
2 there in front of you. You can tell me better than I can  
3 remember. I don't know.

4 I've had several charges. That doesn't change the fact  
5 I'm up here telling the truth about what happened. My past has  
6 nothing to do with this. I mean, I'm up here testifying against  
7 my father, who is deceased, but it still bothers me.

8 So you can bring up my past all you want. It doesn't  
9 matter. It's not relevant to what the truth is.

10 Q. So do you remember what you told Ms. Shiffley about Mr.  
11 Greg Lance?

12 A. What did I tell her about Greg Lance? I didn't even know  
13 who he was until I saw the show when she told me. I had no idea  
14 who Greg Lance was.

15 Q. You said that guy had nothing to do with it and that he  
16 showed up later to get drugs from your dad.

17 A. Okay.

18 Q. How did you have that information?

19 A. All I know is he had nothing to do with it. I don't know  
20 about the drug part. I don't know.

21 Q. That's what you told Ms. Shiffley, right?

22 A. Okay. I told her a bunch of things that I don't remember,  
23 so what's the point? What if he did show up to get drugs? What  
24 does that --

25 Q. I'm asking you why you told her that if you didn't know

1     that.

2     A.       Just conversation.  I don't --

3     Q.       So you --

4     A.       -- know.  I don't know why I told her that.

5     Q.       Be fair to say you made it up?

6     A.       No.

7             MS. DODSON: Objection, Your Honor.

8     BY GENERAL GORE:

9     Q.       Well, then explain it to me.

10    A.       Again, it was just a conversation.  I don't know.  I don't

11    know why I said that.  Same reason why you keep asking me the

12    same question.

13             THE COURT: Let's just answer his questions, so we can

14    get done with this.  Okay?

15             THE WITNESS: All right.

16    BY GENERAL GORE:

17    Q.       So was Greg Lance --

18             THE COURT: Start to wrap this up a little bit.

19             GENERAL GORE: Yes, Judge.

20    BY GENERAL GORE:

21    Q.       Was Greg Lance dating Samantha at the time?

22    A.       I don't know.  I don't know.

23    Q.       Do you remember what you told Ms. Shiffley?

24    A.       I had heard -- I mean, at the time -- what time are you

25    talking about specifically?



1 Q. I'm just asking what you told Ms. Shiffley.

2 A. I don't recall.

3 Q. "Greg was seeing Samantha at the time. Beth, I don't want

4 to get her in trouble. I know for a fact that Greg and her was"

5 --

6 A. That's what I had heard, that he had -- that Samantha had

7 messed around with Greg Lance. I don't -- I mean, again, that's

8 what I heard.

9 Q. Peggy Lynn Horn was your dad's wife; is that correct?

10 A. Yes.

11 Q. She's your stepmother?

12 A. Yes.

13 Q. She is still alive; is that correct?

14 A. Yes.

15 Q. Do you know where she lives at?

16 A. I have no idea. I think it's Georgia or somewhere. I

17 don't know.

18 Q. Do you talk to her?

19 A. No, not in years.

20 Q. There was a witness that testified at trial, a Susan Horn.

21 Do you know who that is?

22 A. Susan Horn? No, I don't believe I know her.

23 Q. Lived on Poplar Grove?

24 A. I don't know Susan Horn.

25 Q. What about Mike Horn? He also testified at trial.

1 A. Mike Horn?

2 Q. Yes, sir.

3 A. My cousin that's deceased?

4 Q. I don't know. I'm asking you if you know Mike Horn.

5 A. I know Mike Horn, but he's dead.

6 Q. And Billy Cleghorn. Do you know Mr. Cleghorn?

7 A. Yes, I know Billy Cleghorn.

8 Q. Do you know if he testified at trial?

9 A. I have no idea.

10 Q. Were you friends with Mr. Cleghorn at the time?

11 A. No.

12 Q. When did you become friends with him?

13 A. I've never been friends with him. I mean, I know the man,

14 but I'm not friends with him.

15 Q. James Myers. Do you know James Myers?

16 A. The name doesn't ring a bell.

17 Q. He identified you in the petition that was filed in this

18 case.

19 A. Okay.

20 Q. He identified you as being involved in a burglary of some

21 guns down in Jackson County.

22 A. No.

23 Q. Not you?

24 A. A friend of mine in Jackson County told me that his guns

25 -- he wanted to pawn his guns, but he didn't have a driver's

1 license. He wanted me to go pawn them, 'cause I had a driver's  
2 license. I did sell them. Come to find out, they were his  
3 father's guns, and, yes, I was arrested for it.

4 There was no burglary. He got those guns, and we pawned  
5 them. I heard it was all cleared up, and he ended up testifying  
6 that, yes, he did give me the guns and used me for my  
7 identification to pawn them. I didn't steal any guns.

8 Q. That was James Myers?

9 A. He had a nickname. That may be his name. I don't know.

10 GENERAL GORE: That's all, Judge. Thank you.

11 THE COURT: And redirect?

12 **REDIRECT EXAMINATION**

13 **QUESTIONS BY MS. DODSON:**

14 Q. Mr. Horn, did you know that you were gonna have to talk  
15 about your past and those types of questions when you came here  
16 today?

17 A. Yes, I did.

18 GENERAL GORE: Object to relevance.

19 THE COURT: I'll overrule.

20 BY MS. DODSON:

21 Q. And you did anyway. Why is that?

22 A. A man has spent 24 years of his life in prison for  
23 something he didn't do, and I think that's wrong. Bringing up my  
24 past to try to discredit me I think is actually kind of cheap and  
25 low, because it has nothing to do with the facts of the case. No

1 matter what I did, it's the past.

2 MS. DODSON: Permission to approach, Your Honor? I want  
3 to ask Mr. Horn about Exhibit 1.

4 THE COURT: Go ahead. He's got it.

5 MS. DODSON: Oh.

6 THE COURT: Maybe I've got it. Yes, I do.  
7 You got Exhibit 2?

8 THE WITNESS: Yeah.

9 THE COURT: I'll take Exhibit 2 back.

10 BY MS. DODSON:

11 Q. Mr. Horn, do you remember talking to the General about one  
12 of these messages where you said something about maybe you should  
13 have paid more attention but didn't want anything to do with it?

14 A. Yes.

15 Q. And that is on Page 25 of the exhibit. Do you mind going  
16 there?

17 A. Okay.

18 Q. Okay. I'm just gonna ask you to read the portion of your  
19 message that precedes that. Starting on Page 22 with, "I know  
20 what I know," can you read that part for us?

21 A. On Page 22?

22 Q. Yes. It's kind of the bottom message there. It says, "I  
23 know what I know."

24 A. "I know what I know, and I know this guy didn't do that.  
25 My dad did. I know it for a fact." This is kind of blotched

1 out.

2 Q. Yeah. It continues on Page 23, I'm sorry.

3 A. Okay. "I know this guy didn't do that. My dad did it. I  
4 know it for a fact. He wouldn't lie to me. He just wouldn't do  
5 that."

6 MS. DODSON: Thank you, Your Honor. We don't have  
7 anything further.

8 THE COURT: Okay.

9 GENERAL GORE: No followup, Judge.

10 THE COURT: Thank you, sir. You can step down. You're  
11 free to stay in the courtroom; you're free to go.

12 (WHEREUPON, the witness stepped down.)

13 THE COURT: Who's next?

14 MS. DODSON: We're calling Derrick Helms next. He's in  
15 custody, so he's on the way up.

16 THE COURT: Okay.

17 (WHEREUPON, the witness entered the courtroom and took  
18 the stand.)

19 \* \* \*

20 **DERRICK HELMS,**

21 **was called as a witness, and having first been duly sworn,**

22 **testified as follows:**

23 THE COURT: Speak into that microphone so everybody can  
24 hear you. State your first and last name and spell them.

25 THE WITNESS: Derrick Helms. D-E-R-R-I-C-K, H-E-L-M-S.

**DIRECT EXAMINATION**

**QUESTIONS BY MS. DODSON:**

Q. Mr. Helms, good morning. Thank you so much for being here today. I know we've met before, but just for the record my name is Margaret Dodson.

I'm part of the team that represents Greg Lance in this case. You've already told us your name. Are you currently incarcerated, Mr. Helms?

A. Yes, ma'am.

Q. Okay. And where is that?

A. Trousdale Turner Correctional.

Q. And what are you serving time for?

A. Drugs and theft over 1,000, ma'am.

Q. And how long is your sentence?

A. Thirty-one years.

Q. How long do you have left?

A. About twenty.

Q. Are you eligible for parole?

A. Yes, ma'am, in December.

Q. December of this year?

A. Yes, ma'am.

Q. Do you know Sam Horn, or did you know Sam Horn?

A. Yes, ma'am.

Q. What about Peggy Horn?

A. Yes, ma'am.

1 Q. I understand that Sam Horn is deceased, but tell us about  
2 your relationship with him.

3 A. I was close to him. He was something like a mentor to me.  
4 I got in drugs -- got to messing with drugs and stuff like that,  
5 and he became the only family I had at one time. He gave me a  
6 place to stay when nobody else would.

7 Q. What about Peggy Horn? What was your relationship like  
8 with her?

9 A. I wasn't close to Peggy. I knew of her. She was around,  
10 but I didn't get close to her. That was Sam's wife and was off  
11 limits.

12 Q. So tell us just a little bit of how you got to know Sam  
13 Horn.

14 A. Well, I first got to know him through his daughter  
15 Samantha at an early age, and later on when I started messing  
16 around with drugs and living that kind of lifestyle I got  
17 introduced to him. From there he took me under his wing and was  
18 like a mentor to me.

19 Q. Okay. Did Sam ever talk to you about the deaths of his  
20 neighbors?

21 A. The Russians?

22 Q. The Kolesnikows?

23 A. I knew them as the Russians. That's what they were  
24 referred to me as.

25 Q. And when was this?

1 A. End of 2002. One night we was -- I was going through some  
2 things with my ex wife, and we was off of making drugs now. He  
3 seen what I was going through, and he spoke to me about similar  
4 circumstances he went through with his wife.

5 Q. Okay. Tell us about that conversation.

6 A. He seen what I was going through and was facing. You know  
7 what I'm saying? I was wanting to do some crazy things because  
8 of the woman I loved.

9 She was also in the drug game, and I was messed up in the  
10 head. He was speaking to me about similar situations he went  
11 through with Peggy. You know what I mean?

12 So he spoke to me about what we do for love and how we  
13 love women and understanding what we do and how it messes with  
14 our minds. Therefore, he told me about a situation he had to go  
15 through with Peggy over a land dispute. You know what I'm  
16 saying? And some things he had to do because of the woman he  
17 loved.

18 Q. And what were those things?

19 A. He didn't go into a lot of detail. He said he had to take  
20 care of something for Peggy. You know what I mean?

21 Everything about a safe -- and also he talked to me about  
22 two jugs of gasoline. He was explaining to me how he didn't want  
23 me to go down the same road. You know what I'm saying?

24 Q. And you understood -- just so I'm clear about your  
25 testimony -- he was talking about his neighbors?



1       A.       The Russians, yeah. He said he had to take care of  
2       something for Peggy. I don't know if he meant for her, because  
3       of her, but it was over Peggy.

4       Q.       And he mentioned the --

5               GENERAL GORE: Judge, I object to leading.

6               THE COURT: Sustained.

7       BY MS. DODSON:

8       Q.       I just want to make sure that you've told us everything  
9       that he told you in that conversation. Did he say anything else  
10      specifically about what he did for Peggy?

11      A.       He said he had to take care of a situation for Peggy  
12      because of his love for her. You know what I'm saying? It cost  
13      him a million dollars, he kept on saying. If he didn't love  
14      Peggy like he did, he wouldn't have done what he done.

15      Q.       And what did you understand that he did?

16      A.       I understood that he covered up --

17              GENERAL GORE: Objection, Judge, as to relevance of what  
18      his understanding was.

19              THE COURT: I'll overrule.

20              Go ahead.

21              THE WITNESS: My understanding, sir, is that over love  
22      he made some mistakes in his past. You know what I'm saying? He  
23      had done things he wished he wouldn't have done and how he done  
24      them.

25      ///

1 BY MS. DODSON:

2 Q. What was his demeanor like when he talked about this?

3 A. He was actually upset at me, because I let -- he warned me  
4 about my wife on what she would cost me, and now it's a  
5 situation. I was on the run from the police. I was facing a lot  
6 of charges.

7 I was thinking about just wasting my life, and he was very  
8 upset with me. He was preaching at me almost.

9 Q. So you believed him?

10 A. Oh, without a doubt.

11 Q. Have you ever discussed this conversation with anyone?

12 A. No, ma'am.

13 Q. Why is that?

14 A. Well, I've lived all my life being an outlaw, and I don't  
15 know this gentleman. I had no reason to, didn't care to until I  
16 gave my life over to God about three years ago. Now I'm trying  
17 to make some changes.

18 Q. And why are you coming forward with this information now?

19 A. Because I've spent my life locked up for pretty much  
20 everything I'm guilty of, and that's been a long time. I see  
21 people's life wasting away every day for reasons they didn't and  
22 shouldn't be in prison, so I feel like I should give this man a  
23 chance.

24 Q. Do you know Crystal Reed or Crystal Waltz?

25 A. Yes, ma'am.

1 Q. Okay. And when did you first meet with her?

2 A. Couple years ago.

3 Q. Did you meet with her in connection to this case?

4 A. Yes, ma'am.

5 Q. Okay. Was that the first time that you told anybody any  
6 of this?

7 A. Yes, ma'am.

8 Q. Okay. Do you have any concerns about testifying today?

9 A. Yeah. I go up for parole in December, and I'm afraid the  
10 State or somebody might try to object to me coming off now and  
11 doing something. You know what I'm saying? Or try to stand in  
12 the way of it or try to do something to make sure I don't get  
13 out.

14 MS. DODSON: Permission to approach, Your Honor?

15 THE COURT: Okay.

16 GENERAL GORE: Judge, I have an objection.

17 THE COURT: I'm sorry?

18 GENERAL GORE: I have an objection as to hearsay.

19 THE COURT: What did he say?

20 THE COURT REPORTER: He has an objection as to hearsay.

21 MS. DODSON: As to the affidavit? Well, this is his  
22 affidavit, Your Honor, that he signed.

23 THE COURT: Out-of-court statement. If it's for the  
24 truth of the matter asserted, then how is it not hearsay?

25 MS. DODSON: Well, again, Your Honor, this is the

1 classic 804B3 statement against interest.

2 THE COURT: It's his affidavit.

3 MS. DODSON: His affidavit. Well, Your Honor, we've

4 gone over that this is not for the truth of the matter. It

5 contains --

6 THE COURT: I'll sustain the objection.

7 You want to mark it for an offer of proof?

8 MS. DODSON: Yes, sir.

9 THE COURT: We'll make that Offer of Proof Number 1.

10 (WHEREUPON, the above-mentioned document was marked as

11 Offer of Proof Number 1.)

12 BY MS. DODSON:

13 Q. Mr. Helms, did you prepare an affidavit in connection with

14 this case before coming here today?

15 A. Yes, ma'am.

16 Q. If you will take a look at the document I've handed you.

17 Is that the affidavit you prepared? A copy of it?

18 A. (Witness reviews document.) Looks like it, ma'am.

19 Q. Okay. I just want to ask you about a couple of the

20 paragraphs and confirm that they're still consistent with your

21 understanding. In Paragraph 5, it says, "Sam Horn told me that

22 the Horns were responsible for the Kolesnikows' deaths and burned

23 their home because of a property dispute between the Horns and

24 Kolesninkows." Is that true?

25 A. Yes, ma'am.

1 Q. In Paragraph 6, it says, "Sam told me that on the night of  
2 the murders Peggy Horn went to the Kolesnikows' home. She  
3 returned saying she messed up. Sam said he and Peggy Horn  
4 grabbed gas jugs and went back to the Kolesnikows' home to cover  
5 up her mistake." Is that --

6 A. Yes, ma'am.

7 MS. DODSON: Thank you, Your Honor. Nothing further.

8 THE COURT: Take that back, please, and I'll take it.

9 General, any questions?

10 GENERAL GORE: I do, Judge.

11 **CROSS-EXAMINATION**

12 **QUESTIONS BY GENERAL GORE:**

13 Q. Mr. Helms, you testified you're in prison serving a --  
14 what is it? Thirty years?

15 A. A total of 31 years, sir.

16 Q. Can you tell us what all you've been convicted of?

17 A. When I was younger right after this happened, I took  
18 police on a chase. I think everybody saw. Deadly weapon,  
19 reckless endangerment, drug charges.

20 Q. I'm gonna read some to you and see if you agree with it.

21 A. Yes, sir.

22 Q. You were convicted here in Putnam County September 23<sup>rd</sup>,  
23 2016, for possession of methamphetamine over half a gram with  
24 intent to sell?

25 A. Yes.

1 Q. Another one September 23<sup>rd</sup>, 2016, possession of meth over  
2 half a gram with intent to sell. You got a 15-year sentence on  
3 that one. Do you remember that one?

4 A. I got a total of 25 for both of them.

5 Q. Then in Cumberland County you had a conviction for  
6 promotion of methamphetamine manufacturing. You got six years to  
7 serve on that.

8 A. It was a theft over 1,000 as well.

9 Q. There was a theft over 1,000. Right.

10 A. It got six years for both.

11 Q. In Van Buren County you were convicted. Do you remember  
12 what that was?

13 A. Possession of methamphetamine.

14 Q. And all that added up to about 31 years?

15 A. Van Buren with Putnam County and the 25 years for the two  
16 sales and deliveries and Cumberland giving me six years on top of  
17 that 25 for 31, and then Van Buren ran in their 15 with the 15 in  
18 Putnam.

19 Q. While you've been an inmate -- you've testified you're  
20 coming up for parole, so you've not had any disciplinary  
21 infractions?

22 A. First since I've been down, sir. I've been in Trousedale  
23 since 2016, and for the first minute after losing my grandparents  
24 I got kind of in some trouble a little bit with fighting and  
25 stuff like that. Then I went up for parole in 2020, and they

1 told me what I needed to do and come back in four years. After  
2 my other grandmother died, I straightened my life.

3 Q. Have you been using drugs while you've been in prison?

4 A. Not this time, sir.

5 Q. Did you get a disciplinary conviction for a positive drug  
6 screen?

7 A. Yes, sir.

8 Q. When was that? Do you remember?

9 A. Over four years ago, sir.

10 Q. So you have a disciplinary conviction for possession of  
11 contraband while you've been in prison?

12 A. Yes, sir. I got caught with what they call a butcher.

13 Q. I'm sorry, I didn't get that.

14 A. A butcher knife. I'm in one of the top ten worst prisons  
15 in the United States, sir. When I first got there, they was  
16 holding people underneath their bed and sending pictures to their  
17 families for money. I mean, 1200 Crips, gangs, Vice Lords, like,  
18 500 or 600. Known what I mean? It was real bad real quick.

19 Q. This is the last I'll ask you about discipline, but did  
20 you get a conviction for tampering with security equipment while  
21 in prison?

22 A. The guards wouldn't come in the pods. We had to put bags  
23 in the door locks where we could pop them open where we could  
24 actually get out to eat. If we didn't do that, we wouldn't eat,  
25 sir. They'd bring trays in and just push them in the pod, only a

1     certain number.

2             If you didn't go out -- you'd have to put a bag in the  
3     door. The officers wouldn't come in. The officers pretty much  
4     didn't come in, period.

5     Q.     Okay. Let me back up. This conviction you had in Van  
6     Buren County --

7     A.     Yes, sir?

8     Q.     Was that for theft?

9     A.     No, sir. I was in a stolen truck, and I took that charge  
10    out of Crossville, sir.

11    Q.     Well, one time did you have a theft charge and maybe a  
12    conviction for stealing from your grandmother, Dixie Helms?

13    A.     It was dropped, sir, because it was a misunderstanding.  
14    I got -- she gave the stuff to me, and my family wanted to  
15    persecute me. She stood up and said it was my stuff. They just  
16    didn't want me to have it, and everything got dropped against me.

17    Q.     And you testified when you had this conversation with Sam  
18    Horn y'all were -- did you testify y'all were making drugs during  
19    that time?

20    A.     Yes, we was, sir.

21    Q.     Okay. What kind of drugs?

22    A.     Methamphetamines. Taught me how to cook when I was a  
23    young addict.

24             GENERAL GORE: I think that's all I have, Judge.

25             THE COURT: Redirect?



**REDIRECT EXAMINATION**

**QUESTIONS BY MS. DODSON:**

Q. Mr. Helms, did Sam Horn tell you that the Horns were responsible for the Kolesnikows' deaths and burning their home?

GENERAL GORE: Judge, I object to leading.

THE COURT: I didn't hear it.

GENERAL GORE: I object to leading. I also object to hearsay.

THE COURT: Sustained.

BY MS. DODSON:

Q. Mr. Helms, I just want to make sure that we understand your testimony and what -- what Sam Horn told you during that. If you could just tell us one more time what he told you.

A. The conversation with me and Sam and everything we talked about, I don't know if it's directly linked to he killed them, but I know he directly told me he was covering it up. You know what I'm saying?

He pretty much told me how to do it because of what I was thinking about doing. You know what I'm saying? Therefore, he explained to me about certain things he had to do.

Q. And by covering up, what do you mean by that?

A. He had to -- he went in and burnt down the place. One of the things he said was that if you didn't want to do the time you always have to find an escape route. Only way to do that is to find somebody else.

1 MS. DODSON: Thank you, Mr. Helms.

2 THE COURT: Any recross?

3 **RECROSS EXAMINATION**

4 **QUESTIONS BY GENERAL GORE:**

5 Q. So, Mr. Helms, in essence, Mr. Horn talked to you about  
6 what you believe was his involvement in covering up a crime?

7 A. He talked to me about what I -- yes, about covering  
8 something up.

9 GENERAL GORE: That's all.

10 THE COURT: Thank you, sir. You can step down.

11 (WHEREUPON, the witness stepped down.)

12 THE COURT: Who's next?

13 MR. GICHNER: Daron Dunn, Your Honor. He's down the  
14 hall. Someone's gonna grab him.

15 (WHEREUPON, the witness entered the courtroom and took  
16 the stand.)

17 \* \* \*

18 **DARON DUNN,**

19 **was called as a witness, and having first been duly sworn,**

20 **testified as follows:**

21 THE COURT: If you will speak into that microphone so  
22 everybody can hear. Tell me your first name and last name and  
23 spell both.

24 THE WITNESS: Daron Dunn. D-A-R-O-N, D-U-N-N.

25 ///

**DIRECT EXAMINATION**

**QUESTIONS BY MR. GICHNER:**

Q. Good morning, Mr. Dunn. How old are you?

A. Fifty-nine.

Q. Where are you from?

A. Cookeville.

Q. Did you grow up in Cookeville?

A. Pretty much.

Q. And did you just finish serving a long prison sentence?

A. Yes, I did.

Q. When did you go into prison?

A. I got locked up November the 3<sup>rd</sup> of '99.

Q. When did you get out?

A. May the 25<sup>th</sup> of '22.

Q. Are you on parole right now?

A. Yes, I am.

Q. How long are you on parole for?

A. Hopefully till February 12<sup>th</sup>.

Q. Did you know Greg Lance before you went to prison?

A. Nope, just in county.

Q. Did you know anybody in the Horn family before you went to prison?

A. Yeah.

Q. Tell me --

A. Knew of them, didn't really know them.

1 Q. Okay. Well, did you know Mike Horn?  
2 A. Yes.  
3 Q. Tell me who Mike Horn is.  
4 A. He's just a convict.  
5 Q. Can you talk a little bit louder for me, please?  
6 A. He's just another dude running around the streets. I  
7 don't -- I didn't really run around with him. I just knew who he  
8 was.  
9 Q. He was a person you knew before you went to prison?  
10 A. Yeah, knew of him.  
11 Q. Who is Sam Horn? What is your understanding of --  
12 A. From what I understand, that's his uncle.  
13 Q. That was his uncle?  
14 A. Yeah.  
15 Q. What --  
16 A. I never met Sam.  
17 Q. You never met Sam?  
18 A. No.  
19 Q. What did you know about Sam before you went to prison?  
20 A. What did I know about Sam?  
21 Q. Yes, sir.  
22 GENERAL GORE: Judge, I object. It would be hearsay as  
23 to what he knew about Sam Horn.  
24 THE WITNESS: Everything I --  
25 THE COURT: Hold on. One second.

1           What did you say?

2           MR. GICHNER: Your Honor, it's not necessarily for the  
3 truth. I'm just trying to get some context of how he knew these  
4 people. I don't need to go into detail.

5           THE COURT: I'll sustain it. If you want to go to next  
6 question.

7 BY MR. GICHNER:

8 Q.       But you knew that Sam was Mike Horn's uncle; is that  
9 correct?

10 A.       Yeah.

11 Q.       And who is Alex Horn?

12 A.       Mike Horn's brother.

13 Q.       Okay. Also nephew to Sam Horn; is that accurate?

14 A.       Yes.

15 Q.       You said you went to prison in '99?

16 A.       Yeah. I went to jail in '99 and then reached prison in  
17 2000.

18 Q.       But when you went to jail in '99 you never got out till  
19 that release just a couple years ago as you told us?

20 A.       Yes.

21 Q.       And at some point early on when you were in custody, do  
22 you remember having a conversation with the FBI about Alex Horn?

23 A.       Yeah.

24 Q.       And do you remember talking to the FBI about things that  
25 Alex Horn had told you about this particular case?

1 A. I remember vaguely. That was a long time ago.

2 Q. It was, and I'm not even gonna ask you the substance of

3 that conversation. The district attorney may -- I don't know.

4 Back in 2000 when you had that conversation, did you talk with

5 the FBI about anything about Mike Horn?

6 A. No.

7 Q. Okay.

8 A. I don't think so. I don't even remember who exactly was

9 at the table. I just know there were some people at the table.

10 Seems like I do remember one introducing himself as the FBI.

11 Q. I've got a transcript of that meeting. I'll show it to

12 you if you need it, but back in 2000 at that point, had you had

13 any conversations with Mike Horn at that point about this case?

14 A. No.

15 Q. At some point did you and Mike Horn talk about this case?

16 A. Oh, yeah.

17 Q. Tell me about that. Where was it? When was it?

18 A. The first time I can't really -- we had so many

19 conversations about it. It really weighed on Mike. We ended up

20 becoming cellies.

21 I got sent to Brushy Mountain, you know, classification,

22 and we ended up becoming cellies. Pretty much every night we

23 have conversations. It weighed on him.

24 Q. So give me a rough idea of when the time period was when

25 you --

1 A. 2000 or early 2000s, maybe.

2 Q. Early 2000s you --

3 A. Early to mid2000s.

4 Q. Tell me what Mike told you about this case and his  
5 involvement in this case.

6 GENERAL GORE: Objection, hearsay, Judge.

7 MR. GICHNER: Your Honor, this is another 804B3  
8 situation.

9 THE COURT: Mike Horn told something against his own  
10 interest --

11 MR. GICHNER: He did.

12 THE COURT: -- or somebody else?

13 MR. GICHNER: He did, Your Honor. What this witness is  
14 about to testify is --

15 THE COURT: His own?

16 MR. GICHNER: Both. He's -- well, let me tell you first  
17 what Mike Horn's gonna say. He --

18 THE COURT: Don't do that. I want to hear what he says.  
19 I think under 804 -- help me if I'm wrong --

20 MR. GICHNER: I will.

21 THE COURT: -- it won't hurt my feelings. I think that  
22 it's an exception if someone says, 'I killed somebody,' because  
23 normally I wouldn't say it to anybody.

24 MR. GICHNER: Correct.

25 THE COURT: If Michael Horn said something like that,

1     that would come in under that exception?

2             MR. GICHNER: Correct.

3             THE COURT: So for him to say somebody -- Mike -- for  
4     him to say -- for Mike Horn to say, 'Somebody else told me that,'  
5     that's double hearsay, right?

6             MR. GICHNER: It is, but the same rule applies. Both  
7     witnesses are unavailable, and the statements are both against  
8     interest.

9             THE COURT: Double hearsay.

10            MR. GICHNER: Correct. Yes, sir.

11            THE COURT: You have a case that says that?

12            MR. GICHNER: I suspect I can find one, but let me tell  
13     you more, though. I won't get into the substance of what he  
14     said, but Mike Horn also said things to this gentleman that are  
15     against his own interest interrelated to the same event. These  
16     two things are not separate from each other.

17            THE COURT: Noted your objection. I'll reserve it at  
18     the moment.

19            You can go ahead and ask.

20            MR. GICHNER: Thank you.

21     BY MR. GICHNER:

22     Q.     Tell the Judge about what Mike Horn told you about this  
23     case.

24     A.     He just told me that Sam had called him one night all  
25     excited and everything and had him come to his house. He gave



1 him a gun. He explained what the gun looked like to him. We had  
2 so many conversations about it that it was ridiculous.

3 Q. What did the gun look like?

4 A. It was just a black gun, but what was funny about it was  
5 that it had a flashlight taped to it. He told Mike to take this  
6 far away from here and get rid of it. Be sure to take it as far  
7 as you can to get rid of it. Well, Mike said he didn't make it  
8 too far down the road a few miles he met a cop.

9 Q. What road?

10 A. I don't even remember.

11 Q. Okay.

12 A. Somewhere down Hidden Hollow.

13 Q. Okay.

14 A. He said as he was driving out of there he met a cop and  
15 got scared and threw it out the window. He knew Sam was gonna be  
16 mad at him, but he didn't care.

17 Q. What else did Mike tell you about the circumstances as to  
18 why Sam told him to get rid of the gun?

19 A. 'Cause he killed the people across the road. What you  
20 want me to say here?

21 Q. I want you to say as much specificity as you remember  
22 about what he told you about it.

23 A. He keeps objecting to hearsay.

24 Q. Don't worry about that.

25 A. I'm just --

1 Q. The General -  
2 GENERAL GORE: Judge --  
3 THE COURT REPORTER: One at a time, please. I can't get  
4 three people at once.  
5 THE WITNESS: Everything I've got to say is hearsay. I  
6 heard it from somebody else. I don't know none of these people.  
7 I don't know Greg Lance from a can of paint.  
8 THE COURT: What I'm saying is you may be right, and I  
9 may rule that way. I'm gonna let them develop a record and put  
10 that on the record. Does that make sense?  
11 THE WITNESS: Yes, sir.  
12 THE COURT: Go ahead.  
13 THE WITNESS: Repeat your question again.  
14 BY MR. GICHNER:  
15 Q. Tell me everything you remember that Mike told you about  
16 what Sam said to him and what he did. I just want to make sure  
17 we don't miss any of it.  
18 A. The logistics is that Sam kept beefing with the neighbors,  
19 the Russians. That's all I ever knew them by, the Russians.  
20 Apparently, they owned a trailer park. Sam kept beefing with  
21 them, 'cause they kept calling the police.  
22 It really wasn't no big deal to Sam from what I  
23 understand, because he had them in his pocket. Anyway, they kept  
24 aggravating him, so they were beefing back and forth. Well,  
25 apparently, he had heard Greg arguing with these people one day

1 over something or another, and he got the bright idea to set Greg  
2 up. And he had his wife get in the house somehow.

3 I guess she knew the wife or whatever. They unlocked a  
4 window from what I understand, a bathroom window. I don't know.

5 They went back over there that night and snuck in and  
6 killed the people. That's basically what Mike told me, and then  
7 they were cleaning up. They had Mike and everybody else involved  
8 and helped them do that.

9 Q. Was it your understanding that Mike had been called out  
10 there to dispose --

11 A. Yeah.

12 Q. -- that same night?

13 A. Well, earlier in the morning, but, yeah.

14 Q. What was Mike's demeanor like? What was Mike like when he  
15 was having these conversations with you about it?

16 A. I mean, it was eating him up, because he knew. You know,  
17 Mike had done time. You know, we all done time, and some of us,  
18 like myself, brought it on ourselves. To know that an innocent  
19 man is doing time, you know what I mean, is just not right.

20 It's not right. Everybody involved knows that Greg Lance  
21 didn't do it. Let's just keep it real. There's people that  
22 could have stopped this a long time ago, but they chose not to  
23 for whatever reason.

24 Q. Mr. Dunn, you told us you're still on parole, right?

25 A. Yes, sir.

1 Q. You know what perjury is?

2 A. Yes, sir.

3 Q. What happens to your parole if you get on a witness stand

4 and lie?

5 A. I'm not even sure I'm allowed to be here now. I don't

6 know how parole is gonna act to this.

7 Q. Do you want --

8 A. But it's the right thing to do.

9 Q. -- to be here?

10 A. I'm here. I'd much rather be somewhere else.

11 Q. You getting anything out of doing this?

12 A. No. Probably may be locked back up.

13 Q. Do you have any kind of relationship with Greg Lance or

14 his family?

15 A. I can't tell him from a can of paint. I met him in jail,

16 didn't really like him.

17 (Laughter)

18 THE COURT: Okay, folks. Y'all are gonna have to leave.

19 One more outburst like that and we'll clear the courtroom.

20 Everybody aware?

21 All right. Next question.

22 BY MR. GICHNER:

23 Q. Mr. Dunn, why are you here offering this testimony today?

24 A. Because you perjured me to be here or whatever the hell

25 that's called.

1 Q. Subpoena?

2 A. Subpoena, yeah, that's it, but mainly it's the right thing  
3 to do. A man done, what, 25 years of his life for something he  
4 didn't do. Everybody involved knows he didn't do it.

5 That's crazy to me. What happened to proof beyond a  
6 reasonable doubt?

7 MR. GICHNER: Thank you. Those are my questions. The  
8 district attorney's gonna ask you some questions.

9 THE COURT: Cross-examination, please.

10 **CROSS-EXAMINATION**

11 **QUESTIONS BY GENERAL GORE:**

12 Q. Mr. Dunn, one of the things the Court looks at is a thing  
13 we call credibility. In considering credibility, we can ask you  
14 about your convictions. That's why I'm gonna ask you this.  
15 Okay?

16 A. Okay.

17 Q. I want you to tell us what all you've been convicted of.

18 A. Oh, my God. It'd be easier to tell you what I ain't.

19 Q. Well, let me read some to you and see if you agree with  
20 me. You've been convicted of theft of property?

21 A. Yeah.

22 Q. Aggravated robbery?

23 A. Oh, yeah.

24 Q. Another count of theft of property out of Jackson County;  
25 is that right?

1 A. Yeah, sound about right.

2 Q. Robbery out of Overton County. Sound right?

3 A. Sound right.

4 Q. You had a cocaine -- felony cocaine conviction here in

5 Putnam County?

6 A. Yeah, in '94. I think that was a conspiracy charge.

7 Q. Let me ask you this, how many aggravated robbery

8 convictions do you have?

9 A. I think I have seven aggravated robberies, maybe five

10 convictions I pled to or something. I had several.

11 Q. And the information you got was conveyed to you through

12 Mike Horn? Mike Horn told you these details that allegedly Sam

13 Horn told him?

14 A. Yes, sir.

15 Q. And you didn't know Sam Horn?

16 A. No. I was offered to meet him one time and was advised

17 not to, because we would probably clash.

18 Q. Okay. And how did you know Greg Lance? I think you

19 testified you may have met him in county jail?

20 A. I didn't know Greg.

21 Q. But you met him in county jail; is that correct?

22 A. Yeah, briefly. He wasn't very outspoken. He kept to

23 himself, and I pretty much did too. He really wasn't my cup of

24 tea.

25 GENERAL GORE: That's all. Thank you.

1           THE COURT: Any more questions?

2           MR. GICHNER: No, I don't have any more.

3           THE COURT: Thank you, sir. You may step down. You're

4 free to go. Have a good day.

5           (WHEREUPON, the witness stepped down.)

6           THE COURT: Who's next?

7           MR. GICHNER: Could we take a five-minute break, Your

8 Honor?

9           THE COURT: Sure. Five minutes. I'll keep my seat.

10 Y'all go ahead.

11          (Short break)

12          THE COURT: Okay, folks. If you'll get back to your

13 seats, we'll get started, please. Court come back to order.

14          Who will be your next witness?

15          MS. DODSON: Your Honor, we call Keith Pinson. He's

16 here.

17          MR. GICHER: Your Honor, can all of the witnesses who've

18 testified be excused if the State doesn't need them?

19          THE COURT: Sure.

20          GENERAL GORE: No opposition.

21          MR. GICHNER: Thank you.

22          (WHEREUPON, the witness took the stand.)

23        ///  
24        ///  
25        ///

1                                   \*     \*     \*

2                                   **KEITH PINSON,**

3       **was called as a witness, and having first been duly sworn,**  
4       **testified as follows:**

5                   THE COURT: If you will speak into that microphone, that  
6       will help everybody hear. Tell me your first name and last name  
7       and spell them both.

8                   THE WITNESS: Keith, K-E-I-T-H. Pinson, P-I-N-S-O-N.

9                   THE COURT: Thank you, sir.

10                                   **DIRECT EXAMINATION**

11       **QUESTIONS BY MR. RATHMELL:**

12       Q.       Mr. Pinson, we've met before. My name is Peter Rathmell.  
13       I'm an attorney for the petitioner, Mr. Greg Lance. Just to get  
14       to know you a little bit more, tell me what you do for a living?

15       A.       I'm retired.

16       Q.       Are you from the Cookeville area?

17       A.       I've been here about 27 years.

18       Q.       Did you know someone by the name of Sergey Levett?

19       A.       For a very short time.

20       Q.       How did you get to know Sergey?

21       A.       I was a minister at Collegeside Church of Christ and don't  
22       even remember how, but somehow I was helping Sergey out.

23       Q.       Did you remember his parents at all?

24       A.       Never knew them.

25       Q.       You remember the name "Kolesnikow"?



1       A.       Excuse me?

2               GENERAL GORE: I object to leading, Judge.

3               THE COURT: Sustain.

4       BY MR. RATHMELL:

5       Q.       Do you recall anything about Sergey's parents dying?

6       A.       I just remember they were in a house that burned.

7       Q.       Did you see Sergey at all after his parents died?

8       A.       I remember taking Sergey to the house after it had burned.

9       Q.       What did you guys do at the house?

10      A.       I sat in the car, and that's all I remember. He walked

11      around.

12      Q.       Did you guys do anything after?

13      A.       Not that I recall. I just barely remember taking him to

14      the house.

15      Q.       Do you recall saying anything to police?

16      A.       I don't have any memory of that.

17               MR. RATHMELL: Your Honor, may I approach the witness?

18               THE COURT: May you what?

19               MR. RATHMELL: May I approach the witness?

20               THE COURT: For what purpose?

21               MR. RATHMELL: To show him a document.

22               THE COURT: What do you want to show him?

23               GENERAL GORE: Judge, we would object to hearsay.

24               THE COURT: Okay.

25               So why is it not hearsay?

1           MR. RATHMELL: I'm gonna introduce it as a reported  
2   recollection under Rule 803-5.

3           THE COURT: Step back. Okay. This is something he  
4   wrote?

5           MR. RATHMELL: Yes, sir.

6           THE COURT: So ask him again if he -- I may have missed  
7   the question. Did you ask him if he remembered writing that?

8           MR. RATHMELL: Well, I was gonna attempt to refresh his  
9   recollection.

10          THE COURT: Go ahead and ask him if he remembers, and  
11   then pass it to him.

12   BY MR. RATHMELL:

13   Q.     Do you remember writing a statement to the police?

14   A.     I do not.

15          MR. RATHMELL: Your Honor, may I approach?

16          THE COURT: Sure. Let him look at, and you take it  
17   back.

18          You can read it.

19          MR. RATHMELL: (Passing document.)

20          THE WITNESS: (Witness reviews document.) Looks like I  
21   --

22          THE COURT: You don't read it out loud. You read it and  
23   then give it back to counsel.

24          Question.

25   ///

1 BY MR. RATHMELL:

2 Q. Does seeing this document help refresh your recollection  
3 at all?

4 A. That is definitely my signature and my handwriting, but I  
5 don't remember writing it. I know it is my writing, but it's  
6 been 25 years or so. That is my signature for sure.

7 Q. Would you have signed it if it wasn't your --

8 A. No way.

9 Q. When you signed it, would it have been fresh in your  
10 recollection?

11 A. Absolutely. Or I wouldn't have signed it.

12 MR. RATHMELL: Your Honor, at this time, pursuant to  
13 Rule 803-5, I'd like to request that the witness be allowed to  
14 read the document in his testimony.

15 THE COURT: If he doesn't remember writing it but  
16 remembers signing it and doesn't remember what he wrote, let's  
17 see what 803-5 says.

18 What's the State's position?

19 GENERAL GORE: Well, Judge, I think it may fit under  
20 803-5 as a recorded recollection, not a refreshing of memory.

21 THE COURT: He has refreshed it under 612. That's what  
22 he did.

23 GENERAL GORE: I think he's attempting to put this under  
24 as a recorded recollection. The document -- I would submit to  
25 the Court, that the statement of Keith Pinson, which is, "I was

1 present when Sergey found the shirt", would be admissible under  
2 803-5 but not what Sergey said. That's hearsay.

3 THE COURT: I'll let you go ahead and ask -- you want  
4 him to just read it?

5 MR. RATHMELL: Yes, Your Honor.

6 THE COURT: Why don't you read it to him?

7 MR. RATHMELL: Statement says, "I, Sergey Levett, found  
8 the striped shirt on the picnic table in the rear of the house on  
9 August 6<sup>th</sup>, '98, and turned it in to the Putnam County Sheriff's  
10 Office on August 8<sup>th</sup>, 1998. Sergey Levett." Below that it says,  
11 "Keith Pinson. I also was present when Sergey found the shirt  
12 37207709."

13 THE COURT: I assume, General, you're not gonna allow  
14 that to be admitted?

15 GENERAL GORE: No.

16 THE COURT: So we will make that Offer of Proof Number  
17 2.

18 (WHEREUPON, the above-mentioned document was made Offer  
19 of Proof Number 2.)

20 THE COURT: Any questions?

21 MR. RATHMELL: No further questions.

22 THE COURT: Any questions from the State?

23 **CROSS-EXAMINATION**

24 **QUESTIONS BY GENERAL GORE:**

25 Q. Mr. Pinson, you testified you took Mr. Levett to the

1 house?

2 A. That's correct.

3 Q. And you sat in the car?

4 A. I was there. I don't remember if I stood outside the car.

5 I just know he walked around, and I didn't leave the car.

6 Q. So you were in close proximity to the car?

7 A. Yes, I was.

8 Q. And your memory today is you don't remember what he did?

9 A. I don't remember at all what he did. I just know I

10 remember standing or sitting or being at the car while he did

11 what he did.

12 Q. As to the shirt, you don't remember what kind of shirt it

13 was?

14 A. I don't remember anything about a shirt.

15 Q. As to the table, you don't remember what kind of table or

16 picnic table or whatever?

17 A. I don't think I ever got close to a table. I stayed at

18 the car. I don't remember anything about the house or the

19 surroundings. I just remember being there with Sergey.

20 Q. I know I'm probably rehashing the same stuff, but you

21 don't remember Sergey giving a shirt to anybody?

22 A. I don't have any recollection of the signature or writing

23 the note or the shirt, but it is my signature. Therefore, I

24 would have never signed it if it wasn't true.

25 Q. Did you remember the address of where y'all were at?

1 A. I know where it is. I have friends that live close by,  
2 but I don't remember the address.

3 GENERAL GORE: That's all. Thank you.

4 THE COURT: Any redirect?

5 MR. RATHMELL: No, Your Honor.

6 THE COURT: Thank you, sir. You can step down. You're  
7 free to stay in the courtroom. You're free to go.

8 (WHEREUPON, the witness stepped down.)

9 THE COURT: Who's next?

10 MS. DODSON: Your Honor, we call Chrystal Reed.

11 (WHEREUPON, the witness entered the courtroom and took  
12 the stand.)

13 \* \* \*

14 **CHRYSTAL REED,**

15 **was called as a witness, and having first been duly sworn,**  
16 **testified as follows:**

17 THE COURT: Speak up in that microphone right there in  
18 front of you. Tell me your first name and last name, and spell  
19 both.

20 THE WITNESS: Chrystal Reed. C-H-R-Y-S-T-A-L, R-E-E-D.

21 THE COURT: Thank you.

22 Direct examination, please.

23 **DIRECT EXAMINATION**

24 **QUESTIONS BY MS. DODSON:**

25 Q. Ms. Reed, it's lovely to see you. My name is Margaret

1     Dodson. I represent Mr. Lance. You stated your name for the  
2     record, but can you tel us where you currently live?

3     A. I live in Murfreesboro, Tennessee.

4     Q. What do you do for a living?

5     A. I'm a private investigator.

6     Q. Are you with a specific company or agency?

7     A. Superior Advantage Investigations.

8     Q. Okay. And how long have you been a private investigator?

9     A. This is my 18<sup>th</sup> year.

10    Q. And are you familiar with Mr. Lance's case?

11    A. I am.

12    Q. We retained you to work on this case?

13    A. Yes.

14    Q. I want to talk about the witnesses whom we've presented  
15    today and just walk through meeting with them. Did you meet a  
16    man named Tim Horn during your investigation?

17    A. I did.

18    Q. Okay. And who was he?

19    A. He is the son of Sam Horn.

20    Q. And when did you first meet with him?

21    A. October 2021.

22    Q. And why did you meet with him?

23    A. Well, Mr. Horn wasn't really on the radar for us as Mr.  
24    Lance's case goes. There was a show that was aired, and Mr. Horn  
25    reached out or came to Mr. Lance's legal team to speak with us.

1 Q. And you met with him after that?

2 A. Correct.

3 Q. Did you meet with someone named Keith Pinson?

4 THE COURT: I'm sorry, but when did you meet with Mr.

5 Horn?

6 THE WITNESS: October of '21.

7 THE COURT: Okay. October of 2021.

8 THE WITNESS: Yes, sir.

9 THE COURT: Sorry to interrupt.

10 MS. DODSON: No, you're good, Your Honor.

11 BY MS. DODSON:

12 Q. Did you meet with a man named Keith Pinson?

13 A. I did.

14 Q. Okay. And who is Mr. Pinson?

15 A. There's a document located that -- Mr. Pinson was -- there

16 was an item of evidence found at the crime scene, and there was a

17 document regarding that item of evidence that was found at the

18 crime scene that had Mr. Pinson's signature on it. We wanted to

19 follow up with Mr. Pinson to determine what he remembered about

20 that.

21 Q. And when did you meet with Mr. Pinson?

22 A. February of 2022.

23 Q. Did you meet with someone named Derrick Helms?

24 A. I did.

25 Q. When did you first meet with him?



1 A. March of 2022.

2 Q. And why did you meet with Mr. Helms?

3 A. There had been an email come in --

4 GENERAL GORE: Judge, I'd object to relevance as to why

5 she met with him.

6 THE COURT: I'll overrule.

7 Go ahead.

8 THE WITNESS: There's an email that came in saying that

9 Mr. Helms would be -- could be a potential witness, and we wanted

10 to locate and interview and follow up to determine if he was a

11 witness to this case or not.

12 THE COURT: In March of 2022?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay.

15 BY MS. DODSON:

16 Q. Did you meet with him shortly after that message came in?

17 A. Yes, ma'am.

18 Q. Did you meet with someone named Daron Dunn?

19 A. Yes, ma'am.

20 Q. Okay. And when did you first meet with him?

21 A. January 2023.

22 Q. And why did you meet with him?

23 A. There was a proffer that Mr. Dunn had -- I think it was in

24 2000, and he was incarcerated. He wasn't willing to speak while

25 being incarcerated. He was released in 2022, and then we follows

1 up and located him regarding information he had.

2 Q. I want to ask you about somebody who did not testify

3 today. Did you meet with Peggy Horn during your investigation?

4 A. I did.

5 Q. And when was that?

6 A. I'd say late last year, 2023.

7 Q. Where was that?

8 A. In Alabama.

9 Q. And what happened?

10 A. I met with Peggy at work. She was at Bojangles, and I

11 waited for her shift to end. I met with her right outside the

12 Bojangles and asked her if she would speak to me.

13 I explained to her who I was and what my purpose was for

14 being there. She briefly talked to me. She was angry.

15 She said that Sam Horn never owned any guns, that she

16 doesn't know why I or why people were harassing her. She said

17 that I could come back at a later date. Her daughter was in the

18 hospital, and she would have to get home. She gave me her phone

19 number and told me to call her and set up a time to come back and

20 actually talk to her.

21 Q. And did you follow up with her?

22 A. I did follow up with her, and she refused to speak to me

23 after that.

24 Q. So you did not meet with her a second time?

25 A. No, ma'am.

1 MS. DODSON: I have nothing further.

2 THE COURT: Cross-examination.

3 **CROSS-EXAMINATION**

4 **QUESTIONS BY GENERAL GORE:**

5 Q. Ms. Reed, you're an investigator for Superior Advantage?

6 A. Yes, sir.

7 Q. And being an investigator probably gives you some  
8 knowledge or expertise on how to get witnesses to court. Would  
9 you agree with that?

10 A. How to get witnesses to court?

11 Q. Right.

12 A. Sure, yeah.

13 Q. You know what a subpoena is, right?

14 A. Absolutely.

15 Q. You could have or your attorneys could have asked for a  
16 subpoena to issue for Ms. Peggy Horn, right?

17 A. Yes.

18 Q. And that hasn't happened?

19 A. No.

20 Q. Let's go back. Since you've testified you've got  
21 knowledge of the case --

22 A. Yes, sir.

23 Q. You've got knowledge of Tim Horn. Where did you find Tim  
24 Horn?

25 A. Tim Horn came to us.

1 Q. He came to you --

2 A. Yes, sir.

3 Q. -- in October of '21, right?

4 A. Yes.

5 Q. But you've got an address or two?

6 A. He gave us his address.

7 Q. Spencer, Tennessee?

8 A. I don't know if he was living in Spencer at that time.

9 Q. In your job you travel around and locate witnesses and

10 interview them, right?

11 A. Yes, sir.

12 Q. Would you say Horn was local? He would have been easy to

13 find?

14 A. Easy to find? That's a hard question for an investigator.

15 Not everyone is easy to find. They move around a lot. I mean,

16 it's hard to say. I didn't have to do that.

17 Q. How would you locate Mr. Horn if --

18 A. Database.

19 Q. You have a database?

20 A. Yes, sir.

21 Q. And what's that database do?

22 A. It will pull up the most recent address or if someone has

23 a utility bill or something.

24 Q. And then when you have that, you go to that address and

25 try to interview them, right?

1 A. Yes, sir.

2 Q. And the same thing for Mr. Pinson, right? He had a local  
3 address.

4 A. Yes, sir.

5 Q. You could have went out, or another investigator could  
6 have gone out and found Mr. Pinson?

7 A. Sure, yeah.

8 Q. Same thing with Derrick Helms? He was in prison.

9 A. That I'm not too sure about. The way we obtain that  
10 information -- nobody really knew about Mr. Helms until my  
11 investigation. So, no, I don't think anybody could have just  
12 went out and interviewed them.

13 Q. When did you start your investigation?

14 A. It would have been around October of 2021.

15 Q. Did the Innocence Project start their investigation back  
16 in 2007 or 2008 or sometime around then?

17 A. I can't answer that question. I'm not sure when Innocence  
18 Project started their investigation.

19 Q. Well, you would admit Mr. Helms was in prison in TDOC,  
20 Tennessee Department of Corrections, right?

21 A. Right.

22 Q. And you know as an investigator there is an inmate lookup?

23 A. Right.

24 Q. So anybody could have looked him up, right?

25 A. Nobody knew about him.

1 Q. That's not my question. Anybody could have looked him up?  
2 A. Absolutely.  
3 Q. He gave a statement. You read his affidavit, right?  
4 A. No.  
5 Q. Well, in that affidavit, he said --  
6 A. Oh, his affidavit from our interview? Yes, sir.  
7 Q. He had been lifelong friends with Sam and Peggy Horn?  
8 A. Sure, yeah. Lifelong, no. He was friends with them when  
9 he was 16, 17 years old when I think he met the Horns.  
10 Q. But he described their relationship as close friends; is  
11 that fair?  
12 A. Yes.  
13 Q. Daron Dunn was in prison, correct?  
14 A. Yes, sir.  
15 Q. Just recently been released?  
16 A. Yes, sir.  
17 Q. If somebody had diligently looked for him, they could have  
18 found him in prison?  
19 A. Yes, sir. I believe they did find him in prison.  
20 GENERAL GORE: That's all.  
21 THE COURT: Any redirect?  
22 MS. DODSON: Very briefly, Your Honor.  
23 THE COURT: Sure.  
24 ///  
25 ///

**REDIRECT EXAMINATION**

**QUESTIONS BY MS. DODSON:**

Q. Ms. Reed, when was the first time that you learned about Tim Horn?

A. It would have been right around October of 2021. I'm just trying to remember, and I believe it would have been around that same timeframe. It was right after he had came to the legal team, and then you got information that was turned over to me.

Q. When was the first time you learned about Derrick Helms?

A. Probably February or beginning of March of 2022.

Q. And then you testified you met with him in March of 2022?

A. Yes, ma'am.

Q. When was the first time you learned about Keith Pinson?

A. February of 2022.

Q. And you met with him in February of 2022?

A. Yes, ma'am.

Q. Do you remember when Daron Dunn got out of prison?

A. May of 2022.

Q. And then you met with him in January of 2023?

A. Yes.

Q. You testified that you found Peggy Horn in Madison, Alabama; is that correct?

A. Yes, ma'am.

Q. So not in Tennessee?

A. Correct.

1 MS. DODSON: Nothing further.

2 THE COURT: Any recross?

3 GENERAL GORE: No, sir.

4 THE COURT: Thank you, ma'am. You can step down.

5 You're free to stay in the courtroom. You're free to go.

6 (WHEREUPON, the witness stepped down.)

7 THE COURT: Who's next?

8 MR. ESQUIVEL: Sarah Shields, Your Honor, and she's in  
9 the courtroom.

10 (WHEREUPON, the witness entered the courtroom and took  
11 the stand.)

12 \* \* \*

13 **SARAH SHIELDS,**

14 **was called as a witness, and having first been duly sworn,**

15 **testified as follows:**

16 THE COURT: Speak into that microphone so everyone can  
17 hear. Tell us your first and last name and spell both.

18 THE WITNESS: Sarah Shields. S-A-R-A-H, S-H-I-E-L-D-S.

19 **DIRECT EXAMINATION**

20 **QUESTIONS BY MR. GICHNER:**

21 Q. Good morning, Ms. Shields.

22 A. Good morning.

23 Q. Where do you work?

24 A. I'm currently employed as a DNA analyst with Bode

25 Technology, which is a private DNA testing laboratory in Northern



1 Virginia.

2 Q. And what do you do in your capacity as a DNA analyst?

3 A. I'm actually a remote analyst. I evaluate DNA profiles  
4 and prepare reports of my conclusions, work on statistical  
5 analysis when it is applicable. I direct the testing of  
6 technicians in the laboratory, and I'm also responsible for  
7 technical and administrative review of other analyses.

8 Q. Can you just give us a little information on your  
9 educational background and professional experience that allows  
10 you to do this work?

11 A. I have a Bachelors of Science from Florida State  
12 University where I majored in biology and minored in chemistry.  
13 I also have a Masters of Science in forensic science. I've been  
14 working as a DNA analyst for about 21 years. I've worked for  
15 Bode Technology from 2003 to 2014.

16 In 2014, I moved to Colorado and began working as a DNA  
17 analyst for the Colorado Bureau of Investigation. After that in  
18 2017, I began work as a DNA analyst with the Jefferson County  
19 Crime Laboratory in Colorado. Then in January of last year I  
20 went back to Bode to work as a DNA analyst.

21 MR. GICHNER: Your Honor, if I may, I'd like to hand Ms.  
22 Shields a copy of her CV. I've handed it to the General.

23 THE COURT: Sure.

24 BY MR. GICHNER:

25 Q. Ms. Shields, take a look at that and tell me if that

1 accurately reflects your educational and professional experience  
2 and is an up-to-date CV for you (passing document?)

3 A. (Witness reviews document.) Yes. It does appear to be up  
4 to date and accurate.

5 MR. GICHNER: Your Honor, I'd ask that be made the next  
6 exhibit.

7 THE COURT: It will be marked as Exhibit Number 3.

8 Is that correct?

9 THE COURT REPORTER: That's correct.

10 (WHEREUPON, the above-mentioned document was marked as  
11 Exhibit Number 3.)

12 BY MR. GICHNER:

13 Q. Ms. Shields, have you worked on cases before involving  
14 DNA?

15 A. Yes. I would estimate I've worked on tens of thousands of  
16 cases throughout my career.

17 Q. And have you testified multiple times as an expert in DNA?

18 A. Yes, I have.

19 MR. GICHNER: Your Honor, I would ask that Ms. Shields  
20 be made an expert in DNA and be allowed to testify as such.

21 THE COURT: Would the General like to voir dire on that  
22 issue?

23 GENERAL GORE: No.

24 THE COURT: Okay. She will be allowed to give her  
25 opinion.

1 BY MR. GICHNER:

2 Q. Ms. Shields, how did you first become involved in this  
3 case?

4 A. This case was assigned to me by my supervisor at Bode  
5 Technology.

6 Q. What exactly was Bode asked to do with the evidence in  
7 this case?

8 A. We were asked to develop DNA profiles from a series of  
9 swabs that were submitted to our laboratory.

10 Q. Was there a plan put in place for how this would happen in  
11 terms of swabbing the evidence and getting it to Bode for  
12 testing?

13 A. Yes, I believe there was.

14 Q. You're aware there was a previous hearing in this court  
15 where we talked about if you would do this type of testing or  
16 not?

17 A. Yes.

18 Q. Are you aware that Katherine Cross who's a DNA analyst at  
19 Guardian did the swabbing of the evidence in the case and sent it  
20 over to Bode for you to do the analysis?

21 A. Yes.

22 Q. So when was it that Bode received the evidence for  
23 testing?

24 A. We received evidence on April 4<sup>th</sup>, 2023.

25 Q. At that point did you conduct DNA analysis on the samples

1     that you received?

2     A.       Yes, I did.

3     Q.       What specifically was the evidence that had been swabbed

4     for testing?

5     A.       If I may refer to my report?

6     Q.       Yeah. In fact, maybe it would be easier if I handed you a

7     copy of your report.

8             MR. GICHNER: Your Honor, may I approach and give her a

9     copy?

10            THE COURT: Sure.

11     BY MR. GICHNER:

12     Q.       I realize that's just the first few pages. I didn't give

13     you all 70 pages, but it had all the data that none of us besides

14     you are gonna understand. Does that accurately reflect the

15     report that Bode generated from the DNA testing that was done in

16     this case?

17     A.       (Witness reviews document.) This is one of the reports,

18     yes.

19     Q.       Is this the most recent report as it relates to the

20     testing that was done on the Tech9 gun in this case?

21     A.       Yes.

22     Q.       All right. And that's what I want to focus on. Fair to

23     say the gun is really the only thing we got profiles that we can

24     do analysis on; is that accurate?

25     A.       Yes.

1 Q. The report that you have in front of you, is that the  
2 report that you signed off on that addresses the testing that was  
3 done on the Tech9?

4 A. Yes.

5 MR. GICHNER: I would ask that be made an exhibit to the  
6 hearing, Your Honor.

7 THE COURT: All right. That will be 4.

8 (WHEREUPON, the above-mentioned document was marked as  
9 Exhibit Number 4.)

10 BY MR. GICHNER:

11 Q. If you look at Page 1 --

12 MR. ESQUIVEL: Your Honor, do you need a copy of this?

13 THE COURT: I do not.

14 BY MR. GICHNER:

15 Q. If you look at Page 1 of your report, I want to talk to  
16 you about the Bode samples that are listed as 70-1 and 70-2. Do  
17 you see those?

18 A. Yes.

19 Q. What is 70-1? What is the agency description of that?

20 A. That was swab from the Tech9 handgun, trigger release,  
21 nooks and crannies.

22 Q. Was a partial DNA profile obtained from that particular  
23 sample?

24 A. Yes.

25 Q. What's a partial profile mean?

1 A. Partial simple means that I did not obtain information  
2 that followed the locations that I tested. It's a partial  
3 profile, because it's not complete.

4 Q. Is the --

5 THE COURT: One second.

6 So does that mean you can't tell? It's not a good  
7 enough sample where you can pick up somebody's DNA on it? Is  
8 that what partial means?

9 THE WITNESS: No. Partial simply means that we didn't  
10 obtain all of the information that we were looking for, but we  
11 can still make conclusions on partial profiles. We do it all the  
12 time.

13 THE COURT: Okay. How do you do that?

14 THE WITNESS: Just because it's limited information  
15 doesn't mean it's not worthy of comparison. We have guidelines  
16 in our laboratory that establish how much information we do need  
17 in order to make conclusions on DNA profiles.

18 THE COURT: Does that amount depend on how much the  
19 partial you get whether you can make a conclusion or not?

20 THE WITNESS: Sometimes it does, yes. There's a certain  
21 number of locations that we need to see in order to make  
22 conclusions on a profile.

23 THE COURT: Do you mean locations on the weapon, or do  
24 you mean locations on the DNA?

25 THE WITNESS: Locations in the DNA. We tested about 25

1 different locations for DNA test, so I would need unambiguous at  
2 three of those locations from a contributor to make a conclusion.

3 THE COURT: A partial?

4 THE WITNESS: For any profile.

5 THE COURT: So you can look at three from a potential 25  
6 and can tell me -- you can make a conclusion from that?

7 THE WITNESS: Yes. There are different variations to  
8 that. If we're doing what I call a binary interpretation, we  
9 need at least three to make an exclusion. When we are doing  
10 STRmix analysis, we just need an unambiguous representation.

11 THE COURT: An exclusion. So you cannot make an  
12 identification?

13 THE WITNESS: Yes. We would need five locations.

14 THE COURT: So with three you cannot make an  
15 identification. You can just exclude?

16 THE WITNESS: Using binary interpretation. Using STRmix  
17 interpretation, I can get an inclusion with three.

18 THE COURT: Could you do that on this case?

19 THE WITNESS: I could make conclusions on a partial.

20 THE COURT: Okay.

21 Sorry to interrupt.

22 MR. GICHNER: That's all right. You're streamlining a  
23 lot of my questions for me.

24 BY MR. GICHNER:

25 Q. In this case, in the DNA we're dealing with, it's not an

1 amount of DNA that we could put into CODIS and try to get an  
2 identification off of; is that right?

3 A. Correct. Bode is not a CODIS-approved laboratory, but we  
4 did have agreement with the Tennessee Bureau of Investigation.  
5 They reviewed this for CODIS -- possible CODIS submission. I was  
6 not a part of that.

7 Q. But what you did have the ability to do is look at these  
8 partial profiles and the interpretable DNA and compare them to a  
9 standard from Greg Lance to see if he could be excluded; is that  
10 accurate?

11 A. Yes.

12 Q. Let's start with 70-1. If I'm looking at this right,  
13 those are swabs from the trigger of the gun?

14 A. Yes. The agency description was trigger release nooks and  
15 crannies.

16 Q. If we look at Number 2 on the first page of your report  
17 under where it says evidence processed, can you read that first  
18 sentence about the partial DNA profile?

19 A. "The partial DNA profile obtained from sample E01", which  
20 is our name for the item discussed, "is consistent with a mixture  
21 of three individuals, including at least one male contributor."

22 Q. So I just want to make sure we're all on the same page.  
23 What that means is that what you were able to get from the DNA at  
24 the trigger release was three distinct people and that we know at  
25 least one of them is a man?



1 A. Correct.

2 Q. So you said you had a sample of Greg Lance. You got that,  
3 because we sent that to you; is that accurate?

4 A. Correct.

5 Q. Did you conduct a visual comparison of the profiles from  
6 the trigger to the samples submitted by Mr. Lance?

7 A. Yes, I did.

8 Q. Were you able to make any conclusions as to exclusion from  
9 your visual inspection?

10 A. I was unable to visually exclude Mr. Lance as a possible  
11 contributor.

12 Q. Okay. And that was just the first threshold of the  
13 analysis, right?

14 A. Correct.

15 Q. As an aside, you've seen the affidavit from Ms. Cross,  
16 right?

17 A. Yes, I have.

18 Q. Are you aware that she did, in fact, make a visual  
19 exclusion of Mr. Lance?

20 A. Yes.

21 Q. Does that mean that the two of you have an inconsistent  
22 opinion about the evidence?

23 A. No. I would say in the end our opinions are consistent,  
24 but, you know, we each follow -- every DNA analyst has to follow  
25 a set of guidelines set forth in their own laboratory based on

1     validations, which is where DNA profiles are evaluated and made  
2     conclusions on. Those are DNA profiles that we know what that  
3     mixture is.

4             We know who contributed to those. We want to make sure  
5     that process is working before we use it on DNA. Those  
6     validations have told us in this I could not exclude, so then I  
7     proceed to the next step in comparison.

8     Q.       Tell us about that next step.

9     A.       The next step is when I use a statistical software called  
10    STRmix. It's spelled S-T-R-M-I-X. That software performed a  
11    comparison between Mr. Lance and the DNA mixture of that gun.

12    Q.       Were you able to draw a conclusion after the next step of  
13    testing?

14    A.       Yes.

15    Q.       Tell us about that.

16    A.       Assuming a mixture of three individuals, this mixture DNA  
17    profile is at least 1.9 thousand times more likely to be observed  
18    if originated from three unknown unrelated individuals than if  
19    from Greg Lance and two unknown unrelated individuals. So you  
20    can think of this statistic -- it's called likelihood ratio -- as  
21    a giant set of scales weighing these two different scenarios for  
22    the evidence that we see. Based on that comparison in STRmix  
23    analysis, this statistical result provides moderate support for  
24    exclusion of Mr. Lance from that DNA mixture.

25    Q.       What does that mean, moderate exclusion?

1 A. In our scientific community -- there's a DNA community --  
2 we have developed a set of guidelines to help explain these  
3 likelihood ratio numbers to laypersons such as jury members.  
4 That falls into the category of moderate exclusion. On Page 2 of  
5 my report, there's a table that summarizes those community  
6 conclusions. Basically, when we're talking about support for one  
7 of those scenarios, 1 is uninformative result.

8 Then it proceeds to limited support, which is between 1  
9 and 100. Moderate support is between 100 and 10,000. Strong  
10 support is 10,000 to 1 million, and then everything over 1  
11 million is very strong support for one of those scenarios.

12 Q. And you've had opportunity to read Ms. Cross's affidavit;  
13 is that right?

14 A. Yes, I have.

15 Q. I want to read a statement from that, and you tell me if  
16 you agree with the conclusion. All right? "Bode Technology  
17 performed a statistical calculation that gives moderate support  
18 for the exclusion of Mr. Lance's profile. This statistical  
19 calculation shows the mixture is 1.9 thousand times more likely  
20 to be from three unknown unrelated individuals than from Mr.  
21 Lance and two unknown individuals. I agree with the exclusionary  
22 conclusion, and in my opinion the statistical calculations is  
23 further evidence that Mr. Lance is not one of the three  
24 contributors to this profile." Do you agree with that statement?

25 A. Yes.

1 Q. Just to finish up the first part as it relates to the  
2 trigger, we've got DNA from three different people?

3 A. Correct.

4 Q. One that is a man?

5 A. Yes.

6 Q. There is statistical support to exclude Greg Lance as a  
7 contributor from the sample?

8 A. Yes. If I could go back to your previous statement. At  
9 least one of them is a man.

10 Q. Thank you for pointing that out. Let me just ask this the  
11 opposite way to be sure. Did you find any evidence for inclusion  
12 of Greg Lance on DNA that was found on the trigger of the gun?

13 A. No, I did not.

14 THE COURT: I remember reading something in there that  
15 might -- I may or may not have. You can educate me. I remember  
16 reading something that says there was a portion of the sample  
17 that you couldn't read?

18 THE WITNESS: Yes.

19 THE COURT: Is that right?

20 THE WITNESS: Yes.

21 THE COURT: So tell me about that.

22 THE WITNESS: We were just talking about how many  
23 locations I need to make an interpretation. I had enough  
24 information from Contributor 1 and Contributor 2 in that mixture.  
25 I did not have sufficient information for visual comparison from

Contributor 3 at that point. Because I could not exclude Mr. Lance visually from Contributors 1 and 2, I proceeded to use STRmix software for that comparison.

STRmix does not look at each contributor individually. STRmix looks at the mixture as a whole. STRmix is actually excluding Mr. Lance from the entire mixture, whereas visually I could only do it from Contributors 1 and 2.

THE COURT: So when it says in the report there was an amount that we can't tell who it's from, you're saying you look at that DNA and couldn't tell who it was from?

THE WITNESS: Correct.

THE COURT: And then you use some formula? Is that what you use?

THE WITNESS: STRmix is a probabilistic genotyping software.

THE COURT: So it's a formula? It's not a test? There are statistics you put in there, and then it generates an opinion?

THE WITNESS: Right. It's not a test. It's a very sophisticated mathematical genetic statistical modeling software.

THE COURT: Right. Not a test?

THE WITNESS: Correct.

THE COURT: Okay. I understand.

Go ahead.

///

1 BY MR. GICHNER:

2 Q. Is STRmix reliable basis for drawing conclusions on DNA  
3 evidence?

4 A. Yes, it is.

5 Q. And is it generally accepted in the community of DNA  
6 analysis?

7 A. Yes, it is.

8 Q. Do you regularly testify about STRmix as a legitimate way  
9 to get results from DNA analysis?

10 A. Yes.

11 THE COURT: Did you test for Mr. Horn?

12 THE WITNESS: No.

13 THE COURT: Why not?

14 THE WITNESS: I wasn't provided a profile or a DNA  
15 sample for Mr. Horn.

16 THE COURT: Mr. Horn's dead, so it would be hard to test  
17 him. But you could test his son for familial DNA? Did I say  
18 that right?

19 THE WITNESS: You did, but this particular DNA profile  
20 did not meet the thresholds that we need for familial DNA.

21 THE COURT: So you don't have enough DNA in there to  
22 test for that?

23 THE WITNESS: Right. We need a certain quality and  
24 quantity of DNA for that testing.

25 THE COURT: Thank you.

1                   Next question.

2   BY MR. GICHNER:

3   Q.       Let me follow up on that quickly.  We wanted to test Mr.

4   Horn's DNA, right?  And we actually got that standard?

5   A.       I don't recall but --

6   Q.       Okay.

7   A.       -- yes.

8   Q.       But because of what you just said, we didn't have the

9   ability to do that testing, because we didn't have enough DNA

10   there to do it.  Is that accurate?

11   A.       Yes.

12   Q.       So there's another sample that's 70-2 in the Bode Report

13   that I want to ask you about.  You see in your report what 70-2

14   is?  Can you tell us about it?

15   A.       That was described as swab from the Tech9 handgun grips.

16   Q.       And were you able to recover a DNA profile from this

17   sample?

18   A.       Yes.

19   Q.       Can you tell us about that, please?

20   A.       The partial DNA profile obtained from that sample is

21   consistent with a mixture of at least two individuals, including

22   at least one male contributor.

23   Q.       And how many of the profiles that you are able to see were

24   you actually able to interpret?

25   A.       I was only able to interpret Contributor 1 from the

1 sample.

2 Q. What's the reason you couldn't interpret the other sample?

3 A. Very similar to Contributor 3 in the previous sample as we

4 did not have enough information from Contributor 2 to make a

5 conclusion on that profile.

6 Q. So as it relates to that DNA that was found on the portion

7 of the gun, we don't know. That could be anybody's in the whole

8 world. We just have no idea whose that is; is that accurate?

9 A. Yes.

10 Q. Now, the part that you were able to interpret, were you

11 able to make an exclusion as it relates to that DNA?

12 A. Yes, I was.

13 Q. Tell us about it.

14 A. I found that Gregory Lance is excluded as possible

15 contributor to the interpretable portion of that DNA profile.

16 Q. Of all the DNA that was recovered from the gun, is there

17 any interpretable DNA that matches Greg Lance?

18 A. I would say that there's no interpretable DNA that is

19 consistent with Mr. Lance.

20 MR. GICHNER: Thank you. Those are my questions.

21 THE COURT: Was there DNA done at the trial? I thought

22 there was.

23 MR. GICHNER: There was not, sir.

24 THE COURT: All right. Go ahead.

25 GENERAL GORE: What was the answer to that?



1 MR. GICHNER: There was no DNA testing.  
2 THE COURT: I thought you were done.  
3 MR. GICHNER: I am done. He asked me a question.  
4 THE COURT: Go ahead.  
5 GENERAL GORE: May I approach, Judge?  
6 THE COURT: Yes, sir.  
7 GENERAL GORE: If I could have this marked as exhibit 4,  
8 Judge (passing document.)  
9 THE COURT REPORTER: This would be 5.  
10 THE COURT: That may be 4.  
11 Do you have your report?  
12 THE WITNESS: Yes, I do.  
13 THE COURT: She's got Exhibit 4.  
14 GENERAL GORE: Can I have this marked as 5, Your Honor.  
15 THE COURT: That will be Exhibit 5.  
16 Can I have 4 back?  
17 THE WITNESS: (Passing document.)  
18 THE COURT: Thank you, ma'am.  
19 (WHEREUPON, the above-mentioned document was marked as  
20 Exhibit Number 5.)

21 **CROSS-EXAMINATION**

22 **QUESTIONS BY GENERAL GORE:**

23 Q. Ma'am, if I could hand you what's been marked as Exhibit  
24 Number 5 and ask you to peruse through that and see if you have  
25 any idea what that is.

1 A. (Witness reviews document.) This appears to be a copy of  
2 the submission form that was sent to Bode Technology.

3 Q. A submission form. What was included? What was submitted  
4 to Bode Technology?

5 A. We have a DNA sample from Tim Horn, a DNA sample of Greg  
6 Lance. I believe that's all that's listed on this form.

7 Q. So that information would -- should lead you to believe  
8 that your laboratory received a sample from Tim Horn and Greg  
9 Lance?

10 A. Yes.

11 Q. But your testimony is you did not test Mitchell Horn's  
12 DNA?

13 A. Correct.

14 Q. You then compare it to any of the evidence that Forensic  
15 Guardian sent to you?

16 A. Correct.

17 Q. Maybe this was asked, but can you tell us why?

18 A. It was never -- well, it was my understanding that it was  
19 never a question of whether Tim Horn handled the weapon or  
20 touched the weapon. We weren't looking for Tim Horn's DNA on the  
21 weapon. It was a question of, could we use Mr. Horn's DNA sample  
22 as a familial reference to compare to the DNA profile mixture we  
23 did obtain. Because the mixture DNA profile was not suitable for  
24 familial searching or familial comparison, that sample was never  
25 processed.

1 Q. But there were other tests that could have been conducted?

2 A. Can you clarify?

3 Q. There were other DNA tests you could have conducted,  
4 familial DNA testing from the sample or from the evidence that  
5 was sent to you by Forensic Guardian?

6 A. There are different types of tests that we may conduct,  
7 but that doesn't mean that every test is applicable to the  
8 evidence received or for the circumstance. So this DNA profile  
9 was not suitable for familial comparison. That's why we did not  
10 process that sample.

11 GENERAL GORE: I'd ask to enter this (passing document.)

12 THE COURT: Thank you.

13 BY GENERAL GORE:

14 Q. Ms. Shields, exactly what type of evidence or exhibits did  
15 you receive from Forensic Guardian?

16 A. May I refer to my report?

17 Q. Yes, ma'am.

18 THE COURT: Number 4?

19 THE COURT REPORTER: The report is Number 4.

20 THE WITNESS: There's actually a report that contains  
21 all --

22 THE COURT: We've got this (indicating.) I've got 3, 4,  
23 and 5.

24 THE WITNESS: So the report that contains all of the  
25 submissions from Guardian is not Exhibit 4.

1           GENERAL GORE: May I approach, Judge?

2           THE COURT: You've got it?

3           MR. GICHNER: Can I see what you got? Is it just the

4 submission form?

5           GENERAL GORE: If we could have this marked as Exhibit

6 6.

7           (WHEREUPON, the above-mentioned document was marked as

8 Exhibit Number 6.)

9 BY GENERAL GORE:

10 Q.       If I could hand you Exhibit 6 and see if you can identify

11 it, please.

12 A.       (Witness reviews document.) This is the report that I

13 prepared in this case.

14 Q.       Is that the first report you prepared in this case?

15 A.       Yes.

16 Q.       In my previous question, I asked you about the items that

17 you received from Forensic Guardian, and that report lists those

18 items; is that correct?

19 A.       Yes, it does.

20           GENERAL GORE: Judge, I'd ask to introduce Exhibit

21 Number 6, please.

22           THE COURT: Any other questions to it?

23           GENERAL GORE: Yes.

24           THE COURT: Just hold onto it.

25       ///

1 BY GENERAL GORE:

2 Q. Exhibit 6, right in the middle of the page, it lists the

3 Bode sample number and agency description; is that accurate?

4 A. Yes.

5 Q. That is the evidence you received from Forensic Guardian;

6 is that correct?

7 A. It's not a complete listing, but, yes, this is a list of

8 the evidence I received.

9 Q. Okay. What did you receive?

10 A. The DNA sample of Gregory Lance.

11 Q. A decade later?

12 A. Yes.

13 Q. And we'll refer to this, if that's okay, as July 18<sup>th</sup>,

14 2023, report.

15 A. Okay.

16 Q. Is that okay?

17 A. Yes.

18 Q. When your lab received these items, how did you begin your

19 testing and analysis of these items?

20 A. As the DNA analyst overseeing the case, I directed the

21 laboratory examination. Because these were just swabs, that was

22 very simple. A DNA technician took the evidence into the

23 laboratory, proceeded to sample those swabs, extracted the DNA,

24 performed a test called a Quant --

25 Q. Can I interrupt you just --

1 A. Yes.

2 Q. What you received from Forensic Guardian were simply  
3 swabs?

4 A. Correct.

5 Q. There had been no DNA extracted from any of the evidence  
6 that was sent to you?

7 A. I don't know if it was previously done, but we just  
8 received those swabs. And that's what we used to create DNA  
9 profiles.

10 Q. Again, all you received were swabs, no extracted DNA?

11 A. I believe so, yes.

12 Q. And then when you got the swabs that's when your lab began  
13 the analysis?

14 A. Correct.

15 Q. And then I interrupted you. What were the next steps your  
16 laboratory conducted?

17 A. Briefly, that first step is sampling of the swabs. The  
18 second step is extraction where you're purifying and isolating  
19 the DNA present in each sample. The next step is called a Quant,  
20 which is to see how much DNA is present in each sample.

21 Of that total amount of DNA, how much is male. Next we  
22 would do amplification, which you can think of as a molecular  
23 Xerox machine making millions and millions of copies of the DNA.  
24 Finally, that copied DNA is put on a machine called genetic  
25 analyzer, which essentially translates all that copied DNA and

1 locations in DNA that we would want to test. We get raw data  
2 that I as an analyst then evaluate for suitability of  
3 interpretation, and I do comparisons when it's appropriate.

4 Q. Okay. And you list on your report the evidence that was  
5 processed for DNA typing using the GlobalFiler kit?

6 A. Yes.

7 Q. What is GlobalFiler kit?

8 A. That is the set of chemicals used to isolate the different  
9 locations of DNA that we want to test. There are different,  
10 quote, unquote, kits that we can use. GlobalFiler is one of  
11 them.

12 Q. You have to have validation studies to be able to use this  
13 kit?

14 A. Yes.

15 Q. Those validation studies are what?

16 A. Validations are when -- I think I touched on this earlier  
17 -- we process mock cases and mock samples where we make up  
18 single-source samples, mixtures, all kinds of different DNA  
19 profiles, and then we test them with the set of chemicals that we  
20 want to use. In this case, it's the GlobalFiler kit. So what  
21 we're doing in our laboratory is making sure that kit operates  
22 according to how it should according to manufacturer. The  
23 manufacturer has previously done their own validations on that  
24 set of chemicals as well.

25 Q. You testified earlier that you reviewed Ms. Cross's

1 declaration; is that accurate?

2 A. Yes.

3 Q. Have you reviewed her work that she conducted in this

4 case?

5 A. No, I did not.

6 Q. Do you know if she conducted any of the things that you

7 have conducted that your laboratory did?

8 A. I'm not aware.

9 Q. Let's go to Number 1 in your report there. "Partial DNA

10 profile obtained from sample. E-01 is consistent with the

11 mixture of three with at least one male contributor." Correct?

12 A. Correct.

13 Q. Down below there, you say, "Due to the complexity of the

14 mixture, no conclusions can be made from this mixture profile."

15 A. Correct.

16 Q. That was your first report, correct?

17 A. Yes.

18 Q. Can you explain to us what "due to the complexity of the

19 mixture" means and why you were unable to reach a conclusion?

20 A. So earlier I talked about CODIS and how we have an

21 agreement with a laboratory that can accept profiles for entry

22 into CODIS. Once that agreement is made, testing begins. That

23 means we have to operate according to that laboratory's -- the

24 kit they use and the type of interpretation they use. Because

25 the Tennessee Bureau of Investigation uses GlobalFiler, we use



1 GlobalFiler.

2 They use binary system interpretation, so that's what was  
3 used for the first report so that Tennessee Bureau of  
4 Investigation could accept that for CODIS upload. The  
5 conclusions in the first report were operating according to those  
6 parameters that the Tennessee Bureau of Investigation needed to  
7 see in order to accept that data for upload.

8 The second report involves STRmix interpretation. TBI  
9 does not align with STRmix, so we could not interpret the  
10 original data for them using STRmix, because they needed to be  
11 able to review that data. Because they don't have policies in  
12 place for STRmix, they could not do that with STRmix.

13 Q. But that's not -- you simply say, "Due to the complexity  
14 of the mixture".

15 A. Yes, I'm sorry. I forgot that part of the question.

16 Q. Okay.

17 A. So using binary interpretation, if you have a mixture of  
18 more than two people -- so in this case three individuals -- that  
19 mixture is too complex for that binary interpretation. Based on  
20 those interpretation guidelines, I have to say this is a mixture  
21 of three or more individuals, and, due to the complexity of that  
22 mixture, I could not make an interpretation using that binary  
23 interpretation protocol.

24 Q. But you have the capability to use interpretation  
25 involving three or more contributors, right? Your laboratory has

1     that ability?

2     A.       Our laboratory does, yes, but the Tennessee Bureau of  
3     Investigation does not.

4     Q.       So you limited your conclusion and work based on what  
5     Tennessee Bureau of Investigation -- what their policies were?

6     A.       Yes. And that was so that if there was something they  
7     deemed suitable for CODIS, that could be uploaded at that time.  
8     We could always go back and interpret using STRmix later.

9     Q.       Looking at Number 2 here, this is in reference to E-02.  
10    You said it was consistent with mixture of at least two  
11    individuals, including at least one male contributor?

12   A.       Correct.

13   Q.       Below that, you say, "Due to the possibility of allelic  
14   dropout, no conclusions can be made from this mixture profile."

15   A.       Correct.

16   Q.       Can you tell us what allelic dropout is?

17   A.       Yes. Allelic dropout is when we are not seeing all of the  
18   information that's represented in that DNA mixture. With binary  
19   interpretation, we do need to see more information than as needed  
20   with STRmix interpretation. Again, under binary interpretation  
21   pools I wasn't seeing enough information from both of those  
22   contributors to be able to interpret that mixture at that time.

23   Q.       Number 4, you reference three samples. You say they were  
24   screened for new DNA and results were below the detection, and,  
25   therefore, the samples were not processed. Is that accurate?

1 A. Yes.

2 Q. Let me ask you to look at the notes portion of it. Number  
3 7, "The submitted evidence associated with samples E-01, E-02, E-  
4 03, E-04, E05, E06, E-07 was consumed." What does that mean?

5 A. That means that all the swabs sent to our laboratory were  
6 consumed during that extraction procedure, so we used all the  
7 swabs they sent us to try to generate a DNA profile.

8 Q. So when you consume the evidence -- and you've done  
9 subsequent testing in this case -- if you have consumed it, how  
10 are you able to do subsequent testing of the evidence?

11 A. I did a subsequent interpretation of the DNA profiles that  
12 were already obtained.

13 Q. So the first report we're looking at is your original  
14 interpretation of the data?

15 A. Yes. That is the interpretation based on binary  
16 protocols.

17 Q. Do you know if Ms. Cross gave an original interpretation  
18 as to your first run of data?

19 A. I don't know.

20 Q. So then the evidence is consumed, and then you reevaluate  
21 or reinterpret the data; is that correct?

22 A. Yes. I reinterpreted the DNA profiles that were  
23 previously obtained.

24 Q. Okay. So when you use STRmix the first time, there's  
25 really no other testing performed. It was more analytical work;

1 would that be fair?

2 A. Yes.

3 Q. When I say analytical work, we are talking about  
4 statistical calculations?

5 A. Yes. STRmix interpretation actually involves two stages.  
6 The first is the deconvolution, so think of a mixture as kind of  
7 a tangle of DNA profiles. STRmix separates those contributors to  
8 the DNA mixture into what is most likely each contributor, so  
9 that's the first stage.

10 The second stage of STRmix is when you're actually doing a  
11 comparison to a specific individual. For the second report, I  
12 performed all of those STRmix procedures on the two profiles that  
13 I did have interpretable data for.

14 Q. Do you know if Ms. Cross performed STRmix procedures?

15 A. I don't know.

16 Q. Well, by looking at her declaration, does it appear that  
17 she has done those STRmix procedures?

18 A. I looked at it a couple months ago, so I remember her  
19 conclusions but don't remember every single part of it.

20 Q. Going back to Number 7, there's a sentence here. "The  
21 secondary evidence generated by Bode associated with Sample E-01,  
22 E-02, E-05, E-06 was consumed. Secondary evidence will be  
23 returned to Forensic Guardian." So after your initial  
24 interpretation of the data, you got asked to reinterpret the data  
25 again a second time; is that correct?

1 A. Yes. If I remember correctly, I reached out and said  
2 there was further interpretation that could be done. We sent the  
3 initial report to TBI first just in case they see something that  
4 is superfluous, and then later I can issue another interpretation  
5 of that data.

6 Q. Let me ask you about your supplemental report that's  
7 already been introduced. I don't know if you have that in front  
8 of you.

9 A. I don't have it.

10 THE COURT: What is it?

11 GENERAL GORE: It's the supplemental report, Judge,  
12 dated September 18, 2023. It's been introduced. I don't  
13 remember the exhibit number.

14 THE COURT REPORTER: Exhibit 6.

15 THE COURT: I think you got 6.

16 Is that the supplemental report?

17 THE WITNESS: No, I think Exhibit 4.

18 THE COURT: This is (indicating?)

19 THE WITNESS: No.

20 THE COURT: Is that it (indicating?)

21 THE WITNESS: Yes.

22 THE COURT: Is that what you're talking about? What  
23 exhibit is that?

24 THE WITNESS: Exhibit 4.

25 ///

1 BY GENERAL GORE:

2 Q. I'm referring to -- under the STR processing, results,  
3 conclusions, and statistics section. Number 1 regarding the  
4 sample E-01, that is the swab from the Tech9 handgun trigger  
5 nooks and crannies. I don't want to rehash the same ground, but  
6 you have three contributors in that profile?

7 A. Correct.

8 Q. Two were suitable for interpretation?

9 A. Yes.

10 Q. Contributor 3 was uninterpretable?

11 A. Yes.

12 Q. You then ran STRmix statistical calculation and came up  
13 with likelihood ratio?

14 A. Yes.

15 Q. What's the likelihood ratio?

16 A. Assuming the mixture of three individuals, this mixture  
17 DNA profile is at least 1.9 thousand times more likely to be  
18 observed if originated from three unknown unrelated individuals  
19 than if it originated from Gregory Lance and two unknown  
20 unrelated individuals.

21 Q. So the statistical calculation is formulated based on  
22 three unknown unrelated individuals in comparison to Greg Lance's  
23 DNA?

24 A. Correct.

25 Q. What if those people are related to Greg Lance?

1 A. That's a possibility, but STRmix -- when we look at it in  
2 the context of this profile and this analysis and interpretation  
3 doesn't make a distinction. If I were given a DNA profile of  
4 someone who was related to Greg Lance, I could perform the same,  
5 you know, comparison.

6 Q. Well, let me ask you this, if in the pleadings the -- in  
7 the investigation of this case, there was a -- the defendant's  
8 mother may have touched the firearm. Would it have been  
9 important for you to have a standard from the defendant's mother?

10 A. No.

11 Q. Okay. Tell me why.

12 A. Sometimes if a person is known to be present on the item  
13 of evidence -- for example, sexual assaults. We get swabs from  
14 people's bodies. We get their DNA profile, because we expect  
15 their DNA profile to be on their own body. Let's say there's a  
16 stolen vehicle, and we get swabs from the steering wheel.

17 I want the driver of that car's DNA profile so I can use  
18 that for comparison. If I was told someone may have touched an  
19 object, that doesn't meet our laboratory's requirements to say  
20 that person is assumed or expected to be on the item. If I were  
21 to be given the DNA profile of someone who may have touched this  
22 item, I would perform the same comparison that I did with Gregory  
23 Lance's profile.

24 Q. What chances of statistical calculation?

25 A. No. Based on the scenario you just gave me, I would not.

1 Q. When you say moderate support for exclusion, that is  
2 simple a verbal scale that you use in your field of expertise,  
3 correct?

4 A. Yes.

5 Q. It's not a conclusory statement?

6 A. No.

7 Q. The conclusion would come from the trier of fact; would  
8 that be accurate?

9 MR. GICHNER: I'm gonna object to that. I think that's  
10 beyond the scope of what this witness --

11 THE COURT: I'll overrule.

12 THE WITNESS: That is a verbal scale that we adopted to  
13 help the trier of fact understand what these statistics mean.  
14 Unless you're a DNA analyst, you have no idea what kind of  
15 numbers we do get on occasion with likelihood ratios. That is a  
16 scale that can be used by a jury or judge to understand what this  
17 means.

18 BY GENERAL GORE:

19 Q. Similar to -- the likelihood ratio is similar to the --  
20 you're gonna correct me here but -- CPI or CPE, correct?

21 A. CPI and CPE are binary statistical methods used for  
22 comparisons with DNA mixtures. CPI stands for Combined  
23 Probability Inclusion. CPE is Combined Probability Exclusion.  
24 Those are -- that's the statistical method that could be used,  
25 but STRmix represents a more sophisticated software that can get



1 a better use of that mixture data.

2 Q. In your expertise, when you use CPI or CPE to either  
3 include or exclude somebody you're using a statistic, correct?

4 A. Yes.

5 Q. You don't say definitively this is not the defendant's DNA  
6 or this is the defendant's DNA?

7 A. Actually, we can use non-statistical analysis to exclude  
8 someone. We cannot use that to include. So if I say someone  
9 could be included in a mixture or DNA profile, I provide a  
10 statistic that gives weight to that.

11 I could never say, yes, this person is definitely in this  
12 mixture unless it came from their body or their car. I don't  
13 make that statement. I provide that statistical analysis to  
14 provide weight to a conclusion.

15 Q. Your work and your expertise in your report wouldn't tell  
16 the trier of fact if Greg Lance ever touched the murder weapon in  
17 this case?

18 A. That's correct.

19 Q. It wouldn't tell the trier of fact whether the DNA had  
20 been degraded on the murder weapon?

21 A. I think some of that STRmix analysis with my experience as  
22 an analyst could inform whether the DNA is possibly degraded, but  
23 the statistical analysis does not say that.

24 Q. Would you opine as to degradation of DNA? Have you ever  
25 opined that before?

1 A. Yes, I have.

2 Q. Moving on to E-02, which is the swab from the Tech9

3 handgun/grips. In that sample, you found a mixture of two

4 individuals with at least one male contributor, correct?

5 A. I found that it was a mixture of at least two individuals,

6 including at least one male.

7 Q. Contributor 1 was suitable for interpretation, correct?

8 A. Correct.

9 Q. You excluded Greg Lance as being Contributor Number 1?

10 A. Yes.

11 Q. As to Contributor Number 2, that data was uninterpretable?

12 A. Correct.

13 Q. You did not and could not exclude, as was asked of you --

14 you did not exclude Greg Lance as being a contributor. His DNA

15 being Contributor 2's DNA?

16 A. Correct.

17 GENERAL GORE: That's all. Thank you.

18 THE COURT: Redirect.

19 MR. GICHNER: Thank you.

20 **REDIRECT EXAMINATION**

21 **QUESTIONS BY MR. GICHNER:**

22 Q. Ms. Shields, you can't exclude anybody from

23 uninterpretable data, can you?

24 A. I cannot, no. The exception to that is using STRmix as I

25 did with the first sample that we discussed.

1 Q. Right. Fair to say when the evidence was first submitted,  
2 was there a discussion amongst Bode, TBI, and Guardian for the  
3 plan that would be put in place for how the testing would be  
4 accomplished?

5 A. Yes, I believe there was.

6 Q. And was the reason you did the type of binary test you did  
7 initially is because we were hoping we'd get a profile that could  
8 be put into CODIS to identify a third party suspect?

9 A. That's correct.

10 Q. And we just didn't get enough DNA profile that it could go  
11 into CODIS?

12 A. Correct. Again, that was TBI's decision.

13 Q. Right.

14 A. I wasn't part of that.

15 Q. So from there is when you moved on to the second step  
16 where we started looking at whether we could do an exclusion,  
17 because we couldn't develop a third party profile. And that's  
18 why we looked at Greg Lance's standard?

19 A. Correct.

20 Q. So your July report and your followup report, there's no  
21 inconsistencies between that. We just did further analysis,  
22 because we moved to the exclusion stage; is that accurate?

23 A. That's correct. The second report involved a more  
24 sophisticated interpretation method.

25 Q. As it relates to Tim Horn, we voluntarily sent you that,

1 right?

2 A. Yes.

3 Q. And the reason for that is because we wanted to do

4 familial testing. It's not that we didn't want to do it. It's

5 that we couldn't do it with the DNA that we had; is that right?

6 A. Yes.

7 Q. All of the interpretable DNA that was lifted from that

8 gun, none of it matches Greg Lance, does it?

9 A. No, it doesn't.

10 MR. GICHNER: That's all.

11 THE COURT: No other questions?

12 GENERAL GORE: No, Judge.

13 THE COURT: Help me understand. Put your teacher helmet

14 on.

15 THE WITNESS: Okay.

16 THE COURT: So you have this DNA testing that you do, a

17 binary test?

18 THE WITNESS: We call it binary.

19 THE COURT: You have a binary test to do that, and

20 that's accepted by the TBI. If it comes back, then they will let

21 you run it to see if it goes into CODIS?

22 THE WITNESS: Right. Because they need to be trained in

23 and understand STRmix in order to evaluate that.

24 THE COURT: They don't do STRmix.

25 THE WITNESS: Right. And that's why we --

1           THE COURT: They say, 'We don't do STRmix.'

2           THE WITNESS: Right. That's why we used what they

3 understood.

4           THE COURT: Right. Got it. And so in your experience,

5 have you used the STRmix thing to exclude people? You said you

6 could not include people and could only exclude people. Is that

7 right?

8           THE WITNESS: STRmix can be used inclusionary also. I

9 have definitely testified when people are included using STRmix.

10          THE COURT: In a criminal trial, using STRmix formula?

11 Not testing but using a formula?

12          THE WITNESS: Yes.

13          THE COURT: Okay. And then did you say in regard to the

14 grip that you could not exclude Mr. Lance in regard to, I think

15 you said Number 2?

16          THE WITNESS: Right. Contributor 2 was not

17 interpretable. I did exclude him from Contributor 1.

18          THE COURT: You can exclude him from Contributor 1 on

19 the grip?

20          THE WITNESS: Yes.

21          THE COURT: Not the trigger?

22          THE WITNESS: Right.

23          THE COURT: And what in your expertise -- I think they

24 admitted that this gun has been, strangely enough, not in a

25 sealed -- you and I are used to sealed stuff. You can't open it

1 unless you put your initials on it and all that stuff. This gun  
2 just -- if anybody wanted to come up and look at it and touch it,  
3 whatever, they could come up and handle the gun over the last 20  
4 years. I assume you wouldn't think in your expertise -- that's  
5 not a good thing in regard to subsequent testing?

6 THE WITNESS: It's certainly not recommended.

7 THE COURT: Right. And if that happens, does that  
8 degrade the amount of DNA or -- or if I touch these glasses, 20  
9 years later can you come up and test these glasses and go, 'Okay,  
10 yeah, that's Judge Ash's right there. He touched it'? If I had  
11 these glasses setting around the house, and my family touches  
12 them and the dog licks it and takes it all over the place, can  
13 you test it then to see if DNA is there?

14 THE WITNESS: I can, so --

15 THE COURT: Would it come -- and do you think it would  
16 stay after 20 years and everybody in my family has touched it?

17 THE WITNESS: It could potentially stay there. If it  
18 does depends on a lot of different factors.

19 THE COURT: Sure. It could potentially stay there, and  
20 it's better if after I touch it we wrap it up, seal it, put it in  
21 a bag, and put initials, nobody messes with it except you or  
22 whoever takes the swab?

23 THE WITNESS: Right.

24 THE COURT: And you didn't take the swabs. Somebody  
25 else took the swabs?

1 THE WITNESS: Correct.

2 THE COURT: Very interesting. You did a very good job  
3 explaining. Thank you. I understand.

4 Any other questions based on my questions?

5 MR. GICHNER: Just a very quick followup to what you  
6 said, Your Honor.

7 BY MR. GICHNER:

8 Q. The fact that the evidence wasn't preserved as it should  
9 have been, I think, is a fair statement, but even if lots of  
10 people touched the evidence, it doesn't discount the  
11 interpretable DNA you find, does it? Those results are still  
12 valid?

13 A. Yes, they are. You know, talking about touching an item  
14 and how that affects the DNA we could get from swabbing it, you  
15 could potentially remove DNA if you touch something. Certainly,  
16 if you clean something, you are removing DNA, biological  
17 material.

18 I think the bigger question of how it was stored was, you  
19 know, humidity controlled or temperature controlled or bacteria  
20 could be on it. That could potentially degrade DNA. Those are  
21 the bigger questions that affect the DNA profile that could be  
22 obtained.

23 THE COURT: And you don't know the answer to that at  
24 all?

25 THE WITNESS: Correct.

1 BY MR. GICHNER:

2 Q. But we did get DNA?

3 A. Yes.

4 Q. And of the DNA that we got that we could interpret, that's  
5 not Greg Lance's DNA?

6 A. Correct.

7 THE COURT: Other questions based on mine?

8 **RECROSS EXAMINATION**

9 **QUESTIONS BY GENERAL GORE:**

10 Q. Ms. Shields, if this evidence, the Tech9 firearm, was  
11 located in the clerk's office and was open to the public for  
12 members of the public to come in and view and inspect, and they  
13 handled that evidence, the Tech9, without any CPE, gloves, mask,  
14 or anything, would there be a possibility that evidence is  
15 contaminated?

16 A. Yes.

17 Q. And that contamination could potentially affect DNA  
18 testing, correct?

19 A. It could in the sense that it could affect the DNA  
20 profiles that are present on the gun, yes. I wouldn't expect  
21 anyone touching it or talking over the item to affect how the DNA  
22 -- the DNA degradation. It wouldn't affect that necessarily.

23 Q. Would you expect if someone touched it you would expect to  
24 find their DNA on the weapon?

25 A. Not necessarily. I could touch this table. I'm not



1 necessarily leaving behind a detectable amount of DNA.

2 I might be. I might be leaving behind a lot, but I also  
3 might not be leaving behind much. That much transfer -- how much  
4 DNA is transferred depends on a lot of things, so I can't have an  
5 opinion on whether someone briefly touching it left behind a  
6 detectable amount of DNA.

7 Q. If you were asked to conduct DNA testing and that was the  
8 circumstances that you were familiar with, you would conduct the  
9 DNA testing, right, because there would be a possibility you  
10 could get DNA evidence off that object?

11 A. Yes.

12 Q. If another person came in and touched that evidence, that  
13 would be a further possibility of more contamination; is that  
14 fair?

15 A. Yes.

16 Q. The more people that done that over the years would be  
17 even further possibility contamination?

18 A. It's possible, yes.

19 Q. And all that would impact the DNA evidence; would that be  
20 fair?

21 A. I think it could impact the DNA evidence.

22 GENERAL GORE: That's all.

23 MR. GICHNER: Just a followup as to that.

24 THE COURT: Absolutely.

25 ///

**FURTHER EXAMINATION**

**QUESTIONS BY MR. GICHNER:**

Q. But it's not like it messes up the results that we get from those profiles. Those profiles are what they are. I understand the point that many people could have touched this.

Sometimes you get the DNA; sometimes you don't. But when you get a profile, that's the profile regardless of whether people have touched the evidence over the years. Am I right about that?

A. Correct.

MR. GICHNER: Thank you.

THE COURT: But whose profile do you get?

THE WITNESS: You know, short answers -- there's so many factors that we just have to do the test and see what we get.

THE COURT: And that's what you did?

THE WITNESS: Yes.

THE COURT: And that's how you came to your different results?

THE WITNESS: Yes.

THE COURT: All right. Makes sense.

BY MR. GICHNER:

Q. And the best you could get to with testing were exclusionary results even though we wanted to try to get inclusionary results; is that fair?

A. Correct. To be clear, these profiles could be used for

1 inclusion if standards were submitted. In this case, it was only  
2 exclusions.

3 MR. GICHNER: Thank you.

4 THE COURT: But you could exclude Mr. Lance on the  
5 trigger?

6 THE WITNESS: Yes.

7 THE COURT: But you could not exclude him in regard to  
8 the grip?

9 THE WITNESS: I could exclude him from part of the  
10 profile but not the entire mixture.

11 THE COURT: That's right, because there were three,  
12 right?

13 THE WITNESS: There were three on the trigger and two on  
14 grips.

15 THE COURT: Two on grip. Okay. Very good.

16 BY MR. GICHNER:

17 Q. And you can't exclude Mr. Lance, because you can't exclude  
18 anybody from that part of it, right?

19 A. Yes. From Contributor 2 on the grips.

20 MR. GICHNER: Thank you.

21 THE COURT: Thank you, ma'am. You may step down.

22 (WHEREUPON, the witness stepped down.)

23 THE COURT: It's 12:00 noon, so we'll go ahead and break  
24 for lunch. Y'all be back at 1:00, and we will start back then.

25 (Lunch break)

1 (END OF VOLUME I)  
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# REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, ERICA MURPHY, Court Reporter, with offices in Nashville, Tennessee, hereby certified that I reported the foregoing PCR hearing of **GREG LANCE VS. STATE OF TENNESSEE**, by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

I further certify that in order for this document to be considered a true and correct copy, it must bear my original signature, and that any unauthorized reproduction in whole or in part and/or transfer of this document is not authorized, will not be considered authentic, and will be in violation of Tennessee Code Annotated 39-14-149 Services.

ERICA MURPHY  
Court Reporter

1                   IN THE CIRCUIT COURT OF PUTNAM COUNTY, TENNESSEE

2                                   AT COOKEVILLE

3       **GREG LANCE,**

4                   **Petitioner,**

5       **VS.**

CASE NO. 2021-CR-1152

6       **STATE OF TENNESSEE,**

7                   **Respondent.**

8  
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10  
11                                   **PCR - VOLUME II**

12                                   **HONORABLE DON ASH**

13                                   **JULY 2ND, 2024**

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(BEGINNING OF VOLUME II)

THE COURT: Thank you. Have a seat, please.

Counsel, who's next?

MR. ESQUIVEL: Katherine Cross, Your Honor.

THE COURT: Okay.

(WHEREUPON, the witness took the stand.)

\* \* \*

**KATHERINE CROSS,**

**was called as a witness, and having first been duly sworn,**

**testified as follows:**

THE COURT: Speak into that microphone in front of you.  
Tell me your first name and last name and spell both.

THE WITNESS: Katherine Cross. K-A-T-H-E-R-I-N-E, C-R-  
O-S-S.

THE COURT: Questions, counsel.

**DIRECT EXAMINATION**

**QUESTIONS BY MR. GICHNER:**

Q. Ms. Cross, where are you employed, and what do you do for  
a living?

A. I am a forensic biologist and DNA technical leader at  
Guardian Forensic Sciences.

Q. What does it mean to be the DNA technical leader?

A. That means in addition to my core responsibilities, I have  
responsibility of ensuring and maintaining the DNA and biology  
testing program, the SOPs, and policies and procedures associated

1 with that, making sure analysts have their requisite proficiency  
2 tests and continuing education. Everything that goes along with  
3 the accreditation process or the laboratory are what I'm  
4 responsible for.

5 Q. And tell us a little bit about your educational and  
6 professional background that qualifies you to do the work.

7 A. I have a Bachelors of Science in biology with a  
8 concentration in genetics from the University of North Carolina  
9 in Charlotte. I also have a Masters of Pharmacology with a  
10 concentration in forensic DNA serology from the University of  
11 Florida.

12 MR. GICHNER: Your Honor, if I may approach and hand her  
13 a copy of her CV?

14 THE COURT: Yes, sir.

15 BY MR. GICHNER:

16 Q. Ms. Cross, please take a look at this and tell me if this  
17 is an accurate and up-to-date copy of your CV(passing document.)

18 A. (Witness reviews document.) Yes, it is.

19 MR. GICHNER: I'd ask to make that the next exhibit to  
20 the hearing, Your Honor.

21 THE COURT: Will that be 7?

22 THE COURT REPORTER: That will be 7.

23 (WHEREUPON, the above-mentioned document was marked as  
24 Exhibit Number 7.)

25 ///

1 BY MR. GICHNER:

2 Q. Ms. Cross, how long have you worked in the field of  
3 forensic serology?

4 A. Over 30 years now.

5 Q. Have you ever testified as an expert in DNA in court  
6 before?

7 A. Yes, I have.

8 Q. Have you, in fact, testified as an expert in DNA in this  
9 court before in a previous hearing we had?

10 A. Yes, I have.

11 MR. GICHNER: Your Honor, I would ask that Ms. Cross be  
12 admitted to testify as an expert in DNA in this case.

13 THE COURT: Was that a pleasant experience for you last  
14 time you testified in front of me?

15 THE WITNESS: Yes, it was.

16 THE COURT: Very good.

17 GENERAL GORE: No objection, Judge.

18 THE COURT: All right. I will allow her to give her  
19 opinion.

20 MR. GICHNER: Thank you, Your Honor.

21 BY MR. GICHNER:

22 Q. Ms. Cross, I'm gonna try to be efficient and not rehash  
23 all the stuff we went over with Ms. Shields, but, after the last  
24 court hearing we had where the Judge ordered the forensic  
25 testing, can you please explain to the Court what role you played

1 in terms of testing or swabbing the evidence and getting it to  
2 Bode to do the analysis?

3 A. Yes. My role has been -- since the last hearing, I have  
4 been involved in multiple meetings and logistical strategy of how  
5 the samples could be analyzed and potentially be put into CODIS  
6 where they would be eligible for CODIS entry. The decisions that  
7 were made and what eventually ended up happening is the evidence  
8 was sent to me at Guardian. I did the initial evaluation and  
9 swabbing of those samples from evidence, but, because of the  
10 rules and regulations for CODIS entry, I could not do the DNA  
11 testing myself.

12 But Bode already had agreement with TBI to allow their  
13 data to be uploaded if it was eligible. Once I had collected the  
14 samples off of the evidence, those were sent to Bode where the  
15 samples were actually physically analyzed for DNA analyses, and  
16 those results were then provided to me for review as well as  
17 further discussions of what potential testing could be done after  
18 that initial.

19 Q. So let's unpack that a little bit. You said you initially  
20 evaluated and swabbed the evidence in the case. What does that  
21 mean?

22 A. That means when the evidence was sent to me, I had  
23 inventory of everything that was sent. Things were photographed.  
24 They were documented as to what condition they were in.

25 In one of the strategy meetings, we had determined which

1 samples were Tier 1 or our first round samples we wanted to test.  
2 Those went through further evaluation process where they were  
3 more closely photo documented. I evaluated areas that would be  
4 the best potential for collection for DNA, and then I made those  
5 collections.

6 Q. When we were having these discussions about you doing the  
7 swabbing and analysis happening over at Bode, were all of these  
8 done in consultation with TBI with the aim towards hopefully  
9 being able to enter a profile into CODIS?

10 A. Yes. Everything -- TBI was involved in some of those  
11 discussions were as to what they needed to see for potential  
12 CODIS entry, and the real logistical issue with that is all of  
13 these decisions have to be made before we even open the evidence.  
14 We have no idea if it's even going to be suitable for CODIS  
15 entry, but everything we do needs to be in mind that it could be  
16 uploaded so we do have the proper procedures.

17 Q. Is that essentially because TBI needs to effectively give  
18 their blessing to be able to plan if we get a profile that they  
19 put it into CODIS?

20 A. Yes. They have to take ownership of any results that are  
21 obtained, so in order to do that, they have to approve the  
22 testing process. The laboratories have to be evaluated. The  
23 initial analysis has to be done using their parameters.

24 Q. How did you make the decision of what parts of the  
25 evidence to swab in terms of trying to turn up biological

1 samples?

2 A. Well, my main focus, knowing the history and background of  
3 some of these items and potential contamination, my focus was to  
4 try areas that are least likely to be contaminated. In fact, one  
5 of the samples specifically off of the Tech9 was off the nooks  
6 and crannies and smaller spaces where cells can get into those  
7 spaces, but it's going to take multiple times of holding that  
8 item in order to get those into the nooks and crannies. So  
9 places where -- like the screw that's holding something onto the  
10 gun, those are indentations where cellular material collect. So  
11 those are the areas I was focusing on, not just open surfaces  
12 where someone was casually touching it might have touched.

13 Q. After you swabbed the evidence, did you send it over to  
14 Bode?

15 A. Yes, I did.

16 Q. Bode does the analysis and then issues a report that you  
17 get a copy of; is that what happens?

18 A. Yes.

19 Q. All right.

20 A. And I issues my own report on what I had done to that  
21 point after the samples were forwarded.

22 Q. Right. But you hadn't done any DNA testing at that point?

23 A. No, I had not.

24 Q. You had made the decision about what to swab. You had  
25 swabbed the evidence, and then you sent those swabs to Bode for

1 the analysis so we would be in compliance with the TBI  
2 regulations?

3 A. That's correct.

4 Q. Got it. So when you get the report back from Bode, do you  
5 evaluate the report and the data and underlying conclusions?

6 A. Yes, I do.

7 MR. GICHNER: If Ms. Cross could be handed Exhibit 4,  
8 please.

9 THE COURT: Ask that again.

10 MR. GICHNER: If Ms. Cross could be handed Exhibit 4.

11 THE COURT: Sure (passing document.)

12 MR. GICHNER: Thank you, Your Honor.

13 BY MR. GICHNER:

14 Q. Do you recognize that report?

15 A. (Witness reviews document.) Yes, I do.

16 Q. Okay. Is that the final report we got from Bode as to the  
17 conclusions related to the profiles that were lifted off of the  
18 Tech9?

19 A. Yes. This is the actual report that has the comparisons  
20 in it.

21 Q. And you heard Ms. Shields talk about this stuff, but there  
22 are essentially two areas of the fun that are at issue in terms  
23 of DNA. So there's the trigger release portion, and then there's  
24 another portion of the gun, right?

25 A. Yes.

1 Q. Let's talk about the trigger portion release first. Did  
2 you hear Ms. Shields testify that she did not visually exclude  
3 Mr. Lance based on her analysis of the data. Her exclusion did  
4 not come until she had done the STRmix extraction analysis?

5 A. Yes.

6 Q. Were you able to reach a conclusion as to a visual  
7 exclusion for the trigger release DNA that was found?

8 A. Yes. This report actually has trigger release as  
9 basically one place, but it was the trigger release mechanism  
10 that's actually two different places on the gun.

11 Q. Thank you for clarifying that. What was the conclusion  
12 that you reached in terms of a visual exclusion?

13 A. Based on my experience and laboratory policy, I could  
14 visually exclude Mr. Lance from being a contributor to that  
15 sample.

16 Q. Can you just explain why you were able to reach a visual  
17 exclusion and Ms. Shields was unable to reach a visual exclusion?

18 A. Yes. Most of it has to do with the laboratory policies  
19 and procedures that they put in place. Everybody in the forensic  
20 science field, once the data gets generated, they're going to all  
21 agree, yes, that's an allele call or, no, that's not an allele  
22 call. We're not ever going to dispute what the data -- the pure  
23 data is. What's going to be somewhat disputed or interpreted  
24 slightly differently between laboratories is going to be because  
25 of policies in place.



1           I know that Ms. Shields said this morning that they have a  
2 policy that they have to have data at so many areas before they  
3 can make an inclusion or exclusion, and that's very common with a  
4 lot of laboratories. Our laboratory does not have that  
5 requirement, because there is a difference -- a lot of  
6 laboratories have the same threshold for both. But there's  
7 actually a difference in the ability to exclude someone than to  
8 include. You need far more data to include someone as a  
9 contributor than you need to be able to exclude.

10 Q.       So what is it that you're actually looking at through the  
11 data to inform you that you can make an exclusion?

12 A.       Well, what we're looking at is, first of all, what is  
13 present and what is not present. So we are looking at requisite  
14 alleles which are the alleles that we see in a profile. These  
15 are the ones we know an individual has. Then we compare that to  
16 the question sample.

17           Are we seeing all of those? Are we only seeing a few of  
18 them? How common are the ones that we are seeing? Is this an  
19 allele that 40 percent of the population may share?

20           So it really doesn't mean a whole lot if our person of  
21 interest has that allele that is missing ten others. We are  
22 looking for both what is there, what isn't there, how much of  
23 each is present. And another thing that we can take into account  
24 are -- in the data itself, we're looking at the peak heights of  
25 those alleles or how strong they are. If they're from the same

1 person, it should be a relatively equal strength, because one  
2 comes from mom and one from dad.

3 They're gonna be equal. If we're seeing something that is  
4 -- we use RFUs, relative fluorescent units. It's a measurement  
5 of how tall or how strong these peaks are. If we see a peak  
6 that's 100 RFUs and it's paired -- the reference profile has two  
7 peaks, and they're both showing up.

8 One is at 100, and one is at 20. Those are likely not  
9 coming from the same person. We can use peak heights to also  
10 help us interpret whether this is multiple people contributing  
11 the same allele or whether it's just not consistent with being  
12 that particular individual.

13 Q. So you reached a conclusion based on a visual inspection  
14 that Mr. Lance was excluded from the trigger and release portions  
15 of the gun?

16 A. Yes.

17 Q. And did Ms. Shields and Bode eventually come to an  
18 exclusion opinion on that as well?

19 A. Yes. They were not, because their policies were unable to  
20 make a visual exclusion. So they went another step to a  
21 statistical interpretation, which allowed them to evaluate  
22 whether there's a weight to an inclusion or exclusion. And they  
23 also came up statistically with an exclusion.

24 Q. And is it your opinion that you and Ms. Shields are in  
25 agreement as it relates to exclusion to those portions of the

1 gun?

2 A. Yes.

3 Q. And in terms of the other area of the gun, what was the  
4 other area of the gun where profiles were lifted from?

5 A. That's from the grips of the gun.

6 Q. Did you and her both have the same opinion about the grips  
7 of the gun?

8 A. Yes, we did.

9 Q. And what was that?

10 A. That was a visual exclusion.

11 Q. And there was a portion of the grip of the gun where  
12 there's DNA there. It just wasn't interpretable; is that  
13 accurate?

14 A. Yes. There just wasn't enough to be able to say who it  
15 could or couldn't be. It was just too minor.

16 Q. So there wasn't enough DNA there to make a call as it  
17 relates to Greg Lance or to make a call as it relates to me?

18 A. That's correct.

19 Q. Of all of the DNA that was found on that Tech9, is there  
20 any evidence from any of the interpretable data that DNA belongs  
21 to Greg Lance?

22 A. No, there's not.

23 MR. GICHNER: Those are my questions. Thank you.

24 THE COURT: Cross-examination.

25 ///

**CROSS-EXAMINATION**

**QUESTIONS BY GENERAL GORE:**

Q. Ms. Cross, you prepared a forensic biology report in this case; is that correct?

A. Yes, I did.

GENERAL GORE: May I approach, Judge?

THE COURT: Yes, sir.

GENERAL GORE: I'd like to have this marked Exhibit 8.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 8.)

BY GENERAL GORE:

Q. Let me hand you what's been marked Exhibit Number 8, and please try to identify that.

A. (Witness reviews document.) Yes. This is a copy of the forensic biology report that I created.

GENERAL GORE: We'd ask to introduce Exhibit Number 8.

THE COURT: Ma'am, if you could hand that to me. Thank you.

BY GENERAL GORE:

Q. Ma'am, this report lists the items that were submitted to your lab; is that correct?

A. Yes, it does.

Q. In total, how many items were submitted to your laboratory?

A. Forty-eight items.

1 Q. Forty-eight items?

2 A. Yes.

3 Q. Of those 48 items, how many did you test?

4 A. There were five items that were selected for testing.

5 Q. Why only 5 out of 48?

6 A. I believe these were the items that were originally

7 approved for testing from the last hearing.

8 Q. Only five items or the entire list?

9 A. I believe it was these five items in particular that were.

10 Q. Then why would all those items be sent to you?

11 A. Usually, when I receive all the items, it's because

12 whoever is holding the item wants to keep the case together and

13 not have it separate in multiple locations.

14 Q. Was it up to you and Bode Technology to decide what items

15 were tested?

16 A. No, it was not.

17 Q. You're sure about that?

18 A. Yes. We were a part of the discussion, but we were not

19 the ones that made the final decision as to which items.

20 Q. Okay. Who made the final decision?

21 A. I believe that was something that came out during Mr.

22 Lance's legal team and the Court. We made recommendations based

23 on what items were known to exist and what probative value might

24 be from those items, and then they were selected.

25 Q. On direct examination, you testified that there were Tire

1 1 items that were selected for testing.

2 A. Right.

3 Q. What were the Tire 1 items?

4 A. Those were the Tier 1 items.

5 Q. What were the Tier 2 items?

6 A. I do not know specifically. Tier 2 would be if we failed

7 to get anything from the Tier 1 items. We would go back and

8 reevaluate what the next level of probative items would be.

9 Q. Looking at Number 121 on your list, you see it says, "One

10 clear plastic bag a green cord." You see that?

11 A. Yes.

12 Q. Did you test the green cord?

13 A. No. The green cord was not tested.

14 Q. Can you tell us why?

15 A. That was not one of the pieces that was requested at the

16 time.

17 Q. I'll move down to the examination and serological analysis

18 portion of it. Items 70, 70.1, 71, 71.1, and 72 you did testing

19 on those items, correct?

20 A. I did collections for potential DNA analysis.

21 Q. No testing but collection?

22 A. Yes.

23 Q. And how did you collect evidence?

24 A. The evidence on all of these were collected using a swab.

25 Q. So you swabbed the evidence; is that correct?

1 A. That's correct.

2 Q. So there was no testing?

3 A. The only thing that was tested was on the flashlight.

4 There were some reddish stains. They were tested for possible

5 blood.

6 Q. Okay.

7 A. That was the only actual test that I did.

8 Q. And what was the result of that?

9 A. The reddish stains were negative.

10 Q. But you also done a Y-STR test; is that correct?

11 A. Yes. There was a Y-STR test that was performed after

12 Bode's analysis was completed.

13 Q. What was the result of the Y-STR test?

14 A. Well, the samples from the Tech9 were completely consumed

15 from Bode's testing, so I had to go back to the Tech9, which was

16 still in my possession, collect another sample, and attempt to do

17 Y-STR testing. There were no results obtained from that swab.

18 Q. Okay. At the end of your report you say these tests are

19 accredited to the laboratory's ISO/IEC17025, accreditation issued

20 by the American Standards Institute National Accreditation; is

21 that correct?

22 A. Yes.

23 Q. And you attach a copy of that accreditation statement to

24 the attorneys, correct?

25 A. Yes.

1 Q. Do you recall if your accreditation was up to date at that  
2 point?

3 A. Yes.

4 GENERAL GORE: May I approach, Judge?

5 THE COURT: Yes, sir.

6 GENERAL GORE: Can I have this marked as the next  
7 exhibit, please?

8 (WHEREUPON, the above-mentioned document was marked as  
9 Exhibit Number 9.)

10 GENERAL GORE: May I approach the witness?

11 THE COURT: Yes, sir.

12 BY GENERAL GORE:

13 Q. Let me hand you what's been marked as Exhibit Number 9.  
14 Is that your accreditation -- certificate of accreditation for  
15 your laboratory?

16 A. (Witness reviews document.) This is one of the  
17 accreditations.

18 Q. And that is for your laboratory; is that correct?

19 A. Yes, it is.

20 Q. And when did you do the swabbing and the one test in this  
21 case?

22 A. It would have been March of '23.

23 Q. Which was after the valid date on your accreditation  
24 statement; is that correct?

25 A. Yes. This may have been provided prior to the last



1 hearing. We do have the current one on our website as well as  
2 through ANAD.

3 GENERAL GORE: Could we introduce that as Exhibit 9?

4 THE COURT: Thank you.

5 BY GENERAL GORE:

6 Q. What kind of test did you use to do the Y-STR test? Like,  
7 what was the brand of it? Was there a certain identity that you  
8 used to describe that type of test?

9 A. Yes. We use the Promega PowerPlex Y23 kit.

10 Q. Okay. Tell us what that is.

11 A. Well, Y-STRs are a specific form of STRs or short tandem  
12 repeats that normally occur on the Y chromosome. So this  
13 particular kit only focuses on male DNA, and what the attempt was  
14 here was, because STRs are inherited directly from father to son  
15 with no changes, we can detect a family line. So the goal was to  
16 get a Y-STR profile off of the sample. Then we could test it  
17 against individuals to see if someone in that particular family  
18 line was on the weapon.

19 Q. And the Promega test, you got experience using the Promega  
20 test; is that correct?

21 A. Yes.

22 Q. And the STRmix test, do you have experience using STRmix?

23 A. I have a working knowledge of STRmix. I do not actually  
24 use that program myself in case work.

25 Q. There's nothing listed on your CV that would indicate that

1     you have experience using STRmix?

2     A.       No.  It would only indicate that I had some training in  
3     workshops.

4     Q.       Bode used a testing kit called GobalFiler.  Do you recall  
5     that?

6     A.       Yes.

7     Q.       Do you have any experience using GlobalFiler?

8     A.       Yes, I do.

9     Q.       Is that listed in your CV?

10    A.       I do not know all of the kits that I have experience with  
11    are listed in my CV because it is dependent on what the  
12    laboratory is using at the time in whatever laboratory I'm  
13    working in or whatever is required by a client.

14    Q.       As to the testing that Bode done, you were able to  
15    visually exclude, whereas Ms. Shields could not visually exclude  
16    Mr. Lance as being a contributor, correct?

17    A.       Yes.  Based on the policies of the different laboratories.

18    Q.       Well, what were the policies of Bode, and what were the  
19    policies that you had regarding forensics?  How were they  
20    incongruent?

21    A.       Well, they're not really incongruent.  It's just what the  
22    laboratory decides for themselves what their comfort level is for  
23    interpretation.  Bode has set a requirement for a certain number  
24    of low side with data before they can make a call.

25            We don't have that particular restriction.  What we do is

1 we look at everything, and we look at the requisite alleles  
2 versus what is present or not present in the sample.

3 Q. Okay. So would it be fair to say Bode has written  
4 procedures and your laboratory does not as it pertains to  
5 interpretation of data?

6 A. No. That's absolutely not true.

7 Q. That's what I'm --

8 A. We all have written procedures for interpretation. The  
9 written procedures may just vary slightly depending on the  
10 differences and validation studies and the level of comfort the  
11 laboratory has.

12 Q. And that's what I'm asking you. What was it about Bode's  
13 that differed between what they had in their policy and what you  
14 had written in your policy?

15 A. Well, what's different is whatever their written policy  
16 says that their technical leader has approved for them to make  
17 calls. So different laboratories will have different  
18 restrictions. Some laboratories will say, I have to have out of  
19 the 24 markers tested -- I have to have 15 of them before I'm  
20 gonna compare it at all. Other laboratories will say that's  
21 ridiculous.

22 Q. Ma'am, I'm not asking you about other laboratories. I'm  
23 asking you about Bode's laboratories' written policies and  
24 Guardian Forensic Sciences' written policies.

25 A. They're based on the validations and experience of the

1 analyst.

2 Q. I'm not asking what they're based on. I'm asking what the  
3 difference was, because you've testified that there's a  
4 difference. And I'm asking you, tell me what the difference is  
5 between their written policies and your written policies.

6 A. Well, the difference is, as Ms. Shields said, they have to  
7 have a certain number of low side with a certain type of result  
8 before they can make a comparison.

9 Q. Okay.

10 A. We do not have that restriction. We can make a comparison  
11 with any data that comes through.

12 Q. So you can make a comparison based on one low side?

13 A. Yes. We can make it for exclusions. We will not make any  
14 inclusionary statements based on it.

15 Q. And that interpretation criteria is in your written  
16 policies?

17 A. Yes, it is.

18 Q. If I gave you Bode's work, could you show us how you do a  
19 visual exclusion?

20 A. Yes.

21 Q. Okay.

22 GENERAL GORE: May I approach, Judge?

23 THE COURT: Sure.

24 GENERAL GORE: May I have this marked as the next  
25 exhibit?

1                   (WHEREUPON, the above-mentioned document was marked as  
2 Exhibit Number 10.)  
3 BY GENERAL GORE:  
4 Q.       Ma'am, I'm gonna hand you what's been marked as Exhibit  
5 Number 10. Thumb through it, and see if you can identify it.  
6                   MR. GICHNER: Your Honor, can I come up and watch just  
7 to see --  
8                   THE COURT: Sure.  
9 BY GENERAL GORE:  
10 Q.       You good?  
11 A.       Yes.  
12 Q.       Can you identify that data?  
13 A.       (Witness reviews document.) Yes. This is the laboratory  
14 case file from Bode, which is all of their notes.  
15 Q.       So let me back up just a little bit. What you did in this  
16 case, prior to reviewing that data you swabbed them, correct?  
17 A.       That's correct.  
18 Q.       You sent that to Bode Technology?  
19 A.       Yes.  
20 Q.       And then they interpreted the data?  
21 A.       Yes.  
22 Q.       They sent the data back to you?  
23 A.       Yes.  
24 Q.       You didn't do any of the analysis in the DNA, correct?  
25 A.       I did not do any of the technical work to get those

1 results.

2 Q. So when Bode sends you that data back to you, tell us how  
3 you visually excluded Greg Lance.

4 A. What I would do is -- in my laboratory, we do a lot of our  
5 work with highlighters.

6 Q. You can highlight that if you like.

7 A. What I would do is take the profile found on Page 66 of 89  
8 and then compare it to E01, which is found on Page 32 of 89. I  
9 would start going through the sample. D3, the reference is 1216.  
10 The question is a 14, 15, 16, 17, 18.

11 There is no 12. The 12 is the smallest. We should be  
12 seeing that. We then go down to D8, which is in the second row.

13 The reference is 814. The question is 12, 13, 14. There  
14 is no 8. The next one over is D21.

15 The reference is 2730. The question is 28, 29. None of  
16 the alleles are present there. D2S441, the reference is 1314.

17 The question is 10, 11, 14, 15. There's no 13. D19, the  
18 reference is 1313.2. The question is 12, 13, 14.

19 There's no 13.2. Low 1 is a 7. Question is 6. D22  
20 reference 16.

21 The question is 15. 16. D5 references a 12. Question is  
22 11, 12, 13. The last one we have is D10. There's 13, 14, and  
23 the question is 13 or 14.

24 Q. If you will turn to the front page.

25 A. (Witness complies.)

1 Q. On the first page, you will see a checklist that Ms.  
2 Shields prepared.

3 A. Yes.

4 Q. One of the things Ms. Shields did in her technical  
5 analysis was she applied controls. What controls did you use?

6 A. I relied on her controls for doing this. The  
7 interpretation doesn't use the controls. The controls are used  
8 in the testing process to make sure the testing is working  
9 properly.

10 Q. And she did the testing?

11 A. Yes.

12 Q. And she also had two independent analyses performed that  
13 is consistent. Did you do that?

14 A. I'm sorry, she had --

15 Q. Again, this is on the first page on the checklist.

16 A. Yes.

17 Q. This says two independent analyses performed and its  
18 consistent.

19 A. Okay. That would be the technical and administrative  
20 reviews.

21 Q. Yeah. I'm asking did you do that? Did you do two  
22 independent analyses?

23 A. I did not do any analyses. All I did was review the work  
24 that she did.

25 Q. She also had lab sheets complete. Did you have lab

1 sheets? Lab worksheets?

2 MR. GICHNER: Judge, at some point I'm gonna object to  
3 the relevance of this. These people have the same opinion, so I  
4 don't really know what we're doing.

5 THE COURT: I'll overrule.

6 Go ahead.

7 BY GENERAL GORE:

8 Q. Let's talk about STRmix, ma'am. You have a limited  
9 understanding as to STRmix, correct?

10 A. I have a working knowledge of what it is and how it  
11 operates. I do not use it on a daily basis.

12 Q. Your laboratory does not use STRmix?

13 A. No, we do not.

14 Q. If you wanted to be able to use STRmix, what would the  
15 process be if you -- that you would have to go through to use  
16 STRmix?

17 A. The process would be a training in -- an in-house training  
18 program. Prior to that, we would have to go through a new set of  
19 validation studies with our instrumentation to set up the correct  
20 parameters for the statistical part.

21 Q. Based on your working knowledge of STRmix, you understand  
22 STRmix uses a likelihood ratio, correct?

23 A. Yes. That's how a statistic is presented.

24 Q. Does the analyst complete the likelihood ratio, or is that  
25 a statistical calculation by a software program?



1 A. It takes a statistical calculation by a software program  
2 based upon the raw data that was generated in the testing.

3 Q. When did you issue your report?

4 A. My report was issued October 30<sup>th</sup>, 2023.

5 Q. When was the last Bode report you got?

6 A. September 18<sup>th</sup>, 2023.

7 Q. Why was yours issued after they issued theirs?

8 A. Because mine included the Y-STR testing that was done  
9 after Bode's last analysis.

10 Q. As to the DNA sample that was obtained from the grips of  
11 the Tech9, E-02 -- would that be the correct reference to it?  
12 I'm referencing the last three letters of the sample, E-02.

13 A. Yes. That's the grips of the Tech9.

14 Q. There were two contributors to that sample, correct?

15 A. That is correct.

16 Q. One of which the data was uninterpretable, correct?

17 A. Yes.

18 Q. Greg Lance cannot be excluded from that?

19 A. He can't be included or excluded.

20 GENERAL GORE: That's all I have, Judge.

21 THE COURT: All right.

22 Re-examination.

23 MR. GICHNER: Thank you, Your Honor.

24 ///

25 ///

**REDIRECT EXAMINATION**

**QUESTIONS BY MR. GICHNER:**

Q. Ms. Cross, did you and Bode reach the same conclusion as to exclusion of Mr. Lance from the interpretable DNA?

A. Yes, we did.

Q. Is your lab accredited?

A. Yes, it is.

Q. Has your lab been accredited throughout the history of this case?

A. Yes, it has.

Q. Were you just shown a piece of paper with your accreditation from 2022 back from when you previously testified before this court in 2022?

A. That is likely where that document came from.

Q. You were asked about a lot of evidence that was shipped to you initially in the case. Most of that evidence was shell casings and bullets; is that right?

A. Yes. A lot of it was projectiles and some actual fired bullets, but most of the projectiles were projectile casings.

Q. And the DNA experts advised everybody on the pieces of evidence that were best to test to try to obtain DNA profiles; is that right?

A. Yes.

Q. And the only evidence that we got DNA profiles off of was the gun?

1       A.       The only usable profiles, yes.

2       Q.       And the only interpretable data on the gun is DNA that

3       does not match Greg Lance?

4       A.       That is correct.

5               MR. GICHNER: Thank you.

6               THE COURT: Can I have all my exhibits back?

7               THE WITNESS: Yes (passing.)

8               THE COURT: Thank you. You may step down, ma'am.

9       You're free to go. You're free to stay in the courtroom.

10              (WHEREUPON, the witness stepped down.)

11              THE COURT: Who's next?

12              MS. DODSON: We have nothing further, Your Honor.

13              THE COURT: Okay.

14              Any proof by the State?

15              GENERAL GORE: Yes, I do. I have one witness. I'd like

16       to call Jennifer Wilkerson. She may be downstairs at the clerk's

17       office.

18              THE COURT: She's going to get her.

19              (Respite.)

20              GENERAL GORE: Judge, while we're waiting on her, I have

21       another issue I'd like to -- Judge, I would ask to introduce a

22       self-authenticated document under TRE Rule 902-1, a domestic

23       document under seal. An exception to the hearsay rule under

24       8038, which is a public record and report -- this is a federal

25       habeas corpus. It's a petition filed by the petitioner.

1           It is under seal from the U.S. Middle District Court,  
2   federal court in Tennessee. We would submit that this is a  
3   petition Mr. Lance filed in his federal habeas case. I believe  
4   he filed this sometime around 2007. Judge, if it is admissible,  
5   I will ask the Court to turn to a certain page as to the  
6   relevance that's contained in this document.

7           THE COURT: Do y'all have an objection?

8           MS. DODSON: We do object to it as hearsay, Your Honor  
9   with no -- with no exceptions applying. We are also willing to  
10   talk about the substance of it.

11          THE COURT: Okay. I'll go ahead and accept it and  
12   reserve any ruling for a final order.

13          (WHEREUPON, the above-mentioned document was marked as  
14   Exhibit Number 11.)

15          THE COURT: What did you want me to look at on this?

16          GENERAL GORE: Judge, I guess the first thing I'd ask  
17   the Court to look at is on Page 8. When I say Page 8, the  
18   pagination at the top of the page.

19          THE COURT: All right. Page 7?

20          GENERAL GORE: Page 8.

21          THE COURT: Okay. I'm there.

22          GENERAL GORE: Judge, if you look at the second  
23   paragraph, in that paragraph -- I can read it in the record,  
24   Judge, or you can read it. Essentially, the defendant sets out  
25   what he says was proven in a civil case against Sam and Peggy

1 Horn. He sets out a scenario involving what Sam and Peggy Horn  
2 did during the killing of the victims in the case.

3 The reason why I tendered this to the Court is --  
4 again, this was filed in 2007. The witnesses that he's brought  
5 in here today, Judge, would be cumulative to what he knew about  
6 in 2007. That's why we're asking to introduce this.

7 THE COURT: And I note your objection to it.

8 MS. DODSON: And we're just -- it's our position this  
9 isn't an appropriate time to argue the relevance of that.

10 GENERAL GORE: And I'm not gonna try to argue it, Judge.  
11 I just --

12 THE COURT: I got it. Okay. I got it.

13 Can we bring in our next witness? Our State witness?

14 GENERAL GORE: I think they went to get her.

15 THE COURT: We got her.

16 Have her come on in.

17 (WHEREUPON, the witness entered the courtroom and took  
18 the stand.)

19 \* \* \*

20 **JENNIFER WILKERSON,**

21 **was called as a witness, and having first been duly sworn,**  
22 **testified as follows:**

23 THE COURT: If you'll just tell me your first name and  
24 last name and spell each, please.

25 THE WITNESS: My name is Jennifer Wilkerson. J-E-N-N-I-

1 F-E-R, W-I-L-K-E-R-S-O-N.

2 THE COURT: If you will speak into that microphone that  
3 way everybody can hear.

4 **DIRECT EXAMINATION**

5 **QUESTIONS BY GENERAL GORE:**

6 Q. Ma'am, where do you work at?

7 A. I'm the Putnam County Circuit Court Clerk.

8 Q. You're the elected Putnam County Circuit Court Clerk,  
9 correct?

10 A. Yes, sir.

11 Q. When did you get elected?

12 A. 2018.

13 Q. And how many people do you have work for you?

14 A. Currently, I believe there are 37.

15 Q. What are your job duties in that elected position?

16 A. The clerk's office will file paperwork, petitions,  
17 motions, that type of thing. We are the official record keepers.  
18 Exhibits, evidence at trial comes to our office until they're to  
19 go to the appellate court.

20 Q. Okay.

21 A. We also do passports and various other things.

22 Q. When you receive evidence in a trial, do you keep that in  
23 an evidence room?

24 A. We do.

25 Q. And can you tell us who the clerk was before you were

1     elected in 2018?

2     A.       Prior to coming to the office it was Marsha Boris.

3     Q.       Okay.  What is the policy about public access to the  
4     evidence that is received during a trial here in Putnam County?

5     A.       So there is no written policy in the county regarding that  
6     evidence.  We are required as clerks to follow statute.  It's my  
7     understanding that certain exhibits would be open for public  
8     inspection if requested.

9     Q.       Do you allow the public to inspect exhibits in criminal  
10    cases?

11    A.       We have had public individuals come into the office to  
12    inspect particular evidence.  We do not allow them to open bags  
13    or containers or anything of that nature.

14    Q.       Okay.  Are you familiar with the evidence in this case?

15    A.       Somewhat.

16    Q.       Did you assist in preparing this evidence to be sent to  
17    any court or sent to a testing laboratory?

18    A.       I did not assist in it being sent to a laboratory.  I did  
19    assist in the evidence being sent back to the appellate court.

20    Q.       Is that evidence secure?  Is it bagged or boxed up in any  
21    way?

22    A.       So when I came into office in 2018, the vault had various  
23    types of evidence for lots and lots of different cases.  This  
24    particular case I am familiar with in the sense that when we were  
25    trying to clean up the vault.  There was a tote in a box that had

1 multiple cases and evidence from multiple cases inside.

2 Q. Do you know if there has been a request by various members  
3 of the public to view and inspect this evidence?

4 A. I'm not sure if there's been an individual from the public  
5 asking to inspect this case, but it is not that uncommon for  
6 individuals -- we don't keep a log or a record of who asked to  
7 see each case.

8 Q. Do you know if the attorneys have inspected this evidence?

9 A. I do.

10 Q. Can you tell us about that?

11 A. I believe a local attorney Mr. Gordon Byars came to our  
12 office and asked to inspect this case. The tote and some of the  
13 items were taken upstairs. He and one of the deputy clerks were  
14 opening that tote at the same time.

15 Q. Does your office require any kind of precautions as to the  
16 integrity of the evidence?

17 A. We do not.

18 GENERAL GORE: That's all, Judge.

19 THE COURT: Cross-examination.

20 **CROSS-EXAMINATION**

21 **QUESTIONS BY MR. ESQUIVEL:**

22 Q. Good afternoon, Ms. Wilkerson. My name is David Esquivel.  
23 I'm one of the lawyers representing Greg Lance. I have a few  
24 questions for you.

25 So if I understand it, your office does not currently have



1 any written policies or procedures about how evidence from trials  
2 in Putnam County should be kept; is that right?

3 A. Policy, no. It's my understanding the court clerk is  
4 required to follow Tennessee statute.

5 Q. I believe you said the statute that you referenced was the  
6 statute requiring public inspection?

7 A. That is my understanding.

8 Q. Are you aware of any Tennessee statute that requires  
9 evidence from a trial that's in the care of the clerk's office to  
10 be kept with any particular safety guards?

11 A. I believe the evidence is supposed to be locked in a  
12 vault.

13 Q. To your knowledge, are there different procedures that  
14 should be followed for evidence for criminal cases versus civil  
15 cases?

16 A. No. I'm not aware of the difference.

17 Q. Does your office follow any different kinds of procedures  
18 for criminal evidence in criminal cases versus civil cases?

19 A. We do not. Once evidence is entered into a trial, the  
20 deputy clerk takes that evidence as it is handed to us in the  
21 courtroom and then taken and secured into the vault. Since I've  
22 taken office, the precautions that we've made is that they are  
23 now -- each individual case is placed into its own container as  
24 to how it's labeled with case number and secured in our vault.

25 Q. In your experience, in criminal cases since you have

1     become the clerk, how is it that evidence in criminal cases, the  
2     individual pieces of evidence are generally kept? Are they  
3     generally kept in bags?

4     A.       Well, that would depend upon which type of evidence that  
5     -- or which type of evidence they are handing to us.

6     Q.       In this case, we are specifically talking in great deal  
7     about a murder weapon. In your experience, how is it that the  
8     clerk's office typically keeps a murder weapon in its vault?

9     A.       So since I've been in office, again, since 2018, I have  
10    only had cases where a weapon being boxed and kept inside a box  
11    during the trial is not taken out of that container. Again,  
12    that's my limited experience.

13    Q.       And then your experience -- to your knowledge, is the  
14    evidence from Mr. Lance's case, including the murder weapon, kept  
15    in a box in a way that your office keeps it now?

16    A.       So when I came into office, this particular case was not  
17    placed in a box. It was laying out in the open in -- I don't  
18    remember that particular item or where the item was located.  
19    Again, I do remember that case was in a tote, and there were  
20    multiple items from other cases inside that one tote.

21    Q.       Was it vivid in your mind, because seeing the evidence  
22    from a criminal case in one big tote all mixed up together --  
23    that's something that drew your attention, right?

24    A.       It is something that was concerning to me. I haven't had  
25    a background in forensic evidence or any type of particulars of

1     that nature. I'm not aware of clerks receiving that training,  
2     but it was something that didn't seem right to.

3     Q.       Why didn't it seem right to you?

4     A.       Because I assumed if a clerk was going to keep evidence,  
5     they would want to keep only one case labeled appropriately where  
6     it could be found.

7     Q.       And so in that case, your concerns are about making sure  
8     that the evidence for trial is maintained and -- and it's not all  
9     mixed up together. That's not how it should be kept or how your  
10    office keeps it now?

11    A.       I can say what my concern is that when I come into the  
12    office, I want to be able to provide the Court with the evidence  
13    in each case. I think that's part of our job or duty as a clerk.

14    Q.       And that's right. It's the responsibility of the clerk's  
15    office to maintain the exhibits from trials, right?

16    A.       Yes.

17    Q.       And it is solely the clerk's responsibility to do that; is  
18    that right?

19    A.       Until it is turned over to the appellate court or another  
20    court.

21    Q.       So when it's not sent to the appellate court and when it  
22    is in control of the Putnam County Clerk's Office, it is the  
23    clerk's office sole responsibility, right?

24    A.       That's correct.

25    Q.       Does Mr. Lance have any control over the way the evidence

1 is kept in his trial?

2 A. No.

3 Q. Does Mr. Lance's legal team have any control over the way  
4 evidence is kept by the county clerk's office?

5 A. The court clerk?

6 Q. Yes, I'm sorry. The court clerk.

7 A. No, not that I'm aware of.

8 Q. And that's solely your responsibility? Your office's  
9 responsibility?

10 A. That's correct. The deputy clerks' and my responsibility.

11 Q. I believe you testified earlier that you don't keep a log  
12 of when the public accesses the exhibits from the trial; is that  
13 right?

14 A. That is correct.

15 Q. And how long has that lack of a log been in place in  
16 Putnam County to your knowledge?

17 A. I can't really attest to what practices were prior to me  
18 coming into office, but I have not located any logs or anything  
19 that would suggest otherwise. I can tell you that since I have  
20 been in office since 2018 -- and I have asked our local attorneys  
21 if that was a requirement under statute, and we were not able to  
22 locate.

23 Q. Since 2018 while you have been in office, there are no  
24 laws that exist to tell us who, if anyone, accessed the exhibits  
25 from Mr. Lance's trial?

1 A. Correct.

2 Q. To your knowledge, before 2018, you're not aware of any  
3 law that tells us who, if anyone, accessed the evidence in Mr.  
4 Lance's trial?

5 A. That's correct.

6 Q. You do have a -- you testified to specific knowledge that  
7 counsel Mr. Byars did come at some point and ask to see the  
8 evidence; is that right?

9 A. That's correct.

10 Q. If I understand your testimony correctly, Mr. Byars and  
11 one of your deputy clerks took the tote upstairs to see what was  
12 in it?

13 A. That's correct. The only thing that we require -- again,  
14 this is not a written policy. This is something that is just  
15 done in our office, because we are the keeper of those records.  
16 We require a staff member be present whether it's an individual  
17 or an attorney or whoever.

18 When they are examining those things, we are there. That  
19 is simply so that we don't allow photos to be taken of something  
20 or copies to be made of things that we're not aware of and, of  
21 course, opening packages or anything of that nature. I was not  
22 with the deputy clerk and Mr. Byars when they opened that.  
23 Again, I'm going off memory, and I believe I was told they were  
24 upstairs.

25 MR. ESQUIVEL: I understand, Your Honor, that my

1 colleague is passing a note that we would stipulate that Mr.  
2 Byars, when he was taking these out -- the witness is testifying  
3 -- the State will stipulate that Mr. Byars was wearing gloves  
4 when he handled the murder weapon.

5 GENERAL GORE: That's fine, Judge. Yes, sir.

6 THE COURT: That's fine.

7 MR. ESQUIVEL: Thank you.

8 BY MR. ESQUIVEL:

9 Q. Am I correct that your testimony is the only instance that  
10 you are aware of -- that the murder weapon in this case was  
11 handled by someone was Mr. Byars and that the deputy clerk took  
12 that access and took it upstairs to look at?

13 A. Actually, when I -- I think I said I was told it was taken  
14 upstairs. I don't know if he actually handled the weapon itself.  
15 I wasn't with the two of those people when they were looking or  
16 inspecting things.

17 Q. And I should have asked it more clearly. The only person  
18 that you to your personal knowledge that ever asked for this file  
19 was Mr. Byars?

20 A. That asked for the file?

21 Q. That asked for the evidence in the file.

22 A. Okay. It's the only person that I can recall. The only  
23 reason I recall Mr. Byars taking a look at it is because it was  
24 an incident in which they opened a paint can that had a really  
25 foul odor, and we had to call the district attorney's office and

1     some other folks due to that.

2     Q.       Was the murder weapon in the paint can?

3     A.       I did not see. I don't know that. I would assume not.

4     It's my understanding there was some sort of fluid or some other

5     liquid substance in the can.

6     Q.       Ms. Wilkerson, are you an expert or even familiar with the

7     DNA testing sciences?

8     A.       I am not.

9     Q.       Have you reviewed the DNA reports that have been submitted

10    in conjunction with this proceeding?

11    A.       I have not.

12    Q.       And are you qualified at all to comment on the conclusions

13    that were reached in the DNA testing in this case?

14    A.       I am not.

15    Q.       To your knowledge, do you know anything about whether the

16    fact that the public had access to the murder weapon in any way

17    had an effect on the results of the DNA testing?

18    A.       I could not answer that.

19            MR. ESQUIVEL: Your Honor, may I have a moment to confer

20    with my client?

21            THE COURT: Go ahead.

22            MR. ESQUIVEL: That's all I have. Thank you, Ms.

23    Wilkerson.

24            THE COURT: Any further questions?

25            GENERAL GORE: No, sir.

1 THE COURT: Thank you, ma'am. You may step down.  
2 You're free to stay in the courtroom. You're free to go.

3 (WHEREUPON, the witness stepped down.)

4 THE COURT: Any other proof from the --

5 GENERAL GORE: State rests.

6 THE COURT: Any rebuttal proof y'all would like to put  
7 on?

8 MS. DODSON: No, Your Honor.

9 THE COURT: Closing arguments?

10 MS. DODSON: If we could just have a short break before  
11 that.

12 THE COURT: Sure. How long you want?

13 MS. DODSON: Five minutes.

14 THE COURT: See you back here in five minutes.

15 (Recess)

16 THE COURT: Have a seat, please. Thank you very much.

17 Okay. Closing arguments, please.

18 MS. DODSON: Thank you, Your Honor. Your Honor, we're  
19 here today for a very important reason. Greg Lance has spent  
20 nearly a quarter of a century in prison for crimes he did not  
21 commit. He has maintained his innocence this entire time, and we  
22 finally have the evidence and proof to get him out of prison and  
23 bring him home to his family and his loved ones where he belongs.

24 If we're not successful here, Greg Lance is sentenced  
25 to spend the rest of his life in prison for something he did not



1 do. This hearing feels very big, and the stakes are very, very  
2 high for Mr. Lance and his family and those people in the gallery  
3 here today who worked so hard to prove his innocence. Because in  
4 this moment, in this hearing, in this petition there's really  
5 nothing bigger. There are no higher stakes.

6 Taking a step back from that and looking at what we  
7 have to prove, the legal standard for coram nobis relief in our  
8 state and our burden is not nearly as high as the stakes are for  
9 Greg Lance. We just have to prove that if the evidence presented  
10 today had been presented at Mr. Lance's original trial that the  
11 outcome may have been different. That's it. That's the standard  
12 under our coram nobis statute legislature.

13 We don't have to prove today there were witnesses that  
14 say Greg Lance is innocent even though he is. We don't have to  
15 prove today through our witnesses that Sam Horn or Peggy Horn or  
16 either of them is guilty of anything. We just have to prove that  
17 this evidence could have made a difference in the jury's decision  
18 to convict Mr. Lance, and I would submit, Your Honor, that  
19 against the State's purely circumstantial case at trial that this  
20 new evidence would without a doubt have changed the jury's  
21 decision to convict. Frankly, Your Honor, if we haven't met the  
22 standard for coram nobis relief, I'm really not sure what case  
23 can.

24 Now, we've talked a little bit in the beginning about  
25 the recent Clardy decision, and I just want to put a fine point

1 on this. Clardy doesn't change what we have to prove today at  
2 this hearing. Clardy just says our petition which we filed and  
3 Your Honor has to show that if the affidavits from the witnesses  
4 are true that we have clear and convincing evidence of actual  
5 innocence, that we get our day in court. Here the affidavits  
6 from these witnesses are true.

7           They all say that somebody else other than Greg Lance  
8 committed these crimes. Once we've met that clear and convincing  
9 standard, Your Honor, we're really just here talking about  
10 whether our witnesses are credible and whether we have new  
11 evidence, and that's what we've shown here today. Before I talk  
12 about the evidence that we've presented, I just want to set the  
13 stage for what the jury was asked to consider at Mr. Lance's  
14 trial. And there's no question that the State's trial evidence  
15 against Mr. Lance was purely circumstantial, and so the State  
16 agreed to a circumstantial evidence jury instruction.

17           I think it's really important to keep this instruction  
18 in mind in conjunction as the Court considers what if all this  
19 new evidence could have changed the mind of Mr. Lance's jury. It  
20 says, "Before a verdict of guilty is justified, the circumstances  
21 taken together must be of a conclusive nature and tendency  
22 leading on the whole to a satisfactory conclusion producing an  
23 effect of moral certainty that the accused and no one else  
24 committed the offense." That was the jury instruction. A moral  
25 certainty that the accused and no one else killed the Kolesnikows

1 over in their home.

2 Against that instruction, Your Honor, and the State's  
3 circumstantial evidence, let's talk about what we heard today.  
4 We have multiple, new, consistent confessions from Sam Horn that  
5 he and his wife killed the Kolesnikows and/or that they burned  
6 their home. The first two witnesses are really notable in their  
7 own right, because the first one is Sam Horn's son Mitchell Horn.  
8 His dad confessed to him while the house was still smoking a few  
9 days after the murders and again a few months later.

10 No one knew about Mitchell Horn or Tim Horn at the time  
11 of trial. He came forward as you heard after hearing about Greg  
12 Lance's incarceration on a TV show, and he came forward on his  
13 own, because he knew that his dad and not Greg Lance had killed  
14 the victims. That's our first witness, his own son. The second  
15 is Mr. Helms, a man who testified that Sam Horn was like family  
16 to him.

17 He gave him a place to sleep when nobody else would,  
18 and Sam confessed to Derrick about his involvement in covering up  
19 the deaths of the Kolesnikows and burning their home a few years  
20 after the trial and shortly before Sam Horn died. Now, the  
21 timing of this is really important, because there's no way Greg  
22 Lance would have known about Derrick Helms at his trial. Because  
23 Sam Horn hadn't confessed years before that happened. He has  
24 come forward for the first time, because we reached out to him.

25 We found him, and he wants to do the right thing.

1 These men were Sam Horn's family, his chosen family, and, as you  
2 heard, they absolutely had nothing to gain from going through  
3 what they went through today and coming forward to tell their  
4 stories now. You heard from Derrick Helms he's worried about  
5 coming forward, because he's eligible for parole. He doesn't  
6 want to mess that up.

7 But they came forward for the same reason. That's  
8 because they know Greg Lance should not be in prison for the  
9 Horns' crimes. The third witness Daron Dunn testified today as  
10 to how the murder weapon ended up on the side of the road near  
11 Sam Horn's house. We've never known how it got there, but now we  
12 do.

13 His cellmate was Mike Horn, Sam Horn's nephew. Mike  
14 Horn told Daron Dunn the story of how Sam Horn was responsible  
15 for these murders and how Mike Horn disposed of the murder weapon  
16 when his uncle told him to. Now, I know that Daron Dunn provided  
17 a lot of detail today about Sam Horn's confession to Mike Horn  
18 and Mike Horn's confession to Daron Dunn, and I know Your Honor  
19 had a conversation with my colleague about the hearsay within  
20 hearsay issues there. And so I did just want to point Your Honor  
21 to Rule 805 which is the rule that deals with hearsay within  
22 hearsay.

23 It says, "It is not excluded under the hearsay rule if  
24 each part of the confined statements conforms with an exception  
25 to the hearsay rule provided for in these rules." I do have a

1 couple of case cites as well from the Tennessee Court of Criminal  
2 Appeals where the Court has cleared the hearsay exception for  
3 double hearsay and -- and allowed that testimony in. So I did  
4 just want to make Your Honor aware of that based on the earlier  
5 discussion.

6 Again, we've heard from Daron Dunn about Mike Horn's  
7 confession, how he disposed of the murder weapon with a  
8 flashlight taped to it. Irrespective of this double hearsay  
9 issue, there's no question that Mike Horn -- excuse me, Daron  
10 Dunn testified to that Mike Horn telling him Sam gave him the gun  
11 and that Mike Horn threw it out the window the night of the  
12 murders. That in itself is an inculpatory statement against his  
13 own interest, so that provides us proof of Sam Horn's connection  
14 to a murder weapon through Mike Horn. He told Daron Dunn this  
15 story over and over.

16 Daron Dunn said he told him a number of times, because  
17 it ate Mike Horn up. As I said, this testimony directly links  
18 Sam Horn to the murder weapon, and it corroborates Billy  
19 Cleghorn's jury-out testimony that we talked about a little bit  
20 this morning about the Horns' connection to the murder weapon.  
21 Just to refresh Your Honor, Billy Cleghorn testified that he  
22 heard Peggy Horn say the Horns had gone over to the Kolesnikows  
23 and used a gun with a flashlight taped to it and that Peggy said  
24 that the best way to kill somebody was to tie a flashlight to a  
25 gun. As we heard from Daron Dunn, Mike Horn told him again and

1 again and again that he tossed a gun with a flashlight out the  
2 window after Sam Horn told him to.

3 We all know the murder weapon in this case was a Tech9  
4 with a flashlight taped to it. Your Honor, like the first two  
5 witnesses, Daron Dunn has nothing to gain by coming forward with  
6 his testimony now. He's on parole. He's not gonna get up here  
7 and perjure himself, and you've heard from him.

8 He's here, because we subpoenaed him but also because  
9 he -- he wants to do the right thing. Finally, on fact  
10 witnesses, we heard from Keith Pinson who testified to being with  
11 the victims' son and turning in a blouse to law enforcement on  
12 the evening of August 8<sup>th</sup>, just a few nights after the murders.  
13 Now, the shirt or the blouse has really been something of a  
14 mystery till now, because, again, Billy Cleghorn testified that  
15 Peggy Horn said that she left a blouse behind at the crime scene.  
16 Again, none of Billy Cleghorn's testimony ever actually went to  
17 the jury for lack of corroboration.

18 Despite multiple requests, the State has never turned  
19 over or been able to locate this blouse. In 2015, in response to  
20 one of Mr. Lance's many, many records requests, he got some files  
21 from the State fire marshal's office, and in those files was a  
22 receipt for the shirt or blouse we talked about today. It shows  
23 that Mr. Ledbed and another person found the blouse at the crime  
24 scene and turned it in. Unfortunately, the other person's name  
25 was illegible.

1           None of us could read it. No one could read it until  
2 we got some additional records from the Putnam County Sheriff's  
3 Office in 2021 that contained this name that led us to Mr.  
4 Pinson. He says he may not remember these events, but he  
5 absolutely would not have signed that statement if it weren't  
6 true. Your Honor also had a conversation with my colleague about  
7 whether the portion of the Ledbed statement that is above Mr.  
8 Pinson's statement was admissible under the hearsay rule.

9           I do just want to point out, Your Honor, that under  
10 803-5, which is the reported recollection exception, Subparagraph  
11 4 says that those statements could be introduced, made, or  
12 adopted by the declarant. And here, obviously, Mr. Pinson has  
13 said, 'I also found the shirt,' referencing the statement above  
14 with Mr. Ledbed. So that's our argument in support of why that  
15 portion of the statement should come in.

16           That's who we heard from in terms of fact witnesses.  
17 Just to summarize, we now have multiple, consistent confessions  
18 from Sam Horn to his family and those who loved him like family  
19 that he and his wife Peggy killed the Kolesnikows or burned down  
20 their home. Remember, the confessions we introduced today are  
21 not the only confessions in the record. We also have Billy  
22 Cleghorn's jury-out testimony that I mentioned multiple times,  
23 and we have Chris Henry's post-trial testimony that Sam Horn also  
24 confessed to him.

25           So that means we have five witnesses who can testify

1     that the Horns confessed to these crimes, five independent  
2     witnesses for the Horns' confessions, zero for Mr. Lance. We  
3     have additional evidence connecting Sam Horn to the murder weapon  
4     based on his nephew's repeated confession to Daron Dunn as to Sam  
5     Horn gave him the gun the night of the murders and how he tossed  
6     the gun out the car window not far from Sam Horn's house and we  
7     have new evidence that Peggy Horn left a blouse behind at the  
8     crime scene, corroborating Billy Cleghorn's testimony that she  
9     left this evidence behind. All of that is further supported by  
10    the fact that forensic testing has discovered unidentifiable male  
11    DNA on the murder weapon and testing has excluded Mr. Lance from  
12    any interpretable portions of that DNA.

13             That is a lot. That is what we have, and that's what  
14    we've presented today. Your Honor, I go back to the jury  
15    instruction which required Mr. Lance's jury to find in effect a  
16    moral certainty that the accused and no one else committed this  
17    crime. There is no credible argument that this evidence would  
18    not have impacted or could not have impacted the jury's decision  
19    to convict Mr. Lance.

20             On this evidence, Your Honor, on these facts, I ask  
21    again, if we haven't satisfied the standard for relief, then what  
22    case can? If not this case, then what case? Now, in just a  
23    minute, the State is gonna stand up and do its best to convince  
24    you that this overwhelming evidence does not matter.

25             I expect when it does so it will do very little to



1 actually say how this evidence would impact at trial. That  
2 strategy in and of itself is telling, because, Your Honor, the  
3 State cannot engage with the substance of this evidence for the  
4 very obvious reason that completely undermines Greg Lance's  
5 conviction. Instead, I expect the State to focus on issues like  
6 witness credibility or evidentiary issues. Your Honor, we have  
7 briefed legal arguments in this case extensively.

8 I'm not gonna stand up here and repeat those or ask  
9 questions from you on those specifically, but I will say this on  
10 the credibility of the folks we heard from today. Suffice it to  
11 say that we have witnesses who irrespective of their backgrounds  
12 are telling a consistent story that places the guilt of these  
13 crimes squarely with Sam Horn and Peggy Horn and not Greg Lance.  
14 They have no reason to testify the way they did today, some  
15 against the interest of their own family. They know Sam and  
16 Peggy Horn killed these people, and Greg didn't.

17 Your Honor, you don't have to take my word for it on  
18 credibility. Here's what the State had to say about its own  
19 witnesses in closing at Greg's trial: "These are witnesses who,  
20 like me, will probably never be deacons at their church." Except  
21 Mr. Pinson was a minister. "Now, if you took one of them in here  
22 and gave their testimony independently of any of the others, you  
23 might say, 'Well, that's somebody who got convicted of a crime  
24 back in the 80s. Maybe we don't believe them.' But you can't  
25 take the combination of all of them put together and do anything

1 but believe it."

2 The question before the Court today is not whether the  
3 testimony of our new witnesses could prove the guilt of another  
4 person. The question before the Court is if these new witnesses  
5 testified alongside the State's witnesses at trial, witnesses who  
6 have their own credibility issues and who, frankly, are not even  
7 telling the same story as they were, could the result have been  
8 different? The answer to that is obviously yes. Thank you, Your  
9 Honor.

10 THE COURT: Thank you.

11 Anything from the State?

12 GENERAL GORE: Judge, I think I want to focus my main  
13 portion of my argument to the petitioner's requirement that he be  
14 reasonably diligent in pursuing the claim that he raises today in  
15 the petition. If you think about history of this case, it was  
16 tried, I think, back in '98, maybe a little bit later. There was  
17 a suspect in that case. That suspect, the petitioner's suspect,  
18 was Sam and Peggy Horn.

19 They called Billy Cleghorn to the stand to introduce  
20 statements attributable to Sam and Peggy Horn. And the Trial  
21 Court said that's hearsay. There's been no showing that Sam Horn  
22 is unavailable. Okay. The defendant got convicted.

23 He presented an alibi defense at trial. It didn't  
24 work. The jury heard the circumstantial evidence jury  
25 instruction, and they said guilty for two counts of murder,

1 especially aggravated burglary, and aggravated arson. So he goes  
2 to a motion for new trial.

3 At the motion for new trial, the petitioner again  
4 brought in another witness, Chris Henry. Chris Henry testified,  
5 again, to statements attributable to Sam and Peggy Horn. Judge,  
6 I looked at the transcripts from the motion for new trial. These  
7 were the questions that were asked to Chris Henry during his  
8 testimony.

9 "What did he say? How did he say he would take care of  
10 someone who snitched on him?"

11 "He said he would knock on the front door. He said he  
12 was too old to go to prison, that he would die before he got out  
13 anyway. He would knock on the front door, shoot them, and burn  
14 their house down behind him, and leave."

15 "QUESTION: He told you that before these people were  
16 killed?"

17 There was not an answer.

18 "QUESTION: What did he say?"

19 "He said he took care of the problem or something like  
20 that."

21 Here's the important part of this portion of the  
22 transcript: "Did you tell the person who came and spoke to you  
23 before -- before that for Mr. Lance -- did you tell him what you  
24 told me?"

25 "Yes, sir."

1 Well, I submit to you, Judge, that person that they're  
2 talking about -- that Chris Henry is talking about where he's  
3 saying, yeah, Mr. Lance had an associate or agent or somebody  
4 that can't even talk to him. Judge, they knew Sam Horn was on  
5 radar. They could have raised that defense during the trial.  
6 They could have raised it in the motion for new trial which was  
7 in 2001.

8 If you look at the exhibits they introduced today, in  
9 2007 he files his federal habeas petition. He says -- again, I  
10 think this is on Page 8 - two witnesses testified in a civil case  
11 and gives a very detailed explanation about what happened during  
12 the murders of the Kolesnikows. Here's my point in raising the  
13 issue, Judge. One of the things that you're required to find is  
14 that he diligently pursued -- he exercised reasonable diligence,  
15 and, if he had, it would not have led to untimely discovery and  
16 new information.

17 The point of that is you bring in Mitchell Horn, the  
18 son of Sam Horn. You have an investigator. You could have went  
19 out and interviewed Mitchell Horn. You bring in Derrick Helms, a  
20 family friend of the Horns.

21 Why didn't you go -- why didn't you interview Derrick  
22 Helms? Same thing for Daron Dunn, Judge. What I want the Court  
23 to think about is -- I've tried many cases in here, and there has  
24 to be -- if you've got a defense and the defense is Sam Horn is  
25 the true killer, then what I think Mr. Byars would do or any

1 other defense attorney is you call Sam Horn to the witness stand.  
2 You ask him, 'Did you say these things?'

3 'No. But I can tell you what your client said to me.'

4 My point is there's a reason why they didn't put Sam  
5 Horn on the witness stand. Now, they're looking to round up  
6 Mitchell Horn, Derrick Helms, Daron Dunn, everybody from 20 years  
7 and relay it back to the same claim that existed in 2000 at trial  
8 that existed in 2001 in the motion for new trial that existed in  
9 2007 during his federal habeas. Judge, the proof that you have  
10 in front of you clearly shows you he has not diligently pursued  
11 the information that he's presented to you, and that is one of  
12 the things that you have to find is that he is without the fault  
13 in a sense that he exercised reasonable diligence -- would not  
14 have led to untimely discovery of new information.

15 The second thing you consider is requirement or finding  
16 of -- the finding you will have to make is that you're reasonably  
17 satisfied with the veracity of the new evidence. To that point,  
18 Judge, I know what I had to do today. It's not pleasurable to  
19 question a witness about things that happen to them back years  
20 ago, their criminal history, but that's part of it. That's part  
21 of what we do, and that's what I did with Mitchell Horn.

22 And he admitted it. He also admitted some things that  
23 is inconsistent in his affidavit versus an exhibit that they  
24 submitted, which was the Messenger messages to Beth Shiffley.  
25 Those two things were inconsistent. So can you be reasonably

1 well satisfied with the veracity of that?

2 I submit that you can't, Judge. Same thing with  
3 Derrick Helms. He has a long criminal history. He never really  
4 came out and said Sam Horn confessed.

5 He said Sam Horn -- and I'm paraphrasing -- was  
6 covering up for Peggy. What good does that do then if they're  
7 pointing the finger at Sam Horn? As to Daron Dunn, Judge, we  
8 would submit -- you ruled on this. We would submit to you that  
9 what Daron Dunn says -- what Dunn got from Mike Horn who got it  
10 from Sam Horn is a double layer of hearsay and wouldn't be  
11 admissible.

12 I don't think it would be admissible in any trial.  
13 What veracity do you give that information? I submit to you it's  
14 not going to be reasonably well satisfied.

15 As to the new forensic DNA evidence, Judge, you have at  
16 least one mixture where Greg Lance can't be excluded from. You  
17 have testimony that this evidence has been open to the public. I  
18 didn't do that. Once exhibits are introduced at trial, the State  
19 has no control over that.

20 The clerk's office does that. I would agree our best  
21 policy is to keep it bagged up and keep it boxed up, but there  
22 have been many trials, Judge -- I'm sure you've seen where the  
23 lawyers -- and I think that happened in this case. At least it's  
24 -- there's the inference that happened if you read the  
25 transcripts, but I've had many trials where I will handle the

1 murder weapon. It may be handed to a witness.

2 A TBI agent may handle it. There may be a firearms  
3 examiner. Sometimes they put gloves on, but there's been times  
4 where they might not have them. So what value can you place on  
5 the new DNA evidence?

6 Does it mean that Greg Lance never touched the murder  
7 weapon? Certainly not. That was the testimony. We would submit  
8 to you this claim existed.

9 He pursued it; it didn't work. There were other  
10 occasions where he could have pursued it again. He didn't, and  
11 now he's waited twenty-something years to bring this before the  
12 Court. The last thing I want to make to you, Judge, about the  
13 Clardy issue and you denied it for the time being, and you will  
14 briefly consider that.

15 The evidence that the petition in this hearing has to  
16 show is that there's clear and convincing evidence that the  
17 petitioner is actually innocent. What they told you in their  
18 closing argument to you is that the evidence was of a third party  
19 -- guilt of a third party. Somebody else killed him. Judge,  
20 that doesn't mean Greg Lance did not commit the crime.

21 That's what the Clardy opinion requires you to do. You  
22 have to find actual evidence which is that he did not commit the  
23 crime. Because of those reasons, Judge, we -- I do acknowledge  
24 that it is an emotional case, but this is a case that came out of  
25 the Supreme Court.

1           The parameters that you have to work with are the  
2 parameters that were given to you by the Supreme Court. I'm  
3 asking you to consider those and follow and ask you to deny the  
4 petition. Thank you.

5           THE COURT: Thank you, sir.

6           Anything else from the plaintiff?

7           MS. DODSON: Very briefly, Your Honor, just to respond  
8 to those arguments. First, as to reasonable diligence, Your  
9 Honor, our petition is rife with the actions Greg Lance has taken  
10 in the intervening 24 years since his conviction, a number of  
11 records requests he's filed, the number of times he has tried to  
12 interview people, the efforts he has put in to his innocence, the  
13 petitions he has filed pro se, and -- and there really is no  
14 question as to the fact that he has continued to investigate this  
15 case and to try and find a way out because his defense has always  
16 been innocence. It is innocence here today. We aren't here to  
17 relay trial strategy.

18           There are cases that show this isn't before him to do  
19 that. We've also responded to the State in our briefing. Again,  
20 Greg did try to introduce evidence of Sam Horn at trial, and it  
21 was ultimately disputed, excluded due to lack of corroboration.  
22 This has always been his theory.

23           This has been his theory from Day 1, and we finally  
24 have the evidence to corroborate Billy Cleghorn and Chris Henry  
25 and to get him out of prison. Your Honor, the State had Greg's



1 trial counsel on the witness list and decided not to call him.  
2 He could have asked him all he wanted about reasonable diligence  
3 but didn't call him here today to talk about what that strategy  
4 was.

5 THE COURT: Didn't he have evidence, though, when the  
6 trial took place that Sam Horn did this?

7 MS. DODSON: The person he had at the time was Billy  
8 Cleghorn, and Billy Clerghorn testified.

9 THE COURT: They did have evidence at that time that Sam  
10 Horn did this?

11 MS. DODSON: That's right, Your Honor. That never went  
12 to the jury, but that was the original proof at Mr. Lance's trial  
13 that he attempted to put on of that case. So, Your Honor, the  
14 coram nobis standard that the State has come up with has not --  
15 that's not the actual standard. We don't have to come up with  
16 some new theory of innocence on coram nobis.

17 It's very clear -- the statute is crystal clear that  
18 we're able to litigate issues that were presented, that were  
19 litigated at trial if we have new evidence that meet the  
20 standard. That's what we've done. We're not up here saying we  
21 didn't know about Sam Horn at trial. You just have to read the  
22 trial transcript.

23 Mr. Lance's attorneys tried to put that evidence on and  
24 were denied. He was denied motion for new trial with another  
25 witness, but we're not here to talk about all that. We're here

1 to talk about the standard that we have met with these new  
2 witnesses who have all come forward within the one year  
3 timeframe, and that's clear from our briefing established in the  
4 record today with Ms. Reed of when we found out about this stuff  
5 and when she talked to them. And their affidavits are in the  
6 record, and petitions are in the record all to show that all of  
7 that clears our one year timing requirement.

8 Your Honor, the argument that we should have called --  
9 Greg's counsel should have called Sam or Peggy Horn to come  
10 confess to murder at his trial -- I don't think anybody really  
11 thinks those people are gonna come in and confess to murder when  
12 Greg Lance is sitting here on trial. Frankly, Your Honor --

13 THE COURT: Wait a minute. You're saying you don't have  
14 to call them. What you can do is you can wait 20 years --

15 MS. DODSON: Your Honor --

16 THE COURT: -- and find somebody out there who's saying  
17 they -- and they're not dead or at least Sam is. They're saying  
18 now 20 years later we got somebody he told he killed them.

19 MS. DODSON: Why, Your Honor, would any person wait 20  
20 years in prison and then try to go find someone? Greg Lance has  
21 not known about these people. His investigator did not know  
22 about these people. These witnesses came to us.

23 People came to us after watching a Sundance TV show.  
24 Thank goodness for it. They came out of the woodwork and said,  
25 'This isn't right. This man is innocent.'

1           That's how we found them. They'll all tell you -- you  
2   heard Daron Dunn tell you it's the worst kept secret. These  
3   people don't want to be here to testify. They are here to  
4   testify as you heard, because they've all done time.

5           As you heard every one of them say, 'I was guilty for  
6   it. That man isn't.' That's why they're here. It's not like  
7   Mr. Lance has just been sitting here twiddling his thumbs hoping  
8   that Sundance would put out a TV show and maybe these people  
9   would come forward 20 years later.

10          THE COURT: Yeah. I don't think I'm saying that. What  
11   I'm saying is if you know that Sam Horn is your prime suspect,  
12   why is not more of an effort made at his trial to introduce that  
13   when you know about it at that time? I think if you look at the  
14   record, it was brought up on direct appeal. His attorney did a  
15   bad job, and it was ineffective assistance of counsel.

16          The appellate court ruled on that, and then they ruled  
17   on a PCR for the appellate lawyer. And then on the first coram  
18   nobis and second coram nobis I didn't see -- it just seems to me  
19   -- and I understand that you've got witnesses that you didn't  
20   have before. I got that; I understand that.

21          I understand your theory in saying if you get witnesses  
22   you never had before that it's newly-discovered evidence. As we  
23   go through the test, we decide whether it goes out. That's kind  
24   of what you're saying, right?

25          MS. DODSON: Yes, Your Honor. The case that we cite in

1     our -- in our reply brief says this isn't the place to litigate  
2     ineffective assistance of counsel. We're not litigating that  
3     issue here.

4             THE COURT: Well, it's already been litigated.

5             MS. DODSON: It's already been litigated. Exactly. We  
6     are not trying to re-litigate whether these testimonies for Billy  
7     Cleghorn or Chris Henry was properly excluded. We are past all  
8     that. We are here with something brand new, and it doesn't have  
9     to be a brand new theory.

10            The statute literally says matters that were previously  
11   litigated. It doesn't say you have to come up with a new theory  
12   for Greg Lance, or you're stuck. Matters that were previously  
13   litigated that may have made a difference. That's what we're  
14   here to say, Your Honor.

15            The State's argument -- well, I do want to address a  
16   couple other points. In terms of the veracity of Tim Horn's  
17   testimony, I don't think there was any inconsistency in his  
18   adamant, adamant statements that his dad told him that he killed  
19   these victims and that he burned their home. I mean, we heard  
20   that from him time and time again. The fact that he doesn't  
21   maybe remember specific words in text messages from four years  
22   ago I don't think really has any bearing on the fact that he was  
23   repeatedly telling this Court what his dad told him and what it  
24   meant.

25            In terms of the DNA exclusion, Your Honor, we've never

1 taken the position that exclusion in and of itself is sufficient  
2 to grant coram nobis relief. It is another factor on top of all  
3 of this that we think entitles -- entitles Mr. Lance to relief.  
4 The State's argument is really what's done is done and leave it.  
5 There is an interest in finality.

6 We see that in cases, but there are also exceptions.  
7 That was reaffirmed as recently as last week with Clardy. We  
8 have demonstrated that we meet those exceptions, Your Honor, and  
9 those exceptions exist to make sure that we are not a society  
10 that sits idly by and lets innocent people sit in prison for  
11 other people's crimes. Your Honor, for these reasons and for all  
12 the reasons set forth in our petition, we are respectfully  
13 requesting that you grant Greg Lance's petition for writ of error  
14 coram nobis and overturn his conviction.

15 Thank you.

16 THE COURT: All right. Thank you.

17 So, ladies and gentlemen, I know there are a lot of  
18 people here and interested in this, so let me tell you. My plan  
19 is -- sitting on the bench I take comfort in knowing what the law  
20 is. It's not just what I think. A lot of times I can look at  
21 something and interpret what I think the law is and what the  
22 evidence is according to the law, and I'll do that in this case.

23 I take comfort in that as well. I want you to know  
24 that I want to make sure I do this correctly, because I know  
25 whichever way I go that either side is gonna appeal. That's

1 great. That's why we have an appellate court.

2 I want to be able to cite to the record. Since the  
3 lawyers have done such a good job presenting the case and it's  
4 not taken us two days to hear this, I've asked the court reporter  
5 if she will type me up a transcript for the hearing today. She  
6 said she would, so I appreciate it. I appreciate that.

7 That will take about 60 days to get that transcript to  
8 me. The reason for that is when I put down my order I want to be  
9 able to cite to the testimony that comes in. When the appellate  
10 court looks at this, they'll know that I considered that law or  
11 those facts that were introduced. So 60 days to get me the  
12 transcript and to be honest probably 30 or 40 days.

13 It'll take me that long to get that opinion out. I'll  
14 do a written opinion and try to do a good job on that, so I'm  
15 sure your attorneys will get that opinion to you. I'll work on  
16 doing that and making sure it's in the proper form that I like  
17 it.

18 In closing, Mr. Lance, your attorneys have done an  
19 incredible job. You're a lucky man to have these people spend  
20 this time and this dedication to this issue. Saying that doesn't  
21 mean I'm gonna agree with what they say.

22 Your closing argument was fantastic by the way, but I'm  
23 gonna look at it again and look at the law again and look at the  
24 testimony again.

25 But you and the people who care about you, you're a

1 lucky man for that, too. Most people that go to prison, people  
2 just let them go and never have contact with them again for 15,  
3 20 years. So you're a lucky man in regard to that.

4 That doesn't mean I'm gonna go with you on this case,  
5 but I hope you take time to reflect on the fact that you've had  
6 excellent attorneys. And, more importantly, you've got a whole  
7 group of people that care for you, and that's a blessed man.

8 I appreciate the effort of the State. I don't know if  
9 any of the victims' families are here, but you think about  
10 dealing with something like this for 20 years. What's that got  
11 to be like? Being an assistant district attorney or even a  
12 district attorney is a very hard job.

13 You have to really study to do that, and so you've  
14 really done a great job of providing documents and making me  
15 study. I'm convinced that good lawyers make me be a better  
16 judge. Both sides of this case as I've reviewed documents have  
17 helped me become a better judge, so I appreciate your efforts on  
18 that.

19 No matter which way this goes, the appellate court will  
20 review it, so I look forward to their wisdom on this -- on this  
21 issue. Then we will go from there. Once again, I appreciate the  
22 effort made by both parties on this thing.

23 To the court staff here in Cookeville, y'all have been  
24 great to me, so I appreciate you making me feel at home. We will  
25 stand in recess. Thank you.

1	(END OF VOLUME II)
2	(END OF PROCEEDINGS)
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# REPORTER'S CERTIFICATE

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, ERICA MURPHY, Court Reporter, with offices in Nashville, Tennessee, hereby certified that I reported the foregoing PCR hearing of **GREG LANCE VS. STATE OF TENNESSEE**, by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

I further certify that in order for this document to be considered a true and correct copy, it must bear my original signature, and that any unauthorized reproduction in whole or in part and/or transfer of this document is not authorized, will not be considered authentic, and will be in violation of Tennessee Code Annotated 39-14-149 Services.

ERICA MURPHY  
Court Reporter